

### Comment Period

I wish to begin by saying we find it completely unconscionable that the Government has given the tourism industry and its many small water system owners only 12 days to respond to the proposed changes as posted on May 17, 2005 on the Environmental Bill of Rights Registry. Not only does this fall well short of the 30 day comment period required by law, but it is an insufficient period of time for stakeholders to familiarize themselves with the details of the proposal and to submit a written response.

The Rationale for the Shortened Comment Period as posted on the EBR Registry is completely without merit. Such an important piece of legislation cannot and should not be presumed to become effective in law without a proper comment period. The Minister has had access to the Advisory Council's report since February 8, 2005, which was first publicly disclosed on March 22. This gave the Minister and Ministry officials a full 14 weeks to develop the currently proposed draft, during which time the industry was largely left to speculate as to how the Advisory Council's findings and recommendations might find their way into policy. By leaving the release of the policy until just two weeks before the June 1 deadline (thus allowing only a 12 day comment period) without changing the deadline itself to allow reasonable time for analysis by the industry, is draconian and unacceptable.

The Ministry has consumed a disproportionate amount of time to release its proposals, and the industry and small water system owners are effectively being penalized for the government's inability to act sooner. This release should be accompanied by a delayed deadline to allow a 30 day comment period as required by Ontario law.

By its actions the Ministry of the Environment continues to be reactive instead of proactive in this matter, and has forced small water system owners into a position where there appears to be little recourse. It is not unreasonable that this be perceived as a bullying tactic cloaked in concern for ensuring safe water. It is completely within the Ministry's control to rectify this situation by extending the deadline or the comment period.

### Process and Manner of Release

We find it unusual in the extreme that the critical details of the Proposal are buried in a hyperlink at the end of the EBRR posting, under the heading: "Additional material in support of this notice..."

This presupposes that stakeholders can find and access this link – an expectation which is not reasonable. Communication within the industry these past two weeks has demonstrated that even experienced, informed stakeholders have missed this link until it was specifically brought to their attention. One is forced to ask, what will be the experience of less-involved though equally concerned industry members?

The Government has done a woefully inadequate job of communicating with stakeholders on the new requirements they will imminently face, specifically in the context of the timetable. Communication does not happen by magic, nor can it be overnight. There is a large community that remains uninformed or misinformed, and sufficient steps have not been taken to clarify to these stakeholders what is required, and the impact that the proposed changes will have on them in what appears to be a matter of days.

If misinformation ultimately results in instances of non-compliance, what will the Ministry do? Will it continue with punitive measures under changing and confusing circumstances, or will it truly make a genuine effort to act collegially with the industry to bring about an effective solution that has the understanding and commitment of those affected?

### Political Context

It is hard to avoid the perception that the May 17 announcement contains an element of political manipulation and the management of public and industry opinion.

I have already commented on fact that essential details of the proposal were not disclosed in a transparent manner that makes them easy to find. Other political influences are evident in attempts by Ministry officials to obtain favourable written comments from the industry in advance of disclosure of the detailed policy, and more so, by highlighting only those recommendations that the industry would find favourable while burying the rest in legislative language not prominently featured in the EBRR posting.

To be sure, we applaud the decision to remove the Professional Engineering requirement; to eliminate the requirement for certain types of tests; and to eliminate the need for annual reporting.

However, there are details within the legislative language which require further consultation with the industry and consideration by this Ministry before enacting the law "as close to June 1, 2005 as possible". The Ministry's current timetable and stated intent to drive the proposed changes forward without delay makes further consultation appear quite difficult.

### Clarity of the Regulation

From our review, it is our understanding that all elements of Regulation 170 will go forward as previously written, except as specifically noted by the proposed amendment. Does this, for example, mean that affected establishments are still required to register their intention to comply by the previously-set June deadline? If a food service premise, such as a Bed and Breakfast, does not register

because the resident owner does not understand the web of amended and existing requirements that the Ministry has now developed, are they to be in breach of the law and subject to fines?

The proposed changes have brought clarity to some "big picture" highlights of the Regulation, but large-scale confusion remains surrounding the process and proposed details which will operationalize the policy going forward.

For example, specific to the proposed changes, there is, on page 15, 1-7 (2), an example of a level of understanding that will likely never be achieved throughout the Bed and Breakfast community. This section says that it is our responsibility to inform the private laboratory of what they are supposed to be testing for. This assumes that we have a clear understanding of the requirement in the first place; it further obliges the government to adequately impart this understanding.

If the requirement is to use private labs without option, should it not also be an obligation of the laboratory to inform us about legislative requirements for our segment of the industry? It cannot be the sole responsibility of the smallest of system owners such as B&Bs to find this out on their own. The expectation does not reflect reality.

#### Testing and Private Services

Free Enterprise being what it is, we are concerned that private labs will implement fees that could far exceed the cost and reasonable profit associated with providing testing services. The industry has already seen ample evidence of this in the past year.

We have also seen cases where some suppliers of water treatment equipment are "terrorizing" less informed industry consumers with false statements in an effort to sell their products, when these suppliers themselves often do not understand the requirements. The climate of uncertainty in the industry is rampant, and it is incumbent on this government to bring clarity and transparency to a process by which we can achieve our common objectives of ensuring safe clean water, while avoiding inevitable cost escalations caused by simple supply and demand.

Public Health Units need to retain a role in the provision of testing services. Under the current scenario, it is conceivable that testing demands on the Health Unit lab infrastructure will actually decrease, as establishments who have been using public labs in the past are moved to private labs.

