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**Submission to
Standing Committee for Social Policy
Hearings on Bill 43, the *Clean Water Act, 2005***

Monday, August 21, 2006

Introduction

Good afternoon. My name is Anne Mitchell. I am executive director of the Canadian Institute for Environmental Law and Policy, also known as CIELAP. CIELAP was founded in 1970, with the mission to provide leadership in the research and development of environmental law and policy that promotes the public interest and sustainability. Our vision is a world where the right to a safe and healthy environment is included as a basic human right.

Thank you for giving me the opportunity to speak with you this afternoon on Bill 43, the *Clean Water Act, 2005*. The proposed Act is an essential step towards the protection of drinking water sources in watersheds across Ontario. It offers new tools to protect water quality and quantity from existing and future threats and will benefit users of municipal and private drinking water and safeguard the environment and human health in Ontario.

Clean water is vital to life, and safe drinking water is a fundamental public health issue. The tragedy in Walkerton reminded us that the government must be diligent to protect the public from contaminated drinking water. CIELAP believes that protecting watersheds and watershed communities is a crucial way for the government to ensure the long term availability of safe drinking water for current and future generations.

We support the proposed legislation but we believe that a number of changes could be made to better protect Ontario's drinking water supplies. We support all of the recommendations contained in the joint letter from environmental organizations sent to Minister Broten on May 23, 2006, but would like to highlight three areas of concern in particular: the precautionary principle; public participation; and adequate funding.

Precautionary Principle

The precautionary principle should be specifically adopted into the *Clean Water Act*. The Ministry of the Environment has endorsed the precautionary principle in its Statement of

Environmental Values which is intended to inform the development of new environmental legislation in the province.

However, there is no reference to precaution in the proposed Act. The precautionary principle should be included in the *Act* both as a guiding principle in the purpose statement and as an operationalized component of the source protection plans.

Suggested amendments

Specifically, the two subsections listed below should be added to the *Clean Water Act*:

The following subsection should be added to the Act's purpose statement in section 1:

(2) In the administration of this Act, the Government of Ontario, the Minister, and all bodies subject to the provisions of this Act, including provincial authorities and responsible authorities, shall exercise their powers in a manner that protects the environment and human health and applies the precautionary principle.

The following subsection should be added to section 19:

(1.1) In preparing a source protection plan, the source protection committee must apply the precautionary principle, so that where there are threats of serious or irreversible damage to an existing or future source of drinking water, lack of full scientific certainty should not be used as a reason for postponing measures to prevent the threat.

Public Participation

Meaningful public participation is essential for an effective source protection regime. At a minimum, this should include participation at both the planning and implementation stages, through: involvement on source protection committees; financial support for all community participation during the process; easy access to all relevant information; and the opportunity to make *EBR* submissions on the proposed terms of reference, assessment reports, and source protection plans.

The draft *Clean Water Act* itself contains few mandatory public consultation provisions, leaving the issue for the most part to the discretionary regulation-making powers of the Lieutenant Governor in Council. While the proposed regulations may include strong public participation measures, the legislative provisions of the Act should require and provide for public involvement at every stage of the planning and implementation process.

Implementation of each source protection plan will occur mostly at the local level, through measures carried out by individual landowners, industries, and businesses. Considerable public support will be needed, and the most effective way to build public support is to thoroughly engage the public in the planning and implementation process.

We are troubled by the fact that there are few mandatory public participation provisions currently included in the *Act*. At a minimum, meaningful participation requires the public's involvement on source protection committees, financial support for all community participation during the process, easy access to all relevant information, and the opportunity to comment on proposed terms of reference, assessment reports, and source protection plans before these documents are finalized.

Suggested amendments

The following section should be added after section 9:

- 9.1 The source protection authority shall,
- (a) publish the proposed terms of reference in accordance with the regulations;
 - (b) give notice of the proposed terms of reference in accordance with the regulations to the persons prescribed by the regulations, together with information on how copies of the terms may be obtained and an invitation to submit written comments on the terms to the source protection authority within the time period prescribed by the regulations; and
 - (c) publish notice of the proposed terms of reference in accordance with the regulations, together with information on how members of the public may obtain copies of the terms and an invitation to the public to submit written comments on the terms to the source protection authority within the time period prescribed by the regulations.

The following subsections should be added to section 10:

- (1) The source protection authority shall submit the proposed terms of reference to the Minister, together with,
[...]
- (c) any written comments received by the source protection authority after publication of the terms under section 9.1.
- (1.1) If proposed terms of reference are submitted to the Minister under subsection 10(1), the Minister may confer with any person or body that the Minister considers may have an interest in the proposed terms.

The following section should replace the existing section 11:

11. As soon as reasonably possible after the terms of reference are approved by the Minister, the Minister shall publish notice of the approval on the environmental registry established under the *Environmental Bill of Rights, 1993*, together with,
- (a) a brief explanation of the effect, if any, of any comments submitted under section 10; and
 - (b) any other information that the Minister considers appropriate.

