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REGIONAL PROCEDURE FOR RESPONDING TO REQUESTS MADE IN ACCORDANCE WITH ONTARIO REGULATION 153/04 TO USE NON-POTABLE REMEDIATION STANDARDS

The Transportation and Works Committee recommends the adoption of the recommendations contained in the following report dated March 25, 2009, from the Commissioner of Environmental Services and the Commissioner of Planning and Development Services.

1. RECOMMENDATIONS

It is recommended that:

1. Regional Council endorse the Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04) contained in Attachment 1.
2. Regional Council approve the proposed fee of \$500 to cover the costs of the review.
3. The Regional Clerk circulate this report to the Clerks of the nine local municipalities.

2. PURPOSE

The purpose of this report is to update Regional Council on activities related to contaminated site cleanup, often referred to as Brownfield site remediation, and to endorse a finalized internal procedure for responding to requests received by the Region to use non-potable site condition standards as the remediation standard for clean-up of former contaminated sites in accordance with Ontario Regulation 153/04 under the *Environmental Protection Act*.

3. BACKGROUND

Remediation of Brownfield sites transforms previously unusable land into productive land to aid growth plan targets

In 2001, the Province introduced the *Brownfields Statute Law Amendment Act* to encourage reuse of former industrial and commercial sites, and to address the legal, land use planning and financial barriers to this reuse. The Ontario Ministry of the Environment (MOE) describes Brownfields as “lands on which industrial or commercial activity took place in the past and that may need to be cleaned up before they can be redeveloped.”

Redevelopment of Brownfields has many benefits. One of the most important benefits is that previously unusable or marginalized land can be redeveloped for more sensitive land uses such as housing or parkland. When these lands are located in existing urban areas they can potentially assist in meeting intensification requirements consistent with the Provincial Places to Grow Plan. According to the MOE, there are approximately 30,000 contaminated sites in Canada that need to be rehabilitated before they can be used for another purpose. These sites may have previously been left unused, but the Province's Brownfields regime provides a method to ensure that the sites within Ontario can be adequately remediated. As a result previously unusable land is turned into useable and productive land once more.

Provincial Brownfields Legislation allows the Region to object to the use of non-potable remediation standards

On October 1, 2004 the Province enacted Ontario Regulation 153/04 *Record of Site Condition Part XV.1 of the Act* under the *Environmental Protection Act* (the "Regulation"). The Regulation requires property owners to provide specific information to the MOE regarding the environmental condition of a property before a Record of Site Condition may be submitted. A Record of Site Condition contains mandatory information about the environmental condition of a property at the time of submission including the types of environmental site assessments that were completed, remediation work that has been completed, and statements by the owner and the owner's environmental consultant ("qualified person"). A Record of Site Condition may be filed voluntarily by a property owner if no change to a more sensitive land use will occur, but filing is mandatory if the land use will change to a more sensitive use. For example, a site which has commercial or industrial uses may be converted to residential or parkland, which is deemed to be a more sensitive use.

Potable site condition standards require clean up of a site to a level that is protective of and permits the use of groundwater or surface water at the property as a source of drinking water. Non-potable site condition standards are intended for use at properties where a municipal supply of drinking water is available; resulting in significantly lower health risks.

The Regulation also requires property owners to notify the local and Regional levels of government of their intent to apply the non-potable standards for remediation of a site. The non-potable standards are generally less expensive than cleaning up a site to potable standards. In some areas, the local or Regional municipality may want more stringent clean up to ensure adequate protection of drinking water sources. The Region and the local municipality then have a 30-day window in which to object to the application of non-potable site condition standards. Failure to object to a notice or failure to respond, within the 30-day period allows the property owner to proceed with the use of non-potable site condition standards.

Brownfields remediation supports Drinking Water Source Protection efforts

In line with the Province's source protection initiatives under the *Clean Water Act*, Brownfield remediation is part of the multi-barrier approach to protect drinking water sources. Site remediation prevents or limits the transport of the contamination of Regional aquifers in sensitive areas such as the Oak Ridges Moraine, Wellhead Protection Areas and areas of high groundwater vulnerability. As risk assessment work moves ahead, the identification of additional sensitive areas may be required.

