

Sierra Legal Defence Fund
RECOMMENDATIONS
for Public Hearings 2 & 3

Based on our research, it is our view that a safe drinking water supply requires a number of regulatory or legislative components, most of which are currently in place in one or more of the jurisdictions reviewed by us, but nowhere are all of them incorporated into one superior model. The fundamental paradigm shift that must occur to ensure safe drinking water requires that we view water protection as the underlying obligation of all those who might affect the quality of water in any way at any time. From this perspective, all regulation of land use, waste disposal into air, land or water, collection of water for human use, and distribution of that water, must specifically ensure that potential and actual contamination of water is avoided.

The following recommendations outline the necessary elements of a safe drinking water regime. The recommendations are set out in terms of the elements, and do not address the legislative and regulatory reform that will be required to implement them, recognizing that the precise mechanisms for implementation require some flexibility.

- 1. Source Protection:** Ontario currently has no mandatory source protection measures, puts little or no emphasis on source protection in its Drinking Water Protection Regulation or any other legislation or regulations, and has entirely inadequate permissive protection for watersheds and wellfields that supply drinking water. We recommend that Ontario impose mandatory source protection that includes a mandatory designation of the land areas that influence water quality as well as an assessment of all existing and potential risks to drinking water quality. Representatives should be appointed with responsibility for the protection of every watershed and wellfield, and these representatives should have authority to fully participate in government decisions about land use activities that may affect the watershed or wellfield. Land use, waste management and industrial activity laws, regulations and permits must be amended to ensure the protection of these areas.
- 2. Legal Standards:** In the wake of the Walkerton disaster, Ontario has implemented some of the most stringent testing requirements in the country through the Drinking Water Protection Regulation (with the exception of recent Quebec

regulations). The most obvious element missing from this regulation is that there is no review of the contaminants listed in it. Ontario should amend the regulation to ensure that qualified provincial scientists conduct regular, periodic reviews of the list of contaminants to ensure that all known contaminants are included, and of the standards set for these contaminants, to ensure that these standards are based upon the best available science worldwide.

3. **Training:** Ontario has a licencing system set out in Ontario Regulation 435/93 (as amended by O.Reg. 539/98). This regulation contains a number of "grandfathering" clauses that allow undertrained or tested people to possess certificates for the operation of water systems. It is recommended that the regulation be reviewed to ensure that all operators of public water systems are required to be trained and certified in a manner that ensures that they possess sufficient knowledge and expertise to ensure safe drinking water. The regulation should be further amended to ensure that upgraded training and re-certification is required for water system operators on a regular and periodic basis. Finally, regular and periodic evaluation of the training and certification requirements must be built into the regulations to ensure that training is appropriate in light of changing technology and information.
4. **Citizens Right to Enforce:** Ontarians should be given the legislative right to enforce drinking water standards and protections in the courts.
5. **Testing:** Ontario's Drinking Water Protection Regulation requires regular testing of a detailed list of contaminants. This regulation should be amended to include a provision that requires qualified scientific staff to review the testing requirements on a regular and periodic basis to ensure that they are adequate in light of new or emerging information worldwide.
6. **Disinfection:** Disinfection is required for public water supplies in Ontario, unless the water comes from a groundwater source and the exemption criteria in the Drinking Water Protection Regulation have been met. Chlorine is the default disinfectant and must be used unless another system has been approved. It is recommended that Ontario should establish a program for the examination of disinfection methods other than chlorine. These alternative methods should be implemented where applicable, and in the event that another system is determined to provide equal or better disinfection and lower

environmental and public health risks, the regulation should be amended to reflect this.

- 7. Facilities:** Ontario has no binding standards for the design, materials, construction and operation of drinking water treatment facilities and distribution systems. Certificates of Approval are required, but there is no adequate mechanism to ensure compliance. A comprehensive water protection regime must include regulation of the facilities as well as the water quality. It is therefore recommended that Ontario enact legislation or regulations that either set the standards for public water facilities. It is proposed that these standards ought to be flexible enough to permit individual systems to ensure appropriate design, but mandated sufficiently to enhance compliance and facilitate enforcement.
- 8. National Cooperation:** Ontario should take the leading role in the development of federal/provincial/territorial working groups for the evaluation and sharing of contaminant standards, testing, reporting, treatment and distribution for drinking water.
- 9. Random Sampling:** Ontario should develop and conduct a program for random sampling and inspection, with clear follow-up actions required in cases of non-compliance.
- 10. Emergency Response Plan:** Ontario should require that each public water supplier prepares and provides to the appropriate ministry, and to the public, plans to deal with water quality emergencies.