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DATE                        02 April 1997

TO/DEST.                 Committee Co-ordinator,  
                                 Planning and Environment Committee

FROM/EXP.                Deputy Regional Solicitor  
                                 Environment and Transportation Commissioner

SUBJECT/OBJET         **ENFORCEMENT OF REGIONAL SEWER BY-LAW AND  
MFIPPA REQUIREMENTS: RESPONSE TO NOTICE OF  
MOTION**

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#### **DEPARTMENTAL RECOMMENDATION**

**That Planning and Environment Committee receive this report for information.**

#### **BACKGROUND**

This memorandum is in response to a request from the Committee Chair for an opinion regarding the MFIPPA implications of Councillor Cullen's Notice of Motion tabled by the Committee on March 25, 1997.

#### **NOTICE OF MOTION**

The Notice of Motion is as follows:

That an annual report be prepared on the enforcement of the Regional Sewer By-Law, including a listing of warning notices given, Part III Summons given, and convictions, including the name of the offender, date and place of incident.

## DISCUSSION

### Industrial Waste Strategy

The Water Environment Protection Division has developed over the last three years an Industrial Waste Strategy which focuses on the concept of pollution prevention promoting continuous improvement through operational and behavioural changes. This objective is achieved by working in cooperation with industrial dischargers in Ottawa-Carleton to make process and other changes to achieve effluent levels which are in compliance through immediate operational changes, then voluntary abatement tools such as agreements and compliance programs are used.

The Industrial Waste Program inspectors are heavily engaged in informal activities which assist industry to remedy violations with the sewer regulations. Such activities include inspections of facilities which uncover violations. These violations are usually remedied by the industry immediately once they become aware of the situation. Analyses of samples from industry discharges also reveal non-compliant effluent. Again, companies notified of such violations generally respond quickly to remedy their non-compliance.

One of the objectives of the sewer use regulations is to encourage this voluntary compliance together with a responsible attitude toward pollution prevention by industry. The sewer regulations deal with limiting the material that can be discharged to the sewer system, the submission of information by industry to the Region, entering into discharge agreements for treatable parameters, approval of compliance programs for the discharge of non-complying effluent, and the reporting of unusual discharges.

Non-compliance or a violation of the Regional Regulatory Code, Part 5.2 (sewer use by-law), occurs when any of the provisions of this Part of the code are not followed. For example, an industry which discharges effluent to the sewer System which does not meet the effluent limits set out in Sections 5.2.2 and 5.2.3 is in violation of the Code. The strategy undertaken by Region's Industrial Waste Section is to promote voluntary compliance by working in cooperation with industry rather than creating an adversarial environment in which industry would be reluctant to recognize effluent problems which they may have.

The Code requires that a Waste Survey Report be submitted by the operator of an industrial premises which provides detailed information concerning the process operations of the industry. Although the Region has the usual enforcement mechanisms available to it in the event that an operator does not submit such report, the collection of this information is greatly facilitated if the Region is not perceived as being in an adversarial position.

Section 5.2.6, Agreements, allows a discharger to enter into agreements with the Region where he/she is discharging overstrength waste or water from a separate source. These agreements allow the party to continue to discharge waste that is not in compliance with the regulations but pays additional fees for the treatment of such sewage. Since these are "agreements", a discharger is not required by by-law to enter into such arrangements. If the region lost the cooperation of

the industry to enter into such agreements, the Region would be faced with the task of determining whether to charge these dischargers with non-compliant effluent and then obtaining court orders to prevent the continuance of such discharges. It would then be necessary to physically ensure such discharges stopped.

Section 5.2.7, Compliance Program, allows an industry to apply to the Region for permission to continue discharging non-compliant material during a defined time period in order that the industry plan, design, construct or install facilities to eliminate the non-compliance. Should the industry be faced with the possibility of publication of their name, this mechanism to allow companies to come into compliance without fear of exposure to prosecution would likely disappear.

Industrial dischargers are also required by the sewer regulations to install and maintain manholes in their connections to the sewer system. Industry currently cooperates with the Region to install these manholes without the Region having to resort to formal enforcement mechanisms. This cooperation greatly facilitates the monitoring of effluent to the sewer system.

