



Source Protection Plans under the Clean Water Act, 2006

A Discussion Paper on Requirements for the Content and Preparation of Source Protection Plans

June 2009

This consultation document has been produced to provide the basis for discussion on source protection plans made under the Clean Water Act, 2006, their content, and how they will be developed. Outcomes of this discussion will inform the development of regulations that will govern the content and preparation of source protection plans. Throughout this process the government is committed to engaging and consulting with source protection committees, municipal and stakeholder groups, and the public.

This paper attempts to simplify concepts in the Clean Water Act, 2006 for discussion purposes. The reader should consult the legislation for the specific legal requirements.

To submit your comments electronically, email: Source.Protection@ontario.ca

Comments must be received no later than **September 23, 2009**.

To submit written comments, please forward your response to:

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Purpose

Under the Clean Water Act, 2006, regulations must be developed to enable local source protection committees to complete the source protection plans required by the Act. At this time, the government believes it is important to have a public discussion on source protection plans, their content, and how they will be developed, so that the Ministry of the Environment can use the results of the discussion in developing the draft source protection plan regulations.

The Clean Water Act, 2006 sets out minimum requirements for the contents and preparation of source protection plans. The Act also requires the plans to be prepared in accordance with the regulations and the locally developed terms of reference for each source protection area. This paper discusses the regulatory requirements that the ministry is currently considering for the content and preparation of source protection plans, including consultation requirements being proposed during plan development.

To launch this process, the ministry is seeking feedback from the public, stakeholders, communities and First Nations on the proposed content of the regulations, including the potential policy approaches to be used by local source protection committees. To help gather feedback, a number of specific questions are posed throughout this paper; however, readers need not restrict their comments only to the questions posed. All comments received by the ministry will be taken into consideration during the development of the draft source protection plan regulations.

This paper is also designed to help source protection committees respond to inquiries about source protection plans, while consulting on their locally developed assessment reports. The ministry has developed this discussion paper before the completion of local assessment reports so that source protection authorities, committees, municipalities, the public, and other interested stakeholders have an opportunity to gain a deeper understanding of the ministry's preliminary views on the analysis needed to develop effective source protection plans for their area.

Definitions

“*Condition*” means, as more particularly described in Rule 126 of the Technical Rules issued under the Clean Water Act, 2006, the presence of a substance in a vulnerable area that results from a past activity and that also constitutes a drinking water threat.

“*CWA*” or “*Act*” means the Clean Water Act, 2006.

“*Drinking Water Threat*” means, as more particularly described in Section 2 of the Act, an activity or condition that adversely affects or has the potential to adversely affect the quality or quantity of any water that is or may be used as a source of drinking water.

“*Drinking Water Issue*” means, as more particularly described in Rule 114 of the Technical Rules, circumstances where a certain parameter or pathogen is present in a well or at a surface water intake at a concentration, or showing a trend of increasing concentrations, that may result in the deterioration of the quality of the source water.

“*Policy Approach*” means the approach a threat policy relies upon to reduce the risk posed by drinking water threats. The various policy approaches provided in the Act are listed below:

- education and outreach activities
- incentive programs
- land use planning approaches (e.g., official plans, zoning by-laws, site plan controls)
- new or amended provincial instruments (e.g., Certificates of Approval)
- risk management plans
- prohibition
- restricted land uses.

“*Instrument*” means, as more particularly described under Section 2 of the Act, a document, other than a regulation, issued under the laws of the Province of Ontario, such as a Certificate of Approval issued under the Environmental Protection Act or a Permit To Take Water issued under the Ontario Water Resources Act.

“*Measure*” means a tangible direction or course of action. For example, a measure associated with the “risk management plan” policy approach may be one of the specific required actions set out in the risk management plan. In the “education and outreach” policy approach, a measure may be an educational pamphlet or training course that sets out best practices. In “incentive programs,” a measure may be the financial incentives provided toward the purchase of low-flow toilets or water restricting showerheads).

“*Ministry*” or “*MOE*” means the Ministry of the Environment.

“*Policy*” means a statement of intention. A policy may be designed to guide current and future actions and decisions, and to achieve a desired goal or outcome. A policy may refer to the policy approaches or the measures that will be used to achieve it.

“Policy Developer” means the public body responsible for developing source protection plan policies, as set out in the terms of reference for each source protection area. A policy developer may include a municipality, source protection authority, or source protection committee.

“Provincial Risk Management Catalogues” means databases that will contain information on risk management measures to reduce the risk that drinking water threats pose to source water.

“Significant Threat Policy” is defined in the Act to mean:

- (a) a policy set out in a source protection plan that, for an area identified in the assessment report as an area where an activity is or would be a significant drinking water threat, is intended to achieve an objective referred to in paragraph 2 of subsection 22 (2), or
- (b) a policy set out in a source protection plan that, for an area identified in the assessment report as an area where a condition that results from a past activity is a significant drinking water threat, is intended to achieve the objective of ensuring that the condition ceases to be a significant drinking water threat.

“Source Protection Plan” is defined in the Act to mean a drinking water source protection plan that is prepared under Act. (In accordance with the General Regulation (O. Reg. 287/07), source protection plans are due in August 2012 for Minister’s approval).

“Technical Rules” means the Technical Rules for Assessment Reports, dated December 12, 2008, issued under the CWA.

“Threat Policies” mean policies in a source protection plan that address a drinking water threat of any risk level (significant, moderate or low), including policies that address activities and conditions.

“Vulnerable Areas” is defined in the Act to mean:

- (a) a significant groundwater recharge area
- (b) a highly vulnerable aquifer
- (c) a surface water intake protection zone
- (d) a wellhead protection area.

Background

The intent of the Clean Water Act, 2006 is to protect existing and future sources of drinking water, as part of the government's overall commitment to protecting and enhancing human health and the environment. Source protection represents the first barrier in the multi-barrier approach to providing a safe supply of water.

Chronology of the CWA and Regulations

The CWA came into force on July 3, 2007, when the first five regulations under the CWA were filed, including regulations governing source protection areas and regions, source protection committees, and terms of reference. A draft Assessment Report Regulation, draft Technical Rules, and draft Definitions of Words and Expressions used in the Act Regulation were posted on the Environmental Bill of Rights Registry for public comment on June 20, 2008. The General Regulation (O. Reg. 287/07) was amended and the Technical Rules were approved in late 2008 and are available on the Ministry of the Environment's Web site.

One of the most important parts of the CWA is that it requires source protection committees to develop science-based assessment reports and source protection plans at the local level. The source protection plans will consist of a range of policies that, together, will reduce the risks posed by water quality and quantity threats.

Figure 1: Drinking Water Source Protection



Developing and implementing effective local source protection plans is an important step in protecting Ontario's drinking water sources. Figure 1 provides an overview of the Drinking Water Source Protection process, to provide readers with an overall context as they review and comment on this paper. For additional information on the role of source protection committees and how the terms of reference and the assessment report are developed, readers may wish to refer to information on the CWA on the Ministry of the Environment's Web site www.ontario.ca/cleanwater. The ministry intends to post draft guidance in support of the preparation of source protection plans, which will include

considerations related to the policy development process and conformity requirements following approval of the plan, on this Web site. The reader may find this draft guidance provides helpful information and context for the proposals presented in this paper.

In the future, the ministry intends to develop risk reduction guidance for managing drinking water threats, including the Provincial Risk Management Catalogues. The ministry is also planning to support source protection committees and authorities with guidance on developing Great Lake policies

The ministry is required by the Environmental Bill of Rights, 1993 to consider the ministry's Statement of Environmental Values (SEV) in decisions that affect the environment. This discussion paper was written with consideration for the SEV.

Guiding Principles of the Ministry's Statement of Environmental Values

- Ecosystem approach
- Cumulative effects
- Current and future generations
- Precautionary approach
- Pollution prevention
- Polluter pays
- Rehabilitation of environmental harm
- Range of tools
- Transparency and engagement

<http://www.ebr.gov.on.ca/ERS-WEB-External/content/sev.jsp?pageName=sevList&subPageName=10001>

Structure of the Paper

Section 1 provides an overview of the CWA's minimum content requirements for source protection plans. Section 2 sets out in detail the various approaches available to policy developers to reduce the risks posed by drinking water threats. The additional content requirements for threat policies that the province is considering including in forthcoming regulations on source protection plans is discussed in Section 2.8.

In Sections 3 and 4, the paper's focus moves from threat policies to the policies governing the monitoring of drinking water threats and issues, and the policies related to the Great Lakes.

Section 5 contains a discussion on the consultation requirements under consideration for the development of a source protection plan, and Section 6 summarizes the various proposals presented throughout the paper.

Lastly, Section 7 sets out considerations related to some of the CWA's administrative requirements.

1. Content Requirements in the Clean Water Act for Source Protection Plans

The CWA specifies that the source protection plan contents must be prepared in accordance with the regulations and the terms of reference. While the reader should consult the legislation itself for the specific legal requirements for source protection plans, the main requirements for the contents of the plans are listed below. The corresponding section of this paper that provides more detail is identified in parenthesis. Source protection plans *must*:

- Include the most recently approved assessment report
- Include policies to:
 - Ensure that activities that are or would be a significant threat to drinking water in vulnerable areas cease to be and never become a significant drinking water threat (Sections 2.1 – 2.6)
 - monitor significant drinking water threats in vulnerable areas (Section 3)
 - monitor moderate and low drinking water threats to prevent them from becoming significant threats (source protection committees have some discretion when deciding which of the moderate and low threats in their area will be monitored) (Section 3)
 - monitor drinking water issues (source protection committees have some discretion when deciding which drinking water issues will be monitored) (Section 3)
 - help achieve Great Lakes target(s), if so directed by the Minister of the Environment (Section 4.1)
 - monitor efforts to help implement and assess the effectiveness of any Great Lakes target policies (Section 4.2)
- Designate who is responsible for implementing these policies
- Include dates for official plan, zoning by-law, and prescribed provincial instrument conformity.

In addition to the mandatory requirements summarized above, the CWA also provides that source protection plans *may*:

- designate policies that help achieve Great Lakes targets as “designated Great Lakes policies” (Section 4.1)
- include policies to address conditions that result from a past activity, where the conditions constitute a significant drinking water threat (Sections 2.1 – 2.4)
- include policies to address drinking water threats (i.e., activities and conditions) in vulnerable areas that are not or would not be significant (e.g., moderate or low) drinking water threats (Sections 2.1 – 2.4)
- set out policies governing incentive programs and education and outreach programs (Sections 2.1 and 2.2)
- contain a list of designated activities to which Section 57 (prohibition) of the CWA should apply and, for each designated activity, the areas where Section 57 should apply (Section 2.5.2)
- contain a list of designated activities to which Section 58 (risk management plans) of the CWA should apply and, for each designated activity, the areas where Section 58 should apply (Section 2.5.1)
- contain policies governing the content of risk management plans that are agreed to or established under Section 58 (Section 2.5.1)
- contain a list of designated land uses to which Section 59 (restricted land uses) of the CWA should apply and, for each designated land use, the areas where Section 59 should apply (Section 2.5.3).

