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

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Dear Mr. Day,

Re: Submission to the Standing Committee on Social Policy with respect to the *Clean Water Act, 2005*

Please accept this submission by the Canadian Environmental Law Association (CELA) regarding proposed amendments to Bill 43: the *Clean Water Act, 2005* (*CWA*). We strongly support the source protection initiative, and we believe that this *Act* is an essential step towards the ultimate goal of protecting drinking water sources in all watersheds across Ontario.

In order to ensure that the legislation provides the necessary level of protection to human health and the environment, we have identified several areas of concern which we submit will require further consideration. As the legislation moves forward, we will be paying close attention to how the *Act* and any amendments address these concerns.

Introduction

CELA is a public interest law group founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and citizens' groups in the courts and before tribunals on a wide variety of environmental matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.

For the past two decades, CELA's casework and law reform activities have focused on drinking water quality and quantity issues. More recently, CELA has been involved in a number of drinking water matters, such as:

- representing the Concerned Walkerton Citizens at the Walkerton Inquiry;
- preparing various issue papers for Part II of the Walkerton Inquiry, including *Tragedy on Tap: Why Ontario Needs a Safe Drinking Water Act;*

- submitting model water legislation to entrench watershed planning and water conservation in Ontario;
- commenting on the *Safe Drinking Water Act*, *Sustainable Water and Sewage Systems Act, 2001*, and *Nutrient Management Ac*t, and proposed regulations thereunder;
- commenting on various municipal land use planning reforms and amendments to the *Municipal Ac*t;
- commenting on the MOE *White Paper on Watershed-Based Source Protection Planning*;
- providing input on the Great Lakes Charter Annex international negotiations;
- convening public workshops on source water protection across Ontario;
- facilitating the development of an Ontario-wide network of interested and engaged non-governmental organizations (NGOs);
- preparing joint NGO sign-on letters to numerous Ministers expressing support for the source protection initiative and suggesting areas for improvement; and
- attending public meetings held by the MOE regarding source protection and water-taking initiatives.[1]

In addition, CELA has served as a member of several advisory committees established by the Ontario government to consider various aspects of source water protection, such as:
- Advisory Committee on Watershed-Based Source Protection Planning;
- Implementation Committee for Watershed-Based Source Protection;
- Nutrient Management Advisory Committee; and
- Advisory Committee to the Great Lakes Water Management Initiative.

It is against this extensive background and experience that CELA has reviewed the various provisions of the proposed *CWA*. For comparative purposes, we have also considered related documents and reports regarding source protection, including:
- *Source Water Protection Statement of Expectations* (endorsed by NGOs across Ontario);
- the Part I and II Reports of the Walkerton Inquiry;
- *Final Report: Protecting Ontario's Drinking Water – Toward a Watershed-Based Source Protection Program* (April 2003);
- *Summary Report: Consultation Sessions on the White Paper on Watershed-Based Source Protection Planning* (March 1 to 23, 2004);
- MOE briefing materials and related documentation;
- *Watershed Based Source Protection: Implementation Committee Report to the Minister of the Environment* (November 2004); and
- *Watershed-Based Source Protection Planning: Technical Experts Committee Report to the Minister of the Environment* (November 2004).

The first of these documents, the *Source Water Protection Statement of Expectations*, explores sixteen themes which are of key importance and concern to the environmental NGO community. This submission assesses the *CWA* in the context of those priorities.

CELA commends the Ontario government for its commitment to furthering the source protection initiative, and for its efforts to improve upon the previously proposed *Drinking Water Source Protection Act*. We encourage government to incorporate the recommendations listed below, and we look forward to the passage of the *CWA* so that the important work of protecting Ontario's watersheds can proceed as expeditiously as possible.

