



The Regional
Municipality
of Durham

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Pat M. Madill, A.M.C.T., CMM III
Regional Clerk

April 1, 2010

Ms. Debbie Scanlon
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Ministry of the Environment
Drinking Water Management Division
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REGION OF YORK
CLERK'S OFFICE
FILE NO. - P42



**RE: DRAFT REGULATION ON REQUIREMENTS FOR THE
CONTENT AND PREPARATION OF SOURCE PROTECTION
PLANS (EBR POSTING: 010-8766) (2010-J-7), OUR FILE: L14**

Ms. Scanlon, the Joint Health & Social Services, Finance & Administration, Planning and Works Committees of Regional Council considered the above matter and at a meeting held on March 31, 2010 Council adopted the following recommendations of the Committee:

- "a) THAT Joint Report #2010-J-7 be endorsed and submitted to the Ministry of the Environment (MOE) as Durham Region's response to EBR Posting 010-8766;
- b) THAT Regional Council recommends that the Province should:
 - i) Make the language of the regulation much clearer and more direct so the reader may easily understand and interpret it, or provide a simplified guide that clearly explains the source protection plan regulation and for areas where several protective acts (e.g. Lake Simcoe Protection Act, Greenbelt Act) are in place, clarifies which piece of legislation takes precedence;
 - ii) Provide permanent funding for municipalities to build staff capacity to participate in the ongoing source protection process as they have done for conservation authorities;
 - iii) Extend the deadlines for the assessment reports (ARs) and source protection plans (SPPs) to allow for more thorough municipal review and commentary on draft documents. This is critical given that municipalities are a key delivery partner;



- iv) Integrate drinking water source protection requirements into any provincial mechanisms that govern prescribed threat activities;
- v) Be the one source of up-to-date, credible geo-referenced information on the provincial instruments required by the source protection committees to develop the source protection policies and plan in a timely way;
- vi) Ensure that communication from the SPCs to businesses and residents about potential significant drinking water threats will be handled with great care and in a coordinated manner;
- vii) Revise section 19.8 of the draft regulation to provide a clearer definition of transport pathways and to remove the requirement for municipalities to notify the SPC of provincial approvals related to an application that would create new transport pathways;
- viii) Provide, in the explanatory document, the rationale for any amendments the Province makes to the SPP after it is submitted for approval;
- ix) Fund municipalities to acquire the hardware and software and develop the systems and capacity for data management to support SPP implementation, monitoring and enforcement activities at the municipal level;
- x) Use data collected in the annual reports to evaluate the effectiveness of the source protection plans and enforcement mechanisms in protecting or improving Ontario's drinking water sources;
- xi) Ensure proactive, cost-efficient and consistent record-keeping by the SPCs by revising the regulation to include a requirement for the SPC to adopt an appropriate records retention schedule based on a model developed by the Province which would:
 - i. suggest retention periods for records in all media based on the function of the records series created or collected by the SPC;
 - ii. identify appropriate repositories for the care of and provision of access to electronic data and archival records; and

- iii. identify the custodians of the records for purposes of public access and FIPPA;
- xii) Properly resource the SPC records and data management functions to ensure that:
 - i. decisions are properly documented in case of appeals or other legal actions; and
 - ii. electronic data are properly maintained so that the data continue to be accessible for scientific study;
- xiii) Revise the regulation to require that the source protection plan contain a workplan and budget for implementation. When the Ministry approves the source protection plan they would need to:
 - i. commit the Provincial resources needed to deliver that plan; and
 - ii. negotiate with CAs and municipalities the timing and allocation of financial commitments to support their roles in source protection plan implementation;
- xiv) Provide start-up funding for the Part IV enforcement function and permanent funding for the ongoing costs (e.g. training costs and information systems) associated with the enforcement function;
- xv) Better delineate the risk management function and deliver it at the provincial level as part of a one-window enforcement function;
- xvi) Specify in the regulation who is qualified to develop risk management plans on behalf of landowners or persons engaging in prescribed threat activities; and
- xvii) Compensate farmers, residents and lower-tier municipalities in intake protection zones (IPZs) and wellhead protection areas (WHPAs) for the costs to comply with source protection policies and provide incentives and technical assistance to support changes or adopt practices that reduce drinking water threats below the "significant threat" level; and

- c) THAT a copy of Joint Report #2010-J-7 be forwarded to the Minister of the Environment, the Minister of Municipal Affairs and Housing, the Association of Municipalities of Ontario, Durham Region local area municipalities and conservation authorities, Durham Region MPP's, the Regions of York, Halton and Peel, the Durham Region Federation of Agriculture, the GTA Agricultural Action Committee, the Greater Toronto Area Countryside Mayors' Alliance, the Durham Agricultural Advisory Committee, and the Economic Development and Tourism Department, for their information."

Please find enclosed a copy of Joint Report #2010-J-7 for your information.



