



**FRIENDS OF RURAL COMMUNITIES & THE ENVIRONMENT
(FORCE)**

**SUBMISSION TO THE STANDING COMMITTEE ON SOCIAL
POLICY REGARDING BILL 43, *ONTARIO CLEAN WATER ACT***

AUGUST 28, 2006

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F O R C E - Lawson Park Ltd., Box 15, RR # 1, Freelton, ON L0R 1K0

INTRODUCTION

Friends of Rural Communities and the Environment (FORCE) thank the Standing Committee on Social Policy for the opportunity to input to Bill 43 – the *Ontario Clean Water Act* – as the Committee deliberates following Second Reading. FORCE has previously submitted comments to the Ministry of Environment regarding source water protection – with respect to draft legislation, during the work of the technical expert and implementation committees as well as regarding the recent discussion paper on proposed regulatory directions. We have also attached a copy of our August 21, 2006 presentation deck to the Committee for easy reference.

FRIENDS OF RURAL COMMUNITIES AND THE ENVIRONMENT (FORCE)

Friends of Rural Communities and the Environment (FORCE) is a federally registered not for profit corporation. It is a citizen-based advocacy group with hundreds of supporters in rural Flamborough (Carlisle, Freelon, Mountsberg) rural Milton (Campbellville), and rural Burlington (Kilbride). FORCE was formed in June 2004. Our goal is to protect our natural and built environments in the face of a proposed Greenfield large-scale, below the established groundwater table, aggregate development in the Northeast Flamborough portion of the amalgamated City of Hamilton. We note upfront that our organization is not anti-aggregate or anti-road; indeed, our area is home to some of Ontario and Canada's largest aggregate operations, many of whom have applied for expansions in recent years. We are located near Dufferin Aggregates in Milton, Nelson Aggregates in Burlington, and Lafarge and Dufferin operations in West Flamborough.

We do, however, have significant issues with the pending application in its proposed location for substantive reasons – reasons that relate to source water protection (groundwater), our active and productive agricultural operations, our fragile natural systems, and our rural communities. We also believe that our organization has a responsibility to promote good government in the municipal and provincial arenas and ergo, we have a responsibility to input to the broader planning reform processes which bear upon the approvals process for development proposals such as the one before our communities. In addition to participating in the consultations regarding source water protection, FORCE has been active with respect to the provincial government's *Strong Communities Act*, the current planning reform changes encompassed in Bill 51, the *Greenbelt Act* and companion Plan, and the *Places to Grow Act* and companion Plan.

SUPPORT IN PRINCIPLE

We strongly support the source water protection initiative. We believe that this Act is essential to begin to take steps as part of a multi-barrier approach to protect drinking water sources in all watersheds across the province. The legislation introduces a process by which threats to drinking water sources are identified and risk management strategies are put into action. It also provides municipalities with the additional tools and powers that they need to protect waters within their jurisdictions.

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FORCE has, however, identified some areas of important emphasis and some areas of concern which we draw to your attention. Amendments to address these concerns would enhance the protection of our water sources which is necessary for human health and the environment.

ISSUES IDENTIFIED FOR EMPHASIS AND ISSUES OF CONCERN

Primacy

The Act contains various provisions regarding its integration with other laws. These include sections 35 and 96. Generally speaking, the approach taken provides that in the case of conflict with another law, the more protective provision will prevail. We support this direction as appropriate and emphasize that primacy should be stated in order to clearly articulate the priority to protect water sources and drinking water. Primacy will also clarify the role of the Act within the province's water protection regime and establish a minimum framework to ensure consistent application of the Act and its measures.

Precautionary Principle

Work that underscored the legislation, including the Expert Technical and Implementation Committees, was premised on the need to exercise the precautionary principle. We note that there is not a single reference to the principle in the Act. We believe that the principle is important for statutory interpretation of the Act. While it is critical that risk assessment and source protection plans be based on scientific data, it is equally critical that the lack of full scientific certainty not be used as a reason for postponing measures to prevent a threat. We recommend that the precautionary principle be inserted into the Act in section 1 – Purpose and into section 19 as a component of source protection plans. Sample language might look like:

1(2) In the administration of this Act, the Government of Ontario, the Minister, and all bodies subject to the provisions of this Act, including provincial authorities and responsible authorities, shall exercise their powers in a manner that protects the environment and human health and that applies the precautionary principle.

