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February 19, 2010

The Hon. John Gerretsen  
Minister of the Environment  
Ferguson Block  
11th Floor  
77 Wellesley Street West  
Toronto ON M7A 2T5



Scugog Lake Stewards Inc.



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Dear Minister Gerretsen:

**RE: OVERCOMING OUTSTANDING CHALLENGES IN ONTARIO SOURCE  
WATER PROTECTION EFFORTS**

As you know, we are now in the second main phase of the source protection planning process in Ontario, undertaken under *Clean Water Act, 2006* ("CWA"). In particular, Source Protection Committees ("SPCs") across the province are currently assessing

potential threats to drinking water sources. At the same time, SPCs are undertaking public consultation on various matters arising from the forthcoming Assessment Reports.

While this important work is well underway, we are writing to you to advise that several important implementation challenges remain unresolved at the present time. These challenges include:

- (1) the Great Lakes as a source of drinking water have not been adequately included in the source protection planning process to date;
- (2) private drinking water systems are not being sufficiently covered by the CWA;
- (3) regulations and a legal framework to address potential threats to drinking water from federally managed lands, transportation corridors and facilities need to be developed; and,
- (4) provisions are needed to ensure the rapid and effective transitioning of newly-appointed members on to SPCs.

These four challenges, and recommendations about how these challenges can be overcome, are discussed below.

#### **(1) The Great Lakes as a Source of Drinking Water**

Given their great water volume, the population they support and the economic activities taking place adjacent to them, the Great Lakes present complicated water resource management issues. To address these issues within the Ontario source protection planning process, sections were included within the CWA that deal with the Great Lakes as a source of drinking water. Under section 83, the Minister can strike a Great Lakes advisory committee, or committees, to provide advice on the use of the Lakes as a source of drinking water; and under section 85 the Minister can set targets concerning the use of the Lakes as a source of drinking water.

To date, the province has established Great Lakes sub-committees, comprising SPC members, to address Lakes Ontario and Erie. This is an excellent start and we commend the province for making these initial moves, and we anticipate that the work of these sub-committees will be of benefit to Ontario's source protection efforts. However, in order to deal effectively with the complexity of Great Lakes issues, we feel strongly that a Great Lakes advisory committee that will look at the Lakes system in its entirety should be established. This committee should include SPC members, Great Lakes experts from academia, and representatives from the ENGO community, the Canadian federal government and possibly the federal government of the United States. We consider section 83 one of the most important elements of the CWA, as it is a rallying point around which other laws, treaties and regulations concerning the Great Lakes can be more effectively carried out. We therefore strongly suggest that as Minister, you consider forming such a committee as soon as possible.

## **(2) Private Drinking Water Systems and the CWA**

Although Ontario source protection efforts under the CWA are largely focused on municipal drinking water systems, Ontarians on private systems will also benefit in several ways. For example, Ontarians across the province may be eligible for private drinking water system project funding under the Ontario Drinking Water Stewardship Program. In addition, the province has supported Green Communities Canada's Well Aware project, which provides rural homeowners with information on protecting individual domestic wells and groundwater. This type of support must continue in order to help ensure that Ontario's aquifers and drinking water in rural areas are better protected.

Most important, groups of six or more households which are serviced by the same well or surface water intake, or a group of households serviced by six or more private wells that draw their water from the same aquifer, can (at least in theory) receive the same coverage as municipal systems under the CWA. However, the decision to "elevate" these non-municipal systems into the CWA process remains at the discretion of the MOE and municipalities. To date, aside from two First Nations systems, few if any non-municipal systems have been elevated into the CWA process.

As you know, the number of Ontarians upon private wells or intakes is not insignificant, and has been estimated to be between 1.5 and 2.5 million people. The degree to which these rural residents are not covered under the CWA is a consistent topic of discussion at Water Guardians Network ("WGN") workshops, meetings and on conference calls, and is a major issue among rural Ontarians who are following developments in Ontario's source protection planning process.

We therefore strongly recommend that the province develop criteria to identify and prioritize non-municipal systems warranting elevation under the CWA, based upon potential threats to drinking water quality and quantity. Alternatively, the province should encourage municipalities and/or SPCs to develop and apply such criteria. Coverage of such systems under the CWA will then allow the development of appropriate policies and mitigation measures to address threats to non-municipal systems.

## **(3) Ontario Source Protection and Areas/Facilities under Federal Jurisdiction**

There is an overdue need for clarity from the MOE on how potential threats to drinking water from federally managed lands, transportation corridors and facilities will be addressed under the CWA. It is our understanding that the MOE has been working on a legal opinion on this topic, but it has not been released to date to the SPCs for their consideration under the CWA. We acknowledge that such jurisdictional issues are complicated and require time to resolve; however, we encourage the province to work expeditiously with SPCs, stakeholders, and representatives of the federal government to address this matter. Such interjurisdictional collaboration will lead to more effective source protection and better water resource protection generally. We would suggest that the MOE's legal opinion should be completed and released as soon as possible, and

further suggest that regulatory guidance in this matter be provided in the form of amendments to Regulation 287/07 by the end of this year.

**(4) Transitioning New Members on to SPCs**

Since the creation of SPCs, a number of members representing various interests have stepped down from their positions for a variety of reasons. Not surprisingly, the farther we move in the source protection planning process, the more difficult it becomes for new SPC members to bring themselves up to speed on source protection developments: it is a matter of both the enormous quantity of reading material, and the often demanding technical nature of the material that members must review.

We recommend that the source protection programs branch enter into dialogues with SPC Chairs on this issue, in order to identify steps that could be taken to improve the transitioning process.

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Minister, your government and Ministry have done much to safeguard our province's drinking water, and there is still more work to be done. We therefore encourage you to act on these recommendations to help overcome the serious challenges to Ontario source protection identified in this letter.

Please feel free to contact the undersigned if you or your staff have further questions or comments about this letter.

Yours very truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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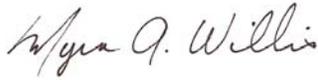
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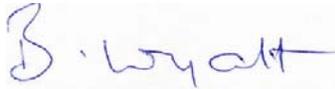
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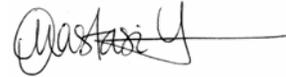
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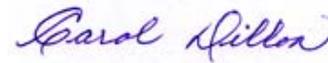
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