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UPDATE ON SOURCE WATER PROTECTION AND REQUEST FOR ADDITIONAL FUNDS TO MEET REQUIREMENTS UNDER *THE CLEAN WATER ACT*

The Environmental Services Committee recommends the adoption of the recommendations contained in the following report dated April 28, 2010, from the Commissioner of Environmental Services and the Commissioner of Planning and Development Services.

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council endorse staff comments submitted in response to Environmental Bill Registry posting 010-8766 “Regulatory components to support the development and implementation of source protection plans under the *Clean Water Act*, 2006” appended to this report as *Attachment 1*.
2. Blanket purchase order number B00011915 issued to Stantec Consulting Limited be increased by the amount of \$233,664 from \$66,336 to \$300,000 excluding GST for additional work for Water Quality Threats Inventory to be funded 100% by the Province of Ontario.
3. This report be circulated to local municipalities for information.

2. PURPOSE

The purpose of this report is to provide updates on source water protection including the need to:

- Deliver a new risk management program to meet the *Clean Water Act* requirements
- Manage expanded scope for technical studies for the Assessment Report
- Participate in upcoming consultation activities to engage the public
- Participate in development of source protection plans

This report also provides an update on other related activities including staff’s response to the Ministry of the Environment.

3. BACKGROUND

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

The *Clean Water Act* sets out a framework to protect drinking water at the source. 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 and aggressive timelines. Public consultation is mandated under the *Clean Water Act* at various stages throughout the process to promote participation and provide local context.

As previously outlined to Regional Council (Environmental Services Committee No 1, October 14, 2009), work is well underway to deliver key components of source protection as prescribed under the *Clean Water Act* (Table 1).

Table 1
Deliverables under the *Clean Water Act*

Deliverables	Status	Anticipated Extended Deadlines For Source Protection Region	
		South Georgian Bay Lake Simcoe	Credit Valley Toronto Region Central Lake Ontario
Terms Of Reference	Complete	June 29, 2009	August 17, 2009
Assessment Report	~75%	December, 2010	October, 2010
Source Protection Plan	Initiated	August, 2012	August, 2012

Negotiations between Source Protection Regions and the Province to extend completion deadlines for the Assessment Report from this summer to later this fall are underway. These anticipated due dates will allow sufficient time to align with completion of required technical studies. Final approval of these extensions by the Province is anticipated by the end of May.

Assessment Report will identify threats to drinking water supplies

In recent months, the Region and Conservation Authorities for the South Georgian Bay Lake Simcoe (SGBLS) and the Credit Valley Toronto Regional Central Lake Ontario (CTC) Source Protection Regions have been working together to finalize the draft Assessment Reports. These reports will summarize a series of technical studies that analyze the landscape for threats to drinking water quality and quantity within a watershed boundary. More specifically, the Reports will:

- Identify vulnerable areas on a map
- Identify water quality issues related to water sources
- Identify risks to municipal drinking water systems, and

- Count the number of significant threats for each municipal drinking water system in York Region

Estimated 3,000 drinking water threats identified in York Region that need to be field verified

Drinking water threats have been prescribed by the Province and include activities related to septic systems, waste disposal sites, agricultural source material, fuels, fertilizers, pesticides, solvents and other related chemicals. Information on these threats is limited by available data sets and minimal field verification. It is a conservative approach based on a number of assumed site conditions. On-site property specific details were not mandated or funded by the Province for the Assessment Report, however it is hoped public consultation will improve site specific data quality with information provided by landowners. The Assessment Report is the basis for developing Source Protection Plans, which will outline policies designed to minimize risks to sources of drinking water.

Source Protection Plan specifies actions needed to protect drinking water

As the final deliverable in 2012, the Source Protection Plan will detail actions required to protect drinking water as determined by the Source Protection Committee, a group of appointed representatives from municipalities, agriculture, public, golf course and aggregate industry. Although locally driven, the Province will regulate the objectives and content of source protection plans through legislation.