19(1) In preparing a source protection plan, the source protection committee must apply the precautionary principle such that where there are threats of serious or irreversible adverse impact to an existing or future source of drinking water, lack of full scientific certainty should not be used as a reason for postponing measures to prevent the threat.

The precautionary principle should also be reflected in all companion materials to the Act – regulations, rules, guidelines, training materials, risk assessment matrices, etc.

Scope of Protection

In its current form, the Act is geared to the protection of municipal drinking water systems within source protection areas. We understand the realities of phased implementation, limited resources,

and focusing on the “biggest population impacts for the buck”. In a rural area, which includes considerable private systems, both individual and communal, we believe, however, that the scope of the Act can be broadened to address private systems more rigorously than is currently contemplated. We make the following recommendations:

- The legislation should at least require the identification of drinking water sources for both private and municipal systems in assessment reports. For example, in section 13(2), amendment should be made so that assessment reports shall identify the location of individual and communal wells on provincial water well records. This could be inserted as a new 13(2)(f) with reordering to follow: identify the location of all individual and communal wells on provincial water well records.
- The legislation should provide increased means by which “clusters” of private water systems can be included in assessment reports, where appropriate. Examples might include vehicles such as Ministerial direction and public petition in addition to the municipal resolution provided in section 8(3). Sample language might be: The Minister may order that for the purpose of 13(2) that the assessment report consider any existing or planned cluster of drinking water wells, identified on provincial well water records, that are not a drinking water system referred to in clause 13(2)(e)(i). We accept that some criteria might be appropriate in order to avoid the interpretation that we can protect every single private well from day one – densities that approximate or begin to approach those of rural settlement areas or which include clusters of roads with interior roadway networks may be appropriate indicators.
- A basic threats assessment should be conducted for all systems – municipal and private - and significant drinking water threats should be addressed at a minimum.
- Significant drinking water threats in groundwater recharge areas and highly vulnerable aquifers should be identified and measures to address them should be permitted. This requires amendments to sections 19(2) and 19(6) – current language limits the prohibition, regulation or land use restriction of significant drinking water threats to surface water intake protection zones and wellhead protection areas. Sample language might read 19(2) A source protection plan shall, in accordance with the regulations and terms of reference, set out the following: ...9. Identify for each groundwater recharge area and highly vulnerable aquifer identified in the assessment report under section 13(2)(d), one or more measures intended to achieve the following objectives: i. Ensuring that every existing activity identified in the assessment report as a significant drinking water threat for that vulnerable area ceases to be a significant drinking water threat. li. Ensuring that none of the possible future activities identified in the assessment reports as activities that would be drinking water threats for that vulnerable area ever become significant drinking water threats.
- We accept that conformity with source protection plans, especially for Official Plans, will take time but believe that a phased approach with emphasis on significant threats is key to ensure compliance. We do believe, however, that similar to improvements recommended to protect species at risk, we must ensure that the Act explicitly allows actions to be taken to address less severe threats (low to moderate) in both a future planning as well as a regulated approach to existing activities in order to ensure that these threats do not become significant.

Some amendment to section 19 seems in order – we acknowledge that it is clear that source protection committees are required to set out policies to ensure that moderate or low threats do not become significant in the future but the committees need the authority to include mandatory and voluntary measures in protection plans to address these lower level threats. Sample language might look like: 19(2.1) A source protection plan may, in accordance with the regulations and the terms of reference, set out measures in response to drinking water threats identified in the assessment report under section 13(2)(g) which are not or would not become significant drinking water threats.

Our Agricultural Partners

We are fortunate in our communities to be working collaboratively with individual farmers and our local federations of agriculture on the case before us. We understand that there are concerns from the farming community with respect to Bill 43 – some related to substantive issues and some related to perceptions based on the Walkerton experience. We emphasize that for our communities source water protection is not a “blame game”. We believe that to successfully protect drinking water, we must work with our agricultural neighbours, and all land owners, as partners.

