

Clause 9 in Report No. 12 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on September 22, 2016.

9

Update to Procedure for Responding to Requests to Use Non-Potable Standards

Committee of the Whole recommends adoption of the following recommendations contained in the report dated August 11, 2016 from the Commissioner of Environmental Services:

1. Council endorse the updated Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04) contained in Attachment
 2. Council approve the proposed re-submission fee of \$250 to re-evaluate requests which have remained inactive for more than six months.
 3. The Regional Clerk circulate this report to the Clerks of the local municipalities.
-

Report dated August 11, 2016 from the Commissioner of Environmental Services now follows:

1. Recommendations

It is recommended that:

1. Council endorse the updated Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04) contained in Attachment 1.
2. Council approve the proposed re-submission fee of \$250 to re-evaluate requests which have remained inactive for more than six months.
3. The Regional Clerk circulate this report to the Clerks of the local municipalities.

2. Purpose

This report requests that Council endorse an updated procedure for processing applications received by the Region to use non-potable site condition standards. Updating the procedure will improve the service for applicants, recover costs associated with re-evaluating submissions and drive consistency with the Ministry of the Environment and Climate Change (the Ministry) requirements and neighboring municipalities.

3. Background

Redevelopment of contaminated sites requires cleanup of soils and groundwater to standards that reflect surrounding land and water use

Developers interested in redeveloping contaminated sites have the option to consider the use of less stringent soil and groundwater standards (non-potable site condition standards) for cleanup, as set out by the Ministry. When a developer opts to use less stringent standards for cleanup they are required to notify both the local and Regional municipalities. The municipality can object to the use of non-potable standards if the site is within an environmentally sensitive area or there is a concern that contamination on site has the potential to impact private water supplies in the area.

Non-potable request review supports source water protection initiatives

In line with the Province's source protection initiatives under the *Clean Water Act, 2006*, review of non-potable requests is part of the multi-barrier approach to protect drinking water sources. Site remediation prevents or limits contamination of Regional potable water sources, such as groundwater and surface water, in environmentally sensitive areas, such as Wellhead Protection Areas, Intake Protection Zones, the Oak Ridges Moraine and Areas of High Aquifer Vulnerability.

The Region has played an important role in protecting drinking water sources from contaminated sites for over ten years

In November 2005, Council first adopted an interim procedure to guide staff decisions related to reviewing applications sent to the Region to apply non-potable site condition standards for site remediation. It was recommended that staff apply the proposed approach and report back to Council with a finalized approach after more experience had been gained. Subsequently in April 2009, Council adopted the “Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04)” under Report No. 4 of the Transportation and Works Committee.

The 2009 procedure included several changes to the review process, as well as a fee for cost recovery. The procedure outlines conditions that would trigger an objection from the Region to the use of non-potable site condition standards. The four conditions are:

- a) The subject site is in a Wellhead Protection Area;
- b) The subject site is on the Oak Ridges Moraine and in an Area of High Groundwater Vulnerability;
- c) The subject site is located within 500 metres of a property that is not connected to a municipal water supply;
- d) There is a potential impact to private wells within a 500 metre radius from the subject site boundaries.

If these conditions do not exist, Regional staff can approve the request to use non-potable standards for site cleanup.

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 *Records of Site Condition-Part XV.1 of the Act* (the Regulation) under the *Environmental Protection Act*. The Regulation requires applicants to provide specific information to the Ministry regarding the environmental condition of a property before a Record of Site Condition may be submitted. A Record of Site Condition may be filed voluntarily by an applicant, but is mandatory if the land use is changing to a more sensitive use. For example, if a site changes from a commercial use to a residential use, it has changed to a more sensitive use.

Cleanup of a site to potable site condition standards protects groundwater or surface water sources in the area, which are used for agriculture or human consumption. Non-potable site condition standards are intended for use at properties where the risk to exposure is less because a municipal supply of drinking water is available and wells are not present in the area.

The Regulation requires applicants to meet a number of criteria in order to use non-potable standards for site remediation. One criterion requires property owners to notify the local and Regional municipalities, in which the property is located, of their intent to use non-potable standards. In some environmentally sensitive areas, the local or Regional municipality may require more stringent cleanup 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, where the site meets the criteria under the Regulation.