Last fall, staff provided comments on an earlier Discussion Paper on the requirements for source protection plans as reported to Regional Council (Environmental Services, Committee No1, October 14, 2009). The Discussion Paper provided a good starting point to explore options for implementing source water protection; however, staff's overriding concern that public health and safety should remain paramount in legislative and policy tools available to municipalities appears to be missing.

Regional staff provided comments to Province on the proposed regulation outlining source protection plan policies

More recently, the Province released a draft regulation amending O. Reg 287/07 to establish objectives for policies that will appear in the Source Protection Plan, as a follow up to the Discussion Paper on source protection planning. It was posted on the Environmental Bill of Rights (EBR# 010-8766) on January 25, 2010. Comments were due on March 26, 2010. Proposed amendments outline:

- Requirements for use of mandatory and optional policies
- Use of other mechanisms such as provincial instruments under other related legislation (e.g. certificates of approval issued under *the Environmental Protection Act* or *Ontario Water Resources Act*)

- Powers and duties of the Risk Management Official; and
- Other consultative matters

Regional staff from Long Range Planning, Legal and Environmental Services prepared comments (*Attachment 1*) in response to the new regulation. The Region's comments were circulated to the local municipalities to provide an opportunity to include their feedback. Responses were provided by the Towns of Georgina, Aurora and Newmarket.

Regional staff are involved in Planning working groups to develop Source Protection Plans

Various working groups focusing on specific specialized planning tasks have been initiated by both Source Protection Committees. These groups provide support for the work of the Committees by bringing together knowledge and expertise to assist decision making by the Committees. As a participant on the Planning working committees, the Region will help guide the process to ensure decisions made by the Source Protection Committees consider local context as previously reported to Regional Council at the meeting of May 15, 2008 (Transportation and Works Committee Report No 5). Membership on these working committees includes Source Protection Committee members, Region staff from Environmental Services and Long Range Planning, local municipal and conservation authority staff. Workshops are planned throughout the summer and fall of this year.

4. ANALYSIS AND OPTIONS

New regulation for Source Protection Plans identifies risk management needs

Overall, staff are encouraged to see that the Province continues to recognize the need to promote local flexibility and offer an opportunity to use a variety of tools, including enforcement, education and outreach in the new draft regulation (EBR# 010-8766) for source protection planning. Staff are also encouraged that the Province has proposed a list of Provincial instruments to minimize duplication. However, the draft regulation still leaves many questions unanswered, particularly funding and liability.

The draft regulation does not clarify roles, responsibilities and powers for drinking water protection using land use planning tools. It is not clear what the Source Protection Committee's liability and accountability for drinking water safety will be if it is ultimately responsible for administering and implementing the plans. Finally, it is not clear how municipalities responsible for drinking water supply treatment and distribution will ensure a timely and effective process is in place to safeguard public health when an unexpected threat is encountered.

Specific comments to the Province outlined in *Attachment 1* include:

- There is a need to clarify roles, responsibilities and powers for drinking water protection using land use planning tools
- Province needs to provide funding to municipalities to support new responsibilities and address liabilities
- Existing planning tools are not capable of addressing cumulative impacts
- Existing land uses may require a temporary prohibition or 'cease and desist' action where the threat is impacting water quality
- Province needs to ensure that all relevant legislation, regulations and instruments support source water protection
- Need to coordinate Source Protection with Lake Simcoe Protection Plan

A new Risk Management Program is required in the next 18 months

York Region has a strategy to protect drinking water sources to keep in step with new Provincial directions, as reported to Regional Council (Transportation and Works Committee No 2, February 19, 2009). With the release of a new draft Source Protection Planning regulation, it is anticipated that a new Risk Management program will be necessary to:

- Appoint a new Risk Management Official and Risk Management Inspectors
- Issue and track a new permit program to mitigate risks
- Report activities to the Province and Source Protection Committees
- Develop by-laws and protocols for fee recovery and consistency across the Region
- Define upper and lower tier roles and responsibilities
- Promote and educate the public on risk management requirements
- Address additional needs related to risk management

This new program will need to be designed prior to release of the Source Protection Plan to stay proactive and ensure timely mitigation of drinking water risks. In the upcoming months, staff will begin to develop the program scope to align existing activities with new requirements to prevent duplication of efforts across local municipal and Regional responsibilities. It is expected a follow up report will be submitted to Regional Council in Fall 2010.

