

## EXPLANATORY DOCUMENT

*Prepared on behalf of:*  
**Essex Region Source Protection Committee**

**Under the Clean Water Act, 2006**



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## 1.0 Explanatory Document

The Ontario Regulation 287/07 Section 40 requires that an Explanatory Document be prepared and submitted with each Source Protection Plan. The purpose of the Explanatory Document is to provide stakeholders, the general public, other interested parties, as well as the Source Protection Authority and the Minister of the Environment with an understanding of the rationale for the policies included in the Plan by providing information that may have influenced policy decisions.

## 2.0 Explanatory Document Requirements

The Explanatory Document must include:

- Source Protection Committee's reasons for each policy
- Reasons to designate an activity under Clean Water Act Section 57 (prohibition)
- Summary of comments received during pre-consultation and how it affected the development of policies
- Explanation of how the Assessment Report climate change summary affected the development of policies
- Summary of how the consideration of the financial implications (for implementing bodies and those affected by the Source Protection Plan) affected the development of policies
- A statement from the SPC that a policy using Clean Water Act Section 22 (7) tools or Ontario Regulation 287/07 Section 26 only will address the significant drinking water threat and that a policy to regulate or prohibit is not necessary

The Essex Region Explanatory Document accompanies the draft Source Protection Plan during public consultation purposes. As with the draft Source Protection Plan, it must be published on the Internet and made available for viewing by the public at one or more locations. While the Explanatory Document itself is not subject to comments by the public or other stakeholders, it will help provide clarity on the reasons for the policy decisions in the Plan.

### 2.1 Reasons for Each Policy

The Essex Region Source Protection Plan is a management strategy that looks at the current and future sources of municipal residential drinking water within the Essex Region. The Plan identifies the potential threats to these sources and develops actions and programs to reduce or eliminate these risks. The Source Protection Plan will have the effect of reducing or eliminating human impacts on the quality of drinking water sources. This is accomplished through Plan policies. The Essex Region Source Protection Plan sets out the policies to protect sources of municipal drinking water from activities that are or would be drinking water threats.

Source Protection Committees have worked in partnership with Conservation Authorities, Municipalities, property owners, the Ontario Ministries of the Environment (MOE), and other stakeholders to facilitate the development of local, science-based Source Protection Plan policies.

The rationale, or reasons, for each policy in the Plan are provided in **Appendix A**. Rationales for each policy were developed as part of the planning process, from the policy approach stage as described in

**Section 3.4.4** of the Source Protection Plan. These policy rationales provide clarity as to the purpose of each policy, explaining why the policy is needed and how it addresses the identified drinking water threat.

Threats related to the handling and storage of fertilizer, handling and storage of dense non aqueous phase liquids and the handling and storage of organic solvents are **not** significant threats in the Essex Region intake protection zones, through the vulnerability scoring approach. Threats related to the application of road salt and commercial fertilizer do not meet significant threat circumstances as explained in **Section 2.3**.

The Education & Outreach policies do not include the following drinking water quality threats as the activities do not and will likely not exist in the vulnerable areas targeted in these policies:

- The application of road salt;
- The management of runoff that contains chemicals used in the de-icing of aircraft;
- The use of land as livestock grazing or pasturing land, an outdoor confinement area or a farm-animal yard

The handling and storage of non-agricultural source material (NASM) is identified as a significant threat in Windsor IPZ-1, Windsor IPZ-2, Lakeshore IPZ-1 and Amherstburg IPZ-1. Policies related to these threats apply only to the off-farm handling and storage of NASMs as there are no agricultural lands in these areas (Table 1) and it is highly unlikely that the areas will be rezoned as agricultural.

Table 1 - Zoning for vulnerable areas in the Essex Region SPA where the handling and storage of NASM is considered a significant threat

Vulnerable Area	Zoning
Lakeshore (Belle River) IPZ-1	Commercial
Windsor IPZ-1	Residential, commercial, industrial and manufacturing
Windsor IPZ-2	Residential, commercial, industrial and manufacturing
Amherstburg IPZ-1	Residential, Commercial Neighbourhood, Light Industrial, Industrial, and Environmental Protection

## 2.2 Reasons to Designate an Activity under Clean Water Act Section 57 (Prohibition)

Prohibiting existing threats to reduce risks to source water can be challenging. Stopping activities that are already taking place can be very costly and can have a serious impact on the business and/or property owner(s) affected. Whenever possible, it is preferable to use other available tools to adequately reduce the risk created by an existing threat. Choosing to manage rather than prohibit a threat can help ensure that existing activities and businesses are not penalized unfairly, simply due to the historic circumstances of their existence.

