

**Guidance on Areas and Regions Regulation
under the *Clean Water Act, 2006***

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Version 1.0

Purpose

The purpose of this document is to explain how source protection areas and regions are established and what it means to be a participating municipality under the Source Protection Areas and Regions regulation made under the *Clean Water Act, 2006*. The document is an accompaniment to the legislation and regulation that establish these areas and regions. While every effort has been made to ensure the accuracy of the information contained in this guide, it should not be construed as legal advice. If you have any doubts or questions regarding the legal aspects of this guide you should consult legal counsel.

If there are concerns, questions or suggestions, please send an email to “Ask the Expert” at source.protection@ontario.ca. The Province intends to update this guidance periodically and post them on the Ministry website.

Background

The *Clean Water Act, 2006*, (formerly Bill 43), was introduced for First Reading on December 5th, 2005. Following Second Reading on May 18, 2006 the Bill proceeded to the Standing Committee on Social Policy. Public hearings were held August 21-25, 2006 in Walkerton, Toronto, Cornwall, Bath and Peterborough. Clause by clause review of the Bill took place September 11-12, 2006. The *Clean Water Act, 2006* passed Third Reading on October 18, 2006. The *Clean Water Act* received royal assent on October 19, 2006 and was proclaimed on July 3, 2007.

The first phase of draft regulations was posted on the Environmental Registry on April 12th for a 30-day comment period which closed on May 12th, 2007. Over 90 comments were received from a range of sectors, including the public. Over that period, the Ministry of the Environment held five regional consultation sessions in Sudbury (April 18), Toronto (April 24), London (April 26), Ottawa (April 30), and Orillia (May 9) to consult on the draft regulations. Representatives from conservation authorities, municipalities, agriculture, health, industry, and non-governmental organizations were invited to attend the roundtable sessions. Representatives from a number of provincial ministries (e.g. OMAFRA, MNR, MOH) also attended these sessions. Consultation sessions on the Areas and Regions regulation were also held with municipalities affected by source protection area boundary amendments in Ottawa (May 1) and Orillia (May 10).

The Ministry also held three separate information sessions with bands located in the proposed source protection areas to discuss the draft regulations. These sessions were facilitated by the Mohawks of the Bay of Quinte (May 29), the Six Nations of the Grand River (May 31) and Whitefish Lake (June 5) First Nations.

The draft Areas and Regions regulation was revised based on feedback received through EBR submissions, regional sessions and consultations with other provincial ministries. Two key suggestions were identified:

- That, where only a small part of a municipality was added into an expanded area, the existing conservation authority participating municipalities list should not change; and
- That changing the participating municipalities list impacts existing groupings of municipalities under the *Conservation Authorities Act, 1990*. To minimize this impact, changes to the list of participating municipalities were reduced based on the previous point.

Taking these suggestions into account, the draft list of participating municipalities was amended to remove new municipalities with only a small area within the source protection area, as long as the excluded area did not include any known vulnerable areas.

1.0 Source Protection Areas based on Conservation Authorities

1.1 Establishing the Source Protection Areas

What the Legislation says...

Under the *Clean Water Act*, a conservation authority's area of jurisdiction (established under the *Conservation Authorities Act*) is a source protection area. Section 108 (a) of the *Clean Water Act* allows the Minister to make regulations to amend the boundaries of these source protection areas.

What the Regulation says...

The regulation amends the initial source protection areas' boundaries, including extending some boundaries into the Great Lakes to the international boundary.

Source protection areas' boundaries are meant to define the watershed based areas in which drinking water source protection planning must be completed. The legislation initially sets the boundaries of the source protection areas as the boundaries of the 38¹ existing conservation authorities established under Section 4 of the *Conservation Authorities Act*.

A watershed based approach to source protection was recommended by Justice O'Connor. Given that some conservation authority boundaries are not watershed based, the Minister, by regulation, has altered the initial source protection area boundaries to encompass the full watershed.

Where a source protection area borders on a Great Lake, the source protection area boundary was extended to the international boundary. The purpose of this change is to recognise that the Great Lakes provide water for many municipal residential drinking water systems. For the *Clean Water Act* and its regulations to apply to these systems, the intakes and their source water must be within the boundaries of a source protection area.

The regulation requires that maps showing the boundaries of the source protection areas be made available to the public. A map with the boundaries at a provincial level is posted on the Ministry

¹ Although it is generally recognised that there are 36 Conservation Authorities on Ontario, under the *Clean Water Act* the Quinte Conservation Authority is legally three separate conservation authorities: Prince Edward Region Conservation Authority, Moira River Conservation Authority, and the Napanee Region Conservation Authority. These three conservation authorities are considering legally amalgamating into the Quinte Conservation Authority. Until the three formally merge, there are 38 source protection areas established by section 4 of the *Clean Water Act*.

of the Environment Drinking Water Portal and the Clean Water Act website (<http://www.ontario.ca/cleanwater>). In addition, detailed digital maps will be available.

