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Ministry of the Environment
Drinking Water Management Division
Source Protection Programs Branch
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March 26, 2010

Dear Ms. Scanlon,

AGCare is pleased to provide input on: **EBR Registry Number 010-8766:
Regulatory components to support the development and implementation of
source protection plans under the Clean Water Act**

Agricultural Groups Concerned About Resources and the Environment (AGCare) is the voice of Ontario's 45,000 crop and horticulture farmers on environmental issues. As farmers, we believe that clean drinking water and a safe, healthy and affordable local food supply is critical for our province. We are also the stewards of thousands of acres of farmland and appreciate the need for sustainable practices and believe in continuous improvement for the environment.

As stakeholders, we have a number of comments and concerns regarding this posting that are critical to the success of truly meeting the objectives of the Clean Water Act. Three general areas of concern focus on the prescribed instruments, the potential use of land use planning control tools to implement source protection plans, and the misuse of the terms 'threat' and 'risk'. We will also outline more specific concerns of the draft regulation with concerns and recommendations highlighted.

As we understand this draft regulation, there appears to be four distinct ways in which Significant Drinking Water Threats (SDWT) can be managed:

- Through A Prescribed Instrument (Exemption From s. 58 of the Clean Water Act)
- Through an Amended Prescribed Instrument
- Negotiated RMO Agreement – No Financial Assurance
- Negotiated RMO-Agreement – With Financial Assurance

We feel strongly that the provincial Prescribed Instruments should continue to be held as the provincial standard to ensure consistency and prevent a patchwork of standards and requirements across Ontario. This four-step process for dealing with a Prescribed Instrument is unacceptable. We are greatly concerned that a Local Source Protection Committee will have the power to amend a provincially issued permit / prescribed instrument. The Province must take responsibility for the permits they issue. It makes any attempt at business planning and investment impossible for local and small businesses without assurance that the provincial approvals they get will actually allow them to carry out the business they are proposing.

Similarly, it is offensive to require the person engaging in the activity to provide notice regarding the provisions of a prescribed instrument (Section 19.37 of the draft regulations). Individuals often do not have the technical expertise to provide these assurances. Farmers must have confidence that the prescribed instruments issued by the Province will meet their needs for the use.

The draft regulations also propose the use of Land Use Planning Controls to manage threats to municipal drinking water. It is our assertion that these tools may only be used to manage **significant drinking water threats, not for low or moderated threats**. Applying these tools for low or moderate threats has the potential to extend across the entire landscape of the Province – which goes well beyond any intent of the Clean Water Act and municipal drinking water source protection processes. Ultimately, this section must be reigned in to apply to ONLY “Significant Drinking Water Threats” to municipal drinking water supplies, and then applied only when reasonable.

There is an obvious conflict in attempting to promote Land Use Planning policies under the Source Protection Plan (SPP). The responsibility for the SPP lies with the SPC, but the Official Plan and land management decisions are the responsibility of locally elected officials. Land use planning is very broad based, whereas source protection is focused on municipal water quality and quantity. This illustrates how inappropriate it is to use land use planning approaches with municipal drinking water source protection.

The lack of access to an appeal process, such as that found under the Planning Act is a significant concern, indicating a lack of due process in the system. It is also curious that the Municipal Act is not being referenced when it deals more with land management issues.

We are also concerned about the continual misuse of the terms **“threat”** and **“risk”** throughout the Clean Water Act and its associated regulations, including this draft regulation. The “threat” to municipal drinking water is the presence of a substance or contaminant – not an activity or presence of an activity.

Clause-By-Clause Review:

- The word “believes” is used frequently throughout the draft regulation. For example, “every person who the source protection committee believes is engaging in an activity...” [Section 10; Section 19 (3), 19(4)(a)]. It is our opinion that it must be clearly stipulated that this ‘belief’ is supported by available documented scientific evidence. This must be changed in all instances where the word “believes” is used.
- Section 19.3(1) 1 - This section, and other sections later in the draft regulations, frequently states that an activity must **cease** to be to be a significant drinking water threat. The use of the term “ceases” is extremely problematic in this context. It is our understanding from previous discussions that once deemed a SDWT the activity cannot become moderate or low, but rather a “managed” SDWT. If the term “ceases” remains, the only option available to the SPC or the Risk Management Official (RMO) will be prohibition of the activity, and we are opposed to this. This phrase must be changed throughout the draft regulations.

