

## Planner's FAQ – September 29, 2011

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The Planner's FAQ is intended to be circulated to SPC's to help address some common policy development questions as they arise.

### **Policy suggestions are in bold.**

Included in this issue of the Planner's FAQ are responses to Part IV questions:

1. Do I need to write a s. 59 policy to accompany s. 57 prohibitions or s. 58 risk management plans?
2. What part of Part IV is applicable law under the Building Code Act and how is this linked with building permits and development applications?
3. What could a Part IV policy look like and what is a reasonable effective date?

**1.** Do I need to write a s. 59 policy to accompany s. 57 prohibitions or s. 58 risk management plans?

While the legislation does not require a s. 59 policy when using Part IV, it would benefit the municipality. Remember that a s. 59 policy enables a process to be established that links the threats activities affected by s. 57 and s. 58 with building permits and planning applications. This would help "catch" proposals at the planning approval application or building permit application stage, before the threat is established, as the s. 59 notice is required up front. Without designating policies for the purpose of s. 59, the municipality would not have the benefit of this process to catch these proposals. Remember that the RMO is only looking at these applications in the areas where the Part IV policies are in effect, so not all of the building permits or the planning applications will need to be screened.

If a s. 59 policy is not included, then the chief building official is obligated to issue a permit<sup>1</sup> without the benefit of the RMO's review. This may make it difficult for the municipality to ensure that threat activities do not become established. If a s. 59 is not included, then the municipality may have to amend its official plan and pass a procedural by-law to require development applications be reviewed by the RMO. These processes may be subject to lengthy and costly appeals. Therefore, if s. 57 prohibition or s. 58 RMPs are required, it is strongly recommended that a s. 59 policy be included to assist the municipality with implementation. While not all activities that proceed on the landscape require building permits or planning applications, a large portion of new uses/activities would be caught (required to be reviewed).

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<sup>1</sup> Provided that the permit satisfies the requirements of the Building Code Act

2. What part of Part IV is applicable law under the Building Code Act and how is this linked with building permits and development applications?

The section 59 notice will be the applicable law flag. Section 57 and 58 are not "applicable law" under the BCA and we are not aware of any intention to prescribe them as such. The s. 59 CWA notice will be the applicable law flag that links in the s. 57 prohibition and s. 58 RMP with building permit review and applications under the Planning Act. Here are a couple of real world examples:

- a) A person inquires about a building permit for a gas station in an area where s. 57 applies to the handling and storage of fuel. The CBO checks the s. 59 map and advises (flags) that the property is within an area where threats to drinking water could be significant, and that there are restrictions on activities at the property and the person needs a s. 59 notice to proceed from the RMO before he can consider the permit application. The person checks with the RMO and the RMO advises that the fuel storage is prohibited on the site, and will not issue the s. 59 notice. The applicant cannot proceed.
- b) A carpenter wishes to construct a workshop to build and finish cabinets, and includes an area where furniture will be stripped using organic solvents. The property is within an area where the threat to drinking water is or would be significant and s. 58 RMPs are required for organic solvents. The CBO checks the s. 59 map and advises the applicant to check with the RMO, that he needs a s. 59 notice to proceed with the building permit application. The applicant goes to the RMO and the RMO advises that a risk management plan is required for the use of organic solvents on the site. The person negotiates the RMP and the RMO attaches the s. 59 notice to the s. 58 RMP and the person takes the notice to the CBO who can then complete the processing of the building permit application.
- c) A person wishes to rezone a property to allow a number of commercial uses to be permitted, including a dry cleaning establishment. The property is within an area where s. 57 applies to DNAPLS. As part of the complete application requirements for the rezoning application, the Planning Department checks the s. 59 map and advised the applicant that they need a s. 59 notice to proceed and is advised to go and speak to the RMO. The RMO advises that DNAPLS are prohibited on site and the applicant amends the application to exclude the dry cleaning establishment, but other uses are satisfactory from a Part IV review, and the applicant obtains a s. 59 notice from the RMO to proceed with the amended application.

