

Source Protection Bulletin: New Administrative Amendments and Prescribed Threats under the Clean Water Act – August 2018

Introduction

On July 1, 2018, amendments to the General regulation (O. Reg 287/07) under the *Clean Water Act* came into effect. These amendments help to ensure source protection plans are kept up to date, improve transparency when minor changes are made to plans and assessment reports, and update the list of drinking water threats for the continuous improvement of the source protection program. This bulletin provides information on the obligations of source protection authorities when making minor amendments to source protection plans, and the requirements for ensuring local plans address liquid hydrocarbon pipelines.

An amendment was also made to the General regulation under the *Clean Water Act* to support the implementation of the new regulation under the *Safe Drinking Water Act* (O Reg. 205/18), by ensuring new and changing drinking water systems are incorporated into source protection plans in a timely manner. For more information on that change, please see the separate Source Protection Bulletin: Requirements for Municipal Drinking Water Systems – July 2018.

Plan Amendments

Changes to the General Regulation under the *Clean Water Act* affect amendments which qualify as typographical, administrative or other minor amendments listed in section 51, and do not require consultation or approval by the Minister of the Environment, Conservation and Parks. Two additional types of amendments now qualify under section 51, specifically:

- an amendment to a source protection plan to account for the discontinuation of wells or surface water intakes, and
- an amendment to a source protection plan to account for changes in terminology used in the Tables of Drinking Water Threats.

These types of amendments are administrative in nature and allow source protection authorities and committees to update plans quickly so they remain relevant.

Source protection authorities should maintain regular communication with municipalities and other drinking water system owners that may be planning on decommissioning a well or intake

to ensure the authority can keep the plan up to date and meet the notification requirements under the *Clean Water Act*. Once a well or intake has been properly decommissioned, you can make an administrative amendment to your local source protection plan and assessment report, ensuring that you notify the Ministry and affected implementing bodies. However, where there are wells or intakes that are being decommissioned near other wells or intakes, this may impact the vulnerability scoring of the remaining vulnerable areas. Where this is the case, additional amendments may need to be made beyond the administrative removal of the well or intake from the plan, and would be completed under section 34 or section 36 of the *Clean Water Act*. Source Protection Programs Branch staff are available if you need assistance or have any questions about these requirements.

Providing notice to implementing bodies

To increase transparency about minor amendments under section 51 of the amended regulation, you must provide notice directly to implementing bodies that would be affected. Source protection authorities are still required to publish the amended plan and notice of the amendments on the Internet, but must also:

- notify the Director and all persons or bodies responsible for implementing policies affected by any section 51 amendments; and
- provide updated geospatial mapping data to the Ministry so that the provincial Source Protection Information Atlas can be kept up to date.

Providing a notice describing the amendment is critical to ensure implementing bodies and Source Protection Programs Branch are aware that plans have changed, especially when vulnerable area mapping has been updated and policies no longer apply around decommissioned wells or intakes. This ensures that when policy burden is removed, municipalities, businesses, and land owners are not undertaking source protection work unnecessarily.

Liquid hydrocarbon pipelines as a prescribed threat

During the first round of source protection planning, pipelines were not included as a prescribed drinking water threat; however, five source protection committees included pipelines in their plans as local threats. The amended regulation expanded the list of prescribed drinking water threat activities to include 'the establishment and operation of a liquid hydrocarbon pipeline' to consistently require the assessment of risk that pipelines pose to sources of drinking water across all source protection areas.

This new prescribed threat captures pipelines designated for transmitting or distributing liquid hydrocarbons to terminals and distribution centers; it does not capture pipelines that move liquefied natural gas or liquid petroleum gas. It also does not capture pipelines operated by the Ministry of Natural Resources and Forestry (MNRF) as defined in the *Oil, Gas and Salt Resources Act*, or those that operate within a property such as a refinery. Pipelines that convey liquid fuel within a single property would fall under the prescribed threat 'handling and storage of fuel.'

How will pipelines be addressed in source protection plans?

When you are undertaking your comprehensive source protection plan review under section 36 of the *Clean Water Act*, you will need to amend your assessment report and source protection plan to identify the areas where pipelines would be a significant, moderate or low threat, and include policies where they pose a significant risk. You may also initiate this work as an amendment under section 34 if there is rationale to proceed sooner. When you update your source protection plan to address pipelines, you will need to evaluate whether there are vulnerable areas where pipelines pose a significant risk in accordance with the circumstances included in the Tables of Drinking Water Threats, and whether policies need to be added. If you already included pipelines as a local threat, you may need to revise your assessment report and adjust source protection plan policy text to capture pipelines under their prescribed circumstances. Language around the local threat should be removed as it would be duplicative of the new prescribed threat.

Most existing local threat policies to address the risk of pipelines use approaches such as spills contingency planning, reporting through the province's Spills Action Centre, and education and outreach. Through consultation, the Ministry heard that these tools have been effective, and expect that most new policies will be similar. Additionally, new engagement between source protection authorities and pipeline companies will help familiarize the companies with the locations of vulnerable areas and can improve communication around ideal siting for future pipelines.

As with the first round of source protection planning, source protection authorities and committees should consider cross-boundary issues when writing their policies. Consultation with neighbouring committees is important when developing policies for pipelines that cross into other source protection areas. Applying consistent policy tools will be more practical for pipeline companies to implement.

Policy exemptions

Currently, the *Clean Water Act* requires that each source protection plan have policies in place to ensure that every activity that could pose a significant threat to sources of drinking water is

managed or prohibited, regardless of the possibility for the activity to occur. The amended regulation provides an exemption from including policies if the prescribed threat activity does not exist and there is no likelihood it could be located there in the future. When updating your plan and assessment report, you may want to evaluate the land around your wells and intakes to see if policies for new prescribed threats are required. The exemption may be used for pipelines, for example, if a wellfield is located within a highly developed residential area where no pipeline currently exists and there is no likelihood of one being established in the future. An exemption is only authorized if you provide reasonable rationale in the explanatory document.

Resources Available

The amended regulation can be accessed: <https://www.ontario.ca/laws/regulation/o7o287>

You should speak with municipalities to determine if they have data for local pipelines. Source Protection Programs Branch has a dataset of federal pipelines that can be provided to you and other sources of information are available online¹.

For additional information about the amended regulation, please contact the Source Protection Programs Branch through the General Inquiries Line 416-212-5296 or source.protection@ontario.ca.

¹ Some online tools are available, including:
Canadian Energy Pipeline Association interactive map - <http://aboutpipelinesmap.com/>
National Energy Board interactive map - <http://www.neb-one.gc.ca/sftnvrnmnt/sft/dshbrd/mp/index-eng.html>