

**COMMITTEE OF THE WHOLE   OCTOBER 22, 2001**

**BILL 81 PROPOSED NUTRIENT MANAGEMENT ACT, 2001**  
**REGION OF YORK PLANNING COMMITTEE INFORMATION REPORT**

**Recommendation**

The Commissioner of Planning recommends that this report BE RECEIVED for information purposes.

**Purpose**

The purpose of this report is to provide Council with a background to Bill 81, the *Nutrient Management Act, 2001*, which proposes to develop new standards for collecting, storing, handling, using and transporting all land-applied materials containing nutrients relating to agriculture including livestock manure, commercial fertilizer, municipal biosolids, septage and industrial pulp and paper sludge.

**Background - Analysis and Options**

Bill 81, which has received first reading, emerged out of the recommendations of the Task Force on Intensive Agricultural Operations in Rural Ontario and Operation Clean Water Strategy and has been proposed by the Ministry of Environment (MOE) and the Ministry of Agriculture Food and Rural Affairs (OMAFRA). The Bill, if passed, would govern: mandatory Nutrient Management Plans; minimum distance requirements for manure and biosolids application; ban the application of untreated septage over a 5 year period; establish education, training, and certification programs; establish minimum quality and application standards for land applied nutrients; and establish a framework for phasing in Province-wide standards for land application of materials containing nutrients.

Bill 81 is an enabling legislation that would support the implementation of a comprehensive regulatory framework. The full implications of the proposed Act are unknown at this time as the implementing regulations have not been drafted.

**Conclusion**

Staff will continue to monitor the progress of Bill 81, *the Nutrient Management Act*, at the Province. Should Bill 81 receive Royal Assent, Staff will report back to Council as necessary to provide information on the implications of this Act, if any, for the City.

**Attachments**

1. Report to York Regional Planning Committee Report on the Proposed Nutrient Management Act August 29, 2001, as adopted by Regional Council September 6, 2001.

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Respectfully submitted,

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of 2001. Registration of dwelling units for the first half of 2001 are occurring at approximately the same level as the first half of 2000.

Four of the five Official Plan amendments dealt with by Regional Council during the months of April, May and June were appealed, or appealed in part, to the Ontario Municipal Board. Staff are attempting to narrow the issues or reach a settlement for these applications.

## 2

### BILL 81 - PROPOSED NUTRIENT MANAGEMENT ACT 2001

The Planning and Economic Development Committee recommends the adoption of the recommendations contained in the following report, August 20, 2001, from the Commissioner of Planning and Development Services subject to the following amendments:

1. Recommendation No. 2 to be amended by replacing the word "issues" with the words "serious concerns of the area municipalities";
2. The following recommendation to be added:
  - "4. The Regional Clerk forward a copy of the report to the Association of Municipalities of Ontario for information purposes."

#### 1. RECOMMENDATIONS

It is recommended that:

1. This report be received for information purposes and submitted to the Justice and Social Policy Standing Committee of the Legislature prior to its September 14, 2001 deadline for written submissions.
2. The Region advise the Justice and Social Policy Standing Committee of its support for the legislation subject to issues raised in Section 4 of the report.
3. The Ontario Ministry of Agriculture, Food and Rural Affairs be advised that the Region wishes the ability to review and comment on the proposed Regulations to the Act prior to their approval.

#### 2. PURPOSE

The purpose of this report is to review the proposed *Nutrient Management Act 2001* (Bill 81), and identify the implications of the proposed legislation to The Regional Municipality of York and its area municipalities.

### 3. BACKGROUND

In January, 2001, Council endorsed Clause 10 of Report 1 of the Regional Planning and Economic Development Committee, dealing with the proposed legislation and standards of operation arising from the recommendations of the Task Force on Intensive Agricultural Operations in Rural Ontario. York Region staff in that report raised three main issues:

- Enforcement
- Potential financial hardship to operators
- The use of advisory committees to mediate disputes

No proposed legislation or Regulations were released at that time.