[1] CELA's water-related briefs, factsheets and reports are available at: www.cela.ca

Integration with Existing Legislation

The *Act* contains many important provisions regarding its integration with other laws, and generally provides that in the case of conflict with another statute or regulation, the more protective provision will prevail. Moreover, if conflicts arise, the source protection plans will prevail over official plans and zoning by-laws, and the *CWA* will prevail over the *Nutrient Management Act* and any regulations or instruments created under it. Any weakening of these conflict provisions would undermine the effectiveness of the Act as a whole. These provisions provide clarity on the role of the *Act* within Ontario's water protection regime, and they establish the minimum framework necessary to ensure the consistent application of the Act and all of its protective measures.

It is noteworthy that section 96(1) only addresses conflicts between the *CWA* and the provisions of another Act or regulation, whereas section 96(2) applies to the *Nutrient Management Act*, its regulations, **and its instruments**. Section 96 should be broadened to include instruments created under other Acts, in addition to the *Nutrient Management Act*. At a minimum, these other Acts should include:

- the *Aggregate Resources Act*,
- the *Conservation Authorities Act*,
- the *Crown Forest Sustainability Act, 1994*,
- the *Environmental Protection Act*,
- the *Mining Act*,
- the *Oil, Gas and Salt Resources Act*,
- the *Ontario Water Resources Act*,
- the *Environmental Assessment Act*, and
- the *Pesticides Act*.

Instruments (i.e. licenses, permits, and certificates of approval) are key components of any legislative scheme, and may greatly impact a watershed depending on the rigorousness of their conditions. It is through instruments that legislation is applied on a day-to-day basis.

Precautionary Principle

In Part 2 of the *Report of the Walkerton Inquiry*, Justice O'Connor suggests that "when the potential consequences of the hazard in question are large, the precautionary principle has a role to play in practical risk management and should be an integral part of decisions affecting the safety of drinking water."[2]

The Final Report of the Advisory Committee on Watershed-based Source Protection Planning sets out several principles which are intended to guide decision-making processes. The second principle is entitled *comprehensiveness*, and includes specific reference to the precautionary approach as follows:

> All watershed-based source protection plans must take a precautionary approach that uses the best available science and is subject to continuous improvement as our knowledge

[2] D.R. O'Connor, *Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water* (Ontario: Queen's Printer for Ontario, 2002) at 77.

> increases. The plans must be defensible and have the flexibility to accommodate Ontario's diverse watersheds.[3]

The Statement of Environmental Values for the Ministry of the Environment states that:

> The Ministry will exercise a precautionary approach in its decision-making. Especially when there is uncertainty about the risk presented by particular pollutants or classes of pollutants, the Ministry will exercise caution in favour of the environment.[4]

Despite these numerous recommendations and commitments, the proposed *CWA* does not contain a single reference to the precautionary principle.

As Minister Broten noted in her introductory remarks on Monday, August 21, "the proposed *Clean Water Act* is inherently precautionary and as regulations are developed under the Act, we will be mindful of the precautionary principle." However, during the course of the hearings on this Act, we heard several industry and farm groups challenge the appropriateness of the precautionary principle in the context of source protection. Their opposition is merely evidence of the fact that parties will not implement this legislation in a precautionary manner unless explicitly required to do so by the text of the Act. Finally, the precautionary principle is entirely consistent with a science-based approach; it simply guides decision-makers when science is unable to provide absolute answers.

The precautionary principle can be expressed in the following manner:

> Where there are threats of serious or irreversible damage to an existing or future source of drinking water, lack of full scientific certainty should not be used as a reason for postponing measures to prevent the threat.

This language is similar to that used in the Supreme Court of Canada case *Spraytech* v. *Hudson*[5]. Some expressions of the precautionary principle limit its application to "cost effective" measures. However, linking precaution to economic considerations is inappropriate in this context. The *CWA* is intended to protect drinking water and human health. The "cost-effective" caveat has been historically misapplied in such situations and used as an excuse for avoiding action. This is due to the failure of standard cost-benefit analyses to capture the full array of long-term environmental and human health costs.

