



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

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Submission to Standing Committee on Governmental Affairs

Re: Bill 81, Nutrient Management Act

- Thank you for the opportunity to appear today.
 - Background about CELA
 - We support farming and farmers; many of our clients over the years have been and are farmers; we have consistently expressed concern for the protection of agricultural lands in Ontario
 - We have provided to the clerk copies of the Brief we prepared in August, 2001
 - Address certain themes today
1. Consistency with Justice O'Connor's reports from the Walkerton Inquiry
 - The Hon. Mr. Eves has stated the government's intention to implement every one of Justice O'Connor's recommendations from both Parts 1 and 2 of the Walkerton Inquiry reports
 - It is critical to ensure Bill 81 is consistent with Mr. Justice O'Connor's recommendations
 - Report calls for development and provincial approval of Watershed based source protection plans
 - Conservation authorities and municipalities will be central to development of those plans
 - Certificates of approval for biosolids application must also be consistent with the Watershed source protection plans (Part II Recommendation 10) and approvals must not be given unless they are consistent; Bill 81 should be amended to provide for this
 - Bill 81 should be amended to provide that the Minister of the Environment is the responsible Minister for regulating potential impacts of farm activities on drinking water sources, (with technical support from OMAFRA). (Part II Recommendation 11)
 - Bill 81 should be amended to include purposes or objectives and among those should be the necessity of regulation of nutrients in order to protect drinking water sources and protect them from agricultural sources (Part II Recommendation 12 as well as Part II report page 137)
 - Bill 81 should be amended to provide powers to make regulations concerning other aspects of agriculture that could have impacts on drinking water sources, (such as the handling of pesticides or fuels)
 - Bill 81 should be amended to include a preamble providing that it is intended to regulate the potential impacts of agriculture on drinking water sources (Part II Report page 139)
 - Bill 81 should be amended to require all large or intensive farms, and all farms in areas designated as sensitive or high-risk by the applicable Watershed source protection plan,

to develop binding individual water protection plans consistent with the source protection plan, such plans to be approved by the Ministry of the Environment (Recommendation 13, Part II Report page 139 and 142)

- Bill 81 should be amended to provide that once a farm has in place an individual water protection plan that is consistent with the applicable source protection on plan, municipalities should not have the authority to require that farm to meet a higher standard or protection of drinking water sources than that which is laid out in the farm's water protection plan. (Recommendation 14, Part II Report)
- Bill 81 should be amended to require the Ministry of Environment to work with OMAFRA, agricultural groups, conservation authorities, municipalities, and other interested groups to create a provincial framework for developing individual farm water protection plans (Recommendation 15, Part II Report), dealing with manure management practices, spreading of biosolids or septage, use of chemical fertilizers, ways of dealing with stormwater runoff, including tile drainage, pesticide use and fuel management (Recommendation 15, part II Report)

2. Need for standards to be in place as soon as possible

- Timelines for development of the standards under Bill 81 must be established. The Bill presently contains no provision as to when the various standards must be in place, meaning that even if the Bill is passed, there is no requirement that the anticipated standards be in place within a reasonable time, or even ever.
- Since these standards address essential issues such as containment, quantities of materials that can be applied to lands, transportation and equipment standards, provision for minimum distance separation guidelines, and much else, there must be provision in the Bill that these matters will in fact be dealt with and soon. The costs to municipalities, farmers and the environment of dealing with the current atmosphere of uncertainty as to what these standards will be are unacceptable.
- Even with all of the amendments noted herein and in the Walkerton Report, Bill 81 will not be effective in addressing manure management issues unless and until the all-important standards necessary to implement the Act have been released, circulated for public notice and comment, and put into place. Meaningful public comment opportunities must be provided under Part II of the EBR prior to finalization of the regulations, but this should be done as soon as possible.

3. Giving municipalities the tools they need for source water protection

- Many municipalities are struggling to meet the challenges presented by the Walkerton tragedy in terms of their own responsibility to protect their drinking water sources
- We strongly endorse Justice O'Connor's recommendations for Watershed based source protection plans (to be approved by the Ministry of the Environment).
- Today, municipalities feel they are in a grey area regarding nutrient management by-laws, and also face additional costs and sometimes legal challenges to develop and defend those by-laws. As to biosolids applications that pose threats to drinking water sources, municipalities feel that their powers are even more tenuous.
- Bill 81 must strengthen and clarify these municipal powers; Justice O'Connor's recommendations for watershed based source protection plans and for approved farm plans to be consistent with those source protection plans would be a very effective tool

4. Need for legislative objectives and clear standards
 - Bill 81 must include a broad purpose statement including for protection of the environment and public health
 - Bill 81 should be amended to expressly provide for consideration of the presence of microbes as well as other constituents of manure (Part II report page 136) and for their impact on drinking water sources
 - Bill 81 should be amended to require consistency of nutrient management plans with watershed-specific information (Part II report page 137)

5. Other amendments
 - CELA made other suggestions in our original Brief regarding Bill 81, including:
 - Prohibition against delegation of powers / duties to non-Crown employees;
 - Bring Nutrient Management Act approvals under Parts V and VI of the Environmental Bill of Rights
 - Broader offence provisions and higher penalties for non-compliance
 - Remove the various exemptions and exceptions that the agricultural sector currently enjoys under Ontario's environmental laws
 - Repeal the Farming and Food Production Protection Act, 1998

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