A summary of the mandatory and optional plan policies is presented in Table 1. The table may be a helpful reference to readers throughout the remainder of this paper.

Table 1: Summary of Mandatory and Optional Policies in a Source Protection Plan

MANDATORY	OPTIONAL
<p>Policies that:</p> <ul style="list-style-type: none"> • address activities set out in the assessment report that are or would be significant threats • govern the monitoring of significant threats • achieve Great Lakes targets and monitor their implementation and effectiveness (only if targets set and Minister directs source protection committees to do so) <p>If and where advisable – policies that:</p> <ul style="list-style-type: none"> • govern the monitoring of moderate and low threats • govern the monitoring of drinking water issues 	<p>Policies that:</p> <ul style="list-style-type: none"> • address conditions resulting from a past activity • address activities set out in the assessment report that are or would be moderate or low threats • are identified as a “designated Great Lakes policy” • govern incentive programs and education and outreach programs • designate the activities and areas to which Sections 57 (prohibition) and 58 (risk management plans) of the CWA apply • designate the land uses and areas to which Section 59 (restricted land uses) of the CWA applies

2. Policy Approaches to Reducing Risks Posed by Drinking Water Threats

There are a number of different ways to address a drinking water threat. To develop effective policies that address risks to local sources of drinking water, policy developers will need to be familiar with the various approaches provided in the CWA to reduce the risks posed by different threats. These policy approaches range from education and outreach activities and voluntary programs with incentives, to prohibition of an activity, which is one of the new powers provided in Part IV of the CWA. The range of policy approaches used to reduce risks and manage threats can be seen as a continuum—moving from non-binding and/or informal approaches that are the least invasive (sometimes called “soft tools”) to approaches that are both formal and legally binding.

In many instances, different approaches can be used to achieve similar outcomes, and they may be used in combination. The approaches provided in the CWA that a threat policy may rely on are listed below:

- education and outreach programs (leading to voluntary risk reduction)
- incentive programs (leading to voluntary risk reduction)
- land-use planning approaches (e.g., official plans, zoning by-laws, site plan controls, development permits)
- new or amended provincial instruments (e.g., Certificates of Approval)
- risk management plans
- prohibition
- restricted land uses.

Before some of the policy approaches can be used—specifically prohibition, risk management plans, and restricted land uses—the activities to which these policies may apply must first be identified in CWA regulations. This discussion paper presents the different policy approaches and includes a description of the activities and land uses under consideration to be included in regulation (see Section 2.5 of this paper for more details). Similarly, before source protection plan policies may affect new or amended provincial instruments (to align with the details in the policy), the list of eligible provincial instruments must first be prescribed in regulations under the CWA. The government is currently developing a list of these prescribed provincial instruments (see Section 2.4 for more details). A summary of the types of plan policies where each approach may be applied is presented in Table 2.

Policies that address threats that pose a significant risk to source water may utilize a wider range of approaches than policies that address moderate or low threats.

The risk level of a threat identified in the assessment report for each source protection area would have been assessed according to the intrinsic risk of the threat. While information on existing risk management measures undertaken voluntarily or through other regulatory means may have been collected during the development of the assessment reports, the Technical Rules issued under the CWA stipulate that they are not factored into the calculations for risk. However, information on existing risk management measures is very valuable and will be taken into consideration during policy development. Section 5 of this paper discusses how consultation and engagement can provide this valuable information to help inform policy development.

Table 2: Range of Policy Approaches Provided in CWA for Consideration in Policy Development

Policy Approach (approach the policy relies upon to reduce the risk posed by drinking water threats):	May be Applied To			
	Activities that are or would be significant threats	Conditions that result from a past activity and are a significant threat	Moderate and Low Threats	Achieving Great Lakes Targets (if established under Section 85 of CWA)
Education & Outreach Programs	√	√	√	√
Incentive Programs	√	√	√	√
Monitoring Activities	√	√	√	√
Land Use Planning Approaches (e.g., official plans, zoning by-laws, site plan controls)	√	√	√	√
New or Amended Provincial Instruments (only applicable for those instruments prescribed in regulations under the CWA)	√	√	√	√
Risk Management Plans (s. 58 of CWA)	√*			
Prohibitions (s. 57 of CWA)	√*			
Restricted Land Uses (s. 59 of CWA)	√*			

notes: √* eligible only for activities and land uses in wellhead protection areas and intake protection zones prescribed in future regulations under the CWA.

Policy developers may also develop policies that do not rely upon the approaches described above. In this case, the policy would rely on existing powers or authority already granted through other legislation to the body responsible for implementing the plan policy, such as existing authority granted under the Municipal Act, 2001 (see Section 2.6 of this paper for details). However, in most cases, the ministry anticipates that policy developers will rely at least to some extent on the policy approaches presented above as they address source water risks.

QUESTIONS:

As you read through the policy approaches presented in this section, please consider and comment on what limits, if any, you feel would be appropriate to place on their use to addressing drinking water threats. Please specify why this is important.

2.1 Education and Outreach

Source protection plan policies that rely on education and outreach activities to reduce the risks posed by some drinking water threats can be effective because they can trigger the voluntary adoption of risk reduction measures. The goal of education and outreach activities is both to inform stakeholders and to elicit a positive response, by motivating them to voluntarily change their everyday lives and current business practices.

Policies that use education and outreach are designed to foster behavioural changes over time and support a natural progression of gradual uptake or change within the community. Education and outreach activities can also help foster a positive relationship between source protection authorities and municipalities and others throughout the watershed community. However, education and communication methods can be costly, particularly if implementing the policy requires education on different scales or a variety of issues. Education and outreach techniques may also require more time to take hold, since the education campaign must first be researched and designed, and sufficient time must be allowed for the behavioural changes to occur after it is implemented.

Education and outreach programs can be targeted to specific drinking water threats in specific areas or may be applied in a general manner throughout a source protection area. They may be used to address drinking water threats of all levels (significant, moderate and low).

Education and outreach may also be used as part of a staged policy approach. Education and outreach policies can be used as a pre-cursor, and eventually a complement, to policies that rely on other approaches that are more regulatory in nature, such as risk management plans or prescribed provincial instruments. In this way, education and outreach are used to encourage the voluntary adoption of general or specific risk management actions, measures, practices, procedures, etc., that reduce the risk of a certain threat before a complementary or non-voluntary threat policy comes into effect.

It is important to combine education and outreach programs with careful monitoring of the acceptance and the success of the program (see Section 3 for more information). Tracking the adoption/retention of voluntary risk reduction measures over time can help generate information to demonstrate the policy satisfies the objectives set out in Section 22(2)2 and 22(2)6 of the CWA (i.e., the activity and conditions cease to be or become a significant drinking water threat). Tracking can also provide the necessary information for the annual reports required by Section 46 of the CWA.

2.2 Incentive Programs

Incentive programs can be a very effective approach to reducing risks to source water because they can provide positive motivation for a voluntary change in behaviour. Incentive programs may be used to attract stakeholders to take action to address threats of all risk levels (significant, moderate and low drinking water threats). Incentive programs need not be restricted to monetary rebates, but can also include other rewards, such as discounted products and program fees and community recognition.

Incentive programs that offer discounted products and program fees can be used within source protection plans to provide risk reduction. For example, if the application of a commercial fertilizer to land is identified in an assessment report as a significant drinking water threat, policy developers may consider working with corporate sponsors to develop specific measures to be included in the incentive program, such as, promoting the switch to fertilizer that poses a lower risk to source water through a coupon rebate or product trade-in program.

Similarly, a recognition program that acknowledges early or pro-active implementation of risk reduction measures can both encourage participation and accelerate source protection. For example, many conservation authorities already hold annual recognition ceremonies for volunteers, citizens, and corporations. These ceremonies could be expanded to include awards for risk reduction actions, or to provide a framework for new recognition programs on source protection activities.

Policies that rely on monetary incentives should maximize the use of existing funding-based incentive programs (e.g., tax rebate programs, conservation easements, Environmental Farm Plan Program). Policy developers may also work collaboratively with others that would be implicated in the incentive program to extend or establish new incentives. It is not intended for committees to develop policies that involuntarily bind others, including corporate sponsors or public bodies, to provide financial incentives.

Policies that rely on incentives should be paired with monitoring activities so that the incentive program can be tracked and the effectiveness measured (see Section 3 for more information). If incentives are used in threat policies as a stand-alone approach for significant threats, it is necessary to combine them with activities that monitor the acceptance and success of the program to satisfy the objectives set out in Section 22(2)2 and 22(2)6 of the CWA (i.e., the activity and condition ceases to be or become a significant drinking water threat) and to provide information for the annual reports. An example of monitoring activities may include tracking the program's overall impact on behavioural change (e.g., number of businesses targeted through an incentive program that have implemented best management practices).

2.3 *Land Use Planning Approaches*

Policies that rely on land use planning approaches, including official plan, zoning by-law, and site plan control decisions under the Planning Act or related decisions under the Condominium Act, 1998, can serve as a valuable policy approach when dealing with activities that would be a drinking water threat if they were established near water sources in the future (i.e., future threats). The Planning Act sets out the legislative framework for land use planning in Ontario and describes how land uses may be controlled, and who may control them

The CWA requires that all decisions made under the Planning Act (or the Condominium Act, 1998) “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, 1998 must “have regard to” these plan policies. It is important to note that there may potentially be different outcomes from the “conform with” and “have regard to” policy obligations.

What Authority Do Municipalities Have Today in Relation to Land Use Planning and Source Protection?

Currently, municipalities across Ontario can direct or limit the location of land uses within their boundaries by establishing and updating official plans and zoning by-laws. The Planning Act requires municipal decisions on planning matters to be consistent with the Provincial Policy Statement (PPS), 2005, which includes policies on protecting municipal sources of drinking water.

Specifically, subsection 2.2.1 d) of the PPS indicates that “Planning authorities shall protect, improve or restore the *quality and quantity of water* by implementing necessary restrictions on *development and site alteration* to: 1) protect all municipal drinking water supplies and designated vulnerable areas...”.

Wellhead protection areas and intake protection zones that are defined as vulnerable (in accordance with provincial standards, such as the Technical Rules issued for Assessment Reports) by virtue of their importance as a drinking water source 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.

Municipalities are therefore in a position to use the information generated through the assessment report to inform the development of their official plan policies, and to use restrictions on development and site alteration to protect their municipal drinking water sources. In fact, some municipalities across the province already do so.

While the Clean Water Act, 2006 requires municipal official plans, zoning by-laws, and other Planning Act decisions to conform with significant threat policies set out in the source protection plan, the Clean Water Act, 2006 does not limit municipalities from moving forward today to direct or limit land use as appropriate, using their powers under the Planning Act.

