

**CELA'S PROPOSED AMENDMENTS TO THE SDWA
(November 27, 2002)**

RECOMMENDATION #1: The SDWA should be amended to include a preamble as follows:

The people of Ontario have the right to safe drinking water;

Safe drinking water is a basic human entitlement and essential for the protection of human health;

Effective protection of drinking water requires a multi-barrier approach that includes assessing and protecting sources of drinking water;

The public has the right to participate in decision-making and standard-setting in relation to drinking water and its sources;

The public has the right to information about drinking water and its sources, and to prompt notification where there are violations of regulatory requirements for protection of drinking water and its sources;

The process for identifying and regulating current and future drinking water contaminants must be open, transparent, based upon the precautionary principle, and aimed at protecting public health;

Since protecting drinking water and its sources may exceed the technical and financial capability of smaller municipal and non-municipal drinking water systems, the Government of Ontario has the responsibility to provide assistance to ensure that such systems comply with regulatory requirements; and

The Government of Ontario has the primary responsibility to prevent a recurrence of the Walkerton Tragedy, and has committed to the full implementation of all recommendations in the Reports of the Walkerton Inquiry.

RECOMMENDATION #2: The SDWA should be amended to include the following statement of purpose:

1(1) The purposes of this Act are,

(a) to recognize that persons in Ontario expect, and have the right to receive, safe drinking water;

(b) to protect and enhance the quality of drinking water and its sources in Ontario; and

- (c) to protect human health by protecting drinking water and its sources in Ontario through a multi-barrier approach.
- (2) In order to fulfill the purposes of subsection (1), this Act provides,
- (a) means to ensure that persons in Ontario have safe drinking water;
- (b) increased public access to information about drinking water and its sources;
- (c) enhanced public participation in decision-making and standard-setting in relation to drinking water and its sources;
- (d) means to ensure that drinking water standards are set, reviewed, revised and enforced in order to protect public health;
- (e) funding and technical assistance programs for smaller municipal and non-municipal drinking water systems; and
- (f) increased accountability of the Government of Ontario for protecting drinking water and its sources.

RECOMMENDATION #3: The SDWA’s definition section should be amended as follows: “raw water supply” means water outside a drinking water system that is a source of water for the system, and includes a well, lake, river, spring, stream, reservoir, artificial watercourse, groundwater, or other water or watercourse.

RECOMMENDATION #4: The SDWA should be amended to:

- (a) use the word “shall” in section 3(1) so as to impose a mandatory duty on the Minister to undertake the various activities, programs and research listed therein;
- (b) expand the section 3(1) list of the Minister’s drinking water duties to include:
- developing a comprehensive, “source to tap” Drinking Water Policy for Ontario as soon as practicable;
 - within 45 days of the Act’s coming into force, establishing and adequately funding the Drinking Water Branch within the Ministry for overseeing drinking water treatment and distribution systems;

- within 45 days of the Act's coming into force, establishing and adequately funding the Watershed Management Branch within the Ministry for overseeing watershed-based source protection plans and watershed management plans;
 - conducting annual public reviews of the adequacy of drinking water standards to protect public health;
 - conducting five-year public reviews of the effectiveness of the SDWA in protecting public health;
 - researching and developing measures for the protection of sources of drinking water; and
 - researching and developing water conservation measures;
- (c) expand the list of prescribed content requirements for the Minister's annual reports to include:
- the work of the Advisory Council established under section 4 (including information posted by the Advisory Committee on the EBR Registry);
 - the findings and recommendations arising out of the public annual review of the adequacy of drinking water standards;
 - the findings and recommendations arising out of five-year annual review of the SDWA; and
 - summaries of financial assistance provided by the Government of Ontario to owners/operators of municipal and non-municipal drinking water systems;
- (d) specify that:
- the annual report for a calendar year shall be tabled by the Minister on or before April 1 of the following calendar year; and
 - the first annual report shall be tabled by the Minister on or before April 1, 2004, and shall cover the period that begins on the day that this Act comes into force and ends on December 31, 2003.

