



## SPC Sub-Committee MEETING MINUTES

JUNE 10, 2011

Meeting #39

Bob Bedggood, Chair of the Source Protection Committee called the meeting to order at 9:00 a.m. on June 10, 2011 at the St. Clair Region Conservation Authority (SCRCA) Boardroom. The following members and staff were in attendance:

### **Members**

Bob Bedggood  
Murray Blackie (SPA Liaison)  
Pat Donnelly  
Dean Edwardson  
Pat Feryn  
Paul Hymus  
Carl Kennes  
George Marr  
Valerie M'Garry  
Earl Morwood  
Darrell Randall  
Joe Salter

Charles Sharina  
Patrick Sobeski  
Augustus Tobias  
John Trudgen  
John Van Dorp  
Joe Van Overberghe  
Darlene Whitecalf

### **Regrets:**

Kennon Johnson  
Jim Reffle (MOH Liaison)  
Brent Clutterbuck  
Joe Kerr  
James Maudsley  
Sheldon Parsons  
Doug McGee  
Don McCabe  
Teresa McLellan (Provincial Liaison)

### **Staff:**

Steve Clark  
Chris Tasker  
Deb Kirk  
Melissa Kiddie  
Brian McDougall  
Linda Nicks

Chitra Gowda  
Bonnie Carey  
Ralph Coe  
Teresa Hollingsworth  
  
Lisa Ross (MOE)

## 1) Chair's Welcome

Bob Bedggood welcomed the committee and introduced Melissa Kiddie as the new SPP Policy Advisor; the members introduced themselves. Bob indicated a quorum had not been met and the members present agreed to proceed as a subcommittee and report to the full Source Protection Committee to endorse the decisions made in sub-committee,. The committee received new USB's and were asked to return any outstanding ones at the next meeting.

## 2) Adoption of the Agenda

Changes to the agenda were; Agenda item 6c and 6d were switched to review "*Repercussions of not complying with a RMO*" first and "*Concerns about constraining municipal land use decisions.*" Under Business two items were added to include 7c "*Update from the Fuels Working Group*" and 7d "*Outcomes resulting from the June 3, 2011 workshop.*"

Moved by Joe Salter -seconded by Dean Edwardson

*"RESOLVED that the agenda be approved with the additional changes as outlined above."*

*CARRIED.*

## 3) Delegations

There were no delegations.

## 4) Minutes from Previous meetings

When a quorum was reached the committee approved the minutes from the April 8<sup>th</sup> and May 13<sup>th</sup> SPC meetings. It was suggested if quorum is not reached, approval of the minutes can be obtained through an email process. A quorum was reached at 10:30 a.m at which time a motion to approve the minutes proceeded.

Moved by Dean Edwardson -seconded by George Marr

*"RESOLVED that the April 8<sup>th</sup> SPC meeting minutes be approved."*

*CARRIED.*

Moved by John Van Dorp-seconded by Charles Sharina

*“RESOLVED that the minutes from the May 13, 2011 sub-committee meeting be approved and the decisions of the sub-committee be accepted by the SPC.”*

*CARRIED.*

5) Declaration of Conflict of Interest

No conflict of interest was identified.

6) Business arising from the minutes

a) AR Status

The updated St. Clair Assessment Report is now posted on the website. A letter from the Ministry has been received for an extension to the end of June. An open house occurred June 9, 2011 in Bright's Grove and another is scheduled for June 13, 2011 in Wallaceberg. At the June 9 open house, the new pipeline being replaced in the St. Clair River was discussed. The pipe is being replaced from the original one in the 1950's due a dent that occurred during construction.

The Upper Thames River Assessment Report will be posted July 4, 2011 and be submitted to the Ministry on August 8, 2011. Three open houses are being planned for the last week of July to be held in Dorchester, Thamesford and St. Mary's. Any comments from the committee will be submitted after the August 12, 2011 SPC meeting. A question of whether there have been any responses to the significant threat letters. Teresa Hollingsworth reported there have been phone calls and many have mailed their questionnaires back. Teresa will provide a summary table.

b) First Nations Liaison update

The First Nations Advisory Committee Terms of Reference has been finalized. The committee's first meeting is scheduled for July 27<sup>th</sup>. The initial focus of the group will be to prepare capacity grant funding applications for the Ministry of Environment. Darlene Whitecalf reported Derekica Snake is attending a First Nation's Water Conference today and will be speaking about SWP.

c) Concerns about constraining municipal land use decisions

Sheldon Parsons submitted a memorandum to the SPC outlining his concerns that municipalities have many useful options available such as using prohibition if the RMP does not work.

