

Three things to know about the Safe Drinking Water Act, 2002

Municipal, Land Use, and Development

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Following the tragic events of the Walkerton contaminated water disaster in 2000, the Ontario Legislature passed the *Safe Water Drinking Act, 2002* (the “Act”) to regulate Ontario’s drinking water and create mandatory standards.

The Act has flown somewhat under the radar for the last decade and a half, with many owners and operators of drinking water systems unaware of their imposed responsibilities for the quality and safety of their drinking water.

Municipalities, non-municipal corporations and individuals operating drinking water systems all have obligations under the Act with severe penalties for non-compliance. Corporations convicted of an offence under the Act can face fines of up to \$200,000 per day. For offences that result in a drinking water health hazard, corporations can face fines of up to \$10,000,000 per day.

Here are three things developers and municipalities should know:

1) Your drinking water system may be classified as a “Non-Municipal Year-Round Residential Drinking Water System” under the Act.

If your drinking water system supplies water on a year-round basis to a residential development with six or more private residences (e.g., apartment buildings, private subdivisions, condominiums, townhouse complexes, mobile home parks), then it may be classified as a “non-municipal year-round residential drinking water system” (“Non-Municipal DWS”) under the Act. Generally, where the water supply does not come directly from a public water main / municipal service connection, or when the municipal service connection supplies more than one property, the system may be considered a Non-Municipal DWS.

Common situations which may give rise to a Non-Municipal DWS include:

- Common element condominiums, standard condominiums, multi-phase and phased condominiums and vacant land condominiums;
- Situations where an initial single property is severed into separate parcels of land;
- Developments with multiple independent condominium corporations within one property serviced by a single water service connection, where the water supply continues in series from one condo corporation to the next;
- Developments where there is no street frontage or access to a public water main or municipal service connection.

Due to the wide variety of development possibilities, it is important to consider, on a case-by-case basis, whether a proposed development will include a Non-Municipal DWS and, if so, to plan accordingly.

2) The Act imposes stringent requirements on non-municipal year-round residential drinking water systems.

Non-Municipal DWS are subject to the *Drinking Water Systems Regulation* (O. Reg. 170/03) and the Act which outline specific requirements and responsibilities.

All Non-Municipal DWS must be registered with the Ministry of the Environment and have their water tested on a routine basis.

Owners and operators must prepare annual reports and retain records of all test results. Copies of the test results, annual reports from connected systems that supply water and a copy of O. Reg. 170/03 must be available free of charge to the public, upon request.

Every owner and operator of a drinking water system must ensure that:

- the system's water meets Ontario's Drinking Water Quality Standards;
- anyone operating or working on their system is properly trained and certified;
- drinking water tests are conducted by licensed, accredited laboratories;
- adverse test results are reported to the Ministry of the Environment and Climate Change and the local medical officer of health.

The full requirements are set out in detail in the *Drinking Water Systems Regulation* (O.Reg. 170/03) and the *Safe Drinking Water Act, 2002*.

3) You cannot construct or extend a non-municipal year-round drinking water system without written municipal consent.

The Act prohibits the construction or extension of a Non-Municipal DWS intended to serve a major residential development without the written consent of the municipality. The municipality's consent may be subject to whatever conditions and limits it deems necessary to prevent deficiencies in connection with the system. The municipality may also require financial assurance as a condition of consent.

Conclusion

It is important for developers and municipalities to understand their responsibilities under the Act and recognize situations involving Non-Municipal DWS because of the strict requirements, regulations and associated penalties.

If you have any questions regarding this article, please contact David Sunday at dsunday@sorbarlaw.com

This article is intended only to inform or educate. It is not legal advice. Be sure to contact a lawyer to obtain legal advice on any specific matter.