

REPORT TO: Halton-Hamilton Source Protection Committee
REPORT NO.: SPC-21-10-01
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DATE: October 5, 2021
SUBJECT: Halton-Hamilton Section 36 Updates: Pre-Consultation Comments

Recommendation

THAT the Halton-Hamilton Source Protection Committee **receives for information the Staff report Halton-Hamilton Section 36 Updates: Pre-Consultation Comments.**

Executive Summary

Halton-Hamilton Source Protection Region (HHSPR) staff began pre-consultation with policy implementing bodies on the comprehensive science and policy updates under Section 36 of the *Clean Water Act, 2006*. Comments received are considered and updates recommended. Additional discussions are considered.

Report

Background

Under Section 36 of the Clean Water Act, the Ministry of the Environment, Conservation and Parks (MECP) required the submission of workplans to review Source Protection Plans. This has led to the second round of source protection planning across Ontario.

Upon approval of the first source protection plan for the Halton-Hamilton Source Protection Region (HHSPR) on December 31, 2015, the Minister of the Ministry of the Environment, Conservation and Parks (MECP) issued an order requiring the subsequent submission of a workplan by November 30, 2018 to review source protection plans per Section 36 of the Clean Water Act. These workplans were required across Ontario, leading to the second round of source protection planning across the province.

The HHSPR workplan was reviewed by MECP, resulting in the Minister issuing an amended order in March 2019 pursuant to Section 36 of the Clean Water Act. This amended order specifies the mandatory science and policy update items, to support the continued protection of drinking water sources.

HHSPR staff are undertaking updates to the assessment reports, source protection plan, and explanatory document per the Section 36 workplan. These updates are being brought to the Halton-Hamilton Source Protection Committee (HHSPC) for review and endorsement. The updates are also subject to a comprehensive consultation process. The **Figure 1** shows the early engagement and consultation steps.

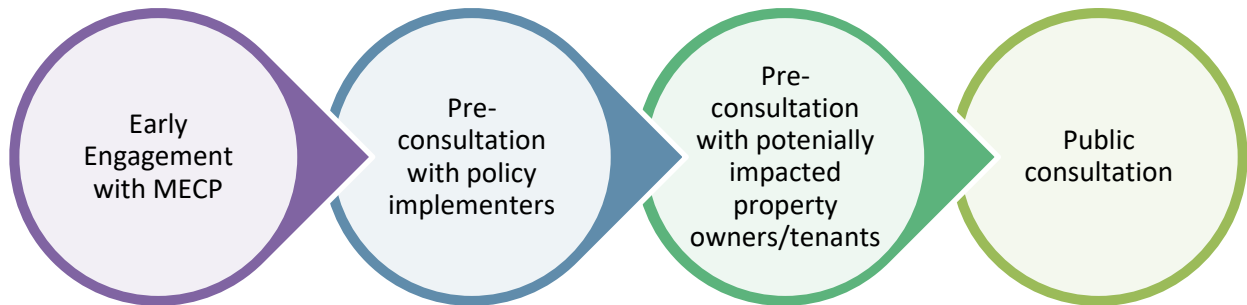


Figure 1: Source Water Protection Consultation Steps

The **Table 1** developed by HHSPR staff provides timelines that ensure adequate consultation and result a submission to the MECP.

Table 1: Timelines for Comprehensive Updates for Source Water Protection

| No. | Step | Timeline |
|-----|--|---------------------------|
| 1 | Need for updates identified | 2018 onwards |
| 2 | Development of comprehensive amendments in consultation with HHSPC | April 2019 to June 2021 |
| 3 | Early engagement with MECP, HHSPC review | June to August 2021 |
| 4 | Pre-consultation with all policy implementers; address comments received, HHSPC meeting with follow up | September-October 2021 |
| 5 | Pre-consultation with impacted landowners/tenants, consider comments received | October-November 2021 |
| 6 | Public consultation (minimum 35 days), address comments received, HHSPC meeting with follow up, SPA Board meetings | November 2021 to May 2022 |
| 7 | Submission to MECP | May 30, 2022 |

HHSPR developed customized pre-consultation packages for each implementing body, based on the proposed updated Assessment Reports and Source Protection Plan. The packages contained the science and policy updates relevant to the implementing body. These were sent by email on September 4, 2021 to around 80 recipients including municipal clerks, provincial ministries and businesses, along with a secure link to the updated Assessment Reports and Source Protection Plan. HHSPR noted that virtual meetings could be arranged if needed by the policy implementing body. The deadline for comments is: October 4, 2021.