RECOMMENDATION #5: The SDWA should be amended to provide that:

- (a) the Minister shall establish the Advisory Council and appoint its members (including the Chair and Vice-Chair) within 45 days of the Act's coming into force;**
- (b) the Advisory Council shall consist of not fewer than seven and not more than twelve members, who shall not be part of the public service of Ontario;**
- (c) members of the Advisory Council shall be persons who are unbiased, free of conflict of interest, and have knowledge or experience in drinking water matters;**
- (d) the mandate of the Advisory Council shall be to:**
 - generally assist the Minister in carrying out the duties imposed by section 3 of the Act;**
 - review and report upon the adequacy of current drinking water standards, and to recommend revisions thereto as may be necessary to protect public health;**
 - identify, evaluate and make recommendations in relation to new or emerging drinking water contaminants;**
 - review and comment upon the annual reports tabled by the Minister under section 3(4) of the Act;**
 - undertake and disseminate research into drinking water treatment, drinking water testing, source protection measures, or the diagnosis, treatment and prevention of health effects caused by drinking water contaminants;**
 - consider any matter affecting drinking water or its sources that the Minister refers to the Advisory Council or that the Advisory Council decides to consider on its own initiative; and**
 - address such matters as may be prescribed by regulation;**
- (e) the Minister shall provide the Advisory Council with sufficient professional, technical, secretarial, clerical resources, and any other facilities or supplies, that are necessary for the Advisory Council to carry out its mandate under the Act.**

RECOMMENDATION #6: The SDWA should be amended to:

- (a) **require the Minister to provide adequate funding, staffing and other resources to enable the Chief Inspector carry out the duties imposed by section 7;**
- (b) **require the Chief Inspector to develop a new compliance/enforcement manual that specifies that the Ministry shall:**
- **ensure that inspectors have the same or higher qualifications as the operators of the drinking water systems they inspect;**
 - **ensure that inspectors shall receive special training;**
 - **increase the use of mandatory abatement;**
 - **strictly enforce all regulations and provisions related to the safety of drinking water;**
 - **the inspection program shall consist of announced and unannounced inspections to be undertaken at least annually for each drinking water system;**
 - **inspectors shall review all relevant MOE records (eg. approvals, orders, consultants' reports, etc.) prior to the annual inspection of a drinking water system;**
 - **the checklist of mandatory inspection items should include: review of the system's operating, training and maintenance records; water testing results, especially exceedances of prescribed standards; sampling of raw and treated water; state of monitoring, alarms, treatment, and distribution equipment; and other prescribed matters;**
 - **copies of inspection reports shall be retained on file at the local MOE office and the Approvals Branch, and shall be provided to the owner/operators of the drinking water system, the medical officer of health, and the public upon request; and**
 - **there shall be strict adherence to the prescribed timelines for the preparation and delivery of inspection reports, responses by owners/operators, and the submission of interim status reports regarding remedial action;**

in accordance with this Act and the regulations.

- (c) require the Chief Inspector to undertake public consultation on the new compliance/enforcement manual prior to its finalization, and to approve and implement the manual within 45 days of the Act's coming into force.

RECOMMENDATION #7: The SDWA should be prescribed as a statute to which the EBR applies. In particular, the SDWA (or regulations thereunder) should provide that:

- (a) proposals to amend the SDWA after its enactment, and proposals to make or amend policies or regulations under the SDWA, shall be subject to sections 15 and 16 of the EBR;
- (b) proposals to make or amend licences, permits, approvals, variances, orders or directions under the SDWA shall be classified as Class I or II instruments subject to section 22 of the EBR;
- (c) the public participation exception in section 32 of the EBR does not apply in relation to SDWA permits or approvals for municipal drinking water systems; and
- (d) the Application for Review provisions of Part IV of the EBR apply to the SDWA and policies, regulations and instruments thereunder.

RECOMMENDATION #8: The EPA amendments (and other necessary statutory amendments) regarding source protection/watershed planning should be fast-tracked and subsequently attached to Part XIII of the SDWA as "Complementary Amendments".

RECOMMENDATION #9: The SDWA should be amended to provide that:

- (a) the operational duties in section 11(1) are binding and enforceable against an "owner" of a drinking water system even where an "operating authority" has been established; or alternatively, the "owner" is liable to conviction under section 11(1) whether or not the "operating authority" is prosecuted or convicted;
- (b) "owners" and "operating authorities" shall comply with drinking water treatment and reporting requirements under the Act, regulations, standards and approvals, and shall assess and report upon the quality and quantity of the raw water supply;
- (c) "owners" and "operating authorities" shall only obtain drinking water testing services from laboratories that are duly accredited and licenced under Part VII of the Act;

