



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

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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 If, however, Bill 107 is not withdrawn, then CELA submits that the attached amendments are necessary to safeguard the environment and the public interest.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.

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



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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

130 SPADINA AVE • SUITE 301 • TORONTO • ON. • M5V 2L4
TEL: 416/960-2284 • FAX: 416/960-9392 • www.cela.ca

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.