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July 29, 2011

Greetings,

I am pleased to provide you with the two attached documents, specifically designed for those municipalities who will have roles and responsibilities related to the administration of Part IV of the Clean Water Act.

The first document, entitled "**Administering & Enforcément Part IV under the Clean Water Act**" is intended to provide information and guidance on Part IV of the Clean Water Act, the associated roles and responsibilities of municipalities, as well as an overview of the Ministry of Environment's technical training courses that have been developed to satisfy the requirements for appointing risk management officials and risk management inspectors under Part IV, and for exercising entry powers under the Clean Water Act.

This document will provide a general understanding of the process and more specifically municipal involvement in the implementation and enforcement pertaining to Part IV of the Clean Water Act.

The second document, which compliments the first, is entitled "**Source Protection Planning Bulletin – Section 56 Risk Management Plans**". The ministry is providing this document to assist those municipalities who are considering using the authorities provided in section 56 of the Clean Water Act to apply risk management plans to significant drinking water threats in the interim period, based on the results of an approved assessment report and prior to that threat being addressed through an approved source protection plan.

Section 56 sets out a process for negotiating risk management plans with persons who are engaged in significant drinking water threat activities and, in limited circumstances, where negotiation does not succeed, authorizes a risk management official to establish an interim risk management plan through an order by a specified date.

I strongly encourage municipalities to review their options and understand the implications of section 56. Doing so will assist municipalities in participating in the source protection planning process as well as in laying the foundation to implement these tools once source protection plans are completed.

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

Sincerely,

Paul Heeney, Director (A)
Source Protection Programs Branch
Ministry of the Environment

Ontario Ministry of the Environment's
Administering & Enforcement Part IV under
the Clean Water Act

Risk Management Official and Risk Management Inspector Training Course

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Introduction

Part IV of the Clean Water Act ("the Act" or "CWA") contains a number of tools that a source protection plan (SPP) can use to deal with significant drinking water threat (SDWT) activities in wellhead protection areas (WHPA) and intake protection zones (IPZs). If a SPP designates activities for the purposes of Part IV provisions, the municipality that will be responsible for the enforcement of this part should consider how it intends to administer Part IV.

The purpose of this document is to provide information and guidance on the following:

- An overview of Part IV of the CWA
- Roles and responsibilities under Part IV of the CWA
- Outline of the enforcement and administration of Part IV of the CWA, and,
- An overview of the Ministry of Environment's (MOE's) technical training courses that are provided to satisfy requirements for appointing risk management officials and risk management inspectors under Part IV, and for exercising entry powers under the CWA.

This document is intended to provide a general understanding of the process and who is involved with enforcement and administering Part IV of the CWA.

Purpose of the Clean Water Act

Protecting water at its source is the first step in ensuring that every Ontarian has access to safe drinking water. Stopping contaminants from getting into sources of drinking water — lakes, rivers and aquifers — will provide the first line of defense in the protection of the environment and the health of Ontarians.

The purpose of the CWA is to protect Ontario's existing and future drinking water sources, as part of an overall commitment to safeguard human health and the environment. A key focus of the legislation is the preparation of locally developed terms of reference, science-based assessment reports and SPPs. For additional information on the CWA and how the terms of reference and assessment reports were developed, readers may refer to MOE's website www.Ontario.ca/cleanwater.

One of the central principles of the Act is that SPPs are locally developed and implemented. Municipalities are already responsible for the delivery of municipal drinking water and land use planning within their boundaries. They have already done a great deal of work and the source protection process is intended to build on this work.

The source protection authority (SPA), which in most cases is a conservation authority, is comprised of representatives appointed by the participating municipalities of the conservation authorities. The authority's main role under the CWA is to establish a source protection committee (SPC) and provide support to the SPC during the preparation of the terms of reference, assessment report and the SPP.

There is strong municipal representation on the SPC, and a range of other stakeholders within the watershed. Municipalities across the watershed will work together through the SPC, identifying, assessing and addressing risks to drinking water within their municipal wellhead and intake protection areas. Municipalities may also work with their SPA to develop an understanding for the specific impacts of draft policies, including those using Part IV.

Overview of Part IV of the Clean Water Act

A SPP under the CWA is required to contain policies to deal with every area that has been identified in an assessment report as an area where an activity is or would be a SDWT. These are known as "significant threat policies". A significant threat policy must achieve the following objectives:

- i) ensuring that if the activity is being engaged in, it ceases to be a SDWT; or
- ii) a future activity never becomes SDWT.

The Act enables a broad range of policy approaches or "tools" to achieve these objectives. These include significant threat policies that affect existing legislation, including decisions under the Planning Act/Condominium Act, 1998, decisions in relation to prescribed instruments; or significant threat policies that direct the development and implementation of programs, such as education and outreach or incentive programs. Part IV of the CWA created additional tools that can be used to implement a significant threat policy to address SDWT activities in WHPAs and IPZs. Specifically, Part IV provides SPCs with two main tools to address SDWT activities, including:

- i) Prohibiting the activity (section 57 of the CWA), or
- ii) Requiring a risk management plan (RMP) for the activity (section 58 of the CWA).

Prohibition – section 57 of CWA:

For the purposes of section 57 (prohibition) of the CWA, a SPP may designate an activity and all or part of an area of a WHPA or IPZ where the assessment report has identified that activity as a SDWT. Any future activity that is designated for the purpose of section 57 would be prohibited in the corresponding designated areas from the time the SPP takes effect.

Risk Management Plans – section 56 and 58 of CWA:

The other Part IV tool, section 58 - RMPs regulates how the activity is carried out. A SPP may designate an activity and all or part of an area of a WHPA or IPZ where the assessment report has identified that activity as a SDWT for the purposes of requiring a RMP. Where a SPP policy uses section 58 of the CWA, a person will be prohibited from engaging in a designated activity in the corresponding designated areas unless a RMP has been established or entered into for that activity at that location.

It is important to note that Part IV also allows municipalities to use of interim risk management plans (IRMPs) under section 56 to deal with SDWT activities in WHPAs and IPZs after an assessment report has been approved and before SPP policies come into effect. Therefore, municipalities should communicate to SPCs if IRMPs are in place and how they are being used during the interim period to deal with SDWT activities in the WHPAs and IPZs, particularly if the SPC is thinking about designating an activity for the purposes of section 57 or 58 in the SPP.

Restricted Land Use – section 59 of CWA:

When SPP policies use section 57 prohibition or section 58 RMPs, they may have a complementary policy that uses section 59, a tool that is also enabled by Part IV of the CWA. The purpose of section 59 is to ensure that, if development that may include a SDWT activity is proposed in an area that is subject to section 57 or 58, then approvals for the proposal can not be issued until the risk management official has an opportunity to review the proposal and ensure its compliance with those provisions.

Risk Assessment – section 60 of CWA:

In addition to this, where a person may be subject to section 57 (prohibition) or sections 56 or 58 (RMP), the person has the option of preparing a risk assessment for the purpose of demonstrating that the activity, if carried out at the location, is not a SDWT. Essentially, the purpose of a section 60 risk assessment is to demonstrate that the vulnerability score given to a specific property by an assessment report is inaccurate, for instance, due to the scale of the mapping in the assessment report. Risk assessments must be prepared in accordance with the regulations and the rules. If a risk assessment is accepted by the risk management official, then the activity at that location is exempted from the application of sections 56 (IRMP), 57 (prohibition) and 58 (RMP).

