



May 11, 2007

James Scott
Senior Policy Analyst
Ministry of the Environment
Strategic Policy Branch
Floor 11, 135 St. Clair Avenue West
Toronto Ontario
M4V 1P5

RE: EBR posting 010-0122: The first phase of regulations under the *Clean Water Act, 2006 (CWA)*.

Dear Mr. Scott,

I am writing on behalf of the Great Lakes and St. Lawrence Cities Initiative, in response to the Environmental Bill of Rights Registry posting 010-0122, the first phase of regulations under the *Clean Water Act, 2006 (CWA)*.

The Great Lakes and St. Lawrence Cities Initiative is a bi-national organisation of Mayors who have come together to give a voice to the priorities and concerns of cities regarding the protection of the Great Lakes and St. Lawrence water system. We currently have 42 members, of which 16 are Ontario mayors representing over a quarter of Ontario's population. (a list of members is attached).

The following comments reflect our members' interests as municipalities, and as communities that draw their drinking water primarily from the Great Lakes. We have limited our comments to two of the first set of regulations, concerning the source protection committees (SPCs), and the terms of reference.

177 North State Street, Suite 500, Chicago, Illinois 60601 ~ (312) 201-4516 phone ~ (312) 553-4355 fax |
www.glslicities.org

David Miller, Mayor of Toronto, Chair

Richard M. Daley, Mayor of Chicago, Founding Chair

1. Source Protection Committees

The GLSLCI is extremely concerned with the representation of municipalities on the Source Protection Committees. This representation is completely inadequate and unacceptable given the enormous responsibilities that municipalities carry with respect to delivering safe drinking water, and for implementing and financing the source protection plans.

Municipalities must have the majority of votes around the SPC table. It is simply unacceptable for a municipal member representing thousands, or even millions of Ontarians, to have the same voice as a single public or industry representative.

If it is considered unmanageable to increase the number of municipal members, then the number of municipal representatives proposed should have their votes weighted in favour of a majority municipal voice.

Furthermore, from a Great Lakes perspective, the source protection areas, representation on the SPCs and the knowledge base of the Source Protection Authorities (SPAs) are not reflective of the true nature of threats that may be found around Great Lakes intakes. While the SPC and SPA may be effective at assessing and developing plans for inland threats around wellheads and in tributaries leading to the Great Lakes, the Great Lakes need a fundamentally different approach.

With its support of the Collaborative Study to Protect Lake Ontario Drinking Water, the Ministry of the Environment (MOE) has already recognized that the area of study along Great Lakes shorelines is much broader than that of the designated source protection regions. There are also intergovernmental and bi-national considerations when considering the Great Lakes. To simply suggest that SPCs must collaborate along the shoreline, and consider bi-national agreements as they prepare their source protection plans does not recognize the complexity of such a task, or the difficulty of brokering agreement on what needs to be done. An SPC has neither the expertise nor the authority to deal with Great Lakes challenges such as:

- the erosion of the St. Clair river, a federal waterway, affecting water levels;
- the cumulative pollution impact along the Great Lakes nearshore particular from watershed inputs during major storms;
- sediment transport dynamics and resuspension impacts;
- impacts of sinking plumes during winter conditions;
- a significant chemical spill from anyone of the large industries along the Great Lakes shoreline;
- a fuel or chemical spill from a lake freighter; and
- ultimately a potential tritium spill from any one of the Province's nuclear power plants.

These are highly complex, costly challenges that demand a coordinated federal-provincial-municipal government response.

It is therefore proposed that terrestrial, tributary or groundwater matters related to inland water intakes or wellheads within Great Lakes source protection areas continue to be dealt with by the SPC and SPA. All other analysis related to intakes located in the Great Lakes, and the related assessment of threats and plans in response to these threats, must be dealt with under a Great Lakes specific process that would ultimately feed into the SPC process.

To this end, it is recommended that a separate Great Lakes committee, as allowed under the *Clean Water Act*, should be created for each Great Lake, Lake Ontario, Lake Huron, Lake Erie, and Lake Superior, with representation from municipalities, the Province and the Federal Government, to share information, and problem solve around challenges facing the quality and quantity of drinking water entering Great Lakes water intakes. This would reinforce and be consistent with the Province's efforts to include source water protection in the Canada-Ontario Agreement and the Great Lakes Water Quality Agreement. It could also be integrated into current work related to Lake-wide management plans (LAMPs). Each of these four committees would be provided funding to undertake appropriate modelling and assessment of threats, tailored to the Great Lakes, and would be responsible for brokering the appropriate response to the threats amongst the three levels of government, and with the United States as necessary.

Assessment reports and source protection sub-plans from these Great Lakes committees would then be submitted to each of the appropriate source protection committees to inform the 'inland' source protection plans and to be included in their broader source protection plans. The importance of such Great Lakes sub-plans cannot be overstated. They will support the protection of 75% of Ontario's drinking water.

This model is entirely consistent with the CWA, but would require changes to the source protection committee regulation to specifically call for this type of dual process for the Great Lakes, as well as changes to the terms of reference regulation, as outlined below.

