

October 30, 2023

Delivered via online submission

Dear Minister:

RE: Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry (ERO: 019-6928)

A. BACKGROUND AND OVERVIEW OF THE PROPOSAL

The Ontario Ministry of the Environment, Conservation and Parks is proposing to modify the standards and regulation of stormwater management in Ontario (“**Proposal**”). This Public Comment (“**Comment**”) will focus on ERO 019-6928¹; however, the Proposal discussed in the Comment has not been brought up in isolation. There exist three other proposals that all seek to dilute review mechanisms relating to the environment in Ontario.² The Proposal has three main areas that it seeks to adjust.

Firstly, the Proposal will allow for smaller water management operations to be self regulated. This regulation will be done through a self registration process via the Environmental Activity and Sector Registry (“**EASR**”). Essentially, this portion of the Proposal seeks to streamline and minimize regulation for some stormwater management works servicing commercial, institutional, light industrial, and private multi-unit residential developments. This effectively downloads the procedural work of Environmental Compliance Approval (site

¹ Environmental Registry of Ontario, “Ministry of the Environment, Conservation and Parks. ERO number 019-6928”, online: <<https://ero.ontario.ca/index.php/notice/019-6928>>.

² Environmental Registry of Ontario, “Ministry of the Environment, Conservation and Parks. ERO number 019-6951”, online: <<https://ero.ontario.ca/notice/019-6951>>, Environmental Registry of Ontario. “Ministry of the Environment, Conservation and Parks. ERO number 6853”, online: <<https://ero.ontario.ca/index.php/notice/019-6853>>, Environmental Registry of Ontario. “Ministry of the Environment, Conservation and Parks. ERO number 6963”, online: <<https://ero.ontario.ca/index.php/notice/019-6963>>.

assessments of existing or new stormwater management works/analysis and reports) from the Ministry to a Licensed Engineering Practitioner (“LEP”), retained by the project proponent.

Secondly, the Proposal seeks to expand the exemptions for “low impact development” (“LID”) works contained in O. Reg. 525/98.³ This change would allow for more LIDs to be done without the need for an environmental compliance approval (“ECA”).⁴ Additionally, the Proposal seeks to add exemptions for “drainage works for roadways and railways,” including Metrolinx railway projects not currently captured under the *Ontario Water Resources Act*.⁵

Thirdly, although the Proposal is framed as an amendment to further environmental protection, in reality the Proposal will dilute protections. This could negatively impact human health and the environment. Without regulatory safety nets this Proposal will *increase* the likelihood that waste and water run-off will be mismanaged to the detriment of the people of Ontario.

We are a group of five second-year law students. Individually and as a whole we have a keen interest in the preservation of the environment and the maintenance of human health. We write out of concern that this proposal has the potential to cause risk to public health and environmental harm.

B. ANALYSIS

1. Self Regulation and The Environmental Activity and Sector Registry (EASR)

I. Self-regulation is not adequate regulation for the safety of Ontarians: *It could result in the mismanagement of stormwater*

A portion of the Proposal seeks to reduce regulation requirements for stormwater management. The Proposal achieves this by permitting smaller water management operations to

³ *Supra* note 1.

⁴ *Ibid.*

⁵ *Ibid.*

register on the EASR. Smaller businesses are able to self-monitor their water management systems. The Proposal defines self-regulation as a less rigorous form of regulation.⁶ The following is an outline of the risks of having a self-regulation system and an explanation as to why loosening regulations will pose unacceptable risk to human health, the environment, and the economy.

II. Removal of scrutiny poses a unique set of risks to the health of Ontarians and the environment

Combined sewer overflow systems, such as the ones found in Toronto, Hamilton, London and Windsor, do not have the resilience to accept less-scrutinized amounts of stormwater runoff. During periods of intense rainfall, the volume of stormwater that enters these combined sewers can exceed the system's capacity and some of the combined sewer flow (a mix of stormwater and sewage) must be diverted, untreated, directly into creeks, rivers and lakes.⁷ The former Environmental Commissioner of Ontario ("ECO") noted in 2018 that "In heavy rains, 44 Ontario municipalities still overflow their combined sewers and spill filthy, bacteria-laden sewage into lakes and rivers. Combined sewers are the primary source of raw sewage discharges, causing 766 overflows in the last year."⁸

