

Legal & Operational Implications of the Walkerton Inquiry Part II Report

Presentation to General Committee

September 17, 2007

Agenda

Introduction & Background

Peter Loukes, Director of Operations

Part I – Legislation & Legal Obligations

Catherine Conrad, Town Solicitor

Part II – Legislative Implications for Waterworks Operation

Jerry Klaus, General Manager of Waterworks

Part III – Next Steps

Peter Loukes, Director of Operations

Q&A

Introduction & Background

Introduction

- The Province has introduced the Municipal Drinking-Water Licensing Program in May 2007
- Staff will be making a series of presentations to inform Council of the implications of the this Licensing Program for the system and Owners
- Presentation #1 – Legal and Operational Implications of the Walkerton Inquiry
- Presentation #2 – Municipal Drinking Water Licensing Program
- Presentation #3 – Quality Management System, Gap Analysis & Delivery Plan

Background

Walkerton Inquiry Report - Part II

- 93 recommendations made leading to numerous Legislated Acts and Regulations
- Major Effects of the Walkerton Inquiry Recommendations
 - New Legislation & Regulations
 - Specified Owner's and Operating Authority's Accountabilities
 - Additional prescribed duties for Waterworks
 - Financial requirements for full cost recovery and reporting related to Waterworks

Background (cont'd)

Major Legislation Introduced as a
Result of the Walkerton Inquiry

- Safe Drinking Water Act, 2002 (SDWA)
- Sustainable Water & Sewage Systems Act, 2002
- Nutrient Management Act, 2002
- Clean Water Act, 2006

Part I – Legislation & Legal Obligations

Safe Drinking Water Act, 2002

- Received Royal Assent on December 13, 2002
- Major regulatory requirements for drinking water Providers
- Significant statutory duties and enforcement provisions
- Section 19 of the Act – “Standard of Care-Municipal Drinking-Water System” will come into force January 1, 2013.

Statutory Duties

- Apply to owners (Council) and operating authority (the Town's Waterworks Department) of drinking water systems including Markham and York Region
- All water to meet the prescribed drinking water quality standards
- Duties regarding Drinking Water System Owners
- Duties of Operators
- Testing at accredited laboratories only
- Duty to report adverse water quality incidents

Standard of Care

- Applies to owner of municipal drinking water system and those exercising decision-making authority in connection with accredited operating authority
- Reasonable prudent person standard/must act honestly, competently and with integrity with a view to ensuring the protection & safety of users of the municipal drinking water system
- Failure to comply with the standard is an offence
- Decision makers can be convicted of an offence whether or not the owner is prosecuted

Offences and Penalties

- **Offences** include contravention of:
 - Requirement for operator's certificate
 - Duty to have accredited operating authority
 - Permitting a drinking water hazard
 - Requirement for approval or license of drinking water system
- **Penalties**
 - First offence maximum of \$100,000 per day for corporations and \$20,000 per day for individuals
 - Subsequent offence maximum of \$200,000/day for corporations and \$50,000/day for individuals and/or imprisonment up to one year
 - Fines even higher where offence **could have** resulted in drinking water health hazard

Special offences & Penalties

- Failure to report adverse water test result
- Individuals: Maximum \$4,000,000 and \$7,000,000 for first and subsequent convictions and/or up to five years less a day imprisonment
- Corporations: Maximum \$6,000,000 and \$7,000,000 for first and subsequent convictions
- Administrative Penalty maximum of \$10,000/day (not yet proclaimed)

Nutrient Management Act, 2002

- Significant regulatory requirements that would apply to agricultural operations, municipalities and generators of materials containing nutrients
- New standards for the application of land-applied materials containing nutrients
- Regulations supercede municipal bylaws
- Administrative Penalties and Fines

Clean Water Act, 2006

- Objective is to protect drinking water sources
- Expected to override other Acts where there is a risk to human health
- Municipalities would be required to prepare inventories and plans documenting actual and potential water supplies, and any threats to them, including landfills, storage tanks and the use of hazardous chemicals
- Conflict provisions provide that the Act that provides the greatest level of protection prevails