Existing threats are activities that are already confirmed (known) to exist or that would potentially exist between now and the date the Source Protection Plan takes effect, based on the vulnerable area and vulnerability score. The Clean Water Act requires that policies are required to address all types of 'existing' significant threats, even where there is little or no possibility that they actually could exist.

As described above, in some cases policies prohibit future occurrences of significant threat activities which are not known to exist now or highly unlikely to exist in the future, mainly due to current and zoned land uses or by-laws or due to the small sizes of the vulnerable areas, or combinations of all of these, in the subject vulnerable areas. Therefore, some of the policies which prohibit future threats were extended to prohibit those threats which could exist between now and the date the Plan takes effect based only on vulnerable area and score, but which are highly unlikely to occur based on current and zoned land uses, or through other means such as the Municipal Act. In those cases, the prohibition of the particular type of would be 'existing' threat activity was deemed to be a reasonable approach. The SPC determined that the implementation of these policies would have no negative effect, while ensuring that there is no future occurrence of the subject activity. These reasons for using Clean Water Act Section 57 are provided in each policy using that tool, in **Appendix A**.

A list of policies that use the Section 57 tool is provided in List G of **Appendix B** of the Essex Region Source Protection Plan.

Where there was considered to be a possibility that a particular threat activity could actually exist, policies were developed to manage those types of 'existing' threats, even if they are not known to currently occur, as they could occur between now and the date the Plan takes effect.

## **2.3 Consideration of Comments Received**

### ***2.3.1 Consideration of Comments Received during Pre-consultation on Draft Source Protection Plan***

Before the Plan is released to the public for review and comment, the Source Protection Committee must hold Pre-consultation on draft policies with those who would be responsible for implementing the policies, whether individuals or agencies. Notices of Pre-consultation were distributed to proposed implementing bodies in December 2011, with comments requested by January 31, 2012 to be incorporated into the proposed Source Protection Plan submitted in August 2012. Pre-consultation notices of new and updated policies were distributed on October 31, 2014, with comments requested by November 7, 2014 to be incorporated into the Updated Source Protection Plan.

The **Appendix B** contains all of the comments received during Pre-consultation in both 2011 and 2014, along with responses to the comments, and rationale for changes made. Comments received were discussed by the SPC regarding changes to draft policies. Some comments in particular required considerable discussion and edits to policies, and some resulted in the removal of a few of the policies. The notable comments, and how they were considered in the development of the policies, are described below. Refer to **Appendix B** for **all** comments received, and responses to those comments (including resulting changes to some of the policies).

### **Policies to be implemented by Essex Region Conservation Authority**

In a comment (no. 5) by Richard Wyma, General Manager/ Secretary Treasurer, Essex Region Conservation Authority (ERCA), it was noted that the ERCA Board of Directors accepted the proposed implementation of the subject policies, on the understanding that the cost of implementation would be funded by the Province through the Source Protection Program, or other special sources. Some of the policies are associated with significant threats and as such, implementation would be mandatory if the policies are included in the final approved Source Protection Plan. It is understood by the Board that the Provincial funding criteria for implementation related activities beyond 2012 have not yet been determined, and at this time there is no indication that funding will be provided for implementation of Source Protection Plan policies. The ERCA Board also requested that the Province provide funding to cover the costs of Risk Management Official (RMO) Services, where ERCA would provide such services, to municipalities for implementation of those policies which are under Part IV of the Clean Water Act.

The MOE has advised that the implementers of the significant threat policies will be responsible for informing the parties affected by the policies. This would include the MOE for Prescribed Instrument type policies, and the RMO for Clean Water Act policies. The SPA/ERCA will be responsible to provide information to the implementers, to assist them with their responsibilities in this regard. However, it is not appropriate for ERCA to initiate the contact with the affected parties. As a result, five (5) draft policies which identified ERCA as being responsible for these activities have been removed (policies W2AI-industrialeff-1 (E&O); W1A1I1storagesaltsnow-1 (E&O); SLWA123-handlestorefuelX(E&O); AI-waste-1 (E&O); WIW2A1I1-applPesticide-1 (E&O)).

