



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

ONTARIO SAFE DRINKING WATER ACT, 2002 & ITS REGULATIONS: FAQs

(Current as of November 25, 2011)

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1. How safe is Ontario's drinking water?

Drinking water in Ontario is drawn from surface water sources like lakes and rivers, and from groundwater sources like public or private wells. Municipalities provide over 80% of Ontario's drinking water, the remainder is provided by privately owned water systems, ranging from private wells to large scale residential water supply systems.

Although the quality of raw water may vary from one community to another, the ultimate safety of drinking water depends on a multi-barrier approach, which includes: water source protection from contamination; effective treatment; frequent and comprehensive testing; vigilant monitoring and reporting; the training and competence of waterworks operators; a secure distribution system; and a quick response when problems are found.

Communities in Ontario have learned not to be complacent about drinking water. In May 2000 the province's drinking water became the focus of intense concern when seven people from the town of Walkerton died, and more than 2,300 others became ill from drinking contaminated water. This tragedy underlined the importance of protecting public health against the risks of unsafe drinking water, and led to a public inquiry conducted by Mr. Justice Dennis O'Connor and the subsequent development of provincial legislation intended to ensure drinking water safety, such as the *Safe Drinking Water Act, 2002*, and its Regulations, the *Nutrient Management Act, 2002*, and the *Clean Water Act, 2006*.

Based on monitoring results collected by the Ontario Ministry of the Environment, it appears that municipally treated drinking water usually meets Ontario's drinking water quality standards. High levels of contaminants are rarely found. The 2011 annual Minister of the Environment's report on municipal drinking water in Ontario found that the ministry's stringent drinking water standards were met in:

- 99.88% of drinking water tests from municipal residential systems,
- 99.51% of drinking water tests from non-municipal year-round residential systems, such as mobile home parks, and
- 99.49% of drinking water tests from non-residential and seasonal residential systems serving designated facilities such as day nurseries, schools and health centers.

Not every community in Ontario, however, is free of drinking water problems. There continue to be communities in Ontario and across Canada that are subject to continuous boil water advisories; the Ministry of Health and Long Term care reported 473 active boil water advisories in Ontario during the month of October 2011. Some of those boil water advisories have been in effect for years. Drinking water standards for First Nations communities are still absent.

For information on the proposed *Safe Drinking Water for First Nations Act* (Bill S-11) tabled in the 40th Parliament, see the Federal Government's summary at:

www.parl.gc.ca/About/Parliament/LegislativeSummaries/bills_ls.asp?ls=s11&Parl=40&Ses=3&source=library_prb&Language=E.

For CELA's perspective on the proposed Bill S-11, click www.cela.ca/publications/bill-s-11-attempt-introduce-first-nations-drinking-water-bill.

2. What is Ontario's *Safe Drinking Water Act*?

The Ontario *Safe Drinking Water Act, 2002* (SDWA) and its regulations (see below) were enacted in response to certain recommendations made by Justice O'Connor in his Report of the Walkerton Inquiry, Part 2, Chapter five, including:

- **Recommendation 18** "In setting drinking water quality standards, the objective should be such that, if the

standards are met, a reasonable and informed person would feel safe drinking the water”

- **Recommendation 19:** “Standards setting should be based on a precautionary approach, particularly with respect to contaminants whose effects on human health are unknown.”
- **Recommendation 25** “In setting drinking water quality standards for Ontario, the Minister of the Environment should be advised by an Advisory Council on Standards.”
- **Recommendation 26** “The Advisory Council on Standards should have the authority to recommend that the provincial government adopt standards for contaminants that are not on the current federal–provincial agenda.”

For information on additional Inquiry recommendations that have been adopted through the Act and its Regulations, as of August 2007, click www.ontario.ca/drinkingwater/dw_el_prd_043553.pdf.

