

STAFF REPORT: ENGINEERING AND PUBLIC WORKS DEPARTMENT

REPORT TO: Infrastructure & Recreation
 Committee
MEETING DATE: October 8, 2013
REPORT NO.: EPW.13.083
SUBJECT: Standard of Care Provisions and
 Council Responsibilities
PREPARED BY: John Caswell,
 Manager of Water and Wastewater
 Services

A. Recommendations

THAT Council receive Staff Report EPW.13.083 entitled "Standard of Care Provisions and Council Responsibilities" for their information.

B. Background

Residents and business owners are entitled to safe, high quality drinking water. Municipal officials and councillors have an important role in ensuring safe, high quality drinking water.

The Safe Drinking Water Act, 2002 (SDWA) includes a statutory standard of care for individuals who have oversight responsibilities for municipal drinking water system. The Act does not require Municipal officials and councillors to be an expert in the water field, but does require officials to be informed. Section 19 of the SDWA allows for a person to rely in good faith on a report of an engineer, lawyer, accountant or other person whose professional qualifications lend credibility to the report.

Section 11 of the SDWA describes the legal responsibilities of owners and operating authorities of municipal drinking water systems.

Owners and operating authorities are responsible for ensuring their drinking water systems:

- Provide water that meets all prescribed drinking water quality standards
- Operate in accordance with the Act and its regulations, and are kept in a fit state of repair
- Are appropriately staffed and supervised by qualified persons
- Comply with all sampling, testing and monitoring requirements
- Meet all reporting requirements

Section 19 (Attachment # 1) of the SDWA extends legal responsibility to people with decision-making authority over municipal drinking water systems. It requires that they exercise the level of care, diligence and skill with regard to a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation and that they exercise this due diligence honestly, competently and with integrity.

Some examples of actions required of owners and operating authorities under Section 14 (3) include:

- Being aware of the established procedure for communication with the operating authority, including how information is expected to be shared with municipal councillors, and assessing the effectiveness of this procedure
- Holding regular meetings with the operating authority, especially in cases where there may be reason to believe the operating authority is not carrying out its responsibilities

Responsibilities of Municipal Councillors under the Safe Drinking Water Act:

- An operator of a drinking water system is required to ensure that an annual summary report is presented to the members of council or local services board. Summary reports must be produced by March 31 of each year to cover the preceding calendar year

The summary report must include:

- information about any requirements of the SDWA, the regulations, the system's approval, drinking water works permit, municipal drinking water licence and any order that the system failed to meet during the time period, plus the duration of the failure
- a description of the measures taken to correct each failure
- a comparison of the system's capability with the quantities and flow rates of the water supplied the preceding year to help assess existing and planned uses

Municipalities are also required to provide details about each residential drinking water system in an annual report to consumers. This annual report must be completed by February 28 each year and include:

- a brief description of the drinking water system including chemicals used
- a summary of the results of required testing, plus the approval, licence or provincial officer order issued to the system
- a summary of any adverse test results required to be reported to the Ministry of the Environment
- a description of any corrective actions taken, and
- a description of any major expenses incurred to install, repair or replace required equipment

Considering the aforementioned responsibilities, Staff provide quarterly updates throughout the year on happenings within the department which include information about:

- Raw, Treated and Distribution Water Quality Data
- Staff Training
- Distribution System Summary
- Summary of Plant Flows
- Watermain Break Summary
- Incidents of Adverse Water Quality
- Water Quality Concerns / Resident Complaints

It is not intended that Council be consulted on regular operations, however, in the event of an adverse test results, Council will be contacted.

There are a variety of actions Councillors can take to be better informed including, but not limited to:

