

AMO/MEA/OGRA SUBMISSION TO THE WALKERTON INQUIRY IN PREPARATION FOR PUBLIC MEETINGS #2:

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 'Provincial Government: Functions and Resources'. Further commentary and recommendations may be added during AMO's presentation on July 23rd.

3. Recommendations regarding Provincial Government

a. Overall policy and standards

There are a number of areas for which policies and standards affect drinking water- including the actual treatment and delivery of drinking water, source water protection, the regulation of point and non-point sources of contamination, building codes for wells, accreditation of labs, notification protocol, boil-water advisory protocol, emergency response, policies with respect to inter-agency coordination and communication, etc.

Concern has been raised over the fragmentation of legislation, regulation, policies and standards association with drinking water. This issue has been dealt with in the context of Public Meeting #1, with respect to the need for an integrated policy framework that makes the linkages between and amongst these various areas. This could be in the form of a Safe Drinking Water Act, but would likely have to extend beyond just one piece of legislation.

While standards and policies must be designed to protect public health, there remains the challenge of draft standards that are workable. What has been demonstrated since Walkerton is that rolling out policies, standards or regulations without sufficient consultation with stakeholders or a thorough analysis of the costs of new requirements results in unintended, costly consequences. Regulation 459, the new drinking water regulation, has imposed very high operational costs on municipalities and water rate payers. As recommended at Public Meeting #1, AMO would like a review of these requirements, with a view to adopting a risk-based approach that reflects the local circumstances of municipalities rather than a one-size fits all approach that currently exists.

b. Approvals/Licensing/ Environmental Assessment

There are a number of provincial approvals related to drinking water, including certificates of approval, environmental assessment approvals, and permits to take water.

Each water plant requires a certificate of approval. As Cs of A were issued over a number of years to different municipalities, a patchwork of requirements resulted,

with some municipalities having very detailed requirements outlined in their Cs of A, and others with minimal requirements outlined.

The consolidated C of A process that is underway currently will hopefully go a long way in addressing the inconsistencies in water treatment plant Cs of A.

There is some concern that the MOE may introduce new standards through the consolidated Cs of A that were not included in Reg 459. For example, MOE staff are considering the adoption of some of the so-called 'Ten State Standards'. These standards were negotiated amongst ten US states, with MOE input. No municipalities have had input into the standards. Now it appears that some of these standards will be incorporated into Cs of A. There is concern that these standards are too generic, and somewhat outdated.

Recommendation #1: AMO recommends that any new standards that are not included in Reg. 459, but that will be integrated into the consolidated Cs of A, such as the Ten State Standards, should first be subject to thorough review and consultation with municipalities.

The MOE also provides approvals for water taking, in the form of water taking permits. Water taking permits are a bit of an approvals anomaly in that very little technical evaluation is undertaken prior to granting a water taking permit, particularly for a private company that is seeking permission to take water. This is in stark contrast to the extensive evaluation and information gathering that is required of municipalities through the Environmental Assessment process when siting a new municipal drinking water well. Such a distinction between a private water taker and a public water taker is unacceptable, given that either activity could have a potential environmental impact.

Recommendation #2: AMO recommends that the MOE adopt a thorough technical review on which to base approvals to take water. This review should be based on a sound analysis of the quantity of water in the aquifer, an assessment of the competing demands on that water source, and the likely impact of the combined demands on the water source. MOE should share all water taking proposals with the relevant municipality(ies) prior to issuing a permit to take water.

In terms of licensing, MOE has introduced licensing requirements for municipal water operators. The licensing of operators is working well, although some municipalities are finding a scarcity of certified Level 1 operators. In addition to operators, MOE may consider another level of licensing, for waterworks managers. This training and licensing would be focused on longer-term planning and human resource skills, such as ongoing maintenance, capital budget planning, staff training and assessment, etc.

c. Accreditation

Accreditation of private labs is absolutely essential. There remain many parameters that require testing under Reg 459 for which there are no accredited labs. These include about 70 radionuclide parameters. For now, MOE is not enforcing these requirements, but strictly speaking, municipalities are out of compliance. The effect is that municipalities are put in a very difficult liability predicament.

d. Oversight

Given the number of agencies involved in the various functions that contribute to the provision of drinking water, there is a vital need for clear lines of responsibility. It does not necessarily mean that there is a need for one overarching overseeing authority. MOH has responsibility over public health units, MOE over water treatment system operators, well construction, and MMAH over septic tank builders, etc. What is most important is that there is adequate oversight of the various aspects of drinking water delivery.

Oversight by a number of agencies does require good coordination, as well as effective and timely required monitoring. This could be done in a number of ways, two of which AMO recommended in its Public Meeting #1 submission - through a consultative roundtable, and an annual or bi-annual report on drinking water and water sources protection.

