Comments of the CTC Source Protection Committee on EBR posting 010-6726: Source Protection Plans under the Clean Water Act, 2006: A Discussion Paper on Requirements for the Content and Preparation of Source Protection Plans

Section 2.0 – Policy Approaches to Reducing Risks Posed by Drinking Water Threats:
Q1: As you read through the policy approaches presented in this section, please consider and comment on what limits, if any, you feel would be appropriate to place on their use to addressing drinking water threats. Please specify why this is important.

Response
Remove limits to permit maximum flexibility for the use of all tools where appropriate. Additional comments about limits can be found in the subsequent questions.

Section 2.4 – New or Amended Provincial Instruments Prescribed in Regulation
Q2: Please comment on the concept of relying on prescribed provincial instruments as the policy approach of first choice in addressing drinking water threats (in areas where they may be lawfully applied), to minimize regulatory duplication.

Are there any provincial instruments that related to the list of prescribed drinking water threats set out in Section 1.1 of the General regulation (O. Reg. 287/07) under the CWA that you would not want to be prescribed for this purpose and why not?

Response
The CTC SPC agrees in general with using prescribed provincial instruments as the policy approach of first choice to minimize regulatory duplication.

Clarity however is needed on a number of fronts. First, it should be specified that a CWA policy could compel the province to decide to amend an instrument to include new conditions or limits (as opposed to waiting for a proponent to request a change that would trigger the decision to amend, or waiting for the instrument to expire). Second, it should be clarified that a CWA policy could result in prohibitions on the issuance of future PTTWs or C of As (for example), and could also result in existing instruments being amended to include new conditions or limits (as well as revoked?). If the CWA policies cannot compel such changes, they are of limited utility and should not be the policy approach of first choice. If an instrument cannot be re-opened in a timely manner to insert much-needed conditions, then an identified risk could persist for an unacceptable period of time before this sort of source protection policy could take effect. Third, the assessment of the threat activity, related instrument and range of risk reduction measures commonly / rarely used in relation to the threat and instrument (1st bullet point on pg 16) would seem to be the sort of information that MOE should provide to a source protection committee up front. By the time specific policies are being crafted, the more pertinent information would be the actual risk reduction measure currently in place for a particular threat.

If prescribed provincial instruments are to be the first choice policy approach, there should be efforts made to redress the historic problems that have plagued provincial instruments (i.e. information on those instruments related to source protection plan policies should be maintained in a transparent, accessible, up-to-date registry of some sort, and efforts should be made to systematically update these instruments as the science of source protection progresses).

There are no instruments on the proposed list that we believe should not be included. There are other provincial statutes and regulations that require approvals and issuing of provincial instruments that could be used to implement source water protection and would avoid even more regulatory duplication. The CTC SPC recommends that the province should review and

provide a list of all the provincial approvals and the rationale for excluding any from the list of prescribed instruments.
Some to be considered for addition include:

- *Conservation Authorities Act* – section 28 permits
- Permits under the *Building Code Act* and fire protection approvals
- Environmental Farm Plans
- Technical Safety & Standards Association approvals dealing with handling and storage of fuels
- *Emergency Management Act* approvals, e.g. where needed to ensure municipal water system operators are provided information, etc.
- Brownfield RSC – (Record of Site Conditions)
- Broaden pesticide permits from land-based to add pesticide application to water & pesticide storage

Additional Comments/Questions:
Response

- Can provincial instruments that currently don't allow for conditions be amended to allow conditions?

Section 2.5.1 – Risk Management Plans – Regulated Activities
Q3: Please comment on the proposals above related to the use of the risk management plan approach to address drinking water threats to source water. What other limits, if any, do you think would be appropriate to place on the use of this policy approach in source protection plans and why?

Response
The CTC SPC agrees with using provincial instruments as the approach of first choice (where they exist) and then using RMP where no provincial instrument exists. However, RMP should be allowed for moderate risks to prevent them from becoming a future significant risk. Instead of just "is" a SDWT, wording should be changed to "or would be" a SDWT.

