October 21, 2005

The Honourable Laurel C. Broten
Minister of the Environment
12th Floor, 135 St. Clair Avenue West
Toronto, Ontario
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Via Facsimile & Regular Mail

Re: Watershed Based Drinking Water Source Protection Legislation

Dear Minister Broten:

We would like to begin by expressing our congratulations to you on your recent appointment as Ontario's Minister of the Environment. We are encouraged by your demonstrated interest in environmental issues, and we welcome the opportunity to work with you in ensuring that Ontario's upcoming source water protection legislation effectively fulfills its enormous potential.

We are writing collectively to express our concerns with respect to some of the decisions the government must make with respect to watershed based drinking water source protection legislation. We urge your government to enact legislation that is strongly protective of Ontarians' present and future sources of drinking water.

There are six areas of concern that we would like to discuss in this letter:

1) Timely inclusion of surface water systems

Due to the serious threats confronting communities on municipal surface water systems, source protection plans for these systems should be on the same timeframe as groundwater systems.

2) Source protection benefits to non-municipal water (e.g. small systems and private wells)

The legislation should ensure that watershed assessments include an assessment of the risks posed to non-municipal sources of drinking water, and that source protection plans include required measures to address any "significant" risks identified.

3) The types of required responses to assessed risks

Source protection legislation should require appropriate responses for moderate and low risks, in addition to significant risks, and adequate funds should be made available for these levels of risk as well.

4) The province of Ontario's own environmental approvals

Immediately after the passage of the new legislation, the government should begin a process of ensuring that new and existing provincial permits, approvals, and standards of operations are reviewed and amended, where necessary, for consistency with watershed based source protection.

5) Integrating source water protection with Great Lakes protection

Proactive steps must be taken as soon as the legislation is passed to ensure that the new source water protection regime is integrated and incorporated into existing Great Lakes programs as well as inter-provincial, federal and bi-national agreements regarding future use.

6) Adequate funding of source protection at the implementation stage

It is essential that there be a sustainable and reliable approach to funding the implementation measures contained in source protection plans, which includes a mechanism for the equitable reallocation of funds.

1) TIMELY INCLUSION OF SURFACE WATER SYSTEMS

Due to the serious threats confronting communities on municipal surface water systems, source protection plans for these systems should be on the same timeframe as groundwater systems.

We are concerned that there may be a decision by the government to focus source protection efforts initially on municipal groundwater systems. While it is essential to provide source protection for municipal groundwater systems, it is equally essential to provide source protection for municipal surface water systems.

This would include all of those cities and towns whose water is taken from a river (such as Kitchener and Brantford, for example), as well as those whose water is taken from one of the Great Lakes or connecting channels (such as Toronto, London, Windsor, Hamilton, for example).

We appreciate that the province has invested heavily in technical work regarding municipal groundwater systems and that this work must be efficiently used in source protection. However, in our view, there is no reason not to require the municipal surface water systems to initiate and complete the first phase of source protection planning on the same time frame as municipal groundwater systems.

In many cases, the potential threats and risks to communities are even greater in the case of surface water systems than in groundwater systems, making the barrier of source protection even more urgently needed. For example, in the case of an industrial spill upstream of the City of Brantford, the contaminants could move to drinking water intakes within an hour or two, removing the City's entire drinking water supply for the duration of the cleanup. On a longer term basis, watersheds cumulatively contribute contaminants from agriculture and urban activity to the surface water supply of downstream communities that can present real, present health risks and that can seriously interfere with the community's ability to treat the water so that it is safe enough to drink. In both examples, watershed based source protection plans should be required to assess the risks and to propose response measures in accordance with the level of the risk. This is what your Technical Experts Committee recommended in its report to you last November.

The Walkerton Inquiry recommendations, as well as the reports of the Source Protection Advisory Committee and the Technical Experts Committee, all noted that source protection is an important protection barrier for both surface water and ground water systems. Source protection plans for surface water systems should not be on a slower track than groundwater systems.

2) SOURCE PROTECTION BENEFITS TO NON-MUNICIPAL WATER (E.G. SMALL SYSTEMS AND PRIVATE WELLS)

The legislation should ensure that watershed assessments include an assessment of the risks posed to non-municipal sources of drinking water, and that source protection plans include required measures to address any "significant" risks identified.