Optional meetings took place with the Ontario Ministry Of Agriculture, Food And Rural Affairs (OMAFRA) on September 13, 2021 and with municipalities on September 21 and 23, 2021. HHSPR staff provided an introduction to the Clean Water Act, overview of the Section 36 comprehensive updates process, the related consultation process and highlights of the policy and science updates.

Policy Discussions

Policies T-20-C, T-21-C, T-25-C, T-26-C

A virtual meeting was hosted by HHSPR on September 13, 2021 with the OMAFRA staff upon the latter's request. A follow up email was received on September 21, 2021 from OMAFRA staff as follows, regarding policies T-21-C (for application and storage of ASM) and T-26-C (for application and storage of commercial fertilizer):

"Thank you for the opportunity to comment on the proposed update to policy T-26-C. I have copied the proposed policy and will provide comments below:

Where the future application of commercial fertilizer would be a significant drinking water threat,

- a. the Ministry of Agriculture, Food and Rural Affairs shall ensure that nutrient management plans required under the Nutrient Management Act include measures that, when implemented, will ensure that this activity never becomes a significant drinking water threat.*
- b. the Ministry of the Environment, Conservation and Parks shall document the number and location of inspections that were compliant and non-compliant with nutrient management plans and strategies, and non-agricultural source material plans and the actions taken, and report this information to the Source Protection Authority by February 1 of each year.*

I believe that (b) is consistent with the feedback we have provided over the years that OMAFRA so that makes sense me to. Regarding (a) – I want to note that OMAFRA does not have an active role in Nutrient Management Plans. There are requirements set out in the Reg as to when a farm requires an NMP and what has to be included in an NMP but OMAFRA does not ensure compliance with those sections, that would be MECP. I interpret the phrasing of "OMAFRA shall ensure NMPs include measures..." to mean that OMAFRA must include measures above and beyond the regulatory requirements of an NMP, which we cannot do. I just want to note that if that is the intent of the policy wording, we will not be able to conform to the policy. The current wording of (a) makes it sound like (to me) OMAFRA is being directed to actively review and impose possible conditions when we cannot do that. My points above would also apply to policies for ASM application".

This matter has been a long-standing topic of discussion among source protection areas/regions and committees. The Halton-Hamilton Source Protection Plan also contains policies using risk management plans as the policy tool, implemented by Risk Management Officials: T-20-C (for application and storage of ASM) and T-25-C (for application and storage of commercial fertilizer) on farms not phased-in under the Nutrient Management Act.

OPTION 1: Update these prescribed instruments (nutrient management plans and strategies) policies to replace OMAFRA with MECP, as follows with changes tracked. This update relies on the fact that MECP conducts compliance inspections. However, MECP does not issue/approve these instruments and does not ensure that additional measures/conditions are added to the prescribed instruments to protect municipal drinking water sources from the specified threat activities. This will remain to be a gap.

Policy T-21-C

Where the existing and potential future application or storage of agricultural source material are or would be significant drinking water threats and are managed by nutrient management plans and strategies,

~~a. the Ministry of Agriculture, Food and Rural Affairs shall ensure that the nutrient management plans and strategies are inclusive of measures to protect drinking water sources that, when implemented, will ensure that the application and storage of agricultural source material never become or cease to be significant drinking water threats. Contingency plans required for nutrient management plans and strategies must contain the requirement for notification of the Spills Action Centre if a leak is discovered from an agricultural source material storage facility or if there is a spill.~~

~~b.~~

a. the Ministry of Agriculture, Food and Rural Affairs, the Environment, Conservation and Parks shall document the number and locations of nutrient management plans and strategies that were reviewed or approved and the actions taken to ensure that the application and storage of agricultural source material never become or cease to be significant drinking water threats.

~~attain compliance with this policy and~~

b. the Ministry of the Environment, Conservation and Parks shall report this information to the Source Protection Authority by February 1 of each year.

