



DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

Source Protection Plans Developed Under the Clean Water Act – Draft Regulation Amendments Proposal

Overview

Prepared by: Ministry of the Environment (MOE)

Presented to: TCC Source Protection Committee

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Source Protection Plan: A drinking water source protection plan developed under the Clean Water Act (CWA) to protect existing and future sources of drinking water

Policies will affect activities and land use planning in vulnerable areas, especially WHPAs and IPZs

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Outline

- Context – SPP Regulation and Policy Development
- CWA Requirements – Mandatory and Optional Policies
- Key Proposals
 - Objectives
 - Other policies that may be included in SPP / Additional plan contents
 - Prescribed provincial instruments (PI)
 - Part IV powers (interim RMP, RMP, prohibition, administrative matters)
 - Consultation requirements
 - Amendments
- Draft Regulation Consultation Strategy

Appendices: Miscellaneous Regulation Proposals

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Context – Draft Source Protection Plans (SPP) Regulation

- SPP regulation needed to enable committees to complete SPP.
- Assessment report requirements and technical rules prescriptive, with limited local flexibility (i.e. based in science).
- SPP requirements intend to allow more local flexibility.
- SPP Discussion Paper – stimulated discussions among stakeholders
 - Focus groups; 63 written submissions (highlights next slide)
 - Comments guided draft regulation content.

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...con't... EBR comments summary

- Support **avoiding regulatory duplication** with existing provincial instruments.
- Support broad applicability of RMPs to allow for local decision making.
- Widely support only using **prohibition of existing threats** as a “**last resort**”.
- Some concern about costs for administration / enforcement of Part IV authorities.
- **Early consultation opportunities** supported by municipal and agricultural stakeholders.
- **Rationale document** supported.
- Incorporate **climate change**.
- Allow policies that address **vulnerability** (eg, transport pathways).

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**SPP Policies
(as per CWA)**

Mandatory:

Policies that:

- address activities set out in AR that are or would be significant threats
- monitor significant threats
- Achieve Great Lakes targets and monitor their implementation and effectiveness (*only* if targets set and Minister directs SPCs to do so)

If and where advisable – policies that:

- monitor moderate and low threats
- monitor issues

Optional:

Policies that:

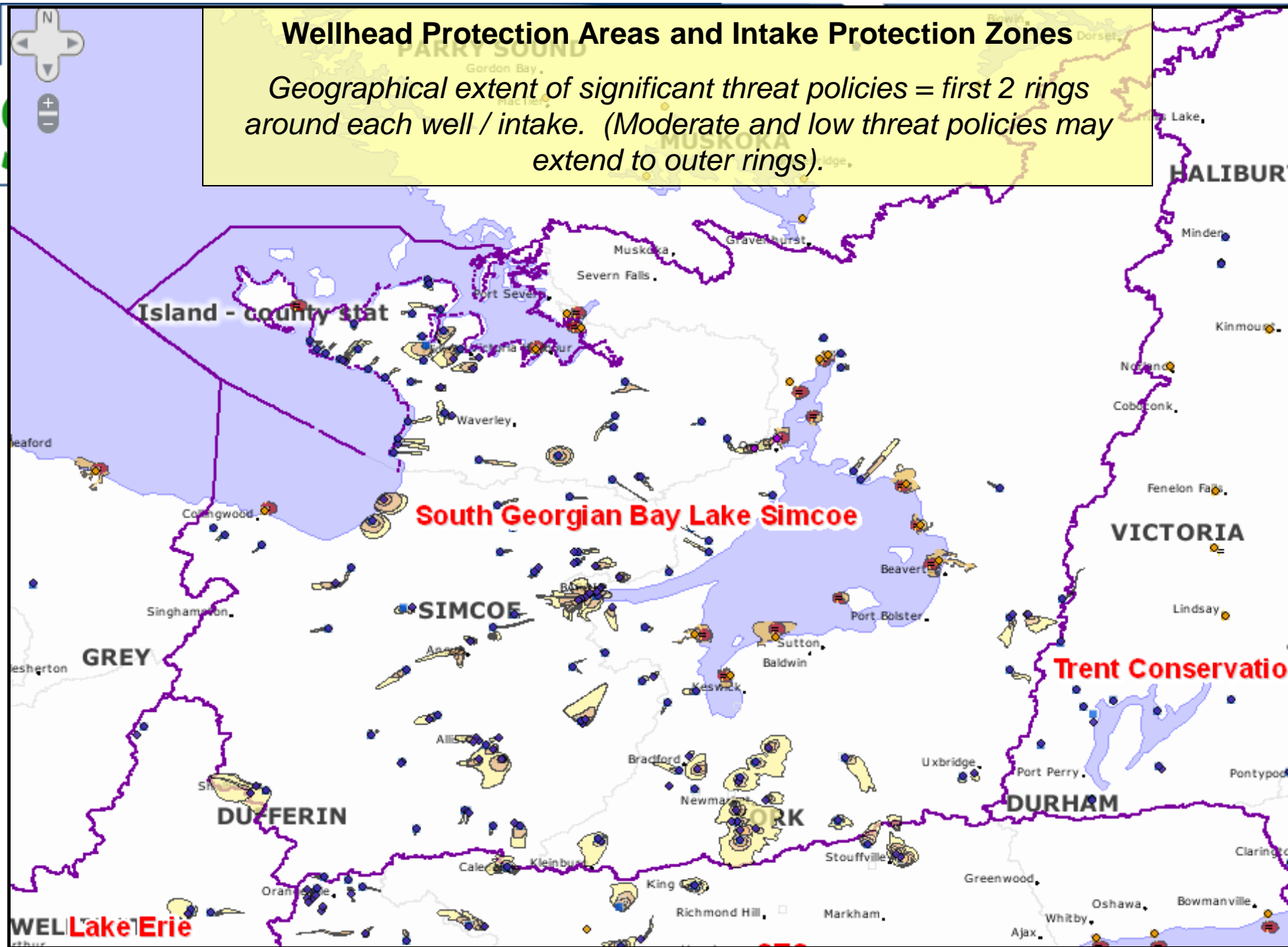
- Address conditions that result from past activity
- Address activities set out in AR that are or would be moderate or low threats
- Govern incentive programs and education & outreach programs

