

**APPLICATION FOR REVIEW**  
**Filed pursuant to Section 61 of the *Environmental Bill of Rights***  
**RE: *Clean Water Act, 2006* and Ontario Regulation 287/07**

**1. APPLICANTS**

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I hereby declare I am a full-time resident of Ontario and have been since 1960.

December 12, 2019



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DATE

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RICHARD D. LINDGREN

**APPLICANT NUMBER TWO:**

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I hereby declare I am a full-time resident of Ontario and have been since 1985.

December 12, 2019



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DATE

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THERESA A. McCLENAGHAN

## **2. SUBJECT MATTER OF REQUESTED REVIEW**

The Applicants hereby request a review of an **existing** Act and regulation, namely:

- *Clean Water Act, 2006*, S.O. 2006, c.22 (*CWA*); and
- Ontario Regulation 287/07 (General), as amended.

Subsection 61(1) of the *Environmental Bill of Rights* (“*EBR*”) provides that an Application for Review may be filed where the Applicants believe that a provincial Act or regulation “should be amended, repealed or revoked in order to protect the environment.”

The Acts and regulations administered by the Ministry of the Environment, Conservation and Parks (MECP) are prescribed for the purposes of Applications for Review under Part IV of the *EBR*: see O.Reg.73/94, sections 2, 3(1), 5, 6(1), and 7(1). This specifically includes the *CWA* and Ontario Regulation 287/07.

For the reasons set out below, the Applicants submit that it is in the public interest to review and revise the current *CWA* regime in order to extend source protection planning requirements to certain non-municipal drinking water systems (e.g. private well clusters, public or designated facilities, etc.) in Ontario.

In the Applicants’ view, it is now time to make all necessary legislative and regulatory changes to expand the *CWA* coverage to non-municipal systems in order to protect the environment and the health and safety of Ontarians who are not served by municipal drinking water systems.

As Ontario approaches the 20<sup>th</sup> anniversary of the Walkerton Tragedy, the Applicants submit that these requested reforms are long overdue to safeguard groundwater and surface water sources that supply non-municipal drinking water systems. Thus, the overarching question is not **if** non-municipal drinking water systems should be covered by the *CWA*, but **how** such systems should be brought under the *CWA*.

## **3. REASONS WHY THE REQUESTED REVIEW SHOULD BE UNDERTAKEN**

### **(i) Description of the Applicants**

The Applicants are lawyers with the Canadian Environmental Law Association, and have been actively involved in casework, advocacy and public legal education relating to drinking water safety, provincial well standards, groundwater protection and public health. For example, both Applicants served as co-counsel for Walkerton residents at the Walkerton Inquiry, which was held after seven people died, and thousands were sickened, after drinking contaminated water drawn from a municipal well in May 2000.

Subsequent to the Walkerton Inquiry, the Applicants have been extensively involved in various initiatives, policies and programs under the *CWA*, *Safe Drinking Water Act, 2002 (SDWA)*, *Nutrient Management Act, 2002*, *Ontario Water Resources Act (OWRA)* and the regulations under these statutes.

In addition, one of the Applicants is a member of a Source Protection Committee (SPC) established under the *CWA*, while the other Applicant participated on the Implementation Committee and Technical Experts Committee when the *CWA* was first being developed, as discussed below.

## **(ii) The Public Interest Rationale for Extending CWA Coverage**

### (a) Overview

The Applicants' overall position is that the MECP should undertake the requested review and revision of the *CWA* and Ontario Regulation 287/07 in order to better protect the environment and safeguard public health and safety.

The Applicants note that the current legislative and regulatory regime under the *CWA* continues to be largely (if not exclusively) focused on identifying and protecting sources of **municipal** drinking water.

In particular, the inaugural round of source protection planning under *CWA* from 2007 to 2015 primarily focused upon wells and surface water intakes used by municipal drinking water systems. Accordingly, the first generation of approved source protection plans, which are now being implemented across many parts of Ontario, contain protective policies which are intended to safeguard municipal wellheads and intakes against significant drinking water threats.

Given that approximately 80% of Ontarians obtain their drinking water from municipal systems, the Applicants acknowledge that this initial focus on municipal wellheads and intakes was both reasonable and understandable.

In particular, given the novel nature of the *CWA* framework when first enacted, the Applicants understand that the Ontario government wanted to initially focus the first round of source protection planning on municipal residential drinking water systems that serve millions of Ontario residents. In fact, this rationale is precisely what was communicated by Minister Gerretsen during the early implementation of the *CWA*, along with an expectation that non-municipal systems would eventually be included in the second round of source protection planning.

Now that the first generation of source protection plans have been approved, the Applicants agree with the Environmental Commissioner of Ontario (ECO) that to date,

the implementation of CWA program has successfully resulted “in thousands of on-the-ground actions to reduce drinking water threats” to municipal systems.<sup>1</sup>

However, since current source protection plans are now being reviewed and updated, the Applicants submit it is now time to extend the reach of the CWA program to the sources of water used by non-municipal drinking water systems that serve some of the most vulnerable people in Ontario (e.g. children, elderly persons, etc.).

On this point, the Applicants have reviewed all 22 approved source protection plans in Ontario, and could not find a single example where a non-municipal drinking water system serving a public or designated facility was expressly elevated for consideration in the source protection planning process. Nevertheless, several SPC’s have characterized the continuing non-inclusion of such systems as a “future policy need” or “future consideration” as source protection plans are updated, as discussed below.

In these circumstances, the Applicants submit that the Ontario government’s ongoing refusal to bring non-municipal drinking water systems under the CWA is contrary to the reasonable expectations of many stakeholders (including the Chairs and members of SPC’s) who understood from previous MECP representations that while the initial focus under the CWA would be on municipal systems, source protection measures would be developed for non-municipal systems in due course. Simply put, this extension to non-municipal systems has inexplicably stalled, and it is now necessary for the MECP to make tangible progress in this matter.

The Applicants further note that extending the CWA to non-municipal systems is consistent with the advice received by the Ontario government from the province’s Implementation Committee and Technical Experts Committee during the development of the CWA. In particular, these Committees advised the provincial government that “diverse communities, including those on municipal and private supplies, as well as First Nations, should be protected by the approach to source water protection.”<sup>2</sup>

(b) Non-Inclusion of Non-Municipal Drinking Water Systems

During the first round of source protection planning, it was notionally possible under the CWA for municipalities to “elevate” certain non-municipal systems (i.e. private well clusters, wells in a “settlement area” under the *Planning Act*, etc.) for inclusion in the source protection planning process, as discussed below in more detail.

However, to the Applicants’ knowledge, such discretionary “elevations” did not occur, largely at the insistence of MECP officials at the outset of the source planning protection process.

