



DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

Source Protection Plans Developed Under the Clean Water Act – Draft Regulation Amendments Proposal

Multi Stakeholder Discussion Sessions

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***Source Protection Plan (SPP):
A drinking water source protection plan developed
under the Clean Water Act (CWA) to protect existing
and future sources of drinking water***

*Policies will affect activities and land use planning in vulnerable areas,
especially Wellhead Protection Areas and Intake Protection Zones*

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Outline

- Context and Scope
- Key Proposals
 - Objectives
 - Other permissible policies / Additional plan contents
 - Prescribed provincial instruments
 - Part IV powers (interim risk management plans (RMPs), RMPs, prohibition)
 - Consultation requirements
- Breakout Discussions:
 - Consultation proposals & integration into policy development (Breakout 1)
 - Approach to enabling Part IV (Breakout 2)
 - Other permissible content
 - Open dialogue

} (Breakout 3)

SPP Regulation to:

- enable preparation of SPP
- allow flexibility to address local circumstances - unlike the prescriptive regulatory requirements and technical rules for assessment reports (AR)
- reflect Environmental Registry (EBR) comments and focus groups input resulting from the SPP Policy Discussion Paper

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CWA Legislative Framework for SPP

Mandatory:

Policies that:

- address activities set out in AR that are or would be significant drinking water threats (SDWT)
- monitor SDWT
- 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:

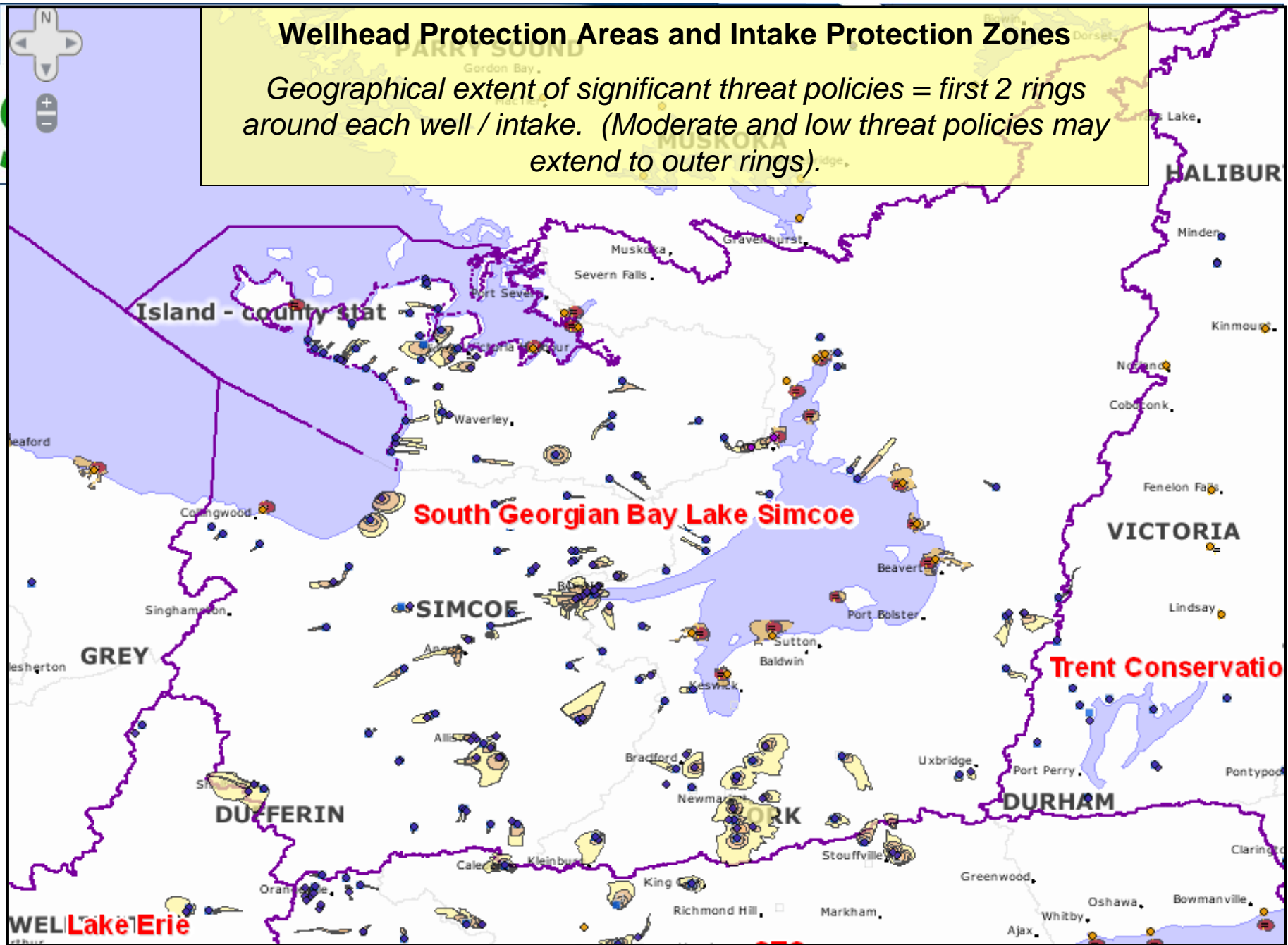
- Address conditions that result from past activity
- Address activities set out in AR that are or would be moderate or low threats
- Govern incentive programs and education & outreach (E&O) programs

Designated policies:

- Identify which Great Lakes policy(ies) are designated

Wellhead Protection Areas and Intake Protection Zones

Geographical extent of significant threat policies = first 2 rings around each well / intake. (Moderate and low threat policies may extend to outer rings).



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Scope of Draft Regulation

- Key focus: Enable approaches SPCs may rely upon to address SDWT
- *Not proposing* to regulate the local SPC policy development process; early thoughts on guidance:

Consider pros + cons of various options

Goal / Outcome

Manage activity?

Prohibit activity?

How? (eg, ABC required to manage threat)

Which way?

- Voluntary basis (eg E&O, incentives)?
- Regulated? (eg Planning Act –type policies, provincial instrument type-policies, municipal by-laws, s. 58 RMP)

Who? (eg CAs, municipality, crown)

How/Who?

- Planning Act –type policies (CWA requires Official Plan & Zoning by-law conformity following SPP approval)
- Prescribed Instruments –type policies (CWA requires Crown conformity after SPP approved)
- S. 57 Prohibition –type policies (new power in CWA)

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Objectives

Regulatory Proposal: (section 19.3 of draft regulation)

- Protect ***existing and future sources*** of drinking water
- Ensure ***activities*** never become / cease to be ***significant drinking water threat***
- If “***condition***” policies in SPP, ensure condition ceases to be significant
- Achieve ***Great Lakes*** targets if identified

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Other Permissible Policies

Regulatory Proposal: (19.7 to 19.15)

- Policies respecting:
 - stewardship programs
 - programs that promote best management practices
 - pilot programs
 - research
 - specifying actions to implement SPP or achieve its objectives
- Policies governing incentive and education/outreach programs for drinking water systems not focus of AR
- Climate change data – policies specifying actions to ensure data on ***climate conditions*** in area is gathered on an ongoing basis

related to
drinking
water threats
/ GL targets

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...con't...

- Transport pathways (19.8):
 - policies to ensure threats in vicinity of **transport pathway** cease to be / not become significant (eg, improperly abandoned well)
 - after SPP approved, **future transport pathways notification** requirement by municipalities
- **Context** information – may include anything to assist in understanding / implementing the plan (19.10)
- Must include a **consultation summary** (19.9)
- **Type, legal effect, person responsible** and applicable **area** for each policy must be clearly identified in SPP (19.11 to 19.15)

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Prescribed Provincial Instruments

- CWA: prescribed instruments to ***conform with*** SDWT policies and ***have regard to*** other threat policies.
- Crown: ensures prescribed instruments conform to SPP policies by amending, revoking, etc.
- 56 pieces of legislation examined. Eligible Instruments deal with water quality or quantity; site-specific; include terms and conditions; long-lasting (ie, effective post-construction).

