



October 12, 2012

The Honourable James Bradley
Minister of the Environment
11th Floor, Ferguson Block
77 Wellesley Street West
Toronto ON M7A 2T5

REGION OF YORK
CLERK'S OFFICE

FILE No. - P42

The Regional
Municipality
of Durham

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

RE: SOURCE WATER PROTECTION PLANNING CONSULTATION
PROCESS - COMMENTS BY DURHAM REGION IN RESPONSE
TO PROPOSED SOURCE PROTECTION PLAN FOR SOUTH
GEORGIAN BAY LAKE SIMCOE (SGBLS) SOURCE
PROTECTION REGION (2012-J-31)
(OUR FILE NO.: E02-41)

Please be advised the Joint Finance & Administration, Health & Social
Services, Planning & Economic Development and Works Committees of
Regional Council considered the above matter and at a meeting held on
October 10, 2012 Council adopted the following recommendations of the
Joint Committee:

- "a) THAT the following general recommendations summarized within
Report No. 2012-J-31 be adopted:
- i) the Ministry of the Environment should establish, for use in
the source protection plans province-wide, clear workable
definitions of existing and future threats;
 - ii) the definition of existing threats should use the Assessment
Report as an inventory of existing threats except for threats
resulting from crop rotation practices;
 - iii) for properties affected by a Clean Water Act Section 58
policy, the Province should mandate registration on the title
of the property a requirement for a risk management plan;
 - iv) the Province should exempt from appeal to the Ontario
Municipal Board or Environmental Review Tribunal
amendments made to municipal Official Plans to bring them
into compliance with source protection plans;
 - v) municipalities and provincial ministries should have
equivalent flexibility in deadlines to complete SPP policy
requirements;
 - vi) the Nutrient Management Act should be extended to cover
all farms in significant threat areas, and expanded to include
Non-Agricultural Source Materials and pesticides;



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- vii) an integrated farm risk management plan should be negotiated and established by the Ontario Ministry of Agriculture, Food and Rural Affairs and enforced by the Ministry of Environment as the most effective approach to managing agriculture-related threats to drinking water sources;
 - viii) the existing and future application of pesticides should be prohibited within 100 metres of a wellhead;
 - ix) the Ministry of the Environment should request the Agrichemical Warehousing and Standards Association to add wellhead protection areas and intake protection zones as locations to be avoided for pesticide storage facilities;
 - x) the provincial ministries and agencies such as the Ministry of Transportation and the Technical Standards and Services Authority should play a supportive role in managing significant drinking water threats related to their mandates;
 - xi) the Ministry of the Environment should develop and disseminate education and outreach materials for use and distribution by municipalities and source protection authorities delivering source protection plans education and outreach programs;
 - xii) the Province should continue to offer grants and incentives under the Ontario Drinking Water Stewardship Program and other programs to assist property owners in addressing significant threats; and
 - xiii) since the implementation of source protection plans will result in significant start-up expenses and inappropriately downloaded costs to the Region, the Province should help fund the implementation costs.
- b) THAT the submission provided in Attachment 2 to Report No. 2012-J-31 be endorsed as Durham Region's comments on the proposed South Georgian Bay Lake Simcoe (SGBLS) Source Protection Plan and forwarded to the South Georgian Bay Lake Simcoe Source Protection Authority;
- c) THAT the Association of Municipalities of Ontario and the Province address and alleviate the financial impacts of source protection plan implementation on municipalities at the Memoranda of Understanding table prior to approval of the plans by the Province; and

October 12, 2012

- d) THAT a copy of Report No. 2012-J-31 and the submission in Attachment 2 be forwarded to the Minister of the Environment, the Minister of Agriculture, Food and Rural Affairs, the Ministry of the Environment-Source Protection Programs Branch, the Association of Municipalities of Ontario, the Region's conservation authorities, the Regions of Peel and York, and the Townships of Brock, Scugog and Uxbridge for their information."

As directed, please find attached a copy of Joint Report #2012-J-31.



Pat M. Madill, AMCT, CMM III
Regional Clerk

PMM/lf

Encl.

- c: The Honourable T. McMeekin, Minister of Agriculture, Food and Rural Affairs
Ministry of the Environment (Source Protection Programs Branch)
P. Vanini, Executive Director, Association of Municipalities of Ontario (AMO)
R. Powell, CAO, Central Lake Ontario Conservation Authority
R. Messervey, CAO, Kawartha Conservation Authority
B. Denney, CAO, The Toronto & Region Conservation Authority
L. Laliberte, General Manager, Ganaraska Region Conservation Authority
D.G. Wood, CAO, Lake Simcoe Region Conservation Authority
D. Kelly, Clerk, York Region
C. Reid, Clerk, Region of Peel
T. Gettinby, Clerk, Township of Brock
K. Coates, Clerk, Township of Scugog
D. Leroux, Clerk, Township of Uxbridge
R.J. Clapp, Commissioner of Finance
C. Curtis, Commissioner of Works
A.L. Georgieff, Commissioner of Planning and Economic Development
R.J. Kyle, Commissioner & Medical Officer of Health



The Regional Municipality of Durham

To: The Joint Finance & Administration, Health & Social Services, Planning & Economic Development, and Works Committee

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

Report No.: 2012-J-31

Date: September 27, 2012

SUBJECT:

Source Water Protection Planning Consultation Process - Comments by Durham Region in Response to Proposed Source Protection Plan for South Georgian Bay Lake Simcoe (SGBLS) Source Protection Region

SC #2012-111 Correspondence dated August 27, 2012, SGBLS Source Protection Region Notice of Formal Consultation on the SGBLS Proposed Source Protection Plan from Lynn Dollin, Chair, SGBLS Source Protection Committee

Correspondence dated August 10, 2012 to C. Curtis, Commissioner of Works, from O. Salamon, A/Director, Source Protection Planning Branch, Ministry of the Environment re: Region's SPP Concerns (Attachment 1)

Note: A glossary to the acronyms used in this report begins on page 14.