192 requests to use non-potable site condition standards have been received since 2005

The Region has objected to the use of non-potable site condition standards and recommended application of more stringent potable site condition standards for 123 of the 192 requests (64 per cent). Of the 123 potable responses, 15 (12 per cent) were for sites within a Wellhead Protection Area and 5 (4 per cent) were for sites within the Oak Ridges Moraine and an Area of High Groundwater Vulnerability. The remaining 103 potable responses were recommended based on either insufficient information provided to evaluate the request or there was potential for site contamination to enter private well supplies which may be used for drinking water purposes. Distribution of all non-potable request sites submitted to the Region in relation to the Region's environmentally sensitive areas are shown in the attached map (Attachment 2).

4. Analysis and Options

Proposed updates to procedure will protect the Region's drinking water sources and improve alignment with Ontario Regulation 153/04 and neighboring municipal processes

Since the last update to the procedure, the Region's process for responding to requests to apply non-potable site condition standards has evolved. For example, pre-consultation with the proponent is typically conducted prior to receipt of non-potable requests to clearly communicate submission requirements and provide

an overview of the non-potable review process. Staff also gained considerable experience in applying the procedure which has resulted in the recommended improvements. A streamlined approach has been developed to consistently evaluate non-potable requests. The updated procedure aligns the Region's approach more closely with the Regulation and with neighbouring municipal procedures (see information below and Attachment 1).

Stakeholder consultation regarding the process improvements has been conducted with consultants who submit applications for the use of non-potable standards. Discussions are underway with Building Industry and Land Development Association (BILD) on how to best facilitate communication proposed changes to their members, culminating in a presentation scheduled for September.

Addition of environmentally sensitive area supports source water protection initiatives

In 2013, the Regional Official Plan was amended to include Intake Protection Zones as prescribed by the Clean Water Act, 2006. Intake Protection Zones are zones established to protect the quality and quantity of water entering lake based municipal drinking water intakes. Within Intake Protection Zones 1 and 2, remediation to potable standards should be required to reduce the potential impacts to Lake Simcoe based drinking water supplies. Neighboring municipalities, including Orillia, already have this condition in place to support source protection initiatives.

A qualified professional should sign and stamp the final submission for the use of non-potable standards

Under Ontario Regulation 153/04, a Record of Site Condition is required to be completed by a qualified person, who is defined as a person designated as a Professional Engineer (P. Eng.) or Professional Geoscientist (P. Geo.). Establishing the requirement for a qualified person to sign the site screening questionnaire and subsequently sign and stamp the final non-potable request submission aligns with the Regulation and ensures the information provided has been qualified by a professional. Neighboring municipalities, including Peel, Durham, and Orillia, also have this requirement for non-potable request submissions.

Updated procedure considers surrounding land use and contaminants of concern

According to the current non-potable request procedure, potable standards are required for sites within the Oak Ridges Moraine and an Area of High Aquifer Vulnerability; even if the site is adjacent to existing contaminated lands (e.g. a site on the Moraine and in an Area of High Aquifer Vulnerability adjacent to a landfill would require the use of potable standards). The updated non-potable request procedure calls for a review of surrounding land use and contaminants of concern in addition to the current non-potable request requirements to ensure that contaminants on-site do not negatively impact surrounding groundwater (e.g. a site on the Moraine and in an Area of High Aquifer Vulnerability adjacent to a landfill may allow for the use of non-potable standards as long as the contaminants on-site do not negatively impact surrounding groundwater). This additional requirement within these sensitive areas will provide greater flexibility in assessing sites adjacent to existing contaminated lands and allows proponents to consider background conditions.

Revised investigation area will reduce the level of effort for applicants, improve review efficiency and align with the Regulation

A conservative 500 metre investigation area was adopted in the interim non-potable request procedure approved by Council in 2005. Since this time, the Province's municipal drinking water source protection initiatives under the *Clean Water Act, 2006* have been established through policies in approved Source Protection Plans. To align with the Regulation and neighboring municipalities, including Durham, Halton, Orillia, and Hamilton, a revised investigation area of 250 metres is recommended. Given the zone of influence around a private well is typically less than 100 metres, a 250 metre investigation area from property boundaries will continue to ensure private wells are protected. A reduced investigation area of 250 metres will balance environmental concerns and increase equity for applicants while streamlining the non-potable request process and aligning the investigation area with that set out in the Regulation.