We note that many farmers are at the forefront of land stewardship and related initiatives to protect source waters – for both private and public benefit. As such, it bears repeating that source protection committees should reflect the agricultural sector in their composition and need to be cognizant of the practices and processes that are already in use by farmers to mitigate the risk associated with locational factors and land use practices. In particular, we cite the value of tools such as the Environmental Farm Plans, Best Management Practices, and nutrient management.

We understand and support the directions of sections 83 and 88 as they pertain to expropriations and limitations on remedies. We do hope that these sections are not currently drafted in so restrictive a manner as to preclude the type of land lease approaches that are common for hydro corridors and other circumstances where land might be taken out of production or production might need to be changed as part of source protection plans for wellhead protection areas and similar vulnerable zones.

Regulating Drinking Water Threats

FORCE definitely supports a regulated approach to prescribing activities/land uses which should be subject to either prohibition or risk management in Part IV of the Act, i.e. aggregate development. We understand that it will be regulations to this Act rather than the legislation itself that prescribe the actual activities and land uses that will be regulated as source and drinking water threats. It bears repeating, however, that aggregate development, while important to all of us in our everyday lives and to provincial infrastructure in general, poses risks to water sources and drinking water and should be prescribed as subject to risk management prohibition/regulation. Many groups such as ours will be watching to see how the government responds to the aggregate industry’s arguments to minimize the regulatory burden on that sector. We will also be watching to make sure that the transition provisions for each of s49 – 51 are not so broad as to be loopholes from source protection plan obligations for

existing activities or pending applications (involving study activities) related to significant threats to water. The best work we collectively have in this area that is scientifically based is the Minister of Environment's Expert Technical Committee. It included aggregate development – notably that which involves below groundwater table excavation - on its list of Provincially Significant Threats. Aggregate development carries risks for both quantity and quality of drinking water. This is due to the risk of opening pathways to drinking water sources and due to the nature of on-site activities.

While we support regulating drinking water threats, we have questions and concerns about the proposed permit approach. The permit approach does not seem feasible and seems to be of concern to many sectors, including agriculture, and to some municipalities. We would support the option of a risk management plan approach that is legally binding and backed with orders for non-compliance. We believe that this would be consistent with the proposed interim protection measures provided in the Act now and others that we outline below. As well, it would be more reflective of a partnership and stewardship approach to source water protection. Then individual landowners, farmers, and other operations would be able to evaluate the risk profile of their activities in relation to vulnerable areas and zones, along with a range of risk management strategies and options, and develop a plan that is effective and cost-efficient for them but also carries public benefit. We are comfortable that this approach could also allow for right of appeal to the Environmental Review Tribunal along with a strong enforcement regime through orders, prosecutions, etc. We have not offered specific language suggestions here – noting post facto that the Minister of Environment indicated a willingness to move in this direction in her remarks to the Committee. We look forward to the Minister's amendments prior to clause by clause review of the Bill.

Interim Measures

It is a reality that current land uses and operations, including some which are provincially regulated, have the potential to impact water sources while source water protection plans are still being developed. In addition, new development proposals have been and will be applied for before the plans are in place. We are encouraged by several promising interim measures contained in the Act such as the requirement for interim progress reports to be prepared and the option to order risk management plans. Additionally, if imminent drinking water health hazards are identified during the course of collecting information, there is an obligation to notify the Ministry. We remain concerned, however, that significant threats to source waters could develop or continue unabated before the source protection plans are approved. Accordingly, we recommend consideration of the following actions and amendments:

- The province should undertake to review all provincially regulated facilities on a priority basis to ensure that they do not pose a significant threat to drinking water sources.
- The province, municipalities and conservation authorities should be required to take immediate pre-cautionary actions in response to high-risk activities and land uses once these are identified by persons who have authority to enter a property under section 79 for purposes of collection of information to prepare an assessment report or source protection plan or monitoring. This would require amendment to section 80. One approach is to broaden 80(1.2)(b) to require corrections akin to those prescribed under the *Safe Drinking Water Act*,

2002, where applicable. Another approach is to amend section 80 as follows: (1.2) The Director shall, within 30 days after receiving a notice under subsection (1), take action intended to achieve the following objectives: (a) ensuring that the substance which is being discharged or which is about to be discharged, ceases to be an imminent drinking water health hazard, if notice was given under subsection (1)(a); or (b) ensuring that the raw water supply of an existing drinking water system meets all the standards prescribed by the regulations, if the notice was given under subsection (1)(b). (2) The Director shall, within 30 days after receiving a notice under subsection (1), give written notice of the action taken by the Ministry to (a) the source protection authority, if the notice under subsection(1) was given by an employee or agent of a source protection authority; or (b) the municipality, if the notice under subsection (1) was given by an employee or agent of a municipality.