Regulatory Proposal: (1.0.1)

- Prescribe ***all instruments related*** to the 21 prescribed drinking water threats unless the instrument does not have the legal authority to regulate the site-specific nature / type of threat. (*See appendix for list*)

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Part IV Powers
Interim RMP
(s. 56 CWA)

- Transition authority delegated to **municipalities** (*address SDWT only between approved AR and approved SPP*)
- Interim RMPs: locally negotiated; phase-in period; notice provisions

Regulatory Proposal: (19.4)

- Enable interim RMP for any SDWT, except waste disposal / management* that requires prescribed instrument under Environmental Protection Act (EPA); operation of a sewage system* under Ontario Water Resources Act (OWRA) / Building Code

*(*these threats require a prescribed instrument or fall under the Building Code and can continue to be managed through those means = avoids regulatory overlap)*

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Part IV Powers
RMP (s. 58
CWA)

- New powers **address gap** where SDWT cannot be addressed by existing planning tools or regulatory instruments
- RMPs - locally negotiated after SPP approval; phase-in period

Regulatory Proposal: (19.4, 19.37)

- Enable RMP for any SDWT, except waste disposal/management* that requires prescribed instrument; operation of a sewage system*
 - Include “opt out” notice provision for holders of other prescribed instruments who demonstrate instrument provisions address threat.

*(*these threats must still have SPP policies; would rely on prescribed instrument/ Building Code authorities)*

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Part IV Powers
Prohibition
(s.57 of CWA)

- In addition to relying upon existing Planning Act authorities, SPCs can use Part IV of the CWA to write policies that prohibit activities:
 - future activities (activities that do not currently exist in SP area)
 - existing activities (activities that currently exist in SP area)

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Part IV Powers
Prohibition
(s.57) ...con't

Regulatory Proposal:

- Enable s. 57 prohibition for **any future** SDWT, except for waste disposal / management* that requires prescribed instrument; operation of a sewage system* (19.4)
- Restrict prohibition of **existing** SDWT only where:
 - In opinion of SPC prohibition required / risk management measures not sufficient / to ensure threat ceases to be significant (19.5), and
 - Where activity is not waste* / sewage* (i.e. regulated under EPA / OWRA instruments or Building Code) (19.4)

*(*these threats must still have SPP policies; would rely on prescribed instrument and Planning Act conformity requirements in CWA and Building Code authorities)*

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Consultation
/ Notification

Regulatory Proposal:

- **Early** notification and **information** gathering (19):
 - **Notify** municipalities, chief of bands, and individuals engaged in SDWT when committee begins preparation of SPP.
 - Specify **reasons** for notice (SPC believes person engaging in SDWT)
 - Request persons engaged in SDWT to **indicate** if activity is governed by **prescribed instrument**, describe provisions

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Consultation
/ Notification
...con't

- Involve responsible party before finalizing:
 - Give **notice** and invite comment from public bodies or person responsible for implementing various policies **prior to finalizing policy** in draft SPP (eg, Planning Act and Prescribed Instrument type policies, E&O policies, Monitoring, etc) (19.17 – 19.20)
- Notice/consultation provisions for draft and proposed SPP = same as for AR (eg, 35 day posting, etc) (19.21, 19.22)

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Breakout Sessions

Diverse Perspectives

- range of expertise

Breakout Session Guidelines

- Full discussion recorded in laptops at every table
- Inclusive discussions
- Topic focus
- Table assignments: determine facilitator, time keeper, person to report back
- Report back style

