



Staff Report Information Only

Appeal Provisions for Water Shut Offs and Requiring Industrial Effluent Monitoring

Date:	April 8, 2008
To:	Public Works and Infrastructure Committee
From:	Joseph P. Pennachetti, Deputy City Manager and Chief Financial Officer; Lou Di Gironimo, General Manager, Toronto Water
Wards:	All Wards
Reference Number:	P:\2008\Cluster B\TW\pw08005 (AFS #6544)

SUMMARY

This report provides details of the existing appeal provisions contained in the City's Water Supply By-law for owners who have received a notice of water shut off. An amendment to the By-law is not required at this time as there are sufficient notification requirements in place. Water shut off to a property does not occur without cause or proper notification unless emergency situations, such as a major watermain break or threat of system contamination, exist.

In addition, this report responds to a request made by the Executive Committee to the General Manager Toronto Water to report on the requirements for industries to install effluent monitoring equipment under the Sewer Use By-law.

This report has been reviewed by the City Solicitor.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of this report.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting held on October 22 and 23, 2007, City Council adopted a motion requesting the General Manager of Toronto Water and the Deputy City Manager and Chief Financial Officer to report back to the Public Works and Infrastructure Committee on the implications of providing an appeal mechanism to owners who receive a notice of water shut off initiated by the City under

Section 851-11 of the Water Supply By-law. Below are the links to the relevant Council Decision and the corresponding staff report, including appendices:

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-10-22-cc13-dd.pdf>

<http://www.toronto.ca/legdocs/mmis/2007/pw/bgrd/backgroundfile-7196.pdf>

<http://www.toronto.ca/legdocs/mmis/2007/pw/bgrd/backgroundfile-7197.pdf>

On May 28, 2007, the Executive Committee recommended adoption of the staff report recommendations, as amended, dated May 14, 2007, entitled “Water Rate Restructuring – Results of Public Consultation and Recommended Rate Structure”. A copy of the report can be found at: <http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-3800.pdf>.

On June 19, 20, and 22, 2007, while considering the above report, City Council requested the General Manager of Toronto Water report directly to the Executive Committee on which classes of businesses shall require effluent monitoring equipment and which classes of businesses shall be exempt from this requirement.

A copy of the October 11, 2007 staff report entitled, “Toronto Water Compliance Policy for High Volume Users – Effluent Monitoring”, can be found at:

<http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-8807.pdf>. Additional background information can be found at:

<http://www.toronto.ca/legdocs/mmis/2007/ex/decisions/2007-11-26-ex15-dd.pdf>.

On November 26, 2007, the Executive Committee during its consideration of the October 11, 2007 report from the General Manager Toronto Water, entitled “Toronto Water Compliance Policy for High Volume Users – Effluent Monitoring”, directed the General Manager Toronto Water to submit a report to the Public Works and Infrastructure Committee to address “that: a) in order to qualify for bulk water rates, a company must be required to install effluent monitoring equipment; and, b) any company that is convicted of dumping effluent into the sewer system more than once be required to install effluent monitoring equipment;”

On December 12, 2007, Municipal Code Chapter 849 (“Water and Sewage Services”) was amended to allow a second lower block water rate (known as Block 2) for industrial processing water users. The amendment allows for effluent monitoring equipment to be installed, where required by the General Manager Toronto Water, by industrial properties receiving the Block 2 water rate.

ISSUE BACKGROUND

Appeal Provisions for Water Shut Off

The Water Supply By-law (Municipal Code Chapter 851), was adopted by Council at its meeting held in October 2007 and harmonized existing By-laws from the former municipalities. It refined existing roles and responsibilities and established new guidelines to help better protect the drinking water system. Section 11 of the By-law, “Water Shut Off initiated by the City”, allows the General Manager Toronto Water to shut off the supply of water to a property due to safety concerns or as a result of on-going failure or refusal by an owner to obey the By-law. The majority of shut offs initiated by the City are due to emergency events such as watermain or valve

breaks, or planned works such as watermain re-lining or reconstruction and are unrelated to non-compliance with the By-law.

Industrial Effluent Monitoring Requirements

The Sewer Use By-law (Municipal Code Chapter 681-Sewers) provides the General Manager Toronto Water with the authority to instruct any industry to carry out monitoring and sampling of any discharge to a sewer where necessary to ensure compliance with the By-law. This requirement can be imposed on any industry and no industrial class is exempt from this provision of the By-law. This authority is in addition to the provisions in Municipal Code Chapter 849-Water and Sewage Services that allow the General Manager Toronto Water to require industries to install and maintain effluent monitoring equipment as a condition for receiving the Block 2 water rate.