Before the passage of SDWA, drinking water was generally governed by the *Ontario Water Resources Act* as part of the province’s overall regime for protecting surface and groundwater. In the aftermath of the Walkerton tragedy, the Ontario government intensified its efforts to ensure drinking water safety under the "Operation Clean Water" program. Initially, the government introduced the transitional Drinking Water Protection Regulation (O. Reg. 459/00) that converted drinking water objectives into legally binding standards. This Regulation was revoked in June 2003 when the Act came into force.

The SDWA is one of four legislative changes recommended in the Report of the Walkerton Commission of Inquiry. While the SDWA is an important part of the overall protection framework, the Inquiry also recommended legislation to address source protection (e.g. *Clean Water Act, 2006*), agricultural issues (e.g. *Nutrient Management Act, 2002*), and financing water systems (e.g. *Water Opportunities and Water Conservation Act, 2010*).

In essence, the Act consolidates legislative and regulatory requirements regarding the treatment and distribution of drinking water in Ontario. The SDWA’s main features include:

- drinking-water quality standards,
- licensing for water-testing laboratories,
- approvals process for private water supply systems,
- duties on owners, operating authorities and laboratories to immediately report adverse water test,
- enforcement mechanisms, and
- an annual drinking-water report published by the Minister.

It also establishes the Advisory Council on Drinking-water Quality and Testing Standards, to consider issues and provide recommendations relating to standards for drinking-water quality and testing.

Regulations enacted under the SDWA include the:

- Ontario Drinking Water Quality Standards Regulation (O. Reg. 169/03),
- Drinking Water Systems Regulation (O. Reg. 170/03) as amended,
- Compliance & Enforcement (O. Reg. 242/05):
- Drinking Water Testing Services Regulation (O. Reg. 248/03),
- Certification of Drinking-water System Operators & Water Quality Analysts (O. Reg. 128/04),
- Schools, Private Schools & Day Nurseries (O. Reg. 243/07) and its lead standard amendment (O.Reg. 417/09),
- Financial Plans Regulation (O. Reg. 453.07), and the
- Licensing of Municipal Drinking Water Systems (O. Reg. 188/07).

3. What are the major features of the *Safe Drinking Water Act*?

The *Safe Drinking Water Act* (SDWA) has a number of important features designed to protect drinking water consumers:

- The Act creates, through the Ontario Drinking Water Quality Standards Regulation (O. Reg. 169/03), **legally-binding standards for contaminants in drinking water.**

These standards are intended to protect public health. There have been amendments made to this Regulation that have resulted in some of the standards being revised or eliminated. For example, the amended Regulation contains a more stringent standard for the chemical trichloroethylene and eliminates microbiological standards for fecal coliforms, background colony counts and heterotrophic plate counts.

- The Act creates, through the Drinking Water Systems Regulation (O. Reg. 170/03) **requirements for the sampling and testing of drinking water** and the **installation and operation of treatment equipment.**

O. Reg. 170/03 specifies the frequency of sampling and testing for each drinking water system category. The frequency of testing and parameters tested vary according to the category of the drinking water system, the size of the population served, and the source. For municipal residential drinking water systems, continuous monitoring equipment at the drinking water system is required for turbidity and chlorine residual.

O. Reg. 170/03 establishes specific requirements for the minimum levels of treatment that must be provided. It identifies the types of treatment processes and equipment that can be used to achieve the results that are necessary when drinking water is being provided to the public. For example, for municipal residential systems the owner of a drinking system that obtains water from a raw water supply that is surface water shall ensure the provision of water treatment equipment that is designed to be capable of chemically assisted filtration.

Several amendments have been made to O. Reg. 170/03 since its enactment to make the requirements of the Regulation more workable and affordable, as well as to increase the quality of the water supplied. For example, clarity has been added by providing definitions of terms such as weekly, bi-weekly, and monthly. Other amendments have also been made to reduce the risk of elevated lead levels in municipal residential and non-municipal year-round residential systems by testing tap water for lead at residential homes.

- The Act makes it **mandatory to use licensed and accredited laboratories** for drinking water testing through the Drinking Water Testing Services Regulation (O. Reg. 248/03).