### **Policies for significant threats not known to exist, but 'could exist'**

In comment no. 11, MOE recommended that in order to cover any unknown circumstances of threats that may be occurring without the knowledge of the SPC, it is appropriate to apply policies to all types of existing and future in order to ensure this possibility is addressed. It was suggested that some policies could be extended to prohibit all types of existing threats as well, since it is the SPC's understanding that none exist.

Some of the Essex Region significant threat policies prohibit future occurrences of activities which are highly unlikely to exist now or occur in the future, mainly due to current land uses and permitted land uses in the subject vulnerable areas (primarily in the IPZ-1s of Windsor, Amherstburg and Lakeshore intakes, and a more limited number of potential threat types in Windsor IPZ-2). Where policies prohibit future threats, the options are to extend this prohibition to 'existing threats', or to develop new policies to manage the 'existing' threats'. These approaches for 'existing' threats were discussed with the relevant implementing bodies. The 'manage' existing approach was used in those situations where there is a possibility that they could actually exist. The 'prohibit' existing approach was used where there is little or no possibility that the threat actually could exist. These policies were revised accordingly: W1L1A1-bypass/effluent/storage-1 (Prescribed Instrument), WIW2L1A1-industrialeff-1 (Prescribed Instrument), W1L1A1-applicationNASM-1 (Prescribed Instrument), W1L1A1-storageNASM-1 (Prescribed Instrument), WIW2L1A1-hauledsewage-1 (Prescribed Instrument), W1L1A1-minetail-1 (Prescribed Instrument), W1L1A1-waste-1 (Prescribed Instrument), WIW2L1A1-applASM-1 (Clean Water Act), WIW2L1A1-storageASM-1 (Clean Water Act), W1L1A1-applNASM-1 (Clean Water Act), W1L1A1-

storageNASM-1 (Clean Water Act), WILIAI-storageNASM-3 (Clean Water Act), WILIAI-storageroadsalt-1 (Clean Water Act), WIAILI-storageroadsalt-3 (Clean Water Act), WILIAI-storage snow-1 (Clean Water Act), WILIAI storage-1 (Municipal Act), WIW2LIAI-livgraz-1 (Planning).

### **Policies for application of road salt and fertilizer**

In comments 15 and 16, the MOE noted that policies to address the significant threats for road salt and fertilizer are required if the significant threats circumstances (percent impervious surfaces and livestock density, respectively) were met. Since these circumstances were not met, the policies were not deemed necessary and were therefore removed.

### **Land use planning policy – information in Official Plans**

The intent of the policy WIW2AILI-officialplaninfo-1 (Planning) was to recognize that Windsor intends to provide information in their Official Plan and the Amherstburg and Lakeshore may be considering it. In comment no. 17, the MOE has indicated that this cannot be considered a policy, as it does not provide direction. The policy has been removed.

### **Clean Water Act Section 59 policies**

In comment no. 21, the MOE recommended that further consideration be given to applying Section 59 to Clean Water Act Part IV policies. As a result, Section 59 policies have been added to complement the Section 57 policy for the handling and storage of NASM and the Section 58 policy for the handling and storage of pesticides. The two additional Section 59 policies are WILIAI-storageNASM-3(Clean Water Act) and WIAILI-storagepesticide-3(Clean Water Act).

### **Comments from MTO on the policy for installation of signs**

In comment no. 47, the Ministry of Transportation Ontario (MTO) suggested a revision in the wording of the draft policy as follows “MTO, in collaboration with other members of the MTO/MOE/SPC Working Group will design a standardized source water protection road sign, and will be responsible for the manufacture and installation of any signs to be placed on provincial highways. Municipalities will be responsible for manufacturing to the design standard and installing on their roadways.” Also, MTO noted that the reference to legal effect, for MTO, should be revised from ‘conform with’ to ‘non-legally binding’. These changes suggested by MTO were made to policy 'All123-transportcorridor-3 (Specify Action)' with respect to signs to be placed on provincial highways only. As directed by the SPC at the February 2012 meeting, the policy has been modified to no longer apply to other roads, and to address significant threats (fuel) in IPZ-3s where there are provincial highways. Legal effect has been changed to ‘non-legally binding’. Policy number is changed to ‘All3-transportcorridor-1 (Specify Action)’.

