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

**The Planning and Economic Development Committee recommends the adoption of the recommendations contained in the following report dated May 10, 2007, from the Commissioner of Planning and Development Services:**

#### **1. RECOMMENDATIONS**

It is recommended that:

1. Council endorse and forward a copy of this report to:
  - The Minister of the Environment as Regional Council's comments on the draft regulations posted for comment on the Environmental Bill of Rights registry (EBR) number 010-0122 (*see Attachment 1*).
  - The Association of Municipalities of Ontario (AMO).
  - Local Municipalities within York Region, The Regional Municipality of Peel, The Regional Municipality of Durham, The Township of Bradford-West Gwillimbury, the City of Toronto, the Toronto and Region Conservation Authority, and the Lake Simcoe Region Conservation Authority for their information.
2. 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 draft regulations posted for comment on the Environmental Bill of Rights registry by the Ministry of the Environment on Thursday April 12, 2007 with a 30-day comment deadline of May 12, 2007 (*see Attachment 2*). This report also outlines potential implications of the proposed regulations to York Region. The report outlines the comments that were submitted by staff to The Ontario Ministry of the Environment (MOE) Environmental Bill of Rights (EBR) Registry.

These comments will be forwarded on to 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 being released in four separate waves over the next year.

Earlier this year, MOE released 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. A staff report to Council (Report No. 4 of the Transportation and Works Committee Regional Council Meeting of April 19, 2007) outlined potential implications of the proposal to York Region. 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.

Following the Discussion Paper, MOE released the first set of draft regulations on the EBR on April 12, 2007 with a 30-day comment deadline of May 12, 2007.

As in past, due to the limited time for response to this EBR posting, Regional staff submitted comments in draft to the MOE on May 11, 2007, pending endorsement by Council. As the Region’s comments to the Province are not reflected in these draft regulations, our comments once again focus on the same three major areas of concern, i.e. adequate municipal representation on the Source Protection Committee; sustainable funding; and reasonable timelines for public consultation.

### 4. ANALYSIS AND OPTIONS

This report has been structured to:

- Outline the *Clean Water Act 2006* Governance Model and Source Water Protection Committee Structure.
- 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.

#### 4.1 **Clean Water Act 2006 Governance Model**

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. 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.

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

Each *Source Protection Area/Region* will be lead by a *Source Protection Authority*. 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.

An overview of the *Clean Water Act, 2006* governance structure is illustrated in Figure 1.

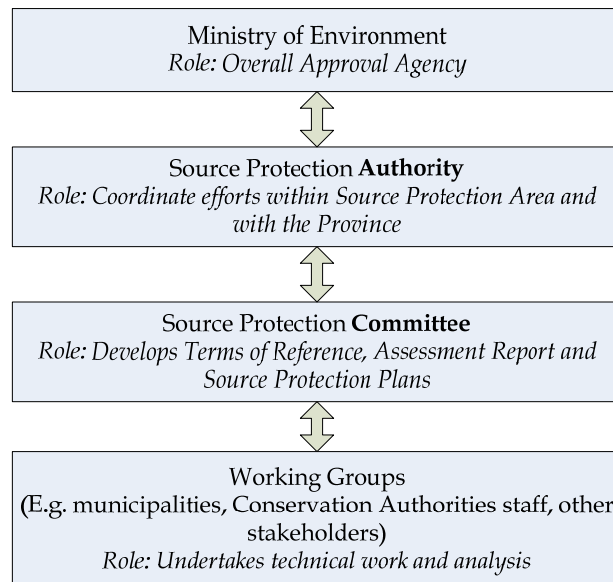


Figure 1: Overview of the *Clean Water Act, 2006* governance.

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.

#### **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.

Under the currently proposed Regulations, 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 16 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 are 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*. ***While the Province anticipates that staff will primarily be considered as municipal members in the two Source Protection Committees in York Region, with one member required for each Committee, it is important for the Province to understand that Regional Council are the primary decision and policy makers for the Region, and as such, members of Regional Council may elect to sit on the Source Water Protection 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.

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 on a number of occasions with little change. These concerns continue to be crucial to the Region and were restated to the MOE in response to the current EBR posting.