RECOMMENDATIONS:

THAT the Finance & Administration, Health & Social Services, Planning & Economic Development, and Works Committee recommends to Regional Council:

- a) THAT the following general recommendations summarized within Report No. 2012-J-31 be adopted:
 - i) the Ministry of the Environment should establish, for use in the source protection plans province-wide, clear workable definitions of existing and future threats;

- ii) the definition of existing threats should use the Assessment Report as an inventory of existing threats except for threats resulting from crop rotation practices;
- iii) for properties affected by a Clean Water Act Section 58 policy, the Province should mandate registration on the title of the property a requirement for a risk management plan;
- iv) the Province should exempt from appeal to the Ontario Municipal Board or Environmental Review Tribunal amendments made to municipal Official Plans to bring them into compliance with source protection plans;
- v) municipalities and provincial ministries should have equivalent flexibility in deadlines to complete SPP policy requirements;
- vi) the Nutrient Management Act should be extended to cover all farms in significant threat areas, and expanded to include Non-Agricultural Source Materials and pesticides;
- vii) an integrated farm risk management plan should be negotiated and established by the Ontario Ministry of Agriculture, Food and Rural Affairs and enforced by the Ministry of Environment as the most effective approach to managing agriculture-related threats to drinking water sources;
- viii) the existing and future application of pesticides should be prohibited within 100 metres of a wellhead;
- ix) the Ministry of the Environment should request the Agrichemical Warehousing and Standards Association to add wellhead protection areas and intake protection zones as locations to be avoided for pesticide storage facilities;

- x) the provincial ministries and agencies such as the Ministry of Transportation and the Technical Standards and Services Authority should play a supportive role in managing significant drinking water threats related to their mandates;
 - xi) the Ministry of the Environment should develop and disseminate education and outreach materials for use and distribution by municipalities and source protection authorities delivering source protection plans education and outreach programs;
 - xii) the Province should continue to offer grants and incentives under the Ontario Drinking Water Stewardship Program and other programs to assist property owners in addressing significant threats; and
 - xiii) since the implementation of source protection plans will result in significant start-up expenses and inappropriately downloaded costs to the Region, the Province should help fund the implementation costs.
- b) THAT the submission provided in Attachment 2 to Report No. 2012-J-31 be endorsed as Durham Region's comments on the proposed South Georgian Bay Lake Simcoe (SGBLS) Source Protection Plan and forwarded to the South Georgian Bay Lake Simcoe Source Protection Authority;
- c) THAT the Association of Municipalities of Ontario and the Province address and alleviate the financial impacts of source protection plan implementation on municipalities at the Memoranda of Understanding table prior to approval of the plans by the Province; and
- d) THAT a copy of Report No. 2012-J-31 and the submission in Attachment 2 be forwarded to the Minister of the Environment, the Minister of Agriculture, Food and Rural Affairs, the Ministry of the Environment-Source Protection Programs Branch, the Association of Municipalities of Ontario, the Region's conservation authorities, the Regions of Peel and York, and the Townships of Brock, Scugog and Uxbridge for their information.
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REPORT:**1. PURPOSE**

- 1.1 This report summarizes the proposed SGBLS source protection plan (SPP) and provides the detailed comments prepared by Regional staff in response to the proposed source protection plan (Attachment 2) to be forwarded to the source protection authority.

2. BACKGROUND

- 2.1 In May 2012, Regional Council endorsed and submitted comments to the SGBLS SPC on its ***draft proposed*** source protection plan. (See Council Report No. 2012-J-14). Other public bodies with potential implementation roles also provided comments to the SPC at that time.
- 2.2 Since Durham Region falls within the jurisdiction of three source protection committees, Regional staff reviewed and compared the draft proposed plans for TCC, CTC and SGB-LS source protection regions. Staff subsequently wrote to the Ministry of Environment (MOE) Source Protection Programs Branch outlining issues of inconsistency across the three plans, highlighting certain recommendations drawn from the related Council Reports and reiterating the concerns around funding of implementation. The Ministry's response to the Commissioner of Works was received August 21st (Attachment 1) and outlines the MOE's position on several of the Region's recommendations.
- 2.3 Based on the responses received during the first consultation period, the SPC refined and revised the policies and released the ***proposed*** source protection plan on August 28, 2012. The Explanatory Document that accompanies the proposed source protection plan outlines the rationale for and evolution of the policies and alludes to advice and input from various provincial ministries and agencies. SPC Chairs and Project Managers from the various source protection regions have met during this process to discuss ways to achieve greater consistency among the plans.