When using this policy approach, the level of detail and content of the policy must fall within the authority of the Planning Act or Condominium Act, 1998. Decisions under these acts may not be retroactive and can only have an effect on *future* occurrences of an activity posing a source water threat, and not activities that are already present or established before the plan comes into effect. In addition, the range of municipal powers under the Planning Act or Condominium Act, 1998 primarily controls land use decisions, as well as a limited range of land use-related activities. For example, through official plans, zoning by-laws and site plan controls municipalities can redirect future land uses and certain land use-related activities to lower-risk locations, or prevent them from occurring in higher risk places. In some cases, Planning Act and Condominium Act, 1998 decisions can also control how land uses will occur by setting parameters on future development.

An official plan is a policy document that describes a municipality’s strategic vision for future community development and land use. An official plan may also designate areas requiring environmental protection types of policies, such as wetlands and other environmentally sensitive areas, including wellhead protection areas and intake protection zones. It is designed to manage physical change and the effects of these changes on the social, economic, and natural environment. An official plan employs the implementation tools provided by the Planning Act, including zoning by-laws, site plan controls, community improvement plans, and subdivision controls.

Under recent Planning Act amendments, municipalities were given a number of new planning tools to support sustainable development that can also be used to support source water protection, provided the threat policy details satisfy both purposes. For example, municipal site plan controls have been extended (see Section 41(4)2(d) of the Planning Act) to give municipalities authority to control matters relating to exterior design, including sustainable design elements such as green roofs and drainage management. Under the Planning Act, municipalities also have the authority to encourage and provide incentives for the redevelopment of contaminated sites (e.g., brownfields) by identifying brownfield areas for Community Improvement Plans (CIPs). Through CIPs, municipalities now have increased flexibility to approve financial assistance to the private sector for costs associated with new building construction on brownfield sites (e.g., site remediation).

The Clean Water Act amended the Planning Act to facilitate the use of zoning as a way to prevent some land uses in vulnerable areas. Section 34, paragraph 3.1 of the Planning Act reads as follows:

34. (1) Zoning by-laws may be passed by the councils of local municipalities:

Contaminated lands; sensitive or vulnerable areas

3.1 For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures on land,

- i. that is contaminated,
- ii. that contains a sensitive groundwater feature or a sensitive surface water feature, or
- iii. that is within an area identified as a vulnerable area in a drinking water source protection plan that has taken effect under the Clean Water Act, 2006.

This section of the Planning Act gives municipalities the ability to prohibit development or restrict the types of development possible within a delineated wellhead protection area. In this case, “development” means the creation of a new lot, a change in land use, or the construction of buildings and structures that require approval under the Planning Act (as defined in Section 6 of the Provincial Policy Statement (PPS), 2005).

Zoning by-laws are used to implement local official plan policies and to provide for their day-to-day administration. Zoning by-laws also set out specific land use permissions and controls. They control the use of land by stating, for example, how land may be used (what specific types of uses are permitted) and where buildings and other structures may be located.

When policy developers rely on planning approaches, they may go about it in two ways. The first approach is to develop policies that contain detailed actions to reduce the risk of a drinking water threat. The types of threat activities planning approaches may affect include:

- threats related to the siting / placement of structures (e.g., structures that store substances prescribed as drinking water threats in Section 1.1. of the General regulation under the CWA (O. Reg. 287/07))
- threats related to servicing (e.g., septic systems)
- water quantity threats that reduce the recharge of an aquifer (where the associated risk reduction measures in the plan policy relate to restricting the location or scale of development, impervious surface, or the exterior design of a development if related to a sustainable design element (e.g., use of a green roof or permeable paving stones to reduce water quantity risks))
- threats related to brownfields (e.g., contaminated sites; only where the policy relies upon a municipal incentive program under the authority of the Planning

Act, like the Community Improvement Plan, to remediate and redevelop the brownfield).

The second approach is to develop a less-detailed policy that limits the land use that is associated with any particular threat or group of threats in specified locations. A policy that limits a broad land use in specified locations may be useful if policy developers wish to keep a group of activities common to that land use away from particular areas.

2.4 New or Amended Provincial Instruments Prescribed in Regulation

In addition to the CWA and the Planning Act, Ontario has extensive legislation in place to protect the environment. As a result, it is important to note that many threats are already regulated through provincial instruments. Some examples of instruments include Certificates of Approval for waste disposal and management under the Environmental Protection Act, Permits to Take Water and Certificates of Approval under the Ontario Water Resources Act, and Aggregate Licences under the Aggregate Resources Act.

The CWA requires that decisions to issue or amend instruments prescribed in regulations under the CWA conform with significant threat policies and designated Great Lakes policies that are set out in the source protection plan (see Section 39(7) of the CWA). The CWA also stipulates that the decision to issue, or amend an instrument must “have regard to” other policies (e.g., moderate and low threat policies; policies governing monitoring) set out in the plan. It is the responsibility of those persons or bodies with authority to issue or amend instruments to ensure, where appropriate, that such instruments satisfy these obligations. This section presents how policy developers can choose to rely on these legally binding requirements as an effective approach to reduce the risk of drinking water threats.

Unlike the policy approach that relies on land use planning approaches (e.g., official plans, zoning by-laws, site plan controls) to reduce the risk of drinking water threats, policies that use this policy approach can affect both existing and future occurrences of the threat.

Before provincial instruments can be relied on as the approach to reduce threats to source water, the instruments must first be prescribed in future regulations under the CWA. **The Ministry is proposing to prescribe existing provincial instruments that relate to activities on the land that could reasonably be expected to have an impact on the quality or quantity of drinking water sources—specifically, provincial instruments related to the prescribed list of drinking water threats in Section 1.1 of the General regulation (O. Reg. 287/07).** Before the list is finalized, however, the province is committed to engaging in stakeholder discussions and consultation.

To use this policy approach the drinking water threat must fall within the existing authority of the prescribed provincial instruments. In many cases, legislation lays out exceptions that describe specific locations, situations or activities where the instrument is not required or permitted. When considering the use of this approach during policy development, it is therefore important that policy developers assess the threat activity and

related instrument under consideration to verify that the provincial instrument can be used to address the activity. These assessments may reveal useful information, such as:

- the range of risk reduction measures commonly / rarely used in relation to the threat and instrument
- best practices currently in place among “leaders” in the field
- the effectiveness of the existing risk reduction measures
- determining which additional measures, if any, need to be applied to the activity to reduce its risk level.

The Technical Rules for assessment reports issued under the CWA stipulate that the risk level of drinking water threats identified in the assessment report is based on intrinsic risk; it therefore does not factor in the risk reduction provided by existing risk management measures, including those set out in the terms and conditions of operation within provincial instruments. Existing risk management measures may be considered during the policy development process.

Carrying out an assessment as described above is anticipated to help policy developers as they formulate local source water protection policies. If the assessment determines that measures, activities, practices, or techniques set out in the related instrument can reduce the risk posed by the threat adequately, maintenance of these existing measures could be incorporated into the drinking water threat policy, in essence prohibiting backsliding.

Policy developers will be encouraged to make this approach their first choice whenever there is a prescribed instrument that can manage the risk associated with activities or conditions identified as a threat in the assessment report. This would help avoid regulatory duplication and build upon the existing capacity of persons and business that are generally familiar with and already incorporate compliance with provincial instrument requirements into their day-to-day business.

QUESTION:

Please comment on the concept of relying on prescribed provincial instruments as the policy approach of first choice in addressing drinking water threats (in areas where they may be lawfully applied), to minimize regulatory duplication.

Are there any provincial instruments that relate to the list of prescribed drinking water threats set out in Section 1.1 of the General regulation (O. Reg. 287/07) under the CWA that you would not want to be prescribed for this purpose and why not?

2.5 New Policy Approaches to Address Risks to Source Water: Risk Management Plans, Prohibition, and Restricted Land Uses

The CWA establishes some new policy approaches to reduce or manage risks to source water that can be incorporated into source protection plan policies to address *activities that have been determined to be significant drinking water threats*. The new approaches are “risk management plans”, “prohibited activities” and “restricted land uses”, and these approaches are described in Sections 58, 57, and 59 of the Act, respectively.

Policy developers should be aware that the CWA places some restrictions around the use of these new policy approaches. For example, the new approaches may not be included in policies that are designed to address conditions that constitute a significant drinking water threat resulting from a past activity (e.g., contaminated sites). Nor may they be used to address moderate or low drinking water threats, or to address Great Lakes targets. As well, the new approaches may only be used to reduce the risk of threat activities that occur or could occur within wellhead protection areas and surface water intake protection zones.

Before the risk management plan or prohibition approach may be used within a policy, the activity to which the policy applies must first be prescribed in regulations under the CWA. Similarly, policy developers may only apply the restricted land uses powers established in Section 59 of the CWA to land uses that are prescribed in CWA regulations, and only to complement a policy that uses the risk management plan or prohibition approach; not as a stand-alone approach to reducing the risk of significant threat activities. Before these prescribed lists are finalized, the province is committed to engaging in stakeholder discussions and consultation. Details about the risk management plan, prohibition, and restricted land uses approaches are provided in the following sections of this paper.

2.5.1 Risk Management Plans – Regulated Activities

Risk management plans are site-specific plans that address significant threat activities by formally setting out actions that will be taken by the person(s) who is engaging (or in the case of future threats, proposing to engage) in the activity to reduce the level of risk. The details of the actual risk management plan itself are intended to be agreed* on collectively by the person(s) engaging in the activity and a risk management official, who is established in accordance with Part IV of the CWA (*note: the risk management plan can be imposed as a “last resort” by the risk management official as deemed necessary).

In cases where multiple drinking water threats exist on a single property, and a risk management plan is identified in the source protection plan policy as the way to address those threats, a single risk management plan may be able to capture the multiple threat activities. As a result, the property owner would not need to prepare a separate plan for each threat.

An overview is provided below describing when the CWA permits the use of the risk management plan approach in policy development:

- Risk management plans may only be used for activities that are prescribed by regulations.
- Risk management plans may only be used for activities identified as significant threats in the assessment report (and are not applicable to moderate and low threats).
- Risk management plans may be used to address existing and future activities.
- The source protection plan policies must specify the activity(ies) which the policy designates as subject to the application of risk management plans (see Section 58 of the Act).
- The plan policies must identify the area(s) where the risk management plan policy applies.

A key advantage of the risk management plan approach is that any risk reduction activities that are already occurring on the site can be *formally* identified and recognized in the risk management plan. As a result, the property owner receives recognition of previous efforts and good stewardship, and the risk management official receives formal assurance through the risk management plan that the property owner will continue to engage in effective risk reduction activities.

