

Clean Water Act: General Background

The Clean Water Act (October 2006) marked the beginning of a 6-step planning process.

Action	Schedule
3 rd Reading and Royal Assent of the Clean Water Act – enabling legislation	October 2006
Series of Regulations – Ongoing	Ongoing
Regulation 288/07 – Formation of Source Protection Committees	2007
Regulation 287/07 –General / Terms of Reference Regulations	2007
Regulation 284/07-Source Protection Areas and Regions	2007
Regulation 231/07 – Service of Documents	2007
Mapping Symbolology for the Clean Water Act	Nov 2008
Technical Rules for the Preparation of Assessment Reports (58 pp)	Dec 2008
Tables of Drinking Water Threats (490 pp)	Dec 2008
Assessment Report Technical Rules & Tables of Drinking Water Threats Amendments	November 2009
EBR Registry Number: 010-8766 Draft: Source Protection Policy Regulations	January 2010
Formation of Source Protection Committees	Completed 2007
Terms of Reference	Completed 2007
Completion of Assessment Reports [How much land & where? What Activities deemed to be significant risk?]	Current – 2010 completion
Completion of Source Protection Report [Policies for ‘significant’, ‘moderate’ and ‘low’ drinking water risks]	2011 -2012?
Municipal Management and Implementation [subject to Provincial Approval]	2012?

1. The Province has committed approximately \$120,000,000 for Source Protection Plan development.
2. The Technical Rules: Assessment Report and the Table of Drinking Water Threats were released on December 12, 2008. Amendments were released in November 2009. Links to these reports can be found at: <http://www.ene.gov.on.ca/en/water/cleanwater/cwa-technicalstudies.php>
3. Technical Rules: Assessment Report highlights
 - a. Hazard rating X Vulnerability score = Risk score
 - b. Hazard ratings for threats are determined and set by the province
 - c. Ground (GW) and surface (SW) water vulnerability scores are determined locally

<p>Risk score $\geq 80 - 100$ = <u>significant</u> drinking water threat Risk score $\geq 60 - < 80$ = <u>moderate</u> drinking water threat Risk score $> 40 - < 60$ = <u>low</u> drinking water threat</p>
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4. EBR Registry Number: 010-8766 Draft: Source Protection Policy Regulations released January 2010. The Draft Regulation provides the legal framework for Source Protection Committees (SPC) to develop policy for managing significant drinking water threat situations (SDWT).
5. The Livestock Group key questions
 - a. How much land and where?
 - b. What activities will be classified as ‘significant drinking water threats’?
 - c. What risk-mitigation actions will be recognized?
 - d. How much will it cost? [Including long-term municipal operating and administration]
 - e. Who pays?
6. Ontario Livestock Groups generally support the principles of a safe and adequate supply of drinking water. We use that water, too. While livestock groups generally support the goals of the Clean Water Act, we continue to have concerns about specific aspects of the legislation.

<p>Livestock Group Core Position: No farm or business owner inside the designated municipal water protection zones should be placed at a competitive disadvantage compared to producers outside the designated zones. Policies that impose</p>
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Presentation from Chris Attema of Cattlemen’s Association to South Georgian Bay Lake Simcoe Source Protection Region Source Protection Committee on April 22, 2010.

restriction above and beyond ‘normal farm practice’ should be balanced with comprehensive, fair and long-term compensation (cost share and financial assistance).

7. The Association of Municipalities of Ontario (AMO) has also expressed concern with aspects of the Clean Water Act. The key concern is a lack of a substantive role in policy development while having a substantive and apparently unfunded mandate to implement.

We believe that the government has genuinely good intentions to protect Sources of Water, which Ontario Municipalities full heartedly share. The issue is how to protect our sources of water and fairly delineate the roles and responsibilities of managing the process, from the development of the policy to the ongoing implementation of it. AMO has reiterated its concerns with the issue of roles and responsibilities from the beginning. Unfortunately, AMO continues to have substantive issues with the lack of a municipal role in areas of policy development and, in the area of implementation, having a substantive, but apparently unfunded mandate.

