

9 RANGE OF POLICY TOOLS AVAILABLE

The Source Protection Committee had a variety of policy tools available to use to develop Source Protection Plan policies, including specific prescribed instruments and land use planning powers under specific provincial legislation (described below). The *Clean Water Act, 2006* also introduces new powers that can be used in a SPP which would be implemented by the municipalities responsible for supplying drinking water. These are known as ‘Part IV Powers’ and these authorities allow specific activities to be regulated (prohibited or managed) in areas where these activities are, or could be, a significant drinking water threat. The SPC can also choose ‘softer’ tools such as education and outreach programs alone or in combination with other tools. Where existing legislation is available to address a threat, the SPC chose to use tools based on the existing legislation to avoid duplication or conflict. The SPC also chose in many cases to develop new policies/programs to complement the existing controls.

9.1 PRESCRIBED INSTRUMENTS

Prescribed instruments are existing, regulatory tools under specific pieces of provincial legislation. These prescribed instruments allow the regulatory authority to impose conditions on existing and/or future activities that can be used to protect drinking water. Using existing regulatory tools such as Environmental Compliance Approvals under the *Environmental Protection Act, 1990*, avoids regulatory duplication. This means that, rather than creating a new tool, a policy in a SPP would point to an already-existing tool that fulfills the objective of the policy. The *Clean Water Act, 2006* recognizes certain existing instruments that can be used to meet SPP objectives. The instruments that have been prescribed are:

The Aggregate Resources Act, 1990

- Section 8 with respect to site plans included in applications for licenses
- Section 11 and 13 with respect to licenses to remove aggregate from pits or quarries
- Section 25 with respect to site plans accompanying applications for wayside permits
- Section 30 with respect to wayside permits to operate pits or quarries
- Section 36 with respect to site plans included in applications for aggregate permits
- Section 37 with respect to aggregate permits to excavate aggregate or topsoil

The Environmental Protection Act, 1990

- Section 29 with respect to certificate of approval or provisional certificates of approval issued by the Director for the use, operation, establishment, alteration, enlargement or extension of waste disposal sites or waste management systems
- Section 47.5 with respect to renewable energy approvals issued or renewed by the Director

The Nutrient Management Act, 2002

- Section 10 with respect to nutrient management strategies
- Section 14 with respect to nutrient management plans
- Section 28 with respect to approvals of nutrient management strategies or nutrient management plans
- Section 15.2 with respect to NASM plans

The Ontario Water Resources Act, 1990

- Section 34 with respect to Permits to Take Water
- Section 53 with respect to approvals to establish, alter, extend or replace new or existing sewage works

The Pesticides Act, 1990

- Sections 7 and 11 with respect to permits for land exterminations, structural exterminations and water exterminations issued by the Director

The Safe Drinking Water Act, 2002

- Section 40 with respect to drinking water works permits issued by the Director
- Section 44 with respect to municipal drinking water licenses issued by the Director

9.2 RISK MANAGEMENT PLANS (PART IV TOOL, SECTION 58)

A Risk Management Plan (RMP) is a new tool introduced in the *Clean Water Act, 2006* which sets out a plan to manage a threat activity in an area where it is, or could be, a significant drinking water threat, which may include responsibilities and protocols of the person engaged in the threat activity. Risk Management Plans are intended to be negotiated between a Risk Management Official (RMO) and a

person engaging in the threat activity. If agreement cannot be achieved, a RMP may be ordered, so that the user complies. The Risk Management Official must be satisfied that a RMP will reduce the potential for adverse effects to a drinking water source, so that the activity ceases to be, or does not become, a significant threat.

9.3 PROHIBITION (PART IV TOOL, SECTION 57)

The Source Protection Committee may choose to prohibit certain activities, including existing activities which pose a particularly significant threat to drinking water sources, using another new tool introduced in the *Clean Water Act, 2006*. Prohibition of existing activities is meant to be a ‘tool of last resort’, meaning that the SPC may only do so if they are convinced no other method will reduce the risk, or the degree/level of risk that the activity poses is unacceptably high or severe that it may not be permitted to continue. The companion Explanatory Document to this SPP provides the rationale for the SPC’s decisions to use these tools to address some existing significant drinking water threats.

9.4 RESTRICTED LAND USES (PART IV TOOL, SECTION 59)

Restricted Land Uses policies are complementary tools under the *Clean Water Act, 2006* which are used with either s.58 Risk Management Plans or s.57 Prohibition of activities. They do not eliminate a land use (and do not have the same meaning as in the *Planning Act, 1990*), but ensure that activities in the designated area are assessed by the RMO to ensure compliance with s.58 Risk Management Plan or s.57 Prohibition policies before the municipality issues a building permit or planning approvals. This tool acts as a screening tool for municipalities when reviewing applications, to prevent the unintentional approval of activities that are a significant threat to municipal drinking water.