Key points during the discussion:

- The SPP allows for prohibition.
- The legislation states a SPP cannot use a RMP and prohibition together in the same area for the same activity.
- During the consultation phase each municipality may have differences in whether they want to use a RMP or Prohibition. Although, prohibition and RMP cannot be used for the same property however policies can be written for specific areas. An example is using prohibition in one WHPA and RMP in other areas.
- Prohibition of future land use can be accomplished under land use planning, however it can take three to five years to change a planning document. Prohibition of future can also be accomplished through Clean Water Act prohibition. Existing will be more of a challenge. Prohibition of existing is only be used as a last option.
- The Explanatory document will justify actions and outline the details to help municipalities to explain their decisions/actions.
- If a prohibition policy is approved by the Minister, it cannot be appealed however litigation in court is still a concern.
- Property owner subject to *Part 4 Type* tools have the option of conducting a Risk Assessment, based on technical rules of the CWA, on their property to demonstrate the vulnerability level. The RMO is required to review it and if it the activity is deemed not a significant threat, prohibition cannot be used.
- Implementation of policies will be reported on annually to the SPC allowing the SPC to reconsider policies for amendments.

In concluding the discussion, careful consideration to the areas where prohibition may need to be applied when developing policies will be necessary.

## Repercussions of not complying with a RMO

The question was raised at the previous SPC meeting of what happens if a person does not comply with a Risk Management Plan and as a result Lisa Ross from the Ministry provided an overview of Risk Management Plan Compliance, Orders and

Penalties. She provided a hand out to the committee that summarizes sections of the Clean Water Act relating to this.

Key Points of Discussion:

- Section 58 states that where a Risk Management Plan (RMP) is used it needs to be in place or the person shall not engage in that activity that could cause a significant drinking water threat. The Risk Management Official (RMO) will work together with the person to establish a (RMP). Once the policy is in effect, the activity is prohibited until a (RMP) is in place.
- Section 58 states the RMO shall agree to the RMP if fees are paid, and the RMO is satisfied that the RMP satisfies requirements of regulations, rules and SPP. To recover costs, Section 55 gives municipalities the authority to set up a fee structure, similar to permits under the Building Code and will be at the municipality's discretion. Having provisions for the SPP outlining guidance to the municipalities on how to implement this was suggested.
- The question was asked of what happens in the case of "existing" activities. A date can be named in the SPP for any person currently engaging in an activity. As of that date a RMP must be in place. The timeline to comply is a minimum of 120 days.
- A comment was made related to legislation on the EBR from Ministry of Natural Resources relating to natural gas wells operated by landowners in the Lake Erie area. They are proposing in their policy statements to indicate these wells can exist if brought up to standards. The Ontario Petroleum Institute is concerned with this. In the SPP these would be considered transport pathways.
- A question of what happens if the RMO is not aware of new technology to reduce risk and what options do landowners have in dealing with this. Appeal provisions are available under Section 70 to 78.
- The RMO will be trained by Ministry of Environment; ethics and professionalism are part of that training. It is important for the municipalities to be aware that the RMO may require technical support at times. For larger municipalities who have the capacity, working together with the smaller ones may help in pooling resources.
- A concern was discussed related to what can be done in the case of the landowner who continually creates risks to drinking water. Under Section 58 the RMO can refuse to agree with a RMP if past conduct or the RMO has reasonable grounds to believe that the person will not follow the RMP. If a person has a long non-compliance history, refusal of approvals has occurred under other approval processes. If the person has changed, an appeal process can happen. The desired outcome is to work together and

when the RMPs are developed, balancing enforcement and working together will be important.

- Under Section 63 the RMI (Risk Management Inspector) can issue orders to comply with direction, cease the activity or amend to the RMP. It was suggested that the RMO/RMI may be same person.
- Under CWA the RMO can cause things to be done by issuing notices based on the enforcement order. This could involve hiring a consultant or contractor to do the work. Legislation permits the RMO to order the person to pay costs to have this work done. Section 68 outlines orders to pay costs can be also be made through a court order.
- Non-compliance with a “*Prescribed Instruments*” such as a NMP are dealt with through the provincial body not the municipalities.
- If a person does not comply with the RMP it is not an offense (which can be dealt with by the courts).
- Under Section 106 “*Offence Provisions*” were reviewed. An offense was defined as if a person is given an order and does not comply as opposed to not complying with a RMP.
  - Fines may be increased to the amount of monetary benefit from the commission of the offense.
  - A “*Notice to Appear*” is given and a Justice of the Peace decides. Judges can be used for complex issues.
  - A question of whether the RMO will be designated a Provincial Offenses Officer was asked. The RMO will be similar but have their own designation according to the CWA; having specialized training.
  - Environmental Review Tribunal is not appealable under CWA.
  - Clarification was requested on the authority of the RMO if a “*Notice to Appear*” for Provincial court is required. Lisa Ross will follow up and report back. Using all other powers first before using the Justice system is recommended.
  - Monitoring policies may be an avenue for the SPC to know if the SPP’s are being followed.
  - A Working group is in place to determine what role the Ministry of Environment will have to assist the RMOs.
  - How municipalities are supplemented for technical, legislative and financial aspects from the Ministry needs to be determined.