P.M. Madill, AMCT, CMM III
Regional Clerk

PMM/tf

Enclosure

- c: The Honourable J. Gerretsen, Minister of the Environment
The Honourable J. Bradley, Minister of Municipal Affairs & Housing
W. Arthurs, MPP, Pickering/Scarborough East
C. Elliott, MPP, Whitby/Oshawa
J. O'Toole, MPP, Durham
J. Ouellette, MPP, Oshawa
R. Johnson, MPP, Haliburton-Kawartha Lakes-Brock
J. Dickson, MPP, Ajax/Pickering
P. Vanini, Association of Municipalities of Ontario
K. Yellowlees, Durham Region Federation of Agriculture
GTA Agricultural Action Committee
M. Morrison, Greater Toronto Area Countryside Mayors' Alliance
S. Lathan, Regional Clerk, Regional Municipality of Halton
C. Reid, Regional Clerk, Regional Municipality of Peel
D. Kelly, Regional Clerk, Regional Municipality of York
M. deRond, Clerk, Town of Ajax
T. Gettinby, Clerk, Township of Brock
P.L. Barrie, Clerk, Municipality of Clarington
S. Kranc, Clerk, City of Oshawa
D. Shields, Clerk, City of Pickering
K. Coates, Clerk, Township of Scugog
D. Leroux, Clerk, Township of Uxbridge

D. Wilcox, Clerk, Town of Whitby
R. Powell, Chief Administrative Officer, Central Lake Ontario
Conservation Authority
L. Laliberte, General Manager, Ganaraska Region Conservation
Authority
R. Messervey, Chief Administrative Officer, Kawartha Conservation
D.G. Wood, Chief Administrative Officer, Lake Simcoe Region
Conservation Authority
B. Denney, Chief Administrative Officer, Toronto & Region
Conservation Authority
R.J. Clapp, Commissioner of Finance
C. Curtis, Commissioner of Works
A.L. Georgieff, Commissioner of Planning
D. Lindeblom, Director, Economic Development & Tourism



The Regional Municipality of Durham

To: Finance and Administration, Health and Social Services,
Planning and Works Committees

From: R.J. Clapp, Commissioner of Finance
R.J. Kyle, Commissioner and Medical Officer of Health
A.L. Georgieff, Commissioner of Planning
C. Curtis, Commissioner of Works

Report No.: 2010-J-07

Date: March 23, 2010

SUBJECT:

Draft Regulation on Requirements for the Content and Preparation of Source Protection Plans (EBR Posting: 010-8766)

RECOMMENDATIONS:

- a) THAT Joint Report 2010-J-7 be endorsed and submitted to the Ministry of the Environment (MOE) as Durham Region's response to EBR Posting 010-8766;
- b) THAT Regional Council recommends that the Province should:
 - i) Make the language of the regulation much clearer and more direct so the reader may easily understand and interpret it or provide a simplified guide that clearly explains the source protection plan and enforcement regulation;
 - ii) Provide funding for municipalities to build staff capacity to participate in the ongoing source protection process as they have done for conservation authorities;
 - iii) Extend the deadlines for the assessment reports (ARs) and source protection plans (SPPs) to allow for more thorough municipal review and commentary on draft documents. This is critical given that municipalities are a key delivery partner;
 - iv) Integrate drinking water source protection requirements into any provincial mechanisms that govern prescribed threat activities;

- v) Be the one source of up-to-date, credible geo-referenced information on the provincial instruments required by the source protection committees to develop the source protection policies and plan in a timely way;
- vi) Ensure that communication from the SPCs to businesses and residents about potential significant drinking water threats will be handled with great care and in a coordinated manner;
- vii) Revise section 19.8 of the draft regulation to provide a clearer definition of transport pathways and to remove the requirement for municipalities to notify the SPC of provincial approvals related to an application that would create new transport pathways;
- viii) Provide, in the explanatory document, the rationale for any amendments the Province makes to the SPP after it is submitted for approval;
- ix) Support municipalities to acquire the hardware and software and develop the systems and capacity for data management to support SPP implementation, monitoring and enforcement activities at the municipal level;
- x) Use data collected in the annual reports to evaluate the effectiveness of the source protection plans and enforcement mechanisms in protecting or improving Ontario's drinking water sources;
- xi) Ensure proactive, cost-efficient and consistent record-keeping by the SPCs by revising the regulation to include a requirement for the SPC to adopt an appropriate records retention schedule based on a model developed by the Province which would:
 - i. suggest retention periods for records in all media based on the function of the records series created or collected by the SPC;
 - ii. identify appropriate repositories for the care of and provision of access to electronic data and archival records; and
 - iii. identify the custodians of the records for purposes of public access and FIPPA;
- xii) Properly resource the SPC records and data management functions to ensure that:

- i. decisions are properly documented in case of appeals or other legal actions; and
 - ii. electronic data are properly maintained so that the data continue to be accessible for scientific study;
 - xiii) Revise the regulation to require that the source protection plan contain a workplan and budget for implementation. When the Ministry approves the source protection plan they would need to:
 - i. commit the Provincial resources needed to deliver that plan; and
 - ii. negotiate with CAs and municipalities the timing and allocation of financial commitments to support their roles in source protection plan implementation;
 - xiv) Provide funding for the start-up and support for the ongoing costs (e.g. training costs and information systems) associated with this enforcement function;
 - xv) Better delineate the risk management function and deliver it at the provincial level as part of a one-window enforcement function;
 - xvi) Specify in the regulation who is qualified to develop risk management plans on behalf of landowners or persons engaging in prescribed threat activities; and
 - xvii) Assist farmers and residents in intake protection zones (IPZs) and wellhead protection areas (WHPAs) to comply with source protection policies through financial incentives and technical assistance to make changes or adopt practices that reduce drinking water threats below the "significant threat" level; and
- c) THAT a copy of Joint Report No. 2010-J-7 be forwarded to the Minister of the Environment, the Minister of Municipal Affairs and Housing, the Association of Municipalities of Ontario, and Durham Region area municipalities and conservation authorities for their information.
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REPORT:**1. PURPOSE**

1.1 This report provides:

- a) an update on the source protection planning process;
- b) a summary of the Ministry of the Environment (MOE) Draft Regulation on Requirements for the Content and Preparation of Source Protection Plans;
- c) recommendations and comments to the MOE in response to the EBR posting; and
- d) an outline of next steps in the source protection process.

