

REPORT TO: Halton-Hamilton Source Protection Committee
REPORT NO.: SPC-20-12-03
FROM: Chitra Gowda, Senior Manager, Watershed Planning and Source Protection
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DATE: November 27, 2020
SUBJECT: S. 36 Updates: Proposed Update to Restricted Land Use Policy G-2

Recommendation

THAT the Halton-Hamilton Source Protection Committee **endorses the Staff report S. 36 Updates: Proposed Update to Restricted Land Use Policy G-2**

Executive Summary

Staff propose an update to Halton-Hamilton Source Protection Plan Policy G-2 (Restricted Land Use) to support consistency and efficiency in cross-boundary policy implementation. This work supports the Section 36 Workplan Task #8 Policy Amendments, part 2: "Source protection committee will revise policy G-2 to meet the intent of the Township of Puslinch/County of Wellington request".

Report

The Minister's amended Order pursuant to Section 36 of the *Clean Water Act, 2006* directs the Halton-Hamilton Source Protection Region to update the Assessment Reports and Source Protection Plan. One of the mandatory tasks specified in the Minister's amended Order is to revise policies that support improved implementation, such as Policy G-2 for the County of Wellington.

In the approved Section 36 Workplan for the Halton-Hamilton Source Protection Plan, it is noted that the County of Wellington has requested an amendment to policy G-2, which designates land uses to which the restricted land uses provisions of the *Clean Water Act, 2006* apply. They recognize that it is a small area of the wellhead protection area that extends into the Township of Puslinch from the Hamilton Region Source Protection Area, but are asking for consistency in all five source protection plans they implement. This provides the Risk Management Official (RMO) greater ability to screen out development applications from requiring a Section 59 notice under the *Clean Water Act*, thereby streamlining the planning process and reducing the workload. As noted in the Section 36 Workplan, Policy G-2 must be discussed by the Halton-Hamilton Source Protection Committee during the plan review.

Policy G-2 manages existing and future activities within vulnerable areas where the activity is or would be a significant drinking water threat as designated under section 59 of the *Clean Water Act, 2006*, by requiring RMOs to screen applications for works proposed under the

Planning Act, the Condominium Act, and the Building Code Act, 1992 as amended, excluding solely residential uses.

As described in the Halton-Hamilton Explanatory Document, most of the significant threats are not likely to occur on residential properties. Therefore Policy G-2 excludes this land use, which helps streamline the review of Planning Act and building permit applications. However, Section 59 notices would still be issued in industrial, commercial, institutional land uses for situations where proposals would have no impact on source water (for example, a bar and restaurant renovation).

Current Policy G-2 (Restricted Land Use) in the approved Halton-Hamilton Source Protection Plan:

“In accordance with section 59(1) of the Clean Water Act, 2006, unless identified specifically within a policy, all land uses except solely residential uses, set out within the official plans for the municipalities where this Source Protection Plan is in full force and effect are designated as land uses to which the restricted land uses provisions of the Clean Water Act apply in areas where significant threats may occur”.

Since July 2016, the Grand River Source Protection Plan Policy WC-CW-1.3 allows building and planning staff to exempt certain applications from requiring RMO notices or review. This is completed under written instructions from the RMO, as allowed under the restricted land use policy of that source protection plan. Since March 2019, The CTC Source Protection Plan Policy GEN-1 effectuates the same.

Halton-Hamilton Source Protection Region (HHSPR) staff reviewed the CTC and Grand River Source Protection Plans for policy wording for a RMO’s written direction. Staff propose the update as shown below. The proposed update to the policy text has clear policy direction allowing RMOs the necessary decision making to determine the site-specific land uses that both are and are not subject to Section 59 Notices.

Proposed Update to Policy G-2 (Restricted Land Use):

“In accordance with section 59(1) of the Clean Water Act, 2006, unless identified specifically within a policy, all land uses except solely residential uses, set out within the official plans for the municipalities where this Source Protection Plan is in full force and effect are designated as land uses to which the restricted land uses provisions of the Clean Water Act apply in areas where significant threats may occur.

Despite the above policy, a Risk Management Official may issue written direction specifying the situations under which a planning authority or Chief Building Official may be permitted to make the determination that a site specific land use designation is, or is not, designated for the purposes of Section 59. Where such direction has been issued, a site specific land use that is the subject of an application for approval under the Planning Act or for a permit under the Building Code Act is not designated for the purposes of Section 59, provided that the planning authority or Chief Building Official, as applicable, is satisfied that:

- a) The application complies with the written direction issued by the Risk Management Official; and,
- b) The applicant has demonstrated that a significant drinking water threat activity designated for the purposes of Section 57 or 58 will not be engaged in, or will not be affected by the application.

