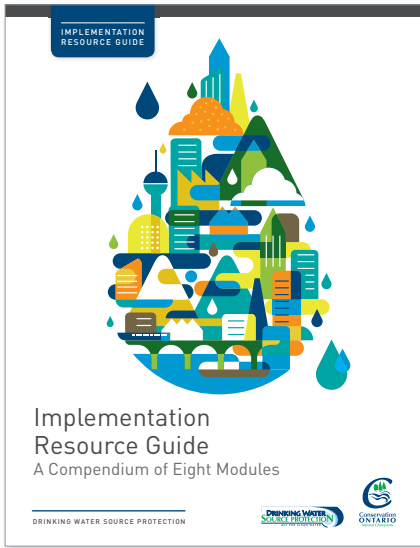




MODULE 6

# Prohibition

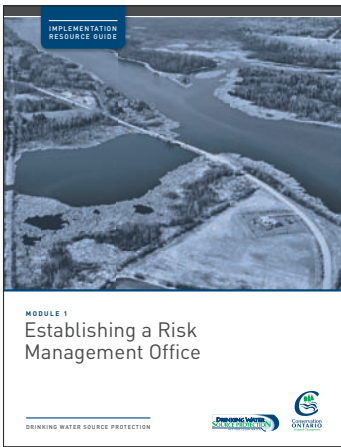


# Implementation Resource Guides

A Compendium of Eight Modules

Look for all eight modules in our Drinking Water Source Protection series. You can find them at [www.conservation-ontario.on.ca](http://www.conservation-ontario.on.ca)

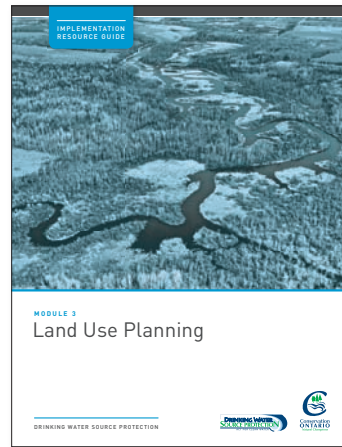
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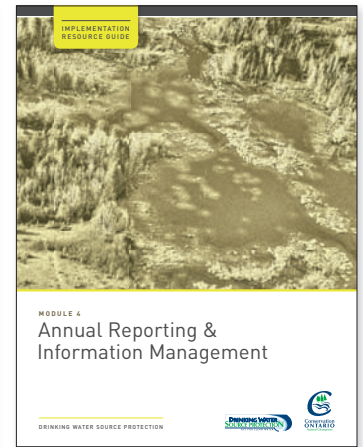
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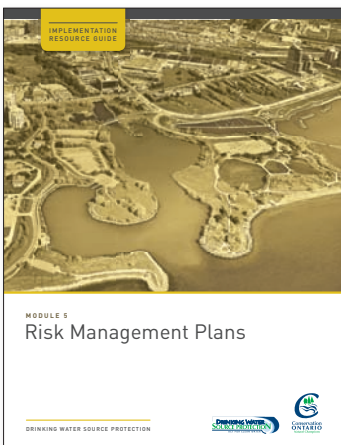
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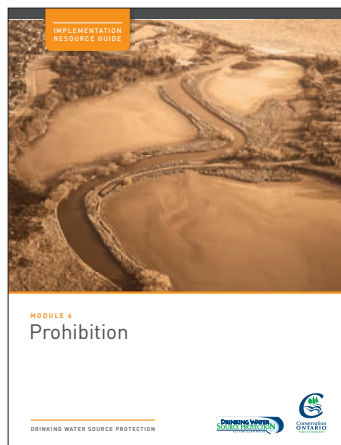
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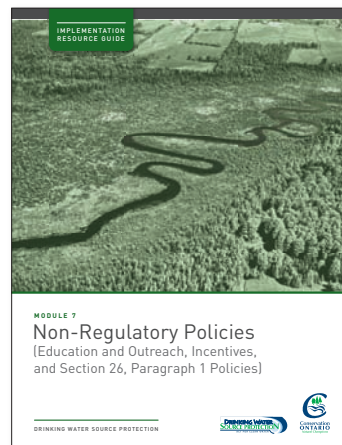
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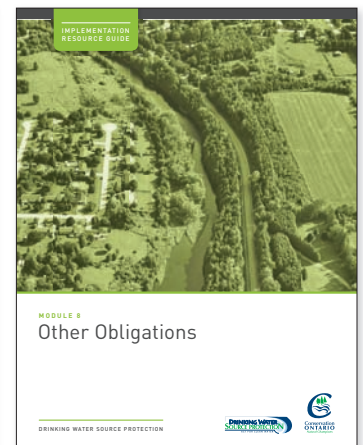
## MODULE 6



## MODULE 7



## MODULE 8



# Module 6: Prohibition

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## Implementation Resource Guide

06/05/2014

Note to Reader: This document is one of a series developed by staff at conservation authorities and Conservation Ontario in support of source protection plan implementation. These documents cover a variety of tools related to plan implementation, but not all will apply in your municipality. Consult your local source protection plan to determine which policies are applicable in your municipality. This document has not been reviewed by legal counsel and is not presented as legal advice.

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## A. Introduction

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The purpose of this module is to explain how the *Clean Water Act, 2006* and source protection plans can result in the prohibition of certain activities that pose significant risk to municipal drinking water systems. Prohibition of activities can be achieved by using various policy approaches, including the new tools established in Part IV of the *Clean Water Act*, land use planning, prescribed instruments, and risk management plans.

In large part, this module focuses on the Section 57 Prohibition tool in Part IV of the *Clean Water Act*. This module is designed to provide municipalities required to prohibit activities with the necessary information to fulfill this obligation. This module is not designed to provide the training required to become a Risk Management Official or Inspector, but to give an overview to the processes and implications for municipalities affected by Section 57 Prohibition policies.

Section 57 of the *Clean Water Act, 2006* provides a policy tool to prohibit activities, and therefore, a strong understanding of how it can be applied will be essential for municipalities. This module will explain how to prepare for prohibition, the roles and responsibilities of those involved, and suggest an implementation process that can be followed to achieve the objectives of the source protection plans.

Section 57 Prohibition can be applied to existing or future activities. This module explains the different approaches that can be taken to address these activities through the implementation of prohibition policies.