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<sup>1</sup> ECO, 2018 Environmental Protection Report: Clean Water, Chapter 1, page 5. Online, <https://docs.assets.eco.on.ca/reports/environmental-protection/2018/Back-to-Basics.pdf>.

<sup>2</sup> See J. Abouchar and T. McClenaghan, *Ontario Water Law (Vol. 1)* (Toronto: Canada Law Book, 2014) pages P1-16 to P1-17.

In particular, the MECP issued an early directive that effectively discouraged municipalities from elevating such private systems at the time. In this directive, the former Director of the Source Protection Programs Branch acknowledged that municipalities had been expressing interest in elevating some non-municipal drinking water sources under the *CWA* regime, but he advised that such elevation requests should be “deferred.”<sup>3</sup>

While this initial direction may have made some practical sense at the time, the Applicants submit that this directive is now outdated, does not reflect good public policy, and should not be driving the next round of source protection planning in Ontario.

In the Applicants’ view, the millions of Ontarians who consume water from municipal drinking water systems are already well-protected under *CWA*-approved source protection plans. This fact is corroborated by the most recent annual report of Ontario’s Chief Drinking Water Inspector, who found that over 99% of municipal water samples met the water quality standards prescribed under *SDWA* regulations.<sup>4</sup>

Accordingly, since the next round of source protection planning is now underway (e.g. updating assessment reports, re-evaluating local drinking water threats, reviewing existing policies in approved plans, etc.), the Applicants submit that it is both timely and appropriate for SPC’s throughout Ontario to start identifying and protecting sources used by certain non-municipal drinking water systems.

In taking this position, the Applicants are not advocating that *CWA* requirements should be immediately applied to the hundreds of thousands of individual private wells located throughout southern and northern Ontario. Instead, the Applicants submit that the MECP should undertake an expedited priority-setting exercise (with meaningful public and stakeholder input) to identify the types or classes of non-municipal drinking water systems that should be brought into the source protection planning process at the earliest possible opportunity.

At a minimum, the Applicants suggest that the following facilities<sup>5</sup> should be prioritized for immediate inclusion in source water protection planning if they do not receive water from a municipal drinking water system:

- children and youth care facilities;
- children’s camps;
- community centres or recreational facilities;

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<sup>3</sup> Letter dated January 8, 2008 from Ian Smith to Source Protection Chairs, page 1.

<sup>4</sup> See <https://www.ontario.ca/page/2017-2018-chief-drinking-water-inspector-annual-report>

<sup>5</sup> The Applicants acknowledge that these facilities may be subject to treatment, testing and operational requirements prescribed under the *SDWA*. However, if these facilities are not served by municipal drinking water systems, then there is no legal requirement under the *SDWA* or the *CWA* to evaluate and safeguard the groundwater or surface water sources that supply drinking water to such facilities. This is the significant jurisdictional gap that the Applicants are addressing through this Application for Review.

- health care facilities, including retirement homes and assisted living or long-term care centres;
- schools or private schools;
- social care facilities, including group homes and emergency or homeless shelters;
- facilities that serve food or provide overnight accommodation, including restaurants, hotels, motels, trailer parks, campgrounds, and marinas;
- private well clusters serving six or more private residences; and
- such other non-municipal drinking water systems as may be prescribed by regulation.

The potential vulnerability of non-municipal systems to drinking water threats has been noted by SPCs established under the *CWA*. For example, the Essex Source Protection Plan reports that “on Pelee Island... there are a substantial number of non-municipal systems which supply drinking water to public facilities such as hotels, restaurants, and a school.” Accordingly, this Plan (like several other approved source protection plans) identifies non-municipal drinking water systems as a “future policy need,” and recommends that consideration “be given to the inclusion of additional drinking water systems, other than the municipal systems addressed to date.”<sup>6</sup>

Over time and as additional experience is gained, the *CWA* regime could be adapted and applied to other types of non-municipal drinking water systems. However, the foregoing list of candidates provides a good starting point for the priority-setting exercise being recommended by the Applicants. We see no reason why this exercise cannot be completed by the MECP by early 2020.

For non-municipal systems located within existing source protection areas or regions, the relevant SPC would be the logical entity to lead the source protection planning process. For non-municipal systems located in central or northern Ontario outside of a source protection area or region, then the MECP (or its delegate) should be tasked with identifying and protecting their sources of drinking water pursuant to the *CWA*.

On this latter point, the Applicants note that the *CWA* currently empowers the MECP to establish source protection areas (and to designate a person or body to exercise the powers and duties of a source protection authority) in parts of the province where no conservation authority exists.<sup>7</sup> We further understand that this power was exercised in a limited manner by the MECP during the first round of source protection planning.

The Applicants further submit that appropriate *CWA* reforms should be developed (with meaningful First Nations’ input) in order to better accommodate or assist source protection planning for drinking water systems serving First Nation communities. In our view, this step is clearly necessary in light of the numerous long-term “boil water” advisories, “do not consume” warnings, and other serious water-related problems that continue to plague many First Nation communities in Ontario.

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<sup>6</sup> Essex Source Protection Plan, page 105. Online, [https://essexregionconservation.ca/wp-content/uploads/2019/06/2\\_SPPlan-sections-1-7\\_2014\\_May\\_2019\\_FinalWordDoc.pdf](https://essexregionconservation.ca/wp-content/uploads/2019/06/2_SPPlan-sections-1-7_2014_May_2019_FinalWordDoc.pdf).

<sup>7</sup> *CWA*, section 5.

However, as discussed below in more detail, only three First Nations passed band council resolutions authorizing the inclusion of their systems under the CWA,<sup>8</sup> while six other First Nations have been developing their own source protection plans outside of the CWA. Given that there are 133 First Nations communities in the province (27 of which are located within source protection areas or regions), the Applicants agree with the Environmental Commissioner of Ontario (ECO) that the provincial government “can and should do what is within its power to support access to safe drinking water for First Nations communities.”<sup>9</sup>

In summary, extending CWA coverage to certain non-municipal drinking water systems should be implemented as soon as possible. Leaving it to the discretion of MECP Directors (or individual municipalities) to safeguard the source water of non-municipal systems is neither acceptable nor justifiable. This is particularly true if the province remains committed to fully using the multi-barrier approach to protect the health and safety of all Ontarians, not just those who are fortunate enough to be served by municipal systems.

(c) The Need to Revise the CWA and Ontario Regulation 287/07

The stated purpose of the CWA is “to protect existing and future sources of drinking water.”<sup>10</sup>

In the Applicants’ view, there is nothing in this purpose statement that expressly confines the CWA’s protections to municipal drinking water systems, or that necessarily excludes all other types of drinking water systems from the scope of the CWA. Accordingly, the Applicants submit that extending the coverage of the CWA to certain non-municipal systems is entirely consistent with this broad statement of legislative purpose.

