SUBJECT: Oversight of Small Drinking Water Systems  BOH08014  (City Wide)

RECOMMENDATION:

That the City of Hamilton forward a letter to the Minister of Health and Long-Term Care to request that the Ministry of Health and Long-Term Care provide 100% of the funding necessary to implement and maintain the Small Drinking Water System Inspection Program.

EXECUTIVE SUMMARY:

In March 2008 the Ministry of Health and Long Term Care (MOHLTC) announced that the MOHLTC 100% funding for Hamilton Public Health Services (PHS) to cover start up activities for the first two years of the Small Drinking Water System (SDWS) inspection program is $47,700 annually. PHS has informed the MOHLTC that this amount of funding is significantly insufficient in order to assess the approximate 400 SDWS presently believed to exist in Hamilton over two years.

PHS has no choice but to provide the SDWS inspection program. However, PHS will continue to lobby for full funding for the program.

BACKGROUND:

The transfer of regulatory oversight of SDWS from the Ministry of the Environment (MOE) to local health units was a recommendation of the Advisory Council on Drinking Quality and Testing Standards and was first announced in 2005. The MOHLTC and the
MOE have been working over the past several years to expedite the transfer of this responsibility, which has involved the creation of new legislation and regulations, the provision of funding to do this additional work, and other activities such as training of staff, creation of software to assess the risk of drinking water systems, new protocols, etc.

A recommendation report (SPH05054) was brought to the Social and Public Health Services Committee in the October of 2005. A similar recommendation was made, that “Council write to the Minister of Health and Long Term Care to request that the transferred water regulatory responsibilities be 100% funded by the province...”. This was done in early 2006. A response was received from the MOHLTC in 2006, indicating that the MOHLTC would cover 100% of the program start up costs in the first two years of the program, after which the MOHLTC would be 75% and 25% of the funding would be a local responsibility. Appendix A is the 2006 MOHLTC funding assurances letter.

An Information Report (BOH7067) regarding the Oversight of Small Drinking Water Systems was brought to the December 10, 2007 Board of Health (BOH) Meeting. BOH7067 provided background on the Ontario government’s intention to make public health units responsible for ensuring safe drinking water in facilities such as churches, community halls, bed and breakfasts, tourist outfitters, food service premises, and other businesses and establishments that own or operate a water supply to which the public has access. In the City of Hamilton there are presently estimated to be approximately 400 SDWSs. The actual number will be determined when PHS staff have been trained and equipped to visit these establishments to determine if the pending SDWS Regulations apply.

Please refer to Appendix B for information regarding;

- What is a SDWS?
- What is **NOT** a SDWS?
- Where are the SDWS?
- What does this mean to owners/operators of SDWS?

**ANALYSIS/RATIONALE:**

In the City of Hamilton there are estimated to be approximately 400 SDWSs. The actual number will be determined when the pending regulations are passed, when guidance and interpretation is provided by the MOHLTC, and PHS staff have been trained and equipped to visit these establishments to determine if the new SDWS Regulations apply.

It appears that the transfer of regulatory oversight is on the verge of happening. There have been previous MOHLTC announcements over the past several years regarding when this transfer would happen. The present guidance from the MOHLTC is that the transfer will happen when the new SDWS Regulations are passed by the provincial government. This is expected to happen in 2008. No more specific timeline has been announced. The MOHLTC has indicated in the past that the transfer will not happen until a full state of readiness exists amongst health units.
There have been several recent indications that the transfer is imminent;

1. In March 2008 the MOHLTC announced that the annual 100% provincial funding for Hamilton PHS to cover start up activities for the first two years of the Small Drinking Water System inspection program is $47,700 per year. PHS has informed the MOHLTC that this amount of funding is significantly insufficient. PHS will continue to pursue additional 100% funding from the MOHLTC in order to adequately staff and deliver this new program.
2. There have been recent introductory meetings regarding the draft/proposed SDWS Regulations, Webinar/conference calls regarding prototype risk assessment software, and an Environmental Bill of Rights Registry posting regarding draft SDWS regulations and an opportunity to comment.
3. The MOHLTC recently offered local health units an opportunity to resubmit their SDWS Inventories due to widespread concern amongst local health units regarding the inadequacy of the provincial funding for local health units to provide the SDWS inspection program. These inventories were originally submitted by local health units in 2005/06, and subsequently edited/reduced by provincial staff.

The present and temporary intention of PHS is to fund a part-time Public Health Inspector for 0.4 of an FTE or until the MOHLTC SDWS 100% funding is exhausted in 2008. Appendix C, Section 1 has more detail regarding funding.

**ALTERNATIVES FOR CONSIDERATION:**

As Legal staff have indicated, the alternative of not accepting the MOHLTC 100% funding and not implementing the SDWS inspection program cannot be exercised. Local health units are mandated under the Health Protection and Promotion Act to provide public health programs required by the MOHLTC. Not implementing the SDWS program could represent a legal risk to the BOH should a health hazard be allowed to exist in the absence of delivering a mandated public health program.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Based on our present interpretation and understanding of the draft SDWS regulations and the MOHLTC expectations of local health units, it is estimated that approximately $126,454 is needed annually for two years to start-up the SDWS inspection program. The 100% start-up funding offered by the MOHLTC is $47,700 per year for the first two years of the SDWS inspection program. This could represent an estimated shortfall of $78,745 annually for the first two years of the program.

After two years, the funding for the SDWS inspection program will become 75% funded by the MOHLTC and 25% funded by the local tax levy. It is estimated that this will add $27,500 to the local tax level each year thereafter.

The MOHLTC has developed a funding calculation document titled “Drinking Water Systems (SDWS) Health Unit Start-Up Funding for 2008: Assumptions and Components”. The difference in funding needs VS funding offered is based on using this
MOHLTC document. There are two main reasons why there is a difference in funding estimates:

1. The MOHLTC calculated their 100% start-up funding based on only 206 SDWS being in Hamilton, even though it was indicated by PHS to the provincial government in 2005 that 387 SDWS were believed to exist in Hamilton.
2. There is a 0.3 FTE difference between MOHLTC assumptions regarding the hours worked by staff annually VS actual hours worked locally/annually.

The MOHLTC funding calculation document titled “Drinking Water Systems (SDWS) Health Unit Start-Up Funding for 2008: Assumptions and Components” does not include or recognize legal costs, costs for IT support, additional administrative staff, or additional management staff. It is assumed that existing staffing and resources will absorb legal consult needs, IT support needs, and administration/management needs of the program.

Appendix C, Section 1 has more detail regarding funding.

POLICIES AFFECTING PROPOSAL:

The new regulations under the Health Protection and Promotion Act will not likely add any regulatory requirements or responsibilities over and above those that presently exist under MOE Regulations. There are estimated to be 27 municipally owned SDWS in Hamilton. It is the understanding of PHS that the owner/operator of these drinking water systems is aware existing MOE regulations.

RELEVANT CONSULTATION:

Consultation has taken place with Legal Services and MOHLTC.

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Public services and programs are delivered in an equitable manner, coordinated, efficient, effective and easily accessible to all citizens.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Human health and safety are protected.

Economic Well-Being is enhanced. ☐ Yes ☑ No

Does the option you are recommending create value across all three bottom lines? ☐ Yes ☑ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No
March 20, 2006

Mayor Larry Di Ianni
City of Hamilton
71 Main Street West
Hamilton ON L8P 4Y5

Dear Mayor Di Ianni:

Re: Request for 100% Provincial Funding, and not user fees, to fund the transfer and maintenance of regulatory oversight of drinking water systems from the Ministry of Environment (MOE) to local Public Health Units

Request for 100% funding for the Draft Mandatory Public Health Safe Water Program

Thank you for the two letters of January 18 with regard to the above.

The Ministry of Health and Long-Term Care and the Ministry of the Environment are proceeding with a proposal for the transfer of responsibility and oversight for small drinking water systems. The transfer was approved on the basis of 100% funding for the start-up phase of this program which includes some of 2009. Therefore under this proposal, all costs that are associated with the risk assessment and related activities specific to small drinking water systems will be fully funded by the province.