- 2.4 In Report No. 2012-J-14 to Joint Committee on May 3, 2012, it was noted that the August 20, 2012 deadline for submission of the final source protection plan did not allow municipal councils on summer recess an opportunity to comment and recommended a 90 day extension. The MOE extended the deadline by 60 days.
- 2.5 In accordance with the CWA, the SPC released the revised plan for a second round of public review. The deadline for commenting is October 5th, however the SPA has indicated that they will forward to the MOE municipal resolutions received after that date but prior to October 22nd. **Staff seeks Joint Committee's authorization to forward the submission to the source protection authority before October 5th, following up with a final resolution from Regional Council after the October 10th Council meeting.**
- 2.6 Hard copies of the proposed source protection plan (172 pages) and Explanatory Document (105 pages) are available for public viewing in the Regional Clerk's Department or may be accessed electronically at: <http://www.ourwatershed.ca/>.
- 2.7 The Region also prepared responses to the proposed source protection plans prepared by the Trent Conservation Coalition SPC and the Credit-Toronto-CLOCA SPC (see Report Nos. 2012-J-27 and 2012-J-30).
- 2.8 The SGBLS Assessment Report identifies 79 significant drinking water threats within Durham Region. These threats are found in the wellheads for the communities of Cannington, Sunderland and Uxbridge. The area within Durham that will be affected by SGBLS significant threat policies is approximately 6.5 square kilometres. Broken down by type, the threats include:

Significant Drinking Water Threats

Threat # per O. Reg. 287/07	Type of Prescribed Threat	# significant drinking water threats
1	Waste disposal site	2
2	Sewage systems	22
3	Application of ASMs	11
10	Application of pesticide to land	9
15	Handling and storage of fuel	26
16	Handling and storage of DNAPLs	8
17	Handling and storage of organic solvents	1

- 2.9 The majority of the significant threats (64) are in the Cannington wellhead protection areas. One drinking water issue was identified in the Arena Wellfield in Cannington. Trichloroethylene (TCE), which is a DNAPL was measured in low concentrations in the raw water at these three wells. Durham Region actively monitors the issue and the measured TCE concentrations have not exceeded the Ontario Drinking Water Quality Standard value.
- 2.10 The SGBLS Assessment Report also identifies an intake protection zone (IPZ) for the Beaverton water supply intake in Lake Simcoe. No significant drinking water threats are associated with the Beaverton IPZ.
- 2.11 No significant water quantity threats were identified in Durham Region portions of the source protection region.
- 2.12 In total, the land area in Durham Region that will be affected by significant threat policies of all three source protection plans is less than 15 square kilometres. This includes approximately 120 parcels of land, most of which are in the jurisdictional areas of the Lake Simcoe, Kawartha and Ganaraska Conservation Authorities. Within the TRCA-CLOCA area, only the Uxville WHPA and part of the Whitchurch-Stouffville WHPA that extends into Durham will be affected.

- 2.13 Chart 1 below outlines the policy tools that may be used within the source protection plan to reduce drinking water threats.

Chart 1: Summary of Policy Tools Available to SPCs			
	Tools	Explanation	
REGULATORY TOOLS	Prohibition (Section 57)	Prohibition of activities in vulnerable areas	Part IV Powers Under the CWA
	Risk Management Plans (Section 58)	Subsided to identify and manage risks to drinking water sources and to develop measures to reduce those risks. Risk management plans may also include measures to reduce risks to drinking water sources.	
	Restricted Land Uses (Section 59)	Activities in vulnerable areas may be restricted to reduce risks to drinking water sources.	
	Prescribed Instruments	Provincial permits or approval documents issued for an activity in a vulnerable area can be amended to include requirements that help manage associated risks to the raw water supply. A policy could prohibit the issuance or revoke such an instrument	
	Land Use Planning Approaches	Municipal planning tools and processes are used to regulate future development to reduce risks to drinking water	
NON-REGULATORY TOOLS	Incentive Programs	Programs to encourage participation in actions to reduce risks to sources of drinking water	
	Education and Outreach	Programs to raise awareness of why and how drinking water sources should be protected	
	Other	Other tools may include: • Specify actions to be taken • Establish stewardship programs • Specify and promote best management practices • Establish pilot programs • Research	

3. OUTLINE OF PROPOSED SGBLS SOURCE PROTECTION PLAN

- 3.1** The proposed SGBLS source protection plan contains 130 policies including general policies for land use planning, monitoring and education and outreach and threat-specific policies across four source protection areas surrounding Lake Simcoe. The plan is laid out in 22 chapters outlined below:

Chapter 1 What is Source Water Protection

Chapter 2 Purpose and Objectives of the Source Protection Plan

Chapter 3 The 19 Source Protection Regions in Ontario

Chapter 4 The South Georgian Bay Lake (SGBLS) Source Protection Region

Chapter 5 Roles and Responsibilities

Chapter 6 Relation to Other Source Protection Planning Documents

Chapter 7 Consultation Process: Overview

Chapter 8 Drinking Water Vulnerability and Threats Evaluation

Chapter 9 Policy Development

Chapter 10 Range of Policy Tools Available

Chapter 11 Legal Effect

Chapter 12 How the Policies are Organized and Numbered

Chapter 13 Definitions

Chapter 14 Transition Provisions

Chapter 15 Timing for Conformity to Policies

Chapter 16 The Policies

Chapter 17 Additional Policies

Chapter 18 Summary of Policies Used

Chapter 19 List of Acronyms

Chapter 20 Glossary of Terms

Chapter 21 Appendix A: Policy Lists

Chapter 22 Policy Designations per Reg. 287/07

- 3.2 Chapter 10 outlines general policies that apply to multiple threat activities and specific policies that apply to the various prescribed threats. Maps of the areas where policies apply are available at the SGBLS website.
- 3.3 In accordance with the CWA, the SPC has also prepared an **Explanatory Document** that outlines the intent of the policies and their evolution in response to inputs from working groups, the SPC, the MOE, other stakeholders and public consultations. Should the Minister amend the SPP, these changes also would be outlined in the Explanatory Document. This document is very useful in providing context for the policies.

