



MOE Liaison Officer Program Update

Date: August 26, 2009

1. Terms of reference

- All 19 source protection committees have submitted their proposed terms of reference to the ministry for approval.
- As of Monday, August 10, 2009 all thirty eight terms of reference were approved by the Minister and the decision notices posted to the Environmental Registry.

2. Assessment report

Technical bulletins completed sent to PMs:

- Delineation of Significant Groundwater Recharge Areas
- Addressing Transportation Threats
- Climate Change Requirements
- Water Budget Drought Scenarios
- Groundwater Road Map
- Surface Water Road Map
- Delineation of Intake Protection Zone 3, Using the Event Based Approach (EBA)

Technical bulletins in preparation:

- General IPZ delineation guidance
- GUDI delineations
- Places to Grow and source protection planning
- Groundwater
- Provincial lists of threats and circumstances

Upcoming training:

- Section 88 Training
When: September 9 to 11
Where: Mississauga

Program Updates and information sent to PMs:

E-mail from Rita Zaro on July 21, 2009 – Access to the threats and issues database (version 6.1) and the threats reference table.



3. Information management

- The Phase 1 data scanning was completed in July 2009. The Source Protection Authorities should have received an electronic copy of Ministry of the Environment files pertaining to water within the 500 metres of a well or within 1 km of a surface water intake.
- Brownfields Environmental Site Registry (BESR) data were originally scheduled to be released on the Ministry's CA Portal by August 2009. However, pending a data integrity review, the data will not be available in bulk in an automated fashion until 2010. Individual records of site condition (on a site by site basis) continue to be available on the BESR website by the general public.
- The following data sets will be available for release to the Source Protection Authorities by the end of August. Staff are in the process of organizing the data by SPA boundaries. Once complete, these data sets will be made available via the FTP site managed by Conservation Ontario. Project Managers can expect an email by the end of August advising of availability of this data set and access procedures.
 - Municipal and non-municipal drinking-water system sample data from the Ministry's Drinking Water Information System (DWIS) Drinking water sample data extracts from the Ministry's Drinking Water Information Management System (DWIMS) including Ministry inspection audit data and Drinking Water Surveillance Program data
 - Ontario Water Taking and Reporting System data (combined with Permit to Take Water (PTTW) data) - this data set will include the actual water takings submitted to the Water Taking and Reporting System (WTRS) by the PTTW clients.
- The Liaison Officers are currently collecting a list of all information still needed for assessment reports. If you have outstanding or emerging data needs please contact your Liaison Officer.

4. Recent letters / memos

There have not been any letters/memos since the last newsletter.

5. EBR postings related to source protection

[Terms of Reference](#)



- Notices for terms of reference approvals are posted on the Environmental Bill of Rights registry (EBR). The regulatory date for the submission of the assessment report to the MOE for approval is based on the terms of reference notice posting date.

Source Protection Planning Discussion Paper

- Ministry of the Environment posted the document “*Source Protection Plans under the Clean Water Act, 2006: A Discussion Paper on Requirements for the Content and Preparation of Source Protection Plans*” on the Environmental Bill of Rights (EBR) website www.ebr.gov.on.ca, # **010-6726** on June 25th, 2009 for a 90-day public comment period. The purpose of the document is to stimulate discussion on source protection plans, their content, and how they will be developed, so that the ministry can use the results of the discussion in developing the draft source protection plan regulations.

The SPC Chairs have been asked to organize a SPC “dry-run” exercise using the guidelines outlined in the June 1, 2009 memo from Ian Smith and the proposals in the discussion paper to provide the ministry with valuable input to guide the development of the draft source protection plan regulations.

Director’s Technical Rules

- The Ministry of the Environment has posted on the Environmental Registry proposed amendments to the Director’s Technical Rules, which govern the content of the assessment report. The posting provides 30 days for stakeholders, including the source protection committees, and members of the public to comment. The proposed amendments can be found through the following link <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTA3NDU3&statusId=MTYxMzM1&language=en>.

The intent of the amendments is to enable source protection committees to complete their assessment reports within their legislative timeframes and to provide more local flexibility in the preparation of the assessment report. The ministry has developed these amendments in such a way as to ensure that significant changes to work performed to date are not



required. There are some cases where changes to maps and information may be required.

6. Ontario Drinking Water Stewardship Program

- The Ministry of the Environment launched the 2009-10 ODWSP on July 17, 2009; there is \$7 million available this year under the program.
- The initial launch of the 2009-10 ODWSP closely mirrors the 2008-09 funding year. Some administrative changes have been made as a part of the continuous improvement strategy of the MOE. Some of these administrative changes include:
 - a streamlined submission process and two application periods/deadlines to better align with fiscal year-end processes and activities
 - strengthened application review and selection criteria
 - more stringent reporting requirements
 - more frequent assessment of approved projects and activities to ensure value for money
- Changes to the program funding projects including the following:
 - Special Projects**
 - Financial assistance for the delivery of ODWSP Early Actions funding moved from Special Projects to Early Actions component of the ODWSP
 - First Nations education and outreach initiatives moved to Education and Outreach component of the ODWSP
 - Education & Outreach**
 - Now includes First Nations initiatives
 - Early Actions**
 - Now includes financial assistance for the delivery of the ODWSP (formerly under Special Projects)
 - Additional agricultural best management practices added
 - Alignment with new Environmental Farm Plan (Growing Forward)
 - Additional erosion and run-off control projects
- Requests for grant proposals and associated applications for Education and Outreach, Special Projects, and Early Actions components are posted on the ministry's website at www.ontario.ca/cleanwater.
- In the fall of 2009 the ODWSP will be undergoing a strategic shift to focus on providing financial assistance to those affected by the Act. As these



persons will begin to be identified with the completion and release of assessment report technical information in the second half of 2009, and in order to accommodate this shift, the MOE may re-issue some or all of the Requests for Grant Proposals on its website.

