

# Source Protection Planning Bulletin – Overview of O.Reg. 287/07 section 26 p.1 Tools



May 5, 2011

## Introduction

The purpose of the Clean Water Act, 2006 (“the act” or “CWA”) is to protect Ontario’s existing and future drinking water sources as part of an overall commitment to safeguard human health and the environment. A key focus of the legislation is the preparation of locally developed terms of reference, science-based assessment reports and source protection plans. For additional information on the CWA and how the terms of reference and assessment reports were developed, readers may refer to the Ministry of the Environment’s website [www.Ontario.ca/cleanwater](http://www.Ontario.ca/cleanwater).

The source protection plans will consist of a range of policies that together will reduce the risks posed by threats to water quality and quantity. This document is one in a series of planning bulletins intended to assist local source protection committees in preparing source protection plans and policies.

## Purpose

The CWA permits source protection committees<sup>1</sup> to use a variety of tools and approaches for policies that address drinking water threats. This document provides source protection committees with information on the policy tools listed in paragraph 1 of section 26 of the regulation (hereinafter “section 26 p.1”), including a summary of legislative requirements for source protection plan policies that rely on these tools for implementation, and examples for their use. For information on the use of policy tools enabled in Part IV of the act, prescribed instruments and land use planning approaches, please refer to the bulletins in this series.

Together the act and its regulations (“the legislation”), in particular the General Regulation - Ontario Regulation 287/07 (“the regulation”), establish a legal framework for drinking water source protection in Ontario. Amendments to the regulation setting out some of these requirements took effect on July 1, 2010. All section references relate to the regulation unless otherwise stated.

While every effort has been made to ensure the accuracy of the information in this document, it should not be construed as legal advice or relied on as a substitute for the legislation.

---

<sup>1</sup> In some instances the municipality has been identified as the lead for the creation of policies that will be included in the source protection plan. In these instances the term “committee”, when used to refer to the creation of policies, is also extended to these other parties.

## Applying section 26 p.1 Tools

The CWA allows the source protection committee to use various approaches when generating policies to address drinking water threats, including the Part IV tools (s. 57 prohibition, s. 58 risk management plans and s. 59 restricted land use), prescribed instruments (prescribed in section 1.0.1 of the regulation), land use planning approaches, education and outreach, incentive programs as well as other approaches set out in section 26 p.1 that don't fall into one of these categories.

Section 26 p.1 of the regulation identifies the following additional tools that can be used in relation to low, moderate or significant drinking water threats that have been identified in an approved assessment report:

- establish stewardship programs
- specify and promote best management practices
- establish pilot programs
- govern research, or
- specify actions to be taken to implement the plan or to achieve the plan's objectives.

These policy approaches may be applied alone or in combination with other policy approaches to deal with a particular drinking water threat. For instance, in relation to the drinking water threat fuel storage, a source protection plan could designate that activity for the purposes of section 58 of the CWA, requiring a risk management plan in every area of a wellhead protection area or intake protection zone where fuel storage is a significant drinking water threat. At the same time, the source protection plan could, pursuant to section 22 (7) of the Act and section 26, p. 1 include a policy that directs a public body to establish an education and outreach program that promotes best management practices for fuel storage.

The following sections provide brief descriptions of these tools and provide some examples and considerations for their use in policies to address threats.

### **Stewardship Programs**

In Ontario, stewardship programs are usually collaborative partnerships between organizations (who provide financial or technical assistance, information, or data) and individuals who take action at a local scale. This assistance may be provided for the development of educational materials, incentives for infrastructure upgrades, or to maintain a monitoring and information network. Local conservation authorities may already administer stewardship programs for drinking water source protection or for environmental conservation that also benefits source protection.

Source protection plan policies can require or direct certain public bodies<sup>2</sup> to establish a stewardship program or, where existing programs address a drinking water threat, source protection plan policies can promote the continuation or the expansion, of these programs. Such a policy could also include details on the program roll out, such as the recommended duration of the program. There are many examples of stewardship programs from across the province funded by the Ministry of the Environment's [Drinking Water Stewardship Program](#). Visit [www.ontario.ca/cleanwater](http://www.ontario.ca/cleanwater) for more information. The [Stewardship Network of Ontario](#) also collaborates with organizations in the province to support stewardship programs for landowners in Ontario, visit [www.stewardshipcentre.on.ca](http://www.stewardshipcentre.on.ca) for more information.

Before a body can be designated in a source protection plan as being responsible to administer a stewardship program, the SPC must consult with the body and provide a draft of the stewardship policy they intend to include in the plan. This consultation must be completed before the SPC publicly consults on the draft plan. The SPC should also consult with the body to ensure it has access to the financial resources necessary to carry out the program before the body is designated to carry out a stewardship program. For more information on the consultation requirements please refer to the Source Protection Planning Bulletin: Pre-Consultation.