## 7) Business

### a) UTRCA Assessment Report

The letter from Ian Smith, Ministry of Environment dated May 10, 2011 outlined the directions for revisions to the Assessment Report. The Summary Table of these changes was provided to the SPC and Chitra reviewed each one.

The other changes to UT Proposed Assessment Report identified in the tables were also discussed. The committee was also asked to review the UTSPA AR text document that was distributed and if there are concerns to forward them to Chitra Gowda and Chris Tasker.

Several updated maps were circulated to the SPC and each one was reviewed and the changes were discussed. Some additional changes resulting from the peer review meeting were discussed.

- *Map 4-1-2a* Dorchester WHPA-E. A peer review meeting will result in minor adjustments to this map. One being the pond due north of interchange of the highway #73 (Elgin Road). Three ponds are side by side and the line goes through, needs to be either in or out. The consultant was also being looking at the area around the interchange and will consider Highway 401.
- *Map 4-1-16a* Thamesford WHPA-E. Peer reviewers discussed white areas on the maps. An example was reviewed. Information indicates one field is tile drained and the other is not. Comments can be submitted for consultation and if it is identified that some of these are tile drained we can recommend that they be corrected before the AR is approved.
- *Map 4-1-21a* St. Mary's WHPA-E. In the upper end of Burgess Creek there will be changes. Different flows (bank full flow for each cross section) were used along different reaches. The travel time will be re-assessed using the largest flow which will likely result in a higher average velocity. There was discussion about the area of potential surface water interaction from which the travel time was calculated. This is perhaps a little conservative which will be documented. A lot of previous investigation of the area around the well has been done without locating a "point" of interaction. The peer reviewers agreed that to choose a point immediately adjacent to the well would not be conservative and result in too small a WHPA-E. It was also pointed out that using a shorter area of potential interaction would not result in a significantly different WHPA-E due to the location of the dam upstream of the zone.

A question was asked of how the water courses are determined as where some are shown there is no watercourse. The lines are based on the watercourses layers from the Province. Some errors have been corrected in our data set, but

verification of all the watercourses is not possible. Woodstock WHPA-E relied on field work investigation in delineated zones rather than relying on the watercourses in the provincial watercourse data set.

The committee broke for lunch from 12:15-12:55 p.m.

When the committee returned the rest of the updated maps were reviewed

- *Map 7-3-16a* Thamesford (WHPA-E) DNAPL. *Map 7-3-17a* Woodstock (WHPA-E) DNAPL *Map 7-3-21a* St. Mary's (WHPA-E) DNAPL It was noted that one of the tables was incorrect and needed to be corrected. The maps will also be updated based on the changes to the WHPA-E discussed earlier.

## b) Ag Policy examples

The Agricultural Threats Policy examples were drafted by Ingrid Vandershot based on the past workshops and were circulated for the committee's review and approval prior to being distributed to the Municipal Policy Advisory Committee for their review and input.

Key points of discussion:

### Application and Storage of ASM's

*Policy Example Number 4-1 Application and Storage of ASMs in WHPA-A, B (Future, Existing, Expanding)*

- A question of what "conform" means under Legal Effect was asked. If it is a significant threat policy, it has to be conformed with. This also depends on who the implementation body for example under Education and Outreach CA's and municipalities must conform whereas other bodies only have to have regard for this type of policy.
- Under Body Responsible for Implementing "Partnership" is defined as the existing partnership between the Conservation Authority's (CA's) and municipalities. The CAs are identified as the lead. The wording will be revised to be clear. When the policies are finalized, specific detail will be included, naming only the municipalities where there are significant threats.
- Under Policy Tool "Education and Outreach" OMAFRA will be included.
- Under Policy Idea, existing partnerships will be highlighted and identified as "Municipal Watershed partnership."
- Each implementation body listed requires consultation.



*Policy Example Number 4-2 Application and Storage of ASMs in WHPA-A, B (Future, Existing, Expanding)*

- Under Body Responsible for implementing, a question of who “others” is? This is a strategic action policy and is highly recommended that the Ontario Drinking Water Stewardship program continue. “Others” refers to those associated with Environmental Farm Plans, such as the Soil and Crop Association.
- Under Policy Ideas the example of using a vaccination for cattle reducing E-Coli to reduce risk will be removed. New and innovative practices which reduce risk should be incorporated into incentive programs shall remain, as a general description.

