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PROPOSED CLEAN WATER ACT, 2005 AND PROPOSED MATTERS TO BE ADDRESSED IN SUPPORT OF THE ACT

The Transportation and Works Committee recommends the adoption of the recommendations contained in the following report, February 7, 2006, from the Commissioner of Transportation and Works and the Commissioner of Planning and Development Services:

1. RECOMMENDATIONS

It is recommended that:

1. The Regional Clerk forward a copy of this report to the Minister of the Environment as Regional Council's endorsement of the comments on the *proposed Clean Water Act, 2005*, and the *Proposed Matters to be Addressed to support the Proposed Clean Water Act, 2005* and Regional staff response to Environmental Bill of Rights (EBR) Registry number AA05E0001 *see Attachment 1* and RA05E0022. *see Attachment 2*
2. The Regional Clerk also forward this report to:
 - The Association of Municipalities of Ontario (AMO).
 - Local Municipalities within York Region, The Regional Municipality of Peel, The Regional Municipality of Durham, The Township of Bradford-West Gwillimbury, the City of Toronto, the Toronto and Region Conservation Authority, and the Lake Simcoe Region Conservation Authority for their information.

2. PURPOSE

This report provides Committee and Regional Council with an overview of:

- The Province's proposed *Clean Water Act, 2005* which received first reading on December 5, 2005 and was posted on the Environmental Bill of Rights Registry (EBR) on the same date.
- The *Regulations to support the proposed Clean Water Act, 2005* which were posted on the EBR on December 22, 2005.
- The Region's comments on the above proposals.
- The funding submissions made in response to Provincial funding grants for source water protection.

3. BACKGROUND

The Act follows two years of Provincial and stakeholder efforts to establish a drinking water source protection process across the province including:

- Release of the *Final Report of the Implementation Committee on Source Water Protection (SPIC Report)* and the *Final Report of the Technical Experts Committee on Science Based Decision making for protecting Ontario's Drinking Water Resources: A Threats Assessment (TEC Report)* on December 10, 2004.
- The “*Draft Drinking Water Source Protection Act, 2004*”. Regional Council endorsed comments to the EBR in Clause 8 of Report No. 8 of the Transportation and Works Committee on September 23, 2004.
- The “*White Paper on Watershed-Based Source Protection Planning*” Regional Council endorsed comments to the EBR in Clause 3 of Report No. 4 of the Transportation and Works Committee on April 22, 2004.
- The “*Protecting Ontario's Drinking Water: Toward a Watershed-Based Source Protection Planning Framework – The Final Report of the Advisory Committee on Watershed-Based Source Protection Planning*” (April 21, 2003). Regional Council endorsed comments to the EBR in Clause 23 of Report No. 6 of the Transportation and Works Committee on June 26, 2003.

On December 5, 2005, the Province introduced the *Clean Water Act* for first reading and placed it on the Environmental Bill of Rights Registry (EBR) for a period of 60 days ending February 3, 2006.

The purpose of the Act is to provide a framework to protect water at its source as a first step in ensuring a safe drinking water supply. The Act sets out five steps towards developing and managing a source water protection program:

1. Identify water source vulnerabilities and relates to surface water intake zones, wellhead areas, and aquifer recharge areas.
2. Apply a science-based approach to identifying and measuring threats to water supplies and develop appropriate plans to mitigate and manage any threats.
3. Coordinate with Conservation Authorities, land owners, community groups and other interested parties to develop a workable, effective plan to address threats to the source waters.
4. Put plans into action through by-laws, education, incentives, land-use planning initiatives and partnerships. Municipalities would be given special authority to take action on significant threats to vulnerable drinking water supplies.
5. Requirements for continuous monitoring and reporting to measure effectiveness of the action plan and to make improvements where necessary.

The Act is part of the Province's commitment to implementing all of the recommendations from the Walkerton Inquiry and will support 22 recommendations on protecting drinking water at its source as outlined in part two of the O'Conner Report.