We are very concerned that your government may decide not to include source protection requirements that would benefit non-municipal water sources in Ontario.

Justice O'Connor pointed out that there are in excess of 500,000 private residential wells in use in Ontario, serving millions of people. They are located everywhere in the province, from southwestern and central Ontario to eastern Ontario and through the north. He noted that in many cases, source protection will be the only realistic barrier to help keep their water sources viable for drinking purposes. In many cases, the well owner has no control over the surrounding activities that may be impacting the drinking water sources on which he or she relies.

In addition, as you know, there are tens of thousands of "small systems" in the province providing drinking water for non-residential uses and seasonal uses. Examples include summer camps, recreational areas, institutions, churches, community halls, restaurants and gas stations and many others. While your government has taken steps to begin implementing improvements to the regulation of these systems, which we support, we note that the Drinking Water Advisory Committee recommended to you that local health units would use source protection assessment information in helping owners and

operators to determine what level of treatment and protection each system needs in accordance with the province's developing regulation.

We urge you to ensure that the legislation requires watershed assessments to include an assessment of the level of risk posed by activities and pathways to these non-municipal sources of drinking water. Furthermore, we urge you to ensure that source protection plans be required to set out those measures that are to be taken to deal appropriately with risks that meet the test of "significant" as it will be defined in the legislation. For example, if a local industry's activities pose a significant risk, the plan should explain what will be required to address that risk, even though the drinking water source is for private users rather than a municipal system. Appropriate measures could range from a required contingency plan to a municipal by-law setting out required protection measures in a particular zone of impact.

Source protection legislation should provide significant benefits and improvements to source water across the province, and not just to Ontario residents who live in towns and cities big enough to have installed municipal drinking water systems.

It may surprise you to know that even within one hour of Ontario's capital city, there are communities with thousands of residents who rely entirely on their own private wells for drinking water and who are at the mercy of the activities permitted to take place in their watershed for the quality of their water sources.

If only municipal systems' sources are required to have protective measures under the source protection plans, then Ontario's watershed based source protection legislation will immediately become irrelevant to millions of Ontarians across much of the province, both in the south and in the north. This is not the vision of the ground-breaking, precedent-setting watershed based source protection legislation that we have been expecting and anticipating from your government. We urge you to ensure that private, non-municipal drinking water will also benefit from required actions under approved source protection plans.

3) THE TYPES OF REQUIRED RESPONSES TO ASSESSED RISKS

Source protection legislation should require appropriate responses for moderate and low risks, in addition to significant risks, and adequate funds should be made available for these levels of risk as well.

Your Technical Experts Committee (TEC) recommended an approach wherein risks will be assessed in the watershed based on provincial criteria, and categorized as "significant risks", "moderate risks", "low risks" and "negligible risks". TEC recommended that significant risks have "mandatory risk reduction" to substantially reduce the risk; that moderate risks be actively managed so that the risks do not increase and are reduced where feasible. It also recommended that low risks be monitored with management to prevent degradation, and that these risks be reduced where feasible.

We support this approach and urge you to ensure that the legislation requires each of these types of responses according to the risk category. We urge you to ensure that source protection plans are not permitted to ignore or fail to respond to the "moderate" and "low" risks. We also urge you to ensure that new municipal tools and financing for source protection are available not only for the "significant" risks, but also for the assessed "moderate" and "low" risks, to be used as appropriate.

While it is imperative and urgent to respond promptly to significant risks, it is equally important that we do not allow situations that have not yet become "significant" to further deteriorate. For areas in excellent condition, the legislation should also, in keeping with TEC's recommended approach, help ensure that those valuable resources are protected and maintained.

We are very concerned that the government may choose to require responses for only significant risks, and leave it open to local communities to decide whether or not to address the remaining risks. Rather, watershed source protection should be forward-looking and preventative. Not only should the legislation urgently respond to the already significant risks, but it should prevent and reduce the other levels of risks. Responses to the moderate and low risks may be quite varied across a watershed or across the province, so long as they are appropriate for the risk level assessed in the source protection plan.

