

# Source Protection Planning Bulletin - Overview of Source Protection Plan Requirements



September 15, 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

This document provides source protection committee (SPC) members with a summary of the key legislative requirements, in plain language, for the preparation of source protection plans. Together the Act and its regulations, 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. This document is divided into sections by key topic.

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.



The Act and the regulation (“the legislation”) divide the drinking water source protection process into four steps:

1. Plan the work: prepare terms of reference for the work to be done;
2. Assess the risks: prepare an assessment report pulling together the results of the technical and scientific studies for each source protection area, identifying *vulnerable areas*<sup>1</sup> and assessing the threats to drinking water sources;
3. Plan for source protection: prepare a source protection plan that addresses identified drinking water threats, particularly *significant* threats.
4. Take Action: implement the source protection plan, report on progress, and revise over time.

### **Preparing Source Protection Plans**

The recent amendments to the Regulation primarily affect the preparation and submission of source protection plans; these amendments build on the existing requirements set out by the CWA.

### ***Source Protection Plan Content Requirements***

Together the Act and Regulation establish the requirements governing the contents of a source protection plan. Some content is mandatory, while other content is optional. These are summarized in the Table 1.

### **Objectives of a Source Protection Plan**

The Regulation requires the source protection plan to contain the following objectives (*section 22*):

- Protect existing and future drinking water sources.
- Ensure that activities identified as *significant drinking water threats* either never become a threat or, if the activity is already taking place, the activity ceases to be a *significant threat*<sup>2</sup>.
- If the SPC chooses to include a risk reduction policy to deal with a condition (contamination from past activities) that is a *significant drinking water threat*, then the plan must include an objective to ensure that the identified condition ceases to be a *significant threat*.
- If the source protection area contains water flowing into a Great Lake or the St. Lawrence River, and the Minister has requested a report with recommendations for achieving a Great Lakes target established by the Minister, the plan must include an objective to achieve the target in question.

The Regulation says that no other objectives can be contained in the source protection plan. This focuses the scope of the plan on the stated objectives.

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<sup>1</sup> Words in italics are defined in the legislation or represent the legal title of a provincial act.

<sup>2</sup> Note: this objective may be met by policies that manage the activity so that the risk is reduced, not necessarily eliminated.

**Table 1: Source Protection Plan Content**

Mandatory Content	Optional Content
<ul style="list-style-type: none"> <li>• Approved Assessment Report</li> <li>• Objectives</li> <li>• Significant threat policies – activities: For areas where an activity is or would be a significant drinking water threat, policies intended to ensure the activity ceases to be or never becomes significant</li> <li>• Monitoring policies:               <ul style="list-style-type: none"> <li>• monitoring activities/conditions in areas where they are / would be significant</li> <li>• monitoring of moderate / low drinking water threats where advisable to prevent the threat (activity or condition) from becoming significant</li> <li>• monitoring of a drinking water issue where advisable</li> </ul> </li> <li>• Summary of consultation activities</li> <li>• Applicable legal provisions<sup>3</sup>, person/body responsible and applicable area for each policy must be clearly identified</li> <li>• Dates by which official plans, zoning by-laws and prescribed instruments<sup>4</sup> must conform with significant threat policies</li> </ul>	<ul style="list-style-type: none"> <li>• Significant threat policies – conditions (contamination from previous activities): For areas where condition resulting from a past activity is a significant threat, policies intended to ensure condition ceases to be significant</li> <li>• Moderate and low threats policies – Policies to address activities and conditions identified as moderate and low threats</li> <li>• Policies governing:               <ul style="list-style-type: none"> <li>• Incentive programs and education &amp; outreach programs, including for drinking water systems not in the terms of reference<sup>5</sup></li> <li>• Spills prevention, contingency or response plans along highways, railways or shipping lanes in intake protection zones or wellhead protection areas</li> <li>• Climate change data collection</li> <li>• Transport pathways<sup>6</sup></li> </ul> </li> <li>• Anything that will assist in understanding the source protection plan</li> <li>• Dates for policies to take effect<sup>7</sup></li> </ul>

*Note: Requirements related to Great Lake targets are not listed, as no Great Lakes targets have been established for the first round of source protection planning.*

<sup>3</sup> For any drinking water threat policy or monitoring policy to take effect (i.e. to obligate a party or body to implement the policy as per the legislation) the Regulation (section 34) requires each plan identify the legal provision(s) in the legislation that applies to the policy in question, see description of this under the “Legal Effect” section below.

