

Memorandum

To: CELA STAFF AND CWC EXECUTIVE
CC: [Click [here](#) and type name]
From: THERESA McCLENAGHAN
Date: 18/09/00
Re: WALKERTON APPLICATIONS FOR STANDING

UPDATE ON HEARINGS DURING WEEK OF SEPTEMBER 5TH – APPLICATIONS FOR STANDING

Hearings were held on September 5th, 6th and 7th, 2000 to deal with the 40-plus applications for standing. These notes are to provide a summary of some of the impressions and arguments. Because I have noted items for follow up or future consideration, **PLEASE DO NOT CIRCULATE** this version of this memo to anyone else. I will be preparing an edited version for public consumption, to reduce the burden on Bruce and Ron and others in keeping people up to date with the proceedings. That version will clearly state that it may be circulated. Sarah also suggests we make a place to post such notes on our web site, which I support.

General Comments and Procedural Matters

I will report under this heading any comments made by the Commissioner over the three days of hearings that pertain to how he is dealing with the hearing, procedural matters, expected procedure, etc.

The Commissioner advised that he will release his decision as to the standing applications collectively, as a single set of reasons. It will be released at the beginning of next week (week of September 11th). He noted that there is urgency in the decision because of the expected timing of the hearing.

The Commissioner advised that if standing is granted to a party, the party would be given advance notice as the inquiry proceeds regarding what evidence is to be called, witness statements that are available, documents that are available. Commission counsel will keep parties so advised. Therefore there will be advance notice as to issues that a party may have an interest in.

The Commissioner advised that as they see Part II proceeding, it will be quite a different process than part I. The Commission will commission a number of study papers; there may be more than those presently suggested on the web site; furthermore, their content may be altered. They will be hearing peoples' suggestions in that respect.

For the first phase of Part II, experts who are independent and highly qualified will draft study papers; the commission will publish them in draft for comment; then will seek responses from the public and from those granted standing in part II. Parties may then also seek to submit papers commenting, agreeing, critiquing, etc. They then envisage convening public meetings, including groups with an interest in that particular subject, meetings with the expert/s in that topic, and including parties with standing. At the conclusion of that process, the commissioner will draw together the reports and draw from them the recommendations that he feels it necessary to make. Thus parties with standing in part II may prepare their own papers and make any other submissions to the commissioner on any of the issues in part II. They do not expect a role for lawyers, at least by way of examination and cross examination of witnesses in part II. They want to hear all they can from people with a valuable contribution to make; whatever the differences in perspective. Plus, the person preparing each of the commission papers will undoubtedly want to consult as well with those who have something to contribute on the particular subject.

Tuesday, September 5th, 2000, morning session

Concerned Walkerton Citizens – CELA's submission on behalf of CWC was the first submission to open the standing hearings. Because it was our submission, I did not make detailed notes as to the content of our submission; if people want it, let me know and I'll generate a synopsis from our notes.

The commissioner queried our submission about funding for a case manager – he noted that Management Board's guidelines do not include provision for case management or community coordinator. He asked us for additional submissions if that argument could be made. We expect to make a supplementary submission to the Commissioner for funding for counsel at one and a half counsel. We also hope to discuss with the deputy at the A.G.'s office the possibility of using a counsel fee to obtain case management or community coordinator assistance. There is an issue as to whether we will have funding for legal counsel because we are legal aid staff.

In terms of experts, we expect the decision to include no funding for expert assistance during preparation of the case. Again, we are renewing a request to the A.G. to explicitly provide for the Commissioner to recommend such funding. It

appears that the government is anxious to avoid replication of the IFPA or anything that resembles it. Inquiry counsel had done a search of previous inquiries and could not find precedent for payment of experts to help parties with their case.

With respect to experts for our case, to be called as witnesses, the Commissioner asked all parties to make their proposals to Commission counsel as to who should be called as witnesses. They hope to avoid duplication where experts would be in agreement. In that case, the experts would be retained by and called in chief by the commission's counsel. We would still be able to discuss matters with such witnesses in advance of testimony, but it appears we will not have funding for them for any such advance work unless we fund raise it ourselves.

With respect to expert witnesses that the commission does not wish to call itself, but which it is willing to have us call, we would have to revisit the issue of funding when such a situation arises. The commissioner prefers to deal with such matters as they arise, rather than providing up-front funding.

With respect to coalitions and standing grants to groups who represent similar interests, CWC was listed along with Walkerton Community Foundation, Walkerton Chamber of Commerce, and the Class action group under the title of "Directly affected groups and town residents". I do not expect to find that CWC is directed to participate with the others, apart from the efforts we and our clients have already made. The foundation and the Chamber may find themselves put together. Similarly, I don't believe that the Commissioner disputed that the class action group of people who suffered serious injury need to be separately represented.

My prediction is that CWC will be granted full standing in all parts of the Inquiry, and that disbursements will be covered (travel, accommodation, copying, phone) but not a case manager nor community coordinator nor experts for case preparation. I suspect that we will not be granted a counsel fee, despite our renewed request for same.

Potential Witnesses to work with CWC

I will note in this section parties and witnesses that we should consider contacting to suggest them as commission witnesses, and in the alternative, to call them as CWC witnesses.

Walkerton Community Foundation

Submissions by a lawyer, Gilbert, advised that the foundation was just incorporated and received charitable status "in record time" in July. He described it as a "unique combination" of Walkerton service clubs, in recognition of the tremendous amount of work that needs to be done. The service clubs include the Rotary, Saugeen Masons, Knights of Columbus, Knights of Columbus Auxiliary, St. John's

Ambulance, Lions, Optimists, Royal Canadian Legion, as well as community members. He stated that the individual members of these organizations "include every trade, business, calling..." The objectives include to provide assistance to those affected; to foster, develop, support and rebuild the fabric of the community. Their issues of particular concern for Part I include:

- adequacy of emergency response plans, if any
- adequacy and timeliness of implementation of same, if any

Their issues of particular concern for Part II include:

- communication – whether it is appropriate, timely, adequate
- whether there are appropriate redundancy systems
- what are the economic costs, both quantifiable and non-quantifiable
- what are the present and future needs for supports in the community, including various types of counseling

Their plan is to call evidence from the membership bases of the constituent groups

Their funding request is only for counsel and disbursements.

They do not plan to call independent experts or consultants and need no funding for these.

Walkerton Chamber of Commerce

This presentation was made by Rick Leks, the president. They have not yet retained counsel. They argue that they meet the criteria for both parts I and II. They had explored sharing of resources with CWC. They believe there are issues of common ground. They had also considered the class action group, but they agree there are differences in approach with them. They have begun exploring commonalities with the community foundation; exploring the "fit" and note that they share mutual territory with them. They need to ensure there is no potential for conflict. They may possibly submit a joint application for funding if standing is granted. They seek legal representation for Part I; with possible experts to be called as well. With respect to Part II, they want to bring in economic expertise. They want to develop crisis management best practices to minimize impacts in any community with a contamination impact.

Class Action Group

Lawyers Kaskie?? and Boland?? This potential class consists of parents of seriously ill children, over 200 individuals with losses and members of a class in a proposed class proceeding which will be before Justice Winkler on September 17th, 2000, when the certification process will be confirmed. Six law firms have combined to form a plaintiffs' counsel group: Siskinds, Harris, Pensa, Ritchie, Strossberg, and two others. They represent separate groups with common interests. If granted standing, the counsel who would appear most at the Inquiry would be Michael Eizinga, from Siskinds, who would also coordinate the counsel group for the inquiry. They have public inquiry experience. They have retained experts in the class action and these will be available to the Inquiry. They are not seeking funding for these experts. They include experts as to the effects and impacts. These experts will not be an expense of this commission. He noted recent case law to the effect that putative class action counsel has a duty to represent unnamed and unknown members of the class, even prior to certification. They feel they provide a specific interest before the Commission that it will get no other way. As to the counsel fee request, they feel it is not equitable at this time, to ask those families who have suffered to cover fees for the inquiry.