*Policy Example Number 4-3 Storage of ASMs in WHPA-A, B (Future)*

- A question was asked of why under Implementation schedule, it states “To be Consistent with other OP and bylaw implementation.” The wording from previous discussion papers will be incorporated.

*Policy Example Number 4-4a Storage of ASMs in WHPA-A, B (Existing and Expanding)*

- The Policy Tool for Existing and Expanding storage is a *Prescribed Instrument*. ASM plans are approved by OMAFRA and inspected by the Ministry of Environment with the exception of repeats whereby self approvals are done. The wording will be revised to correct who the Body Responsible for Implementing is.
- Building Permits would generally be required for storage expansion. As a result the NPA kicks in due to the building permit requirement.
- If a *Prescribed Instrument* satisfies and manages the significant threat other tools can be used such as Education and Outreach. The SPC can direct the province to ensure the prescribed instruments are being complied with. Language will be revised to highlight this point and be included in Policy Example Number 4-4b Application of ASMs in WHPA-A, B (Existing and Future)

*Policy Example Number 4-5a Application and Storage of ASMs in WHPA-A, B (Existing, Expanding and Future)*

- Policy idea outlines Inspections programs are conducted every 5 years.
- Inspections are done by the Ministry of the Environment.

*Note:* A concern was brought forward at a recent policy workshop regarding inspection/monitoring type policies relating to septic systems that the Ministry of Environment inspects. It was identified that an inspection program could not

be made mandatory. As a result our proposed policy was revised to encourage the Ministry to complete the same inspections as under the Building Code Act. Since that time it was suggested that the Certification of Approval (C of A's) could include a condition to require the landowner to have an inspection and to submit certification from a licensed installer that it is functioning as designed. It was pointed out that C of A's for septic for large building septic systems do not have expiry dates. This inspection should be completed in conjunction with the tank being pumped out. MOE is already planning to make mandatory pumping a requirement in vulnerable areas when the AR is approved.

*Policy Example Number 4-5b Application and Storage of ASMs in WHPA-A, B (Existing, Expanding and Future)*

- Policy idea “It is recommended that OMAFRA include voluntary NMPs and Strategies in its review program. “*Where the activity is a significant threat*” will be added.
- As noted before OMAFRA reviews, the Ministry inspects. This needs to be corrected.

*Policy Example Number 4-6a Storage of ASMs in WHPA-A, B (Existing and Expanding)*

- Policy tool is Risk Management Plan.
- Section 58 outlines if there is an expansion the policy regarding it needs to mitigate risk and meet requirements of the NMA. The 3<sup>rd</sup> bullet point will be revised removing the last line “*that reduces the existing risk to drinking water quality*”
- Some existing storage does not meet standards and would need to be upgraded.
- A Risk Management Plan would be required if the NMP is not already required. Through the NMA a Building Permit triggers an NMP so a RMP is likely not required for expansion unless a building permit is not required for the expansion.
- A comment of stating “*the RMP must be accordance with the ASM application standards as laid out in the NMA*” limits the RMO. There may be unique situations where the RMO may need to go farther to ensure that the significant threat is mitigated. The third point in the policy idea section to be revised to “*The Risk Management Plan must, at a minimum, be in accordance with the ASM application standards as laid out in the NMA.*” It will also be noted that it is expected that in most cases a NMP consistent with the NMA will adequately manage the significant threat.

- After a considerable discussion it was noted that a balance between not tying the RMO hands and limiting an overzealous RMO was the desired outcome. The committee was reminded that the committee's mandate is ensuring a significant risk is mitigated.
- Following further discussion where diverging opinions were expressed An agreement was made to include wording in the policies to read the property owner shall fulfill the requirements of the Nutrient Management Strategy under the NMA and if this does not adequately manage the significant risk, then allow the RMO, where justified, to go beyond it.

The language used, intent of the policy and the implementing body responsible needs to be clear and finalized. Further revisions to the policy examples where appropriate, will be completed and circulated to the committee via email. The committee can comment back to Melissa Kiddie who will incorporate comments into the reports and distribute again for final discussion/approval at the next SPC meeting in July.

#### 8) Information

##### a) MOE Technical Bulletins

No technical bulletins were circulated.

##### b) Hydraulic Fracturing (Fracking)

To be reviewed at the next SPC meeting

#### 9) In Camera Session

None.

#### 10) Other business

No other business

#### 11) MOE Liaison Report

No update given.



## 12) Members' Reports

No members' reports.

## 13) Adjournment

There being no further business, the meeting was adjourned at 250 p.m. The next workshop is scheduled for Wednesday, June 29<sup>th</sup> and the next SPC meeting July 8, 2011.