

CEAC Report 2007-03

Report to: Mayor and Members of Council
From: Neil Morris, Chair, Caledon Environmental Advisory Committee (CEAC)
By: Source Water Protection Planning Sub-Committee; Bill Wilson, Don Lobb and Gavin O'Brien (CEAC Item No, 22)
Date: May 31, 2007
Re: **UPDATE ON SOURCE WATER PROTECTION AND CLEAN WATER ACT**

RECOMMENDATIONS

The Caledon Environmental Advisory Committee (CEAC) recommends to the Corporation of the Town of Caledon:

1. That Council receive CEAC report 2007-03 for information.

INTRODUCTION

In response to the Province of Ontario recently passing *Clean Water Protection Act 2006* (CWA), CEAC has prepared the following briefing report as per CEAC's Work Plan Item No. 22.

BACKGROUND

As a result of the Walkerton tragedy in May 2000, Justice O'Connor made several recommendations related to protection of drinking water. The Ontario Government began writing legislation to protect the quality and quantity of existing and future sources of municipal drinking water. The resulting *Clean Water Act* (CWA) received Royal Assent Oct. 19, 2006, fulfilling 12 of those recommendations. Considerable work has already been done outlining the administrative structure, stakeholder roles and necessary products to implement Province-wide protection.

The key parts of the CWA and its regulations deal with SOURCE PROTECTION. Regulations have yet to be passed which would reveal many of the details of how the Act would impact local communities such as Caledon. However, the Feb 21st presentation to Caledon Council by the leader of the newly created Source Protection Authority, Bev Thorpe, highlighted several important facts about the CWA and outlined several points of progress made so far in implementing the CWA.

REPORT OBJECTIVES

This purpose of this briefing report is to provide information only, as it is CEAC's opinion that issues relevant to the CWA are likely to impact Caledon. As such, interpretations and opinions are provided regarding CWA to place potential relevant issues in context as they may pertain to Caledon. CEAC is providing this information cognizant of the fact that the new, yet to be passed regulations associated with the CWA are anticipated within the near future whereby specific issues highlighted by pending regulation could impact Caledon.

DISCUSSION

FACTS ABOUT SOURCE WATER PROTECTION (SWP) PROCESS SO FAR

The CWA takes precedence over all other Provincial Acts

The CWA focuses on existing and future sources of drinking water.

The Lead Ministry is The Ministry of Environment (MOE).

The Province is using Conservation Authority watershed boundaries to create new areas of jurisdiction for source protection administration purposes called Source Protection Areas. Caledon is located in the new area created by the three existing conservation authorities of Credit Valley, Toronto Region and Central Lake Ontario referred to as the CTC area.

The Toronto Region Conservation Authority Board has been designated by MOE as the lead board of the CTC area and the Source Protection Authority (SPA) responsible for source protection.

Source Protection Authorities are primarily responsible for overseeing the planning process, supporting source protection committees and liaising between MOE and other authorities. It is important to note that these committees cannot be legally appointed until the CWA is in force which is anticipated by July 2007 as provided by pending regulation.

Funding from the Province to the Source Protection Authorities for watershed characterization and planning costs is already being provided by the Province.

The CWA establishes a Drinking Water Stewardship Program to provide financial assistance to Ontarians for activities in relation to source protection plans to protect drinking water sources by providing early funding for education and incentive programs. Although the first priority of this funding, however, will be to address problems in the 100 m wellhead protection zone of influence around municipal wells.

STEPS YET TO BE TAKEN SUBJECT TO NEW CWA REGULATIONS

The CWA only "comes into force" when regulations are passed.

Regulations are expected to be passed in July 2007 and include the following subjects:

- 1) Source protection areas and regions
- 2) Source protection committees (SPCs) operations and size
- 3) Terms of reference for work plan

- 4) Time limits for terms of reference, assessment report and source protection plans
- 5) Planned drinking water systems
- 6) Drinking water systems which cannot be included in terms of reference
- 7) Imminent drinking water hazard notification
- 8) Additional Great Lakes agreements
- 9) Exemptions"

SPCs will generally be composed of 10-16 representatives from municipalities, stakeholders and the general public. The CTC is proposed to have 16 including the chair.

SPCs will prepare Terms of Reference (TOR) for the preparation of an assessment reports (AR) and the source protection plan (SPP) which is then submitted to the SPA, who then submits it to the Minister.

Assessment Report (AR) is due within 18 months of CWA coming into force – anticipated to be about November 2008.

The SPPs are expected to be ready for submission to MOE between 2010 and 2012 for approval. SPPs will include the AR and will address “significant threats” to municipal drinking water supplies.

Key geographic areas of concern in Caledon are well head protection zones (WHP). Two parts of the CWA that weren't discussed in detail during the February 2007 Council workshop included highly vulnerable Aquifers (HVA's), and areas of significant recharge (ASR). HVA are interpreted to be shallower aquifers which do not have a confining layer of impermeable rock or soil above it or are hydrologically connected to surface water such as lakes and streams, and ASRs are surface soils or rock, which readily transmit precipitation to the potable aquifer below, thereby providing recharge.

