

The logo for the Toronto Staff Report features a stylized graphic of a city skyline with three buildings of varying heights to the left of the word "TORONTO" in a bold, sans-serif font. To the right of "TORONTO" is the text "STAFF REPORT" in a smaller, all-caps, sans-serif font. A horizontal line is positioned below the text.

TORONTO STAFF REPORT

May 20, 2003

To: City Council

From: Dr. Sheela V. Basrur, Medical Officer of Health

Subject: City Authority to Respond to Standing Water Hazards on Private Property

Purpose:

To describe the City's existing by-law and statutory authority to regulate standing water on private property. The report also describes the City's complaint investigation procedures and response protocols with respect to complaints regarding standing water hazards on private property that may provide breeding habitat for West Nile Virus disease. This report also provides information on larviciding of private property catch basins.

Financial Implications and Impact Statement:

There are no financial impacts arising directly from this report.

Recommendations:

It is recommended that:

- (1) This report be referred to the Toronto Board of Health for information;
- (2) City Council request that Toronto Public Health and Municipal Licensing and Standards report to the Policy and Finance Committee regarding the costs of implementing the West Nile Virus response plan pertaining to standing water hazards on private property; and
- (3) The appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

The mosquito species that carries the West Nile Virus prefers small, protected pools of stagnant water as breeding habitat. Swift action in removing pools of stagnant water has been identified as an important preventive strategy to control mosquito populations and reduce the risk of transmission of West Nile Virus.

This report describes the City's existing legal authority to order the removal of standing water from private property. The report also describes the complaints and investigations protocols pertaining to standing water hazards as presently implemented by Municipal Licensing and Standards (MLS) and Toronto Public Health (TPH). The report also describes the emergency powers and protocols currently used to remove standing water on private property where there has not been an adequate response to a City order. In addition, the report addresses larviciding of private property catch basins.

This report was requested by the Board of Health at its meeting on May 12, 2003 and has been prepared in consultation with Urban Development Services.

Comments:

The City has considerable authority under the *Building Code Act*, the *Municipal Act* and the *Health Protection and Promotion Act* to move aggressively against the West Nile Virus threat posed by stagnant water on private property.

(1) Authority to Respond to Standing Water Hazards – The Building Code Act

The *Building Code Act* grants the authority to municipalities to make by-laws pertaining to property standards. The by-laws under Chapter 629 pertaining to pest control require that all properties be kept free of conditions which may encourage infestation by pests, and that all yards shall be graded and provided with groundcover suited to the prevention of recurrent ponding of water. Both of these by-laws may be invoked to address standing water hazards.

A person or a corporation who fails to comply with the provisions of Chapter 629 of the Municipal Code is guilty of an offence and on conviction liable to a fine of up to \$25,000.00 (first offence) for individuals and \$50,000.00 (first offence) for corporations.

Section 15.7(1) of the BCA also contains emergency powers that the City of Toronto may use to enforce Chapter 629 of the Municipal Code. The BCA provides that if upon inspection of a property the officer is satisfied that there is non-compliance with the standards in a by-law passed under section 15.1 to such extent as to pose an immediate danger to the health or safety of any person, the officer may make an order containing particulars of the non-compliance and require remedial repairs or other work to be carried out immediately to terminate the danger.

The Act also provides for emergency entry powers without a warrant, and states that a municipal corporation, or a person acting on its behalf, is not liable to compensate the owner by reason of anything done on behalf of the municipality in the reasonable exercise of its powers under this section.

The Act further describes a process by which a municipality may apply to a court to recover the costs of dealing with the emergency, and lien the subject property to recover its costs.

Municipal Code Chapter 623, Property Maintenance, also contains provisions that could address concerns related to standing water including requirements to drain and fill depressions and holes. The maximum fine if convicted of an offence under Chapter 623 is \$5000.00.

Additionally, both Chapters have provisions that deal with the removal of junk, debris, waste and other detritus that may create breeding habitat for mosquitoes.

(2) Authority to Respond to Standing Water Hazards – The Health Protection and Promotion Act

The Medical Officer of Health is required to investigate health hazards. A health hazard is defined in the *Health Protection and Promotion Act* (HPPA) to include the condition of a premises, and a substance or a thing that has or that is likely to have an adverse effect on the health of any person.

Under section 13, the HPPA provides that a medical officer of health or a public health inspector may make an order to respond to a health hazard. An order under this section may include requiring the removal of anything that the order states is a health hazard from the premises or the environs of the premises specified in the order.