The problems detailed in the ECO's report of 2018 are still posing unacceptable risks to Ontarians today. In 2022 a submerged combined outflow from a Hamilton residential area was discovered. Thirty-nine properties were flushing sewage directly into a storm sewer leading into the harbour for a period of approximately 26 years. Under a mandated audit, the city of Hamilton

⁶ *Ibid.*

⁷ City of Toronto, *Combined Sewer Overflows*. online:

<[⁸ Ontario, Environmental Commissioner of Ontario, *Back to Basics: Respecting the Public's Voice on the Environment*, \(Environmental Protection Report\) \(2018\) at 6.](https://www.toronto.ca/services-payments/water-environment/managing-rain-melted-snow/what-is-stormwater-where-does-it-go/combined-sewer-overflows/#:~:text=During%20periods%20of%20intense%2C%20heavy,creeks%2C%20rivers%20and%20the%20Lake,>.</p></div><div data-bbox=)

implemented a risk-based sewer inspection pilot project, identified additional spills, and is pursuing an ongoing effort to address this risk to the local community and Lake Ontario. Although responsibility for upgrades and maintenance of water and sewage systems falls largely to municipalities, the Province also works in tandem towards overarching goals found in Official Plans and Statutes. The Proposal does not contemplate adverse effects on existing vulnerable municipal infrastructure, rather, it serves to frustrate current municipal efforts to strengthen stormwater and waste systems. Finally, it does not contemplate the existence of unknown risk factors such as historic and as-of-yet undiscovered discharges into water sources.

We recommend that before allowing an expanded program of self-registration which increases the risk of additional stress on already overwhelmed municipal systems, the Ministry first addresses problems with current infrastructure and existing lack of oversight. If the current gap in municipal water protection is “absolutely unacceptable”,⁹ then the Ministry must recognize where they have the opportunity to avoid compounding existing problems. Increased events of raw sewage flowing into local water sources presents an obvious risk. As the Ministry balances the competing interests between protecting human health and cutting red-tape for designated businesses through an expanded self-reporting mechanism, we encourage erring on the side of caution.

III. Less review is implicit in this decision: *Do not reinvent the wheel*

Less regulation can lead to critical oversights in stormwater management. The mismanagement of stormwater can lead to widespread illnesses¹⁰. The nexus of a review is that a unilateral decision cannot take place without an unbiased party. This Proposal seeks to reduce the

⁹ Bobby Hristova, “Environment minister says Hamilton must audit entire sewage infrastructure after 2nd leak” (quoting Minister of Environment, Conservation and Parks, David Piccini). *CBC News* (November 24, 2022) online: < <https://www.cbc.ca/news/canada/hamilton/sewage-audit-leak-hamilton-harbour-1.6662960>>.

¹⁰ *Supra* note 8.

regulation required for businesses to build and maintain stormwater systems. The justification provided in the Proposal is that self-regulation will “streamline” stormwater management processes. However, allowing self-regulation of stormwater operations does not in turn mean that runoff is being managed correctly or in the best interests of Ontarians’ health and the economy. In reality, self-regulation of stormwater could have dire economic effects. Studies show that the mismanagement of runoff economically outweighs the benefits of loose regulation or minimal stormwater management systems.¹¹ There is a correlation between runoff and disease; “drinking water outbreaks have been linked to runoff; more than half of the documented waterborne disease outbreaks since 1948 have followed extreme rainfalls.”¹²

IV. Does the size of the operation really matter?

Distinguishing between small and big operations for self-regulation is not logical for three reasons. Firstly, allowing an array of small businesses to self-regulate can have the exact same effect as permitting large operations to self-regulate, as multiple mismanagement of smaller operations can cumulatively create a large-scale health impact.

Moreover, the mismanagement of smaller operations could potentially be more harmful than the mismanagement of one large operation as each individual operation could have its own shortcomings including flooding or waste contamination. The fact that the Ministry has not allowed larger operations to self-regulate reflects the risks associated with self-regulation. Finally, even small-scale disproportionate damages to specific communities should not be advanced for the sake of efficiency.

¹¹Stephen J Gaffield, et al, “Public Health Effects of Inadequately Managed Stormwater Runoff.” (2003) 93:9 American journal of public health 1527-33.

¹² *Ibid* at 1527.

