

April 13, 2004

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Ministry of the Environment
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Re: EBR Registry Number PA04E0003
Comment Period: Closing April 14, 2004

White Paper on Watershed-based Source Protection Planning

INTRODUCTION

Pollution Probe strongly supports the Ontario Government's commitment to develop a comprehensive approach and stand-alone legislation for watershed-based source protection planning across the province. These commitments follow many of the recommendations made in Justice O'Connor's Part II Walkerton Inquiry Report, (O'Connor, 2002, Section 4.3).

Pollution Probe's submission to the Walkerton Inquiry on Source Protection called for the Province to:

Develop source water protection legislation that will be "top-down" directional and enabling in terms of requiring and enabling the development of standards and guidelines that would deal with specific aspects of source protection including groundwater protection, aquifer recharge protection and planning and development, in a "nested" or "overlapping" watershed approach. (Pollution Probe, September 5, 2001)

Pollution Probe supports, in principle, the approach proposed by the provincial government on source water protection planning in the *White Paper on Watershed-based Source Protection Planning* (White Paper). We support the decision on designating Conservation Authorities as the responsible organizations for coordinating the development of watershed-based source protection plans wherever possible; the inclusion of stakeholders (which includes the public) in planning and management processes at the local level; and the Ministry's role in consulting with the public on the White Paper. We agree with the need to review the 'Permit to Take Water (PTTW) program and to examine ways in which to design a system of water taking charges.

However, while Pollution Probe believes that the White Paper seems to be directionally appropriate, it is not comprehensive enough for us to assess whether or not the essential components of watershed-based source protection planning have, or ultimately will be, included and properly addressed in legislation. We understand that some of our concerns may be addressed by the Implementation and Technical Committees that have been established to bring forward recommendations on funding strategies, stakeholder roles and responsibilities, and an Ontario-based threat assessment process. However, in the absence of these and other components, Pollution Probe cannot be assured at this time that the proposed watershed-based source protection planning process is complete. **We need to see a more fully detailed picture to be assured that the Ministry will include all of the essential components of source water protection plans, which are currently missing in the White Paper.**

Below, Pollution Probe has commented on some of the components of the White Paper, outlining our concerns and providing recommendations. We did not address all of the questions in Appendix 5 of the White Paper in our EBR submission since many of them were addressed at the consultation session held in Toronto. Unfortunately, although the Ministry informed workshop participants that we would have an opportunity to review and comment on the results from all of the regional consultation sessions before the comment closing period for this EBR, Pollution Probe has not had an opportunity to review or comment on them.

While we are not as confident as we would wish to be concerning the details of the Province's proposed source water protection approach, our comments are intended to be constructive and to help the Ontario Government proceed in developing a complete, clear and effective piece of legislation for watershed-based source water protection.

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 10,000 donors. 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.

Together with members of the Safe Water Coalition, Pollution Probe participated in all parts of the Walkerton Inquiry, undertaking research and providing submissions to Justice O'Connor on source protection and the sustainable management and financing of drinking water systems. Pollution Probe also reviewed and submitted comments to the Ontario Government on the Safe Drinking Water Act, the Nutrient Management Act and Regulations, and the Final Report of the Advisory Committee on Watershed-Based Source Protection Planning: "Protecting Ontario's Drinking Water: Toward a Watershed-based Source Protection Planning Framework".

DEFINITION

Pollution Probe supports the Ontario government's goal to make watershed-based source protection planning a priority, in order to "protect public health [...] and also has economic and environmental benefits". However, the White Paper has only touched on the economic and environmental benefits associated with source protection planning; sufficient attention has not been

paid to the proven benefits on the environment and economy. It is imperative to highlight the links between the environment – human health – and the economy. Really, all sources of water should be viewed as potential sources of drinking water for the future.