### **Other Comments Received**

Other comments received were considered by the SPC. Some of these comments were for information purposes only (such as comments no. 1 and 22). Some comments resulted in changes to terminology (such as replacing the term ‘Certificate of Approval’ with ‘Environmental Compliance Certificate), addition of information in the rationale for clarity (such as explaining what sewage treatment tanks mean),

and a policy text completeness check (although all information is provided in the policy tables, the policy text itself is required to state the policy tool used, whether the threat is existing or future, the threat level and the vulnerable area to which the policy applies). A comment on policy consolidation was considered by the SPC. It was determined that while consolidation would help reduce the number of policies without altering the intent or content, it is not a priority and may be considered if time permits, after the first public consultation. Minor editorial and grammar corrections were made to a few of the policies.

### **2.3.2 Consideration of Comments Received during Public Consultation on Draft Source Protection Plan**

After Pre-consultation on draft policies with those who would be responsible for implementing the policies, the Source Protection Committee undertook public consultation of the Draft Source Protection Plan. Notices of the consultation were published in newspapers and on the Essex Region website in May 2012, with comments on the Plan requested by June 11, 2012 for the proposed Source Protection Plan submitted in August 2012. Notices of the consultation were published in newspapers and on the Essex Region website in November 2014, with comments on the Plan requested by December 22, 2014 for the Updated Source Protection Plan.

The **Appendix C** contains all of the comments received during public consultation on the Proposed Plan, along with responses to the comments, and rationale for changes made. Comments received were discussed by the SPC regarding changes to draft policies. The comments, and how they were considered in the development of the policies, are summarized below. Refer to **Appendix C** for all comments received, and the responses to those comments (including resulting changes to some of the policies). Additional comments received by the public for the Updated Plan will be included in this document.

#### **Clean Water Act Section 59 policies**

In comment no. 4, the MOE recommended that further consideration be given to applying Section 59 to Clean Water Act Part IV policies. As result of the same comment received during pre-consultation, Section 59 policies were added to complement the Section 57 policy for the handling and storage of NASM and the Section 58 policy for the handling and storage of pesticides, in the Draft Plan. The two additional Section 59 policies are WILIAI-storageNASM-3(Clean Water Act) and WIAILI-storagepesticide-3(Clean Water Act).

#### **Policies using land use planning tools**

There were six (6) policies in the draft Plan which indicated that the policies would be reflected in Official Plans and Zoning By-laws (Policies No. 5, 14, 30, 32, 38, and 49). In most cases, the intent of the reference to planning documents in the subject policies was to complement a Prescribed Instrument (PI) policy or Clean Water Act (CW Act) policy, by reflecting the policies in Official Plans (OPs) and Zoning Bylaws (ZBLs) in order to inform property owners and others of the CW Act Part IV policy or PI policy, rather than to regulate the threat activities through the land use planning documents. Through comment no. 49 from MOE and comments no. 33 to 39 from Ministry of Municipal Affairs and Housing (MMAH), it was clarified that it is not permissible to utilize land use planning tools in the policy unless the threat activity meets the definition of a land use. As a result, the reference to planning documents to complement PI or CW Act policies has been removed from policies No. 5, 30, 32, and 38 and has been



