

Source Protection Plan Bulletin – Overview of Requirements for Plan and Assessment Report Amendments under s.34 and s.35 of the Clean Water Act



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Introduction

The purpose of the Clean Water Act (CWA) is to protect Ontario's existing and future sources of drinking water as part of an overall commitment to safeguard human health and the environment. A key focus of the legislation is the preparation of science-based assessment reports and locally-developed source protection plans. The source protection plans consist of a range of policies that together, will reduce risks to water quality and quantity.

Under this framework, the source protection planning process ensures that affected and interested parties have opportunities to contribute to the preparation of amendments to source protection plans and assessment reports. Source protection planning is a locally-driven, collaborative process between many partners, and includes significant municipal and public involvement through the source protection committees (SPCs), supported by local source protection authorities (SPAs).

Plan Revisions under the Clean Water Act

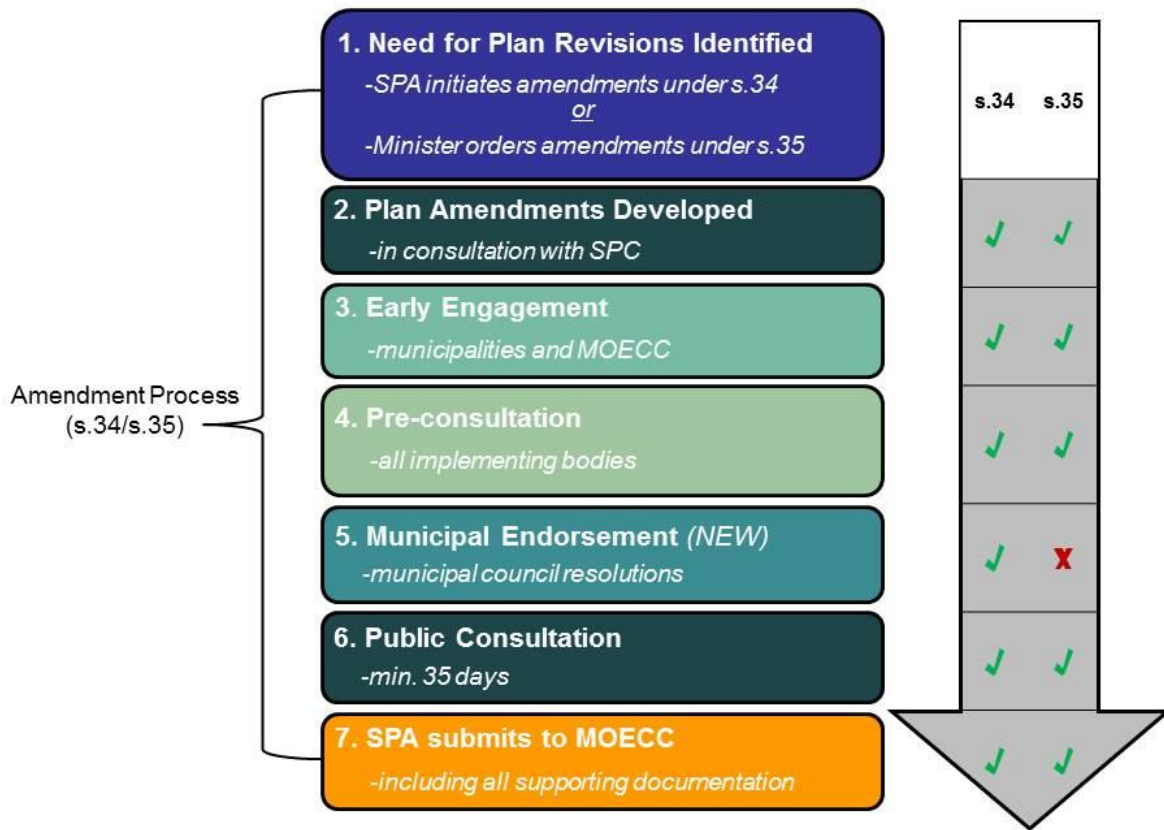
The CWA enables source protection plans and assessment reports to be revised using one of four methods: 1) a locally initiated amendment under section 34; 2) a minister ordered amendment under section 35; 3) an update resulting from the review under section 36; or 4) an amendment under section 51 of O. Reg. 287/07 for minor/administrative revisions. Ultimately, the method used will depend on factors such as the level of complexity of the revisions and their time sensitivity.

This bulletin provides guidance on the legislative requirements for making amendments to source protection plans and assessment reports under sections 34 and 35 of the CWA.

The process for amendments under sections 34 and 35 is similar to the process followed when developing the initial plans and assessment reports, with a few key differences. An overview of the process is shown in Figure 1 - *Plan Amendment Process under s.34/s.35 of the CWA*.

While every effort has been made to ensure the accuracy of the information in this document, it should not be construed as legal advice or relied on as a substitute for the legislation.

Figure 1: Plan Amendment Process under s.34/s.35 of the Clean Water Act



1. Need for Plan Revisions under s.34/s.35 Identified

Before deciding on the need for a section 34 amendment, the SPA should first consider whether the revisions could be made as part of an update under section 36, or as a minor administrative amendment under section 51 of O. Reg. 287/07.

