

COMMENTS AND RECOMMENDATIONS REGARDING THE DISCUSSION PAPER ON SOURCE PROTECTION COMMITTEES UNDER THE *CLEAN WATER ACT*, 2006

Submissions of the Canadian Environmental Law Association
to the Ministry of the Environment
Regarding EBR Registry No. PA06E0013

CELA Publication #556
ISBN #978-1-897043-58-5



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February 1, 2007

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Executive Summary

The *Clean Water Act, 2006 (CWA)* is a positive step towards watershed-based drinking water source protection in this province. Its broad scope encompasses Great Lakes and inland communities, groundwater and surface water sources, rivers and lakes, and current and future conditions. Several “conflict” provisions help to ensure the consistent application of the *CWA* and all of its protective measures. Additionally, a range of new municipal powers, roles and requirements will greatly assist in providing tangible improvements to Ontario’s watersheds. Accordingly, the Canadian Environmental Law Association (CELA) looks forward to the implementation of the *CWA* so that the important work of protecting drinking water sources can proceed as expeditiously as possible.

Having said this, the *CWA* relegates several important functions to the discretionary regulation-making powers of the Minister and the Lieutenant Governor in Council. Some of these regulatory powers, such as those pertaining to the structure of the source protection committees and working groups, will greatly impact the public’s ability to participate in a meaningful way. Our submission reviews the questions posed in the “Discussion Paper on Source Protection Committees under the *Clean Water Act, 2006*”, and makes a number of recommendations for how these matters should be addressed. Overall, CELA commends the Ontario government for its commitment to furthering the source protection initiative.

Introduction

This is CELA’s submission regarding the Discussion Paper on Source Protection Committees. The paper was posted for public comment by the Ministry of the Environment (MOE) on January 2, 2007.

CELA is a public interest law group founded in 1970 for the purposes of using and improving laws to protect public health and the environment. Funded as a legal aid clinic specializing in environmental law, CELA represents individuals and citizens’ groups in the courts and before tribunals on a wide variety of environmental matters. In addition, CELA staff members are involved in various initiatives related to law reform, public education, and community organization.

For the past two decades, CELA’s casework and law reform activities have focused on drinking water quality and quantity issues. More recently, CELA has been involved in a number of drinking water matters, such as:

- representing the Concerned Walkerton Citizens at the Walkerton Inquiry;
- preparing various issue papers for Part II of the Walkerton Inquiry, including *Tragedy on Tap: Why Ontario Needs a Safe Drinking Water Act*;
- submitting model water legislation to entrench watershed planning and water conservation in Ontario;
- commenting on the *Safe Drinking Water Act, Sustainable Water and Sewage Systems Act, 2001, Nutrient Management Act*, and proposed regulations thereunder;
- commenting on various municipal land use planning reforms and amendments to the *Municipal Act*;
- providing input on the Great Lakes Charter Annex international negotiations;
- attending public meetings held by the MOE regarding source protection and water-taking initiatives;

- convening public workshops on source water protection across Ontario;
- preparing joint NGO sign-on letters to numerous Ministers expressing support for the source protection initiative and suggesting areas for improvement;
- presenting at the Standing Committee’s public hearings on the *Clean Water Act*; and
- facilitating the development of the Water Guardians Network, an Ontario-wide network of interested and engaged non-governmental organizations (NGOs).¹

In addition, CELA has served as a member of several advisory committees established by the Ontario government to consider various aspects of source water protection, such as:

- Advisory Committee on Watershed-Based Source Protection Planning;
- Implementation Committee for Watershed-Based Source Protection;
- Nutrient Management Advisory Committee; and
- Advisory Committee to the Great Lakes Water Management Initiative.