The precautionary principle should be inserted into the *Act* both as a guiding principle in the purpose statement and as an operationalized component of the source protection plans. Accordingly, the two subsections listed below should be added to the *Act*:

1. The following subsection should be added to the *Act*'s purpose statement in section 1:

> (2) In the administration of this Act, the Government of Ontario, the Minister, and all bodies subject to the provisions of this Act, including provincial authorities and

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[3] Advisory Committee on Watershed-based Source Protection Planning, "Protecting Ontario's Drinking Water: Toward a Watershed-based Source Protection Planning Framework" (April 2003) at recommendation #6.

[4] Ontario, Ministry of the Environment, *Statement of Environmental Values* at Part III "Environment Protection", www.ene.gov.on.ca/envision/env_reg/ebr/english/SEVs/moe.htm

[5] *114957 Canada Ltee (Spraytech, Societe d'arrosage)* v. *Hudson (Town)*, [2001] 2 S.C.R. 241 at para. 31, taken from para. 7 of the Bergen Ministerial Declaration of Sustainable Development (1990).

> responsible authorities, shall exercise their powers in a manner that protects the environment and human health and applies the precautionary principle.[6]

2. The following subsection should be added to section 19:

> (1.1) In preparing a source protection plan, the source protection committee must apply the precautionary principle, so that where there are threats of serious or irreversible damage to an existing or future source of drinking water, lack of full scientific certainty should not be used as a reason for postponing measures to prevent the threat.

This amendment to section 19 is particularly important, as it provides a concrete way for the principle to be used in managing local threats.

Permits versus Risk Management Agreements

On Monday, August 21, Minister Broten made the following statement in her opening remarks: "one of the amendments we're considering would let a local community have the option of negotiating risk management plans to address significant drinking water threats. Instead of permits, we intend to create risk management tools." At this time, no implementation details have been announced. In particular, the Minister has not provided any assurances regarding the enforceability of the risk management plans and the implications for public transparency. Thus, CELA opposes the removal of the permit provisions. We cannot conclude that a negotiated risk management scheme is an acceptable substitute for the permitting regime, and we foresee countless potential problems should the former route be adopted.

First, it is not necessary to remove the permit provisions in order to address the concerns voiced by numerous stakeholders at the committee hearings. Many groups, including farm groups, suggested in their presentations that officials should be able to use risk management agreements in the majority of cases, and only resort to permits as a last resort to address severe threats. This is not inconsistent with the current reading of the Act. Under sections 19, 50, and 53, the source protection committees already have the flexibility to decide which priority activities (<u>if any</u>) should be subject to permits, and nothing in the Act excludes the use of negotiated agreements. If the permit provisions are removed, officials will no longer be able to access this regulatory approach for even the most dire cases.

Second, enforcement would become a very real concern should negotiated agreements replace permits. Permits are legally binding and are typically subject to periodic renewal. This renewal period allows officials to review the appropriateness of the permit conditions in light of recent scientific developments and site-specific information. Enforcement would be severely compromised if the negotiated agreements were not binding on land users or if they extended for an indefinite duration. Source water protection demands more; if the members of a source protection committee feel that an activity is hazardous enough to warrant a permit, they should have that tool available to them.

Third, the implementation of source protection plans should not deteriorate into confidential negotiations and back-room deals. The public requires transparency in order to fully trust, understand, and contribute to the process. Transparency, in turn, demands that the public have access to information regarding *how* and *why* risk management decisions are being made.

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[6] A precedent for this provision can be found at section 4(2) of the *Canadian Environmental Assessment Act*, R.S.C. 1992, c. 37 as amended.

Fourth, timelines would become particularly crucial under a negotiated risk management system. There would need to be strict deadlines imposed for reaching negotiated agreements and for implementing the agreed-upon measures after deals are finalized. Otherwise, the entire process could stall or become derailed as a result of local politics and competing priorities.

