

COMMENTS TO RICK BY
MONDAY NOON IF POSSIBLE
COMMENTS DUE TUESDAY.

June 5, 2000

BY FAX

Director
Standards Development Branch
Ministry of the Environment
40 St. Clair Avenue West, 7th Floor
Toronto, Ontario
M4V 1M2

Dear Director:

RE: DRINKING WATER REGULATION – EBR REGISTRY NO. RA00E0014

On behalf of the Canadian Environmental Law Association (CELA), I am writing to provide comments with respect to the recently proposed drinking water regulation.

CELA is a public interest group founded in 1970 for the purposes of using and improving laws to protect the environment and conserve natural resources. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups in the courts and before tribunals on a wide range of environmental issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities.

Since its inception, CELA has been particularly active in protecting the quality and quantity of water resources in Ontario and across Canada. For example, much of CELA's casework has focused on preventing or remediating harm to surface water and groundwater – both of which can serve as sources of drinking water. Similarly, CELA has been involved in countless law reform initiatives at both the provincial and federal levels in order to safeguard water quality and quantity.

In light of this experience, we have considered the adequacy of the proposed drinking water regulation. To our knowledge, the actual text of the proposed regulation has not been made available for public review and comment. However, according to the EBR Registry Notice, the proposed regulation is intended to achieve the following objectives:

- require accreditation for all laboratories or water treatment plants which perform tests on drinking water;
- require municipalities to notify the Ministry of the Environment (MOE) if they change the private laboratory which test their drinking water;

- review the Certificates of Approval (C of A) for all water treatment facilities at least once every three years; and
- require laboratories to immediately notify the MOE, medical officers of health, and municipal water facility operators if test results indicate unsafe drinking water quality.

In general, CELA supports these four requirements. CELA submits, however, that these narrowly framed requirements constitute a “band aid” solution that does not go far enough ensure safe drinking water across Ontario. In our view, merely tinkering with lab accreditation or notification procedure does not address the larger legal, policy and administrative reforms that are necessary to provide effective and enforceable protection of drinking water in Ontario, as described below.

Our more detailed comments are provided below.

1. Public Notice/Comment on the Regulation

First, we note that the proposed regulation was posted on the Registry as an “exception” pursuant to section 29 of the *Environmental Bill of Rights* (EBR). Given the gravity of the Walkerton crisis, we do not question the need to promulgate the regulation in an expeditious manner. However, the problems that the regulation purports to address have been in existence for years, and it is tragic that it has taken a public health disaster to prod the Ontario government into long overdue action.

Second, our ability to comment on the proposed regulation has been impaired by the unavailability of the actual text of the regulation. The EBR Registry Notice provides an online link that allegedly provides “access to an electronic copy of the proposal and/or supporting documentation”. In fact, this link provides neither the proposal nor supporting documentation. Instead, the link simply accesses the written version of speeches made by the Minister and Deputy Minister at their May 29th press conference at Queen’s Park.

Accordingly, we are unable at this time to undertake a legal analysis of the actual scope or content of the proposed regulatory requirements. Thus, CELA’s comments below are at a general or conceptual level, and we reserve the right to provide further comment once the regulatory language is available for public scrutiny.

2. Requirements under the Regulation

Our comments on the four proposed requirements are as follows:

(a) Accreditation of Labs and Water Plant Testing Facilities

In principle, CELA has no objection to requiring that testing facilities be accredited by an independent agency in order to perform drinking water testing. However, it is unclear at this point what agency the MOE is proposing to use for accreditation purposes (Canadian Standards Association? Canadian Association of Environmental and Analytical Laboratories? ISO?).

- (ii) the local medical officer of health; and
 - (iii) the owner and operator of the water works.
- (c) The duty imposed by subsection (b) comes into force immediately when the person knows or ought to have known that his or her test results indicate unsafe water quality.
- (d) The person required by subsection (b) to give notice shall give such additional information as may be required by the Director, the local medical officer of health, and the owner and operator of the water works.
- (e) The notice required by subsection (b) shall be in the prescribed form, and shall include:
 - (i) particulars of the test results which indicate unsafe water quality;
 - (ii) a description of any further testing which will be undertaken.
- (f) Upon receipt of the notice required by subsection (b), the owner and operator of the water works shall forthwith,
 - (i) provide immediate and effective public notice that test results indicate unsafe water quality; and
 - (ii) do everything practicable to prevent, eliminate or ameliorate the conditions or circumstances which may be causing unsafe water quality.

3. Looking Ahead: The Agenda for Reform

As described above, CELA submits that the proposed drinking water regulation is, at best, an interim measure which only addresses short-term needs, such as ensuring accreditation of testing facilities and clarifying notification requirements. As such, the regulation should be viewed as a stepping stone to more substantive drinking water reform in Ontario.

If the Ontario government intends to ensure effective and enforceable protection of drinking water, then the government must commit to a sweeping overhaul of the existing legislative and policy framework. At a minimum, this agenda for reform should be developed in an open, consultative manner, and should include the following elements:

(a) Safe Drinking Water Act

At the present time, there is no Ontario law specifically designed to safeguard the province's drinking water, particularly at the point of consumption.

- insert key points of op ed
- review adequacy of ODWO/PWQO

(b) Restoration of MOE Funding and Staff

The budget of the MOE declined from \$287 million in 1995 to \$158 million this year, which represents an astounding 44% reduction. Over the same timeframe, the number of MOE employees has decreased from approximately 2,500 to 1,500 persons.

Among other things, these massive cutbacks have severely reduced the number of MOE staff who had been working on surface water, groundwater and drinking water issues. In 1995, for example, some 113 persons worked for the MOE on water matters; this year, only 48 staff work on water matters. Over the same timeframe, the number of people assigned to groundwater and hydrology decreased from 28 to 15. In addition, four of five provincial testing laboratories were closed in 1996.

- more cites from Kathy's de-reg chronology??

There can be little doubt that these and other initiatives have undermined the MOE's institutional ability to safeguard Ontario's drinking water... Prov. Aud/ ECO reports

- restore MOE funding/staffing (refer to water cuts, plus MAP)

(c) Other Legislative Amendments

- systematic review of outdated/inconsistent laws i.e. FPPA and EPA exemptions, repeal Bill 107
- model water bill re quantity – no sense protecting drinking water quality if there's not enough to go around

We trust that these comments will be taken into account as the MOE finalizes the proposed drinking water regulation. Please feel free to contact the undersigned if you have any questions or comments about this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Richard D. Lindgren
Counsel

cc. The Hon. Mike Harris, Premier of Ontario
The Hon. Dan Newman, Minister of the Environment
Mr. Gord Miller, Environmental Commissioner of Ontario