September 25, 2002 **BY FAX AND REGULAR MAIL**

Manager
Water Policy Branch
Ministry of the Environment and Energy
135 St. Clair Avenue, 6th Floor
Toronto, Ontario
M4V 1P5

Dear Sir:

RE: PROPOSED COMPONENTS OF THE *SAFE DRINKING WATER ACT*
EBR REGISTRY NO. AA02E001

We are writing to provide you with the comments of the Canadian Environmental Law Association ("CELA") with respect to the proposed components of the *Safe Drinking Water Act* ("SDWA").

1. BACKGROUND

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.

Over the years, much of CELA's casework and law reform activities have focused on drinking water quality and quantity. For example, CELA has been advocating for the SDWA since the early 1980s.[1] More recently, CELA has been involved in a number of drinking water matters, such as:

- representing the Concerned Walkerton Citizens during all phases of the Walkerton Inquiry;

[1] T. Vigod and A. Wordsworth, "Water Fit to Drink? The Need for a *Safe Drinking Water Act* in Canada", (1982), 11 C.E.L.R. 80.

- preparing various issue papers for the purposes of Part II of the Walkerton Inquiry, including *Tragedy on Tap: Why Ontario Needs a Safe Drinking Water Act*;[2]
- applying under the *Environmental Bill of Rights* for a review of the need for safe drinking water legislation in Ontario;[3]
- submitting model water legislation to improve watershed planning and water conservation in Ontario;[4]
- commenting on the Drinking Water Protection Regulation (O.Reg. 459/00), the *Sustainable Water and Sewage Systems Act, 2001* (Bill 155), the *Nutrient Management Act* (Bill 81) and proposed regulations thereunder;[5] and
- commenting on various municipal land use planning reforms and amendments to the *Municipal Act*.[6]

It is against this background and experience that CELA has reviewed the proposed components of the SDWA. We have also reviewed Commissioner O'Connor's Part I and II Reports from the Walkerton Inquiry, and we have considered various aspects of the Ontario government's "Clean Water Strategy". For comparative purposes, we have also had regard for the private members' bill introduced last year by MPP Marilyn Churley (Bill 3, the *Safe Drinking Water Act, 2001*).

We further note that the MOE discussion paper indicates that the document, "which is written in 'non-legal' language, combined with the input and expertise from stakeholders and the public, will be used to draft the 'legal' language of a proposed *Safe Drinking Water Act*."[7] However, it is CELA's understanding that the Ontario government intends to introduce the SDWA for First Reading in the Legislature later this week – before the *Environmental Bill of Rights* ("EBR") comment period ends with respect to the MOE discussion paper. If this, in fact, occurs, then it is clear that stakeholder input will not have been used to develop the legislative text of the SDWA. In our view, the timing of the EBR comment period is awkward and unfortunate, particularly if the SDWA is introduced within the next few days.

As public interest advocates (and as counsel for Walkerton residents), we understand the urgent need for passage of the SDWA. However, if the Ontario government truly intended to solicit and act upon stakeholder input, then the MOE discussion paper should have been released much earlier in the summer, and, at a minimum, the EBR comment period should have ended several weeks before the SDWA is introduced in the Legislature.

Despite this timing concern, CELA is prepared to offer general and specific comments in relation to the MOE discussion paper. It is our intention to use these comments as our benchmark for evaluating the legislative text of the SDWA once the Bill has been introduced in the Legislature. On this point, it goes without saying that CELA reserves its right to make further submissions on the actual content of the SDWA upon its introduction in the Legislature.

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[2] These documents are available at: www.cela.ca.
[3] Interestingly, this EBR Application for Review was rejected by the MOE in 2000 on the grounds that a SDWA was not necessary in Ontario.
[4] These documents are available at: www.cela.ca.
[5] *Ibid.*
[6] *Ibid.*
[7] MOE, *Proposed Components of a Safe Drinking Water Act* (August 2002), page 1.

2. GENERAL COMMENTS ON THE PROPOSED COMPONENTS OF THE SDWA

In general terms, it is our view that the proposed components of the SDWA appear to be responsive to the recommendations of Commissioner O'Connor in his Part I and II Reports, subject to the concerns outlined below. However, until the actual legislative text of the SDWA is released, CELA is unable to evaluate whether the proposed components will implement the Walkerton recommendations in a timely and effective manner.

For this reason, CELA recommends that after First and Second Reading, the SDWA should be referred to legislative committee for a short round of focused public hearings and clause-by-clause review prior to Third Reading and Royal Assent. While considerable public consultation has occurred to date (eg. the Walkerton Inquiry, MOE stakeholder meetings, etc), it should be noted that these efforts have largely dealt with general SDWA principles and concepts, rather than the actual wording of SDWA provisions. Given the fundamental importance of the SDWA, CELA believes that the parliamentary process should be as open and accountable as possible, and that Ontarians should have a meaningful opportunity to review and comment upon the proposed text of the SDWA. Nevertheless, even if legislative committee hearings occur, we see no reason why the SDWA cannot be enacted and proclaimed in force by early 2003.

RECOMMENDATION # 1: After First and Second Reading, the SDWA should be immediately referred to a legislative committee for public hearings and clause-by-clause review prior to Third Reading and Royal Assent.

We also note that the proposed SDWA components appear to take a literal (or somewhat minimalist) approach to Commissioner O'Connor's recommendations, in the sense that the components merely duplicate his recommendations but go no further. On this point, it should be recalled that CELA fully supports Commissioner O'Connor's recommendations, and we firmly believe that if properly implemented, his recommendations will go a long way in addressing drinking water safety in Ontario.

However, it seems that the Ontario government views Commissioner O'Connor's recommendations as the "ceiling", and believes that no further steps or measures need to considered with respect to the SDWA. In our submission, the better view is that Commissioner O'Connor's recommendations represent the "floor", and there is no principle or authority that precludes the Ontario government from incorporating additional matters in the SDWA (eg. under Module Seven) if necessary or desirable in the circumstances. After all, the Ontario government is currently drafting the SDWA, and this represents the best opportunity to ensure that the SDWA confers the highest level of protection to Ontario drinking water. Therefore, Commissioner O'Connor's recommendations should be viewed as the starting point (not end point) for the SDWA in Ontario.