Similarly, the Applicants note that the CWA provides that the term “drinking water system” has the same meaning as in the SDWA:

“drinking water system” means a system of works, excluding plumbing, that is established for the purpose of providing users of the system with drinking water and includes,

- (a) any thing used for the collection, production, treatment, storage, supply or distribution of water,

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<sup>8</sup> This small number may be attributable, in part, to First Nations’ concerns that engaging directly in Ontario’s CWA regime may abrogate their inherent and treaty rights: see L. Collins et al., “Source Water Protection Planning for Ontario First Nation Communities: Case Studies Identifying Challenges and Outcomes” (2017), 9 *Water* 550; B. Halpin, “Of the Water: The Rights and Roles of First Nations in Source Protection and Water Quality”, July/August 2009 *Canadian Water Treatment* 18.

<sup>9</sup> ECO, 2018 Environmental Protection Report: Clean Water, Chapter 1, page 38.

<sup>10</sup> CWA, section 1.

- (b) any thing related to the management of residue from the treatment process or the management of the discharge of a substance into the natural environment from the treatment system, and
- (c) a well or intake that serves as the source or entry point of raw water supply for the system.

Again, there is nothing in this definition that would exclude the types of non-municipal drinking water systems that the Applicants suggest should now be phased in under the CWA.

The Applicants further note that Ontario Regulation 287/07 frames the overall purpose of source protection plans as both protective and precautionary in nature:

**22.** (1) Every source protection plan shall set out the following as objectives of the plan:

1. To protect existing and future drinking water sources in the source protection area.
2. To ensure that, for every area identified in an assessment report as an area where an activity is or would be a significant drinking water threat,
  - i. the activity never becomes a significant drinking water threat, or
  - ii. if the activity is occurring when the source protection plan takes effect, the activity ceases to be a significant drinking water threat.

In the Applicants' view, these objectives are directly relevant to source water that serves both municipal and non-municipal drinking water systems. However, for the purposes of greater certainty, section 22 should be amended to clarify that these objectives apply, with necessary modifications, to the types of non-municipal drinking water systems that become subject to the CWA.

At this time, it appears to the Applicants that the current CWA provisions regarding the legal effect of source protection plans (Part III), regulation of drinking water threats (Part IV), and other matters (Part V) can remain more or less intact if the CWA coverage is expanded to certain non-municipal systems. Nevertheless, the regulation-making authority under sections 107 and 108 may require some broadening in order to facilitate the expansion of CWA coverage to non-municipal drinking water systems.

However, the Applicants submit that there are a number of other CWA provisions in Part I (General) and Part II (Preparation, Amendment and Review of Source Protection Plans) that will likely need to be added or amended in order to facilitate the application of source protection planning requirements to non-municipal drinking water systems.

It is beyond the scope of this Application for Review to exhaustively list every CWA provision that needs to be re-considered and/or re-drafted in order to extend CWA coverage to non-municipal drinking water systems. On this point, the Applicants anticipate that the full list of necessary statutory changes would be generated during the MECP's review process in the event that this Application is granted. We further anticipate that if new or amended legislative and regulatory provisions are proposed by



the MECP at the outcome of the review process, then these will be posted on the Environmental Registry for public review/comment purposes in due course.

Nevertheless, on a preliminary basis, the Applicants have identified a number of key provisions in the *CWA* and Ontario Regulation 287/07 that should be modified in order to ensure the smooth and timely expansion of the *CWA* regime to non-municipal drinking water systems. Similarly, we have also identified certain instances where new provisions should be drafted to help accomplish this objective.

For example, consideration should be given to inserting a new definition of “non-municipal drinking water system” in section 2 of the *CWA* in order to designate the full range of systems that will be examined under the upcoming round of source protection planning under the *CWA*. The candidate systems proposed by the Applicants are outlined above, but we recognize that there may well be additional types of non-municipal systems that should be caught by this new definition on a go-forward basis.

As discussed above, subsection 8(3) of the *CWA* currently enables municipalities to pass resolutions elevating certain non-municipal systems for inclusion in the source protection planning process. However, to the Applicants’ knowledge, no such systems were elevated or included within the approved terms of reference for SPC’s across Ontario.

To remedy this omission, the Applicants submit that subsection 8(3) should no longer remain optional in nature. In the Applicants’ view, as long as this permissive power stays within the unfettered discretion of municipalities, there is no guarantee that the power will be used appropriately or at all. This is particularly true if the MECP continues to maintain (or re-issue) documents that direct municipalities not to elevate non-municipal systems.

Thus, the Applicants submit that subsection 8(3) should be amended to impose a mandatory duty upon upper-, lower-, and single-tier municipalities to develop and pass resolutions (within a specified timeframe) that elevate all eligible or prescribed non-municipal systems located within the municipality.

Consequential amendments to subsections 10(6), 10(7), and section 13 of the *CWA* may also be warranted in order to better accommodate such municipal resolutions, which will obviously post-date the original approval of the SPC’s terms of reference for assessment reports and source protection plans.

For example, subsection 10(6) simply provides that the Minister “may” amend terms of reference to require SPC’s to “consider” any existing or planned drinking water system within the source protection area. However, this Ministerial power is entirely discretionary, prescribes no criteria for the exercise of this power, and establishes no deadlines or timeframes for the exercise of this discretion. These significant omissions undoubtedly explain, at least in part, why no non-municipal drinking water systems (aside from the three First Nation systems described above) have been subject to the *CWA* over the past decade.

Accordingly, the Applicants submit that subsection 10(6) should be reviewed in order to determine whether it should become mandatory for the Minister to exercise this power upon request by municipalities, SPC's, Indigenous communities, or members of the public. In the alternative, if this power remains discretionary under the *CWA*, then, for the purposes of greater certainty and accountability, the Applicants submit that the subsection should be amended to include clear criteria to help structure the exercise of Ministerial authority.

Similarly, section 4.1 of Ontario Regulation 287/07 may also require revisions to ensure that there are no legal barriers to the mandatory inclusion of designated non-municipal drinking water systems within the next round of source protection planning. Once such systems have been added, then amendments to section 12.1 of the regulation will also be necessary.

At the present time, section 12.1 of Ontario Regulation 287/07 only lists three First Nations drinking water systems that were prescribed under subsection 15(2)(e)(iv) of the *CWA*. These were the only systems for which band council resolutions were passed in order to specifically include the systems in the source protection planning process under the *CWA*.

However, these existing provisions appear to do little or nothing in relation to First Nations' systems located outside of source protection areas, or where First Nations have developed their own source protection measures outside of the *CWA* framework. Thus, the Applicants suggest that the *CWA*'s current provisions for including First Nations' drinking water systems should be reviewed and/or revised in order to better facilitate the optional inclusion of such systems under the *CWA*, and to otherwise assist First Nations in developing, implementing and funding their own source water protection measures. It goes without saying that these new or amended provisions should be developed collaboratively with First Nations communities.