Timelines

This Act has been a long time in coming. The need for source protection was explicitly identified four years ago by Justice O'Connor, and many municipalities have been working hard to pursue source protection as best they could under existing legislation. In order to ensure that source protection becomes a reality before another Walkerton tragedy can occur, this Act needs to be passed as soon as possible. Furthermore, timelines need to be inserted into the Act so that the planning and implementation phases proceed in a prompt and consistent manner. At a minimum, there should be timelines set for:

- establishing source protection committees (section 7),
- establishing additional source protection areas in areas not covered by Conservation Authorities (section 5),
- designating a person or body for a source protection area in areas not covered by Conservation Authorities (section 99(f)),
- entering into agreements governing the preparation of source protection plans by municipalities in areas not covered by Conservation Authorities (section 23),
- completing terms of reference (sections 8-10), assessment reports (sections 13-15), and source protection plans (sections 19, 22, 26, and 27),
- implementing risk management responses.

Furthermore, under section 85, the Minister "may in writing extend the time for doing anything required under this Act, before or after the time for doing the thing has expired. While CELA has no objection in principle to granting time extensions where necessary and appropriate, we submit that this discretion must be utilized sparingly and judiciously by the Minister. Accordingly, we recommend that section 85 should specify some criteria or factors to be taken into account by the Minister when deciding whether or not to grant time extensions. We further submit that the Act should impose an outside limit (i.e. one year) on the duration of time extensions granted by the Minister.

3. Section 85 should be re-worded as follows:

> 85. (1) The Minister may in writing extend the time for doing anything required under this Act or regulations, before or after the time for doing the thing has expired.
> (2) The Minister shall not grant a time extension under subsection (1) unless:
> (a) the person requesting the time extension has applied in writing to the Minister for the extension and has provided reasons in support of the request;
> (b) the person requesting the time extension has provided public notice and comment opportunities in relation to the proposed extension; and
> (c) the Minister is satisfied that a time extension is in the public interest and is necessary in order to achieve the purposes of this Act.
> (3) In granting a time extension under subsection (1), the Minister may specify such further deadlines or impose such terms as the Minister considers advisable.
> (4) Despite subsection (3), the Minister shall not grant a time extension under subsection (1) for a term that exceeds one year.

Public Participation and Education

Implementation of each source protection plan will occur mostly at the local level, through measures carried out by individual landowners, industries, and businesses. Considerable public support will be needed, and the most effective way to build public support is to provide education opportunities and thoroughly engage the public in the planning and implementation process.

We are troubled by the fact that there are few mandatory public participation provisions currently included in the *Act*. At a minimum, meaningful participation requires the public's involvement on source protection committees, financial support for participation outside of the committees, easy access to all relevant information, and the opportunity to comment on proposed terms of reference, assessment reports, and source protection plans before these documents are finalized. The public has a real contribution to make at the early planning stage as the terms of reference and assessment reports are being drafted. The people of a community often possess unique knowledge of local threats and conditions—the abandoned wells, the illegal dumps, the ponds and waterways that dry up in summer due to overuse. The amendments below recognize this local knowledge and establish a process whereby it can inform the decision-making process.

4. The following section should be added after section 9:

> 9.1 The source protection authority shall,
> (a) publish the proposed terms of reference in accordance with the regulations;
> (b) give notice of the proposed terms of reference in accordance with the regulations to the persons prescribed by the regulations, together with information on how copies of the terms may be obtained and an invitation to submit written comments on the terms to the source protection authority within the time period prescribed by the regulations; and
> (c) publish notice of the proposed terms of reference in accordance with the regulations, together with information on how members of the public may obtain copies of the terms and an invitation to the public to submit written comments on the terms to the source protection authority within the time period prescribed by the regulations.

5. The following subsections should be added to section 10:

> (1) The source protection authority shall submit the proposed terms of reference to the Minister, together with,
> […]
> (c) any written comments received by the source protection authority after publication of the terms under section 9.1.
>
> (1.1) If proposed terms of reference are submitted to the Minister under subsection 10(1), the Minister may confer with any person or body that the Minister considers may have an interest in the proposed terms.