9.5 LAND USE PLANNING

These are policies that affect land use planning decisions. Land use planning policies could fall under the *Planning Act, 1990* or the *Condominium Act, 1998*. These policies may manage or eliminate (through prohibiting it from being established) a future threat activity through a land use policy that is implemented through land use planning decisions (such as Official Plans, Zoning By-laws and Site Plan Controls).

9.6 EDUCATION AND OUTREACH

Considered a non-regulatory or ‘soft’ tool, the SPC may use education and outreach policies in conjunction with other types of policies. If the SPC decides to use only a soft tool to address a significant drinking water threat as a stand-alone tool, it must be explained why the policy is sufficient to ensure that the threat does not become, or ceases to be significant. The companion Explanatory Document to this SPP provides the rationale for the SPCs decisions to use these tools as the only tool to address some significant drinking water threats.

9.7 SPECIFY ACTION

These policies specify an action to be taken to achieve the SPP objectives. These policies may be mandatory depending on the body responsible for implementation. ‘Other’ approaches include policies that:

- specify certain actions be taken by a particular person or body to implement the Source Protection Plan or achieve the SPP’s objectives;
- establish stewardship programs;
- specify and promote best management practices;
- establish pilot programs; and/or
- govern research.

Additional research may be required to determine new, innovative methods or technologies for addressing certain threats, or to better understand where targeted actions to address threats would have the most benefit to source water (e.g., Issues Contributing Area).

9.8 STRATEGIC ACTIONS

Strategic Action policies are a non-legally binding commitment. They assign a discretionary obligation on the implementing body to achieve the objectives of the SPP. Any policy set out in the SPP that is NOT one of the following policies is a Strategic Action policy:

- a significant threat policy;
- a designated Great Lakes policy;

- a policy to which section 45 of the Act applies (Monitoring);
- a policy to which clause 39 (1) (b) of the Act applies (Land Use Planning – Have Regard For); and/or
- a policy to which clause 39 (7) (b) of the Act applies (Prescribed Instruments – Have Regard For).

Strategic Action policies can apply to moderate and low threats ONLY, not significant threats.

9.9 MONITORING POLICIES

Generally speaking, monitoring policies (**Chapter 10.14**) are provided to track the implementation of a threat policy to determine, over time, the effectiveness of the policy. These policies generally require annual reporting to the Source Protection Authority on the actions taken to implement the policy. Every significant threat policy must have an associated monitoring policy.

9.10 LEGAL EFFECT

The Approved Source Protection Plan policies have a variety of legal effect in the Province. The requirements of the implementing bodies named in each policy vary according to the degree of threat the policy is addressing. It should be noted that the decisions of the Ontario Municipal Board (OMB) and the Environmental Review Tribunal are also required to conform to relevant significant threat policies and have regard for moderate and low threat policies. There are 11 lists that organize all proposed policies according to the legal effect for implementing bodies (**and Appendix B**). Implementing bodies include municipalities, planning authorities, provincial ministries, Conservation Authorities, and the Source Protection Authority. The policies are located in tables in **Chapter 10** of this document and include a column that corresponds to the legal effect table below.

List	Legal Effect
List A: Significant threat policies that affect decisions under the <i>Planning Act</i> and <i>Condominium Act, 1998</i>	Legally binding - must conform with
List B: Moderate and low threat policies that affect decisions under the <i>Planning Act</i> and <i>Condominium Act, 1998</i>	Legally binding - have regard to
List C: Significant threat policies that affect prescribed instrument decisions	Legally binding - must conform with
List D: Moderate and low threat policies that affect prescribed instrument decisions	Legally binding - have regard to
List E: Significant threat policies that impose obligations on municipalities, source protection authorities and local boards	Legally binding - must comply with
List F: Monitoring policies referred to in subsection 22(2) of the <i>Clean Water Act, 2006</i>	Legally binding - must comply with
List G: Policies related to section 57 of the <i>Clean Water Act, 2006</i> (Prohibition)	Legally binding - must comply with
List H: Policies related to section 58 of the <i>Clean Water Act, 2006</i> (Risk Management Plans)	Legally binding - must comply with
List I: Policies related to section 59 of the <i>Clean Water Act, 2006</i> (Restricted Land Use)	Legally binding - must comply with
List J: Strategic Action policies	Non legally binding
List K: Significant threat policies that identify a body other than a municipality, source protection authority or local board as responsible for implementing the policy	Non legally binding

Table 9-1: Legal Effect of Source Protection Plan Policies