COMMENTS AND RECOMMENDATIONS REGARDING THE FIRST PHASE OF REGULATIONS UNDER THE *CLEAN WATER ACT, 2006*

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Prepared by:

CANADIAN ENVIRONMENTAL LAW ASSOCIATION
Jessica Ginsburg
Special Projects Counsel

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Table of Contents

Executive Summary

The *Clean Water Act, 2006* (*CWA*) is a positive step towards watershed-based drinking water source protection in the province of Ontario. Its broad scope encompasses Great Lakes and inland communities, groundwater and surface water sources, rivers and lakes, and current and future conditions. Several "conflict" provisions help to ensure the consistent application of the *CWA* and all of its protective measures. Additionally, a range of new municipal powers, roles and requirements will greatly assist in providing tangible improvements to Ontario's watersheds. Accordingly, the Canadian Environmental Law Association (CELA) looks forward to the implementation of the *CWA* so that the important work of protecting drinking water sources can proceed as expeditiously as possible.

Having said this, the *CWA* relegates several important functions to the discretionary regulation-making powers of the Minister and the Lieutenant Governor in Council. Some of these regulatory powers, such as those pertaining to the structure of source protection committees and working groups, will greatly impact the public's ability to participate in a meaningful way. Our submission reviews five proposed regulations dealing with source protection areas and regions; source protection committees; terms of reference; time limits; and miscellaneous other matters. We then make a number of recommendations on how these matters should be addressed. Overall, CELA commends the Ontario government for its commitment to furthering the source protection initiative.

Introduction

This is CELA's submission regarding the first phase of regulations under the *Clean Water Act, 2006.* The regulations were posted for public comment by the Ministry of the Environment (MOE) on April 12, 2007.

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, much of 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*, *Nutrient Management Act*, and proposed regulations thereunder;
- commenting on various municipal land use planning reforms and amendments to the *Municipal Act*;
- providing input on the Great Lakes Charter Annex international negotiations;

- attending public meetings held by the MOE regarding source protection and water-taking initiatives;
- convening public workshops on source water protection across Ontario;
- preparing joint non-governmental organization (NGO) sign-on letters to numerous Ministers expressing support for the source protection initiative and suggesting areas for improvement;
- presenting at the Standing Committee's public hearings on the *Clean Water Act*; and
- facilitating the development of the Water Guardians Network, an Ontario-wide network of interested and engaged NGOs.[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 proposed regulations. For comparative purposes, we have also considered related legislation, documents, and reports regarding source protection, including but not limited to:
- *Source Water Protection Statement of Expectations*[2] (endorsed by NGOs across Ontario);
- the Part I and II Reports of the Walkerton Inquiry;
- *Watershed Based Source Protection: Implementation Committee Report to the Minister of the Environment* (November 2004);
- *Watershed-Based Source Protection Planning: Technical Experts Committee Report to the Minister of the Environment* (November 2004); and
- MOE briefing materials and related documentation.

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 proposed regulations in the context of those priorities, and we encourage government to incorporate the recommendations listed below.

Source Protection Areas and Regions Regulation

The *Statement of Expectations* suggests that the watershed-based source protection planning framework should be required across Ontario. Additionally, Justice O'Connor's first recommendation in the Report of the Walkerton Inquiry is that "…[s]ource protection plans should be required for all watersheds in Ontario."[3]

Currently, the *CWA* extends to the areas over which conservation authorities ("CAs") have jurisdiction.[4] In effect, this excludes large portions of central and northern Ontario from

[1] CELA's water-related briefs, fact sheets and reports are available at: www.cela.ca
[2] T. McClenaghan and D. Finnigan, "Protection Ontario's Water Now and Forever: A Statement of Expectations for Watershed-Based Source Protection from Ontario Non Governmental Organizations" (Canadian Environmental Law Association & Environmental Defence, November 2004) [hereinafter "Statement of Expectations"].
[3] D.R. O'Connor, *Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water* (Ontario: Queen's Printer for Ontario, 2002) at 92.
[4] *Clean Water Act, 2006*, S.O. 2006, c. 22, s. 4(1) [hereinafter *CWA*].