York Region plays an important role in site remediation

On November 17, 2005 Regional Council adopted the "Revised Interim Procedure – Responding to Requests to Apply Non-Potable Soil and Groundwater Standards under O. Reg. 153/04" under Clause 3 of Report 7 of the Regional Planning and Economic Development Committee. Staff from various Regional departments developed an interim procedure to guide staff decisions related to requests sent to the Region by or on behalf of property owners asking to apply non-potable site condition standards for remediation activities.

In general, the interim procedure suggested the use of potable site condition standards for all areas north of the municipally-serviced areas of Richmond Hill, Vaughan, and Markham. For sites within these southern service areas, it was suggested that an internal review of each request would be conducted. Given the new duties and responsibilities established by the Regulation, it was recommended that staff apply the proposed approach and report back to Regional Council with a finalized approach after more experience had been gained.

Status of requests for use of non-potable site condition standards for site remediation

Since October 2005, Regional staff has responded to 63 non-potable requests. For 43 of the 63 requests, York Region objected to the application of non-potable site condition standards and recommended the application of the more stringent potable site condition standards. Of the 63 requests, 13 were for sites located north of Richmond Hill, Vaughan and Markham and 50 were in the south end of York Region. Distribution of these requests is consistent with the location of the Region's urbanized areas.

4. ANALYSIS AND OPTIONS

The finalized procedure protects York Region's drinking water sources and reflects the previous three years of administration

Over the last three years, York Region's process for responding to requests to apply non-potable site condition standards has evolved. The interim procedure was developed

shortly after the Regulation came into effect and therefore was in place before many requests to use non-potable standards were received. The overall premise in the interim approach was that all sites in the northern portion of the Region be required to clean-up to potable standards due to the use of groundwater as the potable water supply. It became evident that objecting to the use of non-potable standards for the northern portion of the Region created additional work and unnecessary costs, in some cases, for property owners that had lands outside of sensitive areas. As a result, all requests were dealt with on a case by case basis.

The final procedure amended as Attachment 1 is a refined process recommending the use of potable standards if one of four conditions exists. Specifically when a request is received, Regional staff review the information provided for the site and determine whether one of four conditions exists to trigger an objection to the use of non-potable site condition standards. The four conditions are:

- a) One or more of the properties within a 500 metre radius of the subject site boundaries are not municipally serviced.
- b) The subject site is in a wellhead protection area.
- c) There is a potential impact to private wells within a 500 metre radius from the subject site boundaries.
- d) The subject site is in an area of high groundwater vulnerability and on the Oak Ridges Moraine.

If these conditions do not exist, Regional staff can approve the request to use non-potable standards without further analysis.

A more detailed version of the finalized procedure is appended as Attachment 1 - Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04). The finalized procedure provides flexibility for case by case review for sites that are outside of protective areas.

A fee of \$500 should be considered to aid in cost recovery

Surrounding Regional municipalities of Durham, Peel, Toronto and Halton were consulted to determine how they recover costs associated with responding to requests to apply non-potable site condition standards. Durham Region is currently the only Regional Municipality charging a fee for this service and have set the fee at \$500 per review.

In order to maintain continuity with the Region of Durham and to recover costs for staff time used to review documents pertaining to a site, it is recommended that a fee of \$500 be required to process a request. Based on an average of 20 requests per year that the Region currently receives this would be a revenue of \$10,000. The cheque should accompany the notice of intent to use non-potable standards and if it is not received will result in an automatic response from York Region recommending potable standards. The fee will be included in the Schedule of Fees and subject to periodic review.

5. FINANCIAL IMPLICATIONS

Review of the non-potable requests have been, and will continue to be, done within the existing staff complement and current operating budget of the Environmental Services, Legal Services and Planning and Development Departments. Revenues of \$10,000 per year are anticipated to contribute to offset costs for staff time.

