LAKE ERIE REGION SOURCE PROTECTION COMMITTEE
MEETING MINUTES

Thursday, October 16, 2008

The following are the minutes of the Lake Erie Region Source Protection Committee meeting held on Thursday, October 16, 2008 at the Grand River Conservation Authority Administration Office, 400 Clyde Road, Cambridge, Ontario.


Members Regrets: C. Ashbaugh, H. Cornwell, P. General, J. Harrison, B. LaForme, G. Rae

Proxy Representatives: D. Goudreau (H. Cornwell), P. Wilson (G. Rae)

Liaisons: A. Dale, Source Protection Authority Liaison; D. Molnar, Provincial Liaison

Region Management Committee: P. Emerson, GRCA; B. Hall, KCCA; T. Marks, KCCA; K. Smale, CCCA

Staff: S. Cooke, J. Etienne, S. Glauser, L. Minshall, D. Schultz, T. Seguin, G. Sousa, G. Zwiers

Also Present: D. Corbett, Region of Waterloo, B. Fields, Norfolk County; S. Kurli, Halton Region; E. Hodgins, Region of Waterloo; G. Ounapuu, Lotowater; S. Smith, University of Guelph; T. Spiers, City of Brantford; S. Stull, Town of Erin

1. Call to Order

M. Wales called the meeting to order at 1:05 p.m.

2. Roll Call and Certification of Quorum – 17 Members Constitute a Quorum (2/3 of members)

The Recording Secretary called the roll and certified quorum.

3. Chairman’s Remarks

M. Wales welcomed members, staff and guests.
4. Review of Agenda

Moved by: B. Ungar
Seconded by: M. Ceschi-Smith carried unanimously

THAT the agenda for the Lake Erie Region Source Protection Committee Meeting of October 16, 2008 be approved.

5. Declarations of Pecuniary Interest

There were no declarations of pecuniary interest made in relation to the matters to be dealt with.


Moved by: J. Laird
Seconded by: L. Perrin carried unanimously

THAT the minutes of the previous meeting of September 4, 2008 be approved as circulated.

7. Hearing of Delegations

None

8. Presentations

None

9. Correspondence

a) Copied

i) Correspondence from Karen Canivet, Deputy Clerk, The Corporation of the Township of East Garafraxa to Craig Ashbaugh, Chair, Lake Erie Region Source Protection Committee Re: Compensation for Land Use Restrictions and activities contained in the draft Definitions Regulation

ii) Correspondence from Randall R. Millard, C.A.O./Clerk, The Corporation of the Township of Malahide to Lorrie Minshall, Source Protection Program Director Re: Township of Garafraxa Resolution

b) Not Copied

None

Res. No. 34-08 Moved by: D. Parker
Seconded by: D. Murray carried unanimously

THAT the correspondence be received as information.
D. Murray made reference to item 9) a) i) and advised that he has been requested to attend an East Garafraxa council meeting, and although he has read staff's recommended response to the comment submitted by East Garafraxa, he asked if the response could be expanded upon and requested direction regarding the committee's position on compensation.

A. Henry stated that he agrees that the concept of compensation should be significantly addressed, but suggested that it should be done at a provincial level with the Chairs, and not at the committee level. He then asked for the province's position on compensation.

D. Molnar confirmed that compensation has been a dominant issue province-wide. The policy assessment stage of the source protection planning process will be a more appropriate time to discuss financial implications because significant threats and the policies to address the significant threats will have been identified and developed. Until such time, the Stewardship Program is providing financial assistance proactively. Any feedback on the Stewardship Program is welcomed.

J. Oliver stated that it is premature to be responding to the issue of compensation until we know if it is an issue. If the Source Protection Plan has policies and land use controls that are prohibitive and restrictive, then the committee can request that the province assist at that time.

J. Laird pointed out that although she appreciates the concept of waiting to respond until there is more information available, the table distributed with the recommended responses to the public comments is, in fact, a response. Further, she questioned if the Stewardship Program is addressing the real needs and concerns of landowners. She stated that members may require more support when attending municipal council meetings and suggested that the Ministry of the Environment either attend the meetings, or put forward, in writing, their position.

