

**The Corporation of the Town of Essex**

**By-Law 2094**

**Being a By-Law to enter into an Agreement between:**

**The Corporation of the Town of Essex**

**And**

**The Essex Region Conservation Authority**

**Whereas** in accordance with the mandates of the Clean Water Act, Council hereby enters into a renewal agreement with the Essex Region Conservation Authority (ERCA) to administer on its behalf a source water protection plan, the Essex Region Source Protection Plan, in accordance with the agreement set out in Schedule "1" to this by-law, until the termination of the agreement on December 31, 2024 and according to the terms and conditions therein.

**Now Therefore** be it resolved that the Council of the Town of Essex enacts as follows:

"That the Mayor and Clerk be directed to affix their signatures, on behalf of the Corporation of the Town of Essex, to Schedule "1" attached and forming part of this By-Law, for the purpose of renewing the source protection plan management agreement with the Essex Region Conservation Authority until December 31, 2024."

Read a first, second, and third time and finally passed on November 15, 2021

---

Mayor

---

Clerk

**Schedule "1" to By-Law 2094**

**AMENDMENT NO.2**

**SOURCE PROTECTION PLAN PART IV ENFORCEMENT TRANSFER AGREEMENT**

THIS AMENDMENT NO.1 made effective the first day of January, 2022.

BETWEEN:

<b>THE TOWN OF AMHERSTBURG</b>	OF THE FIRST PART
- and -	
<b>THE TOWN OF ESSEX</b>	OF THE SECOND PART
- and -	
<b>THE TOWN OF KINGSVILLE</b>	OF THE THIRD PART
- and -	
<b>THE TOWN OF LAKESHORE</b>	OF THE FOURTH PART
- and -	
<b>THE TOWN OF LASALLE</b>	OF THE FIFTH PART
- and -	
<b>THE MUNICIPALITY OF LEAMINGTON</b>	OF THE SIXTH PART
- and -	
<b>THE TOWNSHIP OF PELEE</b>	OF THE SEVENTH PART
- and -	
<b>THE TOWN OF TECUMSEH</b>	OF THE EIGHT PART
- and -	
<b>THE CORPORATION OF THE CITY OF WINDSOR</b>	OF THE NINTH PART
- and -	
<b>THE MUNICIPALITY OF CHATHAM-KENT</b>	OF THE TENTH PART
(hereinafter individually referred to as a "Municipality" and cumulatively referred to as "the Municipalities")	
- and -	
<b>THE ESSEX REGION CONSERVATION AUTHORITY</b>	OF THE ELEVENTH PART
(hereinafter called "the Authority")	

**WHEREAS** the Parties, save and except the Municipality of Chatham-Kent, entered into an agreement dated as of October 1, 2015 for the purpose of developing and implementing a joint program for the enforcement and jurisdictional rights under Part IV of the *Clean Water Act* (the "Majority Agreement"); and

**WHEREAS** the Corporation of the Municipality of Leamington and the Essex Region Conservation Authority entered into an amended agreement dated January 26, 2016; and

**WHEREAS** the Town of Tecumseh and the Essex Region Conservation Authority entered into an amended agreement dated January 2016; and

**WHEREAS** The Essex Region Conservation Authority and the Municipality of Chatham-Kent entered into an agreement dated as of October 1, 2015 on similar terms and conditions as the agreement with the other parties (the "Chatham-Kent Agreement"); and

**WHEREAS** pursuant to Section 7.2 of the Majority Agreement and the Chatham-Kent Agreement, the Authority can initiate a renewal of each agreement no later than 120 days prior to expiry of the term set out in Section 7.1; and

**WHEREAS** pursuant to Section 7.4 of the Majority Agreement and the Chatham-Kent Agreement, amendments may only be made by mutual agreement; and

**WHEREAS** the Parties entered into an amended agreement dated as of October 1, 2018 for the purpose of extending all previous agreements; and

**WHEREAS** the Municipality of Chatham-Kent was added as a party of the Majority Agreement at the time of signing the amended agreement

**NOW THEREFORE** in consideration of the contractual relationship between the Authority and the Municipalities referred to above and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by all Parties, the Authority and the Municipalities hereby acknowledge, agree and undertake as follows:

1. The Majority Agreement is amended as follows:
  - a. This Amendment No. 2 shall amend the Majority Agreement having an effective date of January 1, 2022 and shall extend the Majority Agreement for a period of 3 years, ending the 31<sup>st</sup> day of December 2024.
  - b. Schedule "A" (cost estimates and accounting), as set out in the Majority Agreement are deleted in their entirety and replaced with the following:

<b>Schedule A: Cost Estimates and Accounting</b>			
<b>Municipality</b>	<b>Shared Costs</b>	<b>Direct Costs</b>	<b>Total Costs</b>
Amherstburg	\$4,600.00	\$2,500.00	\$7,100.00
Town of Essex	\$3,800.00	\$2,100.00	\$5,900.00
Kingsville	\$9,600.00	\$5,100.00	\$14,700.00
Lakeshore	\$4,000.00	\$2,900.00	\$6,900.00
Lasalle	\$2,100.00	\$2,000.00	\$4,100.00
Leamington	\$14,500.00	\$17,000.00	\$31,500.00
Pelee	\$2,400.00	\$1,900.00	\$4,300.00
Tecumseh	\$2,100.00	\$1,900.00	\$4,000.00
Windsor	\$3,400.00	\$3,800.00	\$7,200.00
Chatham-Kent	\$5,000.00	\$3,800.00	\$8,800.00
<b>TOTAL</b>	<b>\$51,500</b>	<b>\$43,000</b>	<b>\$94,500</b>

2. All other terms and conditions of the Majority Agreement shall remain in full force and effect unchanged and unmodified except in accordance with this Amendment No. 2.
3. Execution of Agreement; Counterparts; Electronic Signatures
  - a. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.
  - b. The exchange of copies of this Agreement and of signature pages by electronic transmission in "portable document format" (".pdf") form, or by any other electronic

means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by electronic means shall be deemed to be their original signatures for all purposes.

**ESSEX REGION CONSERVATION AUTHORITY**

---

Tania Jobin, Chair, Essex Region Conservation Authority

---

Date

---

Tim Byrne, CAO/Secretary-Treasurer

---

Date

*I/We have authority to bind the Essex Region Conservation Authority.*

**TOWN OF AMHERSTBURG**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the Town of Amherstburg.*

**TOWN OF ESSEX**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the Town of Essex.*

**TOWN OF KINGSVILLE**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the Town of Kingsville.*

**MUNICIPALITY OF LAKESHORE**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the Town of Lakeshore.*

**TOWN OF LASALLE**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the Town of LaSalle.*

**MUNICIPALITY OF LEAMINGTON**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the Municipality of Leamington.*

**TOWNSHIP OF PELEE**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the Township of Pelee.*

**TOWN OF TECUMSEH**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the Town of Tecumseh.*

**THE CORPORATION OF THE CITY OF WINDSOR**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the City of Windsor.*

**MUNICIPALITY OF CHATHAM-KENT**

---

Signature/Name/Title

---

Date

---

Signature/Name/Title

---

Date

*I/We have authority to bind the Municipality of Chatham-Kent.*



## **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

Source Water Protection is the first line of defense in protecting drinking water. Through the Clean Water Act, 2006 (CWA), a local Source Protection Committee (SPC) worked together with ERCA, municipalities, community groups and residents to develop a local, watershed-based Source Protection Plan and policies to protect our source water from contamination and overuse, now and into the future. Our policies work by either eliminating or managing activities that could be considered a threat to our source water and are based on the foundational knowledge that the actions we take on land have an impact on our local waterways and ultimately our sources of drinking water. Following an extensive process that included broad public input and municipal consultation, the Essex Region Source Protection Plan (SPP) came into effect on October 1, 2015. For more information about the SPP and related technical work, please visit our website: <https://essexregionconservation.ca/source-water-protection/>.