It is against this extensive background and experience that CELA has reviewed the discussion paper. For comparative purposes, we have also considered related documents and reports regarding source protection, including:

- *Source Water Protection Statement of Expectations*² (endorsed by NGOs across Ontario);
- the Part I and II Reports of the Walkerton Inquiry;
- *Watershed Based Source Protection: Implementation Committee Report to the Minister of the Environment* (November 2004);
- *Watershed-Based Source Protection Planning: Technical Experts Committee Report to the Minister of the Environment* (November 2004); and
- MOE briefing materials and related documentation.

The first of these documents, the *Source Water Protection Statement of Expectations*, explores sixteen themes which are of key importance and concern to the environmental NGO community. This submission assesses the proposed regulations in the context of those priorities, and we encourage government to incorporate the recommendations listed below.

Source Protection Authority, Areas and Regions

The *Statement of Expectations* suggests that the watershed-based source protection planning framework should be required across Ontario. Additionally, Justice O’Connor’s first recommendation in the Report of the Walkerton Inquiry is that “...[s]ource protection plans should be required for all watersheds in Ontario.”³

Currently, the *CWA* extends to the areas over which conservation authorities (“CAs”) have jurisdiction.⁴ In effect, this excludes large portions of central and northern Ontario from receiving the benefits of source protection. However, the Minister has the authority to make regulations altering the boundaries of a source protection area for the purposes of this Act.⁵

¹ CELA’s water-related briefs, factsheets and reports are available at: www.cela.ca

² T. McClenaghan and D. Finnigan, “Protection Ontario’s Water Now and Forever: A Statement of Expectations for Watershed-Based Source Protection from Ontario Non Governmental Organizations” (Canadian Environmental Law Association & Environmental Defence, November 2004) [hereinafter “Statement of Expectations”].

³ D.R. O’Connor, *Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water* (Ontario: Queen’s Printer for Ontario, 2002) at 92.

⁴ *Clean Water Act, 2006*, S.O. 2006, c. 22, s. 4(1) [hereinafter *CWA*].

⁵ *Ibid.* at s. 108(a).

Additionally, the Minister *may* create new source protection areas in these parts of central and northern Ontario,⁶ with two options available for implementation. First, the Minister could decide to designate a non-CA person or body to serve as the source protection authority from the outset, thereby imposing all of the same duties regarding source protection committees and public consultations as would typically be required of the CA- source protection authorities.⁷

Second, the Minister could enter into an agreement with a municipality, whereby the municipality would prepare a “focused” source protection plan and would be exempted from all of the statutory requirements regarding the establishment of source protection committees and the role of public consultations.⁸ Rather, any requirements around public involvement would be set out in the terms of the agreement. Presumably, these municipalities would be designated as source protection authorities after the completion of the source protection plan, in order that the provisions of the plan could be enforced under the CWA.

Recommendation #1: Regulations passed under the CWA should provide for the mandatory assessment of risks and mandatory reduction of significant drinking water threats in vulnerable areas across the province.

Recommendation #2: Source protection areas should be created or expanded into parts of Ontario that are not currently covered, so that additional water users can receive the full range of protections offered by the legislation.

Recommendation #3: Where the Minister enters into an agreement with a municipality pursuant to section 26, the agreement should provide for an equivalent degree of public involvement as is required in those areas covered by conservation authorities.

Size of the Source Protection Committee

With respect to the size of the committees, the regulation should allow for the maximum number of participants (i.e. 16 members for large regions, 13 for mid-sized regions, and 10 for small regions) to be exceeded in appropriate circumstances. By inserting this small degree of flexibility, the regulations could accommodate local complexities which may necessitate the formation of larger committees than anticipated. The ultimate goal of the regulation should be to maximize the effectiveness and fairness of the source protection committees; this goal may not always be achievable within the size limits which have been proposed.

Recommendation #4: There should be a process for exceeding the maximum number of committee members in appropriate circumstances.

Composition of Committee Members

We are disappointed and concerned to note that the discussion paper does not recognize the distinct status of groups representing environmental interests, or accord them seats on the source protection committees. Environmental non-governmental organizations and community groups hold a unique perspective; possess the required knowledge of local watersheds, communities,

⁶ *Ibid.* at s. 108(c).