Government of Ontario

Lawyers: Morocco, Haney? and Mahoney. Morocco submitted that the government had an obvious interest in both parts of the Inquiry. He said that the people of Ontario want 2 things from the Inquiry: a) a full inquiry and b) the future safety of the water supply in Ontario.

He also stated that people of Ontario want the inquiry to be conducted expeditiously. He noted that it is not only if standing is granted to the applicants that the public interest is represented. He noted the role of the commission's own counsel. That role includes to ensure the orderly conduct of the inquiry; to assist the commission, and that it has primarily responsibility for representation of the public interest, including that all interests bear on the public interest. He submitted that unless a person is directly, substantially interested, they ought not be granted standing, unless the commissioner is satisfied that his counsel won't cover the matter. He also noted that the commissioner should consider that if the same interest is represented by 3 or 4 parties, then the hearing might be full, but it would not be expeditious. He stressed that coalition formation was important – so that there would be adequate funding of those who are directly, and substantially affected. Ontario's objective and his instructions are to do whatever is necessary to facilitate the commissioner in the carrying out of his mandate.

Agricultural Groups

Ontario Farm Environmental Coalition

They are responsible for Ontario environmental farm plans. They promote a “land based agricultural system”. For Part I, all of the agricultural groups will be represented under the OFEC. They ask for 1 standing grant and 1 counsel fee. They have a perspective with respect to agricultural farming practices. For Part II, they ask that each may make separate submissions; each of the Farm groups (notes follow) bring its own special interest to the future recommendations to be made by the commission. OFEC also seeks standing itself for Part II, but anticipates not as much need for legal expenses in part II. OFEC asks for the flexibility to have its counsel at the hearing when it feels it’s needed.

Christian Farmers’ Federation of Ontario

Bob Edgood ? – noted that their perspective is rooted in the protection of creation. They want to ensure that the water and soil resources remain for future generations. They are co-chair of OFEC. They also chair a spills prevention project and have been members of CURB committees. They have participated in many hearings. They have writing teams for best management practices, for example for nutrient management. They have a lot of experience with water quality. They are very conscious that rudiment livestock is one reservoir of E. coli. They seek separate part II representation to ensure that accurate information, and the best available is provided. They do request some intervener funding for part II. They do not like to be distinguished as “agricultural groups” versus “environmental groups” – they note that farmers are the first environmentalists.

Dairy Farmers of Ontario

They request standing in Part II – to bring their particular perspective forward. They do not seek funding.

Ontario Cattle Feeders’ Association

They request separate standing in Part II. They operate on different scales of operation than do the Ontario Cattle Producers. It is the scale that sets their members apart from general farmers. They are particularly interested in environmental management of large quantities of manure. It can either be a nutrient if properly managed or pollution if members lack proper techniques. There are numerous other sources of ground water contamination in the province. Their members usually have modern facilities and therefore their manure is nutrient; not water contaminant. Their interests include study paper #4 (Ontario machinery of government), for example regarding provincial initiatives regarding the forthcoming Agricultural Operations Act. (**Note this for follow up.**) They can assist the commissioner regarding training; provincial responsibility and other issues. They also have an interest in #6 (water pollution; contamination sources) and state that large beef lot operators’ interests must be represented.

Ontario Cattlemen's Association

They seek part II standing. They have done work such as establishing buffer strips along water courses. They have been working with OFAH and others for establishment of wildlife habitat. Mr. Eby, the president making the submission farms around 20 miles northwest of Walkerton in Bruce county. "I'm too close to home to be an expert." He notes that all of their members take E. coli very seriously – it is very common and is carried by cattle and by all ruminants. All of the producers play a role in managing the risk, as well as MNR and others. OCA has spent \$250,000. on research on this issue. They also have access to research across the country through the Canadian Cattlemen's Association. In December they will host a summit of the world's top researchers. They seek to be included in four papers and others. Agricultural practices in the province are under intense media and public scrutiny. There are actually 1.1 million head fewer cattle in Ontario over the last 20 years. Their beef producers have been subject to intense media; helicopters over head; one area farmer has asked OCA to represent their interests. Beef cattle is a major economic activity in this county (Bruce). It is important to them to have separate standing in the inquiry (part II). The recommendations from the Inquiry will have significant impacts on farm practices in Ontario. They seek legal counsel in part II. They will discuss use of experts with commission counsel as the Inquiry proceeds.

Ontario Farm Animal Council

They seek separate part II representation. They have an extensive library. They are providers of technical information. They also bring other producers, such as sheep and goats to the table. They can assist to put together papers; can answer questions; may be in a position to assist OFEC and other groups.

Ontario Federation of Agriculture

Cecil Bradley made their presentation. They seek part II standing. They represent over 43,000 farm families; and consist of 30 member organizations. "Lobbying is their business". They lobby for a legislative and regulatory environment to allow members to do business and live in their communities as they see best. They seek separate standing in Part II to comment on operational issues and on farm practices, water management, etc.

Ontario Pork Producers Marketing Board

Presentation by Larry Skinner. He noted that this tragedy could have occurred anywhere in Ontario. They are individuals involved in food production. They are under the microscope to produce safe food. They have direct involvement with the environment daily. They have a keen interest in environmental issues at the inquiry; for example, liquid manure spreading; storage structures. They have spent over 1

million dollars in the last 5 years on environmental research projects. Examples include land use planning, best practices, rural homes, agricultural waste, intensive livestock grazing. They need to provide an accurate voice at the Inquiry. Their livestock depends on a sustainable environment and nutrient cycle.

Labour Union

OPSEU

Presentation by Donald Eby ? and Tim Hadwin ? – Tim is their in-house counsel; Don is with Gowlings Lafleur Henderson. OPSEU is asking for standing in both parts of the Inquiry, but does not seek funding for either. They provided a detailed written submission. They represent over 2000 workers involved in water delivery, both in the larger public service and those directly involved in Walkerton. They are very concerned that the causes of Walkerton be revealed. They want a “justifiable trust” with the drinking water of the province. They wish to assist with both issues. Their 2000 workers fit into 4 groups:

- MoE staff, including environmental officers, investigators, hydrogeologists, surface water drinking water specialists, treatment specialists, etc.
- Front line staff at the municipalities
- Agricultural production, such as OMAFRA staff, the Dairy Herd Improvement Corp. and the Beef Improvement Association Inc., MNR etc.
- Health units – technical and professional non-medical staff, including those at the Walkerton Health Unit.

The kinds of issues they can assist with include the regulatory scheme; recent changes and changes over time; including funding levels, staffing levels, etc., withdrawal of MoE from water pollution control; changes to Ontario Drinking Water Protection program; proposed changes to Ontario Drinking Water Objectives. Their evidence will be from those who have worked within government and who want to tell about it, through a voice that is independent from government. They provide an alternative voice – as direct and useful as the voice of government of Ontario itself.

Their broader membership includes 50,000 public servants; interests include working conditions; the capacity to provide public services that they are committed to; they are concerned with the machinery of government; funding, downsizing, downloading. For example, they have been involved with the recent whistle blowing issue.

They also represent individuals personally and directly involved in the events of the Walkerton disaster, employees familiar with events leading to the disaster, including at the Health Unit and MoE staff. They want their actions fairly reviewed and their interests considered. There is one group of 4 OPSEU employees who have a separate representation request, from the Owen Sound MoE office; all others personally involved who are OPSEU employees would be represented by OPSEU, but they have modified their request in this respect to provide “witness counsel funding” and they understand that this request has already been agreed to by commission counsel. They also represent employees affected by the outbreak at the jail, other public service employees in town, employees at the Walkerton hospital site in the paramedic service – this category of employee / residents / workers want a full understanding of the events in their workplaces; how they affected the workplaces and themselves.