Designated policies:

- Identify which GL policy(ies) are designated

Wellhead Protection Areas and Intake Protection Zones

Geographical extent of significant threat policies = first 2 rings around each well / intake. (Moderate and low threat policies may extend to outer rings).



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Draft Regulation vs Draft Guidance on Policy Development

- Key focus of draft regulation is to enable the approaches SPCs may rely upon in SPP to address SDWT (details in slides that follow)
- *Not proposing* to regulate the local SPC policy development process / thought processes; early thoughts on guidance:

Consider pro's / con's of various options

Goal / Outcome

Manage activity?

Prohibit activity?

How? (eg, ABC required to manage threat)

Which way?

- Voluntary basis (eg E&O, incentives)?
- Regulated? (eg Planning Act –type policies, provincial instrument type-policies, municipal by-laws, s. 58 RMP)

Who? (eg CA, municipality, crown)

How/Who?

- Planning Act –type policies (CWA requires Official Plan & Zoning by-law conformity following SPP approval)
- Prescribed Instruments –type policies (CWA requires Crown conformity after SPP approved)
- S. 57 Prohibition –type policies (new power in CWA)

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Objectives

- Clear objectives for SPP will improve public understanding, consistency across the province, maintain in-scope focus of SPP.

Regulatory Proposal: (section 19.3 of draft regulation)

- Broad objectives – protect existing and future sources of DW
- Ensure activities never become / cease to be significant drinking water threat (SDWT) in areas identified in assessment report
- If “condition” policies in SPP = ensuring conditions ceases to be SDWT
- If Great Lakes target identified and report completed = achieving target is also an objective

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Other Policies / Additional Permissible Content

- CWA sets out some of the content of SPP. Additional content can be specified in regulation and is proposed below:

Regulatory Proposal: (19.7 to 19.10)

- Policies respecting (wrt drinking water threats / GL targets):
 - stewardship programs
 - programs that promote best management practices
 - pilot programs
 - research
 - specifying actions to be taken to implement SPP or achieve its objectives
- Policies governing incentive and education/outreach programs (wrt non-ToR drinking water systems)

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...con't...

