

Thames – Sydenham and Region Drinking Water Source Protection Source Protection Committee Discussion Paper

Report to Chair and members
Thames – Sydenham and Region
Source Protection Committee

Agenda # 2014.11.7a

Cc SP Management Committee

Date November 12, 2014

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Re: Municipal Pre-Consultation Comments on TSR apSPP

Background

1. On October 15th, 2014 policy implementers received, by email, a Thames Sydenham Region amended proposed Source Protection Plan pre-consultation package with a request to review and provide any comments to Source Water Protection staff by November 4, 2014. Each municipality with significant drinking water threat policies received a customized package that included:
 - a. An agenda for 2 municipal pre-consultation meetings to be held at the Upper Thames River Conservation Authority offices to walk implementers through the changes that have been made to the apSPP, and to answer any questions;
 - b. A customized set of policies that included only those policies that apply to their municipality along with the rationale for each policy and the vulnerable areas they apply to; and,
 - c. A customized change log that included only those policies that have had text changes, and apply to their municipality.
2. A copy of the comments received, excluding replies of no comment, is attached.

Discussion

1. Review of the comments/questions revealed that a large proportion of them were not actionable in nature (e.g. not something that would result in changes to the proposed policies), but instead are questions requiring clarification. This will be better addressed by staff contacting the individual commenter(s) directly to answer these questions.
2. The comments that staff felt were actionable, or that the response required consideration or agreement by the SPC, have been provided below accompanied with potential actions to address these comments.

Ref#	Policy	Comment	Response	Recommended Action
ST1	1.06 c)	Given the Source Protection Plan supersedes the Official Plan and Zoning By-law, I'm not sure the value in making it mandatory to identifying all the significant drinking water threats contained in the Source Protection Plan. Doing so only reiterates what is in the Source Protection Plan. It also makes the threats subject to a possible OMB appeal and requires the planner/Council to defend each threat. The policy should be enabling. A municipality may choose to list significant drinking water threats and prescribed instruments or include in the policy that significant drinking water threats are identified in the Source Protection Plan.	<ul style="list-style-type: none"> Section c) of the policy be amended as follows, "Identify the significant drinking water threats, as listed in O.Reg. 287/07 S 1.1(1), that are prohibited through Prescribed Instruments, or Section 57 of the Clean Water Act, in accordance with the significant drinking water threat-specific policies contained in this Source Protection Plan; and," In the OP Discussion Paper suggest that municipalities cite O.Reg. 287/07 S 1.1(1) [the section of the regulation that lists the 21 Prescribed Drinking Water Threats] and include the list of Prescribed Drinking Water Threats as a schedule in their OP. The discussion paper can provide a list of only those activities that have prohibit policies within the TSR. The paper can also be modified to suggest that municipalities may want to request that their RMO further modify this list for them by narrowing it down to only the Prescribed Drinking Water Threats that have prohibit policies that are applicable within their municipality. 	Amend policy
SA6	1.06 c)	Where can the list of prohibited activities be found? Could this reference be included in the policy?	<ul style="list-style-type: none"> See answers in cell above 	As above
ST2	1.06 d)	Is this not already addressed in b.? Also see c. above. The policy should be enabling. Instead of repeating policies contained in the Source Protection Plan in the Official Plan, an option available to municipalities should be to refer to the Source Protection Plan.	<ul style="list-style-type: none"> Section b of the policy would not address any amendments required to have regard for moderate or low threat policies, This section requires OP updates to address land use planning policies from the SPP This section of the policy would also cover things like a need to amend complete application checklists in the OP to include a requirement for a notice from the RMO where applicable. 	none
ST3a	2.15	I assume this policy applies to residential uses and existing lots of record. Amending an Official Plan and/or Zoning By-law to prohibit development that was previously permitted may result in lengthy and expensive legal proceedings.	<ul style="list-style-type: none"> The policy is intended to apply to existing lots which do not have existing septic systems. The CWA allows for the prohibition of existing activities however in the case of an undeveloped lot of record the activity is not yet existing. The CWA indicates that "no cause of action arises as a direct or indirect result of anything done or not done by a source protection committee, source protection authority, municipality or local board, ... in accordance with Part I, II or III". Parts II and III include the policies allowed in SPPs and requires municipalities to implement the policies. Municipalities need to determine the extent of this locally. Where a lot already has a septic system or where it is serviceable by sewers this would not be a problem. The CA may assist them 	none