7. Recent Questions and Answers

Assessment Report – General

The following questions were raised and answered between June 26th to August 14th, 2009.

1. Question:

When using the modelling approach to delineate IPZ-3 what models can be used? In other words does the IPZ-3 modelling have to show actual contaminant transport modelling? For example an LNAPL such as toluene would have different transport parameters/behaviours than a DNAPL such as PCBs. Alternatively is it sufficient to do the flow modelling for water and make the assumption that the contaminant has the same density as water?

Answer:

In the context of modelling for a surface water system such as referred to in the question the contaminant density does not play a role. This means that the model can assume that the contaminant has the same density as water.

In the case of a groundwater system however the contaminant density would play a role.

2. Question:

Can a cluster of private systems be brought into the assessment report (AR), even though the terms of reference (ToR) has been approved or would the cluster be brought in under the next round of planning?

Answer:

Generally, the Clean Water Act, 2006 (CWA) only applies to municipal residential drinking water systems. The CWA allows drinking water systems other than municipal residential drinking water systems to be brought into source protection planning through a municipal council resolution (section 8(3), CWA), under order by the Minister (section 10(6), CWA), or through a regulation for systems that serve or are planned to serve first nation reserves (section 15(1)(e)(iv), CWA). The CWA does not allow individual private

DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

drinking water systems to be included in source protection planning, unless the criteria set out in section 4.1 of Ontario Regulation 287/07 is met. Under section 4.1 private or other facility drinking water systems can be brought into source protection planning if it is a cluster of six or more wells or intakes, is located within an area of settlement defined under the Planning Act or the private residence is a designated facility or public facility defined under the Safe Drinking Water Act.

It is essential that SPCs/SPAs consider how amending the terms of reference will impact the delivery of their assessment report and source protection plan to the ministry according to their compliance dates. The ministry strongly recommends that where an amendment to a terms of reference is being considered that the SPA work with their liaison officer to determine the appropriate timing. As a guideline the ministry is encouraging SPCs/SPAs to submit a letter of intent to provide an early indication of a potential amendment to the terms of reference and or update to the assessment report.

Additionally the SPC/SPA must consider when the technical work associated with the cluster will be complete. Below are the critical time periods to be considered:

- If amendment to the terms of reference is required and all the work associated with the change will be completed in time to be included in the proposed assessment report submitted to the province in 2010;
- The critical date for submission of an amended terms of reference to the Minister for review and decision is 4 months prior to the submission of your proposed assessment report; for example, if your proposed assessment report is due in March 2010 then the amended terms of reference would need to be submitted no later than November 2009;
- If amendment to the terms of reference is required and the work associated with the change will not be completed in time to be included in the proposed assessment report submitted to the province in 2010, but will be submitted in an updated assessment report before the source protection plan is due in 2012;
- The critical date for submission of an amended terms of reference to the Minister for review and decision is 6 months prior to the submission of your updated assessment report; and
- The critical date for submission of an updated assessment report to the Director for review and decision is no later than June, 2011.



3. Question:

Rule 58 requires the delineation of an intake protection area (IPA) by combining IPZ-1, IPZ-2, IPZ-3 and IPZ-Q. When this happens, pockets/islands can be created. Should those islands be included as part of the IPA or left out?

Similarly, rule 47 requires the delineation of a WHPA for a combination of WHPA-A, -B, -C, -D, -E and -F. Should the islands be filled in or emitted?

Answer:

Pockets/islands may be identified in the delineation of the IPZs. Pockets/islands should not be included in the IPZ. With WHPAs, there may be pockets with the WHPA-E and -F delineation, which again should not be pulled into the WHPA. If SPA staff are getting pockets in the delineation of WHPA-A through -D, the staff may need to discuss the methodologies with MOE staff, as these pockets should not occur.

4. Question:

Some municipalities are being asked to identify locations for potential future bedrock quarries. These include:

- Are there setback guidelines: how far from a private well can a quarry be (500 m/1000m)?
- Are there guidelines as to how close to a river an extraction operation can be located? How close to a provincially significant wetland?

Answer:

The identification and protection of mineral aggregate resources by a municipality must be consistent with the Provincial Policy Statement (PPS) 2005. The PPS provides policy direction on matters of provincial interest related to land use planning and development, and all relevant policies are to be applied to each situation. The PPS refers to “adjacent lands” to a specific natural heritage feature or area and the need to evaluate the ecological function of the adjacent lands and demonstrate no negative impacts on the natural heritage features or on their ecological functions from development proposed on the adjacent lands. However, the PPS does not prescribe minimum separation distances from rivers, significant wetlands or private water wells. The province does provide guidance on the extent adjacent lands for the PPS natural heritage features, including provincially significant wetlands, by means of MNR’s Natural Heritage Reference Manual.



