CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'Association canadienne du droit de l'environnement

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Friends of the Earth
Les Ami(e)s de la Terre

September 23, 2009

Debbie Scanlon
Senior Drinking Water Program Advisor
Ministry of the Environment
Drinking Water Management Division
Source Protection Programs Branch
2 St. Clair Avenue West
Toronto, ON M4V 1L5

Dear Ms. Scanlon:

RE: EBR Registry No. 010-6726: Source Protection Plans under the *Clean Water Act, 2006*: A Discussion Paper on Requirements for the Content and Preparation of Source Protection Plans

These are the comments of the Canadian Environmental Law Association ("CELA") in relation to the Ministry's Source Protection Plan Discussion Paper (June 2009). These comments are being provided in accordance with the EBR Registry notice for this proposal.

CELA is a non-profit, public-interest group established in 1970 to use existing laws to protect the environment and advocate environmental law reform. Funded as a community legal clinic

specializing in environmental law, CELA represents individuals and citizens' groups before 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 actively involved in the development of the *Safe Drinking Water Act, 2002* ("SDWA"), the *Clean Water Act, 2006* ("CWA"), and regulations, policies and guidelines thereunder.

These comments have been endorsed by the following organizations: the Canadian Association of Physicians for the Environment, Concerned Walkerton Citizens, Ecojustice, Environmental Defence, Federation of Urban Neighbourhoods (Ontario), Federation of Ontario Cottagers' Associations, Friends of East Lake, Friends of the Earth, Friends of the Tay Watershed, Northwatch, the Ontario Headwaters Institute, and Toward Balance Support Network.

Subject to the comments below, CELA is generally supportive of many requirements proposed within the Discussion Paper for the content and preparation of source protection plans ("SPPs"). For example, CELA agrees with the proposed policy approaches in relation to education and outreach programs (Section 2.1), incentive programs (Section 2.2), and restricted land uses (Section 2.5.3). Similarly, CELA has no objection to the proposed consultation and engagement requirements for SPP development (Section 5), although we hasten to add that CELA defers to the views of First Nation communities on the adequacy of the proposed approach for addressing Aboriginal interests (Section 5.1). CELA has no comments at this time in relation to the proposals for annual progress reports (Section 7.1) or SPP review/amendment (Section 7.2), except to observe that both matters will likely require the continuation of provincial funding and technical assistance in the post-2012 timeframe.

While CELA supports (or takes no position) on the above-noted components of the Discussion Paper, there are several proposals which gravely concern CELA and which require immediate reconsideration by the Ministry of the Environment. For example, CELA strongly objects to the Discussion Paper's ill-conceived suggestion that certain tools should used "first" (i.e. provincial instruments) or "last" (i.e. prohibition) by Source Protection Committees ("SPCs") as they craft policies to address significant drinking water threats. As described below, CELA strongly submits that the tools at the disposal of the SPCs should <u>not</u> be subject to any upfront regulatory constraints on their availability, particularly since SPPs are supposed to be locally driven and science-based (not provincially dictated).

In short, all new or existing tools must remain equally available to the SPCs, which can decide, on the evidence and on a case-by-case basis, whether one or more of the tools should be applied to a particular drinking water threat. In CELA's opinion, such determinations are best left to the discretion of the SPCs, and they cannot be arbitrarily constrained or limited in advance by provincial officials in the forthcoming SPP regulation.

It should be further noted that under the CWA, there are least two checks or balances on the exercise of SPC discretion: (i) the Minister can refer the SPP (or any matter related to it) to a

hearing officer; and (ii) the Minister ultimately retains the approval power over the SPP, and can require amendments to the SPP. In light of these and other safeguards, CELA submits that it is unnecessary for the SPP regulation to prescribe circumstances when certain tools should – or should not – be used by SPCs.

CELA's specific concerns and recommendations regarding key Discussion Paper proposals are outlined below.

Land Use Policy Approaches (Section 2.3)

CELA anticipates that the SPCs will likely develop SPP policies that rely heavily upon land use planning tools available under the *Planning Act*. However, since Ontario is still almost three years away from the first approved SPPs, CELA submits that municipalities should be encouraged at the present time to proactively exercise their existing *Planning Act* jurisdiction to direct or limit land use in order to safeguard source water quality or quantity.

Accordingly, CELA suggests that it may be helpful for the SPP regulation to clarify that nothing in the CWA or regulation prevents municipalities from exercising their planning jurisdiction to protect source water before the SPP is approved by the Minister. Similarly, the SPP regulation should further clarify that in relation to significant drinking water threats, municipal zoning and planning instruments must conform with the approved SPP, but nothing in the CWA or regulation prevents a municipality from imposing land use controls which are more extensive or stringent than those set out in policies within an approved SPP.

The Discussion Paper envisions that when SPCs are considering the use of planning instruments, they have two basic options: (i) develop prescriptive or detailed policies describing specific risk-reduction measures to address drinking water threats; or (ii) develop less detailed policies which are aimed more at generally limiting broad types of permitted uses in particular areas (pages 14-15). In CELA's view, it is unnecessary for the SPP regulation to force one option or the other upon the SPCs, which should have free rein in deciding which option (or mix of options) would be most effective and appropriate at the local level.

One unanswered question is what happens if an approved SPP requires the passage of certain by-laws or official plan amendments, which are duly passed by the municipality but are then appealed by an aggrieved party to the Ontario Municipal Board ("OMB") pursuant to the *Planning Act*? CELA is unclear whether the CWA regime will expressly prohibit such appeals, or whether the municipality, SPC and/or Ministry of the Environment (or Ministry of Municipal Affairs and Housing) will be compelled to defend the impugned land use controls at the OMB hearing.

Prescribed Provincial Instruments (Section 2.4)

CELA agrees that the appropriate starting point for compiling the list of prescribed instruments should be the provincial permits, licences, approvals and orders that are (or can be) used in relation to the 21 activities that have been prescribed as drinking water threats in section 1.1 of O.Reg.287/07.

Once compiled, this draft list should be compared to the list of environmentally significant instruments prescribed in O.Reg.681/94 under the *Environmental Bill of Rights* ("EBR") to ensure that all relevant instruments are caught by the CWA regulation. Once the proposed regulation has been released for public comment, CELA reserves the right to identify further or other instruments which should be included in the prescribed list under the CWA.

CELA strongly disagrees with the Discussion Paper's suggestion that the SPC's "first choice" for addressing drinking water threats should be the issuance or amendment of a prescribed provincial instrument (page 16). In our view, this is a policy determination that needs to be made by the SPCs without undue constraint at the local level, having regard for the pros and cons of relying upon this approach (or other options) to address a particular drinking water threat. As noted above, CELA firmly submits that the tools available to SPCs should not be prioritized or ranked under the SPP regulation; instead, all tools should remain on the table without any hierarchical preferences imposed unilaterally by the SPP regulation.

Moreover, there is no merit to the Discussion Paper's claim that provincial instruments should be the SPC's preferred tool of choice in order to minimize so-called "regulatory duplication". In our view, this rationale is weak and unpersuasive. Indeed, there is nothing in law that prevents a Director under the *Environmental Protection Act* ("EPA") from issuing an order against a source of contamination, even if the facility is already subject to an approval under the EPA (or zoning controls under the *Planning Act*). This current arrangement does not create "regulatory duplication"; to the contrary, it creates "regulatory flexibility" since it theoretically confers authority upon the Director to utilize a wider range of mandatory abatement tools to address the site-specific discharge of contaminants that cause or may cause adverse effects.

More fundamentally, however, CELA submits that the provincial direction to SPCs to prefer provincial instruments is not only self-serving, but it also does not properly recognize the shortcomings of using existing prescribed instruments to address drinking water threats. After all, if such instruments were fully effective at protecting water resources from depletion or contamination, then the Ontario Legislature would not have found it necessary to create new tools in the CWA in the first place (i.e. risk management plans, prohibitions, and restrictions).

In addition, as a practical matter, it has been CELA's experience that EPA Directors and other provincial officials are generally reluctant to concede that their issued instruments are flawed or not sufficiently protective of the environment or public health. Therefore, in response to SPPs which may direct provincial officials to undertake further amendments to existing permits, it cannot be presumed that in every instance, provincial officials will exercise their discretion in a manner that substantively improves the permits' terms and conditions. As noted above, it also remains unclear to CELA whether the instrument holder or third parties will be able to exercise existing appeal rights under the EPA or EBR in the event that the amended instruments are still unsatisfactory.

For the foregoing reasons, CELA does not agree with the "instruments first" fiat in the Discussion Paper. While it is reasonable to anticipate that some SPCs may well chose to address certain threats via provincial instruments, these are policy choices to be made by SPCs on the

evidence at the local level, rather than be imposed by the Ontario government in a top-down manner in the SPP regulation.

Risk Management Plans (Section 2.5.1)

CELA agrees that the starting point for compiling the list of prescribed activities subject to risk management plans under the CWA should be the 21 activities that have been prescribed as drinking water threats in section 1.1 of O.Reg.287/07. Once compiled, this draft list should be compared to the list of environmentally significant instruments prescribed in O.Reg.681/94 under the *Environmental Bill of Rights* ("EBR") to ensure that all potentially harmful activities are caught by the CWA regulation.

Once the proposed regulation has been released for public comment, CELA reserves the right to identify further or other activities which should be included in the prescribed list under the CWA. CELA also supports the Discussion Paper's suggestion that risk management plans may be used to address any other significant threat activity in an approved Assessment Report (page 18).

However, CELA is concerned about the Discussion Paper's ambiguous proposal to allow a risk management official to subsequently "exempt" any person from preparing a risk management plan, even if such a plan has been required by the SPC in the approved SPP (page 18). First, the Ontario Legislature did not create an exemption power in section 57 of the CWA. Second, the efficacy of using a provincial instrument rather than a risk management plan would already have been considered by the SPC in situations where it has opted for a risk management plan instead of other potential tools.

Therefore, CELA submits it is unnecessary (and counter-productive) to allow the risk management official to issue an exemption if he or she opines that the activity is "regulated" by a provincial instrument. In effect, the risk management official should not be permitted to "second-guess" the SPC on the appropriate source protection tool. We further note that the Discussion Paper fails to provide any criteria or benchmarks to assist the risk management official in determining whether the activity is, in fact or in law, sufficiently "regulated" under other provincial statutes.

In summary, the mere fact than an activity may be notionally subject to discretionary administrative tools under other statutes is an unpersuasive basis for granting risk management officials an open-ended authority to dispense with risk management plans required in approved SPPs. Therefore, CELA submits that creating an ill-defined "exemption" process on the basis of unwarranted concern over "regulatory duplication" is objectionable and unacceptable.

Prohibition and Significant Drinking Water Threats/Issues (Section 2.5.2)

As a matter of public policy, the Ontario Legislature enacted the CWA with the inclusion of an important new tool – prohibition – which was intended, in part, to overcome the shortcomings associated with existing tools available under other provincial laws. CELA strongly supports the

creation of the prohibition tool, and we agree with the Discussion Paper's observation that prohibition is "a very strong approach to addressing source water risks" (page 19).

In creating the prohibition tool under the CWA, CELA notes that aside from delaying the effective date of prohibition for 180 days in relation to existing activities (CWA subsection 57(2)), the Ontario Legislature did not enact any other statutory criteria, limits or constraints on the potential use of this tool when being considered by SPCs to address significant drinking water threats/issues. Accordingly, CELA submits that it is inconsistent with the provisions and legislative purpose of the CWA for the Discussion Paper to now propose regulatory restrictions on the prohibition tool, either in relation to future threats or existing threats.

Accordingly, CELA does not support the Discussion Paper's proposal that "prohibition" should be "avoided" in relation to existing threats unless "there is no alternative" (page 20). The Discussion Paper's attempted rationale for this restriction is premised upon possible economic impacts upon affected landowners or businesses. However, CELA notes that the overall purpose of the CWA is to protect drinking water quality/quantity in order to safeguard public health/safety, rather than to protect private pecuniary interests. Moreover, the prohibition tool itself is a broad concept that may be judiciously used by SPCs in variety of ways (i.e. partial prohibition, time-limited prohibition, conditional prohibition, etc.), either on its own or in conjunction with other tools, so as to reflect or address economic implications at the local level.

In summary, CELA submits that the Discussion Paper's proposed limits on prohibition are unjustified, and they unduly constrain the discretion of the SPCs, which will be well-positioned to assess local claims of economic hardship in situations where some form of prohibition is being contemplated in relation to existing activities. We conclude that the proposed regulatory constraints should not be included in the SPP regulation, particularly since it appears that these constraints appear primarily intended to make prohibition somewhat more palatable to certain stakeholders.

We are also unclear why the Discussion Paper appears to limits prohibition to the 21 prescribed drinking water threats, thereby precluding the use of prohibition in relation to any other significant threat activity included in an approved Assessment Report.

Other Policy Approaches (Section 2.6)

While the Discussion Paper briefly discusses the possibility of incorporating "other" policy approaches within SPPs, the Discussion Paper does not actually inventory these other approaches, nor does it indicate precisely how these other tools will be addressed in the SPP regulation.

Accordingly, CELA is unable to comment further on these "other" policy approaches, except to say that for the purposes of greater certainty, it would helpful for the SPP regulation (or related guidance materials) to address all possible policies that may be used to protect source water (i.e. land acquisition or expropriation under section 92 of the CWA).

Knowledge Gaps and Uncertainty (section 2.7)

CELA acknowledges that during this initial round of source protection planning, SPCs may encounter significant data gaps and/or uncertainty in the proper interpretation of available information.

However, CELA is strongly concerned about the Discussion Paper's suggestion that the appropriate response by SPCs to data gaps and uncertainty is to adopt "softer" approaches in the SPPs, such as outreach/education and monitoring (page 24). In our view, this timid approach is contrary to the inherently precautionary nature of the CWA; in fact, it represents the antithesis of the precautionary principle. Thus, CELA submits that the lack of full scientific certainty should not be invoked by SPCs as the reason for deferring mandatory measures to address activities which are or may become significant drinking water threats.

We have no objection if the SPP regulation requires SPCs to identify data deficiencies, describe how such gaps will be addressed, and indicate which specific policies may require reconsideration in the next SPP review. However, CELA firmly believes that knowledge gaps and uncertainty cannot be used as a pretext for avoiding or deferring mandatory measures to address significant drinking water threats.

Mitigating Low, Moderate and Significant Drinking Water Threats

CELA notes that the Discussion Paper focuses largely on identifying, reducing and monitoring significant drinking threats. In contrast, there is considerably less discussion of moderate drinking water threats. In CELA's view, the SPP regulation should stipulate that SPCs may develop appropriate policies to prevent or mitigate moderate drinking water threats so they do not become significant threats.

Not only does mitigating moderate threats help achieve the purpose of the CWA, but it also reflects the precautionary principle. In addition, this approach helps compensate for the somewhat arbitrary nature of the threat assessment process under the current Technical Rules.

CELA recognizes that the risk scoring system is a necessary component of assessing threats under the CWA.. However, any system with artificially established thresholds is in itself arbitrary to some degree. Moreover, there may be an element of uncertainty (or subjectivity) as to the accuracy of the risk scores assigned to every prescribed drinking water threat. This uncertainty is perhaps most notable for "high" moderate drinking water threats (i.e. those with risk scores in the high 70s).

It is our view that the arbitrariness of risk thresholds and the uncertainly inherent in risk scoring justify ensuring that significant prescribed drinking water threat activities are not overemphasized at the expense of low and moderate threats. Although mitigating tools may be markedly different for significant threats and "high" moderate threats, the two do not represent threats of fundamentally different orders of magnitude. It therefore follows that "high" moderate threats, as well as low and moderate threats, should be seriously considered by SPCs, and that SPCs should be made fully aware of the range of non-mandatory mitigating measures which may

be utilized in relation to non-significant drinking water threats. These measures include monitoring/reporting and recommending and/or overseeing the implementation of best management practices.

Low, moderate and in particular "high" moderate threat activities are nevertheless potential threats to Ontario's drinking water quality or quantity. Mitigation of non-significant drinking water threats should therefore be an important part of the source protection planning process.

Great Lakes Policies and Targets (Section 4)

(a) Great Lakes targets and mitigating drinking water threats on the Great Lakes

Under section 85 of the CWA, the Minister of the Environment has the discretionary power "to establish targets relating to the use of the Great Lakes as a source of drinking water for one or more source protection areas that contribute water to the Great Lakes."

CELA again strongly encourages the Minister to set Great Lakes targets as soon as possible. These targets may be expressed in quantitative and/or qualitative forms, and should include specific goals and timelines for reducing the loading of pathogens and other contaminants from combined sewer overflow and bypass events ("sewer discharge"); and goals and timelines for reducing and ultimately eliminating the presence of toxic chemicals and pathogens of anthropogenic origins.

In addition to mitigating Great Lakes drinking water threats through targets set by the Minister, significant threat activities in intake protection zones ("IPZs"), and activities prescribed in regulations in IPZs, will be addressed through risk management plans, prohibition and restricted land uses. CELA hereby proposes a third mechanism for mitigating Great Lakes threats, and in particular threats associated with sewer discharge.

At present, urban sewer discharge occurs largely because the combined sewer systems in urban areas are overwhelmed during storm events, when sewage treatment plans ("STPs") are unable to process all the wastewater and runoff in the system. Efforts to reduce sewer discharge have tended to focus on increasing wastewater processing capacity and storing wastewater during storm events, to be treated by STPs hours or even days later.

However, despite efforts to reduce sewer discharge, the issue remains one of the most important threats to drinking water in the province. In a passage included in the province's finalized version of its *Design Guidelines for Sewage Works 2007*, it is implied that peak flow scenarios need to be provided for in order to ensure the "satisfactory operation" of a sewage works. Our concern is that the "satisfactory operation" of sewage works will not necessarily lead to great reductions and ultimately the elimination of sewer discharge. Moreover, it is unlikely that increased wastewater storage capacity and/or piecemeal improvements in old infrastructure will by themselves, greatly reduce sewer discharge in surface watercourses in the foreseeable future.

We therefore strongly recommend the adoption and implementation of alternative, supplementary measures for reducing and ultimately eliminating sewer discharge. For example,

sewer discharge can be greatly reduced through rainwater harvesting on residential, commercial, industrial and institutional properties. In addition to the great benefits to source protection that would result from a marked increase in rainwater harvesting, other benefits, including water conservation, energy conservation, and mitigating the potential effects of climate change on the landscape (i.e. less runoff in urban areas during the fiercer, more frequent storms that have been predicted by climate change modelling) would also result.

CELA strongly recommends that the MOE pursue a strategy of proactively promoting rainwater harvesting in urban Ontario through education and outreach programs. Such endeavours could begin soon, financed at least in part through the Ontario Drinking Water Stewardship Program, and could also be funded beyond 2012 through new education and outreach funding anticipated from this time.

