



Clean Water Act and Safe Drinking Water Act Updates

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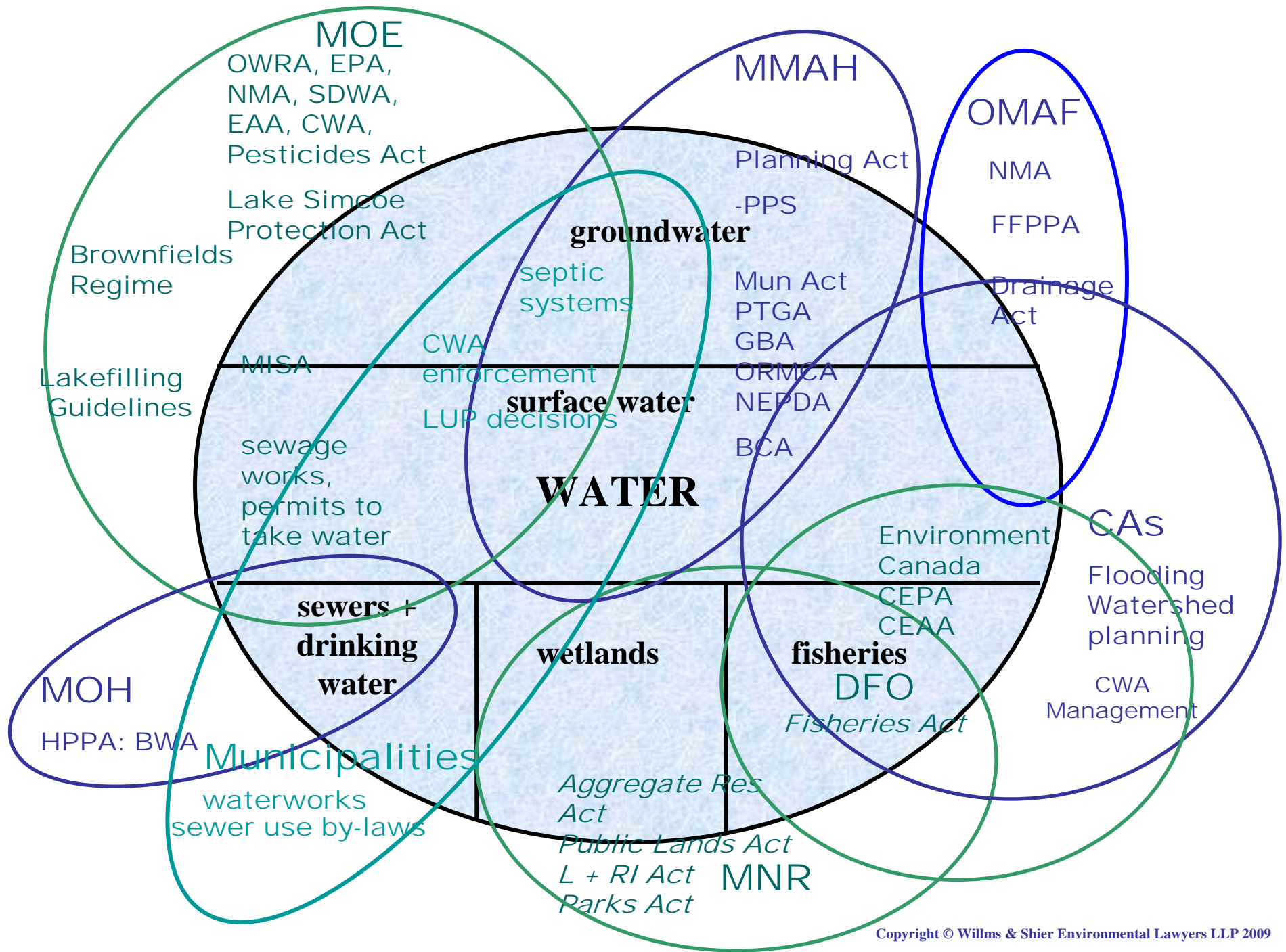
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Outline

