

January 31, 2007

James Scott, Senior Policy Analyst
Strategic Policy Branch
Ontario Ministry of the Environment
135 St. Clair Avenue West, 11th Floor
Toronto, Ontario, M4V 1P5
Email: james.scott@ontario.ca



Dear Mr. Scott:

**Re: Discussion Paper on Source Protection Committees under the *Clean Water Act*
EBR Registry No. PA06E0013**

Via e-mail to james.scott@ontario.ca

Thank you for the Additional Opportunity to Input

Thank you for the additional opportunity to comment on the initiatives contained in the Discussion Paper regarding the formation and operation of proposed Source Water Protection Committees related to the *Clean Water Act, 2006*. Our organization has submitted comments at earlier stages (i.e. draft legislation, response to Implementation and Expert Technical Committee reports, etc.), has appeared before Standing Committees of the Legislature when the legislation was before the Legislative Assembly, and has been supportive of submissions from organizations such as the Canadian Environmental Law Association and Environmental Defence, particularly on matters relating to the role, composition, and operation of Source Protection Committees. At this time, we commend the Province of Ontario for taking steps to strengthen the multi-barrier approach to protection of drinking water sources and to implement the recently passed legislation. These reforms and protections are long overdue. We hope that the Province will now move expeditiously to implement the legislation given the risks facing drinking water sources across the province.

FORCE

As you may be aware, 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 Kilbride, Campbellville, Mountsberg, Freelon, and Carlisle. FORCE was formed in June 2004 to protect our natural and built environments in the face of a proposed large-scale, below the established groundwater table, aggregate development by St. Marys CBM (formerly Lowndes Holdings Corp.) in the Northeast Flamborough portion of the amalgamated City of Hamilton. We note upfront that our organization is neither anti-aggregate nor anti-road; indeed, our area is home to some of Ontario and Canada's largest aggregate operations. We do, however, have significant

issues with the pending application in its proposed location for substantive reasons; reasons that relate to ground water protection for municipal and private well systems, active and productive agricultural operations, acknowledged fragile natural systems within the Greenbelt, and existing rural communities.

We also believe that our organization has a responsibility to promote good government in the municipal and provincial arenas and therefore, we have a responsibility to input into the broader planning reform processes which bear upon the application processes for development proposals such as the one before our communities. Review of the Discussion Paper on Source Protection Committees is clearly an opportune time to impact the ground rules about how we should be protecting our drinking water sources and watersheds as well as how development proposals should be evaluated and approved in a municipal jurisdiction and by relevant provincial agencies.

General Comments

We open our submission with some general comments on the principles of public participation and education that we believe should underpin the formation and operation of the Source Protection Committees and our general support for many of the directions covered in the Discussion Paper. We will then make some specific comments regarding particular issues and/or questions raised by the Discussion Paper either where we disagree or where we agree but believe further elaboration or emphasis is required in order to support and supplement Ministry directions.

One of the most fundamental prerequisites for an effective source protection regime, in our view, is public participation and education. The inclusiveness of the public, broadly defined, is critical to ensure quality source protection planning and acceptance or buy-in to the plan and its implementation requirements. It is a reality that design and implementation of each plan will occur mostly at the local level, through measures carried out by individual landowners, agricultural operations, businesses and industries. The most effective way to build support is to provide information/education opportunities and to thoroughly engage the public. Bottom-up rather than top-down community support – involving sectors, individuals, and groups already involved in watershed-based and source protection initiatives in the area - will be important. The Act does contain some mandatory public participation and consultation provisions but generally speaking, this issue has been left to the discretionary regulation-making powers of the Lieutenant Governor – in – Council. We believe it is important that the regulations include strong public participation measures and provide for meaningful public involvement throughout the various stages of the planning and implementation process.

Community groups and the public have a real contribution to make at the early stages of the source protection planning process as terms of reference, threats/risk assessment and assessment reports are being drafted. The people of a community often possess unique knowledge of local threats and conditions – the abandoned wells, the illegal dumps, the ponds and waterways that dry up in summer due to overuse or low precipitation conditions. This knowledge needs to be captured in order to inform the decision-making process. At a minimum, public participation in the Source Protection Committee and its networks means:

- open opportunity for individual, non-government organization, academic and related members of the public to participate on the Source Protection Committee through a transparent application process in meaningful numbers
- financial stipends for those public members in order to support the costs of their participation on the Source Protection Committee, sub-committees and working/advisory groups and to ensure capacity for active long-term engagement
- easy access, including public meetings and electronic web access, to all information including minutes, policy instruments and scientific data, relevant to local source protection as well as Environmental Bill of Rights Registry postings of the draft Terms of Reference, Assessment Reports and Source Protection Plans (notice and comment) before those documents are finalized.