Source Protection Planning Bulletins:

For more information, please refer to the series of planning **bulletins** prepared by the MOE, regarding SPPs and the various tools that can be used to address drinking water threats. These bulletins have been provided to the Project Managers in the SPA, and are intended to assist local SPCs in preparing SPPs and policies.

The Enforcement of Part IV

Who is the enforcement authority and how do they administer Part IV? These are just some of the questions a municipality or a SPC may have when they decide to use Part IV to deal with SDWT activities in a WHPA or IPZ.

Who is the enforcement authority?

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 (e.g. York, Peel, Durham, County of Oxford, etc.). The municipality responsible for Part IV may delegate some or all of the Part IV enforcement authority by **entering into an agreement** with other public bodies, specifically, a

- Planning Board,
- Board of Health,
- Source Protection Authority (*generally means a conservation authority or other person or body that is required to exercise and perform the powers and duties of a drinking water source protection authority under the CWA*),
- Neighbouring Municipalities (*where it may share or delegate its authority*), or,
- The Province.

Some municipalities responsible for enforcing Part IV, particularly those that have limited resources or do not have experience operating regulatory programs such as the enforcement of by-laws, may consider delegating their authority to another body. For instance, a group of small municipalities may feel that it is best to pool their resources and to request the local or lead source protection authority or the local board of health to enforce Part IV on their behalf within their geographic areas. Alternatively, the municipalities could pool their resources, then enter into an agreement for joint enforcement and work together to arrange for the appointment of risk management officials and risk management inspectors as necessary.

Appointment of Risk Management Officials and Risk Management Inspectors:

The municipality (or the body responsible for enforcing Part IV) will be responsible for the appointment of one or more ***Risk Management Officials (RMOs) and Risk Management Inspectors (RMIs)***, which are necessary to administer Part IV. To understand the distinction between a RMO and a RMI, it is similar to the distinction made between Chief Building Official and Building Inspector under the Building Code Act. The RMO is responsible for making decisions about RMPs and risk assessments, similar to the way in which building officials make decisions on building permits. The RMI is responsible for enforcing Part IV, similar to the way in which building inspectors enforce the provisions of the Building Code Act. An individual cannot be appointed as a RMO or a RMI unless they have the qualifications prescribed by the regulations, which state that the individual completes a ministry-approved training course.

After completing the course and appointing an individual as a RMO or a RMI, the municipality (or body responsible for administering Part IV) must provide that individual a Certificate of Appointment. It is important to note that Part IV does not set out the procedures for RMO or RMI appointments. If the body responsible for enforcing Part IV is uncertain about what procedures they should follow for appointments, they should consult with legal counsel. However, the RMO and RMI appointments may be governed by similar rules that apply to the appointment of other officials in that body.

Some municipalities (or body responsible for administering Part IV), particularly those that will have a small number of staff, may cross-appoint some staff members, so an individual who is appointed as a RMO is also appointed as a RMI. This is important, because under Part IV, only the RMI is permitted to exercise the authority to enter property, to issue orders, or to commence prosecutions to deal with violations. Where a municipality's (or body responsible for administering Part IV) staff is small, the RMO may not be able to rely wholly on other staff members appointed as RMIs to exercise the power of entry to gather information on whether a person is in compliance, or to take the necessary actions to deal with cases of non-compliance.

Person with Qualifications:

Normally, RMOs are responsible for reviewing and ensuring that RMPs and risk assessments satisfy the criteria outlined in Part IV of the CWA. However, an additional option for municipalities (or the body responsible for administering Part IV) includes delegating the establishment of RMPs and the evaluations of risk assessments (under section 60 of the Act) to a ***Person with Qualifications (PQs)***, as set out in subsection 55 (1) (h) of the CWA.

A PQs (as a substitute to RMO determination) is permitted by Part IV to make certifications in relation to a RMP or a risk assessment, certifying that these documents meet the applicable criteria specified in the CWA. If a RMP or a risk assessment has been certified by a PQs (and in many cases the PQs may have been retained to prepare these documents), the RMO is obliged to accept the certifications and the underlying RMP or risk assessment – in other words they are not allowed to go behind the certifications and question the professional judgment of the PQs.

It will be at the discretion of the municipalities (or body responsible for administering Part IV) to decide when to pass a by-law (or rules) that permits the use of a PQs. One instance may be where the RMO lacks the expertise to review RMPs or risk assessments related to an activity that is subject to Part IV. For example, a RMO may ask the municipality (or body responsible for administering Part IV) to pass a by-law (or make a rule) permitting the PQs to make certifications in relation to RMPs for the

management and storage of organic solvents, on the grounds that the RMO lacks the expertise or the resources to review and ensure these RMPs satisfy the criteria set out in the CWA for the RMPs.

When the municipality (or body responsible for administering Part IV) is passing a by-law (or making a rule) authorizing PQs to make certifications in relation to RMPs or risk assessments, they may specify requirements. For instance, the enforcement body may consider requiring that PQs carry professional liability insurance up to a certain amount. Alternatively, the municipality (or body responsible for administering Part IV) may specify minimum education or experience requirements that an individual must satisfy before the individual can act as PQs under Part IV. Or, the rules could provide the RMO with a very limited ability to review the measures outlined in a RMP, for instance the rule may specify that a PQs can certify a RMP as long as the RMO consents to the timelines for implementing the measures set out in the RMP. It is important to note that the Ontario Regulation 287/07 requires these persons must successfully have completed a ministry-approved training course before they can be appointed as PQs.

How is Part IV enforced?

Part IV includes the power to enter property for RMIs for the purposes of inspecting properties in a WHPA or IPZ that are subject to sections 56 (IRMPs), 57 (prohibition) or 58 (RMPs). It is important to note that any person may lawfully enter property with the consent of the occupier – powers of entry are used under a statute where the consent of an occupier cannot be obtained.

A RMI has the authority to issue an order under section 63 of the CWA based on the following grounds:

1. a person is not complying with a RMP;
2. a person engaged in an activity at a location where it is prohibited (in violation of section 57 of CWA); or,
3. a person engaged in an activity at a location where a RMP is required (in violation of section 58 of CWA).

The RMI may issue an order to a person in order to bring the person's activity back into compliance. The order can include directions relating to how the person can achieve compliance, including requiring the person to cease an activity by a specified date. If a person fails to comply with an order, then the RMO has the authority to issue a notice to a person indicating that the RMO will cause a thing to be done that was required by the order (section 64 of the CWA). After such work has been completed, the RMO may issue an order to pay costs to a person to recover any reasonable costs for carrying out the work.

The CWA also makes certain contraventions of Part IV an offence, including:

1. failure to comply with section 57 of CWA (prohibited activities);
2. failure to comply with subsection 58 (1) of CWA (requirement for a RMP);
3. failure to comply with a compliance order issued by a RMI under section 63 (4) of CWA;
4. failure to comply with a RMO order - to prepare a disclosure report under section 61 of CWA; and,
5. obstructing a person who has the authority to enter property (such as a RMI) or providing false or misleading information to a RMO or a RMI (section 90 and 91 of CWA).

Like all other provincial offences or offences under municipal by-laws, offences under the CWA are prosecuted under the Provincial Offences Act (POA). A RMO would be considered a "provincial offences officer" for the purposes of the POA and they may commence a prosecution in accordance with the procedures set out in the POA. The CWA sets out the penalties upon conviction, including: (1) an individual (they are) on first conviction up to \$25,000 for each day the offence continues and on subsequent conviction up to \$50,000 for each day the offence continues; and (2) for a corporation (they are) on first conviction up to \$50,000 for each day the offence continues and on subsequent conviction up to \$100,000 for each day the offence continues.

