ONTARIO STONE, SAND
& GRAVEL ASSOCIATION

Essential materials for building a strong Ontario

September 21, 2009

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(Sent via email to: debbie.scanlon@ontario.ca)

Dear Ms. Scanlon,

Re: Source Protection Plans under the Clean Water Act, 2006: A Discussion Paper on the Requirements for the Content and Preparation of Source Protection Plans (Discussion Paper), Registry Number: 010-6726

The Ontario Stone, Sand & Gravel Association (OSSGA) is pleased to provide comments with respect to the Ministry of the Environment's (MOE) Policy Proposal re: *Source Protection Plans under the Clean Water Act, 2006: A Discussion Paper on the Requirements for the Content and Preparation of Source Protection Plans* (Discussion Paper), Registry Number: 010-6726, posted on the EBR on June 25, 2009.

Who we are

OSSGA is a non-profit industry association representing over 250 sand, gravel, and crushed stone producers along with suppliers of valuable industry products and services. Collectively, our members supply the majority of the approximately 167 million tonnes of aggregate produced and consumed in the province in 2008 to build and maintain Ontario's infrastructure. OSSGA works in partnership with government and the public to promote a safe and competitive aggregate industry contributing to the creation of strong communities in the province

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General comments

OSSGA continues to be supportive of planning for the protection of clean drinking water sources for the citizens of Ontario, specifically the Ministry of the Environment's (MOE) science-based approach to source protection planning, and believes that aggregate extraction is compatible with the goals and objectives of the *Clean Water Act, 2006* (CWA).

OSSGA encourages MOE to continue to provide strong direction and set clear, consistent and scientifically supportable requirements and directions for Assessment Reports (ARs) and Source Protection Plans (SPPs). Water is a resource of provincial interest (similar to aggregate resources); therefore OSSGA believes that the provincial government should maintain ultimate responsibility for the planning and protection of drinking water sources.

Detailed comments

Section 2: Policy Approaches to Reducing Risks Posed by Drinking Water Threats

Section 2.1: Education and Outreach
(pages 10-11)

OSSGA supports education and outreach as a key policy approach to protect source water. Industry associations, such as OSSGA, are oftentimes suitable vehicles to assist MOE and Source Protection Committees (SPCs) to develop and deliver education and outreach programs, and are already engaged in this work.

Section 2.2: Incentive Programs
(pages 11-12)

OSSGA supports incentive and recognition programs as another key policy approach to protect source water. As part of its Industry Advancement Awards program, OSSGA has established an environmental achievement award, which provides an opportunity to formally recognize achievements in the implementation of measures to protect source water.

Section 2.3: Land Use Planning Approaches
(page 13 - inset box)

> *Municipalities are therefore in a position to use the information generated through the assessment report to inform the development of their official plan policies, and to use restrictions on development and site alteration to protect their municipal drinking water sources. In fact, some municipalities across the province already do so.*
>
> *While the Clean Water Act, 2006 requires municipal official plans, zoning by-laws, and other Planning Act decisions to conform with significant threat policies set out in the source protection plan, the Clean Water Act, 2006 does not limit municipalities from moving forward today to direct or limit land use as appropriate, using their powers under the Planning Act.*

Notwithstanding that the CWA does not constrain municipalities from limiting land use, or restricting development and site alteration, pursuant to the *Planning Act* in order to protect municipal drinking water sources, OSSGA continues to be concerned that some municipalities are not applying the best available science that has been developed by the provincial government in support of the CWA. This has the potential to lead to inconsistent approaches between municipalities, and will create inconsistencies between SPPs and Official Plans (OPs) (which must conform to the significant threats policies within SPPs).

In OSSGA's opinion, the CWA and its Regulations represent the best scientific practice for protecting drinking water sources. OSSGA submits that municipalities should be required to recognize the provincial government's current science and approach to identifying significant threats, and the provincial government should not allow municipalities to unnecessarily restrict land uses that do not represent significant threats in vulnerable areas.

We are concerned that a number of municipalities are currently developing OP policies based on partial *information generated through the assessment report*, while ignoring other information generated through the assessment report that does not fit within the political mandate.

