ONTARIO'S WATER RESOURCES: THE NEED FOR PUBLIC INTEREST REGULATION

Submissions to the
Ministry of Environment and Energy from the
Canadian Environmental Law Association
and Great Lakes United
regarding the
Water and Sewage Services Improvement Act, 1997
BILL 107

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SUBMISSIONS TO THE MINISTRY OF ENVIRONMENT AND ENERGY REGARDING THE WATER AND SEWAGE SERVICES IMPROVEMENT ACT, 1997 BILL 107

By

Richard D. Lindgren[1] and Sarah Miller[2]

SECTION 1.0 - INTRODUCTION

These submissions on Bill 107 (Water and Sewage Services Improvement Act, 1997) have been prepared by the Canadian Environmental Law Association (CELA) and Great Lakes United (GLU). CELA and GLU have had a lengthy history of casework and law reform activities aimed at protecting the quality and quantity of water resources within Ontario and across the Great Lakes basin.

CELA and GLU have used their public interest perspective to critically review and analyze the various components of Bill 107. It is the conclusion of CELA and GLU that Bill 107 is fundamentally flawed and is unsupportable in principle and in practice. **CELA and GLU therefore recommend that Bill 107 be withdrawn by the Ontario government unless the legislation is substantially amended.**

The concerns of CELA and GLU may be summarized as follows:

1. No environmental rationale has been offered for Bill 107, and the legislation does not appear to be motivated by ecological concerns.

2. Bill 107 fails to expressly prohibit the privatization of municipal water and sewage facilities, infrastructure or services, despite the Ontario government's professed commitment to "public ownership" of such undertakings.

3. Bill 107 makes no provision for an independent regulator of the water and sewer services industry in Ontario.

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This legislation created the Ontario Water Resources Commission, an independent body that enjoyed general supervisory and regulatory authority over water quality and water use within the province. The Commission had various approval powers and pollution abatement powers, and also served to finance and supply water and sewage services to municipalities. The Commission continued to exercise these powers until 1972 when the newly formed environment ministry took over administration of the legislation, which was re-named the Ontario Water Resources Act (OWRA).[4]

In 1993, the Ontario government created the Ontario Clean Water Agency (OCWA), a Crown corporation that, in many key respects, closely resembled the former Ontario Water Resources Commission. As described below, OCWA assumed the operation of the MOEE's numerous water and sewage facilities, and provided financial and technical assistance to municipalities. The public interest justification for OCWA included protecting human health, promoting water conservation, ensuring public accountability, and supporting provincial policies regarding land use and development.

Thus, the revamped provincial role in water and sewage regulation, first developed in the 1950's, continued intact until the recent introduction of Bill 107 in January 1997. It is noteworthy that Bill 107 was preceded by Bill 26 (Savings and Restructuring Act), which was enacted in early 1996. Among other things, Bill 26 makes it easier for municipalities to dissolve water or public utilities without electoral assent.

At the same time, the Ontario government's Municipal Assistance Program, which provided capital grants for municipal water and sewage projects, was virtually eliminated from the budget of the Ministry of Environment and Energy (MOEE). For example, in the MOEE's 1997-98 capital budget reductions announced on April 11, 1996, approximately $142 million was slashed from the Municipal Assistance Program, which had already suffered multi-million dollar reductions for 1995-96 and 1996-97.

If enacted as drafted, Bill 107 would largely confine OCWA to pursuing contracts to operate water and sewage facilities owned by municipalities. However, after Bill 107 was introduced, a provincial task force identified OCWA as a candidate under review for privatization.[5] Accordingly, the future of OCWA itself seems tenuous under the present government.

There can be little doubt that these and other "reforms" at the provincial and municipal levels pave the way for the privatization of all water and sewage services in Ontario. The threat of privatization potentially applies not only to the OCWA assets that will be transferred to municipalities, but also to the hundreds of water and sewage facilities already under municipal

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[4] See D. Estrin and J. Swaigen (eds.), Environment on Trial (Emond Montgomery 1993), pp.530-31.

[5] See the Government Task Force on Agencies, Boards and Commissions, Report on Operational Agencies (January 1997), at p.9: "[The Task Force] recommends the government review the need for the province to own a water and sewage management company".

province's professed commitment to "public ownership" of water/sewage infrastructure is highly suspect. This is particularly true since Bill 107 potentially permits not only the privatization of OCWA-owned assets, but also permits the wholesale privatization of the hundreds of STP's and WTP's currently owned by municipalities.

