



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

May 16, 2008

Paul Heeney
Manager, Source Protection Implementation
Drinking Water Management Division
Source Protection Programs Branch
Ministry of the Environment
2 St. Clair Avenue West
Toronto, Ontario M4V 1L5

Dear Mr Heeney:

RE: EBR Registry Number 010-3297: Proposed regulation under the *Clean Water Act, 2006* to introduce requirements for the Ontario Drinking Water Stewardship Program and Property Entry Training

The Canadian Environmental Law Association (CELA) is a non-profit, public interest group established in 1970 to use and improve laws to protect the environment, conserve natural resources, and safeguard public health. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental protection and resource management matters.

Since its inception, CELA has advocated the timely development of effective laws, regulations and policies to protect water resources within Ontario and across Canada. Among other things, CELA represented the Concerned Walkerton Citizens at the Walkerton Inquiry, and was instrumental in formulating the *Clean Water Act, 2006*.

Property Entry Training

CELA generally supports the proposed amendments to O.Reg. 286/07 which are intended to establish the initial parameters regarding the training requirements for persons exercising property entry powers pursuant to section 88 of the *Clean Water Act, 2006* ("CWA").

In our experience, important information on source water and threats to source water quality/quantity will by necessity have to be gathered from private property. This

information is needed to produce informed assessment reports and effective source protection plans. Thus, the power enabling trained persons (including employees or agents of municipalities designated by Source Protection Authorities) to enter private property without the consent of the owner or occupier, and without a warrant, is clearly essential to the overall source protection planning process.

This power does, of course, require a considerable degree of professional responsibility on the part of these persons to carry out their information-gathering activities in a consistent and reasonable manner. CELA anticipates that the forthcoming training course will provide these persons with the requisite knowledge for properly carrying out their tasks in accordance with the intended purpose of sections 88 and 89 of the CWA.

To date, however, CELA has not been provided with an opportunity to review or comment upon the course content and materials being developed by the MOE's contractor (Infinity Human Resource Group). Accordingly, we are unable to conclude at this time whether the course will adequately address the diverse matters upon which training is warranted (i.e. biosecurity, legal constraints, landowner contact, etc.).

We presume, however, that the course will evolve in an ongoing and iterative manner in order to identify and incorporate course improvements (or to address new or unanticipated issues) as experience is gained with property entry under section 88 of the CWA.

Drinking Water Stewardship Program

CELA generally supports the proposed amendment to O.Reg. 286/07 which are intended to establish some particulars in relation to applications for financial assistance under the Ontario Drinking Water Stewardship Program pursuant to section 97 of the CWA.

We are aware, however, that as the Terms of Reference process is being carried out within Source Protection Regions and Areas across Ontario, there seems to be considerable confusion (at least among some sectors and their representatives on Source Protection Committees) on the critical distinction between "financial assistance" under the Stewardship Program, and landowner "compensation" (i.e. for alleged business losses, property value depreciation, etc.) where land use activities may be constrained in accordance with policies set out in a Source Protection Plan. We suspect that this confusion may also exist more broadly among other stakeholders and the public at large.

Therefore, as the Stewardship Program is implemented, CELA submits that it is critically important for the MOE immediately to take all necessary steps (i.e. public outreach, community education, memoranda to all SPC Chairs, etc.) to explain more fully the types of projects that may be eligible for financial assistance (i.e. well decommissioning, septic upgrades, etc.), and, more importantly, to dispel the myth that landowners are legally entitled to "compensation" for pecuniary damages (i.e. loss of perceived development opportunities) allegedly attributable to policies within Source Protection Plans.

In closing, CELA appreciates the opportunity to provide comments on the proposed regulatory amendments, and we look forward to reviewing and commenting upon further amendments respecting training requirements for risk management officials and inspectors.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Richard D. Lindgren
Counsel



Christopher Waffle
Source Protection Campaigner

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