It is important to note that Part IV of the CWA provides an appeal to the Environmental Review Tribunal (ERT) for the following decisions:

1. In relation to a RMO:

- (a) the decision to establish or amend a RMP;
- (b) the refusal to agree to or to establish a RMP;
- (c) an order to prepare a report on an activity under section 61 of CWA;
- (d) an order to pay costs under section 67 of CWA; and,
- (e) an order requiring a person to grant access to their property under section 80 of CWA.

2. In relation to the RMI:

- (a) a compliance order issued by the RMI under section 63 of CWA.

A person has 60 days to appeal a decision to the ERT. There is no appeal from an ERT decision; however, the decisions of the ERT, like all other statutory bodies, can be challenged before Divisional Court by way of an application for judicial review.

Preparing for Administration and Enforcement of Part IV

This document does not provide any recommendations or approaches on how municipalities can prepare for the administration and enforcement of Part IV provisions. However, the MOE has been working closely with municipal partners from across the province to develop approaches to administering Part IV. Through this work, the MOE intends to develop additional guidance and resource material that will assist all potentially affected municipalities with the understanding and application of their duties and responsibilities related to the Part IV administration, compliance and enforcement.

Presently, municipalities may, in part through the pre-consultation process (which has already begun in many areas of the province), engage SPCs and authorities to discuss potential municipal work load and financial implications of the relevant Part IV policies in draft SPPs.

Training Requirements

The Ontario Regulation 287/07 – General (O. Reg. 287/07) sets out that the RMOs, RMIs and PQs are required to successfully complete a ministry-approved training course covering necessary information related to the Part IV powers under the CWA. The Property Entry Training Course previously offered to persons collecting information for the purpose of Section 88 of the CWA will continue to be offered and is the model for the property entry skills and knowledge taught to RMIs and RMOs for their duties related to inspections and enforcement. For a person to be eligible to attend

the Part IV Training Course they must successfully complete or have successfully completed the Property Entry Training Course. The PQs do not have the authority to enter property except in the company of a RMO/RMI and therefore, are exempt from taking the Property Entry Training Course. Table 1 summarizes the different roles, responsibilities, authorities, and training requirements for the different persons under Part IV of the CWA.

Table 1: Summary of Roles, Responsibilities, Authorities, & Training Requirements

Persons Under Part IV of the Act	Roles, Responsibilities & Authorities	Prescribed Training & Qualifications (O. Reg. 287/07 – General); The regulatory training requirements for the RMO, RMI and PQs training courses
Risk Management Official (RMO)	<ul style="list-style-type: none"> • Negotiate/establish Interim RMPs and RMPs • Evaluate risk assessments that conclude an activity is <u>not</u> a significant drinking water threat • Issue orders and notices • Cause things to be done • Issue orders to pay • Attend Environmental Review Tribunal hearings • Annually report to the SPA • Interact with other municipal departments depending upon situation 	<ul style="list-style-type: none"> • A detailed description of the rules governing the preparation of the assessment reports, source protection plans, risk management plans and risk assessments; • A detailed description of Part IV of the Act; • An overview of procedures before the Environmental Review Tribunal; • A description of the prescribed instruments to which subsection 39 (7) of the Act applies and how they regulate activities that could be identified in a source protection plan as significant drinking water threats • In the opinion of the Director, provides adequate training for a person to provide a statement under those provisions of the Act
Risk Management Inspector (RMI)	<ul style="list-style-type: none"> • Entry powers to conduct inspections to ensure compliance with interim RMPs; RMPs; subsection 57 (1) (prohibits designated SDWT activities in designated areas); and subsection 58 (1) (requires RMPs for designated activities in designated areas) • Authorized to issue compliance orders to deal with non-compliance under Part IV (as noted above) • Attend Environmental Review Tribunal hearings • Interact with other municipal departments depending upon situation • When entering property under section 62 – if RMI becomes aware of drinking water health hazard must immediately notify MOE (section 89) 	<ul style="list-style-type: none"> • A detailed description of the rules governing the preparation of the assessment reports, source protection plans, risk management plans and risk assessments; • A detailed description of Part IV of the Act; • An overview of procedures before the Environmental Review Tribunal; • A description of the prescribed instruments to which subsection 39 (7) of the Act applies and how they regulate activities that could be identified in a source protection plan as significant drinking water threats • An explanation of the powers of entry provisions in the Act; and protocols for exercising lawful entry onto property – related to section 62 of the Act • In the opinion of the Director, provides adequate training for a person appointed as a RMI under the Act

Persons Under Part IV of the Act	Roles, Responsibilities & Authorities	Prescribed Training & Qualifications (O. Reg. 287/07 – General); The regulatory training requirements for the RMO, RMI and PQs training courses
Person with Qualifications (PQs)	<ul style="list-style-type: none"> • Certify Interim RMP • Certify RMP • Certify Risk Assessment • RMO required to accept the RMP, risk assessment, and interim RMP certified by the PQs 	<ul style="list-style-type: none"> • Same as RMO, as outlined above. • Note: The PQs do not have the powers to enter property except in the company of a RMO/RMI and therefore, is exempt from taking the Property Entry Training Course.

More information regarding the different responsibilities of the municipality, Province, RMO, RMI, and PQs is available in the Appendix. These tables are provided for information purposes only. For a complete record of all the provisions, please refer to the Act and regulations.

Upcoming Training Courses

The MOE will be providing training courses beginning in the Fall of 2011. Table 2 outlines and describes the different courses that will be offered.

Table 2: Course Description & Timelines:

Course	Course Description	Dates
Property Entry Course	<p>A three-day training course that focuses on providing Participants with the skill set necessary to safely and effectively enter property in order to carry out the technical work required to assess source water, or related to Part IV inspections and enforcement duties. <i>(Applicable to those persons entering property under section 62, 66 and 88 of the CWA)</i> - under the provisions set out in the Act, which include:</p> <ul style="list-style-type: none"> • Section 88 - authorizes entry for the purposes of collecting information relevant to the preparation of an assessment report, a SPP, an annual progress report, or to carry out a monitoring program; • Section 62 authorizes entry for the purposes of collecting information relevant to determine if an activity is in compliance with sections 56 (IRMP), section 57 (prohibition) or section 58 (RMP); and • Section 66 authorizes entry for the purpose of a causing a thing to be done on the property, where a notice has been issued under section 64 by the RMO, due to failure to comply with an order. 	Dates to be announced...Fall, 2011

Course	Course Description	Dates
Risk Management Official & Inspector Training Course	<p>A five-day training course that focuses on providing participants with the necessary information related to the Part IV enforcement responsibilities of the CWA, including RMPs. Section 54 of the regulation (O. Reg. 287/07) provides that the course must include:</p> <ul style="list-style-type: none"> • A description of the rules governing the preparation of assessment reports, SPPs, RMP, and risk assessments; • A description of part IV of the Act; • An overview of procedures before the Environmental Review Tribunal; and • A description of the prescribed instruments and the way in which they regulate activities that could be identified in a SPP as a significant drinking water threat. 	Dates to be announced ...Fall, 2011
Person with Qualifications (PQs)	<i>Description of the course will be provided soon, as this course is still under development...</i>	Currently not available

Please note, the MOE is offering a number of courses this year for the interim period before SPPs are approved for municipalities preparing for administration and enforcement of Part IV. The MOE is aware that many municipalities have not begun to plan for the RMO/RMI position and the enforcement of Part IV responsibilities; therefore we will continue to provide this training into 2012 and 2013.

