



# DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

## **Clean Water Act, 2006 and Source Protection Plans**

### **Regulation Amendments to O. Reg. 287/07**

**Overview to Source Protection Committees  
dated August 20, 2010**

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## Presentation Outline

- Context
- Source protection plan content – mandatory and optional
- Policy development process
- Range of approaches / tools
- Consultation / notification
- Explanatory document
- Progress reports
- Next Steps

### Source Protection Plan (SPP) Regulation:

- Enables **preparation** of source protection plan; prescribes **content** and **consultation**; enables range of **approaches / tools**.
- Allows **flexibility** to address local circumstances.
- Reflects **EBR** comments and input resulting from a policy paper (summer 2009) and consultations on draft regulation (winter 2010).

### Source Protect Plan Timeline:

- Draft policies completed in 2011; public consultation begins early 2012; submitted to Minister by August 2012.

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## SPP Policies (as per Clean Water Act)

### Mandatory:

Policies that:

- address activities set out in assessment report 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 assessment report that are or would be moderate or low threats
- Govern incentive programs and education & outreach programs
- Policies authorized by regulations (next slide)

Designated policies:

- Identify which Great Lakes policy(ies) are designated

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## Additional Content

*Additional permissible discretionary policies (O. Reg. 287/07 s.26):*

- Policies with respect to drinking water threats / Great Lakes targets:
  - stewardship programs
  - programs that promote best management practices
  - pilot programs
  - research
  - specifying actions to be taken to implement source protection plan or achieve its objectives
- Policies governing incentive and education/outreach programs for drinking water systems not in the terms of reference (i.e. non-municipal, private)
- Climate change data – policies specifying actions to ensure data on climate conditions in area is gathered on an ongoing basis
- Policies that address spill prevention, contingency or response plans along highways, railways, or shipping lanes in intake protection zones or wellhead protection areas

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...con't  
Additional  
Content

...con't *Discretionary content:*

- Transport pathways - policies intended to ensure threats in the vicinity of transport pathway cease to be or will not become significant, **or that the transport pathway ceases to endanger the raw water supply** (*note – after source protection plan approved, future notification requirement by municipality to source protection authority/ source protection committee when person **applies** for proposal that may create new transport pathway*) (O. Reg. 287/07 s.27)
- May include anything that will assist in understanding source protection plan (O. Reg. 287/07 s.29)

*Mandatory content:*

- Must include summary of consultation activities (O. Reg. 287/07 s.28)
- Type, legal effect, person responsible and applicable area for each policy must be clearly identified in source protection plan (O. Reg. 287/07 s.30-34)

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## Policy Development Process

Context: Risk assessments based on intrinsic risk; existing risk management measures not factored in.

Consider pros + cons of various options:

- local knowledge
- SPC expertise
- guidance / catalogue
- municipal approaches

Goal / Outcome

Manage activity?

Prohibit activity?

How? (eg, ABC required to manage threat)

Which way?

- Voluntary basis (eg, education & outreach, incentives)?
- Regulated? (eg, Planning Act-type policies, provincial instrument type-policies, municipal by-laws, risk

Who? (eg, Conservation Authorities, municipality, crown)

How/Who?

- Planning Act-type policies (Clean Water Act requires Official Plan & Zoning by-law conformity following source protection plan approval)
- Prescribed Instruments-type policies (Clean Water Act requires Crown conformity after source protection plan approved)
- S.57 Prohibition –type policies (new power in Clean Water Act s.57)

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## Range of Approaches / Tools

- Act and regulations authorize a spectrum of approaches / tools for committees to address threats to source water:
    - Education and Outreach
    - Incentive Programs
    - Planning Approaches (e.g. Official Plan, Zoning, Site Plan Control)
    - Provincial Instruments
    - Risk Management Plans & Interim Risk Management Plans
    - Prohibition
    - Restricted Land Uses
    - Other (relying on other existing legislative authority previously granted to the implementing body (Municipal Act) or section 38 obligations of Clean Water Act)
- Enabled through regulation**
- Test? Must meet objectives in Section 22(2) and (6) of Clean Water Act – *ceases to be / does not become significant threat (i.e. adequately managed)*

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## Tools ...con't

- *Education and Outreach, Incentives* – permitted in Act, no limits in regulation.
- *Planning Approaches* (e.g. Official Plan, Zoning, Site Plan Control)
  - **Mandatory** Official Plan and Zoning by-law **conformity** provisions in Act;
  - Planning Act type policies may be included in source protection plan, provided threat and desired action **within scope of Planning Act authorities** (e.g. policies may relate to: siting, setbacks; location/density of development related to impervious surfaces; exterior design that focus on sustainable design elements, such as green roof or permeable paving (water quantity threats); brownfields cleanup with Community Improvement Plans).
- *Prescribed Instruments, O. Reg. 287/07 s.1.0.1* (e.g. Permits, Certificates of Approval)
  - **Mandatory** prescribed instrument **conformity** provisions in Act;
  - Prescribed instrument type policies may be included in source protection plan, provided threat and desired action is **within scope of instrument authorities** (e.g. policies may relate to waste, sewage, nutrient management, water takings, etc).

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## Tools ...con't Prescribed Instruments

### *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

### *OMAFRA Issued Instruments*

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

*\*Lakes and Rivers Improvement Act approvals not included – no legal authority to amend instrument*

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## Tools ...con't Part IV Authorities

- New authorities ***address gap*** where significant threats cannot be addressed by existing planning tools or regulatory instruments (referred to as Part IV powers)
  - Interim Risk Management Plans (transition / temporary)
  - Risk Management Plans (site specific, negotiated plans, after source protection plan approved) (Clean Water Act s.58)
  - Prohibition (Clean Water Act s.57) (referred to as “S.57 Prohibition”)
  - Restricted Land Use

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## Tools ...con't Part IV Authorities

- Part IV enabled for any significant threat except **waste disposal/management** and **operation of sewage system** that requires prescribed instrument or is under Building Code (O. Reg. 287/07 s.23)
  - Waste and sewage threats that are significant must still have source protection plan policies:
    - May rely on prescribed instruments or Building Code authorities for existing and future occurrences
    - May rely on Planning Act type policies for future occurrences
- During plan implementation – local landowner/business with Prescribed Instrument may opt out from Risk Management Plan policies only if they provide notice to the Risk Management Official and a statement from the issuing body that the instrument conforms with the policy (O. Reg. 287/07 s.61)

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## Tools ...con't Part IV Authorities

- S.57 prohibition enabled differently when applied to:
  - future activities (activities that do not currently exist in area)
  - existing activities (activities that currently exist in area)
- Prohibition\* of existing threats is a tool of last resort – SPC must be of the opinion that prohibition is required / risk management will not be sufficient to ensure a threat ceases to be significant (O. Reg. 287/07 s.24)

\* *prohibition of moderate or low threats (using Planning Act or Prescribed Instrument-type policies) not permissible (O. Reg. 287/07 s.32)*

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## Consultation / Notification

**Early** notification and **information** gathering (O. Reg. 287/07 s.19):

- Ø **Notify** municipalities, chief of bands, and individuals engaged in significant threat activity when committee begins preparation of source protection plan.
- Ø Specify **reasons** for notice (SPC believes person engaging in significant threat activity)
- Ø Request persons engaged in significant threat activity to **indicate** if activity is governed by **prescribed instrument**, describe provisions

**Involve** responsible party before finalizing (**pre-consultation**, O. Reg. 287/07 s.35-39):

- Ø Give **notice** and invite comment from public bodies or person responsible for implementing various policies **prior to finalizing policy** in draft source protection plan (eg, Planning Act and Prescribed Instrument-type policies, education & outreach policies, monitoring, etc.)

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Consultation  
/ Notification  
...con't

Post draft and proposed source protection plan on Internet; notice provisions; public meetings (O. Reg. 287/07 s.41-42):

- Ø Modeled after assessment report posting, notice requirements
- Ø **Notify** municipalities, chief of bands, individuals engaged in significant threat activities, **bodies notified in pre-consultation**
- Ø Specify **reasons** for notice
- Ø For chiefs of bands notice of draft source protection plan, include **offer** to discuss source protection plan
- Ø For proposed source protection plan notice, public and stakeholder comments due in 30 days; source protection authority has **discretion** to provide **longer** period for **municipalities and bands**

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## Explanatory Document

SPC prepares explanatory document; makes it **publicly available** for information purposes (O. Reg. 287/07 s.40):

- Explain policy decisions
- Highlight “prohibition of existing significant threat” decisions
- Summary of how comments received during pre-consultation considered
- Explanation for how climate change considerations summary in assessment report affected policy development
- **Summary of how financial implications for persons or bodies implementing or affected by the source protection plan influenced policy development**
- If education/outreach/incentives or other discretionary policies (O. Reg. 287/07 s.26(1.)) are the only means to address significant threat, statement that SPC is of opinion that policy will meet Act’s objectives and that policy to regulate/prohibit not necessary

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## Progress Reports

- Act requires annual progress reports be prepared by source protection authority and sets out content (describe measures taken to implement source protection plan; results of monitoring; extent to which objectives of source protection plan achieved; other specified in regulation – O. Reg. 287/07 s.52):
  - List and reasons for policies that do not meet timelines included in source protection plan
  - Steps taken to address gaps in information used for assessment report
  - Summary of Risk Management Official report on Risk Management Official / Risk Management Inspector activities
  - Other info source protection authority considers advisable
  - Calendar year reporting; due May 1 of following year
  - 2 year exemption (first report due 2nd calendar year after source protection plan in effect)

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## Next Steps

- Committees and conservation authority staff carrying out activities to prepare for plan development (gathering local knowledge, experience)
- Conservation Ontario advisory committee working to assist SPCs:
  - Source protection plan policy drafting process/framework
  - Establish means to work collaboratively, minimize unnecessary duplication of effort, achieve consistency where necessary
- Ministry topic-based guidance materials (e.g., Notice of Plan Development; Policy Development Process; Various approaches/tools, etc) – beginning summer 2010
- SPC training on regulation – fall 2010

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## Appendix:

- Legal effect of various policies in a source protection plan

If significant conditions

If moderate or low conditions

### Mandatory Policies:

### Optional Policies:

Policies that:

Policies that:

- address activities set out in assessment report that are or would be significant threats

- address conditions that result from past activity
- address activities set out in assessment report that are or would be moderate or low threats

- monitor significant threats (activities and conditions)

- govern incentive programs and education & outreach programs\*

If and where advisable – policies that:

- Policies governing:
  - spills prevention, contingency or response plans along highways, railways or shipping lanes in IPZs or WHPAs
  - incentives / education / outreach for non-ToR systems
  - climate change data collection
  - transport pathways

- monitor moderate and low threats (activities and conditions)

- monitor issues

Planning Act decisions – must have regard to. CWA s.39(1)(b)

Prescribed instruments – must have regard to. CWA s.39(7)(b)

Other tools: Strategic action

Municipality, local board or source protection authority – must **comply** with any obligation. CWA s.38

Planning Act decisions – must **conform**. CWA s.39(1)(a)

Prescribed instruments – must **conform**. CWA s.39(7)(a)

Persons carrying out significant threat activities must **comply** with policies that use part IV powers.

All public bodies must **comply**. CWA s.45

\*Education / outreach / incentive program policies are strategic action except when used as significant threat policy directed at municipality, local board or source protection authority.