The CWA specifies that risk management plans may only be applied to activities that are prescribed in regulations under the CWA. **For this purpose, the province is proposing to**

prescribe the list of activities identified as drinking water threats in Section 1.1 of the General regulation under the CWA (O. Reg. 287/07). In addition, the province is proposing to authorize the use of risk managements plans for any other significant threat activity included in an approved assessment report in accordance with the CWA's Technical Rules.

In cases where there is a potential regulatory overlap between a provincial instrument and risk management plan, policy developers will be able to consider both the provincial instrument policy approach and the risk management plan policy approach as they work out their source protection plan policies. Policy developers should maximize the use of the provincial instrument approach (see Section 2.4 of this paper) to minimize regulatory duplication and capitalize on existing compliance efforts. **To further minimize the potential for regulatory duplication during the plan implementation stage, the province is proposing to give risk management officials the authority to exempt a person from requiring a risk management plan where the official determines a prescribed provincial instrument does regulate the threat activity.** This exemption authority could be applied at the time the risk management official and the person engaging or proposing to engage in the activity enter into discussions to locally negotiate a risk management plan.

When policy developers are considering the use of risk management plans, they will need to decide if the local circumstances deem it appropriate to rely on this approach to address both existing and future instances of a particular threat (i.e., where the activity

Risk Management Official and Inspectors

Risk management officials and inspectors are persons responsible for enforcement of Part IV of the CWA, which establishes the risk management plan, prohibition, and restricted land uses policy approaches to addressing significant drinking water threats.

Risk management officials may be appointed by the following entities:

- A municipality
- Multiple municipalities (through joint agreement)
- Board of Health (through agreement with municipality)
- Planning Board (through agreement with municipality)
- Source Protection Authority (through agreement with municipality)
- The Crown (in unorganized territories if there is no agreement with an adjacent municipality)

Risk management officials are responsible for administration and enforcement of plan policies that designate risk management plans (s. 58), prohibition (s. 57), and restricted land uses (s. 59) to apply.

Risk management inspectors help the risk management official to enforce risk management plans. They have the authority to enter property if he or she has grounds to believe that a person is engaging in activities that are against the policies set out in the source protection plan, including designated activities which require a risk management plans or are prohibited.

exists today, and where it would be significant if established in the future). If applying risk management plans for future instances of a threat, policy developers will use a complementary policy using the restricted land uses policy approach provided through Section 59 of the CWA so that together the policies ensure risk management plans are in place before the activity is established (see Section 2.5.3 for more information).

To formulate plan policies that result in the creation of risk management plans and satisfy the CWA requirements, policy developers must ensure that the policy i) clearly articulates the activity(ies) to which the policy is designated to apply and ii) identifies the specific area(s) to which the policy applies. Policy developers may also identify the date by which the policy shall apply to existing activities (if a date is not specified, Section 58(4) of the CWA gives the local risk management official the authority to determine the date the existing risk management plan is required).

QUESTIONS:

Please comment on the proposals above related to the use of the risk management plan approach to address drinking water threats to source water. What other limits, if any, do you think would be appropriate to place on the use of this policy approach in source protection plans and why?

2.5.2 Prohibition

The prohibition of activities is a very strong approach to addressing source water risks. The prohibition approach is established in Section 57 of the CWA. However, prohibition can only be used to address significant threat activities (not significant threat conditions, nor moderate or low threats) that occur either within a wellhead protection area or an intake protection zone, and activities that have been prescribed in regulations.

The province is proposing to prescribe activities that could reasonably be expected to have a significant impact on the quality or quantity of drinking water sources. Currently, two approaches are under consideration—one relating to activities that are already taking place, and the other for activities that would be a significant threat if they were established in the future. Forthcoming regulations under the CWA will set out these prescribed activities after the government has discussed and consulted further on these approaches, described below, with stakeholders and the public.

Using the prohibition approach to reduce the risk of existing threats can pose enormous challenges. Prohibiting activities that are already taking place can be very costly and have serious implications for the business and/or property owner(s) affected. Whenever feasible, then, and where other available policy approaches may be safely and adequately used to reduce the risk posed by an existing threat, it would be preferable to use those other approaches. Avoiding outright prohibition can help ensure that existing activities and businesses are not penalized unfairly simply due to the historic circumstances of their existence.

The province anticipates that most of the existing activities identified as significant drinking water threats in local assessment reports can be managed effectively without resorting to prohibition of those activities. However, there may well be some circumstances in which policy developers determine that there is no other way to deal with the risk posed by an existing threat activity other than prohibiting the activity immediately in certain high-risk locations. This may include, for example, unusual instances where risk reduction approaches are not sufficient to reduce the risk of the threat to below the significant risk level (i.e., unique bedrock, soil or slope conditions). Another example may include the presence of a drinking water issue in the water source(s) that relates directly to the existing threat activity being considered. If policy developers decide to prohibit a significant threat activity in locations where the activity exists today, they will have to document the rationale (see Section 2.8) for their decision.

At the same time, using prohibition to deal with future drinking water threats may provide some advantages. If the activities that could pose a significant drinking water threat are not already established, prohibition can be a very effective and efficient means of preventing them from ever becoming established and thereby posing a significant risk to local drinking water sources. Prohibition of specific future activities in especially vulnerable areas means activities that could pose a significant hazard to the local watershed are shifted to areas where the risk to source water is lower.

To clarify the province's position on the use of prohibition in plan policies, **the province is considering prescribing in regulations the list of activities identified as drinking water threats in Section 1.1 of the General regulation under the CWA (O. Reg. 287/07) along with the following criteria that govern when prohibition (Section 57 of the CWA) may be used to address significant threat activities:**

- where the activity does not exist on the land at the time the policy is being developed (i.e., future threats), OR
- where the approved assessment report for the source protection area indicates there are drinking water issues clearly related to the threat activity under consideration, OR
- where the source protection committee is of the opinion that other policy approaches and risk management measures would not be practical or effective (note: rationale would be required to substantiate this decision).

In addition, the province is **proposing to authorize the use of Section 57 of the CWA to address any other significant threat activity in an approved assessment report in accordance with the CWA's Technical Rules, under the same criteria above.**

QUESTIONS:

Do you agree with the concept of avoiding the use of outright prohibition to address existing threats unless there is no alternative, as outlined above? Please share your rationale for this decision.

What other criteria do you think would warrant using prohibition to reduce the source water risks posed by significant threat activities?

2.5.3 *Restricted Land Uses*

Section 59 of the CWA provides policy developers with the ability to rely on Planning Act applications to reduce risks to source water by developing policies that restrict *certain actions* from proceeding, when associated with specific land uses at specific locations. Source protection plans that use the restricted land uses approach provided in Section 59 of the CWA provides for an early warning system for municipalities to avoid inadvertently approving applications involving potential drinking water threats, ensuring applicants abide by the applicable source protection policies. It should be noted that the definition of the term “restricted land uses” under Section 59 of the CWA does not have the same meaning as when used in relation to decisions made under the Planning Act.

While this approach can help manage the risk of significant threat activities on a property before they become established, it cannot be used for existing activities unless the applicant is seeking re-development. Policy developers may only apply this approach in areas where the land use is directly linked to a significant threat activity identified in the source protection plan as a prohibited activity (Section 57 of the CWA), or an activity requiring a risk management plan (Section 58 of the CWA). In addition, all of the area designated for this purpose must be in a surface water intake protection zone or wellhead protection area. Moreover, source protection plan policies may only apply the restricted land uses approach to those land uses that will be prescribed in regulations.

This policy approach will ensure that drinking water threats are dealt with at the front-end of the land use planning process where developers are encouraged to consult with the municipality before formally submitting a land use planning application for approval. The requirements under the CWA will be integrated into the existing municipal development review process so that applicants will continue to benefit from a one-stop/one-window application process. This will save time and cost while providing land developers with a clear understanding of how the source protection policies are integrated with any restricted land uses in the municipal official plan, resulting from authority under the Planning Act. This integration would be finalized once the official plan conformity exercise occurs following approval of the source protection plan, as required under the CWA.

CWA Section 59 notices issued by a risk management official will be recognized as applicable law for the purposes of the Building Code Act.

Where significant threat policies use the restricted land uses approach, an individual or business planning to engage in an activity related to the restricted land use, or construct or change the use of a building in connection with the land use, would be required to make an application to the risk management official and receive a notice (described below) from the official before proceeding with development. Any development applications (including building permits) that are made in the area that

To clarify the provisions of the Planning Act that would be captured in CWA regulations, the province is considering prescribing all provisions that could reasonably be expected to relate to a significant drinking water threat. This includes the following:

- Official plans and official plan amendments
- Zoning by-laws and zoning by-law amendments
- Plan of subdivision approvals and consent applications
- Site plan applications
- Applications for development permits
- Minor variance applications.

relates to the restricted land use would not be allowed to proceed unless the risk management official issues a notice. The policy thus serves as a check on activities associated with the restricted land use before they become established, but it does not stop the land use per se, nor stops the applicant from ultimately proceeding unless a source protection plan policy prohibits the associated activity. It does ensure that applications involving potential drinking water threats are not inadvertently approved without closer examination.

The CWA stipulates that a formal notice from the risk management official is required by all persons who intend to:

- make an application under a provision of the Planning Act (prescribed in CWA regulations, e.g., official plans and official plan amendments—see text box), for the purpose of using land for the land use specified in the policy, or
- construct or change the use of a building in connection with that land use (includes applying for a building permit).

QUESTION:

Are there other provisions of the Planning Act that should be identified (see text box above)? Please share your rationale for your response.

In order to issue this Section 59 notice, the risk management official must ascertain that the proposed activities on the property are either not subject to Section 57 or 58 of the CWA (i.e., they are not prohibited or regulated activities that require a risk management plan) or, if Section 58 does apply, that a risk management plan has been agreed to or established to address the activity.

Policies that use the restricted land uses approach provided by Section 59 of the CWA provide a means to operationalize the prohibition and risk management plan policies contained in the source protection plan as they relate to activities not yet established (i.e., future threats). Restricted land use policies thus provide an additional safety barrier in the source protection process, by ensuring that applications involving potential drinking water threats are not approved inadvertently. This would occur at the front end of the process, well before the activity is established. Where source protection plan policies rely on Section 57 (prohibition) or Section 58 (risk management plans) of the CWA to address future threats, the development of a complementary policy using the restricted land uses approach in Section 59 of the CWA would be advisable to effectively capture these future activities before they are established.

Other advantages of using the restricted land uses approach in plan policies are summarized below:

- it allows for an activity related to a land use to be controlled, without the need to eliminate an entire land use designation.
- it alerts risk management officials that persons are planning to engage in land uses that may relate to activities for which significant threat policies exist
- it informs those persons of the source protection plan's policies

- it requires those persons to comply with the policies before they make an application to proceed with the activity under the Planning Act or obtain a building permit.