6. The following section should replace the existing section 11:

> 11. As soon as reasonably possible after the terms of reference are approved by the Minister, the Minister shall publish notice of the approval on the environmental registry established under the *Environmental Bill of Rights, 1993*, together with,

(a) a brief explanation of the effect, if any, of any comments submitted under section 10; and
(b) any other information that the Minister considers appropriate.

7. The follow section should be added after section 11:

11.1 The source protection authority shall ensure that the terms of reference, including any amendments made by the Minister, are available to the public on the Internet and in such other manner as the source protection authority considers appropriate as soon as reasonably possible.

8. The amendments included in recommendations 10 through 13 should be similarly applied to the sections dealing with assessment reports.

9. Subsection 18(3) should be amended as follows with respect to the interim progress reports:

(3) The source protection authority shall ensure that the reports are available to the public as soon as reasonably possible after they are submitted to the Director.

10. Subsection 41(2) should be amended as follows with respect to the annual progress reports:

(2) The source protection authority shall ensure that the report is available to the public as soon as reasonably possible after it is submitted to the Minister.

11. Subsection 23(2) should be amended to ensure that the source protection plans prepared by municipalities are subject to the same public consultation requirements as plans prepared by source protection committees.

First Nations

We strongly believe that First Nations, Métis, and Inuit peoples have a critical role to play in the source water protection framework. In its current form, the *Act* does not include provisions related to drinking water systems on reserves, nor does it in any way include First Nations peoples in the source protection process. We continue to stress that federal and provincial governments should support the ability of First Nations, Métis, and Inuit peoples to be full participants in source protection planning and implementation, in addition to allocating appropriate resources to facilitate meaningful involvement.

Great Lakes

Given the critical importance of the Great Lakes as a source of drinking water, we are pleased to note the inclusion of several provisions addressing Great Lakes' concerns. These provisions include the requirement that source protection plans consider existing agreements related to the Great Lakes, the formation of a Great Lakes advisory committee, and the establishment of quality and quantity targets for watersheds within the Great Lakes basin. While we support the importance of these measures, the legislative language is largely permissive. We believe that strong Great Lakes protections should be required, and not simply permitted, by the *Act*. Furthermore, source protection measures should be effectively integrated with existing Great Lakes programs, data collection, and inter-jurisdictional agreements, including the Great Lakes Water Quality Agreement and the Annex 2001 agreements.

Interim Measures

We are encouraged by several promising interim measures contained within the *Act* as it is currently drafted, such as the requirement for interim progress reports to be prepared, and the option to order risk management plans. Additionally, if imminent drinking water health hazards are identified during the course of collecting information, there is an obligation to notify the Ministry. However, we remain concerned that significant threats to source waters could develop or continue unabated before the source protection plans are approved. Accordingly, the following amendments should be applied:

12. The province, municipalities and Conservation Authorities should be required to take immediate, precautionary action in response to high-risk activities and land uses once these are identified. According, subsection 80(1.2) should be added and subsection 80(2) amended as follows:

    (1.2) The Director shall, within 30 days after receiving a notice under subsection (1), take action intended to achieve the following objectives:
    (a) ensuring that the substance which is being discharged or which is about to be discharged ceases to be an imminent drinking-water health hazard, if the notice was given under subsection (1)(a); or
    (b) ensuring that the raw water supply of an existing drinking-water system meets all standards prescribed by the regulations, if the notice was given under subsection (1)(b).

    (2) The Director shall, within 30 days after receiving a notice under subsection (1), give written notice of the action taken by the Ministry to
    (a) the source protection authority, if the notice under subsection (1) was given by an employee or agent of a source protection authority; or
    (b) the municipality, if the notice under subsection (1) was given by an employee or agent of a municipality.

    Subsection 80(1.2)(b) could be broadened to alternatively require corrective actions akin to those prescribed under the *Safe Drinking Water Act, 2002*, where applicable.

13. Furthermore, until source protection plans are in place, government should not issue any new instruments that could potentially cause significant or irreversible harm to source water in vulnerable areas, such as Certificates of Approval and Permits to Take Water.