4) THE PROVINCE OF ONTARIO'S OWN ENVIRONMENTAL APPROVALS

Immediately after the passage of the new legislation, the government should begin a process of ensuring that new and existing provincial permits, approvals, and standards of operations are reviewed and amended, where necessary, for consistency with watershed based source protection.

While it will take some time to establish source protection planning committees, complete source protection plans and begin implementing source protection measures in watersheds, the Province of Ontario currently regulates a huge number of activities which directly affect source waters across the province.

We hope that, beginning with the passage of source protection legislation, the province's own approvals agencies across the government will have immediate requirements and mandates to include source protection in provincial regulatory decisions and actions as follows:

a) Immediately consider impacts on source waters of all new or amended permits and approvals, such as for mining, aggregates, petroleum wells, water wells, certificates of approval for emissions to water and air, land applications of biosolids, siting of waste disposal operations, and all other sectors for which the province of Ontario issues permits and approvals;

b) Immediately alter any relevant prescribed standards of operations across all sectors to include source water protection requirements;

c) Immediately ask each relevant Ministry (for example, MNDM, MNR, MOE, MMAH) to systematically prioritize those provincial permits and approvals that should be reviewed and, if necessary, amended to ensure that they are consistent with watershed source protection principles;

d) As soon as the watershed based source protection plans are completed and approved, require the relevant approval Ministry to review and amend any permits and approvals of operations that have been identified as significant risks in the watershed; and

e) Immediately begin a process to systematically review all provincial permits and approvals issued in northern Ontario where there may not be designated source protection planning regions, to ensure that provincially regulated operations are not presenting a risk to municipal, private or First Nations water sources.

It is also important to ensure that other pieces of provincial environmental legislation are framed in such a way as to maintain consistency with the principles and legal requirements of the source protection legislation. For instance, nutrient management legislation and regulations currently do not deal with human health protection. Source protection legislation must have primacy and ensure that approved source protection plans are implemented on farms as well as on lands used by other industries.

5) INTEGRATING SOURCE WATER PROTECTION WITH GREAT LAKES PROTECTION

Proactive steps must be taken as soon as the legislation is passed to ensure that the new source water protection regime is integrated and incorporated into existing Great Lakes programs as well as inter-provincial, federal and bi-national agreements regarding future use.

There are concerns that, due to the complexity of the issues and the timing of inter-jurisdictional negotiations, adequate source water protection for Great Lakes communities will not be effectuated until much later in the implementation process. However, a vast number of communities rely upon, or are impacted by, the Great Lakes basin, and it is important that their concerns be addressed from the outset.

Immediate steps can be taken to integrate source protection measures into existing Great Lakes programs at both the provincial and federal level, and source protection planning should draw upon the wealth of knowledge and research which has been accumulated under these programs. A central record of all concurrent projects should be maintained by the government in order to ensure that duplication of effort is minimized, and accessibility of information to the public is maximized.

Additionally, it is important that source protection principles inform the province's longer term goals and priorities in its inter-jurisdictional negotiations regarding the Great Lakes. Ultimately, watershed-based source protection measures should be integrated into

agreements such as the Canada-Ontario Agreement, the Great Lakes Charter Annex 2001, and the Great Lakes Water Quality Agreement.

Finally, it is critical that source protection planning and implementation consider the implications to the entire Great Lakes basin, and not only to the individual watersheds. For example, actual water takings should be tabulated for both the watershed and the basin as a whole, and cumulative impacts assessed.

6) ADEQUATE FUNDING OF SOURCE PROTECTION AT THE IMPLEMENTATION STAGE

It is essential that there be a sustainable and reliable approach to funding the implementation measures contained in source protection plans, which includes a mechanism for the equitable reallocation of funds.

While we would prefer that there be a dedicated fund, that is not subject to competing priorities of general revenue in the annual budget-setting exercise, we understand that government may choose to provide for funding in other ways.

Regardless of the method chosen, we strenuously urge the provincial government to structure the funding approach in such a way as to provide a mechanism for the equitable reallocation of funds. This will help ensure that measures are put in place in the locations where they are needed for the health of the watershed. In many cases, the areas of dire need will not be the same as those areas with a sufficient population base to contribute to costs through water rates and property taxes.

In addition, it is important for the funding design to recognize that there may be impacts from upstream users in a watershed, and benefits to downstream users, with the result being that both should be involved in the funding mechanism required to reduce the risks.