This interpretation is confirmed by a careful reading of Commissioner O'Connor's Recommendation 67, which states that "the provincial government should enact a *Safe Drinking Water Act* to deal with matters related to the treatment and distribution of drinking water". There is nothing in Recommendation 67 that says the Ontario government cannot or should not address additional drinking water matters in the SDWA. Indeed, it is our view that the SDWA should

not be restricted to a technical, "pipes and pumps" focus; instead, the SDWA should be the centrepiece of Ontario's drinking water framework, and should not necessarily be limited to "treatment and distribution" matters.

In any event, CELA has a number of general concerns about the components of the SDWA, as currently proposed by the Ontario government. These general concerns may be summarized as follows:

(a) Source Protection/Watershed Planning

Throughout his Part I and II Reports, Commissioner O'Connor repeatedly endorsed the concept of the "multi-barrier" approach to ensuring drinking water safety.[8] The first critical step of the multi-barrier approach is to secure and protect the best possible source(s) of drinking water.[9] Indeed, source protection attracted more public attention and support than any other aspect of drinking water safety during the town hall meetings held by the Walkerton Inquiry.[10]

Accordingly, Commissioner O'Connor recommended, *inter alia*, that the *Environmental Protection Act* ("EPA") be amended so as to require the development of "Watershed Source Protection Plans".[11] It goes without saying that source protection/watershed planning requirements could just as easily fit under the SDWA, but we are content to leave such matters to the EPA in accordance with Commissioner O'Connor's recommendations.

On this point, we note that the seven proposed Modules for the SDWA do not refer to source protection/watershed planning, presumably because the Ontario government intends to address such matters under the EPA rather than the SDWA. Indeed, it is CELA's understanding that the Ontario government has commited to implement all of Commissioner O'Connor's recommendations, not just those related to the SDWA.

In our view, however, the efficacy of the proposed SDWA components will greatly depend on whether comprehensive and enforceable source protection/watershed planning requirements are implemented in an expeditious manner. Thus, CELA strongly recommends that the Ontario government must ensure that the EPA amendments regarding source protection/watershed planning are enacted at the same time that the SDWA is passed into law and proclaimed in force. Otherwise, if there is no legislative linkage between the SDWA and the EPA amendments, the ability of the SDWA to fully ensure the delivery of safe drinking water will be severely compromised. This is particularly true if the SDWA is enacted first, but the EPA amendments are deferred to some unspecified time in the future. In CELA's view, the SDWA must be accompanied by the EPA amendments related to source protection/watershed planning.

On this point, please be advised that together with other non-governmental organizations, CELA will be preparing a separate (and more detailed) submission on the need to legislatively entrench source protection/watershed planning requirements.

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[8] See, for example, Part II Report, pages 5-6.
[9] Part II Report, pages 3, 8-10.
[10] Part II, Report, page 8.
[11] Part II Report, page 92 (Recommendation 1) and page 410 (Recommendation 68).

RECOMMENDATION # 2:The Ontario government must ensure that EPA amendments regarding source protection/watershed planning are passed into law and proclaimed in force at the same time as the SDWA.

(b) Community Right-to-Know

In our view, the "community right-to-know" principle has not been adequately addressed in the proposed components of the SDWA. Indeed, the seven Modules outlined in the MOE discussion paper barely even mention the importance of ensuring full and timely public information about drinking water issues.

Community right-to-know was clearly a matter of considerable importance to Commissioner O'Connor, and his Part I and II Reports contained a number of recommendations aimed at enhancing public access to drinking water information. For example, Commissioner O'Connor identified community right-to-know as a "general principle":

> My recommendations are intended to improve both transparency and accountability in the water supply system. Public confidence will be fostered by ensuring that members of the public have access to current information about the different components of the system, about the quality of the water, and about decisions that affect water safety.[12]

In accordance with this community right-to-know principle, Commissioner O'Connor recommended, *inter alia*, that:

- laboratory accreditation audits should be made publicly available (Recommendation 43);
- municipal contracts with external operating agencies should be made publicly available (Recommendation 49);
- the MOE should create a central electronic database of drinking water information (Recommendation 79);
- the MOE should table annual "State of Ontario's Drinking Water Reports" in the Ontario Legislature (Recommendation 80); and
- the MOE should provide information to the public on how to secure and supply safe drinking water (Recommendation 86).

Interestingly, Bill 3 contains similar community right-to-know provisions, including a requirement (section 6) that would compel the MOE to establish and maintain a water quality registry to provide key information (eg. approvals, test results, enforcement activity, etc.) to the public via electronic means.

In contrast, the MOE discussion paper falls woefully short of proposing components that fully address all aspects of the community right-to-know principle. In our view, O.Reg. 459/00 only partially addresses community right-to-know (eq. quarterly reports to consumers), and there is room for considerable improvement in this area. This is particularly true if one examines

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[12] *Ibid.*, page 6.

community right-to-know requirements in other jurisdictions (eg. the U.S. *Safe Drinking Water Act*, as amended).[13]

Accordingly, CELA recommends that the SDWA must fully incorporate and implement all aspects of community right-to-know. At a minimum, this means that the SDWA should enhance public notice about possible unsafe drinking water, expand current requirements regarding consumer reports, and require the establishment of an appropriate electronic registry that is accessible to the public free of charge.

In our view, such measures are necessary under the SDWA, and they are entirely consistent with the intent and spirit of Commissioner O'Connor's Part I and II Reports. In fact, these measures are particularly responsive to his recognition that community right-to-know is an important "guiding principle". Even if one accepts that the SDWA should be strictly confined to "treatment and distribution" issues, community right-to-know undoubtedly falls under this category since the public notice requirements described above clearly relate to the effectiveness (or ineffectiveness) of treatment/distribution equipment and processes.

RECOMMENDATION # 3: The SDWA should fully incorporate and implement all aspects of the community right-to-know principle. At a minimum, the SDWA should:

(a) require immediate public notice by drinking water suppliers through appropriate means whenever:

- **exceedances of prescribed standards, or indicators of adverse water quality, are detected (including presumptive results);**
- **treatment, testing or distribution system equipment is malfunctioning or inoperative; or**
- **prescribed sampling, testing and analysis is not being carried out.**

(b) require drinking water suppliers to prepare comprehensive, "plain language" consumer confidence reports that are mailed to consumers (and MOE) on a semi-annual basis, and that address the following issues:

- **relevant source protection/watershed planning matters;**
- **any regulated and/or unregulated contaminants detected in raw or treated water samples;**
- **any exceedances of prescribed standards and any related public health concerns (especially for vulnerable populations); and**
- **actions taken to remedy and/or prevent such exceedances; and**

(c) require the MOE to establish and maintain an electronic drinking water registry that summarizes consumer confidence reports, discusses drinking water trends/issues, and serves as a publicly accessible repository for key

[13] For a fuller discussion of community right-to-know, see CELA, *Tragedy on Tap: Why Ontario Needs a Safe Drinking Water Act* (Vol. II), pages 135-39.

drinking water information and documents (eg. approvals, test results, enforcement activity, State of Ontario's Drinking Water Reports, etc.).

