

**Submissions in Response to  
Source Protection Reports by the Implementation  
Committee and the Technical Experts Committee**

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**Prepared by: Theresa McClenaghan  
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**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**  
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

130 SPADINA AVENUE • SUITE 301 • TORONTO, ONTARIO • M5V 2L4  
TEL: 416/960-2284 • FAX 416/960-9392 • WEB SITE: [www.cela.ca](http://www.cela.ca)



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

February 14, 2005

**TO:**

Renee Bowler  
Drinking Water Management Programs Branch  
18<sup>th</sup> Floor, 2 St. Clair Avenue East  
Toronto, ON  
M4V 1L5

**By Fax: 416-212-2757**

**AND TO:**

Dawn Landry, Policy Advisor  
Strategic Policy Branch  
135 St. Clair Ave. West, 11<sup>th</sup> Floor  
Toronto, ON  
M4V 1P5

**By Fax: 416-314-2976**

**RE: FINAL REPORT OF THE IMPLEMENTATION COMMITTEE ON SOURCE  
WATER PROTECTION  
EBR REGISTRY NUMBER XA04E0021  
POSTED DECEMBER 14, 2004**

**AND RE:**

**FINAL REPORT OF THE TECHNICAL EXPERTS COMMITTEE ON SCIENCE  
BASED DECISION MAKING FOR PROTECTING ONTARIO'S DRINKING WATER  
RESOURCES: A THREATS ASSESSMENT FRAMEWORK  
EBR REGISTRY NUMBER XA04E0022  
POSTED DECEMBER 14, 2004**

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## PART I – INTRODUCTION

CELA writes to provide comments with respect to the above-noted final reports of the two recent provincial advisory committees on Watershed Based Drinking Water Source Protection – the Technical Experts Committee and the Implementation Committee. It should be noted, firstly, that CELA counsel sat as a member of the province’s Implementation Committee and as an observer to the Technical Experts Committee. Furthermore, she chaired the Implementation Committee’s working group. Accordingly, CELA has had substantial input into the two reports that are the subject of the instant consultations.

Nevertheless, CELA has several comments to provide with respect to the two reports, based on the content of the final reports and based on extensive dialogue with many members of the public and of the environmental community in Ontario. For example, CELA co-hosted an ENGO’s forum on the two source protection reports, attended the Ministry of Environment’s environmental stake-holder’s consultation and has engaged in substantial additional dialogue with interested persons. The presentations and proceedings of the ENGO’s forum, held January 13, 2005 with a follow up discussion dated January 27, 2005 can be found at : <http://www.thewaterhole.ca/publications/Workshop%20Presentations.htm> It should be noted that these presentations and notes are not consensus documents, but were prepared to assist the participants and others in assessing the two advisory committees’ reports and preparing each organization’s own comments during this consultation.

CELA continues to endorse and advocate the “Statement of Expectations for Watershed-Based Source Protection from Ontario Non Governmental Organizations”, a project of the Canadian Environmental Law Association and Environmental Defence in collaboration with 38 other organizations and individuals who assisted in preparing that document, which can be found at: <http://www.cela.ca/publications/cardfile.shtml?x=2052> .

CELA has a long history of involvement in water protection in Ontario, over the last 35 years. In recent years, CELA prepared a Model Water Bill, advocating and demonstrating protection of water quantity and quality in an integrated fashion in the province. This Model Bill (“An Act to Conserve Ontario’s Waters” by J. Castrilli and CELA staff) can be found at <http://62.44.8.131/publications/cardfile.shtml?x=1056> . CELA has also advocated over the years in many settings for sustainable water protection and in particular for source protection as a means to protecting drinking water. CELA represented the Concerned Walkerton Citizens in all phases of the Walkerton Inquiry and prepared both legal submissions and study papers during the course of the Inquiry. Subsequently, CELA has strenuously advocated for the adoption of Justice O’Connor’s recommendations to implement watershed based drinking water source protection in Ontario. For example, in 2002, following the release of the Walkerton reports, CELA outlined the need for watershed based source protection as the essential first barrier in a multi-barrier approach to drinking water protection at the Grand River Forum (see <http://www.grandriver.ca/index/document.cfm?Sec=26&Sub1=7&Sub2=0> ) and argued that we do not have source protection in Ontario as yet. Thereafter CELA sat on the provincial Source Protection Advisory Committee whose report was issued in April 2003. Subsequently, CELA along with other senior conservation organizations in the province also urged the premier to appoint these two provincial advisory committees in order to get the necessary advice for the

government to move forward with source protection legislation in the province. See [http://cela.ca/uploads/f8e04c51a8e04041f6f7faa046b03a7c/funding\\_source\\_protection.pdf](http://cela.ca/uploads/f8e04c51a8e04041f6f7faa046b03a7c/funding_source_protection.pdf)

Thereafter, CELA also prepared, in conjunction with CIELAP, a report, Revenue Raising for Source Protection Planning - Innovative Tools, exploring tools used for funding source protection in other jurisdictions, which is located at <http://www.cela.ca/publications/cardfile.shtml?x=1884>, in order to advance the discussion regarding drinking water source protection and funding tools.