<sup>4</sup> Prescribed instruments are generally specific types of Government of Ontario approvals, permits and other authorizing documents identified by the Regulation – see description of this under the “Tools” section below.

<sup>5</sup> These other drinking water systems may include privately owned systems and non-residential municipal drinking water systems (e.g. a well supplying a municipally owned/operated hockey arena).

<sup>6</sup> While a transport pathway, in and of itself, is not considered to be a drinking water threat, the presence of a transport pathway can increase the vulnerability of a designated area which could potentially increase the risk associated with existing or future drinking water threats.

<sup>7</sup> A plan takes effect once the Minister has approved the plan and published a notice of approval on the Environmental Bill of Rights Registry. Policies may specify a later date to take effect.

## ***Policy Tools***

### **General**

A source protection committee's desired outcome for every drinking water threat policy is anticipated to fall within one of two categories, manage or prohibit the drinking water threat. The legislation provides SPCs with a wide range of approaches or "tools" to rely upon as a means of achieving their desired outcome. More than one tool may be associated with a particular policy outcome.

The CWA states that policies in a source protection plan may be either general or particular in application. This allows a policy to apply generally across the source protection area or to be site specific. It also allows a policy to apply generally to several drinking water threats, or to a particular class of threat. The ministry suggests SPCs consider policy development from the general, source protection *area* basis as a starting point, since the CWA requires policies to address all areas identified in the assessment report where an activity is a *significant* threat, or would be a *significant* threat if the activity were established in the future.

- **Part IV Tools of the CWA:**
  - **Prohibition** of the activity using section 57 of the CWA ("Section 57 Prohibition")
  - **Regulation** of the activity using a *risk management plan* (i.e. the activity can only occur if an approved plan is in place to manage the risk to the raw water supply from that activity) ("*Risk Management Plans*")
  - **Restricted Land Uses** under section 59 of the CWA (some development applications under the *Planning Act* or the *Building Code Act, 1992* related to activities that would be a *significant drinking water threat* would be subject to certain conditions)
- **Prescribed Instruments** – policies that affect decisions to issue or otherwise create, amend or revoke a *prescribed instrument*. For example, a policy stating that specified provincial permits or approval documents issued for an activity in a *vulnerable area* should contain requirements to help manage associated risks to the raw water supply, or a policy that prohibits the issuance of, or revokes such instruments (and thus prohibits the activity)
- **Land Use Planning Approaches** - policies that affect land use planning decisions under the *Planning Act* and *Condominium Act, 1998*. In some instances it may be appropriate to manage or eliminate (through prohibiting it from being established) a threat activity through a land use policy that is implemented through land use planning decisions (such as Official Plans, Zoning By-laws and Site Plan Controls).
- **Education and Outreach Programs**
- **Incentive Programs**
- **"Other"** approaches including policies that:
  - Specify certain actions be taken by a particular person or body to implement the source protection plan or to achieve the plan's objectives

- Establish stewardship programs
- Specify and promote best management practices
- Establish pilot programs
- Govern research

The SPC may develop policies and choose the most appropriate tool(s), based on local committee knowledge and expertise, current municipal approaches, and provincial guidance. In some cases, the SPC may rely on “hard tools” that use a legal mechanism to regulate an activity (for example, *prescribed instruments*), while in other cases the SPC may rely on “soft tools” - approaches that rely on non-legal mechanisms (for example, education and outreach programs).

The Ministry is currently developing guidance for each policy tool. An overview of the tools is described below. A summary of the tools available for each required and optional plan policy is presented in Table 2.

The Regulation requires SPCs to provide an explanation for all of their policy decisions, regardless of the tools used to address any particular drinking water threat (see Explanatory Document section below).