The regulation altering the source protection areas' boundaries will not affect the existing conservation authority boundaries for the purposes of the *Conservation Authorities Act, 1990* or any obligations under that Act. Therefore, the fact that the boundaries were altered will not affect conservation authority levies or any duties of the conservation authority outside of the *Clean Water Act*. At this time, the Province is funding the work related to source protection planning.

1.2 Participating Municipalities in Source Protection Areas

What the Legislation says...

Under the *Clean Water Act*, Section 108(b) allows the Minister to make regulations that set out the participating municipalities for each source protection area that is altered under Section 108 (b).

What the Regulation says...

The regulation lists the participating municipality for each of the amended source protection areas.

To understand what it means to be a participating municipality, it is useful to first discuss the process under which conservation authority governance is formed as it is the conservation authority that will exercise and perform the powers and duties of the source protection authority. Conservation authorities are governed through boards whose representatives are appointed by their participating municipalities. A board's membership is initially established using the representation by population formula (see Section 2(2) of the *Conservation Authorities Act* for this formula). Under Section 8 of the *Conservation Authorities Act*, participating municipalities can be grouped and appoint one member to represent that group. All municipal groups must be agreed upon by all participating municipalities.

The *Clean Water Act* legislation states that each conservation authority will exercise and perform the powers and duties of the source protection authority and would be considered the source protection authority when undertaking this work. As discussed above, the conservation authority board membership is based on the participating municipalities under the *Conservation Authorities Act*. Given that the Minister is amending the source protection area boundaries, the regulation provides a list of participating municipalities that must be used to set the membership of the source protection authority board. When undertaking source protection planning, the board must include members appointed based on the same methods mentioned above using the list of participating municipalities in the Areas and Regions regulation.

Where there is no change in the list of participating municipalities, it is expected that there will be no change in the conservation authority board when acting as the source protection authority board. This is the case for most of the conservation authorities where there are only minor differences between the source protection areas' boundaries and the existing conservation authorities' boundaries, and no new municipalities are involved as a result of amending the boundaries.

For source protection areas where new municipalities will be participating as a result of amending the boundaries, the board will be different when undertaking *Clean Water Act* business. Examples of source protection areas with significant boundary changes include Cataraqui Source Protection

Area, Kawartha-Haliburton Source Protection Area, Lake Simcoe Source Protection Area, North Bay-Mattawa Source Protection Area, Otonabee-Peterborough Source Protection Area, Raisin Region Source Protection Area, and the South Nation Source Protection Area. For these source protection areas, new or expanded source protection authority boards may need to be established to include appropriate representatives when undertaking *Clean Water Act* business if new participating municipalities express an interest to sit on the Board.

When participating municipalities listed under the *Clean Water Act* and the *Conservation Authorities Act* are different, the group appointment of municipal board members may require further consideration. Where an existing conservation authority board has member(s) that represent a group of participating municipalities under Section 8 of the *Conservation Authorities Act*, these groupings have been designated by the participating municipalities under that act. If the list of participating municipalities list is different for the *Clean Water Act*, then all the participating municipalities under the *Clean Water Act* have not approved the existing *Conservation Authorities Act* groupings. In this case, the participating municipalities under the *Clean Water Act* must approve these group appointments before undertaking additional business as a source protection authority. Municipalities may also want to consider additional or revised municipal groupings.

Important facts:

- All municipalities in a source protection area can participate in source protection planning, whether they are listed as a participating municipality or not. They will have an opportunity to participate on working groups, in the development of the terms of reference, assessment reports, and source protection plans, and consultations.

Special Note:

Difference between conservation authority and source protection authority

It is important to take into consideration that while the physical organization of the conservation authority and source protection authority is the same in most cases (except for those whose board expanded due to significant alterations to the source protection area), the responsibilities between the two entities are different.

Conservation authorities continue to undertake work as required under the *Conservation Authorities Act*. Source protection authorities are responsible for those tasks and activities that relate to source protection planning as defined in the *Clean Water Act* and its regulations. For example, selecting members for the source protection committee and providing technical, administrative and scientific support to the committee to complete the terms of reference, assessment report, and source protection plan. Greater detail is provided on the source protection authority's role in other *Clean Water Act* regulations and accompanying guidance.

- All municipalities within a source protection region or area participate in the selection of municipal representatives for appointment to the source protection committee.
- The source protection committee must consult with all municipalities in the development of the terms of reference, assessment report, and source protection plan.
- All municipalities will have the opportunity to undertake work required for the assessment report and source protection plan. This will be determined during the development of the terms of reference.
- Sections 8 (3) and 8(6) of the *Clean Water Act* identify how municipalities can include a drinking-water system in the terms of reference through council resolution. A municipality is not required to be participating municipality to exercise this authority.