In June of this year, the Government introduced new legislation directed at regulating all land-applied materials containing nutrients including livestock manure, commercial fertilizer, municipal bio-solids, sewage, and industrial pulp and paper sludge. The Act is not intended to affect the application of the *Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Pesticides Act*, although it does recommend a series of complementary changes to other Acts.

Bill 81 has received first reading in the Legislature and is intended to implement part of the Task Force recommendations. The Justice and Social Policy Standing Committee has determined that written submissions in regard to this Act must be received by September 14, 2001.

### 4. ANALYSIS AND OPTIONS

#### 4.1 Application of the Proposed Act and Regulations

From the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA) background information, the *Nutrient Management Act 2002* (Bill 81) is, among other things, intended to:

- Require Nutrient Management Plans (NMPs) for various categories of farm operations.
- Provide for review and approval of NMPs, establish a registry for NMPs and permit fees to be levied.
- Provide a framework to phase in standards over time, depending on the size of the operations and the kinds of practices that are carried out.
- Provide enforcement authority through Provincial government officers.
- Establish the right to appeal to the Environmental Review Tribunal.
- Clarify municipal responsibilities and provide new standards as support for land use planning and building code approvals.
- Allow for creation of local advisory committees.

The three key issues raised in the January 2001 report to Regional Council in relation to the original Task Force recommendations have been dealt with in the following manner:

#### 4.1.1 Enforcement Responsibility

In the July 2000 Task Force report it was proposed that NMP enforcement responsibility be delegated to upper or lower tier municipalities without compensation or indication of training and qualifications required for enforcement staff. While the Regulations are not yet available for review, it appears that the Province has re-thought the enforcement issue and intends to implement it as a Provincial responsibility. Provisions within Bill 81 would allow review and approval of NMPs to be delegated by the Province to a third party, though OMAFRA representatives have indicated that the terms of such delegations have not yet been identified.

#### 4.1.2 Financial Hardship to Operators

The January 2001 report to Regional Council raised the issue of mandating NMPs without a phase-in period and the potential financial impact on farm operators. While York Region and local staff supported the use of NMPs, it was the opinion that a phase-in period should be provided. It appears that the new legislation will include a three to five-year phase-in period.

#### 4.1.3 Advisory Committees as Mediators

York Region took issue with the recommendation that the Agricultural Advisory committees become dispute resolution bodies in addition to their role in providing farm practices information and education. Regional and local staff have been assured that the York Region Agricultural Liaison Committee is not the "Committee" referred to in Bill 81, however, the legislation is unclear leaving it to interpretation through future Regulations.

### 4.2 Other Issues

The proposed wording of Bill 81 leaves much of the detail for application and interpretation to as yet undrafted Regulations. This method of drafting raises a series of issues relating to the applicability of the Act to a range of uses not related to agricultural activities.

#### 4.2.1 Definition of Nutrient

The definition of "nutrient" as used in this Act includes "fertilizers, organic materials bio solids, compost, manure, sewage ... and other material applied to land for the purpose of improving the growing of agricultural crops or for the purpose of a prescribed use...". In the absence of Regulations identifying prescribed uses, this definition may apply, for example, to the use of the above "nutrients" in area municipal parks or on municipal trees along roadways. In a wider context, this definition might also apply to the use of "nutrients" such as urea as a de-icing agent or the transport of "nutrient" laden materials from sewage lagoons or storm water management ponds.

It will be necessary to critically review the Regulations when available to determine impact on Regional activities.

#### 4.2.2 Requirement for the Preparation of Nutrient Management Strategies

Among other things, Section 5(?) of Bill 81 provides for:

- Preparation of plans or strategies (including municipal nutrient management strategies).
- Public notification of nutrient use
- Studies to support application of nutrients including soils surveys and surveys of groundwater flow through soils.

- Testing of samples; and management of material containing nutrients in an "environmentally responsible manner."