With respect to Part II, the OPSEU position is that services ought to be publicly funded and publicly run (e.g. as opposed to Azurix). OPSEU was one of the parties to early call for this type of inquiry and for it be broad based in the wake of Walkerton. They are also a member of Public Services International and of the National union and therefore can draw on European, North American and Canadian experiences. OCWA was called into Walkerton for clean up. They are participants in water policy.

OPSEU members include front line staff and policy makers and policy implementers. It is important that the commission hear from the union that represents front line staff that would have to implement recommendations regarding legislation and regulation.

Their perspective will differ from that of government witnesses (NOTE: the Commissioner interjected to advise that “with respect, it will be commission counsel that will lead this type of evidence.) The OPSEU perspective differs as to budget cuts; other matters.

The Commissioner interjected to say that he was casting for how to define the grant of standing to various parties; one approach may be to grant standing to some parties, limited to those issues relevant to their interest, perspectives, etc.

OPSEU will add perspective as front line employees in Part I – why didn’t the system work. OPSEU front line staff will assist with the perspective that there may be “lots of rules” but there are reason problems are not caught early enough – the OPSEU and front line staff position is fundamentally different from that of commission counsel with government witness or of government itself. For example, on the ground staff can explain the difficult choices and priorities that they make daily – this can be done across the system. also systemic perspective; distinct from government policy making function. Both part I (a) and I(b). They will be

cooperating with other parties granted standing, including other unions such as CUPE.

Mary Clare Saunders

Represented by Peter Faulis ? She is a resident of the Township of Durham east of town. She is not from Walkerton; attended on event in town; was not made aware of the problem with the water until late in the evening. The event was at the Legion; but Legion staff knew of a problem because they took some measures – e.g. boiling water; prepared food in Mildmay. So questions arise: why was she not made aware; why did staff there know on the 20th but town officials apparently did not know until the Monday? She feels that the commission should canvass people working that evening – where did their information come from? She wishes to participate herself to ask questions of those who did know. She is also concerned that the provincial program to provide disaster relief was not accessed for people who suffered hardship.

The commissioner noted that commission counsel should be approached with any such information in order to have them address such issues.

Greta Thompson

She does not seek funding. Wishes to have standing in parts 1(b) and 2 as a witness. She states that the foundation of Ontario's water system is crumbling; has been for years. She wants the commission to "go outside the box" for solutions.

Health Unit – Bruce Grey Owen Sound

They are the defendant in a 1.3 billion dollar lawsuit. The facts that come up at the inquiry would be relied on in that case. The Board of Health is statutorily unable to direct the medical officer of health nor inspectors' opinions – but ends up statutorily responsible for their actions and results: Health Protection and Promotion Act, section 95(3). They seek standing for both parts 1 and 2. He referred to sections 4 to 9 of the Act which outline Board responsibilities and sections 10 to 20 of the Act which outline medical officer and inspectors duties. They are separate and distinct. The Board itself will be under scrutiny in the inquiry: did it do all it could? What else could the Board do? But the Board has no control over the actions of these officers. There could be a difference in interest between the Board and its medical staff because of section 95 of the Act. Because the responsibility of the 2 is difference. The medical officer of health has greater responsibility and acts almost on his / her own.

The Commissioner queried whether there was real conflict, in the interest of avoiding an unnecessary number of employers etc. at the hearing. The reply was that there is no conflict now, but they have different responsibilities. The

Commissioner commented that he will want public health interests fairly and fully represented, but could one standing grant represent them together?

Dr. Murray McQuigge, David Patterson and Mary Sellars, collectively

Represented by Earl Cherniak, jointly with Mr. Grace ?

The Medical officer of health is also an inspector by statute. All 3 were intimately involved in the events from the outset. All 3 have congruent interests; they don't require separate representation here at the inquiry.

Cherniak submitted that when the criteria for standing were met, the commissioner has no choice but to grant standing. That there is not a conflict of interest does not equate to a lack of separate ascertainable interests.

They are not seeking funding.

The medical officer of health is not an employee of the health unit. He has a statutory degree of independence.

The Ontario Drinking Water Objectives, as at May provided particular duties of the medical officer of health. The medical officer of health has not been sued in the pending law suit.

These 3 are those with the most direct responsibility; they are also the keepers of significant records.

Dr. McQuigge also claims a perspective regarding part I(b) because of his intense involvement in the events, and subsequently. His individual perspective is useful with separate representation. For example, he has a perspective regarding the new regulations passed last month – how they will work on the ground; or have worked, for example in the last week. For example, regarding reporting of the results of water testing – what was the system before and compare to the system as it is now.

Association of Local Public Health Agencies

Represented by Paul Waring ?

they are a not-for-profit organization with a membership of all of the Boards of Health of the province, as well as all the medical officers of health and have an affiliation with the supervisors of public health inspectors.

They are the primary public health care providers in the province. The results of the inquiry will directly affect the manner in which they fulfill their roles in communities.

The commissioner queried their standing for part I; for part II he has not question, but what of part 1(a)? The reply was that they would bring *viva voce* evidence regarding policies, practices; advise as to what is the paradigm for delivery of public health? If they were limited to part II, they would make written comment, but this would not be adequate. They will assist the commissioner with knowing what procedures and practices are in the province. Their role is distinct from Dr. McQuigge and the local health unit. They have a limited role; i.e. limited in evidence; as to the role of a medical officer of health and his staff. They are uniquely able to assist the commissioner. They seek funding so that their participation in the inquiry will be more efficient; their staff are not trained as to public inquiries.

Ontario NDP Caucus

Represented by David Jacobs ? for Bud Wildman, Howard Hampton, NDP Caucus and Ontario NDP. He submitted that their interest is as a public law applicant, as well as as a private law applicant. His clients have been “blamed” for the crisis by the current government. The inquiry will also concern the management of government when the NDP formed government from 1990 to 1995. He pointed to sections 5 and 5(2) of the Public Inquiries Act. The Public Inquiries Act deals with findings of “misconduct” and “unprofessional conduct” etc.; such allegations were made by the premier on May 26th. This will involve consideration of the policies, practices, and procedures of the NDP as government.

The Commissioner questioned this argument in that the Public Inquiries Act deals with a “finding” of misconduct; this is not the same as a public statement such as the one referred to. The response was that the Inquiry is not temporally limited. The premier alleges that the policies, practices and procedures in question have been in place since 1993. Thus it is not simply a question of awaiting the Notice of a finding – it is reasonable to anticipate these issues and they should be before the Commission to respond to such accusations. “Our management of government, of the water system of Ontario” are directly put on the table by this government. “It is crucial for us to be here.”

Furthermore, the NDP, M. Churley, H. Hampton all have a major role in calling for the creation of this Inquiry. See Hansard. The NDP has charged this current government as being responsible for bad management and for being part of the events leading to this crisis. They also deserve standing for this reason.

With respect to the public law aspects of their application, the NDP is knowledgeable as a former government with respect to water and environmental policy. Especially Bud Wildman – for example, they created the Environmental Clean Water Initiative, the ECO office and as a party for the last 30 years, have been putting environmental issues front and centre; they are a broad political organization

and bring a unique perspective. Furthermore, their perspective is not limited solely to environment nor solely to labour. Regarding the allegation that their participation would inject a “political sheen” to the proceeding, this is not the basis for their application and not their intent. They wish to uniquely assist in fact finding; they intend to be serious participants. The facts need to be explained; they have particular knowledge; their perspective is unique.