Also in this section, we recommend adding the word “municipal” so the sentence would read “To protect existing and future **municipal** drinking water sources in the source protection areas”.

- Section 19 (4)(c) – Clarification of this section is required. There must be limits placed on these prescribed instruments, to only include the “prescribed instrument” deals with the specified/identified SDWT. For example, the SPC or SPA must not be permitted to request a Permit to Take Water (PTTW) certificate if they are looking into a threat related to chemical storage. The prescribed instruments must be limited to the significant threat in question.
- 19.5 – Prohibiting Existing Activities: The first problem with this section is the fact that the terms ‘threat’ and ‘risk’ are being confused, as discussed above. Also, the decision to prohibit an activity must be science based and have appropriate data to support the decision. It should also be supported by the risk assessment report; it cannot just merely be stated that it is the opinion of the SPC. Of most importance, the prohibition must have **unanimous** support of the committee, and have some appeal mechanism included which is not currently included in the draft regulations. It is advisable to have direct communications and possibly formal consultations with businesses that may be prohibited, prior to making that decision.

- 19.7 – We recommend adding the word “significant” in section 19.7 (1) – “Policies with respect to **significant** drinking water threats...” It will be important to ensure that promotion of best management practices or reliance on stewardship programs are kept within the context of which these programs and practices were developed. In other words, the SPC cannot add conditions to these programs.
- 19.7 (4) – We are glad to see that incentive programs and education and outreach are included within these draft regulations. However, this must be established such that the funds used for these initiatives do not detract from the funds used for paying for implementation and compliance requirements. It would be useful for this section to not offer financial incentives, and instead look to utilize existing education and outreach materials, such as those available through the Well Wise Centre, etc.
- 19.8 – It is very difficult to ascertain the potential impact of this section of the draft regulations on the agricultural community. Further clarification of the consequences of notification and any requirements of the SPC/SPA to act once given this notification are needed. Does this trigger yet another form of review and approval? What is the geographical scope of this requirement? Is this notification required for the entire watershed or only in areas with vulnerability scoring of 8 or higher? **Our recommendation is that notification remains limited to areas of vulnerability scorings of 8 or greater.**

Furthermore, we would recommend a terminology change as ‘transport pathway’ may be confused with transportation corridors. One potential term to consider is “preferential pathways”.

- 19.10 – This section provides the committee with extremely broad powers. We assume and request that there will be limits placed on these, along with the need for science-based rationales for the inclusion of anything under this section, along with the establishment of a method of appeal.
- 19.7.5 – Policies related to climate change be limited to monitoring and data collection by **public bodies** or as **voluntary** collection by individuals. Climate change data collection cannot add regulatory or financial burdens to landowners.
- 19.14 – Any policies related to moderate or low drinking water threats must be limited to only monitoring of activities, and education and outreach. Moderate and Low Threats should remain under voluntary action which may include incentive programs, but do not have any regulatory requirements under SPP. Regulatory rules must not be applied to Moderate or Low Threats – otherwise this becomes a process for regulating the entire landscape and not addressing the real potential issues to municipal drinking water.

- 19.16 – We are very pleased to see the requirement for the production of an Explanatory Document. We view it as an extremely important component of the SPP which will increase understanding of the plan and facilitate its implementation. However, for it to be an effective component of the plan, section 19.16(3) must be broadened, mandating at a minimum that the document be made available in the same ways the actual plan is (i.e. available online). It would be even better to have the explanatory document appended to the draft plan. Allowing feedback and comments from the public should be considered. Perhaps an appeal process on this document can be implemented as well, which would allow for the more technical aspects of source water protection to be considered.

In addition, important decisions around source protection policies must be supported by an **impact and cost-benefit analysis**. Enumerating the potential impact of a policy and the alternatives considered, along with an assessment of costs to both individuals and the public is a critical component of decision making. These should be clearly identified in an explanatory document with the outcome being a stronger rationale and support for the decisions made by the SPC.