Source: Association of Municipalities (AMO) Response to Bill 43. Proposed Clean Water Act, 2005. February 2006.

Background: South Georgian Bay - Lake Simcoe Source Protection Area

1. South Georgian Bay – Lake Simcoe is one of the most complex Source Protection areas, with 123-drinking water systems, 351-wells, 14-surface intakes. 52-municipalities and 3-First Nations. The Assessment Report and Source Protection Planning budget is \$17,239,092.00

Area	Water Source	Comments
Severn Sound	30 groundwater	No GUDI wells identified
	2 surface water	Tay Township Victoria Harbour Rope Subdivision
Lakes Simcoe and Couchiching-Black River	41 groundwater	3-GUDI wells Kawartha Lakes – Woodville Kawartha Lakes – Western Trent / Palmina Township of Brock – Cannington
	10 surface water	Orillia (both surface and groundwater) Alcona, Keswick, Georgina, Beaverton, Port Severn, Brechin & Lagoon City, South Ramara, Washago, West Shore WTP
Nottawasaga Valley	39 groundwater	1-GUDI wells (Shelburne Well Supply)
	1 surface water	Collingwood

2. Source Water Protection is not just a farm / agriculture issue! Other sectors, including septic systems and business /industries will be impacted.

Estimated Number of Potential ODWSP Projects: WHPA 2-year and IPZ1							
Project Type:	Septic	Well	Runoff	Fuel/Chemical	Runoff	P2	Land
Jurisdiction	Number of Septic Systems ²	Number of Private Wells ¹	Number of farms ²	Number of properties with fuel/oil tanks ³	Number of properties >2ha ⁴ (excluding farms)	Number of Businesses / Industry ²	Number of lands for Purchase ⁵
Black-Severn	684	111	2	154	26	25	Unknown
Lake Simcoe CA	1,552	559	110	689	226	631	Unknown
Nottawasaga CA	2,536	438	50	404	735	203	Unknown
Severn Sound EA	2,076	211	40	289	147	95	Unknown
Total Source Protection Region	6,847	1,319	202	1,536	1,134	954	Unknown

Source: South Georgian Bay Lake Simcoe Source Protection Region. Ontario Drinking Water Stewardship Program. April 2, 2009.

Municipal Interaction With the Clean Water Act & Source Protection Planning Process

The municipal interaction with the Clean Water Act can be considered in relation to the following points.

1. There are 7- municipal representatives on the 21-member South Georgian Bay-Lake Simcoe Source Protection Region Committee.
2. Consultation process for the Terms of Reference and the Assessment Report: The legislation requires notification of the clerk in any municipality located in the Source Protection Area.
3. Consultation for the Source Protection Plan: The Source Protection Authority must attach written resolutions received from municipal councils to the Source Protection Plan submitted to the Minister.

Resolutions of municipal councils

24. The council of a municipality may pass a resolution expressing its comments on the proposed source protection plan and may submit the resolution to the source protection authority. 2006, c. 22, s. 24.

Submission of source protection plan to Minister

25. The source protection authority shall submit the proposed source protection plan to the Minister, together with, (a) any written comments that the source protection authority wishes to make on the plan; (b) any written comments received by the source protection authority after publication of the plan under section 23; and (c) any resolutions of municipal councils submitted to the source protection authority under section 24. 2006, c. 22, s. 25.

Source: Clean Water Act 2006. http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_06c22_e.htm

4. Inclusion of non-municipal drinking systems: Residential clusters and other private wells may be included in the Terms of Reference through municipal council resolution. [See criteria set out in section 3 of O. Reg. 286/07 (Miscellaneous Reg)] [Currently no non-municipal drinking systems are included in the Lake Simcoe – Georgian Bay Terms of Reference]
5. Municipalities will be responsible and liable for the ‘municipal risk management official’ activities that relate to ‘significant drinking water threats’.

