

Clean drinking water: Provincial protection with a municipal impact

June 1, 2007

By Blake Hurley

Ontario residents will soon benefit from greater protections for their drinking water, but these protections will come with both responsibilities and changes for municipalities. Here's an overview of what the new *Clean Water Act, 2006* means for Ontario municipalities and the businesses and landowners who reside there.

Source Protection Plan is key

At the heart of Ontario's new *Clean Water Act, 2006* is the requirement that a Source Protection Plan be established for each source protection area in the Province.

Source protection areas generally correspond to the geographic areas of conservation authorities, who, in most cases, are designated as the Protection Authority responsible for the development of Source Protection Plans.

Each Protection Authority must appoint a committee (whose membership will be determined by a regulation yet to be promulgated) to prepare terms of reference for an assessment report that will ultimately form the basis for the Source Protection Plan. The assessment report and Source Protection Plan must be submitted to the Source Protection Authority, and approved by the Ministry of the Environment. The Act provides landowners and municipalities a limited opportunity to provide submissions to the Source Protection Authority.

The Source Protection Plan must include, among other things:

- ☐ policies intended to end existing threats to drinking water and policies intended to prevent future activities from becoming threats to drinking water;
- ☐ a list of activities that are prohibited in certain locations;
- ☐ a list of activities that are not permitted until a risk assessment has been submitted, a risk management plan developed, and a permit issued;
- ☐ a list of locations where a landowner cannot build or change the use of land without a permit.

These requirements will significantly impact some landowners, as they impose restrictions and prohibitions on both existing and future uses and activities that have been identified in the Source Protection Plan as being a significant threat to drinking water.

In addition, the power of municipalities in relation to land use is significantly altered by the Act. For example, the Act:

requires that existing Official Plans and Zoning By-laws conform to the Source Protection Plan, with the Source Protection Plan prevailing in the event of conflict;

prohibits municipalities from passing by-laws for any purpose that would conflict with the policies of the Source Protection Plan, or carrying out any public works or undertakings that conflict with these policies;

requires municipalities to consider the Source Protection Plan policies in making planning decisions.

While municipalities are subject to the limitations and restrictions of the Act, they are also responsible for enforcing it and appointing officers and inspectors to carry out the enforcement. These officials will have wide powers including the power to issue orders to landowners contravening either the Act, Source Protection Plan, or any risk management plan imposed on particular lands to reduce a threat to a drinking water source. Contravention of orders can result in significant monetary penalties.

With the Act providing significant changes to land use planning and establishing a new framework for the protection of drinking water sources it's important for municipalities to be clear about the restrictions that apply to them and the new responsibilities that they now carry.

WeirFouldsLLP

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110
Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110
Fax: 905.829.2035