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MOVING AHEAD WITH SOURCE WATER PROTECTION AND THE IMPLEMENTATION OF THE CLEAN WATER ACT

The Environmental Services Committee recommends the adoption of the recommendations contained in the following report dated September 4, 2009, from the Commissioner of Environmental Services and the Commissioner of Planning and Development Services.

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council endorse Regional staff comments submitted in response to Environmental Bill Registry (EBR) posting 010-6726 “Source Protection Plans under the *Clean Water Act, 2006: A Discussion Paper on Requirements for the Content and Preparation of Source Protection Plans*”, appended to this report as *Attachment 1*.
2. Regional Council endorse the sole source consultant assignment to Earthfx Incorporated for the purpose of completing the Tier 3 Water Budget for the Yonge Street Aquifer and Stouffville wells at a total cost of \$1,397,160 (excluding taxes) to be funded 100% by the Province of Ontario.
3. Regional Council approve Regional staff to pursue opportunities to strongly advocate the need to establish funding mechanisms to support implementation of the *Clean Water Act 2006*;
4. That this report and *Attachment 1* be circulated to local municipalities and the Ministry of the Environment for information.

2. PURPOSE

This report updates Regional Council on activities underway to meet the *Clean Water Act 2006* requirements. It informs Regional Council on staff’s response to the Ministry of Environment’s discussion paper relating to Source Protection Plan contents. Additionally, the report advises Regional Council on other related activities to source water protection.

3. BACKGROUND

The *Clean Water Act* is designed to promote the protection of drinking water sources through voluntary and mandatory actions

The *Clean Water Act 2006* sets out a framework to protect drinking water at the source across Ontario. It has established a locally driven process using the latest scientific approaches to consider existing and potential threats to drinking water sources. It is a highly regulated process, with specific deliverables with aggressive timelines. The three main deliverables under this Act are:

1. Terms of Reference – outlines a detailed work plan and identifies responsibilities for the Assessment Report and Source Protection Plan
2. Assessment Report – identifies the significant threats to the quality and quantity of municipal drinking water sources using scientific approaches
3. Source Protection Plan – sets out the requirements to mitigate significant threats to the municipal drinking water system.

Public consultation is required throughout the process to ensure everyone in the community has an opportunity to contribute to the planning process.

Source Protection Committees have the authority to establish requirements to protect drinking water sources under the *Clean Water Act*

Although administered by the Conservation Authorities, the Source Protection Committee, a group of appointed representatives from municipalities, agriculture, public, golf course industry and other related industries, is responsible for the deliverables under the *Clean Water Act 2006*. There are two Source Protection Committees in York Region as the Region straddles two source protection areas, the Credit Valley, Toronto and Region, and Central Lake Ontario Source Protection Area, and the South Georgian Bay Lake Simcoe Source Protection Area. York Region representation was appointed by Regional Council as Laura McDowell, Director of Environmental Promotion and Protection and Erin Mahoney, Commissioner of Environmental Services, respectively (TWC No 7 Sept 2007, TWC No 3, March 2008, TWC No 2 Feb 2009). Meetings are held monthly and are open to the public.

York Region continues to align activities with new Provincial directions

As reported earlier this year to Regional Council (TWC No. 2 February 2009), York Region has established a comprehensive management plan to keep in step with new Provincial directions on water management. The *Clean Water Act* requires considerable resources from multiple departments including Environmental Services, Planning and Health. Collaboration with local municipalities is imperative. This staff report provides a summary of those activities that specifically meet the *Clean Water Act*, 2006 requirements and provides an overview of comments provided to the Province regarding their recent posting on the Environmental Bill of Rights for Source Protection Planning.

4. ANALYSIS AND OPTIONS

Source water protection activities are well underway across the Province

As early as 2005, activities were initiated across the Province to complete the three main deliverables within the timelines outlined in Regulation under the *Clean Water Act 2006*. Work is well underway to complete the Assessment Report, which are a series of technical studies that analyze the landscape for threats to drinking water quality and quantity. There have been significant challenges as the Province continues to shift direction, with the latest change in August 2009. However, the Region and Conservation Authorities are working together to meet their respective deadlines. The following table provides a summary of status and legislated deadlines for deliverables.