retained only in policy No. 14 -WILIAI-waste-I (Prescribed Instrument). Policies No. 5, 30, 32, and 38 have also been removed from Legal Provisions List A in Appendix B of the Plan, as they were only included there as a result of the reference to OPs and ZBLs, rather than to address the threats through land use planning decisions. Text has been added to Section 6.3 of the Plan, and in the rationale for each of these policies, with respect to the intent of Windsor and Amherstburg to include information regarding these policies in their Official Plans and Zoning By-laws, in order to assist in informing property owners and others, and indicating that there would be benefit in other municipalities doing so. Policy No. 49 - WIW2LIAI-livgraz-I (Planning) has also been retained, although it has been revised as described in the paragraph below, and renamed as WIW2AI-livgraz-I (Planning). Based on comment no. 28 from the Town of Lakeshore, Policy No. 49 - WIW2LIAI-livgraz-I (Planning) has been revised such that it applies only to Windsor and Amherstburg IPZs, as it is inconceivable that livestock grazing and related activities could occur in the Lakeshore IPZ-I. However, as the Clean Water Act requires policies for all significant threats, an Education and Outreach policy has been developed for this purpose (Policy No. 55) which applies to the Lakeshore IPZ-I. Also, Policy No. 14 -WILIAI-waste-I (Prescribed Instrument) has been revised to indicate that Windsor and Amherstburg will reflect this policy in their OPs and ZBLs, as it is recognized that there is no benefit in Lakeshore providing complementary land use planning measures, given the unique nature of this particular IPZ-I. As a result, there are no policies which require the Town of Lakeshore to amend their planning documents. Only Windsor and Amherstburg are affected by policies using land use planning tools (Policies No. 14 and 49).

In comment no. 8, the MOE recommends revisions to the wording of compliance dates for policies using land use planning tools (this now applies only to Policies No. 14 and 49, as outlined above ).The reference to Section 26(1) of the Planning Act has been clarified as recommended. The alternative of five years from the effective date of the Plan is not considered to be necessary. The use of land use planning tools in Policy No. 14 -WILIAI-waste-I (Prescribed Instrument) is complementary to that Prescribed Instrument policy which has a compliance date of when the Plan takes effect. Policy No.49 -WIW2AI-livgraz-I (Planning) addresses agricultural livestock operations which are not a permitted use in the subject IPZs, given the urban nature of the areas.

### **Policies using transitional provisions**

In comment no. 16, the MOE recommends that clarification be provided to describe existing and future threats. The definitions of existing and future threats in the Plan Section 5.4 have been revised, which addresses this comment. To address some of the intent of the previous definition, transitional provisions have been added to policies No. 5 and 14 in Table 5.2 - WIW2LIAI-industrialeff-I (Prescribed Instrument) and WILIAI-waste-I (Prescribed Instrument) which manage existing and prohibit future threats in the Amherstburg IPZ-I.

### **Policies managing existing threats and their dates of compliance**

In comment no. 48, the MOE recommends that the date of compliance be 3 years from the date the Plan takes effect, or such other date as the Director (MOE) determines based on a prioritized review of Environmental Compliance Approvals that govern significant drinking water threat activities. This was discussed by the SPC, who decided that all implementing bodies of policies using prescribed instruments or risk management plans to manage existing significant threats must comply with the respective policies

within 5 years of the date that the Source Protection Plan takes effect. This revision to the date of compliance was made in the relevant policies (see responses to comments no. 48, 57, and 61 for further information).

### **Policies using the Aggregate Resources Act to manage fuel threats**

A comment no. 54 by MNR on the rationale provided in fuel policy nos. 22, 23 and 24 suggested the removal of reference to MNR obtaining documentation from owners of facilities to ensure compliance with the Aggregate Resources Act (including its instruments). Since these policies (nos. 22, 23, 24) use the Prescribed Instrument of the Aggregate Resources Act (ARA) to manage the threat, and since MNR is the implementing body of the ARA, the text in the rationale regarding obtaining documentation to demonstrate compliance with the ARA has been retained. A comment no. 55 by MNR on the related monitoring policy has resulted in the revision to the rationale associated with the monitoring policy to remove the text regarding the 'checking if the TSSA requirements are met', as suggested by MNR.

### **Policies using risk management plans to manage threats related to non-agricultural source material**

A comment no. 64 by Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) indicated support of policies W2-appINASM-I (Clean Water Act) and W2-storageNASM-I (Clean Water Act), as they propose management of non-agricultural source material (NASM) application and storage in Windsor IPZ 2 through the use of prescribed instruments, and the use of risk management plans (RMPs) where prescribed instrument do not apply. OMAFRA recommends that RMPs be based on nutrient management standards, and additional requirements should not be needed to manage the risk. The SPC's response is that it is the intent of these policies that the Risk Management Plan (RMP) be based on the requirements of a NASM plan as per the Nutrient Management Act. The policies specify that the Risk Management Official (RMO) should ensure that the owner has the RMP prepared by someone certified to develop a NASM plan that meets the requirements of Reg. 267/03. However, the Risk Management Official must have discretion as to what constitutes a satisfactory RMP. As specified in the policies, the Risk Management Official may require additional conditions in the RMP to be met such that water bodies are protected adequately from the storage of NASM. As stated in the rationale, this activity is very unlikely to occur or be proposed in the subject area. As well, the Nutrient Management Act or the Environmental Protection Act will normally apply to the activity; therefore implementation has no negative impact.