Before the restricted land uses approach provided by Section 59 of the CWA may be included in source protection plan policies, the land uses must be prescribed in forthcoming regulations. For this purpose, **the province is proposing to allow for its broad use—for any land use that is identified in an official plan or zoning by-law in a municipality in the source protection area, and that could be related to the significant drinking water threat identified in the assessment report.** This broad approach is anticipated to give source protection committees sufficient latitude to apply the restricted land uses approach to any land uses in the local source protection area, based on local circumstances. In addition, this broad approach is expected to capture any differences in land use designations among different local municipalities within the source protection area, but which essentially refer to the same thing.

QUESTIONS:

Do you agree with the proposal under consideration to allow source protection committees the broad use of the restricted land uses approach set out in Section 59 of the CWA? Are there certain land uses that you believe do not relate to particular activities identified as prescribed drinking water threats in Section 1.1 of the General regulation under the CWA (O. Reg. 287/07)? Please share the rationale for your response.

2.6 Other Policy Approaches to Addressing Threats

Policy developers can rely on other approaches to address a source water risk beyond the policy approaches described above. To do so, the actions resulting of the policy must fall within existing powers or authority already granted to the public body responsible for implementing the policy (e.g., authority granted under the Municipal Act, 2001 or City of Toronto Act, 2006). Section 38 of the CWA requires various public bodies, namely municipalities, local boards, and source protection authorities, to comply with any obligation imposed on it by significant threat policies.

The decision to rely on “other” policy approaches may depend on (i) the type of threat, (ii) the information generated during the assessment report process or early engagement and consultation efforts with person(s) engaging in the threat and with municipality(ies) and other stakeholders in the source protection area, or (iii) when the desired outcome does not fall within the authority of the other policy approaches.

Policies that do not rely on the policy approaches described previously to reduce the risk of the threat must still satisfy the CWA objectives that a threat ceases to be or become significant, and be possible to implement.

This may be a particularly useful approach when dealing with threats that are owned or under the control of a municipality (such as a condition (e.g., contaminated site)

identified as a significant drinking water threat in the local assessment report), since the new powers in Part IV of the CWA (risk management plans, prohibition, restricted land uses) can not be applied to address conditions. Another example may be if policy developers wish to rely on existing municipal water management approaches (e.g., conservation-based water pricing; watering restrictions).

2.7 Policy Approach Selection, Knowledge Gaps and Uncertainty

In the development of the assessment report, source protection committees will become aware of critical knowledge gaps. Such gaps may hinder them from determining the best course of action to address the risks in their source protection plan.

Where there is adequate knowledge and good scientific data available, the whole spectrum of policy approaches provided by the CWA to address the risks to local source water may represent appropriate means of addressing source water risks. However, where significant gaps in knowledge occur or there is significant uncertainty around the interpretation of available information, committees may use “softer” approaches to address risks, such as education and outreach combined with monitoring activities. These “softer” approaches could be used in the current cycle of source protection planning until additional information regarding the threat can be obtained to reduce the data uncertainty or knowledge gap, and the assessment report can be updated to document the improved certainty. The results of monitoring policies that track the implementation of these policies, as well as the extent to which the objectives of the plan are being achieved, may guide source protection plans developed in a future planning cycle (see Section 7.2 for a discussion on plan reviews and amendments).

Where the development of a significant threat policy has been affected by a knowledge gap or there is significant uncertainty around the interpretation of available information, the ministry is considering requiring through regulations that the source protection plan will:

- **identify any policies in the plan that will need to be revisited when the knowledge gap has been addressed** (i.e., when the assessment report is updated to document improved certainty).

This information will be useful to source protection committees during the preparation of future assessment reports and source protection plans. The government may be better able to identify province-wide gaps and develop a provincial strategy to address them if this is determined to be necessary to complement the local approaches.

QUESTION:

Please comment on the considerations related to knowledge and data gaps presented in this section. What additional content related to these gaps, if any, should be included in the source protection plan?

2.8 Additional Content Requirements Under Consideration for Threat Policies

It is important to ensure that source protection plan policies are effective, strategic, and sensible, can be readily implemented and are also cost-effective. To ensure that plan policies are clearly communicated to, and readily understood by the public and other stakeholders, MOE is considering setting regulatory requirements for additional content to be included in source protection plans—content that supports the threat policies in the plan. The required details under consideration include:

- **The option for policy developers to include a description of the area(s) that a threat policy is intended to apply (maps or textual description).**

4The CWA already requires this description for significant threat policies that use risk management plans (S. 58), prohibition (S. 57), or restricted land uses (S. 59) to reduce the risk of the threat. Including a description of the locations to which a threat policy is intended to apply, regardless of the threat's risk level and the policy approach used (e.g., education and outreach, incentives, planning approaches, new or amended provincial instruments), will provide clarity to stakeholders affected by threat policies and those ultimately responsible for implementing them.

- **Documented rationale in support of policies that address drinking water threats to source water.**

Including rationale in the plan will promote transparency and accountability. The discussions that occur during the policy development stage can be used as the basis of the rationale to support the resulting policy. The rationale for applying a policy to specific area(s) should be part of the documentation. In addition, it will be helpful to risk management officials as they move forward to implement policies.

During the plan development process, stakeholders and other interested parties may benefit from having a clear understanding of the area(s) to which a policy applies, and may wish to review the rationale developed in support of source protection plan's policies. The ministry may also consider the rationale during the process of approving the plan to better understand the context behind various policies. The ministry is required by the Environmental Bill of Rights, 1993, to consider the ministry's Statement of Environmental Values in decisions that affect the environment. The supporting rationale may assist the ministry in this process. Including documented rationale in support of plan policies will promote both the accountability and transparency of the local decision-making process.

QUESTIONS:

Would including information about the specific areas to which a threat policy is intended to apply be useful to you? Why or why not? Please comment on the concept of including documented rationale in support of threat policies in the source protection plan. What additional details, if any, should be considered for inclusion in the regulations governing threat policies and why?

3. Policies Governing the Monitoring of Drinking Water Threats and Issues

Section 2 examined the various ways that the threat policies set out in source protection plans can reduce the risks to source water. This section discusses the CWA requirement to include policies that govern the monitoring of significant, moderate, and low drinking water threats (activities and conditions), and drinking water issues, including considerations for additional requirements related to these policies that are not specified under the CWA.

The CWA requires policy developers to include source protection plan policies that govern the monitoring of activities and conditions that are or would be significant drinking water threats in vulnerable areas. The CWA also stipulates that plans must include policies governing the monitoring of moderate and low drinking water threats (activities and conditions) and drinking water issues, if and where the committee feels it is advisable to do so (see Section 22(2)5 and 22(2)7). The term “advisable” is explicitly used in the CWA and thus provides committees with some discretion when it comes to deciding which moderate and low threats, and which issues, will be monitored.

Source protection planning is intended to be a continuous improvement process. Accordingly, the information resulting from local monitoring policies can be valuable in a number of ways, including:

- tracking implementation of plan policies (i.e., has the person(s) or body(ies) responsible for implementing the policy done so?)
- describing the extent to which the objectives set out in the plan are being achieved (i.e., tracking compliance with significant threat policies)
- tracking effectiveness of plan policies on (i) documented water quality or quantity problems (i.e., drinking water issues) and (ii) conditions that result from a past activity
- addressing gaps in knowledge about a particular vulnerability or threat.

If the monitoring results show that the objectives set out in the plan are not being achieved, the information may be used to support and guide either amendments to the source protection plan (see Sections 34 and 35 of the CWA) or reviews of the source protection plan (see Section 36). Such amendments and reviews can help ensure that the most appropriate actions are being taken to address threats to drinking water sources. Monitoring results may also be useful in determining the effectiveness of threat policies on related drinking water issues and conditions, where significant threat policies are in place to address documented water quality or quantity problems (i.e., “drinking water issues” that have been traced back to specific threats) or conditions resulting from a past activity (where the condition is a significant drinking water threat).

After a source protection plan is approved, the information collected as a result of monitoring policies will also support the source protection authority’s annual progress reporting obligations under the CWA (see Section 46 of the CWA)—thereby promoting

transparency and accountability to the public. Annual progress reports are described in Section 7.1 of this paper.

3.1 Content Requirements Under Consideration for Monitoring Policies

Although there are various approaches that policy developers may apply when formulating policies governing the monitoring of drinking water threats, a minimum level of content in all monitoring policies would promote a level of consistency in the monitoring policies across the province, and also provide all stakeholders with greater clarity on the monitoring activities.

The province is considering including in regulations the following content requirements for each monitoring policy included in a source protection plan:

- **The objective of the monitoring policy**
 - This will clarify the purpose of the policy and, where applicable, which CWA provision(s) the policy fulfils (e.g., to monitor the implementation of significant threat policies; to track compliance with policies that may effect provincial instruments; to track the effect of threat policies associated with drinking water issues in addressing the issue; to fill knowledge gaps, etc)
- **The desired results of the monitoring activities, where the monitoring policy relates to a drinking water issue and the significant threats associated with the issue**
 - For monitoring policies governing a significant threat(s) related to a drinking water issue, the policy should include a description of the desired results of monitoring activities related to the issue, to demonstrate the effect of the threat policy(ies) in addressing the drinking water issue (e.g., improvement in concentrations of nitrates, for example, within two years of the threat policy's implementation)
- **A description of the monitoring activities / programs, including:**
 - what will be measured, for example, the specific activity, condition or issue, risk trends, or specific parameters associated with the activity or condition (e.g., concentration of nitrates in a water source; changes in water levels accounting for climate change or new takings; participation in an incentive program; adoption of voluntary measures following attendance at a training course; percentage of provincial instruments associated with a threat policy reviewed and amended as required; percentage of official plans that have conformed with threat policies, etc.)
 - the source of data to be used, if applicable (e.g., review of business licences issued, use of Provincial Water Quality Monitoring program data)
 - the frequency with which information will be collected (e.g., monthly, quarterly, yearly)
 - parties who will be responsible for collecting, summarizing and reporting on the monitoring data (which designated public body(ies), as required in Section 22(5) of the CWA)
 - the timeline for implementation of the monitoring policy

- **Identification of any data sets maintained by various parties (e.g., municipalities, conservation authorities, the province) that are critical to the implementation of the proposed monitoring policies, for example any provincial, federal or non-governmental organization monitoring programs.**

It will be important for policy developers to engage the body(ies) that will be implicated by the details of any monitoring policy early in the policy development process to ensure the policy is feasible and, where possible, consistent with existing monitoring programs.

QUESTIONS:

*Is the proposed **content** for inclusion in policies governing monitoring appropriate or too onerous? What additional information or changes, if any, regarding the content of monitoring policies do you propose and why?*

4. Policies Related to Great Lakes Targets

The CWA requires source protection plans to contain policies that relate to the Great Lakes when directed by the Minister of the Environment, including:

- policies that achieve every target established under Section 85 of the CWA, where targets are established by the Minister
- policies that govern monitoring to assist in implementing and in determining the effectiveness of every Great Lakes target policy
- policies that are identified in the source protection plan as designated Great Lakes policies.

