



Prescribed Instruments

Source Water Protection – Consultants Information Day

April 23, 2018

Ministry of the Environment and Climate Change

Source Protection Programs Branch



Learning Objectives

By the end of the module, participants should know:

- What prescribed instruments are
- Generally how prescribed instruments manage drinking water threats
- How multiple instruments may work within one site
- The role of the province, certified persons, and Risk Management Officials regarding prescribed instruments
- How certain prescribed instruments may enable exemption from risk management plan policies.

Overview of Instruments

What are instruments?

Legal documents issued by different levels of government to manage site specific activities:

- Municipal example: Business Licences
- **Provincial example: Environmental Compliance Approvals**
- Federal example: Authorization for works affecting fish habitats

What do they do?

Allow an instrument holder to conduct actions authorized under legislation

- Instruments contain specific terms and conditions that help to regulate an activity in addition to what legislation requires

Overview of Instruments

Who issues provincial instruments?

Instruments are issued by the Minister or by a delegated person (i.e. a signing director) from appropriate provincial ministry, depending on authorizing legislation

NOTE: some instruments under the Nutrient Management Act are not issued by a ministry, but prepared by a certified person.

Certain instruments are “prescribed” for the purposes of the Clean Water Act (CWA) as a means to address drinking water threats

Prescribed Instruments

Ministry of Agriculture, Food and Rural Affairs (OMAFRA)

Nutrient Management Instruments

- Nutrient Management Strategy (Nutrient Management Act (NMA))
- Nutrient Management Plan (NMA)
- Non-Agricultural Source Material Plan (NMA)

Ministry of Natural Resources and Forestry (MNR)

Aggregate Instruments

- Licence (Aggregate Resources Act (ARA))
- Permit (ARA)
- Site Plan (ARA)

Ministry of Transportation (MTO)

Aggregate Instruments

- Wayside Permit (ARA)*

Ministry of the Environment and Climate Change (MOECC)

- Environmental Compliance Approval
 - Sewage works (Ontario Water Resources Act (OWRA))
 - Waste disposal site (Environmental Protection Act (EPA))
 - Waste management system (EPA)
- Municipal Drinking Water Licence and Drinking Water Works Permit (Safe Drinking Water Act (SDWA))
- Permits to Take Water (OWRA)
- Pesticide Permits (Pesticide Act)
- Renewable Energy Approval (EPA)

*MTO issues wayside permits - regulates temporary aggregate operations on private lands for purposes of public authority road construction/maintenance projects.

Legal Effect of Plan Policies on PIs

- **In general, existing and future prescribed instrument decisions must:**
 - “conform with” significant drinking water threat policies in plans
 - “have regard to” other policies in SPPs (moderate or low threat policies)
- **Section 39(7) of the CWA applies to future prescribed instrument decisions:**
 - Any decision to issue, create, or amend a prescribed instrument will need to “conform with” or “have regard to” relevant plan policies
- **Section 43 of the CWA applies to existing prescribed instruments:**
 - Prescribed instruments may need to be amended to ensure they “conform with” or “have regard to” plan policies
 - Due date for this is usually 3 to 5 years after the plan takes effect

Prescribed Instruments and Source Protection Plans

- **Source protection plan policies can require or recommend that instruments include certain terms and conditions to address specific drinking water threats**
 - Important to review the specific policy for your area. Policies often apply to specific areas (e.g.: WHPA-B scoring 10)
 - Person or body responsible for prescribed instrument may need to amend, remove, revoke, create, or add terms and conditions in instruments
- **Objective of policies:** The activity ceases to be/never becomes a significant drinking water threat (CWA section 22)
 - It is the responsibility of the issuing body, or person who creates or amends the instrument, to ensure conformity with plan policies

Nutrient Management Act Instruments

Three instruments under the Nutrient Management Act regulate certain agricultural activities that are drinking water threats, as follows:

1. Nutrient Management Strategy (NMS) – storage of agricultural source material; establishment and operation of anaerobic digestion facilities; outdoor confinement areas and livestock yards
2. Nutrient Management Plans (NMP) – land application of agricultural source material; application of commercial fertilizer
3. Non-Agricultural Source Material Plan (NASM) – land application and storage of non-agricultural source material on farm land

Multiple Threats in One Location

- Where there are many threat activities at a single location, prescribed instruments may only manage some of these threats. Other approaches include Risk Management Plans, negotiated between landowner and the local Risk Management Official.
- Source protection plans may have combined the use of PIs with other policy approaches to address the different activities at the same location.
 - E.g.: manure storage could be regulated by a Nutrient Management Strategy, while livestock pasturing or fuel storage at the same location requires a risk management plan.