4. COMMENTS ON THE PROPOSED SOURCE PROTECTION PLAN

- 4.1 The version of the SPP released on August 27th reflects numerous changes suggested by Durham last spring in Council Report No. 2012-J-14.
- 4.2 Given that the source protection region includes 52 municipalities, the SGB-LS made a commendable effort to consult and keep community officials informed through municipal workshops.
- 4.3 In this final round of consultation on the SGB-LS SPP, the comments provided by Regional staff are generally consistent with the recommendations of our previous Report No. 2012-J-14 and include recommendations to:
- adopt definitions of existing and future threats that apply province-wide;
 - use the Assessment Report as the inventory of existing threats;
 - adopt definitions of existing and future threats that apply province-wide;
 - register the requirement for a risk management plan on title of Section 58 properties;
 - remove from the SPP, the land use planning policies for threats that are regulated by Prescribed Instruments or where there are no Planning Act triggers;
 - exempt amendments made to municipal Official Plans to bring them into compliance with SPPs from appeal to the Ontario Municipal Board (OMB) or Environmental Review Tribunal (ERT);
 - allow risk management officials to determine appropriate mitigation measures for inclusion in risk management plans;

- give municipalities and the province equal flexibility in meeting deadlines for implementation of significant threat policies;
- extend the Nutrient Management Act (NMA) regulations to cover all farms in the significant threat areas and expand the NMA scope to include all agriculture-related threats through farm risk management plans to be delivered by OMAFRA and enforced by MOE;
- existing and future application, handling and storage of fertilizer and pesticides should be prohibited in WHPA-A;
- prohibit future and phase out existing threats from DNAPLs and Organic Solvents with the goal of eliminating these threats;
- clarify the meaning of contemporary standards in regard to fuel tanks; and
- urge the Province to provide the TSSA with the direction and resources necessary to assist in protection of drinking water sources.

4.4 The Region of Durham's comments on the proposed SGBLS Source Protection Plan are outlined in greater detail in Attachment 2.

5. FINANCIAL IMPACT OF THE PROPOSED SPP

5.1 The Region's concerns about financial impacts of SPP implementation also are also summarized in Attachment 2 and include:

- omission from the SPP of any estimate or discussion of the overall cost of implementation;
- implementation roles refused by Provincial Ministries and agencies have been downloaded to municipalities which will result in replication of these functions at the municipal level (i.e. NMPs);
- the Region will be handed a number of new responsibilities upon approval of the SPPs which will translate to increases in property taxes and user fees;
- the RMO function will be in place for three to five years before a municipality collects any offsetting risk management fees under Section 55;
- overhead costs to implement the SPP are largely unrelated to the incidence of threats and may outweigh the benefits;
- area municipalities, conservation authorities, residents, farms and business will all experience increased costs; and

- due to the spillover of benefits, funding of these activities should come from a broader base than municipal property taxes or user rates.

- 5.2 The Region funded one additional position in 2012 to support source protection and anticipates that additional staff may be needed in 2013 as SPPs are approved.
- 5.3 **The Province should provide funding to municipalities to support start-up and downloaded costs of implementation of the source protection plans.**
- 5.4 In addition to municipal costs, residents located in significant threat areas may be faced with the costs to comply with SPP policies related to threats such as onsite sewage systems and household fuel tanks. Farms and businesses in significant threat areas will be directly affected by costs to develop risk management plans for practices such as the storage and use of fertilizers, pesticides, DNAPLs and solvents. **The Province should continue to offer grants and incentives under the Ontario Drinking Water Stewardship Program and other programs to assist property owners in addressing significant threats.**

6. **NEXT STEPS**

- 6.1 During the final public consultation process, comments on the proposed source protection plan are directed to the Source Protection Authority (SPA). All comments received by the SPA are to be forwarded, along with the proposed plan, to the Minister of Environment by October 22, 2012. For this reason, the formal response (which is summarized in this report) has been prepared as a separate submission to the Source Protection Authority (Attachment 2). **Staff seeks Regional Council endorsement of the submission as the Region's comments on the proposed South Georgian Bay Lake Simcoe Proposed Source Protection Plan.**
- 6.2 In accordance with the CWA, the Minister must consider these comments during the approval process.

6.3 The options then available to the Minister are:

- appoint a hearing officer and consider the findings of the hearing officer before amending or approving the plan;
- approve the plan as submitted;
- request the Source Protection Authority to make amendments and resubmit the plan by a specified date;
- after resubmission, make further amendments to the plan if he/she considers it appropriate; and
- if the SPA fails to make the requested amendments in time, the Minister may amend the plan and approve it.

6.4 The CWA contains no deadline for approval of the SPPs. Most likely, approved SPPs will not be in place until mid-2013 at the earliest. The source protection plan is considered to be in effect on the date the approved plan is posted on the EBR by the Ministry of the Environment.

6.5 Implementation steps for some source protection policies are linked to the date of approval of the SPP, so the exact timelines for municipalities to achieve compliance are not yet known.

6.6 Regional staff will continue to track the progress of the SGBLS source protection plan through the approval stages and report to Council as needed.

7. CONCLUSION

7.1 This report summarizes Regional comments on the proposed SGBLS source protection plan in response to the consultation process from August 27 to October 5, 2012. Attached to the report is the Region's submission to the source protection authority conveying more detailed comments and recommendations for improvement to the SGBLS SPP.