The commissioner enquired of other inquiries where political parties have been given standing. The answer was the Ontario Crime Commission Reference ; also Ref. re: Legislative Privilege at 18 O.R. 2d p. 529, albeit not an independent inquiry, political parties were granted standing.

The commissioner commented that maybe an independent inquiry should carry out its investigation and report and then the political process should subsequently take over – because the Inquiry only makes recommendations.

The response was that the NDP did not intend to make this a forum for political debate. Normally one would expect government to represent the MoE going back in time, as government writ large – but they cannot expect that to happen in this case. They want to put all of the facts on record. This a fact finding process – all policies, procedures, changes as in recent years – all of them should be the focus of the inquiry. The mandate of the inquiry is not temporally limited. Otherwise, if they’re not granted standing, there will be an unfairness before the commission.

They are applying for funding. This is an extraordinary expense not anticipated nor budgeted this year. They will assist with research staff. The only funding request is for legal fees, disbursements, use of experts if and when necessary. They seek funding for both parts I and II.

Wednesday, September 6th, 2000

Municipality of Brockton

Rod McLeod of Miller Thompson represents them. Including the mayor, 6 current councilors, the CAO, the former mayor, the 1998 councilors and Steven Burns Engineering, in private practice who worked for Brockton PUC and now is subretained to Miller Thompson.

The 1998 amalgamation created the Municipality of Brockton which is the owner of the water treatment equipment. The old Walkerton PUC was dissolved and immediately recreated under the PUC Act. The PUC Act prohibits a municipality from being involved in the operation or management of the same water treatment & distribution system that it owns where there is a PUC.

The Commissioner asked how the interests differ between the PUC and the municipality, apart from the owner versus operator difference. Is it akin to a principal & agent relationship? The reply was that section 41 prohibits the municipality from attempting to exert management or control over the operation. Although a municipality may take steps to disband a PUC; they can do so by way of 2 by-laws. McLeod notes that this is a live issue because of electricity de-regulation. However, he asserted that there are very different interests between the PUC and the municipality. The Commissioner queried the difference, since the PUC operated up to the contamination events; have an interest in that regard; but were removed as operator almost immediately.

McLeod's reply was that on May 21st, the Sunday of the long weekend, the medical officer of health advised the mayor of his intention to issue a boil water advisory; this was the first notice that the mayor or council or any other representative of the municipality had of the problem. On May 23rd, the Tuesday, there was an emergency meeting with the mayor, council and the medical officer of health; this was the first they knew of contamination events from the prior week; but he expects evidence of knowledge by one or more members of the PUC staff the prior week. On May 24th, the mayor immediately explored possible steps regarding remediation efforts and learned of the possible availability of OCWA. On the morning of May 25th, council passed a resolution to retain OCWA to take over management of the distribution & treatment system. That afternoon, the mayor and CAO were advised by the law firm representing the primary insurer of the town that the resolution should be immediately rescinded because they felt it was not appropriate for the town to take such action; it should be taken by the PUC. The municipality followed this advice and rescinded the bylaw; PUC then retained OCWA by motion and thereafter OCWA has been operating under retainer to the PUC.

The commissioner queried, again, other than an indirect difference in interest, how would the interest of the town differ from that of the operator? McLeod replied: by law, they are separate statutory corporations; by law the municipality is prohibited under section 41 from interfering with the management and operation of the system. He submitted that it's clear that the owner, with potential exposure to civil liability, and with exposure to the regulatory initiatives of higher levels of government has a different interest. Furthermore, regulatory orders have been issued against the municipality.

The Commissioner noted that he sees a large congruence of interest. McLeod replied that he sees possibility of some congruence, cooperation. The municipality has endeavored to work very cooperatively with the PUC; for example the group Mr. Burns is chairing has endeavored to put aside all possible legal differences in the interest of remediation work "post-event". But not only was the municipality and its employees not aware of the PUC knowledge, he expects to bring evidence to the commission that there has been communication between PUC and one or more

“emanations” of Ontario government to which the municipality was not privy. The mayor is ex officio a commissioner by statute. The Chair was always one of the two elected members. On May 25th the MoE placed an Order requiring the municipality to do a number of things, including to immediately flush, monitor, ensure against overflow at the #7 well, securing wells and 8 additional orders have been issued since. 13 weekly reports and an interim hydrogeological report have been made public. The municipal work is ongoing. It is now up to the MoE, and medical officer of health. There have been events as recently as last week. There are also 2 ongoing investigations: OPP and MoE’s Investigation and Enforcement Branch.

The commissioner queried whether the individuals should all have standing or whether there should just be representation of individuals as witnesses.

McLeod noted that his firm assisted the PUC with an emergency by-law; that the mayor, though still ex officio a member of the PUC, has not participated since that time in PUC activities.

McLeod noted that they had retained a former supervisor in MoE’s IEBranch. Other experts they may want to involve include Mr. Bishop, the former director of the water resources branch.

The commissioner repeated his comment that parties should propose experts, the details of their evidence to commission counsel who themselves will be seeking experts; counsel will assess the evidence and whether they choose to call it. They therefore avoid a string of experts from various parties all to say the same thing. If parties are not satisfied with their answers, then the commissioner will address it at that time.

McLeod acknowledged this but stated that there might be a need for a party with standing to have expert advice and assistance. The commissioner stated that the recommendation to the A.G. for funding is subject to the A.G.’s terms and conditions for funding; he is not aware of funding in past inquiries to the parties for experts to assist counsel. Regarding disbursements, they must be in accordance with management board guidelines. McLeod noted for the record their position that they need this type of assistance, and stated that they may make submissions to the A.G. independently or through the commission. He also noted that Brockton is in litigation with its insurers regarding legal expenses incurred. They have used a 1.6 million dollar interest free loan made by the province in July; in the meantime are pursuing their legal expenses from their insurers. (That litigation is adjourned to September 21, 22. It also covers expenses expected to participate in this inquiry.) Therefore, he asked, rather than dealing substantively with their funding application, could the commissioner defer his decision pending information about that litigation. However, without financial support, Brockton is in a difficult position; it is a municipality of 10,000 people; 5,300 of the residents reside outside of the Walkerton

ward and have never been serviced by this PUC. Therefore 5300 taxpayers of Brockton have the prospect of all of these massive civil claims and 2 ongoing investigations.

Walkerton PUC

Represented by Kenneth Prehogan. PUC is directly and substantially affected. They are a local board of a municipality; they have no budget for these unanticipated legal expenses. They have no current revenues on the water side; plus costs continue. The insurer feels not obligated to cover the costs of this Inquiry. They have a reserve, but it is dedicated to other purposes. Part of it has been used for ongoing legal fees; the inquiry might exhaust it.

The commissioner queried the difference of interest between the PUC and the Town. The response was that the PUC does not agree with much of McLeod's submissions – the PUC does not believe there is such a conflict of interest – at least in determining what are the causes. They don't see a divergence of interest regarding part I of the Inquiry mandate.

They submitted that the PUC should be granted standing. The PUC operated the system. The PUC has its own employees, its own mandate; a difference insurer.

The commissioner asked how the two would work together. The reply was that they had not given that much thought – they would provide PUC documents; make their employees available. The PUC involvement was reduced after May 2000 because of the involvement of OCWA.

Stan Koebel

Represented by William Trudell. Mr. Koebel has a substantial and direct interest as per the Public Inquiries Act. He has vital information to give to assist the commissioner. He may be directly affected by the unfolding of events and recommendations.

The commissioner agreed that he has, but queried, in what parts of the inquiry. The reply was only re part I. The commissioner asked, part I (a) or (b)? The reply was that because of his involvement with others, the MoE etc., he would also be useful for part I(b) so asked for standing insofar as evidence from him would be provided. For example, he can advise of the daily operation of the PUC over many years. The commissioner speculated that maybe his standing could be defined in terms of his involvement in both parts. Trudell replied that there are layers of involvement. He seeks funding for his representation; Stan Koebel needs legal representation.

