

ENVIRONMENTAL LAW

SOURCE PROTECTION ADVICE TO GOVERNMENT RELEASED

New drinking water source protection measures are coming to Ontario over the next three years. Following Justice O'Connor's recommendations, and those of the MOE Expert Advisory Panels, the Government intends to introduce new drinking water source protection legislation in Spring 2005.

The new legislation will create watershed-level Source Protection Committees and Boards made up of municipal and conservation officials, and industry and community representatives.

Source Protection Plans will identify well-head and intake protection zones, significant recharge and vulnerable areas. Current and proposed municipal and industrial operations in these areas may be affected.

Proposed requirements could force the rewriting of industry and municipal

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approvals and operating permits, supersede land use planning policies and official plans. Municipalities and the Province will have to find funding for source protection programs. Some of the funding will inevitably come from user fees. Funding problems are likely to spark significant resistance.

Industry should watch out for tighter restrictions on effluent discharge and new controls on on-site storage and disposal of chemicals and waste. Developers could be foreclosed from building in some sensitive areas, and forced to design for minimal impact on drinking water sources in others.

MOE's Expert Committees made 261 recommendations to provide Ontario with a blueprint for protecting our drinking water at source. The Technical Experts Committee proposed a process for assessing threats to sources of drinking water. The Implementation Committee recommended strategies to implement and fund source protection. Together, the recommendations describe an array of tools, including voluntary programs, regulatory restrictions and land use planning. The measures are designed to cut through jurisdictional squabbles, competing levels of government and overlapping agency mandates.

The Committees, made up of water experts from the municipal, conservation, resource, agricultural and health sectors, released reports for public comment on December 14, 2004.

The Government intends to introduce legislation this spring, based on these recommendations, to establish a province-wide drinking water source protection system. The system will be applied on a watershed by watershed basis. The legislation will require municipal land use planning decisions, as well as new and existing environmental approvals, licences and permits, to be consistent with source water protection plans.

WHAT SHOULD MUNICIPALITIES BE DOING TO PREPARE?

- ⇒ Consider who will represent your municipality on the SP Committee
- ⇒ Consider operations that will be affected and plan to accommodate new restrictions
- ⇒ Begin or advance well-head and surface water intake assessment work
- ⇒ Review Official Plan policies and zoning by-laws to identify gaps in well-head, intake and vulnerable area protection
- ⇒ Consider any sensitive land that ought to be secured
- ⇒ Consider how new source protection by-law powers could be used in your municipality

WHAT SHOULD INDUSTRY BE DOING TO PREPARE?

- ⇒ Consider who will represent your industry's interests on SP Committee
- ⇒ Determine whether your facility is near a municipal well or intake
- ⇒ Conduct a risk analysis of your plant's impact on drinking water sources

Creating source protection plans

Source Protection Plans (SP Plans) for each watershed will form the basic foundation of the new regime. Each SP Plan will identify risk reduction and management measures for four distinct areas within the watershed:

1. well-head protection areas;
2. intake protection zones;
3. significant recharge areas; and
4. other vulnerable areas.

(Continued on page 2)

For each watershed, a multi-stakeholder Source Protection Committee will be formed to identify water quality and quantity threats for each area. The SP Committee will also assess and classify the level of risk for each threat (as significant, moderate or low). The resulting SP Plan will outline measures to reduce the risks, allocate legal responsibility for funding and implementation, estimate costs and set time frames and monitoring requirements.

SP Plans will deal with threats using a risk management approach:

- ⇒ Significant risk - mandatory measures to reduce risk
- ⇒ Moderate risks - measures to prohibit increase of risk, and reduce risk where feasible
- ⇒ Low risk - prevent degradation and reduce risk where feasible

The Government is aiming for Ministerial approval of the first generation of SP Plans by the end of 2008. However, a shortage of hydrogeological professionals may delay completion of the huge influx of work, and planning for some watersheds is further along than for others.

How will municipalities be affected?

Official Plans will have to be amended to be consistent with SP Plans. Well-head and intake areas and vulnerable recharge areas and aquifers must be delineated and protected. Some municipalities have already started this work.

Municipalities need new regulatory power to protect drinking water sources. This may come by way of a new “sphere of jurisdiction” under the *Municipal Act, 2001* or by authority under the new *Drinking Water Source Protection Act*. Water protection measures may become a condition of municipal zoning approval.

Four important recommendations apply to small and large sewage systems:

1. regular re-inspection of on-site sewage/septic systems;
2. authority to restrict construction or modification of septic systems in vulnerable areas;
3. regulation governing municipal STP discharges; and
4. enhanced minimum level of treatment for combined sewer overflows.

HOW WILL SOURCE WATER PROTECTION BE PHASED IN?

Winter 2005: Public comment ends February 14, 2005. Conservation Authorities are expected to begin working immediately on watershed characterization reports. Province pledged \$12.5 million for this.

Spring 2005: *Drinking Water Source Protection Act* to be introduced.

Summer 2005-2008: SP Committees will be established. Province to fund 100% of the development costs of the SP Plans. SP Boards (essentially Conservation Authority boards) will review the SP Plans. Minister gives final approval.

Post-2008: Governments and all stakeholders implement source protection measures in approved SP Plans. The Plans will begin to affect industrial emissions, and land use plans.

AREAS OF POTENTIAL CONFLICT OR LITIGATION

- ⇒ Appealing SP Plans
- ⇒ Appealing approvals
- ⇒ OMB appeals
- ⇒ Municipal by-law enforcement
- ⇒ Provincial enforcement of new regulatory standards
- ⇒ Appealing MOE orders

The report encourages municipalities to use their sewer use by-laws for source protection. New or revised sewer use by-laws could affect surcharge agreements, sewage content and sewage rates.

Municipalities will also have to respond to recommendations related to salts/de-icing compounds, cemeteries, storm water, cumulative and non-point source loading, permits to take water, land drainage, water conservation, and private wells.

How will industry be affected?

The Province is urged to develop and refine sector-specific best management practices for pollution prevention. The report recommends that all fuel tanks be subject to inspection and updating (TSSA). Non-fuel tanks should be regulated according to the level of risk to source

protection areas. The Committee recommends that the Province work with stakeholders to develop and implement mandatory or voluntary requirements for using, handling and storing chemicals in vulnerable areas.

The large number of small and medium enterprises makes enforcement difficult. Most do not have sector-specific regulations, compounded by a poor understanding of safe operating practices. If the resources can be found, the Province must work with municipalities and these SME industries to identify activities most likely to pose a risk to drinking water sources, and to develop management tools, such as BMPs, incentives, compliance assistance programs and education efforts to reduce the risk.

Industry may also be affected by recommendations related to oil and gas wells, aggregates, mines and mine tailings, pesticides, contaminated sites, landfills, application of biosolids and manure, farm water protection plans, land drainage, and permits to take water.

Who will pay (and how)?

The Province has agreed to fund the development of the SP Plans through to their approval. The Province has been urged to establish sustainable, secure and long-term funding to support ongoing SP Plan implementation. A funding plan will need to provide assistance in rural areas.

All levels of government, as well as the private sector and non-governmental organizations, will have to contribute. Municipalities will need to use water and sewer rates, development charges, and property taxes to help support local source protection activities. The Committee also recommended that source protection could be partly funded by Provincial general revenue, and user and pollution discharge fees.

The Committee also urges incentive and assistance programs as the key to the success of source protection. Municipalities upgrading from primary level sewage treatment, or purchasing sensitive land, are going to need assistance.

Download the reports of the Implementation and Technical committees from our website:

<http://www.willmsshier.com/latest/>