It is proposed that the small drinking water systems program will become operational on January 2007. This will be followed by initial risk assessments for all systems. These in turn will determine requirements such as frequency of testing and, where necessary, the provision of water treatment to protect the consumer. Those initial assessments will also determine the frequency of reassessment e.g. every 2 or 4 years, which represents the maintenance phase of this program.

This maintenance phase will be costs shared like all other public health mandatory programs, which by 2009 will be 75% provincial and 25% municipal funding. It is presently estimated that the total municipal share of this program province-wide is $0.6 million annually.

Local municipalities that operate small drinking water systems that are included in this program will see benefits form this program. The municipalities will receive the same benefits as any other owner or operator of a small drinking water system. The initial risk assessment will be conducted by a trained Public Health Inspector at no charge, which in most cases eliminates the need to engage the services of an engineer as was the case under Ontario Regulation 170. The site specific risk assessment will also determine the sampling frequency which in turn will result in a significant reduction in the sampling frequency (and associated costs) for those systems that are deemed low risk.
A major focus in this project is the reduction of cost to Government Agencies and Drinking-Water System Operations so that available funds will be directed towards the intended target, the provision of safe drinking water.

If you have and further questions or concerns with regard to this matter please do not hesitate to contact the Safe Water Unit with the MOHLTC by phone at 416-327-8699 or by e-mail at Safewater@moh.gov.on.ca.

Yours truly,

[Signature]

Fred W. Rutf, M.E.S., C.P.H.I. (C)
A/Head, Environmental Health and Toxicology,
Food Safety and Safe Water Unit

U06-00754
What is a SDWS?

Presently there are some grey areas regarding what is a SDWS. Our understanding of draft regulations is that a SDWS is a drinking water system that provides drinking water from a water well or other non-municipal water source at the following types of establishments:

1. Municipally owned recreation facilities, arenas, park, community halls, library, etc. These drinking water systems have been regulated under MOE Regulation 252 since 2005. The new regulations under the Health Protection and Promotion will not likely add any regulatory requirements or responsibilities that presently exist under MOE Regulations. There are estimated to be 27 municipally owned SDWS in Hamilton. It is the understanding of PHS that the owner/operator of these drinking water systems is aware existing MOE regulations.

2. Restaurant, Bed and Breakfast, Garage/Gas Station, Hotel/Motel, Church/Mosque, Marina, Service Club or Fraternal Organization, etc.

3. Public Facility: Any place where the general public has access to a washroom, drinking water fountain or shower.

   This definition (“public facility”) is causing concern amongst some local health units in Ontario as there is differences of opinion and interpretation of what “general public access” means. Public facilities account for approximately 50% of the local SDWS Inventory. Therefore, the SDWS Inventory and SDWS Inspection Program costs will vary according to the interpretation and application of the definitions in the final version of the regulations.

4. Seasonal Trailer Park/Campground that has 6 or more service connections or sites.

   One criteria used to define a SDWS that is not mentioned above is the amount of water the SDWS is capable of using per second. Most SDWS will use less that 2.9 litres of water per second, this calculates to approximately 45,000 imperial gallons per day. There are also some SDWS that could use more water that this, but these are expected to be relatively few in number.

What is **NOT** a SDWS?

Our understanding is that the SDWS Inspection program does **NOT** apply to a drinking water system that provides drinking water from a water well for the following types of establishments. These types of establishments or drinking water systems are presently regulated under existing MOE regulations under the Safe Drinking Water Act;
1. A private residence or a water well/source providing drinking water to 5 or less private residences.
2. Year-round trailer park
3. Municipal residential drinking water system
4. Children and Youth Care Facility; which means a;
   a. Day Nursery,
   b. The following places within the meaning of the Child and Family Services Act and where the following services are provided;
      i. Child development
      ii. Child treatment
      iii. Child welfare
      iv. Community support or young offender
5. Child and family Intervention Facility within the meaning of Regulation 70 under the Child and Family Services Act.
6. Ontario Early Years Centre (and satellite locations) that is funded under the Ministry of Community and Social Services Act.
8. An emergency hostel funded under Ontario Works Act
9. A hostel funded under the Ministry of Community and Social Services Act
10. School/College/University
11. Hospital
12. Nursing Home
13. Home for the Aged
14. Rest Home
15. Psychiatric facility
16. Charitable Institution that is a halfway house, home for the aged, residential group home,
17. Cancer centre
18. Home for Special Care
19. Retirement Home
20. Children’s Camps
21. And other establishments….

Where are the SDWS?

The following table shows the estimated number of SDWS in each Ward as of June 27, 2008. These numbers will likely change when PHS staff begin to make site visits later in 2008 to ground-truth whether or not the new Small Drinking Water System Regulations apply.
What does this mean to owner/operators of SDWS?

Based on a review of recent draft legislation and discussions with MOHLTC staff, our understanding is that the owner/operator of some SDWS will be required to collect and test water samples for bacteria (E.coli and Total coliform) at their own cost every three months or once every two weeks, depending on the type of drinking water system. Owners/operators of some SDWS will not have to test the safety of the drinking water, but will instead be allowed to post a sign that warns the user that the water is not tested or safe to drink. Again, this depends on the type of establishment.

Additionally, the draft SDWS regulations prescribe requirements for owners/operators to;

1. Notify and obtain written permission from the medical officer of health before they supply water after construction, installation, or extension of a drinking water system or after the system has not been used for 60 days.
2. Be trained in drinking water system operation and maintenance.
3. Notify the medical officer of health when the drinking water does not meet the drinking water quality standards.
4. Follow the “directions” of a medical officer of health or public health inspector, in which additional actions may be required regarding;
   a. The frequency, location and method of sampling
   b. Taking additional samples or conducting additional tests
   c. Additional training
   d. Record keeping
   e. Posting of Warning Signs
Such “directions: are basically the same as writing or creating a regulation specific to an individual drinking water system. A direction will require things be done that are in addition to the regulations, and are based on a risk assessment or inspection done by a medical officer of health or public health inspector.

The draft regulations presently indicate that directions can be objected to by the owner/operator by bringing their objections to the attention of the local medical officer of health who will then forward the objection to a medical officer of health in another health unit who will then review the objection and make a decision regarding the status of the direction.

5. Obtain the services of a licensed laboratory and pay for the analysis
6. Keep records for five years
7. Make information available to the public
8. Construct wells to prevent the entry of surface water
9. Disinfect the drinking water (in some cases, not all)
10. Check, Sample, and Test the operation of the system
11. Take corrective action when problems arise

Public education and outreach activities have been discussed with MOHLTC staff, and our present understanding is that MOHLTC will develop resources and provide them to local health units for dissemination to SDWS owners/operators.
1. FUNDING

The SDWS Inspection Program and proposed Protocols will involve many more drinking water systems and work than the MOHLTC funding will support. There is a significant funding gap between what the MOHLTC thinks the costs will be and the local Health Unit cost estimates. The MOHLTC funding model and assumptions does not include funding for Managers, Administrative staff, IT support, Legal Costs, procurement of professional assistance for assessing the security of water sources (GUDI assessments), or additional activities in the Protocols. Two significant activities in the Protocols are training of drinking water system operators and public outreach and education. These gaps and/or activities need to be included in the MOHLTC funding assumptions.

The City of Hamilton Public Health Services cannot over emphasize the difficulty and likely inability to provide the SDWS program based on MOHLTC 100% program start-up funding of $47,700 per year during the start-up phase of the program (the first two years). After program start-up expenses for office equipment, floor space, inspection equipment and tools, mileage, etc, the remainder of the 100% start up funding is loosely sufficient to hire ¼ of a Public Health Inspector FTE to assess ~203 SDWS per year in Hamilton. Our estimates indicate that only 40 to 50 SDWS’s will be assessed per year according to the proposed funding. Additional SDWS program expenses for support/administrative staff, IT support services or staff, and management staff have not been included in the provincial funding assumptions model. Please see the local funding needs estimate below that describes the estimated funding amount that the City of Hamilton needs to start the SDWS program, with the understanding that actual costs could be more or less. The actual costs cannot be further estimated at this time as the related Regulations and Protocols have not been finalized.