receiving the benefits of source protection. However, the Minister has the authority to make regulations altering the boundaries of a source protection area for the purposes of this Act.[5] Additionally, the Minister *may* create new source protection areas in these parts of central and northern Ontario,[6] with two options available for implementation. First, the Minister could decide to designate a non-CA person or body to serve as the source protection authority from the outset, thereby imposing all of the same duties regarding source protection committees and public consultations as would typically be required of the CA- source protection authorities.[7]

Second, the Minister could enter into an agreement with a municipality, whereby the municipality would prepare a "focused" source protection plan and would be exempted from all of the statutory requirements regarding the establishment of source protection committees and the role of public consultations.[8] Rather, any requirements around public involvement would be set out in the terms of the agreement. Presumably, these municipalities would be designated as source protection authorities after the completion of the source protection plan, in order that the provisions of the plan could be enforced under the *CWA*.

The proposed Regulation on Source Protection Areas and Regions only establishes two additional source protection areas: the North Bruce Peninsula Source Protection Area and the Severn Sound Source Protection Area. These new areas have been created pursuant to the first option outlined above, and the Minister has designated source protection authorities from the outset. While we support the establishment of these two new areas, far more needs to be done to fulfill Justice O'Connor's vision of province-wide source water protection.

Recommendation #1: Regulations passed under the *CWA* should provide for the mandatory assessment of risks and mandatory reduction of significant drinking water threats in vulnerable areas across the province.

Recommendation #2: Source protection areas should be created or expanded into parts of Ontario that are not currently covered, so that additional water users can receive the full range of protections offered by the legislation.

Recommendation #3: Where the Minister enters into an agreement with a municipality pursuant to section 26, the agreement should provide for an equivalent degree of public involvement as is required in those areas covered by conservation authorities.

Source Protection Committees Regulation

Size of the Committees

Section 1 of the proposed Regulation on Source Protection Committees stipulates that there shall be 16 members for large regions, 13 for mid-sized regions, and 10 for small regions. In section 11 of that Regulation, the Minister is given the authority to grant exemptions from any provision in sections 3 to 9. However, this authority is not extended to section 1. Therefore, the Minister does *not* have the authority to grant exemptions as to the maximum number of members on the

[5] *Ibid.* at s. 108(a).
[6] *Ibid.* at s. 108(c).
[7] *Ibid.* at s. 5, 108(f).
[8] *Ibid.* at s. 26.

source protection committees. We have recommended in a previous submission dated February 1, 2007, that the Regulation should allow for more than 16 members to be appointed to the committees in appropriate circumstances. By denying the Minister the authority to grant exemptions to section 1, the proposed Regulation becomes too inflexible to accommodate local complexities. The ultimate goal of the Regulation should be to maximize the effectiveness and fairness of the source protection committees; this goal may not always be achievable within the size limits that have been proposed.

Recommendation #4: The Minister should be given the authority to grant exemptions to the maximum number of committee members, as set out in section 1 of the proposed Source Protection Committees Regulation.

Composition of Committees

Section 2(1) of the proposed Regulation specifies the general composition of the source protection committees. Namely, one third of the members will reflect municipal interests; one third of the members will reflect the interests of the agriculture, commercial, and industrial sectors; and one third of the members are to reflect "other" interests, including, in particular, interests of the general public. This breakdown is inappropriate due to its omission of groups representing environmental interests.

While environmental groups *could* be included in the umbrella term "other" interests, it is left to the discretion of the source protection authorities (in most cases, conservation authorities) to divide up the appointments amongst the various stakeholder groups. Therefore, it is entirely possible that the source protection authorities will choose to fill the "other" vacancies with individuals such as those representing the interests of the general public, health, labour, and consumers, to the exclusion of environmental groups.