For example, consideration should be given to crafting a new Part II.1 of the *CWA* that deals specifically with the protection of source water for First Nations' drinking water systems. Among other things, the potential provisions within this new Part could expressly authorize Minister to enter into agreements with First Nations with respect to any specific or general matter related to source protection planning, and to empower the Minister to recognize and adopt source protection plans, policies or measures developed by First Nations outside of the *CWA* framework.

In making this submission, the Applicants are aware that it is ultimately up to First Nations communities to decide whether or not source protection planning should be undertaken within their territorial jurisdiction. If a First Nation decides against opting into the *CWA* framework, and instead wishes to develop its own source protection policies (e.g. pursuant to the federal *Indian Act*, Land Code, or inherent rights), then the *CWA* should be amended to empower the province to enter into financial or technical assistance programs upon request by the First Nation.

The Applicants further note that significant industrial or commercial activities (e.g. mining, forestry, waste disposal, etc.) on surrounding non-reserve lands are generally approved and regulated by the province. Moreover, in the resource extraction context, the province receives revenue, royalties or fees from industrial proponents. In these circumstances, the Applicants submit that it is fair and reasonable that a portion of these funds should be used to help defray the costs of source protection planning undertaken by First Nation communities.

In addition, the Applicants submit that the *CWA* framework requires key revisions in order to integrate the outcome of First Nations' source protection planning with the issuance of environmental approvals under provincial legislation (e.g. *Aggregate Resources Act*, *Crown Forest Sustainability Act*, *Environmental Protection Act*, *Mining Act*, etc.).

For municipal drinking water systems, the *CWA* currently provides that prescribed provincial instruments shall conform with significant threat policies contained in approved source protection plans.<sup>11</sup> The Applicants submit that a similar legal conformity requirement should be created in the *CWA* to ensure that provincial instruments conform with First Nations' source protection policies where applicable. One option may be to amend the *CWA* to empower SPC's (or the Minister in areas without SPC's) to adopt or cross-reference First Nations' policies in *CWA*-approved source protection plans.

On this latter point, the Applicants note that section 111 of the *CWA* currently permits a "rule or regulation" under the Act to adopt other documents by reference, and to require compliance with such documents. However, the specific examples used in this section (e.g. codes, formulas, standards, protocols or procedures) do not seem to capture or contemplate the substantive components of source protection plans prepared by First Nations. Therefore, if this matter is not otherwise addressed within the new Part II.1 proposed by the Applicants, then section 111 should be amended to expressly include the ability to adopt by reference any source protection plan or policies developed by First Nation communities.

In summary, the Applicants submit that extending *CWA* coverage will necessarily require appropriate amendments to existing statutory and regulatory provisions. In the Applicants' view, expanding *CWA* coverage cannot be accomplished in a timely, effective and enforceable manner by simply leaving intact the various discretionary provisions currently found throughout the *CWA*. In our opinion, maintaining the status quo under the *CWA* is a recipe for further delay and inaction in relation to non-municipal systems.

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<sup>11</sup> *CWA*, sections 43 and 44. See also section 1.0.1 of Ontario Regulation 287/07, which prescribes over a dozen types of provincial licences, permits and approvals that must conform to significant threat policies in source protection plans.

*(d) Well-Documented Risks to Non-Municipal Sources of Drinking Water*

The Applicants submit that since its inception, the current CWA regime has been selectively applied in a manner that only protects source water for some – but not all – residents of Ontario. In the Applicants’ view, this bifurcated approach is inequitable and unacceptable.

On this point, the Applicants fully agree with Mr. Justice O’Connor’s equity-based comments in the Part 2 Report of the Walkerton Inquiry:

Second, and even more compelling, is the argument of equity. There is no justification for permitting lower public health standards for some residents of Ontario than those enjoyed by others... This is especially true when there is ample evidence that the water provided in First Nations communities falls well short of the standards of safety and adequacy that are considered acceptable in other parts of the province.<sup>12</sup>

Accordingly, the Applicants call upon the provincial government to immediately take all necessary steps to expand the CWA planning process to include wells and intakes that supply water to certain non-municipal systems.

It is beyond dispute that groundwater or surface water sources used by non-municipal systems in rural or northern Ontario are as potentially vulnerable to chemical or pathogenic contamination as the sources used by municipal systems which supply drinking water to Ontario cities.

For example, the 2014 annual report of the Auditor General of Ontario found that:

Private wells or intakes that serve one residence are currently excluded from source protection planning. An estimated 1.6 million people in Ontario rely on private wells for their drinking water supply. For them, protecting source water is the only line of defence. In 2013, over a third of the water samples from private wells tested positive for bacteria including E. coli. If private wells were held to the same safety standard used for public drinking water systems, water from these wells that tested positive for bacteria would be considered unsafe to drink.<sup>13</sup>

Similarly, the Auditor General of Ontario succinctly summarized the current situation in her recently released 2019 annual report:

**While municipal drinking water sources are becoming better protected, water sources or Indigenous communities, areas outside Conservation Authority boundaries (primarily in northern Ontario) and private wells are**

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<sup>12</sup> Part 2 Report of the Walkerton Inquiry, page 487. Online, [http://www.archives.gov.on.ca/en/e\\_records/walkerton/index.html](http://www.archives.gov.on.ca/en/e_records/walkerton/index.html).

<sup>13</sup> 2014 Report of the Auditor General of Ontario, page 411. Online, <http://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2014.html>.

**not...** Significant risks remain for drinking water sources for Indigenous communities and areas outside Conservation Authority boundaries, as well as private wells, which in total serve 18% of Ontario’s population. Additionally, 22 First Nation communities are subject to long-term drinking water advisories in Ontario due to a variety of treatment plant and distribution system issues (original emphasis).<sup>14</sup>

The ECO has also criticized the MECP “for neglecting its obligations to those whose drinking water comes from the most vulnerable of sources: small private wells.”<sup>15</sup>

In addition, the most recent ECO report noted the unequal level of protection accorded to municipal and private drinking water sources across the province:

Drinking water protections for all?

The *SDWA* provides rules for ensuring the safety of residential drinking water from municipal and some non-municipal systems (such as the water supply for a trailer park or small complex of homes). **There are no comparable rules to protect the drinking water from private wells.**

Similarly, the *CWA* provides rules to protect the sources of most municipal drinking water, but generally excludes other drinking water sources (with a few exceptions). **The source protection framework has not been applied to most of northern Ontario, most First Nation communities or to private wells or other non-municipal drinking water sources. These gaps leave some Ontarians vulnerable to unsafe drinking water** (emphasis added).<sup>16</sup>

In light of these evidence-based findings by independent observers, the Applicants submit that the continuing exclusion of non-municipal systems under the *CWA* affects not only numerous hamlets and villages, but also larger communities or towns that lack communal systems and are therefore 100% reliant upon drinking water drawn from domestic wells.