Keeping pace with changing Provincial rules results in additional work for the Region

The Threats Inventory is a critical component of the Assessment Report. The inventory merges data from numerous sources into a single report to identify land use activities that may present risks to drinking water sources. This work has evolved significantly, with the Province changing requirements as recent as February 2010. Every directive issued by the Province has resulted in a change in scope that was not anticipated. As result, consultants were required to re-do work to evaluate threats. The Region has made substantial efforts to complete this work for all Regional wells, in close coordination with

local municipal staff and conservation authorities, while accommodating changing rules to meet timelines.

Source Protection Committee requests additional work to finalize threats inventory

Recently, a detailed review of the various technical approaches was undertaken to identify opportunities to align approaches to reduce variability from various consultants working on technical pieces for the Assessment Report as directed by the South Georgian Bay Lake Simcoe Source Protection Committee. They were concerned that the public would be confused by the slight variances in how threats were identified due to different consultants' approaches. This new direction by the Source Protection Committee requires refinement of the desktop analysis to ensure threats are captured in the same manner. This new direction by the Source Protection Committee impacts the schedule and time to revise all of the threat studies, which were near completion.

Delivery of draft Assessment Report triggers public consultation process

It is expected that Source Protection Committees will approve the draft Assessment Report this summer, which triggers a series of public consultation activities defined under the *Clean Water Act*. The Source Protection Committees must hold at least one session per Source Protection Region within 35 days of acceptance of the Assessment Report by the Source Protection Committee. As the Region straddles two Source Protection Regions, the South Georgian Bay Lake Simcoe and the Credit Valley, Toronto and Region and Central Lake Ontario, there will be at least two public sessions within the Region. Regional staff has worked with Conservation Authority staff to ensure consistency across the Region. Currently, it is anticipated that public consultation sessions will be held in the communities of Newmarket, Stouffville and Nobleton. Notification of the release of the draft Assessment Report and public meetings will be sent to all municipal Clerks across the watershed. It will also be posted in local newspapers.

Letters will be sent directly to landowners identified to potentially have significant drinking water threats

The draft Assessment Report will identify significant threats to drinking water within highly vulnerable areas. As required by O.Reg. 287/07, landowners who may engage in land activities listed as a significant threat based on the draft Assessment Report must be notified. In York Region, approximately 700 of the estimated 3,000 drinking water threats may potentially be significant. The letter, sent by the Source Protection Committee, will also inform the land owner how they can become involved in the process by sharing data and attending public meetings. Brochures on source protection will also be included in the mail out package. In addition, Regional staff has provided a covering letter to offer additional support in the package. An extensive review by Region staff including legal, Corporate Communications and others has been conducted for all

materials for consistency. Landowners who also have the potential for moderate drinking water threats based on the draft Assessment Report will also receive letters requesting their participation at the public meetings.

Additional outreach activities planned for Councillors and local municipal staff

Prior to the public meeting, the South Georgian Bay Lake Simcoe Source Protection Region is planning to host a workshop to provide an overview of the draft Assessment Report, provide a question and answer fact sheet and identify a contact at the Source Protection Region to whom questions may be directed. The session will also be available by web-based video which will allow for review of materials when personal schedules permit. The exact date for this session will be finalized pending approval of the draft Assessment Report.

Additional outreach activities are planned for businesses within the two year wellhead protection areas

The Region continues to work closely with the Conservation Authorities to leverage Provincial stewardship dollars for early actions to protect 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 (Transportation Works Committee No. 2, Feb 2009). More recently, the Region and Lake Simcoe Conservation Authority received funding to outreach to businesses to develop pollution prevention plans. Uptake for this funding has been minimal to date and it is hoped the door-to-door strategy will create more interest to implement pollution prevention plans.

