

# Source Protection Bulletin: Requirements for Municipal Drinking Water Systems – August 2018

## Introduction

On July 1, 2018 a new regulation under the *Safe Drinking Water Act* (O.Reg. 205/18) and amendments to the General Regulation under the *Clean Water Act* (O.Reg. 287/07) came into effect. The new regulation under the *Safe Drinking Water Act* requires that municipalities work with source protection authorities to ensure new and changing municipal residential drinking water systems are included in source protection plans.

As a source protection authority, you have obligations under the amended *Clean Water Act* regulation that impact a municipality's ability to move forward with projects for new or changing municipal residential drinking water systems. This bulletin provides information on the municipal obligations under the new *Safe Drinking Water Act* regulation, and outlines how this new regulation, as well as amendments made to the General Regulation under the *Clean Water Act*, affect you. Further guidance on other amendments to the General Regulation are provided in a separate guidance document.

## Regulation 205/18: Municipal Residential Drinking Water Systems in Source Protection Areas

The new regulation applies to municipal residential drinking water system owners within source protection areas and works with a regulation under the *Clean Water Act* to identify when and how system owners must ensure that new or changing drinking water systems are protected by their local source protection plan.

### The regulation applies where:

- a new municipal residential drinking water system is being located within a source protection area, or
- changes are being made to an existing municipal residential drinking water system located in a source protection area that results in new or revised vulnerable areas, including (but not limited to):
  - the establishment of a new well
  - deepening an existing well
  - increasing the capacity at an existing well
  - the establishment of a new surface water intake
  - moving an existing intake

## What are the responsibilities of Source Protection Authorities?

Source protection authorities play an important role in ensuring that municipalities understand their obligations under this new regulation and minimizing delays in plan updates. Without established relationships with municipalities, there is an increased likelihood that municipalities will not inform source protection authorities of the work they are undertaking, and source protection authorities will not be prepared to update source protection plans as required in the related *Clean Water Act* regulation. When municipalities understand their obligations they will know to contact you as they begin planning for new or changing drinking water systems to discuss what work will be required under the *Clean Water Act* and how they are going to undertake the work necessary for you to update the source protection plan.

The work necessary for new or changing drinking water systems will depend on the information in the existing source protection plan, so you will need to help the municipality determine what work is needed.

- At a minimum, new vulnerable area delineation information will be required.
- Vulnerability scores are also required for new areas. Where the assessment report has transferable vulnerability information (i.e. areas of high, medium and low groundwater vulnerability), it can be used to generate the scoring for the new or changing system in accordance with technical rule<sup>1</sup> 83.
- Similarly, once the type of surface water system is known and vulnerable area delineated, this can be used to generate scores for the new or changing intake protection zone in accordance with rule 95.
- There may also be a need to update mapping for percent managed lands, livestock density or impervious surface areas if the assessment report doesn't contain this information for the area of the new or changing system, to determine where specific threats could be significant.
- The province is not expecting updated assessment reports to include a field enumeration of existing drinking water threats. However, you may need to undertake some level of desktop analysis of the impact of policies and to determine who has to be notified when consulting on the proposed plan amendments. If the project was subject to the Municipal Class EA, the municipality should have already done some of this analysis during that process to assess the impact of the *Clean Water Act* on landowners when identifying the preferred location for their system.

In many cases, this work will need to be completed by a qualified professional. Depending on how the source protection authority intends to review this work you may want to recommend

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<sup>1</sup> Director's Technical Rules established under the *Clean Water Act*, 2017 <https://www.ontario.ca/page/2017-technical-rules-under-clean-water-act>

that the system owner have a peer review undertaken. Where this is the case, you should inform the municipality early in the process.

Once the technical work is complete the municipality or system owner will provide a written notice to the source protection authority of their intention to apply for a drinking water works permit. The source protection authority will need to confirm that the vulnerable area information is complete. Similar to how this was done during the first round of source protection planning, you should use your judgment to determine whether the work aligns with the technical rules established under the *Clean Water Act*. For example, you may want to compare the content of new technical work with what is already in your approved assessment report for consistency. Where a peer review has been undertaken, this may influence the level of review necessary by the source protection authority. Ultimately, you need to determine if this information will allow you to move forward with a plan amendment. For remaining questions or concerns, Source Protection Programs Branch staff are available to assist.

In some cases, additional technical work may not be required to ensure a new or changing drinking water system is protected by a source protection plan. A system owner may provide technical rationale to the source protection authority to demonstrate that no new vulnerable mapping or scores are needed, and that the well or intake is fully protected by the current vulnerable areas and plan policies. This may include situations in which a new wellhead protection area is fully enclosed within an existing wellhead protection area, or new areas of high vulnerability fall within existing areas with a vulnerability score of 10. In these situations, the source protection authority can specify in the notice to the system owner that no changes are needed in the source protection plan to protect the new or changing drinking water system. Care should be taken when making a decision that plan updates are not needed, as there are some source protection plans that apply different policies to different vulnerable area zones. Given this, you should confirm that the current policies would not need to change with the addition of the new or changing system before responding that no changes are needed to the plan. Where changes to a plan are not going to be made under section 34 of the *Clean Water Act*, you can include any necessary minor updates to include new wells or intakes and vulnerable area information through a future update under section 36 of the *Clean Water Act*.