The *Clean Water Act* is a piece of environmental legislation, and its purpose is to protect existing and future sources of drinking water. However, proposed membership on the source protection committees is currently weighted in favour of those stakeholders who are responsible for causing the greatest threats. We recognize the importance of involving, from the outset, those local individuals and groups who will be required to make the largest changes pursuant to the source protection plans. Having said this, it is equally (if not more) important to include environmental groups to counter-balance economic drivers and to ensure that the source protection plans fulfill their intended purpose.

As such, environmental groups must have the ability to impact discussions in a meaningful way. Groups representing environmental interests should be accorded an equal role on the committees, rather than being overlooked and undervalued relative to the other sectors. Furthermore, local environmental groups often have separate interests, constituencies, and expertise from the "general public." It is therefore insufficient and inappropriate for groups with environmental interests to compete with other NGOs and the public for space on the committees. Finally, the "other" interests category should not include local public health representatives or medical officers of health. These individuals should be guaranteed positions on the committees, either as voting or non-voting members (depending on their preference), separate and apart from the spots reserved for environmental groups and other stakeholder interests.

Environmental non-governmental organizations and community groups hold unique perspectives; possess the requisite knowledge of local watersheds, communities, and issues; and

have demonstrated a clear commitment to the *CWA* through their extensive involvement with government and other stakeholders on this issue over the last several years. There should be an explicit requirement that all source protection committees include members that represent environmental interests, and the Regulation should be drafted accordingly.

Recommendation #5: Subsection 2.(1), paragraph 3 of the proposed Source Protection Committees Regulation should be amended to read as follows:
One third of the members to be appointed by the source protection authority, not counting any member appointed pursuant to section 6, must be persons appointed to reflect interests other than the interests referred to in paragraphs 1 and 2, and shall include a minimum of one member to reflect environmental interests and a minimum of one member to reflect the interests of the general public.

Recommendation #6: Subsection 4.(7)(b) of the proposed Source Protection Committees Regulation should be amended to read as follows:
In considering applications for appointments pursuant to paragraph 3 of subsection 2(1), the source protection authority shall attempt to appoint persons who,
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(b) as a group, are representative of interests other than the interests referred to in paragraphs 1 and 2 of subsection 2(1), and shall include a minimum of one member to reflect environmental interests and a minimum of one member to reflect the interests of the general public.

This language is consistent with numerous recommendations that have been made throughout the conceptualization and development of the *Clean Water Act*. For instance, the Ministry's own Advisory Committee on Watershed-Based Source Protection Planning indicated that "[i]t is *mandatory* for each SPPC [Source Protection Planning Committee] to include appropriate representation of … environmental groups"[9] (emphasis added).

Recommendation #7: Subsection 2.(1), paragraph 2 of the proposed Source Protection Committees Regulation should be amended to read as follows:
One third of the members to be appointed by the source protection authority, not counting any member appointed pursuant to section 6, must be persons appointed to reflect the interests of the agricultural, commercial or industrial sectors of the source protection area's or source protection region's economy.

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(b) as a group, are representative of the agricultural, commercial or industrial sectors of the source protection area's or source protection region's economy.

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

These changes are recommended to reflect the fact that the economies of some areas or regions could be predominantly agricultural, or commercial, or industrial, and it may not be appropriate to require the inclusion of all three sectors on every source protection committee. By changing the "and" to an "or" between the three listed sectors, government's intended interpretation is made clearer.

Selection of Committee Members and Committee Operations

There are several general principles that should apply to the selection of the chair and individual committee members.