6. LOCAL MUNICIPAL IMPACT

Site remediation of contaminated properties protects groundwater and surface water resources in York Region. Protection of water resources is vital for the sustainability of supply and safe delivery of drinking water to residents within the serviced areas of local municipalities as well as residents utilizing private wells. Regional Council endorsement of the Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04) will enable local municipalities and residents to benefit and protect their drinking water source.

7. CONCLUSION

Adopting the Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04), appended as Attachment 1, will provide transparency and equality between all applicants while promoting the protection of the environment and human health.

For more information on this report, please contact Laura McDowell, Director of Environmental Promotion and Protection at Ext. 5077.

The Senior Management Group has reviewed this report.

(The attachment referred to in this clause is attached to this report.)



STATUS

Council Approved

Y

N

CAO Approved:

Y

N

TITLE: Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04)	NO.: Approval Date: Last Updated:
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PROCEDURE STATEMENT:

This procedure outlines the approach to respond to a notice of intent or requests made under O. Reg. 153/04 under the *Environmental Protection Act* to apply non-potable site condition standards, (Table 3 of the Soil, Groundwater and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*), for remediation at a site within York Region (“Non-potable Requests”) within the prescribed 30-day time period.

APPLICATION:

This procedure applies to all Regional staff who are responsible for reviewing a Non-potable Request for a site within York Region.

PURPOSE:

This purpose of the procedure is to ensure that all Non-potable Requests are responded to within the prescribed timeframe to ensure that there is no negative impact to public or private groundwater drinking supplies and that all requests are responded to in a consistent manner.

DEFINITIONS:**Area of High Groundwater Vulnerability:**

Areas where contamination of aquifers is more likely to occur as a result of surface contamination (O. Reg. 140/02 - Oak Ridges Moraine Conservation Plan).

Brownfields:

Lands on which industrial or commercial activity took place in the past and that may need to be remediated before these lands can be redeveloped.

Non-potable Standards:

The full depth generic site condition standards prescribed under section 37 in O. Reg. 153/04 and as set out in Table 3 of the Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act* as amended.



STATUS		
Council Approved	Y	N
CAO Approved:	Y	N

TITLE: Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04)	NO.: Approval Date: Last Updated:
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Potable Standards:

The full depth generic site condition standards prescribed under section 36 in O. Reg. 153/04 and as set out in Table 2 of the Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*, as amended, which set standards that ensure water is fit for human consumption.

Wellhead Protection Area:

A zone around a well where land uses must be carefully planned to protect the quality of the water supply. These areas are delineated based on the time estimated for a contaminant to travel from its point of origin to the well.

DESCRIPTION:

The objectives of this procedure are to:

- a) Respond within 30 days to a Non-potable Request
- b) Reduce the likelihood of a potential impact to York Region's municipal drinking water supply
- c) Reduce the likelihood of a potential impact to private water supplies within 500 metres of the subject property
- d) Support stewardship and environmental protection under the Source Protection multi-barrier approach

The expected outputs from the internal review of a Non-potable Request are:

- a) Written letter sent to the proponent stating York Region's position with a copy sent to the Clerk of the local municipality.
- b) Memo to file including:
 - i) Map of the site location in relation to: wellhead protection areas, areas of high groundwater vulnerability, the Oak Ridges Moraine, municipal water service areas and the proximity to private wells contained in the Ministry of the Environment's well database
 - ii) Air photo of the site location
 - iii) Completed internal review checklist
 - iv) Original letter of intent to use Non-potable Standards
 - v) Copy of the response letter sent to the proponent from York Region
 - vi) Any supporting documentation that supports the request