(c) An Overview of OCWA's Roles and Functions

The provincial government's apparent intention to dismantle and transfer OCWA assets and/or privatize its services is sharply at odds with the reasons why OCWA was established in the first place.

OCWA was established with great fanfare in 1993 when the Capital Investment Plan Act (CIPA) was enacted. The environmental and economic benefits of establishing OCWA as a new public agency were proclaimed by the MOEE as follows:

- contributes to economic renewal;
- ensures greater environmental accountability;
- promotes water conservation;
- encourages sustainable development;
- creates jobs;
- improves service and efficiency;
- fosters new financing and investing arrangements; and
- pursues opportunities for more effective partnerships.[6]

To achieve these benefits, OCWA was given a number of important roles and responsibilities, including:

- taking over the operation of 153 provincially owned sewage treatment plants (STP's), 77 provincially owned water treatment plants (WTP's), and 116 municipally owned STP's and WTP's being operated by the MOEE;
- assisting municipalities in planning, developing and constructing water and sewage services by, among other things, providing technical advice on water conservation and

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[6] MOEE, Introducing Ontario's Clean Water Agency (1993), p.4.

applicable effluent limits or guidelines.[9] There is little evidence that this non-compliance rate has materially changed since this report, and no evidence whatsoever to suggest that compliance rates will improve under the new Bill 107 regime.

In addition to ongoing water quality and STP discharge problems, it must be noted that Ontario's land use planning regime has been severely weakened. The present government's decision to reverse key policy and legislative reforms enacted by the previous government will contribute to continued urban sprawl and scattered rural development without due regard for groundwater and headwater areas. There are many examples of poor land use planning across Ontario where groundwater and surface water contamination has resulted from inappropriate development. The results of poor land use planning also include the need to provide costly water and/or sewage infrastructure to farflung, sprawling development. Under the current land use planning regime, these problems are likely to continue unabated.[10]

In the view of CELA and GLU, these continuing problems point to the need for greater, not lesser, provincial involvement in the planning, delivery and monitoring of the delivery of water and sewage services in Ontario. Transferring OCWA assets to municipalities, and then permitting municipalities to privatize any and all water and sewage services, is a fundamentally flawed and ill-timed proposal that will not translate into enhanced environmental protection or improved water or energy conservation. As described below, it is highly likely that Ontario's environment will be adversely affected by the proposed off-loading of OCWA facilities to cash-strapped municipalities, who will be undoubtedly tempted to sell, lease or otherwise transfer these (and other) facilities to private sector monopolies.

(d) Private Profits from Public Resources: The Case Against Privatizing Water and Sewer Services

Privatization of water and sewage services has already made inroads in Ontario. York Region, for example, has recently cast its lot with a consortium headed up by North West Water (a British utility company) and Consumer's Gas. Other Ontario municipalities are said to be considering various privatization options, and there appears to be growing private interest in acquiring OCWA itself.

It is the understanding of CELA and GLU that the group of private companies interested in bidding on Ontario water and sewage services include: large engineering firms from Canada

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[9] MOEE, Report on the 1991 Discharges from Municipal Sewage Treatment Plants in Ontario.

[10] Generally, see CELA, "Submissions to the Standing Committee on Resources Development Regarding Bill 20" (February 20, 1996); "Septic Issue A Sleeping Giant", New Planning News, Vol.1, No.3 (December, 1991).

any provincial capital grants received for the facility since 1978. This restriction is intended to "protect the taxpayers' investment",[12] but does not serve as a meaningful safeguard or prohibition against transferring such assets to private interests. In essence, all this provision really does is establish the price tag for water and sewage facilities. In addition, it seems likely that the private sector's acquisition costs will ultimately be passed on to consumers of the privatized services through increased water or sewage rates (if not otherwise available for tax write-offs). This also means that only the largest companies will be able to acquire the facilities, which increases the likelihood of private sector monopolies controlling water and sewage services in many areas.

Inexplicably, only the face value of the provincial grants will have to be paid back -- no interest is payable. This relief against paying interest provides an indirect subsidy to private companies interested in acquiring part or all of a municipality's water or sewage infrastructure.

The Ontario government's desire to facilitate (if not openly encourage) the privatization of water and sewage services appears predicated on a number of fundamentally flawed tenets: (1) that private enterprise is inherently more efficient than public enterprise; (2) that private operators are more technically advanced than public operators; (3) that private operators will make capital investments in infrastructure maintenance and improvement; and (4) that water is simply a commodity that should be bought or sold in the open market like any other commodity.[13]
The fallacy of these myths has been amply demonstrated in Britain, where water services were privatized in 1989. A number of well-documented problems have been experienced in Britain under the privatization regime, including:

- substantial increases in water prices;

- the termination of water services to low-income families unable to afford the increased rates;

- severe water shortages and significant restrictions on non-essential water uses;

- outbreaks of dysentery, Hepatitis A, and other public health problems caused by poor sanitation and unavailability of water;

- the sell-off of water reservoir lands for development purposes;

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[12] MOEE, "Water and Sewage Services Improvement Act: Media Backgrounder", p.3.

[13] See Neil B. Freeman, op. cit., pp.57-73, for a critical analysis of these and other myths surrounding privatization. See also Brendan Martin, "From the Many to the Few: Privatization and Globalization", in The Ecologist, Vol.26, No. 4, July/August 1996, p. 145.

107 and the "drive to privatize" water services seem clearly out of step with widespread public support in Ontario for publicly owned and controlled water services.

It should also be noted that the creeping presence of multi-national corporations in Ontario's water industry may give rise to certain Free Trade Agreement implications. In particular, once these corporations secure long-term contracts locking up Ontario water supplies, they will be in a strategic position to renew the push to export or divert Ontario's water into lucrative, water-starved markets (or existing customers) within the United States. Once this export "tap" has been turned on, the Free Trade Agreement requires the continued supply of this "commodity" to south of the border, even if water shortages occur within Canada. CELA and GLU submit that Ontarians, as stewards of the province's increasingly precious freshwater resources, should strenuously avoid leaving such an undesirable legacy for future generations. CELA and GLU note that the current Minister of Environment and Energy has stated that the province will resist efforts to divert water out of the Great Lakes basin.[20] However, CELA and GLU point out that nothing in Bill 107 prohibits such diversions.

In summary, the Bill 107 regime does not merely change the title or ownership of water and sewage facilities in Ontario. Instead, the privatization regime facilitated by Bill 107 raises fundamental questions about the appropriate nature and extent of Ontario's regulatory role in relation to water and sewage services:

> Privatization is not simply a change of ownership. It is a change in the role, responsibilities, priorities and authority of the state.[21]

(e) The Need for an Independent Public Regulator

Among other things, Bill 107 proposes to transfer OCWA assets to municipalities, which, in turn, are free to sell off any WTP/STP facility to the private sector. The current Minister of Environment and Energy has indicated that if a sell-off were to occur, the province would still maintain and enforce "rigid" water quality standards.[22]

In previous years, this claim might have merited some credence; however, given the substantial staff reductions and budget cutbacks experienced by the MOEE (including abatement, investigation and enforcement departments), CELA and GLU seriously question the ability of the MOEE to adequately enforce existing standards, let alone improved water quality standards. In addition, Ontario still lacks an enforceable Safe Drinking Water Act, as

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[20] See "Economize Water Use, Report Says", The Globe and Mail, February 11, 1997.

[21] Brendan Martin, op. cit., p.147.

[22] "Drinking Water Warning Issued", Toronto Star (December 4, 1996).

the natural gas industry and reviews Ontario Hydro's bulk power rates. Even in Britain, when water services were privatized, a public sector agency -- the Office of Water Supplies -- was established to regulate water prices.

If Bill 107 proceeds without the creation of an independent regulator, then Ontarians will be virtually powerless against the private water and sewer monopolies that are likely to result under Bill 107. Consumers of water and sewer services do not generally enjoy the option of switching to a competitor, or not using the "product" at all. Water, for example, is a basic daily requirement for the health and safety of all persons, and is therefore distinguishable from other commodities or natural resources. In the opinion of CELA and GLU, there is a clear and compelling need for an independent public regulator to safeguard against profiteering on water and sewage services, to require water conservation programs and demand management strategies, and, perhaps most importantly, to ensure that Ontarians enjoy clean and safe drinking water.

SECTION 3.0 - CRITIQUE OF BILL 107

The fundamental objections of CELA and GLU to Bill 107 are based largely on public policy considerations rather than on technical or semantic concerns about the legislative language used in Bill 107. As described above, CELA and GLU recommend that Bill 107 be withdrawn unless it is substantially amended.

RECOMMENDATION #1: **The Ontario government should immediately withdraw Bill 107 unless the legislation is substantially amended.**

The nature and scope of the necessary amendments to Bill 107 are outlined below in our detailed review of Bill 107.

(a) General

Before CELA and GLU turn to what is included in Bill 107, it is necessary to review what is not in Bill 107.