Table 1: Deliverables under the *Clean Water Act, 2006*

Deliverables	Status	Due Dates for Source Protection Region	
		South Georgian Bay Lake Simcoe (SGBLS)	Credit Valley Toronto Region Central Lake Ontario (CTC)
Terms of Reference	Complete	June 29, 2009	August 17, 2009
Assessment Report	~50%	June 29, 2010	August 17, 2010
Source Protection Plan	Initiated	August 20, 2012	August 20, 2012

Tier 3 Water Budget studies, 100% funded by the Province, require specialized consulting expertise due to the nature of work and aggressive timelines

A portion of each Assessment Report will focus on groundwater quantity threats using a series of tiered water budget studies, whereby each level of study narrows the focus and increases the level of detail. The most detailed and focused studies are completed at a Tier 3 Water Budget level and are undertaken only if the previous studies identified watersheds as potentially stressed. In York Region, Tier 3 water budget studies are required for watersheds which include municipal wells that serve the communities of Aurora, Newmarket, Holland Landing, Queensville, Sharon and Stouffville.

York Region is working with the Conservation Authorities to lead the Tier 3 studies required for subwatersheds which support the Yonge Street Aquifer as endorsed by Regional Council [TWC No 5, May 2008]. Further work is also required for the Little Rouge watershed which supports the Stouffville wells as identified in the Tier 2 study. Given the nature of the work, it was identified that the two projects should be combined into one regional project using the York Peel Durham and Toronto (YPDT) groundwater model.

For several years, York Region has significantly invested in the YPDT groundwater model to understand regional groundwater flow. This regional groundwater model uses state of the art tools, developed by Earthfx Incorporated. It continues to be refined as further work and data becomes available under the partnership with York Peel Durham and Toronto including the nine associated conservation authorities. This model was used in the previous Tier 1 and 2 water budgets sole sourced to Earthfx Incorporated by Lake Simcoe and Region Conservation Authority and Toronto and Region Conservation Authority. Staff have confirmed with MOE Staff that sole source of this specialized work is in accordance with the Province's funding guidelines.

Given the short deadlines imposed by the *Clean Water Act*, Region staff would like to proceed with a sole source consultant assigned with Earthfx Incorporated. Their expertise with the YPDT groundwater model and study area will advance the work significantly. In addition, their expertise on the prior water budget studies will expedite the project schedule. Given the constraints imposed, Region staff recognize that Earthfx Incorporated is the only consultant who can complete this work at this time. The scope of work will meet the legislated Technical Rules, which define the final mapping products at a total cost to the Province of \$1,397,160 (excluding taxes). This work is entirely funded by the Province as committed in the approved Terms of Reference, with a significant focus on refining the water use data to evaluate the cumulative impact of all water users across the watershed. To remain in compliance with Region purchasing by-law, Regional Council endorsement is required for this consultant assignment to complete this specialized modelling work and meet the legislated deadlines.

Early dialogue with the Province on the Source Protection Plan content has been initiated with an EBR posting

The Source Protection Plan is a pivotal document for the main premise of voluntary and mandatory actions to protect drinking water sources. In June 2009, the Ministry of Environment posted "Source Protection Plans under the *Clean Water Act*, 2006: A Discussion Paper on Requirements for the Content and Preparation of Source Protection Plans" on the Environmental Bill Registry (EBR Registry Number: 010-6726) for a 90 day review period ending September 23, 2009. Staff provided draft comments to the Province to meet the comment deadline.

The Discussion paper provides a range of policy approaches that source protection plans can address. Voluntary risk reduction approaches include education, outreach and incentive programs as well as regulatory approaches using provincial instruments, such as Certificates of Approval. Land use approaches under the Planning and Condominium Act include official plans, zoning by-laws, site plan controls, development permits and community improvement plans which can only restrict specific future lands uses that may pose a significant threat in wellhead and intake protection zones.