Frank Koebel

Represented by Michael Epstein. His client has been an employee of the PUC for over 20 years. He has been foreman. He has day to day responsibility for the water delivery system. He had a role in record keeping. He is vitally interested in part I. He can't distinguish between I(a) or I(b). He is brother to superior Stan. When Stan away, Frank would operate and control. He seeks standing limited to his involvement. He seeks funding because he cannot participate without funding for representation.

Chief Coroner of Ontario; Coroner's Office

Represented by Eleanor Cronk. They submit that the terms of the commissioner's inquiry overlap significantly with responsibilities of coroners. They seek to participate comprehensively; to continue to assist the commissioner and his counsel. They seek full participatory standing. This will make the necessity of an inquest unnecessary. It will avoid duplication. The inquiry has broad terms. There is a precedent with inquiries that might have also had parallel inquest processes. For example, the Ontario Royal Commission; the Dryden Inquiry for the Air Ontario crash. There they agreed between the chief coroner and the commissioner to carry out one proceeding. The coroner's office could actively assist the commission plus could provide a voice in the recommendations. They have an interest to ensure that testimonial evidence is available to the commissioner. They will provide reciprocal assistance with commissioners' council.

Wednesday, September 6th, 2000, Afternoon

Ernest Farmer

By telephone conference. Was a resident of the Walkerton jail – they were not notified of a problem with the water. He became very sick. He was denied medical treatment; issues with diagnosis and treatment following transfers to Hamilton and Millbrook. As inmates, they should be treated humanely.

Azurix North America (Canada) Ltd.

Frank Zechner is legal counsel. They are an engineering facility and the current operator of a significant number and variety of waste water plants. They seek no funding. They want to offer their resources to assist the commissioner. Their interest is as operator of large number of plants.

Alert / Sierra Club Coalition

Paul Vogel of Cohen Highly represents them. They wish to deal with contamination of water by large industrial operators. ALERT members include many farmers. Their concern is that the use of the same technology to control intensive farms as has been used for small family farms.

The commissioner noted that part II papers have been proposed; if there are any suggestions to expand the topics or add others; they would be most appreciative.

They seek funding. The commissioner queried whether for part I they would be content to participate as part of a group granted standing as well as his, if his group took the lead in matters within their expertise. The response was, "certainly" – for example, they have already consulted with SLDF; they would be happy to work with others to address this issue.

They seek funding for both legal and for consultants. The commissioner repeated the advice to go to commission counsel with experts; they the inquiry would retain and pay them. If the counsel disagrees regarding the importance of an expert; then that circumstance is deferred to be considered in due course. They seek to avoid duplicative experts. However, they want to hear from the best. The commissioner continued, regarding part II, people should add suggestions; papers will be issued in draft; etc. ... funding will be determined when they get to that stage and can determine what is necessary in a coordinated basis.

Vogel submitted that their main goal is to ensure that the position they advocate is supported by the necessary expertise.

CAPE, COUNCIL OF CANADIANS, GLU (SLDF COUNSEL)

Elizabeth Christie, along with Doug Chapman to represent these clients. They apply for standing in parts I and II. Partial standing in Part I. They particularly want to examine government policies, practices, procedures. Part I(b) will inform many issues addressed in part II.

They have a unique perspective; they provide a national and international perspective; the expertise of these three groups includes the systematic problems of drinking water regulation; prevention of drinking water contamination (an ecosystem based perspective); access to information and right to know.

Regarding part II, she proposes to review with commission counsel, a list of witnesses; maybe including members of coalition groups – their information is relevant and useful. They also bring the expertise of SLDF.

CAPE is the Canadian representative of International doctors of the environment. They are concerned about effects of environmental degradation on human health, especially children's health, both local and globally. They are interested in water quality issues, especially with respect to children's health since their inception in 1993. they would have evidence regarding policies of government and regarding part II of the Inquiry. CAPE sees a role in 3 of the part II papers.

GLU consists of 175 member groups, on both sides of the great lakes; they can contribute to part II as well as evidence about policies etc. to inform part II. they bring Ontario expertise, plus knowledge and comparative capacity to other jurisdictions.

Council of Canadians is a citizens watchdog group since 1985. They are especially interested in commodification of water and privatization knowledge regarding downloading; they provide an invaluable perspective.

SLDF has expertise in water protection, enforcement, freedom of information and also has scientists on staff.

The commissioner queried whether they would agree to forming a coalition. Elizabeth replied, yes, they have had extensive discussions – they concluded that intensive livestock and manure management were sufficiently specialized that it did not make sense to be a coalition for representation at the commission; they were better working closely to ensure that there was no overlap and each to pursue their own areas of expertise. They have also had extensive discussion with CELA lawyers to ensure there is no overlap and that the most expertise is brought to bear.

The Commissioner questioned whether they had had discussions with the CEDF coalition; her reply was that they had had discussion and had agreed to work conjunctively, but because of the international and national perspective of her clients, there was sufficient distinction that requires independent representation.

The commissioner queried whether, if he concluded that he should give one grant of standing including SLDF, CEDF and leave them to work it out, versus selecting one or the other, what would she prefer? E.C. replied that she would prefer that the discussions as to who did what and how be left to the parties, but she urged the commissioner not to do this and also thinks the difference of perspectives is important. They plan their role to be surgical; not to have daily participation in part I. They intend to very carefully select the part I witnesses that their coalition can comment on and to cross examine in ways that others would not.

The commissioner also queried how commodification of water belongs in part I?

As to funding, they seek for senior, intermediate and junior counsel; the latter would be to minimize the time of the senior; only one lawyer at a time to attend. The commissioner queried whether SLDF would act if they received no funding; she answered that they would have to seriously discuss this with their clients; they have no funds to do this case; they would have to seek funds elsewhere.

She provides water quality expertise; D. Chapman provides prosecutions expertise. They have little request for expert funds; will offer internal resources voluntarily.

Canadian Environmental Defence Fund et al

Represented by Louis Sokolov. They made submissions as to why there should be an environmental group throughout the hearing; not just at part II. There can't be a "bright line" between parts I and II – they need to be substantively linked – "the arrows to part II" need to be linked with what went wrong in Walkerton; these questions need to be asked throughout the Inquiry; not just in part II. They represent 11 groups; 2 national and 8 grass roots groups plus one First Nation – they have a substantial interest in water quality in the province. They "welcome others to work with them."

The commissioner asked if they would be amenable if ALERT, Sierra Club dealt with agricultural issues. The reply was that they would be – they had invited them before – the commissioner then asked, what about the previous applicant, SLDF group the answer was, they had had similar discussions; they had a caveat that there needs to be a real willingness of the parties to work together; he is certain there is by his clients. The commissioner asked whether there was a conflict or diversion of interest; the reply was no, he has seen none – they have an overlap of expertise. In addition to CEDF and Pollution Probe, they represent 8 local groups who represent small communities like Walkerton; some face E. coli contamination. Their perspective is: how will the system work at ground level ; how to protect the local supply. Attiwapasat's interest includes both on and off reserve.

The purpose of the intervention is only to assist the commissioner; no other purpose.

As to funding, the local groups have few or no assets; if they have assets, they are committed to their local battles. CEDF receives donations; much is held in trust in an endowment fund. They seek representation of 2 counsel; 1 regular and 1 junior; usually would be one at the hearing. Experts' requests he will leave in light of earlier comments of the commissioner.