The Safe Drinking Water Act generally requires laboratories that conduct drinking water tests to be licensed under the Act. The Safe Drinking Water Act and the Drinking Water Testing Services Regulation (O. Reg. 248/03) require any laboratory that performs drinking water testing to obtain a licence effective October 1, 2003. In addition, the Safe Drinking Water Act requires owners and operating authorities of drinking water systems regulated under the Drinking Water Systems Regulation (O. Reg. 170/03) to use a licensed laboratory for drinking water testing.

In order to obtain a licence, laboratories must be accredited for the tests they conduct. Licences may be issued with conditions, and the Director has the authority to amend the conditions or to revoke or suspend the licence if the laboratory is not in compliance with the requirements of the Act.

Drinking water system owners are also generally prohibited from using water testing services from out-of-province laboratories, unless the laboratories satisfy the eligibility criteria under the Act.

There are some limited circumstances where the Director may authorize the use of non-accredited laboratories, such as the existence of geographic constraints or if there is no accredited method for a particular test.

- The Act requires, in conjunction with the Drinking Water Systems Regulation (O. Reg. 170/03), **reporting of adverse test results** where contaminants in drinking water do not meet the drinking water quality standards:

The Act imposes a duty to report adverse test results to the Ministry of the Environment and to the local Medical Officer of Health. Both the operator and owner and the laboratory must comply with this reporting requirement.

These reports will have to be made in accordance with the requirements established by Ontario Regulation 170/03. This Regulation requires the report to be made in situations such as the violation of a chemical or radiological standard or the presence of an indicator of adverse water quality such as E. coli. The reports are to be made immediately -- either in person or by telephone -- and confirmed in writing within 24 hours.

Where adverse test results are reportable, the owner of the drinking water system must undertake the appropriate corrective action to address the particular drinking water problem.

- **All operators of municipal drinking water systems must be trained and certified** according to the Certification of Drinking Water System Operators and Water Quality Analysts Regulation (O. Reg. 128/04).

Drinking water system operators must hold a valid operator's certificate issued under the regulations. Certificates issued under the Certification of Drinking Water System Operators and Water Quality Analysts Regulation (O. Reg. 128/04) enacted in 2002, are deemed operator's certificates, replacing the old licensing system created by the Water Works and Sewage Works Regulation (O. Reg. 435/93) under the *Ontario Water Resources Act*.

Ontario Regulation 128/04 sets out the requirements for certification and training. "Grandfathered" operators were required to be recertified within 1 or 2 years, depending on their responsibilities in the system. Training is defined to include continuing education and on-the-job training. Operators will be recertified every 3 years if they successfully complete a specific number of hours of training. The more responsibility an operator has, the more training will be required.

- The Act establishes a **licensing regime for municipal drinking water systems** under its Licensing of Municipal Drinking Water Systems Regulation (O. Reg. 188/07).

Under the SDWA all owners of municipal drinking water systems must obtain a license from the Director of the Ministry of the Environment in order to operate their water systems.

The SDWA sets out requirements to obtain a license, including:

- a drinking water works permit that is required to establish or alter a drinking-water system,
- an operational plan documenting the quality management system the owner and operating authority must have in place,
- a financial plan containing financial projections,
- an accreditation of the operating authority confirming third-party verification that their quality management system conforms to Ontario's Drinking Water Quality Management Standard, and
- a permit to take water that provides the required provincial permissions to take water.

The Director of the Ministry of the Environment may refuse to issue a license or impose terms and conditions upon the license. The Director may also grant partial or complete relief from regulatory requirements regarding treatment, sampling, testing, or monitoring.

Under the Licensing of Municipal Drinking Water Systems Regulation (O. Reg. 188/07) owners of municipal residential drinking water systems are required to submit their operational plans and applications for a license and drinking water works permit on or before the dates prescribed by the Regulation. The dates for submission were phased over an 18 month period, that started on January 1, 2009 for large municipalities (greater than 100,000 people) such as Toronto, followed by medium municipalities (1,001 to 99,999 people) and then small municipalities (under 1,001 people).