2. Terms of Reference

For two years, with the development of the CWA and then the draft regulations, the Ministry of the Environment has promised municipalities that the terms of reference would be a 'negotiation' amongst municipalities and source protection committees, with the default position of municipalities undertaking the assessment and planning work for their own intakes.

Comments on the First phase of regulations under the *Clean Water Act, 2006*

Despite these repeated assurances, the draft regulation on the terms of reference does not reflect this in the least. Instead, the regulation simply requires municipal council resolution to accept or not accept the tasks that are assigned to the municipal corporation.

It is unacceptable for the MOE to renege on its commitment to make the terms of reference process a negotiation. This is the foundation of municipal 'buy-in' into the entire process. Without a negotiation process enshrined in regulation, municipalities will not buy-in to the process. Guidance material from MOE encouraging negotiation is not sufficient.

It is therefore recommended that the regulation be changed to require a negotiation process between the SPC and participating municipalities, with the starting position being that municipalities are responsible for the assessment and planning aspects related to their water intakes or wellheads. The negotiated agreement would then require endorsement by each municipal council, including those tasks assigned to the municipalities and those tasks assigned to the Source Protection Authority.

The regulation must further explicitly allow for a separate but parallel process for Great Lakes water intakes as outlined above to be enshrined in the terms of reference.

With the above changes, municipalities will feel like a true partner in the source protection process, rather than one of many stakeholders commenting on their own infrastructure and services. Municipal buy-in into the source protection process and municipal sense of ownership of the source protection plans is the only way to ensure that source protection will be a success in Ontario.

Thank you in advance for considering the Great Lakes and St. Lawrence Cities Initiative's comments on the *Clean Water Act* regulations. We would welcome a meeting with relevant staff to discuss these comments further and to assist in the amendments to the draft regulations.

Yours sincerely,



David A. Ullrich
Executive Director
Great Lakes and St. Lawrence Cities Initiative

Comments on the First phase of regulations under the *Clean Water Act, 2006*

cc. Theresa McClenahan
Sharon Bailey
Ian Smith

Attachment

Membership of the Great Lakes and St.Lawrence Cities Initiative,05-11-07

| | | | |
|--------------------------------|-------------|-------------|-------|
| Town of Penetanguishene | Dubeau | Anita | Mayor |
| Town of the Blue Mountains, ON | Anderson | Ellen | Mayor |
| Beaconsfield, QC | Benedetti | Bob | Mayor |
| Trois-Rivières, QC | Lévesque | Yves | Mayor |
| Hamilton, ON | Eisenberger | Fred | Mayor |
| Waukegan, IL | Hyde | Richard H. | Mayor |
| Collingwood, ON | Carrier | Chris | Mayor |
| Cobourg, ON | Delanty | Peter | Mayor |
| Becancour, QC | Richard | Maurice | Mayor |
| Evanston, IL | Morton | Lorraine H. | Mayor |
| Rochester, NY | Duffy | Robert | Mayor |
| Gary, IN | Clay | Rudolph | Mayor |
| Goderich, ON | Shewfelt | Deb | Mayor |
| Parry Sound, ON | Adams | Richard | Mayor |
| The Archipelago, ON | Ketchum | Peter | Reeve |
| Superior, WI | Ross | Dave | Mayor |
| Toronto, ON | Miller | David | Mayor |
| Duluth, MN | Bergson | Herb W. | Mayor |
| St. Catharines, ON | McMullan | Brian | Mayor |
| Québec City, QC | Boucher | Andrée P. | Mayor |
| Racine, WI | Becker | Gary | Mayor |
| Cornwall, ON | Kilger | Bob | Mayor |
| Sorel-Tracy, QC | Robert | Marcel | Mayor |
| Erie, PA | Sinnott | Joseph | Mayor |
| Grand Rapids, MI | Heartwell | George K. | Mayor |
| Salaberry-de-Valleyfield, QC | Lapointe | Denis | Mayor |
| Thunder Bay, ON | Peterson | Lynn | Mayor |
| Sault St. Marie, ON | Rowswell | John | Mayor |
| Highland Park, IL | Belsky | Michael D. | Mayor |
| Chicago, IL | Daley | Richard M. | Mayor |
| Montréal, QC | Tremblay | Gerald | Mayor |
| Port Colborne, ON | Bodner | Ron | Mayor |
| Grand Marais, MN | Sandbo | Mark | Mayor |
| Ville de Chateauguay, QC | Pavone | Sergio | Mayor |
| Windsor, ON | Francis | Eddie | Mayor |
| Toledo, OH | Finkbeiner | Carleton S. | Mayor |
| Carling Twmsp, ON | Konoval | Mike | Mayor |
| Ferndale, MI | Porter | Robert | Mayor |
| Ferrysburg, MI | Tejchma | Ray | Mayor |
| East Chicago, IN | Pabey | George | Mayor |
| Whiting, IN | Stahura | Joseph | Mayor |
| Milwaukee, WI | Barrett | Tom | Mayor |