#### **Tools - Limitations – CWA Part IV:**

Part IV of the CWA gives municipalities the authority to regulate *significant drinking water threat* activities in their *Wellhead protection areas* and *intake protection zones*. The purpose of Part IV was to give municipalities additional tools to deal with *significant drinking water threats* where existing local regulatory tools were inadequate to deal with such threats.

There are generally two tools available under Part IV to deal with activities that pose a *significant* threat to source water supplies, prohibiting the activity under section 57 or requiring a *Risk Management Plan* for the activity under section 58. Where a source protection plan uses a Section 57 Prohibition for an activity or requires a Risk Management Plan under section 58 for an activity, Part IV provides an additional tool, Section 59 Restricted Land Uses.

There are certain limitations on the use of these powers:

- The Section 57 Prohibition and *Risk Management Plan* policy tools can only be used in areas where the assessment report indicates that the activity is, or would be, a *significant drinking water threat* and the area is located within a surface water *intake protection zone* or *wellhead protection area*;
- The Section 57 Prohibition and *Risk Management Plan* policy tools cannot both be used to deal with the same activity on a single parcel of land;
- The Section 57 Prohibition and *Risk Management Plan* policy tools can only be used to address an activity that is one of the 21 prescribed drinking water threat activities (or a specific “local” drinking water threat that has been approved by the Director for a particular source protection area), subject to the following:
  - The activity does not require a waste disposal site certificate of approval under the *Environmental Protection Act*;

- The activity does not require a sewage system certificate of approval under the *Ontario Water Resources Act* or the *Building Code Act* applies to the system.<sup>8</sup>

While Part IV CWA tools cannot be used to deal with waste or sewage activities identified as *significant drinking water threats*, the plan must still contain policies intended to manage/reduce the threat from these activities. Other approaches<sup>9</sup> are available for addressing these threats, including *prescribed instrument* policies for an existing or future activity, or a land use planning policy to deal with future activities.

- Section 57 Prohibition can only be used when the SPC is of the opinion that this is the only approach that will ensure that the activity ceases to be, or never becomes a *significant drinking water threat*. The SPC must believe that there is no other policy tool, or combination of tools, available that would effectively manage the risk from the activity.
- The Restricted Land Uses tool can only be used for an area when the following conditions are met:
  - i. The land use in question is “prescribed” by regulation. SPCs may designate restrictions for land uses identified in a local zoning by-law or official plan within the source protection area for this purpose<sup>10</sup>.
  - ii. The land use relates to an activity that has been designated in the source protection plan for the purpose of the Section 57 Prohibition or the *Risk Management Plan* tools.
- During implementation, Restricted Land Uses policies make certain development applications under the *Planning Act* or the *Building Code Act, 1992* related to activities that would be a *significant drinking water threat* subject to conditions. This provides municipalities with a tool to prevent applications or building permits from proceeding if they would create a significant threat.

### **Tools - Limitations – Prescribed Instruments**

An instrument is a permit or other legal document that is usually issued by the government, which typically authorizes specific activities to take place at a particular location. For example, a legal document authorizing a municipality to operate a sewage treatment plant at a specific location, commonly known as a Certificate of Approval, issued under section 53 of the *Ontario Water Resources Act*. These types of documents may contain terms or conditions that require the party who is undertaking the activity to have specified pollution control equipment in place and/or to operate in specific ways.

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<sup>8</sup>Larger sewage systems (e.g. municipal sewage treatment plants) are typically regulated by the *Ontario Water Resources Act* while small sewage systems (e.g. a septic system serving a single household) are regulated by the *Building Code Act*.

<sup>9</sup> The SPC can elect to use any policy tool other than the Part IV CWA tools to deal with these drinking water threats.

<sup>10</sup> Naming of land uses in planning documents varies widely across the province. SPCs may find different names for the same land use associated with activities that constitute a threat in the planning documents for municipalities in their source protection area.

These terms and conditions are often included to help protect human health and/or the environment.

