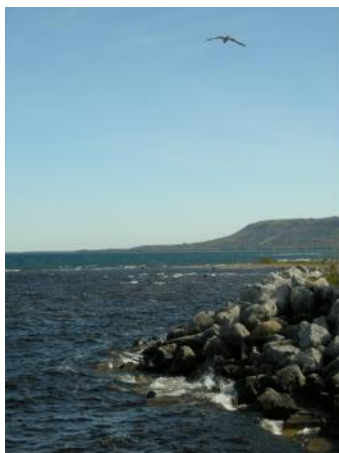


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Chapter 4

Policy Background



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4.0 Policy Background

4.1 Policy Intent

The Source Protection Plan consists of a range of policies that together will reduce the risks posed by threats to water quality of drinking water sources.

The *Clean Water Act* and its regulations allow for a variety of methods to be used to fulfill the task of protecting our drinking water including:

- promoting voluntary measures
- providing education and outreach opportunities
- using official plans and zoning by-laws and prescribed instruments
- restricting land uses
- prohibiting activities
- implementing risk management plans

A policy only applies to the activities and in the vulnerable areas described in the policy's text. A description of how to understand the circumstances and areas where policies apply can be found in Chapter 5.

4.2 Policy Development

The Source Protection Committee undertook an extensive process to arrive at the policies contained in the Source Protection Plan. At a workshop in 2010, the Committee agreed upon a decision-making model that outlined the various steps necessary to develop the successful set of policies that the Committee desired as the outcome of their efforts. Information and knowledge formed the initial core of the work. The Committee received presentations, reports and materials about the drinking water systems, drinking water threats and available policy tools. Considerable discussion about policy options then occurred, resulting in various rounds of revisions to draft policies.

The Planning Officials Working Group consisted of planning staff from counties, municipalities and conservation authorities, a planning consultant, building officials and two Source Protection Committee members. Their expertise in planning-related matters and numerous other areas was invaluable. The Agricultural and Rural Working Group involved representatives of various agricultural commodity groups and sectors, as well as two Source Protection Committee members. They provided significant input into understanding agricultural practices and their relation to drinking water sources, along with the many best management practices being used by producers as stewards of the land.

The Source Protection Committee was assisted in its policy process by two working groups:

- Planning Officials Working Group

- Agricultural and Rural Working Group

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A series of policy packages were developed to discuss each of the threat categories prescribed by the *Clean Water Act*. The policy packages provided an overview of the threat category and gave details on how the threat was viewed in the *Tables of Drinking Water Threats* (Threats Tables) that are part of the *Clean Water Act* regulations. As well, each package stated the preliminary versions of policies. An appendix at the back gave the details of circumstances where activities would be considered significant drinking water threats. This feature gave context to what specifically could be affected by policies.

In November 2011, pre-consultation with potential implementing agencies began. The pre-consultation was a requirement under the *Clean Water Act* that gave an initial opportunity for these agencies to comment on proposed source protection plan policies. A series of workshops were held with municipal councillors and agency staff members. Several agencies provided written comments and these were carefully considered by the Source Protection Committee prior to adopting the Draft Proposed Source Protection Plan.

4.3 Tools

The *Clean Water Act* allows the Source Protection Committee to use various approaches when generating policies to address drinking water threats. This may include using existing regulatory powers, such as land use planning and provincial approvals (also called instruments), new regulatory powers given under the *Clean Water Act*, education programs, incentive programs, and resource management.

