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TERMS OF REFERENCE FOR SOURCE WATER PROTECTION, *CLEAN WATER ACT, 2006*

The Transportation and Works Committee recommends the adoption of the recommendations contained in the following report, April 3, 2008, from the Commissioner of Environmental Services and the Commissioner of Planning and Development Services:

1. RECOMMENDATIONS

It is recommended that:

1. Staff of Environmental Services Department be authorized to lead technical tasks, as set out in *Attachment 2*, in connection with preparation of the Assessment Report for the Toronto and Region and Lakes Simcoe and Couchiching/Black River Source Protection Areas.
2. Staff of Planning and Development Services Department be authorized to co-lead planning tasks, as set out in *Attachment 2*, in connection with preparation of the Source Protection Plan for the Toronto and Region and Lakes Simcoe and Couchiching/Black River Source Protection Areas.
3. This report be circulated by the Regional Clerk to the clerks of the local municipalities, The Credit Valley Toronto Region Central Lake and South Georgian Bay Lake Simcoe Source Protection Committees, Toronto Region Conservation Authority and Lake Simcoe Region Conservation Authority as Lead Source Protection Authorities for The Credit Valley Toronto Region Central Lake and South Georgian Bay Lake Simcoe Source Protection Regions respectively.

2. PURPOSE

To seek Regional Council's approval to undertake technical and planning tasks for development of Terms of Reference under the *Clean Water Act, 2006*.

This report seeks Regional Council's endorsement to allow staff of Environmental Services and Planning and Development Services Departments lead and co-lead, respectively, a number of technical and planning tasks to support preparation of the Assessment Report and Source Protection Plan for the Toronto and Region and Lakes Simcoe and Couchiching/Black River Source Protection Areas as required by the *Clean Water Act, 2006* (the "Act").

3. BACKGROUND

Development of the Terms of Reference for local Source Protection Areas is underway and Council endorsement is required for undertaking tasks

According to *the Act*, The Credit Valley Toronto Region Central Lake and South Georgian Bay Lake Simcoe Source Protection Committees (*the Committees*), in consultation with affected municipalities, must develop Terms of Reference to guide the preparation of an Assessment Report and the Source Protection Plan for Source Protection Areas within their respective Source Protection Region. Proposed Terms of Reference for the Toronto and Region and Lakes Simcoe and Couchiching/Black River Source Protection Areas are currently under development and must be submitted to the Minister of the Environment by October 2008.

O. Reg. 287/07 (Terms of Reference), made under *the Act*, states that the Terms of Reference must contain a work plan that identifies the major tasks required to be performed to complete the Assessment Report and Source Protection Plan for each Source Protection Area. The work plan must also identify:

1. The person or body responsible for performing the task.
2. An estimate of the date by which the task is expected to be completed.
3. An estimate of the costs that are expected to be incurred in performing the task.

Pursuant to Section 4 (1) of O. Reg. 287/07, municipalities interested in performing tasks associated with the preparation of the Assessment Report and Source Protection Plan in their Source Protection Area(s) must confirm their intention via council resolution.

Accordingly, this report seeks Regional Council's approval to undertake technical and planning tasks that will contribute to the preparation of the Assessment Report and Source Protection Plan for the Toronto and Region and Lakes Simcoe and Couchiching/Black River Source Protection Areas located within The Credit Valley Toronto Region Central Lake and South Georgian Bay Lake Simcoe Source Protection Regions.

The resolutions, if passed by Regional Council, will become part of the "proposed" Terms of Reference to be submitted to the Minister. Terms of Reference are referred to as "proposed" until the document is approved by the Minister.

4. ANALYSIS AND OPTIONS

4.1 TERMS OF REFERENCE DEVELOPMENT PROCESS

Municipalities are expected to play a key role in the development of Terms of Reference

The Terms of Reference is the first legislated product required from Source Protection Committees established in Ontario. It details the work necessary to prepare the Assessment Report and the Source Protection Plan. According to O. Reg. 287/07, the process of developing the Terms of Reference entails six major steps as summarized in Table 1 and further explained below.

Table 1
Development of Terms of Reference (O. Reg. 287/07)

Step	Description	Anticipated Timelines (2008)
1	Notice of commencement to affected municipalities and Chiefs of First Nations	February
2	Preparation of draft Terms of Reference	January to May
3	Public Consultation on draft Terms of Reference	May to June
4	Review of draft Terms of Reference	July to August
5	Submission of Proposed Terms of Reference to Source Protection Authority	August
6	Submission of Proposed Terms of Reference to the Minister	October

1. Notification: *The Act* requires source protection committees to notify the clerk of each municipality and the chief of the band of each reserve within source protection area that the preparation of the Terms of Reference has begun. In February 2008, the Chairs of The Credit Valley Toronto Region Central Lake and South Georgian Bay Lake Simcoe Source Protection Committees sent a notice of commencement to the Regional Clerk and invited Regional staff to participate in the preparation of the draft Terms of Reference.
2. Prepare Draft Terms of Reference: The draft Terms of Reference must contain, at a minimum, the information requested in Section 3 of O. Reg. 287/07 (see *Attachment 1*) and be prepared in accordance with guidance from the Ministry of the Environment. Municipalities are given the opportunity to undertake tasks identified in the draft Terms of Reference, subject to Council approval.
3. Public Consultation: There are two phases of consultation requirements for Terms of Reference preparation. The first phase is focused on the draft Terms of Reference. It includes publishing the draft on the Internet for public inspection and circulating

copies to municipalities, other source protection committees and First Nations . A public meeting is to be held at least 21 days after a notice of the draft is published. The notice must advise the public of the 35-day period for submission of comments. The second phase is related to the proposed terms of reference (*see Step 5*).

4. **Review of Terms of Reference:** After the first phase of consultation, the source protection committee shall consider any comments received and may revise the draft Terms of Reference. The committee and municipalities may try to resolve any concerns before finalizing the proposed Terms of Reference. In the event that issues remain unresolved, the committee must submit a summary of these concerns to the source protection authority.
5. **Submission to Source Protection Authority:** The source protection committee must forward the proposed Terms of Reference, along with any concerns and comments received, to the source protection authority and post the document on the internet for a 30-day period of consultation.
6. **Submission to Ministry of the Environment:** The source protection authority then submits the proposed Terms of Reference to the Minister, along with any comments it may have, a summary of the concerns of municipalities and First Nations , and any other comments received during the consultation period. The Minister may approve the proposed Terms of Reference as submitted or provide direction to the source protection authority to amend and resubmit the proposed Terms of Reference.

The Source Protection Committee in consultation with municipalities may propose amendments to the Terms of Reference

Once the Terms of Reference are approved, a notice will be published on the Ontario Environmental Registry. Following approval, the Source Protection Committee, in consultation with municipalities, may propose amendments in the following circumstances according to Section 9 of O. Reg. 287/07:

- Modification of source protection area boundaries;
- Addition and/or omission of drinking water systems from the source protection process in accordance with *the Act* and its regulations;
- Significant changes in the work plan; or
- Correction of errors that would effect the preparation of assessment reports or source protection plans.

Amendments to the Terms of Reference are subject to a public consultation process before the document is submitted to the Minister for approval.

The Minister also has the authority to require further amendments to any section of the Terms of Reference except removing drinking water systems that have been included in the source protection process through municipal Council resolution.

4.2 POTENTIAL TASKS TO COMPLETE THE ASSESSMENT REPORT AND SOURCE PROTECTION PLAN

Municipalities may undertake tasks in their local source protection areas

The Terms of Reference shall not require a municipality to perform any technical or planning task unless the municipal Council has passed a resolution consenting to undertake the work (O. Reg. 287/07). When deciding whether or not to perform tasks, municipalities should consider the following:

- *The Act* gives municipalities the first right-of-refusal to undertake any of the work to complete the Assessment Report and Source Protection Plan on water sources within their municipal jurisdiction.
- Municipalities that choose not to perform any tasks (e.g. due to limited staff resources) will need to rely on their local source protection authority for completion of this work in their source protection area(s).
- If a municipality passes a resolution consenting to undertake tasks to support the preparation of the Assessment Report and Source Protection Plan in its source protection area(s), the Terms of Reference must require the municipality to perform the task(s).
- The Source Protection Committee must consult with municipalities that have consented to perform tasks on the estimated date for completion of the work and estimated costs to be incurred. This information must be included in the proposed Terms of Reference.
- While the Source Protection Committee does not have authority to assign tasks to municipalities, the Minister may do so when reviewing, approving or amending the proposed Terms of Reference.
- Once approved by the Minister, all tasks listed in the Terms of Reference must be carried out.

Attachment 2 provides a list of anticipated tasks required to complete the Assessment Reports and Source Protection Plans required by *the Act*, as well as the recommended lead(s) for each task. This information is based on the Ministry of the Environment *Guidance on the Preparation of the Terms of Reference* dated February 6, 2008.

Since regulations on assessment reports and source protection plans are still pending, as are anticipated in Director's rules, the tasks identified in *Attachment 2* may be incomplete. It is expected that the pending regulations will be available before the proposed Terms of Reference are finalized.

Staff of Environmental Services will lead the assessment of threats and issues in wellhead protection areas

The Assessment Report will identify:

- Vulnerable areas. According to *the Act*, “vulnerable areas” refers to wellhead protection areas, surface water intake protection zones, significant groundwater recharge areas and highly vulnerable aquifers.
- Threats and issues within those vulnerable areas.
- Low, moderate and high risks to either quantity or quality of existing and future municipal water sources.

Prior to the passage of *the Act*, the Region, with the help of provincial funding, has been conducting technical work directed towards assessing water quality issues and threats within existing wellhead protection areas. The following four technical studies are being led by staff of the Water and Wastewater Branch:

- Groundwater Vulnerability Analysis
- Water Quality Characterization and Issues Identification
- Issues Evaluation and Threats Inventory
- Tier 1 Water Quality Risks Assessment

Provincial funding was also made available to the Toronto and Region and Lake Simcoe Source Protection Authorities to carry out similar studies on other vulnerable areas, as well as water quantity assessments at the watershed scale (i.e. water budgets). Regional staff have been extensively involved in the preparation of these studies through information sharing and peer review of products derived from the assessments.

While all the work already underway is being completed following the requirements of the Draft Assessment Report Guidance Modules, it is anticipated that the upcoming regulations and Director’s rules will impose additional requirements (e.g. consultation). In addition, scientific information has not been collected to assess “planned” drinking water supply systems that are included in the source protection process as set out in Section 15 (e) (i) of *the Act*.

Considering that approval has been given to proceed with the establishment of the new water supply systems for the communities of Nobleton (Well #4), Mount Albert (Well #3), and Schomberg (Well #4) under the *Environmental Assessment Act*, these systems are subject to the current source protection process unless Regional Council passes a resolution in accordance with Section (4) of the O. Reg.286/07 (Miscellaneous) made under *the Act*. The resolution must state that the Region does not intend to establish any of all of the above drinking water system(s).

As a result of its advanced knowledge and experience as a water service provider, it is recommended that the Region retain its role of leading technical studies around existing wellheads and conduct similar work for planned drinking water systems.

Anticipated tasks to be performed are shown in *Attachment 2*. Municipal residential drinking water systems subject to the source protection planning process are presented in *Attachment 3*.

It is anticipated that the Toronto and Region and Lake Simcoe Source Protection Authorities will continue to lead the water quality and quantity assessments on other vulnerable areas as this will ensure consistency across watershed edge mapping. However, Regional staff feel that if a Tier 3 Water Quantity Risk Assessment is required within York Region, the Region should lead this task due to the local nature of the work.

Staff of Planning and Development Services will work as co-leads to develop Source Protection Plan Policies for wellhead protection areas and intake protection zones

The Source Protection Plan will identify actions to be taken to eliminate significant threats and to mitigate moderate threats to drinking water supplies that were identified in the Assessment Report. This action will be in the form of policies directed towards protecting drinking water sources.

At this time, it is anticipated that the Region's Planning and Development staff will work as co-leads along with other participating municipalities in local source protection areas and the Toronto and Region and Lake Simcoe Source Protection Authorities to develop policies around wellhead protection areas and intake protection zones, depending on the results of the Assessment Report. This structure will ensure consistency across source protection areas.