L. Minshall reminded members that the committee has discussed compensation previously and agreed at that time that they would wait to see how the discussions between the Ministry and the Ontario Federation of Agriculture developed. The Ontario Federation of Agriculture is no longer discussing options with the Ministry. They are, instead, pursuing the inclusion of compensation in the legislation. The Lake Erie Region Terms of Reference has included language which promotes an efficient, economical, and fair approach to communities with respects to financial impacts.

J. Laird asked if the Stewardship Program takes the restriction of land use into consideration. L. Minshall responded that the restriction of land use may be taken into consideration as it relates to loss of income in subsequent years. At this time there has not been consideration given to the reduction of property value.

D. Parker inquired if the Terms of Reference could be amended moving forward when more information is available, and suggested that the committee could add a statement in the Terms of Reference saying that they would revisit the subject when more information is available.
L. Minshall responded that the current Terms of Reference, once approved by the Source Protection Committee, will not be revised until after the Minister has approved it. Comments and information regarding the Terms of Reference after the Source Protection Committee's approval will be attached to the Terms of Reference for submission to the Minister by December 20. However, because of considerations such as the unreleased Technical Rules and the inclusion of the Ohsweken intake and its resulting regulation, the Terms of Reference development process will have to be revisited at some point, and a revised version will be sent in for approval again.

W. Wright-Cascaden suggested that compensation will be easier to deal with when there is more information. Right now compensation is a matter of principle, but it is unclear how it would apply. She further reminded members that in the committee's Code of Conduct, the only person who can speak on behalf of the committee is the Chair. She suggested the best approach may be to provide information, not a statement of position.

D. Murray suggested that municipalities have the Sustainable Water and Sewage Systems Act which enables system operators to charge rate payers for source protection measures. It may be a means in some communities to have the beneficiaries of Source Protection Planning initiatives contribute to the Source Protection Plan implementation. T. Schmidt pointed out that the Sustainable Water and Sewage Systems Act is not yet in force.

R. Haggart suggested that a Source Protection staff member accompany committee representatives to council meetings. This will ensure that all municipalities receive consistent information.

R. Seibel noted that compensation is outside of the scope of the committee except for a motion to request that the Province address the issue. He expressed concern that the Stewardship fund is not providing enough assistance.

A. Henry stated that the Sustainable Water and Sewage Systems Act has passed, but not received royal assent. It is anticipated that the financial plans for water systems moving forward will include the costs of implementing the Clean Water Act. This does not however, address the mitigation of existing conditions. A. Henry put forward a motion that the Lake Erie Region Source Protection Committee request that the Province of Ontario extend the funding for the Stewardship Program beyond 2011. B. Ungar offered a friendly amendment adding that the Stewardship Program be adequately funded. A. Henry accepted the friendly amendment.

D. Parker asked if the motion could also deal with expanding eligible projects under the Stewardship Program to include pesticide storage, fuel storage, and dead stock composting. It was noted that the Environmental Farm Plan covers some of these projects, but not up to 100% funding. D. Molnar suggested that the Ministry could look into expanding the program to include these projects in the future.
M. Wales suggested that the motion remain focused on funding the Stewardship Program as opposed to expanding it.

Res. No. 35-08  
Moved by: A. Henry  
Seconded by: B. Ungar carried unanimously

THAT the Lake Erie Region Source Protection Committee requests that the Province of Ontario extend the funding for the Stewardship Program beyond 2011, and that the Stewardship Program be adequately funded.

M. Goldberg stated that the role of the committee is to identify threats to drinking water and the necessary mitigation; the province’s role is to fund the remediation. D. Molnar clarified that the role of the Source Protection Committee is beyond identifying threats. The committee is expected to consider the best local solution to address threats. The Clean Water Act provides various tools for the committee to develop policies to reduce the threats. M. Goldberg asked if the committee could recommend compensation at the policy development stage. D. Molnar advised that compensation means something different, but the committee could most likely recommend some sort of financial assistance.

T. Schmidt elaborated that compensation means different things to different people. It is important to exercise caution when proposing compensation without being certain of the definition.

D. Murray requested confirmation that when presenting to municipal councils he is speaking as an individual, and not on behalf of the committee. D. Goudreau elaborated that municipal representatives on the Source Protection Committee are obligated to update the municipalities they represent on the progress and discussions of the committee.