As set out in the CWA, approved source protection plans and assessment reports must be reviewed and updated as necessary, in accordance with the minister’s section 36 order. Therefore, unless the revisions are of an urgent nature, it is expected that the majority of revisions (e.g. new policies and technical work) will be completed as part of this update. A separate guidance bulletin will be provided on the considerations and process for reviewing and updating source protection plans and assessment reports under section 36.

Minor administrative amendments (i.e. correction of typos, spelling, etc.) can be made under section 51 of O. Reg. 287/07¹. However, these types of amendments are intended to be minor in nature, and cannot significantly change the content or intent of

¹ If an amendment is made to the plan or assessment report under section 51, the SPA must publish the amendment, and a notice describing the amendment, on the internet. The source protection authority/committee should record the rationale for this decision and keep it on file. In addition, the SPA should keep MOECC informed of any section 51 amendments by sending an email to source.protection@ontario.ca.

the plan. For example, amendments that will result in the implementation of a new policy, change in the intent of an existing policy, or expansion of the geographic area within which a policy currently applies, are not enabled under section 51.

Section 34 provides an option for the SPA to make amendments that cannot wait until the section 36 update and do not qualify as minor administrative amendments under section 51. Amendments that are appropriate to make under section 34 include those that are necessary to ensure new or expanded municipal sources of drinking water are protected, important information not available at the time the plan was first approved (e.g. water budgets) is incorporated, and critical implementation issues are addressed.

Where the ministry feels an earlier amendment is required, the minister may use section 35 to order the SPA to prepare plan amendments. Situations that may trigger the ministry to pursue an order for plan amendments under section 35 could include an order to add a First Nations drinking water system. It may also be used if there are local issues with moving a proposed section 34 amendment forward; for example, issues with obtaining a municipal council resolution. For this situation, the SPA should contact the ministry to assist in facilitating discussions with the municipality(ies), and be prepared to provide rationale to the ministry as to why municipal support cannot be obtained (e.g. concerns with consultation timelines, disagreement with policy approaches, or other municipal concerns that were not addressed by the SPA).

2. Development of Plan Amendments

If the need for an amendment under section 34 is identified, before proceeding with amendments both the SPA and committee must agree the amendments are advisable. The SPA will need to determine who within their organization decides the amendment is advisable. Generally, SPA boards make these decisions for amendments proposed within their source protection area, but a board may have locally delegated these decisions to a lead SPA, committee or person.

If a minister's order under section 35 were to proceed, the source protection authority/committee would not need to agree the work is advisable before developing the amendments.

When source protection plans and assessment reports are being amended under sections 34 or 35, the source protection authority is responsible for the process; however in practice, the SPA and source protection committee may continue to work together as they did prior to plan approval.

When preparing a section 34 or section 35 amendment, in addition to text and/or maps that are the key focus of the amendment, O. Reg. 287/07 s.48 requires the amendment include:

- ✓ Any changes to the list of applicable legal provisions in the Appendix of the approved plan (e.g. legal effect list)
- ✓ Summary of all consultation activities undertaken (e.g. description of who was consulted, how they were consulted, and when)
- ✓ Description of consultation methods/dates/locations (e.g. letters, newspaper notices, public meetings, etc.)

In the event a section 34 amendment is being contemplated as a result of a notice received from a municipality about a new or modified transport pathway under ss.27(3) of O. Reg. 287/07, the SPA is required to give notice of its intention to propose such an amendment (O. Reg. 287/07, ss.48(2)). This notice must be provided to the municipality that received the transport pathway proposal, the person responsible for the proposal, and any persons engaging in activities that could be affected by policies as a result of the amendment. This notice can be provided at this stage (Development of Plan Amendments) or during the next stage (Early Engagement).

3. Early Engagement

Early engagement serves the same purpose during plan amendments as it did during the initial plan development process. While there are no formal requirements in the legislation for this type of consultation, early engagement is considered ‘best practice’ because it creates the opportunity for source protection authorities/committees to obtain early feedback on the proposed amendments from municipalities and the Ministry of the Environment and Climate Change (MOECC or ministry), and potentially other government bodies. Source protection authorities and committees decide locally on which parties they should talk to about the amendments during the early stages of policy development. Local judgement may be used to decide whether source protection authorities/committees will also reach out to persons engaging in significant threat activities at this stage.

The early engagement phase is an excellent opportunity to inform affected municipalities that a council resolution will be *required* before the amendment package can be submitted to the ministry for review and approval. See section *Municipal Endorsement* below for more details. The requirement to obtain a municipal council resolution is unique to plan amendments under section 34, and municipalities may not be aware of this requirement. For this reason, engaging municipalities early is strongly recommended. This is particularly relevant when the SPA wants to make a plan amendment to incorporate technical work and/or policy changes that began prior to approval of the original plan (e.g. water budgets and quantity policies).

