



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

MEMO

To: Theresa
From: Ramani
Re: PTTW
Date: Feb 19, 2004

In addition to your notes and Rick's comments, you should also consider the following points with respect to tomorrow's meeting. Please note that these are preliminary comments.

General Comments on the Process

It seems the PTTW review process is being undertaken internally with periodic consultation on ad hoc issues as they arise. For example, MoE is currently undertaking consultation on the proposed changes to Reg. 289, which overlaps with a number of issues that are relevant to Source Water Protection Plans (SWPP). I have concerns about the lack of full public consultation on this issue, since it will make it more difficult to provide input after MoE has made a decision or decided to commit to a particular approach. It would be very useful if MoE provide more clarification on how these separate processes will be integrated, and whether there will be more opportunity to review and comment on the review of the PTTW programme that is underway by the Implementation Committee.

Administrative Issues

The issue of water allocation under the PTTW is inseparable from the issue of regulating water quality. Currently, these two programs are treated separately by MoE. I would recommend that MoE amalgamate the current PTTW programme with the agency responsible within MoE for source water protection. Alternatively, if the programme is administered by different agencies, there should be co-ordination and integration of both programmes.

The MoE should establish a data system of information on the availability of water uses, including data on all PTTWs issued. (Please refer to page 8 of CELA brief provided earlier for more detailed information on the type of information which should be included in the database.) The database should be accessible to other Ministries, water management agencies as well as the general public.

Applications for PTTW should be circulated to other Ministries and water management agencies e.g. MNR, MMAH, Conservation Authorities, for comment. (This used to be done, however, I am not sure if it is still the routine practice at MoE.)

Specific Comments

SWPP should include a comprehensive water allocation plan, which should be subject to period review and revision. It should provide for estimates for both current and future capacity within a watershed or sub-watershed to provide for adequate quantity of water for water users. It should also include information about current and planned uses of water. [Reg. 285/99 states a Director may consider current and planned uses for livestock, municipal, agricultural and domestic purposes prior to issuing a PTTW (See section 2(3) Reg. 289/99). However, I am not confident that this is necessarily done, primarily due to lack of adequate information about current and planned uses of water. The SWPPs could provide valuable information to the Director of the MoE on current and planned uses before granting a PTTW.]

The SWPPs should also include a plan for long-term drought prevention strategies. The Ontario Low Water Response provides a means for responding to current low water conditions but recommends that long term drought prevention efforts be developed by water management agencies and users. (See Ontario Low Water Response at p.13.) The SWPPs would be the ideal document for providing information on drought prevention strategies within a watershed or sub-watershed.)

SWPPS should include pre-determined triggers of drought conditions in a watershed or sub-watershed which can be in the form of water levels or streamflow. PTTW should incorporate monitoring triggers to ensure the taking can be reduced or halted as required.

SWPPs should include information about minimum flows of surface water during normal conditions as well as during times of water shortage to protect and maintain the biological and chemical integrity of water. The minimum flows, which are established, should take into account normal seasonal variations in flows. The minimum flow requirements should be incorporated in PTTWs. PTTW should also include monitoring requirements to ensure that the minimum flow requirements are maintained. If monitoring results indicate that the minimum flow requirements are being exceeded, the taking should be stopped.

In addition, the SWPPs should establish minimum flow and levels beyond which there will be no further allocation (exceptions may need to be included in circumstances where allocation is necessary for human life and health).

Prime recharge areas for ground water should be identified.

All consumptive uses and non-consumptive uses in a watershed or a sub-watershed should be identified.

All PTTW holders should be required to adopt plans for water conservation. Conservation measures that should be built into all PTTWs through terms and conditions and must address improvement and efficiency in water use as well as reduction in water use.

Information to be provided in PTTW Applications

The current application form for PTTW should be revised to require applicants provide detailed information on their use and need for water (This was a critical issue in the OMYA case. The company had failed to provide any information on its production needs to support its request for such a large increase in water taking. The Director's witness statement in that case indicated that the Director usually accepts at face value the amount applied for is what is required, but that the Director may ask for certain clarification if the amount seems unreasonable. However, the Director never asked OMYA to justify its need even though the evidence at the hearing indicated that the company had sought for more than double its actual long-term needs.).

In addition, the application form should require applicant's to provide information on whether the water taking is a consumptive or non-consumptive use as this has implications for the sustainability of the province's water supply.