## B. General Information

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### *i. Clean Water Act, 2006*

#### Section 57 Prohibition

Section 57 is a provision under Part IV of the *Clean Water Act, 2006*. This provision enables policies to be written into source protection plans that prevent activities identified as existing or future significant drinking water threats from occurring within designated portions of intake protection zones (IPZs) and/or wellhead protection areas (WHPAs). For example, in some cases a policy created under this provision could prohibit the use and/or storage of a large quantity of fuel within a designated area. In other cases, a different policy tool may be used that places limitations only on how fuel is used and/or stored as an alternative to outright prohibition.

Prohibition is considered the strongest tool available in the policy toolbox for reducing risk associated with significant drinking water threats. When source protection committees considered it as a tool to address activities that already exist on the landscape, they did so only

after considering all other feasible options. This tool cannot be used for low or moderate drinking water threats, or for significant threat conditions (a threat from past land activities).

### **Section 59 Restricted Land Uses (Use with Section 57)**

Section 59 Restricted Land Uses is another provision under Part IV of the *Clean Water Act*. To prevent future developments from becoming significant drinking water threats, Section 59 allows for the creation of restricted land use policies that complement Section 57 Prohibition policies. Section 59 supports Section 57 policies by integrating the municipal development review process with Part IV policy tools (i.e. Section 57 and 58). Section 59 is not a standalone provision under the Act; it can be used only in conjunction with Section 58 risk management plan or Section 57 Prohibition policies.

The Section 59 tool provides a screening process or “early flagging system” so that municipalities avoid processing an application under the *Planning Act*, or a building permit that is either subject to Section 57 Prohibition policies, or Section 58 risk management plan policies. Section 59 policies allow for early identification of development applications that cannot proceed under the *Planning Act*, *Building Code*, or *Condominium Act* because the applications seek to enable activities that are identified as prohibited in the source protection plan (i.e. in an IPZ or WHPA). The following types of development applications under the *Planning Act* are prescribed by Ontario Regulation 287/07, Section 62, for the purpose of Section 59 of the *Clean Water Act*:

- requests to amend official plans;
- applications to amend zoning by-laws for both permanent and temporary use;
- applications for approval to undertake development in a site plan control area;
- applications for minor variances;
- applications for approval of plans of subdivision; and,
- consent applications.

### **Risk Assessment (Exclusion under Section 60)**

Section 60 of the *Clean Water Act* allows individuals to apply for an exclusion from source protection plan policies in the area where Part IV applies. More specifically, this provision enables an individual, where applicable, to reassess the site-specific characteristics affecting the underlying vulnerability analyses and vulnerability score. This reassessment must be applied at a site-specific level, and provides an opportunity to reevaluate the risk level of drinking water threat activities in order to determine if the risk level should be lowered. Reducing the risk level from significant to moderate or low would relieve a person of their obligations under Part IV,

namely those associated with Prohibitions (Section 57), and Risk Management Plans (Section 58) in the location in which the Section 60 risk assessment applies<sup>1</sup>.

In order to obtain exclusion under Section 60, the applicant must submit the following items to the Risk Management Official:

- payment of any applicable fees;
- application for exclusion (obtained from Risk Management Office);
- risk assessment (prepared in accordance with Ministry of the Environment's rules and regulations).

The risk assessment must conclude that the risk level is lower than indicated in the assessment report and therefore, confirm the activity under consideration is not a significant drinking water threat at the location specified. The Risk Management Official has the authority to decide whether the risk assessment has satisfied the rules and regulations set out under the Act.

It is highly recommended the Risk Management Official acknowledge receipt of the risk assessment with a letter to the applicant. The letter should specify a date by which the Risk Management Official will notify the applicant as to whether or not the conclusion(s) contained within the risk assessment have been accepted or rejected.

## **Basis for a Challenge**

The rules and regulations pertaining to Section 60 are currently under development and will undergo public consultation. Risk assessments are anticipated to relate to the following technical aspects:

- vulnerability score of a WHPA based on site-specific characteristics such as local geology and hydrogeological characteristics, etc.;
- IPZ delineation based on site-specific characteristics such as drainage pattern of setbacks (120m), high water mark, nature of transport pathway, etc.

Information obtained from risk assessments may be used to inform updates to Assessment Reports where appropriate.

## **ii. Source Protection Plan Requirements – Refer to Your Local Plan**

### **Where It Applies**

When addressing existing threats on the landscape, source protection committees were encouraged to use the Section 57 Prohibition tool as a last resort where the risk is high, and

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<sup>1</sup> Guidance materials to support the development of risk assessments will be added as an appendix to this module when they become available.



when no other available tools can adequately address a significant drinking water threat. Consequently, the tool would usually be used in areas close to municipal wells and intakes with the highest vulnerability scores.

Section 57 policies include a description of the areas where these policies apply. In some cases, the prohibition rules that apply to a particular activity could differ depending on whether the activity already exists, or will occur in the future. For example, a source protection plan could prohibit an existing activity in a WHPA-A, while the same activity could be prohibited in both a WHPA-A and WHPA-B, if it were to occur in the future. In other plans, source protection committees may describe the area that a Section 57 policy applies as “where the activity could be significant.” In these cases, to understand the geographic area, one must refer to the Table of Circumstances established under the Technical Rules for the preparation of Assessment Reports, or corresponding summary tables, and the vulnerability scoring maps contained in the local assessment report. The tables describe the vulnerability scores, areas, and specific situations that make each threat activity significant, and when cross referenced to the vulnerability maps, delineate the areas where the activity would be a significant threat. For this reason, it is important to refer to your local source protection plan for information on the applicable areas of Section 57 Prohibition policies (Also see Module 2: Understanding Where Policies Apply).

## What It Applies To

Section 57 Prohibition policies only apply to significant threats from the list of prescribed drinking water threats as outlined in Ontario Regulation 287/07, s. 1.1, or any other significant drinking water threats designated by the Director of the Source Protection Programs Branch. The regulation outlines two situations where the Part IV tools cannot be applied to significant drinking water threats, and these are identified in Section B (iii).

The specific situations or circumstances to which a prohibition policy applies may be described in the policy text of source protection plans. Other times, the policy text may be more general in nature. For example, a source protection plan policy may use Section 57 Prohibition for road salt storage; however, the circumstance tables specify that only uncovered road salt storage qualifies as a significant threat. In this case, the Section 57 Prohibition policy only applies to uncovered salt storage. The Table of Circumstances (from the Technical Rules for the Preparation of Assessment Reports) also provides further clarification on the specific criteria that would qualify an activity as a significant threat, such as volume thresholds and level of storage (e.g. above grade).