(c) Purposes of the SDWA

In our view, the legislative statement of purpose in the SDWA will be critically important for a number of reasons. First, the statement of legislative intent should send a clear and unambiguous message about the paramountcy of protecting drinking water and its sources in Ontario. Second, the purpose statement should be drafted in a manner that serves as an effective aid to statutory interpretation in the event that there is debate or uncertainty about the proper construction of SDWA provisions (eg. exercise of administrative discretion or regulation-making authority under the Act).

Unfortunately, the proposed components of the SDWA appear to pay short shrift to the statement of purpose. In particular, briefing material distributed to stakeholders by MOE staff simply indicates that the purpose of the SDWA "would be to protect human health by regulating the provision of safe drinking water".[14] However, it is unclear whether this is merely a summary description of the SDWA, or whether the SDWA will even include a statement of purpose. On the other hand, the MOE discussion paper does suggest that a purpose statement will be included,[15] but it does not appear to be as strongly worded nor as broad as the purpose statement found in Bill 3 as introduced by MPP Marilyn Churley.

For his part, Commissioner O'Connor simply recommended as follows:

> I recommend that the SDWA include recognition that people in the province expect their water to be safe, and there be a legislative and regulatory scheme put in place to ensure its safety. In my view, this is the ultimate goal of the drinking water system, and it is important to recognize this goal in one of the central pieces of legislation on the subject.[16]

Aside from this commentary, Commissioner O'Connor made no explicit recommendation on how the purpose of the SDWA should be framed in terms of legislative text. In these circumstances, CELA submits that it is open to the Ontario government to adopt a comprehensive statement of purpose. In particular, CELA recommends that the Bill 3 statement of purpose should be used as the starting point for developing an appropriate SDWA purpose statement.

RECOMMENDATION # 4: The SDWA should include a comprehensive statement of legislative purpose similar to that found in Bill 3.

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[14] MOE, "Presentation to Stakeholders: Consultation on Proposed Components of a *Safe Drinking Water Act*" (Sept. 9, 2002).
[15] MOE, "Proposed Components of a *Safe Drinking Water Act*" (August 2002), page 45.
[16] Part II Report, page 405.

(d) The Right to Sue

We note that Commissioner O'Connor declined to recommend the inclusion of a new statutory cause of action within the SDWA,[17] primarily on the grounds that existing causes of action are adequate to ensure access to the courts where harm arises from unsafe drinking water.

In the absence of a new cause of action in the SDWA, CELA submits that the SDWA should be made fully subject to Ontario's EBR, particularly Parts V (application for investigation) and VI (right to sue). First, the EBR cause of action is part of the overall legal framework that Commissioner O'Connor relied upon in declining to recommend a new statutory cause of action in the SDWA. Second, because the OWRA (and regulations thereunder) are already subject to the EBR, it necessarily follows that the SDWA (and regulations thereunder) should likewise be prescribed as being subject to the EBR. Third, given that the EBR is intended to protect ecological and human health, we see no compelling reason why the SDWA should be exempt from the EBR, which is an environmental law of general application across Ontario.

RECOMMENDATION # 5: The SDWA (and regulations thereunder) should be prescribed as being fully subject to all Parts of the EBR, including Part V (application for investigation) and Part VI (right to sue).

In addition to these general concerns, CELA has a number of specific comments about each of the seven SDWA modules described in the MOE's discussion paper entitled *Proposed Components of a Safe Drinking Water Act* (August 2002), as set out below.

3. DETAILED COMMENTS ON THE SDWA MODULES

(a) Module One: Licencing and Accreditation of Drinking Water Laboratories

CELA generally supports the Module One proposals in relation to licencing and accreditation of laboratories that perform drinking water testing. Together with similar requirements for drinking water systems (Module Four) and operators (Module Three), the SDWA's licencing and accreditation provisions should assist in protecting drinking water safety in Ontario.

However, the effectiveness of such requirements is greatly dependent upon the expertise, resources, mandate and structure of the agency (or agencies) utilized for accreditation purposes under the SDWA. On this point, we note that the MOE discussion paper merely indicates that the Minister "may" use a regulation to designate "a body that will serve as the body responsible for administering an accreditation program".[18] The discussion paper further suggests that the Minister will be empowered to enter into agreements with "any corporation" to administer an accreditation program".[19] Unfortunately, these proposals do not provide sufficient detail on the institutional structure, operation, or qualifications of the intended accreditation agency.

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[17] Part II Report, pages 405-06.
[18] *Ibid.*, pages 4-5 and 28.
[19] *Ibid.*

This dearth of detail is particularly problematic if the MOE intends to delegate accreditation functions to a private corporation or non-governmental organization. Without such detail, we are unable to determine whether the MOE intends to designate a private entity (eg. the Standards Council of Canada and/or the Canadian Association of Environmental Analytical Laboratories), or create a non-governmental entity (eg. analogous to the Technical Standards and Safety Association) for accreditation purposes. In any event, there are serious accountability and operational issues associated with the use of such entities, especially since the accreditation agency will be addressing significant public health and safety matters.[20]

Accordingly, CELA recommends that the SDWA should clearly stipulate the identity and institutional nature of the agency that it proposes to use for accreditation purposes under the Act. Similarly, the SDWA should establish explicit criteria for the designation of accreditation bodies (eg. the entity should be independent, free from conflict of interest or apprehension of bias,[21] and have the necessary technical and financial capacity to perform the delegated functions). Where the accreditation agency detects non-compliance with regulatory standards, it should be obliged by law to report such violations forthwith to the MOE.

To ensure accountability, the SDWA must specify that the accreditation agency is obliged to file annual reports with the Minister (and made available to the public). Similarly, the accreditation agency must be prescribed as an "institution" for the purposes of the *Freedom of Information and Protection of Privacy Act*. This is true regardless of whether the designation/delegation is accomplished by regulation or agreement under the SDWA. In addition, the SDWA should ensure that the public notice/comment provisions (Part II) and application for review provisions (Part IV) of the EBR apply to any regulations or agreements with respect to the accreditation agency.