This is the case in virtually all regions across the province. In northern Ontario, for example, the Lakehead Source Protection Plan reports that aside from Thunder Bay and Rosslyn Village, all other communities in the area “rely on private wells for their drinking water.”<sup>17</sup> Similarly, the Mattagami Source Protection Plan reveals that a number of communities within Timmins are not served by the city’s drinking water system, and instead “utilize individual wells” for drinking water purposes.<sup>18</sup>

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<sup>14</sup> 2019 Report of the Auditor General of Ontario, Volume 2, page 18. Online,

[http://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR\\_v2\\_en\\_web.pdf](http://www.auditor.on.ca/en/content/annualreports/arreports/en19/2019AR_v2_en_web.pdf).

<sup>15</sup> ECO 2005-06 Annual Report, pages 53-54. Online, <http://docs.assets.eco.on.ca/reports/environmental-protection/2005-2006/2005-06-AR.pdf>.

<sup>16</sup> ECO, 2018 Environmental Protection Report: Clean Water, Chapter 1, page 9.

<sup>17</sup> Lakehead Source Protection Plan, page 12. Online, <http://www.sourceprotection.net/images/Approved%20SPP.pdf>.

<sup>18</sup> Mattagami Source Protection Plan, page 1. Online, <http://www.dwsp.ca/wp-content/uploads/Approved-SPP-April-2-20141.pdf>.

In southwestern Ontario, the Long Point Source Protection Plan indicates that 45% of the watershed's population is not serviced by a municipal drinking water system.<sup>19</sup> Similarly, the Grand River Source Protection Plan states that “the estimated total rural municipally-unserved population for the Grand River watershed is approximately 129,000.”<sup>20</sup>

More specifically, in the County of Brant, the communities of Burford, Oakland, Scotland,<sup>21</sup> and many others, are entirely reliant on domestic wells. Most of these wells draw from the same or connected aquifers, and are therefore susceptible to a common contaminating event such as occurred at Walkerton. In particular, these wells are vulnerable to surrounding land uses, municipally and provincially regulated activities, spills and accidents, agricultural uses, and industrial uses, just as municipal wells were vulnerable before the passage of the CWA.

In central Ontario, the Ganaraska Source Protection Plan advises that only “about 43% of the population of the Trent source protection areas” is served by municipal residential drinking water systems.<sup>22</sup> In effect, this means that the majority of residents in this region obtain their drinking water from non-municipal systems.

In eastern Ontario, the Quinte Source Protection Plan states that groundwater supplies drinking water to 50% of local residents, most of whom rely on private wells.<sup>23</sup> Similarly, the Mississippi-Rideau Source Protection Plan suggests that while 89% of the source protection area is designated as a Highly Vulnerable Aquifer under the CWA (due to thin soils, fractured bedrock, etc.), approximately 25% of the local population is not served by a municipal drinking water system.<sup>24</sup> This Plan also reports that within the region, there are “countless clusters of six or more private wells and intakes,” and “there are over 600 drinking water systems that serve public and private facilities” (e.g. schools, community centres, trailer parks, etc.).<sup>25</sup>

Accordingly, it is beyond dispute that the numerous Ontarians who depend upon non-municipal systems for drinking water purposes continue to lack the legal protection conferred under the CWA for safeguarding source water.

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<sup>19</sup> Long Point Source Protection Plan, page 4-6. Online, [https://www.sourcewater.ca/en/source-protection-areas/resources/Documents/Long\\_Point/LPRSPP\\_SPP\\_Approved\\_V1-clean\\_2019\\_03\\_11.pdf](https://www.sourcewater.ca/en/source-protection-areas/resources/Documents/Long_Point/LPRSPP_SPP_Approved_V1-clean_2019_03_11.pdf).

<sup>20</sup> Grand River Source Protection Plan, page 4-6. Online, [https://www.sourcewater.ca/en/source-protection-areas/resources/Documents/Grand/GRSPA\\_SPP\\_V1.pdf](https://www.sourcewater.ca/en/source-protection-areas/resources/Documents/Grand/GRSPA_SPP_V1.pdf).

<sup>21</sup> These three communities consist of thousands of residents.

<sup>22</sup> Ganaraska Source Protection Plan, page 3. Online, [http://trentsourceprotection.on.ca/images/SPPs/Ganaraska\\_Approved\\_SPP\\_March2018.pdf](http://trentsourceprotection.on.ca/images/SPPs/Ganaraska_Approved_SPP_March2018.pdf).

<sup>23</sup> Quinte Source Protection Plan, page 9. Online, [http://quintesourcewater.ca/web/wp-content/uploads/2019/10/SPP\\_Version1.1\\_Complete.pdf](http://quintesourcewater.ca/web/wp-content/uploads/2019/10/SPP_Version1.1_Complete.pdf).

<sup>24</sup> Mississippi-Rideau Source Protection Plan, pages 10 and 12. Online, [http://www.mrsourcewater.ca/images/Documents/Mississippi-Rideau-Source-Protection-Plan/Text/6.%20Section%202\\_Policy%20Development.pdf](http://www.mrsourcewater.ca/images/Documents/Mississippi-Rideau-Source-Protection-Plan/Text/6.%20Section%202_Policy%20Development.pdf).

<sup>25</sup> *Ibid*, page 18.

*(e) Fundamental Flaws in Regulation 903 (Wells)*

While some non-municipal drinking water systems draw water from surface water bodies, the Applicants are particularly concerned about such systems that draw water from private wells. This situation typically arises in Ontario hamlets, villages or towns that are also dependent on private on-site septic systems, which raises the prospect of bacteriological contamination of the underlying aquifer.

As noted above, the vast majority of private residential wells across Ontario receive no direct protection in source protection plans approved under the *CWA*, and drinking water quality from private residential wells is not regulated under the *SDWA*. By default, the primary legal protection currently accorded to well owners are those found within the provincial requirements established under Regulation 903 under the *OWRA*.<sup>26</sup>

Over the years, however, serious and well-founded concerns have been expressed about the systemic shortcomings in Regulation 903, and several commentators have recommended long-overdue improvements to Regulation 903.

For example, in the Part 2 Report of the Walkerton Inquiry, Mr. Justice O'Connor correctly recommended that "Regulation 903 should be updated and reviewed if necessary to ensure that it requires best construction practices."<sup>27</sup>

Similarly, the ECO has been highly critical of Regulation 903 from a public health and safety perspective:

The well regulation should require best construction practices, as recommended by Mr. Justice O'Connor. However, concerns have been raised... that the new well regulation, as currently drafted, does not meet those intentions, especially with respect to private domestic wells. For instance, there are concerns that the regulation does not require well constructors to verify, through water testing, that new wells have indeed been disinfected. Nor is there a requirement that well contractors disinfect private wells after carrying out repairs...