Ref#	Policy	Comment	Response	Recommended Action
			<p>with this.</p> <ul style="list-style-type: none"> Some municipalities may already limit development on private services For any existing lots which may no longer be developable the proponent has until the zoning amendment is in place to consider getting a permit to install a septic system or await sewer servicing The municipality needs to be aware of the problem of creating new lots of record in these areas prior to the bylaw coming into effect. 	
ST3b	2.15	<p>My understanding is that there may be instances where a new septic system or septic system holding tank may be permitted in a significant drinking water threat area. It depends if an applicant can satisfy the Risk Management Official. If that's the case, an applicant would be forced to amend the Official Plan and Zoning By-law prior to the issuance of a building permit. The policy should be enabling. A municipality may choose to include such a policy or they may choose to indicate development only in conformity with the Source Protection Plan is permitted. Secondly, the timeframe to implement such a policy should be in accordance with 1.09 3. b. 1.09 3. b. appears inconsistent with the timeline contained on page 35.</p>	<ul style="list-style-type: none"> Septic systems are only issued through the Building Code or the Ontario Water Resources Act, Part IV of the Clean Water Act (Risk Management Official is not involved). The policies in the plan require inspections for existing septic systems (and a replacement or modification of an existing system is still considered existing) and prohibition through land use planning for new septic systems only where one does not already exist (with the exception of those needed for a municipal supply well). The dates listed on p35 are a result of the database not allowing us to list 3yr OP updates and 2yr ZBL updates, which is the reason for the conflict 	none
SA1 SA2 SA10 SA13 SA14	1.02 1.04 2.06 3.01 3.02	<p>The use of shall or will vs. should or should consider or shall consider was raised for several policies.</p>	<ul style="list-style-type: none"> Choice of words in these cases are due to the legal effect of the policy. The use of shall or will was only adopted for policies that have the legal effect of conform. In all other cases the policy is suggesting that the implementing body consider following the actions of the policy but the policy does not legally bind the implementer to take the actions outlined in the policy. 	none
SA4	1.06	<p>The implementation of Source Protection Plan policies (the work of the Clean Water Act) is coupled with, or relies upon Planning Act processes and tools, or other pieces of legislation (e.g. Prescribed Instruments). Are any Planning Act amendments needed to provide for the lawful and effective implementation of Source Protection Plan policies?</p>	<ul style="list-style-type: none"> This is up to the Province, staff have forwarded this comment to our MOE liaison for clarification. 	Forward to the province for consideration
SA5	1.06	<p>The timelines for the circulation of planning</p>	<ul style="list-style-type: none"> The municipality has the option to revise their Official Plan to 	none