2. BACKGROUND

2.1 In the summer of 2009, the MOE consulted the public, municipalities and conservation authorities on a Discussion Paper on the Requirements for the Content and Preparation of Source Protection Plans. The Region's response was outlined in Report 2009-J-27.

2.2 The draft regulation was posted on the Environmental Bill of Rights registry on January 25, 2010 (EBR 010-8766) for public review and comment. The deadline for submitting a response to the MOE is March 26, 2010.

3. STATUS OF SOURCE PROTECTION PLANNING PROCESS**Development of Assessment Reports**

3.1 Since the passage of the *Clean Water Act* in 2006, source protection committees have been working to develop source protection plans, focused on safeguarding Ontario's drinking water. Source protection authorities (SPAs) and the Region are presently finishing the various studies and analyses that comprise the **draft assessment reports (ARs)**. The purpose of the ARs is to delineate areas in which municipal drinking water sources are vulnerable to contamination, (such as wellhead areas), and identify activities

in those areas that pose drinking water threats.

- 3.2 As it receives drafts of the assessment reports for review, the Region is getting an early indication of the number of potential **significant drinking water threats**, as defined by the CWA Technical Rules. These Technical Rules require inclusion in the AR of every known or potential significant threat based on a "windshield" survey of properties that lie all, or partially within, the wellhead protection area (WHPA) or intake protection zone (IPZ).
- 3.3 The AR process is essentially the first step in a **screening process**. This step identifies **every possible significant drinking water threat** in the vulnerable area. As proposed in the draft regulation, the **next step is to gather more information** about those potential threats and narrow down the list to those that constitute **actual threats**.
- 3.4 The assessment report also identifies **drinking water issues**, which are documented conditions, such as water quality results which are trending towards the limit of a drinking water standard in a drinking water supply. **Drinking water issues** may be addressed by the operator of the drinking water system through ongoing monitoring or other actions.
- 3.5 Once the draft ARs are completed, it is proposed that the process of **early consultation** involving notification, and information gathering from residents, property owners and municipalities will begin. SPCs will be in direct contact with property owners in protected areas and individuals and businesses engaged in activities that have been identified as significant drinking water threats in these areas. It is anticipated that public interest in the source protection process will increase as a result.
- 3.6 The additional information gathered should help rule out many of the activities identified as potential threats because the SPC will find that the potential threat activities:
- do not exist on the property; OR
 - that sufficient safeguards or mitigations are in place to reduce the threat below the threshold for "significant".

- 3.7 During the ensuing public consultation period, Regional staff will also review all assessment reports for the five source protection areas that cover parts of Durham Region. The source protection committees have to document consultation efforts and take into consideration the responses to their draft reports as they prepare the final version of the assessment reports.
- 3.8 The deadlines for the final assessment reports to be submitted for MOE approval range from June through August 2010 for the three source protection regions (SPRs) in Durham Region. Delays in completing the assessment report studies mainly occurred because the MOE was late in delivering the technical rules that guided the studies. MOE later revised the rules necessitating further changes and granted some extension of the timelines for completion of assessment reports. Some of the source protection committees are seeking additional deadline extensions.

The Lake Ontario Collaborative Study

- 3.9 This study will provide the assessment report components related to Lake Ontario drinking water supply plants. The study will delineate intake protection zones (IPZs) for each municipal drinking water intake along the north shore of Lake Ontario. In addition, the work will model various spill scenarios and will identify any significant drinking water threats within the IPZs.
- 3.10 The Collaborative Study has taken longer than initially anticipated. Its findings will form a major consideration for the source protection regions along the lake and will be incorporated into updated assessment reports in 2011-2012 once the Study is completed.
- 3.11 The source protection committees are required by the CWA to develop policies for any significant drinking water threats within the IPZs as identified in the Collaborative Study. The SPCs may also make recommendations to the MOE about the need for broader Great Lakes policies. MOE staff has indicated that the Minister will not establish any provincial Great Lakes policies and targets in the first set of source protection plans.

Development of Source Protection Policies and Plans

- 3.12 The next deliverables for the SPCs are the policies that will form the source protection plans. The draft regulation outlines the process, scope and content of the plan and the types and effects of policies that must be or may be included in the source protection plan. Some new components of the SPP process have been identified in the draft regulation. One new element is the **early consultation** and information gathering process needed to verify the existence of significant drinking water threats. Another new element is the inclusion of an **explanatory document** to track the rationale for policy choices made by the SPC.
- 3.13 According to the legislated timeline, the SPC must complete the source protection plans by August 2012. If that occurs, **approved source protection plans** should begin to roll out in 2012. Although the MOE extended the assessment report deadlines, they have maintained that the original deadline for completion of the SP plans will not change.
- 3.14 Once the source protection plans are approved, municipalities will be required to bring their Official Plans and operations into compliance with the SPPs by a specified date. Municipalities will also be expected to take up the responsibility to deliver enforcement of the SPPs as delegated to them under the *Clean Water Act*, Part IV (Enforcement).

4. SUMMARY OF DRAFT REGULATION

- 4.1 The draft regulation specifies the requirements and content of the plan including:
- objectives of the source protection plan and limits on its scope
 - mandatory policies:
 - to deal with and monitor all significant drinking water threats
 - to achieve Great Lakes targets should these be set by the Minister
 - discretionary policies on matters such as:
 - transport pathways
 - conditions from past activities
 - activities that pose low or moderate threats

- designation of areas where risk management tools or restricted land uses would apply
 - assignment of responsibilities to public bodies
- identification of strategic actions
- a summary of the legal effect and duties associated with the three policy types: **conform to**, **have regard to** and **strategic actions**
- records retention requirements
- the process for public consultation on the source protection plan (including required consultation with municipalities)
- a summary of the consultation conducted
- the list of prescribed instruments that must conform to or have regard for source protection plan policies
- an explanatory document that provides:
 - a rationale for prohibition policies
 - a summary of comments received during consultation and how they were incorporated into the plan
 - an explanation of how climate change considerations were taken into account in developing the policies
- the process for hearings into plan issues
- the process for plan reviews and amendments.