Furthermore, not all source protection measures will be appropriately implemented by municipalities. The Implementation Committee reported to your government last November that there are a variety of ways to approach protection, including, for example, an exciting array of stewardship approaches that build on the work of local groups, NGOs and conservation organizations.

The Implementation Committee cost estimates for source protection noted one example as resulting in an extrapolated cost for source protection implementation of $30 per capita per year. However, as mentioned above, not all of the source protection work will match the location of the population base, and so it is essential that there be a funding mechanism to collect and then appropriately redistribute implementation funds. We also reiterate that, based on the experiences of those jurisdictions which have embarked on aspects of source protection, there is generally a need for multiple revenue streams.

In this respect, we note that when your government introduced the Ontario Health Premium, it was stated to be based in part on the need for maintaining healthy communities and specifically to be used in part for the funding of source protection.

Other models could include a Source Protection Fund, such as the Manitoba Water Stewardship Fund that was proposed in March 2004 with the province's source protection legislation. That model provides for multiple funding sources, with base funding from an environmental levy plus legislative appropriations, Federal-Provincial agreements, and any other grants to be held in a trust account to disperse grants.

Similarly, Quebec recently introduced legislation to establish its National Water Fund for measures protecting and developing water resources and ensuring sufficient water quality and quantity. Quebec will start the fund with an allocation from general revenue and a variety of sources will contribute to the fund including duties, royalties and fees.

Another well known example is Dayton, Ohio's Well Field Protection Fund where a charge was levied to every customer ($1 per 1000 cubic feet) for six years, after which no charge was levied for five years before being reinstituted at $0.50 per 1000 cubic feet in 1999. This fund generates 1.5 million per annum in that vicinity alone.

The US EPA supports the Source Water Assessment Program with a grants and loans program, and States have established revolving funds with low interest loans for a variety of groups such as communities, non-profits and commercial entities. This is a flexible program that allows for the use of a variety of funding sources.

There are many potential New Revenue Sources, including those recommended by the Implementation Committee (IC) to you last November. These include:

- Water taking charges
- Rates
- Pollution charges
- Per capita charges
- Incentive programs
- General Revenues

For a more detailed discussion of these and other potential revenue sources, please refer to Appendix 1.

The costs of NOT financing source protection are extremely significant. Among them are the absence of a first barrier in protecting drinking water; the potential for illness and even tragedy; the additional costs of treatment and the lack of confidence in drinking water.

Your government is well aware of the costs of the Walkerton tragedy alone, in the face of which households should willingly pay $30 per year for source protection. The Trust for Public Land & AWWA "Source Protection Handbook" cites US EPA data as demonstrating that

  - "the costs of treating contaminated groundwater supplies was, on average, 30 to 40 times more (and up to 200 times greater) than preventing their contamination."

We have just passed the 5th anniversary of the Walkerton tragedy. Justice O'Connor identified source protection as the most fundamental first barrier in a multi-barrier approach, which is the only way to truly protect drinking water.

Ontario needs true watershed-based source water protection that is capable of providing protection to residents across the entire province. Your government must make some immediate decisions regarding governance, financing, new tools and authorities in order to build on the momentum you have generated to date.

Without an adequately funded, watershed scale source protection approach, we risk promulgating a disjointed approach which could fail to identify watershed scale solutions.

We thank you for your attention, and we would welcome the opportunity to meet with you in order to discuss our concerns and hopes for your government's important and ground-breaking source protection initiative.

Yours truly,

Theresa McClenaghan, Counsel at the Canadian Environmental Law Association

Rick Smith, Executive Director of Environmental Defence

Vicki Barron, Executive Director of the Waterfront Regeneration Trust

Derek Coronado, Research and Policy Coordinator for the Citizens Environment Alliance of Southwestern Ontario

Bill DeYoung, on behalf of the Thames Talbot Land Trust

Carol Dillon and David Taylor, Co-Chairs of Friends of the Tay Watershed Association

Bob Duncanson, Executive Director of the Ontario Headwaters Institute

Rick Findlay, Director of the Water Programme at Pollution Probe

John Jackson, Coordinator for the Citizens' Network on Waste Management

Karen Kun, Co-Director and Co-Founder of Waterlution - A Water Learning Experience