It is the responsibility of the person creating or amending the instrument to ensure that it addresses the drinking water threat activity that is regulated by that instrument.

General Roles & Responsibilities - PIs

Source Protection Committee/Authority

- Develop policies to address significant threats to sources of drinking water

Provincial Government

- Provides guidance on instrument authority
- Issuing Director ensures conformity of instruments impacted by plan policies for which the ministry is responsible
- Oversees compliance with provincial instruments

Instrument Holder

- Operate in accordance with terms and conditions within the instrument.

Risk Management Official

- Negotiate Risk Management Plans for threat activities, where required by source protection plans
- Understand role of instruments on a property

Exemption from Risk Management Plans

Section 61 of Ontario Regulation 287/07

Ontario Regulation 287/07 - Section 61

Exemption from Section 58

- Under O.Reg 287/07 (Section 61), a risk management plan (RMP) is not required when the activity to which the RMP relates is also managed by a prescribed instrument that conforms with significant drinking water threat policies in the local source protection plan.
- A person affected may seek this exemption at any time.
 - E.g.: a farmer is applying or storing manure in a wellhead protection area, and has a NMP or NMS for the activity
 - The farmer is approached by a Risk Management Official responsible for negotiating a RMP to address the threat
 - Farmer seeks an exemption from the RMP requirement, based on having the NMP or NMS

Ontario Regulation 287/07 - Section 61

Exemption from Section 58

The person must provide to the RMO:

1. A **notice** stating that the person has a prescribed instrument that regulates the activity, or is intending to obtain one;
2. a **copy of the instrument**;
3. a **statement of conformity** that indicates the instrument conforms to the significant threat policies in the source protection plan (may be a statement in the instrument, or a separate document).

Person responsible for creating the instrument (e.g. signing Director or certified person under the NMA) is responsible for ensuring the instrument conforms to the significant threat policy in the source protection plan (not the RMO).

Ontario Regulation 287/07 - Section 61

Exemption from Section 58

- If the farmer does not have a statement of conformity but intends to have the instrument amended (to conform to the source protection plan), then the RMO will give notice to the person with the date by which the statement and copy of the instrument is required (RMOs may extend dates in writing).
- If the person does not have a prescribed instrument but intends to obtain one (e.g.: the farm operation is expanding and will become “phased in” under NMA), they must provide notice to the RMO indicating the actions they will take to do so.
 - RMO will reply with a notice indicating **the timelines** to provide a copy of the instrument and the statement of conformity. Exemption may be terminated if timelines are not met.

“Statement of Conformity” example - NMS

“2. Other than those approved in this Nutrient Management Strategy, the Owner shall not establish or permit the establishment of a permanent nutrient storage facility that is not subject to s. 11.1 of O. Reg. 267/03, a temporary field nutrient storage site, outdoor confinement area or farm animal yard in an Issue Contributing Area (ICA) within the farm unit, unless

- a) The Owner provides written notice to the Director of the intent to establish the thing, and*
- b) The Owner has received written notice from the Director that,*
 - i. indicates no additional conditions to the Approval are necessary for the establishment of the thing, or*
 - ii. amends the conditions to the Approval and the Owner complies with those conditions.*

3. For greater certainty, to conform with the applicable significant threat policies in the source protection plan, if the Director includes a condition in the approval prohibiting the establishment of the permanent nutrient storage site, a temporary field nutrient storage site, outdoor confinement area or farm animal yard, the Owner shall ensure that the thing is not established.”

“Statement of Conformity” example - NMS

“Your NMS has been reviewed for conformity with the Thames Sydenham Source Protection Plan, in conjunction with information received from your nutrient management consultant.

Conditions have been added to your NMS approval to ensure that these actions are completed.

Please review Conditions #2 and #3 and the reason for Conditions #2 and #3 in the Notice of New or Amended Condition for the Nutrient Management Strategy – Operation Identifier XXXXX.

Please be aware you may have other obligations under the Thames Sydenham Source Protection Plan to manage risks to drinking water that are not covered in this NMS.”

Questions?