Site screening questionnaire will help ensure required information is included in the submission and streamline the application process for applicants

In 2015, the Region objected to ten out of fifteen initial requests to use non-potable standards because the requests were missing required information. A site screening questionnaire, including a checklist with all the requirements needed in order to process a non-potable request, would help applicants to ensure that all required information is included in the initial submission, avoiding

a re-submission. In addition, a site screening questionnaire is recommended to capture any change in land use, and provide an overview of contaminants of concern on site to gain an understanding of the environmental issues. The proposed site screening questionnaire for non-potable requests is shown in Attachment 3.

A re-submission fee of \$250 should be applied for submissions which have remained inactive for more than six months

Since 2009, there have been numerous sites where applications have remained dormant for over six months, while the Region waits for information required to fully evaluate the non-potable request. After six months of file dormancy, the Region requires an updated well survey to re-evaluate the non-potable request to ensure that existing water wells are captured within the review. This Regional requirement stems from Ministry requirements that non-potable response letters be dated within the last six months for submission with a Record of Site Condition.

Although there is currently an initial fee of \$560 to evaluate a non-potable request, there is no fee for resubmissions for dormant files. Staff time is incurred to review new information submitted after six months as well as time required for staff to re-evaluate the entire non-potable request. Charging a re-submission fee of \$250 would recover staff costs associated with re-evaluating requests that have been inactive for an extended period of time and may also incent proponents to work with Region staff and complete requests within shorter timelines.

Changes to the Non-Potable Request procedure are summarized in Table 1.

Table 1
Proposed Changes to Non-Potable Request Procedure

Current Procedure	Proposed Changes
Intake Protection Zones not included as environmentally sensitive areas	Addition of Intake Protection Zones will reduce potential impacts to surface water drinking supplies
No requirement for submission by qualified professional	Submissions will be required by qualified professional
Sites within Oak Ridges Moraine and Highly Vulnerable Aquifer require potable standards	Sites within Oak Ridges Moraine and Highly Vulnerable Aquifer will require review of surrounding land use and contaminants
Conservative 500m investigation area	Revised 250m investigation area will balance environmental concerns, increase equity for applicants, streamlining process and align with the Regulation
No site screening questionnaire required	Site screening questionnaire will help ensure all required information is included in submission
No re-submission fee	Re-submission fee will recover staff costs on requests that have been inactive for an extended period of time

Link to key Council-approved plans

The updated procedure for responding to non-potable requests will continue to support Council's Vision 2051 goal of Protecting Vital Water Systems including protecting Lake Simcoe and groundwater quality within the Lake Simcoe and Lake Ontario watersheds to ensure they are healthy and contain clean, safe water. In addition, the updated procedure supports the 2015 to 2019 Strategic Plan by managing environmentally sustainable growth and supporting community health and well-being.

5. Financial Implications

Review of non-potable requests will continue to be done within the existing staff complement and current operating budget of the Environmental Services, Legal and Court Services and Corporate Services Departments. An initial fee of \$560 is currently required to evaluate a non-potable request. Neighbouring municipalities, including Durham (\$500) and Orillia (\$200), currently have initial fee requirements to evaluate non-potable requests. However, staff are not currently attaining full cost recovery when non-potable request re-submissions occur over an extended period of time. The resubmission fee of \$250 will provide the required revenue to recover staff costs to review new information and re-evaluate requests that have been inactive for an extended period of time.

6. Local Municipal Impact

The Region reviews non-potable requests in support of the Regulation and acts on behalf of our nine local area municipalities by providing this service to applicants/owners of new developments within the Region. Proposed process enhancements and pre-submission checklist will improve service for applicants and help to ensure complete and accurate submissions.

Protection of surface and groundwater drinking sources is vital for the sustainable supply of drinking water to residents within the serviced areas of local municipalities as well as residents using private wells. Council endorsement of the Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04) will result in better protection of drinking water sources for local municipalities and residents.

