



## SOURCE PROTECTION FACT SHEET #6

Prepared by

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**QUESTION:** Under the *Clean Water Act, 2006*, what are “Source Protection Plans” and how are these documents prepared, reviewed and approved?

**ANSWER:** Source Protection Plans are locally drafted, science-based plans that contain various policies intended to protect the quality and quantity of current and future sources of municipal drinking water in Source Protection Areas and Regions across Ontario. The mandatory (and optional) content requirements for Source Protection Plans are set out in the *Clean Water Act, 2006* and regulations. There have been numerous opportunities for public review and comment upon draft and proposed Source Protection Plans before the plans were submitted for approval by the Minister of the Environment.

### **ANALYSIS:**

#### *Background: Source Protection Plans*

The purpose of Ontario’s *Clean Water Act, 2006* (“CWA”) is to protect existing and future sources of drinking water.<sup>1</sup> To achieve this purpose, the CWA establishes a source protection planning process that is locally driven, science-based, and consultative in nature.

In 2007, the Ontario government designated Source Protection Authorities (i.e., existing conservation authorities) in nineteen watershed-based areas or regions across Ontario. Each of these Authorities, in turn, appointed its own Source Protection Committee consisting of persons representing municipal, industrial, agricultural, environmental, and public interests. Some Committees also include representatives from First Nation communities.

The first major documentary step in the source protection planning process under the CWA was the Committees’ development of legally binding Terms of Reference to establish the overall approach for developing source water protection measures at the local level. The second documentary step was the Committees’ preparation of technical Assessment Reports, which examined the vulnerability of groundwater and surface water to contamination or depletion, and evaluated activities which could pose threats to these drinking water sources. The third documentary step was the Committees’ development of proposed Source Protection Plans which are based upon the Assessment Report findings, and which are aimed at addressing significant drinking water threats and safeguarding vulnerable areas.

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<sup>1</sup> CWA, section 1.

### Source Protection Plan Process

The process for preparing, reviewing, and approving Source Protection Plans is substantially similar in all Source Protection Areas or Regions.<sup>2</sup> In essence, each Source Protection Committee is legally obliged to prepare and submit a proposed Source Protection Plan that complies with the requirements of the CWA, the regulations, and the approved Terms of Reference.<sup>3</sup>

When preparing draft Source Protection Plans, the Committees must provide notice to various persons, including municipal clerks, band chiefs, and individuals who may be engaged in activities that are or would be significant drinking water threats at the local level.<sup>4</sup> In addition, the Committees must undertake various consultation measures, including web-posting the draft Source Protection Plans, publishing public notices, holding public meetings, and receiving public comments.<sup>5</sup>

After considering comments on the draft plans, the Committees must provide their proposed Source Protection Plans to the Source Protection Authorities, which, in turn, must submit the proposed plans (and any further written comments or municipal resolutions) to the Minister of the Environment for approval under the CWA.<sup>6</sup>

The regulatory deadline for submission of proposed Source Protection Plans for Ministerial approval is within five years after the Chairs of the Committees were first appointed.<sup>7</sup> In effect, this means that proposed Source Protection Plans were generally due to be filed in 2012, although deadline extensions were granted in some cases.

At the present time, all Source Protection Committees in Ontario have now submitted and web-posted their proposed Source Protection Plans. However, only one plan (Lakehead Source Protection Plan) has been approved to date, while all other proposed plans remain under review by the Ministry of the Environment. It is anticipated that the proposed Source Protection Plans will be approved (or amended and approved) by the Minister in 2014.

After the Source Protection Plan has been approved, public notice must be provided on the *Environmental Bill of Rights* Registry, and the plan begins to take effect on the date that such notice is posted.<sup>8</sup> Similarly, the Source Protection Authorities are required by law to web-post the approved Source Protection Plan, and to make it publicly available through other appropriate means.<sup>9</sup>

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<sup>2</sup> CWA, sections 22 to 36.

<sup>3</sup> CWA, subsection 22(1).

<sup>4</sup> O.Reg.287/07, section 19.

<sup>5</sup> O.Reg.287/07, section 41; CWA, subsection 22(15).

<sup>6</sup> CWA, sections 25, 29.

<sup>7</sup> O.Reg.287/07, section 46.

<sup>8</sup> CWA, sections 30 to 31.

<sup>9</sup> CWA, section 32.