Source Protection Plan policies will be required to address activities set out in the Assessment Report that are or could be significant threats, monitor significant drinking water threats as well as monitor moderate and low threats to prevent them from becoming significant. Source Protection Plans may also contain policies to address conditions from past activities that are a significant threat, govern the content of risk management plans and list designated land uses to which the Clean Water Act should apply. Key points contained in the staff response to the EBR posting contained in *Attachment 1* include:

Further detailed discussion on roles and responsibilities is needed

- The drinking water source protection process introduces many new responsibilities and liabilities for municipalities, many of which are not yet clearly understood.
- More detailed discussion is required between municipalities and the Province on how land use planning could be a more effective tool for source water protection.
- The Province must clearly articulate roles and responsibilities for two-tiered municipal jurisdictions such as York Region where the Region is responsible for supply and distribution of drinking water, but site specific planning tools exist at the local level.
- The Province must ensure that all relevant Provincial legislation, plans and tools provide a coordinated approach to source water protection within wellhead and intake protection zones.
- There is apparent duplication but lack of linkages between the Lake Simcoe Protection Plan, which is focused on water quality and quantity to ensure ecological health and the *Clean Water Act 2006*, which is focused on drinking water quality to ensure human health. While York Region draws drinking water from Lake Simcoe, and the mitigation actions prescribed by the Clean Water Act will also provide ecological benefits to the health of the Lake, municipalities and Source Water Protection Committees will be required to act on both without adequate linkages and guidance.

Stronger and more effective tools for municipalities are required

- Municipalities need stronger and more effective tools than those currently being contemplated in the discussion paper to deal with immediate significant threats.
- The Province must consider that municipal land use planning decisions can be appealed to the OMB which brings rise to a number of issues, including municipal resources and costs, and the possibility of a municipal decision on source water protection being overturned; public health and well being must continue to be the overriding principle.
- The Province must consider prescribing qualifications for municipal Risk Management Officials and ensure they have powers of entry and prosecution.

Establishing funding mechanisms for cost effective implementation is essential

- The Province needs to provide sustainable, long term funding to support municipalities taking on these new significant responsibilities and liabilities.

Outreach actions to implement successful Source Protection Planning are ongoing

York Region continues to work closely with the Conservation Authorities to leverage Provincial stewardship dollars for early actions to protection drinking water sources. The Ontario Drinking Water Stewardship Program provides financial assistance for measures that help to protect Ontario's drinking water sources as reported to Regional Council on February 19, 2009 (TWC No. 2, Feb 2009).

Regional Staff continue to seek out opportunities to inform Source Protection Committee members on source protection activities underway at the Region. More recently, staff participated on a bus tour of the local municipal wells for the Credit Valley, Toronto Region, and Central Lake Ontario Source Protection Region. During the day long tour, York Region staff provided information about York Region wells and source protection practices. The tour allowed Source Protection Committee members to view well sites and see first hand the high operational standards at the Region.

Draft York Region Official Plan contains Wellhead and Intake Protection Zone Policies as an interim measure

In June 2009, Regional Council released the Draft York Region Official Plan for public review and comment over the summer and early fall (PEDC No5, June 2009). The Draft Official Plan contains a section entitled Wellhead and Intake Protection, and contains policies and mapping governing proposed land uses within the Wellhead Protection Areas in the Region as endorsed by Regional Council (PEDC No.3 March 2009). The Draft Official Plan contains a policy that will allow more detailed intake protection policies and mapping to be added to the Plan once determined.

In conjunction with the Official Plan policies, Regional staff has dedicated significant resources to communicate these emerging requirements with local area municipalities and proponents in the development review process. Proposed developments are reviewed with respect to potential threats to water quality and quantity concerns in advance of source protection plans to identify any potential emerging issues for developments.

5. FINANCIAL IMPLICATIONS

Province remains committed to fund development of the Assessment Report and Source Protection Plan

As early as 2005, the Province has committed more than \$20 million dollars for municipalities and Conservation Authorities to conduct studies for the Assessment Report and develop source protection plans. Funding has been allocated as defined in the Terms of Reference and where appropriate allocation in the Environmental Services ten year

capital plan. In addition, staff continue to track hours to ensure reimbursement of staff costs for technical studies for the Assessment Report as committed by the Province of Ontario.

There remains uncertainty on how source protection and risk management activities will be funded

The implementation of source protection measures may be very costly, particularly to existing land activities that have significant threats. The Province has yet to allocate any Provincial dollars for implementation beyond limited funding through the Ontario Drinking Water Stewardship Program. In addition, the program outlined by the Province under the direction of a Risk Management Official is new and will require financial support for resources with expert knowledge to verify, monitor and mitigate land use activities across the Region. Staff have begun to consider these implications and track business processes to ensure these resources are properly supported.

