

RECOMMENDATIONS AND RATIONALE

CONCERNING

**Laboratories and Drinking Water
Providers**

(For Public Hearings 7 and 8)

BY

OPSEU



SEFPO

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A. Summary of Recommendations

OPSEU is very pleased to continue its involvement in Part II of the Walkerton Inquiry by suggesting recommendations about laboratories and drinking water providers. The recommendations are set out below and the rationales follow.

1) DRINKING WATER PROVIDERS:

EMS Standard

Recommendation #1:

- That an Environmental Management System (EMS) standard specific to drinking water production facilities be developed.

Recommendation #2:

- The EMS standard should be built from the foundation of the OCWA standard with representatives of OCWA and OMWA participating in a “Quality Alliance” to validate and improve the OCWA standard.

Recommendation # 3:

- The “Quality Alliance” must not be a delegated function; the Crown, through the MOE Water Branch, must not only have regulatory authority but must be deeply involved in the development of the standard.

Recommendation #4:

- Organizations operating a drinking water facility should be required to hold a certificate confirming conformity to the EMS standard.

Recommendation #5:

- The EMS standard must not replace standards based on outcomes, equipment or skills.

Small Scale Operators

Recommendation #6:

- Due to the risks of water quality variability in the smallest scale waterworks, the smallest tier should be mandated for service by a preferred large-scale operator.

Recommendation #7:

- The preferred mechanism for the development of appropriate scale should be OCWA as revitalized in accordance with the other recommendations of this document.

Recommendation #8:

- Other models, such as regionalization or inter-municipal contracting should receive less preference than integrating operations into OCWA.

Training Standards

Recommendation #9:

- Training standards must be established for the waterworks industry.

Recommendation #10:

- Only curriculum certified as meeting recognized training standards should meet the definition of “training” for the purposes of regulations.

Recommendation #11:

- Until the training standard is developed, the learning outcomes of OCWA/MOE operator courses be recognized as the training standard for the purposes of curriculum certification.

Recommendation #12:

- The mandate of the joint labour-management committee must be expanded to advise on the development of training standards.

Recommendation #13:

- A mandatory training requirement must be set, which should largely be fulfilled by taking certified training courses.

Certification

Recommendation #14:

- **The EMS certification and audit function should not be decoupled from regulatory inspection functions.**

Recommendation #15:

- **The certifying body should be the Crown.**

Recommendation #16:

- **The certification role of the Crown should be located with the Operations Division of the MOE and carried out through that Division's District Office.**

Recommendation #17:

- **A condition of all Certificates of Approval must be that the operator of the facility be in conformity with the EMS standard.**

Recommendation #18:

- **A Safe Drinking Water Act should contain significant transparency measures and should include an obligation on behalf of the Crown and municipalities holding a Certificate of Approval to actively consult municipal employees, municipal politicians and the general population.**

Finances

Recommendation #19:

- **Any full cost recovery can only be required within a policy framework that sets appropriate ranges for water costs and delivers financial support to ensure such ranges are maintained.**

Recommendation #20:

- **Capital subsidies, where required to achieve full cost recovery, should be provided based on projected costs reviewed by OCWA's Project Development Group and approved by the MOE Water Branch.**

OCWA

Recommendation #21:

- The current OCWA Board of Directors should be replaced with a multi-skill, multi-stakeholder board with public meetings and public minutes.

Recommendation #22:

- The relationship between the Crown, the Board and the managers of OCWA needs to be clearly spelt out through a renewed Memorandum of Understanding.

Recommendation #23:

- The new MOU between OCWA and MOE should require the Agency to publish water quality information to the public domain in real time.

Recommendation #24:

- Through the MOU, OCWA should be required to provide aggregate data on a regular basis to the MOE Water Branch to assist in the identification of emerging threats.

Recommendation #25:

- The working conditions and compensation of OCWA employees be adjusted to recognize the change of responsibilities and expectations.

Recommendation #26:

- OCWA's EMS must recognize that the active involvement of operators in the development of SOPs is a best practice.

Recommendation #27:

- OCWA's MOU should include the mandate and financial support to enable the delivery of advisory support to non-client municipal operations.

Recommendation #28:

- OCWA's MOU should include a mandate to serve and support the development of the capacity to produce quality drinking water for isolated First Nations communities.

Public/Private Operations

Recommendation #29:

- **Operation by a Public Water Undertaking (PWU) should be a requirement of the Certificate of Approval.**
- **If a municipality chooses to have an external organization take responsibility for drinking water quality, it is crucial that a “public-public partnership” (PUP) be available.**

Recommendations #30:

- **The Crown must continue to operate a large-scale public water company.**

2) LABORATORIES:

Recommendation # 31:

- **That the Ministry of the Environment (MOE) or the Ministry of Health (MOH) be the exclusive provider of prescribed water quality testing services to those municipalities or waterworks which do not have their own in-house water quality testing capability.**

Recommendation #32:

- **That the MOE reopen the regional laboratories closed due to budget cutbacks in 1996.**

Recommendation #33:

- **That the central MOE laboratory be adequately resourced and staffed to act as a research or reference laboratory with respect to water testing issues.**

Recommendation #34:

- **That the MOE and MOH set up a co-ordinating committee to determine the relative roles of each Ministry with respect to water testing and other water-related issues.**

- That this coordinating committee determine the relative levels of expertise and technical capacities between the Ministries, establish a joint water test result data base with full public access, and ensure appropriate standards development.
- That the coordinating committee promulgate a clear statement of responsibilities and jurisdiction.

Recommendation #35:

- If private laboratories are permitted to engage in prescribed water quality testing, that these private laboratories must be:
 - Accredited by the Standards Council of Canada, and the Ontario Drinking Water Standards be included in the scope of accreditation;
 - Rigorously and frequently audited and inspected by the MOE in accordance with Regulation 459/00;
 - meet standards and testing protocols set by the MOE; and
 - report results with transparency and in a prescribed format;
- That the MOE require CAEAL to communicate to MOE which laboratories fail PE (Performance Evaluation) samples.
- That the above requirements be incorporated into the drinking water standards regulation or other appropriate legislation.
- That the MOE must be properly resourced to carry out the recommended audit and inspection function

Recommendation #36:

- That, with respect to the pricing of prescribed water quality testing, the government ensure that any user fee applied to government testing services or rate charged by private sector laboratories does not create a disincentive to comply with testing or sampling protocols and does not interfere with the protection of public health.

B. Rationale in Support of OPSEU's Proposed Recommendations:

1) DRINKING WATER PROVIDERS

Recommendation #1: Development of a Total Quality Management (TQM) or Environmental Management Standard (EMS) for drinking water providers

1. An Environmental Management System (EMS) or a Total Quality Management (TQM) consists of a grouping of practices, procedures, analysis tools and other standard mechanisms against which conformity can be measured. In this document, OPSEU has opted to refer to such a potential standards as an EMS for two reasons. First, OPSEU wishes to emphasize the critical focus on environmental protection that needs to be at the core of the development of such a standard. Second, the only existing such standard in Ontario is referred to as an EMS by its developer, the Ontario Clean Water Agency (OCWA). The importance of OCWA is the subject of OPSEU, *Public Interests in Water Facilities Operations*. That paper provides an essential context for these submissions.