4.2 Section 1.0.1 of the draft regulation lists (i.e. **prescribes**) eighteen provincial instruments that must **conform with** significant drinking water threat policies and **have regard to** other policies. These include:

- various licences and permits under the *Aggregate Resources Act* (1 - 6)
- Certificates of Approval for waste disposal sites or waste management systems issued under the *Environmental Protection Act* (EPA)
- Renewable Energy approvals issued under the *EPA*
- a variety of approvals relating to dams under the *Lakes and Rivers Improvement Act*
- nutrient management plans and strategies made under the regulations to the *Nutrient Management Act*
- Permits to Take Water issued under the *Ontario Water Resources Act* (OWRA)
- sewage works approvals issued under the *OWRA*

- permits for exterminations issued under the *Pesticides Act*
- drinking water works permits issued under the *Safe Drinking Water Act*
- municipal drinking water licences under the *Safe Drinking Water Act*.

4.3 Other instruments may be prescribed in order to deal with a significant threat from a past activity (e.g. contaminated soils leaching into an aquifer). To avoid regulatory duplication, instruments covering certain prescribed activities such as sewage systems and waste disposal sites, which are regulated under other acts (*the EPA, the OWRA, or the Building Code Act*), are exempted from the list of prescribed instruments in this regulation.

4.4 Decisions under the *Planning Act* and the *Condominium Act* made by the Province, municipalities and the Ontario Municipal Board, must **conform to** the significant drinking water threat policies and Great Lakes policies of the source protection plan and **have regard to** other policies in the plan.

4.5 Use of the CWA Section 57 (risk management plans), 58 (prohibition) and 59 (restricted activities) regulatory tools is reserved for *significant drinking water threats* in wellhead protection areas (WHPAs) and intake protection zones (IPZs).

4.6 **Strategic action policies** set out in a source protection plan represent more of a “to do” list and have no legal effect. These actions will likely be implemented through programs or agreement by partners to undertake tasks and to publicly report back on progress.

4.7 The draft regulation requires specified bodies to monitor and annually report on measures taken to reduce threats. The processes for public consultation on the proposed policies and future plan amendments are also outlined.

4.8 In addition, the draft regulation includes provisions related to Part IV (Enforcement) of the *Clean Water Act* which is delegated to municipalities.

These provisions cover items such as:

- municipal powers to prohibit activities that pose significant drinking water threats in intake protection zones and wellhead protection areas

- qualifications of risk management officials
- contents of risk management plans
- use of the interim risk management plan authority
- designation of land uses based on Official Plans or zoning bylaws
- records retention requirements
- contents of annual reports by risk management officials.

5. **REGIONAL RESPONSE TO THE DRAFT REGULATION**

- 5.1 Regional staff from the CAO's Office, Finance, Health, Legal, Planning and Works departments assisted in the preparation of this report. Some staff attended MOE consultations on the draft regulation. The Region also invited input from the area municipalities at a meeting on March 9th. Comments, concerns and recommendations to improve the draft regulation are summarized below. Recommendations have been bolded and italicized.

Overwhelming complexity of the regulation and associated Acts and guidance documents

- 5.2 The draft regulation is another complex layer added to the already-complicated, multi-jurisdictional, science-based policy regime introduced by the *Clean Water Act*. Given that the proposed regulation has a direct impact on citizens, businesses, property owners and municipalities, it should be written to support ease of understanding. The style and structure of the current draft is very difficult to follow, with many references to provisions in other documents, which in some cases redirect the reader to yet another source.

The structure and language of the regulation must be much clearer and more direct to allow the reader to easily understand and interpret it. If that cannot be achieved in the legal document, there will need to be a plain language version - a simplified guide to source protection plans and enforcement.

- 5.3 The complexity of the legislation and regulatory regime is further amplified for Durham Region by several factors:

- The intent and policies of the CWA and source protection plans overlap with other protective acts and plans such as the *Lake Simcoe Protection Act* and Plan, *Oak Ridges Moraine Conservation Act* and Plan, the *Greenbelt Act* and Plan.
- Lands within the Region are under the jurisdiction of three different source protection committees and five different source protection areas. Participation in the multiple working groups that support the SPCs and, now, review of five sets of assessment reports, are placing a tremendous strain on Regional resources. Involvement in the development of five source protection plans will be equally or even more demanding of Regional staff.
- A single consistent set of Regional Official Plan and operational policies ultimately will be required to achieve Regional conformity with the five source protection plans, followed by conformity exercises in the eight area municipalities.

5.4

As a general comment, the concerns about the administrative complexity, new costs and additional workload involved in the SPP process expressed by the Region to the MOE in report 2006-COW-02 were entirely justified.

The Province should:

- ***provide funding for municipalities to build staff capacity to participate in the ongoing source protection process as they have done for conservation authorities; and***
- ***extend the deadlines for the assessment reports and source protection plans to allow for more thorough reviews of draft documents. This is critical given that municipalities are a key delivery partner.***

Missing Provincial Instruments

5.5

The regulation is silent on requiring best practices, approvals, licences or permits to carry out several known threat activities such as fuel delivery and

storage, or hazardous chemical storage or disposal.

- 5.6 Ministry staff has stated that the proposed prescribed instruments met certain tests, one of which was being "location-specific". There is a considerable body of provincial regulation that is "activity-specific" which could be modified to include general measures that could be required whenever that activity was being carried out in wellhead protection areas.

