



RISK MANAGEMENT SERVICES PROPOSAL FOR RENEWAL OF PART IV TRANSFER AGREEMENT

Prepared by the Essex Region Conservation Authority for municipalities within the Essex Region

INTRODUCTION

Through the Clean Water Act, 2006 (CWA), the local Source Protection Committee (SPC) worked together with ERCA, municipalities, community groups and residents to develop a local, watershed-based Source Protection Plan (SPP) and policies to protect our source water from contamination and overuse, now and into the future. Following an extensive process that included broad public input and municipal consultation, the Essex Region SPP came into effect on October 1, 2015. For more information about the SPP, please [visit our website](#).

The Ministry of the Environment, Conservation and Parks (MECP) prescribed activities as drinking water threats if they may cause contamination that could be harmful to human health. The SPP contains policies to ensure that those activities cease to be, or never become, significant threats, using tools such as education and outreach, land use planning, stewardship, existing provincial prescribed instruments, and tools specific to Part IV of the CWA. Significant threat policies, including those written under Part IV of the CWA are legally binding and must be complied with.

The implementation of Part IV policies is the responsibility of the municipality who, under the Municipal Act, has the ability to pass bylaws pertaining to the treatment and distribution of drinking water. However, the CWA allows municipalities to delegate enforcement of their Part IV responsibilities to another municipality, a board of health, planning board or Source Protection Authority (SPA) using a Source Protection Plan Part IV Enforcement Transfer Agreement.

Part IV tools can only be implemented by trained and certified Risk Management Officials (RMO) or Risk Management Inspectors (RMI), collectively referred to as RMO/I. The CWA and O.Reg 287 outline the training, roles and responsibilities of these persons. Currently, two members of ERCA's staff are trained and appointed as RMO/Is. This ensures access to appropriate resources to perform the duties of the RMO/I as described below as well as the ability to respond in a timely manner to inquiries and applications. In carrying out SPA and CA responsibilities, ERCA staff have already built a collaborative peer network with those responsible for planning and building permit processes, engineering technical support, information technology, water treatment plant operators, neighbouring jurisdictions, and other RMO/Is throughout the province.

In 2015, all municipalities in the Essex Region delegated their Part IV responsibilities to the Essex Region Source Protection Authority. This agreement was amended on October 1, 2018 to extend the period of agreement to December 31, 2021. A second amendment further extended the agreement from January 2, 2022 to December 31, 2024. The RMO/I provides these services on behalf of the municipalities in the Essex Region Source Protection Area (ERSPA), as well as the southernmost portion of the Thames-Sydenham and Region Source Protection Region (TSR), which includes parts of the Town of Lakeshore, the Municipality of Leamington, and the Municipality of Chatham-Kent. The Essex Region Risk Management Office collaborates with the Thames-Sydenham and Region Source Protection Authority to ensure consistent implementation of our similar policies.

At this time ERCA is proposing a new perpetual agreement that will not need to be renewed. The new agreement will begin January 1, 2025, and will renew annually. The agreement will be reviewed every four years. Any municipality may withdraw from the agreement effective January 1 of any given year by providing notice within 120 days of December 31st of the previous year.

SCOPE OF RISK MANAGEMENT SERVICES

Policies written under Part IV of the Clean Water Act can be used to prohibit (s.57) or manage (s.58) existing and future (new) activities identified as Significant Drinking Water Threats (SDWTs). In the Essex Region SPP, activities are only prohibited using s.57 if they are not known to occur in identified vulnerable areas and are not likely to occur in the future. Most of the identified SDWT activities are managed with s.58 Risk Management Plans. Policies written using s.59 of the Clean Water Act, 2006, are intended to act as a screening tool by municipal planning and building staff to identify any potential future (new) SDWTs that would be subject to s.57 or s.58 policies.

Risk Management Plan Negotiation (s.58)

Risk Management Plans (RMPs) are required for existing and new SDWTs. The handling and storage of large volumes of liquid fuel was identified as a SDWT throughout the Essex Region. Other threats were also identified in small areas close to certain drinking water intakes. A RMP describes how these activities can be managed such that the threat to drinking water can be mitigated. It is a negotiated agreement between the RMO and the person engaging in an activity (the proponent). The RMO will work with the proponent to review and describe risk management measures that are already in place and any additional measures needed for the situation, which will be included in the agreed upon RMP. Alternatively, the proponent may wish to have the RMO develop the RMP to establish it either through agreement or by order. If negotiation does not work, the RMO may notify the proponent that they intend to establish a RMP by Order.

