



**CITY OF HAMILTON**  
**PUBLIC WORKS DEPARTMENT**  
**Hamilton Water Division**

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	April 7, 2014
<b>SUBJECT/REPORT NO:</b>	Proposed New Sewer Use By-law (PW13061a) - (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Dan McKinnon Director of Hamilton Water (905) 546-2424, Extension 5941
<b>SUBMITTED BY:</b>	Gerry Davis, CMA General Manager Public Works Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the Sewer Use By-law, substantially in the form attached as Appendix "A" to Report PW13061a, be enacted, and shall come into force on May 1, 2014;
- (b) That the Water and Wastewater/Storm Fees and Charges By-law No. 13-325 be amended to reflect the fees and charges to be imposed for the Sewer Use By-law which are set out in Appendix "B" to Report PW13061a;
- (c) That the Director of Hamilton Water be authorized and directed to apply to the Senior Regional Judge for approval of set fines for offences under the Sewer Use By-law when the By-law has been enacted.

**EXECUTIVE SUMMARY**

The purpose of this report is to summarize the results of the public consultation process, and to seek approval and enactment of the Proposed Sewer Use By-law ("Proposed By-law") substantially in the form attached as Appendix "A". The Proposed By-law will replace the existing Sewer Use By-law No. 04-150 ("Current By-law"), the rationale for which was outlined in Report PW13061, and presented to Public Works Committee on September 3, 2013. It is recommended that the Proposed By-law come into force on May 1, 2014.

The Proposed By-law attached as Appendix "A" to Report No. PW13061a has been minimally modified from the originally proposed version ("Draft By-law") as a result of comments received through the public consultation process, which took place at four separate meetings between September 12 and November 11, 2013.

The Current By-law was originally enacted as a Regional Municipality of Hamilton-Wentworth by-law and which was based on the Ministry of the Environment 1988 model

by-law. A consolidated City of Hamilton by-law was enacted in 2004 and has since been amended several times to reflect current standards, practices and requirements.

In 2009, the Canadian Council for Ministers of Environment (CCME) produced a new model sewer use by-law ("CCME Model By-law") to assist municipalities with addressing sources of contaminants in wastewater. The CCME Model By-law includes several provisions that are considered to be "industry standard" that are not included in the Hamilton's Current By-law and as a result, a comprehensive review of the Current By-law was initiated. The review concluded that a new by-law was necessary to expand into previously unregulated areas, conform to new norms in sewer regulation, to promote clarity and ease of use as well as fair and consistent administration and enforcement. In response, the Draft By-law was prepared by Hamilton Water and Legal Services staff.

It is important to note that the prohibited substances, as well as the restricted substances and their maximum limits prescribed in the Current By-law are not proposed to change at this time; however, staff will continue to review and assess both the prohibited and restricted substances on a regular basis to ensure they remain appropriate.

The sewer use by-laws of other municipalities were reviewed as part of the process of drafting the Proposed By-law to determine best practices in neighbouring jurisdictions. The Proposed By-law builds upon the regulatory framework of the CCME Model By-law to better regulate and protect public health, the natural environment and the City's sewer infrastructure, with no increase to the current staff levels or budget.

The Current By-law includes a schedule of the fees and charges associated with that by-law. In the Proposed By-law, the associated fees and charges have been removed and all fees and charges associated with the Current By-law, as well as any new fees being introduced as part of the Proposed By-law will only be contained in the City's Water and Wastewater/Storm Fees and Charges By-law. New fees and charges associated with the Proposed By-law were subject to a public consultation process through the Draft By-law presented as part of Report PW13061.

The public consultation process to present the Draft By-law included four public open houses, a presentation to the Hamilton Association of Business Improvement Areas, posting the Draft By-law on the City's website, and a follow-up survey to help measure stakeholder engagement.

All comments were received and taken into consideration, and the Proposed By-law was accordingly revised and is now in the form of the Draft By-law, attached as Appendix "A" to Report No. PW13061a.