The regulation and inspection of SDWS was a recommendation made by Justice O’Connor as part of the Inquiry into the Walkerton drinking water tragedy. The provincial government promised to implement all of Justice O’Connor’s recommendations. However, the provincial government has had a frugal approach to the implementation of this particular Inquiry recommendation. Even after lengthy public consultations with stakeholders, and after the Advisory Council on Drinking Water Quality and Testing Standards recommended a new approach to managing small, private drinking-water systems, based on a risk-based, site-specific approach and that public health units should be responsible for delivering the program, the initial MOHLTC and/or the MOE funding model indication was that the SDWS program would be funded by user fees paid by SDWS owners/operators. There was a significant and reasonable opposition and rationale for not funding this local public health program with user fees.

Subsequently, the MOHLTC appeared to change the funding model by indicating verbally on several occasions during meetings and teleconferences, and in a letter dated March 20, 2006 from the MOHLTC to the City of Hamilton that “The MOHLTC and the MOE are proceeding with a proposal for the transfer of responsibility and oversight for small drinking water systems. The transfer was approved on the basis of 100% funding for the start up phase of the program…” “Therefore under this proposal, all costs that are associated with the risk assessment and related activities specific to small drinking water systems will be fully funded by the province.” A copy of this letter is attached as Appendix 2.

However, in March 2008, the MOHLTC issued letters to MOH’s and Chairs of Boards of Health indicating 100% funding amounts for the SDWS program that are significantly less than needed to provide the SDWS program after the transfer of responsibility and oversight occurs. This funding shortfall has been experienced by many Health Units. An investigation into the funding shortfall revealed that the Inventory used to calculate the 100% MOHLTC funding for the City of Hamilton was significantly altered by the provincial government by the removal of approximately 50% of the SDWSs from the Inventory that was submitted by Hamilton Health Unit to the...
government in 2005. The SDWS Inventories submitted by other Health Units have also been reportedly altered without Health Unit consultation.

In the Fall of 2005 (or thereabouts) all Health Units in the province were asked to submit an Inventory of SDWS’s within the Health Unit. Health Units were given instructions and definitions regarding the criteria upon which to exclude or include a SDWS in their Inventory. Health Unit staff prepared the Inventory for the provincial government based upon the provincial instructions and criteria and combined with their local knowledge of drinking water systems. Hamilton submitted an Inventory of 386 SDWS’s (or thereabouts). However, the provincial government reduced the Hamilton SDWS Inventory to 204 systems, and used the lower number to calculate the funding needed to assess 386 SDWS’s over two years. The Hamilton SDWS Inventory has been recently reviewed and updated, and the present estimate is 407 SDWS’s. The definitions and exclusion/inclusion criteria for SDWS’s has not changed since this transfer was proposed, and the definitions of SDWS’s at the time of Inventory development appear to be similar to the definitions in the SDWS Regulations that are the subject of this EBR posting. Basically over the past several years nothing appears to have changed regarding the definition of a SDWS.

The significant funding shortfall is further exacerbated by assumptions made by the provincial government in the provincial document titled “Small Drinking Water Systems (SDWS) Health Unit Start-Up Funding for 2008: Assumptions and Components”. The assumption in this provincial document over estimates the number of hours that a staff person is available to work (and paid) per year by ~30%, compared to the hours worked by a staff person per year in Hamilton.

Summary of the 100% funding shortfall:

- The MOHLTC has reduced the Inventory of SDWS’s in Hamilton by ~50%.
- The MOHLTC has over estimated the annual hours worked by staff by ~30%.
- No inclusion of costs for additional administrative staff, IT support staff or services, additional management staff, legal costs, lab analysis costs, etc. It appears the MOHLTC expects existing Health Unit staff and budgets to absorb the additional admin, management, lab, and IT support and implementation work and costs.

Hamilton SDWS Program Funding Estimate for Start-up phase:

The estimated costs for starting up the SDWS Inspection Program in Hamilton are as follows. The cost estimate below is based on and compared to a funding document that was emailed by the provincial government to all Health Units on March 12, 2008.

- ~407 SDWS are presently estimated to exist in Hamilton.
- 203 Risk Assessments (RA) will need to be done per yr in the 1st two years of the Program in order to do a RA at all ~407 SDWS.

Initial RA time per yr is estimated to take 5.75 hrs x 203 = 1167 hrs
Re-RA inspections estimated for 25% of SDWS @ 2 hrs each = 100 hrs
10% complaint rate @ 2 hrs each = 40 hrs

**Total Field Time Needed for SDWS Inspections in Hamilton** = 1307 hrs/yr

One PHI FTE in Hamilton is estimated to be available to work 1254.5 hrs per year (but paid ~1351 hrs yr), based on the calculation below;

*The above underlined estimates are roughly close to each other. I am comfortable that 1 PHI FTE should be able to conduct ~203 RAs per year if staff work 188 days per year.*

1 Small Drinking Water Systems (SDWS) Health Unit Start-Up Funding for 2008: Assumptions and Components
365 total days – 52 weekends = 261 net days
261 net days – (27 Vacation days + 10 sick days + 11 Stats) = 213 days
213 days – (10 Training days + 10 Office/Consult/Enforcement days) = 193 days
193 days x’s 6.5 hrs/day = 1254.5 hrs available to work
193 days x’s 7 hrs pd/day = 1351 hrs are paid to cover 1254.5 hrs of work

The MOHLTC funding document\(^1\) estimates an FTE is available to work 1458 hrs per year. When compared to local FTE estimates, there is a difference of 203.5 hrs, or 0.2 of an FTE, between the MOHLTC estimate and the local estimate. The Hamilton FTE is paid for 7 hrs/day, but works 6.5 hrs/day. This adds another 0.08 FTE to the estimated difference between the local FTE estimate and the MOHLTC FTE estimate. Therefore the difference between the MOHLTC and the local FTE estimate is ~0.3 FTE or 30%.

**Hamilton Health Unit Costs for Year 1;**

- $80,405 = One PHI FTE (at the top pay level (all benefits incl) in Hamilton)
- $17,000 = Office Accommodations and set up (desk/phone, etc) in 1\(^{st}\) yr
- $6,240 = Mileage (12,000 kms x $0.52/km)
- $1,000 = Cell phone/yr
- $12,000 = Supplies and Equipment (one FTE = $2000). 6 generalized district staff to be trained in the spring/fall Training
- $10,000 = Legal Costs (ongoing each year)

\(~$126,645 = TOTAL 100% FUNDING NEEDED for 1\(^{st}\) year\)

The MOHLTC has offered $47,700 to hire and equip public health inspectors to prepare for and deliver the SDWS program for the 1\(^{st}\) yr of start up. This is approximately $78,945 ($80,000) less than needed.

In year two, costs would be lower by approximately $16,000 ($10K from Office & $6K from Supplies), then add a 3% pay raise for each subsequent year.

The assumed RA Re-inspection rate is 25% at 2 hrs per Reinspection. This rate is likely low as none of these SDWS’s have been previously regulated or assessed. A more reasonable RA Re-inspection rate could be ~40% and the average time per Reinspection could be 3 hrs. If this is closer to the actual RA Re-inspection rate and time, it would add 140 hrs of staff time per year, or an additional 0.1 FTE.

Recent discussions with MOHLTC staff have indicated that the MOHLTC is prepared to increase 100% program start up funding after;

- Proclamation of the transfer legislation,
- Expenses are incurred by the Health Unit to hire and equip staff to provide the program.

However, there were no assurances that 100% of the expenses that are above the initial 100% funding offer will be covered.

MOHLTC staff have indicated that no additional money is available in MOHLTC budgets, and that any additional money needed to cover the start up costs will have to be moved from other MOHLTC budgets. Thus, there appears to be a likelihood that the MOHLTC may not be able to cover of 100% of the SDWS start up costs as promised.

The MOHLTC has consistently indicated that the funding of the maintenance phase of the SDWS program will be cost-shared between the MOHLTC and the local Board of Health according to the typical arrangement of 75% paid by the MOHLTC and 25% paid by the Board of Health. This represents a download of what was a provincial responsibility (when SWDS were the responsibility of the MOE) to the budgets of local Boards of Health. The City of Hamilton has previously opposed the 72/25 funding model for the maintenance phase of the
SDWS program, and requested that the maintenance phase also be 100% funded by the province. This letter is attached.