New land owner information from public consultation requires additional work by the Region to update threats inventory

A re-evaluation of threats is likely required to finalize the Assessment Report for submission to the Province. New data is expected by field verification and public outreach in the upcoming months. It is essential to ground truth data with land owner discussions. Although, it is recognized that this study is a good first step to assess threats at a 'desktop' level, it is limited by available data, which in many cases lacks sufficient detail to truly account for the significance of the threat.

Further discussion with Conservation Authorities is underway to decide how best to manage the data on an ongoing basis. Given the size of the source protection regions, it is anticipated the Region will need to maintain the data sets for our local knowledge and risk management. To keep these datasets current, staff would like to include additional contingency funding in the Stantec Consulting Limited assignment to allow for staff training, software amendments and other unforeseen scope changes from the Province or

Source Protection Committees to ensure compatibility with existing data and reporting structures.

Changes to the threats inventory needs to be compatible with existing data and report structures to keep current information readily available

Considerable efforts have been undertaken to merge land use data from a variety of sources and keep pace with evolving Provincial rules. It is essential that these data sources fit together to allow staff to include new information once public consultation begins and beyond the completion of the Assessment Report. Consistent data structures allow staff to search and quickly identify threats on land owner's property. Substantial knowledge and expertise on the local land uses has been gained by Stantec Consulting Limited as this complex work has evolved with the Provincial rules. Staff recommend Stantec Consulting Limited continue to be awarded the work to addresses consistency issues and updated threats information to maintain compatibility with existing data and reporting structures. Moreover, staff views this approach as an effective use of limited resources, given the complexity of the data and Provincial rules. Further details on estimated costs are outlined in section 5 of this report.

5. FINANCIAL IMPLICATIONS

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

As previously reported to Regional Council, 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. This funding includes costs for public consultation activities.

Source Protection Committees were required to prepare Terms of Reference to outline costs for the work to deliver an Assessment Report and Source Protection Plan. This funding has been allocated to the lead Conservation Authorities by the Province to administer on their behalf since June 2009, when the Terms of Reference were approved by the Province. Funding agreements are arranged with the appropriate Conservation Authority for all work undertaken by the Region. Amendments to technical reports, as directed by the Source Protection Committee, to deal with consistency issues are fully funded under this Program. Appropriate allocation in the Environmental Services ten year capital plan has been considered and there are no additional Regional funds required at this time.

Efforts to align threats inventory work across Source Protection Regions results in additional time and scope, 100% funded by the Province

The Region is leading the threats inventory work within wellhead protection areas as endorsed by Regional Council (Transportation and Works Committee No 5, May 2008). Stantec Consulting Limited (formally Jacques Whitford) was awarded the Water Quality Issues and Threats Inventory work based on a competitive process in 2007, funded by the Ministry of Environment. To accommodate changing rules, alterations to the scope of work and funding agreements with the Province have now been made.

With the unexpected release of new direction by the Province, new additional tasks have been identified to complete the Threats Inventory in 2010 as outlined in Table 2. Stantec Consulting Limited was awarded this work with a current contract value of \$66,336. The additional scope has resulted in this request to Regional Council to increase the contract value to \$300,000.

In summary, staff recommend amending Contract B00011915 with Stantec Consulting Limited to an upset limit of \$300,000 to address consistency concerns from each of the Source Protection Committees and to allow the Region to maintain the threats inventory to ensure compatibility with current data sets. All of this work is 100% funded by the Province. The assignment of this new work to Stantec Consulting Limited will capitalize on their significant local knowledge and expertise gained from substantial efforts to align the threats inventory with ever changing Provincial direction over the past two years.