First, Bill 107 contains no express prohibition against the privatization of water and sewage services in Ontario. CELA and GLU are strongly opposed to the privatization of such services, particularly in light of the questionable privatization track record in Britain and other jurisdictions. If the Ontario government is truly committed to the concept of "public ownership" of such services, then Bill 107 must be amended to include an express prohibition

provisions;

- require public and private drinking water suppliers to provide timely public notice of operational problems, failure to carry out prescribed testing, or violations of prescribed standards; and

- create a statutory cause of action permitting individuals to sue violators of the Act or standards.

In the opinion of CELA and GLU, the need for safe drinking water legislation does not depend on the outcome of the current privatization debate. Regardless of whether water services are under public or private control, Ontarians deserve tough drinking water laws and regulations (as opposed to unenforceable "objectives" or "guidelines") to ensure safe and adequate supplies of clean drinking water. Nevertheless, the seemingly imminent arrival of privatized water and sewage services in Ontario makes it an even greater priority to pass safe drinking water legislation to enhance the accountability of private operators if and when problems arise. In short, the province must act now to ensure that drinking water is protected at the point of consumption.

RECOMMENDATION #4: **If Bill 107 proceeds, it must be amended to include or entrench the essential elements of a Safe Drinking Water Act in order to ensure that Ontarians enjoy safe and adequate supplies of clean drinking water.**

Fourth, Bill 107 fails to require electoral assent to the proposed privatization of municipally owned facilities or infrastructure. This important accountability mechanism was repealed under the Bill 26 reforms discussed above. In the opinion of CELA and GLU, a proposal to dissolve a public utility in order to privatize municipal water and sewage facilities is a fundamentally important matter with profound implications for all ratepayers (and consumers of such services) within a municipality. Accordingly, CELA and GLU submit that Bill 107 should restore the previous statutory requirements under the Public Utilities Act and Municipal Franchises Act regarding electoral assent.

RECOMMENDATION #5: **If Bill 107 proceeds, it must be amended to restore the previous statutory requirements under the Public Utilities Act and Municipal Franchises Act regarding electoral assent to proposals to dissolve or establish utilities providing water or sewage services, or to privatize municipal facilities, infrastructure or services respecting water and sewage.**

Fifth, Bill 107 does not require "full cost accounting" (or even traditional cost-benefit analysis) when proposals are made to privatize municipal facilities, infrastructure or services. In the opinion of CELA and GLU, full cost accounting principles must be applied to such

oversight in Britain, where private companies acquired public utility properties for less than full market value, and then sold the properties at considerable profit for development purposes. Given that in many urban centres in southern Ontario, water and sewage plants occupy large expanses of prime waterfront property, CELA and GLU submit that Bill 107 and MWSTA must be amended to place substantive restrictions on municipal proposals to sell off such lands. For example, the legislation could prohibit municipalities selling such properties for less than the fair market value, as determined by independent real estate appraisals.

RECOMMENDATION #7: **If Bill 107 proceeds, the Municipal Water and Sewage Transfer Act must amended so as to place restrictions on proposals to sell, transfer or otherwise dispose of municipally owned lands used for water works or sewage works.**

Third, section 11 of the MWSTA contains an extremely broad Crown immunity clause that is intended to bar certain civil actions against the Crown and its ministers and public servants. In the view of CELA and GLU, public officials already enjoy sufficient protection under the Public Authorities Protection Act, the Limitations Act, and the Proceedings Against the Crown Act. Section 11 is overbroad and unnecessary, and should be deleted from the MWSTA.

RECOMMENDATION #8: **If Bill 107 proceeds, section 11 of the Municipal Water and Sewage Transfer Act should be deleted.**

Amendments to the Capital Investment Plan Act, 1993

Section 2 of Bill 107 does two things: (1) it repeals section 53 of the Capital Investment Plan Act, 1993 (CIPA), which transferred various assets and liabilities to OCWA when the agency was established; and (2) it adds new provisions to the CIPA which are intended to relieve OCWA and the Crown of obligations to construct, expand or finance the construction or expansion of water or sewage works under agreements entered into before Bill 107 receives Royal Assent.

In addition, new section 56.2 of the CIPA prohibits municipalities from transferring ownership of water and sewage works unless there is repayment of provincial funds received since 1978 to subsidize the capital cost of such water or sewage works. Significantly, there is no obligation to repay any federal funds that were received by the municipality, nor is there any obligation to pay interest on the provincial funds that are payable to Ontario. The Minister is to be the sole arbiter of any disputes as to the amount of funds that are to be paid back to the province.

septic systems every five years....[27]

It is noteworthy that the Commission went on to suggest that the MOEE "consider" entering into contractual arrangements assigning inspection and permit-issuing functions to upper- and lower-tier municipalities.[28] However, the Commission imposed an important caveat on this potential delegation -- before entering the delegation agreement, the MOEE had to be satisfied that the municipality in question had "appropriate expertise" to handle inspection and permit-issuing responsibilities.