Distinguishing conservation authority board business from source protection authority board business:

When a conservation authority board moves from regular conservation authority business to operate as a source protection authority board on *Clean Water Act* business, the conservation authority board should end its business under the *Conservation Authorities Act* and reconvene to undertake source protection authority business under the *Clean Water Act*.

2.0 Additional Source Protection Areas

What the Legislation says...

Under section 5 of the *Clean Water Act*, the Minister may, by regulation, establish new source protection areas.

What the Regulation says...

The regulation lists two new source protection areas. The regulation also lists the person or body that is the source protection authority for each of these two new areas.

Table 2 of the Source Protection Areas and Regions regulation establishes the Northern Bruce Peninsula Source Protection Area and the Severn Sound Source Protection Area as new source protection areas.

For the Northern Bruce Peninsula Source Protection Area, the Municipality of Northern Bruce Peninsula will act as the source protection authority and exercise the powers and duties of that authority. For the Severn Sound Source Protection Area, the Severn Sound Environmental Association will act as the source protection authority and exercise the powers and duties of that authority.

By establishing these two source protection areas, there are a total of 40 source protection areas.

3.0 Source Protection Regions

What the Legislation says...

Under the *Clean Water Act*, the Minister can make regulations to group two or more source protection areas into a source protection region. Where the Minister groups areas into regions, a lead source protection authority is identified. Agreements between the lead source protection authority and the other source protection authorities must be provided to the Minister within 90 days of establishing the region.

What the Regulation says...

The regulation groups 32 source protection areas into 11 source protection regions, and sets out the lead source protection authority for each region.

To facilitate the completion of assessment reports and source protection plans the Minister has grouped 32 of the 40 source protection areas into 11 source protection regions and has designated a lead source protection authority in each region.

With the grouping of 32 source protection areas into 11 regions, the other 8 source protection areas remain stand alone source protection areas: making 19 distinct planning areas where source protection planning is legislated. Each of these 19 distinct planning areas will have a source protection committee. These committees will be responsible for the development of terms of reference, assessment reports, and source protection plans for each of the source protection areas within their planning area.

Where source protection areas are grouped into a source protection region, the legislation states that an agreement must be in place between the lead authority and the other authorities in the region within 90 days of when the Minister established the region. These agreements should set out, at a minimum:

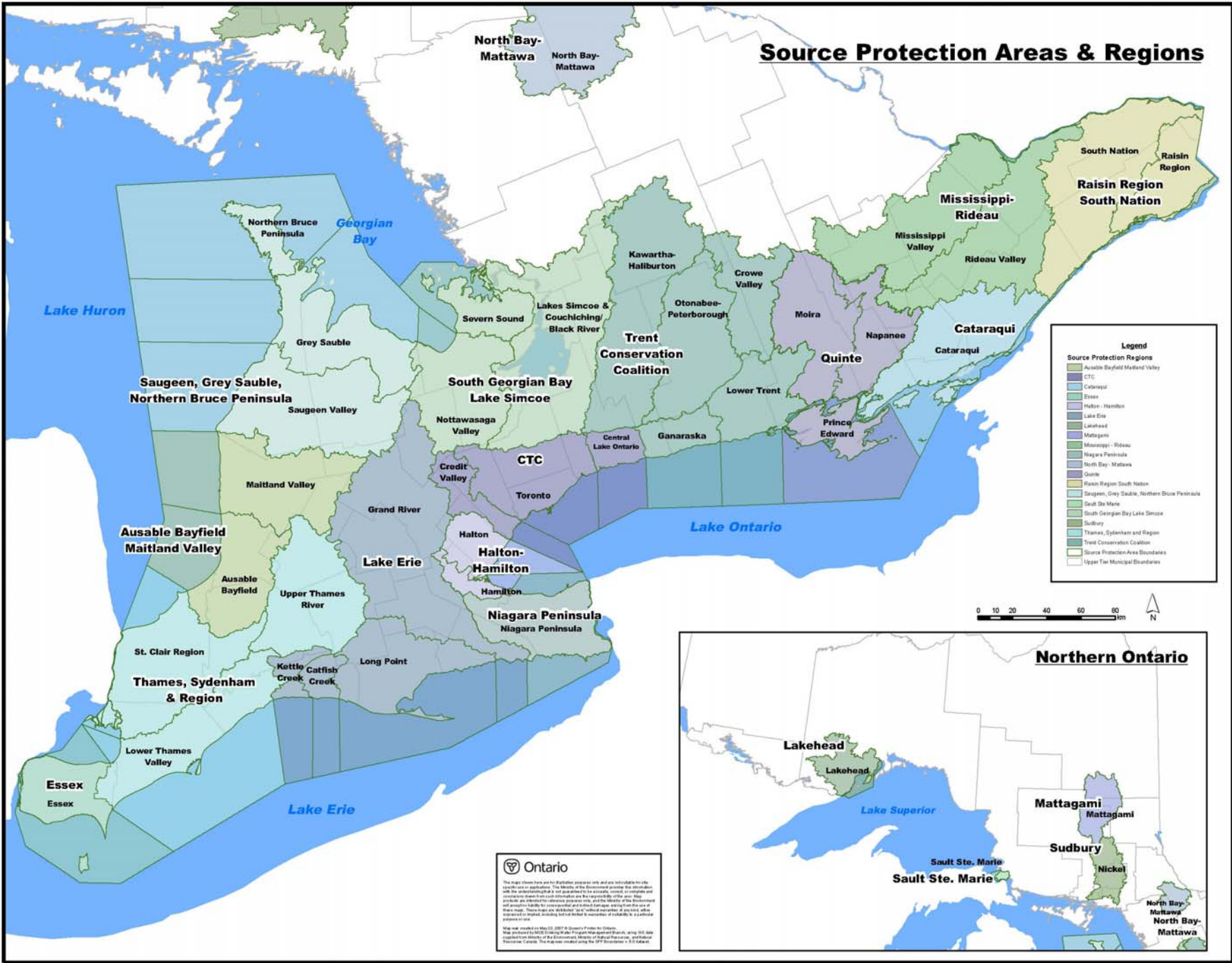
- how each of the authorities will contribute to achieving the obligations of the lead authority, including establishing the source protection committee and nominating chairs;
- how the lead authority will support the other authorities in meeting their obligations under the act, including provision of scientific, technical, and administrative support;
- how information will be shared between the authorities;
- how provincial funding will be used or shared;
- how the authorities will work together, including how they support the source protection committee (for example, providing technical training);
- how the authorities will address cross boundary issues; and
- how consultation obligations will be met for the terms of reference, assessment report, and source protection plan.