- (d) **“owners” shall ensure that its certified operators receive annual training in accordance with prescribed requirements, and that “owners” shall keep and maintain proper records regarding such training;**
- (e) **delete section 14(2) of the SDWA, and amend section 14(3) to provide that agreements with “operating authorities” do not relieve “owners” of their general duties under Part III of the Act;**
- (f) **require “owners” and “operating authorities” to develop and comply with operational plans in accordance with prescribed standards, and specify that operational plans shall address: sampling and testing; continuous monitoring; operational processes; equipment maintenance/repair; contingency plans; emergency response; and other prescribed matters;**
- (g) **specify that where adverse test results are to be reported under section 18,**
 - **the required notice may be given verbally, but shall be confirmed forthwith in writing, by the person giving notice; and**
 - **the “owner” and/or “operating authority” shall undertake resampling, corrective action, or public warnings in accordance with the regulations, and shall confirm in writing to the MOE and medical officer of health that such measures are being undertaken;**
- (h) **extend the section 19 standard of care to every person who owns, oversees, or exercises decision-making authority in relation to regulated non-municipal drinking water systems; and**
- (i) **expand the section 20 prohibition to include “raw water supply”, or, in the alternative, enact a related prohibition as follows:**
 - (1) **For the raw water supply for municipal and regulated non-municipal drinking water systems, the Director shall designate areas in which no person shall discharge or deposit any thing that could result in,**
 - (a) **a drinking water health hazard;**
 - (b) **a contravention of a prescribed standard; or**
 - (c) **interference with the normal operation of the system.**
 - (2) **No person shall cause or permit the discharge or deposit of any thing in any area designated by the Director under subsection (1).**

- (3) For the purposes of prosecuting the offence of contravening subsection (2), it is no defence that the thing did not or could not result in a drinking water health hazard because it was or became diluted when or after it entered the area designated by the Director.
- (4) Subsection (2) does not apply to prohibit activities carried out under statutory authority or for the purposes of complying with a statutory requirement.

RECOMMENDATION #10: Part III of the SDWA should be amended to include the following provisions:

- (a) Upon request, every owner and accredited operating authority of a drinking water system shall permit any person to inspect or copy any approval, order, direction, plan, record, report, sampling results, monitoring data, and any other document required or kept under this Act or the regulations;
- (b) Every owner and accredited operating authority of a drinking water system shall provide immediate public notice in the prescribed form and manner where,
- drinking water testing has detected exceedances of drinking water quality standards or indicators of adverse water quality;
 - testing, treatment or distribution system equipment is malfunctioning or inoperative; or
 - prescribed sampling, testing and analysis is not being carried out;
- (c) Every owner and accredited operating authority of a drinking water system shall prepare comprehensive consumer confidence reports that are mailed to all persons who are served by the drinking water system, and that address the following matters:
- relevant source protection or watershed planning issues;
 - any regulated contaminants and/or unregulated substances detected in raw or treated water samples;
 - any exceedances of drinking water quality standards and any related health concerns for consumers, including vulnerable persons;
 - actions proposed or taken to remedy or prevent exceedances of drinking water quality standards; and

- any other prescribed matter.

RECOMMENDATION #11: Section 21 of the SDWA should be amended to:

- (a) specify that the Minister must make a regulation setting out the drinking water quality management standard with 45 days of the Act's coming into force;
- (b) specify that the Minister shall:
 - place notice of the proposed quality management standard on the EBR Registry;
 - provide an adequate opportunity for public comment on the proposed standard; and
 - ensure that all public comments received are considered as the standard is being finalized;
- (c) provide that:
 - revisions to the approved quality management may be proposed by the accreditation body, the Advisory Council, or any other person; and
 - the Minister shall post notice of any proposed revisions to the standard on the EBR Registry, shall provide an adequate opportunity for public comment on the proposed revisions, and shall ensure that any public comments received are considered as the revisions are being finalized;
- (d) provide that the Drinking Water Branch shall be responsible for recognizing the quality management standard and ensuring that accreditation is properly implemented.

RECOMMENDATION #12: Section 28 of the SDWA should be deleted, and sections 22 and 29 of the SDWA should be amended to:

- (a) provide that the Minister shall establish a public sector body to implement the accreditation program for operating authorities under Part IV of the Act;
- (b) specify that the accreditation body is prescribed as a Crown agency under the *Crown Agency Act*;
- (c) provide that the accreditation body shall report to the MOE Drinking Water Branch, and shall be prescribed as an "institution" for the purposes of the *Freedom of Information and Protection of Privacy Act*;

- (d) ensure that persons appointed to or employed by the accreditation body are free of conflict of interest and apprehension of bias, and have the necessary technical knowledge and experience; and
- (e) ensure that the accreditation body is adequately funded in order to carry out its duties and responsibilities under Part IV of the Act.