2. TRAINING, LEGAL SUPPORT, TECHNICAL SUPPORT, INTERPRATIVE SERVICES

Both Regulations pose some real potential for differences of interpretation and application. The MOHLTC needs to ensure that local health units have access to more than adequate training for staff to be introduced and to comprehend these proposed Regulations. The MOHLTC also needs to ensure that consistent legal and technical interpretation is quickly available to health unit staff. The goal is to achieve a consistent interpretation and application of these new Regulations amongst health units across the Province.

3. PUBLIC EDUCATION AND OUTREACH

There needs to be a comprehensive plan with supporting clear documents provided to all Health Units and all SDWS owners and/or operators so all the parties involved with putting these new regulations into play have the same information for consistent interpretation and application. This should be developed, provided, and delivered by the MOHLTC, or include the development and delivery costs in the MOHLTC funding model and assumptions.

4. REGULATIONS

The two regulation process adds a layer of complication to the introduction of this enforcement program. Explaining the Transitional Regulation and Permanent Regulation process and impact will be confusing and time consuming for staff and operators. The regulations themselves (perhaps by legal necessity) are at times difficult to follow. Some of this complexity relates the variety of premises involved, variability in the type and composition of raw water sources, and variability in required treatment.

Most owners of small drinking water systems do not have a basic understanding of water quality issues water beyond obtaining a water sample for bacteria testing.

Therefore it is recommended that:

a) The MOHLTC provide local Health departments with comprehensive information packages consisting of written guides, forms, fact sheets etc. to be distributed to all current owners/operators of drinking water systems and to have available such packages for distribution to future new drinking water suppliers. Such packaged information would help owners/operators under their new obligations under the regulations and provide more uniform baseline information across the province rather than leaving this up to each Health Unit.

b) That MOH/PHIs in addition to proposed initial training, that the MOHTC provide ongoing access to drinking water systems consultant(s) at the Ministry to help address ongoing technical issues that are surely to arise as these regulatory requirements are implemented across the province.
The following charts identify specific comments and recommendations:

**Transitional-Small Drinking Water Systems**

<table>
<thead>
<tr>
<th>Section</th>
<th>Current Wording</th>
<th>Comment</th>
<th>Recommendation</th>
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<tbody>
<tr>
<td>Definitions</td>
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<tr>
<td>“director”</td>
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<td>It appears odd that the MOE would continue to retain authority for drinking water systems that will be under the authority of the MOHLTC.</td>
<td>Please provide an explanation or clarification to Health Units regarding the implications, application, and role of this definition.</td>
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<td>Definitions</td>
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<td>“drinking water”</td>
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<td>The current wording in the Safe Water Act under Section 10 requires “potable” water in any Act to meet at minimum the requirements of the drinking water standard. There fore, isn’t the use of the word “potable” redundant? If it is not considered redundant, then can potable be defined in the definitions?</td>
<td>Include a definition of “potable” water for drinking purposes</td>
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<td>A gap exists between the required water quality testing parameters in the Safe Drinking Water Act and other regulations, orders, by laws, etc, and the drinking water quality testing parameters in Schedules 1 and 2 of the Transitional SDWS Reg. The Transitional regulation requires drinking water be potable and meet the standards of Reg 169/03, but this regulation does not require the drinking water be tested for the parameters necessary to determine if the water is potable. Therefore, there is not a requirement to actually test and determine if the drinking water is potable. Therefore, one cannot assign a risk category to the SDWS, or imply or state that the water is potable, because one does not have the information to make that determination. There is significant confusion regarding the interpretation of what “potable” means, when drinking water is required to be “potable”, and how drinking water is determined to be “potable”. The MOHLTC needs to provide clear wording, guidance, interpretation, and training to BOH/MOH’s regarding how interpret or avoid this gap (risk). The BOH/MOH and staff thereunder should not be asked or put in position to indicate that a drinking water system is providing potable water (implied via the risk assessment process and category determination), unless the owner or operator is required to provide sufficient information (testing results) upon which BOH/MOH staff can make an informed decision. Basically, drinking water quality cannot be deemed potable, or meet the requirements of being potable based only microbiological analysis.</td>
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| “drinking water system” |                 | Include a reference to the Ontario Building Code Act. There needs to be some criteria other than “any thing” in the definition. Somewhere in the Regulation there needs to be some further definition of “plumbing” and it needs to be consistent with other legislation. The OBCA is long established and accepted regarding the definitions and terms used for construction and building “things”. | “drinking water system”(a) “…supply or distribution of water. Insert the word “drinking” before water.  
“drinking water system”(c) “…supply for the system. Insert the words “drinking water” before system. |
### Definitions

**“food service establishment”**

- The wording in regulation 562 is “food service premise” not s
- Not sure of rationale why we are restricting the definition to a food service premise when all food premises require a supply of potable water (Section 20 Food premises Regulation)

**“Private Residence”**

- Clause b and c of the definition
  - This definition has some practical enforcement issues relating to how one measures the 25% indoor floor area for home business occupancy. Specifically, this definition assumes the use of a home. In many cases, a home business occupancy is conducted in an accessory building or structure located on the same property.
  - The definition involves items that cannot be known until one is inside the “private residence”, therefore one cannot determine if the establishment/building is a private residence without first entering the private residence, which is not permitted without prior consent from the occupant or under a warrant. It is highly doubtful that a warrant will be granted to determine if the establishment/building is a “private residence”, should access not be permitted by the occupant.

**“Public Facility”**

- (a) food service establishment
  - Not sure of rationale for limiting definition of a public facility to a “food service establishment”; Section 18 of Schedule B under the HPPA requires that every place of business…shall provide for occupants, employees, and customers adequate sanitary closets and toilet accommodations. IF a food premises other than food service premise is required to have a washroom as per schedule B, then it follows that they too are a public facility and therefore are a regulated water supply.
  - This definition needs more detail. List/insert specific legislation that requires the general public to be provided access to washrooms. There is much confusion and difference of opinion between the MOHLTC and BOH/MOH staff regarding what a public facility is.

- Consider using definition of “food premise” instead of “food service establishment”. See next definition/comment.

  **Suggested Wording:** Any place where the general public is to be provided access to a washroom, according to the requirements of Schedule B under the Public Health Act (repealed), the Ontario Building Code Act, or by-law that requires a business or occupancy to provide access to a washroom for its patrons or the general public.