V. What's the risk of limited regulation? *Not a problem until it is*

This Comment has made a general argument regarding the importance of regulation in regard to the environment; however, having limited regulation in a stormwater management context is *especially* dangerous. This limited regulation poses a risk because the intermittent utilization of stormwater operations renders the deceiving notion that self-regulation models are effective. Only once a storm, or robust rainfall occurs, may it become apparent that runoff is contaminating clean water sources or impairing the environment.¹³

VI. Climate change is exacerbating risks posed by stormwater run-off

Stormwater that discharges to land or surface water is recognized as a drinking water threat under the *Clean Water Act*,¹⁴ and will be identified as a significant drinking water threat in some vulnerable areas.¹⁵ As the effects of climate change increase, more areas of Ontario become increasingly vulnerable to stormwater-related risks such as flooding, sewage overflow, increased algal blooms, drinking water source pollution, soil erosion, loss of species habitat and numerous other health and environmental consequences. The Proposal does not serve to mitigate the undesirable impacts of unscrutinized stormwater management on watercourses and associated infrastructure. It further does not address how allowing more self-registration will address increasing risks posed by climate change.

VII. Proposal for changes to stormwater management does not exist in a vacuum:

¹³ Carlos Augusto Furtado de Oliveira Novaes & Rui Cunha Marques, “Regulation of Urban Stormwater Management is not a Matter of Choice, but Performance” (2022) 8 Water Policy: 1325–1342, online <<https://doi.org/10.2166/wp.2022.097>>.

¹⁴ *Clean Water Act*, S.O. 2006, c.22 at s.1.

¹⁵ Ontario, Ministry of the Environment, Conservation and Parks. *2017 Technical Rules under the Clean Water Act* (2017-2018 Table of Drinking Water Threats) (last amended July 1, 2018). online<<https://www.ontario.ca/page/tables-drinking-water-threats>>.

In concurrent ERO 019-6963, the Ministry proposes to additionally streamline permissions for waste management systems by expanding eligibility to self-register on the existing EASR.¹⁶ Currently, and as outlined under O. Reg. 351/12, those that engage in transportation of asbestos waste, biomedical waste, treated biomedical waste, and liquid industrial and hazardous waste can not self-register to the EASR.¹⁷ Instead, an Environmental Compliance Approval is required, and in many cases, financial assurances must be put into place before activity begins. These protections are in place to address the high level of risk these classes of waste pose to human health and the environment, including that posed by toxic spills or lax management of these substances.

Stormwater runoff sweeps contaminants from land into the watershed. Ideally, contaminants are proactively dealt with through waste and stormwater management systems before contaminating water sources. However, as noted above, combined sewer systems can easily become overwhelmed, causing untreated stormwater runoff to flow directly into drinking water sources. Less scrutiny on the management and transport of asbestos, biomedical, light industrial and hazardous waste raises the risk of spills. This in turn raises the risk that untreated stormwater will also include contamination from these dangerous materials. This exacerbation of risk is not in line with the values and principles outlined in Ontario's *Environmental Bill of Rights*,¹⁸ does not serve to drive industry innovation toward sustainability goals, and does not adhere to the precautionary principle.¹⁹

¹⁶ Environmental Registry of Ontario. "Ministry of the Environment, Conservation and Parks. ERO number 019-6963", online: <<https://ero.ontario.ca/search?search=019-6963&date%5Bmin%5D=&date%5Bmax%5D=>>.

¹⁷ Ontario. "Ontario Regulation 351/12. Registrations Under Part II.2 of the ACT - Waste Management Systems under *Environmental Protection Act*," R.S.O. 1990, c. E.19, s 2(3.2).

¹⁸ S.O. 1993, c.28.

¹⁹ *114957 Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)* 2001 CarswellQue 1268, 2001 CarswellQue 1269, 2001 SCC 40.

ERO 019-6963 also removes the important protection of requiring a financial assurance prior to commencing waste management and transportation. These ensure that sufficient funding is immediately available for necessary remediation of spills, and functions as a key way to prevent high-risk substances from entering the water supply through stormwater runoff. This is in line with the “polluter pays” principle as outlined in the *Canadian Environmental Protection Act*,²⁰ and the Purposes of the *Safe Drinking Water Act*.²¹ The Ministry proposes that these risks will instead be addressed through private insurance, within a limited liability regime. The private insurance market cannot adequately provide protection against the financial consequences of large-scale water source pollution and the ensuing risk to human health and the environment. It is not uncommon for a single instance of environmental damage remediation to cost upward of one million,²² with some water-source contamination being irreparable or even costing human lives.²³ Further, there is no guarantee that insurers would have the ability to provide for immediate access to funding necessary for rapid emergency remediation. Finally, the Ministry has not indicated that there is wide-spread support of this plan from insurance providers.