New licence and permit applications under the Aggregate Resources Act (ARA) must be accompanied by technical reports (e.g. Natural Environment report, and in the case of extraction below the water table, a Hydrogeological report) prepared by qualified persons. The technical reports may recommend a site-specific setback to mitigate a potential negative impact. The Natural Environment report identifies natural heritage features (e.g. significant wetlands, fish habitat) on-site and within 120 metres of the site, assesses any potential for negative impacts, and recommends any necessary preventative, mitigative or remedial measures, including minimum setback distances. The hydrogeological report determines the water table elevation and the potential for adverse effects of the operation on ground water and surface water and their uses. Where there is potential for an adverse effect, an impact assessment is required to determine the significance of the effect and feasibility of mitigation (e.g. recommend setback from natural heritage feature (e.g. wetlands), river and private water well, etc.).

In addition, where dewatering of the quarry is proposed, a Permit to Take Water (PTTW) under the Ontario Water Resources Act is required. The PTTW program is administered by the Ministry of the Environment.

The Operational Standards within the Aggregate Resources of Ontario Provincial Standards (AROPS) specifies an excavation setback of 30 metres from any body of water that is not the result of excavation below the water table. This distance can be varied through the site plan depending upon the site specific circumstances.

Threats and Issues

5. Question:

Is a storage tank in a basement considered to be below grade?

Answer:

The definition of Grade as per the Fire Protection and Promotion Act is “the average level of finished ground adjoining a building at all exterior walls”. Given this definition a storage tank located in the basement of a building would be considered below grade.

6. Question:



Is there a requirement to produce maps showing 'issues contributing areas' where the issue in question is naturally occurring?

Answer:

You are not required to produce maps for the Assessment Report to show areas where naturally occurring issues arise. There is no need because threats will not be identified in these areas. You simply provide the information that you have about naturally occurring issues for information purposes. This information can also be discussed in the watershed characterisation.

7. Question:

In the case of Great Lakes (or connecting channel) intakes where high nitrogen levels are noted in the raw water and staff believe the levels to be both a) naturally occurring and b) lakewide, how should this be dealt with in the assessment report?

Answer:

In order to answer this question you have to deal with it in two parts. Firstly when a drinking water quality issue is naturally occurring then you are not obliged to identify any natural issue or issue contributing area.

Secondly, however, as the question relates to nitrogen it would be prudent to look at it somewhat differently as elevated nitrogen in lake water may not be or is unlikely to be present for natural reasons. If the data and analysis suggests that elevated nitrogen is a loading problem that exists at a great lakes level and cannot be addressed through local source protection policies, then you are required to identify great lakes based issues that the province should evaluate further. In this way it could potentially be addressed through great lakes targets.

8. Question:

Will the risk management measures catalogue contain guidance for threats to both water quantity and quality?

Answer:

Currently, MOE is preparing two separate catalogues of risk management measures—one for threats to water quality and another for threats to water quantity. The risk management measures described in the catalogues will



range from operational practices to technology improvements, with a description of the level of risk reduction that each measure provides.

For threats that pose a risk to water quality, the catalogue will include a relative rating of the effectiveness of the measure. For threats to water quantity, the catalogue will refer to management measures that reduce the stress to the drinking water supply system.

9. Question:

When enumerating significant threats, do we consider, for the 2010 assessment report deadline, the potential land use activities under the zoning by-law or do we only consider the activities/circumstances that are actually occurring?

Answer:

The AR must include the number of locations where an activity is or would be a significant drinking water threat (SDWT). When enumerating significant threats, the technical rules include the term “is or would be” implying that if the property is not at present hosting the activity but the infrastructure is present on the property such that the activity could take place, it is considered a threat. (i.e. A property with a barn that currently does not have animals in it but could have tomorrow).

The following interpretation should be kept in mind when applying the above guidance:

Is = where activity is currently undertaken.

Would be = where there is infrastructure is present currently to undertake the activity (such as in the barn example).

10. Question:

What are the requirements for listing circumstances and threats? Also, do SPCs report the significant threats as just a total count (e.g., 15) or do they need to show a count of chemical threats and pathogen threats (10 Chemical, 5 Pathogen)?

Answer:

In terms of listing circumstances, for each vulnerable area, the SPC is required to identify the circumstances in which the activity is or would be a significant, moderate or low drinking water threat (see O.Reg 287/07 s. 13 (3), (4) and (5)). This can be done by referring to the Table of Drinking Water

DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

Threats included in the technical rules, creating more specific tables from the look up table database the ministry provided, or creating tables using the UTRCA web-based tool. The ministry is also working on developing this list for all SPAs so that relevant sublists can be referenced in the assessment report. Therefore, this is mostly a paper exercise. If an SPC adds local circumstances for prescribed threats, or new threats beyond those that are prescribed, they must be listed in addition to the provincial lists.

In terms of listing threats, the SPC is required to list the number of locations where a person is engaging in an activity that is or would be a significant drinking water threat. To do this, the SPC needs to know the circumstances that make an activity significant, which also helps with policy development, but the SPC does not have to list these circumstances in the AR when reporting on numbers. If, however, the committee chooses to list the circumstances in the AR, there is nothing that says they can not do this.