2. Developing an EMS standard offers the potential for increasing the overall quality of drinking water by giving waterworks a tool for the transfer of best practices and the establishment of continuous improvement and lifelong learning programs. This potential differs from the outcomes- or equipment-based regulations currently in place with the Ministry of the Environment (MOE) by having an institutional focus and addressing the inputs and processes responsible for drinking water production.

Recommendation #1:

- **That an Environmental Management System (EMS) standard specific to drinking water production facilities be developed.**

Recommendation #2: Creation of the "Quality Alliance"

3. OCWA has already developed an EMS based on ISO 14001 standards and is the only Ontario waterworks operator to obtain certification for their EMS. Considering the value in establishing an EMS relatively quickly, the adaptation of the existing standard for application across the industry offers great value.

4. The OCWA standard may have to be augmented to incorporate areas in which additional standards are being considered which are not covered by the OCWA standard.

5. The Ontario Water Works Association (OWWA) and OCWA have considerable operational expertise and knowledge regarding industry best practices that should be utilized in the development of an EMS.

Recommendation #2:

- **The EMS standard should be built from the foundation of the OCWA standard with representatives of OCWA and OMWA participating in a “Quality Alliance” to validate and improve the OCWA standard.**

Recommendation #3: Appropriate role for the Quality Alliance

6. The role of the Quality Alliance should be to serve as an advisory body to discuss and develop ideas for the establishment of a permanent EMS standard. Authority to recognize the standard and even the carriage of the development process must be held by the Crown in order to avoid regulatory capture due to conflict of interest.

7. External expertise, when used, must be firmly under Crown direction and asymmetries of information or knowledge with such external experts must be avoided in order to protect this necessity. To fulfill this goal, the proposed Water Branch of the MOE should be utilized. Water Branch expertise and resources need to be committed to the development project and the Water Branch must also be responsible for submission to the Minister and Deputy Minister for recommendation to Cabinet.

8. A development process with a less active involvement from the Ministry risks the loss of the intense public interest in the development of the standards. Unlike other ISO standard development projects, the EMS is not an aid to the development of commerce, the compatibility of technology or the interchangeability of parts and therefore is not simply a matter of negotiating between organizations involved in production with the developer in the role of consultant. In the case of EMS development, the public interest is supreme and must not be shunted aside, evaded or overwhelmed by complexity.

Recommendation # 3:

- **The “Quality Alliance” must not be a delegated function; the Crown, through the MOE Water Branch, must not only have regulatory authority but must be deeply involved in the development of the standard.**

Recommendation #4: Application of EMS to drinking water facilities

9. In many industries, conformity to an established standard is a matter of commercial self-interest. Organizations pursue conformity because it increases product marketability and sales potential. This is not the case with respect to the EMS standard. Far from being viewed as a self-interested pursuit, conformity to the EMS standard may be viewed by some industry actors as an additional cost and complexity and therefore a pursuit to be minimized. For this reason, conformity to the standard must be required and must be supported by inspection mechanisms and consequences for non-conformity.

10. Certificates of conformity must be issued to individual water facilities rather than enterprise-wide for three reasons. First, where an organization operates multiple facilities supplying multiple water distribution systems, and the non-conformity in one location has no effect upon conformity in another location, it would be abusive to remove any general operating privileges. Second, making certificates specific to a single location increases the likelihood that the consequences of non-conformity will be applied. Finally, different plants will have differing valid drinking water production processes that need to be individually considered. While concerns about finance, leadership, training, etc., are valid and important, the quality of the production process is of most immediate concern to the production of safe water and needs to be the most accurately audited. General, enterprise-wide audits that confirm proper documentation of production processes and procedures will not suffice.

11. In a situation in which non-conformity is enterprise-wide (e.g.: insufficient leadership training, poor governance practices, etc.) such non-conformities, once discovered, must be considered non-conformity for all facilities within the enterprise.

Recommendation #4:

- **Organizations operating a drinking water facility should be required to hold a certificate confirming conformity to the EMS standard.**

Recommendation #5: Relation of EMS to current regulations

12. Monitoring the quality of production and management processes cannot be considered a substitute for testing water quality for pathogens. While good processes do create good products, undetected or undocumented processes or process inputs can create deadly products even while conforming to a quality standard.

13. Similarly, specific equipment approvals must be continued as they are based on thorough testing and experience in various conditions and add to the consistency of protection.

14. Skills-based standards, as are discussed and recommended later in this document, should follow a different process of development and recognition due to the human relations, learner-instructor and labour-management relationships implicit in such standards.

Recommendation #5:

- **The EMS standard must not replace standards based on outcomes, equipment, or skills.**

Recommendation #6: Quality and small scale operations

15. Evidence has been provided to the Inquiry that compliance problems occur disproportionately among smaller operations. Smaller municipalities have had a higher incidence of non reporting of drinking water quality.¹ David Cameron, *The Relationship Between Different Ownership and Management Regimes and Drinking Water Safety*, points out that “smaller operations may operate in a state of relatively higher uncertainty compared to larger centers”². Inquiry testimony indicates that there is a lesser degree of risk of data falsification if there is a level of oversight, as is only possible in larger organizations.³

16. OPSEU, through the Commission to legal counsel for the Government of Ontario, has requested raw data that would have enabled a statistical analysis of the incidence of non-compliance by operational size. This information request has not be fulfilled in the more than three months since the placement of the request.

17. While OPSEU agrees that scale is not the sole factor in the production of safe water and recognizes that there are many systems that are being well run by smaller municipalities, OPSEU believes that scale is significant factor and increasingly influential as size decreases. Even where a small operation is currently delivering a high quality product, concerns remain regarding the ability to continue at such levels through the succession to a new staff. This is particularly true where there is only one or two workers employed for the provision of safe drinking water.

18. OPSEU believes the variability in quality among smaller operations warrants action to ensure consistent outputs.

¹ See the references collected in the Coroner’s Part 1B submissions at para. 336.

² David Cameron, *The Relationship Between Different Ownership and Management Regimes and Drinking Water Safety*, p. 97.

³ Commission Testimony, June 6, 2001, p. 145.

Recommendation #6:

- **Due to the risks of water quality variability in the smallest scale waterworks, the smallest tier should be mandated for service by a preferred large-scale operator.**

Recommendation #7: Preferred mechanisms for developing scale

19. Research by OPSEU has shown that OCWA-run drinking water treatment plants are far less likely to be out of compliance than plants not run by OCWA.⁴ This is particularly significant given that OCWA's portfolio of operations is weighted toward the problem-plagued smaller systems.