### Source Protection Plan Content

The content requirements for Source Protection Plans are governed by the CWA, the regulations, and the approved Terms of Reference. For example, the CWA provides that each Source Protection Plan “shall” include the following mandatory items:

- the approved Assessment Report;
- policies that are necessary to prevent or mitigate activities which are (or could become) significant drinking water threats;
- policies in relation to the monitoring of drinking water threats and issues;
- any other matters required the regulations.<sup>10</sup>

Source Protection Committees may also choose to include plan policies pertaining to incentive/stewardship programs, pilot projects, best management practices, education/outreach programs, climate change considerations, spills prevention, emergency response plans, contaminant transport pathways, and low or moderate drinking water threats.<sup>11</sup>

In addition, it is open to Committees to include other content that “will assist in understanding the plan.”<sup>12</sup> Thus, proposed Source Protection Plans typically include additional items such as executive summaries, background information, summaries of relevant studies, glossaries, overview of implementation options, or lists of references/links, even though none of these matters are specifically prescribed by the CWA or regulations.

Before publishing and consulting on their draft plans, Source Protection Committees were also required to prepare and web-post an accompanying “explanatory document” to:

- explain the Committees’ reasons for each policy in the plan;
- summarize comments received to date, and indicate how such comments influenced policy development; and
- discuss potential financial implications for persons or bodies that may be responsible for implementing, or otherwise may be affected by, plan policies.<sup>13</sup>

One of the main tasks for Source Protection Committees is to determine the extent to which the provincial list<sup>14</sup> of threat activities presently occur (or could occur in the future) near municipal intakes or wellheads in circumstances that create significant drinking water threats. If so, then it is mandatory for the proposed Source Protection Plan to contain legally enforceable policies to effectively address such threats.<sup>15</sup>

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<sup>10</sup> CWA, subsections 22(2) and (3).

<sup>11</sup> CWA, subsections 22(6) and (7); O.Reg.287/07, sections 26, 27, and 32.

<sup>12</sup> O.Reg.287/07, section 29.

<sup>13</sup> O.Reg.287/07, section 40.

<sup>14</sup> O.Reg.287/07, section 1.1. This provincial list includes: operating waste disposal sites; operating sewage systems; handling or storage of fuel, organic solvents, road salt, dense non-aqueous phase liquid, or aircraft de-icing chemicals; livestock grazing; and storage, handling or application of manure, pesticides, or commercial fertilizers.

<sup>15</sup> CWA, subsection 22(2), para.2.

For example, Part IV of the CWA empowers Source Protection Committees to include new legal tools in their proposed Source Protection Plans, such as:

- policies which prohibit existing (or future) activities which constitute significant drinking water threats;<sup>16</sup>
- policies which restrict land uses which constitute significant drinking water threats;<sup>17</sup>
- policies which require site-specific risk management plans to be developed and approved to manage or regulate significant drinking water threats.<sup>18</sup>

It is anticipated that these and other Source Protection Plan policies will largely be implemented through amendments to municipal land use planning documents<sup>19</sup> (i.e. official plans and zoning by-laws), and through revisions to relevant permits, licences and approvals issued under provincial laws (i.e. *Aggregate Resources Act*, *Environmental Protection Act*, *Ontario Water Resources Act*, *Pesticides Act* and *Safe Drinking Water Act*).<sup>20</sup>

### Public Interest Considerations

When reviewing a proposed Source Protection Plan, it will be instructive for public interest representatives to consider the following questions:

- did the Source Protection Committee or Authority comply with all procedural steps for preparing, publishing and consulting upon the proposed Source Protection Plan?
- does the proposed Source Protection Plan address all of the prescribed content requirements at a sufficient level of detail?
- does the proposed Source Protection Plan properly use the precautionary principle to ensure that lack of scientific certainty does not delay or preclude policies intended to address significant drinking water threats?
- does the proposed Source Protection Plan ensure that significant threats to local drinking water quality/quantity will be eliminated, mitigated and monitored?

Under the CWA, there is no statutory right to “appeal” a proposed (or approved) Source Protection Plan, in whole or in part, to an administrative tribunal or to court. However, the Minister, in his/her discretion, may appoint hearing officers to receive representations, and make recommendations, on the proposed Source Protection Plan prior to approval.<sup>21</sup> After approval, it is anticipated that Source Protection Plans (and the underlying Assessment Reports) will be periodically reviewed and updated, particularly in relation to new or emerging drinking water threats.

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<sup>16</sup> CWA, section 57.

<sup>17</sup> CWA, section 59.

<sup>18</sup> CWA, sections 52 to 56, 58.

<sup>19</sup> CWA, sections 38 to 42.

<sup>20</sup> CWA, sections 43 to 44; O.Reg.287/07, section 1.0.1.

<sup>21</sup> CWA, section 28.