Consultation Proposals & Integration into Policy Development

- Please comment on the proposal related to **early** notification and **information** gathering (slide 16) and **involving responsible parties** before policies are included in a draft SPP (slide 17)
 - Consider – How extensively the early information and involvement of responsible parties may:
 - assist SPCs in policy development
 - integrate into policy analysis / cost-benefit considerations
 - affect policy consistency across SPA / province
 - affect success of implementation

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Breakout Session 1 – Report Back

- Early outreach is common sense, needs to be done – who should be contacted? Transport pathways (related to notification) – to what extent do you do outreach?
- Regulatory proposal – persons engaged in an activity... government should know which instruments are in place, rather than having SPC asking individuals for this; proposal would be a good way to confirm this information, but need the information from the province first.
- People engaged in activities – notification needs to be sensitive and non-threatening (don't prescribe this); municipal notification – regulation should not be overly prescriptive, leave flexibility to SPC.
- Since SPP affect property rights, property owners in whole area – notification needs to go out to all property owners not just those currently engaged in activities (some may be planning to engage in an activity).

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Breakout Session 1 – Report Back

- No objection to early consultation – needs to be an opportunity to get through tier 2 threats assessment before notification in order to allow for tailoring of notifications – be able to narrow down before notifying – perhaps wait some time to do analysis before first notification of those engaged in threats; engage one-on-one rather in a public meeting.
- Need to have early notification – reg should have wording about communication materials and how to communicate effectively (with sensitivity considering the nature of the issues).
- First nations process – consulting first nations crucial; FN participants arriving late in the process, then requires a great deal of resources to bring them up to speed on the issue at hand; need process and protocols (not regulatory requirement) with respect to engaging FN; different FN have different requirements, can't generalize requirement, need to be tailored to individual FN; need to streamline.

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Breakout Session 2 - Overview

Approaches to Enabling Part IV of CWA

- Interim RMP ➤ RMP ➤ Prohibition – future vs existing activities
- Enable Part IV for any SDWT, except waste disposal/management* and operation of sewage system* that requires prescribed instrument or is under Building Code
- During plan implementation - “opt out” notice provision eligible for holders of other prescribed instruments who demonstrate instrument provisions address threat.
- S. 57 prohibition of *existing* limited unless SPC of opinion prohibition required / risk management not sufficient to ensure threat ceases to be significant

(*these threats must still have SPP policies; may rely on P.I. or Building Code authorities) 22

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**Breakout
Session 2 -
Discussion**

Approaches to Enabling Part IV of CWA

- Interim RMP
- RMP
- Prohibition – future vs existing activities

Consider –

- Municipal interest in using transition authority (interim RMP)
- Perspectives of business, local municipalities, and persons engaged in threats to proposals that avoid regulatory overlap
- CWA conformity requirements to significant threat policies (ie, mandatory for Planning Act and Prescribed Instrument decisions to conform)
- Balance among community priorities – protect source water, preserve economy, etc.

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Breakout Session 2 – Report Back

- Prohibition – there will be cases where it is required; there will be future issues, needed to prohibit future, like it is done under Planning Act; existing, agree that it needs to be used only as last resort; if this is used, needs to be done in a manner that is sensitive to existing uses; can't do this arbitrarily without considering the implications it will have; agree that rationale should be documented, and using as last resort to minimize financial impact on property owners.
- Interim risk management plans – not likely to be much uptake; costs involved; municipalities might not be prepared to undertake this at this time; agree that it must be optional not mandatory; leave it as a municipal decision.
- Implementation – if you are using Part IV, how it is put in place – default to municipality; should it be with the body with authority over water, should it be with upper tier (watershed basis)? Not sure it will be necessary to use (where are the gaps with existing authorities, eg. Municipal Act authorities).