## Timelines for Implementation

Section 57 Prohibition policies may apply to future activities, existing activities, or both. Once a source protection plan is “in effect,” prohibition policies for designated future activities take immediate effect. This means that the Risk Management Official must be in place to monitor any development or planning application that could involve prohibited future activities to

prevent those proposals from being approved. Please see Section E (iii), Section 59 Restricted Land Uses Policy and Notice for additional details on how Section 59 relates to the development application screening process.

Source protection plans may contain transition provision policies that allow exceptions for future drinking water threat activities that have been designated as prohibited (through Section 57 or other tools that achieve the outcome of Prohibition, such as land use planning, prescribed instruments or specified actions), to be treated as “existing” activities and managed, even though they will technically commence after the plan takes effect. Transition provisions allow new activities that are in the process of seeking the necessary approvals to be considered as “existing” (even if they haven’t begun yet) in order to grandfather applications that are already underway. A drinking water threat activity related to an application for the issuance or amendment of a prescribed instrument prior to the day the source protection plan comes into effect is one example of a situation in which a transition provision may apply in the source protection plan.

A source protection plan may also prohibit existing activities. In these cases, the policies designate a specific timeframe to allow a reasonable amount of time before the activity is to be terminated. This timeframe can vary from a minimum of 180 days to several years. Make reference to the local source protection plan to determine how prohibition affects these situations. Figure 1 depicts an example of the decision-making process municipal planning staff could follow when processing development applications for future drinking water threat activities designated as prohibited under Section 57 in a source protection plan.

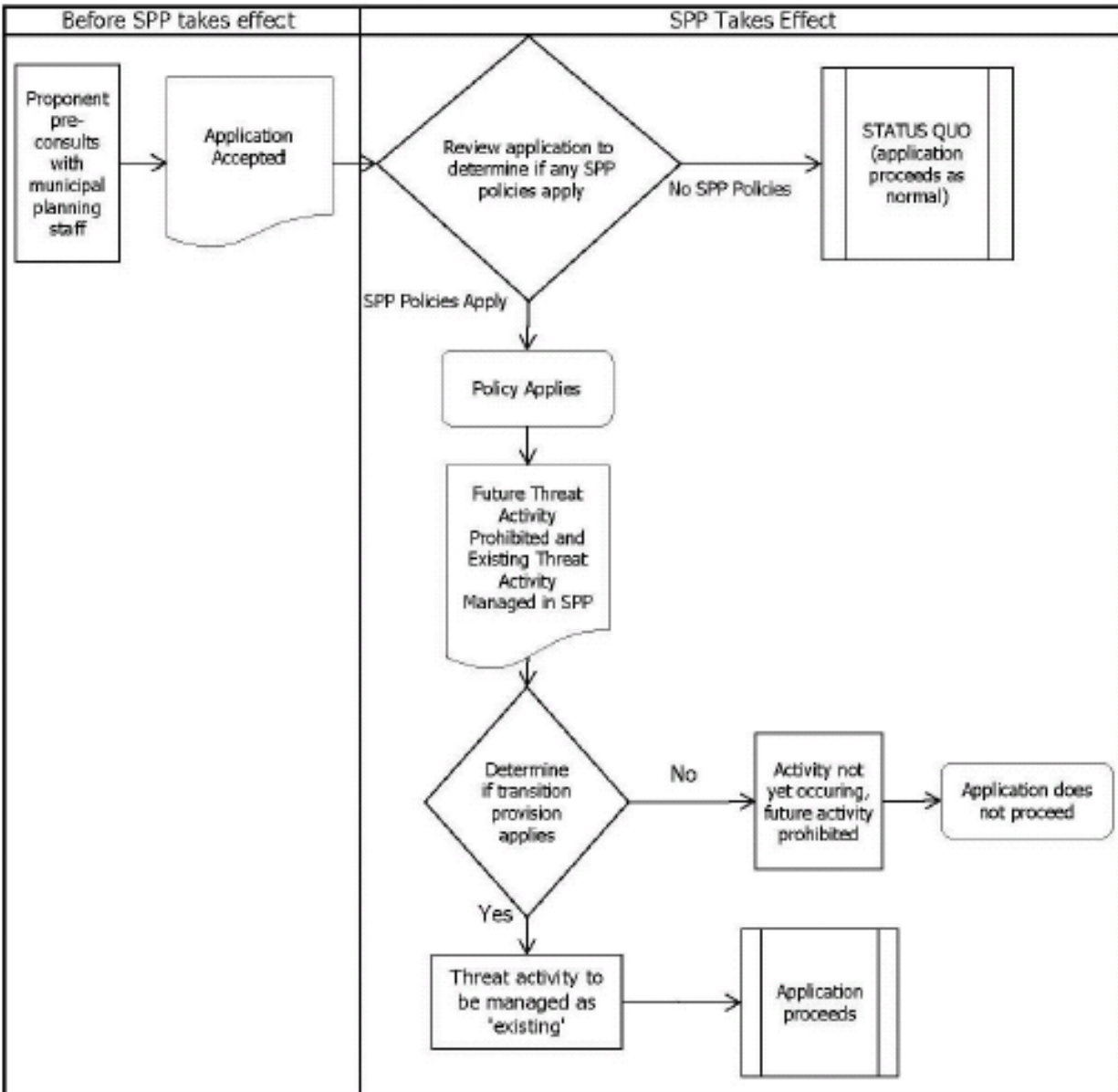


Figure 1: Transition provisions (Adapted from York Region)

### Level of Effort

Municipal staff including clerks, planning staff and building inspectors, as well as Risk Management Officials, will need a solid understanding of the way in which Section 57 Prohibition policies apply to daily business. These staff will need to monitor all new building and planning applications to ensure that what is being proposed is not a prohibited activity (See Section B, Section 59 Restricted Land Uses and Section E, Section 57 Prohibition – Implementing Process). Risk Management Officials will also need to contact anyone who is engaged in an existing prohibited activity and inform them of the timeframe to cease the activity. A follow-up inspection by the Risk Management Inspector may be necessary to ensure that the activity has

ceased. It may be necessary for the inspector to administer subsequent inspections to ensure that the prohibited activity does not start up again.

### **iii. Limitations**

Section 23 of Ontario Reg. 287/07 explains that Section 57 Prohibition can be used to address the risk posed by any of the 21 prescribed drinking water threats where they could be significant, with a few exceptions. These exceptions pertain to waste and sewage threats.