Where the Risk Management Official has provided written direction designating a land use for the purpose of section 59, a written Notice from the Risk Management Official shall be required prior to approval of any Building Permit under the Building Code Act, 1992 as amended, in addition to Planning Act and Condominium Act applications in accordance with Section 59 of the Clean Water Act, 2006”.

This policy update would allow RMOs to provide written direction to municipal staff regarding types of building or planning applications that can be screened out of the Section 59 notice process. It will satisfy the mandatory task noted in the Minister’s amended Order for the HHSPR pursuant to Section 36 of the *Clean Water Act*.

Although the RMO written direction text proposed to be added to the restricted land use policy does not deal with contaminant transport pathways directly, a co-benefit is that screening and guidance for transport pathways can be incorporated into the RMO written direction document if the RMO chooses to do so. While the source protection plan policies are separate for restricted land use and transport pathways, screening and other considerations can be combined into one document for efficient use by planning and building staff.

Signed & respectfully submitted:



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Attachments

Attachment 1: Minister’s Amended Order pursuant to Section 36 of the Clean Water Act

Ministry of the Environment,
Conservation and Parks

Ministère de l'Environnement,
de la Protection de la nature et des
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Mr. Gerry Smallegange, Source Protection Authority Chair (A)
Conservation Halton
2596 Britannia Road West
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Ms. Susan Fielding, Source Protection Authority Chair (A)
Hamilton Conservation Authority
838 Mineral Springs Road P.O. Box 7099
Ancaster, ON L9G 3L3

Mr. Robert Edmondson, Chair
Halton-Hamilton Source Protection Committee
2071 Deer Run Avenue
Burlington, ON L7M 2S7

Dear Mr. Smallegange, Ms. Fielding and Mr. Edmondson

I am following up on your proposed workplan for the comprehensive review and update of the Halton Region and Hamilton Region assessment reports and source protection plan for the Halton Region and Hamilton Region source protection areas. The workplan, dated November 22, 2018, was submitted in compliance with the order dated August 5, 2015 issued under section 36 of the *Clean Water Act*.

I am pleased to note that your workplan confirms that implementation of the source protection plan is going well and I appreciate the level of effort you put into your analysis of your assessment reports and plan.

Pursuant to subsection 36 (1) of the *Clean Water Act*, I am amending the order dated August 5, 2015, to establish requirements governing the content and timeframes of the review and the process to be followed for any updates to your assessment reports and plan. The source protection committee shall update the assessment reports and source protection plan to address the workplan items identified in the attachment to this order and ensure those changes comply with the recent amendments to the General Regulation and Director's Technical Rules.

You may proceed with any other items in the workplan that are consistent with the Act, its regulations and technical rules that are in effect at the time of the updates; staff in the Ministry's drinking water source protection program can provide you advice on this. You can contact Debbie Scanlon, Manager Approvals Section (416-212-8839) if you have any questions. I will leave it to the source protection committee and source protection authorities, with the local municipalities, to determine which of these other updates proceed.

When undertaking any updates, the source protection committee and lead source protection authority must follow the amendment process and consultation requirements set out in the attachment to this letter. All updates carried out under section 36 of the *Clean Water Act* are to be submitted to the Ministry within six (6) months after the completion of the required updates and consultation.

I want to thank you for the continued efforts of the source protection authorities, committee and local communities to ensure sources of drinking water are protected. Significant progress has been made in source protection and the province looks forward to continuing to work with you and all stakeholders to protect sources of drinking water.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rod Phillips', written over a faint circular stamp or watermark.