Similarly, the SDWA should empower the Minister to amend or revoke any delegation agreement under the Act. Moreover, delegation agreements should have specific expiry dates (five year terms?), and there should be periodic independent review of the delegated accreditation functions prior to renewal of such agreements.

In our view, these recommendations are entirely consistent with the spirit and intent of Commissioner O'Connor's comments that the accreditation program should be fully transparent.[22]

RECOMMENDATION # 6: The SDWA should:

(a) describe the identity and institutional nature of the entity to be used for administering the accreditation programs under the Act;

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[20] See M. Winfield et al., *The "New Public Management" Comes to Ontario: A Study of Ontario's Technical Standards and Safety Authority and the Impacts of Putting Public Safety into Private Hands* (CIELAP, 2000).

[21] Unlike the TSSA, the board of directors for the accreditation agency should not include representatives of the regulated industry.

[22] Part II Report, pages 270-71.

(b) establish criteria to govern the qualifications of entities that may be eligible to be designated as the accreditation agency;

(c) specify that the accreditation agency must file annual reports with the Minister (and be made available to the public), and ensure that the agency will be subject to provincial freedom-of-information legislation;

(d) ensure that the accreditation agency reports any regulatory violations to the MOE forthwith;

(e) specify that Parts II and IV of the EBR apply to any regulations or agreements respecting the accreditation agency;

(f) empower the Minister to amend or revoke delegation agreements at any time; and

(g) establish fixed terms for delegation agreements, and ensure that there is periodic independent review of delegated accreditation functions prior to renewal of such agreements.

(b) Module Two: Drinking Water, Distribution, Treatment and Monitoring Standards

We have various concerns about four matters arising out of Module Two: the Advisory Council; regulatory objectives; prohibitions; and monitoring.

Advisory Council on Drinking Water Quality Standards

We note that the MOE discussion paper proposes to create an Advisory Council on Drinking Water Standards to assist in the development of standards for treatment, distribution, monitoring and notification. However, it appears that the actual establishment of the Advisory Council is left entirely to the discretion of the Minister.[23]

CELA strongly supports the creation of the Advisory Council, and submits that the SDWA should impose a duty upon the Minister to create the Council within six months of the Act's coming into force. As a precedent for such mandatory language, regard should be had to the EPA provisions that established the former Environmental Compensation Corporation.

In our view, multi-stakeholder committees – such as the former Advisory Committee on Environmental Standards (ACES) and MISA Advisory Committee -- serve as valuable mechanisms for stakeholder input into the environmental standard-setting process, and we firmly believe that the Advisory Council should play an important (and mandatory) role under the SDWA.

[23] "The Minister may establish an Advisory Council on Drinking Water Standards" (emphasis added): MOE, *Proposed Components of a Safe Drinking Water Act* (August 2002), page 9.

In addition, CELA recommends that the SDWA should clearly describe the composition (eg. variety of stakeholders, including NGOs, academics, public health representatives, etc.)[24] and mandate of the Advisory Council (eg. scientific research, policy development, standard-setting, etc.). It is further recommended that the results of scientific research into drinking water safety (especially health-related aspects) should be quickly disseminated to MOE staff, drinking water system owners/operators, local municipalities and public health officials.

Moreover, the Advisory Council should be given the specific responsibility to periodically review the adequacy of existing standards, and to identify the need for new or updated standards where appropriate in light of new information or developments in technology. Unless the Advisory Council is given this specific review function, CELA remains highly concerned that drinking water standards will not be kept current or sufficiently stringent, just as Ontario's air standards under the EPA have been allowed to languish behind those imposed by other jurisdictions.

In addition, it would be highly desirable for the Advisory Council to review and comment upon the "State of Ontario's Drinking Water Report" that is to be filed annually by the Minister with the Ontario Legislature (see Module Seven below). The Advisory Council should also be required to identify, evaluate and report upon new and emerging drinking water contaminants for which no regulatory standards currently exist in Ontario.

RECOMMENDATION # 7: The SDWA should:

(a) impose a mandatory duty on the Minister to establish the Advisory Council on Drinking Water Quality Standards within six months of the Act's coming into force;

(b) specify the composition and mandate of the Advisory Council;

(c) authorize the Council to periodically review the adequacy of existing standards and the need for new or updated standards;

(d) require the Advisory Council to review and comment upon the annual "State of Ontario's Drinking Water Reports" to be filed by the Minister under the SDWA;

(e) require the Advisory Council to identify, evaluate and report upon new and emerging drinking water contaminants for which no regulatory standards currently exist in Ontario; and

(f) specify that the results of scientific research undertaken by or for the Advisory Council should be quickly and broadly disseminated to all persons involved in drinking water safety in Ontario.

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[24] Part II Report, page 157.

Regulatory Objectives for Standards

We understand that existing drinking water standards promulgated by regulation under the OWRA (eg. O.Reg. 459/00 and O.Reg. 505/01) will be simply rolled under the SDWA.[25] We further understand that other relevant OWRA regulations (eg. O.Reg. 435/93) will similarly be rolled under the SDWA.[26] We note, however, that these existing regulations will have to be carefully reviewed and, if necessary, revised in order to ensure that they fully implement Commissioner O'Connor's recommendations.

With respect to the development of new regulations under the SDWA, we are concerned that the proposed SDWA appears to leave standard-setting to the complete discretion of the Minister and Cabinet.[27] At the same time, the proposed SDWA does not appear to include any specific direction or criteria to guide the standard-setting process. Accordingly, CELA submits that the SDWA must impose a positive duty on the Minister to set, maintain and revise drinking water standards in order to protect the health and safety of all Ontarians, including those who may be particularly vulnerable to waterborne illness or disease. At the same time, the SDWA should entrench the precautionary principle as a mandatory consideration when drinking water standards are drafted, reviewed and/or revised. Indeed, Commissioner O'Connor's Recommendation 19 expressly endorses the precautionary principle in the context of standard-setting. Finally, it goes without saying that the standard-setting process under the SDWA should be subject to the public participation provisions of Part II of the EBR, and the application for review provisions under Part IV of the EBR.

RECOMMENDATION # 8: The SDWA should:

(a) impose a mandatory duty on the Minister to set, maintain and revise drinking water standards;

(b) specify that the primary objective of drinking water standards is to protect the health and safety of all Ontarians, including those who may be particularly vulnerable to waterborne illness or disease;

(c) entrench the precautionary principle as a mandatory consideration when drinking water standards are being drafted, reviewed or revised; and

(d) provide that the standard-setting process under the SDWA is subject to Parts II and IV of the EBR.