There is no requirement to count moderate and low drinking water threats or circumstances. As for reporting significant threat activities, there is no need to differentiate between chemical and pathogen threats. A committee can decide what level of detail they want to provide with respect to reporting numbers in the AR. Some committees are reporting the numbers based on the prescribed threat lists (the 21 listed in the regulation). For example, the AR might say: 15 locations where the application of commercial fertiliser is taking place, and 10 locations where handling and storage of fuel is taking place. The ministry is not requiring the SPC to do anything more than report the number of locations where significant drinking water threats are taking place (25 for this example), but the ministry is recommending the SPC consider reporting at this level. As mentioned, the committee could also show the count by activity and circumstance.

11. Question:

Why isn't shipping considered a threat when IPZ-1 is based on spill response?

Answer:

In terms of shipping, the list of activities that are prescribed as drinking water threats was established using input from multiple stakeholder groups and committees. This list did not contain shipping corridors as a threat. Given the information generated through the consultation, the province developed a methodology with respect to determining risk that does not enable the



evaluation of transportation corridors as a threat. The province may consider amendments to include corridors in future rounds of planning if the inclusion of transportation threats under the existing framework does not adequately address transportation.

Overall, although shipping has not been included as a threat activity, a committee may consider adding shipping as a local threat (with the approval of the Director) using the process outlined in technical rules 119 and 120. To support this, the ministry has posted a bulletin on its drinking water portal for Addressing Transportation Threats. This methodology is based on the hazard ratings assigned to the storage and use of chemicals is a threat, and adds in new threats around the movement of the same chemicals.

12. Question:

A list is currently being compiled of instruments that govern or may govern drinking water threats. Will the list also provide information on the activities/threats the instruments will govern?

Answer:

The province is in the process of developing a draft regulation that will list the provincial instruments proposed to be prescribed to the Clean Water Act. As support for implementation if a final regulation there will be guidance that indicates which instruments may govern the drinking water threats listed in S 1.1 of Regulation 287/07.

Water Budget:

13. Question:

What is our study year?

Answer:

The year prior to the year that the Terms of reference is approved.

14. Question:

Which submission governs the definition of study year? Which leads back to Q1.



Answer:

The study year is in reference to water demand only. The teams must use the whole of the Climate and Stream flow period of record for water supply and reserve. See technical Rule 31 and Table 1.

If the study year is 2008, then you only need to check that there has not been any large permitted demands that may affect the results of the current Tier 1 or Tier 2 assessments. If not, there are no requirements to alter the Tier 1 assessments and simply carry on with the Tier 2 assessments.

15. Question:

In light of the data problem, is one of the above solutions required over another?

Answer:

Unless there are data gaps, there should not be a data problem. The entire climate and stream flow period of record must be used to assess water supply and reserve.

16. Question

Is there a difference between the delineation of WHPAs for water quality and water quantity WHPAs? Is it the case that WHPA's for water quality are based on time of travel and that water quantity WHPA's are based on the well draw down area, therefore they can be different areas with different definitions?

Answer:

Yes this is correct, the WHPA for quality and quantity are delineated relative to the well using different methods (i.e., quality uses time of travel and quantity uses drawdown).

Source Protection Plans

17. Question:

With the powers of the current Ontario Municipal Board (OMB) can they overrule the source protection plan (SPP) policies?

Answer:

The effect of the source protection plan is addressed in subsection 39(1) of the Clean Water Act (CWA).



39. (1) A decision under the Planning Act or the Condominium Act, 1998 made by a municipal council, municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, that relates to the source protection area shall,

(a) conform with significant threat policies and designated Great Lakes policies set out in the source protection plan; and

(b) have regard to other policies set out in the source protection plan.

The CWA requires that all decisions made under the Planning Act or the Condominium Act made by a municipal council, municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, conform with the significant threat policies and designated Great Lakes policies that are set out in the source protection plan.

With respect to other policies in the source protection plan, including policies that address moderate and low drinking water threats and policies governing monitoring, decisions under the Planning Act or Condominium Act must “have regard to” these plan policies. There may potentially be different outcomes from the “conform with” and “have regard to” policy obligations.

18. Question:

Who owns the Source Protection Plan - the ministry, the Source Protection Committee, the Municipality? More specifically who interprets the plan on a daily basis when a policy needs clarification or challenged? And who speaks for the plan/takes responsibility for the plan?