***Alternatives for Consideration – See Page 11***

## **FINANCIAL - STAFFING - LEGAL IMPLICATIONS**

**Financial:** The Sewer Use By-law and program is fully funded through fees and charges collected from users of the program. Appendix "B" to this report contains all of the existing fees and charges associated with the Current By-law, which continues to

apply while the Proposed By-law was being drafted, as well as new fees to be introduced as part of the Proposed By-law and represents full cost recovery. The new fees and charges associated with the Proposed By-law were presented during public consultation and have been revised to reflect comments that were received. All of the fees and charges proposed, including current fees and charges that will continue to apply as part of the Proposed By-law, as well as any new fees and charges being introduced, are set out in Appendix “B” to Report PW13061a. It is important to note that the proposed fees and charges are in line with the average for similar fees and charges of comparable municipalities across the Province. For example, the fees for an application for a sewer discharge agreement or permit for comparable municipalities range from \$300 to \$965. The fee proposed for the same service under the Proposed By-law is \$450.

There are a total of 9 new fees being proposed, 3 of which are optional and can be applied if applicants choose to have City staff obtain certificates that validate property and business information necessary to apply for a permit. There are 3 new permit application fees, which recover the costs associated with staff reviewing the applications and issuing approvals. There is 1 amendment fee, which recovers the costs associated with reviewing the information supplied by the applicant in order to amend an existing permit. There are 2 new quarterly administrative fees, 1 for a new permit type, conditional discharge permit, the other for a compliance program permit (which replaces the Agreement for a Compliance Program under the Current By-law). The quarterly administrative fees recover the ongoing costs associated with validating compliance with the by-law, such as staff and equipment time for sampling and monitoring, and laboratory fees.

It is important to note that these costs are not currently being recovered when a business requests to enter a sewer discharge agreement under the Current By-law, even though the tasks that are being completed and the costs associated are similar. These fees should be applied regardless of a new by-law, and were identified during the 2013 Hamilton Water Rate Structure Review.

**Staffing:** Staffing levels in the Environmental Monitoring & Enforcement Unit, the group that administers and enforces the Sewer Use By-law in the Hamilton Water Division, will remain unchanged.

**Legal:** Once the Proposed By-law is passed in substantially the form attached as Appendix “A” to this Report, amendments to the Water and Wastewater/Storm Fees and Charges By-law will be necessary in order to impose fees and charges associated with the Proposed By-law. Public notice of the Public Works Committee’s consideration of the fees and charges associated with the Proposed By-law has been given under the City’s Public Notice Policy By-law 07-351.

With the passing of the Proposed By-law, a set fine order (i.e. offence wording and fines that are pre-approved by the Regional Senior Judge of a value of no more than \$1000) should be obtained for certain offences contained in the By-law. Therefore, staff is also proposing to take the necessary steps to submit a set fine schedule for consideration by the Regional Senior Judge.

## **HISTORICAL BACKGROUND**

### Current By-law

The Current By-law is based on a 1988 model that was drafted by the Ontario Ministry of the Environment (MOE) and adopted by most Ontario municipalities over 25 years ago. The principal objectives of that by-law are as follows:

- Protect the operation of wastewater treatment plants;
- Protect sewer infrastructure;
- Protect the natural environment;
- Reduce health risks to sewer workers and the public;
- Protect biosolids quality.

The Current By-law regulates the discharge of any matter into the sanitary, combined and storm sewer systems of the City of Hamilton by:

- Establishing maximum concentration limits for various restricted substances being discharged;
- Establishing a list of prohibited substances that may have adverse impacts on sewer infrastructure and/or receiving waters;
- Identifying requirements which industries have to meet to discharge wastewater;
- Requiring notification of spills to City sewer works which enables the City to monitor spills and mitigate impact;
- Enabling the City to monitor and control what is being discharged through sampling and analysis;
- Enabling the City to inspect and sample a facility to assess risks associated with discharges;
- Enabling the City to enter into sewer discharge agreements to recover treatment costs;
- Establishes contraventions and penalties for contraventions.

Since its inception, the Current By-law has been amended several times to accommodate changes to departmental structure and current industry practices and technologies. Most notably in 2004, a consolidated by-law was enacted in order to reflect the amalgamation of the City of Hamilton. Other notable amendments since then, but not exhaustively, include:

- An extensive three-phase consultant review that lead to the addition of restrictions of a variety of organic parameters as well as changes to the provisions on chlorides and sulphates (2004-2006);
- Changes to permitting and operating practices that allow for better management of hauled sewage and industrial wastes that enter the City's facilities (2009);
- The removal of phenols as a parameter for which an overstrength discharge agreement is required (2009);
- Expansion of the City's authority to enforce the by-law as per the *Municipal Act, 2001*, including provisions to issue orders for contraventions and power of entry (2010).

### 2009 New CCME Model By-law

In 2009, the Canadian Council of Ministers of the Environment (CCME) developed a new model sewer use by-law in an effort to harmonize the management of municipal wastewater throughout Canada and to assist municipalities with addressing sources of contaminants in wastewater. The CCME Model By-law is based on the sewer use by-laws of several municipalities and is intended as guidance and reference model for municipalities to adapt applicable provisions to each of their unique circumstances surrounding treatment and collection capabilities, as well as potential vulnerabilities in the receiving waters. The CCME Model By-law suggests ways to deal with issues that have been faced collectively by the municipal wastewater sector.

### Opportunities for Enhancement of the Current By-law

Upon review of the 2009 CCME Model By-law, the recommendations provided by various consultants, as well as lessons learned through the ongoing enforcement of the Current By-law, Hamilton Water staff have identified four guiding principles to effectively close the gaps between the CCME model and the Current By-law, which were discussed in the “Analyses/Rationale for Recommendation” section of the September 3<sup>rd</sup>, 2013 PW13061 Report, and include the following:

- Improved Protection of Infrastructure and Environment;
- Improved Clarity and Transparency;
- Improved Administrative Flexibility;
- Improved Enforcement Capabilities.

As part of a comprehensive review of the Current By-law, staff identified an opportunity to address the following issues related to the improved management and administration of the City’s sewer systems, including but not limited to:

- the installation, operation and maintenance of food related grease control devices (grease traps) in restaurants and food premises;
- the installation, operation and maintenance of oil and grease interceptors in motor vehicle service shops and sediment interceptors in businesses such as car washes;
- the installation, operation and maintenance of dental amalgam separators in dental offices;
- language to support the current Pollution Prevention Program;
- improved hauled sewage provisions to support the current practices and policies;
- a sewer discharge permitting system which will replace the sewer discharge agreement program under the Current By-law which has become cumbersome to administer; and
- updating the structure and language used in the Current By-law.

The review determined that the most effective method of implementing these improvements would be to enact a new sewer use by-law based on the principles of the

CCME Model By-law, including only those concepts that relate to and will benefit Hamilton's own circumstances.

A new sewer use by-law, in the form of the attached Draft By-law, was prepared by staff and includes provisions to address the gaps identified in the review. The Draft By-law was presented to Public Works Committee on September 3<sup>rd</sup>, 2013, in order to obtain consent to begin the public consultation process, the results of which are outlined in the "Relevant Consultation" section of this report.

All comments received through the public consultation process were considered, which resulted in some changes to the Draft By-law that is now in the form of the Proposed By-law, attached as Appendix "A" to Report No. PW13061a.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

Not Applicable.

## **RELEVANT CONSULTATION**

In developing the Proposed By-law, Hamilton Water staff undertook a number of activities to communicate and consult with local municipalities, industry stakeholders, environmental consultants, members of the public and other interested parties, the results of which were detailed in Report PW13061 and presented to the Public Works Committee on September 3<sup>rd</sup>, 2013. Two of the recommendations outlined in that report were that the Director of Hamilton Water be directed to seek public input on the Draft By-law and the new proposed fees and charges through a public consultation process including:

- (i) Four Public Information Centres (PICs);
- (ii) Presentations to stakeholders; and
- (iii) Posting on the City's website.

Hamilton Water staff were also required to report back to the Public Works Committee to provide the results of the public consultation process, together with recommendations respecting the Draft By-law and the new proposed fees and charges.

### **Public Consultation Results - 2013**

Four PICs were planned at various locations around the City:

- Stoney Creek Municipal Centre;
- Ancaster Old Town Hall;
- Hamilton City Hall;
- 700 Woodward Ave (Wastewater Treatment Plant).

Over 1700 formal invitations to the PICs were hand delivered to businesses that may be impacted by the proposed changes, including but not limited to:

- restaurant owners and property managers;
- dental offices;
- vehicle service facility owners.

Over 100 email invitations to the PICs were sent to:

- industries who are currently monitored by the sewer use program;
- current sewer discharge agreement holders;
- septic haulers and generators;
- local non-government agencies, such as Green Venture and Environment Hamilton;
- business associations such as Hamilton Industrial Environmental Association, Canadian Restaurant and Foodservices Association (Ontario Chapter), and the Ontario Dental Association.

Advertising for the PICs was included in the local newspapers and on the City's website. Staff presented highlights of the proposed changes from the Current By-law and there was opportunity for businesses and residents to ask questions and provide input on the Draft By-law. Copies of the Draft By-law were available for attendees to take and review. Prior to the four sessions noted above, a copy of the Draft By-law was made available on the City's website for review and a comment sheet was available for download that could be mailed, faxed or emailed to staff. The review period following the PICs was approximately one month.

The attendance at each meeting varied, with an average attendance of 13 and a total of 52 people. A breakdown of the attendees is summarized in the table below:

<b>Area of Interest</b>	<b>Number of Attendees</b>
Industrial Facilities	17
Restaurants or Food Service Facilities	8
Vehicle Service Facilities (car washes, auto shops)	5
Property Owners/Managers	0
Dental Offices	0
Septic Haulers	1
Associations/Consulting Companies	9
Residents/Other	12

Staff also attended a Hamilton Association of Business Improvement Areas meeting at City Hall and presented a slideshow summarizing the Draft By-law and highlighting how it may impact some Hamilton businesses.

Once the public consultation process was closed, there were 12 pieces of correspondence received from various stakeholders, in the form of emails, letters and completed feedback forms. Once staff reviewed and considered all comments, the

Draft By-law was further revised, and is in the form of the Proposed By-law attached as Appendix “A” to this report. A detailed account of the changes can be found in the “Analysis/Rationale for Recommendation” section below.

## **ANALYSIS AND RATIONAL FOR RECOMMENDATION**

A detailed rationale for the overall changes made from the Current By-law to the Draft By-law was provided to Public Works Committee on September 3, 2013 in Report PW13061.

There were a number of valuable suggestions made during the public consultation process for the Draft By-law and the new fees and charges, some of which have been incorporated into the Proposed By-law. There was an overall acceptance of the need for an update to the Current By-law, and most of the comments were positive, however, 3 of the 12 correspondence pieces identified the following general concern:

- Business and property owners were concerned about the potential costs associated with the installation and maintenance of grease control devices.

While staff recognize there may be costs to businesses that are required to install and maintain grease control devices, staff have implemented a risk based assessment tool (attached as Schedule “E” to the Proposed By-law) that will be used by By-law Enforcement Officers to determine whether or not the discharge from an establishment poses a risk to the sewer works which may result in the requirement to install a device.

The introduction of a grease control device requirement is intended as a mechanism to require the installation and maintenance of grease control devices in those cases where risks are present or where sewer blockages have occurred. The purpose of the risk assessment tool is to identify those food premises, which pose a risk, and to require installation of an appropriate device within a suitable timeframe, depending on the level of risk identified. For instance, a food premises that poses an immediate risk due to a sewer blockage already having occurred, the timeframe to install a device would be 6 months from the date of written notice from an officer. A food premises that poses a high risk would be required to install a device within 12 months. Medium risk is 18 months and low risk is 24 months. If a food premises poses no risk, they would not be required to install a device.

It is also important to note that should a business be discharging large amounts of grease to the sewer works without a grease trap installed, they will likely have required the services of a licenced plumber on a regular basis in the past to snake their sewer lines and clear their drains. Also, there is a high likelihood that these businesses have experienced a sewer back-up in their building or in neighbouring buildings because of grease blockages. The installation and maintenance of grease control devices will reduce or potentially eliminate these issues and costs to business owners.

Hamilton is one of the only municipalities of its size in Canada that does not currently have provisions for the mandatory installation of grease control devices prior to discharging to the sewer. In fact, many comparable municipalities including Ottawa, Toronto, Niagara, Halton, Peel and London have much stricter provisions in their sewer



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use by-laws, requiring food premises to install a grease control device, regardless of the level of risk associated with their discharges. These provisions have been included in the CCME Model By-law and other by-laws, in most cases, for over a decade.

Outlined below is a summary of the changes that have been made to the Draft By-law that was attached to Report PW13061 as Appendix “A”, as a result of the public consultation process. These changes, along with other minor revisions that were made by staff during ongoing detailed internal reviews of the Draft By-law in consultation with Legal Services do not impact the overall concepts, purpose or integrity of the originally proposed Draft By-law.

**Summary of Changes to the Draft By-law Based on Public Consultation**

<b>Section No.</b>	<b>Change</b>	<b>Reason</b>	<b>Requested By:</b>
Section 5.1(b)	Added language requiring a Water Balance Study to be signed and stamped by a qualified professional engineer, rather than a 3 <sup>rd</sup> party engineer.	Reduces costs of hiring 3 <sup>rd</sup> party engineers when many industries have their own in-house engineers. However, engineers must be appropriately licenced and certify studies accordingly and therefore assume accountability for their reports.	Industrial Association
Section 7.9	Added “included but not limited to a vehicle wash premises”.	Added in order to add context to the type of business this provision would generally apply.	Industrial Association
Section 10.6	Removed requirements for dischargers to submit P2 plans in the event of a spill.	This provision was added in error to the original draft.	Industrial Association
Section 11.3	Added “(f) (i) Sewer Use By-law Assessment Report”	Added to the requirements of info the GM may need to assess whether a	Internal Review

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<b>Section No.</b>	<b>Change</b>	<b>Reason</b>	<b>Requested By:</b>
		permit should be issued. This document triggers an inspection by an officer to determine compliance and provides details needed to assess risk.	
Section 11.8	Added provision (b)	Added in order to clarify requirements for measuring flow when applying for a surcharge permit.	Internal Review
Sections 11.14 - 11.15	Revised language of 11.14	Language revised to clarify the requirements of the chlorides permit with regards to completing the engineering study.	Internal Review
Section 16.2	Revised language for transition of sewer discharge agreements and approvals to sewer discharge permits, once Current By-law is repealed.	Language revised to clarify that current agreements and approvals will become permits with same terms and conditions and will be in effect for 3 years from the date of the original agreement or approval. For those that are dated prior to January 1 <sup>st</sup> , 2012 they will be in effect for an additional 9 months from the enactment date of the by-law.	Internal Review

Hamilton Water staff conducted a survey of the various stakeholders via the *Survey Monkey* website in order to measure a number of factors including:

- General understanding of the Current By-law;
- Navigability of the Current By-law;
- Need for change;
- Awareness of proposed changes;
- Acceptability of Draft By-law;
- Staff customer service levels.

There was a 32% response rate to the survey. The results of this survey confirmed the need for a new sewer use by-law, by revealing that many users have had difficulty navigating the Current By-law, and do not have a clear understanding of their requirements to comply. A large majority also felt that the Draft By-law is fair and appropriate, and were generally pleased with the customer service of the Environmental Monitoring & Enforcement Unit staff of Hamilton Water.

### **ALTERNATIVES FOR CONSIDERATION**

In the event that Council elects not to approve the recommendations in this report, there remain two possible options to be considered.

#### **Option A: No new Sewer Use By-law**

This option would continue to utilize the Current By-law that was enacted in 2004 and was based on the 1988 MOE model by-law. This would mean that there would be no improvements to the protection of the infrastructure and environment; clarity and transparency; administrative flexibility or enforcement capabilities. Some of the gaps that were identified could be managed and changed through various amendments to the Current By-law. This is not recommended as it becomes cumbersome for users and enforcement staff to navigate through multiple by-law amendments.

#### **Option B: Change the scope of the Proposed By-law**

The scope of the Proposed By-law could be reduced.

One means to reduce the scope of the Proposed By-law is to remove the provisions requiring the installation, maintenance, evacuation and record keeping of Grease and Sediment Interceptors and Dental Amalgam Separators. However, this would limit staff's ability to enforce the By-law with respect to the substances of concern, and continue to pose a risk for the City's sewer works and the environment. Further, this approach would mean that Hamilton would continue to be one of the only Ontario municipalities of its size that has not imposed regulatory/by-law requirements respecting the discharge of these substances into its sewer infrastructure.

Alternatively, the provisions could be made stricter, requiring the installation, maintenance, evacuation and record keeping of Grease and Sediment Interceptors and Dental Amalgam Separators regardless of the risk assessment results, and simply based on the assumption that any business in those particular sectors would produce the substances of concern and would require a device to prevent those substances from entering the City's sewers. This is the approach that the neighbouring municipalities

that staff surveyed have used. However, this approach would require more staff resources in order to implement and administer in a fair and consistent manner, and may also prove to be more taxing on small business owners that may not present a significant risk to the City's sewer system.

## **ALIGNMENT TO THE 2012 - 2015 STRATEGIC PLAN**

### **Strategic Priority #1**

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

#### **Strategic Objective**

1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

### **Strategic Priority #2**

Valued & Sustainable Services

*WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.*

#### **Strategic Objective**

2.2 Improve the City's approach to engaging and informing citizens and stakeholders.

2.3 Enhance customer service satisfaction.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix A - Proposed Sewer Use By-law

Appendix B - Proposed Sewer Use By-law Fees and Charges