Attachment 1: The CTC Source Protection Plan in the 2020s: A Discussion Paper

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A Discussion Paper

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TABLE OF CONTENTS

Contents

INTRODUCTION 3

BACKGROUND 4

The Walkerton Inquiry 4

Provincial Ministry Permits/Prescribed Instruments 9

Recently Enacted and Proposed Statutory, Regulatory and Policy Change by the Province 13

Planning Act Reforms 14

Provincial Planning Statement 17

Environmental Protection Act – Proposal to Expand Permit-by-Rule (EASR) 21

Environmental Protection Act – Proposal to Limit or Restrict Significant Threat Policies in Source Protection Plans and Exempt Certain Stormwater Management Works from Ministry Permits and Move Others to Permit-by-Rule 23

Environmental Protection Act – Proposal to Exempt or Move to Permit-by-Rule Requirements for Water Takings for Construction Site Dewatering Activities and Foundation Drains 26

Ontario Water Resources Act – New Consolidated Linear Infrastructure Environmental Compliance Approval Framework 28

Environmental Assessment Act – Proposal to Revoke the Municipal Class Environmental Assessment Process and Limit the Environmental Assessment Process to “Higher-Risk” Projects 30

Proposal to Revoke the Municipal Class Environmental Assessment Process and Limit the Environmental Assessment Process – Interface with CTC Source Protection Plan Policies 32

DISCUSSION 34

Appendix: 38

INTRODUCTION

Source water protection program, enabled by the *Clean Water Act, 2006,* is a proactive first step in the multi-barrier approach to protecting and safeguarding municipal drinking water in Ontario. It was put in place in response to the Walkerton tragedy, May 2000, where six people died because of contamination in their drinking water. At the 25th anniversary of the Walkerton tragedy, our continued vigilance in the lessons learned and implementation of the multi-barrier approach is paramount.

As source protection plans across Ontario were initially approved, the Minister of the Environment, Conservation and Parks, was required to issue an order to specify which parts of source protection plans and assessment reports were to be reviewed under section 36 of the Clean Water Act, 2006. CTC received a Minister's order on July 28, 2015. The CTC workplan, developed in response to the order, was finalized on December 21, 2018, after consultation with all stakeholders. The Minister amended their previous order through a new order issued on July 22, 2019, identifying the "mandatory updates" to the CTC Source Protection Plan and the three Assessment Reports.

An important part of these mandatory updates includes a comprehensive review and update of the CTC Source Protection Plan policies, to be undertaken under section 36 of the Clean Water Act. This is in part to ensure compliance with latest Technical Rules that govern the risk assessment in the drinking water source protection framework, but also to ensure efficacy of the existing policies by reviewing their underlying assumptions and intent. This is particularly important for those policies which rely on provincial agencies and regulatory instruments for implementation.

Since the passage of the *Clean Water Act, 2006* nineteen years ago, many changes to the statutory, regulatory and policy framework within which the Act and the CTC Source Protection Plan functions have taken place. The comprehensive update provides the opportunity for a holistic look at the shifting regulatory environment and the potential cumulative impact from a range of regulatory changes proposed by the Ministry of the Environment, Conservation and Parks since 2023, that if implemented, may impact the effectiveness of the CTC Source Protection Plan.

This discussion paper aims to:

- Review relevant findings and recommendations of the Walkerton Judicial Inquiry;
- Examine the role of provincial ministry permits (prescribed instruments) in protecting drinking water sources in the CTC Source Protection Region;

- Highlight a few recently enacted and proposed statutory and regulatory change by the Province in relation to drinking water protection in the CTC Source Protection Region;
- Identify necessary updates to the CTC Source Protection Plan in response to changes in the statutory and regulatory changes;
- Make a series of observations to stimulate further discussion and dialogue as to how some of the proposed provincial changes may alter the effectiveness and operation of the CTC Source Protection Plan.

BACKGROUND

The Walkerton Inquiry

The Walkerton Inquiry was an independent Commission appointed by the Government of Ontario under the *Public Inquiries Act* to examine the contamination of the drinking water supply in Walkerton, Ontario by *E. coli* bacteria and to look into the future safety of the water supply in Ontario. The Commission's mandate was to inquire into the cause of the events in Walkerton in May 2000 including the effect, if any, of government policies, procedures and practices and to make recommendations to ensure the safety of drinking water in Ontario.

The Honourable Dennis R. O'Connor, a Justice of the Court of Appeal for Ontario, was appointed Commissioner. Justice O'Connor held a series of hearings and meetings in 2001, which ultimately led to a two-part Inquiry Report with Part 1, *The Events of May 2000 and Related Issues* transmitted to the government on January 14, 2002 and Part 2*, A Strategy for Safe Drinking Water*, issued on May 23rd, 2002.

The findings and recommendations of Justice O'Connor, as articulated in his Inquiry Report, became the foundation of a comprehensive reform to the management of drinking water in Ontario, including the enactment of the *Clean Water Act, 2006* four years after the Commission's report in 2006.

The findings and recommendations of Justice O'Connor, arising out of a tragedy in our province that was intended to never be repeated, remain relevant today even as the *Clean Water Act, 2006* approaches its 20th Anniversary. Despite changed social, political and economic contexts of the past quarter century since the events of Walkerton, we should remain mindful of how our regulatory systems failed in the past and test if the intentions of the drinking water source protection initiative are remaining true to the intent of Justice O'Connor's studied and informed vision.

Relevant Finding's of Justice O'Connor's Part 1 Inquiry Report, *The Events of May 2000 and Related Issues*:

At page 30 of Part I of the Inquiry Report, Justice O'Connor writes:

> "I am satisfied that if the MOE [Ministry of the Environment] had adequately fulfilled its regulatory and oversight role, the tragedy in Walkerton would have been prevented (by the installation of continuous monitors) or at least significantly reduced in scope."[1]

Further on in the Inquiry Report, Justice O'Connor addresses the work of the Ministry of the Environment in the context of a deregulatory policy agenda and ministry budget reductions that existed in the late 1990's immediately prior to the Walkerton tragedy:

> "I am satisfied that the **regulatory culture**[2] created by the government through the Red Tape Commission review process discouraged any proposals to make the notification protocol for adverse drinking water results legally binding on the operators of municipal water systems and private laboratories."[3]
>
> "The budget reductions had two types of impact on Walkerton. The first stemmed from the decisions to cut costs by privatizing laboratory testing of water samples in 1996 and, in particular, the way in which that decision was implemented. ...
>
> The second impact on Walkerton of the budget reductions relates to the MOE [Ministry of the Environment] approvals and inspection programs. The budget reductions that began in 1996 made it **less likely that the MOE would pursue proactive measures** that would have identified the need for continuous monitors at Well 5 or would have detected the Walkerton PUC's improper chlorination and monitoring practices – steps that would, respectively, prevented the outbreak or reduced its scope. ...
>
> "Before the decision was made to significantly reduce the MOE's [Ministry of the Environment's] budget in 1996, senior government officials, ministers, and the Cabinet received numerous warnings that the impacts could result in increased risks to the environment and human health. These risks included those resulting from **reducing the number of proactive inspections** – risks that turned out to be relevant to the events in Walkerton..."[4]

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[1] Page 30, Part One of the Report of the Walkerton Inquiry
[2] Note that **bolded text** within a quotation has been added for emphasis in each instance.
[3] Page 33, *ibid*.
[4] Page 34-35, *ibid*.