Answer:

The source protection committee (SPC) is responsible for developing the plan for each source protection area. It is not “owned” per se; rather implementation of various components of the plan are the responsibility of different public bodies. Thus, strictly speaking, the public body that is given the responsibility for implementing a policy in the source protection plan has the responsibility to interpret that policy on a daily basis. For example, the municipality is responsible for elements of the plan that involve Part IV of the CWA, as well as where policies will be implemented through Planning Act decisions, Official Plan Amendments, Zoning By-laws, and other existing municipal authorities (e.g. Municipal Act, 2001). The Crown is responsible for ensuring prescribed instruments conform with significant threat policies and designated Great Lakes policies. Thus, where a source protection plan is

DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

implemented through a statutory decision-making scheme, for instance if a plan sets out policies that are applicable to sewage works approvals issued under the Ontario Water Resources Act, the decision-making process including any appeal process would be specified in the governing statute, thus in this case the Director and Environmental Review Tribunal would be interpreting the policies in the Plan related to sewage works approvals. In other cases where policies are not dependent on implementation through a statutory scheme, such as where public bodies are required to implement monitoring policies set out in a particular plan, these public bodies would be responsible for interpreting that policy. Where there is ambiguity in the language of a policy and depending on the context, public bodies responsible for implementing a source protection plan policy may choose to seek advice on how to interpret a policy by contacting the Ministry or by bringing the issue to the source protection committee. These issues could also ultimately be raised through the progress reports required under the Act.

The ministry is presently considering the development of a table for SPCs to use that readily identifies which policy(ies) apply to which public body and/or legislation. Such a table would provide clarity to readers as to whom is responsible for specific policies.

The SPC is to be responsible for carrying out a review of the source protection plan in accordance with the date specified by the Minister when the Minister approves a source protection plan (Section 36 of CWA). The source protection authority shall ensure the review is conducted in accordance with the Act and the regulations.

19. Question:

When a policy is not implemented (as identified through the annual report or the municipality), who will be charged with contacting the body responsible for implementation and enforcement? For example: A source protection plan policy is to be implemented through planning and the municipality is not complying or the MOE is required to revise a C of A and it hasn't been completed by the date specified in the plan? What will be the consequences of non-compliance?

Answer:

Similar to other provincial plans such as the Greenbelt Plan or the recent Lake Simcoe Protection Plan, many policies in a source protection plan may be implemented through other provincial Acts – and how a policy is “enforced”



depends on how the governing statute operates. The plan may include policies related to Planning Act decisions. Where such policies are significant threat policies, municipalities are required to ensure that their decisions under the Planning Act conform to those policies. Failure to do so may lead to a challenge before the Ontario Municipal Board. Similarly, if a municipality fails to bring its official plan into conformity with the applicable significant threat policies by the date specified in the Clean Water Act, the Act provides the Province with a method to compel a municipality to perform this conformity exercise. The same is true with respect to prescribed instruments – the governing statute will provide the method of enforcement. In some cases, the method for legally enforcing other mandatory policies in the SPP may be judicial review. For instance, if a public body has failed to carry out a monitoring program specified by the plan – since the statute makes monitoring policies mandatory – the public body could face judicial review which may result in a court order compelling it to comply with the policy. Beyond legal mechanisms for enforcement however is the importance of monitoring the progress of implementation. In this regard, the Act requires the source protection authority to prepare annual progress reports – and in this context, the source protection authority is given an inspection authority to determine the effectiveness of source protection plan policies. Annual progress reports must be reviewed by the source protection committee before they are given by the source protection authority to the Director.

20. Question:

Does Part IV of the CWA (Regulation of Drinking Water Threats) only apply to Risk Management Plans or is the Risk Management Official charged with enforcement of all of the policies in that Municipality?

Answer:

Part IV of the CWA applies to the enforcement of all new authorities established in Part IV, namely interim risk management plans (S. 56 of the CWA), prohibition (S. 57), risk management plans (S. 58), and restricted land uses (S. 59). In addition, several other responsibilities / authorities are specified including (e.g. enforcement orders (S. 63), orders to cause things to be done (S. 64), order to pay (S. 57), annual reports (S. 81). These are the responsibility of the Risk Management Official, which the CWA defaults to a municipality that has authority to pass by-laws respecting water production treatment and storage under the Municipal Act, 2001. The CWA contains provisions whereby a municipality can enter into an agreement with other entities, including board of health, planning board, or source protection



authority, in which case that entity would be responsible for Part IV enforcement.

There may however be other types of policies in the Plan over which the municipality has jurisdiction but for which the Risk Management Official is not responsible. For instance, if the Plan contains policies that govern decisions under the Planning Act, then the Risk Management Official would not be responsible for enforcing those policies. Similarly, if the source protection plan compels the Municipality to pass a by-law under the Municipal Act to deal with a significant threat policy or to undertake a monitoring program, the risk management official would not have responsibility to enforce those policies.

21. Question:

How is the a policy enforced and when does the Tribunal get involved? Who sits on the Tribunal?

Answer:

Similar to other provincial plans such as the Greenbelt Plan or the recent Lake Simcoe Protection Plan, many policies in a source protection plan may be implemented through other provincial Acts – and how a policy is “enforced” depends on how the governing statute operates. The plan may include policies related to Planning Act decisions. Where such policies are significant threat policies, municipalities are required to ensure that their decisions under the Planning Act conform to those policies. Failure to do so may lead to a challenge before the Ontario Municipal Board. Similarly, if a municipality fails to bring its official plan into conformity with the applicable significant threat policies by the date specified in the Clean Water Act, the Act provides the Province with a method to compel a municipality to perform this conformity exercise. The same is true with respect to prescribed instruments – the governing statute will provide the method of enforcement. In some cases, the method for legally enforcing other mandatory policies in the SPP may be judicial review. For instance, if a public body has failed to carry out a monitoring program specified by the plan – since the statute makes monitoring policies mandatory – the public body could face judicial review which may result in a court order compelling it to comply with the policy. Beyond legal mechanisms for enforcement however is the importance of monitoring the progress of implementation. In this regard, the Act requires the source protection authority to prepare annual progress reports – and in this context, the source protection authority is given an inspection authority to determine the effectiveness of source protection plan policies. Annual



progress reports must be reviewed by the source protection committee before they are given by the source protection authority to the Director.

