



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

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CELA Publication #514

Mr. Matt Uza
Manager, Regulation 170 Review
Water Policy Branch – Quality Improvement Section
Ministry of the Environment
135 St. Clair Avenue West, 5th Floor
Toronto, Ontario
M4V 1P5

Dear Mr. Uza:

**RE: BROAD POLICY PROPOSAL: REGULATION OF DRINKING WATER
SYSTEMS IN ONTARIO -- EBR REGISTRY NO. PA05E0011**

These are the comments of the Canadian Environmental Law Association (“CELA”) with respect to the Ministry’s broad policy proposal for regulating certain classes of drinking water systems in Ontario. These comments are being provided to you in accordance with the above-noted EBR Registry notice.

As we noted in our April 2005 submission on the recent report of the Advisory Council on Drinking Water Quality and Testing Standards, CELA concurs that it is necessary to develop appropriate measures to ensure the safety of drinking water provided by small or private systems.

Accordingly, CELA agrees in principle with the main components of the Ministry’s proposed approach for such systems, namely:

- drafting a new legislative and regulatory framework for the five classes of systems that will no longer be subject to the Regulation 170/03 regime;
- developing a risk-based, site-specific approach for inspection, compliance and enforcement activities for these systems;
- transferring responsibility to local health units to implement this new approach;
- developing “user fees” to recover some of the cost of implementation; and
- establishing interim requirements in relation to bacteriological testing for such systems.

However, CELA’s support for the above-noted components is conditional on a number of key matters.

First, it is imperative to ensure that local health unit inspectors are properly resourced and adequately trained to deliver the new approach. In this regard, we are aware of recent comments by some health unit officials that they presently lack the capacity to assume responsibility for small or private systems. It goes without saying that the success of the new approach will greatly

depend upon whether the local health units have sufficient institutional capacity to take on this significant new responsibility.

Second, the risk assessment criteria and inspection protocols to be utilized by local health unit inspectors must be: (a) developed in an open and consultative manner; (b) based upon best practices and reasonably affordable technology; (c) aimed at achieving a high level of public health protection; and (d) fully in place at the time that the proposed transfer of responsibility occurs.

Third, it is still unclear which ministry or agency will assume responsibility for small or private systems that are located in areas of Ontario not covered by existing local health units. Assuming that the Ministry of the Environment will retain this regulatory responsibility (or may delegate it to another entity), then it will be necessary to ensure that sufficient governmental resources are allocated for this task.

Fourth, once the details of the new approach have been finalized, there will be an immediate need for comprehensive public education efforts and accessible training opportunities for the owners and operators of small or private systems. Simply put, compliance with the new regime (and the safety of drinking water) will be significantly enhanced if the owners and operators are actually aware of these new requirements.

Fifth, CELA would encourage the province to expedite the certification of appropriate treatment equipment or devices so that owners and operators of small or private systems will know which operational options are acceptable for reliably treating drinking water in Ontario.

Finally, for clarity and accountability purposes, the new approach needs to clearly articulate the respective duties, responsibilities and powers of the Ministry of the Environment (i.e. Chief Drinking Water Inspector) and the Ministry of Health and Long-Term Care (i.e. health unit staff) in terms of program oversight and delivery. In our view, a high degree of certainty about “who does what” will be necessary to avoid jurisdictional fragmentation or administrative confusion as the new approach is implemented across Ontario.

CELA reserves the right to make further submissions on this new approach once the details about the forthcoming legislative and regulatory changes are announced later this year. In addition, please be advised that under separate cover, CELA will be sending comments on the proposed revisions to Regulation 170/03 (EBR Registry No. RA05E005). Please contact the undersigned if you have questions or comments about this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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