

Watershed Source Protection

Expectations and Challenges

March 2004

Theresa McClenaghan

CELA

Key Policy Events / Documents

- ❖ Walkerton Inquiry Reports January and May 2002 - multi-barrier approach
- ❖ Source Protection Advisory Committee appointed November 2002
- ❖ Source Protection Advisory Committee report April 2003; EBR consultation summer 2003

Policy documents cont/d

- ❖ Nutrient Management Advisory Committee appointed and began meeting July 2003. First report to government for priority one issues expected June 2004.
- ❖ Two needed Source Protection committees announced November, 2003 to take the SPAC issues to next stages for implementation

Policy documents cont/d

- ❧ December 2003 - chairs and members of Source Protection Implementation Committee and Source Protection Technical Committee announced - 6 to 9 month time frame
- ❧ December 2003 - One year water taking moratorium announcement and proposal for water taking charges announced

Policy documents cont/d

- ❖ February 2004 White Paper on Source Protection and Water Taking issued - comments due April 12th/04
- ❖ Source protection planning legislation expected spring 2004
- ❖ First round of watershed Source Protection Plans proposed to be completed within two years across province

Source Protection Advisory Committee Report

- ❧ April 2003
- ❧ Remains best template to the policy development
- ❧ Implementation work that Source Protection Implementation committee is now working on include funding mechanisms and new municipal and other agency tools

Responsibility and Accountability

- ❧ Ultimate responsibility for ensuring source protection is to be with the province, specifically the Ministry of Environment
- ❧ In addition, all governments and stakeholders share responsibility to ensure a sustainable supply of safe clean drinking water (Rec. 2)

Goals of Source Protection Plans

- ❧ To protect human health
- ❧ Through protection of current and future sources of drinking water
- ❧ Including inland lakes, rivers and groundwater
- ❧ From potential contamination and depletion
- ❧ Through locally developed watershed based source protection plans (Rec. 3)

Scope of Framework regarding Great Lakes

- ❧ Most population in Ontario receives drinking water from Great Lakes
- ❧ Communities that take water from Great Lakes nevertheless share in responsibility to protect and enhance Great lakes drinking water as well as inland water sources
- ❧ Source protection plans will contribute to protection and improvement of Great Lakes water quality and quantity

Great Lakes cont.

- ❖ Ministry of Environment to require any entity that discharges to the Great Lakes (waste water, rural run-off, storm water) to improve quality of discharges to standard that meets source water protection objectives (Rec. 4)
- ❖ Rec. 5 requests the province to recognize the benefits of source protection and incorporate into future agreements

Principles Guiding Source Protection

- ❧ Sustainability - water essential for health and ecosystem; must be valued as finite; SPP's to consider historical, existing, new and future land uses
- ❧ Comprehensive - SPP's must take a precautionary approach
- ❧ that uses best available science and is subject to continuous improvement

Principles cont'd

- ❧ Shared responsibility and stewardship - MoE has ultimate accountability; responsibility for specific outcomes is shared among water managers, users and land owners
- ❧ Public participation and transparency - from first development through to implementation; meaningful input

Principles cont'd

- ❧ Cost effectiveness and fairness - Costs and impacts to be clear, fair and economically sustainable; SPP's access all information practical and reasonable; use technologies and risk management practices to maximize protection of public health
- ❧ Continuous improvement - including peer review, successful implementation, assessment, monitoring, through to modifications

Legislative Basis for Source Protection Planning

- ❧ Advisory committee recommended that the framework be enshrined in new watershed based source protection legislation
- ❧ Need to be clear about when source protection takes precedence over other matters
- ❧ Source protection provisions to be consolidated in one piece of legislation

Legislative Basis cont'd

- ❖ New legislative provisions to focus on gaps
- ❖ Advisory committee stressed Justice O'Connor's recommendations 4 and 5: provincial decisions affecting quality of drinking water must be consistent with approved SPP's and where potential for significant direct threat to drinking water sources, municipal official plans and decisions must be consistent with SPP's

Legislative Basis cont'd

- ❧ For other matters, municipal official plans and decisions should have regard to SPP's
- ❧ Plans should designate areas where consistency required (Part Two Walkerton Inquiry Report recommendations 4 and 5; page 9 of Framework)