Risk management official, risk management inspectors

47(6) The council of a municipality that is responsible for the enforcement of this Part shall appoint a risk management official and such risk management inspectors as are necessary for that purpose. 2006, c. 22, s. 47 (6). Source: Section 47(6) http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_06c22_e.htm#BK55

Criteria for agreeing to or establishing risk management plan

58(15) Subject to subsection (16), a risk management official shall agree to or establish a risk management plan for an activity at a location under this section if, and only if, all applicable fees have been paid and, the risk management official, (i) is satisfied that the risk management plan complies with the requirements, if any, of the regulations, rules and source protection plan, and (ii) is satisfied that the activity will not be a significant drinking water threat if it is engaged in at that location in accordance with the risk management plan;2006, c. 22, s. 58 (15).

Although, the resource and financial impact of the above requirements (permit official) have not been assessed, we anticipate the costs will be substantive due to the creation of a system to review applications, the high qualification requirements and potentially large number of these positions, undertaking of legal proceedings associated with issuance of orders, safety concerns of the employees and potentially high insurance rates.

Source: Association of Municipalities (AMO) Response to Bill 43. Proposed Clean Water Act, 2005. February 2006.

6. Municipalities may be responsible for completing the private septic system re-inspection programs.

- (Municipal) Septic Re-inspections Expected in 2010
- The Clean Water Act, 2006 (CWA) made resulted in consequential amendments to the Building Code Act concerning maintenance inspections of on-site sewage systems
- Amendments to the Building Code Act came into force on July 3, 2007. These amendments establish a legislative framework for sewage system maintenance inspections
- These amendments authorize regulations to establish programs to enforce standards for the maintenance of existing sewage systems, and require that these programs be enforced by principal authorities
- The principal authorities that would enforce programs would be the same authority that current enforces BCA requirements related to sewage systems: i) a municipality, ii) A board of health or conservation authority that undertakes enforcement under an agreement with a municipality; or iii) a board of health or conservation authority prescribed in the Building Code
- Under the proposed Regulation, the mandatory inspection must be completed with-in 3-5 years after the Applicable Source Protection Plan comes into effect. Subsequent inspections must be complete at least once every 5-years.
- Principal authorities may require that fees be paid for maintenance inspections, and can prescribe the amounts of the fees
- An inspector may enter upon land and into buildings at any reasonable time without a warrant for the purpose of conducting a maintenance inspection

Source: Feb 2008. <http://www.obc.mah.gov.on.ca/AssetFactory.aspx?did=778>
<http://www.ssmrca.ca/UserFiles/File/PDFs/SPC/Clipped%20Building%20Code%20Slides%20for%20Septic%20Reinspection.pdf>

7. Municipalities must amend their Official Plans to be consistent with the Source Protection Plan policies.

- Source Protection Plan (SPP) prevails where there is a significant drinking water threat unless other regulation is more protective of drinking water source
 - Municipal action to conform to SPP
 - Official Plan to conform to SPP
 - Zoning by-law to conform
 - Minister can resolve OP non-conformity issues
 - All provincial instruments must also conform

As proposed, the specific work leading up to the development of the SWPP and the approval of the Plan are all responsibilities of the Province, and as such, the logical conclusion is that the ownership of the SWPP is apparently that of the Province. On the other hand, when dealing with land uses, municipalities have the land use planning authority. We are concerned with the potential erosion of this authority, which has the potential to arise as a result of two parallel processes making decisions about land uses, albeit specific to areas relevant to SWP. AMO questions the benefits of having this duplicate process. Why must municipalities go through the *Planning Act* process, which requires “consistency” with provincial policy and requires “conformity” with the SWPP, when at the end of the day, the municipal decision will be a replication of that which is already approved in a SWPP? The more one looks at this proposed new regime, the more similarities one

sees with other provincial plans, most notably the Niagara Escarpment Plan, and in that case, acrimony continues to exist. There is no question in our mind that municipalities will have to expend substantive resources in ensuring that Official Plans parallel the policy of the SWPP in their watershed. This will include duplication of resources, the time expended to making a decision, and the effects on other municipal program areas in order to accommodate this additional requirement.
 Source: Association of Municipalities (AMO) Response to Bill 43. Proposed Clean Water Act, 2005. February 2006.