CELA has made submissions in response to the government's white paper on source protection (see <http://www.cela.ca/publications/cardfile.shtml?x=1753>) and in response to the government's draft source protection legislation posted for comment last summer (see <http://www.cela.ca/publications/cardfile.shtml?x=1963>) including suggestions for the text of the legislation: <http://www.cela.ca/publications/cardfile.shtml?x=1964>. We will not repeat the submissions made in response to those consultations but we do reiterate the points and suggestions made therein.

## **PART II – OVERALL COMMENTS**

CELA commends the Ontario government for its stated intention to introduce watershed based drinking water source protection legislation in the spring of 2005. As CELA has long argued, source protection in Ontario is long over-due. While Ontario lags behind many jurisdictions who have already been pursuing elements of source protection planning and implementation for many years, Ontario's plans to date are also more comprehensive and most importantly, include mandatory implementation. This will put Ontario in a leadership role for source protection, both within North America and internationally. CELA encourages the provincial government to continue the path toward strong, enforceable and implemented watershed source protection for the province.

### **Coverage to Include the North**

Neither of the Technical Experts Committee nor the Implementation Committee reports provide specific recommendations to government with respect to the approach to be taken to governance of source protection in the vast majority of the province, i.e. the area north of Parry Sound and outside of existing conservation authorities areas. Neither committee had a specific mandate to address this question and we understand that the provincial government has been engaged in discussions with a variety of communities and aboriginal peoples in this respect. However, CELA reiterates the necessity that watershed source protection planning must encompass the north. There are many large municipal communities, many rural residents, and many aboriginal communities for whom source protection is an essential and often only barrier to contaminated drinking water. Furthermore there are many large scale activities in the north whose effects can impact extensive watersheds both in the short and very long term, with on-going ramifications for future generations and future sources of drinking water. It would be highly inequitable to extend anything but comprehensive watershed based source protection to the north as well as to the south of the province.

### **Source Protection Planning to Provide Benefits to Rural, Small Town, and Farm Residents**

Across the entire province, there are millions of Ontarians whose drinking water is not derived from a municipal system. In most of these communities there is also no prospect of a municipal drinking water system at any time in the foreseeable future for a variety of structural, economic and historical reasons. For these communities, source protection is as necessary to human health and community wellbeing as for communities with municipal services and also is often the only barrier that will be available for protecting their sources of drinking water. Source protection is also the most economical approach to protecting drinking water sources in these communities just as it is in municipally serviced communities. These communities often include thousands of residents as well as being situated in the midst of a variety of nearby land uses, activities and issues pertaining to quality and quantity of water sources. Residents of these communities contribute to the economic, agricultural, industrial, and recreational sectors of the province and of course to the provincial and municipal tax bases. It will be essential that Ontario's source protection planning system provide benefits to rural, small town and farm residents on an equivalent basis and in the same time frame as source protection benefits are being realized by those who derive their drinking water from municipal systems.

### **Source Protection Planning to Provide Benefits to First Nations and Aboriginal Peoples**

While jurisdictional and fiscal questions pervade discussions over drinking water for First Nations and aboriginal communities, all too many of these communities continue with the fact of drinking water that does not meet acceptable standards for human consumption, whether measured against provincial or federal standards. This is a shameful situation and must be resolved. First Nations and Aboriginal peoples must be involved in watershed source protection from the outset. Not the least of the reasons is that ground and surface water systems encompass treaty lands, traditional territories and first nation reserve lands and that impacts flow beyond these lands to and from these territories and the surrounding areas. Involvement in watershed based source protection will present both opportunities and challenges for First Nations and aboriginal communities and governments as well as to the provincial and federal governments, but these challenges must be met.

Justice O'Connor stated,

“the safety of drinking water on First Nations lands in Ontario faces serious problems, which will not be resolved by jurisdictional squabbles among the federal, provincial and First Nations governments.