Pollution Probe urges the Ontario Government, and in particular the Ministry of the Environment, (the agency accountable for effective source water protection and with a mandate to protect the environment), to ensure that the objective(s) of source water protection goes beyond protecting public health, and includes protecting ecosystems and the economy in a sustainable development context.

LEGISLATIVE BASIS

Pollution Probe supports the Ontario Government's commitment to create a new stand-alone piece of legislation for watershed-based source water protection planning. However, the White Paper is not explicit as to how this proposed legislation will affect and be affected by existing legislation. We are concerned that existing legislation could be inconsistent with watershed-based source protection plans and plans for amending specific pieces of inconsistent legislation have not been outlined. It is also not clear if, how and in what cases, source protection legislation will take precedence over other pieces of legislation (as recommended in the Advisory Committee Report on Watershed-Based Source Protection Planning, p. ii).

Pollution Probe believes that it is imperative for the Ministry to develop (and present to the public) a coherent and comprehensive legislative framework, which outlines the linkages between the Acts and describes ways in which the Acts will interact, to ensure that gaps and inconsistencies in the regulatory framework are eliminated. For example, how will source protection plans authorize or prohibit other planning laws, constraints and environmental approvals, such as local and regional official plans, local by-laws; affect or be affected by the Provincial Policy Statement (which is currently under review), the Planning Act, Nutrient Management Act, Water Resources Act, Environmental Protection Act, Municipal Act, the Mining Act, Oak Ridges Moraine Conservation Plan, Niagara Escarpment Management Plan, and the recent Greenbelt Protection Act..

Pollution Probe also recommends that the Ministry should be clear on where and how source protection legislation will take precedence over other pieces of legislation.

The Ministry of Transportation has not been included as a governmental agency that will be a part of the Source Protection Planning: Governance Structure, found in Appendix #1, Figure #5 of the White Paper (p. 38). Since their roles clearly impact and are impacted by watershed-based source protection planning, Pollution Probe suggests their absence be reconsidered; **Pollution Probe recommends that the Ministry of Transportation be included as an agency that works in a government-wide approach with the Ministries of Environment, Natural Resources, Agriculture, Municipal Affairs, and Health, and the federal government.**

SOURCE WATER PROTECTION AND THE GREAT LAKES

While Pollution Probe was pleased to see the Great Lakes referenced in the White Paper, the lack of detail, and the ambiguity with how the watershed-based source water protection plans would work with and be impacted by Great Lakes programs is of concern. We agree with the white paper comment: "Together source water protection plans and Ontario's comprehensive Great Lakes

programs would complement each other and contribute to the protection and improvement of the Great Lakes water quality and quantity". This sounds good but we are unable to determine how the proposed approach will meet these goals. The Ministry should outline how the proposed source protection planning act will impact and be impacted by federal initiatives such as The Fisheries Act and federal-provincial arrangements such as the Canada Ontario Agreement (COA), and other Great Lakes programs and policies.

Also, Ontario is a signatory to Annex 2001 of the Great Lakes Charter of the Council of Great Lakes Governors and Premiers and it will be important to indicate how the "improvement standard" included in the Annex will be respected and implemented, based on the Source Protection and watershed management approach that will presumably be followed through this new Provincial legislation. <http://www.cglq.org/1pdfs/Annex2001.pdf>

Pollution Probe urges the Ministry to include the Great Lakes Basin in the source water protection plans, in a clear and more comprehensive manner. The plans should not only focus on inland surface water and groundwater. After all, almost three-quarters of Ontario's population rely on the Great Lakes as a source of clean, drinking water and we do have obligations to other provincial and state jurisdictions in both Canada and the United States that must be respected.

FINANCING SOURCE PROTECTION

A successful watershed-based source protection plan needs resources and funding - from the plan development stages, to on-the-ground implementation, with regular monitoring practices and quality assurance and control measures in place. It is important that the Ministry of the Environment establishes and implements funding strategies for all components of source protection planning.