In terms of waste, prohibition cannot be used if the establishment, operation, or maintenance of a waste disposal site (within the meaning of Part V of the *Environmental Protection Act*) requires a Certificate of Approval, or a provisional Certificate of Approval under Part V of the *Environmental Protection Act*. (Note: Certificates of Approval are now known as Environmental Compliance Approvals).

For the sewage threats, Section 57 Prohibition cannot be used if the sewage system requires approval under Section 53 of the *Ontario Water Resources Act*. For example, a septic system with a capacity larger than 10,000 litres per day would not be eligible for prohibition. In addition, if the *Building Code Act, 1992* applies to the system, such as a small/private septic system or holding tank, Prohibition rules under Part IV of the Act do not apply.

Section 57 Prohibition (and Section 58 Risk Management Plans) cannot be used in a source protection plan to address a significant threat condition (e.g. a contaminated site) that results from a past activity and was identified in the Assessment Report.

It is important to note that Section 57 Prohibition can be used on significant drinking water threats beyond the 21 drinking water threats prescribed in the *Clean Water Act*, if the Director approved an activity as a local threat in the Assessment Report. Therefore, it is important the source protection plan be checked for any local threats that may have a Section 57 Prohibition policy associated with them.

### **iv. Methods Other than Section 57 to Prohibit an Activity**

An activity can be effectively prohibited through policies other than Section 57 policies in the source protection plan. This section reviews the other means source protection committees may have used to prohibit a significant drinking water threat activity. The reader may wish to review other modules in this series that relate to the tools described for more details.

#### **Land Use Planning (Municipal Responsibility)**

A source protection plan may have policies requiring a municipality to enact a planning measure, such as a zoning by-law, to prevent a future activity from occurring by restricting associated land uses. This measure would be an effective way of eliminating the possibility of

significant threats being located in an area that could impact a drinking water supply. Official Plans could also help steer land uses associated with these activities to more appropriate locations. A site plan agreement is one tool that could restrict the location of buildings, structures, and roadways on a site, and thereby indirectly restrict the location of activities on a property. This method could be an effective way to achieve the prohibition of certain types of threats, without using outright prohibition of the entire land use. For more information about land use planning policies, please refer to Module 3: Land Use Planning.

### **Prescribed Instrument (Provincial Government Responsibility)**

Source protection plans may contain policies that prohibit certain significant threat activities which require an instrument prescribed in regulations under the *Clean Water Act* (s. 1.0.1 of Ontario Regulation 287/07 identifies the prescribed instruments). For example, activities that require a prescribed instrument such as an Environmental Compliance Approval or Nutrient Management Plan could be prohibited when the prescribed instrument tool is applied through a source protection plan policy. This would mean the Director or other implementing body responsible for issuing, amending, or otherwise creating the instrument, would not issue the instrument, or depending on the geographic area to which the policy applies, make a condition within the approval that would prevent the significant threat activity from occurring within that specific area. This condition would effectively prohibit that particular activity from occurring in the specified location, without using Section 57 Prohibition.

### **Section 58 Risk Management Plans**

Source protection plans may use Risk Management Plans as a policy tool under Section 58 of the *Clean Water Act* (see Module 5: Risk Management Plans).

A source protection plan could require a risk management plan for certain existing types of activities, such as an agricultural operation. Within the risk management plan, some activities may have restrictions on them. For example, the landowner and the Risk Management Official may agree that cattle would not be allowed to graze within a prescribed setback from a watercourse. This measure would effectively prohibit that activity just within that agreed buffer zone.

When a risk management plan is required for a new activity (i.e. a future activity not engaged in prior to the plans' effective date), the activity is prohibited until an approved risk management plan is in place. This means that an approved risk management plan is required before the formal planning process can officially commence. It will be important that the Risk Management Official communicate this message with planning or other approval personnel in the municipal office where the risk management plan has not yet been established. In addition, for plans that include a timeline for the establishment of risk management plans for existing activities, once that timeline passes, the activities are effectively prohibited until the risk management plan is in place.

## C. Preparing for Prohibition

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Municipalities are ultimately responsible to ensure that Section 57 Prohibition policies are implemented in the specific areas indicated in the source protection plan. It is necessary to prepare to fulfill this obligation prior to the source protection plan coming into effect.

Prohibition can apply to both existing and future activities. Most source protection plans provide a timeline by which Section 57 Prohibition applies to existing activities that can vary from 180 days from when the plan comes into effect up to several years (when a plan does not include this date, the *Clean Water Act* default is 180 days after the plan takes effect). Conversely, prohibition of future activities comes into effect on the day the Source protection plan takes effect. For this reason, municipalities need to establish procedures, appoint a Risk Management Official and Inspector, and set up a Risk Management Office prior to the plan coming into effect. This section provides information about preparing for prohibition policy implementation.

### i. Municipality Appoints Risk Management Official and Inspector

Each municipality that is required<sup>2</sup> to prohibit activities as specified in a source protection plan must decide who they will appoint to fulfill the role of the Risk Management Official(s) and Inspector(s) as per Section 47(6) of the *Clean Water Act, 2006* (see Section D (iii)). The Risk Management Official is the primary authority responsible for the negotiation of risk management plans under Section 58 of the Act; whereas, Risk Management Inspectors are responsible for ensuring that persons subject to Part IV policies are in compliance with applicable policy requirements. Both officials and inspectors must have received approved training and certification from the Ministry of the Environment. Further details about these appointments and options available to municipalities are provided in Module 1: Establishing a Risk Management Office.

### ii. Risk Management Office

Establishing a Risk Management Office is a requirement under the prohibition policies. The office could be located in the municipal office, health unit or the conservation authority office. The process for setting up the office is explained in detail in Module 1: Establishing a Risk Management Office.

### iii. Staff Training

The required training for the Risk Management Officials and Inspectors is mentioned in Section C (i) and is regulated by the Ministry of the Environment. However, municipalities should

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<sup>2</sup> Refers to municipalities with by-law making authority under the Municipal Act, 2001, respecting water production, treatment and storage.

consider providing additional operational training to all staff that will play a role in building and planning approvals. This training should include planners, building inspectors, clerks and receptionists. These staff members will need to be aware of the location of vulnerable zones where prohibition policies apply. This will allow them to involve the Risk Management Official immediately should the need arise. Staff should also have a clear understanding of the rationale that supports the prohibition policies.

#### **iv. Communications**

As with any program, communication is critical to ensure that the objectives of the program, including internal and external communication, are being met.

