



May 3, 2007

Caroline Cosco  
Senior Policy Analyst  
Ministry of the Environment  
Land and Water Policy Branch 6<sup>th</sup> floor  
135 St. Clair Avenue West  
Toronto, ON M4V 1P5

**Re: Submission by Pollution Probe Regarding Bill 198, the *Safeguarding and Sustaining Ontario's Water Act of 2007***

Pollution Probe supports the Ontario Government's proposed Bill 198 as an essential step towards the implementation of the *Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement* signed by the Premiers and Governors of the provinces and states in 2005.

Attached please find Pollution Probe's comments, concerns and recommendations on Bill 198. Our recommendations focus on the areas in which we have knowledge and expertise. We intend that they will be useful and constructive.

Sincerely,

Rick Findlay  
Director, Water Programme  
Pollution Probe  
[rfindlay@pollutionprobe.org](mailto:rfindlay@pollutionprobe.org)

Pollution Probe  
101-63 Sparks Street  
Ottawa, ON K1P 5A6  
T: 613.237.3485  
F: 613.237.6111  
[www.pollutionprobe.org](http://www.pollutionprobe.org)

## **Submission by Pollution Probe Regarding Bill 198, the Safeguarding and Sustaining Ontario's Water Act of 2007**

### **Background on Pollution Probe**

Pollution Probe is a non-profit charitable organization that works with all sectors of society to protect health by promoting clean air and clean water. Established in 1969, Pollution Probe is supported by an active donor base of approximately 6,000 donors. Our mandate is to define environmental problems through research; promote understanding through education; and press for practical solutions through advocacy. Our approach is to not point out problems without pointing out solutions. Working in partnership with industry, governments and communities, Pollution Probe offers innovative and practical policy-oriented solutions to air and water pollution issues and we seek to support measures that will assist in providing a clean, safe and healthy environment.

### **Pollution Probe's Ongoing Commitment to the Great Lakes**

Pollution Probe has been deeply involved with protecting the Great Lakes since we were founded. In 1986 we published *The Great Lakes Primer* the first in a series of Primers that we have now produced over the years on a wide range of environmental and health issues. In 2003 Pollution Probe brought together experts from both Canada and the U.S. and formed an institution that would become known as the Great Lakes Futures Roundtable (GLFRT). An on-going initiative, this roundtable has provided key decision makers from all sectors with a non-attributed forum where they can speak frankly and share their perspectives and concerns with one another. This weaving of interests has resulted in, among other things, a Vision for the future of the Great Lakes. The GLFRT Vision is made freely available in whole or in part to any agency that sees value in it. It has been picked up, adapted and adopted a number of times and undergoes continued refinement by the roundtable.

Most recently Pollution Probe joined forces with the Environmental Commissioner of Ontario and embarked on a five-city consultation series around the Great Lakes. Holding both daytime invited roundtables and evening public forums in Kingston, Windsor, Hamilton, Thunder Bay and Toronto, we heard the thoughts, perspectives and concerns of over 400 people from all sectors of society. The synthesis of this information with previous and ongoing efforts forms the basis for many of these comments. We confirmed there is an emerging vision for the Great Lakes in Ontario, one where people, the environment and the economy are healthy and thrive for generations to come.

### **The Great Lakes Charter Annex and Pollution Probe**

Pollution Probe is a member of the Annex Advisory Panel created by the Province to assist it in negotiating the Great Lakes Charter Annex of 2001 Implementing Agreement. Being fully involved as a stakeholder in the Agreement negotiating process has been a positive experience for Pollution Probe and other stakeholders as well, and has resulted in

a stronger agreement that will better protect and sustain the waters of the Great Lakes basin and meet Ontario interests. We commend the Province for taking the initiative to establish the Advisory Panel and to use its advice effectively in the Agreement negotiating process.

Pollution Probe appreciates the political commitment that the Premier has shown to the Agreement and we supported the Premier in his signing, on December 13, 2005 (joined by the Premier of Quebec and the Governors of the eight Great Lakes States) of the *Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement* (Agreement).

### **Implementation of the Agreement**

We understand the purpose of the proposed Bill 198 is to implement the Agreement, primarily by amending the Ontario Water Resources Act, and we support those proposed changes as being necessary for its implementation. We also support it for the purpose of enabling the province to charge commercial and industrial users for water that they take and use.

With respect to the Agreement, we appreciate the political commitment that has been demonstrated by the Premier. We are now taking it on faith however that all articles, clauses and intentions of the Agreement will be implemented through passage of proposed Bill 198. Lacking the capacity to do legal analysis ourselves, Pollution Probe must assume that all the elements of the Agreement map directly to the proposed legislation and that the implementation of the Agreement will be assured through passage of Bill 198.

We have been assured that this is the case, but feel that due to the complexity of the Agreement there is a possibility that something may “slip through the crack” between the Agreement and the proposed implementing legislation. To address this concern we propose that there be a provision written into Bill 198 requiring the Province to periodically produce, for the public and for its own purposes, a plain language Interpretive Manual. We envision this to be a tool that would allow citizens and decision-makers to see how the Agreement is being implemented. If there are shortcomings in implementation that emerge at a later date, it will stimulate regulators to take appropriate action.

Pollution Probe wishes to be sure that, for example, the connection between water quality and water quantity, as required for assessing cumulative impacts, is made. The Interpretative Manual would be useful for establishing a water takings baseline and tracking changes over time. This information is needed for cumulative impacts assessment fundamental for protection, conservation and restoration of the Water Dependant Natural Resources of the basin.

Pollution Probe is also concerned about the resource capacity of the Ontario Government to implement the Agreement. This point is underlined by the recent special report of the Environmental Commissioner of Ontario to the Legislative Assembly (April 4, 2007) that finds the Ministries responsible for implementing proposed Bill 198 are chronically

under-resourced. We believe that the regular, periodic production of an Interpretive Manual would assist in making the case for adequate staff allocation and resources to implement the Agreement, if such is required by law. Otherwise, the added responsibilities under this Act will only serve to exacerbate the situation described by the Commissioner.

### **Enable Water Taking Permits and Charges**

In addition to assuring implementation of the Agreement, the plain language Interpretive Manual that Pollution Probe suggests would be important for the purposes of the proposed Bill 198 that deal with water takings and charges. There will be a continuing path of regulatory adjustment that will likely need to be followed to implement the water taking elements of proposed Bill 198 and a regular, publicly available Interpretive Manual would serve these needs as well.

### **Support for Precautionary Principle**

Pollution Probe supports the language used in section 34.4 (2) recognizing the application of the Precautionary Principle in implementing the Act, specifically, “where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation”.

### **Support for Submission by CELA**

In addition to the points made in this submission, Pollution Probe has worked together with the Canadian Environmental Law Association and Sierra Legal Defence Fund in analysing Bill 198, and is fully supportive of the points made in the submission by the Canadian Environmental Law Association.

### **Conclusion**

Pollution Probe urges immediate passage of Bill 198. In moving toward fulfilling its commitments to the Agreement, the introduction of Bill 198 is seen as a positive step forward for Ontario. This enabling legislation provides a foundation for realising the objectives of the Agreement and is of fundamental importance to protection, conservation, restoration, improvement and efficient and effective management of the Waters and Water Dependent Natural Resources of the Basin upon which rest the many and varied interests of the entire Great Lakes community.

Rick Findlay  
Director, Water Programme  
Pollution Probe  
[rfindlay@pollutionprobe.org](mailto:rfindlay@pollutionprobe.org)