



**Submission to the Ministry of the Environment
Concerning
*The Water Opportunities and Water Conservation
Act, 2010***

EBR Notice 010-9940

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**To:
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On behalf of its members and stakeholders in the wider construction and infrastructure sector, the Residential and Civil Construction Alliance of Ontario (RCCAO) is pleased to make a submission to the Minister of the Environment regarding Bill 72, *The Water Opportunities and Water Conservation Act, 2010*.

The Residential and Civil Construction Alliance of Ontario was formed in 2005 as an alliance composed of management and labour groups that represent all facets of the construction industry. Our members include companies and workers who build both low-rise and high-rise homes as well as roads, sewers and water mains, bridges and other infrastructure.

RCCAO consults with governments, the private sector and the construction industry to devise solutions to issues related to public infrastructure and advocate for adequate investment in public transit, roads and highway, water and sewer systems and other public infrastructure essential to economic growth and quality of life. We provide research and reports, and make recommendations on how to realistically ensure adequate infrastructure for the province.

RCCAO members are:

- Joint Residential Construction Council
- Heavy Construction Association of Toronto
- Greater Toronto Sewer and Watermain Contractors Association
- LIUNA Local 183
- Residential Carpentry Contractors Association
- Carpenters' Union
- Toronto and Area Road Builders Association
- International Union of Operating Engineers, Local 793
- International Union of Painters & Allied Trades, District Council 46

RCCAO members and stakeholders in the construction and infrastructure sector have had a longstanding interest in water policy in the province. We have provided comments in the past on the *Clean Water Act 2006*, the *Lake Simcoe Protection Act, 2008* and Lake Simcoe Protection Plan and the operating regulations of the *Ontario Water Resources Act*, among others. Most importantly, we have promoted the need for the *Sustainable Water and Sewer Systems Act, 2002* (SWSSA), and the development of regulations under that act to ensure full cost pricing for water.

Our members include companies and labour that excavate and install underground water infrastructure, both for delivery of potable water to residential, commercial, industrial and institutional buildings, and storm water and sanitary

sewer systems for carrying waste water to treatment plants. We know from firsthand experience the dramatically greater costs to resolve water leaks and systemic breakdowns like sinkholes caused by pipeline breaks, compared with proper investment in maintaining infrastructure on an ongoing basis.

In addition to our members' on-the-ground – and under-the-ground – experience, RCCAO has commissioned extensive research on the costs of and solutions to water infrastructure challenges. These include:

- *Public Infrastructure Underinvestment: The Risk to Canada's Economic Growth*, Risk Analytica, July 2010
- *Incorporating Sustainability in Infrastructure ROI: The energy costs of deferred maintenance in municipal water systems*, Tamer E. El-Diraby, Bryan W. Karney, Andrew Colombo, University of Toronto, June 2009
- *Benchmarking Infrastructure Funding in Ontario: Towards Sustainable Policies*, Tamer E. El-Diraby, University of Toronto; Tammy Wolters, WSCS Consulting Inc.; Hesham M. Osman, OSTAL Consulting, February 2009
- *Water and wastewater asset management in the GTA: Challenges and opportunities*, Tamer E. El-Diraby, University of Toronto, Department of Civil Engineering, July 2007
- *Financing Water and Sewer Systems in the Greater Toronto Area: What Should be Done?*, Harry Kitchen, Trent University, Department of Economics, July 2007

All can be accessed via the RCCAO website at www.rccao.com.

Among other findings, these studies speak to the extraordinary societal costs of neglecting water infrastructure investment. The studies determined that:

- 25 per cent of all processed water is leaked into the ground after leaving treatment plants, due to faulty pipes;
- 30% of all the energy consumed in pumping water is wasted due to such leakage; and
- the cost of improperly maintained water and wastewater systems runs up to \$1 billion annually.

Therefore, there are compelling reasons for the province to develop a legislative framework that will require municipalities to assess and maintain their water infrastructure.

For many years we advocated for the proclamation of SWSSA, arguing that development of effective regulations under this Act was a critical missing element in the matrix of protections recommended by the O'Connor Commission. Only when municipalities are required to assess and recover the full cost of operating and maintaining sewer and water services will the public have the assurances Justice O'Connor recommended, while at the same time freeing provincial funds to support alternative core infrastructure requirements in areas such as public transit.

During the past 18 months, various Ministers and senior representatives of the government indicated that new legislation was required, rather than merely proclaiming and regulating under the SWSSA bill passed in 2002. A number of reasons were cited, chief among them that SWSSA: (1) did not sufficiently deal with the special needs of very small municipalities facing high costs to update and maintain their systems, and (2) had been developed prior to the 2009 PSAB Section 3150 accounting regulations and therefore did not reflect the new era of full accrual accounting for municipalities.

Both are valid concerns. While these could have been addressed by amendments to SWSSA, the government has chosen to introduce the *Water Opportunities Act* instead.

(This was also done, in part, to promote water technology development and export. This secondary goal of the Bill 72 is legitimate and valuable, but largely outside our core expertise and concerns. For this reason, RCCAO does not intend to address Part II of the Bill, related to the Water Technology Acceleration Project, in this submission.)

RCCAO supports the broad intent of the *Water Opportunities Act*. Bill 72, if passed, will provide a framework for developing and implementing a province-wide approach to planning and financing water and wastewater infrastructure.

However, we have very serious concerns that the Bill does not go far enough in compelling every municipality, on its own or in combination with others, to develop, maintain and self-finance a sustainable plan for water and wastewater infrastructure.

While adding some important new provisions, Bill 72 has dropped essential elements of SWSSA requiring development of plans for full cost pricing of water and wastewater infrastructure. The regulation-making powers are certainly broad enough to allow for such requirements in the future, but, in our view, these are core principles that should be incorporated in the legislation.

Bill 72 will only truly meet Ontario's water and wastewater needs if it is amended to:

- Require full cost pricing for water;

- Establish mandatory metering to control how much water is used; and
- Create dedicated reserves to ensure that water and waste water infrastructure is always adequately maintained and operating at peak efficiency.

Experience has shown that without such requirements, the vast majority of municipalities will never implement plans to fully maintain and replace water and wastewater infrastructure as needed, nor charge user fees sufficient to finance such plans. This is not unique to Ontario, as the Conference Board of Canada noted in a November 2009 study:

Under-investment in this critical infrastructure can be attributed to the financing challenges confronted by Canadian municipalities, under-pricing of water services, and a lack of government priority. One might argue that there is a fundamental disconnect between the long-term nature of water infrastructure planning and the short-term priorities of elected municipal councils.

Improving Infrastructure Management: Municipal Investments in Water and Wastewater Infrastructure, pp. 5-6

In addition to this disconnect between long term planning and short term politics, municipal underinvestment in water and wastewater assets has been aggravated by traditional accounting practices and a lack of attention to effective asset management based on condition assessment and replacement cost rather than historical cost. This has been identified even by the association representing municipal officials:

Further, the concentration of municipalities on minimizing taxes or focusing on “visible” operational services has meant that little attention is paid to aging assets and their renewal. This is because the value of those assets has not been appropriately and fully disclosed to councils and the public.

...There is no doubt that all municipalities undertake some asset management in the form of the annual capital plan. What is missing is the comprehensive look at all assets, the cost of these assets in providing services and the replacement and/or renewal of all these assets.

Tammy Wolters, Treasurer, Lanark County
Newletter No 3, “PSAB/Asset Management”,
 Association of Municipal Managers, Clerks and Treasurers of
 Ontario

Bill 72 provides a clear opportunity to ensure that municipalities go beyond just tracking their historical investment in water/wastewater assets to actually planning for and funding their ongoing needs. This new Act can institutionalize

the requirement to plan for maintenance, system growth, rehabilitation and funding from user fees. Without such requirements, many municipalities will continue to divert water funding to other purposes, and foist most of the costs of water/wastewater infrastructure on federal, provincial and municipal taxpayers, rather than on water users.

The principle that users of such a municipal service should pay the cost of what they consume is hardly foreign. In fact, it is the norm for other municipal utilities, as the Conference Board points out:

There is also a strong contrast between the approaches to water infrastructure and other essential utility services in some cities. There is greater management independence granted to electric utilities owned by the city or to private companies providing natural gas distribution services. In either case, reliance on municipal revenues is often unthinkable: the electric utility or natural gas distributor often contributes significant tax revenues or franchise fees to the city. Further, infrastructure planning is based on full cost recovery through use charges. Although this study is limited to water infrastructure, a basic comparison between utilities in any given city would show the benefits of relying on users to fund the full cost of infrastructure.

Improving Infrastructure Management: Municipal Investments in Water and Wastewater Infrastructure, p. 6

“Full Cost Pricing” means fully identifying and addressing all the costs of building and maintaining water infrastructure on a lifecycle basis. RCCAO does not maintain that the burden should fall entirely on local water consumers (especially given the huge infrastructure deficits accumulated largely due to lack of effective regulation by senior governments) though the user-pay principle should be the most significant element in financing such infrastructure. As Tamer El-Diraby states in his February 2009 report:

“Full cost pricing does not mean that the end user should bear all the costs. Governments (federal or provincial) should not lift its hands from infrastructure funding. It is unfair to download all the deferred maintenance costs to current users...” (*Benchmarking Infrastructure* report RCCAO released in Feb. 2009).

The Ontario legislature already has before it another Bill that directly addresses the need for full cost pricing, full metering and dedicated reserves: David Caplan’s Private Member’s Bill 13, the *Sustainable Water and Waste Water Systems Improvement and Maintenance Act, 2010*. This Bill incorporates many of the principles and much of the language of SWSSA while also updating it to address some of the concerns that the former Minister and his colleagues identified with the 2002 Act.

Bill 13 proposes the establishment of an Ontario Water Board to supervise business plans from all regulated entities (municipalities or combinations of municipalities, where the latter are desirable to address problems or scale or cost efficiency.) While not dismissive of the Ontario Water Board Idea, RCCAO is not convinced that this is the only viable approach. We are open to discussion about alternative methods to monitor water and wastewater infrastructure business plans to ensure consistency with the Act, including regional water boards and/or voluntary or required pooling across logical geographic regions to reduce the financial impact on ratepayers in very small communities. The provisions of Bill 72 certainly provide for the latter, though explicit language might need to be added if water boards at any level were to become the favoured solution.

This issue points to the clear requirement for extraordinary consultation as the Bill is reviewed and implemented. It is critical that industry, municipalities, ratepayer organizations and other stakeholders have a real ability to participate in the development of the policy framework that the bill will impose. The traditional consultative process of a few days of legislative committee hearings would be wholly inadequate for developing the necessary consensus and plans.

Recommendation 1:

The government should undertake an extensive and open consultation process with all interested stakeholders to refine the pooling mechanism to address regional and small-municipality concerns within a framework of asset management and full cost pricing. In order to avoid any party instituting a “veto by delay,” a firm timeline, not to exceed six months, should be established for the process at the outset.

Of course, Bill 72 goes further than Bill 13 in other respects, such as the conservation elements and the Part II focus on water technology opportunities. A marriage of the two, incorporating some of the key Bill 13 language into Bill 72, would provide for the best of both worlds.

Given the complexities of marrying language from different proposed statutes, we will suggest the precise legal language necessary to make such an amalgam work. The principles that need to be incorporated, however, are clear.

Recommendation 2:

Bill 72 should be amended to incorporate language designed to ensure full cost pricing for water, including the establishment of mandatory metering and maintenance of dedicated reserves for fees collected for water and wastewater management.

Full Cost Pricing

The Bill should require every regulated entity to submit a business plan for adequately managing water and wastewater assets on a lifecycle basis, including: planning for growth; regularly assessing and reporting on the condition of the stock; implementing an adequate maintenance and repair plan; managing replacements as needed; and financing all elements of the plan.

The business plan should be based on recovering all necessary costs from fees collected from water users in the regulated entity.

Mandatory Metering

The Bill should incorporate the language of Sub-section 21(8) of Bill 13, or equivalent wording, to ensure that every regulated entity shall specify in the business plan that full metering of all customers is required and will be used as a source of revenue.

Dedicated Reserves

Finally, the Bill should require that all revenues collected by the municipality from water and wastewater fees be held in a dedicated reserve for water and wastewater infrastructure requirements, and cannot be moved to general municipal revenues or utilized for other projects. (Whether this is accomplished by establishing separate business corporations, as proposed in Bill 13, or by other means is something RCCAO is open to discuss.)

Bill 72, as drafted, gives carriage of the Act to the Minister of the Environment, except for Part II where the Minister of Research and Innovation is given specific responsibilities. There is some logic to this given the obvious environmental concerns it addresses. However, there is, in our view, an even stronger case to be made for having all the business plan aspects of the Act housed with the Minister of Energy and Infrastructure. Water infrastructure will be a critical element of the 10-year capital plan the minister is developing; MEI has responsibility for energy conservation, which is directly related to the issue of reducing water use and leakage; and it has the professional expertise to oversee asset management programs.

Recognizing that there are time and legislative constraints to having a new Bill introduced by the Minister of Energy and Infrastructure, a practical compromise would be to have this Minister designated as responsible for Part III, and any other areas that are logically connected.

Recommendation 3:

In section 24 of the Bill, the words “Minister of the Environment” should be replaced with “Minister of Energy and Infrastructure” and similar amendments be made elsewhere in the Bill as required to ensure that the Minister of Energy and Infrastructure is responsible for Part III related to Municipal Water Sustainability Plans and Performance Indicators and Targets.

We appreciate the opportunity to provide comments on this proposed legislation. If you have any questions or comments regarding this paper, please do not hesitate to contact the undersigned. We look forward to an opportunity to discuss this paper with you in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andy Manahan', with a stylized flourish at the end.

Andy Manahan,
Executive Director

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