- Climate change data – policies specifying actions to ensure data on climate conditions in area is gathered on an ongoing basis
- Transport pathways* - policies intended to ensure threats in the vicinity of transport pathway cease to be or will not become significant (e.g. improperly abandoned wells) (**note – after SPP approved, future transport pathways notification requirement by munic. (s 19.29)*)
- May include anything that will assist in understanding and implementing the plan
- Must include a consultation summary
- Type, legal effect, person responsible and applicable area for each policy must be clearly identified in SPP (19.11 to 19.15 – details in appendix)

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Prescribed Provincial Instruments

- CWA requires prescribed instruments conform with significant drinking water threat policies and have regard to other threat policies.
- Onus is on crown to ensure prescribed instruments conform to SPP policies (s. 43) – amending, revoking, etc.
 - No “approval” role for the SPC in conformity exercise
- 56 pieces of legislation considered. Eligible Instruments: deal with water quality or quantity; site-specific document; include terms and conditions; long-lasting (eg, doesn't expire when construction complete).

Regulatory Proposal: (1.0.1)

- Prescribe all instruments (next slide) related to the 21 prescribed drinking water threats unless the instrument does not have the legal authority to regulate the site-specific nature / type of threat.

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Prescribed Provincial Instruments – Reg. Proposal List

MOE Issued Instruments:

- Certificates of Approval
 - Waste disposal sites (EPA)
 - Waste management systems (EPA)
 - Organic soil conditioning sites (EPA)
 - Sewage works (OWRA)
- Permits to Take Water
- Pesticide Permits**
- Drinking Water Works Permit and Licence
- Renewable Energy Approval

MNR Issued instruments (MTO):

- Aggregate licences, permits and wayside permits and site plans
- Lakes and Rivers Improvement Act approvals

OMAFRA Issued Instruments

- Nutrient Management Strategies and Plans
- Non-Agricultural Source Material Plans

** land application of pesticides only

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Part IV Powers - Interim Risk Management Plans (S. 56 of CWA)

- Interim risk management plan (RMP) authority delegated to *municipalities* for their use only during the period between approved assessment reports (~mid-2010) and approved SPP for activities prescribed in regulation (~2012/13).
- Where municipality exercises this authority (no role for SPC), then the activity will no longer be permitted without an interim RMP.
 - Locally negotiated; phase-in period; notice provisions in case of conflict.

Regulatory Proposal: (19.4)

- Enable interim RMP for any significant drinking water threat, except for disposal or management of waste that requires instrument under Environmental Protection Act (EPA), or the operation of a sewage system*

(*note: Circumstances under prescribed DWT #1 that require EPA prescribed instrument can be managed by that instrument; every circumstance under #2 can be managed by an OWRA instrument or under the Building Code = avoids regulatory overlap).

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Part IV Powers: Risk Management Plans (S. 58 of CWA)

- CWA created new powers in Part IV of CWA to address the gap where significant drinking water threats (SDWT) can not be addressed by existing planning authorities (Planning Act) or existing regulatory regimes (instruments).
- RMPs are locally negotiated after Minister approves SPP; phase-in period.

Regulatory Proposal: (19.4, 19.37)

- Enable RMP for any SDWT, except for disposal or management of waste that requires instrument under EPA, or the operation of a sewage system*
 - Include “opt out” notice provision for holders of other prescribed instruments; holder demonstrates instrument provisions address threat in notice (avoiding regulatory overlap).

*(*note: Circumstances under prescribed DWT #1 that require EPA prescribed instrument can be managed by that instrument; every circumstance under #2 can be managed by an OWRA instrument or under the Building Code = avoids regulatory overlap).*

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Part IV Powers - Prohibition (S. 57 of CWA) – Future Activities

- In addition to relying upon existing Planning Act authorities, SPCs have the ability to write policies that prohibit future activities (i.e. activities that do not currently exist in the SP area).

Regulatory Proposal: (19.4)

- Enable s. 57 prohibition for any future SDWT, except for disposal or management of waste that requires instrument under EPA, or the operation of a sewage system*
- *Note: can still have prohibition –type policies for future waste/sewage threats that do not use Part IV; prescribed instrument conformity and Planning Act conformity req'd (avoids regulatory overlap).*

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Part IV Powers - Prohibition (S. 57 of CWA) – Existing Activities

- S. 57 provides SPCs the ability to write policies that prohibit existing activities (i.e. activities that currently exist in the SP area), subject to regulations.