  **OR**

- Remove public facilities from the list of definitions. This would likely solve the funding disputes/discrepancies regarding the start up costs for the SDWS program.
<p>| Exemptions 6. Systems connected to other systems | Are cisterns exempt? | Include or add the word cistern, if the intent of this section is to exempt cisterns from this regulation. Cisterns that receive all drinking water from another “drinking water system”. This will provide some clarity regarding the application of this regulation to cistern based systems. OR include the word cistern in the definition of “drinking water system”. |
| Exemptions 7.3 Reference to “food service establishments” | Not sure of rationale why we are restricting the definition to a food service premise when all food premises require a supply of potable water <em>(Section 20 Food premises Regulation)</em> | Consider using definition of “food premise” as provided in the HPPA, “premises where food or milk is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale, but does not include a private residence;” This definition is more encompassing and would require that all food premises provide testing and monitoring of their water system as they will require a supply of potable water anyways. Discerning between premises that sell “a meal or meal portion” for immediate consumption can be subjective. Further, the HPPA Schedule B requires that a place of business provide for its customers washroom accommodation, therefore, even a food store which is not covered as a “food service establishment” may still be covered as a “public facility”. Using the food service establishment definition may create a situation where some food premises (e.g., food stores, butcher shops) are exempt but not the local service station that has a washroom. This must be able to be worded in a more understandable manner. This wording will cause a divergence of interpretation and application across the Province. |
| Exemptions 7(8) | This is confusing. This needs to be explained better. There is no requirement in this Regulation to test the drinking water from SDWS for the parameters listed in Reg 169/03. So, in effect, there is no obligation to determine if the drinking water is potable, which could be interpreted to mean that people are relieved of any obligation to provide potable water, |</p>
<table>
<thead>
<tr>
<th>Duties of Owners 8(1)ii.</th>
<th>“fit state of repair”</th>
<th>Needs to be defined. Are there some minimum standards or references that can be used as a benchmark? There needs to be clearer detail to ensure consistent interpretation amongst staff. This is has significant potential for varying interpretation.</th>
<th>Suggested other/additional wording: “maintained so that all components of the distribution and treatment systems are in working order”.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duties of owners and operators 8(5)</td>
<td>“subsystem”</td>
<td>What does this term mean?</td>
<td>the term significant risk needs further explanation or definition, or re-wording to be consistent with other similar terms (but maybe different interpretation) used in other public health legislation. When does a risk become significant?</td>
</tr>
<tr>
<td>8(5)</td>
<td>“significant risk to human health”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drinking water testing services 9(3)</td>
<td>“direction”</td>
<td>What does this term mean? This term appears in other sections of this Regulation and other drinking water related Regulations, and it appears to have significant weight or meaning, however, this term is not defined in this legislation or the HPPA, or the SDWA. Is a direction appealable? If a direction is not complied with, what happens next? Is it an offence to not comply with a direction?</td>
<td>A standard, benchmark, qualification, etc needs to be indicated so that a medical officer of health can assess the eligibility of a lab. This is very important, as this “belief” is the basis for a “direction”. Presently, neither the “belief” nor “direction” has much upon which to base or legitimize them. Our opinion is that the MOHLTC or MOE should approve and maintain a “list” of labs and the particular tests that each lab is approved to perform. If a particular lab/test are not on the MOHLTC/MOE list, then that would be the criteria upon which a medical officer of health can come to a reasonable belief that a lab is not an eligible lab in respect to a particular test.</td>
</tr>
<tr>
<td>Duties of owners and operators 9(3)(a)</td>
<td>What is the test or criteria for a laboratory to have “ceased to be an eligible laboratory in respect to a particular test…”? How will a medical officer of health determine that they have a reason to believe a lab is no longer eligible to do a particular test?</td>
<td></td>
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</tr>
<tr>
<td>Duties of owners and operators 9(3)(b)</td>
<td>This requires a medical officer of health to determine if a laboratory is in compliance with MOE legislation. A medical officer of health cannot do this without the MOE doing an investigation, application, and/or an interpretation of the MOE legislation. Is there a mechanism under which the MOE can be compelled or obligated to perform an investigation and provide the findings to the medical officer of health? More importantly, how will a medical officer of health become aware that a lab is not in compliance?</td>
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</tr>
<tr>
<td>Well used as raw water supply 12.</td>
<td>“…ensure that well is constructed and maintained to prevent…”</td>
<td>The word “constructed” requires a reference to some construction standards.</td>
<td>Provide and define some construction standards for wells.</td>
</tr>
<tr>
<td>Notifications 13 “alteration”</td>
<td>“alteration includes… 3. A fragmentation of the system”</td>
<td>What does fragmentation mean?</td>
<td>Define Fragmentation</td>
</tr>
<tr>
<td>Schedule 1 1-3 (1)</td>
<td>“…tested immediately for chlorine residual.”</td>
<td>Specify the type of chlorine residual; free available, total, or combined.</td>
<td></td>
</tr>
<tr>
<td>Schedule 1 1-4. (2)</td>
<td>Reference to “director” to refers to MOE director.</td>
<td>Subsequent reference to “Act”. Likely a reference to the SWA but not sure</td>
<td>Name the “Act” that is referred to unless it is the HPPA</td>
</tr>
<tr>
<td>Schedule 1 1-5 (b)</td>
<td>Delete this section. Too many different methods for testing chlorine concentrations will just get too confusing.</td>
<td>Delete this section</td>
<td></td>
</tr>
<tr>
<td>Schedule 1 Sampling and Testing General Section 1-7</td>
<td>References to “director” in this schedule</td>
<td>Should references to director in this section be changed to MOH/Health Unit?</td>
<td>Confirm the references to MOE is correct</td>
</tr>
<tr>
<td>Schedule 4 Duty to Report Under Section 10 4-3 4.</td>
<td>Delete this, or increase the concentration to 200 mg/L. Sodium concentrations above 20 mg/L are not health related. This isn’t a required test! Sodium concentrations above 20 mg/L are a waste of time and resources, relative to the health risk.</td>
<td>Delete this, or increase the concentration to 200 mg/L.</td>
<td></td>
</tr>
<tr>
<td>Schedule 5 E. coli 5-2 3. i.</td>
<td>“residual” is not a good word.</td>
<td>Replace “residual” with “concentration”. Specify what type of chlorine concentration; i.e. free available, combined, or total?</td>
<td></td>
</tr>
<tr>
<td>Schedule 5 Total Coliforms 5-3 1.</td>
<td>“…reasonably possible”</td>
<td>What does “reasonably possible” mean?</td>
<td>Replace “reasonably possible” with “immediately” or “within 24 hours of becoming aware of the detection of total coliforms”.</td>
</tr>
<tr>
<td>Schedule 5 Sodium 5-7 2.</td>
<td>Sodium above 20 mg/L is not a health hazard. Please save us the hassle of having to deal with situations that are not health related.</td>
<td>The MOH should not have to get involved with low sodium concentrations. Delete this, or increase the concentration to 200 mg/L.</td>
<td></td>
</tr>
<tr>
<td>Schedule 6 Warning Notices 6-2 (2)</td>
<td>A Warning Notice should be posted at all water access points, i.e. taps. This should be done with a “tap tag” that is affixed to the tap. Larger Notices should also be posted in prominent locations as deemed necessary.</td>
<td>Suggested wording “…must be posted at all drinking water access points and in prominent locations…”</td>
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</tbody>
</table>

