

IMPROVING SMALL DRINKING WATER SYSTEMS

Re: Advisory Council on Drinking Water Quality and Testing Standards
Report and Advice on Ontario Regulation 170/03
Smaller, Private Systems Review and Recommendations dated February 8, 2005

Publication #507



Prepared by:

Paul Muldoon, Executive Director
Theresa McClenaghan, Counsel
Richard Lindgren, Counsel
April 12, 2005

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

130 SPADINA AVE. • SUITE 301 • TORONTO, ONTARIO • M5V 2L4
TEL: 416/960-2284 • FAX 416/960-9392 • www.cela.ca



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

April 12, 2005

CELA Publication #507

Minister of Environment
Hon. Leona Dombrowsky
12th Floor
135 St. Clair Avenue West
Toronto, ON M4V 1P5

**Re: Advisory Council on Drinking Water Quality and Testing Standards
Report and Advice on Ontario Regulation 170/03
Smaller, Private Systems Review and Recommendations dated February 8, 2005**

Dear Minister Dombrowsky:

CELA writes to provide some preliminary comments with respect to the recently released Advisory Council on Drinking Water Quality and Testing Standards Report and Advice on Ontario Regulation 170/03 Smaller, Private Systems Review and Recommendations dated February 8, 2005.

The issue of small systems and their provision of safe, reliable water to those they serve is of critical importance. Safe drinking water is a major issue of public health. However, the question of how to ensure that small systems supply safe water and how to ensure appropriate oversight of those systems has been fraught with difficulty.

CELA concurs that there is an urgent need to proceed with a solution that both ensures safe water and that is actually implemented for small systems. The current status quo does not provide the public with appropriate assurance that the water consumed in small systems is reliably safe. Implementation of Regulation 170/03 as currently provided has proven to be extremely problematic in many situations resulting in the deferral of compliance dates for small systems while solutions are explored.

CELA notes that the Advisory Council report has a great deal of promise and may provide a way forward to address the small systems appropriately. However, there are many questions remaining and issues that will have to be considered, which we would like to bring to your attention.

First and foremost is the issue of the current state of the water provided by small systems and the lack of assurance that the water is reliably safe even as we speak. If the government decides to

proceed with the Advisory Council's recommendations, it will be some amount of time until a revised regulation can be prepared. In the interim, in addition to any other existing requirements, the government should take certain steps to increase the level of public safety. These could include the following:

- Immediately require use of presence / absence tests for bacterial contamination of small systems' water with a specified frequency,
- Immediately specify steps that must be taken if those tests indicate presence of bacterial contamination, for example:
 - Provide for notice to be given to users, parents of users, health units
 - Have plans in place for alternate water supply and put alternate water supply in place until further investigation is conducted
 - Issuance of no – use or boil water advisories by medical officers of health in appropriate circumstances
 - Consider an interim regulation / protocol under the Health Protection and Promotion Act to deal with the interim period until a more permanent small systems regulation is developed and in place
- Immediately require specified treatment of all small systems' water using surface water as their source, including artesian wells and springs,
- Request the Chief Drinking Water Inspector to report periodically on the interim measures and use the results of those measures in preparation of the permanent regulation.

The second concern is how quickly the government will be able to develop and design the system recommended by the Advisory Council and implement the resulting regulation/s. As noted, this is an urgent issue since these systems do not yet have the level of protection and assurance that should be provided to ensure safe provision of water.

There are several areas which would have to be considered and appropriately addressed by government in order to proceed with the Advisory Council's model for small systems:

1. For mobile home parks (which are year round residential), the report suggests that Reg. 170 should apply but that municipalities should be required to assist with their compliance and that the province should provide resources to those municipalities by way of a grants program. This should be done expeditiously because these communities are now not adequately protected and by and large they are often low income communities. There is already wide-spread impact on these communities from Reg. 170 and some have gone so far as to shut down, removing necessary affordable housing from impacted communities.
2. Health units charged with assisting owners and operators with establishing the requirements of their systems will need the necessary resources and additional training to carry out these responsibilities. For example, two recent reports indicated that health units would expect to have between 700 and 1000 such small systems in each area of health unit responsibility, regardless of whether they are in the rural north or the urban south. On the other hand, the fact that there are such a large number of small systems in

each area of health unit responsibility indicates that local delivery of the program by health units may be a practical approach.

3. Areas outside of health unit responsibility would need to be addressed by an alternative mechanism, for example by the Ministry of the Environment but this would be an additional resourcing issue for the MoE.
4. Owners/ operators of small systems will need to receive the training appropriate to their system and the province should ensure that there is a mechanism to provide that training expeditiously.
5. The report relies on proposed development of protocols for health unit officers to follow in working with the system operators, in gathering information pertaining to each system, and in deciding as to the appropriate levels of monitoring and treatment for each system. In order to provide safe water, the content of these protocols will be key and must be robust and reliable as well as appropriately applicable to the widely varying circumstances in which they will be applied. We assume that the province would avail itself of the excellent health, hydrogeology and water treatment expertise available in Ontario in developing the protocols, and then strongly recommend that the draft protocols be issued for public review and comment prior to adoption. At all times, assurance of a high level of safety from small systems' water must be the governing factor in developing the protocols.
6. Once small systems have been evaluated in accordance with the yet to be developed protocols, the main question will be what treatment is appropriate for that system. The health unit officers must be able to indicate available, reliable treatment systems that the operators can readily adopt for the circumstances of that system. The report recommends that the province provide certification of package treatment systems and CELA encourages the province to expedite the research, development and certification / approval of such systems for specified circumstances as quickly as possible.
7. Although the report recommends that the Chief Drinking Water Inspector remain responsible for overseeing the new approach to small systems, there is no detail in the report with respect to the mechanics of requiring compliance with a new small systems regulation. Will the model be akin to food inspection with shut down the result of unsatisfactory inspections? Will the system specific design be included in an order or instrument binding on that particular operator and then will the Ministry of Environment be involved in enforcement of those instruments? How will the Ministry of Health be involved? In any event, assurance of timely, appropriate communications between the health and environment officials is imperative for the sake of safe water systems and public health. Furthermore, given that the issue is so critical to public health and safety, the compliance and enforcement system will have to be one that responds immediately to issues of unsafe water and in a way that has broad support by small system water suppliers in order to ensure that the requirements are actually adopted.

CELA would be happy to meet with you or your staff at any time to discuss these concerns.

Yours very truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Paul Muldoon
Executive Director



Theresa McClenaghan
Counsel



Richard Lindgren
Counsel