20. We attribute this higher level of achievement to the five factors discussed below, all of which are reviewed in more detail in OPSEU, *Public Interests in Water Facilities Operations*. Four of the factors (EMS, technology, training and oversight) are related to scale and, specifically, the ability to pioneer innovations at a larger plant and then transfer them to smaller facilities, which we believe is one of the core advantages to scale:

- a) Environmental Management System (EMS)⁵: Only OCWA has a customized EMS/ISO 14001 regime with attendant Standard Operating Practices enabling the establishment of a quality standard specific to drinking water facilities and the ongoing improvement of quality;
- b) Information Technology⁶: OCWA has various customized, proprietary information technology systems developed specifically for various treatment plants and appropriate for their complexity, including remote monitoring technology (Outpost 5);
- c) Training⁷: OCWA maintains a superior peer-to-peer training system delivered regionally and based on the MOE developed training standard;
- d) Internal Oversight⁸: OCWA's three Regional Offices all host Compliance Officers who complete regular tours to OCWA-run facilities and all OCWA operators are subject to oversight by others with industry expertise; and
- e) Public Accountability⁹: OCWA operates under contract to municipalities, and is therefore legally responsible and subject to marketplace

⁴ OPSEU, *Public Interests in Water Facilities Operations*, p. 12

⁵ *Ibid*, p. 11.

⁶ *Ibid*, p. 10.

⁷ *Ibid*, p. 14.

⁸ *Ibid*, p. 12.

⁹ *Ibid*, p. 34.

accountability, but is also a Public Water Undertaking (PWU) and therefore has no loss of public or political accountability.

Recommendation #7:

- **The preferred mechanism for the development of appropriate scale should be OCWA as revitalized in accordance with the other recommendations of this document.**

Recommendation #8: Non-preferred mechanisms for the development of scale

21. OCWA currently holds the expertise and infrastructure to take responsibility for additional drinking water facilities. It is a 'tool ready at hand' with known and respected outcomes. Regional amalgamation of drinking water services cannot offer the predictability of outcomes or the immediacy of access as is available through OCWA.

22. Neither regional amalgamation nor contracting an adjacent municipality can guarantee the inclusion of larger facilities into the portfolio of properties at which technologies and procedures can be pioneered and from which they can be transferred.

23. A particular concern has been raised with respect to the water quality for residents of some First Nations communities. OPSEU believes that the reasons outlined that make OCWA the preferred contractor for other smaller communities are stronger in the case of many First Nations communities because of the tendency for such communities to be geographically isolated. Additionally, because of OCWA's superior training regime, there is greater potential to develop the capacity of the First Nation community to run their own water system within an OCWA framework rather than simply operate the water system on behalf of that community.

24. The use of private firms involves a number of difficulties, including the loss of public and political accountability over the delivery agency. Drawbacks to such an approach are explored later. However, OPSEU notes that many municipalities have chosen OCWA – sometimes after lengthy processes – because the Crown's role offers a measure of comfort due to the existence of the Crown as the ultimate owner of OCWA, with the attendant additional accountability mechanisms.¹⁰

25. Selling OCWA, eliminating OCWA or transferring its contracts to a private company would inappropriately negate those municipalities' explicit choice, given

¹⁰ Cameron, *Op Cit.*, p. 97

the difficulties of initiating an in-house program, particularly for the smaller municipalities.

Recommendation #8:

- **Other models, such as regionalization or inter-municipal contracting should receive less preference than integrating operations into OCWA.**

Recommendation #9: Training Standards

26. There is no definition of “training” or any standard of quality or learning outcomes. Given the lack of standards, training is no doubt playing a far weaker role in supporting quality than could be and is thwarting the intention of existing regulations. If there is an increased emphasis on training, there will be an even stronger adherence to standards.

27. Training standards dictate the learning outcomes required from a training course and are embedded in the courses’ curriculum. Training standards are derived from an analysis of the skills and knowledge (competencies) required by an occupation. To create training standards for waterworks operators, a study of the competency requirements of operators should be undertaken with such competencies forming the basis of the training standards.

Recommendation #9:

- **Training standards must be established for the waterworks industry.**

Recommendation #10: Regulatory implication of training standard

28. In order to ensure that the outcomes of training are consistent with the required competencies of workers in the industry, a system of curriculum certification should be established. In this system, curriculum with learning outcomes meeting the required training standards will be certified.

29. By invoking this process of certification, regulatory requirements for training will more likely result in the transfer of skills and knowledge to industry workers and lifelong learning than exists under the current system.

Recommendation #10:

- **Only curriculum certified as meeting recognized training standards should meet the definition of “training” for the purposes of regulations.**

Recommendation #11: An interim standard

30. A training standard can take 6 months to a year to develop. Current OCWA courses were originally developed by MOE and transferred to OCWA in 1993 and were, until the mid-1990s, the only significant source of training for the industry. Thus, the courses, while in need of continuous updating, are valid for training the skills and knowledge required.

Recommendation #11:

- **Until the training standard is developed, the learning outcomes of OCWA/MOE operator courses be recognized as the training standard for the purposes of curriculum certification.**

Recommendation #12: Standard-setting body

31. In order to determine competencies and establish a training standard, an industry advisory body is generally required to gather the input of job incumbents and their managers, and to initiate a productive learner-centred approach to skills development. All skilled trades are supported by a joint labour-management Provincial Advisory Committee.

32. In the waterworks industry, there is already a joint labour-management committee for the purposes of managing the related certification program. This committee's members would already have some expertise with training and the committee's mandate could easily be enlarged to include this new area.

Recommendation #12:

- **The mandate of the joint labour-management committee must be expanded to advise on the development of training standards**

Recommendation #13: Regulatory requirement for training

33. While operator certification plays a meaningful role in ensuring operators possess the skills and knowledge required by the occupation, training provides the possibility of establishing a lifelong learning environment required for continuous quality improvement.

34. Training courses also help develop an industry culture and opportunities for information sharing (and development of policy capacity) in a way not possible through a certification regime based on testing alone.

Recommendation #13:

- **A mandatory training requirement must be set, which should largely be fulfilled by taking certified training courses.**

Recommendation #14: Relationship between EMS audit and regulatory inspection

35. Any decoupling of industry oversight roles raises a number of significant concerns and would reduce the possibility of developing significant new capacities that would assist in the safeguarding of drinking water.

36. Separate inspectorates for EMS and current regulations would reduce horizontal policy co-ordination and allow for inconsistent protection for the public. The approaches of the separate inspectorates towards the industry – and even individual facilities – could become divergent. Such a divergence would send a confusing message to those working in the industry and could lead to industry frustration and anger. While the industry wants predictability from its inspectorate, the public is also best served by the consistency offered by one agency.

37. Separate inspectorates would diminish policy learning capacity based on operational knowledge. As institutions, no one inspectorate would have a whole view on the industry and a complete understanding of the processes and interaction of process affecting waterworks facilities. At the level of individual facilities, a fragmented inspectorate would know less about the history, characteristics and employees of a single location. These factors would diminish the ability of the inspectorate to develop abatement policies based on learning about operations.

38. Decoupling would diminish information flow between individuals with responsibility for oversight. In some cases, the utilization of penalties or the transfer to the MOE enforcement branch may be a judgment built upon cumulative knowledge about an individual facility. Separate inspectorates would reduce the concentration of information about a facility held in one location and decreases the base of cumulative knowledge used for such judgments.

39. Separate inspectors would have narrowed mandates that could diminish regulatory accountability. Parallel organizations serving the same general purpose create the possibility of “turf wars” and their opposite – repudiation of responsibility or blame.