4. Pre-Consultation

Pre-consultation refers to the regulatory requirements within O. Reg. 287/07 to consult with impacted bodies prior to conducting broader public consultation. More specifically, it refers to the requirement to send notices to persons or bodies² responsible for implementing policies, including government ministries that have obligations under the CWA. These consultation requirements were applied when the plans were initially developed and are the same for plan amendments (O. Reg. 287/07, ss.48(5)). Bodies responsible for implementing policies such as affected municipalities and ministries must be provided with the plan amendment proposal prior to public consultation, including:

- ✓ Notice of plan revisions (incl. assessment report)
- ✓ Draft policy text (incl. vulnerable area mapping³)

² The regulation refers to “persons or bodies”. For discussion purposes, “bodies” is used in the remainder of this bulletin.

³ Particularly when previously approved policies are being extended to new areas.

- ✓ Summary of rationale for amendments
- ✓ Request for submission of written comments

Depending on the extent of early engagement with municipalities, pre-consultation notices sent to affected municipalities could inform those municipalities that a council resolution will be required. The SPA can determine if it wishes to combine the notice for pre-consultation with the notice seeking a municipal council resolution. If these are combined, the SPA will need to provide a copy of the notice to the clerk of the municipality.

Pre-consultation can take place early in the process and prior to technical work being finalized. The SPA must consider comments received and determine whether policies should be further amended prior to public consultation. It is important to note that the regulation currently requires pre-consultation when there are changes in the vulnerable area where policies apply, even if the policy text remains unchanged from the original plan approved by the minister.

5. Municipal Endorsement (*New Requirement under s.34*)

Prior to conducting public consultation the CWA requires that source protection authorities obtain a municipal council resolution⁴ from each municipality affected by the amendments. A municipality may be considered “affected” if it is located within a geographic area related to the amendments, and/or the municipality is responsible for taking actions or otherwise implementing source protection policies related to the amendments.

It is important to note that during the initial plan development process, municipal council resolutions were optional, and as a result municipalities may not be aware of this requirement. As noted in section 3, it is advisable to engage municipalities early in the amendment process and inform them of the need to obtain a council resolution. Doing so may help prevent potential submission delays associated with this new requirement. Note, if an amendment is made under section 35 there is no requirement for the SPA to obtain municipal council resolutions.

6. Public Consultation

The public consultation requirements for amendments are similar to those during plan development; however, only one public consultation opportunity is required and there is no requirement for a public meeting. However, a meeting may be advisable depending on local circumstances and the scope and scale of the amendments.

The public consultation period must be for a minimum timeframe of 35 days, and notification of this consultation must be provided to all implementing bodies, persons believed to be engaged in significant drinking water threat activities, and affected municipalities. Consultation is required with First Nations with reserve land in the area affected by the amendments. Notices must also be published on the SPA’s website and in the local newspaper. Note, even if the text of the approved plan policies remains unchanged, the SPA is still required to consult if the geographic area of a given policy is

⁴ If the SPA has not already done so during pre-consultation, a copy of the proposed amendments must be provided to the clerk of all affected municipalities.

extended as a result of the amendments. The proposed amendments must be published on the SPA's website and hard copies made available in various locations.

Source protection authorities have local discretion to provide additional public consultation opportunities prior to finalizing the amendments.

Summary of parties to notify of posting and opportunity to comment:

- ✓ Clerk of each affected municipality
- ✓ Chief of any affected First Nations band with reserve land
- ✓ All bodies responsible for implementing policies
- ✓ Persons engaging in significant threat activities
- ✓ Other miscellaneous bodies identified in O. Reg. 287/07 under ss.50(2) (e.g. Niagara Escarpment Commission, planning boards, contacts for Great Lakes water quality agreements, etc.)

7. SPA Submits Amendments to MOECC

When submitting amendments electronically to the ministry for approval, the SPA must include a USB data key which contains:

- ✓ Amended plan and assessment report (including a clean version and a version illustrating changes since the last approval)
- ✓ Revised explanatory document (including a clean version and a version illustrating changes since the last approval)
- ✓ Source protection authority cover letter and comments⁵
- ✓ Municipal council resolutions
- ✓ Comments received during consultation
- ✓ Unresolved municipal or First Nations concerns
- ✓ Supporting documents:
 - Sample early engagement letters
 - Sample notice to municipal clerks
 - Sample notice of pre-consultation
 - Sample internet posting
 - Sample newspaper notice for amended plan and assessment report
 - Sample chiefs of bands notice
 - Sample letters to other persons or bodies
 - Notification dates and comment periods summary
 - Mailing lists for all letters and notices
 - Public meeting information, if opted to have a public meeting
 - Outstanding concerns analysis
- ✓ Mapping data associated with amendments - geospatial data consistent with the Assessment Report Database (ARDB) format (please note, maps referenced in the assessment report and source protection plan must also be included on the USB in the form they appear in the documents)

⁵ As noted in section 2, whoever is carrying out the amendments under section 34 needs to ensure both the SPA and committee support the amendments. Depending on local work arrangements agreed to among SPAs within a source protection region, the lead SPA may have authority to submit the cover letter on behalf of all SPAs in the region. Alternatively, each SPA may provide its own letter.