...Although it would be inappropriate for the provincial government to impose such assistance, it would clearly be helpful for the provincial, federal and local First Nations levels of government **in each aboriginal community** to sit down and work out an approach for ensuring drinking water safety. Similarly in regard to the recommendations on source protection...” (*Report of the Walkerton Inquiry, Volume 2, page 41*) (emphasis added)

It is not likely that the appropriate approach will be identical in every First Nation or aboriginal community and accordingly the provincial government should not be looking for or waiting for an across-the-board identical approach to involvement of these governments and

communities. Rather the source protection legislation should adopt a mechanism and authority that provides for the province to enter into agreements and arrangements with both the federal government and respective first nations communities and governments in a variety of ways including training. Nevertheless, the principle of provincial support for first nations and aboriginal involvement should be specified in source protection legislation. The aim should be to include first nations and aboriginal communities, in a manner appropriate to each and as agreed by each, with equivalent source protection and in as timely a manner as for all other Ontario residents.

### **Quality and Quantity**

It has been the expressed intent of the government's proposals to date to include both source water quality and source water quantity issues in the watershed based source protection planning. The need to do this was stressed in the Walkerton Inquiry report in 2002 and has been echoed in all of the provincial advisory committees in 2003 and 2004. Nevertheless, it must be stressed that the source protection legislation must deal equally well with both source water quality and source water quantity issues. Quality and quantity issues intersect and affect each other. Quality and quantity issues are both important to long term sustainability of water sources. The information base and comprehensive planning and protection approaches must apply to both quality and quantity throughout the process of source protection, not only at the assessment stage, but subsequently at the planning, management and implementation stages of source protection. However, the need in some cases for further data or research should not in any way derogate from the source protection legislation mandating that source protection assessments, planning and implementation commence based on available information. Furthermore, not only must water source quality not be allowed to deteriorate and in fact must be improved in many situations that should be specified in the legislation, but water source quantity must also not be allowed to deteriorate and must be required by the legislation to be improved in situations where source water quantity is under stress. Doing so will require not only source protection legislation and implementation but an integrated approach to water protection and management in the province as discussed further below. The recent consultation regarding the Water Taking Permit Manual and its complete lack of reference to the source protection initiative demonstrates that there is much work to be done on integration of the province's various water initiatives.

### **Ground and Surface Waters**

Although it has also been evident in the government's proposals to date that source protection legislation and implementation is intended to address both ground and surface water sources, the necessity to do so must be reiterated. For example, the Technical Experts' report put somewhat more detail in its technical advice on groundwater protection, leaving much of the surface water technical work to further development. The TEC report recommends a 1 kilometre surface water protection zones, essentially intended to deal with sufficient time to shut down surface water intakes in the face of a spill event. However, the entire catchment and its contribution to cumulative source protection issues in the watershed must also be addressed in source protection legislation, regulations and the ensuing source protection plans. CELA stresses that strong protection of surface water sources must be provided in source protection legislation. Other provincial regulation and management of Ontario's surface waters is far from adequate for

drinking water source protection and the requirements for treatment as one barrier in a multi-barrier system do not obviate the need for stringent source protection as the first barrier.

### **Precautionary Principle**

Both of the TEC and IC reports recognize the importance of a precautionary approach to source protection planning and implementation. Fundamentally, the idea of source protection and its inclusion in a multi-barrier approach to protecting drinking water is precautionary. At bottom, the precautionary approach requires that we anticipate and prevent harm rather than waiting for harm to be manifested. The precautionary approach affects the burden of proof – who is required to demonstrate that an activity is safe or not safe; and on what evidentiary or information base should we base decisions to take action or not, especially preventive action? The precautionary principle as embodied in international instruments, and in Canadian cases and statutes provides explicit direction that in certain circumstances it is not justifiable to take no action to prevent harm. CELA advocates framing the precautionary principle as a positive duty – in the face of uncertainty regarding significant or irreversible potential harm, the relevant regulator has a mandate to take the necessary steps to avoid or prevent the harm. Further, CELA advocates that we should avoid a “formulaic” approach to stating the principle - don’t just repeat the particular formulation (such as the Bergen Declaration, for example), without regard to the context in which we are considering the principle. Since we are dealing with drinking water and human health in the present context, the precautionary principle should be stated as a positive duty to take action to avoid or prevent harm to human health from threats to drinking water.

Other mechanisms to incorporate a precautionary approach in drinking water source protection should also be taken, in addition to reciting the principle in a preamble to the statute. For example, the onus of proof should be placed on those whose activities may cause harm, cases of uncertainty should result in protective action rather than no action, and source protection planning committees should be empowered to propose mandatory measures to address risks based on a simple weight of the evidence consideration of those risks.

In addition, the precautionary principle is not a principle in contradiction to science and data; rather it is a principle that works in conjunction with constantly developing science and data. Accordingly, the anticipated provisions in source protection legislation that will require continually improving the information base; up-dating the plan and periodic re-evaluation of the threats to drinking water sources and assessment of the adequacy of measures taken to date will be quite important aspects of a precautionary approach to drinking water source protection.