8. Municipalities must 'have regard' for 'low' and 'moderate' drinking water threats identified in the Source Protection Plan. The majority of agriculture related 'normal farm practices' will be classified as a 'moderate' or 'low' drinking water threat over potentially a very large area. The Ontario livestock groups are very concerned about the potential impact. Our position is that 'Moderate' and 'Low' threats policies should be limited to education, outreach and voluntary actions including incentive programs. Policy related to 'Land Use Planning' or 'New or Amended Provincial Instruments' should not apply to 'Moderate' and 'Low' threat situations
9. Most Source Protection Committees do not have a clear mandate (expressed in the Terms of Reference) to fully disclose cost or evaluate the social and economic cost of policy alternatives. The South Georgian Bay-Lake Simcoe Terms of Reference includes \$325,000 in the budget for impact analysis of alternative policies.

Undertaking an impact assessment to evaluate the social, economic and environmental impacts of proposed policies and risk reduction strategies. This assessment would likely be undertaken by a consultant and working group to evaluate a range of policy options for consideration as well as aid in the selection process of the most appropriate and feasible strategy.

Section 19.16 of the Draft Regulation (Regulatory components to support the development and implementation of source protection plans under the Clean Water Act, 2006: **EBR Registry Number: 010-8766**) introduces the concept of an "Explanatory Document". A credible and thorough 'Explanatory Document' could provide a framework for a disciplined analytical process and informed consideration of alternative policy options. The Livestock group position is that a) the 'Explanatory Document' should be a transparent Appendix to the Source Protection Policy Report and it should be published on the internet) and that b) the scope and content of the 'Explanatory Document' should be amended so that it includes an impact analysis, including a cost-benefit analysis and stakeholder / distributional analysis, of alternative options.

10. Cost certainty and WHO IS GOING TO PAY for implementation?

- There is no legal obligation for the Province to provide funding beyond the plan development stage. The extension of the Ontario Drinking Water Stewardship Fund beyond the committed funding schedule (2011) was "not in the scope" of the program review.
- COST UNCERTAINTY remains the primary and core concern. The Provincial cost commitment is defined by the initial allocation of funds to the Source Protection Authorities (Conservation Authorities) and the contributions to the Ontario Drinking Water Stewardship Fund. Municipal implementation cost is uncertain as the final scope of what is included is not yet defined. Individual business owners potential cost is uncertain as the scope of Source Water Protection and policies related to compensation and appropriate financial support for implementation cost are not fully resolved.

Potential Funding Sources: Source Water Protection Plan Implementation – Who Pays?

Provincial Stewardship Fund	No commitment beyond the spring of 2011 No legal obligation for the province to provide compensation to impacted property owners
Municipal Water Users	Limited capacity to raise rates – particularly for smaller municipal systems
General Municipal Tax Base	Limited capacity to download additional tax burden to business and property tax ratepayers
Impacted Property	Livestock producers understand and accept the need to meet normal farm

Owner	practices, defined as compliance with the Nutrient Mgt. Act, the Pesticide Act, the Ont. Water Resources Act, etc. Ontario livestock groups believe that no producer should be placed at a competitive disadvantage due to Source Protection policies. There should be 100% compensation for any additional cost related to implementing local Source Water Protection policy.
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- Almost all of livestock agricultures concerns are rooted in the failure of government to follow Recommendation #33 from the Source Protection Advisory Committee, 2003.

“Recommendation #33: Consultation on implementation and ongoing planning, including how to pay for source protection, be undertaken with different stakeholder groups immediately following receipt of this source protection planning framework. This consultation should start from the list of potential roles and responsibilities presented by the Advisory Committee in its report.” (Page 11 –Advisory Committee Report)

11. The Walkerton Inquiry Recommendations DO NOT suggest a municipal role in the implementation of Source Water Protection plans.