Specific Comments

Members of the Source Protection Committee (2.0)

The Discussion Paper contemplates various aspects of the Source Protection Committees. It suggests that the composition of the committees consist of one-third municipal representation, one-third sector representation, and one-third public representation (individuals, non-governmental organizations, academic, etc.). This approach is consistent, albeit with slight variations on a theme, with past discussion documents and with the report of the Advisory Committee on Watershed-Based Source Protection Planning. We are not uncomfortable with this direction. To add more detail to the proposed template, however, we recommend that environmental/community non-governmental organizations be considered as bringing a specific local expertise/constituency/interest meriting a distinct place on the Source Protection Committee, even if considered within the public representation rubric. That is, we recommend that some representation from these organizations be a requirement not simply an option. We are quite supportive of representation from public health on the Committee, if appropriate to local circumstances. We also support the role of public health on sub-committee and working groups and as staff advisors to the Committee. These roles must be appropriately resourced. The public health role is currently stretched based on existing roles and resource levels.

The qualifications of members outlined, including the local residency and/or employment requirement, is appropriate. We do note two considerations. First, none of the qualifications should be seen to require formal qualifications or degrees as long as the desired aptitude, behavioural, and involvement tests are apparent. All members should receive basic training on source protection planning at the start of the Committee's work. Second, there can be value to be gained from deployment of sector and non-government organization provincial associations and consideration as to how their involvement can be facilitated during the process should be contemplated so as not to be entirely lost at the implementation stage. We note the commitment, involvement and expertise of groups within the Water Guardian Network, not all of whom are strictly local.

The Discussion Paper also considers the matter of who should select the Source Protection Committee members and through what means. We can support the Minister's appointment of the Chair from a slate of recommended candidates generated by the Source Protection Authority. Some degree of local input and buy-in is important for the credibility of the Chair's position and the proposed nomination process would lend itself to

same. Criteria and qualifications for selection of the Chair seem comprehensive and reasonable, with emphasis on those pertaining to team leadership, facilitation, motivation, and negotiation skills. The qualifications also mirror the roles and responsibilities. It would be logical for the Source Protection Authority, in cooperation with the Chair, to select the alternate or vice-chair. Attention should be given to the same criteria as those for the Chair. For sector representatives, we believe that it would be most efficient and equitable for the municipalities and sectors to recommend their own representatives based on an internal nomination process. With respect to the public representatives, we support an open transparent application process. We would encourage use of advertising, press releases, mailings, flyers, postings in public venues like libraries, notice on the Environmental Registry, and notice to community leaders and local groups.

We note that we also support the ability of First Nations (and their technical delegates) to be full participants in source protection planning and implementation, either on the Source Protection Committee or through whatever vehicles work best for their involvement.

In principle, guidance, from the Ministry to the Source Protection Authority, on membership selection is appreciated in order to fully represent the watershed community. We would expect that criteria around geography, urban/rural mix, water source for municipalities, sector activities, and other matters might be cited. We wonder about the value of the proposed decision matrices and hope that if such “straw dog” examples are provided that a wider range of matrices is included. We would certainly advocate that the Source Protection Authority be free to choose its own methodology for selection while ensuring that the composition of the Committee meets the direction of the regulation.

The roles of Committee/members as outlined in Section 10.0 and the responsibilities in Section 2.6 seem reasonable and should be cross-referenced for completeness.

Rules of Operation (3.0)

Once the Source Protection Committees are formed, we concur that they should be governed by standardized rules of operation, while permitting some flexibility to account for local variability. A Code of Conduct and Conflict of Interest provisions are clearly required to ensure integrity and confidence in the process. It similarly makes sense that corollary provisions for removal of members be in place. We are not bothered by use of either the Source Protection Committee or the Source Protection Authority in this role. Indeed, it makes sense that internal and/or external concerns may be registered with either body. What is most relevant is that there be established reasons for removal against which a member’s performance is evaluated and a due process, including the opportunity to be heard, for the member involved. With respect to decision-making, in general, we strongly support that the Chair be required to make reasonable efforts to operate using a consensus approach. If and when consensus is not possible, putting matters to a vote using established rules, such as Robert’s Rules of Order or Bourinot’s Rules of Order, is appropriate.

