



PUBLICATIONS

0012

THE FALLOUT FROM WALKERTON

*Reprinted from December 2000
COWAN NEWS*

Many municipal water treatment system approvals fail to require compliance with the Ontario Drinking Water Objectives.

**By Mark McKenney
Vice-President
EnviroChex Associates
Toronto, Ontario
416-483-5438
Enviro1@istar.ca**

The fall-out from the Walkerton E.Coli outbreak will undoubtedly impact municipalities in Ontario, and across Canada.

The events in Walkerton, Ontario are resulting in greater scrutiny of municipalities in the areas of: Water Treatment and Distribution, Sewage Collection and Treatment, Sludge Disposal, Waste (Garbage) Disposal Sites, Septic System Programs, Fleet management, Chemical storage, Nutrient Management by-laws and odour controls. Regulators are more vigilant in their inspections and demanding compliance. We expect investigators to be more

aggressive in seeking sanctions against those who fail to comply. This includes not only municipal corporations, but can also include Mayors, Councillors, PUC officials and municipal managers.

Ontario municipalities can expect more Field Orders from the Ministry of the Environment (MOE). This has already happened with two recent rounds of inspections of municipal water treatment systems, resulting in at least 15 municipalities being served formal "orders". Past MOE practice was to forward reports of inspections to the operating authority, which identified deficiencies, and to make recommendations for compliance. Sometimes the inspectors followed up, either by letter, phone call or with a personal visit, but often they did not check for compliance. In recent years, much of the onus was left with the municipal authority to ensure that the recommendations were followed. That approach has changed.

Field Orders are not to be taken lightly. These are legal instruments, which must be responded to quickly. Environmental legislation provides stiff penalties for failure to comply with these orders notwithstanding the potential for penalties for the violation, which gave rise to the order.

Municipal water supplies and distribution systems are governed by Certificates of Approval (C of A). Many of these are outdated and fail to recognize current conditions. The MOE has been slow in updating C of A's but as a result of Walkerton, there has been a recognition that many municipal water treatment system approvals fail to require compliance with the Ontario Drinking Water Objectives. That changed on August 8th, 2000 with the issuance of Regulation 459/00, Drinking Water Protection. This "law" imposes the stringent

continued ⇨

Frank Cowan Company Limited
Canada's Insurance & Risk Specialists
4 Cowan Street East
Princeton, ON N0J 1V0

1 800 265 4000
T/ 519 458 4331 F/ 519 458 4366



PUBLICATIONS

0012

THE FALLOUT FROM WALKERTON

*Reprinted from December 2000
COWAN NEWS*

requirements of the Ontario Drinking Water Objectives upon all providers of municipal water. The implications are significant.

Every municipality in Ontario which provides water from a groundwater source must have an "Engineers Report" prepared, and submitted to MOE. The first of these must be submitted by November 30, 2000, with additional rounds due January 31, March 31, and June 30 of 2001. The reports cannot be done with "in-house" engineering forces, to ensure an impartial examination of the water source and distribution system. This is placing a significant burden on municipalities and PUC's as they scramble to find competent engineers to do this work in time. These reports will serve as the basis for the issuance of amended C of A's that are much more specific and detailed in their demands.

Private prosecutions are also worthy of attention. Over the past 4 or 5 years several activist and civilian groups have sought convictions and penalties against municipal wrongdoers. The cities of Kingston and Hamilton, even the Government of Ontario, have been the target of such actions. These groups have the benefit of skilled, well-funded experienced legal representation.

Two factors combine to make municipalities "sitting ducks" for those inclined to commence private prosecutions. Freedom of Information legislation requires most levels of government to relinquish self-incriminating documents which feed the private prosecutor's gristmill. Many private prosecutions rely on collecting incriminating evidence and most municipal land is generally public land and accessible

to all, including those who wish to sample, photograph or otherwise collect physical evidence.

Municipalities can "prosecution-proof" themselves, to some extent, by preparing strong due diligence policies and by implementing responsible environmental practices in advance. But these policies and actions must be developed and applied before events overtake you. These compliance audits are a rigorous examination by professional environmental auditors, and in the long run they can save your municipality considerable sums. The MOE promotes these voluntary examinations and generally don't demand that they be produced during investigations. There are also interesting ways of having these audits considered confidential using existing techniques.

continued ⇨

Frank Cowan Company Limited
Canada's Insurance & Risk Specialists
4 Cowan Street East
Princeton, ON N0J 1V0

1 800 265 4000
T/ 519 458 4331 F/ 519 458 4366



PUBLICATIONS


0012

THE FALLOUT FROM WALKERTON

*Reprinted from December 2000
COWAN NEWS*

The MOE's goal, and certainly the objective of all municipalities, is to protect the environment. Nobody wants damage to occur - nor is it in anyone's interest to have to go to court to face allegations of wrongdoing. Know your environmental assets and understand your liabilities. Document your "due diligence" long before

an event. Consider receiving regular "Due Diligence" reports from your staff. This is done routinely within the private sector so that Boards of Directors know that actions have taken place to insure compliance. Sound preparation can significantly reduce your risk in this area.

EnviroChex is an engineering and audit consulting service specializing in water treatment, distribution, Engineer's Reports, compliance audits and due diligence programs for municipal and industrial clients. 

Frank Cowan Company Limited
Canada's Insurance & Risk Specialists
4 Cowan Street East
Princeton, ON N0J 1V0

1 800 265 4000
T/ 519 458 4331 F/ 519 458 4366