Recommendation 68: The provincial government should amend the *Environmental Protection Act* to implement the recommendations regarding source protection
Source: Walkerton Inquiry Part Two Recommendation #68

12. The Walkerton Inquiry Recommendations DOES INCLUDE a specific recommendation for Provincial support programs to assist agricultural producers to implement their Farm Water Protection Plan.

Recommendation 16: The provincial government, through the Ministry of Agriculture, Food and Rural Affairs in collaboration with the Ministry of the Environment, should establish a system of cost-share incentives for water protection projects on farms.
Source: Walkerton Inquiry Part Two Recommendation #16

Livestock Group Perspective / Possible Solutions

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1. There is concern about some aspects of the Assessment Report Technical Rules & Tables of Drinking Water Threats.
 - a) There Water Protection Assessment Reports and the Tables of Drinking Water Threats do not equally consider livestock, human and wildlife sources of pathogens. Wildlife and companion animal sources are not considered. A review of scientific literature clearly indicates that wildlife contribute to the pathogen load in watersheds. Ontario research has shown that even in intensive agricultural watersheds 40% of the E. coli is from sources other than livestock agriculture. The level of impact would be expected to vary depending on the watershed characteristics and the proximity of the intake to wildlife habitat.
 - b) In some instances, the livestock related pathogen and nutrient (nitrogen & phosphorus) threats are based on interpretation of aerial photos and 'windshield' surveys. Assessment Reports that label situations as a 'significant drinking water threat' should be based on credible, field-verified data, not inaccurate interpretation.
2. Limit Source Protection Committee Policy to only Significant Drinking Water Threats (SDWT). 'Moderate' and 'Low' drinking water threat policies should be limited to education, outreach and voluntary actions including incentive programs. 'Land Use Planning' or 'New or Amended Provincial Instruments' should not apply to 'Moderate' and 'Low' threat situations.
3. SDWT situations should be managed through the existing provincial prescribed instrument. The Draft Regulation provides the legal framework for Source Protection Committees (SPC) and Risk Management Officials (RMOs) to develop policy to manage significant drinking water threat situations (SDWT). There are 4-distinctly different ways to manage SDWT situations.

<ol style="list-style-type: none">a. Manage SDWT Through A Prescribed Instrumentb. Manage SDWT Through an Amended Prescribed Instrumentc. Negotiated RMO Agreement – No Financial Assuranced. Negotiated RMO-Agreement – With Financial Assurance
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The preferred approach is to manage SDWT through an existing prescribed instrument (e.g the current TSSA-standard for fuel storages, the Nutrient Management Act for pathogen and nutrient threats). This approach would assure consistency across the Province and would reduce the municipal administrative cost and liability associated with the Risk Management Official position.
4. The scope and content of the Explanatory Document should be broadened to include an impact analysis including an estimate of cost distribution among stakeholders. The concept of an 'Explanatory Document' is proposed in Section 19.16 of the Draft Regulation (Regulatory components to support the development and implementation of source protection plans under the Clean Water Act, 2006: **EBR Registry Number: 010-8766**). This could provide a framework for a disciplined analytical process and informed consideration of alternative policy options, including management of SDWT through existing provincial prescribed instruments instead of the municipal Risk Management Official. Our position is that all environmental regulations should be subject to clear, concise, transparent and credible Impact Analysis. i.e following protocols similar to the Government of Canada Regulatory Impact Analysis Statement (RIAS). The Ministry of Environment (MOE) should not approve, and local municipalities should not support, Source Water Protection Plans that do not include full details on implementation cost. [Cost? Who benefits? Who pays?]
5. If it is deemed necessary to employ a Risk Management Official, the attitude, approach and expertise of this staff is crucial to successful implementation. We believe that the RMO authority on private land should be conditioned by a fundamental, underlying respect for the rights and responsibilities of the individual property owner as well as the motivational power of fair cost share and 'voluntary' action. The Risk Management Official should have the mandate and the capabilities to i) negotiate solutions, ii) offer technical advice and iii) offer cost share support.