MAIN ISSUES AND COMMENTS ARISING FROM THE FEB 21st WORKSHOP PRESENTATION TO TOWN COUCIL

GEOGRAPHIC ZONES OF CONCERN ARE DETERMINED THROUGH WATERSHED CHARACTERIZATION. Practically speaking, however, Caledon is primarily concerned with areas of WHP, ASR, HVA. Intake Protection Zones (IPZs) from the Lake Ontario surface water source are applicable for municipal water supplies in areas of Caledon which affect about half of its population (in Valleywood and Bolton). However, insofar as the Lake Ontario intakes are concerned, they impact all of Brampton and Mississauga as well as the aforementioned areas of Caledon. As such, concerns related to the CWA as they affect IPZs are most appropriately addressed by the Region of Peel.

It may help dispel many of the concerns raised by stakeholders by the early clear definition of Well Head Zones, HVAs and ASRs with a detailed review of Well Head Protection mapping for Caledon that may show a strong concentration of municipal well head capture zones being located near residential communities not necessarily open space, agriculture areas etc. Further, if the aquifer where the municipal well draws water is confined this adds another layer of safety as the aquifer would not likely be classified as HVA. If the surface soil unit nearby is not a strong infiltration zone, this adds yet another margin of safety as the area would not be classified as ASR. On the other hand, every well that draws from an aquifer that supplies a municipal well, may be required to

have a WHPZ and this could affect a very large area at great cost to the community. All these things have to be looked at together to evaluate risk and is where science will play a crucial role. Agriculture and other resource industries may be impacted in a more significant way as the process moves to 2, 5, and 25 year time of travel for groundwater, thereby increasing the wellhead protection zone of influence around a municipal well.

It is anticipated that under the CWA the province would offload the bulk of responsibility for addressing a potential or existing contaminant threats to drinking water (aquifer or surface water intake) to the municipalities, with the application of the Act through the use of municipal employees designated to be “Risk Management Officials” who would be responsible to enforce the regulations associated with the Act.

CEAC understands that the Region of Peel already has both the responsibility and jurisdiction over public drinking water from wells and intake pipes. This would suggest that the CWA does not imply any greater or lesser degree of responsibility on the Region of Peel or Town of Caledon for the purposes of protecting and delivering clean drinking water. Nevertheless, there is some question remaining regarding the responsibility as it is related to potential legal issues. It may be prudent that the Town of Caledon, in collaboration with other municipalities, follow-up on potential legal ramifications that could result from implementation of the CWA. Further, where does the issue of responsibility rest for cases in which WHP zones are established in one municipality to provide protection of drinking water supplies going to another municipality as in the case of the two municipal wells located in Caledon that are providing potable drinking water to the Town of Orangeville?

FUNDING - While the Province has been funding planning and watershed characterization as part of the lead up to the CWA, the future of funding sources for on-going enforcement of the provisions of the Act and for implementation of new source protection policies remains uncertain. The means of actual funding of future municipal roles (both Region’s and Caledon’s) is unclear. Some rural municipalities are virtually bankrupt and cannot afford this. The Town of Caledon could collaborate with other municipalities in encouraging the Province to fund for on-going enforcement of the CWA if costs associated with this enforcement as well as those for the anticipated revisions to planning policies and zoning by-laws are offloaded to the lower tier municipal governments.

Impacts to Existing Landowners - Based on the initial council reaction fears voiced at the February 21, 2007 workshop, there is likely to be more financial onus on agricultural land owners to further address, for example, significant threats arising from nutrient and fuel storage and fertilizer applications. Under the CWA, there is no requirement to provide compensation where cost is incurred by a landowner or property value is lowered. This can impact individual property owners, businesses and municipalities. In the interests of agricultural viability, a means of compensation may need to be determined for land owners being requiring to implement mitigation measures or alter land use practices to protect drinking water sources. The announced Stewardship Fund makes no commitment to on-going or future sources of financial support. The Provincial Budget of March 2007 provides for some support to the end of year 4. It is notable that Source Protection Plans are expected to be implemented in year 5 and this is where greater cost to the public could be expected. The Town of Caledon could join other municipalities in encouraging

the Province to provide funds so these issues can be dealt with fairly. Again, these concerns come into play regarding the two Orangeville wells installed in Caledon; thus, Caledon will likely face many of the same issues raised by the farm community.

The CWA impact on various land uses will become clear as the Regulations are made available, however based on the information available the following land uses are likely to be impacted by the CWA.

1. Private sewage systems
2. Transportation corridors
3. Salt application
4. Industrial land
5. Scrap
6. Golf courses grey water
7. Permit to take water (ptw)
8. Underground storage tanks

It should be noted that definition of “SIGNIFICANT THREATS” - in the context of considering the above, has yet to be defined.

CONCLUSION

"While 'significant threats' have not yet been defined, it would help to address the current speculative concerns of local impact of the CWA by beginning to map the various sensitive zones and to quantify existing land uses in those zones with best available information."