Pilot Risk Management Official & Risk Management Inspector Training Course

The MOE recently offered a Pilot Risk Management Official and Risk Management Inspector Training Course, which also included the Property Entry Course. This pilot was delivered from May 9-19, 2011 to a focus group for accreditation. The feedback received from this group will assist in shaping the course for future participants.

Training Course Content

It is important to note that the regulatory training requirements describe the minimum training that must be successfully completed by a potential RMO/RMI before they can exercise their authorities under Part IV of the Act.

Listed below in Tables 3 (a) & 3 (b) are the CWA **skills, knowledge and training requirements** for the Property Entry Course and the Risk Management Official and Inspector Course.

Table 3 (a): CWA Skills, Knowledge & Training Requirements for the Property Entry Course:

Property Entry Course
Background and overview of the CWA and the source water protection process
Powers and Limitations & Roles and Responsibilities for Persons Entering Property <u>under s. 62, 66 and 88</u> of the CWA: <ul style="list-style-type: none"> <input type="checkbox"/> Knowledge of powers of entry under section 62 (inspection purposes), 66 (cause things to be done) and 88 (information collection) of the CWA <input type="checkbox"/> Knowledge of responsibilities under section 89 (notice of drinking water health hazard) of the CWA
Procedures/Practices for Entering Specific Property (Property Entry Protocols) – General & Industry Specific (agriculture and industrial): <ul style="list-style-type: none"> <input type="checkbox"/> Bio-security and farm safety <input type="checkbox"/> Note Taking & Record Keeping <input type="checkbox"/> Professional Code of Conduct
Effective Communications: <ul style="list-style-type: none"> <input type="checkbox"/> Goals of communication as it relates to property entry <input type="checkbox"/> Communication model <input type="checkbox"/> Modes of communication <input type="checkbox"/> Barriers to communication
Conflict Management & Conflict Avoidance: <ul style="list-style-type: none"> <input type="checkbox"/> Goals of communication as it relates to property entry <input type="checkbox"/> Distinguish various human behaviours <input type="checkbox"/> How to apply communication skills during a given situation <input type="checkbox"/> Recognize and diffuse crisis/difficult situations

Table 3 (b): CWA Skills, Knowledge & Training Requirements for the RMO/RMI Course:

Risk Management Official & Risk Management Inspector Course
Background and overview of source water protection process: <ul style="list-style-type: none"> <input type="checkbox"/> Overview of the CWA and source protection planning process <input type="checkbox"/> Additional knowledge of other relevant Acts and their implications
Roles, Responsibilities & Authorities of Risk Management Officials, Inspectors & Person with Qualifications <ul style="list-style-type: none"> <input type="checkbox"/> Knowledge of Part IV Powers under the CWA
Overview of the CWA & detailed background on: <ul style="list-style-type: none"> <input type="checkbox"/> Assessment report <input type="checkbox"/> Risk management plans <input type="checkbox"/> Source protection plans <input type="checkbox"/> Provincial instruments prescribed in regulation (Ontario "General" Regulation 287/07) <input type="checkbox"/> First Nations and source protection
Risk Assessment and Risk Management Measures Catalogue under the CWA: <ul style="list-style-type: none"> <input type="checkbox"/> Knowledge of and applying risk assessment/risk management process (s. 60 of the CWA) <input type="checkbox"/> Risk Management Measures Catalogue – A resource for RMOs
Writing Orders & Obtaining Warrants
Environmental Review Tribunal, Appeal Process, & Presenting Evidence/Note Taking <ul style="list-style-type: none"> <input type="checkbox"/> Note Taking & Record Keeping (as it pertains to legislative reporting requirements) <input type="checkbox"/> Municipal Freedom of Information & Protection of Privacy Act
Professional Conduct Related to Part IV of the CWA <ul style="list-style-type: none"> <input type="checkbox"/> Professional conduct as it pertains to risk management officials and inspectors.
Components of Negotiation

Conclusions

This document provides municipalities an overview of the enforcement and administration responsibilities under Part IV of the CWA, as well as a summary of the MOE's technical training courses. Detailed information and guidance about the enforcement and administration of Part IV will be provided over the next year as discussions with the municipal working group progress.

This document is intended to provide municipalities with a general understanding of the process and who is involved with the administration and enforcement of Part IV of the CWA.

As well, 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.

Additional Sources of Information

Ministry of the Environment's Clean Water Act Website – www.ontario.ca/cleanwater
Clean Water Act, 2006 and O. Reg. 287/07 "General" on the e-Laws Website (www.elaws.gov.on.ca).

Appendix - Summary of Roles, Responsibilities and Authorities Related to Part IV & V of the CWA

SOURCE PROTECTION COMMITTEES (SPCs)

- Designate significant drinking water threat (SDWT) activities and areas for the purposes of section 58 (requirement for risk management plans (RMPs)). May specify required content of RMPs, and may specify date by which existing activities (those commenced before source protection plan (SPP) takes effect) subject to requirement for RMP.
- Designate SDWT activities and areas for the purposes of section 57 (Prohibition). Specify date by which existing activities must be phased out.
- Designate Related Land Uses Subject to section 59 (requirement to obtain notice from RMO before proceeding with development proposal requiring Planning Act approval or building permit).
- Consult with municipality on any SPP draft policies related to Part IV before including them in draft SPP.

MUNICIPALITIES

- Responsible for the enforcement of Part IV:
 - council of a single-tier municipality and;
 - council of an upper-tier municipality that has authority to pass by-laws respecting water production, treatment and storage under the *Municipal Act, 2001*
- Council of a municipality responsible for enforcement are required to appoint a risk management official (RMO) and risk management inspector (RMI) if enforcement under Part IV is required under the SPP.
- Councils of two or more municipalities may enter into an agreement providing for joint enforcement, sharing of costs incurred by enforcement and appointing RMOs and RMIs.
- Clerk of a municipality will issue a certificate of appointment bearing the clerk's signature to the RMO and each RMI appointed by the municipality.
- Municipalities may enter into an agreement with a board of health, planning board or source protection authority (SPA) for the enforcement of Part IV.
- If responsible for the jurisdiction of the enforcement – required to retain records for the period of time prescribed by the regulation.
- Municipality or body responsible may pass rules governing administration of Part IV, including the following:
 - Prescribing classes of RMPs and risk assessments;
 - Establishing and governing inspection programs;
 - Application requirements including information that must be provided for an application;
 - Application fees, including refunds and interest and penalties on unpaid fees (unpaid fees may be added to tax roll);
 - Forms for RMPs, acceptances of risk assessments, and notices under section 59; and
 - Circumstances in which a qualified person can certify a RMP or a risk assessment in place of the RMO.

PROVINCE

- Responsible for enforcement in unorganized territory.
- May enter into an agreement with a council of a municipality for the enforcement of Part IV for activities identified in the agreement.
- May enter into an agreement with a council of a municipality adjacent to an unorganized territory for enforcement of certain activities by the municipality.
- May enter into an agreement with a board of health, planning board or source protection authority for providing for the enforcement of Part IV.
- Regulations may prescribe activities over which the Province must assume enforcement responsibilities under Part IV.
- Director as designated by the Minister is the RMO for the enforcement of this part in areas in which and with respect to the activities for which Ontario has jurisdiction.
- Minister appoints RMIs for activities in areas for which Ontario has jurisdiction and issues a certificate of appointment bearing his or her signature to the Director and each RMI.
- Director rules or Lieutenant Governor in Council (LGIC) may specify rules governing content of RMPs
- LGIC regulations can prescribe the activities that may be subject to regulation under Part IV.

