



February 10, 2006

The Honourable Laurel C. Broten
Minister of the Environment
12th Floor, 135 St. Clair Avenue West
Toronto, Ontario
M4V 1P5

Re: Comments on the *Clean Water Act, 2005*, EBR Registry Number AA05E0001

Dear Minister Broten,

Pollution Probe supports the Ontario Government's commitment to a comprehensive approach and related legislation for watershed-based source protection planning across the province and believes that The Clean Water Act, 2005 is a very positive contribution to safer drinking water in Ontario and a solid foundation for a comprehensive protection regime for watersheds in general.

Pollution Probe is one of a number of organizations that submitted a joint Statement of Expectations in 2004. We are pleased that a number of the issues contained in that Statement have been addressed. However, we believe that a number of amendments could be made to proposed legislation to better protect Ontario's drinking water supplies.

Attached please find Pollution Probe's comments, concerns and recommendations on the *Clean Water Act, 2005*. Our recommendations focus on the areas in which we have knowledge and expertise. We intend that they will be useful and constructive.

We appreciate this opportunity to comment on the *Clean Water Act, 2005* and we encourage the Ministry to revisit the issues addressed in our submission. We would be happy to discuss our recommendations further with you.

Sincerely,

Richard Findlay
Director, Water Programme, Pollution Probe

101-63 Sparks Street
Ottawa, ON K1P 5A6
T: 613.237.3485
F: 613.237.6111
www.pollutionprobe.org

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. 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 programme areas include: Water; Air, which includes strategies for Transportation Demand Management; Climate Change; Energy; Mercury; Environmental Policy Development; and Environmental Health, which includes Indoor Environments and Children's Health. For more information, see: www.pollutionprobe.org.

As part of Pollution Probe's mandate to work in partnership with other stakeholders to develop practical policies that affect the environment, Pollution Probe reviews and comments on various policies, acts and regulations proposed by the Ontario and Canadian Governments. Most recently, Pollution Probe has provided suggestions to the Ontario Government on Planning Act Reform and Implementation Tools, draft policies of the Provincial Policy Statement, Ontario Municipal Board Reform, the Water Taking and Transfer Regulation, the Electricity Restructuring Act and the Industry Emissions Reduction Plan Proposals for a Nitrogen Oxides and Sulphur Dioxide Regulation.

Comments on Clean Water Act, 2005

Pollution Probe is very supportive and appreciative of the comments and recommendations with respect to Clean Water Act, 2005 developed by our colleagues at the Canadian Environmental Law Association in their publication 531. We wish to present the following additional comments.

Great Lakes

It is important for the Act to mandate protection of the Great Lakes through provisions requiring integration with existing Great Lakes programs. The Act currently allows some important provisions relating to the Great Lakes to the discretion of the Minister. Given the critical importance of integrating source water protection with existing Great Lakes programs it is necessary to **ensure that source water protection principles, strategies and policies are incorporated into existing and future Great Lakes agreements and programs**. It is very encouraging to note that with the passage of this Act, Ontario would be seen to be a leader in watershed based source water protection amongst its other

state and provincial governments around the Great Lakes and St. Lawrence River basin. This should have important economic and social benefits as well as environmental ones, in both the short and longer terms.

Apply the Right to Know Principle

Pollution Probe recommends that the Ministry add the Right to Know Principle as an implementation principle. The Right to Know Principle would result in the public having access to data and information and be informed regularly and periodically about the status and progress of source water protection in their watershed. Although the need for open discussion and communication has been addressed under the **Public Participation and Transparency** guiding principle, the right to know principle also underpins the need to provide data and information that has been gathered by public agencies and governments to the public. It also addresses the public's "right to understand" - it is important that citizens have adequate capacity to receive information, understand it, and are empowered to take appropriate action to become involved in the implementation of source water protection plans. The right to understand concept is in the best interest of all involved parties. Responsible authorities benefit from an informed public with an improved understanding of the relevant issues in their community, and data custodians appreciate the responsible and effective use of data held by public agencies, particularly when control is maintained through the use of distributed networks.

Pollution Probe urges the Ontario Government to use the *Clean Water Act, 2005* to develop an integrated watershed-based information system with publicly available internet-based watershed data and information that is consistent across the province.

Climate Change Implications for Source Water Protection

The Clean Water Act, 2005 provides the government with an opportunity to take climate change into account in source protection plan development and implementation. It is Pollution Probe's opinion that consideration of the impacts of climate change should be an integral component of all source protection plans. Climate change is expected to affect the hydrologic cycle which governs the availability of our surface and groundwater resources. **The development and implementation of source protection plans must consider the potential impacts of climate change and highlight the adaptive strategies required to protect our drinking water sources for the long term.**

There is also a need for decision making tools at the watershed level so managers can better identify vulnerabilities and the watershed protection strategies necessary to address them. Advice on how to take climate change into account must be made available to watershed practitioners to ensure source protection plans provide the appropriate flexibilities to allow them to respond to new climate regimes and ensure that neither the quality nor the quantity of our drinking water is compromised.

Net Gain

Pollution Probe prepared a report for the Central Ontario Smart Growth Strategy Sub-Panel in 2003 that provided recommendations to guide future planning in Ontario and which forms the basis for our comments on the proposed growth plan. This report is available on our website: <http://www.pollutionprobe.org/Reports/smartgrowth.pdf>. A Net Gain approach such as is called for in this report will be important to planning in general in Ontario. **The Net Gain approach has particular potential as a helpful tool when setting priorities in a watershed planning and management context.** We realize that our comments on Net Gain should have particular relevance to the proposed regulations under the proposed Clean Water Act, but given the broad nature of this comment with respect to planning in general, we wanted to encourage the Ontario Government to consider Net Gain as a guiding principle in the Act itself.

Watershed Protection for Reasons beyond Drinking Water Source Protection

Pollution Probe is very respectful of the proposed Clean Water Act 2005 for its specified purpose of drinking water source protection. This is indeed an immediate urgency in Ontario and we look forward to passage of the Act, as called for in this submission. We are also mindful of the fact that there are many other important reasons for doing watershed based planning and management that go beyond the need to protect drinking water for humans. These other reasons have to do with the overall sustainability of our environment and the ecosystem that supports natural life in Ontario and is the basis of so much of our economy and society, in general. **We think it is very important to regard the Clean Water Act as a fundamental building block for Ontario but that the Ontario Government should build on it to build a broader framework that would address other important planning goals that all should be met by taking a watershed based approach.**