

Source Protection Planning Bulletin – Notice When Plan Preparation Begins



October 7, 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.

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

This bulletin provides information to assist source protection committees with the process of formally notifying stakeholders and the public that the preparation of the source protection plan has begun. This document includes a summary of the key legislative requirements, in plain language, for the notice.

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.

Notification of Plan Preparation – Regulatory Requirements

Source protection committees are required by Section 19 of the Regulation to formally give notice in their source protection area when they begin preparing their source protection plans.

At a minimum, the committees must notify¹:

Municipalities

- The clerk of each municipality within the source protection area

Other key stakeholders, when they exist in the source protection area:

- The chief of a band or reserve²
- The chair of the Niagara Escarpment Commission
- The secretary-treasurer of a planning board

Individuals

- Every person who could be engaging in one or more activities that are or would be significant drinking water threats, according to the information contained in the assessment report for the area. At a minimum, this means notifying persons whose existing activities have been enumerated in the assessment report³.

To satisfy these requirements, committees are expected to use readily available information to determine which individuals should be notified.

Timing

Committees have some flexibility around the timing for sending out the notice; they are not required to send out notices the first day the committee meets to discuss their policy development process. Before sending out the formal notice, it may be helpful if committees pull together local background information and resources that will assist with the preparation of the plan.

Stakeholders should be formally informed that plan preparation is beginning when the committee is ready to effectively engage them in the process. When a person receives a notification of plan development, the committee should be prepared to answer questions about its workplan and the timeline for source protection policy development. A committee should also be ready to respond to questions about their strategy to communicate with and get input from stakeholders on their policy development process, as well as provide information about the background work the committee has done on risk management measures and approaches in the area. Committees have the option of sending notices all at once or in batches, such as by vulnerable area or sector, which may be beneficial particularly if taking a sectoral approach to policy drafting.

¹ Notices may be given personally or by mail, fax, courier or email. For additional details see section 100 of the Act and section 3 of the Service of Documents regulation (O. Reg. 231/07).

² The ministry will assist source protection committees in developing letters going to First Nations. As a best practice, the ministry encourages committees to send notice to all First Nation communities within or adjacent to the source protection area, even if the community does not have a reserve located within the source protection area, as traditional aboriginal land uses often extend beyond First Nations reserve boundaries.

³ It is optional to notify additional persons, such as landowners in areas with a high vulnerability score where future uses could be established that would be a significant drinking water threat. For example, this could include certain vacant buildings or lands zoned for commercial or industrial uses.

Content – Regulatory Requirements

When notifying persons who could be engaged in an activity that is or would be a significant drinking water threat, the source protection committee must include the following information in the notice:

- Why the person is receiving the notice⁴
- The activity(s) that is believed to be a significant threat OR a list of activities that could be a significant threat, as listed in the assessment report
- That the source protection plan will contain policies that may affect their activity(s)
- That the source protection committee would like to know if the individual believes that the activity(s) is governed by a provincial instrument prescribed by the regulation and, if so, is requesting the individual provide the instrument number and a description of the applicable provisions that regulate the activity

Committees have the flexibility to determine whether they wish to send unique letters to each recipient or letters that are tailored to a group or particular sector, or even a generic letter for all recipients.

Content - Other Considerations

The regulation lists who must be notified when plan preparation begins and the *minimum* content of the notice. Committees have the flexibility to include additional information to provide context and address the unique circumstances in their area. For example, the notification may include local information about the assessment report, and how this science based document will inform the plan; working groups assisting the source protection committee; whether municipalities are leading policy development; plan preparation workplans and timeframes; upcoming information sessions or open houses; local incentive programs; municipal initiatives that protect water supplies (e.g., new septic re-inspection program in areas where septics are significant threats); and existing stewardship funding, among others.

During the consultations on the draft regulation for source protection plans, the ministry received recommendations about the process and content of this notice. If the committee believes it is appropriate for their area, they may also

- Provide:
 - information about the committee, what sectors are represented, contact information, etc.;
 - information materials on source protection, for example a brochure explaining the difference between committees and source protection authorities, and their roles and responsibilities;
 - an opportunity for a follow up phone call or in-person meeting, and contact information to submit this request;

⁴ An explanation that the person is receiving notice because the committee believes that the person could be engaging in one or more activities that are significant drinking water threats, or would be significant threats if established in the future, according to the information contained in the assessment report.

- an explanation of why source protection is important (i.e. following through with recommendations from the Walkerton report), and the end result of the source protection planning process; and/or
- an explanation of key source protection concepts, for example:
 - Source protection takes a preventative approach by identifying existing and potential threats to drinking water. Therefore, the threats identified in the assessment report may not necessarily mean that there are immediate problems.
 - The assessment of threats is based on an evaluation of the intrinsic risk, meaning the basic built-in risk of an activity, regardless of how it is managed. Existing risk management practices can be considered during the development of plan policies, and the notice should identify opportunities for the recipient to provide local site-specific input on these practices and also advise on the implications (financial, operational, etc.) of any additional risk management practices that might be considered.
- Send the notification letter to the property owner in addition to the person engaged in the significant drinking water threat activity, when these are not the same.
- Write the notice in simple and personalized, or formal language, depending on the local audience.
- Provide broad notification to the community or source protection area so persons interested in the protection of their water are advised of this stage of the process even if not directly affected.

As a best practice, committees are encouraged to involve municipalities early in the policy development process if not already engaged through working groups or local leadership. In addition to sending the notice to municipal clerks, the committee may wish to use this formal notification opportunity to address situations where a municipality has to date chosen to not participate or engage. This letter would provide an opportunity for committees to highlight relevant information to the municipality, including:

- Municipal representation on the committee and its working groups
- Significant threats identified in the assessment report that fall within the municipality, and the land uses with which they may be associated, particularly those related to municipal practices, facilities and operations
- Where applicable, intersections between source protection and the local municipality's existing official plan policies and zoning restrictions.
- Consultations, working groups, and other opportunities for municipal involvement

Continuing to engage municipal partners can help expand the current foundation of collaboration helping to ensure successful implementation after plan approval.

Summary

This Bulletin has provided an overview of the requirements for the preparation of source protection plans. For information on other aspects of source protection plan preparation, please refer to the corresponding bulletins in this series, presently under development.

Additional Sources of Information

Ministry of the Environment's Clean Water Act Website – 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)