Table 2

Estimated Contracted Services for Stantec Consulting Limited (B00011915)

Current Contract Value	\$66,336
South Georgian Bay Lake Simcoe Source Protection Committee Revisions	\$58,000
Credit Valley Toronto Region And Central Lake Source Protection Committee Revisions	\$40,000
Additional Staff Training, Software Amendments And Other Scope Changes To Address Evolving Provincial Rules	\$135,664
Total	\$300,000

New risk management requirements are increasing York Region's responsibilities to manage estimated 3,000 drinking water threats

Risk management is a long term program that requires decisions made by Regional staff who can protect the Region's interests and maintain due diligence. It is imperative that York Region continues to play a lead role in the engagement of local municipalities, conservation authorities, source protection committees and the public to raise our common understanding of risks to drinking water sources. In-house knowledge is essential for program development to allow for ongoing dialogue across science and

planning disciplines including local, Regional, Provincial and Conservation Authorities boundaries. Additional resources will be needed to keep in step with emerging Provincial requirements which are very technical, requiring expertise in hydrogeology and land use planning.

A follow up report will be submitted in Fall 2010 to Regional Council to identify additional resource needs for the increasing risk management responsibilities for the Region as a provider of drinking water. Staff will look for program efficiencies to hire professional consulting services where specialized experts are required and determine what new activities will have to be assumed by York Region. Substantial efforts are needed to link existing programs with new responsibilities across a variety of Regional and local municipal departments. A new permit program will need to be created to manage drinking water threats. In addition, cost recovery and funding opportunities need to be explored with the Province to determine how the Region can enact by-laws to recover costs for source protection.

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.

In a recent liaison meeting with local municipalities on March 24, the Region agreed to provide additional support by presenting an overview of source protection impacts to Local Municipal Councils. Previous presentations were conducted for Town of Georgina, Town of Aurora and Town of Whitchurch-Stouffville in past four months. Local municipal staff have been informed of upcoming public sessions and workshops, but it is recognized that the process is complex and needs more resources to coordinate and provide support. It was also suggested that a planning workshop with local municipal staff was necessary. Draft Assessment Report maps and other products have been provided to enable feedback based on local knowledge prior to the release of the draft Assessment Report. In the coming months, important discussions with local municipal staff will begin to gain a fulsome understanding of *the Building Code and Planning Act* responsibilities for the development of a Risk Management Program.

7. CONCLUSION

As a two tiered municipality, there are challenges ahead with potentially 3,000 drinking water threats to be verified, managed and reported as outlined by the proposed Regulation (EBR# 010-8766) for source protection planning. This new regulation increases the

Region's responsibilities as the provider of drinking water. Additional resources will be necessary to create a new program to manage drinking water threats over the next 18 months. A follow-up report will be submitted in Fall 2010 to outline resource needs to meet the new risk management requirements.

In the coming months, public consultation will begin across the Region on the draft Assessment Report. Municipalities and property owners will receive notification of drinking water threats. Public participation is critical to ensure data in the Assessment Report captures the reality of the landscape. Landowners will have an opportunity at public meetings to provide property specific data that may alter findings in the Assessment Report, which is the basis for the Source Protection Plan. Opportunities to inform local municipalities, Councillors, residents, business owners and other stakeholders will be achieved by a variety of methods including public open houses, webinars, websites, presentations and ongoing workshops. Collaboration and communication are paramount as we move ahead with implementation of the *Clean Water Act*.

To finalize the Water Quality Threats Inventory for the draft Assessment Report to the satisfaction of the Province and Source Protection Committees and to update the Inventory based on upcoming public consultation, an amendment to the existing contract with Stantec Consulting Limited in the total amount of \$300,000, 100% funded by the Province is requested. This new work will ensure the Region has an updated threats inventory with new land owner information by maintaining compatibility with data and reporting structures. In addition, the assignment of this new work to Stantec Consulting Limited will capitalize on their significant local knowledge and expertise gained from substantial efforts to align the threats inventory with ever changing Provincial direction.

For more information on this report, please contact Laura McDowell, Director, Environmental Promotion and Protection, at (905) 830-4444 Ext. 5077 or John Waller, Director, Long Range and Strategic Planning, at Ext. 1525.

The Senior Management Group has reviewed this report.