##### **Internal**

Regardless of who is administering prohibition policies, municipalities and conservation authorities (source protection authorities) will benefit from working closely together to create internal processes for communication. The conservation authorities can help explain the rationale for prohibition, develop a strategy to prioritize implementation and annual reporting of the policies. Municipalities can explain how best to integrate the Section 59 policies into their process to catch proposed prohibited activities before they go through the approval process. Together they can develop other approaches and processes to implement prohibition.

##### **External**

Part IV Prohibition needs to be articulated to affected property owners and/or tenants so they know what to expect, how the policy will be implemented, and how it will impact their activities. Communication can happen through letters, phone calls, site visits, or a combination of all three. The *Clean Water Act, 2006* mandates consultation with affected landowners throughout the development of the Assessment Report, and the source protection plan. This previous consultation should mean that people affected by the prohibition policies are already aware of the implications. However, after the source protection plan comes into effect, the timing and the extent of the prohibition policies will still need to be communicated.

Most regions have education and outreach policies that, when implemented, will help to create awareness of the vulnerable areas and which activities are prohibited. Information about which activities are prohibited and where they are prohibited can be provided on source protection region/area websites with links to that information from municipal websites.

#### **v. Site Inspection Protocols**

The legislation gives the Risk Management Inspector the authority to enter property and conduct site inspections to ensure compliance with Section 57 Prohibition policies.

Every property, whether it is industrial, residential, recreational, agricultural, or another land use, has unique characteristics with respective safety and operational concerns. It is therefore important to have an understanding of the typical protocols common to all types of property,

and the protocols unique to the common types of property that the Risk Management Inspector will be visiting. It is also very important to communicate with the landowner to better understand the unique characteristics of the particular property on which the site inspection is being conducted. A municipality, or the body responsible for enforcement, may choose to formalize the protocols around site visits by passing by-laws or regulations establishing and governing inspection programs (see Appendix A - Rules Governing Inspections as Defined under Subsection 62 (3-7, 11) of the Act). See Module 5: Establishing a Risk Management Office for more details.

### **Part of RMO/I Training**

As noted above, all Risk Management Officials and Risk Management Inspectors are required to obtain the appropriate training and certification prior to undertaking responsibilities under Part IV of the *Clean Water Act*, including Section 57 site inspections. This training will provide inspectors with an in-depth understanding of the rules and powers under the Act for conducting site inspections. Some of this information is highlighted in Section C (vi). However, course instructors, training manuals, and the legislation should be consulted for more detailed information.

## **vi. Useful Supporting Documents**

### **Source Protection Plan**

The local source protection plan should be referenced to determine which types of drinking water threat activities are subject to Section 57 Prohibitions and the geographic areas in which the policies apply. In addition, the Tables of Circumstances created under the Technical Rules for the Preparation of Assessment Reports and corresponding summary tables describe the specific situations, areas and vulnerability scores that can determine whether or not each activity is a significant threat. For example, a 900 litre furnace oil tank in a WHPA-A is only a significant threat if it is below or partially below grade. Therefore, it would not be possible to use a Section 57 Prohibition policy to prohibit a tank that was above grade in a WHPA-A. The Risk Management Official and Inspector would determine which local properties may be subject to prohibitions.

### ***Clean Water Act, Regulations***

Part IV of the *Clean Water Act* (and relevant regulations) should be referenced to determine the legislative roles and responsibilities for the implementation and enforcement of Section 57 Prohibitions.



## **D. Prohibition – Roles and Responsibilities**

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This section examines the various roles and responsibilities of those impacted by Section 57 Prohibition policies.

### **i. Property Owner and/or Person Engaged in the Activity**

Consultation and communication is particularly important with prohibition policies because there could be significant financial implications from prohibiting an existing activity. Local source protection authorities were required to contact people engaged in significant threat activities several times during the Assessment Report and source protection plan writing process. As a result, it is expected that most impacted people should have been made aware that an activity on their property will be prohibited prior to the approval of the source protection plans.

Affected property owners should also be aware that the Risk Management Official may be contacting them to confirm that they are in fact involved in an activity that a source protection plan prohibits using Section 57 Prohibition. It will be the responsibility of the property owner and/or the person engaged in the prohibited activity to cease this activity in the timeframe the policy specifies.

### **ii. Risk Management Official**

Appointed Risk Management Officials have a key role related to prohibition policies in the source protection plan. The officials must have received approved training and certification from the Ministry of the Environment. The training includes “powers of entry” training as specified in Section 62 of the *Clean Water Act, 2006*. Risk Management Officials must be versed in the Act and the source protection plan policies and have an understanding of which activities are being prohibited, the specific circumstances under which they are prohibited, where they are prohibited, and when the prohibition takes effect.

It is anticipated that the Risk Management Official will contact all individuals involved in an activity affected by prohibition policies to inform them of the policies and to collect relevant information related to the activity. For existing activities this initial contact will also provide an opportunity to discuss a timeframe in which the activity must cease.

For future activities affected by prohibition policies, Section 59 Restricted Land Uses policies (if used in local source protection plans) provide the Risk Management Official the opportunity to pre-screen all planning and development applications to for activities that would not be allowed by prohibition policies. The purpose of this function is to stop any further review or approval processes if the proposed activities are not allowed.

The Risk Management Official also has a responsibility to report annually to the source protection authority on the number of activities prohibited through Section 57 policies (see Section 81 of the *Clean Water Act* and Section 65 of Ontario Regulation 287/07 for all reporting details). The purpose of this report is to assist the source protection authority in understanding how implementation of source protection plan policies is progressing, in order to determine whether the Section 57 Prohibition policies are effective in addressing significant drinking water threats (see Module 4: Annual Reporting and Information Management for additional information).

### **iii. Risk Management Inspector**

Like the Risk Management Official, the Risk Management Inspector must have received approved training and certification from the Ministry of the Environment. The training includes “powers of entry” training as specified in Section 62 of the *Clean Water Act, 2006*.

It is anticipated that the Risk Management Inspector will arrange periodic inspections of properties that could be involved in prohibited activities to ensure that these activities are not taking place. These inspections may or may not coincide with an inspection required for a risk management plan. The Risk Management Inspector may choose to conduct inspections based on risk and on a random basis rather than scheduled inspections. The Risk Management Inspector training course addresses requirements of the Act, as well as health and safety concerns that may arise while conducting inspections.