Relevant Finding's of Justice O'Connor's Part 2 Inquiry Report, *A Strategy for Safe Drinking Water*:

On the need for multiple barriers to protect drinking water supply:

> "Much reform in government in recent years has focused on overlap and duplication, which are considered to be sources of waste and inefficiency. In the area of public health, however, this approach has limits, because single barriers are never entirely effective. Thus, **a degree of redundancy guards against the failure of any one barrier**. A low tolerance for system failures **requires placing a number of processes in series**, each of which has a low failure rate and each of whose modes of failure is independent of the others. Every step in the chain, from water supply through treatment to distribution, needs careful selection, design, and implementation, so that the combination of steps provides the best defence against calamity if things go wrong."[5]

> "The risks of unsafe drinking water can be reduced to a negligible level by simultaneously introducing a number of measures: by placing multiple barriers aimed at preventing contaminants from reaching consumers, by **adopting a cautious approach to making decisions that affect drinking water safety**, by ensuring that water providers apply sound quality management and operating systems, and **by providing for effective provincial government regulation and oversight**."[6]

On effective risk management:

> "The key features of a good approach to managing risk include being **preventive rather than reactive**…"[7]

> "The keynote in the future should be **vigilance**. We should never be complacent about drinking water safety. Circumstances change. Ontario's population will likely continue increasing, as will the intensity and types of human activities that can threaten drinking water sources. **New pathogens and chemical contaminants will continue to emerge.** We will be able to minimize risks to a negligible level in the future only if we constantly monitor the design and management of our water delivery systems to ensure that we are always employing the safest practices available."[8]

[5] Page 72, Part Two of the Report of the Walkerton Inquiry
[6] Page 5, *ibid*.
[7] Page 75, *ibid*.
[8] Page 8, *ibid*.

On source protection as a first barrier in a multi-barrier approach:

> "The first barrier to the contamination of drinking water involves protecting sources of drinking water. I recommend that the Province adopt a **watershed-based planning** process, led by the Ministry of the Environment (MOE) and by the conservation authorities (where appropriate), and involving local actors. The purpose is to develop a source protection plan for each watershed in the province. The plans would be approved by the MOE and would be **binding on provincial and municipal government decisions** that directly affect drinking water safety. ..."[9]

On source protection planning as a *local* and *effective* planning process:

> "**A local planning process**: To ensure that local considerations are fully taken into account, and to develop goodwill within and acceptance by local communities, **source protection planning should be done as much as possible at local (watershed) level**, by those who will be most directly affected (municipalities and other affected local groups). ..."[10]

> "**Effective plans**: If source protection plans are to be meaningful, they **must be respected by various actors in a watershed**. Once the MOE [Ministry of the Environment] has approved a plan, therefore, **provincial Permits** to Take Water and Certificates of Approval for sewage treatment plants and any other activities that pose a threat to water quality **will have to be consistent with the approved plan**. In cases involving a significant direct threat to drinking water sources, municipal official plans and zoning decisions will also need to be consistent with the local source protection plans. In all other situations, municipal official plans and zoning decisions should at least take the relevant source protection plans into account."[11]

On Provincial Permitting Decisions and the Source Protection Plans:

> "The **provincial government must also be bound by the plans if those plans are to be effective**, because some of its decisions... may have significant effects on drinking water sources. **No permits... should therefore be granted for activities that would** exceed the limits set by or otherwise **violate the provisions of the relevant watershed-based source protection plan**. The source protection plans should designate any other types of provincial decisions where consistency is required. ... This approach will force a **consideration of cumulative ecological impacts of all actions in the watershed** before a [provincial permit] is granted,

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[9] Page 3, *ibid*.
[10] Page 9, *ibid*.
[11] Page 10, *ibid*.

rather than allowing such permits or certificates to be granted strictly on the basis of the individual application."[12]

On Provincial Diligence and Enforcement of Environmental Laws and Regulations:

> "**Environmental regulations and conditions on provincial approvals must be consistently and strictly enforced**. During the Inquiry, I heard that the MOE's [Ministry of the Environment's] approach to enforcing conditions on [Permits] and other environmental regulations has been subject to substantial changes from time to time, depending in part on the policies of the government of the day. In the 1990's the MOE's tendency was to employ "voluntary compliance" techniques rather than to prosecute environmental violators.
>
> The MOE should issue a clear statement, internally and externally, that water pollution must be **tightly controlled**. This means enforcing the provision of the *Environmental Protection Act,* the *Ontario Water Resources Act* (or the *Safe Drinking Water Act* when it is ready), and the *Fisheries Act* … as well as **enforcing the conditions of [Permits]**… Such a policy, supported by appropriate funds, should immediately help to protect the sources of drinking water. Moreover, **the source water protection regime I have proposed cannot work in the absence of enforced rules** concerning land uses, effluent qualities, … and [Permits]. … There is little room for negotiating voluntary compliance agreements when public health is threatened."[13]

<u>Key and Relevant Recommendations from Justice O'Connor's Part 2 Inquiry Report, *A Strategy for Safe Drinking Water*:</u>

> "Recommendation 1
>
> Drinking water sources should be protected by developing watershed-based source protection plans. Source protection plans should be required for all watersheds in Ontario. …
>
> Recommendation 2
>
> The Ministry of the Environment should ensure that draft source protection plans are prepared through an inclusive process of local consultation. Where appropriate, this process should be managed by conservation authorities. …
>
> Recommendation 4

[12] Page 112, *ibid*.
[13] Pages 120-121, *ibid*.

> **Provincial government decisions that affect the quality of drinking water sources must be consistent with approved source protection plans**. (emphasis added)"[14]
>
> Recommendation 5
>
> Where the potential exists for a significant threat to drinking water sources, municipal official plans and decisions must be consistent with the applicable source protection plan. Otherwise, municipal official plans and decisions should have regard to the source protection plan. The plans should designate where consistency is required. …
>
> Recommendation 17
>
> The regulation of other [than agricultural] industries by the provincial government and by municipalities must be consistent with provincially approved source protection plans."[15]

From the selection of extracts from Justice O'Connor's Inquiry Report, it's clear that in relation to provincial regulation decision, and permit decisions, specifically, he expected a high level of vigilance from the provincial government in terms of standards, oversight and enforcement. Further his vision of local source water protection planning included the ability of a source water protection plan to guide and direct provincial permitting decisions in conformity with the locally based decision-making through the policy choices made in the source protection plan. The next section of this discussion paper will examine provincial permits, also called "prescribed instruments" in the context of the enabling framework in the *Clean Water Act, 2006* and the CTC Source Protection Plan.

First-person witness testimony from a resident of Walkerton to the Standing Committee on Social Policy during public hearings on Bill 43 (now the *Clean Water Act, 2006*), which is provided for reflection purposes (**Appendix**).

Provincial Ministry Permits/Prescribed Instruments

Provincial ministries, through their administration of various provincial laws, have the power to regulate various activities on the landscape through a permit process. In legal terms, permits, which are legal documents or tools, are sometimes referred to legally as "instruments." The *Clean Water Act, 2006*, in seeking to implement Justice O'Connor's vision for drinking water source protection, contains provisions for "prescribed instruments" and gives power to source protection plans to contain policies associated

[14] Page 18, *ibid*.
[15] Pages 18-19, 20, Part Two of the Report of the Walkerton Inquiry

with them. The following is a review of the *Clean Water Act, 2006* provisions associated with provincial ministry permits, legally described as prescribed instruments:

First, prescribed instrument defined as:

> "… 'prescribed instrument' means an instrument that is issued or otherwise created under a provision prescribed by the regulations of,
>
> a) the *Aggregate Resources Act*,
> b) the *Conservation Authorities Act*,
> c) the *Crown Forest Sustainability Act, 1994*,
> d) the *Environmental Protection Act*,
> e) the *Mining Act*,
> f) the *Nutrient Management Act, 2002*,
> g) the *Oil, Gas and Salt Resources Act*,
> h) the *Ontario Water Resources Act*,
> i) the *Pesticides Act*, or
> j) any other Act or regulation prescribed by the regulations…"[16]

This definition of prescribed instrument captures various permits processes administered by provincial ministries under 9 environment and land related statutes and gives regulation-making power to potentially add other provincial acts or regulations should the government decide to do so.