For any prescribed threat activity that is provincially-regulated, recognition of drinking water source protection should be integrated through the provincial mechanisms that govern that activity.

Communications challenges and the "guilty until proven innocent" approach

- 5.7 The way the assessment report rules are structured, the potential existence of a prescribed activity within a designated area constitutes a "threat". The identification of the threat does not take into account any safety or mitigation measures already in place to prevent environmental impacts. Several provisions of the regulation repeat the assumption that a threat exists until proven otherwise.

- 5.8. Sections 19 (3) & 19 (4) allow the SPC to act on a "belief that a person is engaging in a threat activity" and require that person to provide information to the SPC about the prescribed instruments that regulate the threat activity. Section 19 (4) is silent about whether information must be provided if the threat activity is not governed by a prescribed instrument.

Communication about significant threats from the SPC to businesses and residents will have to be handled with great care and in a coordinated manner. The terminology "significant drinking water threat" adopted in the *Clean Water Act* is rather alarming and will need to be carefully explained in all the AR communications and early notification letters.

- 5.9 In order to gain the buy-in and co-operation of property owners and users within a WHPA or IPZ, the approach needs to be collaborative and comprehensive, not a "threat by threat" approach. The person should receive a single letter that explains why activities on their property have been

identified as potential significant threats, not multiple letters related to individual threats.

- 5.10 The information must be presented to residents and businesses within a WHPA or IPZ as a shared concern (i.e. prevention of drinking water threats) and be balanced with provincial commitments to assist those whose activities must be restricted or changed to protect water sources.

Early Consultation

- 5.11 As part of the early consultation process introduced in the draft regulation, **the SPC is seeking the property owner/user's assistance in gathering** information about prescribed instruments governing the threat activity. The regulation needs to clarify how interaction with landlords and tenants of leased premises will transpire. In some cases, such as an industrial mall or a home-based business, the landowner may have no knowledge and little control over a threat activity carried out by a tenant.
- 5.12 While many people will respond with the requested information about prescribed instruments in a timely manner, some will not and a few may refuse completely. This could create a significant delay for the SPC in determining which threats are not governed by prescribed instruments. The SPC, an agent of the province, should not need to depend on a multitude of land owners to provide them with current, accurate information about **provincial** instruments.
- 5.13 The province should provide the SPC with geo-referenced lists or maps of every facility within designated areas for which a provincial instrument has been issued. These could then be cross-referenced with the drinking water threats identified in the AR. This would assist the SPC in identifying which threats can be addressed through provincial instruments and which ones will require a different policy mechanism.

The Province should be the one source of up-to-date, credible, geo-referenced information on all of the provincial instruments needed by the SPC in order to develop the SP policies and plan in a timely way.

- 5.14 Sections 19.17 to 19.20 require early consultation by the SPC with municipalities about proposed source protection policies. Consultation will be critical since many of the policy approaches require municipal action or co-operation. The capacity of the municipality to participate in policy development, review and ultimately policy delivery is finite, and must be taken into account by the SPC and by the Province.
- 5.15 Currently, **the timelines for EBR postings and the minimum 30 and 35 day public review periods in the regulation are simply too short for most municipalities to respond in a comprehensive way** and with Council approval of the response. Early consultation will assist somewhat in this regard but municipal staff capacity to respond within the deadlines remains problematic.

Transport Pathways

- 5.16 The definition of transport pathway provided in Section 19.8 is too broad and implicitly requires the municipality to make a judgement about whether a proposed activity will increase the vulnerability of a raw water supply. Would any kind of excavation in a vulnerable area constitute a new pathway? This is a fairly complex judgement that requires hydrogeological expertise.

The definition of transport pathway in Section 19.8 needs to be more specific.

- 5.17 Section 19.8 also requires municipalities to convey information about proposals they may be aware of, that would create new or modify existing transport pathways, to both the SPA and the SPC. The municipality must provide a description of the proposal and the approvals required for the proposed activity to the SPC. In cases where only municipal approvals are required, this is a logical request. ***Where provincial approvals or permits are required, the municipality should not be expected to notify the SPA and SPC.*** In addition, the municipality may be unaware of proposals for new activities on federal lands or First Nations reserves.

Explanatory Document

- 5.18 A provision has been included in the draft regulation requiring the SPC to provide an explanation of their policy choices. In particular, they must provide a rationale for policies that prohibit activities. The explanatory document would also track the reasons for amendments that the SPC makes. This is a valuable addition to the process.

The Province should also provide the rationale for any amendment it makes to the SPP after the plan is submitted by the SPA for approval.

Progress measures and annual reporting

- 5.19 The draft regulation contains two sections (19.32 and 19.45) outlining requirements for annual reports. In both cases, the reports are limited to listing activity levels rather than assessing the effectiveness of policy measures or the risk management plans in protecting or improving drinking water sources. While annual reporting may not be the right time frame for detecting effectiveness, ***data collected should contribute to such an evaluation. Evaluation mechanisms should be built into the Source Protection Plans.***

Need for effective records and information management

- 5.20 The blanket 15 year retention requirement for every record the SPC acquires or creates as described in section 19.1 is unreasonable, very costly and should be revised. While the requirement for the SPC to adopt a proper records retention schedule created by a records management professional should be in the regulation, the details of that schedule (e.g. retention periods) should be part of guidance material. Some records should be retained in perpetuity while most others can be discarded after several years, depending on their function.

To ensure proactive, cost-efficient and consistent record-keeping, the regulation should be modified to require the SPC to adopt an appropriate records retention schedule based on a model developed by the Province.

