

# Source Protection Planning Bulletin – Technical Standards and Safety Authority



December 2010

## 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 information outlined in this bulletin is intended to assist source protection committees in understanding the role of the Technical Standards and Safety Authority (TSSA) and how this understanding may be helpful in the development of policies for source protection plans. This bulletin has been developed jointly by Ministry of the Environment (MOE) and TSSA.

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.

## Background

The Technical Standards and Safety Authority (TSSA) was created in 1996 to deliver public safety services on behalf of the Government of Ontario in four key sectors:

- boilers and pressure vessels, and operating engineers;
- amusement and elevating devices (elevators, escalators, ski lifts);
- fuels as defined in the regulations (transportation, storage and distribution, utilization); and
- upholstered and stuffed articles.

TSSA is a not-for-profit, self-funded corporation that administers and enforces public safety laws in the four designated sectors under the province's *Technical Standards and Safety Act, 2000*.

TSSA's range of safety services include:

- public education and consumer information;
- certification;
- licensing and registration;
- engineering design review;
- inspections;
- investigations;
- safety management consultation; and
- enforcement and prosecution activities.

While the corporation has the authority to order changes to, and even shut down unsafe operations when necessary, its focus is on prevention, and it prefers to work co-operatively with its industry partners and other stakeholders, including the general public, to improve safety in the workplace, in homes and at recreational facilities.

## Regulatory Requirements

Under the *Technical Standards and Safety Act, 2000*, fuel storage in Ontario is regulated by the Ontario Regulation 213/01 (O. Reg. 213/01 – Fuel Oil) and Ontario Regulation 217/01 (O. Reg. 217/01 – Liquid Fuels).

O. Reg. 213/01 applies to the installation, testing, maintenance, repair, removal, replacement, inspection and use of appliances, equipment, components and accessories where fuel oil is to be used as a fuel, but it does not apply to equipment referred to in O. Reg. 217/01 or to the transmission of fuel under Ontario Regulation 210/01 (Oil and Gas Pipeline Systems). It also applies to the maintenance, modification and specified upgrading of existing equipment and to all new equipment.

O. Reg. 217/01 applies to facilities where gasoline or an associated product is handled, loaded or dispensed to be used as a fuel in motor vehicles or as a fuel oil. This Regulation does not apply to

- equipment or installations associated with standby generators or heating oil systems;
- any matter regulated under O. Reg. 213/01 (Fuel Oil);
- any matter relating to liquid fuels that is regulated by the Government of Canada (i.e., storage of fuel on federal property such as an airport);
- the storage, handling and use of equipment or installations for gaseous fuels (i.e., propane/natural gas);
- processing plants where the resulting product is not used as a fuel;
- petroleum refineries;
- equipment or installations at underground parts of an underground mine that are subject to the *Occupational Health and Safety Act, 1990* (OHSA); or
- fuels packaged as consumer goods.

## Related Documents

The requirements for the installation, testing, maintenance, repair, removal, replacement, inspection and use of appliances, equipment, components and accessories that use fuel oil are found in the document entitled “**Ontario Installation Code for Oil-Burning Equipment (Based on CSA B139, with Ontario amendments) 2006**”.

The requirements for the installation, testing, maintenance, repair, removal, replacement, inspection and use of equipment, components and accessories that dispense, handle or store gasoline or an associated product are found in the document entitled “**Liquid Fuels Handling Code 2007**”

For access to these documents please refer to the TSSA website [www.tssa.org](http://www.tssa.org). Copies of the two codes have been provided to Project Managers for each of the 19 Source Protection Committees to support the development of source protection plans and policies.

## Inspections and Compliance

The fuel suppliers must perform an inspection of the installation of fuel oil appliances prior to supplying fuel and a minimum of every ten years there after to ensure compliance with codes and regulations, O. Reg. 213/01. TSSA audits fuel distributors to ensure they comply with the requirements of the regulation.

In accordance with O. Reg. 217/01, liquid fuels licensed facilities are inspected by TSSA on a three year cycle for compliance with codes and regulations. Non-licensed facilities are not inspected on a cycle but on an ad-hoc basis for compliance.

TSSA inspectors issue orders if non-compliances are found with a compliance date depending on the severity of the non-compliance.

## Addressing Leaks or Contamination at Sites Regulated by TSSA

The *Environmental Protection Act, 1990* (EPA) requires that the Ministry of the Environment (MOE) be notified through the Spills Action Centre (SAC) of any spill into the natural environment which has caused or is likely to cause an adverse effect. TSSA must also be notified of any spill which has caused or is likely to cause an adverse effect and of all leaks or the discovery of a contaminant from a fuel handling site. When SAC is notified both the MOE and TSSA are made aware of the incident. MOE and TSSA work together to avoid potential duplication or overlap of effort resulting in a province wide, consistent and cost-effective approach to handling petroleum contaminants.

TSSA is the lead agency for all petroleum based environmental occurrences resulting from a spill, leak or discovery of a contaminant at sites under the jurisdiction of the *Technical Standards and Safety Act, 2000*.