40. Multiple points of accountability would reduce responsiveness to changing public expectations.

Recommendation #14:

- **The EMS certification and audit function should not be decoupled from regulatory inspection functions.**

Recommendation #15: Location of certification and audit function

41. In creating an integrated water industry inspectorate, various locations for these organizations can be envisioned. OPSEU strongly submits that the inspectorate role belongs under the Crown.

42. A system in which the Crown accredits an external body to serve as the certification and regulatory inspection body would immediately have to develop significant oversight mechanisms. In a case of an external certifying body accredited under a contract or Memorandum of Understanding, issues arise with respect to contract enforcement, litigation, proprietary information, training and regulatory capture.

43. Since an external certifying body would employ or contract the auditors, the Crown would be placed in a weaker position with respect to sanctioning a non-performing, incompetent or negligent auditor.

44. The existence of an external certifying body would obscure Ministerial accountability inherent in the role of enforcing regulation.

Recommendation #15:

- **The certifying body should be the Crown.**

Recommendation #16: Location within the Crown

45. The Crown's audit capability must support the development of local relationships with drinking water facilities. Such a capability requires the existence of local officers in proximity to the waterworks.

46. The additional EMS audit and certification function should be served through an institution with significant institutional learning with respect to the waterworks industry.

47. The additional EMS audit and certification function should support a strong policy discourse regarding effective enforcement and abatement strategies and offer greatest capacity for institutional policy learning.

48. The additional EMS audit and certification function should support horizontal policy co-ordination in order to provide consistent protection to the public.

49. The District Offices of the MOE offer proximity, a significant institutional learning base, the greatest capacity for policy learning and the greatest potential for horizontal policy co-ordination.

Recommendation #16:

- **The certification role of the Crown should be located with the Operations Division of the MOE and carried out through that Division's District Office.**

Recommendation #17: Consequences of non-conformity to EMS

50. The creation of a responsibility infrastructure allows for the use of various strategies for gaining conformity to required standards of output or activity. One mechanism for penalizing non-conformity to the standard could be through the Certificate of Approval, which is a requirement of each facility and which lists requirements incumbent upon the municipality in which the public service is offered.

51. In many municipalities, the operator of the facility is not the municipality, but rather an organization contracted by the municipality.

Recommendation #17:

- **A condition of all Certificates of Approval must be that the operator of the facility be in conformity with the EMS standard**

Recommendation #18: Public transparency

52. OPSEU does not believe the chain of responsibility and accountability ends with the inspectorate. A skilled and professional public service is a critical and irreplaceable part of the responsibility infrastructure but cannot, in isolation, speak for the expectations of the consumers of the water. For this reason, we believe that an informed public is a necessary force in the responsibility infrastructure.

53. There are numerous ways in which an informed public can be developed. Clearly, all information regarding EMS audits, regular water testing and continuous monitoring must be available as an absolute right to information, regardless of commercial application. Additionally, contracting information, contractor evaluations and other documents that are currently being treated as confidential commercial documents must be made public. We believe such transparency measures belong in a new Safe Drinking Water Act.

54. While the Safe Drinking Water Act, as proposed by other parties with standing at the Inquiry, creates additional and welcome accountability measures

by establishing the “right” to safe drinking water, OPSEU does not believe that such accountability measures are sufficient.

55. The Crown must actively listen to the ideas and opinions of the public and be available to hear, interpret and respond to public concerns and changing expectations, a job that is essential to the proper functioning of a skilled and professional public service. Such measures are necessary to adjust and respond to concerns and can take a range of valid forms. However, OPSEU believes that actions by the MOE must include the promotion of relations with the municipalities, their elected leaders and the general public.

56. Municipalities must also be actively engaged in the listening process, providing forums for the discussion of waterworks outcomes and practices that include elected representatives, specialized appointees (if existent) and the general public.

Recommendation #18

- **A Safe Drinking Water Act should contain significant transparency measures and should include an obligation on behalf of the Crown and municipalities holding a Certificate of Approval to actively consult municipal employees, municipal politicians and the general population.**

Recommendation #19: Full cost recovery

57. Full recovery of the costs of operation and capital development of a water system is an aspect of maintaining its long-term integrity.

58. The immediate mandating of full cost recovery with a concomitant removal of all water system subsidies would result in massive increases in water costs in some communities.

59. The cost of delivering water is related to system size and geographic features. Higher water bills in exurban communities may support the laudable goal of discouraging sprawl. However for isolated communities higher water costs serves no such goal.

60. Higher water bills may viewed as an appropriate means of initiating water conservation. However, again OPSEU recommends caution. Higher bills that initiate conservation would be unfair and ineffective if borne only by the residents served by smaller systems.

61. The Crown must be mindful of the possibility that a dramatic increase in water costs might encourage the development of water sources with higher contamination risks.

Recommendation #19

- **Any full cost recovery can only be required within a policy framework that recognizes appropriate ranges for water costs and delivers financial support to ensure such ranges are maintained.**

Recommendation #20: subsidy accountability mechanisms

62. OPSEU has provided extensive argumentation regarding the appropriate role of OCWA in ensuring that subsidies are allocated and expended appropriately.¹¹

63. OPSEU believes that because of the greater ability to screen appropriateness of capital allocations, as compared to ongoing operational subsidies, only capital grants be offered to municipalities.

Recommendation #20

- **Capital subsidies, where required to achieve full cost recovery, should be provided based on projected costs reviewed by OCWA's Project Development Group and approved by the MOE Water Branch.**

Recommendation #21: Governance of OCWA

64. Currently, OCWA is governed as a closely-held enterprise of the government. The Agency's Board of Director entirely consists of public service managers. Meetings and minutes of the Board are not publicized. In order to become a true public water undertaking, OCWA's Board must be replaced and Board meetings must be completely transparent.

Recommendation #21:

- **The current OCWA Board of Directors should be replaced with a multi-skill, multi-stakeholder board with public meetings and public minutes.**

¹¹ OPSEU, *Op Cit.*, p. 29.

Recommendation #22: OCWA's relationship to the Crown

65. In order to ensure that OCWA is working toward government objectives, the Board of Directors of OCWA has been drawn exclusively from civil service managers directly reporting to Ministers. However this is not as it should be for an enterprise agency. A more complete MOU for the Agency needs to set out the financial, health and environmental objectives to be met by the Agency. The Board of Directors must have some autonomy to determine their route to achieve these goals. This relationship becomes assured by the adoption of complete transparency.

Recommendation #22:

- **The relationship between the Crown, the Board and the managers of OCWA needs to be clearly spelt out through a renewed Memorandum of Understanding.**

Recommendation #23: A higher level of transparency for OCWA

66. Because of OCWA's Outpost5 system, OCWA can already display water quality measures to remote locations in real time. This capability needs to be expanded to provide such information to the public. In order to set this public objective for the public water company, the MOE should insert such a requirement into its MOU with the Agency.

Recommendation #23:

- **The new MOU between OCWA and MOE should require the Agency to publish water quality information to the public domain in real time.**

Recommendation #24: Access to OCWA data for MOE scientific purposes

67. Since only OCWA operates a large number of facilities in various conditions, only OCWA is able to report emerging threats to the water supply in a standard form and from a representative selection of facilities. The Agency should be required to forward this internal information to the MOE Water Branch in order to help MOE scientists prepare and identify safety challenges.