Prohibitions

We support the MOE's proposal to prohibit persons from establishing, operating or altering a drinking water system except in accordance with the required licence and/or permit.[28] However,

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[25] MOE, *Proposed Components of a Safe Drinking Water Act* (August 2002), page 10.
[26] *Ibid.*, page 12.
[27] *Ibid.*, pages 9-10.
[28] *Ibid.*, page 19.

it appears to us that two related prohibitions are also necessary, particularly in light of recent concerns about the physical security of drinking water systems.

The first additional provision would prohibit persons from damaging, destroying or otherwise tampering with drinking water systems, or attempting or threatening to do so. Similarly, the second additional provision would prohibit persons from unlawfully releasing contaminants into drinking water systems, or attempting or threatening to do so. In our view, these prohibitions against criminal activity should accompany the operational prohibitions that the MOE has proposed for the SDWA.

RECOMMENDATION #9: The SDWA should:

(a) prohibit persons from damaging, destroying or otherwise tampering with a municipal or non-municipal drinking water system, or attempting or threatening to do so; and

(b) prohibit persons from unlawfully releasing contaminants into a municipal or non-municipal drinking water system, or attempting or threatening to do so.

Monitoring

We have reviewed the discussion paper's brief comments regarding monitoring, and we are unclear whether drinking water suppliers will be required to monitor and report upon the source(s) used for drinking water supply. Given the importance of source protection, CELA submits that ongoing source assessment/reporting must be an explicit requirement under the SDWA. In addition, the results of source assessment/reporting efforts should be summarized in the semi-annual consumer confidence reports, and should be posted on the water quality database, as described above in relation to community right-to-know. It goes without saying that drinking water suppliers must be required to take corrective action if the source assessment/reporting reveals actual or imminent threats to the quality or quantity of the drinking water supply. The SDWA should also explicitly require the development of contingency plans for emergency situations, and the MOE should review and approve the content of such plans.

RECOMMENDATION # 10: The SDWA should:

(a) require drinking water suppliers to monitor, assess, and report upon the source(s) used for drinking water;

(b) require drinking water suppliers to take corrective action if source monitoring reveals actual or imminent threats to the quality or quantity of the drinking water supply; and

(c) require drinking water suppliers to develop appropriate contingency plans, which shall be submitted to the MOE for review and approval.

(c) Module Three: Operator Training and Certification

In general, the three main components of Module Three (eg. general duties/prohibitions, licencing regime, training programs) are responsive to Commissioner O'Connor's recommendations.

However, CELA remains concerned about the excessive discretion conferred upon the Minister and the Cabinet in relation to such matters (eg. the Lieutenant Governor in Council "may" make regulations, and the Minister "may" develop or implement training programs).[29] On this point, it should be noted that Commissioner O'Connor's recomendations were directory in nature rather than optional (eg. the MOE "should" require operator certification, "should" develop training programs, and "should" take measures to ensure training for operators in small or remote communities").[30]

In addition, we are concerned that many of the essential details that accompanied Commissioner O'Connor's recommendations have not been carried forward to Module Three. For example, Commissioner O'Connor concluded that to ensure compliance with operator training requirements, drinking water facilities should file annual reports with the MOE to specify the training undertaken by the operator(s). Similarly, Commissioner O'Connor suggested that the MOE should develop standardized forms to facilitate this reporting function and to assist MOE staff in reviewing compliance with training requirements.[31] To our knowledge, none of these suggestions have been included within the proposed components of Module Three. Instead, the MOE discussion paper merely states that regulations "may" be made in relation to operator qualifications and training, as described above.

Given the critical importance of operator training/certification, CELA recommends that the SDWA should include language that explicitly captures all aspects of Commissioner O'Connor's recommendations regarding such matters.

RECOMMENDATION # 11: The SDWA should include provisions that fully reflect all aspects of Commissioner O'Connor's recommendations regarding operator training and certification.

(d) Module Four: Licencing of Drinking Water Systems

The proposed components of Module Four (eg. owners' licence, accredited operating agency, operational plans, and financial plans) appear generally responsive to the relevant recommendations of Commissioner O'Connor. However, CELA has a number of concerns about the application and interpretation of some of these components, as described below.

For example, we note that the bulk of the new requirements initially apply only to "municipal" water systems, rather than to other public and private suppliers of drinking water (eg. campgrounds, parks, schools, restaurants, etc.). However, the MOE discussion paper also

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[29] *Ibid.*, pages 12-13.
[30] Part II Report, Recommendations 59 to 64.
[31] Part II Report, page 386.

proposes to empower the Minister to extend certain requirements (eg. accredited operating agency and operational plans) to these non-municipal systems within a five-year timeframe.[32] In our view, there is no compelling justification for maintaining this distinction between municipal and non-municipal systems for up to five more years following the Act's coming into force. Accordingly, CELA recommends that the SDWA should provide that the requirements regarding operation plans and accredited operating agencies apply equally to municipal and non-municipal drinking water systems.

Similarly, it appears that the MOE's proposals regarding "financial plans" under the SDWA are again limited to municipal drinking water systems (eg. as a condition of the owners' licence). On this point, however, we note that Commissioner O'Connor's Recommendation 83 makes no distinction between the approval of municipal and non-municipal systems. Instead, Recommendation 83 broadly states that "the provincial government should not approve water systems that would not be economically viable under the regulatory regime existing at the time of the application". Recommendation 84 goes on to suggest alternative solutions (eg. funding and/or technical assistance) in relation to approved systems that are not economically viable.[33]

Clearly, it is incumbent upon the provincial government to consider the financial viability of both municipal and non-municipal systems prior to approval, largely because the owners' fiscal resources will greatly determine whether they can actually deliver safe drinking water in accordance with all legislative and regulatory requirements. Thus, CELA submits that the SDWA should make "financial viability" a mandatory consideration during the approvals process for both municipal and non-municipal drinking water systems. Otherwise, CELA is concerned that Ontario may end up with a two-tiered drinking water regime (eg. some systems that are viable and in compliance, and those that are not).

