



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

April 14, 2004

**BY COURIER**

Ms. Dawn Landry, Policy Advisor  
Strategic Policy Branch  
Ministry of the Environment  
135 St. Clair Avenue West, 11<sup>th</sup> Floor  
Toronto, Ontario  
M4V 1P5

Dear Ms. Landry:

**RE: WHITE PAPER ON WATERSHED-BASED SOURCE PROTECTION  
PLANNING (February 2004)  
EBR REGISTRY NOTICE # PA04E003**

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Please find attached a copy of CELA's submissions on the *White Paper on Watershed-Based Source Protection Planning*. These submissions are provided to you in accordance with the above-noted EBR Registry Notice for this proposal.

CELA and the groups listed below strongly support watershed-based protection of surface water and groundwater resources that serve as sources of drinking water. As noted by Mr. Justice O'Connor in the Walkerton Inquiry, source protection is the necessary first step in the multi-barrier approach to ensuring drinking water safety. Therefore, we strongly endorse Mr. Justice O'Connor's 22 recommendations related to source protection, and we look forward to the full and timely implementation of these recommendations by the Ontario government.

CELA represented the Concerned Walkerton Citizens at the Walkerton Inquiry, and CELA was a member of Ontario's Source Protection Advisory Committee (2002-03). CELA currently participates as a member of the province's Implementation Committee for Watershed-Based Source Protection. CELA has therefore carefully reviewed and considered the proposals contained within the *White Paper*.

In summary, CELA generally concurs with the recommendations contained within the *White Paper*, but submits that the proposed planning process requires certain amendments and greater prescriptive detail in order to ensure effective and enforceable source water protection. Accordingly, based upon our review of the *White Paper*, CELA makes the recommendations:

1. The source protection legislation must contain a broad statement of legislative purpose aimed at protecting human health, facilitating ecosystem-based watershed management, and

integrating source water protection with other environmental and land use decision-making processes.

2. The source protection legislation should be administered by the Minister of the Environment, who must be given sufficient statutory powers and tools to ensure the timely development and effective implementation of Source Water Protection Plans.
3. The source water protection legislation must bind the Crown, and must contain a paramountcy clause indicating that the legislation prevails over other special or general Acts in cases of conflict.
4. The source water protection legislation must provide for a mandatory public review of the legislation no later than three years after the legislation comes into force.
5. Existing conservation authorities (“CA’s”) should be utilized as the lead agencies (either individually or jointly) for drafting Source Water Protection Plans; however, the Minister should be empowered to designate other lead agencies in areas where CA’s do not exist.
6. The source protection legislation should impose a mandatory duty on the Minister to provide sufficient funding to CA’s (or other designated agencies) to enable them to draft and implement Source Water Protection Plans.
7. CA’s should be required by law to establish Source Protection Planning Boards, which shall be primarily responsible for ensuring that Source Water Protection Plans are developed and implemented in accordance with provincial requirements and standards.
8. CA’s should be required by law to establish multi-stakeholder Source Protection Planning Committees, which shall be primarily responsible for collecting data, consulting with the public, and preparing the documentation prescribed by the source protection legislation.
9. The source water protection legislation must expressly require meaningful public/agency participation at each significant step of the planning process, and, among other things, the legislation shall provide for the use of: EBR Registry notices; media releases; mailouts; newsletters; public meetings, open houses, workshops, and other appropriate consultation tools.
10. The source protection legislation should specify that the first step of the planning process is the preparation and approval of Terms of Reference that, among other things, describe the components and milestones of the forthcoming planning process. The Terms of Reference should also set out the workplan for identifying and providing interim protection of vulnerable or sensitive sources of drinking water.
11. The source protection legislation should specify that the second step of the planning process is the preparation and approval of an Assessment Report that, among other things, contains hydrogeological data, water use/demand information, inventory of “high risk” activities, evaluation of source water vulnerability to degradation/depletion, and description of regulatory and non-regulatory tools to address actual or potential threats.

12. The source protection legislation should specify that the third step of the planning process is the preparation and approval of a Source Water Protection Plan that, among other things, contains goals and objectives, technical/hydrogeological information (i.e. water budget), measures to mitigate threats or to restore drinking water sources, monitoring/reporting program, and procedural requirements for renewing and updating the plan.
13. The Minister should be empowered to approve (or amend and approve) Source Water Protection Plans, with or without conditions. There should be a limited right of appeal for “interested” persons to appeal the Minister’s decision, in whole or in part, to the Environmental Review Tribunal.
14. There must be an express legislative linkage between the source protection legislation and the permit to take water (“PTTW”) regime under the *Ontario Water Resources Act*. The PTTW regime must be amended in several key respects (i.e. data collection, public consultation, water conservation/efficiency, monitoring/reporting, documentary requirements, and procedural steps) to ensure consistency with approved Source Water Protection Plans and Annex 2001.
15. Source water protection planning and implementation should be financed via various levies and charges based upon “user pay” and “polluter pay” principles (i.e. water rates, water-taking levies and effluent charges) to ensure sustainable funding for source protection programs.
16. The source water protection legislation must ensure that for vulnerable or sensitive sources, groundwater should be protected at a level that meets current drinking water quality standards, and surface water should be protected at a level that meets the Provincial Water Quality Objectives.
17. The source water protection legislation must ensure that threat assessment and risk management decisions are reasonably consistent across the province.
18. The source protection legislation should specify which statutory approvals under other legislation (i.e. land use planning decisions, certificates of approval for air/water emissions, approvals for land application of biosolids) shall be consistent with approved Source Water Protection Plans.
19. The source protection legislation must ensure that there is adequate notice to, and involvement of, municipalities in circumstances where provincial decision-making may affect lands or resources related to source water protection within municipalities.
20. The source protection legislation must ensure that First Nations have meaningful opportunities to participate in source water protection decisions within the entire watershed (including adjoining municipalities).

Please be advised that the following organizations and individuals have endorsed CELA's recommendations and attached submission:

Citizens Environment Alliance  
Citizens' Network on Waste Management  
Environmental Defence Canada  
Georgian Bay Association  
Great Lakes United  
Grey Association for Better Planning  
North Simcoe Environmental Watch  
Bill De Young  
A. P. Lino Grima

We trust that these comments will be taken into account as the Ontario government begins to draft source protection legislation and regulations. 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. The Hon. Leona Dombrosky, Minister of the Environment