7. Conclusion

Adopting these recommended changes to the Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04) will increase efficiency of the process and improve customer service. These recommended changes will also improve alignment with Ontario Regulation 153/04 and current procedures in neighboring municipalities while protecting drinking water supplies within the Region. A re-submission fee is required to offset costs to re-evaluate requests in accordance with Provincial requirements.

For more information on this report, please contact Laura McDowell, Director, Environmental Promotion and Protection ext.75077.

The Senior Management Group has reviewed this report.

August 11, 2016

Attachments (3)

#6950014

Accessible formats or communication supports are available upon request



Status: **Final**
Approved By: **Council**

The Regional Municipality of York

Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04)

Policy No.: 6691947

Original Approval Date:

Policy Last Updated: September 22, 2016

Policy Statement:

This procedure outlines the approach to respond to a notice of intent or request made under O. Reg. 153/04, as amended, under the Environmental Protection Act to apply non-potable site condition standards, (as prescribed in the Soil, Groundwater and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act), for remediation at an impacted site (e.g. brownfields) 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 timeframe prescribed under O. Reg. 153/04 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.

Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04)

Definitions:

Brownfields:

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

Non-Potable Standards:

The site condition standards prescribed under sections 37 or 39 of O. Reg. 153/04 and the applicable tables of the Soil, Ground Water and Sediment Standards for use under Part XV.1 of the *Environmental Protection Act*, as amended.

Potable Standards:

The site condition standards prescribed under section 36 or 38 of O. Reg. 153/04 and the applicable tables of the Soil, Ground Water and Sediment Standards for use under Part XV.1 of the *Environmental Protection Act*, as amended. These standards indicate that water is fit for agriculture or human consumption.

Wellhead Protection Area:

A wellhead protection area is the area around a well where land use activities have the potential to affect the quality and quantity of water that flows into the well. These areas are delineated based on the time estimated for groundwater to travel to the well (with potential contaminants).

Intake Protection Zone:

An intake protection zone is the area around a surface water intake that is defined to protect the source water for a municipal residential drinking water system. This is the vulnerable area where potential contaminants could pose a significant risk or threat to the source water. In most cases, the protection zone includes the water and the land that surrounds the intake and takes into account the influence of land use and water activities.

Well:

As defined in O.Reg. 153/04, “well” means a hole made in the ground to locate or to obtain ground water which is used or intended for use as a source of water and includes a spring around or in which works are made or equipment is installed for collection or transmission of water, but does not include a hole not used or intended for use as a source of water for agriculture or human consumption, such as, a hole solely intended to test or to obtain information in respect of ground water or an aquifer, or a hole solely

Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04)

made to lower or control the level of ground water in the area of the hole or to remove material that may be in the ground water.

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 250 metres of the subject property boundaries
- d) Support stewardship and environmental protection under the Source Protection multi-barrier approach
- e) Support applicant/owners in submitting a complete application for the use of non-potable standards

All requests to use Non-Potable Standards will be copied by the Clerk's Office to those listed on the following circulation list:

Non-Potable Requests, Regional Contact, Water Resources, Environmental Services Environmental Lawyer, Legal Services

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

- a) Written response letter sent to the applicant stating York Region's position.
- b) Memo to file including:
 - i) Map of the site location in relation to: wellhead protection areas, intake protection zones, areas of high aquifer vulnerability, the Oak Ridges Moraine, municipal water service areas and the proximity to private wells contained in the Ministry of the Environment and Climate Change's well database
 - ii) Air photo of the site location
 - iii) Memo summarizing internal review
 - iv) Original letter of intent to use Non-Potable Standards

Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04)

- v) Copy of the response letter sent to the applicant from York Region
- vi) Any supporting documentation that supports the request

All Non-Potable Request responses will be copied to those on the following circulation list:

- Regional Clerk, Clerk's Office
- Environmental Lawyer, Legal Services
- District Engineer, Ministry of Environment and Climate Change
- Environmental Contact, Area Municipality
- Clerk, Area Municipality

Responsibilities:

As defined in the decision tree below.