Small Drinking Water Systems Regulation
<table>
<thead>
<tr>
<th>Section</th>
<th>Current Wording</th>
<th>Comment</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 (1) Interpretation</td>
<td>New term “Adverse Observation”</td>
<td>Owner/operator to report to Public Health Services: inappropriate disinfection, break in piping, back siphonage, contamination to source water, inappropriate filtration, inappropriate chemical mgmt. Corrective action in most cases is for operator to take steps as given by MOH (Section 34). It appears that the BOH is taking on some legal liability if such steps fail to adequately protect the users of the system’s drinking water.</td>
<td>Legal advice may have to be sought to determine if BOH is taking on additional liabilities with current wording. MOHs should not be asked or implied to instruct/direct operators/owners how to resolve adverse observations. The “test” to meet the definition and apparent need to report an “adverse observation” appears to be the responsibility of the operator to determine if “…an observation of an event…indicates that a small drinking water system may not be providing the quality of water that is necessary for the safety of the users…” Therefore, should an operator observe an event AND make the decision that the event may cause the water quality to not be safe, they are required to report the event as an “adverse event” to the MOH. In circumstances that involve Section 34, the corrective action should be that the operator should “notify affected users…” until such time that they verify the drinking water is potable.</td>
</tr>
<tr>
<td>2(1) (a) Interpretation</td>
<td>“inappropriate chemical management”</td>
<td>More detail is needed, maybe in a training or best practices guideline that should be provided by the MOHLTC to operators and inspectors. It is important that operators and inspectors have some idea about what might be “inappropriate” so the operator/owner and inspector can make an informed decision about the need to make a report of an “adverse event”.</td>
<td>Provide more detail in the Reg or in a SDWS Best Practices Guideline.</td>
</tr>
<tr>
<td>2(1) (b) Interpretation</td>
<td>“inappropriate disinfection…”</td>
<td>More detail is needed, maybe in a training or best practices guideline that should be provided by the MOHLTC to operators and inspectors. It is important that operators and inspectors have some idea about what might be “inappropriate” so the operator/owner and inspector can make an informed decision about the need to make a report of an “adverse event”.</td>
<td>Provide more detail in the Reg or in a SDWS Best Practices Guideline.</td>
</tr>
<tr>
<td>2(1) (c) Interpretation</td>
<td>“inappropriate filtration…”</td>
<td>More detail is needed, maybe in a training or best practices guideline that should be provided by the MOHLTC to operators and inspectors. It is important that operators and inspectors have some idea about what might be “inappropriate” so the operator/owner and inspector can make</td>
<td>Provide more detail in the Reg or in a SDWS Best Practices Guideline.</td>
</tr>
<tr>
<td>2(1) (d) Interpretation</td>
<td>“break in systems piping that might result in contamination of the water”</td>
<td>More detail is needed, maybe in a training or best practices guideline that should be provided by the MOHLTC to operators and inspectors. It is important that operators and inspectors have some idea about what might be “inappropriate” so the operator/owner and inspector can make an informed decision about the need to make a report of an “adverse event”.</td>
<td>Provide more detail in the Reg or in a SDWS Best Practices Guideline.</td>
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<tr>
<td>2(1) (e) Interpretation</td>
<td>“potential for contamination...back siphonage has occurred”</td>
<td>More detail is needed, maybe in a training or best practices guideline that should be provided by the MOHLTC to operators and inspectors. It is important that operators and inspectors have some idea about what might be “inappropriate” so the operator/owner and inspector can make an informed decision about the need to make a report of an “adverse event”.</td>
<td>Provide more detail in the Reg or in a SDWS Best Practices Guideline.</td>
</tr>
<tr>
<td>2 (1) Interpretation “adverse test result”</td>
<td>“...unless a different standard is established under a permission or directive...”</td>
<td>A “permission” or “directive” means what? These are new terms under HPPA legislation and they need more definition and detail.</td>
<td>Define permission, or describe it in the Reg somewhere. Does it have to be in writing? How long is it valid, what details need to be in it? The MOHLTC should create a standard “Permission” form for all HUs to use. Define directive. Does it have to be in writing? How long is it valid, what details need to be in it? The MOHLTC should create a standard “Direction” form for all HUs to use.</td>
</tr>
<tr>
<td>2 (1) Interpretation “adverse test report” 4ii; 5ii; 6ii</td>
<td>Wording convoluted, confusing</td>
<td></td>
<td>clarify</td>
</tr>
<tr>
<td>2 (1) Interpretation “adverse test result”</td>
<td>No mention of minimum chlorine concentration for systems that provide primary disinfection</td>
<td>What is the minimum chlorine concentration for systems that provide primary disinfection?</td>
<td>Clarify pls.</td>
</tr>
<tr>
<td>2 (1) 7. Interpretation “adverse test result”</td>
<td>“…concentration exceeds 20 milligrams per litre…”</td>
<td>This extremely low level of sodium will not adversely affect someone’s health, unless there is some evidence exists to indicate otherwise.</td>
<td>Substantiate the risk to health that this low sodium concentration represents, or remove it, or increase it to a concentration that represents an adverse health risk.</td>
</tr>
<tr>
<td>2 (1) Interpretation “alteration”</td>
<td>“alteration”,...exclude repairs to the system: 2. a replacement of part of the system</td>
<td>Interpretation is that a repair is excluded as being an alteration, however, a replacement of part of the system could easily be interpreted to imply or mean the same thing or similar to a “repair”. i.e. replacing a part of the system would likely be done when a repair is being made. Therefore it is difficult to differentiate between a “repair” and “replacement”.</td>
<td>Clarify pls.</td>
</tr>
<tr>
<td>Definitions “drinking water”</td>
<td>Same definition as found in the Safe Water Act. Defined as “Potable, or meeting standard of OR 169”</td>
<td>The current wording in the Safe Water Act under Section 10 requires “potable” water <em>in any Act</em> to meet at minimum the requirements of the drinking water standard. Therefore, isn’t the use of the word “potable” redundant? If it is not considered redundant, then can potable be defined in the definitions? The use of the word potable has significant impact on what drinking water parameters need to be analysed in order to meet the definition of potable. A gap exists between the required water quality testing parameters in the Safe Drinking Water Act and other regulations, orders, by laws, etc, and the drinking water quality testing parameters in the Permanent SDWS Reg. The Permanent regulation requires drinking water to be potable, but it does not require the water to be tested for the parameters necessary to meet the definition of potable in the SDWA. Therefore, one cannot assign a risk category to the SDWS, or imply or state that the water is potable, because one does not have the information to make that determination. There is significant confusion regarding the interpretation of what “potable” means, when drinking water is required to be “potable”, and how drinking water is determined to be “potable”. The MOHLTC needs to provide clear wording, guidance, interpretation, and training to BOH/MOH’s regarding how interpret or avoid this gap (risk). The BOH/MOH and staff thereunder should not be asked or put in position to indicate that a drinking water system is providing potable water (implied via the risk assessment process and category determination), unless the owner or operator is required to provide sufficient information (testing results) upon which BOH/MOH staff can make an informed decision. Basically, drinking water quality cannot be deemed potable, or meet the requirements of being potable based only microbiological analysis. Leaving the determination to require testing for parameters in addition to E. coli and Total Coliforms is a significant risk to place on the shoulders of Health Units. The default position, in order to ensure there is no liability and risk taken on by the Health Unit is to interpret and apply the definition of potable water under the SDWA, and to require SDWS owners and operators to test for the parameters in Reg 169 and assess the lab results according to the MAC for each parameter, and then make a determination regarding the potability of the drinking water.</td>
<td>Clarify and provide a legal interpretation for Health Units; re what potable means, and the liability associated with allowing water to be provided for human consumption, but has been tested sufficiently to ensure its safety.</td>
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<tr>
<td>Definitions</td>
<td>No definition of ground water, or GUDI</td>
<td>The Reg defines surface water – which is an inadequate definition because dug wells should be considered surface water, even they’re not directly subjected to rain. No mention of groundwater or GUDI water is a significant gap. Just because a well has a metal casing does not mean it is a surface water source, therefore the risk cannot be accurately established.</td>