In addition, all other regulated drinking water systems (including municipal non-residential systems serving community centers and sports complexes) are required to have a professional engineer certify that the system is in compliance with regulatory requirements.

- The Act, under its Financial Plans Regulation (O. Reg. 453/07), **requires financial plans from municipal drinking water systems** license applicants.

The Financial Plans Regulation (O. Reg. 453/07) under the SDWA was developed to satisfy the financial plans requirement for municipal drinking water licenses. It encourages water providers to plan for and recover their costs.

Under this regulation, all residential drinking water system owners applying for a drinking water license must have financial plans approved by the Municipal Council that satisfy the requirements prescribed in the Regulation. These requirements include a statement that the financial impacts of the drinking water system have been considered and the financial plans have an application for a period of at least six years.

- The Act gives broad **inspection powers to officers of the Ministry of the Environment**, and **creates a new position of Chief Inspector** who oversees inspections and enforcement.

Provincial officers may conduct inspections without a warrant or court order in order to determine compliance with the Act or regulations.

During inspections, provincial officers have a wide range of powers similar to provisions found in other Ontario environmental legislation such as the *Ontario Water Resources Act* and the *Environmental Protection Act*. Among other things, these include the authority to enter into or on any part of the natural environment, or any place where a drinking water system is located. They have the authority to take samples, conduct tests, require production of documents, take photographs and videotapes, stop and search vehicles and place locks or fences to secure places.

If a prescribed deficiency (that is, a violation that poses a drinking water health hazard) is found during an inspection, the provincial officer must conduct a follow-up inspection within a year.

The SDWA also requires the appointment of a Chief Inspector with responsibility for overseeing inspections and enforcement activities under the SDWA. The Inspector must submit annual reports on inspection and enforcement matters to the Legislature.

- The Act requires **specific inspection requirements** under its Compliance and Enforcement Regulation (O. Reg. 242/05).

The SDWA requires the passage of a "compliance regulation" that sets out specific inspection requirements such as the frequency of inspections of municipal drinking water systems and laboratories, the actions required and response time in the event of a deficiency, and the procedures to be followed for investigations and enforcement. This requirement has been met with the enactment of the Compliance and Enforcement Regulation (O.Reg.242/05).

- The Act imposes a statutory **standard of care upon managers of municipal drinking water systems** (not yet in force).

A proclamation has been issued naming January 1, 2013 as the day on which this provision of the SDWA comes into force.

The SDWA states that specified persons must:

- exercise the level of care, diligence and skill in respect of a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation; and
- act honestly, competently and with integrity, with a view to ensuring the protection and safety of the users of the municipal drinking water system.

This standard of care would apply to the owner of the municipal drinking water system, the person who oversees the accredited operating authority or who exercises decision-making authority over the system, or the officers and directors of the corporation that owns the system.

Failure to carry out this standard is defined as an offence under the SDWA, and individuals may be convicted of the offence regardless of whether the owner of the system is prosecuted or convicted.

4. Does the *Safe Drinking Water Act* ensure that drinking water is safe?

The *Safe Drinking Water Act* enhances the level of drinking water protection across the province by creating a clear and comprehensive framework for drinking water treatment and distribution. However, it is only one part of an overall source-to-tap drinking water framework. Justice O'Connor endorsed a multi-barrier approach as necessary to ensure safe drinking water. He identified source protection as a crucial first step and recommended that the province mandate watershed source protection plans. Source protection legislation is now in place with the enactment of the *Clean Water Act, 2006*.