This section discusses these requirements as well as considerations for additional requirements.

A collaborative and consistent approach to addressing common threats among Great Lakes intakes (including intakes on the Great Lakes connecting channels and the St. Lawrence River)—and particularly threats that are related to common issues across a Great Lake—will help capitalize on the diversity of expertise and approaches from various policy developers within and between source protection areas, and bring a level of consistency to the policies affecting the lake as a whole. The CWA requires source protection plans for areas that contain water that flows into the Great Lakes or St. Lawrence River to consider following agreements:

- The Canada-United States Great Lakes Water Quality Agreement
- The Canada-Ontario Agreement Respecting the Great Lakes Basin Ecosystem
- The Great Lakes Charter
- The Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement.

4.1 Great Lakes Targets

The CWA gives the Minister of the Environment the authority to set targets for the Great Lakes or any part thereof, to address any water quality or quantity issue related to the use of the Great Lakes as a source of drinking water. Targets are anticipated to direct and coordinate action on a drinking water source protection issue or an emerging Great Lakes problem.

The Minister may establish one or more advisory committees (under Section 83 of the CWA) to provide advice on any matter relating to the use of the Great Lakes as a source of drinking water. The Minister may also decide to set Great Lakes targets after reviewing the assessment reports or source protection plans for the source protection areas that contribute water to the Great Lakes. The Minister is not obligated to set Great Lakes targets and may choose to do so at any time.

To ensure that the targets established by the Minister are clearly communicated to stakeholders and readily accessible, the **province is considering requiring through regulations that the source protection plan identifies any targets for the source protection area established by the Minister under Section 85 of the CWA.**

The Minister also has the option of establishing a Great Lakes target for a *group* of source protection areas. If a target applies to multiple source protection areas, the Minister may direct the source protection authorities to jointly decide on what the relative target should be for each individual source protection area, to contribute to the overall target (see Section 85(3) of the CWA). This may require the source protection authorities to decide how they will allocate or partition the Minister's 'group target' among themselves.

Where the Minister exercises this option, and to ensure that these jointly determined targets are clearly communicated to stakeholders, readily accessible, and substantiated, **it is proposed that regulations under the CWA will require the source protection plan to identify any locally allocated targets for the source protection area, and include supporting rationale that describes how the targets were determined jointly by the source protection authorities.** This information will provide the public with a clear understanding of how Great Lakes targets at various scales were determined.

After a Great Lakes target is established for a source protection area, the Minister may choose to require that the source protection authority prepare a report to recommend Great Lakes policies for the source protection plan (see Section 85(6) of the CWA). To ensure these reports are readily available to interested persons, **the province is considering requiring through regulations that the source protection plan includes information on how copies of reports made to the Minister under Section 85 of the CWA can be obtained.**

The proposed regulatory requirements described above will provide for transparency and accountability by providing interested parties with the necessary background information and context to help them understand how the Great Lakes policies were developed.

QUESTION:

Do you have any comments on the proposed reporting requirements described above with respect to Great Lakes targets? Please share the rationale for your response.

4.1.1 Great Lakes Target Policies

The CWA stipulates that Great Lake policies (referred to in this paper as “Great Lakes target policies”) are required in a source protection plan when the Minister has directed the source protection authority for the area to prepare a report that recommends Great Lakes policies and/or other steps that should be taken for the source protection area to assist in achieving the target (report details are set out in Section 85(6) of the CWA). The CWA does not explicitly require the same policies set out in the source protection authority’s report to be included in the plan. However, future ministry guidance on Great Lake target policies will encourage policy developers to give extensive consideration to these policies.

In accordance with the CWA, Great Lakes target policies may **not** be included in source protection plans without the establishment of Great Lakes targets by the Minister and the preparation of the associated report required under Section 85 of the Act.

The province is considering requiring through regulations that source protection plans include the following in respect of Great Lakes target policies:

- **a level of detail sufficient to demonstrate that the actions resulting from the policy will contribute to achieving the target (e.g., what will be done, where it will occur)**
- **a rationale in support of the policies**
- **the person(s) or public bodies anticipated to be involved in implementation**
- **intended timelines for implementation.**

The ministry anticipates that this information will demonstrate that the Great Lakes target policies are sufficient and effective to achieve the Great Lakes target, and are strategic and can be readily implemented. The information is also expected to promote both the accountability and transparency of the local decision-making process. Moreover, this information is anticipated to demonstrate that the policy or policies are sensible and cost-effective.

QUESTION:

*Are the proposed requirements above appropriate? Too onerous? Why? What additional details, if any, should be included in the source protection plan regarding the **content** of Great Lakes target policies?*

Where a Great Lakes target is not established, or where the associated report required under Section 85 is not prepared, until *after* the development of a source protection plan has begun and the plan is near completion, **the province is considering requiring through regulations the Great Lakes target policies be set out in a future source**

protection plan (i.e., a future planning cycle), **or in an amended source protection plan after the initial plan is submitted to the Minister.** With this provision, the time required to establish the most appropriate and suitable Great Lakes target policies will not unnecessarily delay the submission or approval of a source protection plan developed under the first cycle of source protection planning.

4.1.2 Designated Great Lakes Policies

Section 22(4) of the CWA provides that the source protection plan may identify one or more Great Lakes target policies as a “designated Great Lakes policy.” Such a designation is important because, once the plan is approved, public decision-makers are obliged to implement the designated policy, comply with the policy and/or ensure that their actions and decisions conform with the policy (see Sections 38-40 and 42 of the CWA for conformity requirements). Where a source protection plan does not designate any of the Great Lakes policies, the Minister may direct a source protection authority to do so during the process of reviewing and approving the source protection plan.

To ensure that the identification of designated Great Lakes policies is appropriate and substantiated in the plan, **the province is considering requiring through regulations that**

the source protection plan includes rationale in support of any designated Great Lakes policies. The identification of a policy as a designated Great Lakes policy would still be subject to the source protection plan’s approval by the Minister. The supporting rationale may be considered by the ministry during the plan’s approval process.

A municipality, local board or source protection authority is required to implement any obligations imposed upon it by designated Great Lakes policies.

Decisions under the Planning Act or 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, are required to conform with designated Great Lakes policies.

Decisions to issue or amend provincial instruments, prescribed by regulation, must conform with designated Great Lakes policies.

QUESTION:

What other details, if any, should be included in the source protection plan in association with designated Great Lakes policies?

4.2 Monitoring Related to Great Lakes Target Policies

The CWA requires that source protection plans include policies governing monitoring to help implement the Great Lakes target policies they contain and determine their effectiveness (see Section 22(2)6 of the CWA). The requirement for monitoring policies to assist in implementing Great Lakes targets is unique from the other monitoring policies for drinking water threats in the plan. This is because it is anticipated that while a Great Lakes target might be set for a particular parameter that is causing concern for drinking water, it might be difficult to fully implement a policy that mandates a reduction in the particular parameter without first knowing the bulk of the source(s) of the contaminant. General knowledge about the source may be available, but the extent and specific

locations of sources may not be as clear. In addition, knowledge about the effect of in-lake hydrodynamics, such as near-shore processes, may add further complexity.

Although there are various ways of formulating policies governing the monitoring of Great Lakes target policies, the government believes that a minimum level of content will promote a level of consistency in monitoring policies across the province, and provide all stakeholders with clarity on the monitoring activities themselves. **The province is considering requiring through regulations that source protection plans list, at a minimum, a set of specific details regarding each Great Lakes target monitoring policy, including:**

- **The objective of the monitoring policy**
 - This will clarify the purpose of the policy and, where applicable, which CWA provision(s) the policy fulfils (e.g., assist in implementing a Great Lakes target policy; determining effectiveness; monitoring implementation; tracking compliance; filling knowledge gaps, etc.)
- **The desired results of the monitoring activities where the activities are related to drinking water issues**
 - where Great Lakes target policies relate to a drinking water issue, include a description of the desired results of monitoring activities to demonstrate the effect of the Great Lakes target policy(ies) in addressing the drinking water issue (e.g., improvement in the concentrations of a specific parameter within two years of the policy being implemented)
- **A description of the monitoring activities / programs, including:**
 - What will be measured (e.g., what information will be collected, or what parameter will be monitored)
 - the sources of data to be used, if applicable (e.g., surveys, site visits, review of records)
 - how often information will be collected (monthly, quarterly, yearly)
 - parties who will be responsible for collecting, summarizing, and reporting on the monitoring data (which designated public body(ies)) (as required in Section 22(5) of CWA)
 - the timeline for implementation of the monitoring policy
- **Identification of any data sets maintained by various parties (e.g., municipalities, conservation authorities, the province) that are critical to the implementation of the monitoring policies, for example any provincial, federal or non-governmental organization monitoring programs.**

It will be important for policy developers to engage the body(ies) that will be implicated by the details of any monitoring policy early in the policy development process to ensure the policy is feasible and, where possible, consistent with existing monitoring programs.

QUESTIONS:

Is the proposed content for inclusion in policies governing the monitoring of Great Lakes target policies appropriate? Too onerous? What additional information or changes, if any, do you propose and why?

5. Consultation and Engagement Requirements

Consultation and engagement with affected stakeholders and the public is a critical component of the source protection planning process. At its very foundation, the drinking water source protection program integrates public and municipal involvement through the formation of diverse and locally-representative source protection committees. Membership on committees consists of 1/3 municipal, 1/3 sectoral, and 1/3 environmental, health, and other interests of the general public. In addition, the Source Protection Committees Regulation (O. Reg. 288/07) under the Act provides for First Nations representation on committees where a source protection area or region includes any part of a band's reserve.

The first key elements of the program, namely the terms of reference and assessment report, have been structured to rely on the local-level decisions of each committee and require extensive consultation and engagement with the public, municipalities, and affected persons across the source protection area. For example, the CWA and its regulations required notification of these entities at the start of the terms of reference process and at the time that draft and proposed terms of reference were available for review.

Similarly, the CWA and its regulations require source protection committees to engage the public and municipalities when assessment reports are drafted. This has already begun in some source protection areas and regions. Importantly, source protection committees are required to individually notify every person known to be engaging in activities which are significant drinking water threats of consultation opportunities regarding the draft assessment report.

Under this framework, the source protection planning process in Ontario ensures that every opportunity is made available to affected and interested parties to contribute to the preparation of assessment reports and source protection plans.

The province is considering the adoption of an approach for source protection plan consultation that is similar to the consultation and notification requirements that are required for the terms of reference and the assessment reports developed under the CWA.