- **Water Law Regime in Ontario**
- **Source Protection**
 - *Clean Water Act, 2006*
 - Source Protection Plans
 - Effect on Municipalities
- ***Safe Drinking Water Act, 2002***
Prosecutions Update



**Source
Protection
and the
*Clean Water
Act***



Clean Water Act, 2006

- **Stage 1: January - October 2008**
 - ✓ Establish Source Protection Committees
 - ✓ Negotiate and prepare Terms of Reference (TOR)
- **Stage 2: 2009 - 2010**
 - Assessment Report (AR)
 - Identify present and future activities and conditions from past activities that are or could become significant drinking water threats in vulnerable areas
 - Technical Rules (December 2008) guide development of Assessment Reports

Stage 2 – Assessment Reports

- ✓ **Watershed Characterization**
- ✓ **Water Budgets and Quantity Threats**
 - **Groundwater Vulnerability**
 - **Surface Water Vulnerability**
 - **Threats and Issues – Water Quality Threats**

Clean Water Act, 2006

- **Stage 3: 2010 - 2012**
 - Prepare Source Protection Plans (SPP)
 - Policies to address threats
 - Activities to be prohibited or regulated
 - Minister (MOE) Considers Comments and Approves SPP
- **Stage 4: 2013 forward**
 - Implement SPP
 - Inspect and enforce
 - Monitor and report
 - Review SPP

The Focus of Source Protection Plans

- **Drinking Water Threat**
- **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
- **“Significant drinking water threat”**
 - Risk assessment identifies as posing or having potential to pose significant risk
 - Drinking Water Threats table (December 2008) guides “significance”

What The Source Protection Plan Must Set Out:

- **Policies to**
 - ensure activities cease to be or do not become significant drinking water threats
 - monitor activities or conditions, vulnerable areas, issues, effectiveness of policies
 - designate public body responsible for the policy
 - achieve Great Lakes targets to be set by Ontario

What The Source Protection Plan May Include:

- **Activities**
 - that should be prohibited
 - that should be regulated by requiring a risk management plan
- **Land uses that should be restricted unless a risk management plan is established**
- **Policies**
 - to address conditions that results from a past activity
 - for moderate and low drinking water threats
 - for incentives, education, outreach
 - for Great Lakes protection

Effect on Municipalities: Amend OPs and Zoning Bylaws

- **Municipalities are required to revise their Official Plans and Zoning By-laws to conform with significant threats policies in SPP**
 - Include maps of wellhead protection areas, vulnerable areas in OP
 - May restrict uses that are significant drinking water threats in vulnerable areas
- **Affected parties can appeal amendments of the OP to the OMB**
- **Municipalities may have to defend OP amendments required by the SPP**

Legal Significance for Planning Decisions

- **What must conform with SPP?**
 - *Planning Act* decisions
 - Municipal actions re public works, improvements, etc.
- **What does SPP prevail over?**
 - Official Plans and Zoning By-laws
- **Where conflict with SPP, the most protective provision prevails**
 - *Planning Act* policy statements
 - Greenbelt Plan
 - Niagara Escarpment Plan
 - Oak Ridges Moraine Conservation Plan
 - Growth plans

Legal Significance for Municipal Operations

- **Certificates of Approval may have to be amended**
 - E.g. Municipal sewage treatment plant approval
- **New permits may be required for past activities**
 - E.g. old landfills, dumps

New Municipal Regulatory Staff

- **Risk Management Officials**
- **Risk Management Inspectors**
- **Municipalities may enforce jointly or delegate to another municipality, health, or planning board**

New Municipal Regulatory Powers

- **Interim Risk Management Plan Orders**
- **Risk Management Plan Orders**
- **Enforcement Powers**

Interim Risk Management Plan Orders (after 2010)