Policy T-26-C

Where the future application of commercial fertilizer would be a significant drinking water threat,

~~a. the Ministry of Agriculture, Food and Rural Affairs shall ensure that nutrient management plans required under the Nutrient Management Act include measures that, when implemented, will ensure that this activity never becomes a significant drinking water threat.~~

~~b.~~

a. the Ministry of the Environment, Conservation and Parks shall document the number and location of inspections that were compliant and non-compliant with nutrient management plans and strategies, and non-agricultural source material plans and the actions taken to ensure that the application of commercial fertilizer never becomes or ceases to be significant drinking water threats., and

b. the Ministry of the Environment, Conservation and Parks shall report this information to the Source Protection Authority by February 1 of each year.

OPTION 2: Update the current risk management plan policies, to not limit them to farms not phased-in under the Nutrient Management Act. Only the policy preambles would be updated as shown below (includes minor edits) with changes tracked.

T-20-C

Where the existing and ~~potential~~ future application and storage of agricultural source material (ASM) ~~on farms not phased-in under the Nutrient Management Act~~ are or would be significant drinking water threats,...

- a. a risk management official shall screen all building permit and Planning Act applications
- b. a risk management official shall establish risk management plans

T-25-C

Where the existing and future application of commercial fertilizer ~~on farms not phased-in under the Nutrient Management Act~~, and where the handling and storage of commercial fertilizer on properties are or would be significant drinking water threats,...

- a. a risk management official shall screen all building permit and Planning Act applications
- b. a risk management official shall establish risk management plans

It is important to know that the Ontario Regulation 287/07 Section 61 provides an avenue for a person to be **exempt** from the requirement for a Clean Water Act Section 58 risk management plan, where the person holds a prescribed instrument that already adequately regulates a threat activity. The intent is to minimize the potential for regulatory duplication during plan implementation.

Under Section 61 of Ontario Regulation 287, an individual affected by an RMP policy may be exempt from S.58 requirements if:

- They already hold a prescribed instrument that adequately addresses the significant drinking water threat activity OR,
- If they obtain or amend a Prescribed Instrument to address the threat activity.

Where a person already holds such an instrument, the person must provide a copy of the regulating instrument, and a statement of conformity that certifies that the prescribed instrument conforms to source drinking water threat policies in the local source protection plan. This can be in the form of a statement within the instrument itself or as a separate document. The RMO does not hold the responsibility of determining whether or not the instrument conforms to source protection plan policies; this is the responsibility of the body that issues, amends or otherwise creates the instrument (in many cases this body is the Crown). Certified nutrient management planners may develop instruments for farm property owners.

While OMAFRA does not review and approve nutrient management plans, the application of commercial fertilizer is managed through nutrient management plans. The regulatory standards required of those farmers that are required to have a nutrient management plan include standards regarding commercial fertilizer. For instruments not approved by

OMAFRA, the approvals process is revised to delegate the letter of conformity preparation to a certified person.

OMAFRA has revised the training of certified nutrient management planners to include source water protection. Guidance has been developed for Risk Management Officials, farmers and certified individuals that prepare Nutrient Management Plans to use to help determine if a prescribed instrument conforms to the significant drinking water threat policies. They are available at <https://www.nutrientmanagement.ca/courses> Training was also delivered by OMAFRA to certified preparers on requirements and responsibilities of incorporating source water protection into prescribed instruments (nutrient management plans included).

OPTION 3: Retain the updates shown in the pre-consultation package, which only changes policy part b (monitoring policy), to rely on MECP rather than OMAFRA. Apply the same for the ASM policies. Policy part a (directed to OMAFRA) is consistent with the neighbouring Grand River Source Protection Plan and the CTC Source Protection Plan. This approach will leave the comment from OMAFRA unaddressed.

OPTION 4: In part a, replace OMAFRA with nutrient management planners/consultants/certified preparer. This update will address the root of the problem and identify the actual prescribed instrument issuer as the implementing body. The monitoring policy could be one that relies on the training provided by OMAFRA to the implementer, such that the training includes source water protection requirements, roles and responsibilities. It is not known if the policy would be legally binding or not, and further discussions will take place with MECP.