On page 17, the discussion paper suggests that risk management plans (as well as ss. 57 and 59) could only be used for activities identified as significant threats. This is also evident on page. 18 where the recommendation is made to authorize the use of risk management plans for any other significant threat activity included in an approved assessment report [comparable language on page 20 with respect to prohibitions]. However, CWA s. 22(10)(a) [and 22(13)(a) with respect to s. 59] states that:

> An area shall not be designated for an activity under paragraph 1 or 2 of subsection (3) unless,
> (a) all of the designated area is in an area that is identified in the assessment report as an area where the activity is or would be a significant drinking water threat;

Accordingly, s. 57, 58 and 59 policies should be available to address not only significant threats, but also moderate or even low threats if those threats "would be" significant drinking water threats but for the source protection policy.

This could be accomplished by allowing risk management and prohibition policies to be broadly used (as per the discretion of the source protection committees) by prescribing any activities that "are or would be" significant drinking water threats. Section 59 should similarly be applicable to land uses that could be related to a threat "which is or would be" significant.

Limiting the application of s. 57-59 to significant drinking water threats runs contrary to the text of the CWA and makes it virtually impossible to meet the requirement in CWA s. 22(2) para. 2:

Policies intended to achieve the following objectives for every area identified in the assessment report as an area where an activity is or would be a significant drinking water threat:
i. Ensuring that the activity never becomes a significant drinking water threat.

On page 18, the proposal is made to give risk management officials the authority to exempt a person from requiring a risk management plan where the official determines a prescribed provincial instrument does regulate the threat activity. It is hard to imagine where this approach might make sense: presumably, it would be applicable if the source protection committee had erroneously created a risk management policy where a comparable provincial instrument already existed or subsequently came into existence by virtue of the requirement to conform/have regard to another source protection policy and that instrument achieved the same effect. However, except in these limited circumstances (essentially involving errors on the part of the SPCs leading to administrative duplication), the risk management official should not be given the authority to over-ride a decision of the source protection committee. Such unilateral action, taking place in confidential, closed-door discussions with property owners, could undermine the entire validity and accountability of the source protection planning process. Furthermore, if the risk management official were to be given such limited authority in the case of administrative error ONLY, it is insufficient to say that "the official determines a prescribed provincial instrument does regulate the threat activity"; the instrument should be required to regulate the threat activity to an equal or higher standard as that set out in the source protection risk management policy.

The CTC SPC wants no wording in the regulation that limits the ability to use this approach. If it is science-based and defensible, then no criteria should be used that might tie an SPC's hands or limit the use of RMP.

Additional Comments/Questions:
Response
- Can existing auto wrecker yards and auto body shops be subject to a RMP?
- If SDWT activities/land uses are not mapped, how does a landowner get notified to improve their operations?

Section 2.5.2 – Prohibition
Q4: Do you agree with the concept of avoiding the use of outright prohibition to address existing threats unless there is no alternative, as outlined above? Please share your rationale for this discussion.

What other criteria do you think would warrant using prohibition to reduce the source water risks posed by significant threat activities?

Response
The CTC SPC disagrees with the proposal to limit prohibition unless there is no alternative. Prohibition is an important tool to be used where and when necessary and there should be no restrictions on its use. Since all criteria and circumstances can't be foreseen where prohibition should be used, then none should be listed to leave flexibility in the use of the tool. It is also important to not have limits, as such wording will likely lead to future appeals of a prohibition on the grounds that the SPC didn't consider all possible alternatives.

Section 2.5.3 – Restricted Land Uses
Q5: Are there other provisions of the Planning Act that should be identified (see text box above)? Please share your rationale for your response.

Response
The CTC SPC finds the list in the Discussion Paper to be quite comprehensive, but would recommend that provisions of the *Building Code Act* be added in addition to the *Planning Act*. There are important activities controlled under the Building Code administered by municipal building inspectors that can complement source water protection actions, including but not limited to the siting and inspection of private septic systems.

