

## Prescribed Instruments

The list of prescribed instruments proposed in the draft regulation posted to the EBR for comment is based on an analysis of instruments contained in 56 pieces of legislation. The following criteria were used to evaluate instruments.

- Determine instruments that have authority over water or activities that may impact water sources
- Format or structure of the instrument – legislative authority for the issuing person/body to include terms and conditions that would allow instrument to conform to source protection policies
- Legislative authority to person/body to amend existing instruments to achieve conformity
- Authority of instrument to manage site specific activities or land uses that is within the list of 21 drinking water threats in OR 287/07 (e.g., fuel storage, waste, sewage, etc.)
- Longevity to the instrument – ensure that the instrument could manage activities that are ongoing

The evaluation of instruments against the above criteria resulted in the list of instruments in the draft regulation posted to the EBR for comment. The following describes the types of instruments that were not included in the list of prescribed instruments and the rationale for these policy decisions.

### Orders

The majority of legislation considered includes orders that are issued by ministers, directors or provincial officers to address non compliance or to remediate situations. For example all orders under the Environmental Protection Act or Ontario Water Resources Act were considered. Most orders are issued as temporary measures that bring a person or industry into compliance or to undertake work. *Orders are not good candidates as prescribed instruments since they are issued on a temporary basis and reactive to a past situation. Additionally, orders can only have effect upon an existing activity and have no ability to effect future threats should they become established.*

### Instruments that manage development

Examples of this type of instrument includes development, building or work permits or authorities to construct under the Bridges Act, Building Code, Niagara Escarpment Act, Provincial Parks and Conservation Reserves Act, Public Lands Act or Conservation Authorities Act. These types of permits or approvals are issued to address short term situations like construction or establishment of an activity that may be linked to one of the activities in the list of 21 prescribed drinking water threats in some cases and in other cases are not. Once the activity is established (e.g., septic system) *these types of instruments do not provide any ongoing management of the activity such as maintenance or operational aspects that could pose a risk to sources of drinking water.* Additionally there are many situations where *these instruments will not be the only instrument issued for the activity*; for example the development permit under the Niagara Escarpment Act doesn't supersede or eliminate the need to obtain other instruments that are on the proposed list of prescribed instrument such as Certificates of Approval or Permits to Take

Water. Many of these types of activities can be dealt with under Planning Act and zoning decisions for future development.

#### Out of scope with CWA

There were some instruments considered in the legislation review that did not meet the intent of the Clean Water Act or didn't manage one of the prescribed drinking water threats. Some examples include the certificate of approval for air emissions (air emissions were not within the scope of the source protection program at this time), safety orders under the TSSA (not focused on environmental protection but about safety standards), tenure documents/approvals for Crown lands under Public Lands Act (about financial agreements not environmental protection) and pesticide permits to manage application of pesticides to water (scientific assessment of the list of prescribed drinking water threats did not determine that pesticides in water posed a risk to source water). *In order to be effective and applicable the instruments proposed to be prescribed to the CWA had to be able to manage one or more of the prescribed drinking water threats.*

#### Content of Instrument – Conformity

*There are some instruments that were considered but had no terms and conditions that could be included or altered to conform to source protection policies or the instrument has no authority to impose conditions that go beyond requirements in legislation.* For example the pesticide licence for applicators of pesticide products, licenses issued by TSSA for fuel storage, forest resource licence under the Crown Forest Sustainability Act and Licences issued under Cemeteries Act. Many of these, and specifically the instruments issued by TSSA, follow a standard set of requirements in the legislation or code that when the proponent complies with these requirements the issuance of the instruments is a formality.

#### Issuing Authority

There were some additional types of management that didn't meet the definition of an instrument or have any legislative issuing authority. For example environmental farm plans, while site specific and manage activities included in the prescribed drinking water threats, and could include various management measures to conform to source protection policies, *there is no approval body or legislative requirement for agricultural operations to obtain or develop these documents.* The definition of an instrument from the CWA is detailed enough that we were required to consider those instruments that were established in legislation. Another example would be Records of Site Condition that are developed and filed under the Environmental Protection Act. These documents are not issued by the crown but rather filed by the proponent after completing a risk assessment. *The CWA requires that there is an issuing body for prescribed instruments to achieve conformity with source protection policies.*

#### Other instruments

Any additional instruments that SPCs/SPAs and the public suggest (e.g., Emergency Management Act approvals and fire protection approvals) through comments received under the EBR posting for the draft regulation, will be considered