

**AMO / MEA/OGRA SUBMISSION TO THE WALKERTON INQUIRY
IN PREPARATION FOR PUBLIC MEETING #1:
GUIDING PRINCIPLES, OVERALL GOVERNMENT ROLE, FIRST NATIONS**

SUMMARY OF RECOMMENDATIONS

Recommendation #1: A province-wide water source protection strategy is required, which outlines clear roles and responsibilities of various agencies in protecting and monitoring the quality of source water at each part of the water delivery system. (see attached chart). This strategy will need to be developed in consultation with the municipal partners and sufficiently resourced by the Province to ensure its long term viability.

Recommendation #2: An annual or bi-annual provincial report on source water protection should be published that provides a progress report on provincial and local monitoring and protection initiatives. A response to the annual or bi-annual report should be issued by the various agencies in relation to their respective responsibilities and the responses should address any findings of the progress report and actions proposed.

Recommendation #3: The Provincial Government should review its Drinking Water Protection Regulation with a view to assessing the merits of a risk- based approach, particularly for smaller and private systems.

Recommendation #4: The most cost effective approach to protecting drinking water quality is to adopt a preventative approach with a focus on preventing raw water quality degradation through a number of means, including but not limited to:

- Monitoring of raw water quality
- Planning and controlling activity around water courses
- Reducing and eliminating the use and discharge of toxic chemicals

Recommendation #5: A comprehensive review of the planning and enforcement mechanisms for planning and controlling activity around water courses is necessary to ensure that desirable outcomes can be achieved.

Recommendation #6: Water taking and bulk water removal can have a detrimental effect on a watershed's water quality and quantity. The Province must assess the impact of water taking projects on local water supplies. At present, there is no requirement that municipalities be consulted, and this must be remedied so that municipalities, and conservation authorities where they exist, are consulted before the MOE grants or renews any permits to take water.

Summary of AMO Recommendations (cont'd)

Recommendation #7: Given the vital role that water infrastructure plays in protecting public health and safety and in promoting economic development, both the Federal and Provincial Governments have a substantial interest in ensuring that municipalities have adequate, sustainable financing to replace, upgrade and expand their water and sewage infrastructure. As municipalities move towards full cost recovery, both the Federal and Provincial Governments should provide transitional financing support to municipalities, through infrastructure programs or through direct access to an existing tax source.

Recommendation #8: To ensure coordination, information sharing and issue tracking, a provincial/municipal table with political representation as well as staff policy/implementation representation from the health/safety and water operations side should be established. In addition to working on emerging and outstanding issues related to the delivery of safe drinking water, the table would also serve to focus the provincial and municipal effort to interpret and implement the Walkerton Inquiry Commissioner's recommendations.

AMO / MEA/OGRA SUBMISSION TO THE WALKERTON INQUIRY IN PREPARATION FOR PUBLIC MEETING #1:

The Association of Municipalities of Ontario, in association with the Municipal Engineers Association and the Ontario Good Roads Association, is pleased to submit its comments and recommendations to Inquiry Commissioner, Justice Dennis O'Connor, in preparation for the public hearing on 'Guiding Principles; Overall Government Role; and First Nations'.

1. Recommendations regarding guiding principles

a. Clear responsibilities and leadership

Clear responsibilities and leadership are vitally important in the delivery of safe drinking water.

As has been discussed in Part 1B of the Walkerton Inquiry, any ambiguity in the roles and responsibilities of the various agencies involved in the delivery of drinking water can lead to water protection, treating, monitoring and reporting gaps.

The new Drinking Water Protection Regulation has gone a long way in clarifying roles and responsibilities with regard to monitoring and reporting of water quality. There is now a clear protocol in place for water operators to report water quality exceedances both to Ministry of Environment Staff, public health officials, and the public.

The on-going consultations on the draft 'Protocol for the Issuance of a Boil Water or a Drinking Water Advisory' prepared by the Ministry of Health and Long-Term Care will serve to further clarify roles and responsibilities of Public health officials. AMO will be commenting directly on the protocol to the Ministry of Health and Long Term Care, and the Ministry of the Environment.