However, Bill 81 contains neither detail of the magnitude nor terms of reference for municipal nutrient management strategies, relying and referring to the, as yet undrafted Regulations. Discussions with CMAAFA staff have indicated that this aspect of the legislation and Regulations requires more consultation.

#### 4.2.3 Collection of Remedial Costs by the Municipality

Under Bill 81, a farm (or other) operator may be ordered to undertake remediation due to contravention of a provision of the Act, (such as remediating a nutrient storage facility). In the event the operator refuses, or requests assistance, to undertake the clean-up, the Ministry may undertake the work and, as currently written, require the municipality to recover the costs and reimburse the Province (less collection costs) as part of municipal taxes. This proposal raises collection and financial issues for the area municipalities as such properties may be in a tax arrears situation or the farm operator may only be a tenant (with no real property) in the municipality where the infraction took place.

A second concern is that a municipality may inadvertently be drawn into litigation between a property owner and those parties enforcing NMI's simply because it has been directed to collect costs on the Province's behalf.

A more appropriate mechanism for collection may be to freeze or seize assets or accounts through provincial or federal processes, such as those procedures applied to PST and GST arrears. It is recommended that these be critically reviewed for applicability in these situations instead of requiring municipal collection under property taxes.

### 4.3 Summary

Establishing stricter standards to deal with nutrient uses, whether in an agricultural or wider context, is an appropriate response to issues regarding water quality; however, the affected parties must have an opportunity for full discussion of, and meaningful input to these standards. Several issues have been raised in relation to the potential of wide application of this Act and to some of the specific provisions. The main difficulty with the Act is that so much of its ultimate applicability will be guided by as yet undrafted Regulations. While we understand that enabling legislation sets the stage for further work, relegation of significant implementation details to later Regulations leaves significant uncertainty. Moreover, the procedures for formulation and change of Regulations are less rigorous and inclusive than for consideration of statute. Until the Regulations can be reviewed, this remains an issue for the Region and area municipalities.

It is important that the principle of on-going consultation is identified and accepted by the Ministry. In the absence of the Regulations, York Region should advise the Province of the issues contained in this report and request that public agencies and municipalities be given the opportunity to provide input.

### 4.4 Consultation within York Region

On July 19, 2001, Regional staff met with area municipal planning department representatives to discuss Bill 81 and identify issues relating to wording and application. On August 3, 2001, Regional staff held a subsequent meeting with area municipal planning department representatives and ONCAHRA staff. This report is the result of these discussions and represents a consensus of issues raised at these meetings. As a result, several of the area municipal Planning Directors have co-signed this report.

The proposed legislation was discussed with the Agricultural Liaison Committee at its August 7, 2001 meeting. The Committee has indicated that the Ontario Federation of Agriculture is supportive of the legislation and has no additional comments to make in this regard.

#### 5. FINANCIAL IMPLICATIONS

The Act fails to detail the full range of uses to which it may be applied and therefore, costs associated with its implementation are difficult to determine. If the application is limited to agricultural uses, with enforcement to remain a Provincial responsibility, then the impact on Regional and area municipal operating budgets may be minimal. If application of this Act is extended to a range of Regional and area municipal responsibilities or operations then impacts could be substantial.

#### 6. LOCAL MUNICIPAL IMPACT

As the Act fails to detail the full range of uses to which it may be applied, impact assessment is difficult. Area municipalities were consulted in the writing of this report and consequently, several Planning Directors have elected to co-sign it.

#### 7. CONCLUSIONS

The intention to establish water standards to deal with nutrient uses, whether in an agricultural or wider context, is an appropriate response to issues relating to water quality, however, the opportunity for full discussion and meaningful input must be given. Several issues relating to specifics of the proposed legislation have been raised.

In the absence of the proposed Regulations, the Region of York should advise, in writing, the Justice and Social Policy Standing Committee of the issues contained in this report and request the opportunity to provide input to the proposed Regulations.

Regional staff will report back to Planning and Economic Development Committee and Council when the Regulations are released.