

## MEMORANDUM

TO: Denis Kelly, Regional Clerk

FROM: Lloyd Lemon, Program Manager, Water Resources Protection

DATE: October 5, 2005

RE: **Revised Interim Procedure – Responding to Requests to Apply Non-Potable Soil and Groundwater Standards under O. Reg. 153/04**

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### **Purpose:**

The intent of this memo is to establish an interim procedure to ensure that York Region, along with the nine local municipalities, is able to respond to requests for remediation to non-potable water standards under Section 35 of Ontario Regulation 153/04 within the mandatory 30-day period.

### **Background:**

In the fall of 2004, a new regulation came into affect under the *Environmental Protection Act* which establishes new procedures and requirements related to site assessment and clean up. The new regulations require that when a landowner/applicant wishes to apply non-potable water standard remediation to a site, they must advise the Clerk of both the Region and the local municipality of their intent to do so. A “Notice of Intent to Apply Non-Potable Standards” form may be submitted, however, it is also allowable to simply submit a letter from a consultant on behalf of an owner requesting non-potable standards. There is no obligation on the part of the applicant to supply any background testing results to the municipality with this request.

The Region and the local municipality then have a 30-day window in which to object to the request. Failure to object (with appropriate reasons) or failure to respond to the Notice within 30 days results in an automatic approval of the non-potable standard with no option for York Region (or the local municipality) to object later. There are a number of issues which require York Region to consider and respond to each request, including possible liability for York Region if contamination should migrate from the site at a later date.

### **Interim York Region Procedure:**

While staff is proceeding to develop and have Council approve a more comprehensive Policy and Procedures, with your assistance, the following interim procedure is proposed to protect the Region’s interests:

**1) Circulation of the Request:**

Because the Region only has a 30-day period in which to respond, time is of the essence. We request that upon receiving these requests, the Regional Clerk immediately circulate the Notice or letter to the following staff for immediate disposition:

|                 |                                            |
|-----------------|--------------------------------------------|
| Don Sinclair    | Director of Development Law                |
| Dan Kuzmyk      | Senior Counsel                             |
| Sean Love       | Environmental Lawyer                       |
| Lloyd Lemon     | Program Manager, Water Resource Protection |
| Barbara Jeffrey | Principal Planner                          |
| Tina Gardiner   | Manager, Risk Assessment                   |

Lloyd Lemon will be the lead contact in dealing with these requests until further notice.

**2) Interim Policy:**

Staff from the Water and Wastewater Branch, Legal Services, Property Services, Health Services, and Planning and Development Services have reviewed available information regarding the implications of the new regulations and reviewed the policy being followed by other municipalities. In general, municipalities with groundwater sources are establishing policies that object to use of the non-potable standard under all circumstances.

In York Region, staff is recommending to object to use of non-potable standards for all areas north of the serviced areas of Richmond Hill, Vaughan, and Markham. The justification for objecting in these areas is:

- a) The majority of the area is served by private wells (also protected directly in the regulation).
- b) Delineated wellhead protection areas to 25 years cover much of the area within the serviced portions of municipalities north of the serviced areas of Richmond Hill, Vaughan, and Markham.
- c) Projections of the zones of contribution (that provide water to the municipal wells) for greater than 200 years will include serviced portions of municipalities areas not currently delineated in wellhead protection areas.
- d) Delineated vulnerable groundwater areas exist within the serviced portions of municipalities.
- e) For all areas north of the serviced areas of Richmond Hill, Vaughan, and Markham, groundwater flow from beneath the municipality will naturally move beneath areas serviced by private wells.
- f) Potential contaminated sites within Richmond Hill, Vaughan, and Markham are typically areas zoned for commercial/industrial use. As there is generally no potable use of groundwater within or down gradient of these areas, application of the non-potable standards will provide suitable protection to the environment. York Region staff will review each request on a case by case basis and make decisions as to whether to accept a non-potable standard based on consideration of factors such as the proximity to residential areas, the potential for undocumented wells to remain, the understanding of type or nature of contaminants and groundwater flow patterns. In some instances the proponent may be requested to provide additional information of to demonstrate to York

Region that there is no potable use within a reasonable area around and downgradient of the site in question.

**3) Response:**

Staff from the Water Resources Protection Section is currently reviewing and responding to the requests received within the 30 day time frame. Letters are being provided in cases where the interim policy requires objection and in cases where it does not. Legal review and opinions will be provided by Sean Love in Legal Services. If necessary, external legal advice will be obtained. Records of the site locations are being maintained for use in contaminant source inventories.

Responses are currently being copied to the York Region Clerk, to the Clerk of the relevant local municipality, to the Regional Solicitor, and to the circulation list above. All records are being maintained on file in the Water and Wastewater Branch.

**4) Withdrawal of Objection:**

To date, York Region has received a request from one property owner to withdraw the objection to use of the non-potable standard. In these cases, we are asking owners' representatives to submit all site assessment information. Decisions will be provided based on individual review and consultation with department representatives and legal services.

**Next Steps:**

Staff is currently working to establish a formal procedure for dealing with this situation under the Region's policy guidelines, and is working with staff of each of the 9 local municipalities. The final procedure will require the approval of Regional Council. Regional staff will be preparing the necessary briefing memos and policy documentation for Regional Council.

If you have any questions, please do not hesitate to contact me.

LAP/LAL/gw

Copy to:

Bruce Macgregor, Commissioner, Transportation and Works  
Bryan Tuckey, Commissioner, Planning and Development Services  
Jim Davidson, Commissioner, Corporate Services  
Sandra Cartwright, Commissioner, Finance and Regional Treasurer