J. Laird summarized that the committee's response to the issue of compensation is already reflected in the Terms of Reference and the recommended responses to the public comments. She further stated that it may be beneficial if the response included a summary of the barriers to discussing the issue at this time.

B. Ungar asked if the communications staff could create a document listing appropriately worded discussions pertaining to the barriers. R. Krueger suggested that the staff responses to the public comments already provide this information.

10. Reports

a) SPC-10-08-01 Terms of Reference Update

Staff provided an overview of the Terms of Reference Update report and the public comments. The comments varied in nature; some responses can be addressed in the Terms of Reference, and some can be addressed in the future. There are a number of comments that cannot be dealt with by the Clean Water Act, such as
T. Schmidt advised that there may be more municipal input forthcoming regarding timelines before the November meeting.

J. Oliver asked if staff intend to respond individually to comments from members of the public. L. Minshall replied that there are several situations where staff may prepare responses to redirect an individual or clarify a point of concern, but staff will not attempt to respond to all comments. The responses to the comments are available in the recommended response. J. Oliver requested that staff advise him which comments receive a response.

M. Ceschi-Smith referred to the response regarding spills and asked if it is strong enough. L. Minshall replied that the committee has requested the definition of an issue be broadened in their comments to the Ministry regarding the Technical Rules. If the definition is broadened, and can be dealt with under the Clean Water Act, then the task description is sufficient.

W. Wright-Cascaden asked if the public can be advised of how the committee addressed their comments. S. Glauser replied affirmatively.

R. Seibel suggested making reference to compensation in the Terms of Reference preamble stating that it can be addressed during Source Protection Plan implementation; he suggested this may provide some assurance to those who are concerned. L. Minshall replied that a statement regarding the consideration of compensation could be put in the Terms of Reference preamble, but the Terms of Reference is not likely to be approved by the Minister with this reference. The Ministry's definition of compensation has an implication of legal liability.

D. Parker referred to the appeal process and asked if the Terms of Reference should refer to a swift and efficient appeal process. S. Glauser responded that this is beyond the scope of the Terms of Reference. D. Parker reiterated that he feels the recommendation should be included in the Terms of Reference because it is a valid point. L. Minshall suggested she could add it into the summary of comments so that the comment does not get lost.

**Res. No. 36-08**

**Moved by:** D. Murray  
**Seconded by:** A. Henry  
**carried unanimously**

THAT the Lake Erie Region Source Protection Committee agrees with the recommended responses to comments received during the Terms of Reference Public Comment Period, as summarized in Report No. SPC-10-08-01, and directs staff to revise and update the Catfish Creek, Grand River, Kettle Creek and Long Point Region Source Protection Area Terms of Reference accordingly.
J. Laird asked how the public comments for which responses have not been drafted will be addressed. L. Minshall suggested these could be addressed at the November 6, 2008 Source Protection Committee Meeting.

b) SPC-10-08-02 Committee Meeting Dates

M. Goldberg expressed concern regarding the approval of the Terms of Reference on November 6, 2008 without sufficient time to consider the Assessment Report Regulation and Technical Rules. He suggested moving the November meeting date forward one week to allow staff time to review the rules. L. Minshall advised that delaying approval of the Terms of Reference past the November 6, 2008 meeting would result in non-compliance of Ministry timelines. The Terms of Reference clearly state that the costs and schedules are estimates and may be revised and the identified task leads would not likely change as a result of the Assessment Report Regulation and Technical Rules.