- Despite the fact that the appointment of the chair is not subject to the regulations, we strongly urge the Ministry to issue Guidelines specifying the transparent procedure that will be followed. The procedure should include publishing a short-list of candidates beforehand for public comment. This is particularly important given the fact that the chair is intended to act as a neutral member. By allowing the various stakeholders to comment before a final decision is made, the source protection authority and the Minister will be better able to gauge the perceived neutrality of the candidates.
- We have noted that several conservation authorities have already initiated the selection process by publicly advertising the position of chair. This is undoubtedly due to the tight regulatory timelines that are being proposed for the appointment of the source protection committees. However, we caution that although the appointment of the chair is not a regulatory matter, the establishment of the source protection areas and regions *is* included in the proposed regulations, and the source protection committees (including the chairs) are established for the source protection areas. Accordingly, it would be improper for the chairs to be selected prior to the finalization of the source protection areas and regions via regulation.
- There should be a time frame within which the Minister should appoint the chair.
- After a final decision is made regarding the selection of the chair, the Minister should post this information in a similar fashion as the original call for candidates.
- Under section 12(2), the alternate or "acting" chair should be selected by the Minister, in a process akin to the selection of the chair. As with the selection of the chair, all stakeholder groups should be given an opportunity to comment on the short-list of candidates for alternate chair.
- Under section 8(1) of the proposed Regulation, simply being "employed in" the source protection area should not qualify a person for appointment to a source protection committee.
- In section 8(3) paragraph 1, the requirement that appointees must regularly "attend" meetings should be defined as including participation via conference calls.
- The proposed Regulation should include such matters as the mechanism for setting the specific composition of the committee, the qualifications of committee members, and the establishment of the working groups.
- The recommendation to include working groups in the regulation is of particular importance, especially since the working groups will be critical to ensuring that an adequate level of consultation and collaboration takes place among the different sectors. Adequate and appropriate funding is critical to the success of the working groups. Specific funds should be earmarked for the working groups, so that these lower tiers of involvement are neither overlooked nor hindered.
- In sections 14 and 15, the rules of procedure, code of conduct, and conflict of interest policy should not be left to the guidance materials and the discretion of each individual source protection committee. In order to promote consistency across the province, the government should include these items in the proposed Regulation.

- The proposed Regulation should require that all potential conflicts of interest are reported to the chair and to the committee at the outset, and any member who engages in activities that are in conflict of interest should be removed from the committee.
- The proposed Regulation should include stringent transparency requirements to be followed by the committee. Both the committees and the working groups should circulate draft versions of working documents (with qualifications included, as appropriate) and the peer reviews of scientific studies. The quarterly reports provided by the chair of the committee under section 19 should be made public. A web-based portal should be created where the public can submit comments on the documents under review.
- Under section 18(2), any individual requesting that the committee maintain confidentiality should be required to provide valid justification for his or her request.
- There should be one provincial liaison from the Ministry of Environment assigned to each of the 19 source protection regions and areas. This position is important to ensuring consistency, providing training, and facilitating the transfer of information between government and the committee, and visa versa.

Terms of Reference Regulation

Notice to band

In section 2 of the proposed Terms of Reference Regulation, the source protection committee is required to give notice of the preparation of the terms of reference to the chief of any reserve of a band that is included in a source protection area. This level of involvement does not constitute "meaningful consultation" as has been defined by the courts. The Minister, on behalf of the provincial Crown, should ensure that meaningful consultation takes place with not only those bands with reserve lands within the source protection area, but also those First Nations with traditional territories and/or pending land claims within the source protection area. The courts have recognized that the duty to consult may extend to situations in which claims to Aboriginal title have not yet been settled.

Recommendation #9: The Minister has an obligation to ensure that meaningful consultation takes place with those First Nations peoples who have reserve lands, traditional territories, and/or pending land claims within the source protection area.

Performance of tasks by municipality

Section 4 of the proposed Regulation specifies that the terms of reference shall not require a municipality to perform a task unless the municipal council has first passed a resolution consenting to do the work. Similarly, once a municipal council has passed such a resolution, the terms of reference *shall* require the municipality to perform the task. This section fails to include an assessment of whether or not a given municipality is qualified to take on the task at hand. Before work is delegated via the terms of reference, the source protection committee should first establish the municipality's capacity and capability to conduct the work, and institute a peer review system to ensure the accuracy and impartiality of the end product.

Recommendation #10: The last sentence of subsection 4.(1) of the proposed Terms of Reference Regulation "the terms of reference shall require the municipality to perform the

task" should be changed to "the terms of reference may require the municipality to perform the task", subject to certain qualifiers noted above.

Submission of proposed terms of reference to the source protection authority

Recommendation #11: When a source protection committee submits a proposed terms of reference to the source protection authority under clause 9(a) of the Act, it should give the source protection authority a summary of any written comments on the draft that were submitted to the source protection committee within 35 days after the notice was published under subsection 6. (2) of the proposed Terms of Reference Regulation, and a summary of comments made at the public meeting.

Amendments proposed by source protection committee

The source protection committee should be required to propose amendments to the terms of reference in the circumstances enumerated in section 9 of the Regulation, as opposed to leaving it to the discretion of the committee. For instance, if the terms of reference "contain an error that, if left uncorrected, will affect the preparation of the assessment report of source protection plan,"[10] the source protection committee should propose an amendment to the terms of reference as soon as reasonably possible.

Recommendation #12: Section 9 of the proposed Terms of Reference Regulation should be made mandatory rather than discretionary, except for paragraph 3 which should be deleted (see comments below on the Miscellaneous Regulation).

Time Limits Regulation

The proposed Regulation establishes a number of time limits stemming from the appointment of the first chair of the source protection committee, or subsequently, stemming from the date on which the review of the approved source protection plan is required to begin. The time limits relate to:

- the submission of the proposed terms of reference by the source protection committee to the source protection authority,
- the submission of the proposed terms of reference by the source protection authority to the Minister,
- the submission of the proposed assessment report by the source protection authority to the Director, and
- the submission of the proposed source protection plan by the source protection authority to the Minister.

In terms of the deadlines that are included, the one of primary concern is the five year time frame provided for the completion of the proposed source protection plan. If this time frame is followed, it will have taken approximately twelve years from the time of the Walkerton tragedy, and ten years from the release of Justice O'Connor's Report of the Walkerton Inquiry for the planning process to be completed. Following the completion of a source protection plan, it will still take an indeterminate amount of time for the plan to be implemented.

[10] Draft Terms of Reference Regulation, section 9, para. 5.

Recommendation #13: The time period for completing the source protection plans should be shortened.

We are also concerned by the multitude of key deadlines that are excluded from this proposed Regulation. There can be no guarantee that the planning process will proceed expeditiously unless a timeline is provided for every step along the way. Therefore, the proposed Regulation should be amended to include several additional time limits.

- The Minister should be subject to a time limit in responding to the proposed terms of reference. Under section 10(2) of the *Clean Water Act*, the Minister has the option of either approving the terms of reference or requiring the source protection authority to amend and resubmit.
- If the Minister requires the source protection authority to amend and resubmit the terms of reference, there should be a maximum time limit within which the source protection authority must respond. Although section 10(2) indicates that the time period is to be specified by the Minister, the Guidelines should specify a short turn-around period. Otherwise, there may be a disincentive for the source protection committees and authorities to complete the terms of reference in a satisfactory manner within the time frame provided, if they can expect a lengthy extension from the Minister after the initial submission.
- Similarly, there should be a time line for the Minister to approve the amended terms of reference after they have been resubmitted.
- There needs to be a deadline for the source protection committee to submit the proposed assessment report to the source protection authority. Currently, the source protection authority is obliged to submit the proposed assessment report to the Director within two years, but there are no means by which the source protection authority can compel the source protection committee to act in advance of this deadline.
- In keeping with the recommendations above, there should be a time limit for the Director to respond to the proposed assessment report.
- If the Director requires the source protection authority to amend and resubmit the assessment report, the Guidelines should specify a short timeframe within which this resubmission must take place.
- There should then be a deadline for the Director to approve the amended assessment report.
- There needs to be a deadline for the source protection committee to submit the proposed source protection plan to the source protection authority.
- In keeping with the recommendations above, there should be a time limit for the Minister to respond to the proposed source protection plan.
- If the Minister requires the source protection authority or the Municipality to amend and resubmit the source protection plan, the Guidelines should specify a short timeframe within which this resubmission must take place.
- There should then be a deadline for the Minister to approve the amended source protection plan.

