

Tragedy on Tap: Consolidated List of Recommendations

May 15, 2001

RECOMMENDATION #1: Ontario should, to the greatest possible extent, entrench drinking water provisions into a single, integrated statute, rather than in regulation or policy. This statute should contain a paramountcy clause that provides that in cases of conflict between drinking water provisions and any other general or special Act, the drinking water provisions shall prevail to the extent of the conflict.

RECOMMENDATION #2: Ontario should systematically review and, where necessary, revise provincial laws, regulations and policies to ensure that they are consistent with the overall provincial priority of protecting drinking water and its sources.

RECOMMENDATION #3: Ontario's drinking water statute should include provisions that:

- (a) establish appropriate judicial and political accountability mechanisms, such as provincial monitoring/reporting and judicial review opportunities;
- (b) specify that the statute binds the Crown;
- (c) establish an new "Drinking Water Commission" that reports to the Minister of Environment, and that has the statutory mandate to develop and oversee the delivery of Ontario's drinking water program by (among other things) setting and enforcing provincial standards which implement the multi-barrier approach; and
- (d) clearly delineate lines of authority, responsibility and communication requirements between Ministry staff, the Drinking Water Commission, municipal officials, public utilities, and medical officers of health.

RECOMMENDATION #4: Ontario's drinking water statute should apply to all public and private water treatment and distribution systems in the province. In addition, the statute should impose appropriate testing and sampling requirements in relation to private individual wells in order to detect and remedy unsafe drinking water.

RECOMMENDATION #5: Ontario's drinking water statute should entrench a substantive public right to clean and safe drinking water. The statute should further state that its purpose is to recognize, protect and enhance the public right to clean and safe drinking water.

RECOMMENDATION #6: Ontario's drinking water statute should include provisions that:

- (a) impose a mandatory duty upon the Drinking Water Commission (or Minister) to set and maintain drinking water standards;

- (b) impose a mandatory duty upon the Drinking Water Commission (or Minister) to periodically review the adequacy of existing standards, and to make such revisions to the standards as may be necessary to protect human health and safety;
- (c) specify that the primary objective of drinking water standards is to protect public health and safety of all Ontarians, including those who may be particularly vulnerable to waterborne illness or disease;
- (d) entrench the precautionary principle as a mandatory consideration when drinking water standards are being drafted, reviewed or revised;
- (e) establish legally binding mechanisms for meaningful public participation in drafting, reviewing or revising drinking water standards; and
- (f) impose a mandatory duty upon the Drinking Water Commission (or Minister) to identify and evaluate new and emerging contaminants for which no standards exist in Ontario.

RECOMMENDATION #7: Ontario's drinking water statute should contain provisions that:

- (a) establish a self-contained process for the Drinking Water Commission to approve (or reject) applications for waterworks that supply drinking water, and to ensure full public participation in the approvals process;
- (b) clarify and strengthen existing requirements regarding operator licencing and training; and
- (c) retain existing requirements regarding the mandatory use of accredited laboratories for drinking water sampling and analysis.

RECOMMENDATION #8: Ontario's drinking water statute should include provisions that:

- (a) entrench current testing, treatment, notification and corrective action requirements into law rather than regulation; and
- (b) define "groundwater under the influence of surface water", and specify that surface water treatment requirements apply in such situations.

RECOMMENDATION #9: Ontario's drinking water statute should expressly require public and private water treatment and distribution system owners and operators to:

- (a) avoid drinking water sources that will, or are likely to, result in hazards to public health and safety due to pollution from activities within the watershed or sub-watershed;
- (b) assess and periodically review the vulnerability of their sources of drinking water to current or future contamination or degradation, and publicly report upon the results of such assessments;

- (c) develop and implement appropriate source protection measures where necessary to safeguard public health and safety;
- (d) involve the public in developing source assessment programs and source protection measures that will be implemented to safeguard public health and safety; and

RECOMMENDATION #10: Ontario's drinking water statute should amend existing laws (such as the *Planning Act*, *Municipal Act*, and/or *Conservation Authorities Act*) to ensure that municipal officials have sufficient legal tools to implement the measures specified in source protection programs.

RECOMMENDATION #11: Ontario's drinking water statute should fully entrench "community right to know" principles, and in particular, should include provisions that require:

- (a) immediate public notice through appropriate means (e.g. news media, signs, internet, etc.) whenever:
 - (i) exceedances of prescribed standards or indicators of adverse water quality are detected including "presumptive" results;
 - (ii) treatment or testing equipment is inoperative or malfunctioning; or
 - (iii) required sampling and analysis is not being carried out;
- (b) preparation of comprehensive consumer confidence reports which are to be mailed to all consumers on an annual basis, and which address the following matters:
 - (i) source assessment/protection;
 - (ii) discussion of any regulated contaminants or unregulated substances detected in the raw or treated water;
 - (iii) discussion of any violations of contaminant limits or prescribed standards, and related public health concerns, particularly for vulnerable persons; and
 - (iv) discussion of the steps taken to address such violations, and measures proposed to prevent any future violations; and
- (c) require the Drinking Water Commission (or Minister) to establish and maintain an electronic drinking water registry that summarizes consumer confidence reports, discusses issues and trends arising from such reports, and otherwise serves as a public repository for significant drinking water information (e.g. approvals, prosecutions and orders, State of Drinking Water Reports, etc.).