CELA supports the following wording for a statutory definition of the precautionary principle in source protection legislation:

*“Precautionary principle”* means that where there is scientific uncertainty regarding serious or irreversible harm to sources of drinking water, decision makers must take action to avoid or prevent harm.

## **Interim Protection**

There are three connected concerns regarding the interim period between passage of source protection legislation and the future date when source protection plans in particular watersheds have been approved and implemented, for example by way of official plan amendments regarding future land uses.

- The first concern is that in the course of conducting the watershed assessments and long before the source protection plan approval stage, threats to drinking water sources that are fairly urgent may come to the attention of the source protection planning committee.
- The second concern is that between passage of source protection legislation and final source protection plan approval, applications will be made and decisions will be made by the province, municipalities or others that are unwise, vis a vis source protection, and that present new threats to drinking water sources in the watershed.
- The third concern is that decision making will be held up by potential source protection concerns that have not yet been fully articulated prior to completion of source protection plans, and where appropriate measures have not yet been proposed in the watershed.

CELA makes the following submissions in respect of each concern.

Firstly, with regard to the situation where there are urgent existing threats to drinking water sources. CELA submits that the source protection legislation should explicitly require source protection planning committees to identify these situations and the legislation or regulations should specify criteria for mandatory action based on factors such as whether there is a threat to human health, urgency of the situation and numbers of people potentially affected. The legislation should require the SPPC to report to the Minister as to the action it or another agency or authority in the watershed has taken in respect of that urgent threat and the Minister should have the statutory power to direct other or additional action to be taken.

Secondly, with regard to the situation where unwise decisions may be made without regard to source protection concerns pending final approval of source protection plans, CELA submits that the following measures should be taken by the province immediately:

- Provincial approvals should immediately begin to take account of potential source protection implications. This should be done by amending the relevant legislation, regulation and policy affecting provincial approvals so that they include source protection considerations. Many examples are contained in the Implementation Committee report and these need not, and should not await development and approval of the watershed based source protection plans. For example, biosolids application decisions, Mining Act decisions, Aggregate Resources Act decisions, Environmental Protection Act decisions, Ontario Water Resources Act decisions, Drainage Act, Tile Drainage Act and Agricultural Tile Drainage Installation Act decisions, Building Code Act decisions, Environmental Assessment Act decisions, Pesticides Act decisions, Oil, Gas and Salt Resources Act decisions, and many other examples outlined in the IC and TEC reports should immediately begin to have specific regard

to the potential for impacts on source waters. As noted in the IC report, there are existing legislative and policy gaps in many areas of existing provincial approvals, and across many provincial Ministries, in that source protection is either not considered or not adequately considered and incorporated into the decisions of the province nor the instruments by which it administers those decisions. It should also be added that new and expanding businesses should be taking account of the impending source protection legislation and planning for it in any event in order to minimize risk of future expenses to change or retrofit operations and activities.

- The province should immediately identify those highly vulnerable areas of which it is aware and impose an interim Minister’s holding zone under the Planning Act with respect to new land uses that are “threats of provincial concern”. This approach should be refined based on the geology of the specific areas and the threats of provincial concern that would be most problematic to drinking water source protection in those areas.
- The province should immediately proceed with development of new province-wide requirements in areas where it is clear that a standard provincial approach is preferable. For example, the IC committee recommended that standards be established and extended to fuels and non-fuel chemicals and other substances held in tanks to deal with source protection concerns and it is more appropriate to deal with issues such as container standards and inspections province-wide rather than watershed by watershed. Similarly there were recommendations for new research and technology, for example, for better performance standards for small septic systems that could be applied in specific watersheds to solve some existing problems and this effort is best undertaken at the provincial level and commenced immediately. Septic system re-inspection is another example where provincial scale work to identify inspection protocols would be preferable, and there are many other recommendations contained in the TEC and IC reports that the province should begin to develop right now.
- The province should encourage municipalities to establish holding zones for highly vulnerable areas in their boundaries while source protection plans are developed, at least with respect to pertinent “threats of provincial concern”.
- The provincial policy statement under the Planning Act should immediately reference and give priority to watershed based drinking water source protection so that municipalities will include source protection consideration in all official plan reviews and other planning decisions that are undertaken in the “interim” period between passage of source protection legislation and ultimate approval and implementation of source protection plans.