### **Best Management Practices**

Often, with activities like agriculture or construction, there are also sector established best management practices that promote the safest or most efficient way of doing something. Information on typical best management practices may be available from professional organizations, industry associations as well as from people who operate in that sector. Best management practices can apply to a range of measures from operational procedures to administrative processes. The Ministry of the Environment has collected information on many of these established best management practices as part of the Risk Management Measures Catalogue to help committee members identify best management practices that can be used to address specific threat activities. This catalogue is continuously being improved and is available online at <http://maps.thamesriver.on.ca/swpCAMaps/rmc/disclaimer.aspx>

Committee members, persons engaged in threat activities, other stakeholders and even the general public may be aware of additional best management practices to reduce the risk posed by certain threat activities beyond those which were captured in the Risk Management Measures Catalogue. Early dialogue with persons engaged in threat activities may give the committee a good idea of best management practices that are currently in use. While best management practices are generally voluntary in nature, source protection plan policies could support the continuation of these practices and encourage their use at other sites where similar threat activities occur. To achieve this, the SPC would be required to designate the body responsible for the establishment or

---

<sup>2</sup> Municipalities, local boards and source protection authorities are required to comply with obligations imposed on it by a significant threat policy where the plan provides that section 38 of the Act applies to the policy. Other public bodies or organizations can be named to implement the section 26 p. 1 policies, however such a policy is not legally binding. In other words, when section 38 does not apply to a policy made under s. 26 p.1, it reflects the designated body's commitment to carry out a specified program rather than a legal duty to do so.

continuance of a program that is aimed at encouraging the adoption of best management practices. In addition to the discussions with the body about financial capacity prior to designation of responsibility, the SPC may want to discuss how implementation of such a program could be monitored and reported on.

### **Pilot Programs**

Emerging technologies or new methods to address certain threats to drinking water may need to be assessed for their applicability in different situations, or for their suitability to address a wider range of threats. Pilot programs could test these methods or technologies and look at the feasibility of the approach in addressing particular threats or to examine potential improvements to these methods or technologies. Existing or potential pilot programs may be known or discovered through discussions with public and other (eg, academic institutions, industry) bodies during policy development and source protection plan policies could recommend that a specified body undertake or participate in the pilot program to test a method or technology. These policies may also recommend that the outcome of the pilot study be evaluated for its potential to influence future policy decisions for the threats studied in the pilot program.

### **Govern Research**

There may also be situations where the committee feels that further research is necessary to develop new methods or new technologies for addressing certain threats; perhaps existing methods to address the threat have not been as effective as desired under local conditions and the committee feels that research may find a better solution or modification. Additionally, a committee may decide that further research is needed in specific situations to better understand where targeted actions to address threats would have the most benefit to source water, for example related to an issues contributing area. In some cases, additional research may either refine the issues contributing area or demonstrate that remedial actions within specific portions of the area would have the greatest effect. In these situations, the committee may recommend that a specified body be responsible for undertaking additional research and the policy could identify the purpose of the research and any other partners in the undertaking. Partners could include, for example, universities, private companies, or conservation authorities with experience in the field of research.

Where policies that rely on tools such as research and pilot programs are being used to address existing significant threats it is more likely that these policies would be used in combination with other policies. However, in areas where a threat does not yet exist but would be significant if established in the future, the results of pilot programs and research may influence policy decisions affecting the future location of these threat activities and/or how they are carried out.

### **Specify Actions**

Paragraph 1 in section 26 also allows committees to “specify actions” to be taken to implement a plan or achieve the plan’s objectives, including addressing drinking water threats when the committee’s desired action is not within the scope of authority provided by the spectrum of other tools. This policy approach may rely on other regulatory measures to implement the plan or achieve the plan’s objectives. For example,

municipalities have authorities to enact by-laws for specific matters within their jurisdiction and these authorities are available under the Municipal Act, or, in the case of the City of Toronto, under the City of Toronto Act. Municipalities have broad authorities to pass by-laws about the economic, social, and environmental well-being of the municipality, and about the health, safety, and well-being of people.

Source protection committees wishing to include policies that rely on these authorities must also consider the limitations of these authorities. A policy may, for example, require a municipality to regulate a significant drinking water threat activity by enacting a by-law under the Municipal Act. However before including such a policy in a source protection plan, a source protection committee should ensure that the municipality has the legal authority to enact the by-law.

Where a policy specifies actions to be taken by a public or other body, the committee should ensure that there are no legal constraints that would prevent the body from taking the specified actions. Committees, through discussions with the identified implementation body, should determine whether implementation of the policy is within the jurisdiction of that body, and discuss the policy's feasibility, including any financial implications. Any consideration of financial implications must be summarized in the explanatory document<sup>3</sup>.