Unfortunately, no such safeguard exists in section 3(4) of Bill 107, which simply imposes regulatory responsibility for sections 76 to 79 of the EPA upon all local municipalities, regardless of whether individual municipalities are willing, able or equipped to properly carry out these new duties. In the opinion of CELA and GLU, it is completely unacceptable for the MOEE to simply confine its role to promulgating provincial standards, while leaving the critically important matters of implementation and enforcement of standards up to the vagaries of local municipal budgets, staffing, and priorities. The MOEE's self-serving attempt to absolve itself of regulatory responsibility for Part VIII systems is highly objectionable and contrary to the public interest.

CELA and GLU recognize that the MOEE's enforcement of Part VIII requirements by the MOEE has been sporadic at best over the years. However, there is no reason or evidence to believe that enforcement activities are going to materially improve under the new regime contemplated by section 3 of Bill 107. CELA and GLU also acknowledge that in some areas, the MOEE has already designated municipal health officials as "Directors" for the purposes of Part VIII. While this arrangement has produced acceptable results in some jurisdictions, it has produced mixed results in others, underscoring the need for a continuing provincial role in inspections and approvals, as opposed to a wholesale devolution of such responsibilty to every municipality in Ontario.

Aside from the practical constraints facing municipalities now burdened with Part VIII responsibilities, it must be recalled that municipalities also enjoy statutory authority under the Planning Act to approve severances and subdivisions that may be serviced by Part VIII systems. In the past, many of these Planning Act approvals were issued without proper regard to whether the new lots were suitable for septic systems, but at least independent MOEE staff could, in theory, catch such problems when assessing applications for Part VIII certificates of approval. However, removing the review and approvals role of MOEE staff, and giving municipalities the concurrent power to issue Part VIII approvals, may only serve to compound this land use planning problem.

Finally, it must be noted that with the transfer of Part VIII authority comes considerable legal

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[27] Ibid.

[28] Ibid., p.126.

For the reasons discussed in this brief, CELA and GLU submit that this question must be answered in the negative. Accordingly, CELA and GLU cannot support Bill 107 as drafted, and we request that this Bill be withdrawn unless it is substantially amended.

The specific recommendations of CELA and GLU regarding Bill 107 may be summarized as follows:

RECOMMENDATION #1: **The Ontario government should immediately withdraw Bill 107 unless it is substantially amended.**

RECOMMENDATION #2: **If Bill 107 proceeds, it must be amended to include an express prohibition against the privatization of water and sewage facilities, infrastructure or services in Ontario.**

RECOMMENDATION #3: **If Bill 107 proceeds, it must be amended to include provisions establishing an effective, efficient and independent regulator of water and sewage undertakings in Ontario.**

RECOMMENDATION #4: **If Bill 107 proceeds, it must be amended to include or entrench the essential elements of a Safe Drinking Water Act in order to ensure that Ontarians enjoy safe and adequate supplies of clean drinking water.**

RECOMMENDATION #5: **If Bill 107 proceeds, it must be amended to restore the previous statutory requirements under the Public Utilities Act and Municipal Franchises Act regarding electoral assent to proposals to dissolve or create utilities providing water or sewage services, or to privatize municipal facilities, infrastructure or services respecting water and sewage.**

RECOMMENDATION #6: **If Bill 107 proceeds, it must be amended to ensure that proposals to privatize municipal facilities, infrastructure or services are subjected to "full cost accounting" to ensure that the full range of short- and long-term consequences of privatization are quantified and discussed in an open and public process before final decisions are made.**

RECOMMENDATION #7: **If Bill 107 proceeds, the Municipal Water and Sewage Transfer Act must be amended so as to place restrictions on proposals to sell, transfer or otherwise dispose of municipally owned lands used for water works or sewage works.**

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

April 24, 1997

BY FAX

Mr. Todd Decker, Clerk
Standing Committee on Resources Development
Committees Branch
Whitney Block
Queen's Park
Toronto, Ontario
M7A 1A2

Dear Mr. Decker:

RE: BILL 107

As you know, the Canadian Environmental Law Association (CELA) attended before the Standing Committee on Resources Development on April 15, 1997 to speak to Bill 107. At that time, CELA submitted a detailed written critique of Bill 107 for the Standing Committee's consideration.