Finally with respect to the third interim measures concern, that of potential applicants for approvals who fear that their applications will be held up by pending source protection plans, CELA submits that the above suggestions will assist so that applicants will be able to take into account source protection issues initially while developing their business or land use plans and in their application process. While there may still be some necessity to revisit such approvals later,

as with all other existing businesses and activities in place at the time of source protection plan approval, this approach should reduce the amount of revision and amendment to operations, activities and the associated approval instruments.

### **Timelines**

CELA submits that the province must establish firm time lines in the source protection legislation and regulations that will ensure source protection plans are developed across the entire province, and provide protection for the entire population on a timely basis. Given that source protection will be a process of continuous improvement, it is nevertheless essential that each watershed begin with the information base available to it now, and build on it in the future. First generation source protection plans should be required to be completed in every watershed no later than 2007 and implementation of approved measures should be underway by 2008. The legislation should provide for formal review and up-dating of source protection plans with renewed provincial approval every five years thereafter.

### **Phasing of Source Protection and Setting Priorities**

We do not have perfect information in every watershed today. However, as noted above, firm timelines with required action should be established nevertheless. CELA strongly submits that the province should NOT proceed with only municipal system intake sources as a first phase. Even if there is some priority allocation of resources to municipal system intake sources, it is essential to include requirements for priority actions in vulnerable aquifers and recharge zones in first generation source protection plans. That this is critical is due to several factors:

- For millions of Ontarians, watershed based source protection will be the only practical or available barrier to protection of their drinking water as they are not deriving their water supplies from municipal systems
- As a matter of equity, while watershed regions, CA's, municipalities and the province spend resources on source protection it should not be only to benefit part of the population
- In many watersheds, the most significant water risks will be to vulnerable aquifers and recharge zones
- Many of the critical actions for source protection will have to happen in rural regions, headwaters, recharge areas and the residents who live and work in these areas should also benefit from source protection
- Future water supplies also have to be protected according to Justice O'Connor's report and the stated intention of the government to date
- It is essential that water sources not be permitted to be further degraded by the current decision making structures and land uses and activities but that instead decisions begin to provide for long term protection and restoration where that is indicated
- Many of the threats to water sources are long-term in the making and it is necessary that actions begin to prevent or reverse these trends
- Cumulative issues are often only able to be dealt with on a watershed scale, not on a local municipal intake scale.

CELA submits that rather than the province setting the same priorities across the province, each watershed should be required to determine its priorities for proposed measures,

but based on criteria outlined by the province in source protection legislation. That criteria must include an assessment of the vulnerable areas in the watershed and the significance of the water risks in and to those vulnerable areas. However, in all cases, the minimum requirements should be to provide measures for all vulnerable areas as defined in the TEC report; to provide measures that meet the source protection objectives recommended in that report according to whether the water risks are significant, moderate or low, and to specify the time frame over which those measures will be implemented.

### **Adequate Resourcing**

CELA submits that Conservation Authorities, Municipalities, the Province, including all of the various provincial Ministries with a role to play in watershed based source protection, and First Nations, as well as participants in source protection planning must be adequately resourced to carry out source protection planning and implementation in an effective manner.

The adequacy of resourcing is one of the single biggest barriers to meeting the goals of drinking water source protection.

CELA submits that the province commence work immediately to develop the funding tools outlined in the IC report, as well as additional funding tools, in order to ensure that sustainable funding is available for source protection implementation as soon as possible. In the meantime, given the government commitment to provincial funding of source protection plan development, CELA submits that considerably increased resources must be provided forthwith to Conservation Authorities, municipalities, First Nations through agreements with First Nations and the federal government and to the Ministries of Environment, Natural Resources, Agriculture and Food, Municipal Affairs, Mines and Northern Development, Public Infrastructure Renewal and the Ministry of Health for source protection initiatives.

### **Overall Water Policy / Strategy for the Province**

Justice O'Connor noted that water management in Ontario at the time of the Inquiry was fragmented and recommended the development of an overall water management strategy for the province. Similarly the Advisory Committee called for an overall water management approach in its 2003 report and the TEC report has similarly made two separate recommendations in this vein. CELA submits that it is crucial that the province develop an overall water management and protection strategy incorporating the diverse Ministry portfolios and range of provincial oversight, legislation and regulation that is presently in place in Ontario. Watershed based source protection was expected by Justice O'Connor to take place nested within broader watershed planning. The federal government is considering Ontario's watershed based source protection initiative as a possible connection to its Great Lakes program. CELA submits that the Ontario government must seize the momentum and opportunity presented by the watershed based source protection initiative to develop a broader water management and protection strategy and as a framework within which to integrate the diverse water protection priorities of the Ontario government and its residents.