<td>Clarify or expand the definition of surface water to include wells that do not have a water casing that extend ≥6 metres below the ground. Include definitions of ground water and use them in the Regulation to indicate</td>
</tr>
<tr>
<td>Definitions</td>
<td>(c) ...25% of the indoor area</td>
<td>This definition has some practical enforcement issues relating to how one measures the 25% indoor floor area for home business occupancy. The definition involves items that cannot be known until one is inside the &quot;private residence&quot;, therefore one cannot determine if the establishment/building is a private residence without first entering the private residence, which is not permitted without prior consent from the occupant or under a warrant. It is highly doubtful that a warrant will be granted to determine if the establishment/building is a &quot;private residence&quot;, should access not be permitted by the occupant.</td>
<td>Remove the 25% floor area criteria, and assess the SDWS according to whether or not the general public has access to the water supply, as per the definition of a public facility. If the general public has access to the water supply due to a business or other enterprise being operated from time to time, then the premises is a SDWS. If a sign or advertising is present that indicates to the general public that a service or business is offered, then the general public is being invited to enter.</td>
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<tr>
<td>Public Facility</td>
<td>(a) Food service establishment</td>
<td>..... means food service premises...</td>
<td>Suggested Wording; Any place where the public is being invited to enter.</td>
</tr>
</tbody>
</table>
| | | • The wording in regulation 562 is " food service premise” no “s”  
• Not sure of rationale why we are restricting the definition to a food service premise when all food premises require a supply of potable water (Section 20 Food premises Regulation) | • May want delete last "s " in premises for accuracy  
Consider using definition of “food premise” as provided in the HPPA, “ premises where food or milk is manufactured, processed, prepared, stored, handled, displayed, distributed, transported, sold or offered for sale, but does not include a private residence;” |
| Public | List/insert specific legislation that requires the general public to be... |  | This definition is more encompassing and would require that all food premises provide testing and monitoring of their water system as they will require a supply of potable water anyways. Discerning between premises that sell “a meal or meal portion” for immediate consumption can be subjective Further, the HPPA Schedule B requires that a place of business provide for its customers washroom accommodation, therefore, even a food store which is not covered as a “food service establishment” may still be covered as a “public facility” .  
• Using the food service establishment definition may create a situation where some food premises (e.g. food stores, butcher shops) are exempt but not the local service station that has a washroom. |
<table>
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<th><strong>Facility</strong> (i) Any Place where the general public has access</th>
<th>provided access to washrooms. There is much confusion and difference of opinion between the MOHLTC and BOH/MOH staff regarding what a public facility is.</th>
<th>general public is to be provided access to a washroom, according to the requirements of Schedule B under the Public Health Act (repealed), the Ontario Building Code Act, or by-law that requires a business or occupancy to provide access to a washroom for its patrons or the general public.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When does not apply</strong> (4) (a)</td>
<td>Does this imply or apply to cistern supplied systems? Cisterns don’t appear to be mentioned in the Reg. Don’t care if they’re in or out, just need to know which it is.</td>
<td>Cisterns should be mentioned so it is clear regarding the application of this Reg.</td>
</tr>
<tr>
<td><strong>When does not apply</strong> (4) (c)</td>
<td>Remove this, or create an MOU that compels the MOE to provide owners/operators with up to date information regarding the provision of treatment in accordance with sections 1-2 to 1-5 of Schedule 1 or sections 2-2 to 2-5 of Schedule 2 of Reg 170. Health Units should not have to get this info, the owner/operators should be responsible for providing this info.</td>
<td></td>
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<tr>
<td><strong>Notification 5.(1)</strong></td>
<td>The MOHLTC should create a standard Form for notifying the MOH.</td>
<td></td>
</tr>
<tr>
<td><strong>Notification 5. (1) (a)</strong></td>
<td>Building permit # issued for construction or alteration</td>
<td>▪ Checked with representative of our building dept. Not aware of building permit requirement for a drinking water system. At this point they are under the belief that the MOE approves drinking water systems. ▪ MOHLTC may need to provide Ministry of Municipal Affairs “heads up” that local health units will be requiring this information from building departments.</td>
</tr>
<tr>
<td><strong>Notification 5.(2)</strong></td>
<td>MOH should not be giving permission to supply water without first assessing the risk of the SDWS and the potability of the water, or verifying that any specific requirements or directives have been complied with. The risk/liability is too great to permit the supply of water without verifying it is safe to do so, or at least verifying the users have been sufficiently notified to not drink the water, etc. Verification implies proving or establishing the accuracy of something, which requires a site visit as a minimum.</td>
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<tr>
<td><strong>Notification 5.(6) (c)</strong></td>
<td>The MOHLTC should create a standard Form for notifying the MOH.</td>
<td></td>
</tr>
<tr>
<td><strong>Operation Responsibility</strong></td>
<td>This should be required to be done by using a standardized MOHLTC Form.</td>
<td></td>
</tr>
<tr>
<td>Operation Responsibilities of owner and operator 6.(1) (b)</td>
<td>“…meets the requirements established by this regulation or…”</td>
<td>This regulation only requires the water be tested for E. coli and Total coliforms, and it does not require testing for any other parameters. The requirement to test for other parameters in order to meet the definition of “potable” (see Sec 10 of SDWA) is left to local MOHs. This will create a patchwork of standards across the province and it will create unnecessary disputes between MOHs and operators re what and why the operators must test for. Streamline and clarify the requirements in black and white re what is required for potability and testing.</td>
</tr>
<tr>
<td>Operation Responsibilities of owner and operator 6.(2) (b)</td>
<td>“fit state of repair”</td>
<td>Please define what a fit state of repair is. This is too ambiguous, unenforceable, and really means nothing since it is so subjective.</td>
</tr>
<tr>
<td>Operation Responsibilities of owner and operator 6.(2) (c) ii.</td>
<td>“every operator is trained...”</td>
<td>What are the minimum training requirements in order for an operator to be considered “trained”. The owner and the inspector need clear minimum training standards in order to make an informed decision re hiring an operator or deeming an operator “untrained”. Additionally, a component of the training needs to include an assessment or test to ensure a minimum level of competency has been attained.</td>
</tr>
<tr>
<td>Operation Responsibilities of owner and operator 6.(3)</td>
<td>This section is not reasonable or recommended. There should not be any diversion from or setting aside of any drinking water Standard by an MOH or inspector. The approach and application of Standards needs to be standardized across the province. E.g. it would appear prudent for an MOH or inspector to indicate consumption/provision of drinking water with &gt;0 Total coliforms “acceptable” when it’s an adverse situation for Reg 170 systems. The risk is the same...therefore the standards should not be different. This approach just shifts the responsibility and risks to local MOHs. The MOHLTC should be providing clear and consistent standards that apply to all SDWSs and Reg 170 systems.</td>
<td></td>
</tr>
<tr>
<td>Operation Responsibilities of owner and operator 6.(5)</td>
<td>This section is regulating medical officers of health and/or health inspectors to determine requirements SDWS owners/operators must do. So, if the MOH/PHI does not make a determination regarding the requirements to be followed by the owners/operators, is the MOH/PHI breaking the law? This is a reasonable interpretation of the present wording. The requirements necessary to construct and operate a SDWS should be specified in the Regulations. This is a very loose and subjective and risky approach, and basically assigns and downloads a significant amount of technical and administrative responsibility to local health units. It is extremely difficult to comprehend how or why the MOHLTC would take the approach that appears to regulate MOHs and/or PHIs. Remove this section, or revise the wording so it cannot be interpreted to read as though it is regulating MOHs/PHIs to do risk assessments. Presently, this section is interpreted to mean that MOHs/PHIs are required by law determine the requirements for SDWS. This is a significant downloading or responsibility and will only create a wide variation across the province regarding requirements to operate a SDWS. The staff recommendation to the MOH is to take the precautionary approach and require SDWSs.</td>
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</table>