If a policy specifies actions necessary to achieve the plan's objectives in relation to a particular threat, it must identify the body or organization who will be undertaking the action and may provide some details on how this action may be undertaken. For example, a specify actions policy directed to a municipality's road salt storage and application may read as follows:

*Where road salt application is considered a significant threat in a WHPA (see map XYZ) a road salt management plan shall be developed and implemented by the municipality within 2 years of the source protection plan taking effect. It shall contain provisions related to the reduction and wise use of road salt, as well as consideration of road salt alternatives. S. 38 of the CWA applies to this policy<sup>4</sup>.*

This tool is not intended to be directed to individual owners or operators, rather the policy must specify the public body or other organization that is responsible for implementing this policy.

## Regulatory Requirements

Generally, similar to education and outreach or incentive programs, policies relying on the stewardship programs, best management practices, pilot programs or research for implementation are considered "soft tools." Soft tools are those tools that seek to manage a threat activity by non-regulatory means. If a committee were to use **only** "soft tools" to address any **significant** drinking water threats, the explanatory document must

---

<sup>3</sup> For more information about the requirement for the explanatory document please refer to the Source Protection Planning Bulletin – Explanatory Document Requirements.

<sup>4</sup> The Ministry of Environment will work with committees to develop a labelling / coding method so that each policy does not have to state which provisions of Part III of the CWA apply to it (if any) within the text of each policy. The key is that it should be clear to those reading the source protection plan if a policy has legal effect and if so, which provisions under the CWA apply to the policy.

contain an explanation about why the threat was dealt with this way. Section 40 (1) p. 6 of the regulation requires that the explanatory document include a statement specifying that the committee is of the opinion that:

- i. the policy, if implemented, will promote the achievement of the objectives of the plan in accordance with paragraph 2 of subsection 22 (2) of the Act<sup>5</sup>, and
- ii. a policy to regulate or prohibit the activity is not necessary to achieve those objectives.

Policies using the tools in section 26 p.1 must also designate the person or body that will be responsible for implementing the policy (s.30). Before a plan can designate a person or body to carry out a policy under section 26 p.1, the source protection committee must provide the body that would be designated with draft wording of the proposed policy, a summary of the reasons for the policy, request comments on the policy and consider any comments received prior to including the proposed policy in a draft source protection plan (section 35).

Policies under section 26, p.1 should generally specify a timeframe by which the designated body must carry out the specified program, set out a brief description of the program and may even include provisions directing the designated body to report on the results of the program. Threat policies, whether significant, moderate, or low, must designate the area, either generally or specifically, to which the policy applies (ss. 31 and 32). If the section 26 p.1 policy is not a significant threat policy – meaning it only addresses moderate or low threats – then it must be labelled (or coded) a “strategic action policy” in the plan (section 33).

### **Legal Effect of Policies**

The committee should also be aware of the legal effect of source protection plan policies<sup>6</sup>. Where municipalities, local boards, or source protection authorities are identified as the implementing body of a *significant* threat policy that relies on tools listed in section 26 p. 1 that body is legally bound to comply with the significant threat policy (s. 38 of the act). Where the implementing body of a significant threat policy made under section 26 p.1 is not a municipality, local board or source protection authority, or where the policy that relies on section 26 p. 1 is dealing with low or moderate drinking water threats, the policy is not legally binding – rather a non-legally binding commitment.

---

<sup>5</sup> That the activities identified as significant drinking water threats either never become a threat or, if the activity is already taking place, the activity ceases to be a significant threat. This objective may be met by policies that manage the activity so that the risk is reduced, not necessarily eliminated.

<sup>6</sup> Please refer to the Source Protection Planning Bulletin – Overview of Source Protection Plan Requirements, released in September 2010, or to the appropriate sections of the Regulation, for more information about the legal effect of source protection plan policies.

## Summary

This Bulletin has provided an overview of the policy tools listed in section 26 p. 1 of the regulation, including a summary of legislative requirements for source protection policies that rely on these tools, and examples of when or how they might be used. Conservation Ontario has also produced support material on the use of non-regulatory tools which contains additional examples and policy considerations for the use of section 26 p. 1 tools. For information on other aspects of source protection plan preparation, please refer to the corresponding bulletins in this series.

## Additional Sources of Information

Ministry of the Environment's Clean Water Act Website – [www.Ontario.ca/cleanwater](http://www.Ontario.ca/cleanwater)

Clean Water Act, 2006 and O. Reg. 287/07 "General" on the e-Laws Website ([www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca))

For information on Ontario's Drinking Water Stewardship Program please refer to [http://www.ene.gov.on.ca/environment/en/subject/protection/STDPROD\\_080599](http://www.ene.gov.on.ca/environment/en/subject/protection/STDPROD_080599)