## **Public Participation & Engagement**

### **1. Source Protection Planning Requires Transparency from the Beginning:**

Right now, as CA's and municipalities develop work plans for initial information and capacity building, the province, CA's and municipalities must involve the public in the beginning steps of source protection planning. It is important that the technical work not leave the public behind. It is essential to carry the whole community forward in a collective source protection building exercise.

### **2. Whole Public**

The province, CA's and municipalities must include the public broadly defined in source protection planning. In addition to general public outreach there must be attempts to also target business and industrial sectors, land-owners, woodlot owners, farmers, politicians, municipal staff, educators, professionals, residents, rate-payer groups, stewardship and other conservation organizations, and those involved in existing initiatives in the watersheds.

### **3. Access to All Information**

Information access needs to be easy and non-intimidating to the public. Information needs to be available in a variety of ways – it must be web based but also available to the public to walk in to local offices. Information also needs to be available on an “as-we-go” basis, without worrying about whether it's final or “signed off”. Information can be provided with appropriate qualifications (such as “preliminary”) and should reflect the theme of continuous improvement.

### **4. Ownership and Buy-In**

It is critical that there be “ownership” and “buy-in” in each watershed by that watershed's residents, landowners, workers and employers. The source protection plan has to be the watershed public's plan. In this regard, recognition of the source protection effort will be essential. One approach would be to develop a watershed region logo for the plan in development from the very beginning – while linking that work to a similar province – wide “brand” or logo for source protection planning and implementation. It is also important to give people things to do right away to start source protection where they are because once the message is communicated about the importance of source protection, many will want to take immediate steps. Similarly, in order to develop and maintain momentum for source protection planning in the community, there should be reports back to the public to show the watershed plan taking effect even before there's an approved plan!

### **5. Formation of Source Protection Planning Committees**

Right away the province and CA's as well as First Nations need to give thought to how committee members will be selected for Source Protection Planning Committees. It is critical that there be public confidence in both the process of establishing the committees and in the resulting membership on the committees. Even prior to establishment of source protection legislation, the province, CA's and First Nations should start reaching out to and building appreciation of source protection planning, and capacity to participate in likely sectors and among the interested public. Source protection planning committees across the province should include environmental non-government organizations and citizens organizations who have been active in the watershed. A mechanism for nominations to the source protection planning committees and selection of highly qualified candidates must be established.

## 6. Types of Participation

It is important from the outset to recognize and establish varied methods of participating in source protection planning as it is getting underway. Various persons will want to participate by:

- Being able to know about / read about watershed source protection
- To comment on the findings and developing plans as they progress in the watershed
- To hear discussions among various perspectives on the findings and developing plans
- To have input into decisions being made for example as to preferred measures for responding to water risks in the watershed.

## 7. Education and Outreach to the Community

While general public education is essential, education and outreach to the community also needs to be targeted and to reach specific audiences. Each audience is going to have specific questions that need answering. What is this going to mean for us / our community / our sector? What is the vision for source protection in the watershed? What are the long term implications of the plans? Will it really work? How will the negatives (such as cost, time, and complexity) be overcome?

Provincial requirements for source protection planning must include expectations for education and outreach and adequate resources for outreach must also be included in the funding mechanisms for source protection planning and implementation.

## 8. Getting Community's Professionals On Board

In order to ensure that source protection becomes a reality in every watershed, source protection planning as a concept must become ingrained among several key professional groups. These include land use planners, hydrogeologists, engineers, water suppliers, developers, lawyers, real estate agents, academics, and health professionals. Many of these professionals' work and decisions affect the watershed's sources in the course of daily practice and there must be a conscious effort required of source protection plan development to change those key approaches to pursue source protection in the watershed. Public health involvement must be a key component of watershed source protection from the outset. Public health involvement was stressed in the Walkerton Inquiry findings as critical to drinking water and source protection but this necessity must be reinforced in the structure of source protection planning committees and in the critical decisions as to interim measures and as to proposed source protection measures to respond to water risks in the watershed.

## 9. Reaching Interested Public

There is a potentially huge population who will be highly interested in watershed source protection, particularly as the details become available in each watershed as to what the water protection issues and potential measures are. It is important that the province, CA's and others communicating about source protection use a variety of mechanisms to reach people. Specific examples that apply to both the province's communication efforts and to specific watersheds include:

- Flyers may be very effective and inexpensive - make the message direct and specific to the watershed and the topic; not too generic
- Make the message useful and in a handy format that people will keep
- Fridge magnet for watershed source protection's web site

- Email sign up list for announcements of developments and new material
- Calendar of upcoming steps
- Continual record of achievement