COMMENTS

Water Shut Off Provisions

The City initiates water shut offs generally for the purposes of public safety or failure to comply with the requirements of the Water Supply By-law. It may also shut off water to complete planned capital or repair work. Water shut off is also a means of enforcing the provisions of the Water Supply By-law when an owner continues to fail or refuses to comply with provisions of the By-law or to pay a fine for a violation within a specified time frame. When a water shut off is due to non-compliance with Orders issued by the General Manager Toronto Water, it is intended to protect public safety, public and private property and/or the integrity of the waterworks such as preventing possible contamination. In the case of the provisions related to water meters, the Orders may be used for the purpose of preventing the unlawful taking of water.

Section 11 of the Water Supply By-law provides that, with the exception of emergency or potential emergency situations, the General Manager Toronto Water “shall, prior to the shut off of a water supply, provide reasonable notice of the shut off, by personal service or prepaid mail or by posting the notice on the land or property”. In the event of shut off for non-compliance with the Water Supply By-law, generally a warning is first provided followed by an Order to comply. When there has been a violation of the Water Supply By-law such as the theft of water, a warning may not be given before an Order to comply is issued.

The following briefly describes when water shut offs can occur when initiated by the City:

1. *Emergency and Immediate Threat to the Waterworks Situations*

When an emergency or potential emergency exists or when an immediate threat of contamination to any part of the waterworks exists that may endanger public health or safety, then the City may shut off water to protect the public and limit contaminants from entering the drinking water supply, as mandated under the *Safe Drinking Water Act*.

2. *Leaks*

When a severe leak or other fault is found on the private water service line or water service connection and is likely to create an emergency situation including potential personal injury or damage to adjacent properties including those of the City, the City will give

notice in a form that is appropriate in the circumstances, which generally may include door to door communication with the affected parties and working with the owner to make suitable arrangements for the shut off, and turn on, of the water supply to the property.

3. *Failure to Comply*

Water shut off may occur when an owner of a property has failed to comply with an Order of the General Manager Toronto Water after a warning has been issued for a violation. In the case of non-emergency circumstances where there is not an imminent risk to public safety or to private or public property including the waterworks, the owner is provided with ample opportunity to remedy any non-compliance with the By-law. If the owner does not comply with an issued Order, the City will have no other recourse than to enforce compliance through prosecution and/or water shut off depending on the situation. In some cases, subsequent to the issuance of an Order, the cause for non-compliance may have escalated into a more urgent threat to the safety of the waterworks, the public, private or public property and may require more immediate action by the City.

4. *Non-Payment of Fees, Charges and Rates*

In addition to the provisions under Section 11 of the Water Supply By-law, the Municipal Code Chapter 849 -Water and Sewage Services, also provides for water shut off in the event of non-payment. Under Sections 849-33, “Collection of Arrears and Shut Off” and Sections 849-34 “Collection of Arrears and Shut Off: Metered Accounts and Condominiums”, the Chief Financial Officer (CFO), having due regard to Municipal Code Chapter 835 “Discontinuance of Vital Services”, and after having given appropriate notice, may shut off the supply of water to a:

- metered account (including a condominium) for water charges that remain unpaid; or,
- a property with outstanding or overdue water charges where the Chief Financial Officer determines that it is not feasible or financially prudent to exercise other collection measures.

While Chapter 849 allows for the shut off of water due to non-payment, this provision is seldom used in practice. The *City of Toronto Act, 2006* allows the City to transfer any unpaid water charges to a property owner’s tax account, with such charges being treated as “priority liens”, as a means of collecting outstanding water amounts. The ability to transfer water arrears to tax accounts, thus securing the debt against the property has been extremely successful as a collection tool and there remain very few accounts where the arrears cannot be transferred to tax.

When an overdue bill can be transferred to a tax account, collection through this method is more efficient than the more labour intensive water shut off process, which would require significant resources to send out letters, notices, orders and attend to property as part of due regard to Municipal Code Chapter 835 “Discontinuance of Vital Services”. As such, the Chief Financial Officer and General Manager Toronto Water do not proceed with water shut offs for collection purposes, unless the particular circumstances justify otherwise.

5. *Unpaid Fines*

When a property owner has been successfully convicted for an offence under the Water Supply By-law and has not paid the court imposed fine within the set period of time, then the General Manager Toronto Water may order the shut off of the water.