Ref#	Policy	Comment	Response	Recommended Action
		applications can be tight. Is the notice from an RMO required as part of a 'complete application' under the Planning Act, and for all types of applications?	<p>require a notice from the Risk Management Official, when appropriate, to be required as part of a complete application. Suggest amending the OP Discussion Paper to encourage that "to the extent appropriate or possible" municipalities update their OPs to reflect that within areas designated as Significant Drinking Water Threats that a notice from the RMO is required as part of a complete application (Planning Act, Condominium Act or Building Permit).</p> <ul style="list-style-type: none"> The CWA indicates that "a person shall not make an application under a provision of the <i>Planning Act</i> prescribed by the regulations for the purpose of using land for that land use at any location within that area...unless the risk management official issues a notice to the person..." 	
SA7	1.09	Ensure that the effective dates of the Plan provide the municipality with enough time to reasonably access the provincially approved training courses that are offered in Toronto, and allow enough time for the appointment of RMO/I persons by Council.	<ul style="list-style-type: none"> Based on current timelines staff expect that the SPP will be approved in the last half of 2015. It is anticipated that in setting an effective date the Minister will consider readiness as well as opportunities that the municipalities have had to prepare (e.g. RMO/RMI training courses started in 2012, Municipal Implementation Fund began in 2014 and ends in 2015). With this in mind source water staff will continue to advise municipalities that they should have a Risk Management Office (RMO and RMI trained and designated) in place and be ready for implementation in the last half of 2015. 	none
SA8	1.09	Section 26(9) of the Planning Act requires that Zoning By-laws are to be updated within three years of an official plan update. It is suggested that the requirement for SPP zoning updates be increased from 2 years to 3 years.	<ul style="list-style-type: none"> Section 3b) of the policy be amended as follows, "Updates to zoning By-laws shall be initiated as soon as possible after the effective date of the Source Protection Plan with a goal to be completed within three (3) years of the effective date of the Source Protection Plan or if Official Plan amendments are required, within three (3) years of the completion of the Official Plan amendments. 	amend
SA9	1.10	Is it possible (through this section) that an activity could gain the status of being 'existing' although it may in fact not exist? Could this section be abused as a loop-hole?	<ul style="list-style-type: none"> Section 2 of this policy needs to be read in conjunction with section 3 of this policy. Section 3 of the policy highlights the need for the RMI to be conducting an inspection and compliance program to verify what activities are currently in existence within the vulnerable areas (threats verification). This will allow the RMO to know what activities were existing at the time of the adoption of the SPP, or as soon as possible thereafter, closing the loop-hole mentioned above. It will be important to have these inspection programs in place to verify existing activities preventing the municipality from being in a situation where they need to prohibit an activity after the fact. 	none

Ref#	Policy	Comment	Response	Recommended Action
SA3 SA11	1.06 2.39	Several comments reference the request for individual significant threat policies to be written more like code.	<ul style="list-style-type: none"> As much as possible the significant threat policies have been written to all follow the same format (e.g. states the legal clarity of the policy up front). They are also intentionally written to be fairly general in order to allow the policy to be enabling rather than prescriptive (like a code). It is not desirable or realistic to develop code like policies which could reflect all local specifics RMP are intended to be negotiated, codes do not allow for negotiation as they are prescriptive and inflexible in nature Codes where available will be used by the RMO to guide risk management measures 	none
SA11 SA12	2.39 2.53	Several comments reference the request for individual significant threat policies to have terms defined, to list specific quantities (in regards to event based modelling or circumstances that make an activity a drinking water threat).	<ul style="list-style-type: none"> Specifics on quantities involved (e.g. either modelled or those that are circumstance specific) have not been included in policy text as it would make the policy text too unwieldy. The Source Protection Plan is made up of several documents (3 volumes of the SPP, the Assessment Reports, and the Glossary of Terms). Those documents will also reference other resources (e.g. the Tables of Drinking Water Threats) when explaining things such as the circumstances under which an activity can be considered a significant drinking water threat. The reader must be able to understand all of these documents to be able to fully understand and interpret the policies. 	none
SA14	3.02	The management of Phragmites is a growing concern for municipalities. How will this policy impact the spraying of ditches as part of a municipality's overall (future) invasive species management plans?	<ul style="list-style-type: none"> The Tables of Drinking Water Threats would need to be consulted as it would depend on the area of land the pesticide would be applied to and the chemical make-up of the pesticide (only certain chemicals are listed in the tables). This is not a conform policy so the Province has discretion on how to have regard for this policy. There are alternative forms of treatment for phragmites aside from spraying of pesticides should it be a case where this policy requires the municipality to modify their spraying program in those limited areas where the preferred pesticide would be a threat. 	none

Thank you for the opportunity to provide comments. After reviewing the Draft Policies for Pre-Consultation and attending the Workshop on October 22nd, I offer the following comments in red on behalf of the City of Stratford. Generally I believe the policies should be more enabling. A valid approach, in our view, is to reference the Source Protection Plan.