6. LOCAL MUNICIPAL IMPACT

It is imperative that local municipalities remain informed and involved as the Source Protection Plans are developed. Public consultation is a key component of the *Clean Water Act*, with specific requirements to liaise with key stakeholders. York Region continues to host quarterly meetings with the Region's local municipalities to provide an update on ongoing technical studies, available provincial funding and highlight upcoming source water protection initiatives. Moreover, the Region created specialized mapping tools for the local municipalities to locate sites within wellhead protection areas.

7. CONCLUSION

Source Protection activities are well underway across the Province and at the Region. However, there remain many challenges ahead. The process is complex, as defined by the Province, with aggressive timelines to meet complicated technical rules. This report requests Regional Council to approve the consultant assignment for the Tier 3 Water Budget, fully funded by the Province, to Earthfx Incorporated to expedite the highly specialized work required to meet the imposed deadlines for the Assessment Report. As the Assessment Reports are finalized in the coming months, public consultation activities are expected to increase, raising many questions as we navigate through a new process, with new risk management roles and responsibilities.

Significant staff resources have been committed to ensure the *Clean Water Act, 2006* requirements are met. Planning and Environmental Services staff continue to work together to bridge the gap between science and planning disciplines. Opportunities to introduce interim measures, such as the inclusion of wellhead protection area and intake

protection zone policies, will continue to help guide the Source Protection Plans and inform the public of emerging issues for new and existing land uses.

Ongoing discussions with the Province regarding land use planning tools and funding will continue over the next months to ensure the local context is considered. With this report, Regional Council authority is requested to pursue opportunities to strongly advocate the need for established funding to implement source protection measures. Meetings with local municipalities are planned quarterly to ensure they are informed and consulted as the Source Protection Plans are developed over the coming years.

For more information on this report, please contact Laura McDowell, Director, Environmental Promotion and Protection, Environmental Services at Ext. 5077 or John Waller, Director of Planning at Ext. 1525.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report).



October 2, 2009

Debbie Scanlon
Senior Drinking Water Program Advisor
Ministry of the Environment
Drinking Water Management Division
Source Protection Programs Branch
2 St. Clair Avenue West
Toronto Ontario
M4V 1L5

Re: EBR Registry Number 010-6726
Source Protection Plans under the Clean Water Act, 2006: A Discussion Paper on
Requirements for the Content and Preparation of Source Protection Plans –Final
Comments

Thank you for this opportunity to comment on the Discussion Paper on Requirements for the Content and Preparation of Source Protection Plans (EBR Registry Number: 010-6726). Due to the timing of Committees and Council at the Region and the EBR comment deadline, these comments cannot be considered by Council until September 2009. We will provide the Council report to you after that date.

The Discussion Paper provides a good starting point to explore options for implementing source water protection. The Regional Municipality of York (York Region) has a number of comments and questions regarding some of the proposed approaches presented in the discussion paper, however our overriding concern is that public health and safety remain paramount in the legislative and policy tools available to municipalities, as we are ultimately responsible for the supply and delivery of safe drinking water. We realize that the thoughts and ideas in this discussion paper will no doubt become clearer through this consultation and future consultation on the resulting draft regulations.

Our key comments are as follows:

The Province needs to play a strong and accountable role in Source Water Protection

The Province needs to provide funding to municipalities to support new responsibilities and liabilities

- The drinking water source protection process introduces many new responsibilities and liabilities for municipalities, many of which are not yet clearly understood. Staff are concerned that the primary responsibility for a safe and adequate drinking water supply is being devolved to municipalities without adequate tools or funding.
- The Province needs to set up an expropriation fund for municipalities who are forced to buy out landowners in cases where there is refusal or inability to comply with source water protection plans in the case of an imminent threat.
- Municipalities need to have the ability to recover costs through program delivery. Costs recovery opportunities need to be regulated in order to support this.
- The municipal and Provincial role should be clearly defined regarding funding arrangements and distribution based on specific tasks and responsibilities including:
 - Risk Management Official and Inspectors
 - Monitoring Activities
 - Incentive programs

The Regional Municipality of York, 17250 Yonge Street, Newmarket, Ontario L3Y 6Z1
Tel: (905) 895-1231, 1-877-464-YORK (1-877-464-9675), Fax: (905) 895-3203
Internet: www.york.ca

- Education and Outreach programs.