⁷ *Ibid.* at s. 5, 108(f).

⁸ *Ibid.* at s. 26.

and issues; and have demonstrated a clear commitment to the CWA through extensive involvement with government and other stakeholders over the last several years.

The discussion paper makes direct reference to representation of the agricultural, industrial and commercial sectors as well as “other members” which *may* include non-governmental organizations and the general public. However, these “other members” could represent any number of different and diverse viewpoints. For instance, “non-governmental organizations” could include health, labour, and even some business groups. Furthermore, local environmental groups often have separate interests, constituencies, and expertise from the “general public.” It is therefore insufficient and inappropriate for groups with environmental interests to compete with other NGOs and the public for space on the committees. There should be an explicit requirement that all source protection committees include members which represent environmental interests, and the regulations should be drafted accordingly. In light of the fact that the CWA’s stated purpose is to protect existing and future sources of drinking water, environmental interests should be a leading consideration rather than an afterthought.

One model which could be regarded as a positive example of public collaboration is the Advisory Panel on the Great Lakes Charter Annex Negotiations (“Advisory Panel”). In the fall of 1994, the Ministry of Natural Resources invited a broadly representational group of stakeholders, including First Nations, to participate on the Advisory Panel. The panel included key government Ministries, private sector representatives, environmental groups, and public interest groups concerned with the management of the Great Lakes waters. First Nations chose to have a parallel process of consultation with the government. This Advisory Panel, which met regularly during the year, gave advice directly to Ontario’s negotiators on complex policy matters. The Advisory Panel members had access to confidential policy documents and participated in discussions and problem-solving on many complex issues. This form of consultation from the ‘outside-in’ instead of the ‘inside-out’ proved to be very successful and led to a turn-around in the success of negotiations. Consequently, agreements were reached and endorsed by all ten Great Lakes jurisdictions in December 2005. The work of the Advisory Panel continues to this day, and is now focused on implementing the agreements in Ontario. First Nations’ involvement led to the development of terms setting out their involvement in the implementation of the final Agreements and in future consultations.

On a more positive note, we are pleased that the discussion paper recognizes the important role to be played by public health members. We support the participation of public health representatives on each source protection committee, and we believe that information and advice regarding health impacts should help to guide the committees in their decision-making processes.

Recommendation #5: There should be an explicit regulatory requirement that all source protection committees include members who represent environmental interests.

Recommendation #6: Groups representing environmental interests should be treated as a distinct sector from the general public and other NGOs, and their membership on the committees should be provided for accordingly.

Decision Matrices for Membership Selection

In accordance with the above discussion regarding the need to entrench environmental interest groups on the source protection committees, we cannot support either of the proposed decision

matrices. It seems that the first example of a decision matrix is essentially ‘selection by popular opinion.’ The description indicates that “stakeholders” would rank other groups; naturally, the results of such a vote would depend on which stakeholders were selected to act as voters. In a room full of industrial, business, and even agricultural stakeholders, it is anticipated that environmental NGOs would be vastly outnumbered and outvoted. Similarly, it seems that the second decision matrix assigns seats to those stakeholders who are most heavily involved in the high-impact activities. Accordingly, those groups responsible for causing the greatest threats are the same groups that have the greatest voice on the committees. Neither model recognizes the fact that the CWA is ultimately an environmental piece of legislation, and as such environmental groups should have an ability to impact the discussions in a meaningful way. Thus, the member selection mechanism should ensure that groups representing environmental interests are accorded an equal role on the committees, rather than being overlooked and undervalued relative to the other sectors.

Recommendation #7: The member selection mechanism should ensure that groups representing environmental interests are accorded an equal role on the committees, in order to facilitate their meaningful contribution relative to the other sectors.

Selection of Committee Members

There are several general principles which we believe should apply to the selection of the chair and individual committee members.