Legislative Basis cont'd

- ❖ Where human health is a concern, source protection legislation will supersede other legislation
- ❖ Over time, official plans must be amended to be in keeping with SPP's
- ❖ Similarly, Provincially issued permits to take water and certificates of approval to be consistent with approved SPP's

Legislative Basis cont'd

- ❖ SPP's must be done as quickly as possible
- ❖ The legislation must include a schedule of initial plans in the legislation - Rec. 10 - all plans to be done within three years of start date; all plans to be started within two years of effective date of legislation; SPP areas will be phased so the higher risk watersheds may be the first to start - White Paper has amended these proposals to two years

Legislative Basis cont'd

- ❧ Minister of the Environment will identify the planning areas - candidate areas are included in the framework & White Paper
- ❧ Minister of Environment will designate the organization with lead responsibility to coordinate plan development - White Paper proposes that certain Conservation Authority Boards will be designated Source Protection Planning Boards in most cases

Legislative Basis cont'd

- The Advisory committee also recommended that other legislation such as the Environmental Protection Act, the Nutrient Management Act, the Drainage Act, the Brownfields Statute Law Amendment Act, the Mining Act and others be amended where necessary to be consistent with source protection legislation (Rec. 9)

First Nations

- ❧ Importance of First Nations' participation in source protection planning is stressed.
- ❧ Walkerton statement that there is no justification for lower health standards is endorsed
- ❧ First Nations to be full participants in source water protection planning and implementation (Rec. 15, 16)

Financing Initial Source Protection Plans

- ❖ Advisory committee recommended that the province “substantially fund the development of all initial source protection plans” to ensure they are developed quickly
- ❖ Costs are to be analyzed and a formal funding strategy developed (Rec. 19, 20)
- ❖ This is one of the key areas where more work must be done to ensure success

Rest of the Report - www.ene.gov.on.ca/envision/water/spp.htm

- ❧ Not dealt with in this presentation are Gaps in the current system New Powers for Municipalities and New Responsibilities for Conservation Authorities; Interim Risk Management.
- ❧ These aspects of the Framework Fundamentals chapter of the source protection report and the rest of the report are of high interest and should be read

CHALLENGES TO SOURCE PROTECTION

- ❧ Watershed Based Source Protection: What will it take?
- ❧ 1) Three Top Challenges
- ❧ 2) How can they be resolved?
- ❧ 3) What's the bottom line for CELA?

Three Top Challenges

- ❖ 1) Defining Vulnerable Areas & Sensitive Water Resources: What is going to be protected and from what?
- ❖ 2) Defining Consistent Decision Making: Which decisions must be consistent with source protection plans?
- ❖ 3) Financing: will source protection plans be implemented and who will pay the costs?

Defining Vulnerable Areas and Sensitive Water Resources

- ❖ Technical definition was left by the Source Protection Advisory Committee to be developed by a further committee
- ❖ To be developed within six months of the release of the Source Protection Framework
- ❖ Will be needed for introduction of source protection legislation

Vulnerable Areas & Sensitive Water Resources

- ❧ Committee wanted prescriptive definition and standard approach across Ontario to threat assessment
- ❧ Committee also wanted prescriptive management actions at least for most vulnerable areas, but on a site specific basis
- ❧ Committee also wanted the vulnerable areas to be identified as quickly as possible to remove uncertainty

Vulnerable area

- ❧ Framework defined “vulnerable area” as an area where a surface water body or aquifer is vulnerable to contaminants originating on the land’s surface
- ❧ “Vulnerability” was stated as “an expression of the ease with which a threatening or hazardous material can gain access to that resource (through environmental pathways)”

What are the issues in defining vulnerable areas and sensitive water resources?

- ❧ Examples of the issues that remain to be determined include
- ❧ What is the list of potential threats?
- ❧ How will threats be prioritized?
- ❧ On what scale will threats be assessed?
- ❧ What factors will be included in assessing vulnerability?

What is the bottom line?

- ❧ For the definitions of vulnerable areas and sensitive water resources, the bottom line is that ground water needs to be protected from contamination beyond the drinking water standards
- ❧ Surface water needs to be protected from contamination beyond the Ontario Water Quality Objectives

Bottom Line cont.