*The **policy approach** or tool varies from one policy to the next. The Clean Water Act and its regulations enable a whole series of tools.*

The tools used to address activities may include:

- **Prohibition** – uses section 57 of the *Clean Water Act* and may prohibit an activity in certain locations.
- **Risk Management Plan** – uses section 58 of the *Clean Water Act* and requires a landowner to have an approved plan that is negotiated with the Risk Management Official. The activity can continue as long as an approved plan is in place and being followed.
- **Restricted Land Use** – uses section 59 of the *Clean Water Act* in conjunction with risk management plans or prohibition. Is a screening tool when reviewing applications that identifies to planning agencies and others that an activity is controlled by a Risk Management Plan or prohibition policy.
- **Land Use Planning** – affects land use planning decisions under the *Planning Act* and *Condominium Act* and is generally used to identify, through maps and text in the official plan that certain activities on a property may be subject to policies in the Source Protection Plan. It is used in some instances to manage or eliminate activities associated with particular land uses and is implemented through land use planning decisions (such as official plans, zoning by-laws and site plan controls).
- **Prescribed Instrument** – policies that affect decisions to issue or otherwise create, amend or revoke a prescribed instrument for approvals by provincial Ministries.

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The following additional tools are identified by the *Clean Water Act* regulations (O.Reg. 287/07, s. 26(1)) and can be used in relation to significant, moderate or low drinking water threats:

- Incentive Program
 - makes funding available to landowners to assist with implementation costs
- Education and Outreach
 - provides information and materials about the activity, such as best management practices and legal requirements
- Stewardship Programs
 - establishes collaborative partnerships between organizations and individuals who take action at a local scale
- Best Management Practices
 - specifies and promotes practices that offer the safest or most efficient way to undertake an activity
 - may include a range of measures from operational procedures to administrative processes
 - generally regarded by professional organizations, industry associations as well as people who operate in that sector
- Govern Research
 - identifies that further research may be necessary in specific situations to better understand where targeted actions to address threats would have the most benefit to source water
- Specify Action
 - requires an agency to take a particular action, such as passing a by-law using *Municipal Act* powers;
 - helps to implement the plan or to achieve the plan's objectives
- Establish Pilot Project
 - encourages innovative programs, emerging technologies or new methods to address certain threats to drinking water
 - assesses applicability in different situations or suitability in broader applications

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4.4 Definitions/Terminology

Several terms are used frequently in the policies in Chapter 6. The following definitions are provided to assist in the interpretation of the policies.

Drinking water threat

- “means an activity or condition that adversely affects or has the potential to adversely affect the quality or quantity of any water that is or may be used as a source of drinking water, and includes an activity or condition that is prescribed by the regulations as a drinking water threat” (*Clean Water Act*, s.2(1))

Policy approach

- the type of policy tool, such as risk management plan or education program, that is being used by a particular policy text
- policy tools are described in section 4.3 above

Activity

- an action, function, work, development, or similar undertaking
- includes a land use (*Clean Water Act*, s.2(1))
- the Threats Tables describe the circumstances that must be present for an activity to be considered a potential drinking water threat

Activity type

- **Existing activities**
 - includes activities on a property that existed or occurred prior to the effective date of the Source Protection Plan
- **Future activities**
 - includes activities which were not in existence prior to the effective date of the Source Protection Plan; or
 - activities proposed on or after the effective date of the Source Protection Plan

Reference should be made to Policy Text ID G-10 where the terms “existing activity” and “future activity” are defined for use throughout the Source Protection Plan.

Implementing body

- the organization, agency or individual responsible for ensuring that the actions specified in the policy text are carried out
- in some cases the implementing body is overseeing work that a landowner may be obligated to carry out

Effective date

- the date on which the Source Protection Plan takes effect
- specified by the Minister of the Environment and Climate Change in the notice of approval of the Source Protection Plan

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4.5 Policy Examples

The following table provides an explanation of the main policy tools along with a sample policy from Chapter 6 for each policy tool.