VIII. The Province and Municipalities could be at fault: *torts*

Several legal actions can be brought against the province for the mismanagement of stormwater operations, for instance, negligence, strict liability, and riparian rights claims.

Negligence is the most common claim brought.²⁴ The legal actions available further exemplify

²⁰ S.C. 1999, c.33.

²¹ S.O. 2002, c. 32.

²² Office of the Auditor General of Ontario. *Value for Money Audit: Hazardous Spills*. (2021). online: <https://www.auditor.on.ca/en/content/annualreports/arreports/en21/ENV_HazardousSpills_en21.pdf>.

²³ Ontario Ministry of the Attorney General, The Honourable Dennis R. O'Connor. *Report of the Walkerton Inquiry: The Events of May 2000 and Related Issues, Part One*. (Toronto, 2002). online: <<http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/walkerton/part1/>>.

²⁴ Laura Zizzo & Travis Allan & Alexandra Kocherga “Risks of legal liability for stormwater management” *Environmental Science Engineering Magazine* (April 25 2005), online: <<https://esemag.com/stormwater/stormwater-liability>>.

that although it may be arduous to pinpoint an exact outcome of relinquishing review of stormwater operations, it opens the possibility that the province will be liable for damages. For instance, a class action was brought in the City of Stratford that resulted in a settlement of 7.7 million dollars.²⁵ This settlement amount does not include the cost of defending the legal action.²⁶ Discerning the exact outcomes of introducing self-regulation into certain stormwater management operations is difficult; however, what is certain is that there are substantial economic and health risks which could occur if self-regulation is implemented.

2. Exemption of Some Residential Stormwater Management Works

I. Further clarification needed for the scope of new LID exemptions

The *Ontario Water Resources Act* aims to “promote Ontario’s long-term environmental, social and economic well-being,” but ambiguous stormwater management exemptions may fail to meet this purpose.²⁷ As previously mentioned, the Proposal seeks to expand the exemptions for LIDs contained in O. Reg. 525/98, which would remove the requirement to obtain an ECA for these developments.²⁸

Similar to a previous proposal regarding LID exemptions, the current Proposal does not provide much detail around how far the proposed exemptions will go.²⁹ This may be beneficial from a policymaking viewpoint as it allows for a broad interpretation of the rules and flexibility for future developments in this area. However, without the requirement of ECAs, exempted LIDs may cause negative effects that harm Ontario’s long-term environmental, social and economic

²⁵Laura L. Zizzo, & Travis Allan & Alexandra Kocherga. “Stormwater Management in Ontario: Legal Issues in a Changing Climate, (2014) Zizzo Allan 1-31, online: <https://files.cvc.ca/cvc/uploads/2014/05/Stormwater-Management-in-Ontario_Legal-Issues-in-a-Changing-Climate_2014.04.29.pdf>.

²⁶*Ibid* at 25.

²⁷ *Ontario Water Resources Act*, RSO 1990, C O.40, s.0.1.

²⁸ *Supra* note 1.

²⁹ Environmental Registry of Ontario. “Ministry of the Environment, Conservation and Parks. ERO number 4456”, online, < <https://ero.ontario.ca/notice/019-4456>>.

well-being. Below, we will outline two areas of the Proposal where further clarification can help protect these goals. First, clarifying the scope of exempted LIDs and considering the cumulative risk of having multiple LIDs in the same stormwater management area. Second, a clarification on why roadway and railway draining projects are included in the LID exemption section of the Proposal.

II. New exemptions must consider and address cumulative effects of LIDs

While the Proposal categorizes LIDs as stormwater management activities that “pose little to no environmental risk,” this may not be true when considering the cumulative effects of multiple LIDs in one area.³⁰

From Conservation Ontario’s comments on ERO 019-4456, cumulative effects from the combination of multiple LIDs must be delineated from the environmental risk of smaller-scale LIDs due to the difference in total stormwater volume.³¹ We believe this is applicable to the current Proposal as well. Accounting for cumulative effects in the planning stage can prevent situations where individual LID projects pass regulatory requirements, but their combined effect far exceeds acceptable environmental risks.

