



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

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BY EMAIL

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Dear Ms Anderson, Mr. Harth, and Ms. Salamo:

RE: EBR Registry Number 010-3353: Proposed new regulations for Small Drinking Water Systems under the *Health Protection and Promotion Act*

EBR Registry Number 010-3218: Consequential amendments to regulations made under the *Safe Drinking Water Act, 2002* to effect the transfer of regulatory authority for small drinking water systems as defined in the *Health Protection and Promotion Act* to the Ministry of Health and Long-Term Care

EBR Registry Number 010-3193: Proposed Environmental Health Protocols to Accompany Draft Ontario Public Health Standards

The Canadian Environmental Law Association (CELA) is a non-profit, public interest group established in 1970 to use and improve laws to protect the environment, conserve natural resources, and safeguard public health. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental protection and resource management matters.

Since its inception, CELA has advocated the timely development of effective laws, regulations and policies to protect water resources within Ontario and across Canada. Among other things, CELA represented the Concerned Walkerton Citizens at the Walkerton Inquiry, and was actively involved in the development of the *Safe Drinking Water Act, 2002* ("SDWA"), the *Clean Water Act, 2006* ("CWA"), and regulations, policies and guidelines thereunder.

Because of the interrelated nature of the above-noted EBR postings, CELA is jointly responding to all three proposals within this submission. While CELA is generally supportive of the overall direction of the proposals, there are nevertheless several comments that we wish to make in relation to these proposals, as described below.

Proposed Transfer of Responsibility: Small Drinking Water Systems

Subject to the comments below, CELA generally supports the proposal to transfer certain small drinking water systems to regulatory oversight by local health units (rather than the Ministry of the Environment ("MOE")), as had been recommended by the Ontario Drinking Water Advisory Council in February 2005.

In April 2005, CELA filed submissions with the MOE advising that if this new approach was to be pursued, then it would be necessary to have an interim regulation addressing testing and other requirements for small drinking water systems. CELA noted in its 2005 submission that the status quo that prevailed at that time was not sufficiently protective of public health and safety. In June 2005, O.Reg. 252/05 was passed under the SDWA to maintain some – but not all – of the operational requirements imposed upon certain categories of small drinking water systems.

Under O.Reg.252/05, these smaller systems were not required to meet all of the standards under O.Reg.170/03 which were otherwise applicable to regulated drinking water systems across the province, such as those serving municipalities and designated facilities. Small drinking water systems have now been covered by O.Reg.252/05 for approximately three years. However, in light of recent legislative developments (i.e. enactment of the *Health System Improvements Act, 2007*) and the proposed regulations under the *Health Protection and Promotion Act* ("HPPA"), CELA concurs that it is now time to repeal O.Reg.252/05 to effect the transfer of responsibility from MOE to the Ministry of Health and Long-Term Care ("MOHLTC") in relation to small drinking water systems.

However, since many small drinking water systems will not have the same “multiple barriers” to ensure health protection that are enjoyed by municipal drinking water systems, the importance of the new oversight function under the auspices of the MOHLTC cannot be overstated. This is particularly true since some small drinking water systems may not be directly included within source protection planning efforts under the CWA, unless municipalities opt to “elevate” such systems in accordance with the eligibility requirements established under the CWA. Therefore, as a practical reality, the only likely safeguard for countless consumers of drinking water from small systems will be timely and effective activities by local health staff under the new HPPA regulations (see below).

In general, CELA agrees that it is appropriate for regulatory oversight of small systems to be carried out by properly trained staff employed by local health units. We believe that health units are well-positioned to inspect and regulate such systems, particularly in light of health units’ lengthy and relevant experience in diverse health-related matters such as food premises, septic systems, and other facilities. Therefore, CELA is reasonably confident that the proposed transfer of responsibility to local health units will help assure a high degree of public safety where drinking water is being consumed from small systems.

In addition, health units currently have other important functions with respect to safe drinking water within Ontario communities. For example, the medical officer of health is the responsible authority for determining the potability of drinking water and for issuing boil-water advisories or drinking water advisories where necessary. Similarly, in many watersheds, public health officials are participating in the source water protection planning process under the CWA. In particular, public health officials are operating in *ex officio* or advisory capacities, and will be helping to review information concerning drinking water threats within the source protection area or region. In our view, these kinds of current responsibilities and activities are complimentary to the health units’ new task of inspecting and regulating small drinking water systems.