Part II

Legislative Implications for Waterworks Operation

Regulations Impacting Waterworks Under the SDWA

- Regulation 170/03 – Drinking Water Systems
- Regulation 169/03 – Drinking Water Quality Standard
- Regulation 248/03 – Drinking-Water Testing Services

Regulations Impacting Waterworks Under the SDWA

- Regulation 128/04 – Licensing of System Operators
- Regulation 242/05 – Compliance and Enforcement
- Regulation 188/07 – Licensing of Municipal Drinking-Water Systems.
- Regulation 450/07 – Charges for Industrial and Commercial Water Users (OWRA)

Regulation 170/03

Main Impacts

- Requirements for water quality maintenance and testing
 - Annually 10,000 total samples for Microbiology, Chemical, and Chlorine Residual
- The most recent update with impact on Waterworks – Community Lead Monitoring Program
 - additional sampling requirements as of Dec 15, 2007
- Annual status report to Owner on Water Quality & system maintenance
- Records retention extended and strengthened

Regulation 169/03

Main Impacts

- This Regulation defines the acceptable parameters for potable water quality
 - Bacteriological (E.Coli, Total Coliforms)
 - Chemical (THMs, Lead, Nitrates/Nitrites)
 - Full chemical scan for 78 parameters required every 5 years

Regulation 248/03

Main Impacts

- Requirement for Laboratories conducting water quality analyses to be licensed
- Requirement for municipal systems to use Licensed laboratories for water quality analysis and testing

Regulation 128/04

Main Impacts

- Mandatory Operators certification and renewal (3 years)
- Mandatory Operator training requirements (35 hours annually, 12 hours CEU accredited)
- Designation of Operator in Charge & Overall Responsible Operator
- Similar regulatory requirements exist for Wastewater Operators (O.Reg. 129/04)

Regulation 242/05

Main Impacts

- MOE system inspections
 - Standard Annual Inspections
 - Unannounced Inspections every three years
- The MOE can issue Orders to undertake Corrective Actions

Regulation 188/07 – Licensing of Municipal Drinking-Water Systems

Main Impacts

- Requirement for the Owner to obtain a Drinking Water Licence
- Requirement for the Owner to ensure that the Operating Authority for the system is Accredited
- Markham is required to apply for Accreditation by February 1, 2009
- The implications of the Licensing Program will be addressed in the September 24th presentation

Regulation 450/07

Main Impacts

- Financial – Collect fees from ICI customers with high water consumption on behalf of the Ontario Government
- Requirement to accurately identify ICI users that use more than 50,000 litres in any calendar day
- Additional details will be provided in the September 24th presentation

Operational Compliance with SDWA

Action Taken	Completion Date
Delcan - Waterworks Operations Audit (April 2003) – 92 Recommendations substantially complete	2006
3-year organization/staffing plan completed	2006
Certification of Grand-parented Operators	2006
Improved Operational practices • established Water Quality unit • developed comprehensive dead-end flushing program • water quality sampling program • expanded preventative maintenance programs	2006

Part III - Next Steps

Next Steps

- Presentation to Council on the requirements of the Municipal Drinking-Water License Program and the Quality Management System (QMS) (September 24th 2007)
- Presentation and Report to Council on the Gap Analysis and Strategic Plan for the Implementation of the QMS (October 1st 2007)
- Presentation to Council on the Waterworks Reserves and Water Rate Structure with respect to the requirements of the Sustainable Water & Sewer System Act (October, 2007)

Timelines for Municipal Drinking- Water Licensing

Requirement	Due Date	Responsible
Quality Management System implementation, currently underway	Fall, 2008	Waterworks
Operational Plans completion & implementation	Fall, 2008	Waterworks
Drinking-Water Works Permit application	February 1, 2009	Owner
Municipal Drinking Water Licence application	February 1, 2009	Owner
Operating Authority Accreditation by MOE designated Accreditation Body	After February, 2009	Waterworks
Financial Plan submission (pending final Regulation)	Expected by 2010	Waterworks/ Finance

Q&A

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