Q6: Do you agree with the proposal under consideration to allow source protection committees the broad use of the restricted land uses approach set out in Section 59 of the CWA? Are there certain land uses that you believe do not relate to particular activities identified as prescribed drinking water threats in Section1.1 of the General regulation under the CWA (O. Reg. 287/07)? Please share your rationale for your response.

Response
The CTC SPC agrees to the broad use of restricting land uses under the *Planning Act* for preventing SDWT. We do not recommend putting limits on this provision.

We would recommend that it is clarified that the proposed requirement for an application to be made the risk management official (page 21, last paragraph) be part of the one-stop/one-window application process referred to in the preceding paragraph. It is important to work within the streamlined municipal review process.

Additional Comments/Questions:
Response

- Clarity or confirmation is required that CWA s. 59 (1) (b) allows for the *Building Code Act* and building permits to be used to stop SDWT and ensure compliance with the source protection plan.

Section 2.7 – Policy Approach Selection, Knowledge Gaps and Uncertainty
Q7: Please comment on the considerations related to knowledge and data gaps presented in this section. What additional content related to these gaps, if any should be included in the source protection plan?

Response
The CTC SPC in general agrees with using a soft approach to address risks where the scientific knowledge is too equivocal because of data gaps or uncertainty, until such time as there is more certainty. However it should be left to the discretion of the source protection committee to make that determination and not prohibited in the regulation. For instance, there may be some uncertainty in the determination of what moderate or low threats would become significant threats and in some such circumstances "harder" approaches may be warranted in order to achieve the objective of ensuring that the activity never becomes a significant drinking water threat. Additionally, this comment could be relevant to situations involving cumulative impacts. I.e. where there are a dozen threats within a close vicinity and each one ranks only as moderate when viewed in isolation of the others, logic may dictate that if testing were done on the whole they would amount to a significant threat currently. Again, there should be the leeway to take a precautionary approach and apply "harder" approaches in advance of the testing that would be done to confirm the significant existing threat.

It is also recommended that a province-wide strategy to address province-wide data gaps/uncertainty could be useful.

It is noted, however that this proposal may be in conflict with the "precautionary approach" to managing environmental threats set out in the Ministry of the Environment's Statement of Environmental Values under the *Environmental Bill of Rights Act* which sets the policy approach to be used in its decisions.

The CTC SPC also notes that a RMP (which is not a "soft" tool) can be an effective tool to address knowledge gaps and uncertainty, where requirements are imposed to gather more information and monitor a situation.

We agree with the proposal on page 24 that the source protection plan should identify policies that will need to be revisited when the knowledge gaps have been addressed. This requirement should tie into a parallel list in the assessment report of what future studies are needed, and include a plan/timeline/budget/reporting mechanism for accomplishing the work.

Section 2.8 – Additional Content Requirements Under Consideration for Threat Policies
Q8: Would including information about the specific areas to which a threat policy is intended to apply be useful to you? Why or why not? Please comment on the concept of including documented rationale in support of threat policies in the source protection plan. What additional details, if any should be considered for inclusion in the regulations governing threat policies and why?

Response
The CTC SPC feels that additional information, particularly standardized mapping and documented rationale, would be useful as it will assist municipalities in taking the information in the SPP to adopt into their Official Plans (OP) and Zoning By-Laws (ZBL) and it will provide the consistency needed to support OP/ZBL policies. It is felt that appending the assessment report to the SPP will provide the scientific rationale required, and that rationale be provided through reference to specific, applicable sections (eg. section #) of the assessment report. A decision making matrix developed by the province should be used to support the addition of any non-mandatory policies which the SPC wishes to include in the SPP, and that rationale be provided through reference to the decision making matrix. Inclusion in an SPP of non-mandatory policies (e.g. moderate or low threats) should be supported by a formal resolution of the SPC.