RECOMMENDATION 11: The ECO recommends that MOE ensure that key provisions of the Wells Regulation are clear and enforceable...<sup>28</sup>

In addition, the ECO has commented on Ontario's continuing failure to improve the "severely flawed" Regulation 903, which "endangers public health and impedes environmental protection":

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<sup>26</sup> The Applicants recognize that some degree of protection against well water contamination may also be derived from the prohibitions and provisions of the *OWRA*, *Environmental Protection Act* and other provincial laws of general application.

<sup>27</sup> Part 1 Report of the Walkerton Inquiry (2002), page 480.

<sup>28</sup> ECO 2003/04 Annual Report, page 113. Online, <http://docs.assets.eco.on.ca/reports/environmental-protection/2003-2004/2003-04-AR.pdf>

Since the revised Wells Regulation came into effect in 2003, tens of thousands of wells have been constructed, repaired or abandoned under a regulation that is widely seen as inadequate, and with little enforcement or oversight from MOE...

The ECO is very disappointed that MOE has shown itself unable or unwilling to resolve widespread and well-founded concerns about a regulation that is so vital to Ontario's environmental protection and drinking water safety.<sup>29</sup>

The Applicants are especially alarmed by the MECP's continuing inaction on upgrading current disinfection requirements under Regulation 903.

In June 2005, the Ontario Drinking Water Advisory Council (ODWAC) sent an advice letter on Regulation 903 to the Environment Minister, and concluded that Regulation 903's disinfection requirements for well construction and repair are "deficient" for numerous reasons. Therefore, the ODWAC specifically recommended that Regulation 903 should ensure that a rigorous five-step disinfection and sampling protocol is followed before well water is consumed after well construction or repair.

However, this prescriptive advice has not been fully acted upon by the MECP to date, and in the interim tens of thousands of new wells have been constructed, repaired and cleaned in accordance with a standard that did not meet ODWAC's full recommendations.

Accordingly, the Applicants submit that the continuing inadequacy of Regulation 903 – and the Ontario government's inexplicable refusal to make substantive improvements to the regulatory requirements for wells – provides an additional reason to extend CWA coverage to certain non-municipal drinking water systems. In short, the only line of regulatory defence for well users in Ontario is Regulation 903, but it unfortunately remains an inadequate barrier for the purposes of protecting public health and the environment.

The above-noted concerns about water well safety are exacerbated by the fact that funding for the highly regarded "Well Aware" program was discontinued by the provincial government. During its existence, this effective program provided important public education and outreach to private well owners on how to manage and protect the quality of their well water. Accordingly, the Applicants strongly recommend that this program should be restored and properly resourced by the province, particularly in light of the well-documented deficiencies in Regulation 903. In the event that Well Aware is not restored, then its continuing absence provides a further reason why private wells serving certain non-municipal systems should be covered by the CWA regime.

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<sup>29</sup> ECO 2005/06 Annual Report, pages 53-54. Online, <http://docs.assets.eco.on.ca/reports/environmental-protection/2005-2006/2005-06-AR.pdf>.



(f) Protecting Sources used by Drinking Water Systems in Indigenous Communities

The Applicants submit that the ongoing provincial failure to extend source water protection to non-municipal drinking water systems is unconscionable, and that it creates significant and continuing risks which could conceivably be just as serious as the Walkerton Tragedy.

This is particularly true in relation to the many Indigenous communities throughout the province that suffer persistent drinking water quality issues and attendant public health risks.

For example, in the Part 2 Report of the Walkerton Inquiry, Mr. Justice O'Connor observed that the water supplied to these communities "is some of the poorest quality water in the province," and generally does not meet "the standards that prevail throughout Ontario."<sup>30</sup> He also properly concluded that notwithstanding the federal government's constitutional authority in relation to Indigenous matters, "Aboriginal Ontarians, including First Nations people living on 'lands reserved for Indians', are residents of the province and should be entitled to safe drinking water on the same terms as those prevailing in other similarly placed communities."<sup>31</sup>

Similarly, a 2016 survey of five Ontario-based First Nations (located in northern, central and southern Ontario) found various contaminants, such as coliform, *E. coli*, trihalomethanes and other substances, in the communities' drinking water.<sup>32</sup>

This report also highlighted the need for better protection of the groundwater and surface water sources being used by First Nations drinking water systems, particularly where these sources are being impacted by off-reserve activities regulated under provincial or municipal laws:

The quality of source water has a direct impact on drinking water. While water treatment is designed to make source water safe to drink, heavily contaminated source water can make water treatment more difficult and expensive. Ontario has more First Nations water systems that rely on surface water and "groundwater under the direct influence of surface water" (GUDI) than any other province - meaning water quality is directly related to watershed and source water conditions.

For the most part, source water protection falls under provincial law in Canada, because the watershed extends outside the reserve. This makes it legally and logistically difficult for First Nations to engage on the issue. In practice, First Nations cannot effectively carry out their culturally-understood obligation to protect water - either on or off reserve... In many cases, the lakes, rivers, and

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<sup>30</sup> Part 2 Report of the Walkerton Inquiry, page 486.

<sup>31</sup> *Ibid.*

<sup>32</sup> Human Rights Watch, *Make It Safe: Canada's Obligation to End the First Nations Water Crisis* (2016), page 9.

streams that contribute to the source water for these communities have deteriorated because of pollutants from industries, and growing municipalities.<sup>33</sup>

Aside from the on-reserve drinking water systems, the report further notes that private wells in First Nations communities are also at risk:

Households dependent on private wells or wastewater systems on reserves are in an even more precarious situation than those served by public water systems. There is no dedicated government funding to upgrade, operate, maintain, or monitor these systems. Nearly one in five households on reserves in Ontario use these private wells... For the most part, First Nations and these individual households are left to fend for themselves.<sup>34</sup>

Similar findings are contained in a 2017 review of different First Nation source protection approaches in Ontario which concluded that:

The provincial framework for developing and implementing local or regional source water protection planning does not adequately address the needs of First Nations in Ontario, either geographically or politically.<sup>35</sup>

Likewise, in her 2018 annual report to the Ontario Legislature, the ECO correctly noted that “the persistence of drinking water advisories in Ontario’s First Nation communities remains a blight on the province.”<sup>36</sup> In addition, the ECO reiterated some practical recommendations from her 2017 report on what the provincial government should do to facilitate source water protection in First Nation communities:

The MECP should look for ways to work with First Nation communities that participated in the source protection program to develop guidance materials and sample policies that could be used by other First Nation communities to address common drinking water risks. The MECP should also acknowledge and support the implementation of all source protection plans created by First Nation communities, whether or not they were created under the *Clean Water Act* or through their own process.<sup>37</sup>

As discussed above, the Applicants note that it was theoretically possible under the *CWA* for some First Nations’ drinking water systems to be “elevated” by band council resolution for inclusion within source protection plans. However, only three such systems in Ontario have been specifically included to date.<sup>38</sup>

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<sup>33</sup> *Ibid*, page 17.