RECOMMENDATION #12: Ontario's drinking water statute should contain provisions that require the Drinking Water Commission (or Minister) to:

- (a) prepare and file annual "State of Ontario's Drinking Water Reports" in the Legislative Assembly; and
- (b) establish and maintain provincial monitoring programs on drinking water matters, such as:

- (i) quality and quantity of surface water and groundwater sources of drinking water;
- (ii) sources of contamination of drinking water;
- (iii) new or emerging pathogens and substances that may be present in drinking water and that may pose a threat to public health and safety in Ontario; and
- (iv) compliance by water suppliers with parameter limits and other prescribed standards.

RECOMMENDATION #13: Ontario's drinking water statute should contain provisions that:

- (a) impose a positive duty on the Drinking Water Commission (or Minister) to enforce the provisions of the statute on a "zero tolerance" basis;
- (b) impose a positive duty on the Drinking Water Commission (or Minister) to develop (with full public input) a compliance manual to provide detailed direction regarding the investigation and enforcement of drinking water provisions under the statute;
- (c) establish a broad range of mandatory abatement tools, including administrative penalties, stop orders and emergency orders;
- (d) create a streamlined right for Ontarians to require (not just request) investigations of suspected contraventions of drinking water requirements;
- (e) create a "citizens' suit" mechanism that allows Ontarians to enforce drinking water requirements in civil court; and
- (f) create a new cause of action for persons who suffer loss, injury or damage as a result of a contravention of the statute or the regulations thereunder.

RECOMMENDATION #14: Ontario's drinking water statute should include:

- (a) broad, "strict liability" offences that prohibit:
 - (i) owners/operators of public and private water treatment and distribution systems from providing users with drinking water that exceeds permitted contaminant levels or contravenes prescribed standards;
 - (ii) owners/operators of public and private water treatment and distribution systems from contravening the terms or conditions imposed under statutory approvals for such systems;
 - (iii) owners/operators of public and private water treatment and distribution systems from submitting false information or reports required by law;

- (iv) owners/operators of public and private water treatment and distribution systems from failing to report threats to drinking water quality to the Minister and/or public health officials;
- (v) any person from causing or permitting the release of contaminants into or near waterworks, drinking water sources, wells or well recharge areas, or attempting or threatening to do so;¹ or
- (vi) any person from damaging, destroying, altering, or otherwise tampering with waterworks or wells, or attempting or threatening to do so; and

(b) severe penalties for contraventions, including:

- (i) minimum fines for a first conviction;
- (ii) maximum fines of not more than \$6 million for a first conviction;
- (iii) significant higher fines for subsequent offences, or for offences where the health of any person has been impaired as a result of the contravention;
- (iv) jail terms for serious offences, such as where the health of any person has been impaired as a result of the contravention;
- (v) stripping of any profits or monetary benefits acquired or gained by the defendant through the contravention;
- (vi) orders of prohibition, restitution, or restoration, including orders to provide an alternate drinking water supply; and
- (vii) such further orders or conditions that are necessary to prevent further offences or to contribute to the rehabilitation of the defendant.

RECOMMENDATION #15: Ontario's drinking water statute should establish a mandatory duty upon the Drinking Water Commission (or Minister) to:

(a) undertake and fund research programs such as:

- (i) identification, treatment and prevention of adverse public health effects from drinking water contaminants;
- (ii) quality and quantity of water available to public and private water suppliers in Ontario;

¹ For such an offence, it may be necessary to recognize a limited "statutory authority" defence for situations where, for example, a company is lawfully discharging contaminants into the environment in accordance with its certificate of approval.

- (iii) current and future sources of drinking water contaminants, including unregulated substances;
- (iv) controlling or avoiding the effects of intensive farming on sources of drinking water;
- (v) identifying and protecting Ontarians who may be at special risk of waterborne disease;
- (vi) watershed management and source protection measures; and
- (vii) water conservation; and

(b) establish and fund programs that provide technical and financial assistance to owners/operators of public or private water treatment and distribution systems in order to:

- (i) install, construct or upgrade equipment in the waterworks (or related infrastructure) in order to meet drinking water standards;
- (ii) implement water conservation plans or programs;
- (iii) undertake source assessment/protection programs; and
- (iv) employee training;

RECOMMENDATION #16: Ontario's drinking water statute should require the establishment of a public advisory committee to research and report upon drinking water matters to the Drinking Water Commission (or Minister).