Staff have again offered the following comments in response to the recent EBR posting concerning regarding draft regulations dealing with 1) Source Protection Committees, 2) Terms of Reference, 3) Time Limits and 4) Miscellaneous Provisions.

#### 4.3.1 Adequate Municipal Representation on Source Protection Committees

Section 1 (1) of the draft regulation sets out *Source Protection Committees* size.

Under this proposed regulation, the CTC and South Georgina Bay-Lake Simcoe Source Protection Regions would have a maximum of 16 members including the chair and with the composition of Source Protection Committees made up of 1/3 municipalities, 1/3 sectoral and 1/3 other members. This only allows for five (5) municipal representatives for large regions such as CTC and South Georgina Bay-Lake Simcoe Source Protection Regions.

Municipal Councils are the ultimate authority to make decisions on land use issues, implementation and policy. It is imperative Council be guaranteed representation on the Committees in order to ensure the Source Water Protection Plans can in fact be implemented.

As in previous occasions, staff have reiterated to the Province that the current proposal does not allow adequate municipal representation on the Source Protection Committees who are responsible for the development of the Terms of Reference, Assessment Reports, and the Source Protection Plan; the later of which must be implemented at the local level.

The draft regulation does not guarantee representation from municipalities responsible for the provision of drinking water services, although the *Clean Water Act, 2006* requires these municipalities to administer and implement Source Protection Plans. In the CTC Region alone 5 regions and a number of lower or single tier municipalities, including the City of Toronto, are responsible for drinking water supply. Allocation of municipal members for the Source Protection Committee should be provided to those who own and operate water supply systems as designated under the *Safe Drinking Water Act, 2002*.

In the EBR response, staff strongly recommended that the Ministry increase the size of the Source Protection Committee for large/complex Source Protection Regions/Areas. ***York Region strongly encourages the Province to allow provisions in the Regulation to increase the committee size to accommodate additional municipal representatives. For CTC and South Georgian Bay -Lake Simcoe Source Protection Committees, we would recommend to increase municipal representatives to a total of eight (8) and trust that York Region is assumed to have a seat at the table.***

This recommendation proposes that the municipalities hold eight seats and the other sector and public seats be equally divided for a total committee composition of 16 members, plus chair. The Region strongly feels there must be adequate municipal representation in the decision-making process of source protection planning to ensure that the final products (Assessment Report and Source Protection Plans) can be implemented at the local level.

We understand from discussions with MOE staff that concerns regarding remuneration for members of Source Protection Committees are a key consideration in limiting numbers of representatives. We therefore suggest that the Province exempt all municipal representatives from the 'members honorarium' and travel expenditures as discussed in Section 6.0 Compensation, in the Source Protection Committee Discussion Paper [EBR Posting PA06E0013]. Municipal representatives are public servants and participation on the Source Protection Committee or working groups is considered within the purview of their existing job descriptions.

In addition, the Toronto and Region Conservation Authority, on behalf of the CTC watershed region, presented a board report on April 27, 2007 that outlines similar issues on behalf of the municipalities responsible for drinking water supply in the region (*Attachment 3*).

***Recommendation 1***

That the draft Source Protection Committees Regulation is amended to allow exemptions to the committee size (section 1(2)) and composition (section 2 (1)) by the discretion of the Minister.

***Recommendation 2***

That the size of Source Protection Committees for CTC and South Georgian Bay-Lake Simcoe source protection areas be increased to 17 members including the chair, whereby municipalities, sectoral and other members hold eight, four and four seats respectively.

***Recommendation 3***

That representatives of municipalities appointed to a Source Protection Committee be exempted from the "members honorarium" and travel expenditures associated to their participation on the Source Protection Committee.

**4.3.2 Consideration of Reasonable Time Limits**

The Province needs to consider reasonable timelines for delivery of key items and respect the municipal council and 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 York Region, as in other municipalities in Ontario, 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. 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.

The proposed timelines for the formation of the Source Protection Committee must be extended to 180 days, rather than the proposed 80 days. Municipalities need sufficient time to make decisions within the existing democratic process. Although it is agreed the joint selection of the Committee by municipalities is an important task, the proposed timelines do not allow for changes to the Committee, should one municipality disagree or request changes. Staff require sufficient time to prepare reports and submit within the already established municipal framework.