### **Other Comments Received**

Other comments received were considered by the SPC. Some of these comments were for information purposes only (such as comments no. 20 and 24).

A comment no. 1 from MOE on the use of policy text sections and complete policy tables was considered during the Draft Plan stage, which resulted in policy texts being provided in Table 5.2 of the plan, while Appendix A of the Plan and the Explanatory Document provide complete policy tables. A comment no. 5A from MOE on policies that propose to prohibit a significant threat activity resulted in the repetitious text being removed from policy texts. A comment no. 6B from MOE was considered which resulted in removal of the suggestion to provide a form to implementing bodies of monitoring

policies. In the monitoring policies' rationale, clarification is provided to indicate that the SPA may provide a form which may be helpful to the respective implementing bodies. Providing a form is not a requirement. A comment no. 11 from MOE on the policy for the storage of sewage in certain vulnerable areas has resulted in the use of 'Specify Action' tool (instead of 'Municipal Act'), where the municipality can use means such as By-laws to fulfill this policy. A comment no. 22 from MOE has resulted in a revision to the wording to the terms and conditions specified in policies which use Prescribed Instruments to manage significant threats, such that those terms and conditions are suggested by the SPC and are not mandatory or limited to those suggested.

A comment no. 40 from MMAH on policy no. 49 (livestock grazing/outdoor confinement area) resulted in the suggested revised wording in this policy (and its accompanying monitoring policy), to indicate that agricultural livestock operations will not be permitted uses in the Official Plans or Zoning By-laws in the applicable vulnerable areas.

A comment no. 59 by CA staff on policy consolidation was considered by the SPC. As a result policies related to the use of a specific type of Prescribed Instrument, to manage the significant threat activity of the handling and storage of fuel, were consolidated. This applies to policies 16/17/18, 19/20/21 and 22/23/24. The respective monitoring policies are also consolidated.

Minor editorial and grammar corrections were made to a few of the policies.

### ***2.3.3 Consideration of Comments Received during Public Consultation on Proposed Source Protection Plan***

After public consultation of the Draft Source Protection Plan, the Plan was revised as per **Appendix C**, to form the Proposed Source Protection Plan. The Source Protection Committee undertook another 35-day public consultation on the Proposed Plan. Notices of the consultation were published in newspapers and on the Essex Region website in June 2012, with comments on the Plan requested by July 30, 2012.

**Appendix D** provides the comments received during consultation on the Proposed Plan, and how those comments were addressed. A summary is provided below.

The Ministry of Transportation (MTO) recommended revising policy no. 26 to indicate that signs are installed on provincial highways in IPZs of vulnerability scores 8 or higher. The MTO has indicated that they will consider departures from these criteria at the implementation stage, but they are requesting consistent wording in the policies, to reflect the standard criteria based on vulnerability scores. Given that the subject policy (No. 26) is 'non-legally binding' in any event, and will require a cooperative approach in working with the MTO, it is considered advantageous to respect this request to reflect the standard criteria based on vulnerability scores of 8 and above.

Based on comments received from MOE, clarifications regarding the Clean Water Act and its regulations were made, which did not alter the intent of the policies in the Plan. Minor editorial and grammar corrections were also made to a few of the policies.