Kevin Mercer, Executive Director of RiverSides

Mary Muter, "Georgian Baykeeper" for GBA Foundation and VP of the Georgian Bay Association

Edeltraud Neal, President of the Canadian Federation of University Women

Beatrice Olivastri, Chief Executive Officer of Friends of the Earth Canada

Shelley Petrie, Executive Director of Toronto Environmental Alliance

Derek Stack, Executive Director of Great Lakes United

John Welwood, Spokesperson for The Coalition of Concerned Citizens of Huron-Kinloss

Mark S. Winfield, Ph.D, Director of Environmental Governance, The Pembina Institute

c.c. Premier Dalton McGuinty, Premier of Ontario
Minister Dwight Duncan, Minister of Finance
Minister David Caplan, Minister of Public Infrastructure Renewal
Minister Leona Dombrowsky, Minister of Agriculture, Food and Rural Affairs
Minister David Ramsay, Minister of Natural Resources
Minister Rick Bartolucci, Minister of Northern Development and Mines
Minister John Gerretsen, Minister of Municipal Affairs and Housing
Minister George Smitherman, Minister of Health and Long-Term Care
Minister Jim Watson, Minister of Health Promotion

APPENDIX 1: EXAMPLES OF REVENUE SOURCES

Water taking charges

The Implementation Committee on Watershed Based Drinking Water Source Protection (IC) recommended that the province proceed with its plans as announced in December 2003. We urged the province to use water taking charges as one component of funding source protection. IC recommended that they should be imposed as a regulatory charge, they should be volume based, on actual volumes of takings, and that there should be a very limited number of exemptions such as fire fighting, ecosystem restoration and conservation.

Jurisdictions that impose water taking levies include the Netherlands, for ground water takings, and France and Spain, to manage river basins. The UK, Germany and Denmark also impose water taking charges.

In North America, those regions which impose water taking levies include Minnesota, British Columbia, Saskatchewan, Manitoba and Nova Scotia.

Pollution Charges

There are several examples of jurisdictions which impose pollution charges, including British Columbia's Waste Discharge emissions fees, New South Wales, and Australia where threshold emissions are weighted to the substance's environmental impact and the sensitivity of the receiving environment.

These types of charges can be imposed as regulatory charges, which may cover approvals, monitoring, data base establishment and data sharing, resource management decision making and implementation.

Discharges to water levies

There are also several specific examples of discharges to water levies such as waste water taxes in Denmark, Germany, and the Netherlands. In North America, effluent charges are levied in the states of New Jersey, Louisiana, and Washington.

Water and Sewage Rates

Ontario has already provided for the inclusion of source protection costs in the Sustainable Water and Sewer Systems legislation, which is not yet proclaimed. The definition of "full cost" under that legislation includes source protection. We support the use of water and sewer rates to provide a component of source protection funding, but note that it is unlikely they will be able to cover all of the costs, especially as infrastructure needs are so great and the population base is not necessarily located where the source protection work is actually needed on the ground. Water rates are used for aspects of source protection in Seattle, Washington, Dayton, Ohio, and New York City.

Incentive programs

There are many areas where incentive programs will be the best tool for aspects of source protection. Examples include abandoned wells decommissioning, including abandoned petroleum wells, abandoned mines, historic deep well disposal, septic system

improvements, contaminated sites clean up and farm water protection plans.

Examples of incentive programs are diverse: grants and loans, technical assistance, tax credits, partnerships, cost-sharing, information and education and recognition programs. Incentive programs may be administered by a variety of entities including stewardship organizations, not for profit organizations, conservation authorities, and municipalities. We have many successful examples and pilots in the province of Ontario and across Canada.

Other sources of revenue

The IC also considered dedicated taxes, lotteries, development charges, property taxes, permit fees, and other user fees. The IC recommended that no sources be excluded, and that the province build the funding system as we proceed into full fledged source protection implementation. The IC further recommended that we undertake more detailed costing in a staged approach.

Trust for Public Land

An extremely useful approach is found in the US, whose Trust for Public Land provides resources such as their Conservation Finance Program. This program assists land trusts, communities and states to create and expand sources of public funding for land conservation.