In the event that an individual or corporation is not in compliance with a Section 57 Prohibition policy, the Risk Management Inspector may issue an order in an attempt to bring them into compliance. If the individual or corporation fails to achieve compliance, they may be prosecuted. Upon conviction, an individual may be fined not more than \$25,000 for the first offence for each day, or part of a day, that the offence occurs, and \$50,000 per day for any subsequent offence. These fines are doubled for corporations guilty of an offence. The Risk Management Inspector may need to obtain a warrant from a court if the Inspector cannot gain access to the property to conduct an inspection. If the Risk Management Inspector has reasonable grounds to believe that a person is engaging in a prohibited activity contrary to Section 57 Prohibition policies, the inspector may issue an enforcement order requiring the person to comply with the prohibition, by ceasing to engage in that activity. The *Clean Water Act* provides the Risk Management Inspector the authority to prosecute a person who fails to comply with Section 57 Prohibition.

The Risk Management Inspector will need to provide details related to the number of inspections administered each year and any compliance issues so that those details can be included in the annual report prepared by the Risk Management Official.

#### **iv. Municipalities**

A municipality that has the authority to pass by-laws respecting water production, treatment and storage under the *Municipal Act, 2001* is identified as the enforcement authority under the *Clean Water Act*. This means that the municipality is responsible for enforcing the Part IV tools under the Act, including Section 57 Prohibition policies, if the source protection plan includes such policies for that municipality. Alternatively, the *Clean Water Act* includes provisions allowing two or more municipalities to jointly enforce the Part IV, or to enter into an agreement with other bodies, such as neighbouring municipalities, boards of health, planning boards, or a source protection authority. Once such an agreement is established, the other body must enforce the Part IV policies.

Municipalities will find it helpful to have mapping available within the planning and building permit departments and online that indicate areas where Part IV policies apply by the time the approved source protection plan takes effect. Official plans and zoning by-laws will be amended over time to conform to the significant threat policies in plans; however, this process will take time to complete.

#### **v. Source Protection Authority**

The source protection authority is required to collect annual reports about Part IV policy implementation from the Risk Management Officials and prepare a summary of the reports. This summary is included in the annual progress report prepared by the source protection authority under Section 46 of the *Clean Water Act*. The summary, along with other contents of the annual progress report, is made available for review by the source protection committee (see Module 4: Annual Reporting and Information Management). Once the committee has reviewed the annual progress report, the source protection authority sends it with any comments from the committee to the Director of the Source Protection Programs Branch at the Ministry of the Environment. As soon as reasonably possible, the annual progress report will be made public after it is submitted to the Director (as per *Clean Water Act, 2006* Section 46(5)).

The source protection authority will be a great resource and will be able to answer policy or technical questions the Risk Management Officials and Inspectors may have. As well, the source protection authority may assist the municipalities with any education and outreach work related to Section 57 Prohibition policies to ensure consistency and accuracy of any information provided.

#### **vi. Source Protection Committee**

The source protection committee will review and provide any necessary comments on the annual progress report prepared by the source protection authority. The information in the report should help the committee determine whether or not the objectives set out in the source protection plan are being achieved.

The source protection committee may also assist the municipalities with any education and outreach work related to Section 57 Prohibition policies, to ensure consistency and accuracy of any information provided.

### **vii. Businesses and Contractors**

In many cases the Section 57 Prohibition policies will pertain to substances such as fuel, pesticides, fertilizers and hazardous chemicals. Any businesses or contractors involved in supplying or installing equipment to handle or store these materials should be aware of the locations where prohibition is in effect, so that they are not contributing to the contravention of a prohibition policy.

## **E. Section 57 Prohibition – Implementing Process**

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### **i. Identification of Where Section 57 Prohibition Applies**

Each municipality should be very aware of the Section 57 policies and where they apply in their region. WHPAs and IPZs may be included in their Official Plans and zoning maps. Clerks, planners and building inspectors should be aware of and refer to the related maps located in the Assessment Report when considering planning or development applications in areas where Part IV applies. They should also refer to the Section 57 and 59 policies in the source protection plan to determine which activities are prohibited and in which locations (see Sections B (ii) 1 and 2, and C (vi) 1 for additional details).

### **ii. Notification to All Property Owners or Persons Engaged in Activities Subject to Section 57 Prohibition**

It is anticipated that the Risk Management Official will contact anyone engaged in an existing activity that is affected by Section 57 Prohibition policies, in order to inform them of which activities are prohibited and the date by which the activity must cease.

### **iii. Section 59 Restricted Land Uses Policy and Notice**

A Section 59 restricted land uses policy designates land uses in an Official Plan or zoning by-law in the area where Part IV (Section 57 and Section 58) applies. This means that development applications (applications in the area where Section 59 applies and for the land uses named in the policy, such as commercial and industrial uses) need to be screened by the Risk Management Official prior to processing an application. See Figure 2 for an example of the decision-making process municipal planning staff could follow when processing development applications that are subject to Section 59 land use policies.

The Risk Management Official will evaluate the application and determine whether Section 57 applies to the application. If the application involves an activity that is designated as prohibited

under Section 57, the Risk Management Official will not be able to issue a Section 59 notice to proceed with the application. The applicant may either amend the application to eliminate the prohibited threat activity, or pursue the application in a different location where Part IV does not apply, or abandon the application altogether.

If the Risk Management Official reviews the application and is satisfied that Section 57 does not apply, the Official will issue a Section 59 notice to proceed with the application. The Section 59 notice will be part of the complete application requirements and is submitted with the development application (under the *Planning Act* or a building permit) along with any other required information. This means that the Section 59 notice is required in areas where Section 59 applies and the application cannot proceed until the notice is issued. *It is important applicants are made aware that the planning process for their municipal development application cannot proceed to completion until a Section 59 notice has been provided by the Risk Management Official.*

Each municipality that is affected by Section 59 restricted land uses policies will establish an internal process to determine if any planning, development or building applications are related to an area where Section 57 Prohibition policies apply and, if so, how to integrate this review with development review processes. This process will require excellent communications between the Risk Management Official, the municipality, and the proponents.

In jurisdictions with two tiers of municipal government, where the lower tier is responsible for certain applications under the *Planning Act* (i.e. processing building permits) and the upper tier is responsible for Part IV authorities, the two municipalities will need to establish processes to ensure development applications are reviewed by the Risk Management Official in areas where Section 59 applies.

This process is envisioned to operate similarly with existing reviews in a two-tier structure; for example, when an application for a building permit is made at the lower tier and requires an entrance permit onto a regional road from an upper tier. Similarly, for applications in the area where Section 59 applies, the applicant will be required to obtain a Section 59 notice to proceed with the application as part of the complete application requirements. It is critical that all those involved in the process understand the areas where Section 57 and Section 59 policies apply (see sections B (ii) 1 and 2 for additional details).