Table 4.5.1 – Policy Tools and Sample Source Protection Plan Policies

Policy Tool	Sample Policy
<p>Prohibition</p> <ul style="list-style-type: none"> - activity cannot occur in the affected areas - may prohibit a certain amount of a product from being used or stored in some cases - may not necessarily prevent a particular use of the land, only a certain aspect 	<p>The policy applies in all WHPA-A vulnerable areas where the handling and storage of non-agricultural source material is or would be a significant drinking water threat (existing activity or future activity).</p> <p>The handling and storage of non-agricultural source material shall be prohibited. Therefore, the handling and storage of non-agricultural source material is designated for the purposes of s.57 of the <i>Clean Water Act</i>.</p>
<p>Risk Management Plan</p> <ul style="list-style-type: none"> - activity can only be carried out in accordance with an approved Risk Management Plan - property owner submits plan to Risk Management Official for approval - Risk Management Official is appointed by the municipality 	<p>The policy applies in all vulnerable areas where the handling and storage of fuel is a significant drinking water threat (existing activity) under the following circumstances:</p> <ol style="list-style-type: none"> 1. the quantity of fuel is more than 2,500 L; or 2. the quantity of fuel is more than 250 L but not more than 2,500 L and where the facility is a bulk plant or a facility that manufacturers or refines fuel. <p>Establishment of a Risk Management Plan is required. The handling and storage of fuel may only occur in accordance with an approved Risk Management Plan. Therefore, the handling and storage of fuel is designated for the purposes of s.58 of the <i>Clean Water Act</i>.</p> <p>As a minimum, the Risk Management Plan shall address:</p> <ol style="list-style-type: none"> 1) product handling; 2) product storage; 3) record keeping and documentation, including any inspection reports; 4) disposal methods; 5) spills response plan; and 6) containment measures. <p>The Risk Management Plan shall document the capacity of the fuel storage as of the effective date of the Source Protection Plan and shall not allow for the expansion of the storage facility beyond the documented capacity.</p> <p>Risk Management Plans for existing activities shall be established within three years of the effective date of the Source Protection Plan.</p>

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Policy Tool	Sample Policy
<p>Restricted Land Use</p> <ul style="list-style-type: none"> - used to identify or flag that an activity is either prohibited or needs a Risk Management Plan 	<p>All land use designations and zones described in a municipal official plan and zoning by-law, as amended from time to time, are designated as restricted land uses for the purpose of s. 59 of the <i>Clean Water Act</i>.</p> <p>For clarity, the activities identified above are those which are the subject of other source protection plan policies that utilize prohibition under s. 57 of the <i>Clean Water Act</i> or utilize Risk Management Plans under s. 58 of the <i>Clean Water Act</i>.</p>
<p>Prescribed Instruments (e.g., Environmental Compliance Approvals)</p> <ul style="list-style-type: none"> - requires the provincial Ministry responsible for the instrument (e.g. permit, approval) to review approvals and amend in some cases - also, used to deny approval of future activities in vulnerable areas 	<p>The policy applies to the following provincial instruments related to waste disposal activities as described in clauses (1) to (8) above:</p> <ul style="list-style-type: none"> A. approvals of waste disposal sites; B. approvals of renewable energy facilities; and C. approvals of sewage works <p>The Ministry of the Environment and Climate Change shall:</p> <ol style="list-style-type: none"> 1. Review all existing approvals as described in clauses (A) to (C) above; 2. Determine whether the approvals as described in clauses (A) to (C) above contain appropriate terms and conditions and require adequate measures to be in place to ensure that the waste disposal activity ceases to be a significant drinking water threat, with particular consideration given to the monitoring, collection and treatment of leachate into groundwater and/or runoff into surface water; and 3. Where the Ministry is of the opinion that the terms, conditions and measures contained in an approval as described in clauses (A) to (C) above are not adequate, make such amendments to the approval so as to ensure that the waste disposal activity ceases to be a significant drinking water threat. <p>Existing approvals shall be reviewed within three years of the effective date of the Source Protection Plan, or such other date as the Director determines based on a prioritized review of Environmental Compliance Approvals that govern significant drinking water threat activities. Where amendments are deemed necessary, the existing approval shall be amended within three years of the effective date of the Source Protection Plan, or such other date as the Director determines based on a prioritized review of Environmental Compliance Approvals that govern significant drinking water threat activities.</p>

