

THE WALKERTON INQUIRY

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OUTLINE OF POTENTIAL ISSUES IN PART IB

Please note that this outline may change as Commission counsel proceed with their document review and other preparation for Part IB.

Section I

Certificates of Approval

1. Framework: history and nature of Certificate of Approval ("C of A") and Permit to Take Water processes (*Ontario Water Resources Act*, R.S.O. 1990, c.O.40)
2. Policy and practice/ Changes in policy and practice: 1975-2000
 - (a) Types of conditions attached to C of As
 - (b) Summaries of C of As and conditions in Ontario
 - (c) Changes to legislation, policies and procedures
 - (d) Water works design guidelines
3. Granting of C of As
 - (a) Imposition of conditions
 - (b) Factors considered for new sources of water
 - (c) Consideration of land uses and buffer zones
4. Tracking and updating of C of As
 - (a) Provincial responses to internal and external comment
5. Use and dissemination of C of A information to local MOE staff, owner/ operator of water works, and local Medical Officer of Health, and the public

Section II

Water Quality Standards and Testing

1. Roles of MOE and Ministry of Health & Long Term Care (MOHLTC) laboratories: pre-1996
 - (a) Funding, including shift to charging municipalities for testing services in 1994, and basis for such charges
 - (b) Testing for municipal communal water systems, including reporting of both satisfactory and adverse results
 - (c) Communication with local MOE offices and local Medical Officers of Health
2. Drinking water quality standards
 - (a) Ontario Drinking Water Objectives (“ODWOs”)
 - (b) Guidelines versus regulation
 - (c) Promulgation and revisions
 - (d) Roles of Ontario Drinking Water Co-ordinating Committee (“DWCC”), and federal/ provincial subcommittee on drinking water, re: water quality standards
 - (e) Sampling and analysis requirements, protocols and procedures
 - (f) Reporting and notification procedures
3. Privatization of government laboratory services
 - (a) Historical roles of public and private laboratories in Ontario re: drinking water
 - (b) Cessation of routine municipal bacteriological testing and purpose of privatization
 - (c) Consideration of relevant issues, including:
 - (i) Capacity and capability of private laboratories
 - (ii) Certification and accreditation requirements
 - (iii) Communication to municipalities
 - (iv) Communication to local Medical Officers of Health and local MOE Environmental Officers, including guidance to client municipalities on choice of testing facilities
 - (v) Communication to the public
 - (vi) Budgetary impact on municipalities, particularly small and rural municipalities
 - (vii) Budgetary impact on MOE and MOHLTC
 - (d) Provincial responses to internal and external comment

4. Monitoring and assessment of Privatization Initiative: post-1996
 - (a) Responses from MOE and MOHLTC (then MOH) laboratories, local MOE offices and local Medical Officers of Health, including compliance, reporting and quality assurance concerns
 - (b) Responses from affected groups (e.g., municipalities, public health inspectors, private laboratories)
 - (c) Monitoring the accuracy and effectiveness of private laboratories
 - (d) Post-1996 reporting and notification procedures

Section III

Role of MOE in Standards, Monitoring, Compliance and Enforcement Re: Drinking Water

1. Overview: Role of MOE in relation to MOHLTC, municipal owner/ operator, and local Medical Officers of Health and Health Units, Ontario Clean Water Agency (“OCWA”), and Federal government
2. Role of Ontario Drinking Water Co-ordinating Committee (DWCC)
 - (a) ODWOs and Bulletin 65-W-4 entitled “Chlorination of Potable Water Supplies” (“Chlorination Bulletin”)
 - (b) Enforcement and implementation of ODWOs and Chlorination Bulletin.
 - (c) Minimum recommended sampling requirements program
3. Training standards
 - (a) Local operator training, certification, continuing education and monitoring, and grandparenting
 - (b) Water Works and Sewage Works, O.Reg. 435/93 re: training standards for local operators
 - (c) MOE manager and Environmental Officer training and continuing education
4. Monitoring of water works
 - (a) Routine operational monitoring and reporting
 - i) nature and frequency of testing
 - ii) reporting and communication of data
 - iii) record keeping
 - (b) MOE inspections
 - i) Inspection methodology

- ii) Dedicated inspections and follow-up
- iii) Utilization of unannounced site visits
- iv) Inspections under the Sewage and Water Inspection Program (SWIP)
- v) Government inspections after May 2000
- vi) Provincial responses to internal and external comment
- vii) Reporting, communication and record-keeping

(c) Drinking Water Surveillance Program (DWSP)

(d) Roles and responsibilities of MOE supervisors, district managers, regional directors, other directors (e.g. Water Resources Branch), and abatement officers

(e) Annual reporting by the operator to the MOE, and follow-up

5. MOE operational procedures

- (a) Delivery strategies and program prioritization
- (b) Work assignment and degree of specialization
- (c) Staff complement, vacancies and overtime opportunities
- (d) Record-keeping and institutional memory
- (e) Transfer of files and review of new files
- (f) Monitoring between inspections
- (g) Availability of expertise for operators and MOE staff
- (h) Consolidation and communication of policy
- (i) Relationship with local Medical Officer of Health
- (j) MOE relationship with MOHLTC and federal Departments of Health and Environment
- (k) Role of SAC

6. Compliance and enforcement

- (a) Historical overview of compliance policies
- (b) Responses to specific non-conformance and non-compliance
- (c) Voluntary versus mandatory abatement strategies
- (d) Use of Director's Orders