- ❧ Threat assessment exercises and risk management decisions - what will be done to protect water resources from the threats - must be reasonably consistent across the province

Defining Consistent Decision Making:

- ❧ Which decisions must be consistent with source protection plans?
- ❧ For the drinking water source protection framework, health protection is the main criteria for determining which decisions must be consistent with source protection plans

What is the barrier

- ❧ Justice O'Connor gave a list of the most relevant decisions, including provincial and municipal decisions
- ❧ Examples include land use planning decisions, certificates of approval for emissions to air or water, for biosolids application to land, and water taking permits, to name a few

Consistency with source protection plans

- ❖ The delineation of the decisions that must be made consistently with source protection plans will have to consider the matrix of risk management strategies that the framework outlined: Most protective municipal and provincial decisions are required for new uses in the most vulnerable areas and for existing uses in the most vulnerable areas - however tools may differ

An opportunity for municipalities

- ❖ An ongoing issue for many municipalities has been the lack of notice and involvement in provincial decision making affecting the land in their community
- ❖ Examples include emissions, water takings and biosolids application
- ❖ Source protection plans will directly affect those provincial decisions

Municipal opportunities cont.

- ✿ In addition, municipalities may have new notice opportunities such as in the proposed new water taking regulations

The bottom line on consistency

- ❖ Source protection plans that aren't implemented in provincial and municipal decision making are useless
- ❖ Source protection plans will have to have explicit status in municipal land use plans, even govern some aspects of those plans
- ❖ The province will have to respect the plans that they approve, which communities have developed

Financing

- ❖ Financing: will source protection plans be implemented and who will pay the costs?
- ❖ There are several categories of costs that will arise in source protection planning
- ❖ First there are the costs of developing the plans themselves
- ❖ The framework recommended that the province fund the first round of plans

Financing

- ❖ However, after initial plan development, there are ongoing planning costs
- ❖ For example, implementation and monitoring of the plan's effectiveness will have costs
- ❖ Plans will have to be revisited and revised according to how well they are working or as new issues arise

Financing cont.

- ❧ Ongoing planning costs and all of the implementation costs should have sustainable long term funding that all of the affected parties can predict and rely on
- ❧ In addition, the sources of funding should be related to the sources of the impacts and to the beneficiaries of source protection planning

Financing cont.

- “User pay” principles are included in the full cost planning and pricing legislation which was amended to include source protection costs - so some costs can be recovered through municipal rates and other funding instruments for water and sewer systems

Financing cont.

- ❖ Another big category of “user pay” is water takers - who right now do not pay for the actual water taken
- ❖ A nominal levy per litre of water taken could help finance planning and implementation, including capital works

Financing cont.

- ☞ “Polluter pay” was the other major category noted by Justice O’Connor
- ☞ Examples could include levies on certificates of approval for emissions to water that are directed to source protection planning and implementation

Financing solutions cont.

- ❖ However, ongoing planning and implementation must not be subject to the uncertainties of the annual provincial budget exercise
- ❖ Many new and exciting opportunities have been undertaken in other jurisdictions and these needs to be reviewed for success stories

Bottom Line on Financing

- CELA advocates use of levies on water takings and all other available municipal and provincial tools to ensure that robust planning and thorough implementation will occur

Financing for farmers

- ❧ For example, while some amount of capital expenditures may fall to farmers to be included in food prices, many other capital works on farms should be covered from other source protection revenues
- ❧ We can't continue to insist on both cheap food and environmental protection without looking at how we pay for both

The final bottom line

- ❧ We need watershed based source water protection planning and implementation in Ontario
- ❧ Justice O'Connor's 22 recommendations on source protection were among the most fundamental of all of his recommendations
- ❧ In a multibarrier approach to water protection, source protection is first

CELA Action Alert

- ❖ CELA has an Action Alert on our web site at www.cela.ca
- ❖ It gives addresses of the Premier, Minister of the Environment, and the results of a May NGO's workshop on the source protection framework
- ❖ Government is now consulting on the White Paper - deadline is April 12th for comments