RECOMMENDATION #13: Part V of the SDWA should be amended to provide that:

- (a) where it appears that the financial plan does not comply with the requirements of this Act, the Director shall require the applicant to consider and report back upon all managerial, operational and technological options to find the most economical way of providing safe drinking water; and
- (b) where, after considering the various options for delivering safe drinking, it appears that the amended financial plan still does not comply with the requirements of this Act, the Director shall direct the applicant to obtain provincial funding assistance under this Act.

RECOMMENDATION #14: Part V of the SDWA should be amended to prohibit the Director from issuing an approval for a municipal drinking water system where the proposed raw water supply is vulnerable to contamination or degradation that may cause a drinking water health hazard.

RECOMMENDATION #15: Section 42 of the SDWA should be amended to provide that where a person applies for a variance from regulatory requirements,

- (a) the applicant must prepare and submit a comprehensive risk analysis and management plan;
- (b) if the risk analysis and management plan are acceptable, the Director may issue the variance, with or without conditions, for a term not exceeding one year; and
- (c) any variance granted under this section may be renewed for a further term not exceeding one year.

RECOMMENDATION #16: Section 47 of the SDWA should be amended to provide that despite any other provision in any special or general Act, no municipality shall transfer ownership of a municipal drinking water system to a non-municipal corporation.

RECOMMENDATION # 17: The SDWA should be amended to provide that within 45 days of the Act's coming into force, the Minister shall make a regulation that:

- (a) prescribes which non-municipal drinking water systems are subject to the Act; and
- (b) imposes upon these systems drinking water requirements and standards that are equivalent to those imposed upon municipal drinking water systems under the Act.

RECOMMENDATION #18: Sections 52 and 53 of the SDWA should be amended to provide when considering an application for approval of a regulated non-municipal drinking water system, the Director shall consider:

- (a) the purpose of this Act;
- (b) plans, reports and other documents submitted by the applicant;
- (c) comments received from other agencies or the public;
- (d) financial viability of the proposed system; and
- (e) vulnerability of the proposed source of drinking water.

RECOMMENDATION #19: Section 56 of the SDWA should be amended to provide that where a person applies for a variance from regulatory requirements,

- (a) the applicant must prepare and submit a comprehensive risk analysis and management plan;
- (b) if the risk analysis and management plan are acceptable, the Director may issue the variance, with or without conditions, for a term not exceeding one year; and
- (c) any variance granted under this section may be renewed for a further term not exceeding one year.

RECOMMENDATION #20: Section 66 of the SDWA should be deleted, and sections 60 and 67 of the SDWA should be amended to:

- (a) provide that the Minister shall establish a public sector body to implement the accreditation program for operating authorities under Part VII of the Act;
- (b) specify that the accreditation body is prescribed as a Crown agency under the *Crown Agency Act*;
- (c) provide that the accreditation body shall be prescribed as an "institution" for the purposes of the *Freedom of Information and Protection of Privacy Act*;

- (d) ensure that persons appointed to or employed by the accreditation body are free of conflict of interest and apprehension of bias, and have the necessary technical knowledge and experience; and
- (e) ensure that the accreditation body is adequately funded in order to carry out its duties and responsibilities under Part VII of the Act.

RECOMMENDATION #21: Section 70 of the SDWA should be deleted.

RECOMMENDATION #22: Section 99 of the SDWA should be amended by adding the following provisions:

- (a) Where an inspection, or a followup inspection under this section, identifies a serious operational deficiency that may cause a drinking water health hazard, the Director or provincial officer shall issue an order under Part IX within thirty days of the inspection in order to require immediate correction of the deficiency.
- (b) For the purposes of this section, “serious operational deficiency” means,
 - failure to treat drinking water in accordance with this Act or the regulations;
 - failure to undertake drinking water sampling or testing in accordance with this Act and the regulation;
 - failure to install or maintain continuous monitoring and alarm equipment in accordance with the Act or the regulation; and
 - any other prescribed act or omission.