Energy Probe Research Foundation

Represented by Mark Mattson. They do not submit that they meet section 4(a), a direct and substantial interest; rather section 4(b), a clearly ascertainable interest or perspective. They ask for standing for part I – the what / why – they bring a unique and ascertainable perspective. They are not duplicative of commission, nor provincial government, PUC, or environmental groups. Their concern is the proper regulation of a public resource like water. They have for 20 years studied other resources, for example, in the U.K., U.S., Ontario, Canada – re: privatization, especially Elizabeth Brubacher.

The commissioner noted that this is more in part II; he has no difficulty with this; what is distinct regarding part I?

Mattson answered that their study of other utility models and most important components of them include who owns the system, who regulates it, where is the financing; who is enforcing, etc. How clear are these responsibilities? Are they conflicting? How is the system resourced? They want to test their hypothesis in part I – who owns the system; who decides who pays; who determines that records should be disclosed; is financing an issue; were there conflicts in terms of ownership and liability? How do rates influence; are there subsidies; what is the oversight procedure; how accountable are they for performance; what is the vigour of enforcement because of resource constraints provincially? How do all of these compare to other jurisdictions?

Costs in the UK are up, but beaches, rivers are improved; there is less sewage treatment; these improvements are enormous. If there is to be more accountability, more enforcement, more infrastructure, who pays? They have a unique perspective on issues of ownership, liability, regulation and enforcement. Part I will provide the basis for recommendations in part II. Is someone holding the operator accountable for small problems so they don't lead to big ones? Why were there no investigations or prosecutions before now? Is the answer affected by who would have to pay and how it would affect the costs of water? They believe that an institutional structure dooms a system to failure unless the roles are clear; they follow the rule of law; there is enforceability; liability and funding are clear. If the institutional system is corrected, there will be improvement, albeit at a cost – but to the benefit of the environment and people in the drinking water system.

Their participation would be of assistance. This is not a make work project. They are prepared to commit resources.

Thursday, September 7th, 2000

Labour Unions

CUPE, Local 255 and members, and CUPE National

Represented by Howard Goldblatt. They seek standing on their own behalf and on behalf of their members. They are the local for the PUC and represent 7 employees there, all but one, namely Frank Koebel. Their members include the clerical staff – those sending samples, forwarding the material received; advice as to how tests are received; and a knowledge of what happened in this instance.

The Commissioner noted that some of these members would be called as witnesses in part I (a). Goldblatt replied that their evidence should be useful to both parts I(a) and I(b).

The Commissioner also queried whether the local is seeking standing apart from the individuals. The reply was that they hoped their interest would not diverge, but they

have an institutional interest in appropriate representation and participation and want all information from the local brought to the commission. They do not see a conflict in representation. But they also seek standing for the local as an institution.

They also seek funding since their defense fund is stretched. they seek funding for second counsel.

CUPE national also seeks standing only for part II. They do not seek funding.

Professional Engineers and Architects of the Ontario Public Service

Represented by Ian Fellows. They seek standing in both parts I and II. In part I, it is only for part I(b). They represent all engineers employed in the public service. Their members are responsible for approvals, setting standards, imposing conditions on the operation of water facilities, policy recommendations, policy advice to government. They do not seek to be involved in the part I(a) issues unless a section 5 notice is issued to a member; then they would seek standing. They have a direct and substantial interest – they are professional individuals with the ultimate responsibility to ensure that water treatment facilities in the province are designed appropriately and are operating under conditions and terms that will ensure the safety of the water.

With respect to part I(b), they will add to understanding the causes of government action and policy. Their members and their conduct might come under scrutiny. Also, they bring a unique perspective regarding how the province is operating, managing water treatment facilities – or not. Their perspective is useful and will assist the commission. For example, they have a perspective about the erosion, cutting of professional services. For example, OCWA included 53 engineers in the mid 90's; now there are 7!

The commissioner queried how their perspective is different from non-professional unions such as CUPE, OPSEU. The reply was that it is much different. The others represent workers in the field, the hands-on inspectors, to the extent there are inspectors left. PEGO members are usually managerial. OPSEU and CUPE don't represent engineers.

They seek a full right of participation in part I(b); they will assist the commission with structure, workings at MoE and at OCWA. Their concerns and advice include changes in the last 7 years or so and effects or direct effects on Walkerton. Their perspective may be very different from others.

They seek funding. They have no national body; they are a small organization with 410 working members. They have a modest budget. Their contingency fund is their strike fund. PEGO's collective agreement expires December 31st this year.

Part I(b) will apply to Part II. They will have a contribution to causation as well as to systemic recommendations. They hope the province will become a leader in water treatment, as it has not been for some time.

Association of Municipalities of Ontario (AMO)

Represented by Doug Hamilton. Their interest in participation in order of preference is Part II, then Part I(b), then Part I(a). Their members have extensive involvement in drinking water issues. They are affiliated with other organizations here. They have put together a collection of people from municipalities and other organizations.

Regarding I(b), many findings as to causes will affect other municipalities across Ontario. They represent many interests across Ontario; the effect of government policy and practices will also affect other municipalities.

Causes may include a certain type of water control treatment; or how the issues were managed; or reporting between the municipalities and others. The commission needs to know the unique issues as to Walkerton and the common issues. He suspects most causes and circumstances will be shared by other municipalities. AMO can talk about the industry standard – were the causes unique or systemic?

They still have an interest and a perspective as to part I(a) in determining what aspects of the causes are systemic, or shared by their members. They see a passive role in part I(a), more of a role in I(b), but note that the line between parts I(a) and I(b) are not necessarily firm.

AMO seeks part II standing as well.

They also seek funding. AMO is a non-profit organization and had no anticipation of an inquiry in its budget. There is a possibility of a cash call on its members, but they're reluctant to do so since they already did a cash call for Walkerton relief, from which they raised \$40,000 to \$50,000 plus in-kind donations for Walkerton.

The Commissioner queried their large base of municipalities which could raise funds by taxation – the answer was, yes, but it's all from the same pocket, whether provincial or municipal; it's all taxpayers. For reasons of efficiency and economy, AMO advocated that their funding for the inquiry should come from the same sources as other parties. In addition, there could be unequal distribution among taxpayers. The Commissioner noted, however, that their request is to represent the municipal perspective – so should the municipal public may or the provincial public? The reply was: is it a different public? The commissioner noted that the municipal institutions have an ability to tax residents. The reply was, possibly, but it is difficult to do another cash call on the back of the first one and the first one was very important to this town (Walkerton).

Chiefs of Ontario

Represented by Jonathan Kahn and Allison Thornton

Chiefs of Ontario is an umbrella organization for all of the chiefs in Ontario. they bring unique information, a different experience and a different perspective to the inquiry. The request standing for Part II only, but will follow Part I closely. They noted a broad range of factors:

First Nations are substantially affected. Reserves often have the worst water in Ontario; often at third world standards. There is no other source to bring this perspective. They bring traditional ecological knowledge, plus the knowledge of their technical service group. They want to be involved in recommendations both on and off reserve in Ontario. The existence of federal jurisdiction is not a reason to exclude their participation at the inquiry. Flows cross boundaries. Some reserves contract for municipal water. Provincial approvals apply in a scattered approach. Some of them are on provincial land. There is no reason not to include recommendations for reserves in any event; for example in 1984 during the Royal Commission on Education, such recommendations were made. The Chiefs of Ontario is the only voice bringing this perspective.

They have sought federal funding for participation but are unaware of the results or programs that might be available. They're happy to revisit the funding request for part II later.

The commissioner repeated what is envisaged for the part II process as described earlier in these notes. In this discussion, he noted that they do not expect all of the study papers to be published at once.

Conservation Ontario

Represented by Richard Hunter

This is a joint application from Conservation Ontario and the Saugeen Valley Conservation Authority; Jim Coffey from that organization was present. They do not seek funding for legal counsel.

