Bill 43 – Proposed Clean Water Act, 2005

Environmental Bill of Rights Submission
EBR Registry Number AA05E0001

Submitted By: Aggregate Producers' Association of Ontario
Prepared By: APAO Joint Environment/Land Use Committee
Submitted: February 3, 2006

Following are issues and concerns regarding the proposed *Clean Water Act*, referenced by section number in the proposed *Act*, where relevant:

General Comments

1. The APAO is supportive of clean drinking water sources for the citizens of Ontario, and believes that aggregate extraction is compatible with the purpose of the proposed *Act*.

2. In developing the regulations to the *Act*, it is critical to the industry that the reference in the earlier Technical Experts Committee report to aggregate extraction as a "*threat of provincial concern*" is removed. As noted in the attached correspondence between APAO and Ian Smith (MOE), we have reached an understanding that pits and quarries would instead be treated as sites of "augmented vulnerability", where necessary.

3. A primary concern of APAO is that the Province maintains ultimate responsibility for the planning and protection of drinking water sources. Water is a provincial resource (similar to aggregates). Its use and protection should ideally be planned for the province as a whole by a provincial agency, in this case the Ministry of the Environment.

   We understand that conservation authorities have a certain geographical practicality and that municipalities already have responsibilities for a portion of Ontario's existing drinking water systems[1]. However, we urge the government not to delegate the responsibility. The regulations under the *Act* must provide clear, consistent and scientifically based procedures to be followed by all authorities. Plans and policies that provide for the protection of water resources in Ontario must be consistent across the province.

[1] *Although not rural water supplies from private wells, and some private communal systems. It is not clear how these are represented.*

4. To ensure ongoing provincial consistency in the development of the plans, APAO recommends that the province continue with a multi-stakeholder committee(s) formed at the provincial level to review and comment on interpretations to the Regulations, technical information, planning process and the overall consistency of the plans. Stakeholders to this committee would represent industries, agencies and other interest groups with a provincial mandate (similar to the previous Technical and Implementation committees). APAO would be very committed to continuing in this role, and we believe it is essential in ensuring that our industry is adequately represented across Ontario.

5. The total cost for the implementation of the proposed *Act*, including the preparation of terms of reference, assessments, plans, and ongoing monitoring, training, inspection and enforcement, is clearly substantial. There needs to be consistency and fairness in the sharing of these costs across the province.

6. (a) The proposed Clean Water Act will have the affect of regulating land use in Ontario if it prevails over official plans and zoning by-laws (Section 35(2)). Section 106.3specifically identifies vulnerable areas. This reference and the preceding definition could apply to vast tracts of land throughout the province. We believe that additional refinements of these criteria are required. Ontario has a well established, tested and sophisticated system in place to regulate land use under the Planning Act. It includes many checks and balances that have been developed to ensure there is full consideration of a wide range of interests. Under the Planning Act, decision-makers and applicants are equally accountable through the OMB process.

   The inter-relationship between the Planning Act and the Clean Water Act requires further careful consideration to ensure that there is no circumvention of appropriate checks and balances as a result of the new legislation.

   (b) The provisions of the Bill that address inter-relationships with Provincial plans also require further consideration before this initiative moves forward.

   Source protection plans are anticipated to be focused on the protection of drinking water supply whereas Provincial policies and plans are required to comprehensively address a range of resources, land uses and interests including, provisions for availability of mineral aggregates.

   There are likely to be many situations where there is a perceived conflict between provisions of a Source Protection Plan protecting water and provisions of a Provincial plan providing for a resource use (aggregate or agriculture). In order to avoid confusion and potential conflicts, the Source Protection plans will have to recognize that aggregate extraction does not create any unacceptable risks to drinking water sources based on the controls that are already built into the Provincial legislation (e.g. Aggregate Resources Act and Ontario Water Resources Act). This should be required by the Province and not left to the discretion of individual source protection committees.

7. The province should have held public meetings and information sessions in conjunction with the release of Bill 43, given its complexity and significant implications. This would have provided the

opportunity and access for stakeholders to ask questions of clarification prior to commenting. It would still be valuable to hold such meetings even after this commenting period, but before revision and Second Reading.

8. There needs to be a more thorough commitment to consultation. All three of the major reports (terms of reference, assessment report, and source protection plan) should undergo consultation with key stakeholders (not just municipalities) during their development, and then be posted as draft reports for public comment prior to submission and approval. The EBR would a suitable vehicle for public review and comment.

Specific Comments

9. Section 2(1) and elsewhere. The term "*a groundwater recharge area*" should be removed from the definition of "*vulnerable area*". Groundwater recharge occurs to a greater or lesser extent over massive areas of the Province, yet not all of these are necessarily vulnerable. For example, clay plains can be deemed groundwater recharge areas, but the slow rate of infiltration and groundwater flow results in low vulnerability. The term "*highly vulnerable aquifer*" should remain and should be defined in the proposed regulation to consist of unconfined aquifers with high rates of infiltration and recharge.