Apart from roles and responsibilities related to drinking water treatment, there remain areas that affect the quality of water where clarity over responsibilities, and certainly leadership, continue to require action. In particular, with the reduction in resources at the Provincial level, and dwindling resources for Conservation Authorities, source protection and watershed protection generally is not being addressed in a systematic and sustainable way. Reduced resources at the Provincial level and the Province's support for Conservation Authorities, means that municipalities are having to take on more and more of the Province's role for water quantity and quality in the absence of clear Provincial leadership. There are individual municipalities that make source protection a priority, when limited resources allow for it as the service needs compete in a very demanding municipal service delivery framework. The Province is only now establishing a groundwater monitoring network, but this is only covering parts of the Province.

Recommendation #1: A province-wide water source protection strategy is required, which outlines clear roles and responsibilities of various agencies in protecting and monitoring the quality of source water at each part of the water delivery system. **(see attached chart)**. This strategy will need to be developed in consultation with the municipal partners and sufficiently resourced by the Province to ensure its long term viability.

Recommendation #2: An annual or bi-annual provincial report on source water protection should be published that provides a progress report on provincial and local monitoring and protection initiatives. A response to the annual or bi-annual report should be issued by the various agencies as relates to their respective responsibilities and that the response address any findings of the progress report and actions proposed.

b. Risk management/Precautionary principle

A risk management approach is prudent when developing a regulatory and operational regime for diverse water systems that range from serving 2 households to 2 million.

The Drinking Water Protection Regulation has demonstrated that a 'one-size fits all' approach to regulating such different water systems can lead to unwanted outcomes. Water consumers on private communal systems are finding the new regulatory requirements prohibitively expensive. Owners are walking away from the systems, due to the cost and liability implications of the regulation.

Adopting a risk-management approach would allow for some flexibility in regulatory requirements. For example, given the high cost of testing requirements, a risk-based approach could serve to reduce the range of parameters and frequency of testing based on local circumstances. A risk-based approach should not compromise safety. Instead, it should assess the risks of local circumstances and determine the most efficient and appropriate means to monitor water quality in those circumstances.

Recommendation #3: The Provincial Government should review its Drinking Water Protection Regulation with a view to assessing the merits of a risk-based approach, particularly for smaller and private systems.

The Precautionary approach is not entirely applicable to a discussion of drinking water delivery. It is more appropriate to apply a preventative approach, which would require greater attention and resources to be devoted to preventing water quality degradation through source water protection.

Preventing water quality degradation can be carried out in a number of ways. Monitoring of raw water quality provides a vital early warning system. Planning and controlling human, agricultural and industrial activity near water courses is also essential. Reducing and moving towards eliminating the use of toxic chemicals is also intrinsic to a preventative approach to water quality protection.

Recommendation #4: The most cost effective approach to protecting drinking water quality is to adopt a preventative approach with a focus on preventing raw water quality degradation through a number of means, including but not limited to:

- Monitoring of raw water quality
- Planning and controlling activity around water courses
- Reducing and eliminating the use and discharge of toxic chemicals

Recommendation #5: A comprehensive review of the planning and enforcement mechanisms for planning and controlling activity around water courses is necessary to ensure that desirable outcomes can be achieved.

c. Multi-barrier approach

A multi-barrier approach is consistent with the above recommendations related to source protection and water treatment as complementary and mutually reinforcing approaches to delivering safe drinking water.

d. Source to return-to-source protection

While it is only natural to focus on the water that is consumed when considering how to ensure safe drinking water, it must be kept in mind that consumption is only one stage in the water cycle. Equally important is the quantity and quality of the water when it is returned to the watershed. Bulk removal of water from a watershed can affect the surrounding ecosystem, and may limit a community's ability to rely on the watershed for its supply of drinking water. And the degree of wastewater treatment before it is returned to a watershed clearly can have an impact on the quality of water.

A holistic approach that encompasses the whole water cycle, from its raw state, to consumption or removal, through to discharge, is essential to ensure the sustainable protection of water as a precious resource.