Universal Level of Protection

We are concerned that the *Act* does not yet achieve sufficient protection for all of Ontario's source waters. In its current form, the *Act* is weighted towards protection of municipal drinking water systems within source protection areas. We strongly recommend that this scope be broadened to more rigorously address private systems, and drinking water systems outside of source protection areas. These objectives can be accomplished, at least in part, through the following amendments:

14. The legislation should require the identification of all drinking water sources for both private and municipal systems in all watersheds across the province, including those systems outside of source protection areas. For example, assessment reports should include the location of all wells on provincial water well records.

15. Furthermore, a basic threats assessment should be conducted for all systems and significant drinking water threats across the province should be addressed, at a minimum.

16. The province should review all provincially regulated facilities on a priority basis to ensure that they do not jeopardize drinking water sources.

17. The legislation should provide additional means by which clusters of private water systems can be "nominated" for inclusion in assessment reports, such as by petition signed by members of the public, or by Ministerial direction.

18. Currently, under section 19(6), source protection plans may not designate significant drinking water threats as prohibited activities, regulated activities or restricted land uses if they fall within groundwater recharge areas or highly vulnerable aquifers. Instead, the ability to prohibit, regulate, or restrict the land use of significant drinking water threats is limited to surface water intake protection zones and wellhead protection areas. In order to clarify to source protection committees that the source protection plans can, and should, require additional measures to address significant drinking water threats in groundwater recharge areas and highly vulnerable aquifers, section 19(2) should be amended to read as follows:

> (2) A source protection plan shall, in accordance with the regulations and the terms of reference, set out the following:
> […]
> 9. Identify, for each groundwater recharge area and highly vulnerable aquifer identified in the assessment report under section 13(2)(d), one or more measures intended to achieve the following objectives:
> i. Ensuring that every existing activity identified in the assessment report as a significant drinking water threat for that vulnerable area ceases to be a significant drinking water threat.
> ii. Ensuring that none of the possible future activities identified in the assessment report as activities that would be drinking water threats for that vulnerable area ever become significant drinking water threats.

The committees could include both mandatory and voluntary measures under this section.

19. Similarly, the source protection committees need to be provided with the explicit authority to include measures intended to address moderate or low drinking water threats in the source protection plans. The committees should be able to include both mandatory and voluntary measures under this section. It is acknowledged that source protection committees are already required to set out policies to ensure that moderate or low drinking water threats do not become significant drinking water threats in the future. Accordingly, the following subsection should be added to section 19:

> (2.1) A source protection plan may, in accordance with the regulations and the terms of reference, set out measures in response to drinking water threats identified in the assessment report under section 13(2)(g) which are not or would not become significant drinking water threats.

Designation of Activities for sections 49, 50 and 51

Currently, activities and land uses need to be prescribed by the regulations in order for source protection committees to be able to designate them for prohibition, regulation, or restriction in their source protection plans. In other words, under section 100(1) the Lieutenant Governor in Council must specifically identify those activities or land uses that may be subject to a permit scheme or otherwise regulated. Similarly, permit officials cannot require a risk management plan for an activity unless it has been prescribed by the regulations. This arrangement could severely curtail the ability of source protection committees and permit officials to respond to local threats in a flexible and appropriate manner. Additionally, there may be particular local activities that are not reflected in the generic list of prescribed activities identified by the province.

Accordingly, we recommend that the relevant sections be amended to allow source protection committees to designate *any* activities or land uses for prohibition, regulation, or restriction *unless* they are prescribed by regulation. By reversing the emphasis, the Lieutenant Governor in Council need not identify every conceivable activity that should be included, but need only identify those which should be excluded from the list of designated activities. The following amendments are intended to accomplish this objective:

20. Subsections 19(3) should be replaced with the following:

> (3)(a) An activity may be designated under paragraph 3 of subsection (2) unless the activity is a type of activity prescribed by the regulations; and
> (b) An activity shall not be designated under paragraph 3 of subsection (2) unless the activity is identified in the assessment report as a possible future activity that would be a significant drinking water threat.