Subsequent to our appearance before the Standing Committee, CELA has drafted some key amendments to Bill 107 that are necessary if the Bill proceeds. Please keep in mind that CELA does not support Bill 107 and strongly urges the government to withdraw the legislation. If, however, Bill 107 is not withdrawn, then CELA submits that the attached amendments are necessary to safeguard the environment and the public interest.

It should be noted that CELA's proposed amendments do not purport to be a complete codification of the revisions that are necessary with respect to Bill 107. For example, transitional provisions or consequential repeals are not included within CELA's proposed amendments. Instead, CELA's amendments attempt to describe the essential elements of the required changes. Additional technical refinement or "wordsmithing" of these amendments may be left to legislative counsel.

We would like to draw the Standing Committee's attention to three amendments proposed by CELA that are of critical importance: (1) the provision that prohibits municipalities from transferring title or ownership of water works and sewage works to private companies; (2) the provisions that establish an independent public regulator of water works and sewage works in Ontario; and (3) the provisions that entrench the essential elements of safe drinking water legislation.

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In our view, if the provincial government is seriously committed to safeguarding Ontario's water resources and ensuring public ownership of water works and sewage works, then the government should have no difficulty in endorsing and passing these three amendments. On the other hand, if the government balks at these amendments, Ontarians can only conclude that the real motivation for Bill 107 is to facilitate the privatization of Ontario's water works and sewage works, despite government claims to the contrary.

Could you kindly ensure that CELA's proposed amendments are circulated to Standing Committee members prior to clause-by-clause review of Bill 107?

Thank you for your assistance, and please contact the undersigned if you have any questions or comments about this matter.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Richard D. Lindgren
Counsel

cc. Ms. Brenda Elliott, MPP
Mr. Doug Galt, MPP
Mr. Dominic Agostino, MPP
Ms. Marilyn Churley, MPP

CELA'S PROPOSED AMENDMENTS TO BILL 107

(a) Amendments to the Water and Sewage Services Improvement Act

1. Section 3 should be deleted.

2. Section 4 should be deleted.

3. Section 5 should be deleted.

4. Section 6(2) should be deleted.

5. The Act should be amended by adding the following section:

Ontario Water and Sewage Works Commission

(1) The Ontario Water and Sewage Works Commission is hereby constituted as a corporation without share capital on behalf of Her Majesty the Queen in right of Ontario.

Membership

(2) The Commission shall be composed of not less than three persons and not more than five persons, who shall be appointed by the Lieutenant Governor in Council on the address of the Legislature.

Term of membership

(3) The members of the Commission shall hold office for a term of five years and may be reappointed for a further term or terms.

Removal

(4) The Lieutenant Governor in Council may remove a member of the Commission for cause on the address of the Legislature.

Nature of employment

(5) A member of the Commission shall not do any work or hold any office that interferes with the performance of his or her duties and responsibilities as a Commissioner.

Quorum

(6) A majority of Commission members constitutes a quorum.

Chair of commission

(7) The Commission members may determine their own procedures, by-laws or protocols, and may select and designate a member as Chair of the Commission.

Salaries

(8) Each member of the Commission is a member of the Public Service Pension Plan, and shall be paid a salary within the range of salaries paid to assistant deputy ministers in the Ontario civil service, as determined and reviewed annually by the Board of Internal Economy.

Staff

(9) Subject to the approval of the Board of Internal Economy, the Commission may,

(a) employ such employees as the Commission considers necessary for the efficient performance of its assigned duties; and

(b) determine the terms, benefits and remuneration of such employees, which shall be comparable to the remuneration for similar positions or classifications in the Ontario civil service.

Expenditures

(10) All expenditures of the Commission shall be paid out of moneys appropriated therefor by the Legislature.

Audit

(11) All financial books, records, and accounts of the Commission shall be examined annually by the provincial Auditor.

Annual Report

(12) The Commission shall file with the Speaker of the Legislature an annual report summarizing the Commission's performance of its assigned duties and responsibilities.

Functions and powers of commission

(13) Despite any other provision in any special or general Act, it is the function of the Commission and it has power to,

(a) review and reject or approve, with or without conditions, proposed transfers of the title or ownership of municipal water works or sewage works;

(b) review and reject or approve, with or without conditions, proposed contracts between municipalities and any other person or corporation respecting the operation or management of municipal water works or sewage works;

(c) control and regulate the collection, storage, treatment, distribution and use of water for public purposes, and to make orders with respect thereto;

(d) control and regulate the rates charged to Ontario residents by providers of water and sewage services, and to make orders with respect thereto;

(e) ensure that all feasible alternatives such as water conservation, infrastructure maintenance or leakage repairs, are considered and undertaken before decisions are made to build or expand water works or sewage works;

(f) conduct or fund training programs, pilot projects, and research studies that promote water conservation, environmental protection, or public health protection; and

(g) perform such other functions or discharge such other duties as may be assigned to the Commission by the Lieutenant Governor in Council on the address of the Legislature.