1.06 General Land Use Planning (Pg 8)

At a minimum, the Municipalities shall amend the Official Plan and Zoning By-laws to:

- a. Identify the vulnerable areas in which a significant drinking water threat could occur; - No issue. I expect this policy will be implemented by showing vulnerable areas on Official Plan and Zoning Schedules..
- b. Indicate that within the areas identified, any use or activity that is, or would be, a significant drinking water threat is required to conform with all applicable Source Protection Plan policies and, as such, may be prohibited, restricted or otherwise regulated by those policies; No issue. I would expect the policy would also indicate that the Source Protection Plan supersedes the Official Plan and Zoning By-law.
- c. Identify the significant drinking water threats that are prohibited through Prescribed Instruments or Section 57 of the Clean Water Act, in accordance with the significant drinking water threat-specific policies contained in the Source Protection Plan; and, - Given the Source Protection Plan supersedes the Official Plan and Zoning By-law, I'm not sure the value in making it mandatory to identifying all the significant drinking water threats contained in the Source Protection Plan. Doing so only reiterates what is in the Source Protection Plan. It also makes the threats subject to a possible OMB appeal and requires the planner/Council to defend each threat. The policy should be enabling. A municipality may choose to list significant drinking water threats and prescribed instruments or include in the policy that significant drinking water threats are identified in the Source Protection Plan.
- d. Incorporate any other amendments required to conform with significant drinking water or to have regard for the low and/or moderate threat specific land use policies identified in the Source Protection Plan. Is this not already addressed in b.? Also see c. above. The policy should be enabling. Instead of repeating policies contained in the Source Protection Plan in the Official Plan, an option available to municipalities should be to refer to the Source Protection Plan.

ST1

ST2

1.09 Implementation Timing (pg 12)

Except as set out below, within another policy within the Source Protection Plan, or as otherwise prescribed by the Clean Water Act, the policies contained in the Source Protection Plan shall come into effect on the effective date of the Source Protection Plan.

4. Policies written pursuant to Section 43(2) of the Clean Water Act (CWA) (prescribed instrument), regarding the amendment to the prescribed instruments shall conform to the Source Protection Plan within three (3) years of the effective date of the Plan. If prescribed instruments change, including prescribed instruments in an Official Plan would require an Official Plan Amendment. The policy should be enabling. A municipality may choose to refer to the Source Protection Plan and have the Source Protection Plan identify the prescribed instruments or identify the applicable section in the Reg's. .

2.15 Future Septic Systems – Prohibition (Land Use Planning)

For new septic systems or new septic system holding tanks regulated under the Ontario Building Code Act, with the exception of:

- Those required for a municipal water supply well;

Where these activities would be a significant drinking water threat, the Municipality shall amend their Official Plan and Zoning By-law to prohibit such uses, buildings or structures that would require a new septic system or a septic system holding tank within such areas so that these activities never become significant drinkwater threats.

ST3a

I assume this policy applies to residential uses and existing lots of record. Amending an Official Plan and/or Zoning By-law to prohibit development that was previously permitted may result in lengthy and expensive legal proceedings.

ST3b

My understanding is that there may be instances where a new septic system or septic system holding tank may be permitted in a significant drinking water threat area. It depends if an applicant can satisfy the Risk Management Official. If that's the case, an applicant would be forced to amend the Official Plan and Zoning By-law prior to the issuance of a building permit. The policy should be enabling. A municipality may choose to include such a policy or they may choose to indicate development only in conformity with the Source Protection Plan is permitted. Secondly, the timeframe to implement such a policy should be in accordance with 1.09 3. b. 1.09 3. b. appears inconsistent with the timeline contained on page 35.

2.16 Septic Systems – Management (Municipal Act)

Agree it should be removed.

Thank you again for the opportunity to provide comments. If you have any questions about our comments, please do not hesitate to give me a call.

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Thames-Sydenham and Region Source Protection Plan – Volume 3
Policy comments – November 2, 2014
City of Sarnia

Policy 1.01 General Education and Outreach

Fix third last line – incomplete sentence

Policy 1.02 Provincial signage

Confirm that MTO *will* (not *should*) manufacture, install and maintain the signs that are to be erected along provincial highways.