Section 3.0 – Policies Governing the Monitoring of Drinking Water Threats and Issues
*Q9: Is the proposed **content** for inclusion in policies governing monitoring appropriate or too onerous? What additional information or changes, if any, regarding the content of monitoring policies do you propose and why?*

Response
The CTC SPC support a standardized approach for monitoring, but at this time, it is premature to comment upon the monitoring content requirements until the scope of the threats and monitoring required is identified through the assessment reports. When the assessment reports are completed, we can better determine if the monitoring requirements as set out in the Guidelines are too onerous. There should be consistent approach to monitoring. It would be beneficial to have the ability to provide further comments on monitoring requirements in the future.

- The guideline requirements for monitoring did not include (but should) requirements to document follow-up actions, notification, etc in response to significant outcomes/findings that come to light through monitoring.
- If there are different monitoring policies for different monitoring approaches that are taken (ie monitoring through provincial instruments, CA/Municipal monitoring, and self

regulation), it may be useful for the province to provide some guidance with respect to a monitoring tool box.
- At this time it is unknown as to who will be responsible for monitoring; will it fall under the responsibilities of the risk management official, the municipality, the SPA or the CA? It would be helpful for the province to provide some guidance with identifying who should/could be conducting the monitoring to help the SPC in assigning the tasks.
- There are concerns regarding the feasibility of fulfilling monitoring requirements (financial assistance, staff resources,) in particular for smaller municipalities and single tier municipalities.
- While one municipal representative felt the minimum monitoring standards were too onerous and that flexibility in monitoring would be desirable, a general public representative felt the minimum monitoring provisions were appropriate.

Section 4.0 – Policies Related to Great Lakes Targets

Q10: Do you have any comments on the proposed reporting requirements described above with respect to Great Lakes targets? Please share the rationale for your response.

Q11: Are the proposed requirements above appropriate? Too onerous? Why? What additional details, if any should be included in the source protection plan regarding the ***content*** *of Great Lake target policies?*

Q12: What other details, if any, should be included in the source protection plan in association with designated Great Lakes policies?

Q13: Is the proposed content for inclusion in policies governing the monitoring of Great Lakes target policies appropriate? Too onerous? What additional information or changes, if any, do you propose and why?

Response

It is premature at this time to comment upon reporting requirements, whether the reporting is too onerous, the content of the Great Lakes Policies and designated Great Lakes policies, etc, until the ongoing Great Lakes Collaborative work is completed and until targets have been identified by the Minister.

It is strongly felt that anything to do with the Great Lakes should be a Provincial/Federal led responsibility due to the complexities involved and the number of stakeholders (local, provincial, federal, international, CAs, etc).

With respect to Great Lakes targets, the Minister should proceed quickly to establish a multi-stakeholder advisory committee on the Great Lakes, to assist in establishing appropriate Great Lakes targets. Reporting on the Great Lakes should identify all issues or emerging problems associated with the Great Lakes as a source of drinking water, and suggest those targets/policies that may be needed. The advisory committee's recommendations can inform this analysis. There should be a timeline for the establishment of needed Great Lakes targets, and an indication of what further scientific studies are needed.

Section 5 - Consultation and Engagement Requirements:

Q14: To what extent should the government regulate early engagement efforts? What do you think is the "right" level of early engagement? Without the information gathered from early engagement efforts, how else could a policy developer determine the appropriate details (e.g., implementation approach, risk reduction measures), to include in plan policies? Please share your rationale for your response.

Response

The CTC SPC supports regulation of early engagement efforts. However, the Committee recommends that this stage of consultation be regulated in a manner that affords the SPC flexibility in regards to engagement methods. The proposals in Table 3 appear reasonable.

Early engagement is considered highly valuable to the process of SPP preparation and it is in keeping with the contemporary planning principles relating to pre-consultation for planning applications. It was noted by SPC members from the Municipal stakeholder sector that municipalities now mandate private developer participation in early engagement efforts with relevant plan review agencies to help streamline the plan review process and to ensure complete applications are submitted. Similar efforts should be followed by SPCs to ensure these objectives are met during SPP preparation.

