

A large, light gray graphic of a water drop with a recycling symbol inside it, serving as a background for the title text.

Taking Care of Your Drinking Water and Wastewater

Summary Guide for Members of Municipal Councils

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Taking Care of Your Drinking Water and Wastewater

This summary guide is intended to help members of council understand the regulatory requirements on drinking water and wastewater systems, and to provide information about their statutory responsibilities.

Understand the Legislation

Alberta's *Environmental Protection and Enhancement Act (EPEA)* and its regulations provide a legislative framework for all approved public waterworks and wastewater systems, which sets out province-wide standards and rules to ensure that receiving environments are protected and Albertans have access to safe, high quality, reliable drinking water.

This act and its regulations includes a legal duty for persons responsible for the waterworks and wastewater systems to ensure water is safe from contaminants and that operations are in compliance with the act.

These duties can extend to the municipality and municipal councillors. There could be legal consequences for negligence, including possible fines, enforcement orders, and civil remedies.

Drinking Water Legislation

Alberta Environment and Parks uses a source to tap, multi-barrier approach to ensure that safe drinking water is provided to Albertans.

Part 7 of the EPEA relates to potable water in the province. Within that part, section 149 describes the legal responsibilities of persons responsible for waterworks systems. These responsibilities are expanded upon

in the *Potable Water Regulation (A. Reg. 277/2003)* and the *Standards and Guidelines for Municipal Waterworks, Wastewater, and Storm Drainage Systems*. It is important for you to understand the scope of the day-to-day responsibilities of the persons responsible for your waterworks system.

Persons responsible for the waterworks system are responsible for ensuring that their drinking water systems:

- Provide water that meets all prescribed drinking water quality standards;
- Operate in accordance with the act and its regulations and are kept in a fit state of repair;
- Are appropriately staffed and supervised by qualified persons;
- Comply with all sampling, testing and monitoring requirements; and
- Meet all reporting requirements.

Legal Disclaimer

This document should not be viewed as legal or other expert advice. It is a for information purposes only.

Wastewater Legislation

The statute governing the ownership and operation of wastewater systems is the *Wastewater and Storm Drainage Regulation* (A. Reg. 119/1993). It is complemented by the corresponding Codes of Practice and the Standards and Guidelines for *Municipal Waterworks, Wastewater, and Storm Drainage Systems*.

These documents collectively describe the overall and day-to-day legal responsibilities for the persons responsible for the wastewater system.

Persons responsible for the wastewater system are responsible for:

- Ensuring that the substances used and released are not in concentrations that would impair the integrity of the system;
- Operating the system in accordance with the regulation and ensuring the system is kept in a fit state of repair;
- Appropriately staffing facilities with appropriately qualified persons;

Important

Members of municipal council, municipal officials and council committee members who have influence, decision-making authority or control over a water/wastewater system understand that, in addition to the municipality's liability, can be held personally liable, even if the system is operated by a corporate entity other than the municipality.

- Complying with all sampling, testing and monitoring requirements; and
- Meeting all reporting requirements including immediately reporting any violation of the requirements outlined in their approval or Code of Practice for their facility.

Your Duty and Liability

The legal duty has been written into the drinking water and wastewater legislation. These duties extend a legal responsibility to people responsible for the municipal waterworks and wastewater systems.

Section 149 of the *EPEA* establishes a legal duty upon all persons responsible for the waterworks system. It requires that they ensure the drinking water supplied by the system does not contain a harmful concentration of substances.

Section 3 of the *Wastewater and Storm Drainage Regulation* creates a more general duty for all persons responsible for the public wastewater system – to comply with the provisions of the regulation.

In both situations, a failure to fulfill this duty may result in financial penalties for the municipality and its councilors.

Meeting this legal duty is the responsibility of:

- The owner of the waterworks or wastewater system;
- The operator of the waterworks or wastewater system;
- The system's approval or registration holder;
- A local authority that contracts to obtain water from the waterworks system;

- A local authority that grants a franchise to supply water from the system;
- A local authority that contracts to discharge wastewater to the wastewater system;
- A local authority that grants a franchise for the treatment and disposal of wastewater from the wastewater system; and
- Any person who acts as the principle or agent for one of the above persons.

Section 233(1) of *EPEA* specifically notes that where the individual knew or ought to reasonably have known of the circumstances surrounding the failure to satisfy the legal duty, and had the power to influence or control to prevent this failure, then they personally may be found guilty of the offence.

Maintaining an Appropriate Level of Care

Standard of care refers to the level of care and attention that one person owes to another when they are in a legal relationship. The behaviour required to satisfy the standard of care will vary depending on the circumstances of the relationship, the nature of the activity, and the level of supervision one has over the activity.

There is no clearly defined standard of care within the legislation governing the distribution, treatment, and storage of

potable water and collection, treatment, and disposal of wastewater. However, we can deduce an appropriate level of care based on two defences from liability found in sections 220 and 229 of *EPEA* and section 11 of the *Wastewater and Storm Drainage Regulation*.

You are not expected to be an expert in the areas of potable waterworks and wastewater systems.

Section 220 – one must act, or not act, in good faith while carrying out that person’s duties to be safe from liability.

Example

Provision could allow a person to rely on a report created by an engineer, lawyer, accountant or other professional person when making a decision without suffering legal liability.

Section 229 and section 11 – states that conviction can be avoided where a person shows that they took all reasonable steps to prevent the offence from occurring.

Example

Provision assumes all persons responsible for the water/wastewater systems are expected to act reasonably within their powers and to take all steps necessary to ensure they fulfill their duty.