Policy G-1 and Definitions of Existing and Future Threats

Policy G-1 enacts timing requirements for implementation of Plan policies. In the pre-consultation package, Policy G-1 is updated to reflect the date that the updated plan takes effect. The updated wording in the preamble is from the approved Grand River Plan policy WC-CW-1.1.1 (for the County of Wellington). Note that policy WC-CW-1.1.1 does not include the parts (e.g.: a, b, c etc.). The parts are in a separate policy WC-CW-1.1.2.

MECP staff were invited to the optional pre-consultations sessions with municipalities. They indicated that there are three key timelines to be aware of and to ensure that these are captured in the plan:

- Plan effective date
- Policy effective date and
- Policy implementation date.

Plan effective date: When the Minister approves a source protection plan, he/she can also establish an effective date for the plan. If no date is established, the plan takes effect when the notice of its approval is posted in the Environmental Registry. The effective date, is the day that certain policies become legally binding and associated municipal and provincial ministry decisions must conform with those policies.

Policy effective date: Committees have the option of setting an effective date for policies that address existing drinking water threats that is later than the plan effective date. However, this option is not available for policies that address future threats. Future threat policies come into effect on the same day as the plan. The policy effective date must be included somewhere in the plan and/or in the policy itself. Prior this effective date, the policy has no legal effect and is not binding on the implementing body. Therefore it cannot be legally implemented/enforced.

Policy implementation date: Policies can also include implementation timelines. These timelines are not the thing same as the policy effective date. The implementation date is the date by which the committee expects the implementing body to have the actions in the policy implemented (i.e., within 5 years of plan effective date). If the policy is not implemented by that date, then the implementer is “out of compliance” with the timeline provision in the policy.

The Halton-Hamilton Source Protection Plan sets out the plan and policy effective date to be the same. However, the policy implementation date can be different, for example risk management plans must be established within five years of the plan effective date.

Further, MECP recommends including a note in the Source Protection Plan to clarify how plan updates relate to existing or new policies with explicit implementation timelines (e.g., within 5 years of the effective date). Being silent on this is interpreted to mean that these implementation timelines will apply to the amendment (i.e., within 5 years of the effective date of the amendment). While not essential, being explicit in the plan about the authority’s expectations for implementation timelines could help avoid confusion or misunderstanding for implementing bodies.

A related matter is the definitions of existing and future threats. Source protection plans are required to contain policies that address both significant threat activities that exist on the landscape at the time assessment report and plan were developed, as well as any potential future occurrences of the threat. General definitions are as follows:

- Existing threat activity is an activity that occurred prior to effective date of plan
- Future threat activity is an activity that occurred after effective date of plan

Existing threat policies therefore cover activities engaged in prior to the effective date of a plan, while future threat policies apply to activities not engaged in at the time an approved plan takes effect.

The Halton-Hamilton Source Protection Plan includes definitions of existing and future threats in Appendix D: Glossary of Terms, as shown below.

Existing Threat: an activity that commenced, or has been engaged, in a location in a vulnerable area within ten years prior to the Source Protection Plan taking effect where there would be a drinking water threat. It includes any expansion of the activity only on the same parcel of land.

Future Threat: any activity in a vulnerable area where there could be a drinking water threat that is not defined as an existing threat within this Source Protection Plan.

Some plans include transition policies or provisions to define when certain activities are subject to existing or future threat policies. For example, the transition policy could allow applications in transition to proceed while drinking water threats are managed under the “existing threat” policies. It could consider the seasonal nature of some activities, as well as previously approved Planning Act or Prescribed Instrument applications. For example, the CTC Source Protection Committee included a Transition Provision to recognize situations where an approval-in-principle to proceed with a development application had already been obtained, or where a complete application was made prior to the date the SPP came into effect, but requires further planning approvals to implement the application in progress.

Pre-consultation meetings with municipalities in September 2021 included a discussion on the definition of “existing threat” for the HHSR Source Protection Plan, specifically whether there is the necessity to continue to consider activities occurring ten years prior to the effective date of the plan - given that the first round of planning is complete. Situations such as the multi-year rotation of activities, etc. are to be considered. Separate meetings will be held with MECP and municipalities in the week of September 27, 2021 to further discuss the Policy G-1 and determine further updates if needed.

Signed & respectfully submitted:

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