Recommendation #24:

- **Through the MOU, OCWA should be required to provide aggregate data on a regular basis to the MOE Water Branch to assist in the identification of emerging threats.**

Recommendation #25: Employee recognition at OCWA

68. There is a growing awareness of the importance of the industry and the work of employees in it. This change is due to increased public scrutiny and increased responsibilities placed upon industry workers by the public, Crown and OCWA. The working conditions and compensation of employees at OCWA should be adjusted appropriately

Recommendation #25:

- **The working conditions and compensation of OCWA employees be adjusted to recognize the change of responsibilities and expectations.**

Recommendation #26: Employee involvement at OCWA

69. OCWA has developed Standard Operating Procedures for each facility to help guide the actions of operating staff. However, these SOPs have not been developed with sufficient use of the experience and knowledge of front line plant operators.

Recommendation #26:

- **OCWA's EMS must recognize that the active involvement of front line operators in the development of SOPs is a best practice.**

Recommendation #27: Serving municipalities

70. Many municipalities need on-going access to advice and information to support their waterworks programs through a "circuit rider" with the ability to advise municipal operators. For liability reasons, some private contractors may not be able to offer such advice. For other reasons, municipal waterworks employees would prefer a source of information removed from the MOE's inspection capability.

71. OCWA possesses the expertise, proximity, and confidentiality to deliver advice to municipal operations upon request.

Recommendation #27:

- **OCWA's MOU should include the mandate and financial support to enable the delivery of advisory support to non-client municipal operations.**

Recommendation #28: Supporting quality water in isolated First Nations communities

72. The quality of water in First Nations communities has been raised to the Commission. Such communities are often too small to be of financial interest to private companies and, due to isolation, are difficult to partner with adjacent municipalities.

73. OCWA supports a superior training program that could help develop the capacity of isolated First Nations communities to deliver quality drinking water.

Recommendation #28:

- **OCWA's MOU should include a mandate to serve and support the development of the capacity to produce quality drinking water for isolated First Nations communities.**

Recommendation #29: Public accountability of industry

74. Public Water Undertakings (PWUs) and public institutions in general hold different characteristics than private institutions due to the nature of public entities. Some of these properties are legal and structural while other relate to the culture that tends to take hold in organizations circumscribed by such legal and structural relations.

75. The production of safe drinking water is supported by providers that adopt a stance of risk avoidance, transparency, public accountability, independence and the open exchange of information. For various reasons explored below, PWUs have a stronger capacity to successfully adopt these characteristics:

- a) Risk avoidance: Expert Panel discussion identified that PWU's tend to operate on the basis of risk aversion while private sector organizations tend to adopt a culture of risk management. In the case of the production of drinking water, OPSEU believes that risk aversion is a preferable stance.
- b) Transparency: PWUs can operate at a higher level of transparency than private companies because of the elimination of commercial interests. In private companies, there is an innate requirement for secrecy. Some jurisdictions have been successful at making all PWU documents available to the public.¹² Indeed had the offending water supplier in Walkerton not been a public company but a private institution, it is likely litigation would be currently on-going, rather than a public inquiry.

¹² PSIRU, *Water in Public Hands*, p. 19

- c) Public accountability: PWU's and PUPs offer accountability in a greater degree and through more avenues than is possible through contracts with private firms. All public enterprises offer political and administrative accountability, a form of accountability inaccessible to private firms. Private firms can offer legal and marketplace accountability. However, this ability is not exclusive to private enterprises and, in fact, are accountability measures that can be strengthened when employed through a public enterprise. All private firms are susceptible to bankruptcy by their very nature. Actual experiences with water contract companies in Ontario indicate that this risk is not simply theoretical.¹³ Bankruptcy removes all market and contractual accountability mechanisms. With a PWU there is no risk of bankruptcy, and therefore entering into a PUP with an organization like OCWA strengthens contract and marketplace accountability while maintaining public and political accountability.
- d) Independence: PWU's are 'pure-play' environmental organizations, not construction or engineering companies seeking to secure business through a water enterprise 'front,' a concern that has been raised to the government by its own consultants.¹⁴
- e) Asymmetry of information: The most at-risk water treatment facilities are among the smallest tier of operations that will have the greatest difficulty in supporting a proper bidding process. Such an asymmetry of information and power raises the possibility of abuse by the contractor. Where a private contractor is already in place, the monopoly on industry knowledge is further intensified, making it even more difficult for municipal politicians to evaluate proposals.

Recommendation #29

- **Operation by a Public Water Undertaking (PWU) should be a requirement of the Certificate of Approval.**
- **If a municipality can choose to have an external organization take responsibility for drinking water quality, it is crucial that a "public-public partnership" ("PUP") be available.**

Recommendation #30: Offsetting the risks of private involvement

76. Risks associated with the introduction of private organizations into the responsibility framework are due to two major factors: the existence of a profit motive and the barrier formed by the commercial contract.

¹³ The near-bankruptcy of Philips and the implications for continuing operations for water consumers in Hamilton being the case in point.

¹⁴ Privatization Review of the Ontario Clean Water Agency, 1998, p. 36

77. The introduction of a profit motive adds risk to the waterworks industry at various stages. At the stage of contract tendering, the potential for municipal corruption does arise.¹⁵ During the term of the contract, issues regarding the carriage of various costs and under-maintenance arise as do the possibility of further fracturing of responsibility by additional sub-contracting. Transparency of contractual relationships¹⁶, and access to performance reports¹⁷ can be difficult to achieve. At the end of the contract, when market accountability should support quality management, the possibility of a non-competitive bidding situation exists. The existence of a profit motive also implies its opposite – the possibility of bankruptcy with the collapse of contractual and marketplace accountability.

78. In order to offset the risks introduced by a profit motive, various mechanisms can be introduced. Codes of conduct and disclosure requirements can be imposed. However, there are no effective means of offsetting concerns regarding bankruptcy and cost pass-throughs, and under-investment in maintenance.

79. One way to reduce the risk of any introduction of private organizations is to ensure there is a public provider available as a choice with which comparisons can be made. A Crown agency such as OCWA should be fully operational and capable of submitting marketplace-based proposals and assuming operations in order to guarantee contract competition.

Recommendation #30:

- **The Crown must continue to operate a large-scale public water company.**

2) LABORATORIES

Recommendation #31: Prescribed water quality testing should be done by the public sector.

80. Many commentators have praised public laboratories as being among the best laboratories anywhere. (Dr. Bern Schnyder, Inquiry Testimony, May 7, 2001, pp. 145-147) Dr. Schnyder testified that if he had the resources that he would have preferred to keep routine water testing in the public domain. (Inquiry Testimony, pp. 167-170) There was no evidence at the Inquiry that indicated that private laboratories were better at protecting public health than public laboratories. Indeed, the question was at most one of cost not competence.