Res. No. 37-08 Moved by: J. Oliver  
Seconded by: D. Murray carried unanimously

THAT the Lake Erie Region Source Protection Committee cancel the December 4, 2008 meeting, and adopt the following meeting schedule from January to July 2009:

<table>
<thead>
<tr>
<th>Meeting Date</th>
<th>Time</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>February 5, 2009</td>
<td>1:00 pm</td>
<td>Grand River Conservation Authority Administration Centre, Cambridge</td>
</tr>
<tr>
<td>March 5, 2009</td>
<td>1:00 pm</td>
<td>Grand River Conservation Authority Administration Centre, Cambridge</td>
</tr>
<tr>
<td>April 2, 2009</td>
<td>1:00 pm</td>
<td>Grand River Conservation Authority Administration Centre, Cambridge</td>
</tr>
<tr>
<td>May 7, 2009</td>
<td>1:00 pm</td>
<td>Grand River Conservation Authority Administration Centre, Cambridge</td>
</tr>
<tr>
<td>June 4, 2009</td>
<td>1:00 pm</td>
<td>Grand River Conservation Authority Administration Centre, Cambridge</td>
</tr>
</tbody>
</table>

c) SPC-10-08-03 Code of Conduct and Conflict of Interest Policy Amendment

M. Goldberg asked how this amendment improves the policy. S. Glauser responded that in a multistakeholder forum where members are representing sectors as a whole, they cannot be bound by a conflict of interest policy if the item being discussed is considered to be in a members’ interest, and that the interest is one held generally by the sector being represented.

Res. No. 38-08 Moved by: J. Laird  
Seconded by: L. Perrin carried unanimously

THAT the Lake Erie Region Source Protection Committee amend Section 6.0 (Conflict of Interest Policy) in Schedule 1 of the Rules of Procedure to include section 6.4, as follows:

6.0 Conflict of Interest Policy

6.1 A Conflict of Interest refers to a situation in which the monetary Interests or personal considerations of the Member could compromise, or could reasonably appear to compromise, the Member’s judgment in acting
objectively and in the best interest of the Committee. It is important to note that a conflict of interest exists if the decision could be, or could appear to be compromised. It is not necessary that compromise takes place.

6.2 A Conflict of Interest also includes using a Member’s position or Confidential Information for private gain or advancement or the expectation of private gain or advancement (e.g. direct or indirect monetary interest in a matter, a contract or proposed contract). A conflict may occur when an interest benefits any member of the Member’s family (spouse, partner, children, parents, siblings), friends or business associates.

6.3 Members should not engage in private employment or render services for any person or corporation where such employment or services are considered a conflict of interest as defined by the Municipal Conflict of Interest Act, 1990.

6.4 Sections 6.1, 6.2 and 6.3 do not apply to a personal or monetary interest in any matter that a member may have by reason of the member having a personal or monetary interest which is an interest generally in common with the sector represented by the member on the committee.

11. Business Arising from Previous Meetings

None

12. Other Business

a) Question and Answer Period

Terms of Reference Funding

T. Schmidt expressed concern that the Ministry of the Environment has provided $4.257 million dollars in funding for the Lake Erie Region technical studies, while, the Terms of Reference tasks, as listed, will cost $6.9 million dollars. He suggested that the committee will need to discuss how technical work should proceed in consideration of the funding shortfall.

L. Perrin stated that the Source Protection Planning process is meant to be science-based. The value of the outcome is based on the value of the technical work.

W. Wright-Cascaden said that if the province is approving the Terms of Reference, and the funding estimates submitted are reasonable, then the approval should include the funding for the project.

D. Molnar clarified that the regulatory requirement is different than the technical funding. The process to pay for the work is through the Ministry of Natural Resources, the Ministry of the Environment, and the Source Protection Authority. Ongoing funding is different than what is listed in the Terms of Reference.
D. Woolcott asked if any municipalities have asked for more funds than are allowed for in the Terms of Reference. L. Minshall replied that this has not formally happened. Municipal staff will be submitting detailed cost and task descriptions for the technical work to the GRCA. The GRCA will then provide the funding to complete the task to the lead municipalities. Budget discussions and disbursement of funding will be discussed with the municipal water services technical group.

T. Schmidt stated that it is difficult for technical studies to move forward when costs are uncertain because the requirements are not clearly defined. There has not been a timely response and reflective funding for the changes in requirements. Delineated lines need to be defendable if we are going to be putting them forward for plan development.

M. Goldberg advised that the Ministry of the Environment is filled with dedicated staff who are trying to keep up with a quickly evolving process. However, doing a good job will require the appropriate funding and time. He recommended postponing the November meeting to allow for sufficient time to evaluate the information coming out from the Assessment Report Regulation and Technical Rules.

