

Clean Water Act Consultations
Presentation to the Legislative Committee on Social Policy
Tuesday August 22, 2006
Walkerton, Ontario

Introductory Remarks:

On behalf of the Ontario Pork Producers Marketing Board, we would like to thank the Committee for inviting us to present our views on this very important legislation. Ontario Pork markets hogs for over 3,000 producers in Ontario under the authority of the Farm Products Marketing Act.

My name is Bill Wymenga and I am a Provincial Director with Ontario Pork and Chair of Ontario Pork's Environment Committee. Joining me today is also Jamie Boles, Manager of Public Affairs with Ontario Cattleman's Association, Ontario Pork, the Ontario Sheep Marketing Agency, and the Ontario Veal Association, and Sam Bradshaw, Environmental Communications Specialist with Ontario Pork.

Ontario pork producers understand the importance of clean water legislation and why they must be vigilant in exercising best practices in environmental stewardship. We are quite proud of the way pork producers have stepped up to the plate since the passage of the nutrient management act, and we are certain they will continue to do so with workable clean water legislation containing proper economic incentives as recommended in the Walkerton Inquiry. We want to use our time today to raise three fundamental concerns with the legislation.

First, in our view the current legislation is overly punitive and does not make a positive improvement over existing legislation to improve Ontario's drinking water quality or risks.

All impacted business and landowner groups agree that it is vital to have a safe and reliable source of water in this province. At the same time, it is important to bear in mind that high standards for drinking water are already in place in Ontario. Further, there are laws in place to regulate and punish polluters. In this context, it is difficult to understand the business case and administrative need for additional rules, regulations and enforcement protocols.

Ontario pork producers are currently held to a very high standard when it comes to polluting; an operator that allows any amount of manure to move off-site into any waters that may (not does) impair the quality of water is guilty of an offense. The only defense is due diligence.

Our concern is that the proposed Bill goes beyond reasonable, and shifts the burden of proof to the agricultural landowner. In our view, provincial regulators are charged with the responsibility to scientifically demonstrate an "adverse effect" from an existing normal farm practice. Under Bill 43, the process is reversed and the agricultural landowner must 'satisfy' the municipal "permit official" that the normal, legal farm practice will not cause harm.

Rather than creating a predictable, uniform and scientifically sound framework for effectively managing legitimate risks, the proposed Clean Water Act establishes an ill-defined regulatory process that will likely result in overly risk-averse municipal "permit officials" inappropriately applying the precautionary principle to place an unfair and unnecessary burden on the landowner. Placing this level of scientific and technical responsibility and legal liability at the municipal permit official level is inappropriate.

In contrast, there is a need for targeted education, incentive and implementation procedures and protocols based on risk and linked to local Source Water Protection Plan objectives. It is disappointing that Bill 43 is entirely punitive and does not focus on the development of a practical and workable framework for making positive water quality improvement progress.

Secondly Bill 43 is vague on key definitions and scope which, because of farming's large land base, places a disproportionate burden on farmers and this burden could well grow over time.

Agricultural groups are confused by the inconsistency between the broad purpose statement found in the Clean Water Act ("The purpose of this Act is to protect existing and future sources of drinking water") and assurances that the focus of the proposed legislation is municipal residential drinking sources. Further, our concern is that surface water intake zones, as defined in the yet-to-be-finalized REGULATIONS, will impact a much larger land area than the municipal wellhead protection zones.

The definition of terms such as "significant drinking water threats" in the proposed Clean Water Act are unduly broad and subjective, lack any meaningful criteria as a screening mechanism and cast the broadest possible net. Our interpretation is that virtually all activities in a source protection area will be designated, at first instance, a drinking water threat. This definition fails to recognize existing approvals, guidelines or standards that govern normal agricultural land use. The resulting uncertainty, and its consequent investment of resources to deal with any and all such "threats", is unreasonable. Agricultural producer's with-in designated wellhead and surface water protection zones may be subject to permit official conditions that go well beyond the normal agricultural due diligence standards.

Finally, the proposed Act is inconsistent with the Walkerton Inquiry Recommendations that there be a clear commitment for fair funding principles.

The implementation cost and the environmental / human health benefits of Bill 43 are unknown and would appear to fall disproportionately on rural businesses and land owners.

The Bill appears to be structured so that all of the implementation cost is picked up by either the impacted municipalities OR the impacted landowner. It is essentially a case of Expropriation without Compensation.

It is our position that Bill 43 as it stands will have serious financial consequences for landowners, operating to effectively expropriate lands without any apparent compensation. Section 88(6) should be removed and replaced with a section with clearly defined protocols that Source Protection Authorities and municipalities can use to negotiate fair solutions with impacted agricultural landowners. The concept of a provincially supported "Agricultural Stewardship Fund" to assist impacted landowners and municipalities should be specified in the Act.

Agricultural producer's with-in designated wellhead and surface water protection zones may be subject to permit official conditions that go well beyond the normal agricultural due diligence standards. Under these circumstances, competing jurisdictions and reasonable stakeholders favor establishing fair and reasonable cost share and / or compensation.

Consider what the Walkerton Inquiry recommends:

Recommendation 16 - Part Two Report of the Walkerton Inquiry states that the provincial government, through the Ministry of Agriculture, Food and Rural Affairs in collaboration with the Ministry of the Environment, should establish a system of cost-share incentives for water protection projects on farms. This should be in any new legislation.

The Provincial Advisory Committee Recommendations

Recommendation 33 states that:

Consultation on implementation and ongoing planning, including how to pay for source protection, be undertaken with different stakeholder groups immediately following receipt of this source protection planning framework. This consultation should start from the list of potential roles and responsibilities presented by the Advisory Committee in its report.

Recommendation 34 states that:

The model for the sharing of costs to align funding mechanisms with the appropriate responsible body should be negotiated with stakeholders while the initial source protection plans are being developed. Furthermore, all those in a planning area, particularly those who impact sources of drinking water and those who benefit from it, should contribute, to some degree, to the costs of source protection.

Recommendation 35 states that:

Incentive programs and payments for environmental benefits should be considered, especially in sensitive areas and well capture zones, as one way to encourage implementation of source protection measures and provide for long-term sustainability.

In addition, the legislation should be changed so that the Ministry of Environment is prohibited from approving any source water protection plans that do not include an assessment of the costs of implementation and a defined budget, with sources, for the implementation.

Summary:

In summary Chairman:

1. The pork producers of Ontario support environmentally sustainable farming and the objective of Bill 43 to protect source water areas. However, we feel the approach is wrong.
2. But 43 is overly punitive and places undue authority in the hands of local officials. There is a need for targeted education, incentives, and protocols based on risk management principles and farming best practices with better linkages to local Source Water Protection Plan objectives.
3. The scope and definitions contained within the Bill are too broad, lack objective criteria and fail to recognize existing approvals, guidelines or standards that govern normal agricultural land use.
4. Finally, it is our position that Bill 43 as it stands will have serious financial consequences for landowners. Section 88 (6) should be removed and replaced with a section with clearly defined protocols that Source Protection Authorities and municipalities can use to negotiate fair solutions with impacted agricultural landowners. The concept of a provincially supported "Agricultural Stewardship Fund" to assist impacted landowners and municipalities should be specified in the Act.

Thank you for taking the time to listen to our presentation and I would welcome any questions you may have.