

SUBMISSION
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ONTARIO WATERKEEPER & PETTICODIAC RIVERKEEPER**
TO THE CANADIAN COUNCIL OF MINISTERS of the ENVIRONMENT

**RE: OPTIONS FOR A CANADA-WIDE STRATEGY FOR
 MANAGING MUNICIPAL WASTEWATER EFFLUENT**

EBR #: XA06E0010 (IN ONTARIO)

SUBMISSION DATE: MARCH 1, 2007

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INTRODUCTION

Waterkeepers are a citizen-based, not-for-profit and charitable organizations working to serve as independent voices for waterways around the globe. Every Waterkeeper is a member of Waterkeeper Alliance, led by Robert F. Kennedy, Jr. Nine Canadian Waterkeeper programs patrol some of the world's most magnificent waterways, including tidal bays, Great Lakes, and glacial rivers.

Across Canada, Waterkeepers are responding to complaints from the public about poor water quality, beach closures and paddling in raw sewage. Several of our Waterkeepers have been successful using the *Fisheries Act* to bring polluters to court, or bringing evidence forward to Environment Canada to demand action on sewage discharges that are spoiling our lakes and rivers. As we write, Fraser Riverkeeper Doug Chapman is the informant in two private prosecutions of sewage-related *Fisheries Act* offences in British Columbia.

Given that the current *Fisheries Act* makes it an offence to put a deleterious substance into waters frequented by fish, and given that the courts have successfully defined “deleterious” in past cases, Canadian Waterkeepers have concerns that new regulations for municipal wastewater effluent may be less protective than the current law that protects our waterways. Regardless of the size of a community or the characteristics of the receiving water body, all Canadians have a right to swim and to eat the fish safely in their local lake or river.

Waterkeepers applaud the CCME for addressing the problem of managing municipal wastewater. This is long overdue and municipalities need to have national standards that are strictly enforced, or we will continue to see the disparate levels of municipal wastewater treatment that we see across Canada today.

Canadian Waterkeepers formally recommend that, **any new regulations drafted under the Federal *Fisheries Act* must prohibit the discharge of deleterious substances into Canadian waters, regardless of who is releasing them or how much money it will cost to fix the problem.**

COMMENTS ON THE DRAFTED STRATEGY

Canadian Waterkeeper members have carefully read the consultation materials for the Canada-wide Strategy for Managing Municipal Wastewater and wish to offer the following comments:

1. National Performance Standards:

- Toxicity testing should be added to the list of National Performance Standards to ensure the integrity of the deleterious substance intention of the *Fisheries Act* is left intact
- The National Performance Standards must be made legally enforceable; failure to comply with standards should result in prosecution in the criminal courts
- The National Performance Standards must be flexible to adapt to emerging science and rely on the precautionary principal

2. Provincial Effluent Discharge Objectives (EDOs):

- Much more clarity about the EDOs is needed. Right now, it is not clear how or if the EDOs will be anchored in the regulations.
- We have concerns about the time and money that will be spent on characterizing the receiving waters to determine appropriate EDOs – we predict there will be copious amounts of time and money spent creating predictive models to hypothesize what amounts of pollution the receiving waters can handle, yet in the end the province will ultimately make political decisions about what to write into the EDOs (after they are relentlessly lobbied by municipalities and industries who impact the composition of municipal wastewater effluent).
- Substances that will be regulated by the EDOs are important substances that can have major impacts on the aquatic environment and human health; under this model it will be the Province that ultimately regulates what is acceptable and this concerns Waterkeepers as there will likely be noticeable differences among the provinces that might not be justified by science.

3. Risk Assessment Model:

- Our experience in other sectors with risk assessment models to protect our waterways and human health has been discouraging. In general, risk assessments lack transparency, consistency and public input.
- We do not agree with labeling the receiving environment “sensitive” or “not sensitive”. Once you label a river or lake as not sensitive, it opens up the door to assumptions about use (i.e. this lake is not used for drinking water so we can abuse it – or – if we close this area to swimming we can dump more pollutants). We believe that all receiving water with fish habitat should be treated with equal protection.
- The preliminary risk assessment does not take into account the cumulative impacts of pollution on the receiving waters (i.e. in the Ottawa River system there are 100's of municipalities that dump wastewater effluent into the river as well as nine pulp mills and many other industries).
- The public must have input into evaluating the risks associated with polluting the receiving environment – these water bodies in question belong to the public and they have a right to give input into how these water bodies are used or abused.

4. Sewer Overflows:

- The national overflow standards are not aggressive enough to deal with combined sewer overflows (CSOs). CSOs are a big problem that will only get worse in the future with climate change.
- CSO management should be tied into the risk assessment to identify priorities for spending based on impact to receiving waters (i.e. in some municipalities the CSO problem should be fixed before money is spent upgrading wastewater treatment facilities).

5. Sewer Use Bylaws:

- A model sewer use bylaw should be mandatory and enforceable.
- The federal government should provide incentives for pollution prevention - this should not be left to the individual municipalities unless incentives are good enough to make them enforce their bylaws.

6. Leadership and Innovation:

- There should be more emphasis on encouraging innovation and providing incentives for pollution prevention techniques (i.e. water conservation, reduction at source) as well as incentives to go beyond the minimum discharge objectives
- Larger municipalities should be given incentives to demonstrate leadership in innovation even if they are not considered “high risk”.

7. Administrative Agreements:

- We are concerned with the practice of formal administrative agreements between the Provinces and the Feds because the provinces have fewer incentives to bring forward compliance issues (past failures on Fed/Prov agreements include SARA, CEAA and PPER). We think it should be the Federal Government's role to enforce the regulations under the *Fisheries Act*.

8. Reporting:

- Public reporting should be mandatory - all facilities should be required to report annually to the public on all operating permit requirements.

9. Timelines for Implementation:

- The proposed timelines (20-30 years) for implementation are not acceptable. There should be much shorter time frames (< 3 years) for dealing with facilities that are currently out of compliance. Otherwise, the new regulation will effectively legalize pollution for an entire generation.

10. Enforceability:

- The current general prohibition in the *Fisheries Act* applies to all sewage operations and prohibits the deposit of sewage into waters frequented by fish. This is a well-recognized legal standard in Canada, and Canadian courts have used it to hold municipal sewage operators accountable for pollution. The proposed new regulation exempts sewage operators from the general prohibition, replacing it with a new standard. To safeguard the power of the *Fisheries Act*, the new standard must either maintain the general offence section or create a similar, enforceable offence provision.

11. Bill C-45, the *Fisheries Act*, 2007

- Bill C-45, the *Fisheries Act*, 2007 is currently in the midst of second reading in the House of Commons. If the new *Act* passes, it will repeal and replace the current *Fisheries Act*. In order to allow for transparent and effective public consultation, the CCME should incorporate deliberations on Bill C-45 into its strategy.

Thank you for your consideration of our submission. Submitted by:



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