Reference:

- York Region Official Plan 2010 (June 20, 2013)
- Ontario Regulation 153/04, as amended, made under the Environmental Protection Act
- Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act, as amended.

Contact:

Non-Potable Requests Regional Contact, Water Resources, Environmental Services

Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04)

Approval Information:

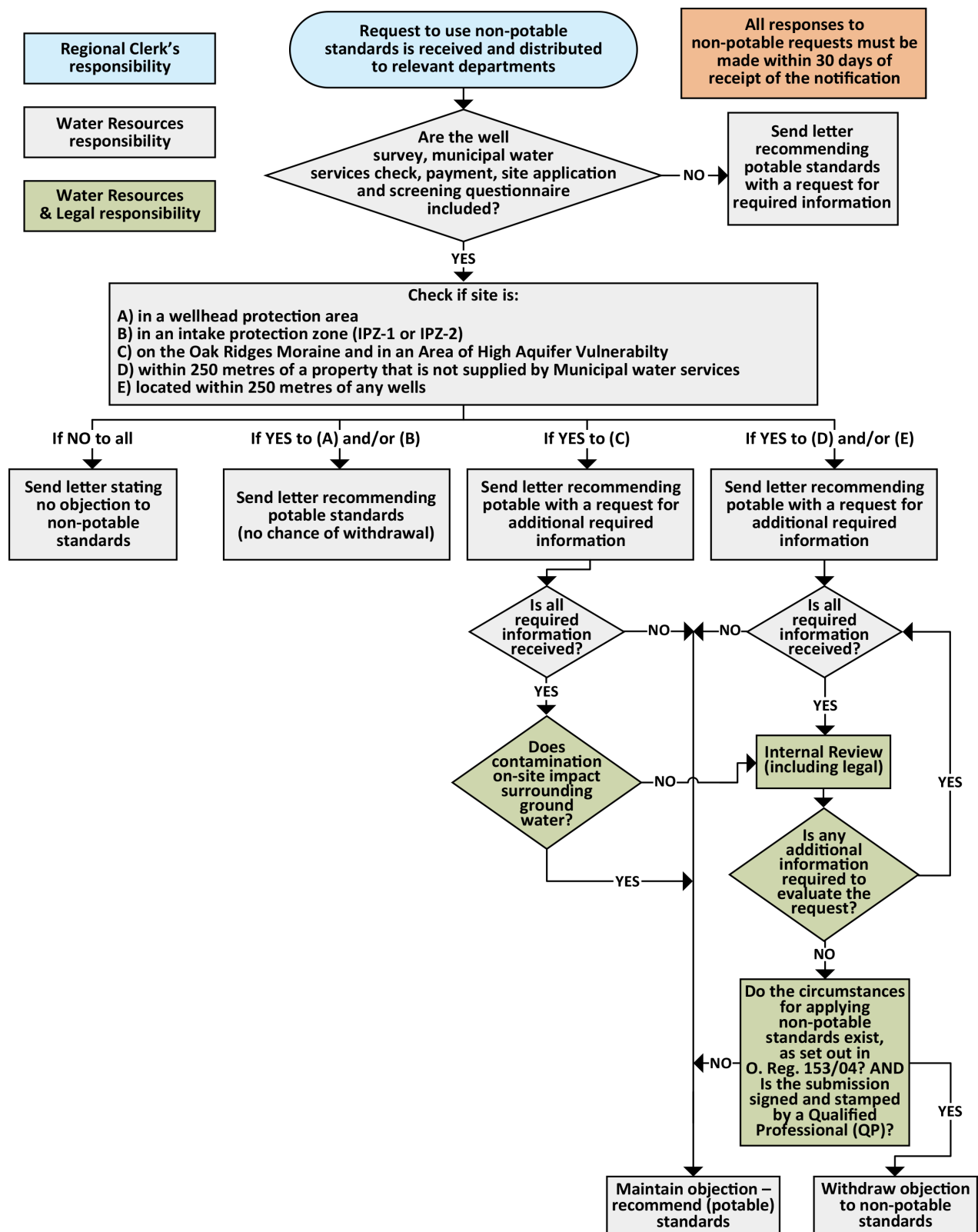
Council Approval Date: Sept 22, 2016	Committee Name: Committee of the Whole
Council Minute No.: 125	Report No.: 12
Extract eDOCS #: 6950014	Clause No.: 9

