

Ministry of
the Environment

Source Protection Programs
Branch

14th Floor
40 St. Clair Ave. West
Toronto ON M4V 1M2

Ministère de
l'Environnement

Direction des programmes de protection
des sources

14^e étage
40, avenue St. Clair Ouest
Toronto (Ontario) M4V 1M2



April 25, 2012

*Designated Participating Municipalities
for the purposes of O.Reg. 284/07 (Source Protection Areas and Regions)*

Greetings,

I am pleased to provide you with the attached information, intended to serve as guidance for those municipalities who provide water services and may have responsibilities related to the *Clean Water Act*.

"*Preparing for Implementation: Part IV of the Clean Water Act*" is meant to assist municipalities in preparing for the administration and enforcement of Part IV - where required under the local source protection plan.

Source protection committees across the province are currently developing and consulting on draft policies to protect municipal sources of drinking water in Ontario. These policies may have implications for municipal operations and processes. We recommend that the attached guidance be shared with municipal councillors and the following departments and/or staff at your municipality:

- Planning Department
- Building Services
- Utility - Water/Wastewater
- Works Department

Two other documents "*Administering & Enforcement of Part IV under the Clean Water Act*" and "*Source Protection Planning Bulletin – Section 56 Risk Management Plans*" were previously shared with your municipality on July 29, 2011, and should be used to provide background information and context.

As consultation is currently underway in many areas of the province, municipal staff are strongly encouraged to review these documents and contact their local source protection committee to discuss any draft policies (not just those under Part IV) that may impose obligations on your municipality.

If you have any questions, please contact Keith Willson at (416) 314-0560 or Keith.Willson@ontario.ca.

Sincerely,

Mary Anne Covelli
Director, Source Protection Programs Branch
Ministry of the Environment

PREPARING FOR IMPLEMENTATION: PART IV OF THE CLEAN WATER ACT



Purpose

The purpose of this document is to provide information and guidance to municipalities regarding implementation of Part IV of the Clean Water Act, 2006 ("the act"). Together the act and its regulations ("the legislation"), in particular the General Regulation - Ontario Regulation 287/07 ("the regulation"), establish a legal framework for drinking water source protection in Ontario.

Part IV of the act provides municipalities with the authority to regulate activities that are significant drinking water threats (SDWTs) on a site-specific basis, where such activities are located within intake protection zones or wellhead protection areas.

This document will assist municipalities in preparing to implement Part IV policies under the local source protection plan and will highlight potential administration considerations. The tools set out in Part IV of the act include:

- Section 56 (Interim) Risk Management Plans
- Section 57 Prohibition
- Section 58 Risk Management Plans
- Section 59 Restricted Land Uses

Specifically, the document discusses the duties and responsibilities of municipalities related to the administration, compliance and enforcement of Part IV, including:

- Approaches for enforcement and authority sharing or delegation arrangements
- Appointing risk management officials (RMOs) and inspectors (RMIs)
- Integrating Part IV into municipal processes

This guidance is being provided to support implementation of source protection plans, expected to commence in 2012.

Source Protection Process Timeline			
Year 1 Laying the foundation	Year 1-2 Assessment of Threats	Year 3-5 Source Protection Planning	Year 5+ Implementation
Establish source protection authorities and committees Negotiation Terms of Reference	Identify and assess threats to drinking water Prepare Assessment Report	Prepare source protection plan, including policies to address significant drinking water threats. → Pre-consultation (informal - 2011/12) • Formal Consultations on: 1) Draft SPP and 2) Proposed SPP (2012)	Inspection and enforcement Monitoring and Reporting Plan review

It is intended that this document be read together with the following documents that were provided to you July 29th, 2011. They include:

- Administration & Enforcement of Part IV under the act
- Source Protection Planning Bulletin: Section 56 (Interim) Risk Management Plans

While every effort has been made to ensure the accuracy of the information in this document, it should not be construed as legal advice or relied on as a substitute for the legislation. The reader should refer to Part IV of the act (sections 47 – 81) as well as the regulation for detailed requirements associated with application and enforcement of Part IV.

Preparing for the Administration of Part IV: Municipal Role

Under Part IV, any single tier municipality or upper tier or lower tier municipality that has the authority to pass by-laws under the Municipal Act for the production, treatment and storage of water is the enforcement authority (referred to as the “default municipality”).

A default municipality is responsible for enforcement of Part IV, including:

- Appointing risk management officials and inspectors
- Making alternate arrangements (if desired) to delegate some or all of the Part IV enforcement authority by entering into an agreement with other public bodies
- Establishing rules or policies to administer Part IV, which may include fees, inspection programs, forms and applications.