Idem

(14) For the purposes of performing its functions and duties under this Act, the Commission and its staff may,

(a) without consent or warrant, enter into and inspect any water works and sewage works in Ontario, and may undertake such sampling, testing, monitoring or investigations as may be appropriate to carry out the Commission's functions and duties; and

(b) examine any person on oath or solemn affirmation on any matter related to the Commission's functions and duties, and may in the course of the examination require the production in evidence of documents, records or any other thing.

Idem

(15) For the purposes of an examination under subsection 14(b), the Commission and its staff have the powers conferred on a commission under Part II of the Public Inquiries Act, and that Part applies to the examination as if it were an inquiry under that Act.

Offence

(16) Any person who contravenes an order issued by the Commission under this Act is guilty of an offence and is liable upon first conviction to a fine not exceeding $500,000 and upon a subsequent conviction to a fine not exceeding $1,000,000 for every day or part thereof that the contravention occurs or continues.

6. The Act should be amended by adding the following Part:

PART II - SAFE DRINKING WATER

Definitions

9(1) In this Part,

"drinking water" means water that is supplied by private or public water works and is intended for human consumption; and

"Minister" means Minister of Environment and Energy.

Drinking water regulations

(2) Within one year of the date that this Act comes into force, the Minister shall pass provincial drinking water regulations that,

(a) prescribe standards which set maximum allowable contaminant levels for each substance contained within the Ontario Drinking Water Objectives;

(b) prescribe standards that address substances which may cause odour, appearance or usability problems with drinking water;

(c) prescribe methods to prevent or eliminate the presence of harmful bacteria or parasites in drinking water;

(d) prescribe the manner, frequency, protocol and procedures for the sampling and monitoring of drinking water quality; and

(e) prescribe the records and reports that must be prepared or kept by suppliers of drinking water.

Idem

(3) The regulations required under subsection (2)(a) shall be set at the level which no known or suspected adverse effects on the health of persons occurs and which allows for an adequate margin of safety.

Consultation

(4) Before passing, amending or repealing any regulations under this Part, the Minister shall,

(a) post notice of the proposal on the Environmental Registry established

under the Environmental Bill of Rights, 1993, and provide at least a 60 day public comment period on the proposal; and

(b) undertake other appropriate forms of consultation to obtain public comment from such persons, agencies or organizations as may be interested or affected by the proposal, including the Ontario Drinking Water Advisory Committee established under this Part.

Investigation and enforcement

(5) The Minister or his designate shall take all reasonable and necessary investigative and enforcement measures, including drinking water testing and water works inspections, to ensure compliance with standards prescribed by regulations passed under this Part.

Ministerial orders

(6) The Minister may issue orders against any person requiring such persons to undertake specified measures to sample, monitor, or treat drinking water in order to ensure compliance with standards prescribed by regulation under this Part.

Minister entitled to bring civil action

(7) The Minister may bring an action in the Ontario Court (General Division) against any person to obtain such relief as may be required to ensure compliance with the standards prescribed by regulations under this Part, or to ensure compliance with orders issued under this Part.

Duties upon drinking water suppliers

10(1) Each owner and operator of water works that supplies drinking water shall,

(a) take all reasonable and necessary steps to ensure that the drinking water meets all standards prescribed by regulations passed under this Part;

(b) periodically sample and monitor the drinking water to assess whether it meets all standards prescribed by regulations under this Part; and

(c) keep such records and file such monitoring reports with the Minister as may be prescribed by regulations under this Part.

Notice of non-compliance with regulations

(2) Where drinking water supplied by a water works does not meet the standards prescribed in regulations passed under this Part, the owner and operator of the water works shall,

(a) immediately notify all persons served by the water works about the nature

and extent of the contravention;

(b) immediately notify the local medical officer of health and other appropriate authorities;

(c) immediately notify the Minister or his designate; and

(d) immediately provide alternative supplies of drinking water where the contravention causes, or is likely to cause, serious risk of harm to the health and safety of any person;

Idem, failure to test drinking water

(3) Where an owner and operator of a water works is unable to undertake the drinking water sampling or monitoring prescribed by regulations passed under this Part, the owner and operator shall immediately undertake the measures required under subsection (2).