Early engagement efforts that take place either before (e.g., while consulting on the local assessment report) or during the preliminary stages of policy development should provide valuable information, such as:

- increased understanding of current measures / actions / practices / procedures, etc., that are in place to reduce risks
- which risk reduction measures are commonly / rarely used in the area(s) where the policy will apply
- best practices currently in place among “leaders” in the field
- the effectiveness of the existing risk reduction measures
- who is always in compliance with existing regulatory requirements
- who carries out ‘beyond compliance’ initiatives
- who has demonstrated commitment to environmental protection.

It is expected that the information assessed during early engagement efforts, along with ministry on guidance risk reduction (provincial risk management catalogues), will guide policy developers as they determine:

- which additional measures, if any, need to be applied to the activity to reduce its risk level
- the level of effort required to put those additional measures in place
- the extent to which persons and businesses engaged in the threat are receptive to pro-active and voluntary risk reduction actions
- which policy approach(es) are available and best suited to reduce the risk of the threat under consideration, and where they are best suited
- the draft policy for the threat under consideration.

Information collected during engagement and consultation efforts associated with the assessment reports for each source protection area may also provide source protection committees with valuable information to inform the policy development process, such as understanding:

- The current measures / actions / practices / procedures, etc., that are in place to reduce risks
- Which risk reduction measures are commonly / rarely used
- The extent to which persons or businesses engaged in the threat are receptive to pro-active and voluntary risk reduction actions (such as those promoted through education, outreach, and incentives, as opposed to regulatory approaches like provincial instruments or the future risk management plans established under S. 58 of the CWA).

The manner in which and the extent policy developers carry out the early engagement efforts may differ depending on the threat that is the subject of policy development, the number of times the threat occurs in the source protection area, and the level of knowledge or expertise already available to the policy developers about the threat, including their understanding of local persons and businesses engaged in the threat.

Although early engagement efforts require planning, time and resources, the long-term outcomes can make the effort well worth while. When persons that will be affected by a project's outcome are engaged early in the planning process, and feel an aspect of ownership about the resulting policy, the outcome can be very positive and have a higher degree of success (e.g., more readily accepted and integrated; fewer compliance issues).

QUESTIONS:

To what extent should the government regulate early engagement efforts? What do you think is the "right" level of early engagement? Without the information gathered from early engagement efforts, how else could a policy developer determine the appropriate details (e.g., implementation approach, risk reduction measures), to include in plan policies? Please share your rationale for your response.

Table 3: Proposed Regulatory Requirements Under Consideration Governing Consultation During the Development of a Source Protection Plan

Consultation and Engagement Topics	Plan Development Process Stage	Required or Discretionary	Rationale and Benefits	Methods
Engage all or a subset of persons or business associated with the activities identified in AR as <i>significant</i> drinking water threats to understand existing approaches, current best practices, “leaders” in the field, challenges, etc, as determined necessary by the policy developers as part of, or prior to, brainstorming of action statements within the policy development process.	Pre-and/or during policy development (e.g., brainstorming, formulating action statements)	Discretionary – depends on threat under consideration, level of expertise and knowledge available to policy developer, etc.	May result in valuable information to contribute to brainstorming, formulating action statements, and considering the applicability of the policy throughout the source protection area.	<ul style="list-style-type: none"> Options may include formal or informal meetings, surveys, telephone conversations, etc.
Engage municipalities and First Nations associated with the source waters or that may have an interest in the threat policy, monitoring policy, or Great Lakes target policy under consideration early in the policy development process. Where a monitoring policy under development relies on information from or affects other public bodies (e.g., source protection authority, province, federal, NGO), engage the public body(ies) in discussions early in the policy development process.	Policy development	Required	Will ensure that First Nation, municipal, and other public body interests are considered and contemplated as draft policies are formulated. Local information can help guide, modify, and tailor draft threat policies to best suit the needs and interests of stakeholders in a source protection area.	<ul style="list-style-type: none"> Notice and offer of a meeting with First Nations, municipalities, and other public bodies associated with the source waters or that may have an interest in the policy(ies) under consideration before formalizing draft policies.
Invite input from the public, municipalities, First Nations, communities, business, and other stakeholders affected by the plan (may include select provincial and federal ministries) on the draft source protection plan. Directly notify the property owners associated with the activities that are or would be a significant threat or persons and businesses that reside in the areas where threats are or would be significant (e.g.,	Draft SPP	Required	An opportunity to receive comments through consultation efforts on the draft source protection plan will enable policy developers to consider and modify draft policies as appropriate.	<ul style="list-style-type: none"> Publish and make available for inspection the draft source protection plan on the Internet and at one or more additional locations that, in the opinion of the source protection committee, is sufficiently accessible to give the public and property owners a reasonable opportunity to inspect the draft. Minimum 1 public meeting per source protection area* Advertising of the meeting done a minimum of 21

Consultation and Engagement Topics	Plan Development Process Stage	Required or Discretionary	Rationale and Benefits	Methods
<p>vulnerability of 8 or greater and other areas affected by drinking water issues) and invite them to review and comment on the draft source protection plan.</p> <p>Where plan policies may affect or be of interest to First Nations, municipalities, or other public body (e.g., source protection authority, provincial ministry, federal ministry) directly notify the First Nation community, municipalities and other public body(ies) and invite them to review, discuss, and/or comment on the draft source protection plan.</p>			<p>Directly contacting property owners in the areas associated with significant threat activities (wellhead protection areas and intake protection zones – may extend if a drinking water issue had been linked to a threat outside these areas) will provide those that may be directly affected by the policies an opportunity to review and comment on the draft policies.</p>	<p>days prior to the meeting.</p> <ul style="list-style-type: none"> Notification of the availability of the draft source protection plan and meeting must be done through a minimum of one newspaper that provides general circulation in the source protection area and posted on the Internet. Notification must also be directly made to all First Nations and municipalities in the source protection area, other public bodies that are affected by plan policies, as well as residences and businesses in intake protection zones and wellhead protection areas where a threat is or would be significant in such a manner as, in the opinion of the source protection committee, is sufficient to bring attention to the notice. The opportunity to comment must be provided at the meeting and for a minimum period of time of 60 days following the meeting. <p>* note: although only one public meeting is required per area, depending on the degree of complexity of policies and number of stakeholders potentially affected, SPCs may wish to consider additional meetings on either a municipal- or sector-basis.</p>
<p>Invite input from the public, municipalities, First Nations, communities, business, and other stakeholders affected by the plan (may include select provincial and federal ministries) on the proposed source protection plan.</p>	Proposed SPP	Required	<p>An additional consultation effort provided to the public and the same persons consulted on the draft source protection plan will afford those</p>	<ul style="list-style-type: none"> Publish and make available for inspection the proposed source protection plan on the Internet and at one or more additional locations that, in the opinion of the source protection committee, is sufficiently accessible to give the

Consultation and Engagement Topics	Plan Development Process Stage	Required or Discretionary	Rationale and Benefits	Methods
<p>Directly notify the property owners associated with the activities that are or would be a significant threat or persons and businesses that reside in the areas where threats are or would be significant (e.g., vulnerability of 8 or greater and other areas affected by drinking water issues) and invite them to review and comment on the proposed source protection plan.</p> <p>Where plan policies may affect or be of interest to First Nations, municipalities, or other public body (e.g., source protection authority, provincial ministry, federal ministry) directly notify the First Nation community, municipalities and other public body(ies) and invite them to review, discuss, and or comment on the proposed source protection plan.</p>			<p>persons another opportunity to review the proposed source protection plan and see how their comments were considered and incorporated prior to the proposed source protection plan being submitted to the Minister.</p>	<p>public and property owners a reasonable opportunity to inspect the proposed plan.</p> <ul style="list-style-type: none"> • Notification of the availability of the proposed source protection plan must be done through a minimum of one newspaper that provides general circulation in the source protection area and posted on the Internet. • Notification must also be directly made to all First Nations and municipalities in the source protection area, other public bodies that are affected by plan policies, as well as residences and businesses in intake protection zones and wellhead protection areas zones where a threat is or would be significant in such a manner as, in the opinion of the source protection committee, is sufficient to bring attention to the notice. • The opportunity to comment must be provided for a minimum period of time of 30 days following publication of the proposed plan.

Collaboration and Municipal Involvement

Although the terms of reference workplan sets out the body(ies) responsible for leading the tasks required to complete a source protection plan, the government's expectation is that these leads, which may include municipalities, source protection authorities, and source protection committees, will work collaboratively and with other interested parties to develop the most suitable policies to protect local drinking water sources. In particular, municipal planning staff are a key group to lead or participate in policy development. It is essential to involve municipalities due to their significant role in implementing source protection plans. For example, municipalities must amend their official plans and zoning by-laws to conform with significant threat policies, and any decisions municipalities make under the Planning Act and Condominium Act, 1998 must conform with significant threat policies. In addition, the CWA requires municipalities to establish risk management officials and risk management inspectors for the purpose of Part IV of the Act, including enforcing policies that result in risk management plans, prohibition, and restricted land uses.

Concerned about a source protection plan policy?

Members of the public, businesses, and other interested persons have the opportunity to express comments or concerns. The first opportunity is through participation as a public observer at source protection committee meetings throughout the assessment report and plan development phases. Committee meetings provide an opportunity to become informed about scientific work and the committees' viewpoints and to bring forward information the committee may not be aware of. Another opportunity is through attending and actively participating in public consultation sessions on both the assessment report and source protection plan, where concerns can be shared and documented and additional information provided for the committee's consideration.

Once the plan is submitted to the ministry for approval, Section 28 of the CWA provides an opportunity for any person to petition the Minister for a hearing before a Minister-appointed hearings officer. Concerns and supporting information may be voiced at the hearing. The hearings officer must make written recommendations to the Minister within 60 days of the conclusion of the hearing.

Following approval of a source protection plan, Section 60 of the CWA provides further opportunity to challenge policies in the plan and their applicability to unique situations. This section of the Act allows a person to conduct their own risk assessment, in accordance with the regulations and the rules. This can be done on their own or through the services of a recognized professional. This risk assessment can then be given to the local risk management official for consideration. If the risk management official is satisfied that the risk assessment shows the activity being undertaken or proposed to be undertaken is not or will not become a significant threat, they may provide an exemption from any plan policy which applies a prohibition or risk management plan to that activity at that location.

The government expects that where a local terms of reference does not explicitly identify municipalities as leading the policy development process, municipalities will be involved extensively in policy development to support source protection committees (e.g., bringing forward draft policies for committee discussion).

The province is considering including in forthcoming regulations a requirement to include in the source protection plan a summary of consultation, engagement, and collaboration efforts. Also under consideration is the requirement to include a description and supporting documentation demonstrating how the consultation requirements were satisfied, in support of, or as part of, the plan.

