

# THE LAWYERS WEEKLY

## Clean Water Act merits close look

By David Germain

June 08 2012 issue

*The Clean Water Act, 2006* will have far-ranging effects on land use planning in Ontario. While actual measures to implement the CWA are still being formulated, it's important for those who practise in this area to inform themselves about the changes coming.

In essence, the CWA and its regulations divide Ontario into source protection areas and regions. The former coincide with the jurisdiction of individual conservation authorities, whereas the latter are composed of multiple conservation authorities.

The relevant conservation authorities, together, form the source protection authority, or SPA, for each area or region. Each SPA is required to establish a drinking water source protection committee to develop terms of reference, an assessment report and, ultimately, a drinking water source protection plan for its region. The fundamental goal, as set out in the s. 1 of the CWA is "to protect existing and future sources of drinking water."



[Melhi / iStockphoto.com]

A source protection plan, among other things, is intended to establish a list of activities that are either prohibited or regulated (i.e. not permitted without a risk management plan) and a list of land uses that are restricted in certain areas. All of these lists will have impacts on land use planning.

At the time of writing, most of the SPAs in Ontario have completed their terms of reference and assessment reports and are formulating and consulting on their draft source protection plans. These are required to be posted online and interested parties, including municipalities and members of the public, have an opportunity to comment.

The CWA provides for comments received in writing as well as resolutions of municipal councils to be forwarded to the minister of the environment, along with each SPA's proposed source protection plan when that plan is put forward for ministerial approval. While there are provisions in the CWA for the appointment of a hearing officer to deal with proposed plans, the decision of whether to do so lies entirely with the minister. Furthermore, any hearing officer appointed only has the power to make recommendations. Final discretion to approve, amend or require a resubmission of a source protection plan lies with the minister.

The plans are required by the *Clean Water Act* to identify vulnerable areas (significant recharge areas, vulnerable aquifers, etc.) as well as activities, including land uses that constitute threats or significant threats to those vulnerable areas. Plans are also required to contain policies aimed at dealing with those threats, including significant threats. These policies will have the greatest implications for land use planning.

Once approved, a source protection plan will impact land use planning in a number of ways.

First, the CWA requires all *Planning Act* and *Condominium Act* decisions made within the area of a source protection plan to conform to the significant threat policies and to have regard to all other policies in the plan. Furthermore, subject to certain provisos set out in the CWA, the significant threat policies in a plan prevail in the case of any conflict with an official plan, a zoning bylaw or a provincial policy statement. Also, municipalities are prohibited from undertaking any work or passing any bylaw that conflicts with a significant threat policy. Finally, the CWA requires municipalities to amend their official plans and zoning bylaws to conform to the significant threat policies in their jurisdiction, by a deadline date set out in the source protection plan.

Because the boundaries of municipalities and conservation authorities often do not coincide, any given municipality may have a number of source protection plans in effect within its boundaries. This has the potential to greatly increase the complexity of any official plan or zoning bylaw amendment implementing source protection policies. Should a municipality fail to amend its official plan or zoning bylaw in accordance with the requirements of the CWA, the minister may, subject to certain conditions, make an order doing so.

Beyond *Planning Act* matters, the CWA imposes a number of obligations on municipalities, including the responsibility to enforce part IV of the act (Regulation of Drinking Water Threats) and to appoint a risk management official. These are beyond the scope of this article, but merit careful consideration by municipal staff and councils faced with the task of commenting on draft source protection plans.

Given its impact on planning instruments and, therefore, land development approvals, the development industry has a significant interest in the content of source protection plans. Activities that reduce recharge to an aquifer, sewage systems, application of road salt and a number of other items potentially associated with development are all listed as drinking water threats in the regulations to the CWA.

Because of the potential impact of the CWA on land use planning, municipalities, developers and other interested parties should take the time to inform themselves regarding proposed source protection plans in their areas and to comment as they see fit.

*David Germain practises land use planning, municipal and environmental law with Thomson Rogers.*

 [Close](#)