Miscellaneous Regulation

"Planned" drinking water systems

The proposed Regulation defines "planned" as a drinking water system that has received approval under Part II of the *Environmental Assessment Act*, or has been identified as the preferred solution under an approved class environmental assessment under Part II.1 of the *Environmental Assessment Act.* This definition of "planned" is overly constrictive and unworkable within the framework of the *Clean Water Act*.

As noted above, the purpose of the *CWA* is to protect existing *and future* sources of drinking water. The reasons for including future sources of drinking water are compelling: it makes little sense to protect our existing sources of drinking water while at the same time neglecting or forgoing the protection of sources that will be relied upon by us, our children, and our grandchildren in the years to come. Focusing only on our present-day needs would be short-sighted indeed. Global changes underscore the importance of long-term planning with respect to water quality and water quantity issues.

The proposed definition of "planned" is extremely short-sighted in the sense that approvals under the *Environmental Assessment Act* are often sought less than a year in advance of the proposed undertaking. Thus, rather than forecasting into the next decade or even the next generation, the scope of the *Clean Water Act* is limited to the next year or so. Although municipalities can initiate the environmental assessment process many years in advance if they so choose, they are unlikely to do so because there is a strong financial disincentive to include additional drinking water systems in the assessment report. This is especially true in light of the fact there has still been no indication from the province whether the municipalities will be adequately funded, or funded at all, to complete the implementation phase of work.

The definition of "planned" in also inadequate as it relates to subsections 15(2)(e)(ii), (iii), and (iv) of the *Clean Water Act*. Section 15 stipulates that assessment reports must identify all surface water intake protection zones and wellhead protection areas that are related to existing *and planned* i) municipal drinking water systems, ii) "clusters" of non-municipal drinking water systems that have been nominated by a municipality, iii) "clusters" of non-municipal drinking water systems that have been nominated by the Minister, and iv) prescribed drinking water systems serving reserves. Many, if not most, types of non-municipal drinking water systems under clauses (ii) and (iii) would be unable to meet the proposed definition of "planned." Furthermore, except in exceptional circumstances, systems serving reserves under clause (iv) could not meet the proposed definition either. Thus, it would be extraordinarily difficult to include "planned" First Nations' systems, and, to some extent, "planned" private clusters in the assessment reports.

In summary, the definition of "planned" needs to be broadened to encompass all subclauses in subsection 15(2)(e), while still maintaining enough specificity to identify the surface water intake protection zones and wellhead protection areas as required under the Act. The definition should also incorporate other elements of long-term forecasting; before planning new systems, municipalities should be required to explore conservation options and substantiate their inability to continue using existing systems.

Drinking-water systems that cannot be included in terms of reference

Section 3 of the proposed Regulation identifies non-municipal drinking-water systems that *cannot* be included in the terms of reference through municipal resolution or through an amendment by the Minister. In essence, this section excludes all private "clusters" of wells from being included in the terms of reference unless the "cluster" includes six or more wells or intakes, or the system is located within an area of settlement under the *Planning Act*.

Given the fact that "cluster" remains undefined, it would be preferable to move this section to the guidance materials. The rationale for limiting the ability of municipalities and the Minister to nominate private systems is supposedly to avoid the potential overuse of this option, and to avoid having single wells included in the terms of reference. However, this seems unlikely to occur for two reasons. First, there is an economic disincentive for municipalities to include an excessive number of private systems in the terms of reference, and if anything there is concern that municipalities will fail to include those clusters that truly merit assessment and protection. Second, the Minister is unlikely to nominate private wells since to do so would run counter to the Ministry's own understanding of the term "cluster".