Section 39 of the *Clean Water Act, 2006* determines the legal effect of source water protection plans in relation to prescribed instruments (i.e. ministry permits):

> "**Prescribed Instruments**
>
> (7) Subject to a regulation made under clause 109 (1) (k), (l) or (m), **a decision to issue**, otherwise **create or amend** a prescribed instrument **shall**,
>
> > a) **conform with significant threat policies and designated Great Lakes policies** set out in the source protection plan; and
> >
> > b) **have regard to other policies** set out in the source protection plan."[17]

Subsection 39 (7) establishes significant power in the source protection plan over ministry decisions around permits. When ministries are deciding to create or amend permits that they issue, the **ministry** becomes an **implementer** of applicable policies in the source protection plan (for significant threat policies and designated Great Lakes policies) and

[16] Extract of subsection 2 (1), Definitions of the *Clean Water Act, 2006,* Statutes of Ontario 2006, chapter 22
[17] Subsection 39 (7), Prescribed Instruments, *ibid.*

must **at a minimum** consider or "have regard to" the rest of the policies in the relevant source protection plan.

In preparing the plan the CTC Source Protection Committee decided to include policies directing prescribed instruments, and therefore provincial ministries' permit decision-making, in the CTC Source Protection Plan, which was ultimately agreed to by the Minister when the CTC Source Protection Plan was approved.

In addressing threats to drinking water, the CTC Source Protection Plan uses "prescribed instrument policies" to both *manage* and *prohibit* threat activities. As described in the explanatory document for the CTC Source Protection Plan in the context of costs on affected residents in implementing the Plan:

> "**The CTC Source Protection Committee have selected Prescribed Instruments as the main policy tool** wherever they have been made available in the *Clean Water Act, 2006*. **Having the province responsible** for implementing these policies [through their permit decisions], … **ensures that the senior level of government exercises its authority and bears the costs, reduces duplication, and minimizes** the number of policies and **associated costs directed to the municipality** to implement Risk Management Plans."[18]

Further:

> "The CTC Source Protection Committee has used Prescribed Instruments as a preferred policy tool throughout the Source Protection Plan because it uses mechanisms and regulatory instruments that already exist to protect drinking water sources. By preferring to use Prescribed Instruments when possible, the Source Protection Committee sought to **avoid creating policies that duplicate** or are redundant."[19]

There are **24 significant drinking water threat policies** in the CTS Source Protection Plan that **rely** on the prescribed instrument power provided by section 39 of the *Clean Water Act, 2006*. These policies are itemized in List C of the Plan[20] and itemized in the following table:

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[18] Page 18, CTC Source Protection Region, *Explanatory Document*, Version 6.0, February 29, 2024.
[19] Page 20, *ibid*.
[20] Page 226-228, "List C," CTC Source Protection Region, *Source Protection Plan: CTC Source Protection Region*, Version 6.0, February 29, 2024.

Item	Significant Drinking Water Threat Policy Area	Significant Drinking Water Threat Policy Identification Number
1	Transition	Transition Provision
2	Transition	T-1
3	Transition	T-2
4	Transition	T-3
5	Application of Untreated Septage to Land	WST-3
6	Storage, Treatment, and Discharge of liquid waste (multiple circumstances)	WST-4
7	PCB Waste Storage	WST-7
8	Septic Systems Governed under the Ontario Water Resources Act	SWG-8
9	A Storm Water Management Facility Designed to Discharge Storm Water to Land or Surface Water	SWG-11
10	Sanitary Sewers and Related Pipes	SWG-13
11	Storage of Sewage	SWG-15
12	Combined Sewer Discharge, Sewage Treatment Plant Bypass, Industrial Effluent Discharges Sewage Treatment Plant Effluent Discharges	SWG-17
13	Application of Agricultural Source Material to Land	ASM-1
14	Storage of Agricultural Source Material	ASM-3
15	Management of Agricultural Source Material	ASM-5
16	Application of Non-Agricultural Source Material to Land	NASM-3
17	Handling and Storage of Non-Agricultural Source Material	NASM-4
18	The Use of Land as an Outdoor Confinement Area or a Farm-Animal Yard	LIV-2
19	The handling and storage of fuel	FER-2
20	The handling and storage of fuel	FUEL-1
21	The handling and storage of fuel	FUEL-2
22	Lake Ontario Sewage	LO-SEW-1
23	Lake Ontario Sewage	LO-SEW-2
24	Taking Water Without Returning It to the Same Aquifer	DEM-1

Accordingly, the CTC Source Protection Committee monitors the changing provincial regulatory context to ensure assumptions and intent of its Source Protection Plan policies

remain valid. Recent legislative, regulatory and policy amendments and proposals may have such implications, though many are unknown. The next section of this discussion paper introduces some of these changes and provides further commentary in relation to the CTC Source Protection Plan.

Recently Enacted and Proposed Statutory, Regulatory and Policy Change by the Province

Recent statutory, regulatory and policy changes either enacted or proposed by the province have included multiple amendments to the *Planning Act*, the issuance of a new province-wide *Provincial Planning Statement,* significant reforms to the *Environmental Assessment Act*, and significant proposed reforms to the permitting processes under the *Environmental Protection Act* and the *Ontario Water Resources Act*. The following table presents a matrix, which seeks to identify the relevant CTC Source Water Protection Plan policies that interface with various recent reform initiatives of the provincial government:

(In the table question marks indicate that the precise implications to the implementation of the CTC Source Protection Plan are presently unknown as only broad concepts of change have been proposed by the relevant ministry. “GP” Refers to the loss of former policies that were contained in the former provincial *A Place to Grow: Growth Plan for the Greater Golden Horseshoe*, which were removed upon the approval of the *Provincial Planning Statement* in 2024)

CTC SPR SPP Policy	Planning Act Reforms	Provincial Planning Statement 2024	Consolidated Linear Infrastructure - ECA	Environmental Assessment Act Reform	Environment and Sector Registry Reforms (EASR)
WST-3					X?
WST-4					X?
WST-7					X?
SWG-8					X?
SWG-11			X		
SWG-13			X		
SWG-14				X	
SWG-15			X?		X?
SWG-17			X?	X	X?
ASM-5					X?
NASM-3					X?
NASM-4					X?
FUEL-1					X?
FUEL-2					X?
LO-SEW-1			X?		X?

LO-SEW-2			X?		X?
DEM-1			X	X	X
Transition	X				
T-8	X				
T-9					
GEN-1	X				
DEM-2		X (GP)			
DEM-3		X (GP)			
REC-1	X				
REC-2	X				

Planning Act Reforms

The *Planning Act* is the basis of Ontario's land use planning system. It defines the approach to planning and assigns or provides the roles of key participants, the legal foundation for key planning processes (planning policies, development control, provincial interests, etc.) and tools for planning and controlling development and redevelopment (official plans, zoning by-laws, site control plans, etc.). All decisions under the *Planning Act* follow provincial policy direction as set out in the *Provincial Planning Statement* and provincial plans.

Source protection is referenced in the *Planning Act* under Part V Land Use Controls and Related Administration, Zoning by-laws. Subsection 34 (1), paragraph 3.1, "contaminated lands, sensitive or vulnerable areas," which states "Zoning by-laws may be passed by the councils of local municipalities: for prohibiting any use of land and the erecting, locating or using or any classes of buildings or structures on land,... (iii) that is within an area identified as a vulnerable area in a drinking water source protection plan that has taken effect under the *Clean Water Act, 2006*".[21]

Bill 23, the *More Homes Built Faster Act, 2022* amended the *Planning Act* to eliminate site plan control on parcels of land containing no more than 10 or more residential units. An unintended consequence of this policy, as it relates to source protection, is that it may limit opportunities for municipalities to screen for drinking water threats, especially for residential development in WHPAs that fall under this exemption.

In 2023, Bill 97, the *Helping Homebuyers, Protecting Tenants Act, 2023*, further amended the *Planning Act* to make an exception for development of no more than 10 residential units if it were in certain areas as prescribed through regulation. The prescribed area regulation included "any area within 300 metres of a railway line and 120 metres of a wetland, shoreline of the Great Lakes, St Lawrence River System, an inland lake or a river or stream

[21] Extract of subsection 34 (1), paragraph 3, 'Contaminated lands; sensitive or vulnerable areas,' the *Planning Act,* Revised Statutes of Ontario 1990, chapter P.13, as amended.

valley that has depressional features associated with a river or stream, whether or not it contains a watercourse." However, the prescribed area regulation did not include source protection for drinking water.

Bill 97 also included enhanced regulation-making authority to allow the Minister to remove and override municipal zoning by-law provisions that limit development and additional residential units. In the *Planning Act*, subsection 47 (4.0.1) under Power of Minister re zoning and subdivision control, provides that: "The Minister may, in an order made under clause (1) (a), provide that policy statements issued under subsection 3 (1), **provincial plans and official plans do not apply in respect of a licence, permit, approval, permission or other matter required** before a use permitted by the order may be established."[22] Not having to comply with provincial and municipal policies may have unintended consequences of undermining the protection of sources of drinking water. Further, removing linkages between provincial and municipal planning policy in the context of implementing permits, would remove the ability to properly implement source water protection plan policies, as articulated in planning policy documents and through implementing permit decisions.

The Province also developed a Zoning Order Framework to guide how requests for Minister Zoning Orders under section 47 of the *Planning Act* are submitted and considered. Unfortunately, the Framework lacks reference to source protection.

Bill 185, the *Cutting Red Tape to Build More Homes Act, 2024* resulted in the removal of planning responsibilities from upper-tier regional municipalities including the Regional Municipalities of Halton, Peel, York, Simcoe, Durham, Niagara and Waterloo. The revised role of these municipalities has removed the ability for them to prepare upper-tier official plans, to approve lower tier official plans and overall land use planning authority. This is especially significant in the context of source water protection, as each of these upper-tier bodies, except for Simcoe County are operators of drinking water systems and provide the Risk Management functions and have used that capacity and insight in the preparation of their regional official plans.

Further, the upper-tier role has now shifted from providing valuable oversight and approval of Official Plans, Zoning By-Laws, etc. for lower-tier municipalities to being a commenting body only. This loss of oversight at the regional level could have unintended consequences for source protection including the increased complexity for the CTC Source Protection Region in now having to mediate between planners at the lower-tier level, who's municipal organizations do not operate drinking water systems with staff at the regional level that

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[22] Extract of subsection 47 (4.0.1), 'Non-application of policy statements, etc.,' the *Planning Act*, Revised Statutes of Ontario 1990, chapter P.13, as amended.

continue to operate drinking water systems. However, upper-tier regional entities continue to be involved in lower-tier source protection efforts through the Risk Management Offices, Risk Management Officials and Risk Management Inspectors which carry out the duties and enforcement responsibilities of Part IV Regulation of Drinking Water Threats of the *Clean Water Act, 2006*.

The amendments to the *Planning Act* discussed above have the potential to interface with the following policies in the CTC Source Protection Plan:

Significant Drinking Water Threat Policy Area	Significant Drinking Water Threat Policy Identification Number	Remarks
Transition	Transition Provision	This 'Transition Provision' policy sets out the circumstances where a future drinking water threat activity may be considered an existing significant drinking water threat activity for the purposes of the Plan. Changes to the *Planning Act* have the potential to alter how or if there remains an ability to implement the REC-1 Policy in certain circumstances.
Transition	T-8	This policy addresses Official Plan conformity to the CTC Source Protection Plan and provides a deadline to bring municipal official plans into conformity with the Plan. Conformity had focused first on the upper-tier plans. Removal of the upper-tier planning function within the CTC Source Protection Region has changed how conformity will take place and will require new relationship and capacity building with lower-tier planning staff regarding source protection issues, which has been developed with upper-tier planners in concert with the upper-tier delivery of municipal drinking water in most cases.

Significant Drinking Water Threat Policy Area	Significant Drinking Water Threat Policy Identification Number	Remarks
General/Other	GEN-1	This policy manages significant drinking water threats that require section 59 Risk Management Official review and approvals under the *Clean Water Act, 2006*. The new exemptions of some development from certain *Planning Act* controls and changes to the Minister's Zoning Order powers may have consequences for the effective application and implementation of this policy.
Recharge	REC-1	This policy directs land use planning to assist in the management of activities that reduce recharge to an aquifer. The new exemptions of some development from certain *Planning Act* controls and changes to the Minister's Zoning Order powers may have consequences for the effective application and implementation of this policy.
Recharge	REC-2	This policy is a Part IV powers, section 58 of the *Clean Water Act, 2006* tool that is implemented by Risk Management Officials to manage an activity that reduces recharge to an aquifer. The new exemptions of some development from certain *Planning Act* controls and changes to the Minister's Zoning Order powers may have consequences for the effective application and implementation of this policy.

Provincial Planning Statement

The *Provincial Planning Statement* (PPS) is a policy statement issued under the authority of section 3 of the *Planning Act* and provides policy direction on matters of provincial interest related to land use planning and development. The PPS provides the policy foundation for regulating the development and use of land in Ontario. It includes direction on matters such as managing growth and new development, housing, economic development, natural heritage, agriculture, mineral aggregates, water and natural and human-made hazards.

Municipalities implement the PPS through their official plans, zoning by-laws and decisions on planning applications.

The PPS came into effect in October 2024 replacing the *Provincial Policy Statement, 2020* (PPS 2020) and *A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019* (Growth Plan). The PPS 2020 and Growth Plan continue to apply where the *Greenbelt Plan* refers to them.

PPS policies for protecting municipal drinking water, from PPS 2020, remain largely intact with the addition of a requirement for mitigative measures. The PPS policy 4.2.1 states "Planning authorities shall protect, improve or restore the quality and quantity of water by: e) implementing necessary restrictions on development and site alteration to: 1. Protect all municipal drinking water supplies and designated vulnerable areas; and 2. Protect, improve or restore vulnerable surface and ground water, and their hydrologic functions;"[23]. The policy continues in 4.2.2 stating "Development and site alteration shall be restricted in or near sensitive surface water features and sensitive ground water features such that these features and their related hydrologic functions will be protected, improve or restored, which may require mitigative measures and/or alternative development approaches."[24]

In the PPS, the definition for "Designated vulnerable area" remains the same as " areas defined as vulnerable, in accordance with provincial standards, by virtue of their importance as a drinking-water source."[25] The definition for "Municipal water services" was changed to "a municipal drinking water system within the meaning of section 2 of the *Safe Drinking Water Act, 2002*."[26] The text "including centralized and decentralized systems" was deleted from the PPS 2020 definition. The definition for "Private communal water service" remained intact as "a non-municipal drinking-water system within the meaning of section 2 of the *Safe Drinking Water Act, 2002* that serves six or more lots or private residences."[27]

References to ground water in the PPS can be found in Chapter 4: Wise Use and Management of Resources. In 4.1 Natural Heritage, policy 4.1.2 remains unchanged and reads "The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features."[28] In 4.2

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[23] Page 22, *Provincial Planning Statement, 2024*, Ministry of Municipal Affairs and Housing
[24] *Ibid*.
[25] Page 41, *ibid*.
[26] Page 47, *ibid*.
[27] Page 50, *ibid*.
[28] Page 21, *ibid*.

Water, policies 4.2.1 c) and 4.2.1 d) were simplified and the specific reference to ground water was replaced with "water resource system". Policy 4.2.1 e) 2 reads "protect, improve or restore vulnerable surface and ground water and their hydrologic functions"[29] however, "sensitive surface water features and sensitive ground water features" was deleted from the PPS 2020 version.

The PPS includes a new, comprehensive definition for "Water resource system". This definition was carried over from the Growth Plan and reads "a system consisting of ground water features and areas, surface water features (including shoreline areas), natural heritage features and areas, and hydrologic functions, which are necessary for the ecological and hydrological integrity of the watershed."[30]

The new *Provincial Planning Statement* discussed above has the potential to interface with the following policies in the CTC Source Protection Plan:

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[29] Page 22, *ibid*.
[30] Page 54, *ibid*.