- ✓ Consider and act on any advice (including deficiencies and action items) identified during the annual management review process
- ✓ Review the QMS policy in your operational plan and its commitment
- ✓ Ask Water Operations Staff to show how it is meeting these commitments
- ✓ Ask Water Operations Staff to review the drinking water emergency plan with council and to explain what responsibilities have been assigned to the owner
- ✓ Know who will be the spokesperson during a drinking water emergency
- ✓ Ensure critical staff have taken necessary training on emergency procedures and have participated in testing
- ✓ Determine when and how Water Operations Staff will communicate to you as an owner
- ✓ Find out what information is made available to the public and how
- ✓ Obtain and thoroughly review copies of the most recent annual and summary reports
- ✓ Ask for explanations of any information you do not understand
- ✓ Consider, act on and correct any deficiencies noted in the reports
- ✓ Review your annual inspection results and ask questions if there is any indication of declining quality
- ✓ Clarify any technical terms
- ✓ Ask how deficiencies are being addressed
- ✓ Review your system's standing in the ratings reported in the Chief Drinking Water Inspector's Annual Report. If your rating is less than 100 per cent, ask why
- ✓ Consider, act on and correct any deficiencies highlighted in the inspection
- ✓ Ensure there are sufficient resources for appropriate levels of training for municipal staff involved in operating a drinking water system
- ✓ Confirm that an overall responsible operator (ORO) has been designated and that procedures are in place to ensure all required staff and contractors are certified
- ✓ Check to see if drinking water operator succession planning is being done

In order to ensure time specific regulatory requirements are being adhered to, Staff has prepared an overview of the responsibilities relating to the drinking water system and specifically DWQMS which are outlined in Attachment # 2. The listing includes steps taken by Staff to satisfy these requirements.

C. The Blue Mountains' Strategic Plan

The acceptance of this Report by Council furthers the Town Strategic Plan Goal # 6 "Providing a Strong, Well-Managed Municipal Government."

D. Environmental Impacts

None

E. Financial Impact

None

F. In Consultation With

None

G. Attached

- Attachment # 1 – Excerpt from Section 19 of the Safe Drinking Water Act
- Attachment # 2 – Water System & DWQMS Responsibility Overview

Respectfully submitted,

John Caswell
John Caswell
Manager of Water & Wastewater Services

Engineering & Public Works
Office: 519-599-3131 Ext.226
Fax: 519-599-7723
icaswell@thebluemountains.ca

Reg Russwurm
Reg Russwurm
Director, Engineering and Public
Works

ATTACHMENT # 1
EXCERPT FROM SAFE DRINKING WATER ACT

Standard of care, municipal drinking water system

19. (1) 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).

Same

(2) 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).

Offence

(3) 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).

Same

(4) 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).

Reliance on experts

(5) 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).

Prohibition

20. (1) No person shall cause or permit any thing to enter a drinking water system if it could result in,

- (a) a drinking water health hazard;
- (b) a contravention of a prescribed standard; or
- (c) interference with the normal operation of the system. 2002, c. 32, s. 20 (1).

Exception

(2) Subsection (1) does not apply to prohibit activities that are carried out,

ATTACHMENT # 1
EXCERPT FROM SAFE DRINKING WATER ACT

- (a) in the course of the proper operation, maintenance, repair or alteration of a drinking water system; or
- (b) under a statutory authority or for the purposes of complying with a statutory requirement. 2002, c. 32, s. 20 (2).

Dilution no defence

(3) For the purposes of prosecuting the offence of contravening subsection (1), it is not necessary to prove that the thing, if it was diluted when or after it entered the system, continued to result in or could have resulted in a drinking water health hazard. 2002, c. 32, s. 20 (3).