A similar oversight already exists in Ontario’s regulations around air pollution.³² Notably, cumulative effects of multiple sources of air pollution are not considered.³³ Rather, each source of emission is treated as the sole source of emission in an area.³⁴ This has led to an extremely

³⁰ *Supra* note 1.

³¹ Conservation Ontario, “Conservation Ontario’s comments on the ‘Amendments to exempt low risk sewage works from requiring an Environmental Compliance Approval’ (ERO#019-4456)” (9 December 2021), online: <[https://prod-environmental-registry.s3.amazonaws.com/public_uploads/2021-12/Final%20Conservation%20Ontario%20Comments%20-%20Amendments%20to%20Exempt%20Low%20Risk%20Sewage%20Works%20from%20Requiring%20an%20ECA%20\(019-4456\).pdf](https://prod-environmental-registry.s3.amazonaws.com/public_uploads/2021-12/Final%20Conservation%20Ontario%20Comments%20-%20Amendments%20to%20Exempt%20Low%20Risk%20Sewage%20Works%20from%20Requiring%20an%20ECA%20(019-4456).pdf)>.

³² Lynda Collins & Loren Sossin, “Approach to Constitutional Principles and Environmental Discretion in Canada” (2019) 52:1 UBC L Rev 299.

³³ *Ibid.*

³⁴ *Ibid.*

polluted airshed near Sarnia, which brings detrimental health effects to the Aamjiwnaang First Nations.³⁵

As previously mentioned, environmental impacts of stormwater mismanagement is not a problem until it is. Rather than setting ambiguous standards and waiting for the worst to happen, it would be much easier to comply with the purpose of the *Ontario Water Resources Act* if the current Proposal took a more proactive approach to mitigate the risks of stormwater mismanagement. As per the government's Stormwater Management Planning and Design Manual ("**the Manual**"), mismanagement may lead to environmental degradation and adversely impact drinking water supplies for Ontarians, both of which harm the future of Ontario's environmental and social well-being.³⁶ The Manual also lists prevention as a key way to "achieve the goals of stormwater management," which further solidifies the need to address the ambiguities surrounding the proposed LID exemptions.³⁷

III. Further clarification needed for the scope of new Metrolinx exemptions

Within the latter portion of the second proposed amendment, it is conspicuous that the Ministry is "also proposing to add exemptions for drainage works for roadways and railways, including railway projects by Metrolinx,"³⁸ This is stated with minimal elaboration regarding the nature of these exemptions. These proposed amendments, as they stand, might provide Metrolinx and other projects involving roadways and railways a degree of immunity from environmental compliance requirements for stormwater management. Consequently, they could be absolved

³⁵ *Ibid.*

³⁶ Ministry of Environment, "Understanding Stormwater Management: An Introduction to Stormwater Management Planning and Design" (2003), online: <<https://www.ontario.ca/page/understanding-stormwater-management-introduction-stormwater-management-planning-and-design>>.

³⁷ *Ibid.*

³⁸ ERO 019-6963, *supra* note 15.

from orders issued by the Director to undertake investigations and make modifications at their own expense under section 53(3).³⁹

In fact, even in Metrolinx's own report regarding an Oshawa to Bowmanville Rail Service extension, they acknowledge the potential implications for stormwater management: The likelihood of affecting watercourse crossing structures such as bridges and culverts, with potential ramifications for floodplain areas:

1. The potential to influence flood conditions within the Central Lake Ontario Conservation Authority (CLOCA) Regulatory Floodplain.
2. The possibility of on-site flooding during construction.
3. Transport of sediment into adjacent natural areas, including watercourses, wetlands, and municipal drainage infrastructure.
4. An increase in impervious surfaces, with potential repercussions for both water quantity and quality.
5. Modifications to the local drainage system, encompassing both overland (major drainage system) and storm sewers (minor drainage system)⁴⁰

Furthermore, the current process to obtain Environmental Compliance Approval mandates a rigorous application procedure, as delineated in O. Reg. 255/11, titled "Applications for Environmental Compliance Approvals."⁴¹ The extent to which exemptions would be introduced with respect to drainage works for Metrolinx and other railway projects remains uncertain. Must they comply with the EASR? Or are the exemptions mentioned completely bypassing ECA and EASR compliance? It is unclear, and explicit language clarifying this matter would be beneficial.