The model schedule should:

- ***set retention periods for records in all media based on the function of the records series created or collected by the SPC***
- ***identify appropriate repositories for the care of and provision of access to electronic data and archival records***
- ***identify the custodians of the records for purposes of public access and FIPPA***

The records and data management functions must be properly resourced by the Province to ensure that:

- ***decisions are properly documented in case of appeals or other legal actions***
- ***electronic data are properly maintained so that the data continue to be accessible for scientific study.***

Costly new municipal responsibilities

5.21

It is difficult to quantify the additional costs to the Region related to source protection plans. The Region has many concerns about **new financial burdens on municipalities**, both upper and lower tier, which would result from the development and implementation of source protection plans. These concerns include:

- costs to revise municipal operations and facilities to comply with SPPs (e.g. upgrades to water and wastewater infrastructure may be required to comply with the significant threat policies and Great Lakes policies)
- costs to implement monitoring policies that designate the municipality
- cost of official plan and zoning bylaw compliance exercises
- costs to defend subsequent Ontario Municipal Board and Environmental Review Tribunal appeals
- additional training and workload for municipal planning staff and building officials to apply the complex provisions of the CWA and its regulations in reviewing development applications and site plans, inspecting buildings and issuing building permits, enforcing zoning bylaws, etc.
- costs related to the new municipal responsibilities to enforce Part IV of the *Clean Water Act* (see more detailed comments below) including staffing and records management. Enforcement will be an entirely new line of

business for the Region. Since this function never existed at the Provincial level, no transfer of staff or funding will be offered.

- 5.22 These costs will be funded through user rates and property taxes, as development charge funding cannot be used to fund operating costs or capital costs unrelated to growth (i.e. no added capacity).
- 5.23 These costs will accrue directly to the Region as a result of the regulation. Under Section 19.11, a source protection plan can designate a person or body as responsible for implementing a policy. Sections 19.17 and 19.20 require the SPC to notify and consult with municipalities about SPP policies that would impose designations and obligations on the municipality and take municipal comments into consideration. However, the regulation does not indicate how a municipal refusal to take on a responsibility might be handled. While unresolved municipal concerns must be forwarded to the Minister with the final Plan, again, there is no indication of how such concerns might be managed. The Province should negotiate with municipalities the extent, financial commitments and time frames for meeting any obligations imposed on them by a source protection plan.
- 5.24 The benefits of source water protection will spill over into other jurisdictions and for this reason, funding of these activities should come from a broader base than municipal property taxes or user rates (i.e. sustained funding should come from the Province and potentially the federal government).

Costly new conservation authority responsibilities

- 5.25 **The Region is very concerned about demands on conservation authorities and the potential requests for additional funding to help support source protection plan implementation.**
- 5.26 The CAs also charge fees which have increased substantially in the past decade for development reviews (e.g. for Class EA activities and other types of planning reviews). This fee-for-service arrangement is in addition to the Region's annual contribution to the Conservation Authorities' operating and capital budgets.

- 5.27 As source protection plans are developed, implemented and amended in future, CAs will incur new, ongoing costs related to the administration and implementation of the source protection program and overhead costs such as enhanced data and records management responsibilities.
- 5.28 Under the *Conservation Authorities Act*, municipalities contribute to the basic operation of the CAs in their area. The Province dramatically reduced their contribution to the funding of conservation authorities in the late 1990's, making the CAs much more dependent on municipal funding. With passage of the CWA, the Province has pumped substantial funding into CAs to deliver the source protection process. In future, as CAs work to implement this provincial priority, the Province should not expect municipalities to bear the cost of delivering provincial source water initiatives.

Additional financial and resource concerns

- 5.29 The level of resources required to deliver the source protection plan is presently unknown. This will depend in part on the scope and scale of significant threats identified in the Region and the types and timing of policies enacted by the SPC to address those threats.
- 5.30 Source protection plans may depend mainly on policies that require conditions in provincial instruments to reduce significant threats. The SP Plan might contain no policies that rely on a **risk management approach to reduce threats**. So, theoretically, some municipalities may not need a risk management function.
- 5.31 Given the size of the Region and the effect of five source protection plans, it seems unlikely that Durham will avoid the risk management role. Limited application of risk management as a policy tool may require only a shared or part-time official. However, whether the Region delivers the risk management function directly or under arrangements with other agencies, there will be costs attached (See sections 5.36 to 5.38 below). As well, future costs to defend and enforce land use restrictions and risk management plans also could be significant and unpredictable.

- 5.32 Both the **land use planning approach** and the **risk management approach** assume a level of capacity and expertise not presently available at the municipal level, particularly in lower tier municipalities. If the municipality's efforts to interpret and manage drinking water threats fail due to insufficient expertise or resources, liability becomes a major concern.
- 5.33 Responsibilities for **monitoring** may be assigned to municipalities and CAs in order to evaluate the effectiveness of policies over time. There will be significant costs and effort to measure, maintain, model and analyze the data collected in regard to both the implementation of monitoring by municipalities and the Part IV enforcement function.
- 5.34 The Region's experience in establishing and maintaining the information systems related to the recently-downloaded assessment and regulation of small drinking water systems is instructive with respect to such cost impacts.

Provincial investments will be needed to acquire the hardware, and software, develop the systems and capacity for data management, to support policy implementation, monitoring and enforcement activities at the municipal level.