Source protection plan policies that use Part IV *do not* require that a municipality pass a by-law nor make any amendments to their official plan or zoning by-law to be in effect. Part IV is solely enabled through the CWA. Part IV authorities may only be used by a municipality in areas where a local assessment report identifies significant drinking water threats¹. For the vast majority of municipalities, this represents a very small geographic area where Part IV application will be possible - i.e. those areas located very close to a municipal wellhead or intake that are most vulnerable.

Appointing Risk Management Officials and Inspectors

Where policies in a source protection plan use Part IV to address SDWTs, the default municipality is required to appoint a risk management official and inspectors, as necessary, to administer and enforce Part IV policies. Part IV can not be implemented until these appointments are made.

The role of the risk management official (RMO) includes:

- negotiating or, if negotiations fail, establishing risk management plans
- accepting risk assessments (under section 60 of the act), and
- Issuing orders and notices.

The role of the risk management inspector (RMI) includes:

- monitoring and ensuring compliance with risk management plans, and
- monitoring and ensuring compliance with prohibition policies² (under section 57).

Although the roles of the RMO and RMI differ, many municipalities may elect to have one person fill both roles.

The legislation does not set out the procedures for RMO or RMI appointments; though appointments of the RMO and RMI must be done via certification by the municipality (similar to the certification process for building officials). The municipality could set out rules for RMO and RMI appointments that are similar to those used to appoint other officials at the municipality. If a municipality is uncertain about what procedures they should follow for these types of appointments, they should consult with legal counsel.

¹ For Interim RMP established prior to the Minister's approval of the local source protection plan, additional requirements are set out in s. 58 of O. Reg. 287/07. For the remaining Part IV tools, the approved plan policies must also designate the specific Part IV tool being used and where it applies.

² Please refer to Table 1 in the document titled "Administration & Enforcement of Part IV under the Clean Water Act" for a summary of the roles, responsibilities, authorities, & training requirements for RMOs and RMIs.

To be appointed as an RMO or RMI, a person must have the qualifications prescribed by Ontario Regulation 287/07 - i.e., the completion of a course and exam which has been approved by the Ministry of the Environment. In addition, they may only exercise their authority to enter property under Part IV of the act if they have taken the property entry training, which is also prescribed by the regulation.

The implementation provisions contained in Part IV should be somewhat familiar to municipalities, as they are based on the relevant Ontario Building Code Act provisions. The RMO and RMI will exercise their respective authorities under the act in a manner that is similar to the exercise of authority by Building Officials and Inspectors in Ontario. The division of roles and responsibilities for upper, single and lower tier municipal governments is also comparable.

Municipalities may also utilize "persons with qualifications" to make certifications under Part IV in place of an RMO. Such persons must also have the qualifications prescribed by the regulation in order to carry out this function (see the *Persons with Qualifications* section below for more details.).

Risk Management Official and Inspector Training

The mandatory official and inspector training course offered by the province will provide the basic skills and knowledge necessary to undertake the duties of an RMO and/or an RMI, including:

- Roles and responsibilities of the positions;
- Familiarity with Assessment Report components;
- Knowledge of how risk is assessed;
- Accessing risk management resources;
- Negotiation, development and application of risk management plans;
- Knowledge of property entry protocols;
- Issuing notices and orders; obtaining warrants;
- Negotiation and communication skills.

NOTE: The Province offers this training twice annually, in Spring and Fall. Information regarding upcoming training courses will be provided to all implementing bodies as it becomes available.

Staffing and Support

Local staffing decisions around Part IV enforcement and the appointment of RMO and RMI positions will depend on many factors, including the number of significant threats that have been identified, the size/population of the municipality, available capacity and resources, and the extent of application of Part IV policies in the local source protection plan.

For some municipalities, the RMO and RMI will be newly created positions. In others, the duties and functions of the RMO and RMI may be subsumed into the activities of existing staff positions at the municipality. For example, some municipalities are considering employing their existing sewer-use by-law staff to carry out the RMI function. In other areas of the province, responsibilities associated with the RMO function may be given to existing planning or building department staff.

In all cases, these existing staff must take the requisite provincial training course and will subsequently need to be appointed (certified) by the municipality to carry out these additional duties.

