

# *Source Protection Planning Bulletins*


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**Section 57 Prohibition – December 22, 2010**



## Background

- One of the “new” tools established under the *Clean Water Act* (2006) to reduce or manage risks to source water that can be incorporated into SPP policies.
  - Can be used to address activities in areas identified in the Assessment Report (AR) as areas where these activities are, or would be significant drinking water threats if established in the future.
  - Established by Part IV of the *Act*.
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## Limitations and Considerations

- Can only be used in areas where the AR indicates that the activity is, or would be, a *significant* drinking water threat AND the area is located within a wellhead protection area or an intake protection zone.
- Section 23 of the General Regulation sets out the activities to which s. 57 prohibition policies can be applied.
- This tool can be used for all prescribed drinking water threats (including local threats, except:
  - The activity requires a waste disposal site certificate of approval under the *Environmental Protection Act*.
  - The activity requires a sewage system certificate of approval under the *Ontario Water Resources Act* or the *Building Code Act* applies to the system.

- Prohibition of activities is a very *strong* approach.
- Wherever possible, it is preferable to use other available tools to adequately reduce the risk created by an existing threat.
- To apply the s. 57 prohibition tool in areas where existing threats occur, the SPC must be of the opinion that prohibition is required to ensure that the existing activity ceases to be a significant threat.
- Section 57 prohibition and risk management plan policy tools cannot both be used to deal with the same activity on a single parcel of land.

## What to include in a Section 57 Prohibition Policy?

- Identify the specific area(s) and activity(ies) to which section 57 policies apply.
- A SPC can set a *future* date for the policy to take effect (must be greater than 180 days after the plan takes effect).
- Pre-consultation critical to determining this timeline.
  - SPC must notify the municipalities responsible for enforcement in the area where the policy would apply.
  - Rationale, wording...etc.
- If the policy applies to future activities, it takes effect when the plan takes effect.

## Section 59 - Restricted Land Uses

- Complimentary policy under section 59 is recommended to accompany Section 57 (Prohibition) and Section 58 (Risk Management Plans) policies.
- Policy must identify the significant threat activity and whether it is prohibited or requires a RMP. In addition, the policy must identify the area and land use(s) to which it applies.
- The SPP must identify and name the local land use (either the OP designation or zoning) for each of the areas where a policy using section 59 applies.
- Section 59 policies does not eliminate a land use, but ensures that activities in the designated area are assessed for their potential risk before they become established.

## Section 59 - Restricted Land Uses - CONTINUED

- Provides a link between the Part IV tools and municipal planning.
  - Screening tool to prevent the unintentional approval of applications under the *Planning Act* or building permits that would lead to the creation of significant drinking water threats.
- Can help to address future significant threats, but cannot be used for existing activities unless the activity is changing or expanding.
- Requires that a RMP be established before a regulated activity can proceed.

## Other Prohibition Approaches

- Section 57 prohibition policies are not the only method of prohibiting activities through a SPP policy.
- Prescribed Instruments
  - A policy could direct that the instruments relating to a significant threat be amended to include specific risk management measures or other operational / administrative procedures to the terms and conditions of the instrument.
- Land Use Planning Approaches
  - Generally only applies to future development
  - Address land use, but not ongoing activities
  - Broad range of activities – not all could be drinking water threats

**Section 58 Risk Management Plans – December 22, 2010**



## What is a Risk Management Plan?

- Site – specific documents
- Negotiated after the approval of the SPP
  - Ideally, this is voluntary – could be imposed.
- Contents:
  - Outline the actions required to address an identified significant drinking water threat,
  - Include and account for risk management measures that are already in place.

## Limitations and Considerations – Using RMP Policies

- May only be used for activities prescribed by the Regulation, or have been identified in accordance with Rule 119.
    - Except:
      - Cannot be applied to waste threats and/or sewage threats that require an instrument listed in (or prescribed by) the regulations, or that fall under the Building Code.
  - RMPs may only be used for activities identified as *significant* threats in the AR (not applicable to moderate and low threats).
  - The SPP policy must specify the activity and area where the RMP policy applies.
  - Pre-consultation with municipality(ies) responsible for implementation
  - Cannot be used in conjunction with Section 57 to deal with the same activity on a single parcel of land
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## Risk Management Plans as a Policy Choice

- Any risk reduction activities that are already occurring on the site can be formally identified and recognized in the RMP.
- Cost → Administration of a Part IV enforcement authority
- Can address multiple threats on a single property
- Can be general or specific in the way the policy is written



## Overview of Prescribed Instruments – December 2010



## Prescribed Instruments Bulletins

- Certificates of Approval (sewage and waste)
  - Renewable Energy Approval
  - Pesticide Permits
  - Municipal Drinking Water Licence and Drinking Water Works Permit
  - Aggregate Resources Act Instruments
  - Nutrient Management Act Instruments
  - Permits to Take Water
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## What is an Instrument?