MOE needs to strengthen and increase inspection and enforcement of activities that pose a threat to source water, and increase funding programs to encourage compliance

- The MOE needs to not only continue to inspect and enforce TSSA based regulations, but to increase inspection and enforcement presence of activities that pose a threat to drinking water safety.
- The Province/MOE also need to invest in funding programs to encourage compliance with current legislation and regulations governing safe storage and use of chemicals or materials considered a threat to drinking water..
- If municipalities are to take on monitoring, education and enforcement, essentially Provincial responsibilities, then funding needs to be provided to cover these costs. This will also ensure a consistent approach to source water protection across the province.

Existing planning tools are not enough alone to manage protection of drinking sources:

The dynamic nature of source water protection is difficult to manage using planning tools

- Currently the land use planning process does not necessarily regulate activities. In order to clarify how the land use planning process can be applied to the science of source water protection (a non-static process) the details about how wellhead protection areas (WHPA) and intake protection zones (IPZ) will be protected requires more focused and detailed discussions with municipalities, other Provincial ministries, and other stakeholders.

Existing planning tools alone are not strong enough to protect drinking waters supplies

- The Planning Act allows municipalities to control land uses, however specific activities and practices cannot be dealt with through the Planning Act. The Province needs to examine how it can use existing legislation and standards to ensure that individual activities and practices, for example chemical storage and handling, don't threaten drinking water quality or safety.
- In addition, the Province needs to explore new powers and tools that could be provided to municipalities through the Building Code, Municipal Act and other relevant legislation and regulations.
- Threat mitigation using existing land use planning tools may prove to be frustrating and ineffective for both municipalities and the Province if the planning process can only be applied to future land uses (and existing uses under certain and limited circumstances). Amendments to the *Planning Act* and/or the *Clean Water Act, 2006* (CWA) are required to make municipal planning-related decisions, as they relate to source water protection, final and not subject to appeal, actions for compensation or other legal actions. Currently, land owners may seek compensation for loss of future development potential.
- Past comments by York Region staff (February 9, 2005, response to EBR XA04E0021 and XA04E0022) suggested that official plan policies developed to implement Source water Protection Plans be approved directly by the Minister of Municipal Affairs with decisions being final and not subject to appeal. Municipal land use planning decisions can be appealed to the OMB, which raises a number of issues, including municipal resources and costs and the possibility of a municipal decision around source water protection being overturned. Public health and well being must continue to be the overriding principle and the Province needs to consider legislation and regulations that will ensure protection of public health is paramount.

Existing planning tools are not capable of addressing cumulative impacts to drinking water sources

- Review of new development and re-development applications under the Planning Act provides only a piece-meal approach to assess any potential quality and quantity impacts to drinking water sources. Amendments to the *Planning Act* are needed to assist in assessing cumulative impacts early in the development approval process on a community-wide or secondary plan basis.
- A provision under the Source Protection Plan that requires a Risk Management Plan for the affected area with the requirement of more specific details or studies as conditions of development approval would be helpful.

Additional Provincial and Municipal tools are required to protect Source Water

Existing municipal risk management tools under the CWA and other legislation are not adequate

- The Discussion Paper suggests that municipalities will not be able to address imminent risks unless they have been identified in the Source Protection Plan, and prior to that, the Assessment report. Municipalities require more flexible, timely and more powerful risk management tools to deal with a wide variety of potential risk scenarios.
- There may be a need for land use restrictions and/or conditions (e.g. requiring an infiltration gallery) for areas outside the WHPA and IPZ zones but still within the contributing area.
- Addressing water quantity threats will require coordination between Conservation Authorities and all municipalities within a source protection area to ensure implementation of infiltration measures do not threaten water supplies. This will require a more flexible and dynamic approach to changing conditions and threats.