R. J. Clapp, CA
Commissioner of Finance

R. J. Kyle, MD, MHSc, CCFP, FRCPC
Commissioner & Medical Officer of
Health

A.L. Georgieff, MCIP, RPP
Commissioner of Planning and Economic
Development

Clifford Curtis, P.Eng., MBA,
Commissioner of Works

RECOMMENDED FOR PRESENTATION TO COMMITTEE

Garry H. Cubitt, MSW
Chief Administrative Officer

- Attachments:
1. Correspondence to C. Curtis from MOE Source Protection Planning Branch, dated August 10, 2012
 2. Region of Durham Comments on the Proposed SGBLS Source Protection Plan

ACRONYMS USED IN THE REPORT

ASM = agricultural source material

CA = conservation authority

CTC = Credit Valley-Toronto and Region-Central Lake Ontario (a source protection region in southwest Durham)

CWA = Clean Water Act, 2006

DNAPL = Dense Non-aqueous Phase Liquids (a organic liquid which is relatively insoluble in water and heavier than water)

ERT = Environmental Review Tribunal

IPZ = intake protection zone

MOE= Ministry of Environment

NASM = non-agricultural source material

NMA = Nutrient Management Act

OBC = Ontario Building Code

OMB = Ontario Municipal Board

OMFRA= (Ontario) Ministry of Agriculture, Food and Rural Affairs

RMO = risk management official

RMP = risk management plan

SGBLS = South Georgian Bay Lake Simcoe (a source protection region in northwest Durham)

SPA = source protection authority (often equates to a conservation authority)

SPC= source protection committee

SPP= source protection plan

SPR= source protection region

TCC = Trent Conservation Coalition (a source protection region affecting east Durham)

TSSA = Technical Standards and Safety Authority

WHPA= wellhead protection area

WHPA – A = area within 100 m radius of the wellhead

WHPA – B = area within 2 year time of travel to the wellhead

Ministry of
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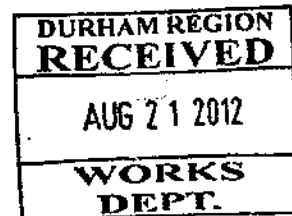
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August 10, 2012

Clifford Curtis, P. Eng., MBC
Commissioner of Works
Regional Municipality of Durham
605 Rossland Rd. E
P.O. Box 623
Whitby, ON, L1N 6A3



Dear Mr. Curtis,

Thank you for your letter of June 25, 2012. I note that Durham Region has also written to the Minister in regard to this issue, and I am pleased to respond on behalf of the ministry.

I want to acknowledge the challenges that face your Region in having to consider policies contained in three different source protection plans. In terms of the consultation process for source protection plans, source protection committees are required to include all comments received on the proposed plan during consultation when submitting the plan to the ministry, and MOE in turn will consider all comments during our review.

It may be helpful for you to know that we have also received similar comments from the Regional Planning Commissioners of Ontario (RPCO) and the Long Range Planners of Ontario (LORAPON). Based on these comments, and input from our municipal working group, we met with the source protection committee chairs to discuss how to draft policies to support implementation. Our municipal working group is also providing guidance to us on how to help municipalities prepare for implementation.

In your letter you raise two main points: first, that the Province should consider extending the scope of the Nutrient Management Act to include all agricultural related drinking water threats; and second to exempt all appeals to the Ontario Municipal Board (OMB) related to any changes to Official Plans and zoning bylaws made in order to achieve compliance with a source protection plan.

Mr. Clifford Curtis

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It is important to consider the original intent of the source protection program when considering the scope of the Nutrient Management Act. Local decision making is a cornerstone of the Clean Water Act; therefore, where the local solutions are achievable we want to respect this approach. Once all plans are submitted and under review the Province will be better able to evaluate where locally based solutions may not be sufficiently effective, and where we may need to identify improvements to existing government programs in order to better protect sources of drinking water.

In terms of exempting all appeals to the Ontario Municipal Board needed to achieve compliance with a source protection plan, when the Clean Water Act and regulations were drafted, existing rights to appeal amendments to documents under the Planning Act, such as Official Plans and zoning by-laws, were maintained. The rationale for this was that appeals will be limited where municipal planning documents are clearly conforming with the source protection plans, because decisions made by the Ontario Municipal Board and the Environmental Review Tribunal must conform to significant threat policies of the applicable source protection plans.

I recognize that there are costs associated with appeals. The Ministry of the Environment will be working with our partners at the Ministry of Municipal Affairs and Housing (MMAH) to identify and discuss possible issues and resolve situations that may result in future appeals to the OMB. Working with MMAH to develop and provide guidance and support to municipalities in undertaking conformity exercises will also help to ensure that source protection policies are implemented as concisely as possible to further reduce the possibility of appeals.

I also want to address some of the comments included in Attachment 2 of your letter. There are a number of comments in the attachment that are best addressed by the source protection committee, and therefore, I have not commented on them here.

You raised concerns over the timelines to submit the source protection plans in areas where there were delays in completing the assessment reports. The Minister has granted extensions to four committees, including two in your municipality. We trust that this will provide you with the additional time you asked for to work with the committees to achieve more consistency before the plans are submitted to the minister.

Regarding the request that the Province establish definitions of "existing" and "future" threats for use in all Source Protection Plans, provisions within the Clean Water Act refer to drinking water threat activities engaged in immediately *before* an approved plan takes effect versus activities engaged in *after* a plan takes effect. For consistency with the act, the ministry has encouraged committees to reflect these provisions within their definitions for existing and future threats, where they have chosen to include definitions in their plan. We will continue to review policies to ensure committees have not

Mr. Clifford Curtis

Page 3

introduced inconsistencies through the use of other definitions. Your comments will be considered as part of our review.

Lastly, with regards to the question of funding for implementation of source protection plans, it's clear that Ontario is facing fiscal challenges. We are counting on source protection committees and municipalities to work out balanced, responsible solutions, and we will work with all partners to realize the most effective implementation strategies for safeguarding local drinking water sources. The Province has funded the entire source protection planning process to date, providing over \$200 million. This includes funding for early on-the-ground actions to protect drinking water sources through the Ontario Drinking Water Stewardship Program.