Equivalent amendments should be made to subsections 19(4)(a) and 19(5)(a).

21. Subsection 48(1) should be amended to read as follows:

> (1) If the Director has approved an assessment report for a source protection area under section 15 or 16 or under an agreement under section 23 and, in a surface water intake protection zone or wellhead protection area identified in the report, at a location or within an area specified in the report, a person is engaged in an activity that is not prescribed by the regulations and is identified in the report as an activity that is or would be a significant drinking water threat at that location or within that area, the permit official may issue an order requiring the person to prepare and submit to the permit official, within such time as is specified in the order, a risk management plan for the activity.

Adequate Funding

It is essential that there be a sustainable and reliable approach to securing funds for the implementation of source protection plans. In Part Two of his report, Justice O'Connor specifically recommended that "the provincial government should ensure that sufficient funds are available to complete the planning and adoption of source protection plans."[7] To implement such a recommendation, CELA submits that the proposed *CWA* should be amended to impose a mandatory duty upon the Minister to establish and oversee a special purpose account for source

[7] D.R. O'Connor, *Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water* (Ontario: Queen's Printer for Ontario, 2002) at 116.

protection purposes. To our knowledge, this fund could be initially started with an appropriate allocation from the Consolidated Revenue Fund. However, to ensure the long-term sustainability of the fund, the province should explore all of the funding mechanisms identified in the Implementation Committee's report, including water taking charges, water rates, pollution charges, incentive programs, general revenues, and stewardship approaches.

Regardless of the method chosen, we strenuously urge the provincial government to structure the funding in such a way as to provide for the equitable reallocation of funds. This will help ensure that protective measures are put in place at the locations where they are most needed for the health of the watershed. In many cases, the areas of dire need will not be the same as those areas with a sufficient population base to contribute to costs through water rates and property taxes.

It is important for the funding design to recognize that there may be impacts from upstream users in a watershed, and benefits to downstream users, with the result being that both should be involved in the funding mechanism required to reduce the risks.

The costs of NOT financing source protection are extremely significant. Among them are the absence of a first barrier in protecting drinking water; the potential for illness and even tragedy; the additional costs of treatment; and the lack of public confidence in drinking water. Without adequate funding, we risk promulgating a disjointed approach which could fail to identify watershed scale solutions.

22. The following subsections should be added to the Act under the heading "Source Protection Fund":

    (1) Within 90 days after this Act comes into force, the Minister shall establish a special purpose account, known as the "Source Protection Fund", in the Consolidated Revenue Fund.

    (2) All amounts received by the Crown under this Act, and under such other Acts as may be prescribed by regulation, shall be held in the Source Protection Fund, including all fines, fees, and proceeds from sales under this Act and other prescribed Acts, including sales of things forfeited to the Crown.

    (3) Money standing to the credit of the Source Protection Fund is, for the purpose of the *Financial Administration Act*, money paid to Ontario for a special purpose.

    (4) The Minister shall direct that money be paid out of the Source Protection Fund, in such amounts and upon such terms as the Minister considers advisable, to any person, agency, ministry, municipality, entity or organization that requests financial assistance in order to implement an approved source protection plan.

    (5) The Minister shall ensure that a report is prepared annually on the operation and financial affairs of the Source Protection Fund.

    (6) The Minister shall submit the report required by subsection (5) to the Lieutenant Governor in Council and shall table the report with the Speaker of the Legislative Assembly.

Conclusion

The *Clean Water Act* is a significant piece of legislation which provides long-awaited protections for watersheds and watershed communities. The 22 amendments we have proposed above will help ensure the source protection framework fulfills its purpose in as comprehensive and effective a manner as possible. We look forward to the passage of the *Clean Water Act* so that the important work of protecting drinking water sources can proceed as expeditiously as possible.

We thank you for your attention, and we look forward to providing further feedback on the development, implementation, and funding of source protection in Ontario.

Yours truly,

Jessica Ginsburg, Counsel
Canadian Environmental Law Association