In addition, the vulnerability of the proposed source of drinking water (eg. groundwater under the influence of surface water) should be an explicit consideration during the approvals process. Again, this consideration should be spelled out with some specificity in the SDWA. On this point, we note that the MOE's proposed definition of "drinking water system" includes reference to "any well or intake that serves as the source of water supply for the system".[34] This reference clearly provides the basis for evaluating the safety of the proposed source (eg. well siting, raw water quality, etc.), and underscores the need for legislative requirements for source protection/watershed planning, as described above. Otherwise, we fear that the MOE may continue to authorize the use of drinking water sources (eg. Well 5 in Walkerton) that pose a risk to public health and safety due to their vulnerability to contamination. Where the proposed source of drinking water is known to be vulnerable, the MOE should reject the licence application and require an alternate (and safer) source to be utilized by the proponent.

Finally, there remains some uncertainty about the effectiveness and enforceability of owners' licence (and other sections of the SDWA pertaining to municipal systems) if a municipality decides to sell its drinking water system (in whole or in part) to a non-municipal entity. In such

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[32] MOE, *Proposed Components of a Safe Drinking Water Act* (August 2002), page 32.
[33] Part II Report, page 31.
[34] MOE, *Proposed Components of a Safe Drinking Water Act* (August 2002), page 18. On this point, the discussion paper is unclear whether the well-related standards in Regulation 903 will be rolled under the SDWA.

cases, does the system cease to be a "municipal" system for the purposes of the SDWA? We are aware that the MOE discussion paper suggests that the terms and conditions on owners' licences are binding on successors and assigns,[35] but we are not convinced that this generic provision fully resolves this uncertainty.

Similarly, we understand that the MOE discussion paper suggests that a municipality should "maintain sufficient responsibility for the provision of safe drinking water" if there is a transfer of ownership to the private sector.[36] Again, however, it is unclear whether this vague provision means that the system remains classified as "municipal" despite the new ownership.

For these reasons, CELA recommends that the SDWA should clarify whether a municipal drinking water system is classified as "municipal" or "non-municipal" under the Act upon a change of ownership of the system (in whole or in part) to another public or private corporation.

RECOMMENDATION # 12: The SDWA should:

(a) provide that the requirements regarding operational plans and accredited operating agencies apply to both municipal and non-municipal drinking water systems;

(b) specify that "financial viability" is a mandatory consideration during the approvals process for both municipal and non-municipal drinking water systems;

(c) specify that "vulnerability to contamination" is a mandatory consideration during the approvals process for both municipal and non-muncipal drinking water systems; and

(d) clarify whether a municipal drinking water system is classified as "municipal" or "non-municipal" under the Act upon a change/transfer of system ownership (in whole or in part) to another public or private corporation.

(e) Module Five: Statutory Duty of Care

In general, the proposed components of Module Five are responsive to Commissioner O'Connor's recommendations. However, we note that the statutory duty of care should not be restricted to municipally owned and operated drinking water systems, but to all drinking water systems (including those owned/operated by private corporations that serve municipalities). In our view, it makes no sense to differentiate the managerial standard of care on the basis of the corporate status of the owner/operator. Thus, CELA submits that the "directing minds" of all drinking water systems must be held to the same "reasonable care" standard.

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[35] *Ibid.*, page 49. We also note that the discussion paper proposes to restrict (but not prohibit) the transfer of owners' licences: see page 26.
[36] *Ibid.*, page 35.

We further note that the proposed language for the statutory duty of care is not unlike the duty imposed upon corporate officers/directors under section 194 of the EPA and section 116 of the OWRA. Significantly, in one of the few "reasonable care" prosecutions under the EPA and OWRA,[37] defence counsel argued that the onus was on the Crown to prove lack of reasonable care, which (according to counsel) was the *actus reus* (wrongful act) prohibited by the legislation. If this argument had been accepted, it would have been exceptionally difficult (if not impossible) for the Crown to prove lack of reasonable care beyond a reasonable doubt. Fortunately, the Court found that the prohibited act under the EPA and OWRA offences was "engaging in an activity that may result in the discharge of a contaminant", rather than the lack of reasonable care. In the result, this meant that once the Crown has proven the *actus reus*, the defendant bore the onus of proving reasonable care (eg. due diligence) in order to be acquitted.

While persuasive, the outcome of the *R. v. Bata* prosecution is not necessarily binding in a prosecution under the SDWA's statutory duty of care provisions. Indeed, the Court would have to find that the prohibited act under the SDWA is not the lack of reasonable care, but the exposure of drinking water consumers to "unreasonable health risks". Whether this proposition would, in fact, be accepted by the Court is unknown at this time. Therefore, to avoid any uncertainty over this issue, CELA recommends that the SDWA should explicitly provide that in any prosecution involving the statutory duty of care, the onus is on the defendant to demonstrate due diligence.[38]

RECOMMENDATION # 13: The SDWA should explicitly provide that in a prosecution under the statutory duty of care, no person shall be convicted if that person establishes that he/she exercised all due diligence to prevent the commission of the offence.

(f) Module Six: Compliance and Enforcement

With respect to compliance and enforcement matters, it appears that the proposed components in Module Six (eg. MOE administration, MOE powers/duties, Director powers/duties, Chief Inspector of Drinking Water, provincial officers, prohibitions/penalties, etc.) are generally responsive to Commissioner O'Connor's recommendations. However, CELA's ability to comment in detail on such matters is hampered by a profound lack of information about precisely what is being proposed for the SDWA (or regulations) in relation to compliance and enforcement.

In some instances, for example, the MOE discussion paper simply indicates that the relevant provisions that exist in the OWRA will be "replicated" in the SDWA, but fails to state whether – or to what extent – these OWRA provisions must be modified in order to properly address Commissioner O'Connor's critical findings and conclusions regarding the MOE's current abatement/enforcement regime.[39] In other instances, the discussion paper acknowledges that "many" provisions in the OWRA will have to be "amended" (or supplemented), but it fails to

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[37] *R. v. Bata* (1992), 7 C.E.L.R. (N.S.) 245 (Ont. Ct., Prov. Div.), at pages 284-85.

[38] See, for example, section 78.6 of the *Fisheries Act*, and section 283 of the *Canadian Environmental Protection Act, 1999*.

[39] MOE, *Proposed Components of a Safe Drinking Water Act* (August 2002), pages 40-43.

describe the necessary modifications.[40] In our view, an MOE commitment to create a "mini-OWRA" within the SDWA is meaningless and unlikely to fully address Commissioner O'Connor's concerns regarding compliance/enforcement. Accordingly, CELA must await the actual legislative text of the proposed SDWA before we can offer any further comment on such matters.