After a source protection plan is approved, the CWA requires that decisions about *prescribed instruments* conform with *significant* threat policies and have regard to *moderate* and *low* threat policies (*CWA: subsection 39(7)*). These conformity standards enable SPCs to write policies in their plan that directly affect the content of approvals, permits or other authorizing documents. The policy may outline specific measures or requirements to be included in the content of these documents to help manage and reduce the risk associated with an activity. These types of policies can only be written for instruments that are specifically “prescribed” (i.e. legally identified) by the Regulation.

There are 16 *prescribed instruments* identified by the Regulation (*section 1.0.1*):

- *Aggregate Resources Act*
  - Section 8 site plans included in applications for licences
  - Section 11 and 13 licences to remove aggregate from pit or quarries
  - Section 25 site plans accompanying applications for wayside permits
  - Section 30 wayside permits to operate pits or quarries
  - Section 36 site plans included in applications for aggregate permits
  - Section 37 aggregate permits to excavate aggregate or topsoil
- *Environmental Protection Act*
  - Section 39 certificates of approval or provisional certificates of approval for the use, operation, establishment, alteration, enlargement or extension of waste disposal sites or waste management systems
  - Section 47.5 renewable energy approvals
- *Ontario Regulation 276/03 (General) made under the Nutrient Management Act, 2002*
  - Section 10 nutrient management strategies
  - Section 14 nutrient management plans
  - Section 28 with respect to approvals of nutrient management strategies or nutrient management plans
- *Ontario Water Resources Act*
  - Section 34 permits to take water
  - Section 53 certificates of approval to establish, alter, extend or replace new or existing sewage works
- *Pesticides Act*
  - Section 7 and 11 permits for land extermination, structural extermination and water extermination
- *Safe Drinking Water Act, 2002*
  - Section 40 drinking water works permits
  - Section 44 municipal drinking water licences

A policy that relies on the *prescribed instrument* conformity standards in the CWA can only control actions that the *prescribed instrument* can legally control. The Ministry

will assist SPCs in understanding the scope of legal authority for each type of *prescribed instrument*, as well as provide appropriate contacts for more information about *prescribed instruments*. Direct communication with the person or business that is subject to an instrument will promote an open dialogue, help SPCs understand existing risk mitigation practices and determine whether any additional measures are needed to ensure the risk is no longer a *significant drinking water threat*.

The conformity standards for *prescribed instruments* under the CWA provide a reliable means for committees using this tool to achieve their desired outcome (that is, “manage” or “prohibit”) for addressing an existing threat that is subject to an instrument. However, prohibition through this tool should only be used as a last resort. If the current risk mitigation practices are not effective enough to manage *significant* threats, plan policies should focus on strengthening the conditions within existing *prescribed instruments*. The Regulation (*section 32*) restricts the use of this tool for policies that address *moderate* and *low drinking water threats*: these policies shall not prohibit or have the effect of preventing a person from engaging in the activity. Instead, *moderate* and *low threat* policies must focus on risk management.

If a source protection plan identifies a condition (i.e. contamination from previous activities) that is a *significant drinking water threat*, the Act gives the Minister the authority to request a person or body to issue, or otherwise create an instrument under any Act to ensure that the condition ceases to be a *significant drinking water threat*. In other words, when dealing with *significant drinking water threat* conditions, there are no restrictions on the instrument the Minister can use.

### **Tools - Limitations – Land Use Planning Approaches**

The CWA requires that decisions under the *Planning Act* and *Condominium Act, 1998* conform with *significant* threat policies and have regard to *moderate* and *low threat* policies (*CWA: subsection 39(1)*). A policy using this tool may outline specific measures or requirements to be included in the land use planning decision to help manage and reduce the risk associated with an activity. These types of policies can only control actions that fall within the legal authority of *Planning Act* and *Condominium Act, 1998* decisions. For example, decisions under the *Planning Act* generally apply to new and future uses and do not apply to existing, established activities. This is why this tool may not be appropriate for addressing existing drinking water threats.

The Regulation (*section 32*) includes a restriction on *moderate* and *low drinking water threat* policies that applies to the land use planning approaches tool: these policies shall not prohibit or have the effect of preventing a person from engaging in the activity.

The Ministry will provide detailed guidance to SPCs on the use and application of the various source protection plan policy tools.