- We support the proposal that the source protection authority will solicit candidates for the committee through advertisements in local newspapers, libraries, offices, etc. However, we would also encourage the use of such means of communication as media releases; mailings to local residents; door-to-door flyers; notices on the EBR registry; and actual notice to community leaders and local groups.
- The source protection authority should publish its short-list of candidates beforehand for public comment. This is particularly important when selecting the chair. As stated in the discussion paper, the chair is intended to act as a neutral member. By allowing the various stakeholders to comment before a final decision is made, the source protection authority and the Minister will be better able to gauge the perceived neutrality of the candidates.
- After a final decision is made regarding the selection of the chair, the Minister should post this information in a similar fashion as the original call for candidates.
- The alternate chair should be selected by the Minister, in a process akin to the selection of the chair. As with the selection of the chair, all stakeholder groups should be given an opportunity to comment on the short-list of candidates for alternate chair.
- Although the discussion paper does not propose a specific process for selecting the “general public” members of the source protection committees, we reiterate our previous proposal that public representatives should be invited to submit statements of interest, and the Minister should make the final selection based on pre-set criteria.⁹
- We advocate that the proposed qualifications of committee members should be broadened in several respects.
 - First, the requirement that each source protection committee member either be a resident or employed in the source protection region is overly constrictive. While we

⁹ T. McClenaghan and J. Ginsburg, “*Clean Water Act, 2005: Comments and recommendations regarding the proposed matters to be addressed in regulations*” (Toronto: Canadian Environmental Law Association Publication #533, 20 February 2006) at recommendation #13.

- agree that connection with, and knowledge of, the region should be sought, the narrowness of the existing criterion effectively excludes provincial organizations from the selection process. Often, provincial organizations have a lengthy involvement with the issues and may provide invaluable insights with respect to the watershed-wide or cross-border concerns. We propose that the test be expanded to include those members who have a “demonstrated interest or historical involvement” in the source protection region. We also propose that references to “provincial organizations” should be clarified to indicate that *local branches* of provincial organizations are similarly provincial in scope, and do not qualify as locally-based associations.
- Second, the discussion paper suggests that source protection committee members should possess a “demonstrated ability to understand source protection science, concepts, and technical reports.” This language should be clarified to reflect the fact that “[t]he Ministry would provide training to committee members” including “technical training pertaining to the assessment report.”¹⁰ Thus, while committee members should have the capacity to learn, understand and analyze technical information, they should not be expected to possess any formal qualifications or scientific degrees.
 - Third, at present the proposed qualifications do not reflect or require an understanding of the broader environmental and health considerations which are integral to source protection. All committee members should have a solid understanding of the underlying goals of source water protection, the historical events which prompted the passage of the CWA, and the grave consequences which could result from poor decision-making. Additionally, committee members should be familiar with basic environmental concepts, including the precautionary principle. These elements should be included in the province’s training to committee members.

Recommendation #8: The names of all candidates should be made publicly available prior to the final selection, and a comment period should be provided.

Recommendation #9: The requirement that each candidate be a resident and/or employed in the source protection region should be expanded to include those who have a “demonstrated interest or historical involvement” in the region.

Recommendation #10: The province should provide basic training to all committee members, rather than requiring them to possess formal qualifications at the outset.

Recommendation #11: All committee members should be required to have a solid understanding of the underlying goals of source water protection, the historical backdrop to the legislation, the consequences of poor decision-making, and the basic concepts of environmental protection.

¹⁰ Ontario, Ministry of the Environment, “Discussion Paper on Source Protection Committees under the *Clean Water Act, 2006*”, online: EBR Registry <http://www.ene.gov.on.ca/envision/env_reg/er/documents/2007/Discussion%20Paper.pdf> (posted 2 January 2007) at 15-16 [hereinafter “Discussion Paper”].