In our submission to the Walkerton Inquiry entitled *The Management and Financing of Drinking Water Systems: Sustainable Asset Management* (Pollution Probe, Sept 5, 2001) Pollution Probe concluded that we are not paying the full cost of our water, and that a steady, predictable long-term funding approach is needed. We called for a Sustainable Asset Management approach that recognizes that source water is itself an asset that is undervalued and that needs to be included in the "balance sheet" when calculating infrastructure assets. Clean source water is more valuable (economically and ecologically) than dirty source water and this needs to be reflected in the development of long-term infrastructure management and financing plans. Pollution Probe recommends the financing of source protection should be integrated with a long term sustainable asset management approach for infrastructure funding and source water should be valued as an asset, for long-term source protection financing and management.

Pollution Probe looks forward to reviewing and commenting on the Implementation Committee's advice on innovative funding mechanisms and incentives.

Without understanding how the Ministry will provide adequate funding to implement the watershed-based source protection plans as outlined in the *White Paper*, it is difficult for Pollution Probe to assess their feasibility. **Pollution Probe urges the Ministry to determine and commit to providing on a long-term sustainable basis the required resources (funding, time, personnel) for developing and implementing source protection plans.**

Pollution Probe also recommends that the funding mechanisms proposed by the Ontario Government and the Source Protection Planning Implementation Committee, includes financial support for the Conservation Authorities and other stakeholders conducting public education and outreach on watershed-based source protection planning.

The Permit to Take Water Program/Water Taking Charges

Pollution Probe supports the Ontario Government's initiative to review the 'Permit to Take Water' (PTTW) program and to examine ways in which to design a system of water taking charges.

Pollution Probe strongly recommends that any revenue raised through charging fees for water takings be applied towards the funding of integrated watershed management programs, which including source protection planning activities.

Pollution Probe supports the Ministry in seeking input on where there should be opportunities for promotion of efficient and sustainable water use and conservation measures in the PTTW process (when permits are granted or renewed), by requiring permit applicants to: explore voluntary commitments for and third party certification of proposed water conservation and demand management measures; and education and outreach.

Pollution Probe recommends that the Ministry review the reasons for not requiring permits for water takings of less than 50,000L/day. The rationale is not clear and in some cases provision for a lower limit would be appropriate.

MOE stakeholder consultation sessions in Toronto and the regions raised the issue of how to scale water charges according to factors related to takings, i.e., based on volume, consumption and/or water source. Pollution Probe believes that this is a complex issue which merits further stakeholder consultation. At a minimum, we would like to have an opportunity to review and comment on the report which contains the results from all of the regional consultation sessions.

Pollution Probe also strongly recommends that the Ministry evaluate how the Great Lakes Charter Annex 2001, signed by the Great Lakes Governors and Premiers might impact the Permit to Take Water Program and Water Taking Charges in the Great Lakes Basin.

Pollution Probe is supportive of the United Kingdom's approach to charging for water based on the volume of the taking; studies have shown that Canadian per capita consumption of water is 40% lower in areas where consumers are required to pay for the volume of water they actually use rather than a flat rate (Pollution Probe, Drinking Water Primer, p.64). We also support charging for water based on the source and the type, i.e. charge more for consumptive vs. non-consumptive uses.

STAKEHOLDERS

Pollution Probe supports the inclusion of stakeholders in the Source Protection Planning Committees, Working Groups and Sub-Committees. It is imperative that key interested and affected members of the watershed community are included in watershed-based source protection planning processes.

However, Pollution Probe disagrees with the Ministry's exclusion of industry representation on the committees. **Pollution Probe recommends that industry stakeholders be included** in the SPPCs, working groups and sub-committees. In order to effectively protect our water sources for the long haul, we need to encourage all stakeholders to accept and play a role in source protection planning; excluding them does not encourage cooperation or success. **Pollution Probe also recommends that environmental non-governmental representatives be present at the table.**

All stakeholders must have a clear understanding of their roles and responsibilities and the "rules of engagement". Pollution Probe recommends that a base level of training should be provided to all committee members.