¹⁵ Public Service International, www.world-psi.org

¹⁶ Minutes, Implications of Public and Private Operation for the Safety of Drinking Water, p. 16

¹⁷ CUPE, An Analysis of a Public-Private Partnership: The Hamilton-Wentworth-Philips Utilities Corporation PPP, p. 15

Concerning cost, no cost-benefit analysis was ever done, and alternatives such as increasing user fees were not given serious consideration.

81. Private sector laboratory quality is much more variant than public sector lab quality. A number of witnesses expressed concerns regarding the quality of the analytical data generated by private sector laboratories (see Paragraph 810, and paragraphs 819 to 824 of the Coroner's closing submissions). In fact, this concern was raised by MOE staff at the time of the privatization decision. (Dr. Schnyder, p. 42-3, p. 50) Even private sector laboratories themselves expressed concerns about quality assurance. At Inquiry Exhibit 310A Tab 9, representatives of IAETL noted:

IATEL representatives further believe that some private sector labs are not maintaining adequate quality control assurance procedures because of cost cutting pressures to remain profitable.

In OPSEU's submission, public labs are of more reliable quality and at least as cost effective.

82. In addition, there are a series of structural advantages to a public lab system.

83. Having a multiplicity of laboratories doing prescribed water quality testing in the province leads to data comparability problems. While the evidence before the Inquiry indicates that there may have been problems between the MOE and the MOH with respect to data comparability, these problems are only magnified when one adds the additional 65 or so separately administered private laboratories carrying out drinking water analysis. (The Jane Pagel, Laboratory Overview paper indicates that there are a total of 79 Ontario-based laboratories carrying out drinking water analysis including the public laboratories). While there is now a requirement for all laboratories to submit results to the MOE, there is no requirement that the laboratories use identical testing methodologies to ensure that data quality objectives are comparable between laboratories.

84. Given the considerable difficulties that MOE and MOH have had in setting up a water quality test results database, the additional complication of having to account for the different testing and reporting methods of some 65 other laboratories does not bode well.

85. Public laboratories provide a valuable resource for front line staff in the MOE (Dr. Schnyder, pp. 204-207). In a situation where public laboratories are responsible for water testing, field staff have access to expert laboratory staff to assist them in interpreting results or anomalies. Private laboratories are unlikely to provide such a service given that they are paid only to provide test results.

86. Testing by public laboratories also provides valuable technical expertise to support the public reference and research function further detailed below. The evidence indicates that the public laboratories (either those run by MOE or by MOH) were leaders in terms of testing methodologies and standards development. This is partly because they also did prescribed water quality testing. Being in the business of prescribed water quality testing enriches more advanced work. Practical experience is gathered. Proposed methodologies can be easily tested in the “real world”. Worrisome anomalies discovered in testing can be explored. “Routine” testing complements methodology and standards leadership.

87. Finally and perhaps most importantly, a public laboratory is a critical part of the entire public health protection system, and it approaches its prescribed water quality testing work in that light. While participants in the Inquiry have often referred to water testing as “routine”, it is incredibly complex and unpredictably variant. Testing involves both sample analysis and the interpretation of the results. Critical to the testing process is knowledge of the sample, how, where and by whom was it taken and an understanding of the water treatment and protection system as a whole. Knowledge of that broader context allows the extraction of all the implications of “routine” tests.

88. It is worth recalling that the Bruce-Grey Owen Sound Health Unit had access to an MOH laboratory in the middle of the night to analyze the water samples collected over the long weekend in Walkerton. Subsequent testing of Walkerton’s water was also done by public laboratories.

89. It is respectfully submitted that public laboratories are uniquely positioned to provide prescribed water quality testing in the Province of Ontario. There was no evidence of quality control, reporting, notification or competence problems with public laboratories prior to 1996. From a laboratory perspective, the problems that led to Walkerton started with the decision to privatize the prescribed water quality testing function. As is set out further below, the problems surrounding the accreditation and auditing of private laboratories simply do not arise where prescribed water quality testing is done by the public sector. Moving from public to private only reduces the protection of public health for no tangible benefit. The evidence presented at the Inquiry demonstrates that no public health cost benefit analysis was done vis a vis the privatization of routine water testing. Moreover, there was no analysis done concerning whether the privatization of “routine” water testing was of benefit to the taxpayers of the Province.

90. It is therefore respectfully submitted that the Inquiry recommend that prescribed water quality testing be done exclusively by the public sector (MOE, MOH or municipal laboratories).

Recommendation # 31:

- **That the Ministry of the Environment (MOE) or the Ministry of Health (MOH) be the exclusive provider of prescribed water quality testing services to those municipalities or waterworks which do not have their own in-house “routine” water testing capability.**

Recommendation #32: That the MOE reopen the regional laboratories closed due to budget cutbacks in 1996.

91. As with the decision to privatize prescribed water quality testing, there was no evidence suggesting a public health benefit resulting from the closure of the 3 Regional MOE laboratories (Kingston, London, and Thunder Bay) in 1996. Many people lost their jobs and the MOE lost considerable expertise and institutional memory across the Province. With respect to the Kingston laboratory, the MOE’s laboratory review concluded:

In terms of areas of excellence as identified by lab and customers, that they have well developed customer relationships and communications, knowledge and information of customer needs and plant performance history. (Exhibit 310A, Tab 20, Appendix p. 53)

With respect to the London laboratory, the review concluded:

Strong microbiological section, which has expert knowledge on agricultural environmental impacts. (p. 56)

92. Regional Government laboratories, such as the former laboratory in Kingston, had considerable historical knowledge and familiarity with: many different types of test results, problem situations, different type of sampling locations, water treatment plant staff and particular watershed problems that existed at facilities and sampling locations in their regions.

93. One of the primary functions of the Kingston Laboratory was to “routinely” test the following types of environmental samples: all types of raw water, from lakes, rivers and groundwater, treated and drinking water supplies, and raw and treated sewage effluent. The testing of water and wastewater involves a host of duties for laboratory staff that includes: media preparation, cleanup, sample reception, reading test results, confirming the identity of bacterial species, data tabulation, sample record keeping, input of data for computer trend analysis and the reporting of test results to MOE and Public Health Unit staff. The Kingston MOE microbiologist visited and inspected nearly all of the water and sewage

treatment facilities that used the MOE laboratory in order to become familiar with their unique operating conditions.

94. In addition to reporting individual test results, the Kingston laboratory reported the trends in drinking water quality from municipal water treatment plants in the Southeast region, on a monthly basis for each year. Trend analysis was done on both treated and raw water from these municipalities. OPSEU will file Annual Reports which compile municipal drinking water and raw water samples.

95. The location of regional labs also supported prompt testing of important samples. For example, it can be very difficult to arrange shipment of microbiological samples from Northern Ontario to the only remaining lab within the 48 hour holding times. Regional availability of testing increased inspection and enforcement effectiveness.

96. Another important function for a regional laboratory is to act as a resource centre for Medical Officers of Health, private laboratories, consultants, Universities and Colleges, lawyers, judges and other parts of government involved in the protection of the environment.

97. The technologists, technicians and scientists employed by the Regional Laboratories had a considerable knowledge base and expertise in water test result analysis and interpretation. Much of this experience was gained on-the-job. The staff at the Regional laboratories became a “regional” (and beyond) resource for those concerned about water quality and other environmental issues.

