

Monday, November 9, 2020

George Jacoub
Water Research Scientist Source Protection Planning Unit
Source Protection Programs Branch, MECP
40 St. Clair, 14th floor,
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Dear George,

RE: Proposed amendments to the Director's Technical Rules made under section 107 of the Clean Water Act, 2006ERO Number 019-2219

The City of Guelph understands that the Ministry of the Environment, Conservation and Parks (MECP) is proposing updates to the technical rules for assessing source water protection vulnerability and risk under the Clean Water Act to ensure that the quality of Ontario's drinking water continues to be protected and that source protection efforts are supported by current science.

The City of Guelph has been a strong proponent of the province's Source Protection Program from its inception and is pleased to see that a number of clarifications and enhancements are proposed as part of this amendment.

As one of the largest groundwater dependent communities in Canada and the fact that almost the entire City of Guelph is located in a vulnerable area as defined under the Clean Water Act, 2006, any changes in the program could have significant implications to the City of Guelph and local businesses and residents.

As outlined on the Environmental Registry of Ontario (ERO):

"The proposed updates to the Director's Technical Rules will:

- *reduce administrative burden for local decision-makers while maintaining technical rigour*
- *provide clarity on the information required to evaluate whether drinking water systems are vulnerable to climate change impacts*
- *clarify the intent of the rules around local threats are to be focused on activities that do not already require provincial or federal approval*
- *adopt an evidence-based approach to delineating geographic areas where activities are cumulatively having a negative affect on the quality of drinking water*

- *address administrative matters through minor clarifications and typographical corrections*
- *clarify the Tables of Drinking Water Threats contained in the rules, which set out the circumstances under which prescribed activities pose a drinking water threat, to support plan implementation and a better understanding of the risks to drinking water as follows:*
 - *more accurately identify areas where the handling, storage and application of road salt may pose a risk to drinking water sources based on the lessons learned from the first round of source protection planning*
 - *provide a list of land use activities that may use, handle or store dense non-aqueous phase liquids*
 - *align the definitions of prescribed drinking water threats with other provincial regulations for storm water and other wastewater works, snow storage, non-agricultural source material, and waste*
 - *combine and simplify the circumstances of both handling and storage of fuel under one risk category*
 - *revise the hazard rating for above-grade handling and storage of fuel to recognize its significant risk to groundwater supplies.*
 - *clarify the commercial fertilizer circumstances to better reflect the actual risk posed*
 - *make editorial and administrative changes to the Tables to allow for ease of use and better search capabilities and better support the identification of risks and plan implementation”*

The City of Guelph appreciates the opportunity to provide MECP with comments and general supports improvements in clarity and streamlining various processes including within the proposal. Further to this feedback, the City offers the following detailed comments for the Province’s consideration under this proposal:

1-Clarifying the intent of the rules around local threats are to be focused on activities that do not already require provincial or federal approval

The City interprets that this change would effectively eliminate the opportunity to fill in any regulatory gaps that may exist for certain activities. We are unclear how the MECP can ensure that specific legislation or regulations would meet the test of Section 22.2 of the Clean Water Act (i.e. ceases to be a significant drinking water threat) simply because there is a provincial or federal prescribed instrument for the property in question. What if the specific terms and conditions of the instrument are not considered to be sufficient to meet the test of Section 22.2 in the Clean Water Act? In such cases, there should be sufficient latitude for local Source Protection Authorities to incorporate appropriate policies to bridge any gaps that may exist.

The City of Guelph has always appreciated the ability to define a “local threat” based on the current Director’s rules, however, we interpret that this proposed amendment will eliminate stakeholders from having the ability to introduce any additional terms and conditions that would effectively fill the gap for the existing provincial (or federal) instruments . Taking away this option is seen to be counter intuitive to the overall objectives of the Source Protection Program and leave regulatory gaps in protecting existing and future municipal drinking water supplies as a result.

