

# What else drives Water Rates Up?

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## What else drives rates up?

- **New duty of care: SDWDA**
- Contaminant plumes
- Insolvency
- Spills and cleanups
- Penalties
- Climate change

# New duty of care

- *S. 19 Safe Drinking Water Act*
  - Dec. 31, 2012
    - exercise the level of *care, diligence and skill* that a *reasonably prudent person* would be expected to exercise in a *similar situation* re municipal DW system
    - act *honestly, competently and with integrity*, with a view to *ensuring the protection and safety* of the users of the municipal DW system

# Whose duty of care?

- Owner of DW system
  - Private corp: all officers and directors
  - Municipality:
    - *every person who, on behalf of the municipality, oversees the accredited operating authority of the system or exercises decision-making authority over the system*
      - Councillors? Staff?
      - How far down the line?

# How broad is the duty?

- How much care is enough?
  - More than “due diligence”?
    - All reasonable care to prevent offence; hundreds of cases
  - “*ensuring the protection and safety*”
  - Make certain?

# Can't really delegate

- Can hire Operating Authority
- But can't delegate ultimate responsibility for:
  - Compliance
  - Safety



# Relying on experts

- Limited:
  - *Can rely in good faith* on report by engineer, lawyer, accountant or other credible professional
  - No one else

# If things go wrong

- Personal and corporate offence
- Jail and/or fines
- For *each day* of breach





# Impact on budgets

- Who can turn down a request for funds?
- Can you keep good staff?
  - What must you pay them?
- Can you tolerate poor staff?

# Source protection?

- Is Source Protection part of the duty?
  - Walkerton: Multi barrier approach
- But how much can you do?

# Peacock v Norfolk

- Storage 750,000 gal/year of hog manure within football field of municipal well
- Expert: manure >100 m endangers water quality
- By-law: No manure storage in 2-year capture zone

# Peacock v Norfolk

- *Nutrient Management Act*: 100 m is good enough
- By law invalid
- Who will pay if well contaminated?

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# Old plumes

- Barrie – TCE
  - Popular solvent
  - Migrating for decades
  - Drawn by pumping?
  - Municipal well 6: 23 ppb
    - safe DW limit was 50 ppb...now 5 ppb
  - “Could take years or decades”

# Cambridge UK

- *Cambridge Water v Eastern Counties Leather*
- Decades old plume
- New standard for PCE
- Knocked out >£1,000,000 well
- 1.3 miles away

# Cambridge ON

- Northstar Aerospace
  - TCE/ chrome plume
  - GW (and indoor air) contamination
  - Spent \$20M
    - 152 houses
    - source treatment
- 



# Damages

- Neighbours' class action
  - Settled for \$4.55 M
    - \$1.55 M cash,
    - \$3 M due Oct 2012
    - .5 M to extraordinary damage fund

# Municipal costs

- Well at risk?
- Public concern
- Retain experts
- Extra monitoring?
- Respond to problem, remediation plan, information, briefings, meetings

# Insolvency

- Northstar to CCAA
  - Sold all assets
  - Funds to bank
- Bankrupt
  - Abandoned:
    - Remediation
    - Indoor air
    - \$3 M settlement payment

# Costs to Cambridge?

- MOE paying to control indoor air, for now
- Everything else?
- Will they order the municipality to pay?
  - Duty anyway?
  - Taxes or rates?

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# Spills and Cleanups

- *City of Kawartha Lakes v. Director, MOE – 2012*
  - Home fuel oil spill
  - Insurance exhausted
  - Oil to sewers, lakefront
  - City innocent victim

# Spills and cleanups

- MOE ordered City to cleanup sewers and lakefront
- Order upheld at ERT, Court
  - Leave to appeal
- Fairness irrelevant
- *Downloading*
- Seize the home?

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# Penalties and fines

- Higher
- Minimums
- Prior convictions?



# Higher

- EPA, OWRA, SDWA
  - more serious, corp, /day:
    - 1st: up to \$6 M;
    - 2nd: up to \$10 M.
  - All plus VFS
  - Legal costs
- 

# Mandatory minimums

- EPA & OWRA – more serious, corp, /day:
  - 1st: \$25,000;
  - 2nd: \$50,000;
  - subsequent \$100,000
- All plus VFS

# Prior Conviction

- “Subsequent offences”
- Multiple statutes
- Forever?
- Private sector can restructure, rename

# Actual fines?

- Going up!



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# Climate change

- Water quality, quantity
- Heat
- Storm intensity, flooding
- Storm damage- *Finch*
- Adaptation
- Reduced assimilative capacity
  - higher WWTP treatment demands
- ?

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# Questions?

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