10. Section 2(1) and elsewhere. Parts (a) and (b) of the definition of "*drinking water threat*" references *potential* effects. This requires further clarification, and/or a procedure to be defined in the regulations, so that potential effects are judged by consistent scientific criteria.

11. Section 4(2). The regulations under the *Act* must provide clear, consistent and scientifically based procedures to be followed by all conservation authorities, and specify the required qualifications of those who conduct the studies.

12. Section 8(3) and 13(2) (e) (i). A definition is required in the *Act* or regulations to define a "*planned drinking-water system*". What is the appropriate planning time frame and justification? APAO is concerned about conflicts that may arise from municipalities who may try to "reserve" future water supplies for some indefinite period without proper justification, at the expense of other legitimate and necessary water users. This would be contrary to the long-standing approach to water use in the Province, and become a right and privilege not afforded to other citizens. We suggest that the term "*planned*" might be defined to mean those systems that are approved but not yet built.

13. Section 13(2) and elsewhere. Pursuant to a previous point, the Province must provide clear, consistent and scientifically based definitions and procedures for the identification and assessment of "*vulnerable areas*" and "*drinking water threats*". These must be set out in detail by the Province in advance of the development of the plans. Source protection committees must be directed to use these consistently under the direction and approval of the Province.

14. Section 13(2) (c), and elsewhere. There is a need for clear and consistent definition of the term "*watershed*", to ensure that the studies are developed at the appropriate scope and scale.

15. Section 13(2) (c) (iii) and (iv). The identification of "*water taken from the watershed that requires a permit under Section 34 of the Ontario Water Resources Act*" is not sufficient for the purposes of source water assessment reports. In the aggregate industry, there is a critically important difference between three types of "water takings":

Maximum Permitted Amount	The maximum daily amount that can be pumped, according to the Permit to Take Water (PTTW).
Actual Water Taking	The actual amount of water pumped at the site. Usually substantially less than the maximum permitted amount listed in the PTTW because of actual operational requirements, (production, precipitation, seasonal shutdown).
Water Consumption	The amount of water that actually leaves the local watershed. It is only a small fraction of the Actual Water Taking since the industry recycles extensively (i.e. aggregate washing) or simply diverts water within the watershed (i.e. quarry dewatering)

Characterization and assessment of the watershed must be based on actual water taking and water consumption, properly taking into account recycling of the water on-site and/or within the watershed. This issue is of particular concern to the aggregate industry where studies have confirmed that the actual water takings are substantially less than the maximum permitted amount, and that the water consumption is only a small fraction of the permitted amount. We can make this information available to the Ministry.

16. Section 13(2) (g) (ii). A definition is required in the *Act* or regulations to define "*future activities*". Similar to a previous point, an appropriate time frame and justification is necessary. The definition could be based on land uses or activities that are approved, but not yet built.

17. Section 19(2) (3) (4) and (5). The designation of activities and land uses that represent a significant threat to drinking water should only be in strict accordance with the regulations, in order to ensure provincial control and consistency. If an assessment report identifies a threat not listed in the regulations, then the province should be requested to add it to the regulations by amendment, with proper scientific support. The source committees should not have the authority to designate additional threats simply though the preparation of an assessment report.

18. Section 25(1). The requirement for a hearing should be aligned with, and based on, the current hearing process for the OMB under the *Planning Act*, given that the source protection plans will result in important land use planning decisions. A hearing should be mandatory upon any legitimate request.

19. Section 35(4). Where there is a conflict with other policies or plans, "*the provision that provides the greatest protection to the quality and quantity of the water prevails*" is of concern to APAO. This statement appears to be lacking reference to an adequate quality and quantity of water in accordance with the associated regulations and standards, which may be an important consideration in the balancing of essential activities and land uses in accordance with Provincial Policy. APAO requests further discussion or clarification on this particular clause to be satisfied that it will not become a mechanism to unfairly deny land uses essential to the welfare of Ontarians.

20. Section 42(6). The responsibilities of the permit officials and inspectors as set out in the proposed *Act* are substantial and will require education, experience and training in groundwater and surface water sciences. APAO recommends that the Province provide through the proposed *Act* or regulations a minimum professional standard for these positions to ensure competency, as well as detailed regulatory standards on all aspects of these roles to ensure consistency across the province.

21. Section 47(2). APAO requests further information regarding the potential scope of permit and inspection fees that may be expected, since this may have a direct impact on the business costs of our members.

22. Section 51. The definition and intent of a "*restricted land use*" is not clear as it relates to "*activities*". In fact, "*activities*" are defined in Section 2 to include "*land uses*". These apparent discrepancies require further explanation or clarification.

23. Sections 54 through 58. The legislation must acknowledge the responsibility for inspectors to comply with safety protocols and procedures established under other provincial legislation. Pit and quarry operations involve many unique safety hazards related to the excavations, stockpiles and processing equipment that requires specialized safety training that the industry provides to on-site personnel and others before any access is provided to a site.