

DISCUSSION NOTES

January 27, 2005

ENGO Conference Call: Follow Up to ENGO's Briefing and Assessment of Source Protection Implementation Committee Report and Source Protection Technical Experts' Committee Report

Participating in call:

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This is not a consensus document. These are discussion notes reflecting comments made on the following topics by the participants, and intended for consideration and to assist participants and engo's in preparing submissions to the EBR consultation of the two Source Protection Committee reports mentioned above. Deadline for comments to the Ministry of the Environment is February 14, 2005 and further information for submission addresses and links to the reports is available at www.thewaterhole.ca

Follow-up Topics:

1. APPEALS

- In general, the preference is for appeals of source protection plans to be to the Environmental Review Tribunal
- One reason for this preference is in the ERT's framing of issues as environmental and health issues
- Consolidated Hearings processes should be re-invigorated where there are multiple processes – for example permit to take water, land use, flood protection and drainage issues
- The focus should be on environmental and health protection rather than development
- OMB reforms are very important for the on-going role that the OMB will still play, for example in subsequent land use appeals.

2. INTERIM PROTECTION MEASURES:

- Use of existing interim powers, provincial, municipal and medical officers of health, for example, should be stressed
- However, criteria are needed to ensure and require action
- One necessary criteria is impact on health
- Other criteria could include "imminence" of the threat, and whether a number of people are at risk
- The precautionary principle should inform interim measures provisions
- The province should make the availability of interim measures widely known and actively encourage municipalities and health officials and others to use them
- Source protection legislation needs defined, definite time-lines. Until the time lines arrive for source protection plans to be approved and implemented, a defined set of priorities should

be determined and public health and drinking water sources protected in all interim decisions. This should be mandated in the source protection legislation.

- Key is identification of highly vulnerable areas at the outset for interim protection and one tool is establishment of holding zones until source protection plans are in place, especially with respect to the activities identified in the TEC list of threats of provincial concern.

3. PRECAUTIONARY PRINCIPLE:

- Want positive duty wording: Where considering all information including the available data and science, there is a recognized threat, the relevant government actor shall take measures to prevent serious or irreversible degradation to sources of drinking water
- The interim measures provisions should be reflective of the precautionary principle (in the face of uncertainty but possible serious or irreversible harm, take cost-effective measures to avoid the harm) - *Note - as requested during the conference call, the wording in brackets was provided by Theresa subsequent to the discussion based on wording that was discussed elsewhere.*
- In establishing the potential for serious or irreversible harm, use a weight of the evidence approach
- Precautionary principle is not anti-science; it is integral to and encourages science
- Data must be public
- Use of models must consider their reliability
- Plans must have mechanisms for review so that new science is incorporated into the decisions made and measures chosen

4. PUBLIC PARTICIPATION:

- There needs to be an emphasis on public education and communication by the province and CA's re the language used in the reports – e.g. “threats”; “significant threats”
- For example, definitions will not be universally comprehensive; the legislative terms are vehicles to capture issues that need attention
- Community engagement must be paramount
- Education is also key to encouraging participation and to encouraging good decision making. Otherwise, precautionary decision making is avoided until a crisis develops.
- Longer term picture necessary to stress for public
- Relationships between watersheds must be stressed – upstream and downstream connections (TEC report mentions this)
- Important to draw people in so that approvals and decisions are not made devoid of public participation
- Public participation needs to be up-front and often. EBR posting is very late in the process.
- Important to have information and data and to communicate it publicly to assist in good public participation and support for decisions made
- Data gaps mean non-level playing field in terms of protection so these areas must be identified and addressed
- Voluntary inclusion of public who own their own wells can help increase interest in and support for efforts – e.g. lots of opportunity for quality and quantity data

- Very important to have funding for public / NGO's participation in source protection committees so they can participate equally with other sectors
- Overall framework as to how SPPC's will be established is needed
- Also need an overall framework from the province as to how watersheds and sub-watersheds will fit together – and in doing so, how to utilize the immense insight and knowledge of the public

5. DATA

- TEC report recommendations on data are strongly supported; can't stress the data issues enough
- Key is the need for a standardized format for data collection – both as to how data is collected and how it is stored and shared
- Data should be available free of charge to the public
- Costs of data system should be internal to government and not externalized to ENGO's
- Data provision should be internet based

6. OVER-ARCHING CONCERNS

- There is an absence of consequences for missing deadlines. In addition to possibility of penalties, there could be alternative remedies such as review by the courts (e.g. an order to meet the requirements for plan development or implementation) as opposed to an actual “conviction” or fine process
- Deadlines for source protection are insufficiently articulated
- There is no provision for annual or bi-annual reporting of source protection plan progress in specific watersheds and provincially
- Capacity within the MoE to quickly and capably review submitted plans is a major concern
- MoE resourcing needs to be sufficient to handle source protection and to ensure compliance
- There need to be guidance documents in place quickly and the experience of the Oak Ridges Moraine where guidance documents are still not public must be avoided
- Guidance documents are necessary for consistent decision making
- In addition to “self-reporting” by lead CA's, there should be third party review – to avoid the natural tendency to exaggerate accomplishments – third party review could be by ECO or by the Drinking Water Inspector or by a new position such as a “Source Protection Commissioner”. In addition, plan development, status and implementation information must be publicly and easily available for public scrutiny and accountability.

END