#### 10. NGO Involvement

CELA submits that a credible drinking water source protection approach will encompass environmental, health and other non-governmental organizations, citizens groups and others who have been active in water protection issues across the province and within specific watersheds. However, engaging NGO's and active citizen's groups can also be challenging in view of the many calls for their time and expertise. ENGO's will be most likely to participate if they understand that source protection pertains to the issues they already work on, and is especially critical with respect to the recommendations of both TEC and IC reports that call for extensive integration of drinking water source protection with other water protection initiatives in the watershed. ENGO's may not only be over-stretched but may also fear exclusion depending on the history of decision making in that watershed. Without adequate involvement from the outset, this can mean that a key constituency of source protection starts out or becomes very skeptical about its potential for meaningful change and protection in the watershed. ENGO's must be assured that their input truly matters in exchange for their time and effort and will want to be clear from the outset about how they will be included? It will be important in designing participation in the watershed that groups and organizations across the watershed be networked especially given the large areas covered by the proposed watershed planning regions and the large numbers of communities encompassed by those regions. It will be necessary to provide for funding for certain positions on committees in order to ensure long term and thorough participation and to put ENGO's on an equal footing with other sectors in the watershed.

#### 11. Scope of the Plan – Building Terms of Reference

The province should immediately be building the groundwork with the various sectors and audiences about the intended scope of source protection planning and implementation. Provincial and CA communication must ensure there is community appreciation that both ground and surface waters; both municipal and non-municipal systems and supplies; both point / non-point threats and both historical uses and future uses are clearly within the scope of and will be encompassed by the proposed source protection system. The province should require CA's to publish the current descriptive work right away as it is developed and to include that information in a provincial database to track source protection as it develops. This initial information should include in each watershed:

- Descriptions of municipal systems;
- Number of people on private supplies;
- Description of the variety of sources of drinking water.

#### 12. A Plan for Sustained Improvement

The province should plan and look for source protection benefits from the very start of the new source protection system. Within each watershed it will be essential to build excitement and a sense of community about source protection. If public participation in source protection is done well, communities will embrace source protection:

- This is about where we each live and work
- This is about the legacy we are leaving our children
- This is our community's plan for a healthy vibrant future.

### **Conservation Authority Governance**

CELA submits that the province should undertake a review of Conservation Authorities' mandate, statutory jurisdiction and governance structure. The experience and scope of activities of conservation authorities is quite diverse across the province. The capacity of various conservation authorities is not uniform and various mechanisms must be pursued to account for these differences. Conservation Authorities with extensive experience, data and capacity must be allowed to proceed expeditiously with source protection in their regions. In many cases they are also watershed regions under a great deal of water source quality and quantity stress. Conservation Authorities with less historic capacity and experience in source protection issues must be enabled to gain resources and capacity quickly so that Ontarians across the province have equitable access to credible source protection.

In addition, given that Conservation Authorities are pursuing a broader range of objectives and have diverse funding sources, it is essential that their statutory governance structures be revisited. This should be done with wide public consultation but the ultimate objective must be to ensure credible, accountable, transparent decision making and activities by Conservation Authorities.

### **Great Lakes Integration and Protection**

Both of the TEC and IC reports note the necessity that the Great Lakes be integrated with source protection plan development and implementation. For those watershed regions within the Great Lakes Basin, each of the relevant source protection plan terms of reference should identify how that watershed's influence on and benefit from the downstream Great Lake will be included in development of the source protection plan for that watershed. The cumulative impacts on Great Lakes must be included in the watershed's terms of reference.

CELA also submits that the terms of reference should describe how that watershed region will work with the adjoining watershed regions upstream of the same Great Lake in assessing their watershed impacts on the Great Lake as a receiving body and in proposing relevant measures to deal with those impacts that are common to or consistent among those watersheds draining to that Great Lake.

CELA also submits that the province of Ontario should designate a body to oversee Great Lakes protection vis a vis Ontario's impacts on the Great Lakes. This requirement is for not only source protection but other water protection and management issues including Great Lakes quantity issues, broader ecosystem protection and overall Great Lakes water quality issues. Although Ontario is only one of several jurisdictions bordering the Great Lakes, Ontario's air, land and water activities have a tremendous influence on the Great Lakes and we need to provincially take responsibility for assessing and addressing Ontario's impacts.

## **Ecosystem Integration and Protection**

CELA submits that watershed based drinking water source protection must be thoroughly integrated with a broader ecosystem and water management perspective. Without a healthy ecosystem, Ontario's drinking water resources are not well protected nor sustainable. CELA supports the TEC guiding principles in this respect, as well as the April 2003 Advisory Committee report which stressed the inter-relationship of source protection and a healthy well functioning ecosystem. As the April 2003 report noted in the chapter on Outcome Measures, the benefits of source protection to human health are not easily measured directly but better measured by a variety of healthy ecosystem measures. A well protected ecosystem supports human health as well as other plants, animals and biota residing within that system. It is not possible to artificially separate the "human" protective measures from the ecosystem protective measures. Nor should such an approach be taken since there would be a risk that human protection would be at the expense of broader ecosystem protection, leading to ecosystem degradation and ultimately the unsustainability of the resource even for human use.