There are 38 conservation authorities in the province. They manage the full range of natural resources in the province. This includes water resources. They advocate a need for focus in the province and a more systemic approach to managing the water in the province. At the very least, the present system is now fragmented. Fairly significant changes will be necessary; the approaches need to be more coordinated. Conservation authorities play a role in delivery at the local level of resource management. There is a need for a comprehensive provincial framework for sustainable water management in the province. Water needs to be valued. There is a

need to sort out provincial versus local interests in responsibility, management, funding. There is a need for policy and regulation in place for protection of the resource. Capacity and financial resources are needed at the local level to handle this.

Mr. Coffey added that they bring a local perspective to water management ... There needs to be a clarification and redefinition of roles and responsibilities; not only provincial and municipal, but also conservation authorities and residents. They have participated in water quality in the past; for example carrying out provincial ground water monitoring. He cited GRCA as a leader.

Ducks Unlimited

Represented by J. Anderson.

Their work is primarily on wetlands and associated habitats. They do a great deal of partnership work. They work on water quality management and rely in part on treatment of wetland resources. They have 40 employees.

Municipal wetland loss in southern Ontario exceeds 60%; in some areas, it exceeds 80%. This is an under-estimated figure; they are not counting areas under 10 acres which also make a significant contribution to water quality management; however their contribution is far from clear. The importance is not mirrored in the water management strategies in place. They intend to use their skill, experience, etc. to review, scope the science, especially with respect to the Great Lakes Basin. They plan a literature review, follow up interviews, including American neighbours under the Clean Water Act and expect this to be valuable to the inquiry. Because of their international structure and U.S. partners, they have access to this body of science. They also use this kind of information to advocate public policy shifts. They held a 1997 symposium on prairie wetlands and issued a report; they will be issuing a report of the above described study, and hope their schedule will coincide with the commission; but it won't be before January. They hope to interface with paper #4 (Ontario machinery of government), and especially wet land use and wet land protection; as well as with paper #6; (water pollution; sources of contaminants). They bring an important addition in wetland science. Wetlands are a component of complex inter-connected ecology; therefore they have linkages with other organizations such as Conservation Ontario. They note that wetlands are significantly under-represented and under-valued with respect to water quality management.

Grand River Conservation Authority (GRCA)

Represented by Paul Emerson, their CAO. CRCA is the largest in southern Ontario. It is unique in that over one million people rely on inland sources of surface and ground water for water supply. Their group of urban municipalities have had to

work together cooperatively to protect the resource because of this reliance. They are especially concerned with respect to the future safety in Ontario of drinking water. They offered to withdraw their application and work with Conservation Ontario and with Mr. Swain.

The commissioner noted, that although he wasn't ruling, the nature of the exercise in part II was not the same level of concern for standing as with part I which is the one that could be protracted.

Ontario Municipal Water Association

Represented by Douglas James. They seek part II standing only. They are "passionate" about a reliable, safe drinking water supply. 8 million families derive their drinking water from the 160 members of their association. They represent the majority of public water authorities in Ontario.

They have no budget for this inquiry; did not anticipate it. They are very closely allied with the OWWA. OWWA are on the technical side; OWMA is more on the political side. They are a volunteer organization. Their members are elected and appointed officials. Most bring a passion and life long interest to this work.

The OWWA budget can include them, except as to privatization issues. This is one issue where they diverge; OWMA advocates no privatization of water treatment or distribution without meaningful public input. The referendum process has been taken away. Now municipalities need only pass a by-law in order to remove that public control and public governance; therefore they are distinct from the OWWA so they seek separate funding regarding that issue. OWWA or AMO may differ; OWWA advocates that water is a public trust and should be publicly owned and governed.

Ontario Society of Professional Engineers (OSPE)

Represented by Robert Goddings, Joyce Rowlands.

They are a new organization to look after the non-regulatory affairs for the engineering profession in Ontario. They are very new. They have no E.D. yet. Joyce is public affairs representative. There was a dual role in the professional organization, with an inherent conflict, so in the last 2 years, they separated regulatory and on-regulatory affairs for the profession. They seek separate standing. They are supported by Professional Engineers of Ontario and A.G. Ontario. Professional Engineers of Ontario deals with licensing and standards of practice. OSPE is a voice for engineers on broader, "policy" issues of the day.

Engineers are involved in the production, delivery of safe drinking water. They do not seek lawyer's fees. They are not here to protect the rights of engineers. They

seek standing for part II because there are important things to say regarding the role of professional engineers in water delivery and about the declining role of professional engineers in the system – this has reduced professional accountability in the system.

Engineering is involved in many elements of the system – site selection; design; treatment are all engineering tasks.

Robert Goodings from the OSPE Board, is part of a task group looking at matters of water engineering in Ontario re: water quality.

They seek standing for part II only and no funding. They have topics to contribute; for example, to describe the extent of engineering involvement in the water supply system, including geotechnical engineering; chemical engineering; civil engineering etc. They are involved in approvals and in daily operation. There has been a gradual diminishment of the involvement of professional engineering in water supply, both because of government lay-offs and hand-offs; municipal and private cost reductions and private sector itself relying on non-engineers. They can contribute as to where in the systems is professional engineering knowledge and judgment required to ensure safety. Engineers also bring professional accountability; reduction of professional accountability to the public which is otherwise embodied with the license to practice and a duty to report when public safety is compromised.

With over 50 years in the water business, they observe that quality of water systems is directly proportional to the investment in the system; ongoing investment in maintenance and renewal. They seek standing at Walkerton; to discuss where and how engineering has been involved; how engineering involvement has been reduced over the last 20 plus years; the value of engineering involved at certain points in the system; and the relationship between investment and quality.

Ontario Water Works Association

Represented by Joe Castrilli. They are sufficiently affected and have a clearly ascertainable interest. They are utility members with special obligations for safe drinking water as per section 2 of the Public Utilities Act. They are responsible to protect the supply and to protect the works. The new regulations passed this year impose new obligations on their members. They have statutory obligations and will be significantly impacted by the commissions recommendations. Their members include utilities, businesses and individuals. They are in contact with other groups such as OMWA and could amalgamate their participation with them subject to the proviso of their Board approval and understand the privatization concern and separate funding for that issue. They propose a 50% contribution by OWWA in their budget; if OMWA to be included, would propose a 33% split.

The commissioner noted that coalitions in part II are encouraged for funding, but not for standing in part II. He is disinclined to direct coalitions for standing in part II, but if groups seek funding, the commission will look for similar interests to join. He is deferring ordering coalitions now in that regard. Will know better the interests, perspectives of parties regarding the papers at that time.

Joe made a submission for supplementary funding and cited section 12 of the former Intervener Funding Project Act.

Professional Engineers of Ontario

Represented by John Gamble.

They are a self-governing body for engineers. They pass regulations under the authority of the A.G. They are responsible for technical competency standards and for professional conduct. They have 63,000 registered engineers under the Professional Engineers Act. Their engineers' duty to the public is paramount. They have a disclosure obligation for public safety. Their interest, perspective is essential to the mandate of the commission. As to some aspects of the practice of engineers, OPSE would comment. The focus of PEO is regarding interests directly relevant to their mandate and statutory duty.

They point to paper #1, (management of social risks); #3 (history of drinking water management in Ontario); #4 (Ontario machinery of government as to the regulatory system, OWRA, EPA, etc (over 30 Ontario statutes are referenced in their Act) and also welcome a fresh look at their own Act which might be in order for all concerned; #10 (training and accreditation). These would be the focus of their involvement, but don't want to be limited to them.

They are the regulator; their responsibility to the public is very serious; they can provide an informed and objective look at the system; they bring expertise and an institutional memory; they are interested to protect public safety and welfare; they see this as an opportunity to learn and improve the way they regulate engineers; they have a shared goal with the commission.