In addition, the Province announced an investment of \$67.5 million toward source water protection. This funding would be distributed as \$51 million over the next five years for technical studies and \$16.5 million for Conservation Authorities over the next year for staff and resources.

Further, on December 22, 2005, the Province posted *Proposed matters to be addressed in regulations to support the proposed Clean Water Act, 2005*. Written submissions commenting on this regulation must be made before February 20, 2006.

The purpose of this document is to provide a description of the source protection planning process and to pose questions to the public on various policy issues that the regulations will deal with. This posting is the first of a series the Province intends to issue, and provides information on the first three areas to be addressed in regulation which include:

1. The establishment of Source Protection Areas/ Regions and lead Source Protection Authorities.
2. Source Protection Committees.
3. Terms of Reference for Assessment Report and Source Protection Plan.

It is expected that the descriptions of the additional areas to be addressed in regulations and Director's rules will be posted on the Environmental Registry in the near future.

4. ANALYSIS AND OPTIONS

The following sections provide a brief overview of the content of the legislation, discuss possible implications that the proposed legislation would have on the Region, and provides an overview of the comments that Regional staff has submitted to the EBR postings.

4.1 Summary of Clean Water Act, 2005

This Act is intended to protect existing and future sources of drinking water through the identification and assessment of drinking water threats and the development of a source protection plan that addresses these threats.

A protection plan will be required for each defined source protection area which will be based on Conservation Authority boundaries where they exist. The Conservation Authority will be designated the source protection authority and will have the role of facilitating the source protection planning process for their area. The legislation, through

regulation, permits consolidation of two or more source protection areas and will designate a lead source protection authority.

The first step in development of each source protection plan involves establishing a 16 member multi-stakeholder committee referred to as the source protection committee (SPC). Under the legislation, the SPC is responsible for:

- Developing the terms of reference for the source protection plan.
- Completing an assessment report.
- Completing a source protection plan.

The terms of reference set out the roles and responsibilities for the planning process, public consultation requirements, and assignment of tasks to municipalities as necessary.

The assessment report will identify the watersheds and their characteristics, the vulnerable areas within the watersheds, and assess the drinking water threats in each vulnerable area in order to determine which threats constitute significant drinking water threats. The legislation identifies four types of vulnerable areas:

- Groundwater recharge areas
- Highly vulnerable aquifers
- Surface water intake protection zones
- Wellhead protection areas

The source protection plan can be initiated once the assessment report is approved by the Minister. The source protection plan is to set out policies intended to ensure that identified existing and future threats are mitigated to remove any threats to the drinking water source. This can be achieved through regulating activities and designating land uses within vulnerable areas. The legislation provides specific *Planning Act, 1990* provisions to regulate specific land uses that are deemed to be a threat to the water supply as they may occur within surface water intake zones and wellhead protection zones. The legislation also has provisions for regulating threats in protection zones through a permitting process all of which are expected to be outlined in future regulations. In addition, municipalities may prohibit land uses and construction on sensitive groundwater or surface water features in areas identified as vulnerable areas in approved source water protection plans. The SPC must consult with each municipality within the source protection area.

Therefore, official plans and zoning by-laws and any other decisions made under the *Planning Act* or the *Condominium Act, 1998* must be amended to conform to the source protection plan. This however does not apply to Provincial policy statements issued under section 3 of the *Planning Act* or a Minister's Order under section 47 of the *Planning Act*. Where a conflict exists, the provision that provides the greatest protection to the drinking water, in terms of both quality and quantity, prevails.

Municipalities are responsible for enforcing source water protection plans as they have the authority to make by-laws under the *Municipal Act, 2001* for the production, treatment and storage of water. The municipality may delegate their enforcement authority to a board of health, planning board, or source protection authority. The enforcement authority may pass by-laws etc. regarding permit applications, inspection programs and fees that support the intent of the source protection plan.