- 5.35 The proposed regulation is silent on how the **revenue** to support the SPP implementation and enforcement will be generated. Just as the resources for developing assessment reports were identified and provided by the province, ***resources needed to implement and enforce the source protection plans must also be identified and budgeted.***

The regulation should require that the source protection plan contain a workplan and budget for implementation. When the Ministry approves the source protection plan they should:

- ***commit the Provincial resources needed to deliver that plan; and***
- ***negotiate with CAs and municipalities the timing and allocation of financial commitments to support their roles in source protection plan implementation.***

Poorly-defined, unfunded municipal responsibilities for enforcement

5.36 The Region is very concerned about the financial and operational impacts of the Part IV risk management and enforcement functions which are delegated to municipalities. This activity represents an entirely new, unfunded responsibility for municipalities. Whether the function is carried out directly by a municipality, jointly delivered with other municipalities, or assigned by the municipality by another body, the cost will accrue to the municipal corporation. This includes costs to:

- hire and train risk management officials
- design and deliver a risk management function in accordance with the regulation and bylaws established by the municipality
- retain records for 15 years and manage enforcement data
- make orders and defend those orders if appealed
- take actions where citizens fail to comply and then collect related costs.

The Province will need to provide funding for the start-up and support for the ongoing costs (e.g. training cost and information systems) associated with this enforcement function.

Unknown skill set requirements, undefined qualifications of enforcement officials

5.37 The draft regulation specifies that the risk management officials responsible for Part IV Enforcement must complete a Ministry-specified training course initially and then every five years. At the consultation session, MOE staff stated that the training was under development and described the course as a 2 to 3 week primer on the Act, regulations and guidelines, application of Part IV and review of risk management plans using a risk management catalogue.

5.38 Perhaps with the intention of providing flexibility, the MOE has not identified the baseline professional qualifications for the risk management officials. Nor has the scope of the risk management role been delineated. At one end of the spectrum, the role could be envisioned mainly as one of managing negotiations and consultant contracts. At the other end, depending on the type of risk evaluations required, the function could demand professional expertise in hydrogeology, hydrology, geology or engineering. The course

requirements outlined in the regulation will merely provide information about Ontario's regulatory process, not the scientific background that may be necessary to do the job of risk assessment.

- 5.39 The position of the risk management officials within the municipal structure and their relationship with other staff at the municipal level (such as planners, bylaw enforcement officers and chief building officials), particularly in the two tier municipal setting, is also unclear.
- 5.40 Durham's position is that enforcement should be a provincial responsibility, not municipal. MOE staff had no examples of risk management functions operating at the municipal level in other jurisdictions and indicated that Ontario was pioneering this approach. It appears that this role will evolve through trial and error.
- 5.41 The unknown factors create two critical dilemmas. First, it is difficult for the SPCs to formulate policies that would rely on the risk management approach. Secondly, it is impossible for municipalities to estimate costs or plan ahead for delivery of the risk management function which may need to be in place, in some form, by 2011 to handle interim risk management plans (CWA, Sec. 56). Staff does not contemplate the use of Interim Risk Management Plans at this time.
- 5.42 In addition, some of the persons (e.g. farmers) of whom risk management plans for certain activities may be required, will already be dealing with the Province to reduce certain threats on their properties through provincial instruments (e.g. pesticides permits). A farmer or a business should be able to work with one provincial office to develop a consolidated plan that reduces all drinking water risks at their premises rather than deal with multiple ministries and municipal officials in achieving compliance. This "one-window" approach should be delivered by the Province.

Durham recommends that the risk management role must be discussed and delineated further and probably moved to the provincial level as part of a one-window provincial enforcement function.

- 5.43 Since landowners are made responsible for developing and presenting a risk management plan to the risk management official, ***the regulation also should specify who is qualified to develop the risk management plans on behalf of landowners.***

Effectiveness of land use planning approach

- 5.44 There is inevitably a **time lag** between the upper and lower tier amendments to achieve conformity with the source protection plans. This can create confusion for applicants about which rules apply. In addition, appeals of OP policies or zoning bylaws could delay implementation and cast doubt on the general enforceability of SPP policies.
- 5.45 The Region anticipates the following issues will have to be dealt with in the proposed source protection plan regulation with respect to land use planning for WHPAs and IPZs:
- the distinction between “land uses” and “activities”
 - prohibition of potentially high risk activities as the default approach due to limited municipal capacity to monitor and enforce development approval conditions over the long term
 - the option of restricting high risk activities on a property by registering conditions on title to protect the potability of the municipal drinking water source
 - over time, geographic inconsistency in source protection policies that arises from individual SPP amendments. (With five source protection areas in Durham, evolution of a policy “patchwork” is a real concern.)

Impacts on rural community

- 5.46 As a region that is over 80 per cent rural, Durham has concerns about the impact of the SPP policies on the rural community. For example, policies that require upgrading manure storage on small farms or replacing failing septic systems could be vital to maintaining water quality in a municipal water source, but could be unaffordable for the residents.

The province should assist farmers and residents in IPZs and WHPAs to comply with source protection policies through financial incentives and

technical assistance to voluntarily make changes or adopt practices that reduce drinking water threats below the "significant threat" level.

- 5.47 As noted earlier a single farm property could contain several threat activities each with a provincial instrument regulating its operations (for example, PTTW, Nutrient Management Plan, Pesticide Permit, septic system approval under the *Building Code Act*). Some threat activities on some farms will not be governed by prescribed instruments and may be required by SPP policies to develop a risk management plan. For example small farms, which are exempt from the requirements for nutrient management plans, may still pose a significant threat in a wellhead protection area.

The Province should develop and implement a one-window, coordinated approach to threat reduction for farms that will address all their prescribed threats and instruments in one process.

6. REGIONAL ADVISORY COMMITTEE COMMENTS

- 6.1 Members of two of Durham's citizen advisory committees reviewed the proposed regulation. Many of these comments are reflected in the sections above. In addition, they raised the following points.