SA1

Policy 1.03 Municipal signage

Within the IPZ-1 for LAWSS – there are no arterial roads, but rather, there are local streets. Surrounding areas are predominantly low density residential neighbourhoods and a marina.

- Would this policy be deemed non-applicable, or would the municipality be required to purchase, install, and maintain signage on local streets?
- Within the IPZ-3 areas – along the provincial highways – could the requirement for municipal signage be satisfied by the signs that are provided by the province?
- Are these signs required because there is a SDWT – or because there is an arterial road in an IPZ-1 or IPZ-3?
- Sarnia and the Village of Point Edward are on the Canada-U.S. international border. Ensure that spills signage does not elevate the possibility of terrorist threats to the water supply systems.

Policy 1.04 Incentive programs

The municipality ‘shall consider supporting existing incentive programs and/or ... support ... new incentive programs ...’.

- The municipality does not have money or resources for such programs.
- As an example, How would a municipality assist with the costs of maintaining and decommissioning transport pathways? Would this refer to transport pathways on City-owned lands or private lands?

SA2

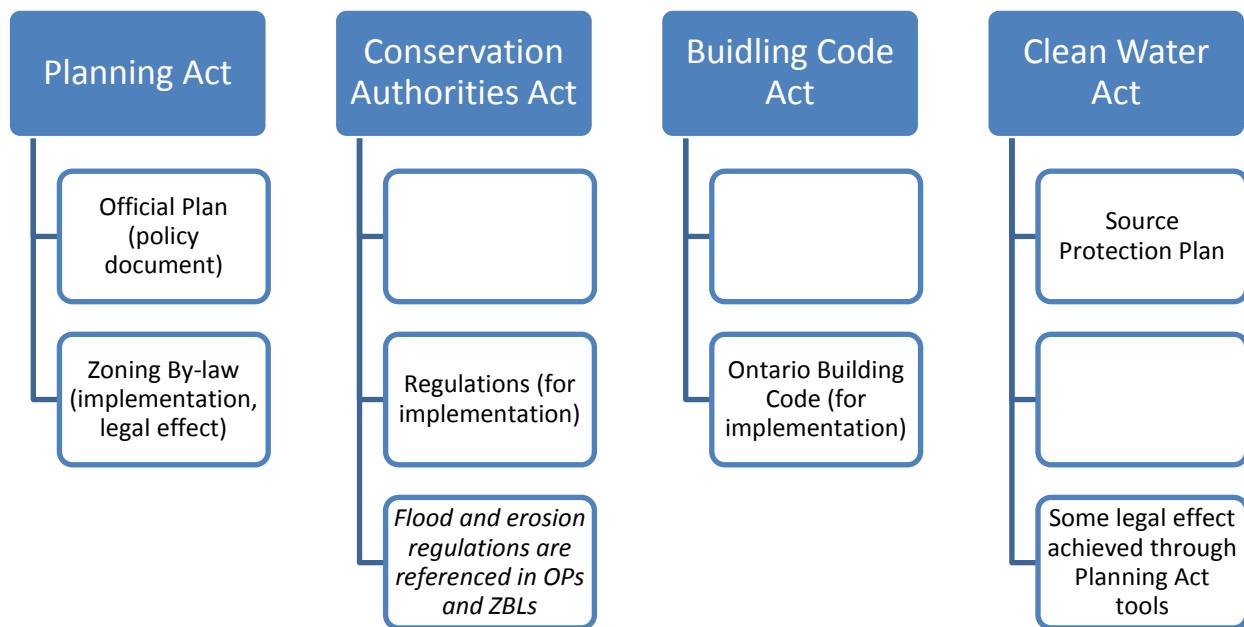
Policy 1.05 Continued funding of Ontario Drinking Water Stewardship Program

This policy would apply to SDWTs only.

Policy 1.06 General Land Use Planning

General comments for Policy 1.06 and related policies

The *Planning Act* provides for the adoption of official plans (policy documents) and Zoning By-laws (to implement OP policies). The *Clean Water Act* provides for Source Protection Plans.