Part IV of the Clean Water Act provides for appeals to the Environmental Review Tribunal. Such appeals only relate to decisions that are made under Part IV – specifically decisions made by the risk management official in relation to risk management plans (including interim risk management plans) and orders made by risk management official and risk management inspectors. These are similar to the type of appeals that the Tribunal now hears under MOE legislation. The Tribunal also hears appeals or matters under other legislation. The Environmental Review Tribunal is made up of members with a broad range of relevant expertise in environmental law and science. Members are appointed by the Government through a transparent selection process. The Tribunal is governed by the Environmental Review Tribunal Act and the Tribunal has a website that describes its mandate, practices and procedures in greater detail – see <http://www.ert.gov.on.ca/english/home.html>

22. Question:

If there are existing municipal plan approvals (i.e. Subdivisions) that have been granted but construction has not been initiated and the assessment report technical work identifies the development could create an issue, be a potential threat, or is located in a HVA or SGRA. Can the SP Plan require the municipality to make changes to the approved application for development?

Answer:

The ability to affect an approval would depend on what type of threat is identified. If it is a significant drinking water threat then, the effect of the source protection plan is addressed in subsection 39(1) of the Clean Water Act (CWA). The CWA requires that all decisions made under the Planning Act or the Condominium Act made by a municipal council, municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, conform with the significant threat policies and designated Great Lakes policies that are set out in the source protection plan.

In addition, 39(6) of the CWA states that “Despite any other Act, no municipality or municipal planning authority shall,
(a) undertake within the source protection area any public work, improvement of a structural nature or other undertaking that conflicts with a significant

DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

threat policy or designated Great Lakes policy set out in the source protection plan; or

(b) pass a by-law for any purpose that conflicts with a significant threat policy or designated Great Lakes policy set out in the source protection plan.”

Planning Act decisions generally affect things not yet established (in other words, could only address future threats...not existing). So if the development application is approved under the Planning Act before a SPP comes into affect, then the provisions in section 39 would not apply. However, the actual content of the SPP policies themselves, while not known until the SPC develops the plan, could theoretically use the new powers in Part IV of the Act, namely prohibition (57) or risk management plans (58). If these were used, then the significant threats associated with the development (assuming the “development” itself does not qualify as a “threat”) would be captured, and the respective provision would apply.

SPCs are not required to make policies to address moderate or low drinking water threats. If there are policies that address moderate and low drinking water threats, then decisions under the Planning Act or Condominium Act must “have regard to” these plan policies. There may potentially be different outcomes from the “conform with” and “have regard to” policy obligations.

Also, ‘issues’ are mentioned in the question. In order for a significant threat to be identified from an ‘issue’ there would have to be a documented ‘issue’ at the intake and this would have to be linked back to an activity. In order for this activity to be implicated, it would have to exist (it is currently in the approvals stage so this is not possible).

However, if an issue was identified, and it was linked back to an activity that was the same as the activity that was going to take place in the new development – then this activity could be addressed as the activity would be a significant drinking water threat. Once a significant drinking water threat is determined through the issues approach, all activities that are the same as this activity must cease to be significant.

23. Question:

Once municipal risk management officials are hired as municipal staff how will their objectivity in the role be ensured?

Answer:

DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

There should not be a perceived conflict of interest as we have always understood that source protection plan implementation will be lead by municipalities. Source Protection Committees (SPCs) are made up of 1/3 municipal representation which was intentional due to their large implementation role. In order to implement risk management plans (should the SPC choose this approach), the municipality will be able to appoint a risk management official and such risk management inspectors as are necessary. Risk Management Officials appointed as per the Clean Water Act are bound by the requirements/process laid out in the CWA. In addition, risk management officials are required to take training (a Director-approved course) in order to enter property for the purpose of inspections under s.62.

Municipalities will also be responsible for implementing other policies, such as those that require Official Plan amendments, education/outreach and incentive programs (unless there is an agreement with the SPA to do so) and others. As these policies are implemented the comfort level with the shift in lead body (from SPAs to municipalities) should increase.

There are many service departments within a municipality that end up having a compliance or enforcement role on its own municipality. For example, municipal buildings and construction have to abide by building code rules that are enforced by municipal staff. Municipalities are self-regulating all the time and have managed to create their own internal processes to ensure that biases and perceived biases are reduced.

Furthermore, municipalities have the option of delegating the authority of risk management plans to conservation authorities, planning boards, health boards and as such those agencies would employ risk management officials and inspectors.

24. Question:

Please outline the content of the catalogue of risk management measures?

Answer:

MOE intends to provide guidance on risk reduction for managing threats—including the Provincial Risk Management Catalogues and an associated guidance document on how to use the catalogues, which are currently under development. This guidance is expected to be valuable in the development of policy options.

DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

The Provincial Risk Management Catalogues will describe appropriate risk management measures that reduce the risk posed by common threats to source water, along with guidance on how to take local circumstances into account when choosing measures to address each type of threat. The catalogues will also set out how much risk reduction is provided by specific measures. Currently, MOE is preparing two separate catalogues of risk management measures—one for threats to water quality and another for threats to water quantity. The risk management measures described in the catalogues will range from operational practices to technology improvements, with a description of the level of risk reduction that each measure provides.

For threats that pose a risk to water quality, the catalogue will include a relative rating of the effectiveness of the measure. For threats to water quantity, the catalogue will refer to management measures that reduce the stress to the drinking water supply system.

MOE anticipates that policy developers will consider the risk reduction information in the catalogues as they develop policies to address the drinking water threats to source water. Policy developers may find it helpful to compare the catalogues' effectiveness ratings with the existing measures commonly used by property owners and businesses, to understand if additional risk reduction measures are required to adequately reduce and manage the risk posed by the threats. Where the catalogues demonstrate that existing measures are adequate, these existing measures may be described in the plan policy, depending on the policy approach

The risk level of drinking water threats described in local assessment reports is based according to the intrinsic risk of the threat. This assessment does not take into consideration the risk reduction associated with any existing risk management measures that are presently being employed on a property. During policy development, existing measures that reduce the risk of a threat are taken into consideration. Policy developers may compare existing measures to provincial guidance on risk reduction, including the Provincial Risk Management Catalogues, to understand the effectiveness of existing risk reduction efforts.

The catalogues will also be of assistance to those who are involved in the development and acceptance of risk management plans, under Section 56 (interim risk management plans) and Section 58 (risk management plans) of the CWA.

The Provincial Risk Management Catalogues will likely be in a database format. The catalogues will be prepared with accompanying guidance manuals that outline how the catalogues should be used. These catalogues



are currently being developed. MOE has already begun work on some elements of the catalogues, and has also begun considering the type of content needed in the guidance documents.

Together, ministry guidance on policy development and the Provincial Risk Management Catalogues will assist source protection policy developers as they consider the range of options to address particular threats to achieve the required risk reduction.

25. Question:

Have development permits been considered for inclusion as prescribed instruments? For example, has the MOE considered adding development permits under the Niagara Escarpment Planning and Development Act as prescribed instruments under the Clean Water Act?

Answer:

The ministry considered including development permits on the prescribed instruments list for source protection plans. Since such instruments are used for development and often have limited or no longevity to continue to manage the activity on an ongoing basis, they have not been included on the list. It was felt that development could be addressed directly through policies in the source protection plan and associated OP amendments. The development permit under the Niagara Escarpment Planning and Development Act was considered as a prescribed instrument; however it was not included on the prescribed instruments list for the reasons noted above. The draft list of prescribed instruments will be posted on EBR for public comment this fall.

Ontario Drinking Water Stewardship Program

26. Question:

What is the status of the Ontario Drinking Water Stewardship Program (ODWSP) land conservation module? Is a municipality eligible for funding under the ODWSP to purchase private land around a municipal well? If yes, how does the municipality apply for funding?

Answer:

Note that this answer was updated on August 6th 2009 following the launch of the 2009/10 Ontario Drinking Water Stewardship Program. The ministry has made the decision that for the ODWSP 2009-10 launch, the program will not fund land securement projects. There will be some further discussions on



funding for land securement in the fall as part of the review of the ODWSP and the planned strategic shift.

(Note: Question revised on August 6th, 2009)

27. Question:

If an SPC wants to send mailouts to residents living within the 2 year WHPAs about potential funding under the Early Actions component of the ODWSP, is it appropriate to use the resident's name on the correspondence? Are there concerns about protecting personal information under MFIPPA?

Answer:

When contacting residents who may be eligible for ODWSP funding, CAs or municipalities will need to include the residents' names on mailouts to ensure the affected owners receive the information. As long as the name is not being posted publicly this should not be a problem with respect to protecting personal information under FIPPA. These lists of names and addresses are generated by the municipalities and letters should go out either from the municipalities or if CAs are sending out letters they should reference the source of the contact information as the municipality. Informing people about potential ODWSP funding is part of the ongoing delivery of the ODWSP.

Other

28. Question

What do SPCs need to know /consider with respect to Official Plans (OPs) and amendments at this time?

Answer:

At this time (i.e., assessment report preparation stage), SPCs should be aware of the points below.

Municipalities will play a central role in the implementation of the source protection plans. Under the CWA, decisions under the Planning Act and Condominium Act by a municipal council, municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, that relate to the source protection area shall conform with significant threat policies and designated Great Lakes policies set out in a source protection plan for the area (see Part III of CWA). This takes effect



once the source protection plan takes effect. In addition, the CWA requires municipalities to amend their official plan and zoning by-laws to conform with the significant threat policies and designated Great Lakes policies set out in the source protection plan by the date specified in the plan for this purpose.

Currently, the Provincial Policy Statement 2005, issued under the Planning Act, gives municipalities the authority to implement necessary restrictions on development and site alteration to protect municipal drinking water supplies and designated vulnerable areas (Section 2.2 of the PPS). Wellhead protection areas, intake protection zones, highly vulnerable aquifers and significant groundwater recharge areas that are defined as vulnerable in accordance with provincial standards (namely the Technical Rules established for Assessment Reports) satisfy the definition of “designated vulnerable areas” in the Provincial Policy Statement. Since much of the technical work involved in delineating these vulnerable areas has been completed, municipalities can be readily informed regarding those areas that need to be protected. In fact, some municipalities across the province already include source protection provisions in their Official Plans.