The Ministry should ensure that all consultation processes are transparent.

PUBLIC EDUCATION

The White Paper contains few references regarding the importance of including public education and outreach as integral components of watershed-based source protection planning. "Basic education and outreach" is only highlighted under "Promoting Water Use Efficiency and Conservation" – which is important, but it does not address the need to inform the public on source water protection planning. For any source protection plan to be a success, the public must be educated about the requirements and importance of source water protection.

The Advisory Committee recommended that the province, conservation authorities, municipalities and other stakeholders ensure that public education and dissemination of information is undertaken (Recommendation 42), and that the Province support education initiatives. **Pollution Probe recommends that the need to inform the public on source water protection planning be prominent in the legislation. The Ministry's role and responsibility for education and outreach activities should also be clearly defined.**

Pollution Probe has produced an educational booklet, called the Source Water Protection Primer, which will be printed in April/May of 2004. The primer gives a comprehensive look at what source protection means, why it is important, describes source protection plans, the government's responsibility for water management and what individuals can do to protect water sources. It will be available for free on the Pollution Probe website (www.pollutionprobe.org) and can be used by all stakeholders as a tool to educate the public.

PUBLIC ADVISORY COMMITTEE

Pollution Probe supports the Ministry's efforts to be transparent to the public, by advertising source water protection meetings to the greatest extent possible, and widely publishing reports for public comment (White Paper, p.16). To further ensure that the public is involved in the planning process, **Pollution Probe recommends inclusion of a formal Public Advisory Committee as an element of the engagement and planning process.**

REPORTING – ANNUAL REPORTS TO THE PUBLIC

Pollution Probe supports the Ministry of the Environment's commitment to provide annual progress reports to the public; however, **we recommend that the Ministry use the information gathered from each source protection planning lead organization to produce annual reports on the status of source water protection plans for ALL watersheds;** outlining the status of source

water protection plans in each watershed to the public, is important but not sufficient. An overview on the overall status of Ontario's watersheds and drinking water sources would be very helpful in sustaining public confidence and in ensuring that the overall goals of this legislation are being met.

The watershed-based source protection planning legislation should be written so that the Ministry is required (obligated) to produce annual reports. At the same time, this requirement should not override the need for real content. That is, progress should be judged according to achievements in the watersheds not just the production of a report.

THE ENVIRONMENTAL BILL OF RIGHTS (EBR)

Pollution Probe recommends that the watershed-based source protection plans be posted on the EBR Registry for public review; in addition the watershed-based source protection planning legislation should be prescribed for reviews under the EBR.

INTEGRATING COMMUNITIES AND DATA

Pollution Probe strongly supports the government's efforts to bring together conservation authorities, municipalities and other stakeholders in the watershed community to develop and implement watershed-based source protection plans. To undertake this integrated, collaborative approach, information and resource sharing mechanisms need to be established between the numerous stakeholders responsible for collecting watershed-related data, and combining this information with complementary data using web-based mapping applications.

Pollution Probe is developing a web mapping application (called Managing Shared Watersheds) for the Ottawa-Gatineau sub-watershed region of the Ottawa River, which will enable users to access and map integrated watershed-related data. This web application will integrate cross-jurisdictional data from several sources, including the federal government, two provincial governments, several municipalities, local stakeholders and Conservation Authorities (South Nation, Rideau Valley and Mississippi). It will be a valuable tool for those engaged in the development and implementation of watershed management plans.

It is expected that this application will help people make more informed decisions regarding watershed management, and facilitate collaboration between government, industry and civil society about priority actions that should be taken within a watershed management approach. This application will be made available online and free of charge for all, to share information, understanding, and responsibility for the management of watersheds.

