



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

ONTARIO'S CLEAN WATER ACT, 2006: CELA FAQ #4

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QUESTION: Under the *Clean Water Act, 2006*, what are “Assessment Reports”, and how will these documents be drafted, reviewed and approved?

ANSWER: Assessment Reports are prepared by local Source Protection Committees in accordance with their approved Terms of Reference, and are generally intended to identify and evaluate threats to the quality or quantity of drinking water sources (i.e. surface water or groundwater). The mandatory content requirements for Assessment Reports are prescribed by law, regulation, and technical rules. There are key opportunities for public review of, and comment upon, Assessment Reports before these documents are approved by the Ministry of the Environment.

ANALYSIS:

Background

The overall purpose of Ontario's *Clean Water Act, 2006* (“CWA”) is to protect existing and future sources of drinking water.¹ To achieve this purpose, the CWA has established a source protection planning process that is locally driven, science-based, and consultative in nature.

In 2007, the Ontario government designated “Source Protection Authorities” (i.e. existing conservation authorities) in 19 watershed-based areas or regions across Ontario. Each of these Authorities, in turn, appointed its own Source Protection Committee (“SPC”) consisting of persons representing municipal, industrial, agricultural, environmental, and public interests. Some SPCs also include representatives from First Nation communities.

The first major documentary step in the source protection planning process was the development of Terms of Reference under the CWA. At the present time, most SPC's have had their Terms of Reference approved by the Minister of the Environment. Therefore, these SPCs are now moving into the second major documentary step of the source protection planning process: development of detailed Assessment Reports.

¹ CWA, section 1.

The Assessment Report Process

The general process for preparing, reviewing, approving and updating Assessment Reports is prescribed by the CWA and regulations.² In essence, each SPC is legally obliged to prepare and submit an Assessment Report within one year of the published notice that the Minister approved the Terms of Reference.³ For most SPCs, this means that Assessment Reports will have to be completed by early 2010.

When preparing the Assessment Report, SPCs “shall consult” with all municipalities within their geographic jurisdiction.⁴ In addition, SPCs are legally obliged to provide notice to clerks of local municipalities and to chiefs of any bands whose reserves are located within the area or region.⁵ Similarly, SPCs are expressly required to undertake various consultation measures, including publishing public notices, holding public meetings, and receiving public comments.⁶

After undertaking the necessary public consultation steps, SPCs will finalize and forward the proposed Assessment Reports to their respective Source Protection Authorities. At this time, SPCs must also web-post the proposed Assessment Report, provide copies to local municipalities and chiefs of local bands, and invite interested persons to send any further comments to the relevant Source Protection Authority.⁷

In turn, Source Protection Authorities are obliged to submit the proposed Assessment Reports for approval by the Director appointed under the CWA by the Minister of the Environment.⁸ Notice of the Director’s approval of the Assessment Report will be posted on the on-line Registry under the *Environmental Bill of Rights*.⁹ Similarly, Source Protection Authorities must web-post the approved Assessment Report and make it available to the public through other appropriate means.¹⁰

When approving the Assessment Report, the Director may impose obligations regarding the filing of interim progress reports on specified matters (i.e. activities or conditions that may adversely affect raw water supplies for municipal drinking water systems), pending the completion of the Source Protection Plan.¹¹ These interim progress reports shall be made available to the public.¹²

² CWA, sections 15 to 21; O.Reg.287/07, sections 11 to 18.

³ O.Reg.287/07, subsection 17(2)(a).

⁴ CWA, subsection 15(4).

⁵ O.Reg.287/07, subsection 15(2)(c).

⁶ O.Reg.287/07, section 15.

⁷ CWA, section 16; O.Reg.287/07, section 16.

⁸ CWA, section 17; O.Reg.287/07, section 17.

⁹ CWA, section 18.

¹⁰ CWA, section 20.

¹¹ CWA, section 21.

¹² CWA, subsection 21(3).

If the SPC becomes aware that the approved Assessment Report is no longer accurate or complete, then the SPC shall submit an updated Assessment Report to the Source Protection Authority, which, in turn, shall submit it to the Director for approval.¹³

The Assessment Report Content

In general terms, the Assessment Report is intended to serve as the technical and scientific basis for developing an appropriate Source Protection Plan. Under the CWA, Assessment Reports must, at a minimum, address the following matters:¹⁴

- identify and map all watersheds within the source protection area, and characterize the water quality and quantity in each watershed;
- set out water budgets for all watersheds and/or subwatersheds (i.e. quantification of incoming/outgoing surface water and groundwater flows, including water-takings);
- identify and map significant groundwater recharge areas and highly vulnerable aquifers;
- identify and map surface water intake protection zones (“IPZ”) and wellhead protection areas (“WHPA”) for existing/planned municipal drinking water systems;
- describe issues affecting drinking water quality or quantity in vulnerable areas (i.e. IPZs, WHPAs);
- list activities/conditions that are or would be drinking water threats, and identify areas in IPZs and WPAs where such activities/conditions constitute “significant” drinking water threats; and
- include other matters prescribed by regulation (i.e. characterization of physical/human geography; low or moderate drinking water threats; climate change implications, etc.).¹⁵

The general regulation under the CWA also prescribes 21 activities as “drinking water threats”¹⁶ (i.e. certain water-takings; livestock grazing/pasturing; operation of waste disposal sites/sewage works; storage/handling/application of manure, fertilizers, pesticides, or road salt; storage/handling of fuel, certain chemicals, etc.), which will have to be considered by SPCs in their Assessment Reports.

The above-noted content requirements have been supplemented by technical rules developed by the Director to provide detailed direction on how SPCs should assess groundwater vulnerability,

¹³ CWA, section 19. Consultation is required before the submission of the updated Assessment Report: see O.Reg.287/07, section 18.

¹⁴ CWA, section 15(2).

¹⁵ O.Reg.287/07, section 13.

¹⁶ O.Reg.287/07, section 1.1.

delineate IPZs and WHPAs, assign hazard ratings to drinking water threats, and other related matters.¹⁷

Public Interest Considerations

When reviewing Assessment Reports, it will be instructive for public interest representatives to consider the following “checklist” of questions and issues:

- did the SPC or Authority comply with all the prescribed steps for preparing, publishing and consulting upon the Assessment Report?
- does the Assessment Report address all of the prescribed content requirements at a sufficient level of detail, including Great Lakes considerations where applicable?
- did the Assessment Report authors solicit aboriginal traditional knowledge and/or community-based local knowledge, where appropriate, to supplement the gathering of technical or scientific data by staff or consultants?
- does the Assessment Report properly reflect the precautionary principle and ensure that lack of scientific certainty does not delay or preclude policies intended to address significant drinking water threats?
- does the Assessment Report ensure that all known or suspected threats to local drinking water quality/quantity (i.e. direct, indirect or cumulative impacts from point- and non-point sources) have been identified and evaluated?
- does the Assessment Report include uncertainty analyses, or identify data gaps which should be addressed in the future?

Under the CWA, there is no statutory right to “appeal” the Assessment Report to an administrative tribunal or to court. Therefore, where a proposed Assessment Report may require strengthening or improvement, it is incumbent upon public interest representatives to directly raise their concerns in a timely manner with the SPC, Source Protection Authority, or the Director prior to approval of the Assessment Report.

¹⁷ The Technical Rules (December 12, 2008) are available at: www.ene.gov.on.ca/en/water/cleanwater/cwa-technicalstudies.php.