Section 2.3: Land Use Planning Approaches
(pages 14 & 15)

> *When policy developers rely on planning approaches, they may go about it in two ways. The first approach is to develop policies that contain detailed actions to reduce the risk of a drinking water threat. The types of threat activities planning approaches may affect include:*
>
> - *threats related to the siting / placement of structures (e.g., structures that store substances prescribed as drinking water threats in Section 1.1. of the General regulation under the CWA (O. Reg. 287/07))*
> - *threats related to servicing (e.g., septic systems)*
> - *water quantity threats that reduce the recharge of an aquifer (where the associated risk reduction measures in the plan policy relate to restricting the location or scale of development, impervious surface, or the exterior design of a development if related to a sustainable design element (e.g., use of a green roof or permeable paving stones to reduce water quantity risks))*
> - *threats related to brownfields (e.g., contaminated sites; only where the policy relies upon a municipal incentive program under the authority of the Planning Act, like the Community Improvement Plan, to remediate and redevelop the brownfield).*
>
> *The second approach is to develop a less-detailed policy that limits the land use that is associated with any particular threat or group of threats in specified locations. A policy that limits a broad land use in specified locations may be useful if policy developers wish to keep a group of activities common to that land use away from particular areas.*

While OSSGA understands the rationale for the second approach, noted above, given that widespread confusion exists with respect to the relationship between vulnerability, threat and risk, we are concerned that this type of approach is currently being used to attempt to prohibit potentially contentious land uses, including those that do not pose a threat, i.e., aggregate extraction. OSSGA recommends that the provincial government direct municipalities to limit the use of this approach to that of a last resort, subsequent to demonstrating that less draconian approaches are not effective to address identified threats associated with the land use.

In addition, it may also be worth articulating in the final Paper that local and regional municipalities are encouraged to give priority to land uses that are compatible with, and/or enhance the protection of drinking water sources in designated vulnerable areas. For example, most sand and gravel pits increase clean groundwater recharge to drinking water sources and therefore may be encouraged through planning policy to locate within wellhead protection areas. In fact, there are a number of municipal wells that are currently located within or adjacent to sand and gravel pits in Ontario and have coexisted with the pit peacefully for decades.

Section 2.4: New or Amended Provincial Instruments Prescribed in Regulation
(page 15 – 2nd paragraph)

> *In addition to the CWA and the Planning Act, Ontario has extensive legislation in place to protect the environment. As a result, it is important to note that many threats are already regulated through provincial instruments. Some examples of instruments include Certificates of Approval for waste disposal and management under the Environmental Protection Act, Permits to Take Water and Certificates of Approval under the Ontario Water Resources Act, and Aggregate Licences under the Aggregate Resources Act.*

OSSGA supports policy developers making existing instruments their first choice to regulate potential threats to source water. Regulatory overlap and process duplication is an unnecessary and significant burden to the economy.

Section 2.4: New or Amended Provincial Instruments Prescribed in Regulation
(page 16 - middle paragraph)

> *The Ministry is proposing to prescribe existing provincial instruments that relate to activities on the land that could reasonably be expected to have an impact on the quality or quantity of drinking water sources—specifically, provincial instruments related to the prescribed list of drinking water threats in Section 1.1 of the General regulation (O. Reg. 287/07).*

OSSGA submits that another important example of an existing instrument that regulates prescribed threats is a Liquid Fuels Handling license pursuant to the *Technical Safety and Standards Act* and Liquid Fuels Handling Code.

It is appropriate to rely on existing legislation, regulations and instruments, as a policy approach to deal with fuel-related threats since they are designed to be protective of water resources.

In the case of regulating activities that occur within aggregate extraction sites that may potentially be considered threats, we submit that it is appropriate to prescribe the following provincial instruments pursuant to the CWA:

- Certificates of Approval for waste disposal and management pursuant to the *Environmental Protection Act*:
- Permits to Take Water pursuant to the *Ontario Water Resources Act* :
- Certificates of Approval pursuant to the *Ontario Water Resources Act*: and,
- Licenses pursuant to the *Technical Safety and Standards Act* and Liquid Fuels Handling Code.

OSSGA also recommends that MOE provide further guidance with respect to what aspect of the existing instruments will be allowed to be revisited and what further requirements can be applied.