### **Tools - Limitations – Education and Outreach Programs, Incentives, Other**

The legislation allows all the remaining tools to be used to achieve the SPC’s desired outcome for addressing drinking water threats. Several of these may also be used together with the other permissible policies in a source protection plan (for example,

transport pathway policies). When any of these tools are relied upon as the sole means of addressing *significant drinking water threats*, the Regulation requires SPCs to include justification for their decision within the explanatory document that accompanies the source protection plan (see Explanatory Document section below).

The Regulation (*section 32*) includes a restriction on *moderate* and *low drinking water threat* policies that applies to the education, outreach, incentives, and other policy tools: these policies shall not prohibit or have the effect of preventing a person from engaging in the activity.

### **Additional Policy Details:**

The level of detail of any given policy may vary. For certain tools, committees have the option of simply stating the policy as their desired outcome (that is, “manage” or “prohibit”). This applies to any tool that is being relied upon when a SPC’s desired outcome for addressing a *significant* threat is to prohibit the activity from occurring, either now or in the future.

When a SPC decides to use the *Risk Management Plan* tool or *prescribed instrument* tool as the means to achieving the desired outcome of managing a particular threat, they have the option of including some policy details about how the activity should be managed, or outcomes that should be achieved, or may leave those details to the public body responsible for implementing the policy. For example, for existing fuel storage sites that are *significant drinking water threats*, the policy could require a specific standard to be applied, or simply state that measures must be taken to ensure that the activity ceases to be a *significant drinking water threat*. This leaves the decision about what fuel storage standard must be applied in each case to the implementing body.

For all remaining tools, more detail should be included in the policy to help the party responsible for implementing the policy to clearly understand the SPC’s expectations. For example, if a policy establishes an education and outreach program for a *significant drinking water threat* activity, it would be appropriate for the policy, at a minimum, identify the person or body responsible for the policy, the date when the program must be in place, and a description of the program including its objectives. The SPC may also consider including details about how the person or body will report on progress in implementing the program, which may be linked to a monitoring policy (see below).

### **Monitoring Policies**

The monitoring policies included in a source protection plan are summarized in Table 1. The CWA requires that any public body identified in monitoring policies in an approved source protection plan must satisfy their obligations under these policies. Monitoring policies will provide valuable information about the implementation of a source protection plan and the effectiveness of its policies. However, monitoring the implementation progress of a plan will not always provide a measurable outcome. For example, a spill-avoidance protocol would reduce the risk of contamination to a drinking water source, but would not result in a measurable environmental change. Monitoring policies should focus on the designated activity and its risk management measures.

This information will assist source protection authorities with required progress reporting (CWA: section 46; O. Reg. 287/07: section 52).

The legislation gives SPCs the flexibility to include whatever policy details they determine are appropriate for the party responsible for implementing the monitoring policy to understand what is expected from the monitoring policy.

### ***Legal Effect of Plan Policies***

Part III of the CWA sets out the legal effect (i.e. the obligations imposed on a party or body to implement the policy) of source protection plans. This part of the CWA requires all decisions under the *Planning Act* or *Condominium Act 1998*, or decisions related to *prescribed instruments*, “conform with” meaning comply with, *significant* threat policies and “have regard to”, meaning to seriously consider, the policies in the plan that relate to *moderate* and *low drinking water threats*. In addition, Part III requires municipalities, local boards or source protection authorities to satisfy any obligations imposed on it by *significant* threat policies in the plan, regardless of the particular tool or approach used in the policy.

However, Part III of the CWA will only apply if the plan expressly states that they apply.

This means that the applicable legal provisions for each policy must be clearly identified in the plan in order for the legal effect provisions in Part III of the Act to apply (O. Reg. 287/07: section 34). For example, a plan that includes a *significant* threat policy to address a threat using a *prescribed instrument* would have to also identify that sections 39(7)(a), 43 and 44(1) of the CWA<sup>11</sup> apply to the policy. In addition, the Regulation requires the plan to specify the types of *prescribed instruments* the policy applies to, or the policy will not have the intended legal effect. The ministry intends to provide SPCs with directions and an associated template to assist them with complying with section 34 of the Regulation.