<sup>34</sup> *Ibid*.

<sup>35</sup> L. Collins et al., “Source Water Protection Planning for Ontario First Nation Communities: Case Studies Identifying Challenges and Outcomes” (2017), 9 *Water* 550.

<sup>36</sup> ECO, 2018 Environmental Protection Report, page 38.

<sup>37</sup> *Ibid*.

<sup>38</sup> Chippewas of Kettle and Stony Point First Nation; Six Nations of the Grand River; and Chippewas of Rama First Nation: see O.Reg.287/07, section 12.1.

Moreover, while First Nations' representatives have served as members of some Source Protection Committees, it appears that the vast majority of First Nations drinking water systems in Ontario remain outside of the *CWA* coverage.

In these circumstances, the Applicants submit that the Ontario government should enhance its efforts to engage with and assist Indigenous communities across the province, in accordance with Recommendation 88 of the Walkerton Inquiry.<sup>39</sup>

Among other things, this means that where requested, Ontario should readily provide technical, scientific and financial assistance to Indigenous communities that wish to adopt, utilize, or "opt-in" to the various source water protection tools that have been used under the *CWA* in relation to municipal drinking water systems.

(g) Previous Requests by the Applicants to Extend CWA Coverage

In recent years, the Applicants have met and corresponded with successive Environment Ministers and MECP staff to request that *CWA* requirements be extended to certain non-municipal systems.

In November 2012, for example, the Applicants wrote to Minister Bradley to request that "the scope of future source water protection efforts under the *CWA* must be expanded to include various types of non-municipal drinking systems (i.e. private well clusters, First Nations systems, etc.) which have been largely excluded from the recently submitted Source Protection Plans."

Similarly, in January 2017, the Applicants wrote to Minister Murray to again recommend that "the next round of source protection planning under the *CWA* must be expanded to include non-municipal drinking water systems which have been virtually excluded from the Source Protection Plans approved under the *CWA*."

The Applicants again expressed the same views to MECP policy staff in February 2018 in relation to minor proposed changes to the *SDWA* and *CWA* regimes.

In response to such requests from the Applicants and other persons (see below), the MECP has claimed that it is open to municipalities to use their discretionary *Planning Act* powers to protect groundwater or surface water resources that supply non-municipal systems.

In reply, the Applicants submit that the MECP's claim is unpersuasive for various practical and legal reasons (e.g. cost and complexity of source protection planning for smaller, rural or northern municipalities; inherent limitations on the use of *Planning Act* instruments such as official plans and zoning by-laws; existence of appeal rights to the Local Planning Appeal Tribunal, etc.).

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<sup>39</sup> "Recommendation 88 - Ontario First Nations should be invited to join in the watershed planning process outlined in Chapter 4 of this report": see Part 2 Report of the Walkerton Inquiry, page 32.

In addition, it must be recalled that it is not legally mandatory for municipalities to use their land use planning powers to implement source protection measures for non-municipal systems. To the contrary, the exercise of municipal planning powers remains highly discretionary at the local level.

In the Applicants' view, the practical reality is that some municipalities do not use their planning powers effectively or at all to secure the protection of source water used by non-municipal systems. This is why the Applicants continue to represent clients engaged in land use planning disputes where municipal authorities have failed or refused to exercise their *Planning Act* powers in a timely and reasonable manner to safeguard local aquifers used by residents for drinking water purposes.

Even if a municipal council was persuaded to enact protective official plan policies and zoning by-laws, these instruments are always subject to proponents' applications for site-specific amendments and/or appeals to the Local Planning Appeal Tribunal. In the Applicants' experience, the result is an uneven, uncertain and inconsistent patchwork of municipal planning instruments across Ontario, despite the provincial direction provided in the water-related policies of the Provincial Policy Statement issued under the *Planning Act*.

Moreover, if the MECP is correct about the efficacy of the *Planning Act*, then it would not have been necessary for the CWA to include new mandatory tools in Part IV (e.g. prohibition, risk management plans, etc.) in order to safeguard drinking water sources against significant threats. In the Applicants' view, the fact that it was necessary for the CWA to include these new tools to address source water protection undermines the MECP's unmeritorious argument that the *Planning Act* is sufficient.

In addition, the position now being taken by the Ontario government in relation to the sufficiency of the *Planning Act* was previously (and thoroughly) discredited at the time that the CWA was being developed.

In particular, the above-noted Implementation Committee undertook a comprehensive analysis of the ability of existing tools under the *Planning Act* and *Municipal Act* to be utilized for mandatory source water protection. This analytical exercise revealed significant gaps in the availability and efficacy of these tools, especially in relation to existing activities, facilities and land uses. In short, the *Planning Act* may be useful for addressing proposed *changes* to land use, but of limited value when current land uses pose threats to source water protection.<sup>40</sup>

In the Applicants' view, the MECP's continuing failure or refusal to extend CWA coverage potentially leaves non-municipal drinking water sources at risk. In short, this is not the time for the MECP to be making erroneous arguments about the *Planning Act*, or for complacency about drinking water safety throughout Ontario. Therefore, the

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<sup>40</sup> J. Abouchar and T. McClenaghan, *Ontario Water Law (Vol. 1)* (Toronto: Canada Law Book, 2014), page P1-4.

Applicants conclude that the Ontario government must immediately address this important unfinished business under the CWA.

In summary, the Applicants submit that protection of the public right to safe drinking water should not be *ad hoc* in nature, nor depend on the discretion of municipal councils in the particular municipality in which Ontarians happen to reside. Instead, the mandatory tools under Part IV of the CWA should become available province-wide in order to protect source water that supplies non-municipal drinking water systems.

Among other things, protecting non-municipal source water through source protection plans under the CWA would legally oblige municipalities to amend their official plans and zoning by-laws to bring them into conformity with significant threat policies.<sup>41</sup> Similarly, provincial authorities would be prohibited from issuing or amending prescribed instruments (e.g. environmental compliance approvals, aggregate licences, water-taking permits, nutrient management plans/strategies, etc.) unless they conform with significant threat policies that are established to safeguard non-municipal systems.<sup>42</sup>

*(h) Support for Extending CWA Coverage to Non-Municipal Systems*

Aside from the Applicants, a number of other observers over the years have identified the compelling need to extend the CWA coverage to certain non-municipal drinking water systems.

