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UPDATE ON SOURCE PROTECTION COMMITTEES UNDER THE PROPOSED *CLEAN WATER ACT*, 2006

The Transportation and Works Committee recommends the adoption of the recommendations contained in the following report, March 21, 2007, from the Commissioner of Transportation and Works and 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 Regional staff comments on the *Discussion Paper on Source Protection Committees under the Clean Water Act* Environmental Bill of Rights (EBR) Registry number PA06E0013 (*see Attachment 1*).
2. The Regional Clerk 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.
3. Staff report back to Regional Council as necessary to highlight the legislative progress under the proposed *Clean Water Act*, 2006.

2. PURPOSE

This report provides Council with an overview of the "Discussion Paper on Source Protection Committees under the *Clean Water Act*" posted for comment on the Environmental Bill of Rights (EBR) on January 2, 2007 with a comment deadline of February 1, 2007. This report also outlines potential implications of the proposal to York Region and provides comments for submission to The Ontario Ministry of the Environment (MOE), the Association of Municipalities of Ontario, area and neighbouring municipalities.

3. BACKGROUND

The *Clean Water Act*, 2006 was introduced in the Provincial legislature on December 5, 2005 to address one of the key recommendations of the Walkerton Inquiry "protecting

water at its source”. Regional Council, at its meeting of March 23, 2006, through its adoption of Item 8 of Report No. 3 Transportation and Works Committee endorsed the comments on the draft legislation. The Act received Royal Assent on October 19, 2006 but has not yet been proclaimed and therefore it is not in force. Regulations that are necessary to fully define the scope and requirements of the *Clean Water Act, 2006* are expected to be released in four separate waves over the next eighteen months.

A discussion paper on the structure, nature and operation rules of *Source Protection Committees* was published on the EBR Registry on January 2, 2007 with comments required by February 1, 2007. Under the *Clean Water Act, 2006*, *Source Protection Committees* are responsible for the preparation of the terms of reference, assessment reports and source protection plans. It is expected that the source protection planning process will formally commence once the *Source Protection Committee* and *Source Protection Areas/Regions* (Conservation Authorities boundaries as shown in *Attachment 2*) are established.

Due to the limited time for response to this EBR posting, Regional staff submitted comments in draft to the MOE on February 1st, 2007, pending endorsement by Council. The comments addressed three major areas of concern:

- 1) Adequate municipal representation on the *Source Protection Committee*
- 2) Sustainable funding
- 3) Reasonable timelines for public consultation.

In addition, comments were offered in response to the questions posed throughout the document.

4. ANALYSIS AND OPTIONS

This report has been structured to:

- Provide an overview of the *Clean Water Act, 2006*.
- Summarize the key points of the EBR posting.
- Describe and discuss major issues and recommendations provided by Regional staff.
- Identify anticipated next steps in the *Clean Water Act, 2006* process.
- Outline the relationship with Vision 2026.

4.1 Overview of the *Clean Water Act, 2006*

The purpose of the *Clean Water Act, 2006* is to provide a framework to protect water at its source as a first step in ensuring a safe drinking water supply. The main instrument to accomplish this goal is a document called a Source Protection Plan. A major objective of the legislation is to create and implement these Source Protection Plans. In general, Source Protection Plans are aimed at managing potential sources of contamination (threats) and prevent pollutants from reaching sources of drinking water.

Source Protection Plans will be required for each *Source Protection Area/Region*, which will be defined in upcoming regulation and based on Conservation Authority boundaries where they exist. Under the *Clean Water Act*, a *Source Protection Area* is the geographic boundary of a Conservation Authority area, if it exists. For efficiency purposes, neighbouring Conservation Authorities will be grouped together to form *Source Protection Regions*. Proposed *Source Protection Areas and Regions* are shown in *Attachment 2*.

Each *Source Protection Area/Region* will be lead by a *Source Protection Authority* which is the Conservation Authority of an area where it exists. The *Source Protection Authority* will coordinate the efforts within the *Source Protection Area*, and act as liaison with the Province for the purposes of completing source protection activities under the Act. Where a *Source Protection Region* has been formed a lead *Source Protection Authority* will be designated to coordinate the efforts of all authorities. An overview of the *Clean Water Act, 2006* governance structure is illustrated in Figure 1.