The Ministry of the Environment, Conservation and Parks (MECP) prescribed certain activities as drinking water threats if they contribute substances that may be harmful to human health if consumed in high concentrations. The SPP contains policies to ensure that those activities cease to be, or never become, significant threats, using a number of different 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 formal 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, three members of ERCA's staff are trained and appointed as RMO/Is with a fourth staff person to be appointed as RMO/I in November 2021. This ensures access to appropriate resources at all times to perform the duties of the RMO/I as described below as well as to be able to respond in a timely manner to inquiries and applications. In addition, these staff have access to support and technical staff at ERCA. 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 Risk Management Services to the Essex Region Conservation Authority. 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. This agreement was amended on October 1, 2018 to extend the period of agreement. The terms of the amended agreement with the municipalities will expire on December 31, 2021.

As per Section 7.2 of the initial enforcement transfer agreement, the original agreement can be renewed. ERCA is proposing such a renewal of this agreement, however municipalities have the option of providing Risk Management Services themselves at the end of the current term (December 31, 2021). In order for it to be cost effective to provide these services on behalf of the municipalities, it is important that a multi-year commitment to funding be in place. It is therefore proposed that the renewed agreement be for a three year period beginning January 1, 2022 until December 31, 2024.

## **SCOPE OF RISK MANAGEMENT SERVICES**

Policies written under Part IV of the Clean Water Act can be used to prohibit (Section 57) or manage (Section 58) activities identified as Significant Drinking Water Threats (SDWTs). These policies apply to both existing and future (new) SDWTs. In the Essex Region SPP, activities are only prohibited (Section 57) if they are not known to occur in identified vulnerable areas and are not likely to occur in the future. The majority of identified SDWTs are managed with Risk Management Plans (RMP) (Section 58). Policies written using Section 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 Section 57 or Section 58 policies.

### **Risk Management Plan Negotiation (s.58)**

Risk Management Plans (RMPs) are required for all identified existing SDWTs as well as new potential SDWTs. The handling and storage of large volumes of liquid fuel was identified as a threat to drinking water throughout the Essex Region. Other threats were also identified in small areas close to certain drinking water intakes. A RMP is a negotiated agreement between the RMO and the person engaging in an activity (the proponent) that allows activities to occur in vulnerable areas where they would be a SDWT. The RMP describes how these activities can be managed such that they cease to be significant threats. The RMO will work with the proponent to review and describe risk management measures that are already be in place as well as additional measures needed for the situation. The RMO will then work with the proponent to develop a RMP that is agreed to by the proponent and the RMO. 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 Source Protection Plans 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 has provided municipalities with a written direction to assist municipalities in expediting the Section 59 screening process for proposed projects under the Planning Act in the identified Event Based Area (EBA), and a "Building Information Sheet" that can be attached to permit applications submitted under the Building Code Act. ERCA has also integrated Section 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 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 AR. 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 Reports. 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. As it is not anticipated that many SSRAs will be conducted, 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.

**Compliance**

The CWA provides the regulatory tools to ensure compliance with both Section 57 (Prohibition) and 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. CWA Section 64 indicates when the RMO may 'cause things to be done' only if the person who is ordered to do a thing has refused to comply, is not likely to comply or requests the assistance of the RMO in complying with the order. An example would be to hire a company to complete work required under the RMP. 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.

Compliance monitoring will be required for all SDWT activities which require a RMP as well as those which have been prohibited. As it is not anticipated that many compliance issues will arise that require legal action, 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.

### **Education & Outreach**

The RMO/I also provides education and outreach to landowners through their threat verification site visits and subsequent negotiation of RMPs. A Source Water Protection package is provided to the landowner with maps of the property within the Event Based Area, a copy of the threat verification site visit letter, a spill reporting form, and an updated contact information sheet for spill reporting, cleanup, tank removal and inspection resources that are local to the region. The package also contains 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, as well as general information about the Source Water Protection Program. These site visits have not only increased landowner awareness, but also improved sources of communication and strengthened relationships with persons engaging in the activity. 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 to the MECP. The CWA contains specific details about the required reporting elements and the MECP has provided templates and a database for this reporting. RMO/I are also required to report to each 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 (TSRSPA). In addition, the RMO/I also prepares a more fulsome annual report for the municipalities detailing the activities undertaken by the RMO/I in the previous year. ERCA has developed an internal information management tool to effectively and efficiently record data, track records, analyze and report on the program. All annual reports are publically available on our website.