2- More accurately identify areas where the handling, storage and application of road salt may pose a risk to drinking water sources based on the lessons learned from the first round of source protection planning

The City of Guelph strongly supports the proposed changes to lower the threshold for the handling and storage of road salt to be a significant drinking water threat. The proposed changes will identify activities and circumstances on a much wider scale and hopefully, allow stakeholders to manage this threat in a more proactive manner.

Considerable efforts must be made to mitigate the impacts of road salt on the environment. The City of Guelph has been actively engaged in a variety of initiatives to increase awareness of this prescribed drinking water threat and the importance and need to work with all stakeholders to manage this threat. We see the proposed amendments as an important step towards mitigating the environmental impacts of the handling and storage of road salt.

3- Provide a list of land use activities that may use, handle or store dense non-aqueous phase liquids

The City of Guelph has concerns that the proposed solution (i.e. the use of Table 2 from O. Reg. 153/04) to assist practitioners in identifying the handling and storage of DNAPLs on the landscape. In our experience, City staff have identified activities and circumstances associated with DNAPL products within sites that are not listed in Table 2 and also have visited facilities that are identified on Table 2 that do not handle or store DNAPLs.

City Source Protection staff leads participated on the DNAPL working group, which was convened by MECP to discuss shortcomings and offer potential solutions. City of Guelph staff as well as the majority of representatives in the DNAPL working group lobbied for a definitive list of products and chemicals that could be characterized as DNAPLs. . The approach that was proposed by the working group would have made the discovery process much simpler for practitioners.

The resultant Table 2 from O. Reg 153/04 does not achieve the efficiency or streamlining of this process in the City view's and we would request that this be revised to align with recommendations of the DNAPL stakeholder working group so to support practitioners in clearly identify persons engaged in activities associated with the handling and storage of DNAPLs.

4- Proposed change to Rule 139

The City of Guelph has a number of Condition Sites. The proposed changes to Rule 139 are shown below:

139. For the purpose of rule 138, the hazard rating of a condition that results from a past activity is,

(1) if there is evidence ~~that the condition is causing off site contamination~~ the contamination is migrating towards the well or intake and the contamination has the potential to deteriorate the quality of water of the aquifer drinking water source or the surface water drinking water source, the hazard rating is 10;60,61

Condition sites have been recognized under the Clean Water Act, however, the legislation to facilitate their removal is contained under the Environmental Protection Act. This presents a number of challenges for local municipalities hosting condition sites as they must rely on the province, specifically the MECP, to take appropriate action to clean up the condition sites. The former Environmental Commissioner of Ontario flagged this as a problem that needs to be resolved for condition sites to be effectively managed.

The proposed amendments in Technical rule 139 (see above) add new requirements to the approach to identify and manage condition sites. If amended, there will need to be more comprehensive studies carried out to prove that the contamination from the condition site is migrating from the site towards the well or intake and the contamination has the potential to deteriorate the quality of the water in the drinking water source. The City would request that the MECP clarify the type of "evidence" that may be required and determine the availability of this evidence for municipal partners to be able to perform the assessment. As currently written, rule 139, using "evidence," "towards" and "potential" is imprecise which will result in multiple and varied interpretations and many difficulties in defining and managing condition sites.

The City's primary concern is related to cases where municipal groundwater wells are situated in a fractured bedrock environment. In such cases, the amended wording will necessitate significant investigation to prove that the contamination is

moving towards the well. In addition, there is concern with respect to how “source” sites might be evaluated with this wording as compared to “flow through” sites. This imparts a number of questions concerning this proposal for which the City would seek clarification from the Province:

- Will the proposed amendments require local municipalities to revisit the list of condition sites and re-assess them?
- How will information on the sites be provided to the municipality and how would the information be evaluated to determine if the site meets the conditions site criteria?
- In complex geological settings (i.e. fractured bedrock) the costs associated with this re-assessment will be significant and as such, will future funding be provided to enable a re-assessment of these condition sites?

The City of Guelph appreciates the opportunity to provide comments on the proposed amendments to the Director’s Technical Rules and we trust the above comments will be given due consideration. We would be pleased to meet and discuss our feedback in further detail at your convenience should this be of interest.

Sincerely,

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