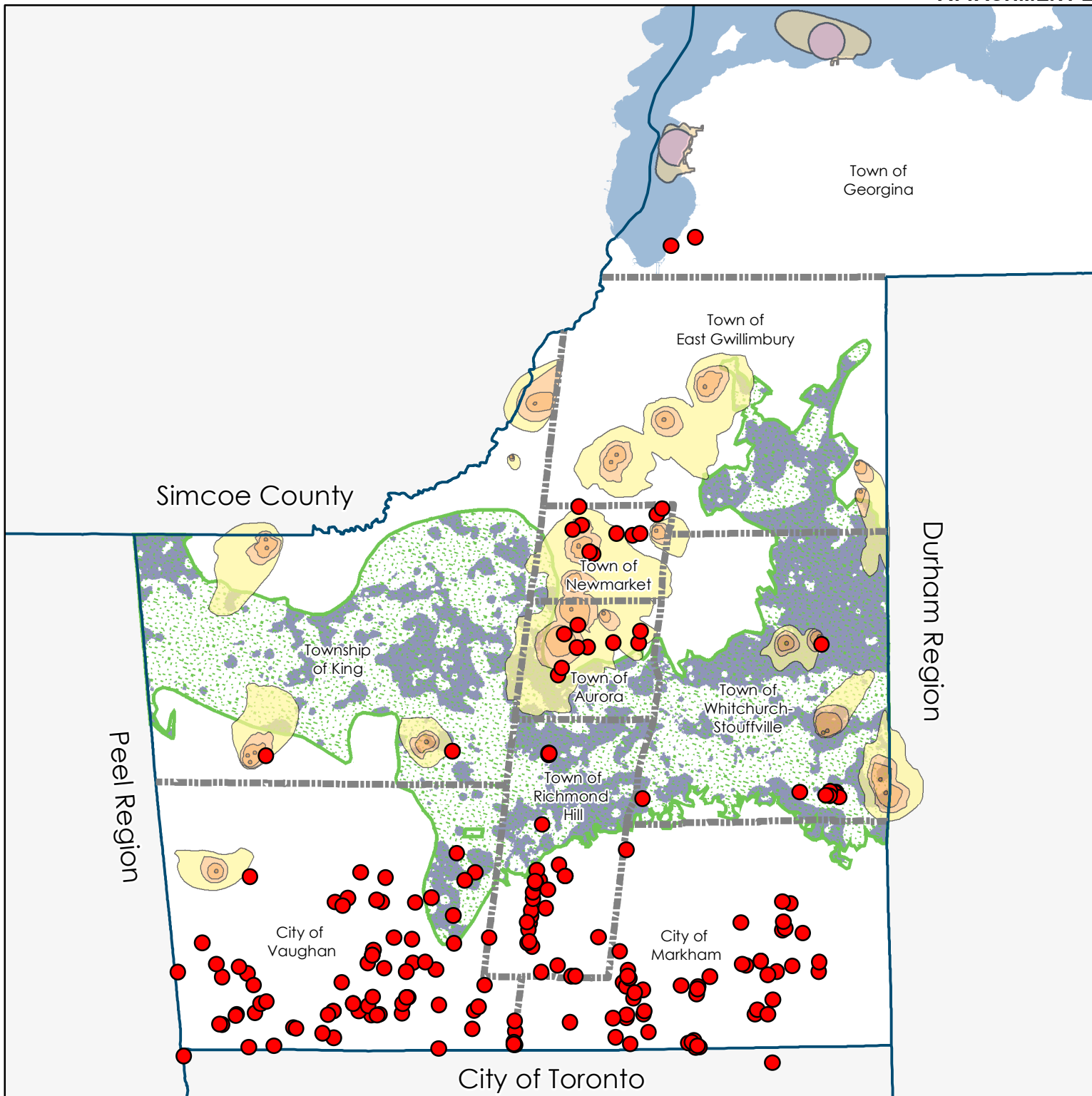
#6691947

Accessible formats or communication supports are available upon request.

