

## Safe Drinking Water and Standard of Care

### *A backgrounder for municipal officials on the Safe Drinking Water Act, 2002 and Section 19, Statutory Standard of Care*

Safe drinking water is essential to public health. Accordingly, the people of Ontario expect that the quality of the water that comes from their taps is safe for human consumption.

As part of Ontario's commitment to safeguard drinking water, the Ontario government recently enacted section 19 of the *Safe Drinking Water Act, 2002* (SDWA). Section 19 sets out the legal responsibilities and duties of persons who oversee municipal drinking water systems.

As a municipal official or a corporate officer, it is important that you understand these legal duties and responsibilities, commonly described as statutory Standard of Care.

This fact sheet provides basic information about the purpose and application of section 19 and is intended to help you better understand your duties and responsibilities. To fully understand your legal obligations under section 19, it is recommended you seek legal advice.

### *Safe Drinking Water Act, 2002*

The SDWA is part of a comprehensive legislative framework established by the Ontario government to protect the safety and quality of Ontario's drinking water. This framework has been enacted to safeguard water quality from the raw water source through to treatment and distribution.

The SDWA regulates the treatment and distribution of drinking water. The primary purpose of the SDWA is to provide for the protection of human health and the prevention of drinking water hazards through the control and regulation of drinking water systems and the testing of drinking water.

Regulations under the SDWA stipulate the detailed requirements for drinking water systems, testing services, quality standards, certification of drinking water system operators and drinking water quality analysts, as well as compliance and enforcement.

**Remember, this fact sheet is only a summary**

To be clear about your specific legal requirements, you must refer to the *Safe Drinking Water Act, 2002*. You can access the SDWA at [www.elaws.gov.on.ca](http://www.elaws.gov.on.ca) or by calling our Public Information Centre at 1-800-565-4923.



## Section 19, Statutory Standard of Care

Section 19 of the SDWA was proclaimed in May 2007 and will come into force on January 1, 2013. This section requires that those who are in a position of oversight of municipal drinking water systems apply a statutory standard of care to their oversight activities. Specifically, section 19 applies to the owner of the system:

- where the system is owned by a corporation that is not a municipality
  - every officer and director of that corporation
- where the system is owned by a municipality
  - every person who oversees the accredited operating authority for the system, and
  - every person who exercises decision making authority over the system.

Anyone to whom the standard of care applies is expected to 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. They also must act honestly, competently and with integrity, with a view to ensuring the protection and safety of the users of the municipal drinking water system.

The section does not require that everyone involved in the oversight of drinking water systems be an expert. However, it is expected that everyone inform themselves appropriately of their responsibilities. It is also expected that everyone be diligent about their oversight responsibilities. Part of this diligence includes engaging, as appropriate, persons who have the particular expertise in the various aspects of owning and operating drinking water systems. In fact, the SDWA recognizes this need to rely on experts. Section 19 of the SDWA allows for any person subject to the standard of care, to rely in good faith on a report of an engineer, lawyer, accountant or other person whose professional qualifications lend credibility to the report.

### Who is subject to Section 19 of the SDWA?

Section 19 of the SDWA expressly extends regulatory responsibility to people with decision making authority over the drinking water system. Depending on specific circumstances and individual responsibilities, this responsibility may extend to individual municipal councillors and other municipal officials and employees.

There are many variations on how drinking water systems are managed by municipalities. Determining to whom the standard of care applies within each municipality, and determining how that standard of care is met must be assessed on a case-by-case basis. To determine who is subject to the standard of care in cases where the municipal drinking water system is owned by a municipality, you should consider issues/questions such as the following:

- who within the organizational structure has decision-making authority over the municipal drinking water system?
- who is responsible for:
  - adopting an overall policy for the system?
  - hiring senior management and conducting regular performance appraisals, or contracting with an external operating authority?
  - asking for and receiving periodic and annual reports from senior management on the operation of the municipal drinking water system?
  - auditing and evaluating the performance of the operating authority?

### Fulfilling Section 19, Standard of Care

The SDWA includes enforcement and compliance measures to assist in the delivery of safe drinking water to the people of Ontario.