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Breakout Session 2 – Report Back

- Do not want this authority given to the water authority; municipal interest in Interim RMP – inter-municipal jurisdiction issues (source in one muni, threat in adjacent muni); needs to be considered, how to achieve oversight over this (looking at it from bigger picture perspective)?
- Interim RMP – in their area, no burning issues requiring it; timelines not really amenable to allow for implementation of IRMPs (not enough time to set it up); not much appetite to use this; what would happen in the case where policy changes as the SPP is finalized.
- Provincial funds/bodies should be used to facilitate/implement Part IV RMP regime.

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Breakout Session 3 - Overview

Other Permissible Content / Open Dialogue

- CWA sets out legislative framework for content of SPP. All other content must be set out in regulation.

Discretionary:

- Policies related to threats in AR respecting stewardship programs, programs that promote best management practices, pilot programs, research, or specifying actions to implement SPP or achieve its objectives (19.7)
- Incentive and E&O for drinking water systems not focus of AR (19.7)
- Climate change data – policies specifying actions to ensure data on ***climate conditions*** in area is gathered on an ongoing basis (19.7)

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Breakout Session 3 – Overview ...con't

Discretionary ...con't

- Transport pathways (19.8):
 - policies to ensure threats in vicinity of **transport pathway** cease to be / not become significant (eg, improperly abandoned well)
 - after SPP approved, **future transport pathways notification** requirement by municipalities
- **Context** information –anything to assist in understanding /implementing plan (19.10)

Mandatory:

- Consultation summary (19.9)
- **Type, legal effect, person responsible** and applicable **area** for each policy must be clearly identified in SPP (19.11 to 19.15)

Other Permissible Content (Part A)

Please comment on the proposals for “other content” (slides 24 & 25).

Consider –

- Range of discretionary content proposed:
 - Are any key elements missing
 - Scope
- Benefits / challenges to SPCs

Open Dialogue (Part B)

- What else in the draft regulation would you like to discuss with other stakeholders at the table?
- Priorities for changes, additional information?

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Breakout Session 3 – Report Back

- Encouraged with ability to include systems not in ToR (incentive and E&O); rationale/context appears to be discretionary – if we do include these policies, then context should also be included (always include context); Security – should security of source be mandate of committee (is this in OWRA powers?).
- Province shouldn't limit scope of discretionary content – set context for things not captured in AR, eg. Transportation corridors; transport pathway policies must have more weight than Strategic Action, in many cases much easier to address threat through dealing with vulnerability issues.
- Discretionary policies – some things that are mandatory should be discretionary, eg. Mandatory notification of municipalities for new transport pathways should be discretionary; transportation corridors – need to be able to deal with them; pits and quarries should be listed as a DW threat, not a pathway (need higher level of legal effect).

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Breakout Session 3 – Report Back

- 19.9 summary of consultation – what if some consultation contained inflammatory comments, should this be included? Soft policies (e.g. E&O, BMPs) are fine, but still need enforcement component to address all threats.
- Support scope of tools in proposed regs; large knowledge gaps, need training on prescribed instruments, and Planning Act needed for SPCs; sinkholes – not transport pathways because they are not man-made; need to be able to deal with them; many developments that don't trigger re-zoning can happen in agricultural areas, without knowledge of these vulnerable areas.
- Mandatory consultation summary – to be part of SPP; turn-out for consultations has been very low in general, what are we learning from consultation efforts – general public not very aware of source protection.

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**Draft
Regulation
Consultation**

- **60 day** comment period (*January 25 – March 26, 2010*)
- Notify key stakeholders
- Multi stakeholder discussion sessions

Comments may be submitted online through EBR or to:

source.protection@ontario.ca

OR in writing:

Source Protection Plans Regulatory Proposal - EBR # 010-8766

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APPENDIX

List of Prescribed Instruments in Draft Regulation

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Prescribed Provincial 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 - Land Application
- Drinking Water Works Permit and Licence
- Renewable Energy Approval

MNR Issued instruments (MTO):

- Aggregate licences, permits and wayside permits and site plans
- Lakes and Rivers Improvement Act approvals

OMAFRA Issued Instruments

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