A survey of the industry completed in 2004 showed that 37 percent of Bed and Breakfasts test their water at least monthly; 57 percent test at least quarterly, and 77 percent test at least 2-3 times per year. (Only 4 percent did not test.) Of these tests, all were conducted through Public Health Unit labs. Requiring that these tests be moved to private facilities will result in an increase in capacity at public labs without any increase in infrastructure.

It is our position that establishments with a demonstrated history of testing through Public Health Units should be permitted to continue in this manner under the new regulation.

### Summary of General Concerns

- The critical details of the amendment are difficult to find
- These details were not presented in a transparent manner by this Government
- The implications continue to pose complex issues for some small water system owners
- The Advisory Council's recommendations have been implemented selectively, and without specific consultation as to the impact of those recommendations which the government has chosen to ignore
- Private testing labs continue to be the sole source of conducting approved tests
- Private lab fee structures are unregulated, and they can charge fees as they wish in a controlled user market
- There continues to be no access to the services of Public Health Labs; Health Units appear to have no on-going role in testing, yet are or will be accountable for drinking water quality
- There is no co-ordinated method of delivering samples to private labs, for example, with the help of Public Health Units
- There is no provision for a role for Health Units in negotiating preset testing fees with private labs
- There is no provision or accounting for the reduced demand on Public Health Unit labs that will result from system owners who are "grandfathered out" of their historic relationship of using Health Unit lab testing services
- Test results are monitoring systems and are incapable of prevention
- There appears to be no consideration of benchmarks used in other jurisdictions as to what constitutes an acceptable result -- other than a perfect score -- and that less than perfect puts into motion the same remedial and punitive process as a score that could be considered as "grossly" unacceptable
- There appears to be no financial assistance forthcoming in any form from the Government, despite the recommendations of the Advisory Council and the recommendations of the O'Connor Commission, in contradiction to the Minister's repeated assertion that every O'Connor Commission recommendation will be implemented

### Specific Concerns Relevant to Ontario Bed and Breakfasts

We note with interest that while B&Bs have been regularly mentioned in public statements from the Minister and in the press as special cases, they are specifically omitted in the list of examples used for illustration purposes in the proposed regulation. Yet according to Page 7 (3) of the draft, B&Bs are

considered in the same category for sampling and testing purposes as Small Municipal non-residential and Non-municipal seasonal residential systems.

This is inappropriate. Examples of expectations which could prove unrealistic for the B&B community yet potentially punitive under the proposed regulation, include Page 10 - Information to be Available; and Page 11 – Retention of Records (2).

It is the position of the Federation of Ontario Bed and Breakfast Accommodations (FOBBA) that Bed and Breakfasts under the Regulation should be designated as owner-occupied principal residences.

Full-time owner occupation makes B&Bs unique in comparison to any other small water system category. As a principal residence, we argue that we should be entitled to continue testing our water samples through the Health Units in our communities, as many of us always have. For those with a history of testing, this will not place any additional burden on the existing infrastructure, since Public Health Units have always been our partners in these health-related matters.

As B&Bs, we appreciate the removal of the engineering requirement, the removal of annual reporting requirements, and the reduction of testing to a more reasonable monthly frequency, subject to the pending Risk Assessment process to be developed. We look forward to continuing our existing relationships with our local Health Units. We ask that FOBBA receive special consideration, representing all Ontario owner-occupied B&Bs, in developing a specific solution for this unique category of service.

We further propose that the specific exemption should be as follows, under the agreed Definition of a Distribution/Service connection:

*Any system where a single service connection with no distribution system serves the permanent primary residents of the facility as well as periodic guests and paying visitors.*

This position is clearly supported in the recommendations of the Minister's own Advisory Council, which defines a "small system" and furthermore, a cut-off point for "small": for example, exemption for a B&B with 5 or fewer rooms.

This is related to what the Advisory Council calls a "principle of significant use," i.e. *"a residence where the frequency of public access is low and where the family is the primary consumer of the potable water."* The Advisory Council report continues: "This [small cut-off] could be related to considerations on the primary use of the facility. The recommended model [Risk Assessment] would address the issue of size and primary use when assessing risk and setting out sampling and treatment options." The Water Health Inspector, as part of the initial risk assessment, would address whether

there is a significant level of public access to a facility - "possibly" says the Council, "less than 25% of the time."

In the context of the above, we propose the requirement for Ontario B&Bs should be:

- Minimum monthly testing through Public Health Units, subject to review upon Risk Assessment;
- Procedure for corrective action to be essentially as proposed under "Procedure for Corrective Action for Non-Residential and Non-Municipal Seasonal Residential Systems that Do Not Serve Designated Facilities and are Not Currently Using Chlorine";
- Create a reasonable definition of what constitutes an unacceptable test result other than a less-than-perfect 0/0 result which would trigger the above Corrective Procedures

### Summary

I wish to conclude on a personal note by saying that the depth of understanding reflected in these comments are those of one who is reasonably well-informed about this regulation, yet it is far from the working understanding the Ministry should expect from the majority of small water system owners, in particular, Bed and Breakfast owners.

Legislators must understand that small non-municipal non-residential system owners are typically private entrepreneurs or volunteers, depending on their industry. We do not have a staff whose job it is to manage our interests in these matters, or to respond to the decisions of government which can potentially alter the way we live. This is the reality of most rural tourism service providers in Ontario.

We seek to have a partner in Government, not a policeman. We are as committed to ensuring safe drinking water for our families and guests as are the regulators and politicians: consider that 94% of small water system owners drink the same water they provide to their guests.

We ask the Ministry to engage the industry, in particular the Bed and Breakfast community, in a series of further discussions surrounding this proposal. These changes are a first step in the right direction, but we have not yet arrived at a sustainable solution.

We thank you for your consideration of our industry's position.

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