



Sarah O'Keefe
Policy Advisor
Strategic Policy Branch
Ministry of the Environment
135 St. Clair Avenue West, 11th Floor
Toronto, Ontario M4V 1P5

Re: Proposed Clean Water Act, 2005, Bill 43

Dear Ms. O'Keefe

The Ontario Professional Planners Institute (OPPI) is pleased to provide comments on Bill 43, *An Act to Protect Existing and Future Sources of Drinking Water and to Make Complementary and Other Amendments to Other Acts*. These comments build on our earlier comments of August 20, 2004, on the *Drinking Water Source Protection Act* and April 8, 2004, on the "White Paper on Watershed-based Source Protection."

OPPI supports Bill 43 and believes it addresses the recommendations of the Walkerton Inquiry on source water protection. Our comments focus on the relationship between the *Planning Act* and Bill 43. We found it difficult to understand this relationship and recommend additional clarification. OPPI is prepared to discuss these comments and recommendations with the Ministry at your convenience.

1. Definition of a Drinking Water Threat

The definition of a "drinking water threat" provided in Section 2(1) of Bill 43 is very general. It includes any existing or future activity or condition that can adversely affect the quality or quantity of drinking water or water that currently or potentially fails to meet prescribed standards. A drinking water threat can consist of any activities and conditions identified in a regulation. However, as there are no regulations proposed, the definition has yet to be clarified.

The understanding of this term is fundamental to the implementation of the *Clean Water Act*. OPPI supports the provision of more specific regulations and guidance to ensure fair and consistent treatment.

The definition specifies an activity or condition that "adversely affects" or has the potential to "adversely affect" the quality or quantity of drinking water. The term "adversely affect" is not defined in Bill 43, as it is in the *Environmental Protection Act*.

We recommend that either a definition of “adversely affect” be included in the legislation or that the legislation adopt the definition used in the *Environmental Protection Act*.

We also recommend that the Bill be amended to make more specific provision for regulation of matters that relate to the definition and understanding of a drinking water threat. The interpretation of such matters is often conveyed more effectively through guidance than through regulation. If the Bill is adopted, it should be supported through the development of comprehensive guidelines to ensure consistent interpretation and implementation.

2. The Relationship between Bill 43 and the Planning Act

2.1 Definitions

“Vulnerable Areas” are defined in Bill 43 as:

- a groundwater recharge area;
- a highly vulnerable aquifer;
- a surface water intake protection zone;
- a wellhead protection area.

Groundwater recharge area, highly vulnerable aquifer, surface water intake protection zone, and wellhead protection area will have their meaning prescribed by regulation.

Of these four different categories of lands, two relate directly to municipal surface and groundwater sources (wellhead and intake protection areas) and two relate indirectly (recharge areas and highly vulnerable aquifers), although the categories could overlap. The first two are to be protected through official plan designations and zoning by-law requirements.

Section 2.2 of the Provincial Policy Statement (PPS) uses the terms “vulnerable surface and groundwater” and “sensitive groundwater/surface water features.” It is critical that the definitions be consistent in Bill 43 and in the Provincial Policy Statement.

2.2 Regulation of Activities

Bill 43 states that source water plans should identify:

- prohibited activities;
- regulated activities;
- restricted land uses.

Also, in the proposed legislation, Section 34 (1), item 3.1, of the *Planning Act* is revoked and replaced with the following:

for prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures on land,

- i. that is contaminated,*

- ii. *that contains a sensitive ground water feature or a sensitive surface water feature, or*
- iii. *that is within an area identified as a vulnerable area in a drinking water source protection plan that has taken effect under the Clean Water Act.*

The overlap between Bill 43 and the *Planning Act* presents the potential for conflict. We recommend that the language and processes that apply to a source water plan in Bill 43 be coordinated more closely with the language and processes of the Provincial Policy Statement, the *Planning Act*, and Bill 51 to bring planning instruments into conformity with source water protection plans and to minimize duplication.

For example, a planning decision might involve hydrological and hydrogeological analysis to obtain an approval under the *Planning Act* and risk analysis for the same features to obtain permit approval under Sections 50 and 51 of Bill 43. Planners seek to avoid unnecessary duplication and to make processes more understandable and accessible, while achieving the basic intent of the legislation. We recommend that guidelines be developed and training sessions be provided to help those entrusted with the preparation of source protection plans and their implementation to ensure consistent and effective approaches across the Province.

2.3 Resource Management

There are two types of planning legislation in Ontario. The first is the *Planning Act*, which applies to private land within organized municipalities, and the second is the *Public Lands Act*, which applies to Provincial Crown lands. Bill 43 makes no mention of the *Public Lands Act*. Approximately 87% of the province is Crown land licensed to various private-tenure holders such as forest and mining companies, cottage leaseholders, provincial park concessionaires, etc. Clarification is needed on how these provisions would apply to resource uses.

“Prescribed instruments” are defined as decisions made under natural resource legislation administered by the four Ministries of Natural Resources, Environment, Northern Development and Mines, and Agriculture and Food, including the *Aggregates Act*, the *Conservation Authorities Act*, the *Crown Forest Sustainability Act*, the *Nutrient Management Act*, the *Ontario Water Resources Act* and the *Mining Act*. Some resource uses are also regulated by zoning and require approval under the *Planning Act*. The approvals and policies that must be met under these legislative and regulatory frameworks are rigorous and, in many instances, more suitable to address the risk analyses required in Sections 49 and 50 of Bill 43. More detail and specifics as to how these requirements will be amended to be consistent with Sections 49, 50, and 51 of Bill 43 is required so the provisions can support the administration of the *Planning Act* in cases where resource uses require planning approvals.

3. Analytical Considerations

Analysis involves data, science, modelling, and the use of judgment at each level of the analyses. The products of these analyses will be, in part, maps and calculations that

planners and councils will use to formulate policies and zones for the purposes of regulation. The Bill would be strengthened if it included provisions addressing questions such as who signs off on these analyses, and which professional standards are used to ensure that analyses are conducted properly and that the results are reliable.

Bill 43 does not seem to provide any opportunities for anyone to dispute the science in an assessment report. Disputes over source water protection plans will be affected by this omission. By contrast, *Planning Act* decisions provide for dispute resolution. We are concerned that unresolved issues arising from the preparation and approval of assessment reports and source water protection plans will result in appeals to municipal councils and the Ontario Municipal Board, where these issues cannot be properly addressed, because the conformity requirement forecloses any opportunity to have these disputes reviewed.

4. Data Accessibility

Section 29 of Bill 43 requires that an approved source protection plan be made available to the public on the Internet. We suggest that the sharing and transfer of information and best practices on the implementation of this legislation would be greatly facilitated by a source protection website hosted by the Ministry of the Environment. The website would provide access to terms of reference, assessment reports, approved source protection plans, documents released for consultation, as well as to legislation, regulations, and guidelines. Since notices for management plans for Provincial Parks and amendments to licenses under the *Aggregate Resources Act* can be provided on the Environmental Registry for comment, it would be helpful if notices for public comment could also be issued for draft terms of reference, assessment reports and source protection plans.

Thank you for the opportunity to comment. If you have any questions related to our comments, or if we can be of further assistance, please contact Andrea Bourrie, MCIP, RPP, Interim Manager Policy at policy@ontarioplanners.on.ca or 416-483-1873 x226.

Yours very truly,

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Director, Policy

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Gary Davidson, President
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OPPI represents Ontario's planning community and has more than 3,500 members. Our members include public- and private-sector municipal, land use, and environmental planners who are active in formulating the land use and environmental policies and decisions which shape the land use fabric in Ontario.