Impact of an Appeal Mechanism

Imposition of a general appeal mechanism for water shut off would hamper Toronto Water's ability to address emergency situations in a timely fashion and would impede its ability to protect public safety, private and public property and its waterworks. Generally, most water shut offs are for the purposes of protecting public safety, private or public property and/or the waterworks. Delay in undertaking a shut off may jeopardize the City's ability to limit such risks or dangers.

Where a leak emanating from an owner's property affects an adjacent landowner's property, any delay in the water shut off process may result in damage or create a risk of damage to the adjacent property. As noted above, in situations where there is not an imminent risk to public safety, private or public property, water shut off is generally used as a last resort by Toronto Water where other methods of achieving compliance have been unsuccessful and the owner has continually failed or refused to comply with the By-law or make payment of fees, charges or fines.

The enforcement process in non-risk situations allows the owner ample opportunity and notice to take corrective action. An appeal would prolong the process further delaying Toronto Water's ability to obtain compliance. The situation may become an imminent risk where the non-compliance is permitted to continue further. In addition to the delay caused by an expanded appeal mechanism, it would also increase the staff resources necessary to obtain compliance and the corresponding cost of same which would be borne by all property owners.

Installing Effluent Monitoring Equipment for Companies Convicted under the Sewer Use By-law

As of January 1, 2008, an amendment to Municipal Code Chapter 849-Water and Sewage Services gives the authority to the General Manager Toronto Water, where he deems necessary as a condition for receiving the lower Block 2 water rate, that industrial process water users install and maintain effluent monitoring equipment.

Effluent being discharged into the sewer system is regulated by the Sewer Use By-law (Municipal Code Chapter 681 – Sewers). Toronto Water monitors industrial discharges to ensure compliance with the By-law. The Sewer Use By-law sets strict limits on heavy metals and toxic organic compounds in effluent discharged to the City's sewers. It also has requirements for those industrial, commercial or institutional (ICI) activities that may discharge any of the 38 Sewer Use By-law subject pollutants to submit Pollution Prevention Plans (P2) or comply with Best Management Practices (BMP). All these provisions are enforceable under the Sewer Use By-law. Enforcement is accomplished by conducting inspections and sampling, reviewing P2 Plans and ensuring that BMPs are followed. Toronto Water monitors over 8,000 ICI facilities for compliance with the Sewer Use By-law.

Currently, most companies that have a high potential to pollute are already equipped to monitor their effluent. Those companies include metal finishers, circuit board manufacturing, chemical

manufacturing, industrial laundries and textile processing. The Sewer Use By-law is an appropriate vehicle for regulating these discharges to the sewers as compliance with discharge limits is mandatory. It is up to the individual owners or operators of the companies to determine how they will ensure compliance to the satisfaction of the General Manager Toronto Water.

Toronto Water issues a written Notice of Violation (NOV) to companies found to be in violation of the Sewer Use By-law and requests an investigation as to the cause of the occurrence and report to the City in writing within thirty days, as to what the company proposes to do to avoid further occurrences. Continued failure to comply with the Sewer Use By-law can result in prosecution.

Toronto Water's experience has shown that after receiving a NOV, a company usually is committed to further upgrades in their wastewater treatment process and will budget for additional capital investment. Other changes may include process or method changes and adjusting on-site treatment accordingly. Similar experience holds true for companies which have been convicted and wish to avoid further prosecution under the Sewer Use By-law.

Section 13 of the Sewer Use By-law provides the General Manager Toronto Water with the authority to require any industry to carry out monitoring and sampling to the City's satisfaction and the results to be reported within a specified timeframe. This can be imposed on any industry and no industrial class is exempt from this provision of the Sewer Use By-law.

It is important to note that in an on-going effort to protect public safety and water quality, Toronto Water actively enforces the Sewer Use By-law. The various measures incorporated into the Sewer Use By-law provides the City with a number of tools to deal with non-compliant industries. Through the authority provided under Section 13 of the Sewer Use By-law and the recent amendments to Chapter 849-Water and Sewage Services there exists the appropriate mechanisms to ensure those industries eligible for the lower Block 2 water rate or convicted under the Sewer Use By-law discharge effluent meets stringent quality requirements. In conclusion, the City's existing By-laws provide the necessary provisions to address the concerns expressed by the Executive Committee and no further amendments are recommended at this time.

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SIGNATURES

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