In 2014, for example, the Auditor General of Ontario highlighted the importance of source protection in the context of private wells:

Many people in Ontario, especially in rural areas, are not connected to municipal drinking water systems and use wells to draw their drinking water directly from underground aquifers. For these people, protecting source water is the only barrier of protection against contaminated drinking water.<sup>43</sup>

Accordingly, the Auditor General of Ontario made the following recommendation:

To strengthen source water protection, the Ministry of the Environment and Climate Change should consider the feasibility of requiring source protection plans to identify and address threats to sources of water that supply private wells and intakes...<sup>44</sup>

Five years later, the Applicants note that this important recommendation has not been acted upon by the Ontario government.

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<sup>41</sup> CWA, sections 38 to 42.

<sup>42</sup> CWA, sections 43 to 44.

<sup>43</sup> 2014 Report of the Auditor General of Ontario, page 413.

<sup>44</sup> *Ibid*, Recommendation 5, page 425.

More recently, the 2018 environmental protection report filed by the ECO generally praised the current CWA program, but identified various opportunities to improve and strengthen source protection planning in Ontario. Among other things, the ECO specifically recommended that “the knowledge and tools” under the CWA should be applied to non-municipal drinking water systems:

Over 3% of Ontario’s population, mostly northern and First Nation reserve communities, reside outside of a source protection area and are therefore not protected by source protection plans. Another 15% of Ontario’s population live within a source protection area but rely on a private well or other non-municipal drinking water supply; their water is also excluded from source protection plans. All told, almost 18% of Ontario’s total population – representing well over 2 million people – are not protected by the province’s source water protections...

To better protect drinking water sources for all Ontarians, **the ECO recommends that the Ministry of the Environment, Conservation and Parks use the knowledge and tools developed through the source protection program to protect other water resources from contamination, particularly drinking water sources not protected by the *Clean Water Act*** (original emphasis).<sup>45</sup>

In addition, representatives of various SPC’s established under the CWA have taken the position that source protection planning requirements should be extended to certain non-municipal systems. In January 2018, for example, the Chairs of several SPC’s in eastern Ontario wrote to the MECP to express the following concerns:

It is the concern of many Chairs that the multiple barrier concept implemented in southern Ontario capturing municipal water supplies has not been extended to vulnerable populations in other situations.

It has been our experience that there is a risk to public health evident in community clusters served by individual wells and private sewage systems...

In southern Ontario, facilities in rural areas such as seniors’ homes and schools, although subject to inspection by public health authorities, have no requirement that they be assessed to ensure that their water supplies are not at risk from activities on adjacent lands.<sup>46</sup>

To address such concerns, these SPC Chairs recommended that the “Source Protection Program ought to be expanded and adapted to ensure that vulnerable populations (in certain types of facilities) in southern Ontario and in many more areas in northern Ontario (where there are no conservation authorities covered by the *Clean Water Act*) are protected.”<sup>47</sup>

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<sup>45</sup> ECO, 2018 Environmental Protection Report: Clean Water, Chapter 1, pages 37 and 39.

<sup>46</sup> Letter dated January 25, 2018 from Quinte SPC Chair to MECP.

<sup>47</sup> *Ibid.*

Similarly, the municipal council in Kingston recently passed a resolution calling for the revision of the CWA-approved Cataraqui Source Protection Plan in order to better protect rural residents who are not served by the municipal drinking water system.<sup>48</sup> This motion was prompted, in part, by the fact that “drinking water wells for many properties in the rural parts of Kingston tap into water sources characterized by thin soils and fractured limestone bedrock that make them vulnerable to external contaminations.”<sup>49</sup>

In light of the foregoing commentary, the Applicants submit that there is widespread public and stakeholder support for extending CWA coverage to non-municipal systems. Indeed, the only entity that favours retaining the unsatisfactory status quo under the CWA is the MECP itself.

### **(iii) MECP Statement of Environmental Values**

In determining whether the public interest warrants the requested review, subsection 67(2)(a) of the *EBR* directs the Minister to consider the relevant Statement of Environmental Values (“SEV”).

In this case, the MECP’s SEV indicates that the Ministry’s “vision” is “clean and safe air, land and water” in order to ensure healthy communities, ecological protection and environmentally sustainable development for present and future generations. To achieve this vision, the SEV commits the MECP to a number of important principles, such as:

- adopting an “ecosystem approach” to environmental protection and resource management;
- using a “precautionary, science-based approach” in MECP decision-making in order to protect human health and the environment;
- developing legislation, regulations, standards and policies to protect the environment and human health;

These and other SEV commitments represent a provincial promise to Ontarians that the MECP will take all necessary steps to safeguard the environment and public health and safety. In the Applicants’ view, the requested review of the CWA regime is consistent with – if not mandated by – the principles and provisions of the MECP’s SEV.

### **(iv) Absence of Periodic Review**

In determining whether the public interest warrants the requested review, subsection 67(2)(c) of the *EBR* directs the Minister to consider whether “the matters sought to be reviewed are otherwise subject to periodic review”.

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<sup>48</sup> “City council seeks groundwater study for rural Kingston,” *Kingston Whig-Standard* (September 20, 2019).

<sup>49</sup> *Ibid.*

At the present time, aside from using Part IV of the *EBR*, there is no statutory mechanism for the formal public review of the *CWA* regime.

**(v) Resources Required for the Requested Review**

Subsection 67(2)(f) of the *EBR* lists “resources required to conduct the review” as another factor to be considered by the Minister when determining if the public interest warrants a review.

To the Applicants’ knowledge, the requested review of the *CWA* regime can be carried out by MECP personnel without the allocation of any new resources or staff.

**4. SUMMARY OF EVIDENCE SUPPORTING THE REQUESTED REVIEW**

The documentary evidence supporting the requested review is attached hereto as follows:

1. Excerpts from the *CWA*
2. Excerpts from Ontario Regulation 287/07
3. MECP SEV
4. Letter dated January 18, 2008 from MECP to SPC Chairs
5. Letter dated November 20, 2012 from the Applicants to the Environment Minister
6. Letter dated January 12, 2017 from the Applicants to the Environment Minister
7. Letter dated February 20, 2018 from the Applicants to MECP Policy Staff
8. Excerpts from the 2003-4, 2005-06 and 2018 annual reports of the Environmental Commissioner of Ontario
9. Excerpts from 2014 and 2019 annual reports of the Auditor General of Ontario
10. Letter dated January 25, 2018 from Quinte SPC to MECP Source Protection Branch
11. Article from *Kingston Whig-Standard* dated September 20, 2019
12. L. Collins et al., “Source Water Protection Planning for Ontario First Nation Communities: Case Studies Identifying Challenges and Outcomes” (2017), 9 *Water* 550
13. B. Halpin, “Of the Water: The Rights and Roles of First Nations in Source Protection and Water Quality”, July/August 2009 *Canadian Water Treatment* 18