### ***2.3.4 Consideration of Official Comments on the Proposed Source Protection Plan Received by the Ministry of the Environment***

The Proposed Source Protection Plan was submitted in August 2012. Initial comments were received by the MOE in June 2014 and the Director's letter with official comments was received in July 2014. These comments and responses to them are included in **Appendix E**. As a result of these comments and new technical work conducted, the following changes were made to the Essex Region Source Protection Plan (see **Appendix E** for more detail):

- New technical work for the updated Assessment Report resulted in the identification of new vulnerable areas which were added to all existing fuel policies (i.e. Harrow-Colchester IPZ-1, IPZ-2 and IPZ-3, Union IPZ-1, IPZ-2, IPZ-3, Pelee IPZ-1, IPZ-2 and IPZ-3, Wheatley IPZ-1, IPZ-2 and IPZ-3), as well as Event Based Areas for all intakes;
- The requirements for Risk Management Plans and Prescribed Instruments to obtain documentation showing compliance with the Technical Standards and Safety Act (liquid fuel handling code) have been replaced with more generic language;
- The Essex Region SPC determined that microcystin-LR is a Drinking Water Issue at Lake Erie intakes and new policies have been written for continued and/or improved environmental monitoring and education and outreach;
- All Section 57 and Section 58 policies are now accompanied by a Section 59 policy;
- A new policy was added requiring Risk Management Plans for the storage of hazardous waste or liquid industrial waste at sites that are not subject to an Environmental Compliance Approval Policies
- Policies for storm water management and the application of pesticides have been updated to include existing threats;
- The policy for sewage from meat plants and industrial facilities has been in order to clarify that the intent of the policy is to manage and not prohibit the activity and;
- The Ministry of Transportation requested new phrasing for the policy on the transportation of fuels to make policies consistent across the province.

### ***2.3.5 Consideration of Comments Received during Public Consultation on the Updated Source Protection Plan and Assessment Report***

Public Consultation of the Updated Source Protection Plan and Assessment Report was conducted from November 24, 2014 – December 24, 2014. Based on the comments received during this period the Updated Source Protection Plan and Assessment Report were revised as per **Appendix F**. Most of the changes required only minor editorial changes. The rationale section of Policy 50 (environmental monitoring of microcystin-LR and phosphorus) was edited for clarity.

## 2.4 Consideration of Climate Change

The Essex Region Assessment Report contains a section on Climate Change. However there is not enough data collected to use in the development of policies. The SPC will strive to collect relevant climate change data if funding allows, in order to incorporate the information in the policies in a subsequent revision of the Plan.

## 2.5 Consideration of the Financial Implications

### *Provincial Funding*

The Province of Ontario has fully funded the source protection planning process to date, including capacity building at each Conservation Authority, support for SPCs, comprehensive technical studies, and the writing of various reports and documents required for the completion of Assessment Reports and Source Protection Plans. As of the date this Draft Source Protection Plan was completed, there is no clear indication from the Ministry of the Environment as to the level of financial commitment from the Province of Ontario for the implementation of Source Protection Plans.

The *Clean Water Act* and the source protection planning process was a program introduced by the Province in response to a province-wide concern about the safety of municipal drinking water. The Essex Region Source Protection Committee strongly believes that the Province should continue to fund the implementation of Source Protection Plans and has formally requested that this be done. Resolutions to this effect have also been passed by several Essex Region Municipal Councils, the Union Water Board (with representation from five Councils), the Source Protection Committee, and the ERCA Board.

Aside from the implementation of policies, as described in Section 6.2, the Source Protection Committee and Source Protection Authority will have various responsibilities in support of implementation. It is essential that the Province continue to provide the funding for these various responsibilities, and for the important future updates of the AR and Source Protection Plan.

Several municipalities have also expressed support Risk Management Official services to be provided by ERCA, and have passed Council Resolutions with respect to the need for Provincial funding for this purpose, as well as for other activities in support of implementation.

Section 97 of the *Clean Water Act* establishes the Ontario Drinking Water Stewardship Program. The purpose of the program is to provide financial assistance to those whose activities and properties may be affected by the implementation of the Source Protection Plan. Under the stewardship program, funding from the Ministry of the Environment provides grants to undertake early actions that protect municipal sources of drinking water. The grants are directed to landowners within vulnerable areas associated with municipal surface water intakes or wells to undertake projects that reduce existing potential contamination sources. The program also provides for outreach and education programs to raise awareness of the importance and opportunities for individuals to take actions to protect sources of drinking water. Ontario Regulation 287/07 (General) further clarifies the details of the Ontario Drinking Water Stewardship Program. The program currently has funding through 2012 to provide grants to undertake Early Response Programs to address significant drinking water in advance of approved source protection plans.