5. When did the *Safe Drinking Water Act* come into effect?

The *Safe Drinking Water Act* (SDWA) has numerous sections that are being phased in, as the regulations to support them are prepared. Many provisions of the SDWA came into force on June 1, 2003. These sections include:

- Ministerial powers and duties (subsection 3(1) to (3)),
- Duties of owners and operating authorities (subsection 11(1) and (2)),
- Duty to report adverse test results (section 18),
- Prohibition against contaminating drinking water systems (section 20),
- Approvals for municipal drinking water systems (sections 31, 32, 34 to 39, 41, 45, 51)
- Regulation of non-municipal drinking water systems (sections 52, 53, 54 (1), (3) to (6), 55 to 61),
- Drinking water testing (sections 62 to 80),
- Inspections, compliance and enforcement (sections 81 to 120, 122 to 125),
- Appeals (sections 126 to 136)
- Offences (sections 137 to 155),
- Miscellaneous provisions and regulation-making (sections 156 to 170)

Provisions of the SDWA that came into force after June 1, 2003 as the regulations that support them were prepared include:

- Operator's certificates (section 12),
- Operational plans (sections 15 to 17),
- Accreditation of operating authorities (sections 13, 21 to 29),

- Municipal drinking water licenses (sections 44, 46-50)

Related regulations also came into force in 2003. These regulations are:

- Ontario Drinking Water Standards (O.Reg.169/03)
- Drinking Water Systems (O.Reg.170/03)
- Definitions of Words and Expressions Used in the Act (O.Reg.171/03)
- Definitions of “Deficiency” and “Municipal Drinking Water System” (O.Reg.172/03)
- Schools Private Schools and Day Nurseries (O.Reg.173/03) (revoked on June 7, 2007)
- Drinking Water Testing Services Regulation (O.Reg.248/03)

Related regulations that have come into force after 2003 are:

- Certification of Drinking Water System Operators and Water Quality Analysts (O.Reg.128/04)
- Compliance and Enforcement (O.Reg.242/05)
- Non-Residential and Non-Municipal Seasonal Residential Systems that do not Serve Designated Facilities (O. Reg. 252/05) (revoked on December 1, 2008)
- Licensing of Municipal Drinking Water Systems (O.Reg.188/07)
- Service of Documents (O.Reg.229/07)
- Schools, Private Schools and Day Nurseries (O.Reg.243/07)
- Financial Plans (O.Reg.453/07)

Several important sections of the SDWA have come into force since 2003. These include: the requirement for the Minister to prepare an annual report on drinking water (subsection 3(4)), the establishment of the Advisory Council on Drinking-Water Quality and Testing Standards (subsection 4(1)). However, the imposition of a statutory standard of care upon owners of municipal drinking water systems (subsection 19(1)) and administrative penalties (section 121) are still not yet in force.

6. What opportunities are there for public participation in the regulation of drinking water under the *Safe Drinking Water Act*?

The *Safe Drinking Water Act* (SDWA) is subject to Ontario's Environmental Bill of Rights, which creates opportunities for public participation in environmental decision-making. For example, notices of proposed drinking water regulations are posted on the Environmental Bill of Rights registry. Once they are posted, members of the public are invited within a time period of 30 days to send the Ministry of the Environment their comments on the strengths and weaknesses of the regulations and to suggest improvements. At some time after this 30 day period, the Ministry of the Environment will post a decision notice on the Registry.

For more information on how to exercise your rights under the Environmental Bill of Rights, click www.eco.on.ca/index.php/en_US/environmental-bill-of-rights/about-the-ebr.

New and expanded water treatment facilities must be planned in accordance with the Municipal Class Environmental Assessment under Ontario's *Environmental Assessment Act*. As part of the process of a class environmental assessment, the public must be given notice and comment opportunities regarding proposals to build or expand waterworks. These requirements for public notice and comment give the public another opportunity to participate in decisions about water supply and delivery in their communities.

The SDWA provides for the establishment of an Advisory Council on Drinking-Water Quality and Testing Standards (subsection 4(1)). The duties of this Council are to advise the Minister of the Environment on new standards for drinking water or the revision of already existing standards. Members of the public can bring the need

for the establishment or improvement of specific water quality standards to the attention of the Council. For more information on the Ontario Drinking Water Advisory Council (ODWAC), click www.odwac.gov.on.ca/.