Because the Source Protection Plan is highly dependent on the results of the Assessment Report, specific tasks to be performed for its completion are very broad at this time (See *Attachment 2*). In addition, it is not clear what policy requirements may be outlined in upcoming regulations, therefore, the decision to lead or co-lead tasks for the preparation of the Plan may change through an amendment to the Terms of Reference in the future.

4.3 ANTICIPATED NEXT STEPS

Regional staff will actively participate in the preparation of proposed Terms of Reference

1. Comment on the draft and proposed Terms of Reference for the Toronto and Region and Lakes Simcoe and Couchiching/Black River Source Protection Areas.
2. Complete technical studies, currently in progress, that support the preparation of the Assessment Report in Toronto and Region and Lakes Simcoe and Couchiching/Black

River Source Protection Areas (subject to availability of updated guidance documents from the Ministry of the Environment).

3. Continue to monitor and review the Province's progress on the source water protection initiative and report to Regional Council as necessary.

Following Ministry of the Environment approval of the Terms of Reference, the development of the Assessment Report will proceed; this is expected to be complete by 2009. The source protection planning process will conclude with the completion of the first Source Protection Plan by 2012.

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

The Province has committed funding to cover the costs of source protection products

The Province will provide funding for the work required to develop the Terms of Reference, prepare the Assessment Report and prepare the Source Protection Plan in each source protection area. It is anticipated that the allocation of funds will be aligned with the estimated costs for completion of source protection products included in the proposed Terms of Reference. The administration of funds is expected to rest with local Source Protection Authorities.

Completion of tasks and coordination with source protection authorities will require substantial staff effort and resources. Source Protection Authorities have been funded to build internal capacity. Municipalities, however, do not qualify for provincial funding to compensate for the significant staff resources and associated time and effort to support this process. Regional staff will retain qualified consultants in accordance with the Purchasing By-Law to carry out the technical work to be led by the Region when funding becomes available.

6. LOCAL MUNICIPAL IMPACT

Local municipalities are encouraged to participate in the source protection planning process

While *the Act* does not require local municipalities to participate in the source protection process, municipal planning documents will need to be amended to conform to the Source Protection Plan, once it is approved by the Ministry of the Environment. Consequently, it is important that local municipalities are aware of the progress of this provincial initiative and provide input as necessary.

Local municipalities are encouraged to participate in the development of the Terms of Reference through the two phases of consultation discussed in *section 4.1* of this report. In addition, Regional staff is committed to ensuring that local municipalities are kept informed with respect to this and other activities being undertaken by the local Source Protection Committees.

7. CONCLUSION

The Credit Valley Toronto Region Central Lake and South Georgian Bay Lake Simcoe Source Protection Committees are currently developing Terms of Reference for Source Protection Areas in their respective Source Protection Regions that will guide the preparation of the Assessment Report and Source Protection Plan required by the *Clean Water Act, 2006*. Proposed Terms of Reference are to be submitted to the Minister in October 2008.

It is recommended that Regional Council pass resolutions for undertaking the technical and planning tasks, listed in *Attachment 2*, that contribute to preparation of the Assessment Reports and Source Protection Plans for the Toronto and Region as well as the Lakes Simcoe and Couchiching/Black River Source Protection Areas.

The Province has committed funding to cover the cost for work necessary to produce the initial Source Protection Plan for each Source Protection Area in Ontario. Funding will be made available to municipalities that consent to undertake tasks listed in the Terms of Reference.

It is anticipated that additional regulations and Director's rules will become available in the summer of 2008. Regional staff will continue to monitor the progress on source protection planning under the *Clean Water Act, 2006* and provide updates to Regional Council on an as-needed basis.

For more information on this report, please contact Wendy Kemp at ext 5141, Program Manager Water Resources, Water and Wastewater Branch, Environmental Services.

Report No. 5 of the Transportation and Works Committee
Regional Council Meeting of May 15, 2008

The Senior Management Group has reviewed this report.

(The attachments referred to in this clause were included in the agenda for the April 30, 2008 Committee meeting.)