- **For existing activities**
 - Identified in Assessment Report as significant drinking water threats,
 - Within intake protection zone or wellhead protection area, and
 - Activity prescribed by regulation
- **If negotiation fails, Risk Management Officer can make order**
- **Appeal to the ERT**
- **Municipality protected from liability for actions of a Risk Management Official in relation to Interim Risk Management Plan Order**

Risk Management Plan Orders (after 2012)

- **Risk Management Plans**
 - Can apply to activities pre-existing SPP
 - Transition for existing activities
- **RMP Process**
 - Negotiate RMP
 - Issue RMP Order
 - Can refuse to issue RMP
- **Appeal to the ERT**

Municipal Enforcement Powers

- **Order a report on risk management measures**
- **Inspect without consent or warrant**
- **Make orders to do work**
- **Do work and recover costs**
- **Order access to facilitate compliance with Risk Management Plan Orders**

Which Municipal Instruments Can Be Appealed To ERT?

- **Interim Risk Management Plan Orders**
- **Risk Management Plan Orders**
- **Orders for reports on activities**
- **Orders to do work or cease activities**
- **Orders to recover costs**
- **Access orders**



Safe Drinking Water Act **Prosecutions Update**

Safe Drinking Water Act

- **Fine maximums**
 - Municipalities
 - \$200,000
 - \$10 million if drinking-water health hazard
 - Individuals
 - \$50,000 and imprisonment
 - \$7 million and imprisonment if drinking-water health hazard

SDWA Prosecutions Update - Fines

- **In Practice:**
 - \$5,000-20,000 per count
 - Close to \$100,000 in total
 - Add:
 - 25% Victim Fine Surcharge
 - Court costs

SDWA Update – Type of Charges

- **Failing to**
 - take samples
 - meet Disinfection Procedure
 - test chlorine residuals daily
 - to maintain free chlorine residuals
 - to notify MOE and local Medical Officer of Health of adverse samples or improperly treated water entering system
 - to comply with Provincial Officer Orders or C of A requirements

SDWA Prosecutions – What to Expect

- **Charges usually arise from routine inspections**
- **Usually more than one charge laid per Information**
- **Most charges do not go to trial**
- **Settlements involve**
 - Guilty plea to some counts
 - Crown withdraws other counts
 - Agreed statement of facts goes on the record
 - Seek “global settlement” to bring charges that are being considered to the table

SDWA Prosecutions – Tips for Success

- **Crown Disclosure**
 - Careful review of evidence can show where there is no reasonable prospect of successful conviction
 - Ask Crown to withdraw those charges
- **Pre-trial**
 - Before a Justice of the Peace
 - Opportunity to move the Crown from unreasonable positions

SDWA Prosecutions - Tips for Success

- **Be prepared for annual inspections**
- **Review draft inspection reports and watch what is being categorized as a “non-compliance” or “best practice”**
 - either challenge it and have it removed;
or
 - address it, then follow-up to ensure done
- **Maintain a respectful relationship with MOE abatement, but abatement-enforcement line is blurring**

SDWA Prosecutions – Tips for Success

- **Ensure clear roles and responsibilities in municipal contracts with consultants**
- **Train on how to respond to MOE interviews – employee's or consultant's admissions often make the Crown's case**
- **Understand distinction between an investigation and inspection, and know your rights**

SDWA Update – Coming Soon

Standard of Care:

- **Exercise the level of care, diligence and skill in respect of a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation; and**
- **Act honestly, competently and with integrity, with a view to ensuring the protection and safety of the users of the municipal drinking water system.**

SDWA – Standard of Care

Duty of Care will be owed by:

- **Owner of the municipal drinking water system**
- **If the municipal drinking water system is owned by a corporation other than a municipality, every officer and director of the corporation**
- **If the system is owned by a municipality, every person who, on behalf of the municipality, oversees the accredited operating authority of the system or exercises decision-making authority over the system**



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