

REPORT TO: Halton-Hamilton Source Protection Committee
REPORT NO.: SPC-21-12-01
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DATE: December 14, 2021
SUBJECT: Halton-Hamilton Section 36 Updates: Consultation and Policy Updates

Recommendation

THAT the Halton-Hamilton Source Protection Committee **endorses the Staff report Halton-Hamilton Section 36 Updates: Consultation and Policy Updates.**

Executive Summary

Halton-Hamilton Source Protection Region (HHSPR) staff completed 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.

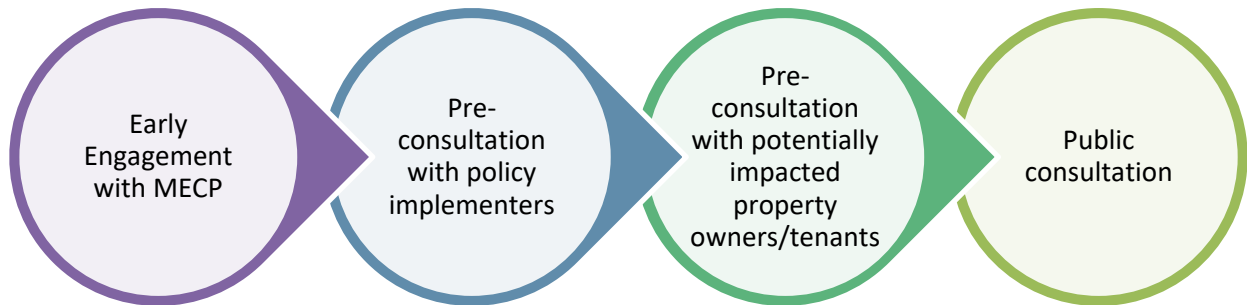


Figure 1: Source Water Protection Consultation Steps

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	December 2021 to May 2022
7	Submission to MECP	May 30, 2022

Pre-Consultation

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 was: October 4, 2021.

Optional meetings took place with the Ontario Ministry of Agriculture, Food And Rural Affairs (OMAFRA) on September 13, 2021, with municipalities on September 21 and 23, 2021, and with AWSA on October 8, 2021. HHSPR staff provided an introduction to the *Clean Water Act, 2006*, an overview of the Section 36 comprehensive updates process, the related consultation process and highlights of the policy and science updates. Discussions were had. MECP staff participate in the municipal meetings and provided insights into policy updates.

HHSPR also developed notices that were mailed out to around 280 properties in wellhead protection area (WHPA) of Freelton, Kelso Walkers Line, Carlisle and Greensville municipal drinking water systems with groundwater sources. The mailouts contained the science and policy updates relevant to the recipients. Information virtual sessions although not required by the legislation were offered by HHSPR on Nov. 22. Individual property inquiries are addressed by the program manager. The deadline for comments was December 3, 2021.

Highlights of Policy Updates from Pre-Consultation

As a result of pre-consultation comments, a small number of policies were further revised as described below. The **Attachment** to this business report includes all of the comments received during pre-consultation on the Assessment Reports and the Source Protection Plan.

Definitions of Existing 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. 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.
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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.
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Pre-consultation meetings with municipalities in September 2021 included a discussion on the definition of “existing threat” for the HHSPR 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. Additional meetings were held with MECP and municipalities in September 2021.

It was discussed to remove the ten-year window. Further, a proponent would need to demonstrate intent of resuming an activity if it had stopped. It would be subject to policies to manage risks. This will help prevent unintended prohibitions, given the high growth and development area that HHSPR is characterized by. Examples of “demonstrated intent” are included in the Explanatory Document, and could include but is not limited to (not exhaustive): presence of infrastructure such as buildings, older documents indicating intent – applications, permissions, legal paperwork, etc. The policy implementer would expect written intent to be provided by the proponent.

Proposed definition of existing threat: an activity that commenced, or has been engaged with a demonstrated intent to continue, in a location in a vulnerable area prior to the Source Protection Plan taking effect where there would be a drinking water threat. It includes any expansion of the activity or conversion to a similar use only on the same parcel of land.

Policy G-1 for timing requirements for implementation of Plan policies

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.

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.

Through a comment and discussion with MECP, a requirement was identified: policies using RMPs to address existing threats cannot come into effect on the same day as the effective date of the Source Protection Plan. This key point was missed in the first round of planning. Policy G-1 is edited to address this gap, using wording from the approved Grand River Plan policy WC-CW-1.1.1 (for the County of Wellington). Policy G-1 also specifies a 5-year timeline to establish an RMP - and this is a policy implementation date, not the policy effective date. Note that future threat policies come into effect on the same day as the plan.

Policies T-21-C, T-26-C

These two prescribed instrument policies rely on nutrient management plans (NMPs) to address the application of ASM and commercial fertilizer where these prescribed threat activities are significant threats to sources of drinking water.

In their pre-consultation comments, both the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) and MECP have expressed concerns with proposed edits to policies T-21-C and T-26-C. More specifically, OMAFRA has reasserted that that it “does not have an active role” with NMPs, and therefore, does not and cannot ensure NMPs include measures to

protect sources of drinking water. This matter has been a long-standing topic of discussion among source protection areas/regions and committees.

MECP recommended that the implementing body be revised to name the person or body responsible for issuing, amending or otherwise creating the nutrient management plan, as responsible for ensuring it conforms with the significant threat policy. This would be the person with an Agricultural Operation Strategy/Plan Development Certificate from OMAFRA, that is certified to prepare nutrient management plans.

As discussed at the October 5, 2021 HHSPC meeting, the pre-consultation comments from OMAFRA and MECP on NMP policies will be addressed in a subsequent section 34. This approach and timing would allow for MECP to sort out the details and logistics for consistency across the province with other SPCs. Confirmation was received from MECP on Nov. 23, 2021 by email that HHSPR and the SPC can move forward with the Section 36 update without including those changes to NMP policies, with the caveat that the update to those policies will have to happen as a future Section 34 amendment.

In addition, MECP commented that the policy T-26-C only addresses the future application of commercial fertilizer. Given the equivalent risk management plan (RMP) policy only addresses non phased-in farms, this means that there is no policy requiring existing PIs to be amended for this activity to ensure it ceases to be, or never becomes a significant drinking water threat. This is a policy gap from the first round of planning. The explanatory document was checked for the history of the policy development. A strong emphasis is placed on education and outreach, prescribed instrument and RMP tools. However there is no statement by the SPC that it is satisfied that education and outreach alone would adequately address existing threats. Such a statement is required where a softer tool (like education and outreach) is used instead of a regulatory tool (like prescribed instruments). Therefore policy T-26-C is edited to address existing threats along with future threats.

Public Consultation

The public consultation will take place from December 15, 2021 to February 4, 2022 surpassing the minimum required 35 days. The notice is **attached**. The proposed updated Assessment Reports, Source Protection Plan and Explanatory Document are **attached**.

Signed & respectfully submitted:



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Attachments:

1. Pre-consultation Comments and Responses Table
2. Public Notice for Proposed Updates to the Source Protection Plan
3. Halton Region Assessment Report with Tracked Updates
4. Hamilton Region Assessment Report with Tracked Updates
5. Halton-Hamilton Source Protection Plan with Tracked Updates
6. Explanatory Document with Tracked Updates
7. Maps of The Halton Region Assessment Report
8. Maps of The Hamilton Region Assessment Report
9. Maps of The Halton-Hamilton Source Protection Plan and Explanatory Document