Regulatory Proposal:

- Restrict prohibition of existing activities only to circumstances where:
 - In opinion of SPC risk management measures would not be sufficient to ensure the threat ceases to be significant (19.5) (demonstrate in explanatory document (19.16), and
 - Where activity is not waste / sewage (i.e. regulated under EPA / OWRA instruments or Building Code) (19.4)

Note: can still have prohibition –type policies for waste/sewage that do not use Part IV (prescribed instrument conformity req'd), but can't remove existing development rights

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Consultation / Notification

- Notification and consultation opportunities early in the planning process are advisable to avoid potential conflicts and unforeseeable issues arising late in SPP development.

Regulatory Proposal:

- Early notification and information gathering (19):
 - Ø Notify municipalities, chief of bands, and individuals engaged in SDWT when committee begins preparation of SPP.
 - Ø Specify reasons for notice (SPC believes person is engaging in SDWT)
 - Ø Request persons engaged in SDWT to indicate if activity is governed by prescribed instrument

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- Give notice and invite comment from public bodies or person responsible for implementing various policies prior to finalizing policy in draft SPP (eg, Planning Act type policies, Prescribed Instrument type policies, Monitoring, etc) (19.17 – 19.20)
- Notice/consultation provisions for draft and proposed SPP are stipulated in the CWA = same as for AR (eg, 35 day posting, etc) (19.21, 19.22)

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Amendments to SPP

- CWA requires circumstances governing amendments be set out in regulation.

Regulatory Proposal:

- Amendments to SPP may be proposed by an SPA if:
 - SPA consults with SPC, and
 - SPA and SPC are both of the opinion that amendment is advisable (19.29).
- Consultation with persons and bodies affected by amendment required (19.30)
- Amendments resulting from typographical errors, etc, need not go through full amendment consultation process (19.31).

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Draft Regulation Consultation Strategy

- **60 day** comment period (Jan 25 – Mar 26, 2010). EBR # 010-8766
- Notify key stakeholders

Comments may be submitted online through EBR or to:

source.protection@ontario.ca

OR in writing:

Source Protection Plans Regulatory Proposal

Ministry of the Environment
Source Protection Programs Branch
2 St. Clair Avenue West
8th Floor
Toronto, Ontario M4V 1L5
Fax: 416-327-6926

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...con't...

- Focused multi-sectoral discussion sessions (SPC/CA representatives; Municipal, Industry, Agricultural, ENGO sectors; First Nation/Metis)
 - Fri February 19th – Kingston (Raisin-South Nation; Mississippi-Rideau; Cataraqui; Quinte; Trent)
 - Mon March 1st – Milton (Halton-Hamilton; CTC, Niagara; SGSNB)
 - Fri March 5th – Sudbury (Sudbury; Lakehead; Mattagami; North Bay-Mattawa; Sault Ste Marie)
 - Wed March 10th – Toronto (SGBLS)
 - Fri March 12th – London (Lake Erie; ABMV; Thames-Sydenham; Essex)

Note: all SPC members and other key stakeholders will be invited for training sessions on the regulation once finalized.

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Appendices - Miscellaneous:

- Identification of Strategic Action Policies / Designated Persons Responsible / Identification of Applicable Provisions
- Prescribed Instruments – Conditions
- Part IV Powers – Administrative
- Part IV Powers – Provisions Related to S. 59 (Restricted Land Uses)
- Explanatory Document
- Form, Records
- Hearings
- Annual Progress Reports

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Identification of Strategic Action Policies / Designated Persons Responsible / Identification of Applicable Provisions

- Crucial for successful plan implementation is a clear understanding of the legal effect of policies and persons responsible for policies.
- Part IV –type policies already designated in CWA to municipality or agent.
- CWA already requires SPP designate body responsible for monitoring policies.
- Part III of CWA stipulates legal effect of policies (e.g. must conform with, have regard to)

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...con't... Identifying Policies

Regulatory Proposal - SPP Identify:

- Which policies have legal effect of strategic action (19.12).
- Person or body responsible for implementing education/outreach/incentive and strategic action –type policies (19.11).
- CWA provisions that apply to each “type” of policy:
 - SDWT Planning Act and other municipal bylaw –type policies (19.15 (1), 19.15 (3) 3)
 - SDWT prescribed Instrument –type policies (19.15 (2))
 - SDWT policies that rely on CWA S. 38 obligations (19.15 (3) 1)
 - “Have regard to” Planning Act –type policies (19.15 (3) 2)
 - “Have regard to” Prescribed Instrument –type policies ((19.15 (3) 4) (also name the type of PI that apply)
 - Monitoring –type policies (19.15 (3) 5)
- Areas to which significant, moderate, low threat policies intended to apply (19.13, 19.14)

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Prescribed Instruments – Conditions

- CWA gives Minister authority to request instrument amendments to instruments prescribed in section 44 (2) for purpose of addressing conditions that are SDWT

Regulatory Proposal: (1.0.1)

- For s. 44 (2) - provide Minister with authority to request any instrument to manage conditions that are significant drinking water threats after SPP approved.

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Part IV Powers – Administrative: Interim RMP Notices / Contents RMP / RMO / RMI Training, Qualifications / Records

Regulatory Proposal:

- Circumstances under which RMO may give notice to require interim RMP = DW health hazard and no prescribed instrument (19.34).
- Additional contents of RMP permitted = provisions to address adverse effects or require financial assurance (19.35).
- Training requirements (19.39) and prescribed qualifications for risk management officials/inspectors (19.41, 19.42) – course every 5 years.
- Various records must be maintained by RMO/RMI for period of 15 years (19.33) (*those in italics are public records*):
 - *Every RMP, notice, order issued*
 - Risk assessments accepted (received); *Acceptances*
 - Other records for purpose of Part IV administration

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Part IV Powers – Provisions Related to S. 59 (Restricted Land Uses)

- S. 59 of CWA = For land uses prescribed in regulation and designated in SPP, prescribed applications under the Planning Act require consultation with RMO early in development approvals process (before proceeding w application).
- Not a stand-alone approach; used in combination with RMP or S. 57 prohibition

Regulatory Proposal:

- Any land use may be designated in a SPP for purpose of S. 59 of CWA if the land use is currently specified in a municipal official plan or zoning by-law in the source protection area (19.6).
- List of applications subject to S. 59: official plan amendments, zoning-by law amendments, site plan approvals, minor variances, plans of subdivision, consents (19.38).

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Explanatory Document

- Written rationale for policies will improve transparency and accountability to all parties affected by and responsible for implementing the SPP, as well as provide critical information to the Minister when approving a SPP, or for bodies reviewing upon appeals.

Regulatory Proposal: (19.16)

SPC develops explanatory document that is available to public upon request for information purposes:

- Explain policy decisions
- Highlight “prohibition of existing SDWT” decisions
- Summary of how comments received on draft policies considered
- Explanation for how climate change considerations summary in AR affected policy development
- If education/outreach/incentives or strategic action policies (19.7) are the only means to address SDWT, statement that SPC is of opinion that policy will meet CWA objectives and that a policy to regulate/prohibit not necessary

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Form, Records

- Prescribed forms and record keeping can aid in achieving quality standards, improved transparency, and consistency across Ontario.

Regulatory Proposal:

- Director may approve a form or software for SPP (19.2), RMP exemption notice (19.37), RMP reports (19.45), explanatory document (19.16) or annual reports (19.32) - if form/software approved, then these must be used.
- Records acquired or created for purpose of SPP to be retained for 15 years (19.1).

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Hearings

- CWA provides that the Minister may appoint hearing officers to conduct a hearing respecting the proposed SPP or any matter relating to the SPP. Notification requirements are to be set out in regulation.

Regulatory Proposal: (19.27)

- Method of service = mail, e-mail, fax or personal service.
- Persons and bodies that must be notified = SPC Chair, SPA chief administrative officer, clerk of municipalities affected by hearing, chief of any bands in the source protection area.

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Annual Progress Reports

- CWA requires annual reports be prepared by SPA and sets out minimum content (described measures taken to implement SPP; results of monitoring; extent to which objectives of SPP achieved).

Regulatory Proposal: (19.32)

- Listing and reasons for policies that do not meet timelines included in SPP
- Effectiveness of policies related to monitoring DW issues
- Measures taken to address policies related to conditions that are SDWT
- Measures taken to achieve Great Lakes targets
- Steps taken to address gaps in information used for assessment report