Municipalities are required to cooperate with the source protection authority in fulfilling any requirements of this legislation. Other than having limited representation on the source protection committee, the Region and municipalities are somewhat external to the process and are regarded as a commenting agency on the outputs of the committee.

The legislation also prescribes specific amendments to the *Building Code Act, 1992*, *Conservation Authority Act*, *Consolidated Hearings Act*, and *Planning Act* as required to create consistency between these pieces of legislation.

4.2 Summary of “Proposed Matters to be Addressed In Regulations”

This section discusses components of the proposed regulation that have a direct influence on York Region. Staff have provided preliminary comments to the Province on issues pertinent to York Region and will provide more detailed comments once the regulation is drafted.

4.2.1 Establishment of Source Protection Regions

The legislation outlines a proposal to consolidate individual source protection areas into source protection regions to facilitate use of resources and coordinate source water protection planning. In the case of York Region, the region is currently served by two conservation authority jurisdictions, the Lake Simcoe Region Conservation Authority and the Toronto Region Conservation Authority.

The legislation is proposing the consolidation of several conservation authority jurisdictions as follows:

- CTC Source Protection Region comprised of Toronto Region, Credit Valley and Central Lake Ontario Region. This would include the municipalities of York, City of Toronto, Peel, Durham, Halton, Simcoe and Dufferin and 24 lower-tier municipalities.
- Lake Simcoe, Nottawasaga, Black River, and Severn Sound Environmental Association comprised of Lake Simcoe and Nottawasaga regions. This would include the municipalities of York, Durham, City of Barrie, Simcoe, District of Muskoka, Grey, Haliburton, Kawartha Lakes, City of Orillia, Dufferin and 35 lower-tier municipalities.

4.2.2 Appointment of Source Protection Committees, etc.

Each source protection committee is to have up to 16 members. The Minister is considering making regulations that will require committee composition to be drawn from a variety of interested bodies and requiring a minimum of 1/3rd municipal representation, 1 member from the general public, 1 member from First Nations, and representatives from agriculture, industry, public health bodies, non-government organizations and others. The proposal outlines several options for committee selection.

The committee will also have the authority, in conjunction with ministry guidance, to establish working groups to undertake activities in the preparation of the assessment report and source protection plan.

4.2.3 Contents of the Term of Reference

In addition to technical requirements, the terms of reference would also outline responsibilities and authorities. There are some proposed responsibilities identified within the document, however the final determination would be negotiated through the terms of reference development process.

4.3 Implications for York Region

Implications for York Region have been considered based on the following themes:

- Integration with current work program.
- Resourcing and funding requirements.
- Governance.

4.3.1 Integration with Current Work Program

Significant effort has been made by both the regulatory bodies and the municipalities and their partners in moving towards effective source water protection planning. In reviewing the intent and expected outcome of the proposed Act, the work program the Region has been executing for the past four years is consistent and in support of the objectives of this Act. Although not complete, this Act and the expected regulations will provide further guidance for future work plans.

Gaps have however been identified and will continue to occur until such time as the terms of reference for the source protection areas have been completed and approved by the Ministry. The various partners involved in source protection are continuing to proceed with activities in support of the Act and funding requests are being made to access the grants announced in December 2005.

4.3.2 Resourcing and Funding Requirements

The drinking water source protection planning process will require York Region and local municipalities to expend substantial effort and resources to participate in development and implementation of Source Protection Plans.

Although significant funding has been earmarked to support source water protection over the next five years, sufficient detail regarding the likely extent of these efforts and total costs will not be determined until the terms of reference for the various source protection areas are completed and approved by the Minister.

In the interim, the Region and its partners will continue to request funding for various programs in accordance with the ministry's proposal guidelines.

4.3.3 Governance

This is an area of significant concern specifically with respect to the formation and composition of the source protection committee and working groups. The proposed matters to be discussed in regulation provide limited guidance on the Minister's approach to forming these committees.