The ministry has also been working within government to determine appropriate strategies to support implementation at the municipal level, and we welcome your ideas on how we can accomplish this together. The insights of your municipality around priority areas, threats and/or policies that need particular implementation assistance would help us understand and support your area most effectively.

Sincerely,



Orna Salamon
Director (Acting), Source Protection Programs Branch
Ministry of the Environment

Cc: Pat M. Madill, Regional Clerk, The Regional Municipality of Durham,
Lynn Dollin, Chair, South Georgian Bay Lake Simcoe Source Protection Committee
Susan Self, Chair, CTC Source Protection Committee
Jim Hunt, Chair, TCC Source Protection Committee

Attachment 2: Submission to SGBLS SPA

October 4, 2012

Lake Simcoe Source Protection Authority
c/o Lake Simcoe Region Conservation Authority
120 Bayview Parkway, Box 282
Newmarket, ON L3Y 4X1
Email: swp@ourwatershed.ca

Re: Region of Durham Comments on Proposed South Georgian Bay Lake Simcoe Source Protection Plan

Durham Region commends the South Georgian Bay Lake Simcoe Source Protection Committee for a tremendous effort in carrying out the source protection planning process and producing a very comprehensive assessment report and source protection plan. This has been an enormous and complicated task. We also greatly appreciate the professionalism, patience, diplomacy and responsiveness of the source protection authority staff over the past several years in supporting this work.

As a Region that supplies municipal drinking water from both groundwater and surface water sources, we appreciate the investment that Province has made in developing the Assessment Reports on a watershed basis, as well as the contribution to the Lake Ontario Collaborative research. Across the Province, we now have a much improved scientific understanding of our wellhead protection areas, intake protection zones and real and potential drinking water threats. This is a valuable tool for municipalities managing drinking water supplies.

While it was essential for the science to be done on a watershed basis, it is not as clear that creating and implementing a new layer of policy on a watershed basis will be an effective approach.

On the positive side, by conducting this exercise concurrently in 19 source protection regions, involving hundreds of conservation authority and municipal staff, councillors and community stakeholders, we now have a much deeper and widespread awareness of drinking water science and threats in Ontario. We also have improved the understanding of policy development in many communities.

That being said, as noted in the Explanatory Documents it seems that the "locally-driven" policy direction was often modified to satisfy the Ministry of Environment (MOE)

or other provincial ministries. The SPC approach was often declared out of scope or would not be supported by the Province. At the end of the day, the MOE may, through their approval process, further "homogenize" and align the plans to improve their legal defensibility and consistency.

A more consistent approach would be easier and less costly for the Region to implement. The Region has been and remains concerned about the expense, replication of effort, and operational impacts of creating, implementing and enforcing three very complex source protection plans within Durham.

These observations on the SPP process and the attached comments on the proposed SGBLS Source Protection Plan constitute our submission to be forwarded to the Province with the SPP. Please be aware that this submission was reviewed by Joint Committee of Regional Council on September 27th but cannot be finalized until the October 10th meeting of Durham Regional Council. We appreciate the opportunity to comment and will notify you of as soon as possible of Council's decision.

We also extend our thanks to the South Georgian Bay Lake Simcoe Source Protection Committee, the staff and the various working groups for their dedicated work over the past several years.

Sincerely,

Commissioner of Works

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The Region of Durham offers the following comments and recommendations for improvement to the source protection plan (SPP). We have commented only on policies where a change or clarification is suggested or to note that a welcomed change has already been made.

The introductory sections of the proposed SPP are generally well written, concise, and offer plain language explanations of the SPP process. Given that the source protection region (SPR) includes 52 municipalities, the South Georgian Bay Lake Simcoe Source Protection Committee (SGBLS SPC) made a commendable effort to consult and keep community officials informed through municipal workshops.

Although the **definitions of existing and future threats** (on p. 52) have been revised, they are still overly complex and the revisions raise new issues.

Expanding "existing threat" or "future threat" to existing or future "threat, activity or use" does not add clarity for the reader. The inclusion of the terms "use" and "uses" in the definitions is quite confusing, given that the Clean Water Act (CWA) and the Planning Act definitions of "land use" are different. Some parts of the definition imply a land "use" in the Planning Act sense since the clause also refers to buildings, structures and alterations. Durham staff prefers the definitions of existing and future threats used in the Trent Conservation Coalition (TCC) and Credit-Toronto-Central Lake Ontario (CTC) source protection plans.

However, all three SPPs have defined an **existing threat** as an activity that has occurred in the past ten years. Except in the context of agricultural crop rotation and fallowing practices, Durham disagrees with this time frame. While it may be common in planning contexts, with respect to source protection, it is counter-productive. A significant threat that was removed seven years ago (e.g. fertilizer storage, gas station) could be recreated tomorrow. It thwarts the key source protection objective of progressively reducing risk to the water source.

The only available inventory of existing threats is the Assessment Report. It would be a logical basis for defining an existing threat other than those created by crop rotation. If the ten year time frame is retained in the definition, the onus to prove that an activity existed in the past decade must be on the property owner or user.

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Definitions of existing and future threats are the foundation for interpreting and applying the policies in source protection plans. It is essential that these definitions be clear, concise, consistent and legally-sound, since appeal decisions may hinge on them. Having different definitions across the three SPRs in Durham Region will create implementation challenges. The Region recommends that the Province adopt definitions of existing and future threats that apply province-wide.