In order to maximize the benefits of early engagement, the SPC feels that it may also be important for the Province to specify in the Regulation who should be consulted. This list should be general but inclusive. Ultimately, it should be left to the discretion of the SPC to decide who the appropriate groups are in their jurisdictions. Among those to consider listing in this regard are the following:

- municipal staff and councils,
- affected landowners,
- adjacent SPA technical staff and SPCs,
- relevant provincial staff responsible for issuing instruments,
- affected individual businesses owners and, where applicable, their relevant business associations, and
- relevant interest groups.

Q15: Do you agree with the proposed consultation topics for the source protection plan? What additional consultation topics, if any, should be included? What is your opinion on identifying certain consultation topics as "discretionary" versus "required"? Are the proposed regulatory requirements associated with each consultation topic appropriate, too onerous, or missing any key requirements? Please share your suggested changes and supporting rationale.

Response

The CTC SPC considers the proposed consultation topics to be appropriate. Some areas related to consultation should remain discretionary in order to afford SPCs flexibility to tailor consultation efforts to the specific circumstances of an SPA.

An additional topic for consultation at the Draft SPP stage should be to invite input from adjacent SPA technical staff and SPA municipalities where plan policies under consideration may trigger cross-boundary concerns or may benefit from a coordinated policy approach.

The CTC SPC considers the proposed regulatory requirements associated within each consultation topic to be appropriate.

Section 5.1 – First Nations Engagement and Consultation:

Q16: What other actions should be taken to ensure First Nation concerns and Aboriginal rights and treaty rights are considered in the policy development process and that policies do not have a deleterious affect on these rights? Please share your rationale for your response.

Response

The Committee had no comments in response to this question as First Nations engagement and consultation matters are not applicable in the CTC SPR as there are no reserve lands. Any potential impacts on general First Nations issues and rights need to be considered by the province.

Section 6 – Proposals Summary:
Q17: What additional content, if any, should be included in the source protection plan? Please provide your rationale for your response.

Response
The CTC SPC supports the proposed additional SPP content and suggests the following be included:

I. Section summarizing existing knowledge gaps.
II. Section identifying all areas where the policy approaches available are perceived to be insufficient for addressing threats and SPC recommendations for what may be done to resolve deficiencies.
III. Recommended date for the Minister's consideration on when the plan should be reviewed.

Section 7.1 – Annual Progress Reports:
Q18: Are the proposed regulatory requirements associated with the annual reports appropriate, too onerous or missing any key requirements? If so, please indicate which items should or should not be included in the reports with your response.

Response
The CTC SPC considers all proposed regulatory requirements associated with annual reports to be appropriate. However, the Regulation should further require that information be provided in Annual Reports on recommended measures to ensure all identified concerns will be addressed (i.e. how identified issues will be addressed and when). For example, where steps have not been taken to implement plan policies within +/- six months of the established timelines, explanation of these occurrences within the Annual Report should be accompanied by descriptions of what will be done to resolve this implementation gap and what timelines for compliance should be encouraged. Additionally, with respect to progress made on addressing research needs and knowledge gaps, the summary to be provided within the Annual Report should be accompanied by descriptions of what steps will be taken to improve progress in accordance with some specified schedule.

In addition to the required details already under consideration by the MOE, the CTC SPC recommends that Annual Reports also provide feedback on the general implementation success of Risk Management Plans. Municipal Stakeholders on the CTC SPC note that this new tool appears to rely on the discretion of the individual Risk Management Official. It was felt that the SPC should continuously be made aware of the success of this policy approach in order to better evaluate its efficacy.

Finally, the CTC SPC also recommends that an additional section in the Annual Report should be dedicated to providing an annual inventory of new or emerging drinking water threats.

Section 7.2 – Plan Reviews and Plan Amendments:
Q19: What other circumstances, if any, should trigger the ability of the source protection authority to initiate an amendment to the approved source protection plan?

Response
The CTC SPC supports the proposed additional circumstances for triggering the ability of the SPA to initiate an amendment to the approved SPP and suggests the following be included:

I. New drinking water source is approved,
II. New drinking water issue arises,
III. New drinking water threat is identified,
IV. New research is available,

V. Progress has been made towards addressing previously known knowledge gaps, or
VI. Other situations at the discretion of the Minister.

Additionally, the Committee strongly supports the province's proposal to set out in regulations that the SPA engages and involves the SPC in the plan amendment process.

Q20: Do you agree with the proposed requirements related to amended source protection plans, as outlined above? Please share your rationale for your response.

Response
The CTC SPC agrees with the proposed requirements related to amending source protection plans.

ADDITIONAL COMMENTS

SPP and Barriers to Establishing New Water Systems:
The CTC SPC has an additional concern that source protection plans under the CWA may create additional difficulties in establishing new water systems.

Suggestion
The CTC SPC would like the MOE to consider the potential impacts of the CWA on the ability of municipalities to establish new water systems, particularly wells and put in place some tools under other legislation to complement and streamline requirements.

There is a need to prevent the CWA from being used as a NIMBY tool to slow the EA process (eg. by asking for a bump-up), when a municipality is searching for a new well site. The approval process for bringing new municipal water supplies on line needs to be streamlined. There needs to be an alternative dispute resolution or mediation process under the CWA to address the hurdles to getting new municipal supplies approved and operational.

The CTC SPC sees the process under the CWA is adding what we feel is necessary and additional protection to drinking water. Landowners near future wells however will most likely view the policies we put in place as actually or potentially restricting the use of their property. There is already an EA process in place for establishing a new ground water supply. It is a fair and transparent procedure, but may be seen to take considerable time and hence cost for the municipal proponent to realize the development of a new water supply source.

Part of the problem in the eyes of some is that along with numerous valid concerns, self interest and politics can be played into the process for developing an essential public requirement. In areas still served by a County form of government, other municipalities and private landowners are frequently obligated to become involved. When additional factors are introduced by land use restrictions under the CWA, there will be an increasing number of instances where differences of opinion arise in the establishing of a new well. Delay in time for a decision with a possible increasing number of bump up requests will impact the proponent and also the landowner who needs to know the outcome sooner than later.

The CTC SPC suggests that streamlining the EA process should be considered to recognize that this is an essential municipal service which is being proposed and that delay and potential abuse of the approval process poses an actual threat to the utilization of this resource for drinking water purposes.

Prohibition or Regulation of Land Use per CWA S. 22(8)

Section 22(8) of the Clean Water Act states the following:
Prohibition and regulation of activity
22. (8) Subject to the regulations, policies set out in a source protection plan under paragraph 2 or 3 of subsection (2) or paragraph 1 or 2 of subsection (6) may prohibit or regulate a land use or other activity even if the land use or other activity is not prohibited or regulated under section 57, 58 or 59. 2006, c. 22, s. 22 (8).

Question
Where are such policies addressed in the discussion paper? How may a policy in a source protection plan prohibit a land use, for example, except by complying with s. 57?

Page 13 "Designated Vulnerable Areas"
The discussion paper suggests that wellhead protection areas and intake protection zones that are defined in an assessment report as vulnerable satisfy the definition of "designated vulnerable areas" in the Provincial Policy Statement.

Question
Please confirm that this also applies to Significant Groundwater Recharge Areas and Highly Vulnerable Aquifers.

Section 2.6 Other Policy Approaches to Addressing Threats
It is not clear what type of policy would be recommended to address a brownfield (i.e. condition identified as a significant drinking water threat) if that brownfield were not owned or under the control of a municipality (in which case 2.6 of the discussion papers identifies some options).

Question
What is the recommended approach for addressing this type of threat?