- 19.17 and 19.18 – As mentioned earlier, we have some concerns regarding the modification of Provincial Instruments. Does Section 19.18 contravene the Environmental Bill of Rights (EBR) Registry process? We feel that if a Provincial instrument needs to be modified, then it is really up to the province to ensure it is changed – not the SPC or SPA.
- 19.21 – It is our position that the explanatory document should also be attached to the draft SPP.
- 19.22 – It is essential that process mandates the inclusion of a summary of concerns raised not just by bands or municipalities, but also includes any dissenting opinions from the SPC members, along with comments from impacted stakeholders. This does not necessarily mean the general public or NGOs but definitely comments made by impacted parties / those identified as having a SDWT.
- 19.29 – We have concerns with the powers given to the SPA to amend the work of the SPC in the Terms of Reference, Assessment Reports and now once again with the Source Protection Plans. The SPP is the work of the SPC, as named by the Minister. As such, the SPA should not have any authority to make amendments to the SPC’s document. The SPA could be consulted for advice but it is really up to the sole discretion of the SPC to make these amendments and propose them to the Minister. Similarly, section 19.30 should have comments on the amended plan going to the SPC, not the SPA.
- 19.30 (5) – We are extremely pleased to see the requirement in section 19.30(5)(b) that the notice must specify “the activity that the source protection authority believes is or would be a significant drinking water threat.” It is our hope that this requirement permeates beyond notice of

amendments to a SPP. It is critical that notification to any landowner that may potentially be deemed a SDWT must have the activities triggering that classification clearly written in the letter of notification. This is true at all stages of Source Water Protection – whether it as at the time of a draft Assessment Report, final Assessment Report, draft Source Protection Plan, final Source Protection Plan or amendments to either of these two documents.

- 19.34 to 19.37 – We are opposed to the proposed SPCs ability to amend provincially issued certificates/documents, as outlined above.
- 19.38 – Comments regarding the use of land use planning controls are provided earlier. **We are opposed to these controls being used on low or moderate threats to drinking water.** If they are used at all, then an appropriate appeal process, comparable to those contained within the Planning Act must be included.
- 19.39 – We suggest that the training required at this level needs to exceed the training provided for people going on property to collect data. Now that there are binding conditions that may need to be met, the training must be more stringent.
- 19.40 –This section around Powers of Entry Training is confusing and requires clarification. Ultimately, anyone entering a property MUST have the appropriate Powers of Entry training, or at a minimum, be accompanied by someone with this training. Having the consent of an occupier of the property does not negate the need for appropriate training. This must be very clearly stipulated within this regulation. As the draft regulation currently reads, it implies that having the consent of the tenant removes the need for Powers of Entry Training and this is unacceptable.
- 19.41 – The qualifications for the Risk Management Official (RMO) must be very carefully thought out, along with the additional training requirements. It is assumed the Property Entry Training, particularly as it deals with agricultural properties, will be mandatory for the RMO. Furthermore, it is our position that a RMO dealing with agricultural operations or activities **will have equivalent training to that of the provincial Agricultural Enforcement Officers.** We recommend that the MOE conduct further consultations with the SPCs, municipalities, and industry sectors to further discuss the skill sets and qualifications of a RMO, along with additional training needs of these individuals.
- 19.43 – The prescribed circumstances in this section could be extremely broad and may be used to move beyond the objectives and intent of the Clean Water Act, and the management of significant threats to municipal drinking water sources. This section requires significant limitations and constraints. Further consultation with industry sectors and SPCs is required to limit the scope of this section.

- 19.45 – We are concerned that the proposed Annual Report prepared by the RMO with published locations of properties and activities may yield privacy issues and concerns. Also, section 19.45(6) does not give any means of identifying where a RMO determined that someone was incorrectly identified as a SDWT. Also, the Annual Report reads like it is enumerating problems and the more adversarial the RMO, the more to report. It appears to be fulfilling quotas, as opposed to getting real results from the activities. Concerns over privacy and the ‘quota filling’ aspect of the annual report must be changed.

In addition to the draft regulations, we would also like to comment on some of the details provided during the “Multi-Stakeholder Discussion Sessions,” specifically addressing early notification and information gathering. As stated above, we believe that any and all notification identifying a person as potentially engaging in activities deemed a SDWT, must also very clearly list the activities leading to the designation of ‘significant’. We are absolutely opposed to the “request person engaged in SDWT to indicate if activity is governed by prescribed instrument, describe provisions.” This is not the appropriate time or means to solicit information regarding prescribed instruments. Furthermore, limits must be placed on what prescribed instruments a SPC or SPA may inquire about, limited to ONLY prescribed instruments regulating or related to the activity deemed to be a “significant” drinking water threat. This process cannot be used to gather information regarding all prescribed instruments a landowner may have.

We trust our opinions and recommendations will be given due consideration and look forward to the opportunity for continued input with this process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul Wettlaufer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul Wettlaufer
AGCare Chair

c. AGCare Founding members