WATER SYSTEM AND DWQMS RESPONSIBILITY OVERVIEW

POSITION	DWQMS TASKS	DUE DATE	COMPLETION SCHEDULE	LAST COMPLETED	COMMENTS	DOCUMENTATION / STAFF REPORT
Mayor / Deputy Mayor / Council	Signing of Commitment & Endorsement Statement (Mayor and Deputy only)	Nov 2014	Based on Elections and Staff Changes	Jun 18, 2012	Needs to be completed upon Staffing changes, could occur more frequently than every 4 years	EPW.08.11 and EPW.09.50
	Evaluate Effectiveness of Infrastructure, Maintenance & Rehabilitation Report	Mar 2014				
	Appoint DWQMS Quality Management System Representative		As required			EPW.08.109
	Review DWQMS Staff Reports received from Top Management		As required			EPW.08.11, EPW.08.109, EPW.09.50, EPW.09.50, EPW.10.061, EPW.11.001, EPW.11.004, EPW.11.056, EPW.12.040, EPW.12.045, EPW.12.052, EPW.12.102 EPW.13.068
LEGISLATED WATER RESPONSIBILITIES						
Mayor / Deputy Mayor / Council	Review Year End Water and Wastewater Capacity Assessment Report	Dec 2014	By December of each year	May 14, 2013		EPW.13.045, EPW.08.89,
	Review Water Summary Report	March 2014	By March 31st of each calendar year	Mar 19, 2013		EPW.09.013, EPW.10.031, EPW.11.014, EPW.12.005, EPW.13.026
LEGISLATED WATER RESPONSIBILITIES						
POSITION	DWQMS TASKS	DUE DATE	COMPLETION SCHEDULE	LAST COMPLETED	COMMENTS	DOCUMENTATION / STAFF REPORT
CAO	Signing of Commitment & Endorsement Statement	Nov 2014	Based on Elections and Staff Changes	Jun 18, 2012	Needs to be completed upon Staffing changes, could occur more frequently than every 4 years	EPW.08.11 and EPW.09.50
	Evaluate Effectiveness of Infrastructure, Maintenance & Rehabilitation Report	Mar 2014	Annually	Mar 25, 2013		
	Perform Annual Management Review	June 2014	Every 12 months	June 4, 2013	Must be completed within a 12 month period (before June 4, 2014)	
	Report Findings of Management Review to Owner and Operating Authority	Jul 2014	Annually	Sept 10, 2013	Exact date is dependant on Council meeting dates	EPW.10.061, EPW.11.056, EPW.12.040, EPW.13.068
	Appointment of Implementation Lead		As required	Jan 11, 2011		EPW.11.004
Review Annual Infrastructure Review Report	Mar 2014	Every 12 months	Mar 25, 2013			
LEGISLATED WATER RESPONSIBILITIES						
POSITION	DWQMS TASKS	DUE DATE	COMPLETION SCHEDULE	LAST COMPLETED	COMMENTS	DOCUMENTATION / STAFF REPORT
Director of EPW	Signing of Commitment & Endorsement Statement	Nov 2014	Based on Elections and Staff Changes	Jun 18, 2012	Needs to be completed upon Staffing changes, could occur more frequently than every 4 years	EPW.08.11 and EPW.09.50
	Evaluate Effectiveness of Infrastructure, Maintenance & Rehabilitation Report	Mar 2014	Annually	Mar 25, 2013		
	Perform Annual Management Review	June 2014	Every 12 months	June 4, 2013	Must be completed within a 12 month period (before June 4, 2014)	
	Report Findings of Management Review to Owner and Operating Authority	Jul 2014	Annually	Sept 10, 2013	Exact date is dependant on Council meeting dates	EPW.10.061, EPW.11.056, EPW.12.040, EPW.13.068
	Review Annual Infrastructure Review Report	Mar 2014	Every 12 months	Mar 25, 2013	Must be completed within a 12 month period (before Mar 25)	EPW.11.004
LEGISLATED WATER RESPONSIBILITIES						
POSITION	DWQMS TASKS	DUE DATE	COMPLETION SCHEDULE	LAST COMPLETED	COMMENTS	DOCUMENTATION / STAFF REPORT
Manager of Water & Wastewater Services	Signing of Commitment & Endorsement Statement	Nov 2014	Based on Elections and Staff Changes	Jun 18, 2012	Needs to be completed upon Staffing changes, could occur more frequently than every 4 years	EPW.08.11 and EPW.09.50
	Evaluate Effectiveness of Infrastructure, Maintenance & Rehabilitation Report	Mar 2014	Annually	Mar 25, 2013		
	Perform Annual Management Review	June 2014	Every 12 Months	June 4, 2013	Must be completed within a 12 month period (before June 4)	
	Report Findings of Management Review to Owner and Operating Authority	Jul 2014	Annually	Sept 10, 2013	Exact date is dependant on Council meeting dates	EPW.10.061, EPW.11.056, EPW.12.040, EPW.13.068
