



STAFF REPORT ACTION REQUIRED

Changes to the Administration of the Industrial Water Rate (Block 2) and Amendments to Municipal Code Chapter 849

Date:	January 21, 2009
To:	Public Works and Infrastructure Committee
From:	General Manager, Toronto Water
Wards:	All
Reference Number:	P:\2009\Cluster B\TW\pw09005

SUMMARY

The purpose of this report is to recommend to Council proposed by-law amendments to the eligibility criteria for the Block 2 water and wastewater industrial process-use service rate (the “Block 2 Rate”) to achieve the following: (i) to provide a mechanism to allow a customer to return to the Block 2 Rate after rectification of a non-compliance with the City’s Sewer Use By-law; (ii) to permit the City to receive Water Conservation Plans from customers at any time; (iii) to provide a mechanism to allow a customer who fails to submit an acceptable annual Water Conservation Plan Progress Report to return to the Block 2 Rate once the progress report is submitted and approved; and (iv) to remove from the Block 2 Rate a customer who has failed to implement its Water Conservation Plan and to permit the return to the Block 2 Rate only when the customer has implemented the approved Water Conservation Plan to the satisfaction of the General Manager, Toronto Water and submits a Water Conservation Plan progress report showing that implementation.

This report also responds to City Council’s directive from its meeting of December 1, 2 and 3, 2008 in response to the report entitled: *Protecting Water Quality and Preventing Pollution - Assessing the Effectiveness of the City’s Sewer Use By-law*, requesting that Toronto Water review all participants receiving the Block 2 Rate to ensure they are adhering to the conditions required to receive this reduced rate. This review has been completed and only those industrial participants who have complied with the conditions are receiving the Block 2 Rate. Any industrial participants, (i.e. companies having one or more water accounts with the City), that failed to meet the necessary conditions,

including remaining in compliance with the City's Sewer Use By-law, have been returned to the higher Block 1 rate.

RECOMMENDATIONS

The General Manager, Toronto Water recommends that:

1. Municipal Code Chapter 849 - Water and Sewage Services and Utility Bill, be amended in accordance with the draft amending By-law attached as Appendix "A" to this Report;
2. Authority be granted to the City Solicitor to introduce any necessary Bills required to implement Recommendation 1 above, subject to any necessary refinements, including stylistic, format and organization, as may be identified by the City Solicitor and the General Manager, Toronto Water; and
3. The appropriate City officials be authorized and directed to take the necessary actions to give effect thereto.

Financial Impact

The recommendations will have no financial impact beyond what has already been approved in the 2009 budget.

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

DECISION HISTORY

The Block 2 Rate was initially approved in June 2007 by City Council as part of the water rate restructuring from seven tiers to two tiers. Industrial participants who met certain eligibility requirements, as approved by Council at its meetings on June 19, 20 and 22, 2007 and November 19 and 20, 2007, were able to receive the reduced Block 2 Rate, in accordance with Municipal Code Chapter 849, Water and Sewage Services and Utility Bill, Sections 17 and 18 (the "By-Law"). The corresponding documentation may be found at the following links:

<http://www.toronto.ca/legdocs/mmis/2007/cc/decisions/2007-06-19-cc10-dd.pdf>

http://www.toronto.ca/legdocs/municode/1184_849.pdf.

<http://www.toronto.ca/legdocs/mmis/2007/ex/bgrd/backgroundfile-8198.pdf>;

<http://www.toronto.ca/legdocs/mmis/2007/cc/agendas/2007-11-19-cc14-ar.pdf>

<http://www.toronto.ca/legdocs/mmis/2007/ex/reports/2007-11-12-ex14-cr.pdf>

During the first year of the new water rate structure, a report was released by the Auditor General entitled *Protecting Water Quality and Preventing Pollution - Assessing the*

Effectiveness of the City's Sewer Use By-law, (the "Auditor General's Report") which can be found at:

http://www.toronto.ca/audit/2008/city_sewers_staff_oct2008.pdf

In response to the Auditor General's Report, City Council at its December 1, 2 & 3, 2008 meeting requested a Toronto Water report on actions taken to ensure all participants met the eligibility requirements for the Block 2 Rate as of January 1, 2008 and have continued to meet these requirements. Furthermore, Council directed that where it was determined that a customer was in non-compliance with the City's Sewer Use By-law, immediate action be taken to remove these customers from the Block 2 Rate and retroactively bill them to the date of the non-compliance. Council's decision can be found at the following link:

<http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-12-01-cc27-dd.pdf>

ISSUE BACKGROUND

Following a year of implementing the industrial Block 2 rate initiative, staff is recommending the by-law amendments to the eligibility criteria for the Block 2 Rate as set out in this report which are considered by staff to be fair, equitable and in accord with industry expectations.

Staff is also reporting back in accordance with Council's direction from its meeting in December 2008.

COMMENTS

Report Back in Response to Council's Direction

As of January 1, 2008, 360 eligible industrial process water user accounts, representing 344 companies, received the lower Block 2 Rate.

Under the authority of the Sewer Use By-law, Toronto Water monitors industries that have the potential to impact the City's sewer system and wastewater treatment plants. Those industrial companies that also receive the Block 2 Rate are sampled once every 1 to 2 months to ensure compliance with the Sewer Use By-law. When it is determined that a company is not in compliance with the Sewer Use By-law, a written Notice of Violation is issued to the customer for the non-compliance. Also, at the same time, Toronto Water advises Revenue Services of the property address and the non-compliance to ensure that the corresponding water accounts (some customers may have more than one water meter/account) are removed from the Block 2 Rate and billed at the higher Block 1 rate effective the date of the non-compliance as evidenced by the issuance of the Notice of Violation (NOV).