Having said this, we are compelled to express concern about the vague timeframe that is being proposed for the implementation of key reforms related to compliance/enforcement. In particular, we note that the MOE discussion paper simply states that "within six months after this section comes into force, or as soon as is reasonably possible after this Act comes into force, the Minister shall make a regulation governing compliance, inspections, and investigations in relation to drinking water".[41] First of all, to the greatest extent possible, the framework for the compliance/enforcement regime should be articulated in the SDWA, not in subordinate regulations that may not be enacted for a considerable period of time. Second, this legislative framework and regulatory regime should incorporate all of the essential elements of the reforms suggested by Commissioner O'Connor (eg. frequency of inspections, investigation procedures, protocols for followup action regarding deficiencies, etc.).[42] For example, "triggers" for mandatory abatement action (eg. failing to chlorinate adequately, failing to properly monitor/report, etc) should be spelled out in the SDWA so there can be no uncertainty within the MOE or among the regulated community as to when formal Orders will be issued and enforced (as opposed to mere warnings, notices, or correspondence).

In addition, we note that the MOE discussion paper suggests that the Minister "may" by regulation prescribe a procedure for members of the public to request investigations of alleged offences under the SDWA.[43] First, we note that Commissioner O'Connor's Recommendation 76 says that the MOE "should" establish such a process; in short, this measure is not optional nor discretionary. Second, it should be pointed out that Commissioner O'Connor does not say that Recommendation 76 should be implemented by regulation; indeed, it is our preference that the investigation procedure be established in the SDWA itself.[44] Third, it is significant that Recommendation 76 specifically refers to the Investigations & Enforcement Branch ("IEB"), not the Minister or the MOE at large. Therefore, CELA recommends that if the MOE intends to satisfy Recommendation 76 by prescribing (or "replicating") the existing procedure under Part V of the EBR, then this procedure must be amended to ensure that SDWA investigation requests are sent to, processed, and reported upon by the IEB rather than the Minister or his/her designate.

RECOMMENDATION # 14: The SDWA should:

(a) provide a comprehensive framework for compliance, inspections and investigations in relation to drinking water, with implementation details to be addressed in regulations that shall be passed within six months of the Act's coming into force;

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[40] *Ibid.*, page 44.
[41] *Ibid.*, page 37
[42] Part II Report, pages 209-10.
[43] MOE, *Proposed Components of a Safe Drinking Water Act* (August 2002), page 44.
[44] See, for example, sections 17-21 of the *Canadian Environmental Protection Act, 1999.*

(b) incorporate all of Commissioner O'Connor's suggested reforms in relation to compliance, inspections and investigations;

(c) specify the "triggers" for mandatory abatement action under the Act; and

(d) establish a procedure for the public to file SDWA applications for investigation with the IEB, rather than the Minister or other MOE staff.

(g) Module Seven: Miscellaneous Provisions

In general, the proposed components of Module Seven (eg. purposes of SDWA, general provisions, "State of Ontario's Drinking Water Report", appeals, general regulation-making authority, binding of the Crown, etc.) are responsive to Commissioner O'Connor's recommendations.

However, CELA submits that the purpose statement is not the appropriate provision for designating the MOE as the lead agency under the SDWA.[45] Instead, this designation should occur in standard legislative text that identifies the Minister as being responsible for the administration of the SDWA (and responsible for developing the comprehensive "source to tap" Drinking Water Policy referenced in Commissioner O'Connor's Recommendation 66).[46] As described above, CELA further submits that the purpose statement should be framed in a clear and comprehensive manner. Moreover, the SDWA should contain a preamble that, *inter alia,* recognizes the socio-economic importance of safe drinking water, affirms the public right to safe drinking water, and reflects the need for a comprehensive, multi-barrier approach to ensuring drinking water safety in Ontario.

With respect to the proposed "State of Ontario's Drinking Water Report", CELA strongly supports the annual filing of such reports in the Ontario Legislature.[47] However, to maximize the accountability and effectiveness of this reporting mechanism, CELA recommends that the SDWA should prescribe the general content requirements, which should be modelled on the invaluable "State of the Environment Reports" formerly prepared by the MOE. In particular, CELA recommends that the Bill 3 list of content requirements (eg. section 15) be used as the starting point for prescribing the contents of the annual Reports to be filed under the SDWA. For example, the annual Report should include a summary of Advisory Council activities, as suggested by Bill 3 (but not by the MOE discussion paper).

RECOMMENDATION # 15: The SDWA should:

(a) use standard legislative language (not the purpose statement) to designate the Minister of the Environment as being responsible for the administration of

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[45] MOE, *Proposed Components of a Safe Drinking Water Act* (August 2002), page 45.

[46] However, it should be noted that Commissioner O'Connor envisioned an overall, "government-wide" water policy covering all ministries and legislation, not just the MOE and its programs: see Part II Report, page 4.

[47] *Ibid.,* pages 46-47. The full range of items to be included in the annual Reports is somewhat unclear at the present time, and the MOE discussion paper fails to clearly indicate whether the content requirements will be prescribed in the SDWA or by regulation.

the SDWA, and for the development of a comprehensive "source to tap" Drinking Water Policy;

(b) contain a preamble that, *inter alia*, recognizes the socio-economic importance of safe drinking water, affirms the public right to safe drinking water, and reflects the need for a comprehensive, multi-barrier approach to ensuring drinking water safety in Ontario; and

(c) incorporate the Bill 3 list of the minimum content requirements for the "State of Ontario's Drinking Water Reports" that are to be tabled annually in the Ontario Legislature by the Minister under the SDWA.

4. CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

As noted above, CELA finds that the proposed components of the SDWA are generally responsive to the recommendations of Commissioner O'Connor. Accordingly, we support the inclusion of these components in the SDWA, but suggest that there are opportunities to finetune these components and/or to include other appropriate components in the SDWA in order to maximize protection of drinking water in Ontario.

In particular, CELA offers the following recommendations in relation to this matter:

RECOMMENDATION # 1: After First and Second Reading, the SDWA should be immediately referred to a legislative committee for public hearings and clause-by-clause review prior to Third Reading and Royal Assent.

RECOMMENDATION # 2:The Ontario government must ensure that EPA amendments regarding source protection/watershed planning are passed into law and proclaimed in force at the same time as the SDWA.