- There should be provision for interim protection measures that allow for the cessation of activities and/or requirement for a risk management plan, upon which go forward decisions can be based, related to an application for a new development until the source water protection plan is completed and in place. This requirement for a cessation of activities and/or a risk management plan might relate to specific hydrogeological and/or mitigation studies to support the application or to the application itself by nature of its proposed development. Such an order should be the authority of a Director(s) and there should be specific tests or criteria which apply such as "...where the study or development could reasonably be expected to have adverse impact or pose significant risk to a known and vulnerable water system...". The Director should have the discretion to order a cessation of activities subject to a risk assessment and management plan through to complete cessation of activities pending the final source water protection plan. It would be advisable to create a separate section for interim protection measures. Sample language might look like an amended version of section 48(1). If the Director has approved an assessment report for a source protection area under section 15 or 16...in a surface water intake protection zone, wellhead protection area, groundwater recharge area or a highly vulnerable aquifer identified in the report, at a location or within an area specified in the report, a person is engaged in an activity that is prescribed by the regulations and is identified in the report as an activity that is or would be a significant drinking water threat at that location or within that area, the Director or the permit official may issue an order requiring the person to cease all activity and to prepare and submit to the permit official, within such time as is specified in the order, a risk management plan for the activity. This order may apply to an activity or to the planning and technical studies which may be required to support the activity in application to a municipal council or other public body. (2) The Director or permit official may accept the risk management plan for the activity if, and only if, the permit official is satisfied that the activity will not be a significant drinking water threat, if it is engaged in accordance with the plan. Note: subsequent provisions should permit an order for amendment, imposition of plan, compliance with plan, and continued cessation of activities until the SPP is in place.
- Until source water protection plans are in place, an amendment should be provided that no Ministry should issue *any new prescribed instruments* that could potentially cause significant harm to source water in vulnerable areas. A key example is a Permit to Take Water. Sample language might be: If the Director has approved an assessment report, and a prescribed instrument relates to an activity that is or would be a significant drinking water threat in

vulnerable areas, the Minister may require the person or body that has the authority to issue or amend the prescribed instrument to withhold issuance of the instrument until a source protection plan is in place and the activity and its instrument is in conformity with the SPP or to amend the instrument to ensure that activity is no longer a significant threat.

Adequate Funding

It goes without saying that the effectiveness of source water protection planning processes, and their implementation, will be highly dependent on a sustainable and reliable source of funds. We acknowledge the significant investments made by the province, to date, to enhance conservation authority capacity and to begin the planning process. Locally, our conservation authorities in Halton, Hamilton and the Grand River have benefited from resources for capacity and to initiate risk assessments. It will be critical that investments continue for the province itself, given this significant new role in land use planning for the Ministry of the Environment, for municipalities to enable them to fulfill their roles, and for conservation authorities. Source protection planning needs to move through each stage with due rigour and yet be timely in order to deliver protections. Lack of capacity and resources can result in hold ups and delay protections. We note the City of Hamilton Groundwater Resources Characterization and Wellhead Protection Study has been pending MOE sign-off since spring 2004. The province needs to give due consideration to the recommendations of the Implementation Committee with respect to funding mechanisms.

CONCLUSION

FORCE believes that the areas for suggested improvement are necessary to ensure safe drinking water across the province and within the City of Hamilton and adjacent municipalities. They are also necessary to support, rather than undermine, important directions in terms of permanent Greenbelt protection, a viable agriculture and rural strategy, and planning reform.

THANK YOU

FORCE thanks the Standing Committee on Social Policy once again for the opportunity to input and looks forward to reviewing the Committee's and the Ministry of Environment's response to these important issues at the clause by clause stage in review of the Bill.

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