Roles and Responsibilities

In addition to the responsibilities currently listed for the chair and individual committee members, we recommend that the following items be added:

- To the best of their abilities, the chair and all members should act to uphold the spirit and intent of the CWA and its regulations; their decision-making should pursue the ultimate goal of protecting existing and future sources of drinking water.
- Additionally, the source protection committees should be given the authority to obtain technical or scientific assistance related to source protection planning, and the responsibility to publish educational information related to source protection planning.¹¹
- The chair and all members should be responsible for collaborating with the working groups and bringing forward their concerns, where applicable. The support person should also be responsible for assisting the working groups where necessary.
- The chair (and other committee members where appropriate) should collaborate with other source protection committees on cross-boundary issues.
- Additionally, we recommend that one or more standing committees should be established at the provincial level to advise the source protection committees on the handling of emerging threats, widespread cross-boundary issues, best practices, and Ontario-wide concerns. These standing committees could include representatives from the individual source protection committees, as well as representatives from other provincial associations, other levels of government (including federal and First Nations), and scientific experts. Ideally, the efforts of these committees could be integrated with those of existing consultative bodies and institutions at the provincial, federal, and bi-national level.

Recommendation #12: One or more standing committees should be established at the provincial level to advise the source protection committees on the handling of emerging threats, widespread cross-boundary issues, best practices, and Ontario-wide concerns.

Code of Conduct

Greater specificity should be added to the language around ethical behaviour and conflicts of interest. For example, it should be made clear that “conflicts of interest” primarily relate to financial conflicts and the improper procurement of commercial benefits. The existing definition of conflict of interest, which includes “helping any outside entities or organizations in any...dealings with the committee,”¹² could be misconstrued as limiting the ability of committee members to help their respective organizations participate in the planning process.

Once the language has been tightened, there should be a ‘zero tolerance’ protocol for addressing conflicts of interest. The regulations should require that *all* potential conflicts of interest be reported to the chair and to the rest of the committee. If it is discovered that a committee member or chair has been engaging in unreported activities that are in conflict of interest, that individual should automatically be removed from the source protection committee.

¹¹ R. Lindgren, “Safeguarding Ontario’s Drinking Water Sources: Essential Elements of Source Protection Legislation” (Canadian Environmental Law Association, August 2004) at recommendation #11.

¹² Discussion Paper, *supra* note 9 at 19.

Recommendation #13: All potential conflicts of interest should be reported to the chair and to the committee at the outset, and any member who engages in activities that are in conflict of interest should be removed from the committee.

Quorum

In response to the question posed on page 20 of the discussion paper, we recommend that attendance at meetings via teleconference should be allowed in extenuating circumstances.

Transparency and Public Input

The section on transparency is inadequate and fails to address public accessibility of the information under review. One of the most fundamental prerequisites for an effective source protection regime is thorough public participation. People will only become engaged if they feel that their input is being heard, and if they are able to control the extent of their participation. Towards this end, members of the public should have a range of involvement opportunities available to them, including reading information, providing comments, observing meetings, and sitting on committees or working groups. As noted in the *Statement of Expectations*, members of the public should have opportunities to participate at both the planning and implementation stages.

All committees should be subject to stringent transparency requirements. We support the proposal that committee meetings should be conducted in public, except in rare circumstances when confidential details are being discussed. In order to facilitate public attendance, the committee should post not only a calendar of its meetings, but also an agenda of what matters it expects to address during the course of each meeting.

The committee should circulate the minutes of all meetings, draft versions of working documents (with qualifications included, as appropriate), and peer reviews of any scientific studies relied upon. The minutes should include records of any public representations; the decision of whether or not to include these records in the minutes should not be left to the discretion of the chair. Draft and final versions of the working groups' submissions should also be made publicly available. Plain language explanations of the more technical matters should be provided at key junctures.

Further, the committee should organize periodic, interactive focus groups, workshops, open houses, and/or other public input forums. A web-based portal should be created where the public can systematically submit comments on the documents being reviewed. These measures will allow the public to provide feedback before critical decisions are made or impasses are reached, and allow the community to gain a sense of ownership over the source protection initiative.