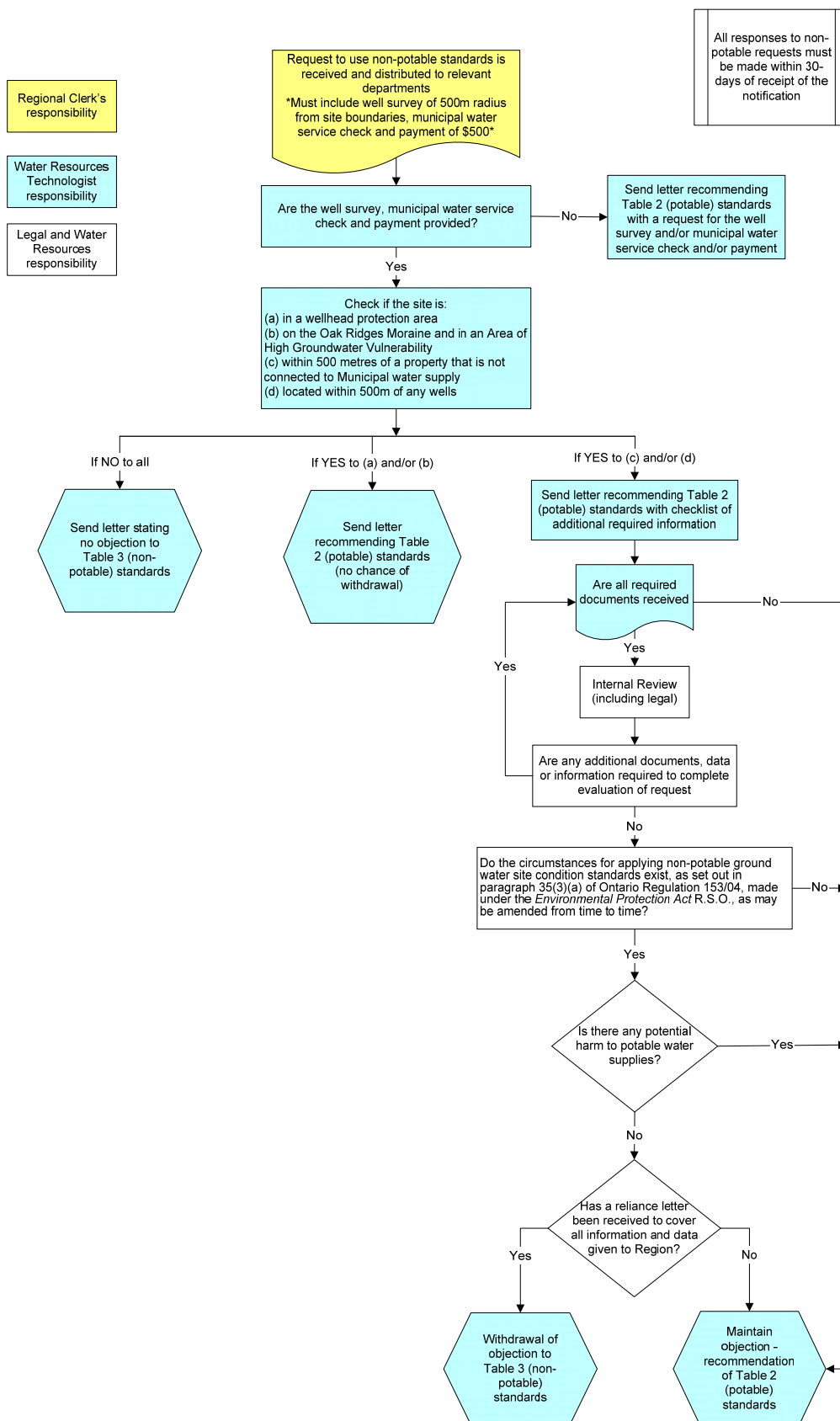
All requests to use Non-potable Standards and the responses to those requests should be copied to everyone on the following circulation list:

Environmental Lawyer, Corporate Services - Legal Services

Manager, Water Resources, Environmental Services

Manager, Insurance and Risk Assessment, Finance - Policy, Risk and Treasury

Water Resources Technologist, Water Resources, Environmental Services





STATUS		
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RESPONSIBILITIES:

As defined in decision tree above.

REFERENCE:

York Region Official Plan (June 1, 2008)
Ontario Regulation 153/04, made under the *Environmental Protection Act*
Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*

CONTACT:

Manager, Water Resources, Environmental Services

APPROVAL INFORMATION

CAO Approval Date:

Committee:

Clause:

Report No:

Council Approval:

Minute No.

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Date: