

Nutrient Management Act

Presentation to ERT

October 23, 2003

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Nutrient Management Act and Environmental Protection

- What protection for the environment was gained from the Nutrient Management Act and what was not?

Primarily nutrients

- Not surprisingly, given the name of the legislation, it deals primarily with phosphorous and nitrogen, which are environmental concerns as nutrients
- The legislation is not directed at pathogens
- In some cases there will be indirect benefits for pathogen and chemical contamination control from the NMA

Not a direct response to Walkerton

- The Nutrient Management Act was under discussion long before the tragic events at Walkerton
- Although it was described as part of the government's Walkerton response, it was introduced in the middle of the Walkerton hearings, well before the Walkerton reports were issued by Justice O'Connor

Limited legislation

- Among CELA's main concerns, as highlighted in our submissions to the government both in written briefs and in submissions to the standing committee prior to passage of the Act was that it was "shell legislation", with all of the implementation details awaiting regulation

Lack of integration

- The other main concern at that time, was that passing the legislation before the Walkerton Inquiry was completed represented a lost opportunity to ensure that the NMA addressed the relevant issues arising from the Walkerton Inquiry reports and recommendations
- There would be a need later to amend the Act for consistency with the recommendations

Source Protection

- The need for integration of the Nutrient Management Act with Source Protection legislation, once the latter is adopted remains a key concern
- Justice O'Connor recommended "farm water protection plans" where such plans would have to be consistent with source protection plans in areas of vulnerability of water sources

Don't want inconsistent planning

- In addition to the concerns of multiple planning that farmers express, CELA is very concerned that nutrient management planning be consistent with source protection planning, and that approved plans under the nutrient management systems allow for source protection plans

Planning must be integrated

- CELA agrees that farms must do their planning for nutrients and their planning for source protection together, in an integrated manner
- This hope must await the source protection legislation and possibly amendments to the Nutrient Management Act or its regulations, as well as further consultations with the agricultural community

How source protection framework dealt with NMA

- The Source Protection Framework recommended that in vulnerable areas, municipalities and conservation authorities be given tools to address issues even where covered by the Nutrient Management Act
- In that case, the NMA will have to be amended to allow for those powers

NMA Regulations limited

- As the NMA regulations have now been passed, they are very limited in scope - covering only new and expanding farms now, and the largest (as defined in nutrient units) farms over the next two years.
- As a result, not only NM planning, but many of the other provisions in the NMA regulations don't apply to most farms in Ontario

Examples

- For example, the rules for winter spreading and buffers around streams don't apply to most farms because they don't have NMA plan requirements
- It remains to be seen when other farms will be covered, and to what extent -- the province appointed a Nutrient Management Advisory Committee on which I sit, to consider these issues

Other issues

- Also not addressed are chemical fertilizers, stormwater runoff, tile drainage, pesticide use and fuel management and ammonia loadings
- Some of these issues will be addressed by the nutrient management advisory committee but several will have to be addressed under source protection or other measures

How to fill gap

- In the meantime, municipal by-laws must continue to fill the gap left by the lack of coverage of the NMA
- In addition, source protection planning will have to consider whether even the level of protection that the NMA would have established is available in their watershed and what more has to be done under source protection plans

Biosolids

- In addition, there were new regulations pertaining to biosolids application to land, but these rules only apply to farms that have to do nutrient management plans
- As a result, the province through the Ministry of Environment is now engaged in a separate consultation on amendments to biosolids regulations under their C/A process

Septage

- Yet another MoE consultation process is dealing with potential amendments to the rules pertaining to septage and land application
- In the meantime, untreated portable toilet waste is shortly to be banned from land application and will have to be taken to treatment systems

Size matters?

- For now, the result is that to determine which rules apply in a range of nutrient management issues, the first issue is whether the farm is covered by the NMA or not
- 300 nutrient units, the size definition for the large farms to be covered in the next year or two, represent very large farms

Most not covered

- Most farms, whether measured by total number of farms, or by total amount of production, are not presently covered by the NMA and this includes farms that are still quite large
- There will be a complex system of partial provincial regulation and partial municipal regulation until (and if) the NMA is extended to cover the rest of the farms

Responsible Ministers

- Justice O'Connor in his report recognized the appropriateness of involvement by various Ministries in different activities, while stressing that the Ministry of the Environment must take the lead for water quality protection - he stated that this will "centralize the protection of drinking water sources within one expert ministry".

Plan development versus enforcement

- When we made submissions during the Walkerton part II meetings and in writing regarding Bill 81, we suggested that Minister of Agriculture was best placed to work with farmers to develop their nutrient management plans but that the Minister of Environment was better placed to deal with enforcement

Public input

- During development of the Nutrient Management Act, CELA advocated that it be prescribed under the Environmental Bill of Rights and/or that there be opportunity for public input prior to approval of Nutrient Management plans
- However, the NMA and its regulations do not so far provide for these opportunities

Appeals

- In general when dealing with environmental protection statutes, we advocate that the appropriate appeal tribunal is the ERT
- Similarly, for source protection, which is still to be developed, the Framework recommends that appeals of source protection plans be taken to the ERT

Will be even more critical

- As the remaining Nutrient Management Act regulations are developed, as source protection planning is developed, and as farm water protection plans are developed, the ERT's role as appeal body from all of the related legislation will require a thorough knowledge of all these legislative requirements and of how they are to work together

Assessing the Nutrient Management Act

- With the regulations passed so far, the Nutrient Management Act is of very limited value to environmental protection
- It deals only with a portion of the agricultural activity
- The regulations are aimed at phosphorous and nitrogen, not at bacteria, protozoa and viruses, nor non-nutrient contaminants

Assessing the NMA cont.

- Nutrient management planning will not be consistent, even within the same watershed, because of inconsistent application
- As Justice O'Connor noted, nutrient management plans “do not necessarily take into consideration watershed-specific information.”

Assessing the NMA cont.

- Many activities are not yet dealt with for most farms, including basic nutrient management, stream buffers, winter spreading and inclusion of biosolids in nutrient planning
- Some protection will incidentally arise from the application of the NMA regulations to the new and expanding and large farms

Assessing the NMA cont.

- However, where that protection is from pathogens or other non-nutrient contaminants, it will be incidental because of the provisions dealing with containment, buffers, winter spreading and biosolids, and not because those issues are the direct focus of the legislation

Looking Forward

- CELA will continue to participate in the Nutrient Management Advisory Committee and in the Source Protection Framework development and will advocate strenuously for an integrated approach that not only deals with nutrients, but also with pathogens and other contaminants