Recommendation #6: Water taking and bulk water removal can have a detrimental effect on a watershed's water quality and quantity. The Province must assess the impact of water taking projects on local water supplies. At present, there is no requirement that municipalities be consulted, and this must be remedied so that municipalities, and conservation authorities where they exist, are consulted before the MOE grants or renews any permits to take water.

e. Public Participation

Public confidence in municipal water systems has no doubt been eroded since the tragic water contamination episode in Walkerton. Greater communication and information sharing on the part of municipal water operators with the public is instrumental in gaining back the public's confidence. Regulatory requirements to post quarterly reports on water monitoring results are improving communication and information sharing with the public.

f. Other Principles

- i) Water treatment, although vitally important, is only a part of the picture. Recommendations on how to ensure the safety of drinking water service delivery must adopt a full system approach, which takes into account the legislative and regulatory framework, source water protection, water system construction and maintenance, water treatment and distribution, water monitoring and testing, treatment of discharged water, inspections and enforcement, and emergency response.
- ii) Recommendations to ensure the safety of drinking water service delivery must be applicable to, and tested against, the smallest public systems and private communal systems. These are the systems that would potentially have the greatest difficulty in meeting more stringent requirements, particularly from a financial point of view.
- iii) Any and all recommendations to ensure the safety of drinking water service delivery must be financially sustainable and viable for systems of all different sizes. Ultimately, the financial viability of a water system depends on the financial capacity of the users on the system, not on the municipality as it is the users that pay.
- iv) When it comes to water service delivery, it is not the level of municipal government who delivers the water, but rather it is how the water service is delivered. Whether water systems are run by lower tier or upper tier municipalities, regional watershed agencies, the private sector, or any other governing or delivery structure, what is most important is that staff are well trained, that the system is effectively operated and maintained, that agencies involved have clear roles and responsibilities, that appropriate checks and balances are in place, and that the system is appropriately financed.

2. Recommendations regarding overall role of government

a. Constitutional responsibility

i. Role of the Federal Government

Federal safe drinking water legislation may assist municipalities that currently lack adequate provincial legislation. However, since the introduction of the Provincial Drinking Water Protection Regulation last August, Ontario now has a strong regulatory regime for the operation of water treatment systems. Federal drinking water legislation would therefore be largely redundant in Ontario.

The Federal Government has an important role in regulating the release of toxics under the *Canadian Environmental Protection Act*, which is an important component to a 'preventative approach' to water quality protection, as discussed above. However, there must be a full assessment of the impacts on municipalities, and possibly mitigation incentives, of controlling or eliminating the use of certain substances.

Given the importance of infrastructure to health and safety and economic development, the Federal Government also has an important role to play in providing a sustainable source of financial support to municipalities to replace, upgrade and expand their priority water and sewage infrastructure needs (i.e. through infrastructure programs or preferably through direct access to an existing tax source).

The Federal Government also has a direct responsibility for protecting the quality of international waters, including the Great Lakes.

ii. Role of First Nations Government

While the quality of drinking water is vitally important for all residents of Ontario, on and off First Nations reserves, the governance of First Nations communities is not directly related to municipal affairs. Nevertheless, from information provided during Part II Expert Meetings, it is clear that there are significant deficiencies in drinking water system infrastructure on some First Nation reserves, and a great need for financial support from the Federal and or Provincial Government.

iii. Role of Provincial Government

The Provincial Government has primary responsibility for establishing the provincial drinking water legislative and regulatory framework, standard-setting, and inspection and enforcement.

The Provincial Government also has responsibility for developing and implementing a provincial water source protection strategy. This includes monitoring raw water quality throughout the province, and protecting watersheds, wetlands and woodlands.

The Province is also responsible for the regulation of point source polluters.

The Province is also responsible for issuing a range of approvals that affect drinking water quality, from certificates of approval for water treatment systems, to permits to take water.

Like the Federal Government, given the importance of infrastructure to health and safety and economic development, the Provincial Government also has a substantial interest in ensuring that adequate, sustainable financing is available to municipalities to replace, upgrade and expand their priority water and sewage infrastructure needs (i.e. through infrastructure programs or direct access to an existing tax source).

Recommendation #7: Given the vital role that water infrastructure plays in protecting public health and safety and in promoting economic development, both the Federal and Provincial Governments have a substantial interest in ensuring that municipalities have adequate, sustainable financing to replace, upgrade and expand their water and sewage infrastructure. As municipalities move towards full cost recovery, both the Federal and Provincial Governments should provide transitional financing support to municipalities, through infrastructure programs or through direct access to an existing tax source.

iv. Role of the Municipal Government

Although the municipal level of government is not recognized in the Constitution, as an agent of the Province, it has been instrumental in delivering safe drinking water for decades to Ontario communities. This role should be maintained and further strengthened through clear and appropriate policy, authority and resources. How safe drinking water is delivered locally should be a decision made with community input.

b. Provincial Government structure to provide safe drinking water

As was pointed out in the Expert Meetings, in response to a crisis, there is a tendency to call for the creation of a new agency to address the problems that led to the crisis. However, such a response does not always address the problems directly. Often, a more appropriate response is to address the gaps in oversight and accountability inherent in the existing responsible agencies, rather than create new ones.