Questions/comments:

- Is a SPP like an Official Plan (a policy document only?) or is it like a Code or Regulation (the implementation tool)? Or is it a hybrid?
- If it is like a code, it should be written like a code – which may mean the removal of some of the rationale.
- The implementation of Source Protection Plan policies (the work of the *Clean Water Act*) is coupled with, or relies upon Planning Act processes and tools, or other pieces of legislation (e.g. Prescribed Instruments). Are any *Planning Act* amendments needed to provide for the lawful and effective implementation of Source Protection Plan policies?

SA3

SA4

Examples:

SA5

- ~ Section 39(2) of the CWA notes that in the event of a conflict between an official plan or zoning by-law and a SPP policy for a significant threat, the SPP policy shall prevail. Should this same wording be included in the Planning Act?
- ~ The timelines for the circulation of planning applications can be tight. Is the notice from an RMO required as part of a 'complete application' under the *Planning Act*, and for all types of applications?
- ~ Is the RMO on the list of public bodies that planning applications must be circulated to, as required under the *Planning Act*? The RMO would play a role in ensuring that decisions are consistent with SDWT policies & appeal to OMB if needed.

Policy 1.06 c) – This policy notes that official plans and zoning by-laws shall be amended to identify SDWTs that are prohibited through Prescribed Instruments.

- Prescribed instruments are site-specific regulatory documents that permit certain activities, set out terms or conditions, or describe a site or location. Do they list prohibited activities?
- Where can the list of prohibited activities be found? Could this reference be included in the policy?

SA6

Policy 1.07 General Restricted Land Uses

The *Planning Act* has a long history of providing for the protection of legal non-conforming uses/rights. Will *Clean Water Act* prohibitions result in the loss of well-established non-conforming rights?

General comment for Enforcement

If an illegal land use is occurring, a municipality would enforce its Zoning By-law, and/or other By-laws. These offenses would typically be taken to the Provincial Offenses court. Some of the matters under the Clean Water Act would be taken to the Environmental Review Tribunal. How would these kinds of enforcement cases be coordinated?

Policy 1.09 Implementation timing

The Source Protection Plan will be approved on a certain date.

- Ensure that the effective dates of the Plan provide the municipality with enough time to reasonably access the provincially approved training courses that are offered in Toronto, and allow enough time for the appointment of RMO/I persons by Council.
- Section 26(9) of the Planning Act requires that Zoning By-laws are to be updated within three years of an official plan update. It is suggested that the requirement for SPP zoning updates be increased from 2 years to 3 years.

SA7

SA8

Policy 1.10 Transitional provisions

Policy 1.10 (1)(a).

An activity is considered to be 'existing' if there is a *site-specific* zoning amendment in progress under Section 34(10) of the Planning Act.

- Does this refer to a by-law for the extension or enlargement of an existing non-conforming use only?

Policy 1.10, 2 – Despite the definition of existing – where a Zoning By-law permits an activity – and Planning Act or Building Code Act approvals are not required – such activity shall be considered to be existing.

SA9

- Is it possible (through this section) that an activity could gain the status of being 'existing' although it may in fact not exist? Could this section be abused as a loop-hole?

Policy 1.11 Definition of existing and future

Existing means undertaken or established. In some cases, the in-force zoning could offer the capability only – but if a use/activity did not need a Planning approval or a building permit – it could qualify as 'existing' under 1.10.

- Policies 1.10 and 1.11 offer slightly different definitions.

Policy 2.06 Prescribed instrument Amendment Fees

SA10

- The waiving of fees is problematic, because the work of a review would still need to be done.
- The waiving of fees suggests that work should be done for free and it undermines the financial well-being of organizations.
- If an incentive is to be offered, establish it through an amended fee structure, for a limited period of time.

Policy 2.07 Existing Stormwater Management Facilities – Management

Is stormwater considered to be a type of sewage?

SA11

Policy 2.39 Fuel Storage in Event Based Areas – Management

- Could the SPP policies be written more like a code or a by-law?