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



April 9, 2010

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**Re: EBR Registry Number 010-8766
Regulatory components to support the development and implementation of source protection plans under the Clean Water Act, 2006**

Thank you for this opportunity to comment on the Regulatory components to support the development and implementation of source protection plans under the Clean Water Act, 2006 (EBR Registry Number: 010-8766). These comments have been provided and reviewed by Regional and Local Municipal staff in planning, environmental services/works and health departments. Due to the timing of Committees and Council at the Region and the EBR comment deadline, these comments cannot be considered by Council until May 2009. We will provide the Council report to you after that date.

Overall, we are encouraged to see that the Province continues to recognize the need to promote local flexibility and offer the opportunity to use a variety of tools from enforcement to education and outreach. We are also encouraged that the Province has proposed a list of Provincial instruments to address duplication. We provided previous comments on Discussion Paper on Requirements for the Content and Preparation of Source Protection Plans (EBR Registry Number: 010-6726) in September of 2009. The Discussion Paper provided a good starting point to explore options for implementing source water protection, however, our overriding concern expressed at that time does not appear to have been clearly addressed in the Draft Regulation, that 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. In addition, this Draft Regulation is not clear on exactly what the roles and responsibilities are of municipalities responsible for drinking water supply are in implementation and enforcement of the source water protection plans. If the Source Protection Committee is ultimately responsible for administering and implementing the plans, then what is the Committee's accountability and liability for drinking water supply? How will municipalities responsible for drinking water supply treatment and distribution ensure that a timely and effective process is in place to safeguard public health when an unexpected threat is encountered?

Our key comments are as follows:

Need to clarify roles, responsibilities and powers for drinking water protection using land use planning tools

- There is a need to better understand the Planning Act and how this, and other pieces of legislation will work as prescribed under the CWA
- The Province will need to outline who is ultimately responsible for various aspects of the land use planning process as it relates to source water protection, especially for two tier municipalities. The Province needs to clarify whether references to official plans include these plans all levels of municipal government, and what level of detail is required in each.

- 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 stakeholders.
- The drinking water source protection process introduces many new responsibilities and liabilities for municipalities, many of which are not yet clearly understood.
- While MOE staff have indicated that the onus will be on the Crown to ensure prescribed instruments conform to Source Protection Plan (SPP) policies, with no "approval" role for the Source Protection Committee (SPC) in the conformity exercise, we suggest a process map be developed to outline processes and inter-relationships between the *Clean Water Act* (CWA) and sections of the *Planning Act* that are prescribed for the purposes of s. 59, so that SPC's can better ensure that comprehensive and effective policies are included in the SPP.
- 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. If our understanding of the draft regulation is correct, it proposes that development applications, etc., will not be permitted under prescribed sections of the *Planning Act* in source protection areas in the WHPA's and IPZ's as identified in the SPP. This is a powerful tool as it prevents threats from locating in these areas and avoids appeals, however, it is not clear if this will prevent actions against municipalities for compensation or other legal actions. Currently, land owners may seek compensation for loss of future development potential.

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

- Support the concept of collecting climate change data on an ongoing basis, however, more thought and direction needs to be provided on who will be responsible for this. Consistent data should be collected across the province, and MOE should discuss what data should be collected, keeping in mind that not all source water protection regions will have the scientific resources or funding to collect some types of data.
- The Province needs to set up an expropriation fund for municipalities for cases where there is refusal or inability to comply with either Interim Risk Management Plans, for the period before source water protection plans are put in place, or afterwards, where there is no other option but to expropriate land 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.
- Although the Act does offer the opportunity to recover costs through bylaws for Risk Management activities, it remains unclear how municipalities will support the remaining aspects of the program. The municipal and Provincial roles should be clearly defined regarding funding arrangements and distribution based on specific tasks and responsibilities including:
 - Incentive programs
 - Education and Outreach programs.
- Many of the proposed regulations deal with future threats; however there are a number of existing significant threats to water sources. Even if uses can be prohibited, ordered to cease and desist, or even purchased via expropriation or other, a potential for existing contamination due to the presence and operation of such a significant threat remains. In some cases, particularly in relation to groundwater contamination, the costs of remediation can be lengthy and expensive. Expropriation or buy-outs may need to be adjusted to reflect such costs.