7. What kind of information is available about drinking water in my community?

The *Safe Drinking Water Act* (SDWA) gives the public the right to detailed information about the quality of their drinking water. The SDWA also ensures that water suppliers make reports available to the public at their facilities.

The Drinking Water Systems Regulation (O.Reg.170/03) under the Act specifies that the following information must be available for inspection:

- Records of operational checks (sampling data);
- Test results with respect to testing for microbiological and chemical parameters;
- Any approval and order that applies to the system and is still in effect, if the approval or order was issued after January 1, 2001;
- Every annual report; and
- A copy of the Regulation.

The owner of a drinking water system must also prepare an annual report, which must contain:

- A brief description of the drinking water system;
- Summaries of any reports or notices submitted to the Director during the year;
- Summaries of operational checks, microbiological, and chemical tests;
- A description of any corrective actions taken in response to adverse water quality indicators; and
- A description of any major expenses incurred during the year to install, repair or replace equipment.

8. How can I get access to this information?

The information must be accessible to any member of the public during business hours, without charge, at the office of the owner. If the owner's office is not at a reasonably convenient location, then the report must be available at another location that is convenient. If the system serves a municipality, the information must be available at the office of the municipality, whether or not the municipality owns the system.

The annual reports must be given without charge to anyone who requests a copy, and every time a report is prepared, the owner of the drinking water system must ensure that effective steps are taken to advise users of the system, and of each designated facility served by the system, that copies of the report are available without charge, and how to obtain copies.

If a drinking water system serves more than 10,000 people, the owner must also post the annual reports on the internet; visit the Association of Municipalities of Ontario www.amo.on.ca/YLG/ylg/ontario.html for a list of Ontario municipal websites.

In addition, the Minister of the Environment is required under the SDWA to table annual reports in the Ontario Legislature on the state of Ontario's drinking water. The Ministerial reports must include the following information:

- The status and development of drinking water quality standards;
- New and emerging information on pathogens, chemicals and other potential causes of drinking water health hazards;
- A summary of inspections and audits for drinking water systems and testing;

- A summary of enforcement activities; and
- A review of raw water quality and source protection initiatives across Ontario.

9. Are private wells in Ontario subject to the *Safe Drinking Water Act*?

Private well owners are not required to meet the regulatory standards under the *Safe Drinking Water Act*. Residents using private wells are responsible for taking samples of their own water supply, maintaining their well, and any treatment they choose to utilize. Well owners should have their water treated 1-2 times per year, preferably after a rain event. Ontario's Ministry of Health currently offers free bacteriological testing of drinking water samples taken by well owners.

For more information on water testing, contact your local Public Health Unit. For a complete listing of all Public Health Units in Ontario, click www.health.gov.on.ca/english/public/contact/phu/phuloc_mn.html.

The construction and decommissioning of private wells is governed by Ontario Regulation 903 under the Ontario Water Resources Act, as amended by O.Reg.128/03. Well owners are legally responsible for wells on their property. For further guidance, contact the Ministry of the Environment office in your region or see the Ministry's www.ene.gov.on.ca/envision/water/wells.htm.

For further information and assistance on how to properly maintain your private well, visit the Well Aware programme's website at www.wellaware.ca/.

10. How is the *Safe Drinking Water Act* enforced?

The Ministry of the Environment is responsible for the enforcement of the *Safe Drinking Water Act* (SDWA). If a provincial officer believes that a person has contravened the SDWA, the officer may issue an order to remedy non-compliance. Orders may contain directions that require measures such as repairing a drinking water system, providing an alternative supply of water, treatment, testing, sampling or reporting, preparing plans or retaining consultants. There may be a requirement to post a notice of the order.

Similar provisions apply if a provincial officer considers that the purposes of the SDWA require an order against the owner, manager or controller of a municipal or regulated non-municipal drinking water system. "System" orders may also require anything that poses a drinking water health hazard to be disconnected or repaired.

In the event of an imminent drinking water health hazard, the Director and the Minister both have the power to issue orders requiring the elimination or amelioration of the hazard. Any Ministerial order will prevail over orders issued by the Director or a provincial officer.