The concern for York Region is based on the consolidation of several conservation authorities into one source protection area. This further increases the pool of eligible municipal stakeholders and could severely impact the level of representation.

Level of municipal representation on source water protection committees is significant in terms of decisions made while developing source water protection plans. Not only are municipalities ultimately responsible for the treatment, storage and delivery of drinking water, they will now also be responsible and held liable in the implementation and enforcement of the source water protection plans.

4.4 Overview of York Region's Response to the EBR Postings

Although the Act and proposed issues to be considered in regulation provide a reasonable source protection framework, concerns remain with regard to issues such as funding, municipal authority, liability and responsibility, and source protection plan implementation strategies. The areas of specific concern identified in the response to the EBR postings fall under four areas:

- Formation of source protection regions.
- Involvement and representation on source protection committees.
- Extent and effectiveness of proposed municipal consultation process.
- Need for formal and specific funding commitments.

The proposal to consolidate certain watershed areas into source protection regions is intended to better capture actual watershed boundaries regardless of municipal boundaries. Although appropriate from a water management perspective, challenges are likely to occur due to the number of municipal jurisdictions captured within these regions. Consideration should be given to balancing the size of the proposed regional watershed area with the number of municipalities who have interest in the area, for example, forming smaller working groups based on an area bounded by the actual conservation authority boundaries, for e.g. the TRCA,. By defining more manageable

interest areas, the source protection committees will be more effective and allow more adequate municipal representation. Regional source protection issues can then be addressed through effective liaison between adjacent source protection committees.

Although the Act does include municipal representation on the source protection committees, it is still unclear as to the level of involvement municipalities will have in the decision making process. Considering the limited committee membership for municipalities, the fact that final approval occurs at the provincial level, and that the municipality will be responsible for implementing the final plan, there is significant concern regarding how these plans will be developed.

It is also concerning that the proposed municipal consultation process is effectively at arms length to the development of the source protection plans. Again, consideration should be given to forming municipal sub-committees or working groups so that adequate feedback can be provided through the process rather than only during final review of the completed documents.

The Province still has not included specific funding commitments within the Act or proposed comments on the regulation. The development and implementation of the source protection plans will require significant funding. Currently, the proposal does require that costs be identified as part of the terms of reference for the source protection plans. However, there has yet to be any commitment from the Province to provide specific funding towards these costs. It is doubtful that the funding released in December 2005 will be sufficient to support the requirements of this Act.

As raised previously in this report, the Region's response to the EBR posting highlights concerns around the municipal role in decision making, implementation, accountability and liability.

4.5 Submission for Funding

In support of the proposed Clean Water Act, the Ministry of Environment recently announced the allocation of \$51 million over the next five years for technical studies to support the source water protection plans in Ontario. To encourage the early start of this work, the MOE also announced that they would be accepting applications for technical studies under three grant programs for the 2005-2006 fiscal by January 31st, 2006.

Eligible technical studies must fall under one of the three grant programs:

- Groundwater Studies
- Intake Protection Zones for the Great Lakes
- Intake Protection Zones for the inland lakes, where supply is not from a Great Lake.

Depending on the nature of work, the grant recipient can be the municipality responsible for the drinking water supply or the conservation authority or as a partnership. Draft Guidance Modules were also posted by the MOE to assist in developing technical work

plans. Applications were submitted on January 31, 2006 for the following work in York Region:

