

October 30, 2001

## **ONTARIO MUNICIPAL WATER ASSOCIATION**

### **POSITION ON PRIVATIZATION**

#### **Caveat**

The Ontario Municipal Water Association has standing in Part II of the Walkerton Inquiry in partnership with the Ontario Water Works Association. These parties agreed from the outset that they may take separate positions on the matter of privatization. This report summarizes the OMWA position on privatization.

### **Public Ownership and Control**

#### **Background**

Water is the most basic of all human needs. In urban areas, the impact of water treatment and subsequent sewage treatment is said to have saved more lives than has the entire medical industry. It is the public's right, through all levels of government, to have absolute and total control of its water supply. The Ontario public clearly indicated in polling by both *Insight Canada Research* and *POLLARA* that water should be provided at cost under governance by municipal level officials. They further indicated that all revenues generated from providing water service should be reinvested in the system. Clearly private operators would not be interested in providing a service without receiving a profit and being subject to local control. Therefore, the position held by the OMWA is that of the public of Ontario - namely that public water supply must remain under public ownership and control.

#### **Historical Perspective**

It is interesting to look at private ownership from a historical perspective. Many water systems in Ontario were installed by private operators at the turn of the last century under franchise agreement with municipalities. These systems were installed essentially for fire protection purposes. When water quality issues became a concern these companies were no longer viable and municipalities assumed control of their systems. It is difficult to determine what has changed in Ontario in the intervening years.

### **English Experience**

The Association would also draw attention to the experience in England where water has been privatized. In England costs of water have risen dramatically, profits are very high and the quality of service has not improved. Indeed it has the appearance of “mining” as the money raised in the business is not reinvested in infrastructure; rather, this infrastructure is allowed to deteriorate, perhaps to the extent that public control will have to be re-established to bring the systems back into acceptable standards. This is an example where monopolies, which have not been subject to very stringent regulation, are not in the public’s interest.

### **Regulatory Frameworks / Franchise Agreement**

There is no framework available or experience to draw from within Ontario, which would allow municipalities to franchise such private operations and still ensure the public’s interest is protected. As such if a system is privately owned and operated, local control of any sort will be difficult at best.

### **Development Control**

Water (and sewer) servicing is the most critical element in controlling development and if water supply were in private hands, a municipality would effectively lose control of development or be subject to conflicting and costly demands.

### **The Cost of Sustaining Water Infrastructure**

The cost to operate, maintain and upgrade water facilities is significant. It is the position of OMWA that public water supply should be fully funded by the customer base. Given the high costs of such, it would not be in the public’s interest to add to their costs the necessary profits of the private operator plus the cost of ensuring adherence to any franchising agreements.

### **Summary of Impact Private Ownership and Control**

History, the public’s position on the need for public control of water systems, the difficulty in regulating monopolies and the need to finance water infrastructure so that it is maintained at a high standard for an indefinite period clearly demonstrates that the public’s interest is best served by public ownership and control of water supply systems. For these reasons The Ontario Municipal Water Association’s position is that water

systems supplying the general public must be owned and controlled by the public.

## **Contracted Operations**

### **Background**

Some of the Association's members, while maintaining public ownership, use contracted services to operate their systems. The majority of such cases resulted from the transition from MOE operations to the OCWA and in some cases the subsequent transfer of ownership to the municipality. Other operating contractors have also been successful in taking over system operations.

The contracts under which these services are provided are often drafted by the contractor and clearly favour the interests of the contractor. As an example many of these contracts have "cost plus" provisions for component maintenance, and as such it is in the contractor's financial interest to let components break down rather than perform preventive maintenance. There are generally no quality assurance inspections to ensure the contractor provides the services stipulated in the contract. This leaves the municipality in a risky situation. The province must show leadership in this regard by providing sample performance contracts which identify all significant technical, financial, and performance standards. The province should also have a role in reviewing or approving contracts, and in regulating contractors. This would assist small municipalities that do not have the resources to undertake the necessary legal and technical staff to review such contracts to ensure that a municipality's (the public's) interests are protected.

### **Non-Compliance**

A greater concern is that the contractor is not responsible for non-compliance with a Certificate of Approval. There have been cases where the contractor failed to provide the services as stipulated or implied in the contract but the municipality (as the owner) was charged and found guilty of the violation of the Ontario Water Resources Act (OWRA). Indeed, it may be to a contractor's financial interest to operate systems in non-compliance or to risk non-compliance. (A presentation made to the Commissioner at the Kingston Town Hall Meeting provided graphic description of such.)

It is the Association's view that operating contractors must be held responsible under the OWRA for their actions. It is not sufficient to simply hold the contractor liable by contract wording, as charges and costs would still be laid against and paid by the owner (the local public). This change to the OWRA should include registration of such contractors. Further and more importantly, such contractors must be held liable for prosecution under the act for a failure on their part that leads to non-compliance.

### **Conclusion**

The Ontario Municipal Water Association, as a representative of public water supply customers and owners, opposes private ownership and private control of water supply systems that provide piped drinking water to the general public. Further, the Association is of the opinion that contract operators must be more closely regulated to ensure that the public's interest is protected and that contract operators must be held responsible under the OWRA for their actions which cause non-compliance with approvals and regulations provided under the act.