RISK MANAGEMENT OFFICIAL (RMO)

- Not eligible to be appointed as a RMO unless he/she has the qualifications prescribed by the regulation (successful complete a Director-approved training course).
- Retain records for the period of time prescribed by the regulation (section 53 of O. Reg. 287/07 – General Regulation).
- Make sure that specific records, prescribed by the regulation are available to the public (see section 53 of O. Reg. 287/07 – General Regulation).
- If an RMO and a person agree to a RMP the RMO shall provide written notice to the person and shall attach a copy of the plan to the notice.
- In circumstance prescribed by the regulations, the RMO may give a person notice indicating that, if no RMP is agreed to by a date specified in the notice that the RMO intends to establish a RMP.
- Can't establish a plan until at least 60 (Interim RMP under section 56 of CWA) or 120 (RMP under section 58 of CWA) days after the notice is given.
- If a notice is given and no RMP is agreed to by the RMO and the person engaged in the activity by the date specified in the notice (subject to the minimum notice periods set out above) the RMO, shall, by order, establish a RMP for the activity at the location.
- In cases where an amendment to the RMP is under consideration, 60/120 day period can be shortened if the RMO believes that an amendment to the RMP is required to prevent a drinking water health hazard and outlines the reasons for the opinion in the notice.
- A person engaged in an activity may apply to the RMO to establish a RMP for that person subsection 58 (11).
- An RMO shall agree to establish an interim RMP (under section 56 of CWA) only if:
 - The RMP complies with the rules and regulations
 - The plan will reduce by a reasonable amount the potential for the activity to adversely affect the raw water supplies of the drinking water system
 - PQs, in circumstances prescribed by the regulation, certify a RMP in a form obtained by the Director that the plan meets the above criteria
- RMO may refuse to establish a RMP if past conduct of the applicant affords reasonable grounds to believe that the applicant will not engage in the activity in accordance with the plan.
- RMO may refuse to establish a RMP if past conduct of the applicant affords reasonable grounds to believe that the applicant will not engage in the activity in accordance with the plan (this authority is not available in relation to interim RMPs under section 56 of CWA).
- Before obtaining a planning approval or constructing a building that involves a land use related to an activity that is designated for the purposes of section 57 or 58 of CWA, a person may be required to obtain a notice from a RMO under section 59 of CWA. The RMO can issue a section 59 notice if the applicant has paid all applicable fees and section 57 (prohibited activities) and 58 (RMPs) do not apply to the activity, or, if section 58 applies, a RMP has been agreed to or established.
- If the RMO issues a notice under section 59 he or she shall give a copy of the notice to the persons prescribed by the regulations (subsection. 59 (4)).
- A RMO shall accept a risk assessment if all fees have been paid, the activity has been assessed in accordance with the regulations and the rules, or a PQ makes a certification, in a form approved by the Director, that the activity has been assessed in accordance with the regulations and the rules.
- An RMO may by order, require a person who proposes to engage in a section 56 or 58 activity, to provide the RMO with a report that describes how the activity will be managed.
- RMO may cause things to be done in accordance with section 64; however, must give notice of intention to cause a thing to be done.
- May issue an order to pay the costs of doing any thing to be done by the RMO by an order under section 64
- RMO must ensure when making the following decisions that the person affected by the decision is notified of their right to appeal the decision to the Environmental Review Tribunal (ERT) (section 70 of CWA):
 - a) An order establishing or amending a RMP.
 - b) A refusal to agree, establish or amend a RMP and a refusal to issue a notice under section 59 of CWA.
 - c) An order to prepare a report on an activity under section 61 of CWA.
 - d) An order to pay costs under section 67 of CWA.
 - e) An order requiring a person to grant access to their property under section 80 of CWA.
- Prepare annual report to the source protection authority summarizing the actions taken by the RMO and RMI (sections 81 of the CWA, and 65 of the Regulation).

RISK MANAGEMENT INSPECTOR (RMI)

- Not eligible to be appointed as a RMI unless he or she has the qualifications prescribed by the regulation (successfully completed a Director-approved training course)
- An RMI may enter property for the purpose of inspections and enforcement without the consent of the owner or occupier and without a warrant if they have reasonable grounds to believe:
 - an activity to which section 56 (interim RMPs), 57 (prohibited activities), and 58 (RMPs) applies and is being engaged in; and
 - there are documents or data on the property that relate to an activity to which section 56, 57 and 58 applies
- RMI cannot enter property unless they have received training prescribed by regulation (successfully completed a Director-approved training course).
- RMI shall not enter a room used as a dwelling without consent of occupier or a court warrant.
- May be accompanied by any person possessing expert or special knowledge that is related to the purpose of the entry.
- Power to enter property may be exercised at any reasonable time
- Power to enter property shall not be exercised unless reasonable notice of the entry has been given to the occupier of the property.
- During an inspection a RMI may:
 - a) Make necessary excavations
 - b) Require that any thing be operated, used or set in motion under conditions specified by the person
 - c) Take samples for analysis
 - d) Conduct tests or take measurements
 - e) Examine, record or copy any document or data in any form, by and method
 - f) Require the production of any document or data, in any form, related to the purpose of the entry
 - g) Remove from a place documents or data, in any form, produced under clause (f) for the purpose of making copies
 - h) Retain samples and copies obtained under this subsection for any period and for any purpose related to the enforcement of this Part; and
 - i) Require any person to provide reasonable assistance and to answer reasonable inquiries, orally or in writing
- RMI may not remove documents or data without giving a receipt for them. Must return them promptly to person who produced them.
- RMI shall identify him or herself and shall explain the purpose of the entry.
- If a property is entered, the RMI, in so far as is practicable, shall restore the property to the condition it was in before the entry.
- If RMI believes a person is in contravention of sections 57 (1) (prohibition) or 58 (1) (RMP) of the Act, the RMI may make an order requiring the person to:
 - Comply with directions set out in order.
 - Cease engaging in activity.
 - Report to RMO on compliance with order.
- A RMI enforcement order may provide temporary relief from subsections 57 (1) and 58 (1) of the Act. For instance – if a activity is prohibited under subsection 57 (1) or is subject to a RMP under subsection 58 (1) – the enforcement order can allow that activity to continue for a specified time period subject to restrictions set out in the order.
- RMI, as provincial officers under the Provincial Offences Act may commence a prosecution under the Provincial Offences Act if a person commits one of the following offences: (1) failure to comply with section 57 (prohibited activities); (2) failure to comply with subsection 58 (1) (requirement for a RMP); (3) failure to comply with an enforcement order under section 63; (4) failure to comply with RMO order to prepare a disclosure report under section 61; and (5) obstruction or submission of false information (sections 90 and 91 of CWA).
- When issuing order RMI must make sure to give notice of right to appeal to ERT, (specifically an enforcement/compliance order issued by the RMI (section 63).
- RMI may have to obtain an inspection warrant from a court if the RMI cannot gain access to a property. For example, the property owner is actively obstructing entry in order to conduct the inspection.