Recommendation #14: The committee should post the minutes of all meetings, including records of any public representations. Both the committee and the working groups should circulate draft versions of working documents (with qualifications included, as appropriate) and the peer reviews of scientific studies.

Recommendation #15: A web-based portal should be created where the public can submit comments on the documents under review.

In-camera / Privacy considerations

Where a person requests that a matter be dealt with by the committee in camera, and the matter is not subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*, the person should be required to justify his or her claim of confidentiality. In such circumstances, a consensus among committee members should be sought in order to grant the request for confidentiality and exclude the public from deliberations on that matter.

Recommendation #16: Any person requesting that the committee maintain confidentiality should be required to provide valid justification for his or her request.

Removal of Members

As noted above, a committee member or chair should be automatically removed from the committee if he or she is discovered to be engaging in activities which are in conflict of interest. Additionally, if a sector no longer feels duly represented by its chosen member, there should be some way in which to re-evaluate that member's position on the committee.

Working Groups

Recognizing that not all interests or knowledgeable parties will be able to directly participate on the source protection committees, it will be necessary to develop working groups around specific sectors and issues. It is agreed that source protection committees should have a certain degree of flexibility when deciding upon the mandate, number, type, and composition of the working groups. We also support the proposition that the government should provide guidance on the circumstances in which it is appropriate to establish working groups. For example, source protection committees should be encouraged to establish working groups which encompass the interests of the entire geographic region, as well as both rural and urban interests.

However, other aspects of the working groups' operations should be mandatory, as set out in the regulations. For instance, the terms of reference should be required to include a section on "Working Group Rules of Operation", and a minimum of one working group per region should be established to further engage the public at large. Where technical experts working groups are convened to assist in the assessment work, government should require a particular level of expertise from the scientists, land use planners, engineers, academics, and other expert members. Finally, the working groups should be subject to the same operational rules as the source protection committees with respect to transparency, ethical behaviour, and avoidance of conflicts of interest.

Adequate and appropriate funding is critical to the success of the working groups. Specific funds should be earmarked for the working groups, so that these lower tiers of involvement are neither overlooked nor hindered.

Recommendation #17: Working groups should be established to assist and inform the source protection committees. The province should provide guidance on their establishment and set minimum regulatory requirements for their operations.

Recommendation #18: Government should require a particular level of expertise from experts who assist in the completion of the technical assessment work.

Financial Compensation

The discussion paper contemplates a three-tiered system of compensation for the source protection committee's chair and support person, and a *per annum* salary for those committee members who are not otherwise compensated for their participation. With respect to the three-tiered system, we feel it is unrealistic to expect that mid-sized regions and/or areas would involve half the workload as large regions, and small areas would involve only one-quarter the workload as large regions. It is therefore likely that mid- and small-sized regions / areas will require more administrative support than is currently envisaged, especially given the added workload which will result from assisting the working groups.

Additionally, while we support the proposal that some monetary amount be provided to those committee members who are not otherwise compensated, we recommend that this amount be changed from a *per annum* to a *per diem* rate. By allocating such funds on a *per annum* basis, committee members may attempt to minimize their time expenditures throughout the year so as to avoid exceeding their allotted pay or working at an unduly low hourly rate. Conversely, if a *per diem* rate is established which also recognizes the need for preparation time, committee members should feel comfortable dedicating the requisite amount of time to the task at hand. The availability of compensation for these committee members should continue after the completion of the source protection plans, so that the committee can play an ongoing role in amending documents and in the implementation process.

Although not specifically mentioned in this section, funds should also be earmarked for the working group members and for the training of source protection committee members.

Finally, we recommend that additional funding be allocated to public education and participation events. 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 one of the most effective way to build public support is to provide education and participation opportunities.

Recommendation #19: Adequate funds should be provided for the training of, and ongoing work by, committee members, the contributions by working groups, and the public participation and education process as a whole.

