

**Draft Correspondence from City of Hamilton to various provincial Ministries
re: Tertiary Septic Systems**

**TO: Ministry of Agriculture, Food and Rural Affairs
Ministry of the Environment, Conservation and Parks
Ministry of Municipal Affairs and Housing**

Dear Minister(s):

Re: The Use of “Advanced” Private Septic Systems

The City of Hamilton, like many Ontario municipalities, enjoys a vibrant mix of urban, suburban and rural settings. In order to ensure appropriate development and growth, particularly in our rural areas, we think it important to draw to your attention a key issue that has emerged in recent development proposals that we believe has significant implications for public health, environmental protection and Building Code standards.

Development proposals located outside of urban municipal water and wastewater infrastructure typically rely on a private well and septic system. Septic systems were originally designed for use in rural communities and can be appropriate as long as there is sufficient land to manage effluent without adversely impacting neighbouring lands. However, as building lots in rural areas become smaller, septic systems can pose a risk to human health and the environment if not properly sited, operated and maintained. Of particular concern is septic system contamination of groundwater—the primary source of rural drinking water—from microbial pathogens (e.g. bacteria, viruses, protozoa) and nutrients such as nitrates and phosphates.

In recent years, development proposals in Hamilton’s rural areas have increasingly proposed the use of septic systems with “advanced treatment units” that claim to reduce nitrates in the effluent to justify development on undersized lots. Like many Ontario municipalities, the City of Hamilton relies on the Ministry of Environment, Conservation, and Parks (MECP) Guideline D-5-4 (1996) to assess risks associated with privately-serviced developments that rely on septic systems to manage their wastewater. Nitrate is the “indicator” contaminant used in Guideline D-5-4 and in the technical review of privately-serviced development in Ontario. Unfortunately, there is a lack of regulatory clarity and guidance as to how municipalities should assess, manage and enforce the *performance* of these treatment units.

The MECP routinely approves these advanced treatment units for large septic systems that fall within their regulatory jurisdiction (i.e. wastewater flows above 10,000 L/day), but the province can rely on enforcement authorities found in the Environmental Compliance Approval process and the *Ontario Water Resources Act*. However, municipalities have no regulatory ability to enforce performance of these systems for parameters that are not

recognized by the Ontario Building Code (e.g. nitrogen, phosphorus and coliform bacteria). In addition, under section 35 of the *Building Code Act*, it is clear that municipal bylaws outlining construction standards that are more restrictive than Ontario Building Code requirements are not permitted.

Shortly put, existing legislation speaks only to the construction, operation and maintenance of private water/sewage works but does not provide authority to effectively *enforce* system performance. In the absence of effective enforcement tools, private monitoring agreements are commonly used in an attempt to regulate system performance, but these arrangements are not easily enforced against successor or underfunded landowners which often forces municipalities to assume long-term responsibility for these systems. Research from the MECP Source Protection Branch indicates that up to 35% of these systems do not perform as intended.

In addition to public health and environmental concerns, this regulatory gap tends to delay development approvals, can lead to expensive OMB/LPAT hearings and exposes rural residents to increased uncertainty.

In order to promote the sustainability of rural development and protect the health and environment of Ontario's rural area and its residents, the City of Hamilton urges the province to:

1. conduct a prompt review of, and implement an update to, MECP Guideline D-5-4 as it is almost 25 years old and does not currently reflect improvements in septic system technology or insights gained by MECP through its own data on "real life performance" of these systems;
2. reconsider the 2011 revocation of proposed change S-B-08-06-06 to the Ontario Building Code that revised the effluent quality table and revise Ontario Building Code Part 8 policies to formally recognize advanced treatment units for nitrogen, phosphorus, and coliform bacteria reduction, and incorporate specific standards into the Ontario Building Code to be enforced by the Ministry of Environment, Conservation and Parks and municipalities; and
3. amend the *Municipal Act* to grant municipalities the authority to enforce legislated performance standards for private water and sewage works.

We feel that all municipalities that enjoy rural development would benefit from this clarity and guidance so that all of Ontario can continue to grow and prosper sustainably.

Thank you for your time and consideration. We look forward to hearing from you.