3. What could a Part IV policy look like and what is a reasonable effective date?

A policy that uses Part IV could simply state that:

**Risk Management Plans are required for handling and storage of fuel for all areas where the threat is or would be significant. Therefore, handling and storage of fuel are designated activities for the purpose of s. 58 of the CWA.**

Another way of stating this would be:

**The handling and storage of fuel is designated for the purpose of s. 58 of the CWA, requiring risk management plans in areas where the threat is or would be significant.**

The associated s. 59 "flag" policy could state that:

**All lands uses in zoning by-law 2009-xx, as amended (or the zoning by-laws within the ABC source protection area) are designated for the purpose of s. 59 restricted land uses under the CWA in all areas where the handling and storage of fuel is or would be a significant threat.**

If a committee decided to use Part IV to require s. 58 RMPs for DNAPLS in areas where DNAPLS are or would be a significant threat, the policy could look something like this:

**The handling and storage of DNAPLS are designated for the purpose of s. 58 under the CWA, requiring risk management plans, in all areas where the threat is or would be significant, except for residential uses.**

When this policy takes effect (see effective date below), all persons who are using DNAPLS (either existing or future) would be required to do so only in accordance with an approved RMP.

The accompanying s. 59 policy could look something like this:

**All land uses within the XYZ source protection area, except residential, are designated for the purpose of s. 59 restricted land uses under the CWA, in all areas where the handling and storage of DNAPLS is or would be a significant threat.**

This means that anyone applying for a building permit or a development application in the area, except residential, where the threat from DNAPLS is or would be significant, would first be required to have their proposal reviewed by the RMO. If they are proposing to use DNAPLS, the RMO would

negotiate an RMP with the individual (or the individual would amend their application to eliminate the use of DNAPLS). When the RMP is agreed upon (or the proposal amended to eliminate DNAPLS) then the RMO would issue a notice to proceed with the application. This notice would be attached to the RMP, and the person would then submit the proposal with the notice to proceed with the building permit or development application.

If the building permit or development application is for residential uses, then the application could proceed without being reviewed by the RMO. This allows a person to add an addition to their house (or build a new house) without requiring their application to be screened through the RMO process. The municipality may provide a brochure or information about the sensitive drinking water area.

New Example:

SPC wishes to prohibit the handling and storage of fuel in quantities greater than XX (whatever quantities are significant) everywhere this drinking water threat is significant, including residential.

The s. 57 policy may look like this:

**The handling and storage of fuel in quantities greater than XX is prohibited and therefore designated for the purpose of s. 57 under the CWA in all areas where the threat is or would be significant.**

The accompanying s. 59 policy could look something like this:

**All land uses within the XYZ source protection area are designated for the purpose of s. 59 restricted land uses under the CWA, in all areas where the handling and storage of fuel is or would be a significant threat.**

Effective Date of Part IV Policies: Immediately on approval of source protection plan (with exceptions provided for existing activities).

Policies that use Part IV authorities must be implemented on approval of the source protection plan, with some phase in considerations for existing activities. This means that the responsible municipality must either have an RMO office set up or have an agreement with another body (permitted under sections 47 – 48 of the CWA) to implement Part IV when the source protection plan is approved. This means that an activity that is prohibited under s. 57 cannot be established immediately on approval of the source protection plan.

The CWA contains phase in provisions for existing significant threat activities that are designated as prohibited under s. 57 or require a risk management plan under s. 58 of the CWA. The CWA provides a minimum of 180 days for s. 57 prohibition to take effect when it applies to existing threat activities

occurring on the landscape. Alternatively, a policy can specify a later date, such as one or two years. This means that the existing threat activity must be stopped within that time. Where a policy in a source protection plan requires a risk management plan for an existing threat activity, the CWA allows (defaults to) the RMO to determine the implementation date on a case by case (or property by property) basis. Alternatively, the source protection plan can specify the date when the RMP is required.