Committee Role in Preparing Terms of Reference, Assessment Report and Source Protection Plans

While recognizing that the Ministry's comments in sections 8-10 of the discussion paper are preliminary in nature, we reserve the right to expand upon or vary our response once further information is known.

First, with respect to the section entitled "consultation / communications", we feel it is important that the source protection committee have access to its own communications budget and staff, as opposed to having all communications routed through the staff of the municipalities or source protection authorities. Due to the multi-stakeholder nature of the source protection committee, it may be seen as inappropriate for public messaging to be handled externally by a single stakeholder. From the public's perspective, it will also be important to demonstrate that the

source protection committee is truly representing a range of interests, as opposed to simply “rubber-stamping” the decisions made by municipalities and source protection authorities.

Second, we are pleased to note that consultations are proposed to take place *during the development* of the terms of reference, assessment report and source protection plan, as opposed to after their completion. Hopefully, this will allow the consultations to serve as true collaboration opportunities, rather than merely information-sharing events. The regulations governing the planning documents should include requirements for public consultation. Additionally, the public should have a mechanism by which additional consultations can be triggered, such as a public petition. Otherwise, there may be financial disincentives to the committee continuing its consultations beyond the minimum requirements set out in the regulations.

The discussion paper specifies that “[t]he consultation expenses would be a component of the planning process budget administered by the source protection authority.”¹³ To reiterate the discussion above, funding should be specifically allocated to public education and participation events, including consultations. If *substantial* funds are not earmarked by the provincial government from the outset, there is a risk that these elements will be undervalued or under-budgeted at the local level. The CWA delegates many additional responsibilities to the local level, and it is unclear at this time to what extent the province will be funding those local efforts. Accordingly, source protection authorities will be struggling to handle the added, and at times competing, financial demands being placed upon them. The province should ensure that a secure and adequate source of funding is available for all consultations and other public outreach initiatives.

Third, the content of the proposed consultations should be broadened in a couple of respects. The assessment report consultations should include a module dedicated to the Municipal Long-Term Water Supply Strategy. The Strategy is integral to the planning process, as it relates to the selection and protection of future sources of drinking water, land use planning and growth implications, conservation goals, and integration of international commitments. Furthermore, the source protection plan consultations should include a module on policies governing incentive programs and education and outreach programs. The purpose of these policies is to assist the public in fully participating in source protection. As such, the public is in the best position to inform the committee of the public’s own needs and priorities.

Fourth, we are troubled by the relatively passive role which has been described for the source protection committee in preparing the planning documents. For instance, the source protection committee is described as:

- “reviewing” the various components of the assessment report,
- “signing-off” on the contents of the assessment report,
- “coordinating” policies “developed by municipalities” for the source protection plan, and
- “coordinating” the development of the list of activities requiring a risk management plan.¹⁴

This phrasing is inconsistent with the emphasis used in the CWA itself, where it is the role of the source protection committee to “prepare” the terms of reference,¹⁵ assessment report,¹⁶ and

¹³ Discussion Paper, *supra* note 9 at 27.

¹⁴ *Ibid.* at 33-34.

¹⁵ CWA, *supra* note 4 at s. 8.

¹⁶ *Ibid.* at s. 15.

source protection plan.¹⁷ The source protection authority, by contrast, shall “assist” the source protection committee and provide scientific, technical, and administrative support.¹⁸ As the Ministry prepares its next series of postings on the Environmental Registry, care should be taken to ensure that the role of the source protection committee is not minimized relative to that of the municipalities and source protection authorities. As noted above, the entire premise of multi-stakeholder collaboration would be undermined if the committee’s role was reduced to a “rubber-stamping” function.

Recommendation #20: Each source protection committee should have access to its own communications budget and staff, as opposed to having all messaging routed through the municipalities or source protection authorities.

Recommendation #21: The public should have a mechanism by which additional consultations can be triggered.

Recommendation #22: The assessment report consultations should include a module on the Municipal Long-Term Water Supply Strategy, and the source protection plan consultations should include a module on policies governing incentive, education, and outreach programs.