PERSON WITH QUALIFICATIONS (PQs)

- Not eligible to be appointed as a PQs unless he or she has the qualifications prescribed by the regulation (successfully completed a Director-approved training course).
- PQs may act under the following:
 - Certify IRMP 56 (9) (b);
 - Certify RMP 58 (15) (b); or
 - Certify a risk assessment 60 (2) (b)
- Municipality or body responsible may pass rules prescribing the circumstances in which PQs may act under: 56 (9) (b); 58 (15) (b) or 60 (2) (b). Can only be used if a rule has been passed under section 55 by enforcement body permitting their use and setting out circumstances when PQ can be used.

PERSON ENTERING PROPERTY UNDER PART V, SECTION 88 OF THE CWA

- Employee or agent of a SPA or a person designated by a SPA may enter property without the consent of the owner and or occupier and without a warrant for the collection of relevant information for the preparation of:
 - Assessment report;
 - Source protection plan;
 - Interim & progress reports, and
 - Conduct monitoring programs for the implementation of policies in a SPP.
- Section 88 person cannot enter property unless they have received training prescribed by regulation (successfully completed a director approved training course).
- Shall not enter a room used as a dwelling without consent of occupier or a court warrant.
- May be accompanied by any person possessing expert or special knowledge that is related to the purpose of the entry.
- Power to enter property may be exercised at any reasonable time
- Power to enter property shall not be exercised unless reasonable notice of the entry has been given to the occupier of the property.
- A person authorized to enter property under section 88 of CWA may:
 - a) Make necessary excavations
 - b) Require that any thing be operated, used or set in motion under conditions specified by the person
 - c) Take samples for analysis
 - d) Conduct tests or take measurements
 - e) Examine, record or copy any document or data in any form, by any method
 - f) Require the production of any document or data, in any form, related to the purpose of the entry
 - g) Remove from a place documents or data, in any form, produced under clause (f) for the purpose of making copies
 - h) Retain samples and copies obtained under this subsection for any period and for any purpose related to the enforcement of this Part; and
 - i) Require any person to provide reasonable assistance and to answer reasonable inquiries, orally or in writing
- Section 88 person may not remove documents or data without giving a receipt for them. Must return them promptly to person who produced them.
- Section 88 person shall identify him or herself and shall explain the purpose of the entry.
- If a property is entered, the s. 88 person in so far as is practicable, shall restore the property to the condition it was in before the entry.

**Source Protection Planning
Bulletin: Section 56 (Interim)
Risk Management Plans**



July 29, 2011

Introduction

The purpose of the Clean Water Act ("the act") is to protect Ontario's existing and future drinking water sources, as part of an overall commitment to safeguard human health and the environment. A key focus of the legislation is the preparation of locally developed terms of reference, science-based assessment reports and source protection plans. For additional information on the Act and how the terms of reference and assessment reports were developed, readers may refer to the Ministry of the Environment's (MOE) website.

www.Ontario.ca/cleanwater.

Under Part IV of the act, Section 56 allows a municipality to utilise "**interim**" **risk management plans** to address activities in areas where an assessment report (which has been approved by the province) has identified those activities as significant drinking water threats, prior to those threats being addressed through an approved source protection plan.

Purpose

This bulletin is intended to assist municipalities in the administration of Section 56 (interim) risk management plans for identified significant drinking water threats in an approved assessment report for a source protection area. Section 56 sets out a process for negotiating such plans with persons who are engaged in significant drinking water threat activities and, in limited circumstances, where negotiation does not succeed, authorizes a risk management official to establish an interim risk management plan through an order by a specified date.

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. Municipal staff should refer to Part IV, Section 56 of the act (and related sections) as well as Ontario Regulation 287/07 ("the Regulation") for detailed requirements associated with the establishment of interim risk management plans.

What Is An “Interim” Risk Management Plan?

Section 56 of the act gives a local risk management official (who is appointed by the municipality) the authority to negotiate and, in limited circumstances, to establish a Section 56 (interim) risk management plan. These plans are intended to mitigate, through a variety of risk management measures, the potential adverse effects that may arise from activities that have been determined to be significant drinking water threats.

Interim risk management plans are seen as a transition tool for municipalities, to be used only after the assessment report is approved and only until the source protection plan takes effect. They are site-specific, negotiated documents that outline the actions required to ensure that identified threat activities do not pose a significant risk to wells or surface water intakes.

An interim risk management plan can be thought of as a means of applying regulatory controls to an activity; it is a mechanism that regulates how an activity is undertaken – one which offers the opportunity for local agreement and negotiation and should account for risk management measures that are already in place

Due to the negotiated nature of these plans, there is significant opportunity for discussion, flexibility and agreement with respect to how a significant drinking water threat will be regulated on that property, in such a way that reduces its potential impact to drinking water sources.

Application of Section 56 “Interim” Risk Management Plans

Interim risk management plans are the only regulatory tool immediately available under Part IV of the act to address significant drinking water threats identified in an assessment report, until source protection plans are approved (beginning in 2012/2013). A municipality has sole discretion to use Section 56, should they choose. However, municipalities are under no obligation to do so.

In order to apply a Section 56 interim risk management plan to an activity, the activity must be one of the 21 activities prescribed (identified) in the Regulation, or a significant drinking water threat activity that has been identified in an assessment report in accordance with Rule 119 of the Director’s Technical Rules. *(Note: Part IV tools - including Section 58 risk management plans - cannot be applied to waste threats and/or sewage threats that require an instrument*

Factors to Consider

Several important factors will contribute to the decision of a municipality whether to apply a Section 56 (interim) risk management plan to a significant threat activity identified in an approved assessment report:

Nature and severity of the threat: These will likely be the primary determinants. While interim risk management plans may be *voluntarily* agreed to as a means to address specific threat activities of concern to a municipality, in order for one to be *established* (via notice of intention followed by an order) the Regulation requires that the risk management official be of the opinion that without one, the activity will result (or will likely result) in a *drinking water health hazard* (Subsection 56(9) (a) (ii)).

Timing for the establishment of the Risk Management Official/Inspector: In order to apply interim risk management plans (even on a voluntary basis), risk management officials and inspectors must be established to administer the process. However, some municipalities may be looking to make alternate arrangements for the administration of Part IV or the act and these arrangements may not yet be formalized. Furthermore, a municipality may not have anticipated creating the positions of risk management official and inspector until such time as they know the nature and extent of the Part IV policies included in the source protection plan.

Local influences and preferences: A municipality may be under some local pressure to take steps to address existing, known threat activities, once the approved assessment report is publicly released. These activities however, may not pose a drinking water health hazard (as per Subsection 56(9) (a) (ii) above), in the opinion of the risk management official. In such cases, where public opinion forms the basis for the decision to apply Section 56 interim risk management plans to threat activities, voluntary agreement may be pursued in the interim until formal policies are developed with local input for inclusion in the source protection plan.

Alternative approaches to risk management: There are other ways to influence those engaged in identified significant threat activities to voluntarily take action to address the threat, without having to rely on an agreed-to or established interim risk management plan. Early and ongoing engagement, education and outreach efforts may be sufficient to encourage early adoption of (enhanced or additional) risk management measures.

Furthermore, another provincial statute may give a municipality the authority to deal with a particular significant drinking water threat activity without having to use Part IV of the Clean Water Act. If municipalities plan to exercise their authority under another statute to deal with a significant drinking water threat activity in the interim period, they may want to consider first obtaining legal

advice to ensure such authority can be exercised effectively to ensure the activity is no longer a risk to their drinking water supplies.