7. Environmental Commissioner/ Provincial Auditor

- (a) Impact of Environmental Bill of Rights on MOE policy re: drinking water, including exemptions
- (b) Provincial response to the Environmental Commissioner's annual reports re: drinking water
- (c) Provincial response to Provincial Auditor's reports re: drinking water
- (d) Other

8. Changes to legal and operations regimes which may have affected Walkerton

(a) Regulatory Reform

- i) Bill 25, *Red Tape Reduction Act*
- ii) Bill 57, *Environmental Approvals Improvement Act*
- iii) Bill 107, *Water and Sewage Improvement Act*
- iv) Bill 152, *Services Improvement Act*
- v) Bill 146, *Farming and Food Production Protection Act*
- vi) Bill 20, *Planning Act*
- vii) Provincial Water Protection Fund

(b) Reductions in MOE budgets, personnel and resources

- i) Reductions in operating and capital budgets
- ii) Staff reductions generally
- iii) Reductions in staff responsible for water
- iv) Reductions in enforcement staff and prosecutions
- v) Deskilling and deprofessionalization
- vi) Recruitment, retention and morale of staff
- vii) Delivery Strategies and communal water
- viii) Issues raised or considered by DWCC

(c) Restructuring

- i) Withdrawal of funding for sewer and water infrastructure
- ii) Municipal amalgamations
- iii) Who Does What panel: Downloading of responsibilities to municipalities
- iv) Alternative Service Delivery initiatives
- v) Centralization of decision-making
- vi) Operational business changes to Ministry of Municipal Affairs & Housing (“MMAH”), MNR, MOHLTC, OMAFRA, and the MOE
- vii) Provincial responses to internal and external comment

Section IV

Municipal Operation of Water Works

1. Overview: Roles of municipality, PUC, MOE, MMAH, Ministry of Agriculture, Food and Rural Affairs (OMAFRA), and OCWA
2. Governance and funding of municipal water works
 - (a) Municipal government / PUC

- (i) Overall scheme under *Public Utilities Act*, R.S.O. 1990, c.P.52
 - (ii) Municipal finance and drinking water infrastructure
 - (iii) Minimum standards for municipal financing of infrastructure, maintenance and operations
 - (iv) Utility rate issues
 - (v) Relationship between the municipality and the PUC, including accountability of PUC to the municipality
- (b) Provincial grant and loan programs
- (c) Federal grant and loan programs
- 3. Provincial regulation of the owner/ operator
 - (a) Water Works and Sewage Works, O.Reg. 435/93
 - (b) Oversight of municipal pricing, financing and investment in infrastructure
 - (c) Statutory duties and responsibilities of PUC commissioners and other municipally-elected officials
 - (d) Orientation and continuing education of PUC commissioners
 - (e) Minimum operational requirements (i.e. infrastructure and technology, record-keeping, training and supervision of staff, contingency planning)
- 4. Changing municipal role and capacity re: operation of water works
 - (a) Effect of municipal amalgamation
 - (b) Effect of downloading of responsibilities, including transfer of septic inspections to municipalities (*Environmental Protection Act*, R.S.O. 1990, c.E.19)
 - (c) Effect of Bill 35, *Energy Competition Act*

Section V

Public Health

- 1. Overview: municipal communal drinking water
 - (a) Roles, duties and responsibilities of local Medical Officers of Health and Health Units
 - (b) Roles of MOHLTC and Chief Medical Officer of Health
 - (c) Roles of MOE, MMAH and OMAFRA re: safe drinking water
 - (d) Role of Health Canada re: safe drinking water in Ontario
 - (e) Knowledge about the health effects of *e. coli* in drinking water, and risk of pathogens generally, and timely communication of risks to operators, Health Units and local MOE inspectors

2. Changes in the public health system re: drinking water
 - (a) Impact of Who Does What process
 - (b) Reductions in budgets, personnel and resources
 - (c) Allocation of funding responsibilities between province and municipalities
 - (d) Cessation of routine municipal bacteriological testing by Government laboratories and coordination between MOE and MOHLTC
3. Adverse Drinking Water Results
 - (a) Roles of public health inspector and local Medical Officer of Health and MOE Regional staff
 - (b) Record keeping
 - (c) Reporting by MOE, including inspection reports, and responses by local Medical Officer of Health
 - (d) Adequacy of monitoring and enforcement (*Health Protection and Promotion Act*, R.S.O. 1990, c.H.7)
4. Emergency planning
 - (a) Adequacy of policies and procedures
 - (b) Communication of information
 - (c) Boil Water Advisories
 - (d) Role of SAC

Section VI

Agriculture - Land Use and Groundwater Protection

1. Overview: Roles of OMAFRA, MOE, MOHLTC, Medical Officers of Health, Ministry of Natural Resources (Conservation Authorities), the Ontario Municipal Board, Farm Practices Protection Board, and the MMAH
2. Provincial role in groundwater protection
 - (a) Provincial groundwater quality management framework, including well head protection
 - (b) Provincial responses to internal and external comment re: monitoring of groundwater quality
3. Municipal role in groundwater protection

4. Environmental standards for agricultural operation
 - (a) Applicable standards and exemptions
 - (b) Best management practices, normal farm practices, and the provincial and municipal role
 - (c) Municipal by-laws, agricultural uses and safe drinking water
 - (d) Manure management standards and procedures
 - (e) Agriculturally derived pathogens and drinking water
 - (f) Aquifer vulnerability assessment and risk-based decisions on land use
 - (g) *E. coli*, campylobacter, and other pathogens re: drinking water
 - (h) Other tools