An example of Metrolinx's compliance with environmental approval protocols is accessible. This compliance was required under the EPA. This document contains a

³⁹ *Ontario Water Resources Act*, RSO 1990, c O.40.

⁴⁰ Metrolinx "Oshawa to Bowmanville Rail Service Extension" (2023) at page 3, online: <https://assets.metrolinx.com/image/upload/v1686168332/Images/Metrolinx/Bowmanville_Extension_-_Supplementary_Panels_-_Stormwater_Management.pdf>.

⁴¹ [APPLICATIONS FOR ENVIRONMENTAL COMPLIANCE APPROVALS, O. Reg. 255/11.](#)

comprehensive compilation of terms and conditions imposed on Metrolinx concerning alterations to a sewer system.⁴² These provisions encompass various clauses, including those pertaining to changes in ownership, erosion and sediment control, and reporting obligations.

Regarding the latter, Metrolinx is mandated to report any operational issues, provide a summary of all maintenance activities, and disclose spill incidents. Additionally, the document outlines rigorous spill contingency plans and obligations, which necessitate Metrolinx to maintain records related to the program for a period of five years.⁴³ While it is admitted this project far exceeds simple drainage works, the lack of clarity again leads to assumptions that may be negated with clear and transparent understanding of what these amendments entail.

This prompts the question of the extent to which these amendments and exceptions granted to Metrolinx will be applied. Will they be granted the latitude to intervene in sewer and stormwater management systems without adhering to the extensive array of terms and conditions as delineated above? Furthermore, the removal of the authority vested in Section 53(3) to hold Metrolinx accountable for potential environmental damage introduces a heightened degree of uncertainty concerning the potential environmental repercussions. While the Local Integrated Drainage Solutions may, as previously mentioned, have a positive impact on the environmental landscape, the introduction of potential exemptions for Metrolinx, without clearly defined guidelines governing these exemptions, raises concerns of good faith on the part of the government. This creates the potential for environmentally detrimental policies to be intertwined with beneficial ones.

IV. The part 2 amendments regarding Metrolinx ought to be postponed until greater clarity is received

⁴² Environmental Registry of Ontario, ERO 019-64330 <<https://ero.ontario.ca/notice/019-4330>>.

⁴³ *Ibid* PDF attachment 6318-C8KSN8N at page 8.

remains ambiguous concerning the nature of these amendments and the extent to which they may allow Metrolinx to circumvent environmental protection safeguards. Moreover, are these exemptions still required to go through the EASR? Or bypass ECA approval as a whole?

Consequently, Part Two, concerning the Metrolinx/Railway/Roadwork amendments, should be postponed until a more comprehensive understanding of the amendments is provided to the public.

Proposals for legislative and regulatory policies aim to ensure transparent public notice, enabling an informed and educated response to potential environmental ramifications. Given the current absence of comprehensive information from the Ontario government regarding the potential Metrolinx amendments and exemptions, this objective remains unattainable, thereby undermining the core objectives of the Environmental Bill of Rights, which encompass:

- (a) to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act;
- (b) to provide sustainability of the environment by the means provided in this Act; and(c)
- to protect the right to a healthful environment by the means provided in this Act ⁴⁴

None of the above purposes can be realized without a proper, transparent, and thorough understanding of the proposed changes, thus are required to be delayed until the requested information is provided.

3. Deregulation of water source protection plans by amending O. Reg. 287/07, Made Under the Clean Water Act, 2006

I. The Proposal contravenes the purposes of the *Clean Water Act, 2006*

⁴⁴ O. Reg. 255/11 S. 2. Applications for Environmental Compliance Approvals.

Diluting the multi-barrier approach provided for by O. Reg. 287/07⁴⁵ under the *Clean Water Act, 2006*⁴⁶ which the Proposal seeks to “remove”, “limit” and “restrict”⁴⁷ contradicts the purpose of the Act by obscuring proposed amendments to source water protection plans, limiting the multi-point technical safeguards currently in place to ensure the protection of water quality and, notably, removing public knowledge and community participation in matters that affect those same communities. Stormwater management works are intricately connected to source water protection plans. Stormwater poses a significant risk as a potential water contaminant, especially when inadequately managed, and source water protection plans are “recognized as the first barrier in the multi-barrier approach to reduce the risk of drinking water contamination.”⁴⁸

The Proposal should not be implemented on the aforementioned grounds in section C of this Comment in addition to the following grounds because the Proposal: (a) strips O. Reg. 287/07 of one of its primary purposes of having a thorough multi-tiered process for amendments to source water protection plans; (b) effectively eliminates the communication to, transparency with and input of affected parties to proposed amendments to source water protection plans, ; (c) creates a general dilution of process and instruments for regulating, overseeing and managing stormwater management works as it affects source water protection plans without adequate proposed safeguards, thereby increasing the risk of dangerous contamination of drinking water in Ontario.