#### **iv. Inspections**

The Risk Management Inspector will determine when inspections related to Section 57 Prohibition policies will take place. Risk Management Inspectors are anticipated to prioritize site inspections with respect to risks posed by the prohibited activity and to the general public, and decide the frequency of inspections based on a number of factors. For example, prohibited activities that are highly visible probably do not need to be inspected as often as activities that take place within a building. The inspector may also have reason to believe the certain

individuals are not willing to comply with prohibition policies. In that case, more frequent and random inspection may be justified.

The inspector will follow the powers of entry (Section 62 of the *Clean Water Act, 2006*) protocols and training if entry to the property is necessary to conduct the inspections.

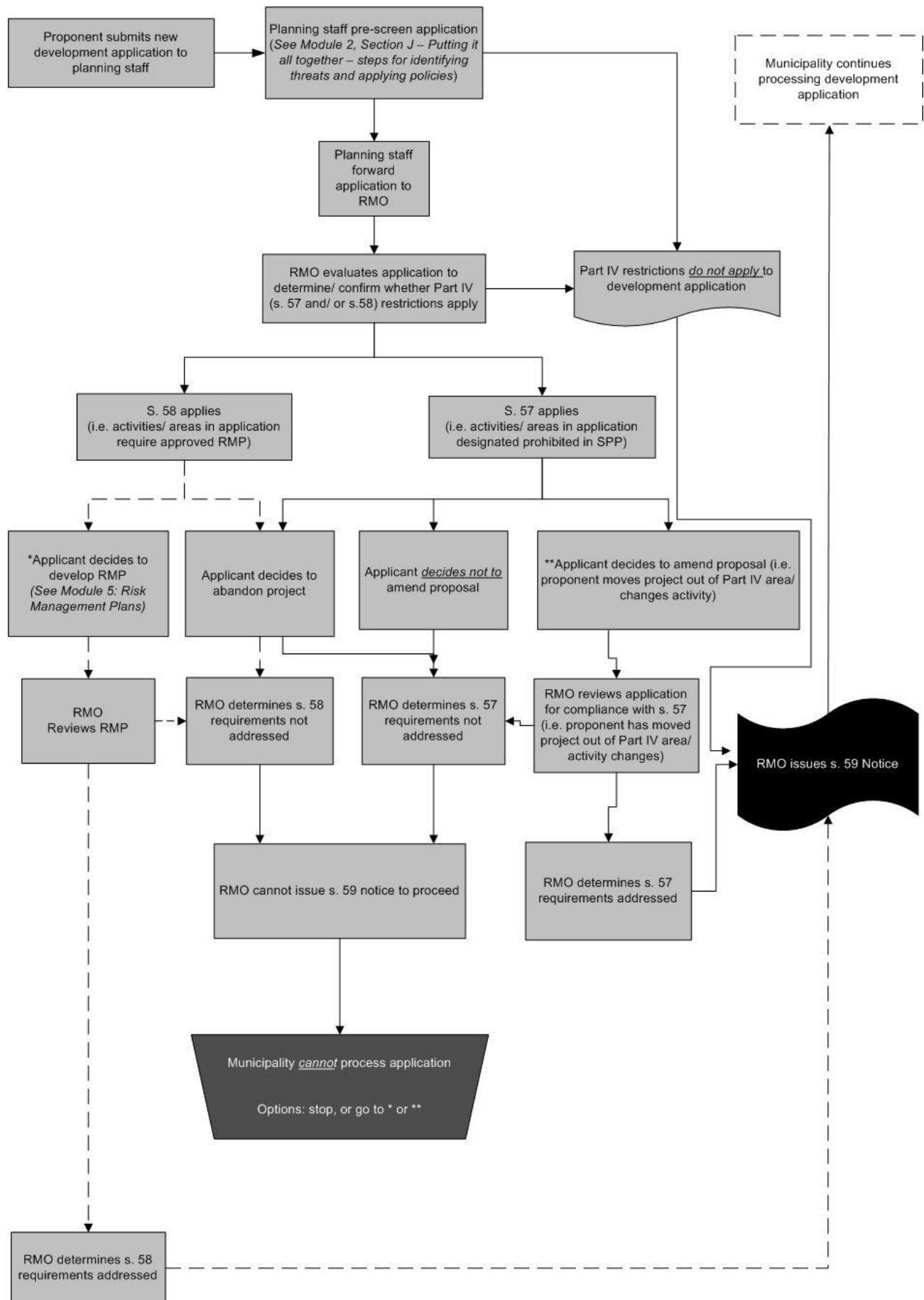


Figure 2: Integrating the Municipal Planning Review Process with Part IV Policy Tools

## Appendices

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### **Appendix A - Rules Governing Inspections as Defined under Subsection 62 (3-7, 11) of the Act**

#### **Risk Management Inspectors:**

- Shall not enter a room used as a dwelling without consent of occupier or a court warrant;
- May be accompanied by any person possessing expert or special knowledge that is related to the purpose of the entry;
- Power to enter property may be exercised at any reasonable time;
- Power to enter property shall not be exercised unless reasonable notice of the entry has been given to the occupier of the property;
- Risk Management Inspector may have to obtain an inspection warrant from a court if the Risk Management Inspector cannot gain access to a property in order to conduct the inspection (e.g. the property owner is actively obstructing entry);
- No force can be used for any purpose.

#### **Powers of a Risk Management Inspector during inspections defined under subsection 62 (8),**

#### **Risk Management Inspectors may:**

- Make necessary excavations (i.e. excavating the soil);
- Require that anything be operated, used or set in motion under conditions specified by the person;
- Take samples for analysis;
- Conduct tests or take measurements;
- Examine, record or copy any document or data in any form, by any method;
- Require the production of any document or data, in any form, related to the purpose of the entry;
- Remove from a place documents or data, in any form, produced under clause (f) for the purpose of making copies;
- Retain samples and copies obtained under subsection 62(8) for any period and for any purpose related to the enforcement of Part IV; and
- Require any person to provide reasonable assistance and to answer reasonable inquiries, orally or in writing.



## **Special considerations**

Before conducting site inspections on private property, the Risk Management Inspector should first prepare for the visit by reviewing the property history. The more the inspector knows about the site before visiting it, the more successful the collection of data during the visit will be. Another important pre-inspection step is to contact the property owner/manager to arrange the visit. This should be done a few business days in advance of when the site inspection will be conducted, and may be preceded by a letter of explanation. Once the inspection has been arranged, consideration should be given to biosecurity and safety issues that could impact the visit.