Directives 7. (1)
Almost all requirements for SDWSs should be spelled out in black and white so the owners/operators and the MOHs/PHIs have a clear understanding of minimum construction and operational standards. The proposed approach will create an application of the Regulation and creation of operational standards that will vary hugely across the province, and it will not likely be formed by science, but more so due to MOH/PHIs pursuing a reduction of liability and legal risk. The proposed approach thrusts the responsibility of permitting or approving many unknowns, thus the default approach should be to ensure the owners/operators take on all responsibility/risks by simply directing (BWA?) them to notify all users not to drink (or consume/use) the water until the MOH is satisfied the drinking water is potable. The definition of potable is clearly spelled out in the Safe Drinking Water Act, which requires drinking water to meet the Standards in Reg 169. Therefore, to diminish the risk/liability, MOHs should not rescind BWAs until they receive evidence that the drinking water has been tested and meets Reg 169. Additionally, MOHs/PHIs should direct owners/operators to provide evidence from a qualified professional that their SDWS is constructed according Reg 903. These two defaults are recommended in the absence of any minimum standards in this proposed Regulation.

<table>
<thead>
<tr>
<th>Directives</th>
<th>“…risk assessment”</th>
</tr>
</thead>
<tbody>
<tr>
<td>7.(1)</td>
<td>The term “risk assessment” needs a definition. This term has significant weight and is the under-pinning for the “requirements”. The MOHLTC needs to be aware that the activities involved with conducting a risk assessment (as we understand what it involves…not totally clear on that) might contravene current MOE Regulations. It is our recollection that only licensed Well Technicians and/or Well Drillers can open a well. This may have changed, but it is recommended that the MOHLTC assess the existence of conflicts between conducting a risk assessment and MOE Regulations.</td>
</tr>
<tr>
<td>Directive 7 (2) and 7.(3)</td>
<td>The MOHLTC funding assumptions model needs to include and/or mention that obtaining (professional) services to assist with assessments of small drinking water supplies is recognized and supported financially by the MOHLTC. The MOHLTC needs to provide technical, interpretative, and legal assistance MOHs/PHIs.</td>
</tr>
<tr>
<td>Directive 7. (4)</td>
<td>This section is interpreted to be similar to section 7.(1). It appears that the proposed regulation is requiring the MOH/PHI to do things, but if they don’t do a risk assessment and issue written requirements they could be owners/operators to warn users not to drink the water until is proven to be potable and the SDWS is constructed according to Reg 903. There will be many complaints, but the present wording of the proposed Regulation appears to warrant this approach.</td>
</tr>
<tr>
<td>Directive 7 (4)</td>
<td>Please revise this section so misinterpretation is diminished. Prepare minimum operational and construction</td>
</tr>
<tr>
<td><strong>Directive Section 7.6</strong></td>
<td>Directive may include…….</td>
</tr>
<tr>
<td><strong>Use of Testing Facilities 8.(1)</strong></td>
<td>Does this mean that Health Units cannot use the Public Health Labs? That’s what this appears to say.</td>
</tr>
<tr>
<td><strong>Use of Testing Facilities 8.(2)</strong></td>
<td>The MOHLTC needs to provide some guidance and support for this section. 36 different health units should be tracking this stuff down. The MOHLTC should be hub and clearing house for this info.</td>
</tr>
<tr>
<td><strong>Use of Testing Facilities 8.(3)</strong></td>
<td>“…issue a instruction”</td>
</tr>
<tr>
<td><strong>Use of Testing Facilities 8.(3) a)</strong></td>
<td>“has ceased to be an eligible laboratory in respect to the particular test to be conducted”</td>
</tr>
<tr>
<td><strong>Use of Testing Facilities 8.(3) b)</strong></td>
<td>“has failed to comply with Section 18.1 of the Safe Drinking Water Act or a prescribed requirement under the Act.”</td>
</tr>
<tr>
<td><strong>Reports 9.(4)</strong></td>
<td>The MOHLTC should create and provide standardized Report Forms, similar to the MOE Forms. This will ensure as much as possible that the operators/owners and Health Units are aware of what needs to be reported, and that it will be reported consistently. Having 36 different</td>
</tr>
</tbody>
</table>
| **Reports 9.(7) b) ii (A) (B) (C) (D)** | Agricultural operations  
Landscaping operations  
Industrial operations…  
Swimming pool… | These four terms need to be defined to increase consistency of application of the Reg. Presently, one cannot determine how to apply this section as one does not have any guidance regarding what these terms mean. | These four terms need to be defined to increase consistency of application of the Reg. |
|---------------------------------|---------------|-------------------------------------------------|-------------------------------------------------|
| **Treatment Wells 13.** | “Wells”  
"...the well is constructed and maintained...” | Define “wells”. There needs to be clarity regarding what this applies to. A “well” has many different meanings, and there are many different types of “wells”. Using the term “water well” will provide clarity, and also link to MOE legislation regarding minimum standards regarding construction and abandonment. | Suggest using the term “water wells”. Create or link to MOE legislation regarding minimum standards for “water well” construction and maintenance. |
| | | There needs to be minimum standards for “water well” construction and maintenance. | |
| **Treated Water 14. (1) 2. and 3.** | | The minimum training requirements for owners/operators of SDWS (should be set by the MOHLTC) should ensure that owners and operators are able to do this. | Prescribe minimum training requirements that includes a competency test. |
| **Treated Water 14. (1) 8.** | “replacement parts” | Too vague. How could anyone know what “may be expected to require periodic replacement”? | Remove this section. Not enforceable. |
| **Treated Water 14. (1) 9.** | “maintenance records” | Specify minimum content requirements for maintenance records; i.e. date, time, parts, location, etc. This is done for swimming pools. People need to know what they’re required to do if they are expected to do something. Simply requiring a maintenance record with no minimum content requirements falls short of achieving the goal, and it does not appear to be enforceable. | Specify minimum content requirements for maintenance records; i.e. date, time, parts, location, etc. |
| **Laboratory Instructions 22.** | | Compliance and Enforceability concerns;  
What if the lab instructions are not clear?  
What if the lab does not provide instructions?  
Who determines if the instructions are clear?  
What compels the lab to provide instructions? | |
<p>| <strong>Distribution samples 24.</strong> | Raw water samples should be collected and tested for E.coli and Total Coliforms if a SDWS has disinfection treatment. Knowing the raw water quality history is a necessary part of the risk assessment process and is extremely key for Corrective Actions, especially if there is an “adverse observation”. | Raw water samples should be collected and tested for E.coli and Total Coliforms if a SDWS has disinfection treatment. | |
| <strong>Improper disinfection 25. (2)</strong> | “…instructs the operator” | | Use “directs” instead of “instructs”. |
| <strong>Turbidity 26.(2)</strong> | “…instructs the operator” | | Use “directs” instead of “instructs”. |</p>
<table>
<thead>
<tr>
<th>Chlorine residual 27.(1)1.i</th>
<th>“quickly”</th>
<th>What does “quickly” mean? Too subjective.</th>
<th>Use “immediately” instead of “quickly”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chlorine residual 27.(1)1.i</td>
<td>“at all points”</td>
<td></td>
<td>Use “throughout” instead of “at all points”</td>
</tr>
<tr>
<td>Chlorine residual 27.(1)1.ii</td>
<td>“at all points”</td>
<td></td>
<td>Use “throughout” instead of “at all points”</td>
</tr>
<tr>
<td>Chlorine residual 27.(1)2.</td>
<td>“quickly”</td>
<td></td>
<td>Provide a minimum time. “quickly” is too subjective.</td>
</tr>
<tr>
<td>Chlorine residual 27.(1)3.</td>
<td>“quickly”</td>
<td></td>
<td>Provide a minimum time. “quickly” is too subjective.</td>
</tr>
<tr>
<td>Chlorine residual 27.(2)</td>
<td>“…instructs the operator”</td>
<td></td>
<td>Use “directs” instead of “instructs”.</td>
</tr>
<tr>
<td>Escherichia coli (E.coli) and Pathogens 28.(1)</td>
<td>“…pathogen”</td>
<td>“Pathogens” are not defined or described in the Reg or HPPA. “Pathogens are not a parameter in Reg 169.</td>
<td>There needs to be a legal description of “pathogen” or use another term or terms, as presently, there s no requirement report “pathogens”.</td>
</tr>
<tr>
<td>Escherichia coli (E.coli) and Pathogens 28.(1)1.</td>
<td>“instructed”</td>
<td></td>
<td>Use “directed” instead of “instructed”.</td>
</tr>
<tr>
<td>Sodium 30.2.</td>
<td>“20 milligrams per litre”</td>
<td>This extremely low level of sodium will not adversely affect someone’s health, unless there is some evidence exists to indicate otherwise.</td>
<td>Substantiate the risk to health that this low sodium concentration represents, or remove it, or increase it to a concentration that represents an adverse health risk.</td>
</tr>
<tr>
<td>Request for Review 37.</td>
<td></td>
<td>This is a surprising and novel approach to dealing with objections to directives. This needs thorough consultation and agreements with MOHs and the CMOH. MOHs need to agree to this. There needs to be legal interpretation as to whether this is even doable; the question is; how can an MOH make a decision regarding a directive issued by a PHI in another jurisdiction? Does the MOH have this authority under the HPPA? There are many more ambiguities and unknowns with this approach…too many to mention.</td>
<td>Get MOH agreement on this. Suggest another approach to dealing with objections to directions. Suggest that the MOHLTC accept objections to directions and review them.</td>
</tr>
</tbody>
</table>
Hamilton

Small Drinking Water Systems
BOH08014
July 9, 2008
SDWS Program

A SDWS is water well that provides drinking water to;

• Arena, public hall, park, library
• Seasonal trailer park
• Restaurant, bed and breakfast, hotel, church, garage/gas station
• Any place where the general public has access to a washroom, fountain, or shower.
SDWS Program

- Transfer was announced in 2005 and expected to happen in 2008.
- New Regulations need to be proclaimed, likely in the Fall.
- MOHLTC will fund 100% of start up costs for 2 years.
- MOHLTC provided $47,700 annually as 100% funding to start up the program.
- After 2 years the MOHLTC funding will be 75% and 25% from the City.
SDWS Program

- $47,000 provided to assess the risk of approximately 400 SDWS in two years.
- Estimate $126,000 is needed annually.
- MOHLTC was asked in 2006 to fund 100% of the costs for this program.
- MOHLTC indicated “…the transfer was approved based on 100% funding for the start up phase (first 2 yrs)”. (Appendix A)
Impact - Owners

- Restaurants and seasonal trailer parks;
  - drinking water must be tested for bacteria, at the owners expense.
- Most other SDWS can opt to post warning signs that the water is not tested and do not drink it.
- There are additional activities that need to be done;
  - get permission to supply water
  - Be trained to operate and maintain a SDWS
  - Notify Public Health when the water is unsafe
  - Follow directions from Public Health
  - Record keeping…
  - etc
SDWS Program

The MOHLTC should provide 100% of the funding necessary to implement and maintain the Small Drinking Water System Inspection Program.