Conclusions and Recommendations

The CWA is a significant piece of legislation which provides long-awaited protections for watersheds and watershed communities in this province. In the foregoing analysis, we comment on several of the critical matters which are left to the discretionary regulation-making powers of the Minister and Lieutenant Governor in Council. Summarized below are our recommendations for how these matters should be addressed. In drafting the regulations, government should bear in mind two overarching goals: first, to provide source water protections province-wide; and second, to create a truly transparent, representative, and interactive public planning and implementation process.

In closing, CELA supports the source water protection initiative and applauds the government for seeking public feedback on these important matters. We look forward to providing further comments on the development, implementation, and funding of source protection in Ontario.

Recommendation #1: Regulations passed under the CWA should provide for the mandatory assessment of risks and mandatory reduction of significant drinking water threats in vulnerable areas across the province.

Recommendation #2: Source protection areas should be created or expanded into parts of Ontario that are not currently covered, so that additional water users can receive the full range of protections offered by the legislation.

Recommendation #3: Where the Minister enters into an agreement with a municipality pursuant to section 26, the agreement should provide for an equivalent degree of public involvement as is required in those areas covered by conservation authorities.

¹⁷ *Ibid.* at s. 22.

¹⁸ *Ibid.* at s. 7(5).

Recommendation #4: There should be a process for exceeding the maximum number of committee members in appropriate circumstances.

Recommendation #5: There should be an explicit regulatory requirement that all source protection committees include members who represent environmental interests.

Recommendation #6: Groups representing environmental interests should be treated as a distinct sector from the general public and other NGOs, and their membership on the committees should be provided for accordingly.

Recommendation #7: The member selection mechanism should ensure that groups representing environmental interests are accorded an equal role on the committees, in order to facilitate their meaningful contribution relative to the other sectors.

Recommendation #8: The names of all candidates should be made publicly available prior to the final selection, and a comment period should be provided.

Recommendation #9: The requirement that each candidate be a resident and/or employed in the source protection region should be expanded to include those who have a “demonstrated interest or historical involvement” in the region.

Recommendation #10: The province should provide basic training to all committee members, rather than requiring them to possess formal qualifications at the outset.

Recommendation #11: All committee members should be required to have a solid understanding of the underlying goals of source water protection, the historical backdrop to the legislation, the consequences of poor decision-making, and the basic concepts of environmental protection.

Recommendation #12: One or more standing committees should be established at the provincial level to advise the source protection committees on the handling of emerging threats, widespread cross-boundary issues, best practices, and Ontario-wide concerns.

Recommendation #13: All potential conflicts of interest should be reported to the chair and to the committee at the outset, and any member who engages in activities that are in conflict of interest should be removed from the committee.

Recommendation #14: The committee should post the minutes of all meetings, including records of any public representations. Both the committee and the working groups should circulate draft versions of working documents (with qualifications included, as appropriate) and the peer reviews of scientific studies.

Recommendation #15: A web-based portal should be created where the public can submit comments on the documents under review.

Recommendation #16: Any person requesting that the committee maintain confidentiality should be required to provide valid justification for his or her request.

Recommendation #17: Working groups should be established to assist and inform the source protection committees. The province should provide guidance on their establishment and set minimum regulatory requirements for their operations.

Recommendation #18: Government should require a particular level of expertise from experts who assist in the completion of the technical assessment work.

Recommendation #19: Adequate funds should be provided for the training of, and ongoing work by, committee members, the contributions by working groups, and the public participation and education process as a whole.

Recommendation #20: Each source protection committee should have access to its own communications budget and staff, as opposed to having all messaging routed through the municipalities or source protection authorities.

Recommendation #21: The public should have a mechanism by which additional consultations can be triggered.

Recommendation #22: The assessment report consultations should include a module on the Municipal Long-Term Water Supply Strategy, and the source protection plan consultations should include a module on policies governing incentive, education, and outreach programs.