The response to P&E Inquiry No. 31 of March 25, 1997 from Councillor Stewart, will address in more detail the policy issues surrounding voluntary compliance, the practices in other Ontario municipalities, the types of agreements, and compliance programs that the Region has with its industrial partners.

## LEGISLATION MFIPPA

The production of an annual report as requested in the Notice of Motion will engage the application of MFIPPA in different respects, depending on whether the offender is an individual or a company, as described below.

### 1. Warning Notices

#### Information about Individuals:

Warning notices given to individuals are a matter of internal procedure and are not subject to procedures before the Court. As such, these warnings are not a matter of public record. The identity of the individual who has received a warning for suspected violation of the sewer regulation is considered to be the personal information of that individual. Under section 14(1) of MFIPPA, such personal information cannot be disclosed without that individual's consent. Therefore, the publication of the identities of individuals who have received warnings under the sewer regulation would be prohibited, unless consent of the individual is obtained. The publication of details regarding date and place of the incident in an annual report could be possible, as long as the information disclosed does not lead to the identification of the individual in question.

### Information about Companies:

The identity of a company that has received warnings for suspected violations of the sewer regulation may be subject to two sections of MFIPPA. Under section 10 of the Act, the Region cannot disclose information concerning the company (including its identity) if that information was supplied to the Region in confidence, and if the disclosure could cause financial harm to the company. A case-by-case analysis of each situation in which a company received a warning would therefore be required before disclosure could be made in an annual report.

Under section 8 of the Act, the Region has the discretion to refuse disclosure of information which relates to a law enforcement matter. The advantage to keeping information about a company's non-compliance with the by-law confidential is that the Water Environment Protection Division is then able to foster a co-operative relationship with the company, which includes extensive monitoring of that company's future actions as well as the voluntary implementation of pollution prevention measures. In some cases, publication of a warning issued to a company may jeopardize this voluntary and co-operative relationship. Therefore, it is recommended that careful analysis of the circumstances surrounding each warning be made in order to evaluate the impact of disclosure on that company. An alternative course of action is to publish the number of warnings together with details of the date and place of the incident without publishing the name of the company or any identifiable information regarding of the company.

## 2. Part III summonses under the *Provincial Offences Act*

### Information about individuals:

Part III summonses under the *Provincial Offences Act* are a matter of public record as they are issued on the basis of an Information which has been declared before a Justice of the Peace. However, the Legal Department recommends that the publication of names of individuals who have been issued these summonses should be reviewed carefully. The positive step of making these names available in an annual report could be seen by individuals as an unjustified invasion of personal privacy which could ultimately lead to privacy complaints to the Information and Privacy Commissioner of Ontario. Furthermore, publication of this information may lead to claims for damages if the suspected offences are not substantiated in subsequent court proceedings.

### Information about companies:

Although technically a matter of public record as described above, the publication of the names of companies which have received summonses under the *Provincial Offences Act* may lead to claims for damages for loss of reputation, should the offence itself not be fully substantiated in Court.

## 3. Convictions

A conviction obtained against an individual of a company for the violation of the sewer by-law is a matter of public record. Publication of convictions against individuals or companies in an annual report would therefore not violate MFIPPA.

## CONCLUSION

As outlined above, and on the basis of the memorandum dated March 14, 1997 provided to the Committee, the creation of an annual report containing information about the warnings, summonses convictions in relation to the sewer by-law may be problematic if the identities of individuals and companies are included in the report. Depending on the circumstances, the publication of the identities of individuals and companies is prohibited under MFIPPA.

In staff's opinion consideration of the success of the voluntary compliance approach presently used by the Water Environment Protection Division is of particular importance in the overall consideration of the production of an annual report as proposed. It is the recommendation of staff that working together with the private sector through the voluntary compliance program is ultimately a more effective method of ensuring the integrity of the environment by compliance with regional by-laws.

*Approved by  
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Environment & Transportation Commissioner*

EAJ:cab