CLIMATE CHANGE

The impacts of global warming and climate change on inland water sources and the Great Lakes are predicted to be significant. As a result, **it is imperative that watershed-based source protection plans take the potential impacts of climate change on water sources into account.** Pollution Probe also recommends that the Ontario government conduct scientific research on the expected impacts of climate change and work towards developing adaptation strategies.

SCIENCE

Pollution Probe supports the Ministry's reference to improving water management science through research in the White Paper. We would like to reiterate the important role that research plays in the

development of source protection plans. We strongly support the recommendation made by the Advisory Committee on Watershed-based Source Protection Planning, “that drinking water research be adequately resourced and shared so that each component of the source-to-tap protection system is continually improved. Specifically, it [Part II Report of the Walkerton Inquiry] asks the government to ensure that a sustainable level of funding for ongoing research into the sciences related to source water protection, and most particularly, those related to human health, is provided” (Advisory Committee Report, p. XVI).

Pollution Probe recommends that an explicit funding arm, such as the Ministry of Natural Resources, be designated as the agency responsible for managing a science fund, for watershed-based source protection planning. The science fund should include sufficient funds to support research for source protection plans.

PRECAUTIONARY PRINCIPLE AND RISK ASSESSMENT/ RISK MANAGEMENT

Pollution Probe strongly supports integrating the precautionary approach into risk assessment and management activities related to source water protection. Pollution Probe supports including “duty to act” as an essential requirement of the precautionary principle - action should be taken despite any gaps in science and information. This supports Justice O’Connor’s recommendation, “...the absence of scientific certainty about a risk should not bar the taking of precautionary measures in the face of possible irreversible harm”; “precautionary measures such as investments in risk mitigation, alternative technologies, and research are called for”(O’Connor, Part II, p77).

Pollution Probe supports the use of the precautionary approach in watershed-based source protection planning. **Public perceptions and values are fundamental elements of risk-based decision-making processes; effective opportunities for public debate and advice throughout risk assessment and management processes should be established.**

POTENTIAL DECISION-MAKING TOOL – THE NET GAIN PRINCIPLE

Pollution Probe supports the development of effective tools and principles that will aid decision-makers in preparing and implementing watershed-based source protection plans.

Pollution Probe urges the Ministry of the Environment and the Source Water Protection Implementation and Technical Committees to adopt the net gain principle as a guiding principle in developing watershed-based source protection plans. Net gain means that when, for example, a change in land or water use is proposed in a watershed, that there would be widespread recognition that this change should only occur if it results in a net environmental benefit. Changes in impacted ecosystems can be valued in terms of the services that an ecosystem provides, using an approach such as an ecological currency. The application of net gain could help watershed managers make informed decisions about the relative merits of one change in land-use over another and can be used to ensure that watershed management plans lead to a net improvement in the overall integrity of watersheds. (For more information, see: “Exploring Applications of the Net Gain Principle” and “Air Quality, Water and Soil: Issue Paper No. 2”; <http://www.pollutionprobe.org/Reports/netgain.pdf>)

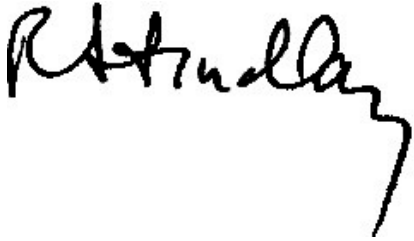
CONCLUSION

Pollution Probe strongly supports the Ontario Government's commitment to develop stand-alone legislation for watershed-based source protection planning across the province, however, as outlined above, we have both general and specific concerns about aspects of the white paper and the potential legislation as it has been proposed.

We encourage the Ministry to revisit these issues following the release of the Implementation and Technical Experts Committee reports. While there is urgency to move on source protection matters, rushing forward prematurely could lead to more harm than good.

We look forward to learning about, reviewing and commenting on the advice provided by the Implementation and Technical Committees.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Findlay". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

Rick Findlay
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