Registration of the requirement for a risk management plan on title

The definition of existing threats allows for threat activities that occurred in the decade prior to SPP approval, but not currently being undertaken on a property, to be reinstituted. The sale of property would not extinguish the "existing" status of a threat activity. Therefore, a new owner may purchase a property with a plan to continue or re-engage in the threat activity. To ensure continuity of risk management, we recommend that for properties with a Section 58 designation, the **requirement to establish a risk management plan** for threat activities on the property should be registered on the title of the property.

The **definition of risk management plan** should read, "accepted by a risk management official" not "approved by a qualified person".

Land use planning (LUP) policies

The SPP attempts to regulate threat "activities" by using land use planning tools but official plans do not regulate at the "activity" scale. It may be possible to affect the future location of certain threat activities through zoning bylaws. The application of LUP policies to some threats is redundant where those activities are governed by a prescribed instrument (e.g. WAST(a)-2/LUP 1). LUP policies will be ineffective where there is no Planning Act trigger for the activity. Fertilizer storage (FERT (H&S)-1 or -2) could begin in any existing or future building with no *Planning Act* trigger to alert municipal officials to the stored contents.

One area where land use planning tools are effective and appropriate is in dealing with water quantity threats. The Region supports policy RCHRG -1 and the land use policies LUP-9 and 11 which focus on planning for sustainable use. However, Regional staff has concerns about LUP-10 which encourages municipalities "to amend their planning documents to protect significant groundwater recharge areas from

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incompatible development or site alteration". This policy goes beyond the SPC mandate to deal with significant threat areas and would affect 32% of lands in the Durham part of the SPR. Since Durham's SPAs used different methodologies to delineate these areas there is no consistent definition or mapping to apply across the Region.

Given the inconsistencies in basic definitions, mapping and threat policies across the 3 SPPs for Durham, it may be very challenging to align official plan policies. **The Region recommends that amendments made to municipal Official Plans to bring them into compliance with SPPs be exempt from appeal to the Ontario Municipal Board (OMB) or Environmental Review Tribunal (ERT);**

Timing policies

The SGBLS policies Time-1 and Time-5 introduce an inequity in meeting deadlines. Both include a timeline for action on significant threats, requiring either a risk management plan or revision of a prescribed instrument within five years. In contrast to the firm five year time limit for the municipal actions, the Province is given the option to set its own schedule and priorities for getting this work done. **Municipalities should have the same flexibility to set their schedule and priorities for completion of RMPs as the Province is being given to complete Prescribed Instrument reviews.**

Content of risk management plans

A number of policies that require Section 58 RMPs include details about minimum content of a risk management plan. This is inconsistent with policies of the neighbouring TCC and CTC SPPs (e.g. FERT (App)-1, FERT (H&S)-1, SALT (App)-1). Determination of acceptable risk mitigation measures should be left up to the Risk Management Official, based on MOE guidance documents, best practices, industry standards, and local hydrogeology.

Education and outreach policies

The Region is pleased to see that policies EDU-1, 2, 3 and 4 require the MOE to be involved in developing education and outreach material at the provincial level for delivery solely, or in partnership, by SPAs, municipalities and other agencies.

Agricultural threat policies

As noted in our previous submissions, the Region strongly disagrees with the

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application of Section 58 risk management plans to regulate significant threats related to agriculture. **Instead, the Province should extend the Nutrient Management Act (NMA) regulations to all farms in the significant threat areas as originally intended. Threats related to non-agricultural source materials (NASMs) and pesticides used on farms should also be included in the expanded regulation. In keeping with the Drummond report, the goal should be to establish a single integrated farm risk management plan that protects drinking water and the environment and reduces the number of agencies regulating and inspecting farms.**

Farm risk management plans should be established by OMAFRA and enforced by MOE. These ministries already have NMA, NASM and pesticides standards, process and expertise in place. It makes no financial or regulatory sense to recreate these functions in dozens of municipalities across the Province. An integrated farm risk management plan is a sensible approach in order to reduce the number of contacts and paperwork for the farmer. It also matches responsibility and accountability to the agencies with the legislated mandate and the expertise to deliver the service.

Existing and future application, handling and storage of fertilizer and pesticides should be prohibited in WHPA-A. Further, to assist in reducing pesticide threats, the Region urges the Province to ask the Agrichemical Warehousing Standards Association to include wellhead protection areas and intake protection zones on their list of locations to be avoided for pesticide storage facilities.

DNAPLS and Solvents

Durham staff suggests having parallel policies for DNAPLs and solvents. We support policy DNAPL-3 which encourages MOE to research and find alternatives to existing uses of these chemicals so that their use in the WHPA can be phased-out over time. Despite of the definition of existing threats, no recurrence or expansion of use or storage of DNAPLs or organic solvents should be permitted where these would be significant drinking water threats. Because it is almost impossible to rehabilitate a water system contaminated by these substances, the policies should be focused on eliminating the threats.

Policy SOLV-1 refers to the RMP being "based on contemporary standards" however, the Explanatory Document does not clearly identify an authority to define these

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standards.

Fuel

Policy FUEL-1 appears to exempt low density residential development from the requirement for a risk management plan if the homeowner can establish that the tank is "certified and up to contemporary standards". The policy should define contemporary standards. The way this policy is written, it appears that below grade storage tanks that meet "contemporary standards" would be exempt from a risk management plan.

Existing home heating fuel tanks are one of the most prevalent significant threats Ontario-wide and across Durham Region. For this reason, clear consistent policies and risk management approaches are very important. The Region notes that the SGB-LS and CTC policies for existing fuel threats are now more closely aligned but the fuel policies adopted by the TCC SPC require risk management plans for all existing fuel threats.