Significant Drinking Water Threat Policy Area	Significant Drinking Water Threat Policy Identification Number	Remarks
Demand	DEM-2	This policy is a land use policy that seeks to manage activities that take water from an aquifer without returning the water to the same aquifer and applies to new development in certain designated vulnerable areas in the CTC Source Protection Region. The former Place to Grow: Growth Plan for the Greater Golden Horseshoe had the following supportive direction in the context of considering new settlement boundary expansion areas for new urban growth: *"Policy 2.2.8.3: Where the need for a settlement area boundary expansion has been justified… the feasibility of the proposed expansion will be determined and the most appropriate location for the proposed expansion will be identified based on a comprehensive application of… the following: … the proposed expansion would meet any applicable requirements of … any applicable source protection plan…"*[31] The new *Provincial Planning Statement* contains no equivalent policy direction to consider source protection plans.
Demand	DEM-3	This policy directs provincial agencies responsible for setting population targets and growth areas that may require additional new municipal water supplies to consider the significant water quantity threat analysis to certain designated vulnerable areas within the CTC Source Protection Region. The growth management policy changes discussed directly above as well as the other growth management direction in the new *Provincial Planning Statement* mean there are likely fewer opportunities to prudently apply this policy when planning for further urbanization on the landscape.

[31] Page 26, *A Place to Grow, Growth Plan for the Greater Golden Horseshoe, Office Consolidation, August 2020*, Ministry of Municipal Affairs and Housing

Environmental Protection Act – Proposal to Expand Permit-by-Rule (EASR)

On August 31, 2023, the Ministry of the Environment, Conservation and Parks (MECP) posted a policy proposal on the Environmental Registry of Ontario (Posting number 019-6951) titled "Exploring changes to streamline the permit-by-rule framework."[32] As of the writing of this report, no decision has been made on the proposal. The comment period closed on October 30, 2023.

According to the ministry, the intention of the posting was to:

> "[explore] opportunities to expand and improve Ontario's permit-by-rule framework. This will help us propose improvements to Ontario's environmental permissions [(permits)]."[33]

From the proposal, it's clear that the impetus for the proposal from the government was to reduce administrative delay for desirable development activity:

> "The ministry is seeking input on how to expand the use of its permit-by-rule framework to reduce delays on projects that matter most to Ontario communities, such as new housing and job-creating businesses."[34]

A permit-by-rule "allows proponents to self-register activities on the ministry's online Environmental Activity and Sector Registry (EASR) and **start work immediately instead of waiting** up to a year for a [proactive] ministry review."[35]

According to the posting, there are two types of EASR's: (1) "Assessed EASRs" where a "qualified person" retained by the proponent prepares assessments that are assessed against established environment outcomes and (2) "Rules based EASRs" where eligibility criteria are set out by the ministry and allow an eligible activity to register but do not require any qualified person commissioned by the proponent to assess the proposal. Once an activity is self-registered by a proponent, they are expected to self-impose adherence to rules and standards as set out in regulation.

Within this framework for self-registration and self-regulation, the ministry states in the posting:

> "To **move more activities to a permit-by-rule framework faster**, Ontario is exploring **allowing a wider range of activities to register** where proponents demonstrate, through a technical assessment, that activities can meet established

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[32] Environment Registry of Ontario Posting 019-6951 available at https://ero.ontario.ca/notice/019-6951
[33] *Ibid*.
[34] *Ibid*.
[35] *Ibid*.

environmental outcomes, **such as … water discharge standards**."[36] According to the posting, proponents can currently self-register for several sectors including:

- "automotive refinishing
- commercial printing
- waste transportation
- solar facilities
- end of life vehicle processing
- construction related water taking
- certain activities with air emissions"[37]

Finally, the ministry notes that its current practice, as contemplated in the CTC Source Protection Plan, is for a site-by-site proactive review with direct oversight by professional technical ministry staff before the work take place:

> "The ministry uses a site-specific approach for most types of activities and sectors where sites are governed by terms and conditions in environmental compliance approvals (permissions that require ministry review) which means companies have to work with the ministry to establish criteria, which can take months to complete."[38]

A CTC Staff Report considered at the December 6, 2023 CTC Source Water Protection Committee meeting reported that:

> "Staff from CTC Source Protection Region do not support the use of EASRs for any activity that is or would be a significant drinking water threat under the Clean Water Act and O. Reg. 287/07. Awareness and operational knowledge of source protection policies remains extremely uneven across the province, and proactive due-diligence and verification by regulators is essential prior to approval, as recognized and provided for in the current CTC Source Protection Plan. Reliance on self registration in areas where the activity is or would be significant drinking water threats will pose a potentially unmitigated risk to sources of municipal drinking water."[39]

Municipalities in areas designated for potential water quantity stress were particularly concerned with the proposed expansion of EASR in the permit to take water framework without due consideration for the source protection requirements.

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[36] *Ibid*.
[37] *Ibid*.
[38] *Ibid*.
[39] Page 4, CTC Source Protection Region Staff Report "Proposed changes to environmental permissions and the permit-by-rule framework" dated December 6, 2023.

Environmental Protection Act – Proposal to Limit or Restrict Significant Threat Policies in Source Protection Plans and Exempt Certain Stormwater Management Works from Ministry Permits and Move Others to Permit-by-Rule

On August 31, 2023, the Ministry of the Environment, Conservation and Parks (MECP) posted a policy proposal on the Environmental Registry of Ontario (Posting number 019-6928) titled "Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry."[40] As of the writing of this report, no decision has been made on the proposal. The comment period closed on October 30, 2023.

In the proposal, MECP notes that "**Good management of stormwater is an important part of ensuring Ontario has clean water for drinking**, manufacturing products and recreational activities now and into the future."[41] MECP then proposes to:

> "… amend Ontario Regulation 287/07, made under the *Clean Water Act, 2006*, by **removing the need for, limiting, or restricting the types of policies to be included in source protection plans** where a significant drinking water threat is being managed through registration on the EASR, **and to allow for amendments to existing source protection plans without following the usual process**."[42]

As discussed in the previous section above, the EASR (Environmental Activity and Sector Registry) is a permit-by-rule approach that skips proactive site-specific review of a permit application by ministry technical staff and "allows proponents to self-register activities on the ministry's online Environmental Activity and Sector Registry (EASR) and **start work immediately** instead of waiting up to a year for a [proactive] ministry review."[43]

In the posting, the ministry provided the following rationale:

> "**The Ministry considered how risks to sources of drinking water could be managed** under an EASR framework **and determined that risks can be addressed by** the rules proposed in **the new EASR** regulation."[44]

We are not aware of the scope or details of the risk assessment referenced. It is also important to note that a foundational principle of the *Clean Water Act, 2006* has been that the local community, via the CTC Source Protection Committee is to consider risks to sources of dinking water enumerated through the local watershed Assessment Report and

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[40] Environment Registry of Ontario Posting 019-6928 available at https://ero.ontario.ca/notice/019-6928
[41] *Ibid*.
[42] *Ibid*.
[43] Environment Registry of Ontario Posting 019-6951 available at https://ero.ontario.ca/notice/019-6951
[44] Environment Registry of Ontario Posting 019-6928 available at https://ero.ontario.ca/notice/019-6928

then make decisions/determinations on management approaches. The ministry is to play an oversight and coordinating role, not a top-down, centralized and deterministic one. With respect to management of significant threats, the CTC Source Protection Committee made the deliberate and considered decision to choose prescribed instruments (provincial ministry permits) as the main implementing too for the CTC Source Protection Plan, as discussed above.

According to the Minister of the Environment during the Third Reading debate on Bill 43 (October 2, 2006), which became the *Clean Water Act, 2006*:

> "**Instead of opting for a central model that would impose the same set of protection measures for everyone, we are relying on the communities themselves to tell us what they need to implement their local protection plans**. Local source protection committees represent a broad spectrum of stakeholders, including municipalities, businesses, the health sector and the public. **Each committee will** need to look carefully at the research findings, technical studies and risk assessments to **come up with prevention measures that deal with the vulnerable areas they've identified**."[45]

Further, the Parliamentary Secretary to the Minister of the Environment made the following remarks during the clause-by-clause consideration of Bill 43:

> "**To work,** it **[drinking water source protection] must be driven by the people, not by the ministry. That's really the intention of this bill.** It might be simpler for us to have this kind of top-down approach, but we are committed, through this bill, to having a ground-up approach. …"[46]

The two quotes above illustrate the intent of the Legislature when passing the *Clean Water Act, 2006*, for the ministry and CTC Source Water Committee in carrying out their duties under the Act.