Municipalities require strong tools to ensure that an imminent threat is immediately addressed

- The Province is rightly concerned with the undue hardship a prohibition would impose on an individual business or land owner, however municipalities are responsible for providing safe drinking water to residents on municipal servicing, as well as the prevention of human health impacts that could occur should a threat contaminate the drinking water supply. Public health and safety must continue to be the overriding principle in source water protection.
- Municipalities need a strong and enforceable suite of tools, including a provincially funded expropriation fund, and the ability to take immediate action if a threat is imminent if it cannot be remedied through any other means or if a landowner is unwilling to voluntarily mitigate the risk. The tools currently proposed in the Discussion Paper do not provide the necessary strength, effectiveness and time sensitivity that could be required in an urgent situation, a further suite of tools to deal with imminent threats that could range from written warnings, cease and desist orders up to and including prohibition should be considered.
- Source Protection Plans also need to be flexible enough to deal with the dynamic nature of WHPA and IZP zones, (e.g. changes due to increased pumping rates). If a threat arises that was not identified in the assessment report, (e.g. change in chemical uses within an existing business, change in status of a low risk threat, etc.) municipalities need the flexibility to deal with these issues immediately. The legislation and the Discussion Paper assume that risk is a static state.
- The Province needs to determine how to capture new land uses activities that don't trigger the *Planning Act* (e.g., resale of a property that doesn't result in a zoning change but a change in business practices) which may impact source water protection.
- Who would be responsible for monitoring changes in land use activities, would it be the Risk Management Official? What Provincial legislative tools could be used to ensure awareness of these changes, for e.g. a trigger through the Building Code?

The MOE needs to better understand land use planning and drinking water protection under two tier levels of municipal government

- Regional municipalities set broad land use policy through official plans while lower tier municipalities have more detailed and site specific land use planning tools like zoning by-laws.
- In York, the Region is responsible for treatment and delivery of drinking water and, under the CWA, enforcement of Part IV; however it is the local municipalities who are responsible for distribution of water to residents and for planning at the site specific level.

Monitoring implementation activities need to be effective and efficient

- The Province needs to develop effective means to monitor and act on the cumulative impacts of significant threats across source water protection areas.
- The cumulative impact of significant threats needs to be considered on an ongoing basis in Source Protection Plans as well as risk management plans. This could pose a challenge as most of the data

is administered through the Province, as the regulatory authority, and will need to be coordinated between municipalities and the Province for the purpose of Source Protection Plan implementation.

- The expected outcome from a monitoring program needs to be realistic and must work within natural water resource processes. For example, a two year groundwater monitoring program will not be sufficient to show a decline in nitrate concentrations (e.g. Oxford County U of Waterloo study).
- Reporting frequency needs to reflect the type of the data required. For example monthly reports will be onerous when the expected outcome may not be seen for several years.
- Annual reports should be based on performance indicators.
- Consider monitoring policies not only to determine the acceptance of an incentive program, but also to determine if the incentive program is achieving the desired policy.

The Province needs to ensure that existing and future legislation, regulations and instruments support source water protection

- The Province needs to define “provincial interest” as it relates to source water protection. This should be reflective in key planning legislation and any associated plans or policies (e.g. Places to Grow, the Building Code).
- The Province needs to clarify how existing Provincial legislation (e.g. Permit to Take Water, Certificates of Approval, the Building Code, etc.) Plans and regulatory tools will be coordinated to protect drinking water sources and address significant threats. These tools need to be well coordinated at the Provincial level in order to ensure they are “catching” and addressing an existing or new source water protection threat. This coordination also needs to include communication with municipal stakeholders in order to ensure a comprehensive multi-level approach is taken to ensure protection.
- New technologies not currently regulated which could impact the protection of drinking water should be Provincially or Federally regulated (e.g. geothermal installations).
- Geothermal systems should be prescribed as an activity which could be a drinking water threat.
- There needs to be a notification program similar to O.Reg 387/04. Municipalities should be notified of changes to instruments related to significant surface or groundwater threats. This will ensure that local concerns are not overlooked.
- There needs to be a notification process set up along with any change of business activity by each land and/or business owner within the WHPA, IPZ and areas of significant recharge.
- Paragraph 19 of section 1.1(1) of O.Reg. 287/07 should be clarified relative to implementation. Is water “not returned” to be interpreted to factor in consumptive use of the water or does it mean every drop is to be returned for this section not to apply? Is it intended to apply to ‘after use’ water (i.e. treated effluent)?
- The Province should provide funding to allow implementation of incentive programs that encourage low risk land activities (e.g. redevelopment of brownfields).

