

TAKING CARE OF YOUR DRINKING WATER

A Quick Guide For Members Of Municipal Councils

If you are a municipal councillor, this quick guide is intended to help you better understand the Safe Drinking Water Act, 2002 (SDWA) and provide information about your statutory standard of care responsibilities. You are encouraged to also read *Taking Care of Your Drinking Water: A Guide for Members of Municipal Councils*. It provides more details about these responsibilities as well as information about how Ontario's drinking water is protected.

Ontarians expect safe, high quality drinking water. It is a matter vital to public health. As a member of a municipal council, you have an important role to play to ensure that your community has access to safe, high quality drinking water — and you are legally obliged to do so.

THREE THINGS TO REMEMBER AS A MUNICIPAL COUNCILLOR:

It's Your Duty. The Safe Drinking Water Act, 2002 includes a statutory standard of care for individuals who have decision-making authority over municipal drinking water systems or who oversee the operating authority of the system. This can extend to municipal councillors. There are legal consequences for not acting as required by the standard of care, including possible fines or imprisonment.

Be Informed. Ask questions. Get answers. You don't have to be an expert in drinking water operations, but you do need to be informed about them. Your decisions can have an impact on public health. Seek advice from those with expertise and act prudently on that advice.

Be Vigilant. Complacency can pose one of the greatest risks to drinking water systems. It is critical that you never take drinking water safety for granted or assume all is well with the drinking water systems under your care and direction. The health of your community depends on your diligent and prudent oversight of its drinking water.

“Water is unique as a local service. It is, of course, essential to human life and to the functioning of communities, (and) the consequences of a failure in the water system (are) most seriously felt by those who depend on it locally. Municipal ownership, and the ensuing responsibilities, should provide a high degree of public accountability in relation to the local water system.”

— Justice Dennis O'Connor,
2002 Report of the Walkerton Inquiry

Legal Disclaimer – This quick guide should not be viewed as legal or other expert advice. For specific questions regarding the legal application of the Safe Drinking Water Act, 2002 and its regulations, please consult a lawyer and/or consult the text of the Act at www.e-laws.gov.on.ca.

Key Sections of the SDWA for Municipal Councillors

Section 11: Duties of Owners and Operating Authorities

Section 11 of the SDWA describes the legal responsibilities of owners and operating authorities of regulated drinking water systems. It is important for you to understand the scope of your municipality or operating authority's day-to-day responsibilities.

Owners and operators 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

Examples of actions required of owners and operators under Section 11:

- Sampling and testing of drinking water with a frequency appropriate to the type, size and users of the system in accordance with the act and corresponding regulations
- Using an accredited and licensed laboratory for drinking water testing services
- Reporting of adverse test results that exceed any of the standards in the Ontario Drinking Water Quality Standards Regulation, both verbally and in writing, to the local medical officer of health and the Ministry of the Environment and Climate Change (MOECC)
- Obtaining a drinking water licence for a municipal residential drinking water system from the MOECC, which includes a financial plan
- Ensuring the drinking water system is operated by an accredited operating authority
- Hiring certified operators or trained persons appropriate to the class of the system

- Preparing an annual report to inform the public on the state of the municipality's drinking water and the system providing it, and an annual summary report for the owners of the drinking water system

Section 19: Your Duty and Liability – Statutory Standard of Care

Section 19 of the SDWA expressly extends legal responsibility to people with decision-making authority over municipal drinking water systems and those that oversee the accredited operating authority for the system. 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.

Meeting your statutory standard of care responsibilities

Meeting the statutory standard of care is the responsibility of:

- the owner of the municipal drinking water system
- if the system is owned by a municipality, every person who oversees the accredited operating authority or exercises decision-making authority over the system – **potentially including but not limited to members of municipal councils**
- if the municipal drinking water system is owned by a corporation other than a municipality, every officer and director of the corporation

Maintaining an Appropriate Level of Care

Standard of care is a well-known concept within Ontario legislation.

For example, the Business Corporations Act requires that every director and officer of a corporation act honestly and in good faith with a view to the best interests of the corporation and exercise the care, diligence and skill that a reasonably prudent person would in comparable circumstances.