In the posting, the ministry further states that:

> "We are proposing to amend *Ontario Regulation 287/07 General*, made under the *Clean Water Act, 2006* by removing the need for, limiting, or restricting the types of

[45] Page 5094, Legislative Assembly of Ontario, Second Session, 38th Parliament, Official Report of Debates (Hansard) for Monday 2 October 2006, No. 100A.
[46] Page SP-1170, Legislative Assembly of Ontario, Second Session, 38th Parliament, Official Report of Debates (Hansard) for Monday 11 September 2006, Standing committee on social policy, Clean Water Act, 2006, No. SP-30.

> policies to be included in source protection plans where a significant drinking water threat is being managed through an EASR [self] registration or prohibition.
>
> We also propose to amend the regulation to allow for amendments to be made to source protection plans without undergoing the existing amendment processes where the amendment is to remove policies that are no longer operative. For example, prescribed instrument policies may no longer be necessary because significant drinking water threats would be managed by the stormwater management regulation on the EASR rather than through a prescribed instrument [(ministry permit review)]. This would reduce duplicative requirements while ensuring the ongoing protection of sources of drinking water."

This proposal, as presented, included provisions to remove and limit significant drinking water threat policies that currently direct the ministry to undertake a proactive site-specific permitting process, which do not adequately consider the intent of those policies. The calls to "reduce duplicative requirements" can be interpreted as contrary to the multi barrier approach which requires "**a degree of redundancy guards against the failure of any one barrier".**

As presented, the proactive role of the ministry in the regulatory process to consider site specific considerations is being replaced with a reactive posture that may take remedial action pending potential audit and inspection. While the proposal may be helpful to improve approval timelines in certain circumstances, within designated vulnerable areas, the proponent driven process is not in line with the precautionary principle and proactive intention of the Clean Water Act, 2006.

The last aspect of this proposal is a proposal to exempt certain drainage works from any stormwater management regulation by the ministry, including:

> "We are also proposing to add exemptions for drainage works for roadways and railways, including railway projects by Metrolinx that are not already captured under the *Ontario Water Resources Act*."[47]

Currently, it is not clear as to the extent of this proposed exemption.

A CTC Staff Report considered at the December 6, 2023 CTC Source Water Protection Committee meeting reported that:

> "The approved CTC Source Protection Plan includes two Prescribed Instrument policies (SWG-11 and SWG-17) directed at MECP to take action to ensure that

[47] *Ibid*.

approval of activities related to stormwater management facilities ensures that the activity ceases to be, or does not become, a significant drinking water threat. Should the proposed amendments proceed, the scope of these policies will be limited as compared to their intended application. These Prescribed Instrument policies represent deliberate policy choices of the CTC Source Protection Committee, following extensive public consultation, municipal and provincial endorsement, to manage risk to drinking water sources and are premised on the Ministry maintaining robust and proactive regulatory oversight.

It is our understanding that the proposed amendments do not alter the definition or circumstances of the prescribed drinking water threat sewage sub-categories related to storm water management facilities and drainage systems. Rather, MECP has considered how risks to sources of drinking water could be managed under an EASR framework and determined that risks can be addressed by the rules proposed in the new EASR regulation. The proposal in its current form does not provide sufficient analysis or details to support this claim. Source protection authority staff recommend the proposed changes be paused to undertake consultation with municipalities and source protection authorities to establish how these risks are being addressed.

Staff from CTC Source Protection Region recognize that the Minister has broad regulation-making powers under the *Clean Water Act, 2006*; however, staff recommend that in recognition of rigour of the source protection planning process, and the extensive consultation process that led to the adoption and approval of source protection plans, proposing this change through filing of a regulatory amendment is not in the spirit and intent of the *Clean Water Act, 2006*. Taken together with the other proposed changes discussed in this report, this represents a significant departure from how source protection plans were developed and how risk from various significant drinking water threats were assessed by source protection committees."[48]

Environmental Protection Act – Proposal to Exempt or Move to Permit-by-Rule Requirements for Water Takings for Construction Site Dewatering Activities and Foundation Drains

On August 31, 2023, the Ministry of the Environment, Conservation and Parks (MECP) posted a policy proposal on the Environmental Registry of Ontario (Posting number 019-

[48] Pages 8-9, CTC Source Protection Region Staff Report "Proposed changes to environmental permissions and the permit-by-rule framework" dated December 6, 2023.

6853) titled “Streamlining permissions for water takings for construction site dewatering activities and foundation drains.”[49] As of the writing of this report, no decision has been made on the proposal. The comment period closed on October 30, 2023.

According to the ministry, the intention of the posting was to consider proposed “… changes to Ontario Regulation 63/16 and 387/04 to further reduce burden related to water takings for construction site dewatering activities and foundation drains… reducing regulatory burden for construction and infrastructure projects.”[50]

Changes proposed as part of this posting included:

- **removing the** current volumetric **water taking limit** of 400,000 litres of ground water per day with regards to taking ground water in relation to one or more dewatered work areas within a construction site and instead allowing someone to **self-register** on the Environmental Activity and Sector Registry (EASR) **for the taking of any quantity of ground water or storm water** from a dewatered work area(s) at a construction site subject to meeting certain eligibility requirements;
- exempt residential foundation drain system from requiring a Permit to Take Water for water taking of up to 379,000 litres of water per day; and,
- **remove the current requirements to notify the local conservation authority** (and therefore also the source protection authority) of the water taking.

If implemented, the proposal would exempt residential foundation systems below the proposed threshold from regulatory oversight and move construction related water taking to a self-registration and self-regulation approach to facilitate the immediate start of work. This approach would replace the current practice of obtaining a Permit to Take Water from the ministry, subject to site-specific and proactive review by ministry technical staff, as contemplated in the CTC Source Protection plan. The impetus for the proposal, as reported by the ministry is to: “reduce time, cost and resources that proponents spend on seeking environmental permissions from the ministry”[51] and to “help tackle the housing supply crisis by streamlining the process to build infrastructure.”[52]

A CTC Staff Report considered at the December 6, 2023 CTC Source Water Protection Committee meeting reported that:

> “Staff from CTC Source Protection Region do not support the use of EASRs for permanent foundation drains or for temporary dewatering activities within

[49] Environment Registry of Ontario Posting 019-6853 available at https://ero.ontario.ca/notice/019-6853
[50] *Ibid*.
[51] *Ibid*.
[52] *Ibid*.

> moderately or significantly stressed subwatersheds, as identified in approved Assessment Reports, where consumptive water taking would be a significant drinking water threat. Cumulative impacts of foundation drainage from multiple dwellings in such areas may negatively impact drinking water supplies. Many Source Protection Plan policies rely on prescribed instruments, such as PTTWs, to manage current and future significant drinking water threats. These activities should continue to be regulated by Permits to Take Water and to be subject to the full range of Source Protection Plan policies as determined by local source protection committees. Any future amendments to the regulation should ensure that source protection authorities and municipalities retain the ability to prohibit permanent dewatering systems in areas where dewatering is a or would be a significant drinking water [threat]."[53]

The proposed changes to ministry regulatory approaches discussed above have the potential to interface with numerous policies in the CTC Source Protection Plan. This may include WST-3, WST-4, WST-7, SWG-8, SWG-15, SWG-17, ASM-5, NASM-3, NASM-4, FUEL-2. As the extent of those reforms has not been revealed it is not clear if/how these activities are contemplated for self-assessment and self-registration in the Environment and Sector Registry (EASR) proposal.

DEM-1 policy seeks to manage activities that take water from an aquifer without returning the water to the same aquifer through ministry Permit to Take Water permits. The policy applies within the Wellhead Protection Area Quantity 1. Any new permits are to be issued only after ensuring that the new taking will not become a threat to drinking water by using the Tier 3 Water budget analysis. Additional conditions on any permits are also contemplated. With the relaxation and exemption of the requirement to obtain permits directly from the ministry and instead to self-assess and self-register on the EASR system, the degree of rigor required by this policy direction to regulate these activities may be reduced.