Delivering safe, quality drinking water to the people of Ontario is serious business and there are serious consequences for non-compliance with the SDWA and section 19. That is why we strongly recommend your municipality consider where it would be appropriate to engage people with expertise in drinking water systems to provide advice or answer questions. It will help to protect you, your municipality and the people of your municipality who rely on your due diligence for safe drinking water and their health.

Failure to comply with section 19 of the SDWA is an offence and could result in the prosecution of an individual, a corporation, or both.

A conviction under section 19 could result in significant financial penalties and/or imprisonment. The maximum fine for an individual convicted of a first offence under the section is \$20,000 for each day or part of a day that the offence occurred, imprisonment, or both. If a breach of section 19 resulted in a drinking water health hazard or other severe consequences, the fine could be

as high as \$4 million for each day or part of a day that the offence occurred, imprisonment, or both. Significantly greater fines could result on subsequent convictions. Fines for corporations are significantly greater.

Actual penalties would be decided by the courts and would depend on the severity and consequences of the offence.<sup>1</sup>

### **What can you do to better meet your Standard of Care responsibilities?**

Get informed and stay informed.

Being informed and demonstrating diligent oversight requires knowledge of some basic principles of operation, administration and financial planning so that you understand the characteristics of the drinking water system or systems you oversee.

Actions that municipal officials with oversight for drinking water systems should take include:

- being acquainted with drinking water legislation and regulations
- learning about drinking water safety and the operation of water works facilities
- familiarizing themselves with their municipal drinking water systems and their approvals
- setting the overall policy direction for the municipal drinking water system
- clearly defining and understanding the roles and responsibilities of councillors, senior management and other municipal or corporate officials who exercise decision-making authority over the drinking water system
- hiring competent senior management and conducting regular performance appraisals
- asking for and receiving periodic and annual reports from senior management on the operation of the municipal drinking water system
- periodically auditing or evaluating the performance of the external operating authority if one has been contracted to run the drinking water system
- reading and asking questions about any reports which identify declining drinking water quality
- being satisfied that appropriate steps are taken to address any issues
- seeking outside expertise when needed.

### **The Municipal Drinking Water Licensing Program and Standard of Care**

The Ministry of the Environment has introduced the Municipal Drinking Water Licensing Program that, when fully implemented by 2013, will assist owners and operators of municipal residential drinking water systems in meeting the statutory standard of care.

The program includes a number of requirements to assist owners and operators to retain and acquire the appropriate knowledge and expertise to develop and implement appropriate management and controls over drinking water systems. To obtain a license, owners will be required to:

- have an accredited operating authority
- develop a quality management system (QMS) in conjunction with the operating authority and ensure adequate resources are available for its implementation
- implement the QMS through a ministry accepted operational plan, and
- prepare and approve a financial plan for the system.

One of these requirements, the operational plan component, for example, will include:

- a policy that will commit the owner and operator of the drinking water system or systems to providing safe drinking water and to complying with applicable legislation and regulations
- key information about every residential drinking water system owned by a municipality
- a process for risk assessment that is required to be completed and/or reviewed at least once every 36 months
- a description of organizational structures including roles, responsibilities and authorities for both the owner and operating authority
- a procedure for an annual review of the adequacy of the infrastructure needed to operate and maintain the drinking water system and a commitment for the operating authority to communicate the findings of the review to the owner
- a procedure for sharing sampling, testing and monitoring reports between the owner and operating authority about the safety of your municipality's drinking water
- an outline of responsibilities of the owner and the operating authority of the drinking water system during emergency situations

- a commitment to continual improvement through corrective actions
- a procedure for conducting a management review at least once every 12 months that evaluates the continuing suitability, adequacy and effectiveness of the QMS and to report the results of this review, including identified deficiencies, decisions and action items.

**For more information:**

The information contained here is intended to give general information only and must be read in conjunction with the legislation and regulations that outline specific requirements and procedures.

For further information about the *Safe Drinking Water Act, 2002* and its supporting regulations, visit the Ministry of the Environment's web site at [www.ene.gov.on.ca](http://www.ene.gov.on.ca) or *Drinking Water Ontario* at [www.ontario.ca/drinkingwater](http://www.ontario.ca/drinkingwater), e-Laws at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca) or by calling the Ministry's Public Information Centre at 1-800-565-4923.

<sup>1</sup> For more information on the fines and terms of imprisonment, refer to Part X1-Offences, of the *Safe Drinking Water Act, 2002*, c.32.