98. An extensive body of knowledge was developed and communicated, both in formal quarterly meetings and informal conversation between the central MOE and MOH environmental microbiology laboratories and the three regional labs. Government environmental laboratories, because of their network with water and sewage treatment operators and the expertise of their staff were in an excellent position to develop new, imported test methods and to share this information with other public and private laboratories. It is unlikely that this spirit of collaboration and method development will flourish among competitive private environmental laboratories.

99. The closure of the three regional laboratories meant that everyone involved in drinking water issues lost a valuable resource. Front line MOE staff advise that the closure of the regional labs was a huge loss (OPSEU, Renewing the Ministry of the Environment, paras. 97):

A microbiologist with one of the former regional labs put it this way:

The laboratory system is the heart of the MOE. And what the government did is cut out the heart of the Ministry of the

Environment...The government labs operated at an arms length to the clients. The lab was kind of the hub. As samples came in, the lab communicated with a huge number of people. You needed that communication. You just can't send samples to the lab. I got asked over and over what do the lab results mean? You have to place the lab samples in context of the problem...

A Medical Officer of Health commented at the relevant Expert Meeting that the regional lab expertise was a crucial resource for solving regional public health problems (See Expert Meeting Notes, May 22-24, Point 2.3.1).

OMA adds that the MOE labs were an essential part of the system of coordination and advice-giving, as Health's labs and the MOE labs could talk over technical issues proactively. When the MOE labs were closed, this left a gap since neither the Ministry of Health nor MOE alone has all of the necessary expertise (hydrologists, toxicologists, etc) to deal with the complex technical issues. From the private labs we get a technician informing us that a test was positive, not expertise on the implications or knowledge of the community. We desperately need that resource to be available.

When the regional labs closed, those regionally concerned with drinking water lost the experts who were familiar with their systems, their staff and their particular problems. The expertise and institutional memory was lost. Private sector laboratories cannot and will not replicate this expertise. There is no guarantee that a particular laboratory will win the next contract or even be in the water testing business in the future (for example, GAP Laboratories got out of the business of "routine" water testing prior to the Walkerton outbreak). The private sector is not designed to provide public services. Regional labs are critical parts of the public health system which can interact on an ongoing basis with other parts of that system to protect public health and not to increase profits.

Recommendation #32:

- **That the MOE reopen the regional laboratories closed due to budget cutbacks in 1996.**

Recommendation #33: That the central MOE laboratory be adequately resourced and staffed to act as a research or reference laboratory with respect to water issues.

100. There appeared to be general agreement at the Part II Expert Meeting that the research or reference function should remain with the MOE Central Laboratory. Research was defined as “methods development” and “hypothesis driven”, supporting government policy and involving the development and evaluation of existing and evolving technologies. The reference function can be defined as acting as a scientific or technical resource. (A more detailed list of research and reference functions can be found at Jane Pagel, Laboratory Overview, p. 14).

101. In his presentation to the Inquiry in Peterborough, Mr. Russ Calow of Lakefield Research agreed that the research and reference function should be undertaken by the MOE Laboratory. (Inquiry Transcript, April 10, 2001, pp.22-25)

102. A Research and reference laboratory is well-positioned to perform the auditing and inspection function with respect to other laboratories in the Province (see Recommendation #35). Indeed, such a laboratory is the only real candidate for the job of ensuring private laboratories are using the best methods and standards.

103. Being on the cutting edge of scientific and technical developments in water science requires resources. Unfortunately, the MOE Laboratory Services Branch has been subjected to budget constraints which have caused the loss of experienced scientific and technical staff. Budget constraints have also hampered the ability of the MOE Laboratory to replace outdated equipment and to make necessary new acquisitions.

104. In the *Laboratory Overview* paper prepared for the Walkerton Inquiry, Jane Pagel stated:

On the issue of staffing, at approximately 115 staff the MOE has a relatively large laboratory with a number of pockets of specialised expertise. Experts interviewed from private laboratories highly praised their helpfulness and competence. However, with respect to its scientific and technical expertise, several years of downsizing and more attractive salaries in other sectors such as the pharmaceutical industry have made it **difficult to attract and retain research scientists and technicians**. Also, **support for longer term research and trend analysis, publishing in peer-reviewed technical literature and presentations at both national and international conferences** are even more essential if the MOE is to be truly effective as an internationally recognised reference centre for environmental testing. (p. 23—emphasis in original)

105. The closure of the Regional laboratories in 1996 also resulted in the loss of scientific and technical expertise. One result of the downsizing and cutbacks is that the number of microbiologists employed by MOE laboratories has been reduced from 12 to 1 (Notes on the Expert Meeting, May 31st-June 1st, p. 5).

106. In OPSEU, *Renewing the Ministry of the Environment*, a Ministry employee commented on the state of the laboratory equipment:

...equipment [at the provincial lab] is 20-25 years old-which is 10 years past its prime. The capital budget has been cut by 90% since 1995. Equipment funding is tied to projects or comes out of the year-end surplus, which means that there is no replacement planning. When old equipment breaks down, staff spends time fixing it. This also affects data quality (less ability to analyze new compounds, meet detection limits). (p. 29)

Broken equipment has also been used as a rationale for privatising tests that would have otherwise been done by the MOE Central Laboratory. The logic appears to be that since the equipment is broken and there is no money to repair or replace the equipment, it is better to privatise the particular test.

107. In addition to aging equipment, OPSEU has identified the issue of aging staff. The average age of MOE staff is 47. People with needed expertise are retiring and they are not being replaced. (OPSEU, *Renewing the Ministry of the Environment*, p. 24)

108. A hallmark of a world class reference laboratory is an experienced, well-trained, expert staff. Scientific and technical staff must be given the time and the resources to keep abreast of current developments. The Inquiry has heard evidence that scientific and technical training fell dramatically during the 1990s. (Testimony of Brian Gildner, April 26, 2001, p. 207 and Exhibit 307, Tab 12 and Tab 17).

109. As pointed out in OPSEU, *Renewing the Ministry of the Environment*, para. 70, MOE Laboratory staff are already overworked. There are not enough staff to carry out the demands of internal MOE programs. Frequently, MOE staff do not have the time to assist other branches of government, let alone the public. There is a need to add to the staff complement to ensure that the MOE laboratory can carry out the recommended research, reference and auditing functions.

110. Maintaining and improving the MOE Central Laboratory is a critical piece in the water protection puzzle. World class public services cost money. OPSEU submits that there is a demonstrated need to maintain and improve the MOE Laboratory as a premier research and reference facility by bolstering its scientific and technical staff resources and equipment.

Recommendation #33:

- **That the central MOE laboratory be adequately resourced and staffed to act as a research or reference laboratory with respect to water testing issues.**

Recommendation #34: An MOE and MOH water testing co-ordinating committee to deal with water testing and other issues.

111. An MOE/MOH committee should determine the relative water testing expertise and technical capacities of each Ministry, establish a water test result database with full public access and ensure appropriate standards and method development between the Ministries.

