

November 9, 2020

Dr. George Jacoub, P.Eng.
Water Research Scientist- Hydrologist
Ontario Ministry of the Environment, Conservation and Parks
Source Protection Programs Branch, Land and Water Division
40 St. Clair Ave. W. 14th Floor
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Via email: George.Jacoub@ontario.ca

Dear Dr. Jacoub,

RE: ERO 019-2219 - Proposed amendments to the Director's Technical Rules made under section 107 of the Clean Water Act, 2006

The Ontario Federation of Agriculture (OFA) is the largest general farm organization in Ontario, proudly representing more than 38,000 farm family members across the province. OFA has a strong voice for our members and the agri-food industry on issues, legislation and regulations governed by all levels of government. We are passionate and dedicated to ensuring the agri-food sector and our rural communities are included, consulted, and considered in any new and changing legislation that impacts the sustainability and growth of our farm businesses.

Ontario's diverse and innovative agri-food sector is a powerhouse for the province – growing and producing more than 200 farm and food products, fuelling our rural communities and driving the provincial economy by generating more than 860,000 jobs and contributing over \$47 billion to Ontario's annual GDP. We are the leading agricultural advocate for Ontario farmers, their businesses, and their communities.

OFA has many concerns with the proposed changes to the Technical Rules under the *Clean Water Act*, and the process used in proposing these changes. First is the concern that this posting did not include a regulatory impact assessment or statement. There is no statement or consideration provided which outlines what the potential impact of these proposed changes are. The process was further hindered by not posting the "track changes" version of this extremely large document. Furthermore, the Ministry never attempted any form of outreach to the agricultural industry - a key stakeholder in the success of source water protection, to discuss these proposed changes. While this is not a requirement, it is a common practice throughout the provincial government that results in better decision making and can minimize unintended consequences and strengthen the protections put in place. This is completely unacceptable. Given that the agricultural community has been active, engaged participants in the protection of our shared water resources for many decades, this lack of both direct outreach and inclusion is appalling.

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OFA also has concerns with some of the proposed changes. For example, Section 15.1(4) gives the Source Protection Committee (SPC) the authority to use an alternate method or approach from that which is already prescribed. Similar concerns are noted for Section 55.1 whereby SPC's are provided the authority to reclassify an intake or planned intake. The criteria for these intakes are very clearly articulated and changing them may be problematic. For both of these sections, OFA believes that the SPC needs to consult directly with stakeholders prior to making these changes and be able to summarize the impact of this alternative approach versus the already prescribed methods. They must also be able to articulate what these new approaches will achieve that is lacking in the already approved approach. Potentially impacted landowners must be both informed and consulted directly and have input into these changes. They must also be provided with some form of complaint and appeal process if the SPC chooses to use an alternate approach. If the intent to use alternate approaches still requires the Directors approval for these changes, it must be clarified as the current wording does not make this clear.

OFA is opposed to section 62.1 that may extend setbacks. The delineation of IPZ-1 is very clear in the existing rules and were developed through extensive consultation with scientific experts and practitioners. They are based on defensible science that includes calculations of time of travel. If the Source Protection Authority has concerns that the existing IPZ's do not accurately reflect the time of travel conditions already established, then they may petition the SPC to consider commissioning another hydrological study based on the existing prescribed criteria. There is no defensible reason to allow arbitrary extended setbacks. This would diminish the integrity of the Clean Water Act, and its' claim to be science based.

OFA also has concerns with some of the proposed amendments to the Tables of Drinking Water Threats. With respect to all of the threats, some proposed circumstances list two points of consideration. It is unclear if these points are to be read as 1 and 2, 1 or 2, or 1 and/or 2. This is a critical clarification as to how these tables are applied.

The magnitude of changes under the Road Salt threat appears extreme and warrants greater, broader consultation prior to making any amendments. Changing from 80% impervious area to 30% and going from greater than 5000 tonnes of road salt stored of less than 10 kg is significant. This requires greater review of the potential threat to municipal drinking water sources and the impact to landowners, beyond the recommendations of small working group.

We were also very surprised to see greenhouses included with commercial and industrial land uses within the Table (specifically Storm Water Management Facilities and Drainage Systems). Greenhouses are an agricultural land use and must remain treated as such. Many pieces of provincial legislation define greenhouses as agricultural, including the Farming and Food Production Protection Act, Nutrient Management Act and in the Provincial Policy Statements.

Further clarity is also required to the proposed definition of "Storm Water Infiltration Facility". If the intent is to target urban facilities, then this must be made very clear within this definition. The definition in the proposed amendment includes a vegetated filter strip, a grass swale, a dry swale, etc. Farmers are encouraged to have a vegetated filter strip as a beneficial environmental management practice to minimize their potential impact on water sources. To have them now be captured as a potential drinking water threat for this practice is indefensible.

Further consultation and consideration are absolutely required under Wastewater Treatment Facilities and Associated Parts. Our conversations with MECF staff indicate that this section is specific to human waste. This must be very clearly stated within the document. There are areas within provincial legislation where vegetable washwater is defined as sewage. It is our opinion that this section must explicitly state that this threat is limited to human waste/human sewage.

OFA is opposed to the changes regarding the Handling and Storage of Commercial Fertilizer as proposed. It is unclear as to which circumstances this applies. Does it remain limited to storage for retail purposes or does it now include storage on any site? This also does not account in any way for how the commercial fertilizer is stored. For example, the approach for road salt differentiates between “road salt is exposed to precipitation or runoff from precipitation or snow melt” or “road salt in an enclosure”, and thereby recognizes the different level of risk posed by these conditions. The same consideration with regards to how commercial fertilizer may be stored is critical to understanding the potential threat to a municipal drinking water source.

Not mentioned within the proposed amendments are the potential restrictions and costs farmers may face in order to protect the public municipal drinking water supply. Recognition of the costs borne by farmers and other landowners were clearly recognized in Section 97 of the Clean Water Act which provides for the Ontario Drinking Water Stewardship Program. The purpose of this program is to provide financial assistance to “persons whose activities or properties are affected by this Act...”. Proposed amendments to the Technical Rules: Assessment Report under the Clean Water Act absolutely cannot be enacted without financial support for both capital and ongoing operating costs that farmers may incur for protecting municipal drinking water sources.

Overall, we believe that the proposed amendments to the Tables of Drinking Water Threats and the glossary both require additional consultation and consideration. The Ministry should engage directly with the agricultural community to further explore the existing potential for unintended consequences of the proposal and work to mitigate these impacts.

I trust our opinions and recommendations will be given due consideration and look forward to ongoing consultation and discussion.

Sincerely,



Keith Currie
President

cc: Honourable Jeff Yurek, Minister of Environment, Conservation and Parks
Honourable Ernie Hardeman, Minister of Agriculture, Food & Rural Affairs
OFA Board of Directors