While some initiatives and programs, provincially and federally are targeted at broader ecosystem goals, the source protection initiative must be well integrated with these other programs and objectives. The goals and objectives, terms of reference and resourcing of source protection must be carried out in light of and consistently with other broader ecosystem management and protection goals.

## **Enforceability of Source Protection Plans**

CELA submits that it is imperative that source protection plans, once approved by the province, must be actually implemented. In that regard, the source protection legislation must specify how the plans will be implemented and must provide mechanisms to ensure same. CELA supports the recommendations of the IC report which call for mandatory consistency of provincial and municipal decision making, effective the date of approval of the specific watershed plan.

Source protection legislation and approved plans must have primacy over other provincial legislation and other provincial and municipal approvals and instruments must be consistent with approved source protection plans. Furthermore, existing provincial instruments should be reviewed in a timely way in light of identified source protection issues and approved measures in the watershed in order to ensure that they are consistent with the approved plans.

## **Appeals**

CELA agrees that appeals of source protection plans must be available to all residents, businesses and landowners in a watershed. Such appeals should be to the Environmental Review Tribunal on a standard of reasonableness. After appeals are exhausted, and plan implementation is underway, the normal appeal process for the subject decision will be available, but there must be a requirement that the approved source protection plan prevails and the subject decision, whether provincial or municipal, must be consistent with that approved source protection plan. It must not be possible for subsequent instrument and land use appeals to in effect revise the approved source protection plan.

There should be no modification of approved source protection plans in between the five year renewal period unless a modification is made by the Minister in an urgent situation affecting human health. Approved source protection plans should be up-dated and reviewed, but based on a watershed perspective and in light of both the experience of the plan to date as well as the new information and science then available.

### **Achievability by 2008**

CELA supports the recommendations made by the TEC regarding drinking water protection actions at Recommendations 122, 123, 124, 125 and 127. These recommendations call for implementation of programs and jurisdictions that have initiated source protection plans for well head protection areas through provincial groundwater studies money, development of a comprehensive program to address private water supplies by source protection planning committees, incorporation of Medical Officers of Health in advising private well owners of relevant information, and implementing risk management actions quickly for high risk / high impact situations identified prior to formal plan approval. In the case of the latter, please see CELA's submissions regarding interim measures above.

However, with respect to Recommendations 126 and 128, CELA respectfully disagrees with the time frames proposed in these recommendations.

Recommendation 126 calls on the provincial government to establish a comprehensive and publicly accessible groundwater aquifer data structure to accept 2008 submissions of data to support aquifer mapping. With respect, this time frame is far too slow. While accepting that our data systems are not perfect, the current shape of data systems must in no way be allowed to delay or defer the development of source protection plans in watersheds and the commencement of implementation of approved measures in response to identified water risks. By 2008, first generation plans should have already been completed and implementation should be underway in accordance with the time lines proposed in the approved source protection plans.

Recommendation 128 states that “an assessment report for each source protection area in Ontario should be in progress by 2008”. Again, this time frame is not acceptable. The assessment reports should be in progress by 2006. First generation plans should be completed and approved by 2008 and implementation of the initial measures identified in the plans should be underway by 2008.

There is no time to waste with respect to source protection plan development and implementation. The Walkerton tragedy occurred in May 2000 and we are nearing the fifth year mark of that event. Justice O'Connor initially envisaged a six month period following his report in 2002 to develop a source protection framework and we are far behind that anticipated schedule already. Enough work has been done with provincial committees advising the province on a Framework, and on implementation and technical matters that the province can now move expeditiously to develop the legislation and regulations for watershed based source protection planning and implementation. Since source protection is the first and most fundamental barrier to drinking water contamination and depletion in a multi-barrier framework, public health interests cannot abide such a substantial delay as is implied in these two TEC recommendations.

We repeat a statement we made on May 8, 2000 in a presentation to Ontario Water Works Association / Ontario Water Management Association, ironically just as the outbreak at Walkerton was occurring:

‘We will continue to call on Ontario to start making real commitments and to start taking real action for water protection.’

Thank you for the opportunity to provide these comments.

CELA would be pleased to meet with you at any time to review these submissions.

Yours very truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**

A handwritten signature in black ink, appearing to read 'Theresa McClenaghan', written in a cursive style.

per  
Theresa McClenaghan  
Counsel