112. The Ministries have been unsuccessful in coordinating their activities in the past. As early as 1991, the MOE and MOH agreed to cooperate on issues relating to quality proficiency testing and a common database. Unfortunately, this work was not completed due to a lack of resources. (Testimony of Dr. Bern Schnyder, May 7, 2001, pp. 24-27, Exhibit 310A, Tab 5). Pagel, in *Laboratory Overview*, comments on the relationship between MOH and MOE and jurisdictional overlap. She states:

The major issues cited with respect to the role to the MOH laboratories were **jurisdictional overlap with MOE in drinking water testing, reporting problems and lack of integrated data, and poor relations between the two ministries in the area of water testing.** (emphasis in original) (p. 16)

Ms. Pagel also notes that:

The relationship between the MOE and MOH Laboratories has often been strained over the last ten or more years, particularly with respect to drinking water analyses. During the Walkerton crisis, the associated high level of tension further exacerbated this situation. Jurisdictional overlaps, controversy over different analytical methods and the use **of a different accreditation program for MOH laboratories** strained the fragile relationship. (emphasis in original, pp. 23-4)

In his presentation to the Inquiry in Peterborough, Russ Calow stated:

Unfortunately, the MOE and MOH are not working well together. There appears to be turf fights and jurisdictional confusion....The other problem we see is that the MOH and MOE do not seem to be able to easily share data. I think that's probably as a result of the lack of a sophisticated data-handling system in the health labs and, until recently, the lack of a central database at the MOE. (Russ Calow, April 10, 2001, p. 25)

113. While the database concerns may be somewhat alleviated by the creation of the MOE database, there are still problems surrounding who does what between the two Ministries. It is likely difficult for the Inquiry to make detailed recommendations as to which tests ought to be done by which Ministry. OPSEU respectfully suggests that the Inquiry ought to recommend the creation of a properly resourced coordinating committee with access to senior decision makers who can resolve disputes between the Ministries.

114. OPSEU concurs with Pagel's recommendations with respect to better MOE-MOH coordination (Pagel, p. 25)

Recommendation #34:

- **That the MOE and MOH set up a co-ordinating committee to determine the relative roles of each Ministry with respect to water testing and other water-related issues.**
- **That this co-ordinating committee determine the relative levels of expertise and technical capacities between the Ministries, establish a joint water test result data base with full public access, and ensure appropriate standards development.**
- **That the coordinating committee promulgate a clear statement of responsibilities and jurisdiction.**

Recommendation #35: If there is private testing, then it must be tightly regulated.

115. OPSEU submits that the value of public laboratories has been demonstrated time and time again throughout the Inquiry. It will be difficult, if not impossible, to regulate private labs so as to provide the same level and depth of service.

116. Moreover, the need to regulate notification of appropriate parties about adverse results does not arise if prescribed water quality testing is done by the public sector. Public sector labs can be relied on to communicate with other

public sector agencies on a regular basis and without compulsion. And, in the course of so doing, invaluable informal networks are developed.

117. Accreditation is only a partial solution. If quality control slips, it can take a number of months before a private laboratory loses its accreditation to do a particular test. Furthermore, there is no clear notification mechanism in place so that the laboratory customers, the public or the appropriate regulatory authorities are aware when a particular laboratory loses its accreditation for a particular test. (Richard Wilson, Inquiry Testimony, May 8, 2001, p. 213-220). In addition, CAEAL only audits laboratories every two years although they have the ability to do a surprise audit. (Richard Wilson, p.224). True surprise audits are rare and CAEAL tends to announce their audits in advance. Finally, accreditation only examines the test methodology, technical standards and equipment etc. It does not examine the individual laboratory's knowledge, understanding, or compliance with legislative or regulatory requirements. (Richard Wilson, p. 233) Accreditation is to the ISO standard and not to the requirements of Regulation 459/00 or the Drinking Water Standards. It is also important to note that CAEAL is a voluntary organization and may not always act in the public interest. CAEAL should be required to advise the MOE which laboratories fail sampling tests.

118. It is respectfully submitted that the accreditation process is a necessary step to ensuring quality control in any private laboratories but it is not enough. The MOE must be empowered to audit and inspect private laboratories to ensure there is compliance with the Drinking Water Standards and the Drinking Water Regulation. In other words, the MOE should have the same abilities and powers to inspect a private laboratory that they have with respect to the inspection of waterworks generally.

119. It should go without saying that in order to perform this audit function, the MOE must be given the resources and trained staff to audit effectively. OPSEU understands that many MOE staff are being loaned to CAEAL as auditors or accreditors. OPSEU respectfully submits that these staff could be employed as laboratory auditors. The Laboratory Services Branch is not presently resourced to act as a laboratory auditor or inspector. There is a need to ensure that if existing staff are used as auditors or inspectors, the positions currently occupied by these staff are filled with new employees.

120. In addition to the audit function, the MOE should be setting technical standards and protocols with respect to any private lab water testing. The MOE laboratories should also have the ability to double check water results from private laboratories to ensure accuracy. This is a function that the MOE laboratory is called on to perform on an ongoing basis, often in highly contentious circumstances.

121. Finally, private laboratories should be required to report results with transparency and in a prescribed format. This would ensure that the results can be incorporated into a database with less difficulty.

122. OPSEU submits that these requirements be incorporated into the Drinking Water Regulation or other appropriate legislation to ensure compliance.

123. OPSEU also submits that municipal or water treatment plant laboratories should be treated as private laboratories for the purposes of this recommendation.

Recommendation #35:

- **If private laboratories are permitted to engage in prescribed water quality testing, that these private laboratories must be:**
 - **Accredited by the Standards Council of Canada, and the Ontario Drinking Water Standards be included in the scope of accreditation;**
 - **Rigorously and frequently audited and inspected by the MOE in accordance with Regulation 459/00;**
 - **meet standards and testing protocols set by the MOE; and**
 - **report results with transparency and in a prescribed format;**
- **That the MOE require CAEAL to communicate to MOE which laboratories fail PE (Performance Evaluation) samples.**
- **That the above requirements be incorporated into the drinking water standards regulation or other appropriate legislation.**
- **That the MOE must be properly resourced to carry out the recommended audit and inspection function**

Recommendation #36: Any water testing fees not be a barrier to compliance

124. OPSEU submits that the evidence from the Inquiry demonstrates that the price of “routine” water testing has an effect on compliance. See for example, the discussion of the MOE Panel with respect to small communal systems. (MOE Panel, May 9, 2001, pp. 92-98). OPSEU takes the position that the MOE or MOH should be providing “routine” water testing as a free service to the public as was the case prior to 1993. This would remove any disincentive to sample and test. In particular, free sampling should be made available to smaller municipal systems. However, if user fees are established by MOE or MOH or if the private laboratories continue to provide prescribed water quality testing services, then the MOE should monitor the cost of testing and sampling to ensure it does not

create a disincentive to water works owners to comply with testing and sampling requirements.

Recommendation #36:

- **That, with respect to the pricing of prescribed water quality testing, the government ensure that any user fee applied to government testing services or rate charged by private sector laboratories does not create a disincentive to comply with testing or sampling protocols and does not interfere with the protection of public health.**