Consultation, engagement and information gathering: If the application of a Section 56 risk management plan is being contemplated for certain threat activities, it would be helpful to be aware of the policy approaches being contemplated for those threats by the source protection committee, in the development of the source protection plan. Consultation with the committee, prior to deciding on using a section 56 approach, is highly recommended.

Efforts should also be made to get a general sense of the types of existing risk management measures or operational practices currently in place that pertain to those activities, and to ensure that the person(s) who would be affected (both those engaged in the activity and the policy implementers) are aware of the approach being considered.

While a municipality is under no formal obligation to consult on the potential application of interim risk management plans, early and ongoing engagement is recommended during the decision making process. The result of such engagement may mean an entirely different (although equally effective) approach to risk management for a particular threat activity.

Time-Limited Application/Long-Term Management: An interim risk management plan may cease to be in effect once the source protection plan comes into effect if the source protection plan takes a different policy approach. Long-term management is therefore a factor to consider when making a decision on the early application of interim risk management plans, and why consultation with the source protection committee during source protection plan development is crucial.

Source Protection Plan in Effect

When the source protection plan comes into effect, the interim risk management plan may cease to be in effect – for example, if the source protection plan prohibits the activity or if the source protection plan does not require a Section 58 risk management plan for that activity, at that location.

Interim risk management plans will only apply during the first (i.e., current) round of source protection planning; once source protection plans are in effect for all source protection areas, there will be no ability to use Section 56 interim risk management plans. In the future, source protection plan policies will continue to apply during the plan review and amendment process (i.e., the plan will remain “in effect”).

Appointment of Risk Management Officials and Inspectors

The municipality that has Municipal Act authority over water production and treatment has enforcement responsibility for Part IV of the act within its boundaries. However, this authority may be shared or delegated by agreement to other bodies (a source protection authority, another municipality, or a local board of health).

The council of a municipality that is responsible for the enforcement of Part IV of the act is required to appoint risk management officials and inspectors, as necessary, to administer Part IV. Section 56 cannot be used until such appointments are made as it is the role of the risk management official to negotiate, or if negotiations fail, to establish interim risk management plans, while it is the role of the inspector to monitor and ensure compliance with those plans.

When determining who to appoint to the positions of risk management official and inspector, the municipality will likely consider several factors (e.g., technical expertise required based on assessment report results; familiarity with a range of risk management measures, etc). Despite their formal appointment however, the risk management official may rely on the knowledge and expertise of others (i.e., municipal staff, consultants, those with relevant expertise) to assist in making their decisions.

Appointment of these positions occurs through the issuance of a certificate by the municipal clerk to each individual who will be performing the role of official or inspector. This is similar to the appointment of officials and inspectors under the Building Code. Risk management officials and inspectors may only be appointed if they have the qualifications prescribed by the Regulation (i.e., the necessary training – see Sections 54 and 57 of the Regulation). Furthermore, risk management inspectors may only exercise a power of entry under Part IV of the act if they have taken the (Section 88) property entry training prescribed by the Regulation.

Section 55 of the act gives the enforcement authority the power to make rules around the administration of Part IV, dealing with such matters as the payment of fees, establishing and carrying out inspection programs, providing for applications under Part IV, prescribing forms and so forth. Section 55 also allows a rule to be passed by the enforcement authority that sets out the circumstances where persons with qualifications may make certifications under Part IV in place of a risk management official, including certifications that must be made with regard to an interim risk management plan (*see later section, "Persons with Qualifications" for more details*).

Establishing a Section 56 Interim Risk Management Plan

Although there are a variety of scenarios that might lead to a Section 56 interim risk management plan being established, there are two primary mechanisms through which this is likely to occur: either through voluntary negotiation (Subsections 56(1) and (2)), or by a notice and an order from a risk management official (Subsections 56(3) and (6)).

In most cases, negotiated and **voluntary** agreement is preferred. The process may be proactively initiated by the person engaged in the activity, or it may be the official who initiates the process (for example, via letter). In either case, the property owner is under no obligation to voluntarily agree to an interim risk management plan.

If the risk management official and the person do negotiate and agree to an interim risk management plan, the risk management official provides written notice to the person and attaches a copy of the interim risk management plan to which they agreed. Generally, this is the simplest and most efficient scenario.

However, there may be situations where the risk management official will approach a person engaging in the activity with a **notice** (under Subsection 56(3)), that indicates a date by which an interim risk management plan must be negotiated and agreed to. The notice will also state that if a plan is not agreed to by that date, the risk management official intends to establish one for the activity.

This notice can only be issued if:

1. in the opinion of the risk management official, without an interim risk management plan the activity will result in, or is likely to result in, a *drinking water health hazard*; and
2. the activity is not regulated by an instrument (e.g., Provincial Certificate of Approval, License, Permit, etc) prescribed by the Regulation (Section 1.0.1)

The notice given by the risk management official under Subsection 56(3) must give the person at least 60 days to negotiate a plan, and the person has the option to waive the 60-day notice period and consent to the establishment of a plan at an earlier date. **[Note: Section 100 (1) of the Clean Water Act and Ontario Regulation 231/07 specify the circumstances where the service of documents (including this notice) has been deemed made (i.e., in person, via mail, fax, e-mail, etc.)]**

In a situation where the date in the notice has passed and no Section 56 risk management plan is in place, the risk management official is required under Subsection 56(6), to establish a risk management plan for the activity by **order**. A plan may only be established if the risk management official (or, if the

enforcement authority has passed a by-law or rule permitting its use, a qualified third party) is satisfied that:

- a) the plan satisfies the requirements of the rules and the Regulation, and
- b) the plan will reduce by a reasonable amount the potential for the activity to adversely affect the raw water supply of the affected drinking water system.

Promoting and supporting the voluntary negotiation of interim risk management plans, in part by ensuring that potentially affected persons (i.e., those engaged or proposing to engage in an activity) remain informed and involved, will likely be the simplest and most effective approach for both municipalities and property owners. If it is necessary to establish an interim risk management plan by order (via Subsections 56(3) and (6)), the process becomes more adversarial and potentially onerous.

Negotiating Interim Risk Management Plans

Source protection planning under the Clean Water Act recognizes and considers local circumstances and objectives. As such, the process allows for municipalities to use their discretion in negotiating the contents of interim risk management plans, so long as the requirements of Section 56 of the act are complied with. Since a municipality (through the risk management official) is responsible for establishing and enforcing interim risk management plans, that municipality would also determine both appropriate content and associated administrative processes.

Generally, once contact has been initiated (by either party) and arrangements made for a person-to-person dialogue, the risk management official and the property owner will jointly review the various risk management measures available, including those outlined in provincial guidance. This includes reviewing the **Provincial Risk Management Catalogues**, and determining the measures most suitable to sufficiently reduce the risk posed by the significant drinking water threat activity. This joint decision-making process should also consider factors such as risk reduction measures already in place, the variety and effectiveness of additional approaches, the timing of implementation, costs and other site-specific circumstances that may be relevant.

Once the risk management official and the property owner have reached an agreement about the risk management measures that will be used to address the threat, those measures will then be formally written into the interim risk management plan.

Content of Interim Risk Management Plans

The specific content of interim risk management plans is not detailed in the act or regulations. The Province has allowed for local flexibility in the design and execution of the risk management plan itself, as well as the supporting program structure. There are, however some key considerations related to the content of the interim risk management plans that are noted below.