However, OSSGA does not support licences pursuant to the *Aggregate Resources Act* (ARA) being prescribed within a Regulation as:

- Aggregate extraction is not a prescribed drinking water threat;
- Notwithstanding Sections 39 (7) & (8) and 43 (1) (2) & (3) and 44 (1) & (2) of the *Clean Water Act, 2006*, we are concerned that if licences pursuant to the ARA are prescribed in Regulation that agencies and individuals (other than the Ministry of Natural Resources), will attempt to use provisions within the CWA to review existing approved licences and future licence applications; and,
- Provincial instruments exist that regulate all activities that occur within an aggregate operation that are currently prescribed as threats, or might potentially be prescribed as a threat.

Section 2.5: New Policy Approaches to Address Risks to Source Water: Risk Management Plans, Prohibition, and Restricted Land Uses

Section 2.5.1: Risk Management Plans – Regulated Activities
(page 18 - inset box & page 19 – 2nd paragraph)

Local risk management officials will be granted considerable authority to regulate. How will the provincial government ensure that these officials have adequate training and experience to apply appropriate science, consistent with the Regulations as established for the preparation of the ARs and SPPs, to their decision-making?

Section 2.5.2: Prohibition
(page 20 - question box)

We agree with the concept of avoiding the use of outright prohibition to address existing threats unless there is no other alternative. Prohibiting land uses and activities is a drastic action that has significant economic consequences, and therefore should only be considered as a last resort, and only when it has been demonstrated that no other alternative exists.

Given the potential financial harm to persons who are currently conducting various activities, it seems reasonable and fair to establish limits on the SPCs' ability to prohibit existing businesses from continuing to operate to ensure that SPCs fully explore all options before adopting prohibition as a policy within an SPP.

Many landowners are unaware of the source protection planning process and do not have the legal or scientific understanding, nor the financial means of obtaining same, to address policies within SPPs that may potentially adversely impact their livelihood.

Without strong direction from MOE, the potential exists for some SPCs to allow activities with reasonable measures to protect source water, while other SPCs may prohibit the same activities. This would create a form of inequity across the province and may result in competitive disadvantages.

In addition to protecting source water protection and ensuring a consistent approach across the province, OSSGA submits that it is important to establish regulatory certainty.

Prior to prohibiting existing activities, OSSGA submits that SPPs should include a requirement that landowners/operators are afforded an opportunity to establish risk management plans that include reasonable and effective actions the owner/operator is able to take to protect source water, rather than placing landowner/operators in the position of attempting to dispute an automatic prohibition.

SPCs should be encouraged to be creative, to find the most cost effective and least administratively burdensome means of protecting source water, rather than adopting prohibitions as a simplistic approach to meeting the goal of preparing a SPP by the deadline.

Section 2.5.3: Restricted Land Uses
(page 23 - question box)

> ***QUESTIONS:***
> *Do you agree with the proposal under consideration to allow source protection committees the broad use of the restricted land uses approach set out in Section 59 of the CWA? Are there certain land uses that you believe do not relate to particular activities identified as prescribed drinking water threats in Section 1.1 of the General regulation under the CWA (O. Reg. 287/07)?*

OSSGA does not support the proposal, noted above, to allow SPCs the broad use of the restricted land uses approach set out in Section 59 of the CWA.

OSSGA supports a focus on *activities* that represent significant threats to drinking water rather than land uses, as many of the prescribed drinking water threats can occur in association with a number of diverse land uses.

Section 2.8: Additional Content Requirements Under Consideration for Threat Policies
(page 25 – 2nd bullet)

Given that the CWA enables SPCs to prohibit existing activities and that *Prohibiting activities that are already taking place can be very costly and have serious implications for the business and/or property owner(s) affected*, OSSGA strongly agrees that a rationale for policy recommendations in the SPPs be required to be documented and,

furthermore, that the rationale should be based on the science and approach identified within the Regulations. Additionally, OSSGA recommends that the provincial government carry out a technical review of these recommendations to confirm that they are adequately based in science.

It is imperative that the principles of accountability and transparency be integrated within the source protection planning decision-making process, given that SPCs have been granted considerable authority through the CWA, and have the ability to materially impact people's lives.

Conclusion

OSSGA looks forward to further discussions with MOE as we collectively work through the source protection planning process. If you have any questions or require further information, please feel free to contact the undersigned.

Yours truly,

Jessica Annis
Environment & Resources Manager

Copy to: Brian Messerschmidt, Ministry of Natural Resources