Other qualifications

When determining the selection of potential appointees, municipalities will likely want to consider additional qualifications that would reflect local needs and circumstances. For example, these qualifications may include:

- Successful completion of a University Degree in a particular field (e.g., geosciences, engineering);
- Formal registration as a professional in a particular field;
- Relevant experience (e.g., managing groundwater or surface water based supplies, providing hydro-geological technical guidance, etc);
- Knowledge of relevant standards, acts, by-laws, regulations and guidelines, environmental management systems, pollution prevention programs;
- Competencies such as leadership, results/achievement focus, human resources management, financial management, business planning, decision making;
- Project management skills;
- Negotiation, communication and presentation skills;
- Possession of a valid Ontario driver's license;
- Ability to travel and/or work outside regular business hours, as required.

An RMO may be appointed by one municipality specifically because of their knowledge of agricultural-related threats, whereas another may be appointed in a different municipality for their knowledge of industrial chemical use and storage. Similar appointment considerations would also apply for the RMI position.

Where there is a range of threats to be addressed, the RMO may need to rely on various subject matter experts to supplement their own knowledge. For example, they may need to draw on other experts available in a municipality, source protection/conservation authorities, local health units, consultants, or associations on an as-needed basis. Access to such expertise may be arranged formally via an agreement or informally.

Enforcement of Part IV – Options

The act provides for a great deal of flexibility in determining Part IV enforcement arrangements. These enforcement arrangements must be documented between the default municipality and the other bodies involved. Within these agreements, municipalities have the flexibility to either transfer or share jurisdiction for enforcement.

The province strongly encourages early engagement and discussion between municipalities and source protection committees and authorities regarding the financial and workload impacts, particularly related to implementation, to help determine if alternative enforcement approaches are applicable or feasible.

Alternative approaches may include:

- entering into an agreement to transfer enforcement to another body, for example a municipality, a source protection authority, or a board of health
- two or more municipalities entering into an agreement to provide joint or shared enforcement and appointment of risk management officials and inspectors

Cost arrangements can be made to accommodate a variety of scenarios.

Joint Administration/Enforcement

Part IV of the act allows the council of two or more municipalities to enter into an agreement to share the enforcement responsibility for Part IV, including the sharing of costs and the appointment of RMOs and RMIs. Such sharing could also be arranged, for example, between a municipality and a source protection authority, board of health or planning board.

Shared enforcement may be appropriate in situations where:

- one or more municipalities do not require the services of a full time RMO or RMI;
- the number of significant drinking water threats identified locally is fairly small;
- there are few policies in the source protection plan that are implemented through Part IV;
- local resources to support these functions are limited;

- the expertise necessary to carry out either the RMO or RMI role is unavailable.

Where municipalities are considering sharing enforcement, a “regional” RMO or RMI is an option. A “region” could be based on an existing source protection area or on a grouping of municipalities. A regional RMO or RMI would therefore exercise their authority within a defined region, rather than within a single municipal boundary.

In this type of arrangement, each municipality involved may contribute a portion of the costs for the “regional” RMO and/or RMI position, based (for example) on the percentage number of significant threats, or the number of properties affected in a given municipality’s boundaries.

Transfer of Authority

The act also allows for the transfer of Part IV authorities to another body, such as a municipality, source protection authority, or board of health, provided that they have entered into an agreement to that effect.

Depending on the local situation, it may make sense for a municipality to either transfer responsibility for Part IV enforcement to another municipality, or perhaps to another body like a source protection authority or a local public health unit. Transferring the enforcement authority may be a desirable option in less populated or remote municipalities, and in municipalities where there are a small number of SDWTs and their distribution on the landscape lends itself to this type of approach.

Furthermore, where an existing upper or single tier municipality, a source protection authority or a local health unit has some degree of familiarity, knowledge and/or technical expertise related to specific threats, municipalities may find it more efficient to transfer the administration and enforcement of Part IV (where applied to those specific threats) to that body.

Many source protection authorities in the province are well positioned to take on the role of RMO and/or RMI and have in many cases already approached the local area municipalities with an indication of their willingness to do so. These authorities have a longstanding familiarity with the source protection planning process, and also possess the necessary technical expertise and in-depth knowledge of the local watershed required to undertake these roles.

Cooperation and partnership for enforcement should be encouraged, where feasible, to build on existing expertise and to realize potential cost savings.

Partial Assignment/Transfer of Authority

When considering the sharing of enforcement authority among municipalities, or the transfer of that authority to another body, it is also important to remember that the approach does not need to be “all or nothing” in its application.

The delegation of authority could be limited to addressing certain threats or categories of threats. For example, another body could have authority over specific fuel or agricultural-related threats, while the municipality retains authority for all other threats.