Recommendation #14: Section 3 should be removed from the proposed Miscellaneous Regulation and added to the guidance materials, along with further direction to municipalities regarding the circumstances in which they should include private clusters through resolutions. At a minimum, section 3 should not be used to constrain the Minister's authority to nominate private systems under section 10(7) of the Act. The Minister should be left with the discretion to define "clusters" as appropriate.

Exemptions from subclause 15(2)(e)(i) of the Act

Section 5 of the proposed Regulation exempts from the assessment report any existing municipal drinking-water systems that are intended to be discontinued within five years. In order to claim the exemption, the municipal council must first pass a resolution stating its intent, within five years, to discontinue use of the system and apply to have the approval / license / permit revoked under the *Safe Drinking Water Act, 2002*. This section will allow municipalities, conservation authorities, and source protection committees to save time and money that otherwise would have been spent assessing these systems. However, there is also the danger that municipalities may not follow through with its commitments under the resolution within the five year timeframe. If that is the case, the exemption ceases to apply, but the municipality would have bought itself a five year extension of time for completing an assessment of the system. Also, a strong argument can be made that all systems currently in use should receive threats assessments, regardless of whether or not they are intended for long-term use. Finally, as was discussed under the section on "planned" drinking water systems, the decision to discontinue an existing system and introduce a new system should be linked to long-term planning considerations such as conservation goals.

Recommendation #15: The exemption granted in section 5 of the proposed Miscellaneous Regulation should be removed. The Minister should provide guidance and oversight as to when existing municipal drinking water systems can be proposed for discontinuation, with an emphasis on conservation objectives.

Conclusion and Recommendations

The *CWA* is a significant piece of legislation that provides long-awaited protections for watersheds and watershed communities in this province. In the foregoing analysis, we comment on several of the critical matters which are left to the discretionary regulation-making powers of the Minister and Lieutenant Governor in Council. Summarized below are our recommendations on how these matters should be addressed. In drafting the regulations, government should bear in mind two overarching goals: first, to provide source water protection province-wide; and second, to create a truly transparent, representative, and interactive public planning and implementation process.

In closing, CELA supports the source water protection initiative and applauds the government's efforts in seeking public feedback on these important matters. We look forward to providing further comments on the development, implementation, and funding of source protection in Ontario.

Recommendation #1: Regulations passed under the *CWA* should provide for the mandatory assessment of risks and mandatory reduction of significant drinking water threats in vulnerable areas across the province.

Recommendation #2: Source protection areas should be created or expanded into parts of Ontario that are not currently covered, so that additional water users can receive the full range of protections offered by the legislation.

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Recommendation #10: The last sentence of subsection 4.(1) of the proposed Terms of Reference Regulation "the terms of reference shall require the municipality to perform the task" should be changed to "the terms of reference may require the municipality to perform the task", subject to certain qualifiers.

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Recommendation #12: Section 9 of the proposed Terms of Reference Regulation should be made mandatory rather than discretionary, except for paragraph 3 which should be deleted.

Recommendation #13: The time period for completing the source protection plans should be shortened.

Recommendation #14: Section 3 should be removed from the proposed Miscellaneous Regulation and added to the guidance materials, along with further direction to municipalities regarding the circumstances in which they should include private clusters through resolutions. At a minimum, section 3 should not be used to constrain the Minister's authority to nominate private systems under section 10(7) of the Act. The Minister should be left with the discretion to define "clusters" as appropriate.

Recommendation #15: The exemption granted in section 5 of the proposed Miscellaneous Regulation should be removed. The Minister should provide guidance and oversight as to when existing municipal drinking water systems can be proposed for discontinuation, with an emphasis on conservation objectives.