There remains some tension in oversight responsibilities that needs to be worked out between MOE and MOH. On several occasions, public health units have made decisions that override MOE decisions with respect to drinking water and sewage treatment. In one instance, a public health unit ruled that a municipal treatment system had to meet a standard that was more stringent than the recently introduced regulated Ontario Drinking Water Standards. MOE and MOH must work more collaboratively to avoid such situations.

e. Human resources management

Effective human resource management should be at the heart of every organization. This includes assessment of staff performance, incentives for good performance, penalties for poor performance, and effective supervision. These can be influenced by rulings of various labour tribunals and the arbitration process, and not always in the control of municipal government.

f. Public Involvement

Public involvement in drinking water safety can be expanded, particularly with respect to activity that can have an adverse effect on drinking water. For example, those households on private septic systems and water systems require more information on the importance of properly maintaining their systems and ways to minimize the risk of contaminating drinking water through poor maintenance of their private systems. An information, educational outreach program would be helpful and could be available at the issuance of the building permit stage.

g. Emergency Planning

Emergency planning is vital to a quick and coordinated response in the event of an emergency in a community. Many municipalities have prepared emergency plans in place and hold training and mock emergency events. Since the ice storm and the Walkerton tragedy, municipal awareness for emergency planning and the nature of incidents has heightened. This is an area where the sharing of protocols and experiences in both the design and testing as well as real event evaluation is critical to continuous improvement. If the Province approves AMO's proposal for a Municipal Centre of Excellence, a virtual organization that will identify and transfer best practices, emergency planning matters would be a natural fit. A Municipal Centre of Excellence would be a unique extension of the municipal performance measurement project that AMO and the Ministry of Municipal Affairs and Housing are undertaking.

The development of 'incident planning' is likewise important. Many situations do not reach emergency levels, but require appropriate responses from staff. For example, municipal staff should know how to respond in the event of a power outage, if a chlorinator breaks down, if key staff do not report to work, or in the event of a boil water advisory. For each of these types of incidents, municipalities should have protocols in place and staff training to ensure that everyone is familiar with their roles and responsibilities in certain situations.

4. Recommendations regarding relationship to other public institutions

a. Overall coordination role of Provincial Government

There needs to be a lead ministry that is able to coordinate the activity and input of all provincial agencies, including MOE, OMAFRA, MOHLTC, MNR, and SuperBuild. In the case of the Ontario government, the Ministry of the Environment is best placed to take the lead role with respect to drinking water.

b. Relationship to Municipalities

In recent years, the speed of the provincial government's policy agenda has resulted in numerous pieces of significant legislative and regulatory changes being made with little or no consultation with the municipal governments – the body that most frequently must implement the new policies and programs. Changes for which there was little or no consultation include the privatization of water testing labs, Reg 459, and funding programs like OSTAR.

AMO has made it clear to the Provincial Government that municipal governments are not just another stakeholder. Municipalities are in essence an order of government that in this case is the drinking water deliverers. They have operational experience that should be respected and sought after by provincial policy makers. In order to ensure that a proposed regulation or policy is workable, the Province must first consult with those that will have to implement the policy change- municipalities.

The ongoing relationship between municipalities and provincial field staff has been scaled back considerably in recent years, due to cutbacks in the budgets to field operations of the ministries of Environment, Natural Resources, and Agriculture, Food and Rural Affairs. As a result, provincial field knowledge and skill level has diminished. Provincial support across the province has been weakened as a result, and provincial decision-making and consultation has become too centralized.

Recommendation #3: In addition to pre-consultation, to take advantage of municipal operation experience, AMO recommends that the Provincial Government reinvest in its field offices and its field office staff in MOE, MNR and OMAFRA. Regional representation will help the Province to better track what is happening, to communicate better, and to interact more regularly with municipalities.

c. Relationship to Health Units

Some public health units are currently suffering from lack of capacity, both in terms of staff and resources. There is a lack of supply of public health staff, particularly for more remote health units. Preventative health care, which includes public health is part of the health care system and as such is clearly a provincial responsibility, but one that has largely been downloaded to municipalities.

Although public health is provincial responsibility, the Province provides “50% of approved public health costs” only. In practice, this amounts to less than 50% funding, as the raising of standards results in higher costs, approved costs sometimes do not include administrative costs (this is the case for flu shots and Healthy Babies Healthy Children programs), and cap labour costs, and provincial funding does not include any discretionary health programs that are not approved by the province but are considered essential by the local health board.

As a result, as we heard from Chief Medical Officer of Health Colin D’Cunha during the Walkerton Inquiry 1B hearings, that Ontario’s public health units are working toward full compliance with the public health mandatory guidelines as part of the transition process. A provincial recommitment to funding without the limits as outlined above would help the financing of the public health system.

The new notice protocol for adverse water samples is resulting in considerably more public health unit involvement, yet another example of increases in standards without a sufficient increase in resources. These additional requirements put more pressure on the municipal property tax base at the same time there is pressure from taxpayers and others, including the province, to contain if not reduce property taxation levels.

Recommendation #4: AMO recommends that the Province undertake a complete review of the capacity of Public Health Units to meet the mandatory public health guidelines, and specifically review the capacity of PHUs to meet their responsibilities with respect to drinking water safety. If the review determines that PHUs require further resources, this increase in resources should be provided by the Province to meet its requirements.

In terms of the relationship between health units and municipalities, there are currently two models. In Counties and smaller single municipalities, the Board of Health is separate from Municipal Council. Issues of accountability and communication arise with this separation.

In Regions and in most large single-tier cities, the Board of Health is a committee of municipal council, made up of municipal councillors. Since the amalgamation of larger cities like Hamilton, Ottawa, Toronto, this integration of Board of Health into council has had beneficial effects. Council now has a more direct link to the Board of Health, in terms of accountability and communication. The departmental relationship and other activities, including emergency planning is enhanced. A greater awareness and understanding of public health issues in the community, and a greater investment in public health are strengthened. There is also efficiency savings in that administration functions are provided by the municipal corporation, e.g., communication tools and systems, human resources expertise, purchasing. AMO has proposed to the Province that the regional model of integrating Boards of Health as a council committee may be beneficial for counties.