## **Biosecurity**

Since biological hazards exist in the environment, there is always some risk of contamination occurring during site inspections. However, by following appropriate biosecurity protocols when conducting site inspections, inspectors can ensure that the risk of contamination is reduced to an acceptable level. Biosecurity protocols are particularly important for agricultural properties where disease outbreaks can have serious economic consequences. For agricultural properties, biosecurity is most important for livestock operations and greenhouse facilities. While the risks are considered lower for most crop situations, they are still present. Inspectors should be mindful of the key risk factors which are manure, animal excretions and plant material. Biosecurity involves many steps at different levels which include: import/movement restrictions, industry standards and protocols, vaccination, good husbandry, hygiene, and controlling visitor traffic.

Prior to visiting agricultural properties, Inspectors should call the farm manager to determine biosecurity protocols and parking restrictions. Once the site inspection has been arranged, the general procedure that should be followed when inspectors arrive at an agricultural property is to park vehicles away from barns, traffic areas and feed storage, and not under air intakes or exhausts. Vehicles should be parked facing in the exit direction, and inspectors should wait at the vehicle for the owner or operator to meet them. The owner/operator should be asked if the farm has biosecurity protocols, and any additional measures required by the producer should be respected.

**It is recommended that Risk Management Inspectors possess the following biosecurity equipment for conducting site inspections:**

- Washable or disposable gloves
- Disposable boot covers (heavy gauge 6 mil thickness)
- Washable or disposable coveralls
- Plastic pail and boot brush
- Chemical disinfectant or detergent (e.g. Virkon)
- Container of water (5-10 L)
- Spray bottle of disinfectant solution
- Germicidal hand lotion
- Garbage bags
- Paper towels
- N95 dust mask and hair nets

In general, when conducting site visits on agricultural properties, inspectors should wear clean washable or disposable footwear and not enter any barn or facilities that house animals unless necessary. Coveralls should be worn in animal pastures, and lab coats should be worn in greenhouses as required. All contaminated clothing and equipment should be cleaned or disposed of when leaving the property. Clean biosecurity equipment should be stored separately from dirty equipment in the vehicle, and both the interior and exterior of the vehicle should be kept clean of contaminated materials. If more than one farm site inspection is to be made on the same day, vehicles should be washed in-between visits. Property owners should always be consulted first to determine any property-specific protocols that should be followed.

### **Safety**

An important safety issue for many agricultural and industrial properties is the accountability of individuals who are visiting or have visited their site. Inspectors should expect to sign-in and out at most industrial and agricultural properties when conducting inspections. Inspectors should also ask the property owner whether any safety protocols or regulations apply to the property in advance of the inspection. Personal protective equipment, such as safety goggles or hearing protection, may be required for anyone entering the property.

While conducting Section 57 site inspections, health and safety should always be a priority. In general, if inspectors do not feel safe at any time during a visit, they should leave, postpone the visit, and discuss the matter with their employer. The following are some recommendations that will help ensure safety during site inspections:

- Ask about any special safety procedures
- Carry a cell phone at all times (unless they cause specific hazards to the facility)
- Notify others of the inspection location and check-in with someone before and after visits
- Consider working in pairs
- Be cautious of dogs or other pets on the property
- Take weather related issues into account
- Assess risks to yourself (i.e. hazardous material)
- Have a site official accompany you at all times
- Close fitting clothes should be worn when working with or around moving machinery or equipment

## **Appendix B - Some Terms You Need to Know**

**Agricultural property visit** – In attendance on the agricultural operation, including compounds, laneways, all outbuildings and structures, rooms, pens, walkways, fields, pastures, adjacent watercourses, ditches, drains, or any areas which may contain or be susceptible to contamination by biological hazards that could cause harm to agricultural plants or animals.

**Biosecurity** – The collective measures designed to prevent or minimize the risk to biological system from the introduction and spread of hazards.

**Industrial Spaces** – The use of land or a building on a property for an enterprise or activity involving assembling, fabricating, manufacturing, processing, producing, storing, warehousing or distributing goods or raw materials. Industrial properties also include land that is used for: the transportation of goods or people by railway or by airplane; the production of oil or gas, or mining or quarrying; in connection with a water treatment or sewage facility, or a waste disposal site; in the transformation or generation of electricity; as a salvage yard, including an automobile wrecking yard or premises.

**Personal Protective Equipment (PPE)** – Protective equipment (e.g. safety goggles) that inspectors may be required to wear to be consistent with on-site safety rules or regulations.

## **Appendix C – Sample Notification – Information Letter for Section 57**

**[Name  
Address  
Date]**

To **[XXXX]**,

You have received this letter because the RMO for the **[Municipality Name]** would like to inform you that the Source Protection Plan for the **[SPArea]** was approved by the Ministry of the Environment on **[XX date]**. The effective date for the Source Protection Plan is **[XX date]**.

The Source Protection Plan was developed in accordance with the *Clean Water Act, 2006* and its supporting regulations. The purpose of *the Act* is to protect Ontario's existing and future drinking water sources, in order to safeguard human health and the environment. A key focus of the legislation is the preparation of locally science-based Assessment Reports and Source Protection Plans.

You are encouraged to review the provincially approved **[Area Name]** Source Protection Plan, which is comprised of both the scientific basis for identifying significant threat activities (in the form of the Assessment Report) as well as the local policies designed to address them. The Plan can be found online at [www.conservation-ontario.on.ca](http://www.conservation-ontario.on.ca) or a hard copy can be obtained via the (Municipal Clerk, Risk Management Official, etc).

As you should already be aware, one or more of the activities and areas on your property has been designated in the Source Protection Plan as being subject to Section 57 prohibited activities. Policy # **[XX]** in the Source Protection Plan states that once a Source Protection Plan is in effect, an activity that has been designated as prohibited must cease within the area specified in the Plan on the property address above. The Source Protection Plan sets a date of no longer than **[x]** months for the activity in the designated area to cease.

In order to better understand what is required, please contact the Risk Management Official's Office at **[xxx-xxx-xxxx]**, anytime between **[Monday and Friday, X:XX am to X:XX pm]**, to discuss the specific contents of this notice and to request additional information.

If you wish to call into question the designation of the above activity at that location as a significant drinking water threat, you may do so by submitting an application and completing a site-specific Risk Assessment, under Section 60 of the *Clean Water Act*. For more information on this process, please contact your local Risk Management Official/municipality.

Thank you for your ongoing cooperation in protecting our local sources of drinking water. We look forward to speaking with you in the near future.

***[Provide Contact Information]***