Procedure for Responding to Requests to Use Non-Potable Site Condition Standards (Ontario Regulation 153/04)

Decision Tree





Distribution of Non-Potable Request Sites

Update to Procedure for Responding to Requests to Use Non-Potable Standards - September 8, 2016

Produced by: Water Resources
 Environmental Promotion & Protection
 Environmental Services
 © The Regional Municipality of York, May, 2016

Data Sources:
 © Copyright, The Regional Municipalities of Durham and Peel,
 County of Simcoe, City of Toronto
 * © Queen's Printer for Ontario 2003-2016
 See York.ca for disclaimer information.



0 5 10 Kilometers



Legend

- Non-Potable Request Site
- Oak Ridges Moraine
- Area of High Aquifer Vulnerability
- Intake Protection Zone 1
- Intake Protection Zone 2
- Wellhead Protection Area A
- Wellhead Protection Area B
- Wellhead Protection Area C
- Wellhead Protection Area D

Site Screening Questionnaire for Non-Potable Requests Submitted to The Regional Municipality of York

This form must be completed for all non-potable groundwater standard requests which are submitted to York Region and forms part of the Applicant/Owner's submission. Please note York Region may request additional information, not outlined on this form, at its discretion in connection with evaluating a non-potable groundwater standard request submission. Applicant/Owner can access York Region's online mapping tool at york.ca/spmap to indicate whether the Subject Property is within an environmentally sensitive area.

APPLICANT

Applicant: _____ **Owner:** _____

Legal/Municipal Address of the Subject Property : _____

REQUIREMENT CHECKLIST

SUBJECT PROPERTY INFORMATION

Please ensure the following information is included in the submission (please check boxes):

Please indicate if the Subject Property is (please check all boxes that apply):

- The submission has been addressed to The Regional Municipality of York
- A map denoting boundaries of the Subject Property
- A well survey for all properties, wholly or partially, within 250 metres from the Subject Property boundaries (based on Ministry of the Environment and Climate Change (MOECC) water well records) dated within the last 6 months
- A municipal water service check for all properties, wholly or partially, within 250 metres from the Subject Property boundaries (include request and response from local area municipality)
- A statement from the qualified person that non-potable standards are suitable for the Subject Property, the application of which does not have the potential to impact water supplies within a 250 metre radius of the Subject Property's boundaries
- A cheque made payable to The Regional Municipality of York in the amount of \$560.00 for reviewing and processing the request (as amended in accordance with Bylaw No. 2010-15)

- in a wellhead protection area
- in an intake protection zone (IPZ-1 or IPZ-2)
- on the Oak Ridges Moraine and in an Area of High Aquifer Vulnerability
- within 250 metres of a property that is not supplied by municipal water services
- within 250 metres of any wells

What is the current use of the Subject Property? (please check all boxes that apply):

- industrial
- commercial
- community use
- residential
- institutional
- parkland or agricultural.

Is the Subject Property land use changing to a more sensitive land use (e.g. industrial/commercial to residential/institutional)?

- Yes No Uncertain

Is it the owner/applicant's intention to submit a Record of Site Condition (RSC) to MOECC for approval?

- Yes No Uncertain



INFORMATION REGARDING CONTAMINANTS ON THE SUBJECT PROPERTY

Please list any contaminants on the Subject Property in soil or groundwater that **exceed the applicable potable site condition standards**, (as prescribed in the Soil, Groundwater and Sediment Standards for Use under Part XV.1 of the *Environmental Protection Act*) and their respective maximum concentrations:

Applicable Site Condition Standards:			
Contaminants	Soil / Ground Water	Applicable Standard	Maximum Concentration

CERTIFICATION

I, _____ certify that I am the registered owner/authorized agent for the owner of the Subject Property and to the best of my knowledge, the information provided in this questionnaire is correct.

Signature of Registered Owner/Authorized Agent
I/we have the authority to bind the corporation

Date

I, _____ certify that I am a Qualified Person under Ontario Regulation 153/04, who is defined as a person currently designated as a Professional Engineer (P. Eng.) or Professional Geoscientist (P. Geo.), and to the best of my knowledge, the information provided in this questionnaire is correct.

Signature of Qualified Person

Date