The Regulation requires that any policy that does not fall under one of the categories listed below must be identified in the plan as a “strategic action policy” (section 33):

- a *significant threat policy*
- a Great Lakes policy
- any type of monitoring policy that is to be carried out by a specified public body
- a *low or moderate threat policy* that affects decisions made under the *Planning Act* or *Condominium Act, 1998*
- a *low or moderate threat policy* that affects *prescribed instruments* (see description of this tool below)

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<sup>11</sup> S. 39(7)(a) of the CWA requires the body issuing a prescribed instrument to conform to an applicable significant threat policy; S. 43 of the CWA requires the body issuing a prescribed instrument to amend an existing instrument to conform to an applicable significant threat policy; S. 44 of the CWA provides the Minister with the authority to request the appropriate issuing body to take steps to amend a prescribed instrument if the Minister is of the opinion that the instrument does not conform to an applicable significant threat policy.

Strategic action policies do not have legal implementation requirements; therefore can not legally be enforced. However, strategic action policies are still an important part of a source protection plan, and their implementation can be monitored publicly through required progress reports.

### **The Explanatory Document**

The Regulation requires that the SPC prepare a second type of document, called an “explanatory document”, to accompany the source protection plan (*section 40*). The purpose of the explanatory document is to provide the source protection authority, stakeholders, the Minister and general public with background information that the SPC used to prepare the plan and support a transparent decision making process. The explanatory document must include:

- an explanation of the SPC’s policy decisions (i.e. the reasons for each policy or a group of policies set out in the plan);
- the reasons why the SPC was of the opinion that an activity that exists today had to be prohibited in the plan using the Section 57 Prohibition tool;
- a summary of how comments received from various parties during the plan pre-consultation process affected the development of various policies (note, the pre-consultation requirements are described later in this compendium);
- a summary of how climate change considerations noted in the assessment report affected the development of policies. (Note: if there was insufficient climate information in the assessment report to have any effect on policy decisions or if climate information had no effect on policy decisions that should be stated in the explanatory document);
- a summary of how financial implications on both implementing bodies and other persons potentially affected by policies influenced the development of policies. (Note: if financial implications were not considered, or financial implications had no effect on policy decisions, this should also be stated in the explanatory document.)
- where a plan includes policies that address *significant drinking water threats* exclusively by non-regulatory means<sup>12</sup>
  - an explanation of why the *significant* threat was dealt with this way, and,
  - statements explaining why the SPC is of the opinion that the policy(s) will achieve the objective of ensuring the activity either never becomes a *significant* threat or, if the activity is already taking place, the activity ceases to be a *significant* threat, and that a policy to regulate or prohibit the activity is not necessary.

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<sup>12</sup> These are described in subsection 22(7) of the Act and section 26 paragraph 1 of the Regulation: education and outreach programs; incentive programs; stewardship programs, best management practices programs; pilot programs; research programs; or a policy that specifies actions to be taken to implement the plan or achieve the plan’s objectives.

**Table 2: Summary of Approaches / Tools Available for Source Protection Plan Policies**

Approach / Tool		<i>Policies Addressing:</i>									
		<i>Significant Drinking Water Threat - activities</i>	<i>Significant Drinking Water Threat - conditions</i>	<i>Moderate or Low Threats</i>	<i>Monitoring Significant Threats</i>	<i>Monitoring Moderate and Low Threats</i>	<i>Monitoring Drinking Water Issues</i>	<i>Transport Pathways</i>	<i>Spill Prevention/Contingency Plans/Emergency Response Plans</i>	<i>Climate Change Condition Data</i>	<i>Non-Terms of Reference Drinking Water Systems</i>
Part IV Tools	S. 57 Prohibition	√*									
	Risk Management Plans	√*									
	Restricted Land Uses	√*									
Prescribed Instruments		√	√	√							
Land Use Planning Approaches		√	√	√							
Incentives		√	√	√				√			
Education / Outreach		√	√	√				√			√
Other	Stewardship Programs	√	√	√				√			
	Best Management Practices	√	√	√				√			
	Pilot Programs	√	√	√				√			
	Research	√	√	√				√			
	Specify Actions	√	√	√				√	√	√	
Specify Monitoring Details					√	√	√				

\* Except for waste and sewage threats that require a prescribed instrument under the Environmental Protection Act / Ontario Water Resources Act, or fall under the Building Code.