Both the act and the Regulation include enabling provisions specifically related to the content of risk management plans:

- o Subsection 55(1) of the act allows the enforcement authority (i.e., the municipality) to prescribe a form for risk management plans.
- o Section 59 of the Regulation allows a risk management plan to include measures to remediate the adverse effects caused by the significant drinking water threat activity and a requirement to provide financial assurance in a form specified in the plan.

Further requirements governing the content and preparation of interim risk management plans may be prescribed in Regulation or in the Director's technical rules.

The Regulation does contain one specific requirement with respect to content for all risk management plans; every risk management plan **must** have a provision stating that the *"risk management plan cannot be transferred to another person without the written consent of the risk management official."*

Despite the overall flexibility of the act and the Regulation with respect to the content of risk management plans, the province is recommending that the following information (at minimum) be included in every risk management plan:

1. Current contact information for the person engaged in the activity(ies) and/or (if applicable) for the property owner (if different person).
2. The specific activities designated as significant drinking water threats in the area to which the plan will apply (from the Assessment Report)
3. A map (or maps) of the property identifying the location of the activities
4. The risk reduction measure(s) to be taken to address the threat
5. Rationale in support of the measure(s) identified
6. An implementation schedule for measure(s)
7. Details of the monitoring and reporting requirements to ensure that the implementation schedule is being followed
8. Relevant signatures and date.

The above minimum level of information will likely be needed in order to create a complete and effective risk management plan. Additional information may be included in the interim risk management plan based on local preferences, needs and objectives.

Agreement on an Interim Risk Management Plan

A risk management official must agree to or accept an interim risk management plan if he/she is satisfied that it complies with any applicable requirements of the Regulation, the Director's technical rules, and is satisfied that it will (as per Subsection 56(9) (a) (ii)):

"reduce by a reasonable amount the potential for the activity to adversely affect the raw water supplies of the drinking water systems that obtain water from the area identified in the assessment report as an area where the activity is or would be a significant drinking water threat".

When agreeing to or establishing an interim risk management plan, the official should make every effort to indicate the compliance requirements by the person undertaking the activity, and the official should also clearly indicate the consequences for non-compliance (see later section regarding "Failure to Comply").

An existing interim risk management plan will no longer apply if the activity has been prohibited through the approved source protection plan, or if a different policy (for example, an education and outreach type policy) has been identified to manage the threat activity, or if the activity (or the location) has not been designated for the application of Section 58. In other circumstances, the measures or approaches in the interim risk management plan may be adopted (or adapted) as part of a risk management plan under Section 58 of the act.

Amendment of an Interim Risk Management Plan

The process for amending an interim risk management plan is similar to the process used for the initial interim risk management plan establishment. Amendments may be negotiated and voluntarily agreed to, or they may be imposed after a specific date set out in a notice (Subsection 56(3)) from the risk management official.

However, where an amendment to an interim risk management plan is concerned, the 60-day minimum timeframe associated with the above notice can be shortened by the risk management official if he or she is of the opinion that the amendment to the interim risk management plan is required to prevent a drinking water health hazard. In this case, the notice issued by the official must include the reasons for his or her opinion.

Legal Effect and Failure to Comply

Once an interim risk management plan is established, the person engaging in the activity is obligated to comply with it; monitoring and reporting will follow (as documented in the plan), to ensure compliance.

If a risk management inspector has reasonable grounds to believe that a person is failing to implement a provision of the interim risk management plan, the inspector may make an order under Section 63 of the act:

- requiring the person to comply with the directions in the order for implementing provisions of the risk management plan
- requiring the person to request an amendment to the interim risk management plan and/or
- requiring compliance reports.

If a Section 63 order is made, the risk management inspector may notify the person of the order, and then ensure that the requirements of the order are carried out. Where a risk management inspector cannot gain entry to a property, he or she may consider obtaining an inspection warrant.

Part IV of the act provides the risk management official with the authority to cause work to be done at the expense of the person to whom an order has been issued in the event that the person does not comply with the order. Failure to comply with an order under Section 63 of the act is an offence, and carries penalties and fines, detailed in Section 106 of the act (up to \$25,000/day for an individual's first offence, and \$50,000 for subsequent offences). These penalties are higher for corporations.

Record Keeping

An interim risk management plan under Section 56 is subject to certain record keeping requirements set out in the act and Regulation.

Once an interim risk management plan is agreed to or established, a copy should be retained by both the risk management official (on behalf of the municipality) and the person responsible for implementing the plan.

A municipality, or if the municipality has delegated its enforcement authority by agreement to another body, (that body) must retain a copy of every risk management plan (and any amendments) agreed to or established for 15 years from the date the plan comes into effect. In addition, subject to the conditions of the Freedom of Information and Privacy Protection Act, the risk management plan must be made available to the public (as per Subsection 54(3) of the Clean Water Act).

Persons with Qualifications

A municipality or the body that is acting as the enforcement authority under Part IV of the act may decide to authorize qualified persons to certify risk management plans (Sections 56 or 58) or risk assessments (Section 60) in place of a risk management official. This provides another avenue to obtain, where warranted or necessary, the technical expertise required for negotiating and establishing more complex risk management plans.

The circumstances for using persons with qualifications to negotiate or establish interim risk management plans must be authorized by the enforcement authority. Where the enforcement authority is, for example, the municipality, this may be done by passing a by-law made under Section 55 of the act. The by-law should specify the circumstances when a qualified person can be relied on to certify a plan in place of a risk management official.

There is flexibility in both the scope and setting for using persons with qualifications. The assistance of persons with qualifications could be reserved for circumstances that are quite limited, such as when risk management plans will be developed for a certain class of threats, or in certain specific areas/locations.

Once the enforcement authority authorizes the use of qualified persons in specified circumstances, a risk management official is not permitted to question the certifications of the qualified person – the plan must be agreed to or established by the risk management official.

Requesting a Hearing before the Environmental Review Tribunal

There are specific instances where a hearing may be requested in the case of a Section 56 interim risk management plan. These include situations where the risk management official (or inspector, where applicable) has issued:

- An order to establish or amend a risk management plan under Section 56
- An order under Section 61 to prepare reports regarding the manner in which an activity is being carried out
- An order under Subsection 63(4) to comply with a provision of, or to amend a risk management plan under Section 56
- An order under Section 67 to pay the costs associated with doing anything that is caused to be done by the risk management official or inspector; or
- An order under Section 80 to permit access for the purposes of doing something in order to carry out the requirements in a risk management plan.

Where an order is being issued by the official or the inspector, it must be accompanied by a written notice, together with written reasons for making the order. Under Section 70 of the act, if an order is issued under one of the above circumstances, the person being ordered may request a hearing before the Environmental Review Tribunal.

A person who receives notice of an order related to Section 56 may request a hearing by giving written notice to the Tribunal and to the risk management official or inspector who made the order. The notice requesting a hearing must identify the parts of the order the person is opposing, why the person objects to the order and the grounds on which the person intends to rely at the hearing.

Except with leave of the Tribunal, at a hearing by the Tribunal, the person is not entitled to appeal a portion of the order or to rely on a ground that is not stated in the notice requesting the hearing.

Summary

This bulletin has provided an overview of the application and establishment of Section 56 Interim Risk Management Plans, authorized by Part IV of the Clean Water Act. It has provided some guidance with respect to the limitations and important considerations when considering the application of this tool, as well as details around potential content and implementation aspects.

Additional Sources of Information

Ministry of the Environment's Clean Water Act Website

www.Ontario.ca/cleanwater

Clean Water Act, 2006

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_06c22_e.htm

O.Reg 287/07 "General"

http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_070287_e.htm