Clean Water Act, 2006 General Regulation (O. Reg. 287/07) Amendment and New Regulation under the _Safe Drinking Water Act, 2002_
Questions and Answers
EBR Decision Notices: April 5, 2018

KEY MESSAGES

- Ontario is taking action to ensure safe drinking water sources through new requirements and updates to existing rules.
- The new regulation under the *Safe Drinking Water Act* will ensure protections are in place for new or expanding drinking water systems before treated water is provided to the public.
- The updates to the General regulation under *Clean Water Act* will ensure source protection plans are kept up to date, reduce administrative burdens, clarify requirements for amendments that deal with new or alterations to existing municipal drinking water systems and add pipelines as a new threat of provincial interest.
- The new regulation and changes take effect on July 1, 2018.

Q1. What's the news?

The Ministry of the Environment and Climate Change (ministry) has established a new regulation under the *Safe Drinking Water Act* to ensure sources of drinking water for new or expanding municipal drinking water systems are protected before treated water is provided to the public. The ministry also made changes to the General regulation (O. Reg. 287/07) under the *Clean Water Act* to improve how source protection plans are kept up to date and relevant.

Q2. Why did the ministry make regulatory changes?

The ministry is committed to continuous improvement of the source water protection framework and to ensure that source protection plans remain relevant and up to date. Regulatory changes were made to ensure that new or expanding municipal residential drinking water systems within source protection areas are protected by source protection plans before treated water is provided to the public. The changes also address implementation challenges, reduce burden and improve transparency for some additional types of administrative amendments and also improve consistency in protecting drinking water sources from liquid hydrocarbon pipelines.

Q3. What are the details of the regulatory changes?

New Regulation under the _Safe Drinking Water Act_:

We learned through the first round of source protection planning that it was not always clear when and how a future source of drinking water should be protected. The regulation under the *Safe Drinking Water Act* is intended to address this ambiguity and ensure that new and expanding municipal residential drinking water systems within source protection areas are proactively included in source protection plans before

treated water is provided to the public. By working together, drinking water system owners and source protection authorities can ensure plans are updated in a timely manner.

The regulation made under the *Safe Drinking Water Act* requires that, prior to an application being submitted for a drinking water works permit for new or expanding municipal residential drinking water wells or intakes, the owner of the system ensures the technical work necessary under the *Clean Water Act* to identify vulnerable areas has been completed. When submitting an application for the drinking water works permit the system owner will be required to include a notice from the source protection authority. The requirements of that notice are set out in the *Clean Water Act* regulatory amendments.

In addition, the regulation requires that a condition be included within the drinking water works permit or municipal drinking water license specifying that drinking water will not be supplied to users of the new or expanding system until the amended source protection plan is approved. This provision works in tandem with the amendment to the General regulation (O.Reg.287/07) under the *Clean Water Act*, which ensures that source protection authorities initiate work to update the source protection plans when vulnerable areas are provided for these systems. Under the *Clean Water Act* regulation, when a source protection authority issues the notice needed for a drinking water works permit application, the source protection authority must confirm they are satisfied that the necessary wellhead protection areas or intake protection zones have been identified and provide details on how the plan will be updated.

Together these changes will help ensure that source protection plans are updated, putting environmental protections in place prior to treated water being provided to the public. The regulation does not apply in emergencies: when an application for a drinking water works permit is being made to alleviate an immediate drinking water health hazard or is subject to emergency exceptions under the *Environmental Assessment Act*.

This approach also recognizes that municipalities should be building the costs of source protection planning into the cost of a new or expanding drinking water system where possible. There are a number of options for municipalities to recover these costs as set out in Question 8. In addition, the province continues to fund source protection authorities to support the implementation of this program and they will work with municipalities to support technical work and policy development.

Amendments to the General Regulation (O.Reg. 287/07) under the Clean Water Act:

Plan Amendments: When source protection plans require amendments they must be consulted on and submitted to the Minister for approval unless they qualify as a typographical or other administrative amendment. The regulatory changes allow for additional types of amendments to qualify as administrative and exempt source protection authorities from the requirement to consult on and submit these types of amendments to the ministry for approval.

The two additional types of administrative amendments are those that account for:

- properly decommissioned wells or surface water intakes, and
- changes the province has made to the terminology in the Tables of Drinking Water Threats.

Amendments to Incorporate New or Expanding Systems: Additional amendments made to the General regulation under the *Clean Water Act* work in tandem with the new regulation under the *Safe Drinking Water Act*. When the source protection authority receives notice of a system owner's intent to establish or expand a drinking water system, they are required to issue a notice to the owner when they have, and are satisfied with, the necessary vulnerable area information. The regulation requires the notice provided to the owner also identify any necessary source protection plan amendments, the timing for such amendments, and if any of the amendments have been or will be implemented as a result of a source protection committee updating the plan as a result of a comprehensive review under section 36 of the *Clean Water Act*.