Current Policy 2.39 as written:

Policy: To reduce the risk to municipal drinking water sources from the handling and storage of fuel, in event modelled quantities, this activity shall be managed where it is or would be a significant drinking water threat.

This activity shall be designated for the purposes of Section 58 of the Clean Water Act

Possible re-write of Policy 2.39:

Policy: The *handling and storage* of *fuel*, in *event modelled quantities*, shall be *managed* under Section 58 of the CWA. This policy applies to *significant drinking water threats* only.

This activity shall be *designated*

Handling and storage means – define

Fuel means - define

Event modelled quantities means – list the volumes

Managed means – risk management plan

Designated means - _____ (describe how you do this)

Applicable in:

IPZ-1

IPZ-2

IPZ-3 (*does it apply to the explanation mark identified areas only? Or the IPZ-3 as a whole? Be specific to reduce the confusion.*)

Applies to **significant threats** (direct reader to list of threats)

- Most of the SPP terms are defined, and they have specific meanings under the legislation. It would help if these terms could be **italicized** to allow the reader to know that the language is not common language, but rather it is in reference to specific terms, with specific meanings.
- The reader needs to know how to cross-reference these terms to other documents to derive meaning (such as definitions in a glossary, or level of threat in an Appendix, or geographic areas on a Map) in order to figure out: #1 – what the policy means, and #2 - how to apply it.
- As an example, the *handling and storage* of fuel does not include the transportation of fuel, it means the handling and storage of fuel once it is delivered to a site, and it doesn't constitute *fuel* unless there is a certain volume of fuel. If the fuel is stored below grade – does the policy apply – or does this policy apply to above-ground tanks only?

Policy 2.41 Handling and storage of fuel at Aggregate Operations – Management

This policy refers to site plans. What kind of site plans? Do these site plans form part of an approval or permit?

Policy 2.53 Transportation of fuel and nitrogen based fertilizer

Policy: The *transportation of fuel and nitrogen based fertilizer ...* (is a threat). Event based modelling has identified these activities as significant drinking water threats within *specified parts* of IPZ-1, 2 and 3. In these areas, municipalities shall consider

SA12

- The *transportation of fuel and nitrogen* **means** – the transportation of any amount, or the transportation of a specified amount?
- *Event based modelling in specified parts* – **means** (Does this refer to the exclamation mark on the maps?)

SA13

3.01 Moderate and low threat septic systems – discretionary monitoring

- The municipality does not have the resources to implement this type of program. If a program is to be implemented, enforcement would be required.
- Enforcement can lead to significant liability issues and legal costs for a municipality.
- It is suggested that this policy focus on education and outreach, or assistance with upgrading failing systems on a voluntary basis, or at time of site redevelopment.
- This policy applies in HVA (whole north end of the City) where vulnerability scores are low.

SA14

3.02 Moderate and Low threat pesticide application – management

The management of Phragmites is a growing concern for municipalities. How will this policy impact the spraying of ditches as part of a municipality's overall (future) invasive species management plans?

Policy 3.03 New Prescribed instruments

- Is the list of Threat Subcategories the same as a list of Prescribed Instruments?
- Policy 1.06 c) indicates that official plans and zoning by-law shall identify activities that are prohibited by Prescribed Instruments. Could this policy (3.03) list the prohibited activities?

Policies 4.01 and 4.02 Spills

What is the meaning of spills? Does this policy cover any volume of spill – or just a statutory spill (a certain substance, of a specified volume, at a specified location)?

Policy 4.06 Transport pathways reporting – municipal

This policy requires the municipality to report to the province 'If a person applies to the municipality for the approval of a proposal to engage in any activity ... that may result in the creation of a new transport pathway or modification of an existing transport pathway ...

- Provide a reference to explain what a transport pathway is.
- E.g. Would this include the digging of a new ditch on a farm?

Policy 4.07 New Transport Pathway Reporting Guidance

This policy will certainly be necessary, with respect to Policy 4.06.

Policy 4.09 Transport Pathways Notification – provincial

Does this policy bind the federal government?