- Sets out additional requirements that are specific or customized to the activity being carried out at one site, or multiple sites.
- May or may not include expiry dates.
- Issuing ministries have powers to revoke or modify instruments based on criteria set out in the enabling statute.



## Legal Effect of Plan Policies on Prescribed Instruments

- Prescribed instruments that have already been issued (i.e. existing) at the time the SPP is approved, must conform with significant threat policies and designated Great Lakes policies.
- Any future decision to issue, create, or amend an instrument must conform with any applicable significant threat policies and designated Great Lakes policies that are set out in a source protection plan.



- Important to understand which instruments can legally address which drinking water threats and for what purpose. → Table 2
- Prescribed instruments are not meant to address or manage the risks associated with all prescribed drinking water threats.



**Technical Standards and Safety Authority – December 2010**




## Background

- TSSA was created to deliver public safety services on behalf of the Government of Ontario in four key sectors including fuels (transportation, storage and distribution, and utilization).
- Overview of Regulatory Requirements and Related Documents



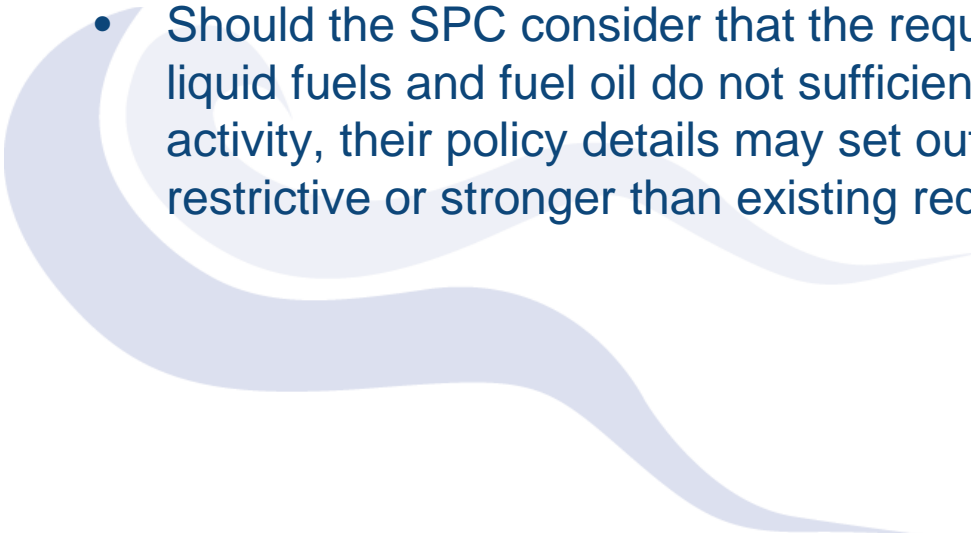
## Inspections and Compliance

- Fuel suppliers must perform an inspection of the installation of fuel oil appliances prior to supplying fuel and a minimum of every ten years thereafter.
  - TSSA audits fuel distributors to ensure compliance.
  - Liquid fuel licensed facilities are inspected by TSSA on a three year cycle for compliance.
  - Non-licensed facilities are not inspected on a cycle, but on an ad-hoc basis.
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## Addressing Leaks or Contamination at Sites Regulated by TSSA

- TSSA must be notified of any spill which has caused, or is likely to cause an adverse effect, AND of all leaks or the discovery of a contaminant from a fuel handling site.
  - Although the Spills Action Centre is notified (as required in the EPA), TSSA is the lead agency for all petroleum based environmental occurrences resulting from a spill or leak.
- In situations where there are abandoned, insolvent, or bankrupt businesses at a site where there is adverse effect or the likelihood of adverse effect, the MOE is the lead agency.

## Important Considerations

- Should policies be drafted for SPP that directly impact the TSSA's inspection, management of fuels, or contaminated sites, the SPC will be required to consult with TSSA (Section 35 of the General Regulation).
  - The MOE is incorporating the requirements from TSSA's codes into the Risk Management Measures Catalogue.
  - Should the SPC consider that the requirements in the TSSA's codes for liquid fuels and fuel oil do not sufficiently manage the threat posed by the activity, their policy details may set out requirements that are more restrictive or stronger than existing requirements.
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