When you are satisfied that the technical work is complete and can be used to proceed with source protection plan amendments you will provide a notice back to the system owner that must:

- include a statement that the source protection authority is satisfied the technical work is complete;

- identify any necessary amendments to the source protection plan, such as sections within the assessment report and source protection plan that will need to be revised, including whether or not it is anticipated that new policies will need to be developed;
- indicate when the source protection authority will be able to propose amendments to the source protection plan, you could consider including details such as when the changes will be provided to affected municipalities for endorsement, subsequent public consultation, and submission of the proposed amendment to the Minister if known; and
- identify whether any of the amendments have already been made.

Source protection authorities should have business processes in place so that you can receive the technical information provided by the system owners, provide the notice to the system owners, and amend source protection documents in a reasonable amount of time. The source protection authority must ensure that the person issuing the notice has the authority to issue this notice. Lead and local source protection authorities should examine any existing partnership agreements to ensure its clear who has the authority to issue these notices in each of the source protection areas. It would be helpful to communicate your process to municipalities and system owners to ensure they are aware of your requirements.

Following issuance of the notice, the source protection authority and committee together will:

- amend the source protection plan and assessment report to include the new or changing system and associated vulnerable areas as well as any new or amended policies,
- consult on the proposed changes, and
- submit the proposed amendments to the Ministry for approval in accordance with the *Clean Water Act and regulations*.

Approval of the source protection plan amendment will ultimately rest with the Ministry, including confirmation that the technical work has been conducted in accordance with the Technical Rules as set out under *Clean Water Act*. Similar to the process used during the development of the initial assessment reports and source protection plans this will require examination of background documents developed in support of the vulnerable area delineation and scoring. Given this, please ensure you request this information from the drinking water system owner and submit it to the Ministry with your proposed source protection plan amendment.

### **Condition of approval**

Drinking water works permits or licenses issued after July 1, 2018 will include a condition to prevent water from being supplied to the public until any necessary updates to the source protection plan are approved by the Minister. In order to ensure that new and changing

systems can provide treated water in a timely manner, ensure you consider their timelines when determining your timeline for the assessment report and source protection plan amendments.

### **Early engagement with municipalities**

The province advises drinking water system owners to undertake source protection work early in the planning phases for new or changing drinking water systems to ensure that they are not delayed in providing water to the public. Where appropriate, they may initiate this work during the Class Environmental Assessment project. In other cases, they may initiate this work once they have finalized the location of wells or intakes and the planned pumping rates.

Some drinking water system owners may not understand the importance of initiating work early. Therefore, you should be working with your municipalities to encourage early engagement with you during the planning stages for new or changing systems. If you are aware of drinking water system projects that are underway that may not have completed the required vulnerable area information, you should contact the municipality to ensure that they will be able to meet the new regulatory requirements.

### **Regulation exemptions**

You should also be aware that the new regulation does not apply in the following emergency situations:

- where an application for a drinking water works permit is being made to address an immediate drinking water health hazard; or
- a Declaration Order has been issued under the *Environmental Assessment Act*

Accordingly, there may be situations in which source protection plans would be required to be amended after a new system or system changes are made and brought into service. In this case, plan amendments should be made as soon as reasonably possible.

### **When the regulation does not apply**

There may also be situations where the regulation does not require a notice be included with an application for a drinking water works permit. For example, if a drinking water system has already been included in a source protection plan as a planned system, then the regulation under the *Safe Drinking Water Act* does not apply. If this is the case, the source protection authority may want to provide a letter (which could be in the same format as your notice) that confirms the system is already included in the source protection plan. Alternatively, the municipality may choose to indicate in their application how it is already included in the existing source protection plan.

## Resources Available

The new regulation can be accessed: [www.ontario.ca/laws/regulation/r18205](http://www.ontario.ca/laws/regulation/r18205)

For additional information about the new regulation please contact the Source Protection Programs Branch through your Liaison Officer or by email [source.protection@ontario.ca](mailto:source.protection@ontario.ca)

For more information on the drinking water works permit application process, please contact the Approvals & Licensing section in the Environmental Assessment and Permissions Branch of the Ministry of the Environment, Conservation, and Parks at:

Local: 416-314-4300

Toll Free: 1-888-999-1305

E-Mail: [MDWLP@Ontario.ca](mailto:MDWLP@Ontario.ca)