When SPCs are solicited to comment on Official Plans and Official Plan amendments, it would be good practice to share the results of their technical work on delineating vulnerable areas, so that the municipality has the latest information available. In addition, it would be advisable for SPCs to advise the municipality of the status of the SPCs policy development work in the source protection plan and extend an invitation to the municipality to become engaged in the development of plan policies. SPCs may also find it helpful to review the specific provisions in the Official Plans and Official Plan Amendments that relate to source protection, to better inform themselves on the range of approaches municipalities in their jurisdiction are employing to address source water risks. Municipalities have the authority to include provisions related to source water protection in their Official Plans and Official Plan Amendments today, in advance of source protection plans being developed under the CWA.

The ministry will be providing further guidance about policy development and approaches that can be used in that process, including planning approaches.

29. Question:

Section 8 of Ontario Regulation 288/07 states that the term of appointment for Source Protection Committee (SPC) members are three (3) years. What



happens to the SPC at the end of the term of appointment? Can the existing SPC members be reappointed by the SPA or is a new SPC developed?

Answer:

Section 8 of the Reg. 288/07 requires that no more than 1/3 of each committee expires each year, with the one third being evenly distributed across the three sectors of the committee. The current SPC members will be on board until the source protection plan is approved and the notice of approval of the Minister's decision on the source protection plan is posted to the EBR under section 30 of the Clean Water Act. At that time, the appointment of 1/3 of the committee members will expire; one year later another 1/3; and one year later the final third.

Existing SPC members can be reappointed as long as the conditions of appointment under section 7 of Ontario Regulation 288/07 continue to be met and the member is hired in accordance with section 4 of Ontario Regulation 288/07. At each of the three expiration dates noted above, the Source Protection Authority will appoint new members for three year terms. In this way, moving beyond 2012, each year 1/3 of the committee will be renewed.

30. Question:

Does the MOE have a formal training program for new SPC members? What resources are available?

Answer:

Currently, MOE does not have a formal Clean Water Act training program in place, since training new members usually rests with the SPA staff who appoint the SPC members. However, new SPC members are given a resource binder to review when they join a committee. The material in the binder includes information regarding the Clean Water Act, 2006 (CWA) and the source protection planning process, which was developed by the MOE and Conservation Ontario.

When SPCs were first formed, MOE provided formal training to the new members. Now that SPCs have been operational for over a year, the MOE does not provide formal training specifically on the CWA. The MOE is focussed on providing training sessions on a number of other topics related to the current status of the source protection program (e.g. Section 88 Training, Threats and Issues Training, Source Protection Plan Discussion Paper, etc. It is possible for new SPC members to "piggy-back" on these training



sessions, which provide an overview of the source protection program. These training sessions are typically coordinated by the Source Protection Programs Branch Training Coordinator or MOE Liaison Officers. New SPC members can work with their Project Manager and Liaison Officer to determine what training may be available.

Once the first Source Protection Plans are approved, the term of appointment for SPC members will begin to expire as set out in Section 8 of O.Reg 288/07 (Source Protection Committees). The MOE anticipates that more formal training will be provided again to new members appointed by SPAs once the first source protection plans are approved.

31. Question:

What is the process for appointing a new Health Unit liaison representative?

Answer:

There are no requirements related to having an acting Health Unit liaison. If a position becomes vacant, an individual selected by the local Health Unit can act in the vacant position for the remainder of the current appointment.

In terms of the process for appointing a new Health Unit liaison, the Health Unit is responsible for identifying (i.e. providing) the liaison. Once an individual has been identified, either the Health Unit or the individual him/herself must communicate the change to the Manager of Source Protection Approvals Section (Keith Willson). In turn, the Manager will notify the Minister to formally name this person. The reason for this is that section 19 of Source Protection Committees Regulation (O.Reg 288/07) requires that the Minister designate the representative of the medical officers of health for the health units in which any part of the source protection area or source protection region is located.

32. Question:

A list is currently being compiled of instruments that govern or may govern drinking water threats. Will the list also provide information on the activities/threats the instruments will govern?

Answer:

The province is in the process of developing a draft regulation that will list the provincial instruments proposed to be prescribed to the Clean Water Act. As support for implementation if a final regulation there will be guidance that



indicates which instruments may govern the drinking water threats listed in S 1.1 of Regulation 287/07.

33. Question:

Will the list of instruments being compiled which govern or may govern drinking water threats include federal instruments? If not, why not and how should a SPC deal with a situation where they discover a significant drinking water threat that is federally regulated?

Answer:

The list of prescribed instruments will not include federal instruments. The province does not have jurisdiction over federally regulated activities regulated through federal instruments or on federal lands. There are likely very few instances where the prescribed list of drinking water threats includes activities that are under federal jurisdiction. Where an SPC discovers that a significant drinking water threat is federally regulated (under a federal instrument or not) then it would be advisable to notify the province to determine the best source of action.

DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER