

June 30, 2021

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Public Works

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Re: ERO 019-2972- Modernizing environmental compliance practices of the Ministry of the Environment, Conservation and Parks

Dear Ms. Boland:

Thank you for providing us the opportunity to comment on ERO 019-2972- Modernizing environmental compliance practices of the Ministry of the Environment, Conservation and Parks (Ministry). The following represent comments from Region of Peel staff.

General Comments

Overall, Regional staff is supportive of the proposed measures that seek to protect community health and the natural environment through implementation of a compliance policy and supplementary tools that draw close attention to high-risk incidents and holding polluters accountable for the impact of their actions. Regional staff is also in support of supplementing the policy with resources that can bring more transparency and consistency to compliance practices, such as the referral directory and service level standards.

Ontario's Environmental Compliance Policy

Regional staff find the policy well organized and clear in outlining the available compliance tools with a gradual, risk-based approach by the Ministry staff when assessing potential impacts and identifying violations.

The Province's Regulator's Code of Practice, referenced in Section 3.1 of the policy, is described as "a registry of guiding principles for provincial officers while on duty, whether it is during an inspection, audit, investigation, or other regulated activity". This section takes the reader to an archived page with a note that it was published under a prior government and is available for archival and research purposes only. However, the web page version control references the page was last updated on May 18, 2021, this raises a question on the validity of the code.

Regional staff recommends that the Ministry reviews the Regulator's Code of Practice to ensure it reflects the current guiding principles and expected performance of provincial officers.

Under the same Section 3.1, the consequences in response to failing to allow the provincial officer to exercise their powers are disclosed. By contrast, information on how the person(s) interacting with the Ministry staff can report conflicting conduct or misuse of a provincial officer's powers is not included in the policy. Also missing is information on reporting

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conflict with the compliance approach taken or the use of individual discretion. Quality assurance calibration is essential to ensuring the process is fair (so there's consistency in the way inspectors manage and grade findings from one facility to another), accurate and transparent.

Regional staff recommends that the Regulator's Code of Practice or the Environmental Compliance Policy includes or refers to the Ministry's process for performance calibration to verify that the services provided meet the specified guiding principles.

It is important to note that not all complaints are a potential risk to the environment. For example, a report of a "spill" of yellow in a waterbody may, in fact, just be naturally occurring phenomenon (e.g. pollen). A complaint of odour might be from within the premise plumbing/fixtures (e.g. drains or washing machine) or related to a nearby activity (e.g. agriculture manure spreading) or naturally occurring (e.g. decaying shoreline algae). It is, therefore, appropriate to investigate each complaint (by asking the right questions), but it may not always be appropriate to "take action / respond to the incident".

If a provincial officer decides to "vary from the recommended compliance tool in the Informed Judgement Matrix (IJM)", it would be important to clarify if this decision needs to be supported by, and justified to both the Ministry director and the "offender" and what may be the basis of a referral for investigation of low-risk, high-likelihood-of-compliance situations (per Figure 1 and Table 1).

Given the more focused interest in high risk incidents and if inspections form a basis for determining risk, it is anticipated that the Ministry would implement more frequent inspections of wastewater treatment plants.

Regional staff recommends that the Ministry considers the following:

- **develop and implement an inspection framework and establish structured inspection frequency for municipal wastewater collection systems**
- **review of the wastewater treatment plant inspection cycle to apply a regular and continual inspection model in place of sporadic inspections.**
- **implementation of alternate tools and methods of conducting inspections or audits to remain flexible to available advanced technologies when information is shared or submitted upon request.** This is even more important considering the COVID-19 pandemic and measures in place that are limiting some current activities from being performed.

Further, where the Ministry follows the established inspection framework with risks assessed, **Regional staff recommends that inspection reports are formatted to clearly reflect the findings against the set environmental and public health consequence level (if any).** This would clearly present to the reader/customer the scale range and determine whether the violation or non-compliance was critical to cause adverse effects to the environment or harm to public health. In addition to inspection scoring, a risk index should be incorporated into the report card that clearly presents system performance, using a modular approach that clearly enlists type or category of non-compliance.

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Lastly on the inspection process, **Regional staff suggest that the Ministry's inspection and enforcement program considers periodically rotating provincial officers (inspectors) through facilities or municipal systems, where possible.** Having the same inspector for a prolonged period can provide benefits, in that they will gain detailed knowledge of the facility and processes as well as good understanding of vulnerabilities and risks. However, that also may contribute to potential risk of complacency or habitual routines.

Referral Tool

The proposed Referral Tool outlines various agencies or authorities that are responsible to manage incoming reports and complaints. It is important that the tool is complete with, or references an up-to-date contact directory for each agency to ensure complaints are addressed appropriately. Some of the other existing resources available through the Ministry website direct the customer to the municipality within which a drinking water or wastewater system is physically located and not the owner/operating authority of the system. In the case of a two-tier municipal jurisdiction such as in Peel region, it is especially important that the referral tool avoid creating an unnecessary burden on agencies and discouraging complaints.

It is also unclear if the Ministry expects the respective agency to report back on the results of investigation and if so, in what format. It raises another question- whether the Ministry will have a portal or a database (e.g. ServiceOntario) available for incidents to be logged instead of expecting written reports; thereby, creating an administrative burden for municipalities.

The Referral Tool indicates that bottled water complaints related to the quality of water be referred to the Medical Officer of Health (MOH). The example in the Referral Tool should reflect what is currently in the legislation with complaints directed to the Canadian Food Inspection Agency. The Medical Officer of Health is the named enforcement body in the Smoke-Free Ontario Act and should be added to the Commercial/Service Retail Outlets, including Restaurant section of the Referral Tool. Also, municipal fire departments should be added to the Residential Odours or Smoke section of the Referral Tool.

It is unclear how complaints of odours originating from listed sources that are in transport or on route to a facility for processing (e.g. biosolids) would be handled. It is also unclear whether the Ministry's expectation is for the source agency to be responsible to respond or the person in charge or control of the odorous substance.

Regional staff recommends that the Ministry supplements the Referral Tool with the following:

- **develop and maintain an up-to-date contact directory to ensure accurate and timely response is provided to complaints routed through the Ministry**
- **reflect existing legislation for directing complaints in regard to bottled water enquiries**
- **add the Medical Officer of Health to the Commercial/Service Retail Outlets, including Restaurant section of the Referral Tool as they are the named enforcement body in the Smoke-Free Ontario Act**

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- **add municipal fire department to complaints related to Residential Odours or Smoke**
- **clarify response to odours complaints of substances that are in transit and in control of the transport vessel operator.**

Service Delivery Standards

Regional staff support the establishment of service delivery standards for environmental incident reports received by the Ministry. They will set expectations that the public and Ministry partners will have of the Province. It is important that the Ministry further clarify how incidents that trigger evaluation and consultation with municipalities will be managed in terms of expected timelines for turnaround of information/findings.

While the proposed standards only focus on response times, including consistency and transparency standards may further promote reliability and trust.

Comments specific to the Region of Peel

Noise and odour complaints are managed at the municipal level through applicable by-laws. Conditions of the Region of Peel's wastewater Environmental Compliance Approval include the requirement of reporting odours and noise complaints to the Ministry within a specified timeline. It is therefore unclear how the proposed framework will impact the current process. With the Inspiration Lakeview development coming next door to the Region of Peel's GE Booth Wastewater Treatment Plant, it is unknown how the Ministry would triage odour complaints from this new community and what the expectations would be of Regional staff with regards to corrective action.

Thank you for the opportunity to comment on the proposed updates to the compliance policy and the associated resources. Regional staff are available to answer any questions you may have.

Sincerely,



Kealy Dedman, P.Eng., MPA
Commissioner of Public Works
Region of Peel