Policy FUEL-2 should include an exception to allow certain municipal facilities (such as the well system itself) to locate its emergency fuel supply for a back-up generator in the WHPA-A or IPZ-1.

Policies EDU-2 and 11 suggest that the SPA will deliver an **education and outreach** program for fuel using materials developed by the MOE. Protection of the environment from damage or contamination by fuels is part of the TSSA mandate and within their expertise and should not be downloaded. Training of fuel delivery agents and bulk fuel handlers mandated by the TSSA should include source water protection awareness, best practices and spills response training. It makes no operational or financial sense for the MOE, SPAs or municipalities to replicate this function. **The Region urges the Province to provide the TSSA with the direction and resources necessary to assist in protection of drinking water sources.**

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FINANCIAL IMPLICATIONS OF SPP IMPLEMENTATION

The SGBLS Source Protection Plan does not include any estimate or discussion of the **overall cost of implementing the proposed plan**. The Explanatory Document indicates that relative costs of policy options for individual threats were one criterion considered by the SPC. However, there is no estimate of the cumulative costs to implement the complete package of policies. This is a significant gap in the planning process given that implementation is likely to begin next fiscal year (2013).

When SPCs consulted Provincial ministries, such as OMAFRA, about taking on additional duties as part of SPP implementation (such as extending the NMA to farms in significant threat areas), they generally advised the SPCs that they have no spare resources for this purpose. Since the CWA compels municipalities to conform to SPPs, the clear alternative for the SPC is to assign the responsibility to the municipality or the SPA. Either of these delivery alternatives results in municipalities carrying the financial burden. Provincial expenditures may be reduced by shifting the activity to the municipal tax base but the result will be an unnecessary replication of provincial-style administrative and enforcement functions in dozens of municipalities across Ontario.

As an implementation body, the Region will be handed a number of new responsibilities upon approval of the SPPs. The Region will be responsible for negotiating and enforcing risk management plans to manage threat activities regulated under Part IV provisions of the Clean Water Act. This will be an entirely new line of business for the Region. The Region may also be involved in delivering the mandatory sewage system maintenance inspections required under the Ontario Building Code (OBC) if these are delegated to the Region by area municipalities.

Since most of the Region's water supply is Lake Ontario-based, Durham has relatively few significant threats compared to some other regions. The total area affected by proposed significant threat policies for all three SPRs is less than .6% of the Region's geography. However, many of the costs, such as those relating to start-up of the risk management function and conformity activities, largely are unrelated to the incidence of threats.

The anticipated costs to the Region are uncertain but will be significant based on the following requirements:

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- prepare by-laws to govern the implementation Part IV responsibilities;
- prepare legal agreements with other municipalities regarding shared Part IV responsibilities for WHPAs that cross municipal boundaries or;
- establish and operate the risk management function;
- inspect properties to verify significant drinking water threats;
- create new information management systems;
- store annually increasing volumes of risk management office records for a minimum of 15 years;
- defend RMO decisions at the Environmental Review Tribunal;
- hire subject matter experts to review specialized or complex RMPs;
- carry out RMO orders for work to be done where risk management requirements have been contravened;
- review and amend the Regional Official Plan(ROP) to comply with three source protection plans;
- defend those amended ROP policies at the OMB;
- negotiate and implement new business processes to ensure coordination among planning departments, risk management officials, chief building officials, health department, etc;
- implement the mandatory onsite sewage system maintenance inspection program if delegated to the Region by the area municipalities;
- address municipal operational threats (e.g. emergency fuel storage at municipal wells);
- provide education, outreach and incentive programs;
- erect additional WHPA signs if required; and
- meet new requirements in Environment Compliance Approvals for Regional facilities as these documents are reviewed by the MOE for SPP compliance.

Municipalities have three revenue streams to cover the costs associated with the implementation of the SPPs:

- fees charged for risk management services (per CWA Section 55);
- water and sewer user rates; and
- general tax levy.

Development charges can only be used to fund capital costs related to growth.

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Recovering the overhead costs related to the risk management function may be a very slow and uncertain process. The time lag between establishing the risk management function and the Region receiving any offsetting Section 55 fees may be considerable.

While the Region can begin to prepare for implementation on the basis of proposed SPPs, more exact plans and calculations may not be possible till the MOE issues approvals in mid-2013 or later.

Area municipalities also will face increased costs. As the Principal Authority under the OBC, the new responsibility and costs for implementing the mandatory onsite sewage system maintenance inspections directly or through a contract lies with the area municipality, i.e. the Chief Building Official. Area municipalities may also be affected by new capital and operating requirements relating to stormwater management systems, snow storage and salt management plans. They will face various costs to bring municipal operations and municipal facilities that have wells in line with the SPPs.

The Region is also concerned about demands on conservation authorities (CAs) and the potential requests to the Region for additional funding to help support SPP implementation.

In addition to municipal costs, residents located in significant threat areas may be faced with the costs to comply with SPP policies related to threats such as onsite sewage systems and household fuel tanks. Farms and businesses in significant threat areas will be directly affected by costs to develop risk management plans for practices such as the storage and use of fertilizers, pesticides, DNAPLs and solvents. **The Province should continue to offer grants and incentives under the Ontario Drinking Water Stewardship Program and other programs to assist property owners in addressing significant threats** as recommended in policies INCENT 1 and 2.

The costs and benefits of source water protection spill over into other jurisdictions and for this reason, support for these activities should come from a broader base than municipal property taxes or user rates. **The Province should be requested to provide funding to municipalities to support start-up and downloaded costs of implementation of the source protection plans.**

We hope this input is helpful and thank you for the opportunity to comment.