A. Henry stated that the technical foundation cannot be mediocre, or the entire structure will be mediocre. He cannot support a plan if there is not sufficient information.

L. Minshall advised that if the Terms of Reference are not approved on November 6, the Lake Erie Region will be out of compliance, and the committee will need to move ahead with the December 4 meeting or an alternative date. The Source Protection Committee is mandated to meet until they have an approved Terms of Reference. If the approval of the Terms of Reference is delayed, staff will notify the Ministry.

L. Perrin asked if the committee would be more comfortable to do a mediocre plan and have to defend it, or to say the scientific work was excellent, however, the province failed to fund Source Protection Planning sufficiently, and failed to carry out the implementation of the plan.

J. Laird stated that she is sensitive to the idea of doing do a good job.

L. Perrin suggested that Source Protection Planning is uncharted territory, and is new worldwide. He suggested the quality of work not be compromised by trying to meet unrealistic timeframes and budgets.

I. Macdonald asked how the Assessment Report Regulation and Technical Rules will affect the Terms of Reference. L. Minshall responded that issues definition would be a large component of the rules that will affect the Terms of Reference. The 6.9 million dollars for the Terms of Reference does not address issues identification because the definition of an issue was unclear in the draft rules. Staff could know more about the implications of the
Assessment Report Regulation and Technical Rules at the December 4 meeting. It will then take a portion of the winter to develop work plans in response to the new rules.

A. Henry asked who pays for the shortfall if the province won’t provide more money and we have to complete the work. L. Minshall replied that the work can be re-scoped. There are simpler and less complex ways to do the work; however, the simpler methods are not what the technical staff feel we need.

W. Wright Cascaden stated that the dollar values are part of the Terms of Reference, and they are being approved as part of the submission of the Terms of Reference. If the funds are not in place for full development of the plan, part of the submission to the Ministry should address this situation. The Ministry can then either accept the cost or advise what technical work should be scoped back.

M. Goldberg moved that the Source Protection Committee meeting of November 6, 2008 be postponed by two weeks. J. Laird seconded and offered a friendly amendment to postponing the meeting three weeks.

J. Oliver stated that he preferred to proceed with November 6 meeting. The rules are not likely to change the major tasks, and they are likely to make costs go up, not down. He asked if other Source Protection Committees and their staff are experiencing the same problem of insufficient funding.

L. Minshall replied that she is not aware if others are having funding difficulties. The ministry received the money from cabinet and disbursed the funds based on a formula that was not shared with CA or municipal staff. The Terms of Reference is being developed after the funds have been allocated.

B. Ungar stated that he still feels the committee should still meet November 6 to go over the rules and possibly approve the Terms of Reference.

D. Murray asked if November 6 is enough time to review the rules and regulations. L. Minshall replied that the 6th of November does not provide enough time to review and have any meaningful discussion. The outstanding question remains whether the region should move forward with the detailed technical work, or scope it back. D. Murray stated that he feels the committee should still meet and determine the status of these issues.

J. Laird stressed the importance of ensuring there is enough information for a meaningful agenda. She stated that meeting on November 27 and December 6 will provide the opportunity for a more meaningful discussion.
Motion Defeated

Moved by: M. Goldberg
Seconded by: J. Laird
3 in favour, 17 opposed

THAT the November 6, 2008 Lake Erie Region Source Protection Committee meeting be deferred to November 27, 2008 to provide staff with the opportunity to review and apply the Director’s rules to the Terms of Reference.

Res. No. 39-08

Moved by: J. Laird
Seconded by: R. Krueger carried unanimously

THAT the December 4, 2008 Lake Erie Region Source Protection Committee meeting be tentatively reinstated for review and approval of the Terms of Reference if the Terms of Reference is not approved at the November 6, 2008 Source Protection Committee meeting.

13. Closed Meeting
Not applicable.

14. Next Meeting – Thursday, November 6, 2008, 1:00 pm,
Grand River Conservation Authority, 400 Clyde Road, Cambridge, ON

15. Adjourn

Moved by: L. Perrin
Seconded by: D. Murray carried unanimously

THAT the Lake Erie Region Source Protection Committee meeting of October 16, 2008 be adjourned. The meeting adjourned at 3:35 p.m.