Such arrangements could also be applied on a location-specific basis, where another body would have authority for certain designated locations or areas. These areas could be small, such as the 100 meter zone around a well, to large, such as an area of several square kilometers.

Persons with Qualifications

A municipality, or other body acting as the enforcement authority, may decide to authorize a *person with qualifications* (as defined in Regulation 287/07) to certify risk management plans (under sections 56 or 58 of the act) or risk assessments (under section 60) in place of an RMO. Doing so provides another avenue to obtain, where warranted or necessary, the technical expertise required for negotiating and establishing more complex risk management plans and/or for accepting risk assessments.

Ontario Regulation 287/07 requires that these persons must have successfully completed a training course that has been approved by the Ministry of the Environment before they can be appointed as a “person with qualifications” under the act.

The appropriate situations for using a person with qualifications to prepare and recommend risk management plans or review risk assessments are determined locally and must be authorized by the enforcement authority. Where the enforcement authority is the municipality, this may be done by passing a by-law made under Section 55 of the act.

The by-law must specify the situations when a person with qualifications can be relied on to certify a plan or a risk assessment. There is flexibility in both the scope and setting for using persons with qualifications. They may be used in specific situations, such as during the development of risk management plans for a certain class of threats, or even in specific geographic areas or locations.

Where an RMO wishes to rely on these subject matter experts to:

- review the threats posed by an activity,
- review risk management plans addressing a threat activity, or
- review risk assessments addressing a threat activity,

the RMO may ask the municipality to pass a by-law permitting a person with qualifications to make certifications in relation to risk management plans for that activity or those threats. The person with qualifications would then be authorized to review those risk management plans and the measures they contain to ensure that, if the plan is followed, the activity will not become a significant threat to drinking water, or will cease to be a significant threat to drinking water.

Once the use of a person with qualifications is authorized, a RMO must accept the certifications of that person – either in relation to a risk management plan under sections 56 or 58, or a section 60 risk assessment. The content of a risk management plan in those specified situations becomes the full responsibility of the person(s) with qualifications. *The RMO therefore cannot amend the risk management plan (or the risk assessment, as the case may be); rather they must accept and approve those documents.*

The RMO always retains the responsibility for the issuance of notices and orders under Part IV, and the RMI is always responsible for inspection/enforcement of a risk management plan.

Considerations for municipal by-laws

Given the limitations placed on the RMO when a person with qualifications is used, the wording used in the by-law to specify those circumstances can be very important. The by-law could be written in such a way as to include:

- opportunities for an RMO to provide input around certain aspects of risk management plans, for example around the timing for implementing the measures it contains;
- requirements that these persons carry professional liability insurance and stipulate a minimum acceptable amount;
- requirements for a minimum level of education or experience that an individual must satisfy before the individual can act as a person with qualifications under Part IV.

In practise, an RMO may at any time choose to receive reports, expertise and advice from outside professionals (e.g., hydro geologists, engineers or other experts), who are *not* designated as persons with qualifications under the act. Nothing precludes or restricts a municipality (or their agents) from obtaining relevant input, advice and knowledge, either from existing municipal staff or from outside consultants, and relying on that expertise in making their decisions; this is done in many municipalities on a

regular basis. Designating persons with qualifications is not necessary to retain such expertise.

Appointment Duration

When considering how long to appoint RMOs and RMIs, it is important to note that Part IV policies contained in an approved source protection plan remain in effect in perpetuity; and while modifications or changes to those policies might occur as a result of updates to the assessment report and source protection plan in the future, the source protection plans themselves do not lapse. As such, there will be an ongoing need for the RMO and RMI to ensure compliance with, and report on, any applicable Part IV policies contained in the plan.

In addition, RMOs will continue to screen development applications and building permit applications submitted to the municipality through section 59 (Restricted Land Uses) to assess proposals for potential threats to source water, and to ensure that source protection policies are being followed. A municipality considering the duration of appointments may wish to reflect the evolving nature of these roles.

Application of Section 59 - "Restricted Land Uses"

Section 59 of the act provides municipalities with a process to screen Planning Act applications and building permits for activities that either require a risk management plan (under s. 58) or are prohibited (under s. 57). Section 59 provides a link between the Part IV tools and municipal planning approvals and building permits. The section 59 notice will be part of the application requirements made under the *Planning Act*, and will be applicable law for building permits under the *Building Code Act*.

A section 59 notice "flags" the locations, uses and activities to which Part IV tools apply. (See *Appendix 1* for a description of the proposed process for applying Section 59).