Ontario Medical Association

Represented by Dr. Ted Boadway. He is the E.D. of health policy with the OMA. Public health policy director, also there, is Carol Jacobson. Physicians are very interested; there is intense professional interest in what happened in this community; it is constantly on their minds. Firstly is their interest in prevention; what happened here was not prevented. Secondly is treatment; it is each physicians' nightmare – how would I cope in my town? It was so fast and so catastrophic. When the catastrophe is preventable, it is especially upsetting. Every physician sees the possibility of these events happening in their community.

The foundation of OMA 120 years ago was over water safety issues. This has been a priority ever since. They have always been involved in regulatory affairs dealing with water; something as leaders, but always involved. They bring history on the subject and background knowledge. They also deal with legislative issues on this topic. As a medical profession they bring a body of knowledge and a skill set that is unique and of value to the commission.

Firstly, regarding the role of the medical officer of health and the critical components of that person's functional capacity; secondly as to the administrative structure and reporting methods; the context within which they practice.

The commission must address these fulsomely. They are open to suggestion as to how to proceed with their standing request; they do wish to bring testimony publicly; their president and medical officers of health want their voices heard on the record; also they want to be involved in policy papers re: the future directions. They do not plan to have legal counsel nor cross-examine. They do want their public voice and to work with the commission.

Maureen Reilly; Sludgewatch / Uxbridge CA

Interest in rural disposal of industry waste; conservation of landfill capacity has resulted in greater use; seeks part II standing. Trying to work more closely with SLDF, WWF, CELA, Sierra Club. Interested in safest management framework policy and abatement. Wettest summer together with increased volumes of waste = collision course. Also concerned with risks of secondary contamination. Has been a failure in transparency and accountability. They are a rural watchdog; grass roots organization, with a wealth of understanding of the byzantine regulatory framework; has the best understanding of gaps in the framework in the regulatory of these materials of anyone in Ontario.

Mrs. Mary Richter

A long student of alternative health.

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Documents Pertaining to Walkerton crisis

Test Results from Lab to Walkerton

PUC Received PUC May 18, 2000 - Water contained E-Coli
Hamilton Spectator 26/5/2000
Kit Review 26/5/2000
Tor Star 27/5/2000 A&L Canada Labs, London Ontario

Right to farm laws Prov. appointed Board can over- ride local objections to factory farming.
Ontario Law
Tor Star 27/5/2000

A& L Lab Not Certified

Joan Walters
Owen Sound Sun Times 27/5/2000
From "documents on a Canada-wide registry"

Prevalence of E-Coli 0157 Killer
Cattlemen's Association Website filled with reference.
Recent study by U.S. National Academy of Sciences
Showed one third of U.S. cattle carry E-Coli
Tor Star Thomas Walkom 27/5/2000

Statement released by Environment Ministry- what it knew when MoE:
Received test results January to April from GAP Enviro Microbial services
That showed presence E-Coli
May 3 received copy of lab report - showed absence of E-Coli after treatment
No further lab reports received
Owen Sound Sun Times 29/5/2000
Quote Toronto Sun interview with spokesperson John Steel of M.O.E.

Ontario Drinking Water Objectives

Under the section "Responsibility for Water"
Tor Star 27/5/2000

Government guide lines issued

Discussion of to whom laboratory is obliged to report; legal obligations vs. guidelines
"bible" for water system operators
Owen Sound Sun Times 31/5/2000

Report re prevalence of contaminated wells in Ontario.
1991, Professor Michael Goss, U of Guelph - Land Resource Science Dept
found 30% of wells contaminated
Globe & Mail 30/5/ 2000

Missing Provincial Commission Report

That was to have been issued last month after 3 months of hearing into factory farms in agriculture.

Klaus Seeger public health inspector, Huron County

Globe & Mail Ken Kilpatrick 30/5/2000

Letter sent 5 months ago to Ontario Government, by Murray McQuible, Bruce Grey Owen Sound medical officer of health - warned bacteria in drinking water can't be treated by antibiotics used on farm - now resistant.

Quoted by Dalton McGuinty at Queen's Park.

Sun Times, Owen Sound 31/5/2000

Internal Memo from an assistant deputy minister, Environment Ministry cited by liberal critic Jim Bradley at Queen's Park. Memo notes that staff cuts compromise ability to enforce laws.

Sun Times, Owen Sound 31/5/2000

Study done by Health Canada, in south western Ontario. Dr Pascal Michel, mapped 3,000 cases of E-Coli infection, including 0157, 1990 -1995 mapped coincidence of cattle density and E-Coli.

Andrew Nififoruk - Special to Globe & Mail 31/5/2000

Tor Star 1/6/2000

Research published last year journal Epidemiology & infections

Queen's Park Scrum

Agriculture Minister - Ernie Hardeman. Farms are not monitored to see if manure is polluting. "Manure is not a toxic waste, this is fertilizer"

Toronto Star 1/6/2000

Information on Wells System

Chlorination, Walkerton will be released to public tomorrow

Report will also contain a diary of Walkerton's water system May 4 to May 21

Info from town of Walkerton to public

Sun Times, Owen Sound June 1/2000

Licence of Walkerton PUC copy obtained by Globe & Mail.

- fails to impose legal requirements to test or report on water safety
- awarded 1979 - guideline of Ontario's Drinking Water objectives not incorporated into licence. Globe & Mail June 1/2000.

Ecoli from Livestock

U. S. government study from Nebraska published in March. 43% carry after slaughter, 20% after evisceration and processing. Globe & Mail June 3/2000.

Effect of Cuts on Environment Ministry

Doug Mc Dougall, investigative officer with ministry in Timmins, also chairs employee relations committee. Susan Bourette Globe & Mail June 3/2000

Cuts to Ministry \$824 million to \$352 million, U of T Phd student, Anita Krajnc also, Toronto Star Tom Walkom June 6/ 2000.

Water & Sewage Services Improvement Act, Govt of Ont 1997 - down loaded water & sewage treatment to municipalities. Toronto Star June 5/2000.

Memo from senior environment minister shows front-line staff met 3 years ago to talk about potential for disaster due to inspection cuts.

- Memo senior officials on legal threat
- Sessions on how to protect themselves from liability in case of catastrophe

Richard Brennan Toronto Star June 7/2000.

National Water Crisis Forecast Science Paper to be published Fall 2000 David Schindler U of A, Canadian Journal of Fisheries and Aquatic Water.

- declining supply
- lax attitudes

Andrew Nikiforuk Globe & Mail June 7/2000

Fed Doc Shows town of Walkerton applied for and received federal and provincial money for sewer and water related projects. Contrary to "lack of interest" charged by Harris & Company. Toronto Star June 7/2000 also Globe & Mail June 7/2000.

Warning - by Environment Ministry - Senior officials to Government of Ontario 1997

- ask for changes to the Ontario Drinking Water Objectives
- dangerous to public health

Susan Bourette Globe & Mail June 8/ 2000

Minister denies seeing Memo

Document said no procedure in place to make sure Medical Officer is warned

Susan Bourette Globe & Mail June 9/2000

Memo in January, 1997 from Shelia Willis, assistant deputy minister, more information given in article by Richard Mackie, Globe & Mail, June 13/2000.

Leaked cabinet document - Ontario's municipalities will be asked to prove they can deliver "better value" on services in the private sector. Leaked to the Globe & Mail on June 13/2000.

Richard Brennan Toronto Star June 14/2000 Globe & Mail June 14/2000 Owen Sound Sun Times June 14/2000

1998 plan for Walkerton town council to Harris; help in protecting water supply. Globe & Mail June 16/2000

icipal water quality,
ilities already doing it.

with respect to water

ivate labs cost double

needed to
20/2000.

tar June 7/2000

nd air.

es needed; 2 months
of inspectors. Dated
in any year.
tor June 22/2000