There should be recognition that the Clean Water Act is fundamentally different from other environmental legislation. Most environmental legislation is reactive. Failure to comply with

performance and activity standards results in enforcement and penalties. Farmers can engage in 'normal farm practice' subject to meeting the required conditions (eg. completed Nutrient Mgt. Strategy, completed Pesticide Certification). The Clean Water Act is preventative. Actions including 'normal farm practices' are classified as 'significant', 'moderate' or 'low' drinking water threats based on the type of activity and the proximity to municipal drinking water supplies. 'Normal farm practices' could be classified as a 'significant-drinking-water-threat' which could be prohibited subject to approval of the Source Protection Committee policy or the Risk Management official oversight.

The existence of the 'Provincial Stewardship Fund' in the Clean Water Act suggests that there is a need for cost-share and compensation, but there is no currently no legal responsibility for the RMO to offer cost share or fair compensation to the impacted property owner.

The agricultural community is not opposed to the concept of preventative action. In fact, the popular and heavily subscribed Environmental Farm Plan concept is based on the concept of preventative action with-in the context of a voluntary, peer-reviewed and confidential process. While we recognize that the voluntary and peer reviewed features of the Environmental Farm Plan do not lend themselves to meeting the Clean Water Act goals, we continue to believe that there is both a need and an opportunity to build on this existing strength.

6. Municipal support, approval and comments related to Proposed Source Protection Plans should be contingent on the availability of appropriate, long-term Provincial financial support programs. The approved Terms of Reference for the Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region is consistent with this principle.

The success of the implementation of SPP policies is directly linked to the availability of provincial funding through programs such as the Ontario Drinking Water Stewardship Program (ODWSP). *The SPC expects a level of financial commitment from the Province of Ontario to ensure the successful implementation of SPP policies. The SPC also expects that landowners will not be unduly affected by the implementation of these policies.*

The Source Protection Committee will provide advice to those responsible for implementation of Source Protection Plans, that the implementation of measures required by Source Protection Plan policies be contingent upon the availability of funding to support affected landowners in implementation. The Source Protection Committee strongly recommends that money be made available locally in the stewardship fund to address implementation and affected landowners when Source Protection Plans are completed.

Following the completion of the Source Protection Plans, policies will be prioritized and implemented as sustainable long-term funding is available.

Source: Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region. Approved Terms of Reference Summary Document. http://www.waterprotection.ca/plan/2009_08_17_ToR--Summary_Document.pdf

The italicized portion shown above was amended by the Minister of the Environment. The Terms of Reference approved by the Saugeen-Grey Sauble-Northern Bruce Peninsula SPA is shown. *The SPC expects and requires a level of financial commitment from the Province of Ontario to ensure the successful implementation of SPP policies and also to ensure that landowners are not unduly affected by implementation of these policies. Following the completion of the SP Plans there will be no implementation of Source Protection Plan policies until funding is made available to affected landowners for required upgrades or loss*

7. Lease and land rental programs may be considered eligible items under the Ontario Drinking Water Stewardship Program. [Purchasing, easements or leasing land within 100m of WHPA or 200m of IPZ]. Most in the Agricultural community support further discussion and refinement of these type of arrangements. The ALUS (Alternate Land Use) concept builds on this idea. The Norfolk County ALUS group is requesting support for long-term provincial funding for ALUS-initiatives from agricultural, provincial and municipal stakeholder groups.

A mix of public and private ownership of resources exists on private land, so the stewardship of natural capital and environmental resources must be a shared responsibility of governments and landowners. Due to this shared nature, environmental services should be cost-shared with producers. Farmers should receive annual payments or other forms of compensation to deliver and maintain environmental services
Source: Ontario ALUS Alliance. <http://norfolkalus.ca/>