In certain cases such as continuing non-compliance with an order or abandonment of drinking water systems, the Director may issue a notice of emergency response that can be used to direct the Ontario Clean Water Agency (OCWA) to step in to remedy matters.

Director's orders may also be used for other purposes such as to decommission or replace all or part of drinking water systems, to appoint interim operating authorities, to require OCWA to prepare an operational plan for a drinking water system, and to require municipalities to provide service from a municipal drinking water system to persons served by deficient drinking water systems.

In addition to issuing administrative orders, the Ministry may bring prosecutions or commence civil actions against those in contravention of the SDWA. The SDWA's administrative penalties provision has yet to come into force (see Answer # 12).

Additionally to these compliance and enforcement provisions contained in the SDWA, the Ministry is required to meet its obligations under the Compliance and Enforcement Regulation (O.Reg.242/05), which came into force in June 2005. This Regulation includes the following elements:

- All municipal residential drinking water systems shall be fully inspected annually;
- At least one out of every three inspections at such systems shall be unannounced;
- Inspection reports shall be sent to the system, owner/operator, medical officer of health, conservation authority and other parties within 45 days after the inspection;
- "Mandatory action" (that is, provincial officers' orders, director's orders, or referral to the Investigations and Enforcement Branch) must be undertaken by the Ministry of the Environment within 14 days if the inspector finds a deficiency. If the deficiency poses an immediate drinking water health hazard, then the Ministry must immediately undertake "mandatory action";
- Laboratories that provide drinking water testing services shall be inspected at least twice per year (including at least one unannounced inspection).

11. What opportunities are there for public involvement in the enforcement of the *Safe Drinking Water Act*?

The Compliance and Enforcement Regulation (see Answer #10) includes a "public enforcement right". This right closely resembles the Application for Investigation provisions under Part V of the Environmental Bill of Rights, and it essentially permits citizens of Ontario to apply to the Ministry's Investigations and Enforcement Branch for the investigation of alleged contraventions under the *Safe Drinking Water Act* (or Regulations).

In addition, where a person has reasonable and probable grounds to believe that an offence has been committed under the *Safe Drinking Water Act* (or Regulations), then that person may commence a private prosecution against the alleged offender in accordance with the *Provincial Offences Act*.

12. What are the penalties under the *Safe Drinking Water Act*?

The Director may impose administrative penalties with respect to contraventions under the *Safe Drinking Water Act* (SDWA), with a maximum of \$10,000 for each day that the contravention occurs (although the administrative penalty provisions of the Act are not yet in force).

For individuals convicted under the SDWA, the fines range between \$20,000 and \$7 million, depending on the offence. Convicted individuals may also be imprisoned for certain offences. For corporations convicted under the SDWA, the maximum fines payable range from \$100,000 to \$10 million, depending on the offence. The court may also impose on both individuals and corporations other orders and monetary penalties such as profit stripping, restitution orders, or orders to prevent damage.

13. What are Justice O'Connor's recommendations in his Report of the Walkerton Inquiry?

The report of the Walkerton Commission of Inquiry, parts 1 and 2, contains information on Justice O'Connor's recommendations regarding the need for a Safe Drinking Water Act. You can access the report at:

www.attorneygeneral.jus.gov.on.ca/english/about/pubs/walkerton/.

14. Who has the responsibility for regulating Small Drinking Water Systems in Ontario?

A small drinking water system is a system where drinking water is made available to the public that does not come from a municipal drinking water system. These small drinking water systems serve restaurants, seasonal trailer parks, seasonal campgrounds, community centres, libraries, motels, resorts and places of worship.

Effective December 1, 2008, responsibility for regulating Ontario's small drinking water systems was transferred from the Ministry of the Environment to the Ministry of Health and Long-Term Care. Until November 30, 2008, small drinking water systems were regulated under the Non-Residential and Non-Municipal Seasonal Residential Systems that do not Serve Designated Facilities Regulation (O.Reg.252/05) under the *Safe Drinking Water Act*. This Regulation was revoked after responsibility for small drinking water systems was transferred between Ministries.