6.2 Durham Agricultural Advisory Committee (DAAC) Comments

- Need for a significant amount of public education on the new regulations to control the uses already in place
- Great concern about the absolute right for an enforcement officer to enter onto private property
- Questions about whether the scientific study has considered if source water is affected by natural pollution from wildlife such as geese or deer? These sources appear to be ignored in the consideration of contamination of stormwater
- Concern about whether wellhead protection measures applied to a farmer's property, will tie up his land, in which case there should be some form of compensation
- Questions about whether the SWP legislation over-rides the Right to Farm legislation? Overlap and duplication of legislation are problematic.

Existing tools, such as the Environmental Farm Plan (EFP) Program, already in place should be considered to meet source water protection requirements

- How will farmers in rural Ontario afford to make any necessary changes to reduce drinking water threats?

6.3 **Durham Environmental Advisory Committee (DEAC) Comments**

Concern about the potential for inconsistent enforcement approaches, requirements and penalties for non-compliance across the different source protection regions.

7. **ANTICIPATED MUNICIPAL IMPACTS OF THE REGULATION**

Financial Impacts

- 7.1 As outlined in section 5 above, the creation of many new unfunded responsibilities for the Region and the area municipalities are the key anticipated impact and concern.

Land Use Planning

- 7.2 The Regional Official Plan already contains numerous policies to protect significant recharge areas and wellhead protection areas. The extent to which additional policies may be needed will not be known until completion of the assessment reports and source protection policies.
- 7.3 Some provisions in the regulation would be implemented by the lower tier municipalities. Lower tier municipalities prepare the more detailed plans and zoning bylaws reflective of broader categories of Regional land use designations. Achieving two levels of OP compliance among a large number of municipalities in a source protection region will be a challenge.
- 7.4 The source protection regions that cover Durham encompass a much larger geographic area with many upper, lower and single tier municipalities. In some areas, protective policies may already exist in plans like the Oak Ridges Moraine Plan, Greenbelt Plan and Lake Simcoe Protection Plan. **Durham**

Region's concern is that there be a single consistent set of policies for drinking water source protection within Durham.

Regulation of Threats through Provincial Instruments

7.5 Many of the prescribed provincial instruments govern the Regional facilities and operations (e.g., waste management facilities, water supply plants and water pollution control plants, management of non-agricultural source materials). If new limits, standards or obligations to protect drinking water sources are imposed in these instruments, **structural or process changes to the facilities may be required. Such changes could also effectively reduce the "capacity" of the facility through a new restriction or put new burdens on the municipality.**

7.6 Changes to instruments regulating how businesses and farms operate could also add to Regional costs. For example, revisions to nutrient management plans could further restrict the Region's ability to use land application as disposal method for municipal biosolids. Introduction in SPPs of stringent septic system policies for private residences could increase the amount of septage the Region receives from private system sources. **As a result, the Region may incur significant capital costs to upgrade or build new infrastructure.**

Risk Management Plan Approach

7.7 Under the CWA, the risk management responsibility rests with the Region as the municipality responsible for drinking water supply, treatment and distribution. However, the triggers for the risk management reviews of "prescribed activities" may stem from the subdivision agreements, zoning amendments and building permits generally administered by lower tier municipalities. Planning Departments and Chief Building Officials are expected to identify potential risks such as new transport pathways. Municipal activities such as salt or snow storage may require development of risk management plans. **Positioning the risk management official within the municipal organizational hierarchy as an "approval mechanism" could present some challenges or even conflicts, particularly if the role is added to an existing job.**

Reduced ability/increased expense for municipalities to locate new sources of drinking water

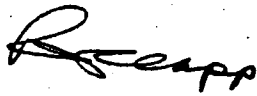
- 7.8 The kinds of restrictions that may be applied to properties within a WHPA or IPZ may effectively limit the future use of the property and potentially affect property value. For this reason, property owners may refuse municipal requests to explore their land in search of new drinking water sources or demand that the municipality compensate them for loss of market value or use if a municipal water supply is developed in the area. Conversely, the options available for new water supplies may be narrowed dramatically if those areas containing existing threats are routinely eliminated from consideration.

8. CONCLUSION

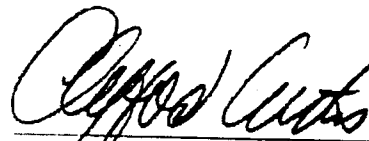
- 8.1 This report provides comments and recommends changes to the proposed regulation. It also highlights the ongoing concerns about the financial and operational impacts on the Region with respect to the implementation of the source protection plans.
- 8.2 While the regulation enables a range of policy approaches, the primary mechanisms for regulating significant drinking water threats should be through provincial instruments and regulatory mechanisms. The Province should provide the information about these mechanisms to the SPC. Land use restrictions imposed through municipal plans or zoning bylaws are not an ideal tool for managing and monitoring drinking water threat activities in an ongoing way. The regulation should also require source protection plans to include a work plan and budget, negotiated by the Province, the municipality and conservation authority, to implement, enforce and measure outcomes of the source protection policies. The Province should provide additional time and resources to municipalities to participate in source protection planning. Ideally, Part IV enforcement should be delivered by the Province through a "one window" with one comprehensive plan per property to manage significant drinking water threats.

9. **NEXT STEPS**

- 9.1 The MOE will consider the responses to the EBR posting of the draft regulation then prepare and enact the final regulation. In addition, the MOE contemplates preparing guidance documents to assist source protection committees in drafting the source protection plans.



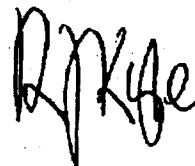
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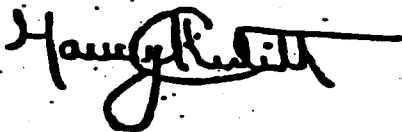


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