It is equally important that all Source Protection Committees be subject to stringent transparency requirements. We support that the committee must have a quorum (at least 50% plus one) present in order to conduct business, that meetings be public and accessible, and that information be maintained as part of the public record. We do

recognize that committee members must have access to *all* pertinent information regarding particular parcels of land, including terms of existing or proposed permits, Certificates of Approval, and other regulatory instruments. As such, there will undoubtedly be circumstances where confidential information must be discussed. We support the Province providing guidance on privacy issues as per the *Municipal Freedom of Information and Privacy Act (MFIPPA)*, information disclosure, and the use of in-camera sessions.

That being said, in order to truly engage the public in the planning process, Source Protection Committees should make publicly available on a website, as well as at other local accessibility venues, their calendar of meetings, minutes, drafts of working documents (with qualifications, as appropriate), and scientific studies and peer reviews, among other materials. While delegations at meetings as a public input session can be valuable, we also recommend plain language explanations of technical matters at key junctures and the organization of periodic workshops, open houses or other public input forums throughout the various stages of the planning exercise. Such measures will allow public feedback before critical decisions are reached and allow the community to gain a sense of ownership of the source protection planning initiative. People will only become engaged if they feel that their input is being heard and if they are able to control the extent of their participation. Members of the public should have a range of involvement opportunities available to them from simply reading information, to providing comments, to observing meetings, to sitting on committees, sub-committees or working groups.

Working/Advisory Groups (4.0)

Recognizing that not all interests or knowledgeable parties will be able to directly participate on the Source Protection Committees, it will be necessary to develop sub-committees and working groups around specific sectors and issues. To this end, we agree that Source Protection Committees should be provided with the explicit power to establish sub-committees and convene working groups of non-committee members that are assigned tasks to move the process forward. These bodies provide the opportunity to provide invaluable input through the broader engagement of the public, sectors and experts. These would include notably the municipal and agricultural sectors, hydrogeologists, engineers, water suppliers, academics, and public health and other health professionals, among others.

We concur with the approach to provide guidance to Source Protection Committees but not to regulate a standardized approach. Local conditions will determine the appropriate network. That being said, the provision of sample working group sectors or issues is appropriate along with process and procedural matters such as suggestions around working group terms of reference and work plans.

Term of Office (5.0)

The proposed term of office seems appropriate - three years or completion of the source protection plan – with the reversed proviso of whichever occurs last rather than whichever occurs first. The one-third turnover for replacement following approval of the source protection plan is also reasonable in order to stabilize the process and to preserve institutional knowledge. A one-third rotation also facilitates new involvements and fresh ideas and energy. It is consistent with Board and other organizational practice.

Financial Compensation (7.0)

Adequate and appropriate funding is critical to the success of the source protection planning process. Allocations to the Source Protection Authority must be sufficient to ensure both internal and retained capacity and quality of the policy and technical work. An element of this funding is budget for the Source Protection Committee, including financial stipends for committee members. We concur that there should be remuneration for the Chair reflective of his/her level of involvement and the complexity of the watershed involved. There should be financial support for members of the committee (public and non-government organization) in order to provide them with the capacity for long-term active engagement. A per meeting stipend may work out to be more equitable than a per annum stipend which may not contemplate the required frequency of activity. Travel and out-of-pocket expenditures are appropriate for all members. Ontario Public Service standards are appropriate. We also believe that specific funds should be earmarked for sub-committee and working group members so that these tiers of involvement are also supported.

Committee Role in Preparing Terms of Reference (8.0), Assessment Report (9.0) and Source Protection Plan (10.0)

The content of the Discussion Paper, in the above noted areas, begins to describe some elements which may be included in the Terms of Reference and related regulations. We understand that the Ministry will provide more detailed guidance through a future posting on the Environmental Registry. Directionally, we note that we support the elements outlined and, in particular, find that the consultation provisions and postings are consistent with our comments found in Rules of Operation (3.0).

Thank You Again

Thank you again for the opportunity to input to this important review of the role, responsibilities, functioning and membership of Source Protection Committees under the *Clean Water Act, 2006*. We commend the Province for its leadership in this area following the Walkerton Report and encourage it to move with dispatch. We look forward to the final product, along with the other companion regulations, and the impact they will have on the protection of our drinking water as well as on the quality of land use planning decisions.

Respectfully submitted,

A handwritten signature in black ink that reads "G. Flint". The signature is written in a cursive, slightly slanted style. Below the signature is a horizontal line that underlines the name.

Graham Flint BSc, P. Eng
Chair & Spokesperson