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

- As stated in previous comments to the Province, the 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 policy under the SPP 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.
- We strongly advise that Planning Act decisions to delete a permitted use that is considered a significant threat should not be appealable to the Ontario Municipal Board. We recommend a legislative change be made that links to the appeal opportunities of the Planning Act under Sections 17 and 34 whereby a conforming Official Plan Amendment and Zoning Bylaw Amendment cannot be appealed to the OMB, similar to what was provided with the Oak Ridges Moraine Conservation Act and Conformity exercise. Without this provision, many implementing OPAs and ZBAs may be unnecessarily delayed at the OMB and incur unnecessary costs to all parties.

Existing land uses may require temporary prohibition or a “cease and desist” action where the threat is imminent

- The draft regulation proposes a number of approaches to deal with significant threats AFTER a SPP is approved by the Minister as well as giving the SPC the ability to prohibit existing activities “subject to regulations”, and only in certain circumstances. These actions should fall under the jurisdiction of the RMO. Municipalities need a strong suite of enforcement tools 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 and process (i.e. SPC writing policies to deal with existing activities that pose a significant threat) currently proposed in the draft Regulation 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 issued and enforced by the RMO, up to and including prohibition should be considered.
- 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.
- SPPs 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 CWA and the draft regulation assume that risk is a static state.
- The Province needs to determine how to capture new land use *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?
- Having an existing significant threat 'Cease and Desist' would stem the source of potential contaminants; however, where a significant threat has already introduced impacts, a cease and desist order may not be sufficient to further protect the source water. Some thought should be given to a Cease, Desist and Remediate order where necessary. Consideration also need to be given to existing impacts, especially if there a change in public ownership as municipalities would be required to address contaminated lands, which would require a RSC prior to a further change in ownership or land use.

The Province needs to ensure that all relevant legislation, regulations and instruments support source water protection

- There needs to be stronger links with the Environmental Assessment Act and Record of Site Condition regulation as an opportunity for notification of new systems and potentially new threats, rather than duplicate notification and assessment efforts.
- It is encouraging to see that the regulation includes a proposed list of prescribed Provincial instruments, however, it is not clear how these (e.g. Permit to Take Water, Certificates of Approval, the Building Code, aggregate licenses, nutrient management plans, etc.) will be used to address significant threats. These instruments 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, risk management officials and others in order to ensure a comprehensive multi-level approach is taken to ensure 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).
- 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.

Need to Coordinate Source Protection with Lake Simcoe Protection Plan

- There is a potential for overlap of policies and duplication of work between the development of SPPs and work required under the Lake Simcoe Protection Plan. The MOE should ensure coordination between these plans and, where applicable, an appropriate hierarchy for policies in each developed to avoid conflicts.

Specific Comments on EBR 010-8766 Source Protection Planning Regulation

Section Reference	Comments
1.01	Prescribed instruments – Commercial fuel storage is a significant risk for many urban areas with groundwater systems. There is lack of understanding how these commercial fuel storage are regulated by the Province to ensure continuous integrity of tanks and establishment of continuous monitoring and reporting requirements. The current TSSA does not provide adequate control. It is suggested the Province should establish a Provincial Instrument to ensure consistency across the Province.
	There is a need to tie the Brownfield regulation (O.Reg. 153/04 Records of Site Condition) with the Risk Management Official. That is, notification of intent to remediate using non-potable standards should also be addressed by the Risk Management Official along with the upper and lower tier municipalities unless otherwise designated by the municipality to the RMO.
19.1	Notice to municipalities needs to include both upper and lower tier municipalities.
19.4(2)-(3)	The wording is if a CofA is “required”, shouldn’t the CofA actually be issued for this exemption to apply?
19.5 - ‘Cease to be’ a significant threat	There is no caveat to remove a significant threat under the current Technical Rules. That is, a significant threat is defined by the Threats Tables, which does not allow for a ‘downgrading’ to less significant risk when BMPs or other risk mitigation measures are considered. It will never ‘cease to be’ unless the activity completely ‘ceases to be’. It’s this double messaging that requires clarification to the public as we move past the Source Protection Plan. Consideration to add the words