If the Medical Officer of Health or a health inspector is of the opinion upon reasonable or probable grounds that a health hazard exists, he or she may issue an order to require the occupier or owner of a property to take a specific course of action with respect to the health hazard. If the person to whom the order is directed refuses to comply with the order or refuses to comply with the order promptly, a medical officer of health may direct and engage someone to undertake the requirements set out in the order.

If a Medical Officer of Health or a public health inspector is prevented from investigating a health hazard on any premises, an application may be made for a warrant to authorize the investigation and to enter and have access to the premises.

Failure to comply with an order under s. 13 of the Act is an offence and, upon conviction, an individual is liable to a fine of up to \$5,000, a corporation 25,000, for every day or part of a day on which the offence occurs or continues.

(3) MLS/TPH Protocols to Respond to Standing Water Hazards

Toronto Public Health (TPH) and Municipal Licencing and Standards (MLS) have developed a joint West Nile Virus response protocol (see Appendix 1). Both departments collect information about potential standing water hazards. If the potential hazard is on public property (parks, schoolyards, boulevards, city right-of-ways, road allowances and so on) TPH will refer the information about the potential hazard to the relevant City department (Parks and Recreation, Works and Emergency Services, Toronto Transit Commission and so on). The relevant department will then undertake an inspection and respond appropriately.

If the potential hazard is on private property, MLS will undertake the investigation to determine the nature and extent of the hazard. In situations where there is a potential hazard, but it is not an emergency, MLS will issue an order under the relevant by-law and monitor the situation to ensure compliance with the order and that the hazard is remediated.

When the potential hazard is on private property, but involves an accessory (such as a fountain, or a plastic pool cover with water pooled on it), Toronto Public Health will investigate. If a health hazard exists the public health inspector will issue an order under s. 13 of the HPPA and monitor the situation to ensure compliance with the order and remediation of the health hazard.

Determinations are made as to whether or not a situation is an emergency either when the intake information is assessed, or upon inspection. In the case of an emergency, MLS and TPH will undertake a joint inspection, issue the appropriate orders and execute whatever emergency response is required. See below for descriptions of emergency actions undertaken in 2003 to remedy standing water hazards on private property.

(4) Examples of City Action Taken to Remove A Standing Water Hazard in 2003

A vacant lot, the site of a former gas station, was the subject of numerous complaints due to a large water-filled depression on the lot. In late March 2003, when the complaints were received, the water was frozen. Municipal Licensing and Standards (MLS) issued a Notice of Violation to the property owners under the Property Maintenance By-law, advising that when the weather warmed, the water could become a West Nile Virus-related hazard.

The property owner failed to take any action and ignored verbal requests from City enforcement personnel. In addition to the notices by MLS, a Public Health Inspector deemed the site a health hazard that required immediate attention.

MLS issued an Emergency Order under the authority of the *Building Code Act* as the depression and water "posed an immediate danger to the health and safety of any person." The hole has since been filled and the lot graded, effectively removing the hazard. Charges have been laid in this matter.

The time period between when the site was deemed to be a potential health hazard and when actions were taken to remove the potential health hazard was 48 hours.

In another instance of prompt action to address a standing water hazard, a house under renovation had a derelict pool with standing water in it that posed a West Nile Virus concern. MLS accessed the matter and determined there to be an emergency. MLS made an order under Chapter 629 through the authority of the *Building Code Act*.

MLS retained the services of a contractor to pump the standing water out of the pool and the services of a sanitation truck to remove and haul away residual sludge. The time frame from MLS being made aware of the situation to remediation was 48 hours.

(5) Larviciding of Private Catch Basins

MOE has received numerous inquiries from private property owners (e.g. condominiums, shopping malls, industrial plazas, etc.) that have catch basins on their property and who wish to apply a larvicide to these sites. In addition, private owners of land, such as golf courses, industry and commercial properties, etc., where there is standing water have also requested to apply a larvicide due to concerns about West Nile Virus.

The Medical Officer of Health will be providing a letter to the MOE supporting provision of permits for mosquito control activities on private properties that are consistent with the City's approach to controlling West Nile Virus. The letter will include a request that the Medical Officer of Health be notified of all properties for which permits have been granted before any larvicide is applied.

Conclusions:

The City of Toronto, under the authority of the *Building Code Act*, the *Municipal Act* and the *Health Protection and Promotion Act*, has the mechanisms it needs to respond to standing water hazards on public and private property. Municipal Licensing & Standards and Toronto Public Health have established a protocol to coordinate enforcement activities relating to standing water under the existing legislation. These mechanisms are already in practise as illustrated by examples of actions taken to date in 2003. There is, therefore, no need to enact a specific standing water by-law for the City of Toronto.

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List of Attachments:

Municipal Licencing & Standards and Toronto Public Health – West Nile Virus Response
Protocol Flowchart