	Review Annual Infrastructure Review Report	Mar 2014	Every 12 Months	Mar 25, 2013	Must be completed within a 12 month period (before Mar 25)	EPW.11.004
	Evaluate Risk Assessment	Oct 2013	Every 12 Months	Oct 30, 2012	Must be completed within a 12 month period (before Oct 31)	N/A
	Perform Risk Assessment	Oct 2015	Every 36 Months	Oct 30, 2012	Must be completed at minimum, every 36 months	N/A
LEGISLATED WATER RESPONSIBILITIES						
POSITION	DWQMS TASKS	DUE DATE	COMPLETION SCHEDULE	LAST COMPLETED	COMMENTS	DOCUMENTATION / STAFF REPORT
Implementation Lead	Report Findings of Management Review to Owner and Operating Authority	Jul 2014	Annually	Sept 10, 2013	Exact date is dependant on Council meeting dates	
	Review Annual Infrastructure Review Report	Mar 2014	Every 12 Months	Mar 25, 2013	Must be completed within a 12 month period (before Mar 25)	
	Evaluate Risk Assessment	Oct 2013	Every 12 Months	Oct 30, 2012	Must be completed within a 12 month period (before Oct 31)	
	Perform Risk Assessment	Oct 2015	Every 36 Months	Oct 30, 2012		
	Hold QMS Awareness Meetings for Operators	Dec 2013	Every 3 Months	Sept 11, 2013	Reviews are performed at least every 3 months throughout each year	
	Draft Response Procedures as Required from Risk Assessment		As Required		New procedures will be created as required when identified through the Risk Assessment	
	Establish and Convene a Risk Assessment Team	Oct 2015	Every 36 Months	Oct 30, 2012		
	Ensure the currency and accuracy of the Essential Supplies and Services Table	Dec 2014	Annually	Sept 11, 2013		
	Review Element # 17 Procedure to ensure its validity and currency	Dec 2014	Annually	Aug 28, 2013		
	Review Element # 19 Procedure to ensure its validity and currency	Dec 2014	Annually	Aug 28, 2013		
Review Element # 20 Procedure to ensure its validity and currency	Dec 2014	Annually	Aug 28, 2013			
LEGISLATED WATER RESPONSIBILITIES						
POSITION	DWQMS TASKS	DUE DATE	COMPLETION SCHEDULE	LAST COMPLETED	COMMENTS	DOCUMENTATION / STAFF REPORT
Quality Management System Representative	Administers the QMS by ensuring that processes and procedures are established and maintained		Ongoing			
	Ensure personnel are aware of applicable legislation and regulatory requirements for DWQMS		Ongoing		Must be completed within a 12 month period (before Mar 25)	
	Ensure implementation of current versions of documents required by DWQMS are in use		Ongoing		Must be completed within a 12 month period (before Oct 31)	
	Report on status of DWQMS to Staff and Top Management		As Required			
	Ensure that processes and procedures are established and maintained		Ongoing		Reviews are performed at least every 3 months throughout each year	
	Promote awareness of QMS throughout the Operating Authority		As Required		New procedures will be created as required when identified through the Risk Assessment	
	Ensure currency, accuracy and ease of retrieval of each QMS document		Ongoing			
	Initial documents/form prior to release to Water Operations Staff		Ongoing			
	Evaluate Risk Assessment	Oct 2013	Every 12 Months	October 30, 2012		
	Hold QMS Awareness meetings for Operators	Dec 2013	Every 3 Months	September 11, 2013		
	Provide support and guidance during adverse situations		Ongoing			
	Review Element # 17 Procedure to ensure its validity and currency	Dec 2014	Annually	August 28, 2013		
Review Element # 19 Procedure to ensure its validity and currency	Dec 2014	Annually	August 28, 2013			
Review Element # 20 Procedure to ensure its validity and currency	Dec 2014	Annually	August 28, 2013			
LEGISLATED WATER RESPONSIBILITIES						
POSITION	DWQMS TASKS	DUE DATE	COMPLETION SCHEDULE	LAST COMPLETED	COMMENTS	DOCUMENTATION / STAFF REPORT
Water Operators	Evaluate Risk Assessment	Oct 2013	Every 12 Months	October 30, 2012		
	Assume ORO responsibilities as required		Ongoing			
	Be prepared to respond to any water treatment/distribution emergency		Ongoing			
	Attend training relating to emergency response procedures	April 2014	Every 12 Months	April 25, 2012		
	Maintain licencing as per O.Reg 128/04		Ongoing			