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Policy Tool	Sample Policy
<p>Land Use Planning</p> <ul style="list-style-type: none"> - requires municipality to process a change to the official plan and zoning by-law - identifies to planners, developers, professionals, the public, and others that restrictions apply to the properties shown on zoning maps 	<p>The municipality shall amend its official plan and zoning by-law to include:</p> <ol style="list-style-type: none"> 1. mapping that identifies vulnerable areas where activities would be significant threats (future activities); and 2. text that identifies that policies within the Source Protection Plan may apply to activities in these mapped areas. <p>This policy applies to all land use designations and zones described in the municipality's official plan and zoning by-law, as amended from time to time.</p> <p>The Municipality shall:</p> <ol style="list-style-type: none"> A. Adopt the official plan, or official plan amendment as the case may be, and: <ol style="list-style-type: none"> i. submit the plan to the appropriate approval authority; or ii. give a notice of adoption; and B. Adopt the zoning by-law, or zoning by-law amendment as the case may be, and give a notice of adoption. <p>For Section 40(2) of the <i>Clean Water Act</i>, the official plan and zoning by-law must be amended within five years of the effective date of the Source Protection Plan or at the time of the next official plan and zoning by-law conformity exercise as per Section 26 of the <i>Planning Act</i>.</p>
<p>Specify Action</p> <ul style="list-style-type: none"> - may require a municipality or other agency to enact a municipal by-law regarding a certain activity or undertake other actions in their jurisdiction 	<p>The policy applies in all vulnerable areas where the establishment, operation or maintenance of a system that collects, stores, transmits, treats or disposes of sewage is or would be a significant drinking water threat (existing activity or future activity).</p> <p>Municipalities shall inspect and maintain municipal sanitary sewers and related pipes so as to uphold high standards of performance and minimize the risk of leakage.</p> <p>Existing sewage lines shall be inspected within three years of the effective date of the Source Protection Plan and at regular intervals thereafter.</p>
<p>Establish Pilot Program</p> <ul style="list-style-type: none"> - seeks to establish an innovative program that will test a method to resolve a problem and gauge whether the method could have broader application 	<p>The Ministry of the Environment and Climate Change, in conjunction with municipalities and Conservation Authorities, shall give due consideration to creating a pilot project to determine the location of unused and abandoned wells within vulnerable areas. An additional goal of the project would be to decommission the wells once they are located (existing activity).</p> <p>The project could include:</p> <ul style="list-style-type: none"> - airborne geophysics; - magnetic surveys; - interviews; - air photo interpretation and comparison over time; - historical land use search

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Policy Tool	Sample Policy
<p>Incentive Program</p> <ul style="list-style-type: none"> - offers grants to property owners to assist with the costs of projects that help to address potential drinking water threats 	<p>The Ministry of the Environment and Climate Change and/or the Ministry of Agriculture, Food and Rural Affairs should make available an incentive program. The program should require an application that is subject to a technical review and approval process.</p> <p>Eligible projects in the grant program generally may include, but not necessarily be limited to:</p> <ul style="list-style-type: none"> - consulting fees; - plan preparation costs related to risk management plans, nutrient management plans or nutrient management strategies; - training courses related to the preparation of plans where the applicant intends to prepare the plan themselves; - implementation of best management practices <p>Other eligible projects in the grant program should include, but not necessarily be limited to:</p> <p>A. For the establishment, operation or maintenance of a system that collects, stores, transmits, treats or disposes of sewage:</p> <ul style="list-style-type: none"> - connection to the municipal sewer line and decommissioning of an on-site sewage system;
<p>Education Program</p> <ul style="list-style-type: none"> - informs property owners and those affected by policies about legal requirements, best management practices, alternatives, possible grants, and additional sources of information and advice 	<p>Conservation Authorities shall provide an education program that offers information and materials to landowners. Furthermore, Conservation Authorities are encouraged to work in partnership with other agencies to implement this policy</p> <p>Topics of a general nature in the program may include, but are not limited to:</p> <ul style="list-style-type: none"> - Prohibition of certain activities; - Requirements for a Risk Management Plan for certain activities; - Constraints on prescribed instruments (provincial approvals) for certain activities; - Local zoning by-law provisions and municipal by-laws; - Proper disposal methods; - Occurrence of hazardous waste disposal opportunities; - Funding opportunities; - Advice and assistance available from provincial Ministries, non-governmental organizations and other agencies; - Various types of facilities or equipment for application, handling or storage activities; - Best management practices for application, handling or storage activities.

