



Time to Clean up: Imminent New Regulations on Municipal Wastewater Management

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The federal government has recently, through the Minister of the Environment, the Honourable Jim Prentice, announced stringent new federal regulations on managing Municipal wastewater. The draft regulations, which are expected to be published in the Canada Gazette in December 2009, and revised and finalized in 2010, will cover all land-based wastewater systems under municipal, provincial or federal government operation, as well as those on federal or Aboriginal lands, that discharge effluent to surface water.

Background

In November 2003, the Canadian Council of Ministers of the Environment (CCME) decided that municipal wastewater was a national environmental priority, and undertook consultations with municipal, provincial and territorial representatives, the wastewater sector, non-government organizations, interested parties and Aboriginal representatives. The result was the development of the CCME Canada-wide Strategy for the Management of Municipal Wastewater Effluent, which was endorsed on February 17, 2009 by almost all the members of the CCME, including British Columbia.

Summary of the Strategy

The Strategy sets out the collective agreement reached by the CCME to ensure that wastewater facility owners will have regulatory clarity in managing wastewater effluent under a harmonized framework that is protective of human health and the environment. The Strategy requires that all facilities achieve minimum "National Performance Standards" and develop and manage site-specific "Effluent Discharge Objectives." The National Performance Standards set out minimum performance requirements for effluent quality from all municipal, community and government wastewater facilities that discharge wastewater effluent to surface water. The site-specific Effluent Discharge Objectives will address specific substances that are of concern to a particular discharge or environment. Implementation of these standards and objectives will be based on risk over a maximum time period of 30 years. High-risk facilities will be required to meet the National Performance Standards first, followed by medium- and low-risk facilities. The Strategy also outlines risk management activities to be implemented to reduce the risks associated with combined and sanitary sewer overflows.

The Strategy considers source control activities to be important to the management of effluent pollution, and states that the establishment of a sewer-use bylaw is recognised as a best management practice. All wastewater facility owners with appropriate legislative authority are encouraged to establish such a bylaw to control what is discharged to their wastewater systems, and a Model Sewer Use Bylaw has been developed to provide guidance for facility owners in this regard.

Facilities will be required to regularly monitor and report on the quality of the effluent being discharged and, to ensure that regulatory clarity is achieved through a “one-window” approach, the requirements are to be incorporated into federal, provincial and territorial regulatory frameworks.

The total cost over 30 years to implement the Strategy is estimated to be at least \$10 to \$13 billion, adjustable with inflation, with at least half of this amount being spent in the first 10 years in addressing high risk facilities. An economic plan is also outlined in the Strategy, which states from the outset that all levels of government will need to recognise wastewater infrastructure as a priority if the Strategy is to be successfully implemented.

The economic plan identifies a number of potential funding mechanisms for the required infrastructure investments. These include own source revenue (for example, full cost recovery and strategic budget allocations), federal and provincial infrastructure funding programs, debt financing and other innovative funding mechanisms, such as public-private partnerships. Alternatives will be determined on a case by case basis for smaller and declining communities for whom infrastructure investment would not be economically feasible.

The Strategy’s requirements are considered to be a minimum level, and it is possible that jurisdictions may impose more stringent or additional requirements.

Implementing the Strategy: The Proposed New Regulations

According to the Honourable Jim Prentice, the principal instrument to implement the Strategy will be new regulations under section 36(5) of the *Fisheries Act*, which are expected to be published in December 2009. The regulations are intended to give better clarity to the operators of wastewater treatment facilities and ensure that the release of wastewater effluents does not pose unacceptable risks to human and environmental health and fishery resources.

Although more details will emerge when the regulations are published, these federal regulations will set national performance standards, timelines and monitoring and reporting requirements based on the Strategy, and all jurisdictions will have to maintain, update, or develop new regulatory implementation tools.

Implications for Local Governments

There are more than 4,000 wastewater systems in Canada that vary in their capacity to treat sewage, and a multitude of policies, regulations and legislation that currently govern the effluents discharged from these wastewater systems. Such policies and regulations are administered at the federal, provincial and territorial levels, but the key responsibility for implementation falls on local governments.

The federal government expects that local governments will not be able to meet the new regulations without secondary sewage treatment and, accordingly, many will need to invest to bring their wastewater facilities up to the new standards. One first major question, then, is how will local governments afford the billions of dollars required in upgrades?

The federal government asserts that it has taken this into consideration, and that municipalities, regional districts and First Nations communities across Canada will be able to upgrade their wastewater treatment facilities by taking advantage of available infrastructure funding through the \$33-billion Building Canada Fund that was set up in 2007. Additionally, the Minister of the Environment stated that in the last Budget, available funding was increased still further through Canada's Economic Action Plan,

which includes almost \$12 billion of new funding for infrastructure over the next two years. The Minister stated that much of this money can also be used to improve wastewater management.

However, as federal infrastructure programs are built on a cost-shared principle, the province and the local governments will need to contribute their share of the investment as well.

But what happens if the local governments do not have funds available for these projects, or the budget has already been committed? For that, the Minister stated that they have introduced a \$2-billion program that will provide low-cost Municipal Infrastructure Loans, administered through the Canada Mortgage and Housing Corporation.

The second major question then, is how much time do wastewater facilities have to secure funding and build or upgrade their treatment plants? While the regulations have yet to be published, they are expected to follow the timelines set out in the Strategy. Based on the Strategy, jurisdictions will, within one year, need to determine the initial risk level for facilities that do not meet the National Performance Standards, to determine whether they are high-, medium- or low risk. There is then a 30 year implementation period, within which high-risk facilities will need to be compliant within 10 years, medium-risk within 20 years and low-risk within 30 years. Combined and sanitary sewer overflows will need to meet national standards within 7 years. All facilities must begin to monitor effluent quality within 3 years, and must meet applicable public reporting requirements within 3 years. On a general level, jurisdictions will have to harmonise their own regulatory frameworks with the Strategy within 3 years, and put forward implementation plans.

Final comments

The endorsement of the Strategy and the announcement of the new federal regulations herald significant future infrastructure investments for local governments that operate wastewater facilities. Additionally, the monitoring and reporting requirements are also likely to be onerous, and may require specialised and increased human and technical resources to manage the additional responsibilities. It would be prudent for all local governments to begin to familiarise themselves with the regulations, as soon as these are finalised in 2010, in order to place themselves in the best position to meet all necessary regulatory requirements on time.