

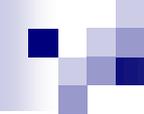


When the Rubber Hits the Road:

Legal Implications of Implementing
Source Water Protection
Ontario Water Works Association
March 2, 2016

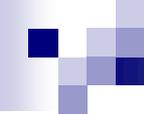
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Overview: Municipal Challenges of Implementation

- A New Role for Municipalities
- No Precedents
- Conflict Potential - Affects Existing Rights
- Overlap with *Planning Act* Approvals
- Decisions can be Appealed
- Uncertain resource needs



The Regulatory Tool Box

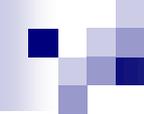
1. Regulating Existing Activities

- By Agreement with RMO- s. 58 (5)
- By Application to RMO– s.58 (11)
- By Order of RMO – s. 58 (10)

2. Restrictions on New Land Uses – s. 59

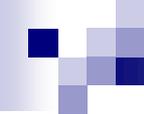
The Enforcement Tool Box

1. Order to Report – s. 61
2. Inspection Powers – s. 62
3. Enforcement Orders – s.63
4. “Causing the Thing to be Done”
 - ❑ RMO power to take action – s. 64
 - ❑ Order to Pay (Cost Recovery) – s. 67



Regulatory Function (RMPs, s. 58): Potential Challenges

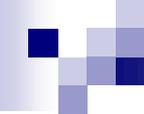
1. Resistance and lack of knowledge – Existing businesses
2. Potential for Appeals/legal challenges
3. Lack of in-house Resource/ Expertise



Regulatory Function (RMPs, s. 58): Addressing Challenges

General Approach

- Prior Consultation with Affected Businesses
- Reaching Agreements on RMPS
- Orders (if required) – defensible and effective



Regulatory Function (RMPs, s. 58): Addressing Challenges

Consultation with Affected Businesses

- Prior to Section 58(4) notice if possible

- Resources/Expertise Needs
 - Information packages
 - Consultation vehicles (meetings/open houses/ web presence)

- Encourage consultation with experts

- Discuss Section 59(11) Applications



Regulatory Function (RMPs, s. 58): Addressing Challenges

Reaching Agreement on RMPs

- **Agreement preferable to Order**
- **Developing Consistent Approach/Process**
 - Transparency on approach and criteria
 - Fairness – treat like businesses consistently
 - Based on SPP requirements and criteria
 - Science-based
 - Responsive to reasonable business concerns
- **Potential Resource Needs**
 - Special expertise
 - Legal support
- **Know your bottom line**

Regulatory Function (RMPs, s. 58): Addressing Challenges

Issuing RMP Orders

- **Make sure all statutory procedures followed**
 - Notice – s. 58(4)
 - Opportunity to reach agreement (not required but advisable)

- **Sound legal basis for the Order**
 - Consideration of Section 59(15) Criteria
 - Complies with Source Protection Plan
 - Complies with all relevant regulations, guidelines, rules

- **Sound technical basis for the Order**
 - Based on sound science/appropriate expertise
 - Accurate understanding of activities being regulated
 - Best Industry Practices

- **Resource Needs**
 - Technical Expertise: environmental, business operations, best practices
 - Legal: confirming defensibility in event of appeal
 - MOECC: Experience/ mentoring

RMO Role in Land Use Planning Approvals (s. 59): Challenges

■ **Planning Application Stage**

- Potential disconnect between RMO Review Function into Planning Act application process
- Confusion/ overlap between *Planning Act* and SPP requirements

■ **Potential Conflicts**

- Potential Conflict with Development industry
- Unclear delineation of roles - land use planners (municipal staff and private consultants)

■ **Overlapping Statutory Requirements**

- Potential confusion in interpretation of language: land use change versus activity
- Potential involvement in OMB appeals

■ **Resource/Expertise Needs**

- Review of Planning applications
- Review of Risk Management Plans Applications
- Involvement in Hearings: ERT Appeals/OMB hearing

RMO Role in Land Use Planning Approvals (s. 59): Suggestions to address Challenges

■ **Planning Application Stage**

- Building RMO Review Function into Planning Act application process
- Integration of Planning application processes/forms and SPP requirements

■ **Potential Stakeholder Conflicts**

- Coordination with other RMOs/municipalities
- Consultation with Local development/homebuilder associations
- Consultation with land use planners (municipal staff and private consultants)

■ **Legal challenges**

- Workshops/discussions with lawyers/planners and RMOs seeking consensus on interpretation of statutory requirements
- Staff training and legal advise on involvement in OMB and ERT hearing processes

■ **Resource Needs (Staff and Expertise)**

- Assess and address resource needs for the following functions
 - Review of Planning applications
 - Review of Risk Management Plans Applications
 - Involvement in Hearings: ERT Appeals/OMB hearing
- Potential for Resource sharing amongst RMOs

Enforcement Role:

Suggestions to address Potential Challenges

■ **Conflicting Mandates/Political Pressure**

- In house separation of investigation/enforcement function from regulatory outreach efforts to business
- Policies to separate enforcement function from political influence

■ **Lack of in-house Experience/Expertise**

- Tapping Provincial Enforcement Expertise (in all stages of enforcement)
- Sharing municipal expertise and experience

■ **Addressing Resource Needs**

- Assess resource needs for enforcement functions
- Seek provincial assistance/advise/expertise
- Pooling resources amongst municipalities for enforcement/Appeal functions

Conclusions: The Implementation challenge

1. **The rubber is hitting the road. Trail blazing is difficult. Be prepared for:**

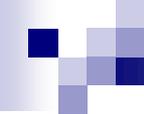
- A new interface with potential resistance: New stakeholders being hit with unprecedented new regulatory program
- New laws, regulations and policies to be interpreted for first time
- Initially fluid and evolving interpretation of the rules
- Appeals/legal challenges are inevitable

2. **Don't underestimate the resources and expertise required,**

- Especially in early days as systems are being set up, while rules are being interpreted, and challenged, for the first time

3. **Draw on all available resources/analogous experience**

- MOECC experience – administrative orders and enforcement
- Pooling resources and expertise of other municipalities
- Drawing in legal and expert assistance



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