RECOMMENDATION #23: The SDWA should be amended to include a public inspection procedure as follows:

- (1) Any person may require the Investigation and Enforcement Branch to investigate an alleged offence under this Act or regulations.
- (2) The requirement for an investigation under subsection (1) shall be in writing and shall include:
 - description of the alleged offence;
 - identity of the alleged offender, if known;
 - summary of evidence supporting the allegation; and
 - any other relevant material or documents.
- (3) The requirement for an investigation under subsection (1) may be filed with the Investigation and Enforcement Branch, or with any local,

district or regional Ministry office, which shall forthwith forward the requirement to the Investigation and Enforcement Branch.

- (4) Upon receipt of the requirement for an investigation under subsection (1), the Investigation and Enforcement Branch shall:
- (a) investigate all matters related to the alleged offence;
 - (b) complete the investigation within 120 days, or as soon as practicable after that date; and
 - (c) report the outcome of the investigation to the person who filed the requirement under subsection (1).
- (5) Despite subsection (4), the Investigation and Enforcement Branch may refuse to investigate where:
- (a) the requirement filed under subsection (1) is clearly frivolous and vexatious; and
 - (b) the Branch provides written notice of its refusal to investigate, with reasons, to the person who filed the requirement under subsection (1).
- (6) The Minister may make regulations prescribing forms or any other matter related to requirements for investigation under subsection (1).

RECOMMENDATION #24: The SDWA should provide as follows:

- (a) Section 116 of the SDWA should be amended by adding the words “or any other person” after the word “Minister”, or in the alternative, the SDWA (and regulations and instruments thereunder) should be prescribed as being subject to Parts V and VI of the EBR; and
- (b) any person may apply for judicial review of the Minister’s exercise or non-exercise of any power, or performance or non-performance of any duty, imposed or conferred under this Act, whether or not the person is directly affected or has suffered special damages.

RECOMMENDATION #25: The list of offences in section 136 of the SDWA should be amended to include reference to the following sections of the Act:

- (a) section 23(1);
- (b) section 26;
- (c) section 29;
- (d) section 33, para. 3;
- (e) section 47;
- (f) section 61;
- (g) section 64;

- (h) section 67;
- (i) section 71(3), para. 3 and 4;
- (j) section 105(2);
- (k) section 106(5) and (6);
- (l) section 109(7), (11), (12); and
- (m) section 110(4) and (14).

RECOMMENDATION #26: The SDWA should be amended to impose minimum fines for the following offences:

- (a) Section 138 is amended by adding a new subsection (4): “The minimum fine for offences under this section is \$5,000 for a first offence, \$10,000 for a second offence, and \$20,000 for a third or subsequent offence”; and
- (b) Section 139 is amended by adding a new subsection (4): “The minimum fine for offences under this section is \$10,000 for a first offence, \$20,000 for a second offence, and \$40,000 for a third or subsequent offence”.

RECOMMENDATION #27: The SDWA should be amended to:

- (a) provide that the Minister shall make, maintain, and, where necessary, revise regulations to establish drinking water standards that protect public health and safety;
- (b) require the Minister to make regulations in relation to the following matters within 45 days of the Act’s coming into force:
 - source protection standards to protect raw water supplies;
 - standards for treatment, testing, and monitoring of drinking water;
 - drinking water quality standards;
 - standards for the construction, operation and maintenance of drinking water systems;
 - standards for notification, resampling, corrective action and public warnings where adverse test results are obtained;
 - emergency response standards;
 - quality management standards for drinking water systems; and
 - standards for operator qualification, certification and training;
 - requirements for MOE inspection, compliance and enforcement activities under the Act; and
- (c) provide that when regulations are being made, reviewed or revised under the Act, the lack of full scientific certainty shall not be used as a reason for delaying or rejecting standards that will, or are likely to, mitigate or prevent drinking water health hazards.

RECOMMENDATION #28: The SDWA should be amended to include a statutory review mechanism as follows:

- (1) Five years after the coming into force of this Act, the Minister shall undertake a comprehensive and public review of the provisions and administration of this Act.**
- (2) The Minister shall, within one year of completing the review under subsection (1), submit a report on the review to the Legislative Assembly, including a description of any changes to the Act or its administration that the Minister may recommend.**
- (3) The review and report requirements imposed by this section may be delegated by the Minister to a committee of the Legislative Assembly designated or established for that purpose.**

RECOMMENDATION #29: Section 168(2) of the SDWA should be deleted, and section 168(1) should be amended as follows:

This Act comes into force on a day by proclamation of the Lieutenant Governor, or three months after the day that this Act receives Royal Assent, whichever is the earliest.