Risk Management under Source Protection Planning

- The Province is proposing to allow a Risk Management Official to exempt a person from compliance with a Risk Management Plan when he/she is of the opinion a prescribed instrument regulates the threat adequately. The Province should provide guidance to assist in this decision-making process, for example: who is responsible for enforcement of a drinking water policy contained in a condition of a prescribed instrument? Is the Risk Management Official expected to enforce this as part of the Source Protection Plan or is the Ministry of the Environment (MOE) retaining this responsibility as enforcing compliance with C of A or PTTWs it has issued or amended?
- Flexibility is needed to accommodate local needs (e.g. smaller towns may not require elaborate programs whereas a multi-tier servicing jurisdiction will).
- A Risk Management Plan should be developed by a “qualified person/professional” whose qualifications should be prescribed under provincial regulations, similar to those set out in O.Reg.153/04.

- Provincial guidance setting out and clarifying the respective powers of enforcement and inspection under the CWA of the Risk Management Official and the Risk Management Inspector would be helpful in assisting municipalities tasked with managing these positions.
- There needs to be clarification on how the Risk Management Official will be controlled and overseen and what happens when there are disputes. If there is a possibility of tribunal, the process should be set up.
- If a Risk Management Plan should fail, and contamination of a drinking water source occur, who is responsible and how would these circumstances be resolved?
- Clarification should be provided as to what additional measures can be undertaken if the monitoring suggests that the significant threat is not reduced.
- The CWA regime should allow for partnerships with like industries for the purpose of cumulative Risk Management Plans.
- The Province should create a business process map (e.g. flow chart) to identify roles and responsibilities, gaps to be addressed and to establish consistency across municipal boundaries.
- The contents of a Risk Management Plan need to be defined and standardized, similar to the site specific risk management plans under O.Reg 153/04, and needs to include an environmental monitoring plan with indicators.
- Risk Management Plans should focus on and follow a net gain benefit approach.
- If a Risk Assessment is performed to exclude application of a Risk Management Plan or prohibition, there should be requirements on the land owner for follow-up monitoring to ensure the assessment has in fact abated the risk.

Education, outreach and incentive programs need to be consistent across the Province

- Look for opportunities to establish provincial education, outreach and incentive programs for consistency and efficiencies.
- Consider creating programs that are focused on business groups that are threat-related, e.g. gas stations.
- The Province should provide regular updates on new technologies and best practices and promote their application.
- The Discussion Paper suggests requiring Source Protection Authorities and Committees to proactively engage First Nations communities. The MOE should provide some guidance as to what types of activities will satisfy this requirement, what approaches should be taken in circumstances where First Nations communities are unresponsive, if funding is requested to facilitate participation by First Nations, will such requests be granted and who would be providing the funding. It would be preferable to have a commitment from the MOE to develop an appropriate consultation process when an Aboriginal or treaty right is engaged, rather than the 'strive to work in partnership' language.

Policies related to Great Lakes targets

- The development of Great Lakes targets by the Minister and development of policies related to Great Lakes targets needs to be coordinated with work the Province is undertaking in relation to the Great Lakes St. Lawrence River Basin Sustainable Water Resources Agreement of 2005 to ensure consistent requirements under both regimes and avoid duplication. If Great Lakes targets, and associated policies, which are being considered relate to the exception criteria for an intra-basin transfer set out in subsection 34.6(3) consideration should be given to relating compliance with such SPP policies to satisfaction of exception criteria under the OWRA.

General discussion

- How will the success/failure of Source Protection Plan implementation be defined?
- Staff suggest implementing a peer review process for Source Protection Plans.
- The circumstances under which a Source Protection Authority may propose amendments to a Source Protection Plan may be somewhat limited. It may be helpful to have a more general provision allowing the Source Protection Authority to propose amendments outside of the circumstances proposed in

the policy. Changes that are administrative in nature or are to correct an error should be allowed without undergoing the formal amendment process.

- There is a potential for overlap of policies and duplication of work between the development of Source Protection Plans and work required under the Lake Simcoe Protection Plan. This is not addressed in the policy paper. The MOE should ensure coordination between these plans and, where applicable, an appropriate hierarchy for policies in each developed to avoid conflicts.

Sincerely,

John B. Waller, M.C.I.P, R.P.P.
Director Long Range and Strategic Planning
Long Range and Strategic Planning
Planning and Development Services Department

Laura McDowell, P.Eng.
Director, Environmental Promotion &
Protection

JBW/la-p

Copy to: Erin Mahoney, Commissioner of Environmental Services, York Region
Tamara Kondrachova, Hydrogeologist, Environmental Services, York Region