It may be more useful to consider 'operating principles' for provincial agencies that share responsibility for different aspects of drinking water delivery. These principles could include:

- Clear roles and responsibilities for all agencies involved, and clear accountability to the public, through the designation of a lead ministry and minister.
- Consistent information handling and sharing protocols and practices amongst provincial agencies and with municipalities, public health units, and the public
- Coordination amongst provincial agencies, as well as public health units, and municipalities.
- Cross ministerial issue tracking
- Corporate memory mechanisms to ensure continuity as ministers and their ministries experience change.

Recommendation #8: To ensure coordination, information sharing and issue tracking, a provincial/municipal table with political representation as well as staff policy/implementation representation from the health/safety and water operations side should be established. In addition to working on emerging and outstanding issues related to the delivery of safe drinking water, the table would also serve to focus the provincial and municipal effort to interpret and implement the Walkerton Inquiry Commissioner's recommendations.

c. Safe Drinking Water Act

One criticism that has been raised repeatedly throughout Part II expert meetings is the fragmented nature of legislation, regulations, and policies related to ensuring safe drinking water and the lack of a comprehensive framework. A cohesive piece of legislation that integrates existing pieces of legislation and fills gaps where they exist, could serve to provide greater clarity in roles and responsibilities for all parties concerned and provide an overall framework for drinking water delivery and water quality protection more generally.

The Ontario Government's new Drinking Water Protection Regulation went a long way in addressing many of the problems related to reporting protocol and responses in the event of a water quality standard exceedance. And the proposed nutrient management legislation is an important step in protecting the quality of raw water sources.

However, the Province continues to respond to identified threats to water quality in a piecemeal fashion. There remain gaps in the legislative and regulatory regime with respect to water quantity and water quality protection. What is needed is a thorough examination of the water system, from raw water protection through to sewage treatment.

This is why CELA's Safe Drinking Water Act is a positive contribution to the debate. It offers a coherent, comprehensive framework, rather than rolling policy development. A number of aspects to the legislation are worthy of further study, including:

- More stringent requirements for water taking;
- Legislative direction on water conservation;
- More reliable financing mechanisms.

Above all, a consolidated piece of legislation must be practical. It should be balanced, and not overly prescriptive. Rather, a Safe Drinking Water Act should provide an enabling framework that allows municipalities of all sizes to deliver affordable, safe drinking water. To ensure that the legislation strikes the appropriate balance, it should undergo extensive government to government consultation, that involves stakeholder groups and the broader public in its development.

Six Principal Functions that affect the Quality of Municipal Drinking Water

1. Legislative and Regulatory Landscape	2. Water Source Protection	3. Design/Approval/ Construction of Waterworks	4. Operations of Waterworks	5. Water Quality Standards, Testing, Monitoring	6. Inspection & Enforcement, Emergency
The legislative and regulatory framework defines the roles and responsibilities of different agencies in broad terms. What are the most significant changes to the legislative and regulatory landscape that have affected these roles and responsibilities?	In the first instance, the quality of water depends on its quality in its natural state. How does water become contaminated? What measures are in place to mitigate /prevent water from being contaminated? How do approvals and planning for water taking, agricultural/ commercial and industrial activity affect watersheds?	This includes key decisions about the source of water to be drawn from, the design of the waterworks system, the review and approval of the recommended system by the PUC/ municipality and the MOE, and the quality of the construction of the system.	Once a system is established, day-to-day operations by trained personnel ensures that the water being distributed meets and/or exceeds provincial standards, and that the system is properly maintained, and that the water is continuously monitored.	Water Quality is measured against provincial water quality standards, with regular testing by specialised laboratories. The quality of raw water, either groundwater or surface water, is also monitored .	Waterworks operations are overseen by Public Health Units and MOE staff. MOE requirements are enforced through inspections, orders and fines. Each agency has a role to play in response to an adverse testing result or an emergency situation.