II. Current regulatory requirements under the Clean Water Act, 2006 for protecting water quality are necessary and appropriate

⁴⁵ O. Reg. 287/07 Under *Clean Water Act, 2006*, S.O. 2006, c. 22.

⁴⁶ *Supra* note 13.

⁴⁷ *Supra* note 1.

⁴⁸ Azhar Al Ibrahim and Robert J. Patrick, “Source Water Protection Planning and Management in Metropolitan Canada: A Preliminary Assessment” 9:7 (July 2017) Water 1.

While the Ontario government summarizes its third objective in the Proposal as creating “smarter and more efficient environmental permissions processes” for the purpose of reducing “unnecessary burden to support housing” and “build[ing] critical infrastructure”, there is a lack of evidence substantiating these claims⁴⁹. This is important because the Proposal, if implemented, will affect the regulation of source water protection plans that provide multi-barrier safeguards to Ontarians’ drinking water.

Under the *Clean Water Act, 2006*, O. Reg. 287/07 currently provides for a significant number of provisions pertaining to the preparation, approval and amendment of source protection plans (ss. 19-52).⁵⁰ More significantly, under the current regulations there are detailed requirements for submissions that must be made in relation to any changes to source water protection plans in particular. These documents include: a submission of a proposed source protection plan to the source protection authority; a submission of explanatory documents to the source protection authority; a submission of a proposed source plan to the Minister; and a submission of explanatory documents to the Minister (O. Reg. 287/07 ss. 43-45).⁵¹ The breadth and detail of these requirements highlights the importance of source water protection plans as a safeguard which is necessary to a cautious and thorough approach to achieving the purpose⁵² of the *Clean Water Act, 2006*.

III. The Government’s new Proposal disposes of public participation

In addition to the above required submissions with regards to source water protection plans, under s. 47(1) of O. Reg. 287/07 there is a requirement of a notice of hearing for proposed source protection plans that include multiple points of disclosure to affected or responsible

⁴⁹*Supra* note 1.

⁵⁰*Supra* note 45.

⁵¹ *Ibid.*

⁵² *Ibid* at s 1.

parties such as, for example: the chair of the source protection committee, under s. 47 (1)(2)1; the clerk of the affected municipality under s. 47 (1)(2) 4; and the chief of the band if the plans affect their respective reserve, under s. 47. (1)(2) 5.⁵³ Significantly, under s. 48 (1) of O. Reg. 287/07, “Amendments to source protection plans”, the Regulation requires under subsection (a) that: “the source protection authority consults with the source protection committee about the proposed amendment” and under subsection (b) that: “the source protection authority and the source protection committee are both of the opinion that the amendment is advisable. O. Reg.. 246/10, s. 12.”⁵⁴

In addition to these safeguards, there are additional regulatory requirements provided for proposals that may affect drinking water which begins with a written notice of amendment to source protections plans by the owner of an existing or planned municipal water drinking system⁵⁵ and includes multiple steps of disclosure and review of the impacts to water quality, all of which are required to be captured by a “summary of all consultation activities undertaken by the source protection authority during the preparation of the amendment...”⁵⁶ It is important to note that any proposed amendment to a source protection plan must also be made public.⁵⁷ The emphasis on notice to and community awareness of amendments to source water protection plans will be eliminated by the current Proposal, effectively exchanging the community’s notice and participation for developers’ convenience and efficiency.

IV. The Proposal puts Ontarians at a higher risk of exposure to contaminated drinking water

⁵³ *Supra* note 45 at s 47.

⁵⁴ *Supra* note 45 at s 48.

⁵⁵ *Supra* note 45 at s 48(1.1).

⁵⁶ *Supra* note 45 at s 48(7).

⁵⁷ *Supra* note 45 at s 50(1).