4.0 Summary of Areas and Regions

The following is a summary of the 11 regions and 40 areas:

Source protection region (total of 11 Regions)	Source protection areas (total of 40 areas)
Ausable Bayfield Maitland Valley Source Protection Region	Ausable Bayfield Source Protection Area, Maitland Valley Source Protection Area.
CTC Source Protection Region	Central Lake Ontario Source Protection Area, Credit Valley Source Protection Area, Toronto And Region Source Protection Area
Halton-Hamilton Source Protection Region	Halton Region Source Protection Area, Hamilton Region Source Protection Area
Lake Erie Source Protection Region	Catfish Creek Source Protection Area, Grand River Source Protection Area, Kettle Creek Source Protection Area, Long Point Region Source Protection Area
Mississippi-Rideau Source Protection Region	Mississippi Valley Source Protection Area, Rideau Valley Source Protection Area
Quinte Source Protection Region	Moirra River Source Protection Area, Napanee Region Source Protection Area, Prince Edward Region Source Protection Area
Raisin-South Nation Source Protection Region	Raisin Region Source Protection Area, South Nation Source Protection Area
Saugeen, Grey Sauble, Northern Bruce Peninsula Source Protection Region	Grey Sauble Source Protection Area, Northern Bruce Peninsula Source Protection Area, Saugeen Valley Source Protection Area
South Georgian Bay-Lake Simcoe Source Protection Region	Lakes Simcoe and Couchiching/Black River Source Protection Area, Nottawasaga Valley Source Protection Area, Severn Sound Source Protection Area
Thames-Sydenham and Region Source Protection Region	Lower Thames Valley Source Protection Area, St. Clair Region Source Protection Area, Upper Thames River Source Protection Area
Trent Conservation Coalition Source Protection Region	Crowe Valley Source Protection Area, Ganaraska Region Source Protection Area, Kawartha-Haliburton Source Protection Area, Lower Trent Source Protection Area, Otonabee-Peterborough Source Protection Area.
N/A	Cataraqui Source Protection Area
N/A	Essex Region Source Protection Area
N/A	Lakehead Source Protection Area
N/A	Mattagami Region Source Protection Area
N/A	Niagara Peninsula Source Protection Area
N/A	Sudbury Source Protection Area
N/A	North Bay-Mattawa Source Protection Area
N/A	Sault Ste. Marie Region Source Protection Area

Source Protection Areas & Regions



Ontario

 This map shows the Source Protection Areas for Ontario's water bodies and is intended for informational purposes only. It is not intended to be used as a legal document or as a basis for any legal action. The boundaries shown are based on the most current information available at the time of publication. The Ministry of the Environment, Conservation and Forestry reserves the right to update this map at any time without notice. This map is not intended to be used as a basis for any legal action.

Source Protection Areas & Regions: Northern Ontario