Statutory standards of care address the need to provide diligent oversight. What is considered to be an appropriate level of care will vary from one situation to another. As a municipal councillor, it is important to educate yourself on this statutory requirement and to gain an understanding of the operation of drinking water systems in your community to help you meet the standard of care requirements.

You are not expected to be an expert in the areas of drinking water treatment and distribution.

Section 19 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.

Enforcing the Statutory Standard of Care

As a municipal councillor, you need to be aware that not meeting your statutory standard of care responsibilities comes with serious consequences. Section 19 provides the province with an enforcement option when needed.

☑ Actions You Can Take – to be better informed about your drinking water oversight responsibilities.

General

- Read *Taking Care of Your Drinking Water: A Guide for Members of Municipal Councils*, which provides more details about your responsibilities as well as information about how Ontario's drinking water is protected and reference material on drinking water.
- Consider taking the Standard of Care training with the Walkerton Clean Water Centre. Get course details and session offerings at www.wcwc.ca or by phoning toll free 1-866-515-0550.
- Learn about drinking water safety and its link to public health. Speak to water system and public health staff to learn more.
- Become familiar with your municipal drinking water system. Ask your water manager to give a presentation to council and/or arrange a tour of your drinking water facilities.

A provincial officer has the authority to lay a provincial offence charge against a person to whom the standard applies. The range of penalties includes maximum fines of up to \$4 million for a first offence and provision for imprisonment for up to five years. No minimum penalties are established. Actual penalties would be decided by the courts depending on the severity and consequences of the offence.

It is important to note the difference between the provision of the Municipal Act, 2001, that limits the personal liability of members of municipal councils and officials, and the standard of care imposed under the SDWA. Under sections 448-450 of the Municipal Act, 2001, municipal council members and officials have relief from personal civil liability when they have acted in good faith. However, despite that protection, municipal councillors and officials that are subject to the duty imposed by Section 19 of the SDWA could be penalized if a prosecution is commenced and a court determines they have failed to carry out the duty imposed under that section.

- Review the reports of the Walkerton Inquiry, specifically sections related to municipal government (Chapter 7 in Report I, Chapters 10 and 11 in Report II). The reports are available online at www.attorneygeneral.jus.gov.on.ca/english/about/pubs/walkerton.
- Become further acquainted with drinking water legislation and regulations, available on the Ontario Government e-Laws website at www.e-laws.gov.on.ca.

Drinking Water Operational Plan

- Ask your operating authority to speak to your municipal council about your operational plan.
- Consider and act on any advice (including identified deficiencies and action items) identified during the annual management review process.
- Review the Quality Management System policy in your operational plan and its commitments.
- Ask your operating authority to show how it is meeting these commitments.

Drinking Water Reports and Inspections

- Obtain and thoroughly review copies of the most recent annual and summary reports.
- Ask for explanations of any information you don't 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.

Infrastructure Planning

- Find out what maintenance, rehabilitation and renewal plans are in place for your drinking water system.
- Ask your operating authority to present the findings of its annual infrastructure review.

Communicating with Your Operating Authority

- Determine when and how your operating authority will communicate to you as an owner.
- Find out what information is made available to the public and how.

Emergency Planning for Drinking Water

- Ask your operating authority 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.

Drinking Water System Operators

- 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 and that measures are taken to address any current or anticipated challenges to recruiting skilled employees.
- Ensure your municipality or operating authority has contingency plans in place for situations where your certified operators may not be available (e.g. labour disputes, illnesses, vacancies, etc.) and, if activated, confirm that these contingency plans have been, where required, approved by the Ministry of the Environment and Climate Change and are working.

Source Protection Planning

- Review the source protection plan for your area and find out what actions are being taken to protect vulnerable areas around your drinking water sources.
- Find out if your municipality has appointed risk management officials and inspectors to support source protection planning and whether you are sharing these duties with other municipalities or delegating to a local source protection authority.

For more information, call the Ministry of the Environment and Climate Change at **1-800-565-4923**
Email: drinking.water@ontario.ca

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