### **COST ALLOCATION**

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. Inventories of SDWTs were used to apportion costs associated with activities directly related to SDWTs. This includes negotiating RMPs for existing and future SDWTs, compliance and screening planning applications and building permits for Section 59 policies. The level of effort required for these services is assumed to be proportional to the number of SDWTs and costs have been assigned accordingly.

The costs associated with delivering RMS have been broken down into two parts - shared and direct costs.

- Shared costs include elements such as project management, development and maintenance of databases and templates, training and attendance at regional meetings as well as a portion of corporate services. These elements are essential in order to ensure that Risk Management Services are provided consistently throughout the Region.
- Direct costs have been apportioned based on the proportion of known SDWTs confirmed in each municipality. This includes elements such as the negotiation of RMPs, Section 59 screening and compliance visits.

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 will be allocated equally amongst the municipalities and 50% of shared costs 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. Because it is difficult to predict how much of each activity will occur in any given year of the agreement, total costs for the term of the agreement have been estimated (Appendix I). ERCA issues two invoices per year based on a cost recovery model for services rendered.

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. This estimate may be revised through further discussions with the municipalities. As is stated in section 4.2 of the original agreement, ERCA will keep accurate records relating to expenses in accordance with generally accepted accounting principles. Should the actual costs differ from the proposed budget, municipalities will be consulted to discuss treatment of any surplus or deficit.

Of note is that the proposed budget does not include the recovery of non-routine costs, as is outlined in section 4.3 of the original agreement. An example of non-routine costs would be legal action resulting from situations where the negotiation of a RMP does not reach a suitable outcome. 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. This situation did not occur in the original nor the amended agreement, 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.

There are only certain parts of the RMS program that are able to be recovered by fees, which could be used to offset the costs charged to the municipalities under the proposed municipal service agreements. Further, the CWA requires that the RMO/I confirm that applicable fees have been paid before issuing certain documents (such as notices of acceptance). 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).

The water system (through rates charged for water) is a potential funding source for these services (or those parts of the services not recovered from the person engaged in the activity). Alternatively, municipal budgets (generated from property taxes) are also a source of funding. 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.

On November 1, 2013 the MECP launched Ontario's Source Protection Municipal Implementation Fund (SPIMF), which distributed funds to eligible municipalities. In February, 2016 additional SPIMF money was made available to municipalities not included in the original distribution of funds. In the Essex Region, all eligible lower tier municipalities as well as the County of Essex received SPIMF following this second round of distribution. Eligible activities for SPIMF are those undertaken by a municipality, or on the municipality's behalf, including the implementation of Part IV policies. The SPIMF agreements expired in December, 2018 and are no longer an option for funding 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 could take place during the period of this amended agreement.

## TERM AND RENEWAL

ERCA proposes to amend the original agreement for the term from January 1, 2021 to December 31, 2024 with terms and conditions as agreed to in the original agreement and term, with option to renew the agreement prior to the end of the term of the amended agreement.

## APPENDIX 1

The proposed budget below includes 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. The estimated costs are for the term of the agreement from January 1, 2021 to December 31, 2024.

Municipality	Shared Costs	Direct Costs	Total Costs
Amherstburg	\$4,600.00	\$2,500.00	\$7,100.00
Town of Essex	\$3,800.00	\$2,100.00	\$5,900.00
Kingsville	\$9,600.00	\$5,100.00	\$14,700.00
Lakeshore	\$4,000.00	\$2,900.00	\$6,900.00
Lasalle	\$2,100.00	\$2,000.00	\$4,100.00
Leamington	\$14,500.00	\$17,000.00	\$31,500.00
Pelee	\$2,400.00	\$1,900.00	\$4,300.00
Tecumseh	\$2,100.00	\$1,900.00	\$4,000.00
Windsor	\$3,400.00	\$3,800.00	\$7,200.00
Chatham-Kent	\$5,000.00	\$3,800.00	\$8,800.00
<b>TOTAL</b>	<b>\$51,500</b>	<b>\$43,000</b>	<b>\$94,500</b>

Table 1 - Cost Estimates for Risk Management Services

For more information, or for a copy of this document in an alternative format, please contact ERCA at 519-776-5209 or [accessibility@erca.org](mailto:accessibility@erca.org)."