TSSA requires the owner/operator of the site to determine the extent of contamination and restoration where contaminants have caused or are likely to cause an adverse effect, to prevent any likelihood of on- or off-site adverse effects, in the following situations:

- where contaminants remain on-site; or
- where off-site contaminant migration is limited to municipally owned properties (e.g., roadways, right-of-ways, etc.) unless an off-site assessment confirms there are sensitive receptors or off-site clean-up is necessary.

The lead will transfer to MOE where contaminants:

- exceed or are likely to exceed the Ontario Drinking Water Objectives at any on-site or off-site drinking water well; or
- have migrated off-site except for municipally owned properties as noted above.

Where a facility under the jurisdiction of the *Technical Standards and Safety Act, 2000* is permanently closed and the fuel handling equipment is not removed within the time period set out in the Regulations, TSSA may order the removal of such equipment. TSSA is the lead agency until equipment has been removed or accepted by TSSA to be permanently abandoned in-place. At this point, the MOE becomes the lead agency and the owner/operator is required to meet obligations under the EPA.

The MOE and TSSA work jointly to establish the source of contaminants where it is not readily apparent what the source of contaminants is.

In situations where there are abandoned / insolvent / bankrupt businesses at a site where there is adverse effect or the likelihood of adverse effect, the MOE is the lead agency.

## Important Considerations

Under the CWA, O. Reg. 287/07 identifies the handling and storage of fuel as a potential drinking water threat. This relates specifically to the TSSA mandate to manage fuels as defined in the regulations (transportation, storage, distribution and utilization). The regulation under the CWA does not include other activities that would relate specifically to other sectors of responsibility for the TSSA (i.e., boilers and pressure vessels, operating engineers, amusement and elevating devices (elevators, escalators, ski lifts), or upholstered and stuffed articles).

Source protection committees (SPCs) assessing the vulnerability of sources of drinking water may identify the handling and storage of fuel as drinking water threats in their assessment reports. Where these activities are identified as significant drinking water threats, committees must write policies in the source protection plan to address the risk associated with these significant threats.

TSSA establishes the legislative and regulatory framework for the management of fuels in Ontario. The TSSA liquid fuels and fuel oil codes may be helpful to SPCs in developing policies for source protection plans.

TSSA can not be directly be impacted by the source protection plan policies as an implementation body to address drinking water threats. Rather the codes and regulatory requirements established by TSSA may be helpful to SPCs developing policies for the source protection plans such as determining which measures or requirements of the codes could be required in risk management plans to manage drinking water threats.

Should policies be drafted for the source protection plan that directly impact the TSSA's inspection, management of fuels or contaminated sites (i.e., through policies that specify actions<sup>1</sup>), SPCs are required to consult with TSSA as per section 35 of Regulation 287/07 under the CWA.

The MOE is incorporating the requirements from TSSA's codes into the risk management measures catalogue. SPCs, can review the catalogue or the TSSA codes directly when writing policies to ensure that the threat – handling and storage of fuel – is managed. Should SPCs consider that the requirements in the TSSA codes for liquid fuels and fuel oil do not sufficiently manage the threat posed by the activity (i.e., section

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<sup>1</sup> Policies that specify actions as per section 26 of Ontario Regulation 287/07 under the Clean Water Act would have the legal effect of strategic action.

22, CWA<sup>2</sup>); their policy details may set out requirements that are more restrictive or stronger than the existing requirements. If management of the threat is not possible then the SPC could consider prohibition of the activity in the vulnerable area (see Bulletin on Prohibition for more details). The SPC should ensure that the explanatory document details the decision making process and why a particular policy tool or management measure has been applied in arriving at the final source protection policy.

## Summary

This Bulletin has provided an overview of the Technical Standards and Safety Authority and how it relates to source protection planning. For information on other aspects of source protection plan development 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 - [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_06c22\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_06c22_e.htm)

O. Reg. 287/07 "General" - [http://www.e-laws.gov.on.ca/html/regis/english/elaws\\_regs\\_070287\\_e.htm](http://www.e-laws.gov.on.ca/html/regis/english/elaws_regs_070287_e.htm)

Technical Standards and Safety Act, 2000 - [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_00t16\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_00t16_e.htm)

Technical Standards and Safety Act, O. Reg. 210/01 - [http://www.e-laws.gov.on.ca/html/regis/english/elaws\\_regs\\_010210\\_e.htm](http://www.e-laws.gov.on.ca/html/regis/english/elaws_regs_010210_e.htm)

Technical Standards and Safety Act, O. Reg. 213/01 - [http://www.e-laws.gov.on.ca/html/regis/english/elaws\\_regs\\_010213\\_e.htm](http://www.e-laws.gov.on.ca/html/regis/english/elaws_regs_010213_e.htm)

Technical Standards and Safety Act, O. Reg. 217/01 - [http://www.e-laws.gov.on.ca/html/regis/english/elaws\\_regs\\_010217\\_e.htm](http://www.e-laws.gov.on.ca/html/regis/english/elaws_regs_010217_e.htm)

Technical Standards and Safety Authority Website – [www.tssa.org](http://www.tssa.org)

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<sup>2</sup> Section 22, CWA requires that activities identified as significant drinking water threats either never become or, if the activity is already taking place, the activity ceases to be a significant threat