Enforcing the Legal Duty

As a municipal councilor, you need to be aware that not meeting your legal duty can result in serious consequences both for the municipality and you as an individual.

Section 233(1) of the *EPEA* provides for individual liability of public officials for an offence committed under the Act. Pursuant to section 228(2) a person who fails to meet their duty to ensure safe drinking water may be liable for a penalty of up to \$50 000.

In the case of a corporation, including a municipality the maximum penalty is \$500 000. Additionally, section 234 allows for the court to impose a variety of other penalties based on the nature of the offence and the circumstances surrounding its commission. These penalties include:

- Prohibiting the offender from doing anything that could result in recidivism;
- Publishing, at the offender's cost, the facts related to the offence;
- Requiring the offender to pay a discretionary amount of money to the court;

Important

Members of municipal council, municipal officials and council committee members who have influence, decision-making authority or control over a water/wastewater system understand that, in addition to the municipality's liability, can be held personally liable, even if the system is operated by a corporate entity other than the municipality.

- Directing the offender to pay the Minister for the costs associated with remedial or preventative action carried out by the Province;
- Ordering the offender to perform community service, or
- Requiring compliance with any other condition at the discretion of the court

Section 10 of the *Wastewater and Storm Drainage Regulation* creates a similar offence for any person who contravenes various sections of the Regulation. Here, an offence carries with it a fine of no more than \$50,000 for individuals and no more than \$500,000 for corporations.

If the municipality and its councilors are found guilty of an offence under the *EPEA* and its regulations, they may also be held liable for damages in civil court if such action is taken by those individuals who suffered as a result of municipal actions or decisions.

Actions You Can Take — To Be Better Informed

General

- Ask your utility manager to give a presentation and/or arrange a tour of the water/wastewater systems. Review to understand the authorizations for these systems and the corresponding operating, monitoring and reporting requirements.
- Become further acquainted with drinking water and wastewater legislation and regulations, available on the Government of Alberta Queen's Printer website at www.qp.alberta.ca

- Learn about water safety and its link to public health. Speak to the waterworks and wastewater system operators, regulators and public health staff to learn more.
- Consider taking the Standard of Care training with the Walkerton Clean Water Centre. Get course details and session offerings at www.wcwc.ca or by phoning toll free 1-866-515-0550

Operational Plans and Reporting

- Ask your operating authority to speak to your municipal council about your operational plan.
- Consider and act on any advice (including identified deficiencies and action items) identified during the annual management review process.
- Review your annual inspection results and ask questions if there is any indication of declining quality.
- Find out what maintenance, rehabilitation and renewal plans are in place for your systems.
- Ask your operating authority to present the findings of its annual infrastructure review.
- Review the Drinking Water Safety Plan for your waterworks system and find out what actions are needed to address any identified risks.
- Determine when and how your operating authority will communicate to you as an owner.
- Find out what information is made available to the public and how.

Emergency Planning for Drinking Water

- Ask your operating authority to review the drinking water emergency plan with council and to explain what responsibilities have been assigned to the owner.
- Know who will be the spokesperson during a drinking water emergency.
- Ensure critical staff have taken necessary training on emergency procedures and have participated in testing.

Water/wastewater System Operators

- Ensure there are sufficient resources for appropriate levels of training for municipal staff involved in operating a water/wastewater system.
- Familiarize yourself with the water and wastewater operator certification requirements.
- Confirm that an operator in charge has been designated and that procedures are in place to ensure all required staff and contractors are certified.
- Check to see if water/wastewater operator succession planning is being done and that measures are taken to address any current or anticipated challenges to recruiting skilled employees.
- Ensure your municipality or operating authority has contingency plans in place for situations where your certified operators may not be available (e.g. labour disputes, illnesses, vacancies, etc.) and, if activated, confirm that these contingency plans are working.



Check Your Knowledge

- Have I had a tour of our drinking water and wastewater facilities?
- Am I familiar with our municipal waterworks and wastewater systems including:
 - water source
 - where treated wastewater is discharged
 - physical condition of major infrastructure
 - condition of monitoring equipment and how well they are maintained
 - background and experience of senior staff, and
 - elements of the approvals that have been granted for ownership and operation of the facilities
- Am I acquainted with the legislation and regulations?
- Do I know basic information about water safety and the operation of water facilities?
- Do I understand the different roles and responsibilities of those who have decision making authority – municipal councillors, senior management, and other municipal officers?
- Am I aware of the risks currently facing our water sources, water facilities and infrastructure? What are the plans to address these risks?
- Am I aware of the risks of discharging treated wastewater to the receiving environment and potential impact if the system does not operate in accordance with the approval or registration? What are the plans to address these risks
- If there is an emergency with the waterworks or wastewater system, what procedures are followed? How will I be notified? How will the public be notified?
- Am I aware of the municipal role in source protection planning?
- How and when do I ask for annual/monthly reports on the drinking water and wastewater system from senior management?
- What should I look for in the annual/monthly report? What questions must it answer?
- What should I do if a report identifies declining water quality?
- Do I know if appropriate steps are being taken to resolve any issues? Do I know when outside expertise is needed?
- Are our water systems periodically audited? When? How often? What should I do when I receive audit results for consideration?
- Am I assured that competent senior management has been hired? Do they conduct regular performance appraisals waterworks and wastewater of staff?
- What were the results of our last inspection? Are there areas for improvement?
- Do I know if our waterworks and wastewater systems are financially sustainable for the future? Are there financial plans in place?

If you can't answer any of these questions, review them with municipal staff.