- a) Vulnerability Assessment of the Wellhead Protection Areas in York Region. This project will be lead by York Region, in partnership with Toronto Region Conservation Authority and Lake Simcoe Region Conservation Authority. Total estimated cost \$300,000.
- b) Intake Protection Zone Delineation for Drinking Water Sources in Lake Simcoe. This project would be lead by Lake Simcoe Region Conservation Authority in partnership with the municipalities, including York Region for the Georgina and Keswick Water Treatment systems. Total estimated cost \$170, 391.
- c) Develop a Vulnerability Assessment Methodology within the Jurdisdications of TRCA and CLOCA, lead by Toronto Region Conservation Authority with municipal partnership. Total estimated cost \$57,500.
- d) Delineation of Watershed Recharge and Discharge Zones using Geophysical techniques lead by Toronto Region Conservation Authority with municipal partnership. Total Estimated cost \$552,000.
- e) Develop a Water Budget Modelling for the entire TRCA region, lead by Toronto Region Conservation Authority. Total Estimated cost \$235,000.

The total value of these projects is estimated at \$1,314,891.

Successful proponents are expected to be notified by the MOE by February 28, 2006.

4.6 Next Steps in Drinking Water Source Protection

The next steps in the Province's initiative to achieve source protection in Ontario, and the schedule anticipated by York Region staff are:

1. Province to review EBR comments on *Clean Water Act, 2005*.
2. Province to hold Standing Committee Hearings following second reading of the Act, staff recommend that the Region make a formal presentation to these hearings.
3. Legislative process leading to Royal Assent in spring/summer 2006.

Regional staff will continue to monitor and review the Province's progress and will report to Committee and Regional Council at key points over the next year.

4.7 Relationship to Vision 2026

Watershed-based Drinking Water Source Protection Planning is intended to preserve and restore the integrity of groundwater and surface water resources for the benefit of future generations. This intent is consistent with the objectives of Vision 2026 toward insuring clean water, securing a green York Region, and promoting conservation.

5. FINANCIAL IMPLICATIONS

Effective long-term management and protection of water resources is expected to be very costly. The two expert committee reports provide the Minister with further advice on options for funding watershed-based drinking water source protection.

The Province has indicated that the costs of developing the initial Source Protection Plan will be 100% funded by the Province and the recent provincial funding commitment made for the next five years, although likely not sufficient, demonstrate the Province's commitment to support this process.

Full cost implications are not known at this time but are expected to be detailed through the terms of reference development as required for each source protection area.

The 10-Year Capital Plan for groundwater management activities, including support of conservation authority projects to deliver watershed plans as part of the Oak Ridges Moraine Conservation Act, consider the gross project costs only and do not consider the potential for funding to be provided by the Province.

6. LOCAL MUNICIPAL IMPACT

Local municipalities will be expected to participate in the drinking water source protection planning process and to support implementation of the developed Source Protection Plans. Municipal planning documents will need to be amended to be consistent with Source Protection Plans. These amendments will need to be accompanied by new by-laws that are required to meet the objectives of the Source Protection Plans. In addition, it is not yet precisely clear what enforcement activities municipalities will need to assume.

7. CONCLUSION

The *Clean Water Act* received first reading on December 5, 2005 and was posted on the EBR on the same date, and the related *Regulations to support the proposed Clean Water Act, 2005* was posted on the EBR on December 22, 2005.

The proposed *Clean Water Act* has evolved from many source water protection related initiatives and projects supported by the Ministry of Environment over the past several years. The Act provides sufficient clarity in the intent and administration of source protection areas and will further advance source water protection in the Province of Ontario.

York Region, in its extensive efforts over the past four years, has both contributed significant input to the process and advanced the Region's understanding of source

protection and groundwater management. This has occurred to the point where the Region and its partner conservation authorities will be leading source water protection planning and implementation in the Province.

Staff have submitted comments on both the Act, and the proposed matters to be addressed in regulation, to further advance York Region's role in source protection planning.

Key concerns include municipal representation on source water protection committees, as well as municipal accountability and liability in implementing source water protection plans.

York Region and our partners have applied for Provincial funding in the amount of \$1,314,891 in order to undertake initiatives related to source water protection requirements.

The Senior Management Group has reviewed this report.

(The attachments referred to in this clause were included in the agenda for the March 1, 2006 Committee meeting.)