Under the *Clean Water Act*, O. Reg. 287/07 makes it clear that there are multiple points of inspections, disclosure and discussion with multiple parties that are required when it comes to any proposals that affect source water protection plans. The voluminous nature of the regulations for source water protections plans and amendments thereto, create a multi-barrier approach to ensure that that purpose of the *Clean Water Act* is achieved.⁵⁸

The purpose of the *Clean Water Act* is to “protect existing and future sources of drinking water.”⁵⁹ Without introducing any regulatory measures comparable to those currently found in O. Reg. 287/07, the government is proposing to remove these prescribed instruments and policies, suggesting they “may no longer be necessary because significant drinking water threats would be managed by the stormwater management regulation on the EASR rather than through a prescribed instrument.”⁶⁰ The dual approach of negating the need for multi-point inspections and processes while also removing public notice of same forebodes the risk of another public health crisis akin to the Walkerton tragedy.⁶¹

In 2017, a national study of water quality and management in major metropolitan areas revealed that the gaps in provincial regulation of source water protection is problematic, especially in areas with high urban development.⁶² Specifically in that report, “A senior water manager for the City of Toronto working to assess and protect the city's groundwater resources indicated that urban land development in Toronto is one of the most significant factors affecting raw water quality”.⁶³ This study highlights complicated risks to Toronto’s water supplies due to urban development in 2017, and with the large amount of ongoing urban development in Toronto in 2023, the metropolitan hub of our province serves as both an example and a reminder that

⁵⁸ *Supra* note 45 at s 1.

⁵⁹ *Ibid.*

⁶⁰ *Supra* note 1.

⁶¹ *Supra* note 22.

⁶² *Supra* note 48 at 8.

⁶³ *Ibid.*

stormwater management is an increasingly complex task that should not be deregulated, and subsequently delegated to a single LEP.⁶⁴ Decades of research examining the risk of deregulation when it comes to the protection of water quality clearly shows that “deregulation of public drinking water service can be calamitous, resulting in price increases, service reduction and water contamination.”⁶⁵ Ontario should not approve a Proposal that exchanges vigorous regulation of water quality which includes stormwater management, for a streamlined approach that prizes efficiency over safety and environmental health.

The dilution of the multi-barrier approach provided for by O. Reg. 287/07 under the *Clean Water Act, 2006* which the Proposal seeks to “remove”, “limit” and “restrict”⁶⁶ goes against the aim of the Act by obscuring proposed amendments to source water protection plans, limiting the multi-point technical safeguards currently in place to ensure the protection of water quality and, notably, removing public knowledge and community participation, all of which is to the detriment of Ontarians.

E. Conclusion:

In conclusion this Comment addresses each of the three proposed points of the Proposal. In response to point one of the Proposal our perspective is that ‘rigorous’⁶⁷ requirements for registration of stormwater management works are in the province's best interest. This is for three reasons: (i) Self-regulation is not as effective as the current regulation process (ii) Concurrent and cumulative risks posed by less scrutiny of an already overburdened stormwater management system is not in line with the values and principles outlined in Ontario’s *Environmental Bill of Rights*,⁶⁸ it does not serve to drive industry innovation toward sustainability goals, and does not

⁶⁴ *Supra* note 1.

⁶⁵ Robert J. Patrick, “Source Water Protection in a Landscape of ‘New Era’ Deregulation” (2009) 53:2 *The Canadian Geographer* 208.

⁶⁶ *Supra* note 1.

⁶⁷ *Ibid.*

⁶⁸ S.O. 1993, c. 28.

adhere to the precautionary principle.⁶⁹ (iii) The damages from flooding are unpredictable and stripping regulations will be costly. In response to point two of the Proposal, we urge the following two factors to be considered. First, further clarification around the scope of the new LID exemptions with a particular focus on the cumulative effect that multiple LIDs in one region can cause. Second, postponing the exemptions regarding roadway and railway drainage works until a more comprehensive definition of the exemptions are provided to the public. In response to point three of the Proposal we are of the opinion that the government's proposed amendments to O. Reg.. 287/07: (i) contravene the purpose of the *Clean Water Act, 2006*; (ii) problematically disposes of public participation and notice to changes in source water protection plans and; (iii) creates unacceptable dilution of current procedure, putting Ontarians at a higher risk of being exposed to contaminated drinking water.

Thank you for the opportunity to comment on this Proposal. We look forward to future engagement on this issue and would be pleased to answer any questions you may have.

⁶⁹ *Spraytech*, *supra* note 18.

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