

BILL 43 - THE CLEAN WATER ACT

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In response to 22 recommendations of Part II in the Walkerton Inquiry relating to the protection of drinking water sources, the McGuinty government tabled new legislation that will place municipalities at the forefront of source protection.

Bill 43, the *Clean Water Act*, was introduced in the legislature on December 5, 2005. It follows the February 2004 release of the Province's *White Paper on Water Shed-Base Source Protection Planning* and the subsequent extensive stakeholder consultation.

In sum, Bill 43 proposes the following:

- Ontario's 36 conservation authorities would be designated as source protection authorities which would have the responsibility of striking drinking water source protection committees to prepare assessment reports to identify all watersheds in each authority's area and to prepare a budget for each watershed.
- The assessment reports would identify vulnerable areas and threats to drinking water in those areas. The assessment reports would be submitted to the Ministry of the Environment for approval after which the source protection committee would be required to prepare a source protection plan.
- The plan would likely include policies to deal with existing significant threats to drinking water and possible future threats. The plan would also identify activities and land uses that should be subject to regulation pursuant to Part IV of the legislation.
- Municipalities responsible for providing drinking water would also be responsible for enforcement. Municipalities would have the authority to regulate activities that threaten drinking water sources by requiring risk assessments for the activity, permits or compliance with a risk management plan. Some land uses could be restricted and require a municipal permit permitting the restricted use.
- For the parts of the province without a conservation authority, the province may enter into agreements with municipalities to enable them to assume the role of the conservation authority and thereby generate a source protection plan.

Other Canadian jurisdictions have introduced, or are in the process of introducing, legislation and policies to deal with drinking water source protection. British Columbia enacted its *Drinking Water Protection Act* in 2001. Manitoba's *Water Protection Act* was passed in June 2005, but is not yet in force.

Unlike the existing scenarios in other jurisdictions, Bill 43 places municipalities at the forefront of source protection as the regulator. Municipalities will be empowered to pass by-laws which are necessary to develop and implement the permitting regime which will be required for activities that may endanger a drinking water source. They will have authority to conduct inspections to ensure land use in accordance with permits, where issued. Permit inspectors will be empowered with a number of inspection powers comparable to those presently held by provincial officers. Inspectors would also be authorized to issue enforcement orders to companies that were not operating in compliance with a risk management plan, a permit or were undertaking activities prohibited by a source protection plan.

The Bill would also amend the *Planning Act* to permit municipalities to pass zoning by-laws for areas where sensitive ground or surface water features exist. Municipalities would be required to amend their official plans when necessary to comply with source protection plans. They would not be permitted to undertake any work or undertaking that would conflict with a source protection plan nor pass any by-law that would conflict with the operative plan.

The Bill provides municipalities with the option of transferring the enforcement responsibility to a local board of health, a planning board or a source protection authority yet the municipality would continue to be responsible for either all or part of the cost.

Coincident with the Bill, the province also announced funding for conservation authorities and municipalities to assist with the implementation of the legislation. This may point to the province's intention to fast track the legislation for enactment early in 2006.