Prescribed Threats: When developing assessment reports all source protection committees were required to identify areas where prescribed threats pose a risk to drinking water. They were also allowed to seek approval to include local activities of concern within their communities ("local threats"). Liquid hydrocarbon pipelines were included as local threats by 5 local source protection committees, leading to an inconsistent approach across the province. The ministry heard that this activity should be evaluated consistently. In response to this, the ministry amended the General regulation to include the establishment and operation of liquid hydrocarbon pipelines on the list of prescribed drinking water threats, putting requirements in place for source protection plan policies to be developed where pipelines could pose a significant risk to drinking water sources.

Q4. What pipelines will be captured in the amended regulation and changes to the technical rules?

The amended regulation under the *Clean Water Act* will primarily capture large pipelines that are designated for transmitting or distributing liquid hydrocarbons to terminals and distribution centres. The pipeline circumstances added to the Tables of Drinking Water Threats do not capture pipelines operated by the Ministry of Natural Resources and Forestry as defined in the *Oil, Gas and Salt Resources Act*, however, this may be re-evaluated in the future.

Q5. What kind of protection plan policies could be included in local plans to address pipelines, now that they are included as a prescribed threat?

With the addition of pipelines to the list of prescribed threats in the General regulation, additional areas of the province may be subject to policies addressing pipelines. Existing policies for pipelines focused on spills prevention, emergency preparedness, education and good planning, and were not legally binding on pipeline operators or owners. These approaches have been successful in improving spills response preparedness and the consideration of vulnerable areas by pipeline companies and at

the Ontario and National Energy Boards; it makes sense that similar policies be included in other source protection plans. New pipeline policies will provide consistent environmental protection of drinking water sources across all source protection areas.

The regulation includes an exemption from including pipeline policies where there is no reasonable prospect of a pipeline being constructed (for example in a vulnerable area that is already fully developed such that a new pipeline could not be extended through that zone).

Q6. Do these regulatory changes ensure transparency and accountability when plan amendments are made?

Yes, new measures included in the General regulation for administrative amendments ensure notification is provided to the ministry and others responsible for implementing plan policies. A requirement was also included to ensure that the Explanatory Document developed by source protection committees and authorities includes any rationale used in making decisions not to include policies to address future significant drinking water threats such as pipelines.

Q7. Why is water quantity work not required as part of the new regulatory requirements?

Our expectation is that if a municipality has made a decision to establish a new drinking water system, or expand an existing one, that they have looked at whether there is sufficient water in the area to support that system. In fact, existing watershed and sub-watershed scale water budgets have already been completed for all source protection areas and this information can be used by municipalities as they make decisions on where to access sources of drinking water for growth.

When municipalities are considering new or expanded sources of drinking water in areas where water quantity may be stressed in the future, a water quantity risk assessment (water budget) will be required. These can be completed during comprehensive assessment report and source protection plan reviews under section 36 of the *Clean Water Act*. As such, specific updates to water quantity assessments are not required within the regulatory changes. Assessment reports should instead include a workplan to identify when and how any necessary water quantity assessments will proceed where the work will not be completed at the time of source protection plan amendments.

Where a municipality and source protection authority choose to undertake water quantity risk assessments (water budgets) in advance of the application being submitted for a drinking water works permit under the *Safe Drinking Water Act*, the work should be included in the amended source protection plan.

Q8. How can municipalities recover the costs associated with source protection?

Source protection planning is an important and necessary part of developing new or expanding drinking water systems. Through Ontario's investment of over $270 million

we have built a foundation of watershed science that can be used when undertaking technical work to identify wellhead protection areas or intake protection zones for new or expanding drinking water systems. This will reduce the overall costs of source protection and the cost for any new technical work should be factored into the costs associated with system expansion or development. Municipalities have various options available to them to recover costs including the use of development charges where new or expanded systems are needed to support growth or through their water rates when systems are being developed to support established areas.

In some areas, as development is being established, private companies construct drinking water systems that will be assumed by the municipality at some time in the future. When these systems are assumed by the municipality, they will be subject to the *Clean Water Act.* Where drinking water works permit applications are being made, municipalities will be responsible for ensuring technical work is completed so that local source protection authorities can add them into the local source protection plan. Given this, municipalities may want to consider putting in place requirements that developers undertake the required source protection technical work before the municipality assumes the system.

Where the municipality cannot recover costs through development charges, they may wish to determine their eligibility under the Ontario Community Infrastructure Fund. This fund is generally to help cover costs associated with capital infrastructure expenditures for small, rural and northern municipalities. The ministry will also continue to work to provide funding for small rural municipalities where necessary.