The draft Regulation stipulates time limits to provide information to the Minister as set out in the *Clean Water Act, 2006* but there is no indication as to the Minister's deadlines to approve submissions made by the Source Protection Authority on behalf of the Source Protection Committee. We are concerned that delays in the approval process may negatively impact the process of solving drinking water threats and issues, thereby unnecessarily increasing health risks to residents.

**Recommendation 4:**

The proposed timelines for the formation of the Source Protection Committee be extended to 180 days.

**Recommendation 5:**

The Time Limits regulation must include provisions whereby deadlines are established for the Minister to approve the three key documents to be prepared by the Source Protection Committee.

**4.3.3 Miscellaneous Regulation – Scope of Work**

Sections 8(3) and 10(7) of the CWA permit a municipality or the Minister to add additional existing or planned drinking-water systems for consideration during the completion of the Assessment Report. Section 3(1) of the draft Miscellaneous Regulation limits the ability of a municipality or the Minister to add a non-municipal drinking water systems that only serves one private residence, unless the well or intake for the drinking water system is within a cluster of 6 or more wells or intakes; or the system is within a settlement area defined under the Planning Act.

Through the EBR response, staff requested MOE to provide clarification to identify who will be responsible for the costs associated with including non-municipal drinking water systems as part of the terms of reference in the circumstances allowed by section 3(1). While it is important to consider non-municipal supplies as part of the source protection planning exercise, staff's issue is that there is a lack of direction with respect to roles and responsibilities of relevant stakeholders, and who bears the burden of costs associated with planning and implementing measures to protect these drinking water systems.



In addition, the Regulation does not define a ‘cluster’ in terms of spatial resolution. Staff suggested that this term should be clarified.

**Recommendation 6:**

Provide further detail into section 3(1) regarding roles and responsibilities and funding obligations associated with the inclusion of non-municipal drinking water systems in the source protection planning process.

**Recommendation 7:**

There needs to be flexibility for municipalities to define what a “cluster” is according to local conditions or direction from the Minister on how a “cluster” is to be defined.

**4.3.4 Sustainable Funding for Implementation**

Although there is no discussion about funding in the first set of regulations released as part of the current EBR posting, staff again took the opportunity to emphasize the need for sustainable funding to implement recommendations arising from source protection plans in the response to the EBR posting. While staff were pleased with the Province’s acknowledgement to provide 100% funding for the preparation of the three key documents required by the CWA, staff remains concerned with respect to the cost associated to implementation and enforcement of source protection plans.

As previously stated, the powers of the Source Protection Committee to implement measures have significant financial implications to municipalities and very little accountability to municipal taxpayers. 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. Staff are concerned that this financial burden will be downloaded to municipalities, which we consider to be a duplication of the *Conservation Authorities Act*.

**Recommendation 8:**

That the Province establishes a sustainable, secure and long-term funding program to support the implementation and enforcement of source protection plans.

**4.3 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 | 2012 |
|------------------------------------------------|------|------|------|------|------|------|
| 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             |      |      |      |      |      |      |

#### **4.4 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 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.

The South Georgian-Lake Simcoe Authority, which would involve our northern local municipalities, has planned a start-up meeting in the near future, and will soon 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.

On April 12, 2007 the Province released the first wave of draft regulations related to the *Clean Water Act, 2006* on the Environmental Bill of Rights Registry (010-0122).

Municipal Councils are the ultimate authority to make decisions on land use issues, implementation and policy. It is imperative Council be guaranteed representation on the Committees in order to ensure the Source Water Protection Plans can in fact be implemented.

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

- The need for adequate municipal representation on the *Source Protection Committee*
- The need for the Province to provide further detail regarding roles and responsibilities and funding obligations associated with the inclusion of non-municipal drinking water systems in the source protection planning process
- 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.

While the Province anticipates that staff will primarily be considered as municipal members in the two Source Protection Committees in York Region, with one member required for each Committee, Regional Council will have to decide whether staff or Council members sit on the Source Water Protection Committee.

Staff will continue to monitor the progress on *Clean Water Act, 2006* and provide updates to Committee and Council on an as-needed basis. 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 Laura Atkins-Paul, extension 1534, Senior Planner, Long Range and Strategic Planning Branch, or 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.)*