Rod Phillips
Minister

- C: Diane Bloomfield, Project Manager, Halton Hamilton Source Protection Region
- Hassaan Basit, CAO Conservation Halton
- Lisa Burnside, CAO Hamilton Conservation Authority
- Judy Love, Administrative Assistant, Hamilton Conservation Authority
- Director, Source Protection Programs Branch, MECP
- Debbie Scanlon, Manager, Source Protection Programs Branch, MECP
- Stacey Baker, Program Analyst, MECP
- Bilal Kidwai, Liaison Officer, MECP

Mandatory Updates to the Assessment Reports and Source Protection Plan

The Halton-Hamilton Region source protection committee shall ensure that the review includes updates to the assessment reports and source protection plan to:

- comply with the amendments made to the Director's Technical Rules, published on the Environmental Registry in March 2017 under posting number 012-8507. In particular for your source protection areas, this includes assessing the vulnerability of the Great Lakes intakes that the workplan indicates are vulnerable (Burlington, Oakville and Woodward) and identifying locations where the above grade handling and storage of fuel poses a risk;
- update liquid hydrocarbon pipeline references in the current assessment reports and plan from a local threat to a prescribed drinking water threat of provincial interest and ensure policies apply to all relevant protection zones to align with 2018 amendments to the General regulation (O.Reg. 287/07) under the *Clean Water Act* and Director's Technical Rules;
- make updates to align with neighboring Source Protection Plans to incorporate the water quantity risk assessment and policies when included in the approved Grand River source protection area for Guelph-Eramosa;
- include technical work completed within the timeframe of the comprehensive review for changes to drinking water systems, including Freelon, Carlisle, Burloak, Campbellville, Cedarvale, Woodward and Walkers Line drinking water systems where appropriate, as necessary under O.Reg 205/18 of the *Safe Drinking Water Act*.
 - The source protection committee, authorities and affected municipality should jointly determine if it would be more appropriate to have the source protection authority propose amendments under section 34 of the *Clean Water Act* to deal with the changes to any drinking water systems, as opposed to including these updates as part of the review under section 36.
- revise policies that support improved implementation, such as policy G-2 for the County of Wellington.

Amendment Process for Updates including Consultation:

The rules that source protection committees and source protection authorities were required to follow under the *Clean Water Act* in preparing, consulting on and submitting assessment reports and source protection plans to the Ministry will generally apply when making updates as part of this review. However, as with locally initiated amendments, any proposed updates to the assessment reports and plan are to be consulted on concurrently and submitted together as one package to the Ministry by the source protection authority.

Only those provisions of the *Clean Water Act* and the General regulation referred to below apply to the update of the assessment reports and source protection plan. For example, as no terms of reference is being required for the review and update of the assessment report and plan, subsection 36 (3) of the *Clean Water Act* does not apply.

Accordingly, for the updates to the assessment reports and source protection plan, the following provisions apply:

- Assessment report content outlined in section 15 of the *Clean Water Act* and sections 11 to 14 of the General regulation.
- Source protection plan content outlined in subsections 22 (2) to (15) of the *Clean Water Act* and sections 20 to 34 of the General regulation.

Updates to the assessment reports and source protection plan shall be made in consultation with affected municipalities, the Ministry, and any other bodies responsible for implementing a policy that may be revised as part of the updates. Consultation shall include the following minimum requirements:

- Early consultation on any draft updates to the assessment reports and plan with the Source Protection Programs Branch prior to carrying out pre-consultation with other bodies.
- Pre-consultation with all implementing bodies as well as persons and businesses engaged in significant drinking water threats in the geographic areas affected by the updates in accordance with sections 35 to 39 of the General regulation.
- Consultation for a minimum of 35 days, as outlined below.

The Explanatory Document that accompanies the plan (section 40, General regulation) shall also be updated to reflect the proposed changes to the plan and made available for consultation.

While consulting on the proposed updates to the assessment reports and source protection plan in accordance with the requirements set out above, comments received shall be documented, considered and addressed prior to advancing to the next consultation stage or finalizing the proposed updates to the assessment reports and plan.

Notification and publication of the proposed updates shall follow the provisions included in the General regulation for assessment reports and plans as described below. This includes making the proposed updates available on the Internet and in locations that are accessible to give the public and other interested parties an opportunity to inspect and comment on the updates. Specifically, consultation on the proposed updates to the assessment reports and plan shall occur concurrently and sections 23 to 25 of the *Clean Water Act* and section 41 of the General regulation apply with modifications noted below:

- References to a draft or proposed source protection plan shall be read as references to the proposed updates to the assessment reports and source protection plan that result from the review carried out under section 36 of the *Clean Water Act*.
- Notices shall be provided to the clerk of each municipality and all other persons and bodies listed in section 41 that are affected by the proposed updates.
- A public meeting referred to in clause (c) of subsection 41 (3) and in subsection 41 (7) is optional as determined by the source protection committee in consideration of the nature and scope of the proposed updates.