Restricted Land Use (s.59)

Section 59 policies were effective when the SPPs took effect and were a priority for implementation because building permits and approvals under the Planning Act and the Building Code Act cannot be issued until it has been determined that a SDWT will not be created and/or has been managed as part of the proposed works. The RMO/I provided municipalities with a written direction to expedite the s.59 screening process for proposed projects under the Planning Act in the Event Based Area (EBA), and a "Building Information Sheet" to be attached to permit applications under the Building Code Act. ERCA has also integrated s.59 screening in our internal processes, allowing for quick turnaround time so that new building projects are not held up by this requirement. The RMO/I will continue to provide this screening service and work with municipalities to find further efficiencies and to ensure that the intent of these policies is being met. The RMO/I updates the written direction from time to time and offers refresher training to municipal staff by request.

Site Specific Risk Assessment

A proponent can undertake their own Site Specific Risk Assessment (SSRA) if they question the Risk Assessment completed in the approved Assessment Report. An SSRA would be conducted by professionals retained by the proponent and would be completed according to the same technical rules which guided the Assessment Report. It would also be based on guidance and requirements to be provided by the Province.

In the unlikely event that a proponent chooses to conduct an SSRA, the RMO will be required to review and accept the analysis or have access to appropriate professionals to review the work. These situations would be considered on a case-by-case basis and would be considered extraordinary costs. Should these situations arise, the municipality would be immediately notified and consulted. To date, no SSRAs have been completed in the Essex Region.

Compliance

The CWA provides the regulatory tools to ensure compliance with both s.57 (Prohibition) s.58 policies (Risk Management Plans). The CWA allows the RMO/I to issue orders following due notice. These orders can include establishing a RMP, forcing compliance with a RMP or, if appropriate, causing things to be done and recovering costs. In addition to these powers, the CWA provides the RMO/I with similar enforcement tools to Building Officials, By Law Enforcement Officers and other Provincial Offenses Officers. These include seeking a warrant to gain access to property and the ability to lay charges.

There are currently over 100 established RMPs in the Essex Region and the portions served in the Thames Sydenham and Region. Compliance monitoring will be conducted for all existing RMPs. It is not anticipated that many compliance issues will arise that require legal action. Should these situations arise, they would be considered extraordinary costs and the municipality would be immediately notified and consulted.

Education & Outreach

The RMO/I also provides education and outreach to landowners through their threat verification site visits and subsequent negotiation of RMPs. A package is provided to the landowner with site specific information, general information about the Source Water Protection Program and a sticker to be placed on the fuel tanks indicating that the tank is in a vulnerable area and includes the number for Spills Action Center. The RMO/I also provides training for municipal staff as needed and can act as a liaison to provide additional education material either about the Source Protection program or other services provided by ERCA and/or the municipalities.

Monitoring & Reporting

The CWA requires the RMO/I to prepare and submit an annual report on their activities. The CWA contains specific details about the required reporting elements for which the MECP has provided templates and a database. RMO/I are also required to report to each Source Protection

Authority (SPA) in their jurisdiction. For some municipalities in the Essex Region, this includes both the Essex Region SPA and the Thames-Sydenham and Region SPA. The RMO/I also prepares a more fulsome annual report for municipalities detailing the activities undertaken by the RMO/I in the previous year. ERCA uses an internal information management tool to effectively and efficiently record data, track records, analyze and report on the program. All annual reports are publicly available on our [website](#).

COST ALLOCATION

Cost allocation and recovery is broken down into three parts:

- Cost Category A -an equally allocated fixed minimum charge necessary to sustain and deliver the program and determined to be \$2000 per annum, per municipality that is party to the agreement. Cost is recovered bi-annually.
- Cost Category B -weighted shared costs for activities that ensure Risk Management Services are provided consistently such as project management, development and maintenance of databases and templates, training and attendance at regional meetings, and a portion of corporate services. Costs are allocated according to a weighted formula, described below and recovered bi-annually
- Cost Category C -direct costs for activities such as the negotiation of RMPs, s.59 screening and compliance visits, and are estimated in Appendix A, based on previous years and estimated future work. Actual costs are tracked and recorded for each municipality and recovered bi-annually.