### ***Financial Implications – Source Protection Plan Policies***

In the development of policies for the Source Protection Plan, the SPC considered financial implications for implementing bodies and other affected parties. The responsibilities of implementing bodies, including Provincial Ministries, municipalities, and the ERCA, are described in Section 6.3 of the Source Protection Plan. Implications for landowners, businesses, and other potentially affected parties are outlined in Section 6.4 of the Plan.

A key consideration for the SPC in the development of policies for the Source Protection Plan was to ensure that costs associated with policy implementation are reasonable. In selecting the most appropriate policy tools to address each type of significant threat or sub-threat, and in developing the details of the policies, some of the important considerations in this regard were as follows:

- Wherever possible, the policy approaches rely on ‘Prescribed Instruments’ which utilize existing regulations implemented by the Province. This avoids duplication and unnecessary local implementation costs.
- In cases where Prescribed Instruments do not apply, existing land use planning measures are utilized where possible. This approach used in situations where it was considered to have no negative impact, and implementation was not considered onerous.
- The SPC utilized the new policy tools provided through the Clean Water Act only when other tools were not available. This avoids duplication and unnecessary local implementation costs.
- The SPC consulted very extensively with affected municipalities in order to select policy approaches and tools that would be most practical and effective, while ensuring implementation costs should be reasonable, and also obtained valuable input from the Fuels industry in developing reasonable policy approaches for that particular type of significant threat.
- In determining policy approaches for confirmed existing significant threats, the SPC determined that it would be effective and appropriate to manage, rather than prohibit, these threats. Where the type of threat activity would be precluded by the current and permitted land uses in the subject areas, or where the activity would be extremely unlikely to be proposed or considered in the future, the SPC determined that it would be most appropriate and effective to prohibit the activity, recognizing that there would be no negative impact.
- If the type of threat activity were likely to be proposed in the future, or if there was considered to be a remote possibility the significant threat activity might be initiated before the Plan takes effect, the SPC determined that it would be most appropriate and effective to manage those particular types of future significant threats.
- For those policies which manage threats through Section 58 of the Clean Water Act, or through Prescribed Instruments, wherever possible, the requirements as specified in the policies are based on the requirements of existing Legislation such as the Technical Standards and Safety Act or Pesticides Act. This was intended to minimize new or additional requirements for property owners, and avoid duplication and unnecessary effort on the part of implementing bodies.

## **Fees - Clean Water Act Part IV**

Source water protection is a responsibility that crosses municipal and watershed and boundaries; therefore, arriving at a fair and equitable manner to share the financial responsibilities of implementation of the Source Protection Plan is complicated. Within the *Clean Water Act*, some provisions are set out for financing various aspects of source protection including stewardship programs and application of fees for Part IV policies. As stated in the *Clean Water Act*, fees can be applied for applications received under Section 58, 59 or 60, for agreeing to or establishing a risk management plan under Section 56 or 58, for issuing a notice under Section 59, for accepting a risk assessment under Section 60, or for entering property or exercising any other powers under Section 62. Municipalities will be responsible for implementing these Sections of the Act, through the appointment of Risk Management Officials and Risk Management Inspectors. The decisions regarding the potential charging of fees will be a matter for municipalities to address in preparing for implementation.

## **2.6 Policies using Clean Water Act Section 22 (7) or Ontario Regulation 287/07 Section 26 Tools**

The Essex Region SPC acknowledges that the policies W2bypass-I (Specify Action), W2effluent-I (Specify Action) and WIW2-combinedsewerbypasseffluent-I (Specify Action), which use the Ontario Regulation 287/07 Section 26 tool 'Specify Action to be taken to implement a Plan or achieve the Plan's objectives' will address the confirmed existing significant threats of Sewage treatment plant bypass discharge to surface water, Sewage treatment plant effluent discharges (includes lagoons) and Combined Sewer Overflows (CSOs), and that prohibition or regulation is not necessary. The Essex Region SPC also acknowledges that the policy LI-livgraz-I (E & O) which uses the Clean Water Act Section 22(7) tool of Education and Outreach will address the significant threat of the use of land as livestock grazing or pasturing land, an outdoor containment area or farm animal yard in the Lakeshore IPZ-I (this activity is not known to occur in this vulnerable area, and highly inconceivable that it would occur given the land use).

These policies and their rationale are provided in the **Appendix A**.