Prohibitions

11(1) No owner or operator of a water works shall supply drinking water that does not meet the standards prescribed by regulations passed under this Part;

Idem

(2) No person shall fail to comply with a Ministerial order issued under this Part;

Idem

(3) No person shall tamper, or attempt or threaten to tamper, with a water works that supplies drinking water.

Definition of tamper

(4) For the purpose of subsection (3), "tamper" means,

(a) introduce a contaminant into drinking water supplied by a water works; or

(b) otherwise disrupt, disturb, or interfere with the operation or management of a water works.

Offence

(5) Any person who contravenes subsections (1), (2) or (3) is guilty of an offence and is liable upon first conviction to a fine not exceeding $1,000,000, and upon subsequent conviction to a fine not exceeding $1,000,000 for every day or part thereof that the contravention occurs or continues.

Civil liability for non-compliance

(6) Any person who has suffered injury, loss or damage resulting from a contravention under subsection (5) may commence an action in the Ontario Court (General Division) against the person(s) responsible for the contravention, and if entitled to judgment, the person may be awarded,

(a) damages to compensate for the injury, loss or damage proven to have been suffered by the person;

(b) injunctive or declaratory relief;

(c) costs; and

(d) such further or other orders as may be appropriate.

Ontario Drinking Water Advisory Committee

12(1) Within six months of the date that this Act comes into force, the Minister shall establish the Ontario Drinking Water Advisory Committee.

Composition of committee

(2) The Minister shall appoint the members of the Committee, who will serve renewable three year terms without remuneration, and who do not become members of Ontario's civil service by reason of their appointment to the Committee.

Idem

(3) When appointing the members of the Committee, the Minister shall ensure that the Committee, at a minimum, includes,

(a) three persons representing municipal interests or organizations;

(b) three persons representing environmental organizations with a demonstrated interest in drinking water issues; and

(c) three persons representing the general public as members-at-large; and

(d) such other persons who, by reason of their knowledge or experience, would assist the Committee in carrying out its assigned duties and responsibilities under this Part.

Purpose of committee

(4) The Committee shall provide the Minister with advice and recommendations on any matter referred to it by the Minister, or on any matter that Committee finds to warrant review and consideration.

Scope of committee mandate

(5) Without limiting the generality of subsection (4), the Committee may consider and make recommendations to the Minister on the following matters:

(a) the content or timing of regulations under this Part;

(b) improved methods to identify, measure or remove contaminants in drinking water;

(c) measures to protect, conserve or remediate groundwater which serves as a source of drinking water;

(d) public health effects caused by contaminants in drinking water;

(e) methods to identify sources of contaminants in drinking water;

(f) alternative water treatment techniques or technologies which eliminate the use of organic chemicals in the treatment process; and

(g) training programs for persons employed in water works, and for persons acting as inspectors or supervisory personnel regarding drinking water.

(b) Amendments to the Municipal Water and Sewage Transfer Act

1. Section 11 should be deleted.

2. Section 13 should be amended by adding the following subsections:

Restrictions on transfer of title or ownership

(2) Despite any other provision in any special or general Act, a municipality shall not transfer title or ownership of a water works or a sewage works to any person or corporation other than a municipality or Crown corporation.

Conditions precedent for transfer

(3) Before a municipality may transfer title or ownership of a water works or sewage

works, the municipality shall,

(a) undertake a full cost-benefit analysis of the proposed transfer;

(b) undertake an independent real estate appraisal to determine the fair market value of the water works, sewage works, or associated lands or infrastructure to be transferred;

(c) hold at least one public meeting to provide public information and to receive public comments on the proposed transfer; and

(d) undertake a public referendum, plebiscite or vote to determine whether a majority of electors within the municipality support the proposed transfer.

Prohibition

(4) A municipality shall not transfer title or ownership of a water works or sewage works unless,

(a) a majority of electors within the municipality support the proposed transfer; and

(b) the Ontario Water and Sewage Works Commission approves the transfer.

Transfer void

(5) A transfer of title or ownership in contravention of sections (2), (3) or (4) is void and of no force or effect.

No transfer of water rights

(6) Despite any other provision in any special or general Act, a transfer of title or ownership of water works or sewage works, or a contract between a municipality and any other person or corporation respecting the construction, use, operation or management of municipal water works or sewage works, does not transfer, convey or create any interests or rights in water, which remain vested in Her Majesty the Queen in right of Ontario.

April 24, 1997