

## PROTECTING DRINKING WATER: THE LEGISLATIVE CONTEXT

(Prepared by Richard D. Lindgren, CELA Counsel, May 22, 2003)

The provincial framework for protecting drinking water in Ontario is evolving from the decades-old *Ontario Water Resources Act* to more specialized laws such as the *Safe Drinking Water Act* and the forthcoming source protection regime.

It should be noted, however, that Ontario's environmental legislation – such as the *Environmental Protection Act*, *Environmental Assessment Act*, and *Pesticides Act* – will continue to play an important role in addressing potential sources of water pollution. Other provincial statutes – such as the *Conservation Authorities Act*, *Health Promotion and Protection Act*, *Planning Act*, and *Municipal Act* – also provide legal tools that may be used to protect drinking water quality and quantity. In addition to the above-noted legislation, Ontario has recently passed two statutes that are relevant to protecting drinking water: the *Sustainable Water and Sewage Systems Act*, and the *Nutrient Management Act*.

In summary, the *Sustainable Water and Sewage Systems Act*:

- was passed in December 2002, but has not yet been proclaimed in force;
- requires municipalities to prepare and submit audited reports on the full cost of their water services (e.g. source protection, capital and operating costs);
- requires municipalities to prepare and submit audited cost recovery plans for their water services; and
- will be administered by the Ministry of the Environment (“MOE”).

In summary, the *Nutrient Management Act*:

- was passed in June 2002, but has not yet been proclaimed in force;
- authorizes the passage of regulations regarding farm animals, nutrient management plans and strategies, restrictions on land application of nutrients, construction standards, and minimum separation distances from municipal wells and surface water; and
- specifies that regulations under the Act supersede municipal by-laws which address the same subject-matter.

In March 2003, the Ontario government announced that it was taking a “new direction” under the Act, and that certain regulations would begin to apply to new or expanded “large” livestock farms (e.g. more than 300 nutrient units) on July 1, 2003. Existing “large” livestock farms are to be covered by the regulations in July 2005. Other classes of agricultural operations may not be covered until 2008 at the earliest, depending upon future recommendations from a provincial advisory committee, and upon the future availability of cost-shared funding. A protocol is being developed to facilitate joint administration of the Act by the MOE (investigation/enforcement) and the Ontario Ministry of Agriculture, Food and Rural Affairs (monitoring/assistance).

**THE SAFE DRINKING WATER ACT AT A GLANCE**  
(Prepared by Richard D. Lindgren, CELA Counsel, May 21, 2003)

The *Safe Drinking Water Act* ("SDWA") was enacted by the Ontario Government in December 2002. Once fully proclaimed into force, the SDWA will impose important legal duties upon municipal (and prescribed non-municipal) drinking water systems. The SDWA will be administered and enforced by the Ministry of the Environment ("MOE"). Among other things, the SDWA:

- authorizes the MOE to set drinking water quality standards, quality management standards, and other regulatory standards;
- imposes various operational duties upon drinking water suppliers in relation to testing, reporting, treatment, and distribution of drinking water;
- requires training and certification of drinking water system operators;
- establishes a system of permits, licences and approvals for drinking water systems and laboratories performing drinking water testing; and
- creates a broad range of inspection and enforcement tools, and includes stringent penalties for non-compliance.

Numerous sections of the SDWA are scheduled to come into force on June 1, 2003. These sections include: Ministerial powers and duties (subsection 3(1) to (3)); duties of owners and operating authorities (subsection 11(1) and (2)); duty to report adverse test results (section 18); prohibition against contaminating drinking water systems (section 20); approvals, permits and licences for municipal drinking water systems (sections 31, 32, 34 to 39, 41, 45, 51); regulation of non-municipal drinking water systems (sections 52, 53, 54(1), (3) to (6), 55 to 61); inspections, compliance and enforcement (sections 81 to 120, 122 to 125); appeals (sections 126 to 136); offences (sections 137 to 155); miscellaneous provisions and regulation-making (sections 156 to 170).

Five related regulations are also scheduled to come into force on June 1, 2003. These regulations are: Ontario Drinking Water Standards (O.Reg. 169/03); Drinking Water Systems (O.Reg. 170/03); Definitions of Words and Expressions Used in the Act (O.Reg. 171/03); Definitions of "Deficiency" and "Municipal Drinking Water System" (O.Reg. 172/03); Schools, Private Schools and Day Nurseries (O.Reg. 173/03).

Significantly, several key sections of the SDWA will not be coming into force on June 1, 2003. These sections include: requirement for MOE to prepare annual reports on drinking water (subsection 3(4)); establishment of the Advisory Council on Drinking Water Quality and Testing Standards (subsection 4(1)); imposition of a statutory standard of care upon owners of municipal drinking water systems (subsection 19(1)); drinking water testing (sections 62 to 80); and administrative penalties (section 121). At this time, it is unclear when these sections will be proclaimed in force.

Similarly, new regulations have not yet been promulgated under the SDWA in relation to operator training/certification, inspection/compliance matters, quality management standards, or laboratory licencing. Some of these regulations are imminent, while others may be released by the MOE before the end of 2003.