

COMMITTEE OF THE WHOLE – JANUARY 17, 2012

SAFE DRINKING WATER ACT - COUNCIL'S STATUTORY STANDARD OF CARE

The City Manager, the Commissioner of Engineering and Public Works, the Director of Public Works, the Director of Engineering Services and the Director of Development/Transportation Engineering, which for the purposes of the City's Drinking Water Quality Management System are collectively referred to as "Corporate Top Management", recommend that Council formally endorse the process outlined in this report for meeting Council's Statutory Standard of Care as "Owner" of Vaughan's municipal drinking water systems.

Contribution to Sustainability

The provision of safe drinking water to residents and businesses is key to the vitality and sustainability of the City.

Economic Impact

There is no direct economic impact as a result of the recommendations contained in this report. The costs of compliance to the requirements of legislation governing the provision of drinking water are fully funded through the City's Drinking water rates and are updated on a yearly basis.

Communications Plan

Not Applicable.

Purpose

The purpose of this report is to:

- Acknowledge the vital role that Council, as Owner of the City's drinking water systems, play in the delivery of safe drinking water;
- Advise Council, as the Owner of the City's drinking water systems, as to the new Statutory Standard of Care requirements under Safe Drinking Water Act;
- Outline the processes used in Vaughan allowing Council to meet the Statutory Standard of Care for Vaughan's municipal drinking water system; and,
- Confirm the City's conformance to these requirements.

Background - Analysis and Options

Regulatory Background for the Standard of Care

Mr. Justice Dennis O'Connor, who headed up the Walkerton Commission of Inquiry, in Recommendation 45, stated: "*Given that the safety of drinking water is essential for public health, those who discharge the oversight responsibilities of the municipality should be held to a statutory standard of care.*" (page 296 of the Part Two Walkerton Report).

In response to that recommendation, Section 19 of the Safe Drinking Water Act (SDWA), Statutory Standard of Care will come into force on January 1, 2013. Section 19 of the SDWA expressly extends responsibility to people with decision making authority over the municipal drinking water system.

Section 19 of the Safe Drinking Water Act states:

“Each of the persons listed in subsection (2) shall,

(a) exercise the level of care, diligence and skill in respect of a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation; and

(b) act honestly, competently and with integrity, with a view to ensuring the protection and safety of the users of the municipal drinking water system. 2002, c. 32, s. 19 (1).”

Subsection (2) outlines the following “persons”:

“The following are the persons listed for the purposes of subsection (1):

- 1. The owner of the municipal drinking water system.*
- 2. If the municipal drinking water system is owned by a corporation other than a municipality, every officer and director of the corporation.*
- 3. If the system is owned by a municipality, every person who, on behalf of the municipality, oversees the accredited operating authority of the system or exercises decision-making authority over the system. 2002, c. 32, s. 19 (2).”*

Subsection 3 deals with offences, and states:

“Every person under a duty described in subsection (1) who fails to carry out that duty is guilty of an offence. 2002, c. 32, s. 19 (3).”

Subsections 4 and 5 further clarifies this as follows:

“A person may be convicted of an offence under this section in respect of a municipal drinking water system whether or not the owner of the system is prosecuted or convicted. 2002, c. 32, s. 19 (4).”

“A person shall not be considered to have failed to carry out a duty described in subsection (1) in any circumstance in which the person relies in good faith on a report of an engineer, lawyer, accountant or other person whose professional qualifications lend credibility to the report. 2002, c. 32, s. 19 (5).”

Staff's Efforts to Ensure Council Meets Their Responsibilities

Council, as the “Owner” of the City’s two water distribution systems, has an oversight role to play in the provision of safe drinking water to Vaughan residents. To ensure Council is kept up to date with respect to the operation of the drinking water systems, staff provide Council the following reports specific to the City’s drinking water systems:

- Summary Report (MOE Requirement) – provided by March 31 of the following year
- Annual Report (MOE Requirement) - provided by February 28 of the following year
- Quality Management System Review (MOE Requirement) – provided annually

These mandated reports provide additional background information for Council to make informed decisions with respect to the ongoing operation, repair, replacement and rehabilitation of the water distribution systems.

Staff also inform Council on drinking water related issues through the traditional Committee report format. Examples include reports detailing financial and technical planning, management of the systems, and recommendations for tender awards for capital or operating contracts. These reports come before Council through Committee of the Whole, or through the Water/Wastewater Operating and Capital budget processes. All of these reports, including the Summary Report, the Annual Report, and the Quality Management System Review, are publicly available documents.

Operational updates are also sent to members of Council, via e-mail, with respect to any significant service interruptions to either the City's water distribution or wastewater collection systems.

Staff will continue to provide information to Council on the status of its drinking water systems so that Council, as the Owner, can make informed decisions with respect to them.

Operator Responsibilities

In terms of operator responsibilities, operators of water distribution systems are required to hold valid operators' certificates, in accordance with Regulation 128/04. As part of maintaining that certificate, operators are required to complete Ministry approved training courses each year and documented on-the-job training hours.

Among other reasons, Section 13 (6) of Regulation 128/04 states the Director may revoke or suspend a Operator's certificate if:

“ 6. The person has failed,

- i. to exercise the level of care, diligence and skill in respect of a drinking water system that a reasonably prudent operator would be expected to exercise in a similar situation, or*
- ii. to act honestly, competently and with integrity, with a view to ensuring the protection and safety of the users of a drinking water system.*

7. The person has failed to meet or has contravened any condition that is set out in his or her certificate. O. Reg. 128/04, s. 13 (1); O. Reg. 323/08, s. 4.”

All of Vaughan's Water and Wastewater operators are certified, and all receive the necessary training required to maintain their certificates. Operators are also governed under other areas of the Safe Drinking Water Act, and are subject to various other penalties as prescribed therein.

Relationship to Vaughan Vision 2020

Statutory Standard of Care requirements align with the objectives of the Vaughan Strategic Plan, specifically the following:

Goal: Service Excellence
Objective: Promote Community Safety, Health and Wellness
Objective: Demonstrate Excellence in Service Delivery

Goal: Organizational Excellence
Objective: Manage Corporate Assets

Regional Implications

Water delivery in York Region is a two-tier system, with the Region of York supplying water to the local municipalities. The local municipalities then distribute the water to their residents and businesses. The Standard of Care is applicable to all Owners of municipal drinking water systems, including the Region of York.

Conclusion

The introduction of a Statutory Standard of Care is one of many recommendations that came out of the Walkerton Commission of Inquiry reports. This new level of legal responsibility will come into effect January 1, 2013.

Notwithstanding that Council has approved a structure for managing its drinking water systems through the approved Operational Plan, it is important for Council, and all members of Corporate Top Management and Operational Top Management, as well as operators of the systems, to be fully aware of responsibilities when it comes to providing safe drinking water to the public.

Council meets its Statutory Standard of Care by exercising care and diligence when reviewing staff reports and recommendations with respect to the ongoing operation, repair, replacement and rehabilitation of the City's water distribution systems ongoing, and "*by acting with a view to ensuring the protection and safety of the users of the municipal drinking water system.*".

Staff will continue to provide the necessary reports and information to ensure Council meets these statutory obligations.

Attachments

Not Applicable.

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Respectfully submitted,

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