	<i>Optional Plan Policies</i>
	<i>Mandatory Plan Policies</i>

## **Notification/Consultation Requirements During Plan Preparation**

The legislation requires SPCs and source protection authorities to carry out consultations at several points during the preparation of a source protection plan.

### ***Notice When Plan Preparation Begins (section 19):***

The legislation does not strictly define when the preparation of a source protection plan begins; this provides SPCs with some flexibility in determining when the preparation of the planning document formally begins. Once the SPC has determined they are ready to begin preparing the plan, the Regulation requires that a number of parties be notified, including:

- The clerk of each municipality and band chief of any First Nation reserve that is located all or partly within the source protection area.
- Any person who the SPC believes could be engaging in one or more prescribed activities that are or would be a *significant drinking water threat*. The notice must say why the SPC is notifying this person<sup>13</sup>. The notice must either specify the activity(s) in question or provide a complete or partial list of activities that were identified to be *significant* threats in the local assessment report in the area where the person is carrying out the activity(ies).

The Ministry is currently developing more detailed guidance to assist SPCs with the requirement. Please see the Ministry's source protection planning bulletin "Notice When Plan Preparation Begins".

### ***Pre-consultation with Affected Parties (sections 35 to 39):***

The Regulation requires SPCs to consult with affected parties during the policy development process, before the draft plan is published for initial public comment.

If the SPC intends to include any incentive, education and outreach, or "other" policies (*section 26, paragraphs 1, 4, 5 and 6, and section 27*), the SPC is required to notify the person or body who will be responsible for implementing the policy. The notification must tell the party in question that they will be required to implement a policy in the plan. The notice must include draft wording of the policy along with a summary of the reasons for the policy and an invitation to provide input on the draft policy. A committee is required to consider all comments received when finalizing the draft policy.

The same basic consultation and notification process described above is required for other types of policies that would impose implementation responsibilities on a person, body or organization. Pre-consultation notices can be combined if the SPC is required to notify the same person, body or organization several different times:

- for policies affecting *prescribed instruments*, the SPC is required to consult with the body or person responsible for issuing or amending the instrument;

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<sup>13</sup> The notice must say that the person has been given a notice because the committee believes the person could be engaging in one or more activities that are, or would be, significant threats according to the information in the assessment report.

- for policies affecting decisions under the *Planning Act* or *Condominium Act, 1998*, the SPC is required to consult with municipalities, planning boards, municipal planning authorities or other local boards whose decisions will be affected and the appropriate regional director of the Ministry of Municipal Affairs and Housing;
- for *significant, moderate, and low threat policies* that impose an obligation on a municipality or other body or person, the SPC is required to consult with the appropriate affected body;
- for the policies that rely on the Part IV tools (Section 57 Prohibition, *Risk Management Plan*, Restricted Land Uses), which impose enforcement of a policy on the council of a municipality, the SPC must consult with the affected municipality; and
- for monitoring policies, the SPC is required to consult with the person or body who will be responsible for conducting the monitoring program.

A summary of how the comments received from the affected parties as a result of pre-consultation notices, and an explanation of how the comments affected the development of the plan policies, must be included in the explanatory document that accompanies the source protection plan.

In addition to these consultation requirements, the legislation sets out specific requirements for both the submission of the draft and proposed plan. Guidance will be provided in the future to assist committees with these requirements.

### **Miscellaneous Requirements (sections 20, 21, and 40)**

SPCs should be aware of the following additional requirements related to the preparation of source protection plans:

- Every record that is created or acquired for the purpose of preparing or amending a source protection plan must be kept by the SPC for a period of 15 years.
- The Director has the authority to require SPCs to use a specific form or computer software when preparing source protection plans.
- The Director has the authority to require SPCs to use a specific form or computer software when preparing the explanatory document.

### **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](http://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](http://www.e-laws.gov.on.ca))