In employing the above three strategies – setting Great Lakes targets, addressing significant threat activities and activities prescribed in regulations through mandatory mitigation measures, and CELA's proposed rainwater harvesting campaign – the MOE would be approaching Great Lakes threat mitigation in three different and often complementary ways.

(b) Great Lakes target policies: monitoring and mitigating drinking water threats

Once the Minister has set Great Lakes targets, obstacles to an effective mitigation of Great Lakes drinking water threats remain. Section 4.2 of the Discussion Paper provides as follows:

> The requirement for monitoring policies to assist in implementing Great Lakes targets is unique from the other monitoring policies for drinking water threats in the plan. This is because it is anticipated that while a Great Lakes target might be set for a particular parameter that is causing concern for drinking water, it might be difficult to fully implement a policy that mandates a reduction in the particular parameter without first knowing the bulk of the source(s) of the contaminant (page 31).

Long-term monitoring policies are then described in the Discussion Paper, but it is left unclear when (or whether) these monitoring activities/programs will actually lead to concrete action on reducing threats to water quality within the Great Lakes.

Monitoring, in and of itself, will not mitigate threats to Great Lakes water quality. Furthermore, CELA submits that a lack of knowledge of "the extent and specific locations of the sources [of Great Lakes drinking water threats]" is not sufficient justification to not attempt to mitigate drinking water threats present in the Great Lakes, especially since millions of Ontarians rely upon the Great Lakes as sources of drinking water.

This comment applies to both chemical and pathogenic threats, regardless of their origins. Systemic failures or refusals to attempt to reduce Great Lakes contaminants is inconsistent with the "inherently precautionary" nature of the CWA. Even if the precise locations of all contaminant sources cannot be determined at this time, and/or are complicated jurisdictionally (e.g. transboundary aerial deposition), contaminants entering the Great Lakes (or their connecting channels and tributaries) still need to be prevented or reduced in order to safeguard

drinking water quality. In our view, the SPPs should be a vehicle – not a barrier – to achieving this long overdue result.

Resolution of Provincial and Federal Jurisdictional Issues

The Discussion Paper is generally silent on the critical question of whether – or to what extent – policies in approved SPPs may be applicable to "federal" activities in or near IPZs or wellhead protection areas ("WHPAs").

In this regard, CELA notes that during the formative stages of the source protection initiative in Ontario, it was generally envisioned that there would be a more extensive engagement of federal entities and interests than currently exists under the CWA. In 2002, for example, Mr. Justice O'Connor stated that:

> I also encourage the federal government to participate where appropriate; particularly relevant will be representatives of Fisheries and Oceans Canada, Environment Canada, Indian and Northerm Affairs Canada, and Agriculture and Agri-Food Canada. The participation of federal agencies will help ensure intergovernmental coordination in an area where constitutional jurisdiction is not always clear.[1]

Similarly, the 2004 Report of the Implementation Committee explored various issues regarding federal lands/waters and the Great Lakes, and the Committee made the following recommendations:

> Implementation Committee recommends the province work with the federal government to identify and ensure the participation of federal land holders in source protection planning and implementation on federal lands and waters.
>
> Implementation Committee recommends that the province work with the federal government and other Great Lakes partners to ensure coordination and integration of source protection planning and implementation activities with existing Great Lakes programs.
>
> The IC recommends that, when participating in negotiations regarding the Great Lakes, the province work with the federal government and other parties to incorporate source protection principles into any agreements.[2]

In light of these recommendations, CELA submits that the development and implementation of comprehensive SPP policies will remain plagued by uncertainty unless interjurisdictional immunity issues regarding federally regulated activities are fully and properly resolved. While this matter will not necessarily be addressed by the passage of the SPP regulation *per se*, CELA nevertheless submits that the Ministry must immediately provide much-needed clarity and direction to the SPCs on this important matter.

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[1] Part 2 Report of the Walkerton Inquiry, p.108.
[2] Report of the Implementation Committee (2004).

