

## Municipal & Environmental Law Bulletin

### Bill 43: Land Use Planning by the Ministry of the Environment?

*by Laura Bisset*

On December 5, 2005, the Minister of the Environment introduced Bill 43, “an Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts,” also known as the proposed ***Clean Water Act, 2005***. The Bill’s stated purpose is the protection of existing and future sources of drinking water; and it is intended that this purpose be carried out by way of watershed based source protection through land use planning controls administered largely by the Ministry of the Environment.

Part I of the Bill establishes drinking water source protection areas coincident with the jurisdictional areas of Ontario’s thirty-six conservation authorities. Each conservation authority will act as the source protection authority for its respective source protection area. The Minister may, by regulation, designate areas outside of the jurisdiction of any conservation authority as source protection areas; and may designate a person or body as the source protection authority for each area (for example, in an area with no conservation authority).

Pursuant to Part II, each source protection authority must establish a multi-stakeholder “source protection committee” to carry out planning activities with the support of the source protection authority. The source protection committee has three major responsibilities:

- draft **terms of reference**, in consultation with municipalities in the source protection area, for the preparation of an assessment report and a source protection plan in accordance with regulations made pursuant to the Bill;
- prepare an **assessment report** identifying **inter alia** (a) all watersheds in the source protection area, (b) vulnerable areas in watersheds, (c) all existing and future drinking water threats in vulnerable areas, such as “surface water protection zones” and “wellhead protection areas” and (d) significant drinking water threats, after performing a risk assessment, including threats to drinking water quantity; and
- develop a **source protection plan** which will include policies to eliminate significant drinking water threats and to prevent future drinking water threats from becoming significant threats. As will be detailed below, certain violations of the source protection plan are punishable offences pursuant to the Bill.

The Minister is responsible for approving terms of reference, assessment reports, and source protection plans.

Once a source protection plan is in effect, Part III of the Bill will require that all decisions under the **Planning Act** or the **Condominium Act, 1998** made by the Ontario Municipal Board, a municipal council and other specified bodies conform with the source protection plan; and these plans will prevail over an official plan or a zoning by-law in the event of a conflict. Conflicts between source protection plans and provincial plans (e.g. the Greenbelt Plan, the Oak Ridges Moraine Conservation Plan) or a policy statement made pursuant to section 3 of the **Planning Act** will be resolved in favour of the plan which provides the greatest protection to the quality and quantity of drinking water. Municipalities may not pass by-laws in conflict with effective source protection plans and will be required to amend their official plans and zoning by-laws to conform with their respective source protection plans.

Enforcement of the Bill is provided for in Part IV. In organized territories, municipally-appointed permit officials with powers akin to provincial officer powers under the **Environmental Protection Act** are charged with the task of

inspecting for violations of the Bill. The Province bears the responsibility in unorganized territories. There are two important aspects to this Part:

- First, if an assessment report has been approved, and a person engages in an activity identified as a significant drinking water threat in a designated area, the permit official may require a risk management plan for the activity, compliance with which will be required.
- Second, where a source protection plan is in effect, (a) certain activities may be prohibited altogether, (b) other activities may only be undertaken (i) after a risk assessment demonstrating that the activity is not a significant drinking water threat has been accepted by the permit official, or (ii) in accordance with a permit, or (iii) in compliance with an accepted risk management plan for the activity; and (c) without a notice being issued by a permit official, certain **Planning Act** applications may not be made and certain construction or changes in building uses may not be undertaken. Failure to act in accordance with points (a) and (b) of this paragraph are offences pursuant to the Bill.

Offences under the Bill are punishable pursuant to Part V of the Bill. Individuals may be penalized up to \$25,000 on a first conviction and \$50,000 for subsequent convictions; corporations may be penalized up to \$50,000 on a first conviction, and \$100,000 on subsequent convictions.

The Bill has been criticized for transferring land use planning responsibility to the MOE, a Ministry lacking in planning expertise; for introducing more uncertainty into an already uncertain land use planning legislative scheme which includes newly-introduced provincial policy (e.g. **Greenbelt Act, 2005, Places to Grow Act**, Provincial Policy Statement 2005, Bill 51); and because of the likely costs to conservation authorities and municipalities of meeting the requirements of the Bill, and thereafter enforcing them.

Moreover, as the Bill is currently worded, source protection plans have the potential for being broad-ranging documents. The broadness of these plans has the potential for dramatically altering the nature of land use planning in Ontario, given (a) the requirement of conformity with source protection plans in planning documentation, and (b) the ability of the MOE to penalize failures to comply with the Bill. These factors will be of particular

concern to stakeholders given that the Bill does not provide for a right of appeal to permit the review of an assessment report or a source protection plan. Accordingly, if the Bill is passed, stakeholders, to the extent possible, should become involved at the outset, perhaps through involvement with drafting the terms of reference.

A copy of the Bill can be found on the Ontario Legislative Assembly website at [http://www.ontla.on.ca/documents/Bills/38\\_Parliament/session2/b043.pdf](http://www.ontla.on.ca/documents/Bills/38_Parliament/session2/b043.pdf). 🌟



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