Ontario Water Resources Act – New Consolidated Linear Infrastructure Environmental Compliance Approval Framework

On March 17, 2021 the Ministry of the Environment, Conservation and Parks (MECP), posted a "Decision Notice" on the Environment Registry of Ontario related to "Proposed

[53]Page 5, CTC Source Protection Region Staff Report "Proposed changes to environmental permissions and the permit-by-rule framework" dated December 6, 2023.

changes to environmental approvals for municipal sewage collection works."[54] According to the notice:

> "Ontario is adopting a Consolidated Linear Infrastructure Permissions Approach (CLI) for low risk **projects related to sewage collection and stormwater management**, with a goal of getting important, low-risk public infrastructure projects built sooner by reducing the time it takes between when needs are identified and when citizens can actually benefit.
>
> Under the proposed consolidated process, a municipality would no longer need to submit individual "pipe by pipe" [ministry permit] applications for future alterations provided they are built in accordance with new design criteria and all other ministry approved conditions. These **pre-authorizations will allow municipalities to proceed without first having to obtain an individual ministry permission [(permit)]**. In certain circumstances, and with municipal approval, developers who are constructing infrastructure on behalf of municipalities can receive pre-authorization if work is being carried out in accordance with the requirements of the municipality's consolidated linear infrastructure Environmental Compliance Approval (ECA), including meeting ministry design standards.
>
> ...
>
> The CLI Permissions Approach will replace the current approach for lower risk, routine sewage works and has been modelled after the current framework for municipal drinking water systems.
>
> All existing and future approvals will be incorporated into two consolidated Environmental Compliance Approvals (ECAs):
>
> - one for municipal sanitary collection systems
> - one for stormwater management works."[55]

In reporting on the comments received on the consultations on this proposal, the ministry reported that concerns were raised regarding the potential for increased environmental impact associated with the change in regulatory posture by the ministry, (as in other examples discussed above, by moving away from site-specific proactive permit reviews and approvals to a larger-scale pre-authorized approach without specific proactive ministry review):

[54] Environment Registry of Ontario Posting 019-1080 available at https://ero.ontario.ca/notice/019-1080
[55] *Ibid*.

> “Some comments expressed concern for potential increased environmental risk because of the streamlining of the approvals process, as under certain circumstances separate ECA applications for lower risk, routine sewage works would no longer be submitted to the ministry.”[56]

Many municipalities are generally supportive of the CLI-ECA approach because it streamlines the permitting process for their water and wastewater operations. The interface between the CLI-ECA framework and source protection plans is of great interest to CTC as we update the sewage and waste policies for conformity with latest Technical Rules. Source Protection Authority staff are in discussion with implementing municipalities and MECP on a range of issues related to the source protection threat assessment requirements such as design consideration, potential interactions with MDWLs, erosion hazards related to sewage pipes in river valleys with the Event Base Area/IPZ3, and also how to achieve the aims of existing policies through the new framework.

Environmental Assessment Act – Proposal to Revoke the Municipal Class Environmental Assessment Process and Limit the Environmental Assessment Process to “Higher-Risk” Projects

On February 16, 2024, the Ministry of the Environment, Conservation and Parks (MECP) posted a regulation proposal on the Environmental Registry of Ontario (Posting number 019-7891) titled “New regulation to focus municipal environmental assessment requirements.”[57] As of the writing of this report, no decision has been made on the proposal. The comment period closed on March 17, 2024.

According to the proposal:

> “We are proposing to revoke the Municipal Class EA (MCEA) and make a **streamlined EA regulation for** municipal infrastructure for **higher-risk projects** The new regulation would help deliver critical public works to support housing infrastructure for Ontario’s rapidly growing population. …
>
> We are proposing a new environmental assessment regulation for municipal infrastructure that puts the focus on certain water, shoreline and sewage system projects. This approach will help us eliminate unnecessary burden on lower-impact projects and reduce duplicative requirements to support Ontario’s rapidly growing population. …

[56] *Ibid*.
[57] Environment Registry of Ontario Posting 019-7891 available at https://ero.ontario.ca/notice/019-7891

The proposal includes two key components:

- The Project List that describes the municipal infrastructure project types subject to the process (to be designated as Part II.4 projects under the *EA Act*).
- The Municipal Project Assessment Process (MPAP) that sets out requirements for consultation, consideration of alternative designs, impact assessment studies, documentation and notification."[58]

Examples of "higher-risk" project types that *would continue* to be subject to the new EA regulation include:

"Drinking water facilities

- constructing a new water system including a new well
- establishing a new surface water source
- constructing a new water treatment plant or expanding facility beyond existing rated capacity

Sewage treatment facilities

- constructing a new sewage treatment plant that processes over 50,000 litres of sewage per day
- expanding an existing sewage treatment plant by 25% or more of existing rated capacity, establishing new lagoons, or expanding lagoons beyond existing rated capacity

Stormwater management systems

- constructing or modifying retention/detention facilities for stormwater control where active treatment (chemical/biological) is required..."[59]

Examples of projects that are currently subject to the Municipal Class Environmental Assessment, but *would no longer require consideration* under the *Environmental Assessment Act*, according to the proposal, include:

- "all projects that are currently subject to Schedule B of the MCEA (2023), including constructing a new pumping station; a new, expansion or replacement of water intake pipe for a surface water source; or, expanding a sewage treatment plant, including relocation or replacement of outfall to

[58] *Ibid*.
[59] *Ibid*.

receiving water body, up to existing rated capacity where new land acquisition is required;

- certain smaller sewage treatment plant expansions which are currently subject to Schedule C of the MCEA (e.g. expansions to existing facilities less than 25% of existing rated capacity and all new facilities under 50,000 litres per day);
- **all municipal roads or new parking lots in any location**, reconstruction of **any bridges** with or without cultural heritage value, **all water crossings**;
- **all private sector infrastructure projects** for residents of a municipality regardless of size, including a new sewage treatment plant of any size;…"

This proposal represents a significant scoping down of what municipal infrastructure would be subject to the environmental assessment planning process and the ability of that process to integrate information and requirements from the CTC Source Protection Plan into consideration when evaluating alternatives for municipal infrastructure project proposals.

Proposal to Revoke the Municipal Class Environmental Assessment Process and Limit the Environmental Assessment Process – Interface with CTC Source Protection Plan Policies

Significant Drinking Water Threat Policy Area	Significant Drinking Water Threat Policy Identification Number	Remarks
Sewage	SWG-14	This policy seeks to manage future sanitary sewers and related pipes subject to an environmental assessment or similar planning process where they would be a significant drinking water threat. These works would no longer be subject to an environmental assessment under this proposal. Therefore, the linkage between this policy and its implementing process will be broken. The policy will need to be applied through direct and active municipal outreach and awareness.

Significant Drinking Water Threat Policy Area	Significant Drinking Water Threat Policy Identification Number	Remarks
Sewage	SWG-17	This policy prohibits future sewage works where they would be a significant drinking water threat. Existing sewage works where they are a significant drinking water threat are otherwise to be managed through ministry permits. These works would no longer be subject to an environmental assessment under this proposal. Therefore, the linkage between this policy and its implementing process will be broken. The policy will need to be applied through direct and active municipal outreach and awareness.
Demand	DEM-1	This policy seeks to manage activities that take water from an aquifer without returning the water to the same aquifer through ministry Permit to Take Water permits. The policy apples within the Wellhead Protection Area Quantity 1. Any new permits are to be issued only after ensuring that the new taking will not become a threat to drinking water by using the Tier 3 Water budget analysis. Additional conditions on any permits are also contemplated. These works would no longer be subject to an environmental assessment under this proposal. Therefore, the linkage between this policy and its implementing process will be broken. It is not clear how the ministry will work with municipal infrastructure project proponents to ensure this policy is addressed.

DISCUSSION

Since the passage of the *Clean Water Act, 2006* nineteen years ago, many changes to the statutory, regulatory and policy framework within which the Act and the CTC Source Protection Plan functions have taken place. As the Source Protection Authorities in CTC undertake the comprehensive update of the Source Protection Plan, it is timely to consider these (proposed) changes and their potential impact on the intent and underlying assumptions of plan policies and the effectiveness of the Plan itself.

As the Minister of the Environment observed during the course of Third Reading debate on Bill 43, which became the *Clean Water Act, 2006*, after the bill was passed into law:

> "**This act is inherently precautionary in nature**. That is the premise of the Clean Water Act: to prevent contamination to drinking water in the first place – hard lessons our province has learned in the tragedy in Walkerton, lessons that we don't want to see repeated. The Clean Water Act is one part of our overall government, Ministry of the Environment and other ministries' strategies to ensure that we have clean, safe drinking water for generations to come."[60]

A precautionary approach was also recommended by Justice O'Connor in his Inquiry Report:

> "Recommendation 19
>
> Standards setting should be based on a precautionary approach, particularly with respect to contaminants whose effects on human health are unknown."[61]

Justice O'Connor articulated the precautionary principle in his Inquiry Report, as follows:

> "[the precautionary] principle, which has been formulated in many ways, says that the absence of scientific certainty about a risk should not bar the taking of precautionary measures in the face of possible irreversible harm. ... Although this prudent approach must still take account of costs, when the potential consequences of the hazard in question are large, the **precautionary principle** has a role to play in practical risk management and **should be an integral part of decisions affecting the safety of drinking water**."[62]

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[60] Page 5097, Legislative Assembly of Ontario, Second Session, 38th Parliament, Official Report of Debates (Hansard) for Monday 2 October 2006, No. 100A.
[61] Page 19, Part Two of the Report of the Walkerton Inquiry
[62] Page 77, *ibid*.

The emphasis on this principle is warranted because of the complexity it entails. As the provincial government looks for ways to facilitates its ambitious housing targets, source protraction plans should be considered as part of the feasibility assessment, whether it be for development related approval or regulatory changes, with rigorous inspection and enforcement mechanisms.

For example, any activity that may reduce recharge to a municipal aquifer or remove water from an aquifer (or surface water) without returning it the same source, within an area designated for water quantity stress, must be assessed through a source protection lens. Any regulations that enable such activity must explicitly consider the impact within the vulnerable areas designated under the Clean Water Act, and requirements from relevant source protection plans. Similarly, importation of excess soil within well head protection areas should only be considered if it can be demonstrated there will be no negative impact to the source of municipal drinking water, and there is adequate oversight for the duration of the project to ensure compliance with the requirements outlined in the Soil Rules under O. Reg. 406/19 (On-Site and Excess Soil Management).

Both examples represent ongoing challenges in CTC. CVSPA staff are also working on a second report to the CTC Source Protection Committee on importation of excess soil within well head protections areas in the absence of guaranteed provincial oversight. Later this year, the water quantity policies in the CTC source protection plan will be reviewed in part due to the increased potential from proponent driven/built drinking water systems that may be not be subject to the same rigorous requirements as those planned and built by municipalities, and also to clarify the role of Conservation Authorities and Source Protection Authorities in the permitting process for water abstraction (PTTW or EASR). Update of watershed scale water budgets (Tier 2) to re-evaluate potential water stress has also been identified as a priority, pending availability of resources.

As part of the conformity exercise with the latest Technical Rules, the above-mentioned regulatory proposal and changes impacting sewage and waste policies are being considered and worked through in collaboration with implementing municipalities and MECP. Clarity on the scope and details of some proposal may not be available in time for the comprehensive update of the CTC source protection currently under way. This may lead to policy gaps that will have to be addressed through further amendments. The CTC Source Protection Committee will be consulted on draft policies in the coming months.

In his Part 2 Inquiry Report, Justice O'Connor recommended a watershed based, locally driven, multi-stakeholder process to develop source protection plans which have legal status to direct both provincial and municipal governments decision-making. Part III of the

Clean Water Act, 2006 contains 10 sections detailing the legal status of source protection plans. This includes requirements that provincial permit decisions:

> "conform with significant threat policies and designated Great Lakes policies set out in the source protection plan; and have regard to other policies set out in the source protection plan."[63]

The CTC Source Protection Committee, like most others across Ontario, for financial consideration and to avoid duplication, relied on Prescribed Instruments as the main policy tool for implementation of the regulation of significant drinking water threats.

> "... the CTC Source Protection Committee have selected Prescribed Instruments as the main policy tool wherever they have been made available in the *Clean Water Act, 2006*. Having the Province responsible for implementing these policies, through existing mechanisms and instruments, ensures that the senior level of government exercises its authority and bears the costs, reduces duplication, and minimizes the number of policies and associated costs directed to the municipality to implement Risk Management Plans."[64]

The proposal discussed above along with recent direction from MECP against inclusion of minimum requirements (vulnerable area mapping and emergency management plans) in Prescribed Instruments governing "existing" significant drinking water threats (Item 8.1, SPC meeting #1/25) has raised questions about their efficacy. Some of the proposals, in their current form, represents a download of responsibility to municipalities at a time when they are faced with significant challenges. This will disproportionately impact smaller and rural municipalities.

The precautionary and proactive approach in the source protection framework is essential to its efficacy. While each proposal, if assessed independently, may not significantly alter the risk assessment informing CTC Source Protection Plan, the cumulative impact may reduce the effectiveness of the policies.

As Justice O'Connors noted:

> "The keynote in the future should be vigilance. We should never be complacent about drinking water safety. Circumstances change."[65]

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[63] Subsection 39 (7), *Clean Water Act, 2006*, Statutes of Ontario 2006, chapter 22.
[64] Page 18, CTC Source Protection Region, Explanatory Document, Version 6.0, February 29, 2024.
[65] Page 8, *ibid*.

Source Protection Authorities and their municipal partners look forward to collaborating with provincial ministries, in their dual roles as regulators and implementing agencies, to address upcoming challenges.

Appendix:

Deputation by Mr. Bruce Davidson, resident of Walkerton and representative of Concerned Walkerton Citizens to the Ontario Legislature Standing Committee on Social Policy on August 22, 2006:

"To give you some sense of what it means on a more personal level for people in this community -- most of us are well, but there are a number who still struggle -- there's a woman in Walkerton who suffers from irritable bowel. She has severe attacks about every six weeks. When an attack strikes, she will go from feeling reasonably well to feeling completely debilitated and ill within a few moments. By the time she calls her husband, who lives three minutes away from her workplace, to pick her up, she cannot stand up on her own and all the colour is washed from her face. By the time he gets her home, he'll assist her to get to the bedroom, where she will writhe in agony for two to three hours before literally passing out. That's my wife. There's a man in town who is now suffering from diabetes and high blood pressure, who had no history of it before and struggles with it. That's the gentleman beside me. There's a young boy in town who, two years ago, found one of his feet became quite swollen for no reason. He was taken to the hospital. They diagnosed it as gout symptoms. According to the doctor, they have never diagnosed it in someone that young. That's my son.

This is a small taste of the type of ongoing misery that people live through. We've pulled up our socks and we are going and we're fighting and we're carrying on our lives but imagine the cost in the future if some of these diseases get worse. You can't estimate a cost for that. So these are things we have to look at.

If you don't think it's worth protecting our water and spending the money, ask the young boy in town who lost both his kidneys; ask his parents about the hell they've been through. He nearly died, and his kidneys are not expected to take him through to adulthood. These are not trivial matters. We have to take the time to ensure that these types of things don't happen again.

In terms of legislation, you cannot legislate enthusiasm for a law; you can't make people do it. But where we have the ability to do that is through education. We are suggesting that we embark upon an aggressive education program whereby we don't just go to municipalities and to farmers and to First Nations and to cottagers and all the stakeholders and put a series of facts that they have to comply with in front of them, but rather we blend that technical information -- and I've done this in several provinces and we, as a group, have -- with the human impact, thereby resonating with those people on multiple levels so that

they understand that they are complying because there is a reason to comply: to protect their own lives and their own health.

In closing, I would suggest to you that our children are going to face challenges in their lives that we've never considered. We have no idea what they'll face. Let's work collaboratively to make sure lethal water is not one of those challenges. I thank you for your time."