Within many Source Protection Areas and Regions across the province, there are a number of federally regulated undertakings, institutions, and lands. Certain activities carried out in relation to these federal matters (i.e. water takings, waste disposal, nutrient management, pesticide/fertilizer application, chemical storage/spills, etc.) may potentially affect the quality/quantity of groundwater and/or surface water used as sources of municipal drinking water across Ontario.

In fact, these kinds of activities have been prescribed by Ontario as drinking water threats in section 1.1 of O.Reg.287/07 under the CWA. However, it is self-evident that such activities will not become benign (or cease to be drinking water threats) merely because they are carried out on federal lands or by federally regulated entities. It goes without saying that groundwater and surface water resources do not distinguish between impacts from "federal" or "provincial" activities.

Given the division of legislative powers as between the federal and provincial levels of government in Canada, there can be no doubt that the CWA is constitutionally sound and can be justified on the basis of various heads of provincial power under the *Constitution Act, 1867* (i.e. property and civil rights; matters of local/private nature; municipal institutions; agriculture; ownership/control of provincial lands/natural resources, etc.).

However, despite the fact that the Ontario government has the requisite jurisdiction to enact the CWA, it is well-settled law that provincial legislation cannot have extra-territorial effect, in the sense that Ontario's legal requirements are not binding or enforceable within adjoining jurisdictions, such as Quebec or New York State.

Nevertheless, the Courts have recognized that in certain circumstances, provincial laws of general application may be applicable to federal matters in Ontario, provided that the provincial laws do not attempt to regulate the essential nature of the federal matter, and do not otherwise create operative conflict with federal requirements.[3] In light of such cases (and given concurrent provincial and federal jurisdiction over pollution and water-related matters), it is incumbent upon the Ministry of the Environment to publicly clarify forthwith whether the CWA is a provincial law of general application that may be applicable to federal activities/lands in Ontario which constitute drinking water threats.

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[3] See, for example, *R. v. Canadian Pacific* (1995), 17 CELR (NS) 129 (SCC): held that Ontario's EPA is applicable to a federally regulated railway; *CNR v. Director* (1991), 6 CELR (NS) 211 (Ont Div Ct); affirmed (1992) 8 CELR (NS) 1 (Ont CA): held that an EPA cleanup order can apply to federal public property; *R. v. TNT Canada* (1986), 1 CELR (NS) 109 (Ont CA) [leave to appeal to SCC refused]: held that the EPA requirement to obtain an approval for PCB transportation was applicable to a federally regulated undertaking (i.e. interprovincial trucking company); *R. v. Nitrochem Inc.* (1995), 14 CELR (NS) 157 (Ont Ct – Prov Div): held that EPA and OWRA are applicable to an interprovincial trucking company and to an interprovincial (and international) waterway (i.e. St. Lawrence River).

We trust that the foregoing comments will be taken into account as the Ministry prepares the content of the forthcoming regulation to prescribe the substantive and procedural requirements for preparing SPPs. If requested, we would be pleased to meet with Ministry staff to discuss CELA's concerns and recommendations regarding this important matter.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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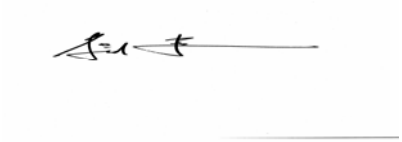

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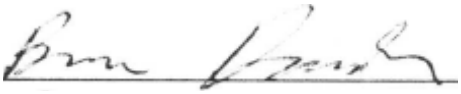
CONCERNED WALKERTON CITIZENS



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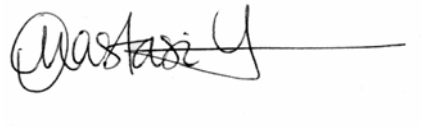

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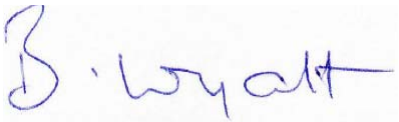

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