The follow section should be added after section 11:

11.1 The source protection authority shall ensure that the terms of reference, including any amendments made by the Minister, are available to the public on the Internet and in such other manner as the source protection authority considers appropriate as soon as reasonably possible.

The amendments relating to the terms of reference should be similarly applied to the sections dealing with assessment reports.

Subsection 18(3) should be amended as follows with respect to the interim progress reports:

(3) The source protection authority shall ensure that the reports are available to the public as soon as reasonably possible after they are submitted to the Director.

Subsection 41(2) should be amended as follows with respect to the annual progress reports:

(2) The source protection authority shall ensure that the report is available to the public as soon as reasonably possible after it is submitted to the Minister.

Subsection 23(2) should be amended to ensure that the source protection plans prepared by municipalities are subject to the same public consultation requirements as plans prepared by source protection committees.

Adequate Funding

Some of the concerns that have been expressed about the *Clean Water Act* have related to the question of how source protection plans will be financed. This is a significant issue. It is essential that there be a sustainable and reliable way to ensure that the necessary funds are available for to implement source protection plans in the long term. Even if these funding mechanisms are not included specifically in the legislation, the government should announce its plans to raise the revenues required for source protection.

A number of different funding mechanisms for source water protection have been proposed. You heard about some of them in this morning's submission by the Canadian Environmental Law Association. I want to describe and give examples of three more funding tools: water rates; water taking levies; and fertilizer and pesticide levies.

Municipal Water and Sewer Pricing

In pricing municipal water and sewer services, it is crucial to recognize that fresh water is an asset which has a value and must be managed in a way that protects that value. The asset must be managed in a sustainable manner and protected for the needs of future generations. Paying the full cost of municipal water and sewer rates is a means of both financing source protection and encouraging water conservation.

To recover the costs of providing an adequate and reliable amount of safe drinking water, many jurisdictions have adopted a full-cost pricing system. Adopting this type of system makes sense when jurisdictions are required to comply with increasingly stringent regulations. Several OECD countries have adopted a full-cost pricing scheme to recover costs associated with water and water services.

Ontario has embarked on this path with the passage of the *Sustainable Water and Sewage Systems Act*. However, regulations have yet to be made under this Act so that it can come into force. When it is in force, municipalities will be required to assess and report on the full cost of providing their water and sewer services and to prepare long-term cost-recovery plans. These plans will consider the costs associated with source protection measures among other factors.

This kind of funding approach should be structured to ensure the equitable reallocation of funds. Measures must be put in place in locations where they are needed for the health of the watershed. Because the areas of dire need are not likely to be the same as those areas with a sufficient population base to contribute to costs through water rates and property taxes, a reallocation of funds will be required.

Water Taking Levies

Water taking levies are usually charged in order to fund the management of water resources. This includes monitoring, gathering data, information dissemination and management decisions, as well as regulating takings. The Ministry of the Environment has already announced, in December 2003, that it intends to apply charges to water takings that remove water from the watershed for commercial purposes.

Rates imposed for water taking should include a volume-based water taking charge, based on the actual volume of water taken, and not the maximum permitted amount. Charges for water takings should be phased-in and rates should vary according to factors such as: the characteristics of a water taking; the impact of the taking on water quality; what the water is used for; whether the use, or sector taking the water, is determined to have a wider public benefit; and other economic and geographic considerations.

A number of jurisdictions, such as British Columbia, Saskatchewan, Manitoba, Nova Scotia, Minnesota and the United Kingdom, have implemented a charge for water taking. In many jurisdictions, exemptions are permitted for uses required for drinking water, fire protection, agriculture, and wildlife habitat and wetland conservation.

Fertilizer and Pesticide Levies

Nutrients and pesticides applied on agricultural land may seep into ground and surface water, and contaminate drinking water sources. Major agricultural pesticides are associated with negative effects on human and wildlife health. Charging levies on fertilizers and pesticides can generate substantial revenues to fund programs such as:

monitoring, research and technical assistance on alternatives to hazardous chemicals; farmland preservation; and agricultural pollution clean up.

Some US states like Wisconsin, Iowa, Minnesota and Oregon assess surcharges on fertilizer/pesticide sales or charge producers/distributors directly, and may also charge for fertilizer/pesticide product inspection, registration and/or licensing fees. California, Minnesota, and Iowa have each adopted nominal pesticide taxes, constituting 0.3 - 1.5 % of sales and these funds are used to encourage more research and the adoption of sustainable practices. States like Kansas have fertilizer registration fee programs that fund conservation, water quality and water use projects.

Conclusion

CIELAP believes that the *Clean Water Act* is a positive and necessary step towards protection our drinking water sources. I hope that CIELAP's recommendations will help ensure implementation of an effective, workable framework. Thank you for the opportunity to make submissions on the *Clean Water Act*.

For further information on CIELAP and its work please contact:

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