If an activity is designated for section 58 and requires a risk management plan, the application for the proposed activity will only be processed by the municipality once a notice has been provided from the RMO stating that a risk management plan has been negotiated or established in association with that application.

A section 59 "restricted land use" policy does not eliminate a land use; rather it ensures that activities within a designated area are assessed for their potential risk to drinking water before they become established. The land uses that would require this type of screening must be named directly in the section 59 policy, which is contained in the source protection plan.

The intention is for section 59 to become part of the existing municipal single application process. This policy approach will ensure that drinking water threats are dealt with at the front-end of the land use planning process when developers first consult with the municipality before formally submitting a land use planning or building application. This will save time and cost while providing land developers with relevant information about their application and a clear understanding of how source protection plan policies affect land use planning in a specific area.

Relevance for Section 56 Interim Risk Management Plans

The information contained in this document applies to the implementation of Part IV policies following ministerial approval of the local source protection plan. However, this information is also relevant and applicable where interim risk management plans are concerned.

Interim risk management plans (IRMPs) under Part IV (section 56 of the act) are intended to be used when an RMO has determined there is an urgent need to address an existing threat *before* an approved source protection plan is in place.

In order to apply IRMPs (even on a voluntary basis), risk management officials and inspectors must be established to administer the process. Therefore, considerations raised in this document (around qualifications of the RMO/RMI, staffing, etc) must be similarly considered in the context of section 56.

An interim risk management plan may cease to be in effect once the source protection plan comes into effect. In order to recognize the somewhat 'temporary' nature of the IRMP approach, enforcement arrangements for interim risk management plans may be made on a temporary basis.

Long-term enforcement of Part IV policies should be strongly considered when making a decision on the early application and enforcement of interim risk management plans in order to promote consistency.

Proposed Part IV Policies and Municipal Input

Source protection committees are generally comprised of 1/3 municipal representation, and many have established local municipal working groups to assist in the development of source protection plan policies.

The act also provides several opportunities for all affected municipalities to inform the development of source protection plans, including providing feedback on policies that propose the use of Part IV to address significant drinking water threats (SDWT). Throughout the fall and winter of 2011/12, municipalities have been engaged by their local committees during both the "pre-consultation" and public consultation phases,

with a request to review and comment on the approaches being proposed by the source protection committee.

Through these consultation opportunities, municipalities have been given an opportunity to review and providing feedback on draft policies, taking into consideration potential implementation responsibilities, including:

- the capacity of the municipality to deliver what the policies intend;
- alternate (or preferred) approaches to delivering the policy outcomes;
- timelines proposed for implementation; and
- resource and staffing implications associated with the policies.

Municipalities are strongly encouraged to use these opportunities to discuss with the SPC how the proposed policies will impact day-to-day municipal activities.

Appendix 1 – Proposed Process for Implementation of Section 59: Restricted Land Uses

Section 59 – Restricted Land Uses: Process

- | | | |
|---------------|--------------------------------|---|
| Step 1 | Proponent | <ul style="list-style-type: none"> • Proponent submits application for development or building permit to municipality. |
| Step 2 | Municipal Clerk/Planning Staff | <ul style="list-style-type: none"> • Municipal staff review the application to determine whether it is: <ul style="list-style-type: none"> • Located in an area of an IPZ or WHPA where sections 57 or 58 apply; • Designated as a related land use - requiring a section 59 notice before the development proposal can proceed. • If a planning or building permit application is being proposed in a designated land use – the municipality cannot process that application until RMO has issued a section 59 notice and any relevant approvals. • The application is redirected to the RMO for review. • Proponent submits application to RMO for review to assess for any applicable source protection plan policies |
| Step 3 | Risk Management Official | <ul style="list-style-type: none"> • RMO consults source protection plan (including maps) to identify the location where the activity is proposed and the applicable source protection plan policies. • RMO assesses the proposal for any activities that would be significant drinking water threats in the area. |

If s. 57 Prohibition applies:

- RMO notifies proponent of the applicable source protection plan policies and which activities are prohibited
- RMO notifies proponent (and any other applicable persons – e.g. relevant municipal staff) that the activity can not proceed

Outcomes

If s. 58 applies:

- RMO notifies proponent of the applicable source protection plan policies and that an RMP is required to carry out the activity; provides information on negotiating/establishing an RMP
- Once RMP is approved, RMO provides notice of RMP approval and the proponent can then proceed with their development/building permit application
- If an RMP is not approved, the proponent can not proceed with the application

If there are no SPP policies that apply:

- RMO notifies proponent that the activity can proceed normally. The notice would indicate that neither sections 57 or 58 apply.