RECOMMENDATION # 3: The SDWA should fully incorporate and implement all aspects of the community right-to-know principle. At a minimum, the SDWA should:

(a) require immediate public notice by drinking water suppliers through appropriate means whenever:

- **exceedances of prescribed standards, or indicators of adverse water quality, are detected (including presumptive results);**
- **treatment, testing or distribution system equipment is malfunctioning or inoperative; or**
- **prescribed sampling, testing and analysis is not being carried out.**

(b) require drinking water suppliers to prepare comprehensive, "plain language" consumer confidence reports that are mailed to consumers (and MOE) on a semi-annual basis, and that address the following issues:

- **relevant source protection/watershed planning matters;**

- any regulated and/or unregulated contaminants detected in raw or treated water samples;
- any exceedances of prescribed standards and any related public health concerns (especially for vulnerable populations); and
- actions taken to remedy and/or prevent such exceedances; and

(c) require the MOE to establish and maintain an electronic drinking water registry that summarizes consumer confidence reports, discusses drinking water trends/issues, and serves as a publicly accessible repository for key drinking water information and documents (eg. approvals, test results, enforcement activity, State of Ontario's Drinking Water Reports, etc.).

RECOMMENDATION # 4: The SDWA should include a comprehensive statement of legislative purpose similar to that found in Bill 3.

RECOMMENDATION # 5: The SDWA (and regulations thereunder) should be prescribed as being fully subject to all Parts of the EBR, including Part V (application for investigation) and Part VI (right to sue).

RECOMMENDATION # 6: The SDWA should:

(a) describe the identity and institutional nature of the entity to be used for administering the accreditation programs under the Act;

(b) establish criteria to govern the qualifications of entities that may be eligible to be designated as the accreditation agency;

(c) specify that the accreditation agency must file annual reports with the Minister (and be made available to the public), and ensure that the agency will be subject to provincial freedom-of-information legislation;

(d) ensure that the accreditation agency reports any regulatory violations to the MOE forthwith;

(e) specify that Parts II and IV of the EBR apply to any regulations or agreements respecting the accreditation agency;

(f) empower the Minister to amend or revoke delegation agreements at any time; and

(g) establish fixed terms for delegation agreements, and ensure that there is periodic independent review of delegated accreditation functions prior to renewal of such agreements.

RECOMMENDATION # 7: The SDWA should:

(a) impose a mandatory duty on the Minister to establish the Advisory Council on Drinking Water Quality Standards within six months of the Act's coming into force;

(b) specify the composition and mandate of the Advisory Council;

(c) authorize the Council to periodically review the adequacy of existing standards and the need for new or updated standards;

(d) require the Advisory Council to review and comment upon the annual "State of Ontario's Drinking Water Reports" to be filed by the Minister under the SDWA;

(e) require the Advisory Council to identify, evaluate and report upon new and emerging drinking water contaminants for which no regulatory standards currently exist in Ontario; and

(f) specify that the results of scientific research undertaken by or for the Advisory Council should be quickly and broadly disseminated to all persons involved in drinking water safety in Ontario.

RECOMMENDATION # 8: The SDWA should:

(a) impose a mandatory duty on the Minister to set, maintain and revise drinking water standards;

(b) specify that the primary objective of drinking water standards is to protect the health and safety of all Ontarians, including those who may be particularly vulnerable to waterborne illness or disease;

(c) entrench the precautionary principle as a mandatory consideration when drinking water standards are being drafted, reviewed or revised; and

(d) provide that the standard-setting process under the SDWA is subject to Parts II and IV of the EBR.

RECOMMENDATION #9: The SDWA should:

(a) prohibit persons from damaging, destroying or otherwise tampering with a municipal or non-municipal drinking water system, or attempting or threatening to do so; and

(b) prohibit persons from unlawfully releasing contaminants into a municipal or non-municipal drinking water system, or attempting or threatening to do so.

RECOMMENDATION # 10: The SDWA should:

(a) **require drinking water suppliers to monitor, assess, and report upon the source(s) used for drinking water;**

(b) **require drinking water suppliers to take corrective action if source monitoring reveals actual or imminent threats to the quality or quantity of the drinking water supply; and**

(c) **require drinking water suppliers to develop appropriate contingency plans, which shall be submitted to the MOE for review and approval.**

RECOMMENDATION # 11: The SDWA should include provisions that fully reflect all aspects of Commissioner O'Connor's recommendations regarding operator training and certification.

RECOMMENDATION # 12: The SDWA should:

(a) **provide that the requirements regarding operational plans and accredited operating agencies apply to both municipal and non-municipal drinking water systems;**

(b) **specify that "financial viability" is a mandatory consideration during the approvals process for both municipal and non-municipal drinking water systems;**

(c) **specify that "vulnerability to contamination" is a mandatory consideration during the approvals process for both municipal and non-muncipal drinking water systems; and**

(d) **clarify whether a municipal drinking water system is classified as "municipal" or "non-municipal" under the Act upon a change/transfer of system ownership (in whole or in part) to another public or private corporation.**

RECOMMENDATION # 13: The SDWA should explicitly provide that in a prosecution under the statutory duty of care, no person shall be convicted if that person establishes that he/she exercised all due diligence to prevent the commission of the offence.

RECOMMENDATION # 14: The SDWA should:

(a) **provide a comprehensive framework for compliance, inspections and investigations in relation to drinking water, with implementation details to be addressed in regulations that shall be passed within six months of the Act's coming into force;**

(b) **incorporate all of Commissioner O'Connor's suggested reforms in relation to compliance, inspections and investigations;**

(c) **specify the "triggers" for mandatory abatement action under the Act; and**

(d) **establish a procedure for the public to file SDWA applications for investigation with the IEB, rather than the Minister or other MOE staff.**

RECOMMENDATION # 15: The SDWA should:

(a) **use standard legislative language (not the purpose statement) to designate the Minister of the Environment as being responsible for the administration of the SDWA, and for the development of a comprehensive "source to tap" Drinking Water Policy;**

(b) **contain a preamble that, *inter alia*, recognizes the socio-economic importance of safe drinking water, affirms the public right to safe drinking water, and reflects the need for a comprehensive, multi-barrier approach to ensuring drinking water safety in Ontario; and**

(c) **incorporate the Bill 3 list of the minimum content requirements for the "State of Ontario's Drinking Water Reports" that are to be tabled annually in the Ontario Legislature by the Minister under the SDWA.**

We trust that the foregoing comments and recommendations will be taken into account as the Ontario government finalizes the SDWA. Please contact the undersigned if you have any questions or comments about this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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The Hon. Chris Stockwell, Minister of the Environment and Energy
Mr. Dalton McGuinty, Leader of the Opposition
Mr. Howard Hampton, NDP Leader
Mr. Gordon Miller, Environmental Commissioner of Ontario