Oversight of these small systems is now set out mainly in the *Health Protection and Promotion Act* and regulations such as the Transitional – Small Drinking Water Systems Regulation (O.Reg.318/08) and the Small Drinking Water Systems Regulation (O.Reg.319/08).

These Regulations contain provisions that stipulate the responsibilities of the owner and operator, what incidents must be reported, how water must be treated, how long records are to be retained, what information must be made available to the public, what operational checks must be made, what samples and tests must be completed, and what corrective actions must be taken for small drinking water systems.

For more information on small drinking water systems, see the Ministry of Health and Long Term Care's website at www.health.gov.on.ca/english/public/program/pubhealth/safewater/safewater_mn.html.

15. What actions can be taken if there is an adverse water quality accident?

The Ministry of Health and Long Term Care defines an adverse water quality accident as occurring when a water sample test result exceeds the Ontario Drinking Water Quality Standards or an operator observes that the system may not be providing safe water.

As part of the multi-barrier system that protects our drinking water, the *Safe Drinking Water Act* requires that immediate action be taken to address an adverse water quality accident, which can consist of the local Officer of Health issuing a Boil Water Advisory or a Drinking Water Advisory. The Ontario Ministry of Health and Long-Term Care has the responsibility for developing the protocols for Boil Water Advisories and Drinking Water Advisories

A Boil Water Advisory is issued when there is an unacceptable microbiological quality in the treated water. A Drinking Water Advisory is issued when there is reason to believe that a drinking water supply has an existing condition that may result in a risk to consumers that cannot be corrected by boiling the water or by disinfection. This

condition may arise when a chemical standard is exceeded, a radiological standard is exceeded, or another condition occurs that is judged to be hazardous that cannot be rectified by boiling water.

16. What are the Canadian Environmental Law Association's views on Ontario's *Safe Drinking Water Act*?

CELA supports the *Safe Drinking Water Act* (SDWA) and its Regulations. In order to be effective, however, the SDWA must be properly enforced, adequately funded, and work in conjunction with source water protection legislation. For detailed information on CELA's views on the Act and its Regulations, see CELA's collection of publications on the Safe Drinking Water Act at www.cela.ca/collections/water/safe-drinking-water-act.

17. How can I get more information about the Ontario *Safe Drinking Water Act*?

The *Safe Drinking Water Act, 2002* and Regulations are available at www.e-laws.gov.on.ca/

Information about the *Safe Drinking Water Act* and other drinking water concerns is available in the www.ene.gov.on.ca/en/water/index.php of the website of the Ontario Ministry of the Environment.

Changes made to the *Ontario Safe Drinking Water Act* and regulations are explained in more detail in the Chief Drinking Water Inspector's www.ontario.ca/ONT/portal61/drinkingwater/General?docId=stel01_046820&lang=en.

Both the *Safe Drinking Water Act* and the Report of the Walkerton Commission of Inquiry are also available in print form from the Ontario Government <http://pubont.stores.gov.on.ca/pool/>.

The Ministry of the Environment's Drinking Water Surveillance Program provides information about reporting adverse drinking water quality incidents and information, see the Ministry's www.ene.gov.on.ca/environment/en/monitoring_and_reporting/drinking_water_surveillance_program/index.htm.

18. How can I find out more about drinking water legislation in other jurisdictions?

- For information on drinking water in the United States and the full text of the U.S. Safe Drinking Water Act, click www.epa.gov/safewater/sdwa/sdwa.html.
- For information on drinking water issues in other provinces, click www.ec.gc.ca/eau-water/default.asp?lang=En&n=24C5BD18-1#AB.
- For more information concerning water governance in other jurisdictions in Canada, click www.flowcanada.org/policy/governance.
- For example, British Columbia's recently passed drinking water legislation can be found at: www.health.gov.bc.ca/protect/dwact.html