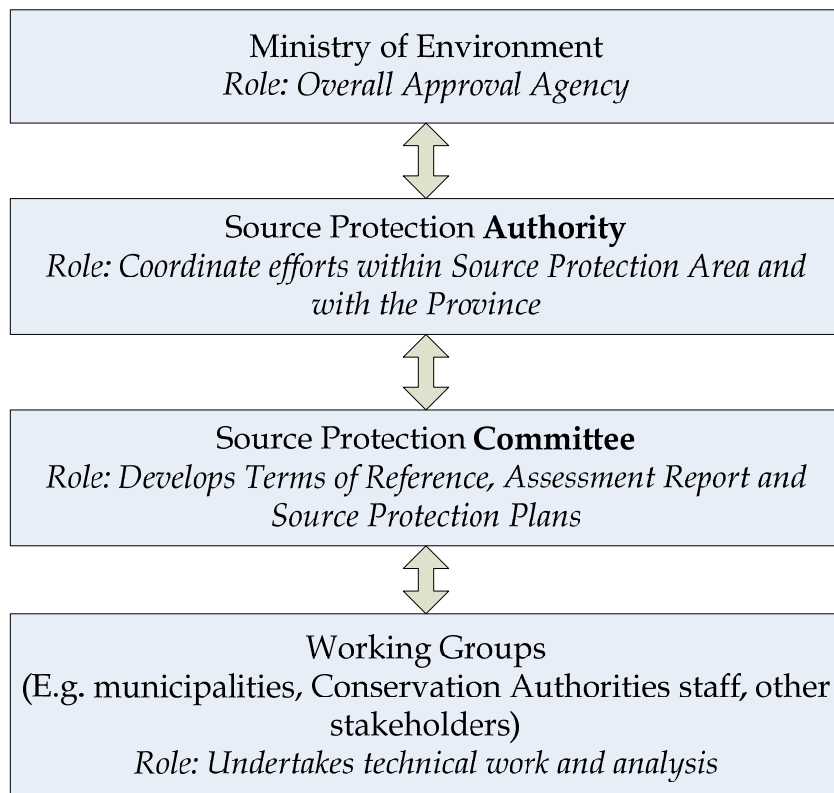


Figure 1: Overview of the *Clean Water Act, 2006* governance.

York Region is currently located within two *Source Protection Regions*:

- *CTC Region* is comprised of three conservation Authorities that border Lake Ontario from west to east, namely Credit Valley (C), Toronto Region (T) and Central Lake Conservation Authorities (C).
- *South Georgian Bay-Lake Simcoe Region* includes four conservation authorities, namely Lake Simcoe, Nottawasaga, Black River and Severn Sound Conservation Authorities

For the two *Source Protection Regions* in York, Toronto Region Conservation Authority (TRCA) and Lake Simcoe Region Conservation Authority (LSRCA) have been identified as the lead *Source Protection Authorities* respectively.

The Act provides that there be one *Source Protection Committee* per region and that the lead *Source Protection Authority* establish the *Source Protection Committee* for the region. The *Source Protection Committee* will be responsible for developing *Source Protection Plans* in three steps:

1. Terms of Reference that set out the scope of the work to be undertaken, roles and responsibilities for the planning process, public consultation requirements, timetable and assignment of tasks to municipalities as necessary
2. Assessment Report identifies the watershed characteristics, the vulnerable areas within the watersheds, and assesses the drinking water threats in each vulnerable area (i.e. Wellhead protection areas, surface water intake protection zones, etc) to prioritize risks to the quality and quantity of municipal drinking water sources. and
3. Source Protection Plan describes the risk management actions that municipalities must ensure are implemented, including land use planning controls under the *Planning Act*. Actions may include the establishment of policies to prevent significant drinking water threats (significant threat policies); Great Lakes policies; and the monitoring of source protection areas, risky activities as well as identified drinking water issues. Prohibited activities, regulated activities and restricted land uses are also to be listed.

4.2 Source Protection Committees

One of the primary requirements of the *Clean Water Act, 2006* is the establishment of multi-stakeholder committees referred to as the *Source Protection Committee*. The *Source Protection Committee* is responsible for the preparation of the three key pieces of documentation for each *Source Protection Region*, namely the Terms of Reference, Assessment Report and Source Protection Plan as describe in above section.

In addition, the *Source Protection Committee* will also be responsible for establishing working groups, coordinating local consultation process, facilitating local approvals of

source protection plans, submitting locally approved plan to Source Protection Authorities (SPA) for final review and submission to the MOE and providing input on the interim progress reports for the province. The *Source Protection Committee* is required to work collaboratively with municipalities during the entire planning process.

Committee size is proposed to vary according to the size and complexity of the *Source Protection Region*. Large-complex regions, such as the two in York Region, will have a committee composed by 15 members plus a chair. The *Source Protection Committee* will be comprised of representatives from municipalities (1/3), First Nation (1), sectoral such as agricultural, commercial (~1/3 members) and other stakeholders like members of the public, etc (~1/3). There is also an opportunity local medical officers and MOE staff to become members of the committee as advisors. The current proposal precludes members of Conservation Authority Boards from participating in *Source Protection Committees*.

Members of the *Committee* can be self-nominated, however the *Source Protection Authority* will select the *Committee* members. The Chair of the *Committee* will be appointed by the Province based on local recommendations from *Source Protection Authorities*. It is anticipated that Regional staff will be considered as municipal members in the two *Source Protection Committees* in York Region, requiring one member for each *Committee*.

Participation will also be expected by Regional staff in the working groups to be formed by the *Source Protection Committee* in order to prepare the key documents described above. These multi-stakeholder working groups will provide input and feedback throughout the planning process by bringing local and regional knowledge to the table and identify local issues towards the development of a source protection plan. Working group membership will be very broad and open to all watershed stakeholders, whether they relate to a particular sector or not.

Proposes key roles and responsibilities are as follows:

Source Protection Authority:

- Establishes the *Source Protection Committee*.
- Provides recommendation to the Minister of Environment with respect to potential Chairs for the *Source Protection Committee*.
- Provides scientific, technical and administrative support and resources.
- Reviews and comments on terms of reference, assessment report and Source Protection Plan.
- Submits the above documents to the MOE for approval.
- Prepares and submit interim progress reports to the MOE.
- Manages budget provided by the Province for the *Source Protection Committee*.
- Ensures compliance of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) and the *Freedom of Information and Protection of Privacy Act*.
- Assigns a mediator to resolve disputes when committee cannot resolve them.

The Ministry of the Environment (MOE):

- Provides regulation and guidance as it relates to the formation and operation of *Source Protection Committee*.
- Appoints the chair of the *Source Protection Committee* based on recommendation from the *Source Protection Authority*.
- Participates in *Source Protection Committee* and provides information as required.
- Provides training to committee members.

Municipalities:

- Participates in the planning process as a member of the *Source Protection Committee* and/or working groups.
- Provides local data/information.
- Works with *Source Protection Committee* to develop work plans for Intake Protection Zones and Wellhead Protection Areas.
- Takes the lead in preparation of portions of the assessment report and source protection plan that relate to specific future municipal supply areas.
- Implements Source Protection Plans.

It is also anticipated that there will be a number of technical or sub committees under each *Source Protection Committee*. As a result of these roles and responsibilities for two *Source Protection Regions*, there will be considerable time and effort required by Regional staff in order to participate fully in these efforts.

4.3 EBR Comments

On several previous commenting occasions, Regional staff has raised the following primary concerns to the MOE, yet they have not been considered. These concerns continue to be crucial to the Region and were restated to the MOE in response to the current EBR posting.

4.3.1 Adequate Municipal Representation on the *Source Protection Committee* Issue:

The current proposal limits the *Source Protection Committee* to 16 members for complex *Source Protection Regions*. In addition, municipal representation in the *Source Protection Committees* is restricted to 1/3 (or 5) representatives. While it is recognized that the number of *Source Protection Committee* members should be limited to effectively accomplish the *Committee's* work, it is considered that the proposed size and municipal representation are not adequate to ensure that source protection plan reflects local or Regional needs, which is of particular importance as the Region has legislated responsibility to provide adequate and safe supply and quality of drinking water.

Recommendation:

The Ministry increase the size of the *Source Protection Committee* and reconsider the current allocation to allow 50% for municipal representation. Adequate municipal

representation in the decision-making process of source protection planning will ensure that the final products (Assessment Report and Source Protection Plans) can be implemented at the local level.

4.3.2 Sustainable Funding

Issue:

The powers of the *Source Protection Committee* to implement measures have huge financial implications for municipalities and very little accountability to municipal taxpayers. Ultimately, municipalities will be responsible for implementing source water plans, including policing offences and will very likely be subject to liability. To date, there has been no commitment by the Province to financially support the implementation measures of this work, nor guidance on how this implementation will happen.

There is also no sustainable funding to maintain the *Source Protection Authority*. While the current government has made public statements committing \$120 million to funding 100% of the costs through the development of the source protection plans (and is currently providing funding on an annual basis through to March 2008), there is no certainty or mechanisms for the *Source Protection Authority* to secure funds to undertake and carry out their legislative and proposed regulatory responsibilities under the *Clean Water Act, 2006*. The most recent announcement by the Province, there was a commitment to fund \$16.5 million dollars to *Source Protection Authorities*. The Region is concerned that this financial burden will be downloaded to municipalities, which we consider to be a duplication of the *Conservation Authorities Act*.

Recommendation:

The Province provides funding for all aspects of development and implementation of Source Protection Plans.

4.3.3 Reasonable Timelines for Consultation

Issue:

The Province needs to consider reasonable timelines for public consultation to occur on these proposals and respect the municipal Council reporting processes. We remain of the opinion that there is a fundamental gap in the Province's understanding of the way the municipal council decision-making process works. Within the Region of York, staff requires at least a three month advance notice in order to give due consideration to initiatives and have these initiatives considered by Committee and Council.

Recommendation:

The Province must allow flexibility to ensure that they not impose short deadlines that circumvent the *Source Protection Committee's* ability to have adequate consultation with municipal councils.

4.3.4 Other Matters

In addition, Regional staff provided comments to the Province on the specific questions posed by the Province in the Discussion Paper and other general concerns with regards to

consultation, training and communication of this initiative. A list of these additional matters is included in the Table as part of *Attachment 1* to this report.

4.4 Next Steps and Timelines

The process towards reaching the goal of protecting municipal drinking water systems, as prescribed by the Province, can be illustrated in seven major steps as shown in Table 1 below.

The legislative foundation is critical and is currently underway with Proclamation scheduled for Spring 2007. The MOE plans to release Regulations over the next 18 months that support the implementation of the *Clean Water Act, 2006*. The first wave of regulations (Spring 2007) deals with the establishment or alteration of the boundaries of source protection areas, creation of source protection regions, formation of source protection committees and notification of imminent health hazards. The second wave (Fall 2007) focuses on the preparation of assessment reports, risk assessment plans, certification and training and Ontario Drinking Water Stewardship Fund. The third and fourth waves (2008) address the development of source protection plans and other matters (i.e. general operation matters) respectively.

As the Province develops this legislative package, municipalities and Conservation Authorities are concurrently building the knowledge and understanding of the natural flow systems that support municipal drinking water systems. Technical studies are well underway at the Region and with partnering Conservation Authorities to ensure that we have the necessary information to proceed with the source water planning.

The establishment of the *Source Protection Committee* is necessary in order to complete the assessment of all the technical work undertaken and create the Source Water Protection Plan. It will also direct much of the implementation and the final phase of monitoring, enforcement and reporting.

Staff will continue to monitor the progress of the *Clean Water Act, 2006* and provide updates to Council as necessary. Due to the cross departmental interests, internal staff from Health, Planning and Works have established a steering committee to help disseminate information and knowledge.

Table 1: Clean Water Act, 2006 Process and Timelines

Steps	2007	2008	2009	2010	2011
Create Act and Regulations, Guidance documents					
Complete Technical Studies					
Establish <i>Source Protection Committee</i>					
Complete the Assessment Report					
Complete the Source Protection Plan					
Implement the Plan					
Enforcement, Monitoring, Reporting					

4.5 Relationship to Vision 2026

Source Protection Planning, using a watershed-based approach, 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 objectives in Vision 2026.

5. FINANCIAL IMPLICATIONS

As previously reported, the long term management and protection of water resources is expected to be very costly and the full cost implications of implementation will not be known until the completion of the Source Protection Plans. 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 commitment of \$18.5 million in grants to support the technical studies required development of the source protection plans demonstrates this commitment.

Well in advance of this legislation, the Region had already recognized and committed investment in the understanding and protection of our water resources. In the past five years, the Region has spent over \$3 million dollars every year in developing a groundwater model, an extensive monitoring network, conducting technical studies and watershed studies through collaboration with our partner Conservation Authorities. However, much work remains to be done in order to meet these new legislative requirements which has already, and will continue to require significant staff time.

Regional staff continue to make every effort to apply for Provincial grants to complete the technical work as required by this new legislation, which reported on January 23, 2007 Item No 2, Report No 1 of the Transportation and Works Committee. To date, the Region has been successful at every opportunity, with current Provincial grants totalling approximately \$350,000 to date. In addition, the South Georgian Bay-Lake Simcoe Region has recently received approximately \$820,000 to undertake studies for surface water intake protection zones on Lake Simcoe, of which Keswick and Georgian Water Treatment plants were included.

6. LOCAL MUNICIPAL IMPACT

The Credit Valley (C), Toronto Region (T) and Central Lake (C) (CTC) *Source Protection Authority* has already initiated communications with Regional staff and area municipalities in their area of jurisdiction. A technical advisory committee has been formed and meets on a frequent basis. Current plans are underway to hold a symposium with senior Regional and area municipal staff to discuss the development of *Source Protection Committee* in mid April.

It is anticipated that once the *Act* is proclaimed the South Georgian-Lake Simcoe Authority, which would involve our northern local municipalities, will start its work in earnest.

Regional staff is making every effort to ensure local municipalities receive timely information with respect to the progress of *Clean Water Act, 2006* and the *Source Protection Authority's* work.

7. CONCLUSION

The *Clean Water Act, 2006* was introduced in the legislature on December 5, 2005 to address one of the key recommendations of the Walkerton Inquiry "protecting water at its source". The Act received Royal Assent on October 19, 2006 but has not yet been proclaimed and therefore it is not in force. It is anticipated Proclamation will occur in the Spring 2007. Regulations that are necessary to fully define the scope and requirements of the *Clean Water Act, 2006* are expected to be released in four separate waves over the next 18 months.

In January 2007, the Province released a discussion paper regarding their current thinking and vision for the *Source Protection Committee* on the Environmental Bill of Rights Registry (PA06E0013). The paper provided significant insight into the Province's view of the composition, member selection, responsibilities, and their role in developing terms of reference, the Assessment Report and Source Protection Plan. It also provided the Province's direction for public consultation and involvement.

Staff has submitted draft comments to the Province regarding their proposal and continue to raise these same three primary concerns:

- The need for adequate municipal representation on the *Source Protection Committee*.
- The need for sustainable funding.
- The need to establish reasonable timelines for public consultation, with specific consideration of the municipal process.

It is anticipated that there will be considerable time and effort required by Regional staff in order to participate fully with two *Source Protection Committees* and several working groups. An internal multi-department steering committee has formed with Health, Planning and Works to help disseminate information, knowledge, roles and responsibilities.

Staff will continue to monitor the progress on *Clean Water Act, 2006* and provide updates to Committee and Council on an as-needed basis. Wherever possible, Regional staff is making an effort to ensure area municipalities receive timely information with respect to the progress of *Clean Water Act, 2006* and the technical studies.

For more information on this report contact Wendy Kemp, extension 5141, Program Manager, Water Resources of the Water and Wastewater Branch in the Transportation and Works Department.

The Senior Management Group has reviewed this report.

(The attachments referred to in this clause are attached to this report.)