In making this comment, CELA is mindful that adding another layer of responsibility to health units has resource implications and may pose capacity questions at the local level. For example, there is concern that some health units, which already carry out a considerable number of health-related tasks, may find it challenging to undertake mandatory (or discretionary) septic re-inspections on the thousands of septic systems in their respective jurisdictions. Thus, the addition of new obligations regarding small drinking water systems could pose operational difficulties or stretch institutional resources within health units.

Accordingly, CELA submits that it is important to ensure that health units are adequately staffed, sufficiently trained, and properly resourced in order to carry out their important duties and obligations, including overseeing small drinking water systems under the HPPA.

CELA supports the proposed HPPA “transition regulation” which ensures the continued application of current requirements under O.Reg.252/05 to these small systems until they have received an initial assessment and a directive by the medical officer of health or

public health inspector under the HPPA “permanent regulation.” As noted above, it is important to ensure that users of these systems receive interim protection until the new regulatory regime is fully in place.

It is anticipated that the directives issued to the small systems under the new “permanent regulation” will be responsive to issues and threats that may be present for that system. In our view, creating a credible, site-specific assessment process, and issuing effective site-specific directives, constitutes an appropriate approach for small drinking water systems.

CELA concurs that the MOE should retain licencing and regulatory authority over laboratories that carry out drinking water testing services for small systems regulated under the HPPA, as the MOE does in relation to laboratories performing testing services for municipal systems and designated facilities. The expertise and quality assurance of laboratory services is an essential component of our drinking water safety system in Ontario, and these small systems must benefit from the same rigorous standards.

CELA also concurs that the MOE should retain regulatory authority over drinking water system operator certificates, regardless of whether systems are operated pursuant to regulations under the SDWA or HPPA. Again, the training and certification of operators is an essential component of assuring safe drinking water, and there is no tangible benefit to be gained from dividing regulatory responsibility over operators among different ministries.

In addition, the MOE has proposed various “housekeeping” changes which are intended to ensure that certain aspects of the SDWA will continue to apply in relation to small systems. Such aspects include the annual reports of the Chief Drinking Water Inspector and Minister; laboratory reporting of adverse test results; laboratory accreditation, licencing and testing (see above); emergency response; and the general prohibition against contaminating or impairing drinking water systems. CELA supports these consequential amendments which are intended to keep these important SDWA components applicable to small drinking systems.

Finally, CELA submits that both the MOE and MOHLTC should undertake appropriate public outreach and community education in order to explain the proposed transfer of responsibility as well as the key requirements of the “transitional” and “permanent” regulations under the HPPA. In particular, CELA submits that it would be highly beneficial for both Ministries to prepare and widely distribute appropriate training manuals or similar materials for the owners and operators of small drinking water systems regulated under the HPPA. The provision of technical advice or assistance from provincial officials to owners and operators would also go a long way in ensuring that these small systems are constructed and operated in a safe and secure manner.

Drinking Water Protocol: Ontario Public Health Standards

CELA is generally supportive of the Drinking Water Protocol which has been proposed to accompany the Ontario Public Health Standards, subject to two comments below.

First, it appears to us that the efficacy of this Protocol is heavily dependent upon the Risk Categorization Tool (“RCAT”) that health units are to utilize when conducting assessments or issuing directives in relation to small drinking water systems (page 3 of Protocol). However, the most current version of the RCAT does not appear to have been appended to the Drinking Water Protocol. This omission, of course, constrains CELA’s ability to review and comment upon the nature, scope and requirements of the RCAT. At a minimum, the RCAT must be a robust, reliable and replicable tool for identifying, evaluating and mitigating drinking water threats and issues. Accordingly, we would hereby request a briefing by MOHLTC staff on the current content and intended use of the RCAT at the local level in relation to small drinking water systems.

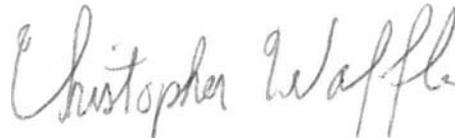
Second, the Drinking Water Protocol only imposes a vague duty upon public health inspectors to issue appropriate directives (or take other enforcement action) in order to prevent or remedy drinking water threats posed by small drinking water systems. In CELA’s view, it would be helpful for the Protocol to include a brief description of the various items within the “tool kit” available to public health inspectors (i.e. types of water treatment that may be ordered, types of systems in which such orders may be imposed, etc.). Again, CELA would hereby request a briefing by MOHLTC staff to review the mandatory tools that may be available to public health inspectors (or medical officers of health) in relation to small drinking water systems.

In closing, CELA appreciates this opportunity for providing comments on these EBR Registry postings. Please contact the undersigned if you have any questions or comments about this submission.

Yours sincerely,



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