The level of effort required for implementation of the services will vary for each municipality. The size, type and number of existing significant drinking water threat (SDWTs) vary, as does the size and nature of the areas which will be regulated through these tools. In consideration of the fact that shared costs are correlated to an extent with activity, ERCA will apply a weighted formula to these costs, as follows: 50% of shared costs (Category A) will be allocated equally amongst the municipalities and 50% of shared costs (Category B) will be allocated on a proportionate basis, calculated as each municipality's direct costs divided by the total direct costs, as incurred by all municipalities. Estimated annual costs are provided in Appendix A.

The attached budget estimates have been prepared to assist municipalities in planning for the services and exploring the merits of receiving the services from ERCA. ERCA will keep accurate records relating to expenses in accordance with generally accepted accounting principles. ERCA issues two invoices per year based on a cost recovery model for services rendered.

The proposed budget does not include the recovery of non-routine costs, as is outlined in section 4.3 of the agreement (e.g. legal action; retention of third party experts). These situations would be considered on a case-by-case basis and the municipality would be consulted with as soon as these situations come to light. Any external parties required to be retained (e.g. legal counsel)

would be hired upon mutual agreement with the affected municipality. To date, no such situation has occurred, and it is anticipated that these situations will continue to be rare.

COST RECOVERY OPTIONS

Risk Management Services may be funded through cost recovery (fees), property taxes and/or water rates.

The CWA allows fees to be collected only for specific actions including receiving an application (s58,59,60); agreeing to or establishing a RMP (s56,58); accepting a SSRA (s60); entering property or any other power under s62 (inspections). Further, the CWA requires that the RMO/I confirm that applicable fees have been paid before issuing certain documents (such as notices of acceptance). These fees could be used to offset the costs charged to the municipalities.

The water system (through rates charged for water) can be used to fund Risk Management Services (or those parts of the services not recovered from the person engaged in the activity). Alternatively, municipal budgets (generated from property taxes) can be used. This would have the benefit of sharing the costs over a larger funding base, however in many cases the water systems provide services to only part of the municipality or may be providing water for a neighbouring municipality.

ERCA can discuss these options with municipalities, but ultimately the source of the funding drawn upon to fund these agreements is left to each municipality to decide. ERCA would support an approach that was consistent throughout the Region. To date, there have been no fees to landowners associated with Risk Management Services.

UNCERTAINTIES ASSOCIATED WITH COST OF SERVICES

The relative level of effort on each of the components will shift as the program matures. For example, negotiation of RMPs for all existing SDWTs has been completed, allowing the RMO/I to focus on compliance and enforcement. Other external factors such as growth and development pressures, and updates to the SPP as a result of modifications to the CWA, its Regulations and/or Technical Rules will also have an impact on costs. It is anticipated that the next update of the SPP will result in the identification of additional SDWTs that will require RMPs. This change will take place during the period of this amended agreement.

TERM AND RENEWAL

ERCA is proposing a new perpetual agreement that will not need to be renewed. The new agreement will begin January 1, 2025, and will renew annually. The agreement will be reviewed every four years. Any municipality may withdraw from the agreement effective January 1 of any given year by providing notice within 120 days of December 31st of the previous year.

APPENDIX A

The proposed budget below includes estimated annual costs associated with the delivery of Risk Management Services by the Essex Region Conservation Authority on behalf of the Municipalities in the Essex Region as outlined in the proposal above. Cost Category A will be subject to an annual economic adjustment equal to the negotiated percentage wage rate increase for the Authority's unionized staff complement.

	Cost Category A Minimum Fixed Cost	Cost Category B Estimated Shared	Cost Category C Estimated Direct	Total Estimated Annual Program Cost
Amhersburg	\$ 2,000	\$ 1,000	\$ 670	\$ 3,670
Essex	2,000	690	260	2,950
Kingsville	2,000	1,130	850	3,980
Lakeshore	2,000	830	430	3,260
Lasalle	2,000	570	100	2,670
Leamington	2,000	2,110	2,150	6,260
Pelee	2,000	570	100	2,670
Tecumseh	2,000	570	100	2,670
Windsor	2,000	1,460	1,300	4,760
Chatham-Kent	2,000	1,070	770	3,840
	\$ 20,000	\$ 10,000	\$ 6,730	\$ 36,730