Between January 1, 2008 to June 30, 2008, 77 companies out of the 344 eligible companies, noted above, fell into non-compliance with the Sewer Use By-law and, therefore, were returned to the higher Block 1 rate retroactive to the date of their non-compliance as determined by the date the City issued to them a NOV under the Sewer Use By-law.

As of July 1, 2008, only 80 (out of the originally eligible 360 water accounts, noted above) submitted acceptable Water Conservation Plans and continued to receive the Block 2 Rate. The remaining customers who did not submit a Water Conservation Plan were returned to the higher Block 1 Rate. Of the customers who had submitted a Water Conservation Plan by July 1st, 2008, 11 companies are being billed at the higher Block 1 rate as they were deemed non-compliant with the Sewer Use By-law.

Current Application of the Block 2 Rate

To continue to receive the lower Block 2 Rate, the industrial customer must continue to comply with the Sewer Use By-law and submit both an acceptable Water Conservation Plan and subsequent annual progress reports by July 1st of each year. If any of these conditions are not met, the customer loses the benefit of the Block 2 Rate and reverts back to paying the higher Block 1 Rate.

Currently, the By-law has no mechanism to allow an industrial customer to return to the Block 2 Rate once it has rectified its non-compliance with the By-law. Specifically, there is no provision which allows a customer to return to the Block 2 Rate after rectification of its non-compliance with the Sewer Use By-law. Similarly, there is no provision in the By-law which permits a customer to return to the Block 2 Rate if the customer submits its Water Conservation Plan (or subsequent annual progress reports) past the July 1st deadline imposed by the By-law.

In addition, there is no mechanism in the By-law to allow staff to remove a customer from the Block 2 Rate for failure to implement its Water Conservation Plan in accordance to the conditions required by the General Manager, since the By-law speaks only to the submission of the initial Water Conservation Plan and subsequent annual progress reports.

Proposed By-law Amendments Regarding the Block 2 Rate

Based on the Council decision history regarding the Block 2 Rate, Council's intent has been that this lower industrial rate initiative be available to eligible industrial customers whose water consumption is in excess of 6000 m³ per year and where water is used for industrial or manufacturing processes. However, as of July 1, 2008, the Block 2 Rate has been applied to only 80 water accounts (although not all continue to receive the Block 2 Rate as a result of their failure to meet the conditions necessary to continue to receive it), representing less than 25 % of potential industrial accounts. The feedback staff has received from the industry is that greater flexibility is needed in the City's application of the Block 2 Rate. Specifically, it has been conveyed to staff that the inability to return to

the Block 2 Rate once any non-compliance of the Sewer Use By-law or conditions imposed by the By-law have been rectified is regarded by the industry as punitive in nature and an extreme disciplinary measure.

To simplify the process by which industrial customers can access this economic benefit and to provide an opportunity to return to the lower Block 2 Rate, it is recommended that proposed amendments be made to the By-law as outlined in the draft amending By-law in Appendix “A” and as described below.

With respect to non-compliance with the Sewer Use By-law, it is proposed that a customer may have up to two (2) Notices of Violation issued within a given billing year and still have the opportunity for reinstatement to the Block 2 Rate once satisfactory compliance is achieved. If the customer is issued a third Notice of Violation in the same billing year, it is recommended that the customer be deemed to be a “habitual offender”. Before becoming eligible to return to the Block 2 Rate again, it is recommended that such habitual offenders will be required to remain in compliance with the Sewer Use By-law for 12 consecutive months from the date of issuance of the third Notice of Violation.

In terms of the Water Conservation Plan, the By-law currently requires that the plan be submitted to the City by July 1st of any given year. It is recommended that the July 1st deadline be removed and Toronto Water be permitted to accept Water Conservation Plans at any time throughout the calendar year. Once a Water Conservation Plan is submitted and approved, the Block 2 rate would become effective on the date Toronto Water received the Water Conservation Plan. Furthermore the customer would then be required to submit an acceptable annual Water Conservation Plan progress report by July 1st of each subsequent year detailing progress made in achieving its water reduction targets until such time as the General Manager, Toronto Water provides written notification that the annual report is no longer required. If the customer fails to submit the annual progress report by July 1st, it is recommended that the customer be taken off the Block 2 Rate effective July 1 of that year until their progress report is received and approved by the General Manager, Toronto Water.

Where a customer has failed to implement the approved Water Conservation Plan to the satisfaction of the General Manager, Toronto Water, it is recommended that the customer's annual Water Conservation Plan progress report not be accepted and the customer be removed from the Block 2 Rate effective July 1st of the year the annual progress report was submitted.

The customer may be eligible to return to the Block 2 Rate where the customer has implemented the approved Water Conservation Plan to the satisfaction of the General Manager, Toronto Water and submits a Water Conservation Plan progress report showing that implementation. The effective date to return to the Block 2 rate would then be the date this approved Water Conservation Plan progress report is received by Toronto Water.

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ATTACHMENTS

Attachment A – amending By-law for Municipal Code Chapter 849.