	'mitigated significant risk' to the terminology of the regulation would eliminate the double messages.
19.7-1ii	There is uncertainty on what is an acceptable best management practice. It is our understanding that the Province will establish a specific reference/catalogue for accepted best management practices e.g. SWP BMP Risk Management Measures which shall strengthen the acceptance of a specific practice.
	For small (< 10,000 litres per day) private sewage and water systems including distribution systems, there is no prescribed instrument, however there is a need to capture under the Source Protection Plan. It may be captured under the Planning Act but it may be too late in the process to be adequately dealt with.
19.17	When the person or body is designated a responsibility for the Policy, there is appears to be no ability of the assignee to refuse or accept the responsibility. How will conflicts be resolved if the assignment is deemed inappropriate by the assignee?
19.19	Does this refer to decisions which have already been made before the SPP is finalized or any decision which could be made on a go forward basis?
19.19 e	If a municipality strongly opposes a policy, there needs to be clarity on dealing with mediated decision between the Committee and the Municipality. However section 19.22-1c allows for this to be documented in the submission to the Ministry
19.27 -2	Need to specify who received the notification of the hearing. Should include the impacted municipalities (lower and upper tier).
19.29 Amendments to SPP	It remains unclear how to deal with additional water supply systems or new wells. At which point will the SPP require amendment? Would the SPP require also an amendment of the Assessment report? Is public consultation required and under which regulation? There needs to be a way that the process is fluid and risk management requirements can be enforced by the RMO for emerging drinking water supplies.
	It remains unclear how the Assessment Report and SPP will be amended for new cumulative impacts from new activities e.g. water budgets
19.30 2-1	Should include upper and lower tier municipalities.
19.32	Need to specify the deadlines of the annual reports. We prefer on the anniversary of the Source Protection Plan approval by Minister.
19.32-2	It is unclear how to measure the effectiveness of the policies. There needs to be further guidance from the Province.
19.35 Risk Management Plan, contents	Would suggest there needs to be more clarity on the contents, similar to the guidance for a permit to take water to assist and ensure consistency across the Province. That is, a risk plan needs to consider notification protocols for emergency events, cumulative impacts, references to published risk management approaches (MOE Risk Management BMP database?), use of accepted modelling tools, etc.
19.37	Should there be some discretion on the part of the RMO or the province to determine whether or not the prescribed instrument actually fulfills the requirements of (1) or is it to be left to the instrument holder's interpretation alone? What security is there that once the person is exempt they will comply with the conditions of the instrument, will this be monitored by the RMO/RMI or the province?
19.41 Qualifications	Additional professional qualifications should be added under the Ontario Professional Geoscientists or Professional Engineers Acts. This course should mirror the type of training MOE's provincial officers receive. Particularly if the province will not be conducting prosecutions. Components of the training need to include collection of evidence, powers of entry, chain of custody procedures and proper documentation procedures.
19.43, 19.45 - 8 and Act 106;	It remains unclear if a person does not comply with orders under CWA who is responsible for prosecution. Is a RMO responsible for pursuing the penalties under the Act (s106).
19.44	It remains unclear how the Risk Management Official is notified when the

	bankruptcy process initiated and how to work with new land owners.
19.45 RMO Reports	Circulation of RMO reports should also be provided to municipal councils.
	Annual report should also include any new risk management plans based on amendments to the Assessment Report. The RMO will be appointed by Council and therefore should report to municipal staff and communicated to Council before they would be provided to the SPA.

Sincerely,

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JBW/la-p
 Copy to: Erin Mahoney, Commissioner of Environmental Services, York Region
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