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4.6 Legal Effect

The requirements of the implementing bodies named for each policy vary according to the degree of threat the policy is addressing (e.g., significant, moderate or low drinking water threat) and the type of policy. It should be noted that provincial appeal bodies, such as the Ontario Municipal Board, are also bound by the legal effect of the various policies in the plan. There are three ‘levels’ of legal effect.

*The Source Protection Plan and the policies within it, once approved by the Minister of the Environment and Climate Change, will have **legal effect** in Ontario.*

4.6.1 “Conform To” Legal Effect

Policies that are written to address significant drinking water threats must be complied with in most cases. Implementing bodies, including provincial ministries, municipalities, source protection authorities, and other agencies named, must take the action specified in the policy under the authority provided by the *Clean Water Act*. Monitoring policies also have the legal effect of “conform to”. An exception would be a significant threat policy where the implementing body is a federal agency or a non-governmental organization.

In most cases, the instruments prescribed in O. Reg. 287/07 are issued by the provincial government, such as environmental compliance approvals. Prescribed instruments that are already issued (i.e. *existing*) at the time the Source Protection Plan is approved must conform with significant threat policies (*Clean Water Act*, s.43). This means that existing approvals may need to be revoked if the policy would prohibit the activity. For other situations, the instrument may need to be amended by the person/body responsible for issuing those instruments to ensure the requirements of the instrument conform with the requirements of the applicable source protection plan policy. Any *future* decision to issue, create or amend an instrument that has been prescribed by O. Reg. 287/07 must conform with (i.e., comply with) any applicable significant threat policies (*Clean Water Act*, s. 39(7)(a)).

4.6.2 “Have Regard For” Legal Effect

Policies that are written to address moderate or low drinking water threats are less stringent than those for significant threats. These policies must be considered when implementing bodies are making decisions relevant to the policy. The decisions made by implementing bodies must be consistent with the intent of the policy. This relates to land use planning decisions under the *Planning Act* and decisions on prescribed instruments for moderate or low drinking water threats.

4.6.3 “Strategic Action” (Non-Legally Binding Commitment) Legal Effect

Strategic action policies are those within the scope of source protection plans that are considered recommendations. Strategic action policies can be used in two ways; as strategic action policies which are non-legally binding and do not directly address significant threats, and as significant threat policies with a non-binding legal effect.

Strategic action policies do not have a legal effect, rather they represent good faith commitments by persons or bodies to carry out certain actions. For example, a policy may designate a public

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body to carry out an education and outreach program for a moderate or low drinking water threat.

There is no legal requirement for the agencies to fulfill these policies. However, strategic action policies are still an important part of a source protection plan, and their implementation will be monitored publicly through required progress reports.

Any policy that does not fall under one of the categories listed below must be identified in the plan as a “strategic action policy” (O.Reg 287/07, s. 33):

- a significant threat policy
- a Great Lakes policy
- any type of monitoring policy that is to be carried out by a specified public body
- a low or moderate threat policy that affects decisions made under the *Planning Act* or *Condominium Act*
- a low or moderate threat policy that affects prescribed instruments

4.7 Monitoring Policies

An accompanying monitoring policy has been assigned to each source protection plan policy. The intent of the monitoring policy is to provide a reporting of the implementation of a policy by the implementing body so that the Source Protection Committee can evaluate the implementation of the source protection plan policies. The information that results from monitoring policies may help to inform discussions for revisions to the Source Protection Plan in the future.

Source Protection Committees may also include monitoring policies, where advisable, to monitor activities or conditions that are moderate or low threats to prevent them from becoming significant and to monitor drinking water issues.

The *Clean Water Act* requires that any public body identified in monitoring policies in an approved source protection plan must satisfy their obligations under these policies. Monitoring policies will provide valuable information about the implementation of a source protection plan and the effectiveness of its policies.