Consultation, engagement, and collaboration efforts are anticipated to help policy developers formulate policies that are satisfactory across jurisdictional boundaries (e.g., upper and lower tier municipalities, across municipalities within a source protection

area), since consistency is expected to make implementation easier. Where agreement cannot be reached in multi-jurisdictional matters, future ministry guidance may suggest that a description of the attempts to resolve the matter and outstanding comments should be noted with the submission of the plan.

Cross-Border Engagement and Consultation

Where wellhead protection zones or intake protection areas cross provincial lines into the United States or other provinces, the ministry encourages source protection authorities and committees to proactively share information with the other jurisdiction early in the source protection planning process.

By informing these other jurisdictions about the work being undertaken to develop the assessment report and source protection plan, policy developers may create more opportunities to engage the other jurisdictions. Discussions may reveal valuable information, such as what they are doing today in terms of assessing or monitoring drinking water threats, as well as existing actions that may be in place to reduce the risk threats pose to source water.

QUESTIONS:

Do you agree with the proposed consultation topics for the source protection plan? What additional consultation topics, if any, should be included? What is your opinion on identifying certain consultation topics as “discretionary” versus “required”? Are the proposed regulatory requirements associated with each consultation topic appropriate, too onerous, or missing any key requirements? Please share your suggested changes and supporting rationale.

5.1 First Nations Engagement and Consultation

One of the cornerstones of drinking water source protection is developing good working relationships with First Nations through effective engagement throughout the drinking water source protection planning process. First Nations will continue to be engaged by source protection authorities and source protection committees, as well as the Ministry of the Environment, who will all work together to encourage First Nations to participate in the drinking water source protection planning process, and to build relationships. The engagement of First Nations will graduate to consultation where the Crown’s duty to consult is triggered.

The Crown’s duty to consult originates from the constitutional protection of Aboriginal rights and treaty rights under Section 35 of the Constitution Act, 1982. The Crown has a duty to consult with Aboriginal peoples where it has knowledge of the existence or potential existence of an Aboriginal right or treaty right and contemplates conduct that may adversely affect that right (Aboriginal peoples refer to Inuit, Métis, and First Nations). The ministry will strive to work in partnership with the source protection authorities and First Nations to develop an appropriate consultation process where the need arises.

The ministry anticipates that the precautionary and inherently protective nature of the CWA may benefit both source water and Aboriginal interests in the natural environment. To ensure policy developers have the most up-to-date and relevant information available during the policy development process, the **ministry is considering requiring in forthcoming regulations that source protection authorities and source protection committees pro-actively engage First Nations communities early in the planning**

process. The intent of this engagement is to pro-actively determine how source protection plan policies may potentially impact on the interests of First Nations. These discussions with First Nations may occur at the assessment report stage of the planning process.

In cases where a draft source protection plan policy has the potential to have an adverse affect on an Aboriginal right or treaty right, the ministry is committed to entering into the consultation process with affected First Nations. Both the ministry and the source protection authority will work together to engage and, where necessary, consult with First Nations.

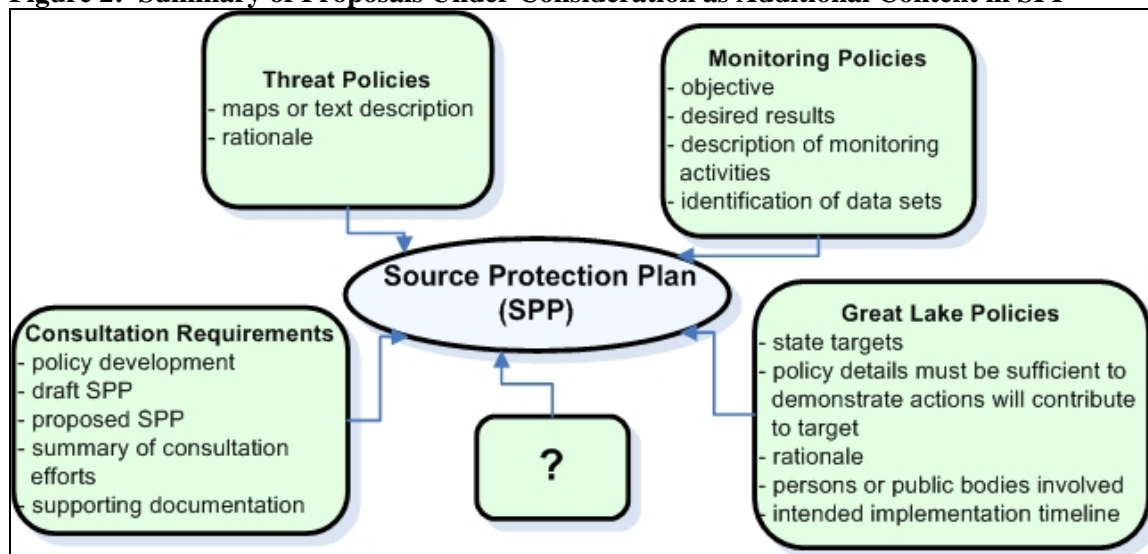
QUESTION:

What other actions should be taken to ensure First Nation concerns and Aboriginal rights and treaty rights are considered in the policy development process and that policies do not have a deleterious affect on these rights? Please share your rationale for your response.

6. Proposals Summary

Throughout this paper, the source protection plan requirements set out in the CWA and considerations for additional content in future regulations have been discussed. A summary of this information is illustrated in Figure 2.

Figure 2: Summary of Proposals Under Consideration as Additional Content in SPP



QUESTION:

What additional content, if any, should be included in the source protection plan? Please provide your rationale for your response.

7. Administrative Requirements

The CWA leaves the requirements of several administrative issues to be prescribed in regulations governing the preparation and content of source protection plans. The purpose of this section is to present considerations for additional requirements not specified under the CWA related to provisions for (i) amending a plan, and (ii) generating annual reports).

7.1 Annual Progress Reports

The success of source protection planning depends on implementing the plan, tracking the extent to which objectives in the plan are being achieved (i.e., tracking compliance with the plan's policies), and modifying the plan when needed or when the plan is renewed/updated. The CWA (Section 46) requires that annual progress reports be generated, and that these reports include:

- a description of the measures taken to implement the plan
- the results of the monitoring programs established through monitoring policies set out in the plan
- a description of the extent to which the objectives of the plan are being achieved
- any other content prescribed by the regulations.

The annual progress reports will document the extent to which plan policies are achieving the overall goal of reducing and managing risks to drinking water sources. Annual reports will be prepared in such a way to ensure private information is protected, in accordance with the Municipal Freedom of Information and Protection of Privacy Act.

The province is considering requiring in regulations that the annual progress reports also include the following details:

- an explanation for any aspects of the plan that have not been implemented within +/- six months of the timelines associated with plan policies
- a summary of the effectiveness of plan policies on (i) documented water quality or quantity problems (i.e., drinking water issues) and (ii) conditions that result from a past activity
- a summary of progress made on addressing research needs or knowledge gaps.

These additional requirements for the annual report are intended to provide greater transparency and public accountability with respect to implementation of the source protection plan.

QUESTION:

Are the proposed regulatory requirements associated with the annual reports appropriate, too onerous, or missing any key requirements? If so, please indicate which items should or should not be included in the reports with your response.

7.2 Plan Reviews and Plan Amendments

When the Minister approves a source protection plan, Section 36 of the CWA requires that the Minister specify the date by which a review of the plan must begin. The plan review process will kick-start a new cycle of source protection planning. During this new round, source protection committees will be required to re-examine their terms of reference, assessment report, and source protection plan, and to develop an updated terms of reference, assessment report, and source protection plan. Source protection authorities are responsible for ensuring that the review is conducted in accordance with the CWA and its regulations (see Section 36(3) of the CWA).

There may be circumstances where, to protect source water, an amendment to the source protection plan is determined to be necessary before the plan review takes place or the updated plan is developed. Section 34 of the CWA provides for a source protection authority to propose amendments to a source protection plan in circumstances prescribed by the regulations. The Minister also has the authority to require plan amendments (under Section 35 of the CWA). Regardless of who initiates the plan amendment process, since the source protection committee is responsible for the development of the source protection plan, **the province is considering setting out in regulations that the source protection authority engages and involves the source protection committee in the plan amendment process.**

The province is considering setting out the following circumstances in regulations for which a source protection authority may propose amendments to the source protection plan:

1. An amended assessment report has been approved by the Director.
2. It is not possible to implement the existing threat policy.
3. The objectives of the plan related to the policy are not being achieved (e.g., the policy is not being complied with; voluntary measures resulting from education and outreach policies are not being adopted as anticipated; or the policy is not effective—a drinking water issue occurs).
4. The existing threat policy is linked to a drinking water issue and monitoring results demonstrate that the issue is getting worse.
5. The public body identified in the plan policy to carry out an action can not do so or ceases to exist.

QUESTIONS:

What other circumstances, if any, should trigger the ability of the source protection authority to initiate an amendment to the approved source protection plan?

Where a source protection plan amendment is required for a source protection area, policy developers are anticipated to apply the same policy development process and considerations they used to formulate threat policies, with any necessary modifications.

Consultation Requirements for Plan Amendments

The province is considering including in regulations that drafts of the proposed source protection plan changes be published and made available for review and comment in the part of the source protection area that is affected by the proposed changes. In addition, it is proposed that notification of the proposed changes be given in such a manner that is, in the opinion of the source protection committee, sufficient to bring the notice to the attention of the public, property owners, municipalities, and Chief of any First Nations communities in the part of the source protection area that is affected by the changes. It is also proposed that the source protection committee be required to consider any comments received.

QUESTION:

Do you agree with the proposed requirements related to amended source protection plans, as outlined above? Please share your rationale for your response.

Overview and Next Steps

Regulations are required under the CWA to enable committees to complete source protection plans. A spectrum of policy approaches and how the ministry is considering enabling these in regulations have been discussed throughout this paper. Policy developers will have this broad spectrum available to them as they prepare source protection plans. Justification for the selection will be needed to promote transparency and accountability.

The CWA provides the basic legislative framework for the development of source protection plans. Many supporting details have been described in this paper and are anticipated to be discussed in greater detail in provincial guidance on policy development. Other details need to be clarified through regulations under the CWA, and these proposals and considerations have been described throughout this paper. The feedback received by the ministry on this discussion paper will be used to inform the drafting of forthcoming CWA regulations and provincial guidance documents governing the content and preparation of source protection plans. The ministry intends to post these future regulations on Ontario's Environmental Registry for comment, and to develop additional guidance materials in consultation with partners and stakeholders.

The ministry has developed this discussion paper before the completion of local assessment reports so that source protection authorities, committees, municipalities, the public, and other interested stakeholders have an opportunity to gain a deeper understanding of the analysis needed to develop effective source protection plans for their area. The ministry encourages these persons to consider the interim results of their local assessment report as they review the information proposed in this paper. Comments resulting from this exercise would be very beneficial to the ministry in developing and finalizing the future regulations and accompanying guidance.