
HALDIMAND COUNTY

Report RDS-01-2020 Support for Actions to Address Over-Application of Winter Maintenance Chemicals

For Consideration by Council in Committee on December 8, 2020



OBJECTIVE:

To obtain Council support of actions to address over-application of winter maintenance chemicals to protect sources of municipal drinking water.

RECOMMENDATIONS:

1. THAT Report RDS-01-2020 Support for Actions to Address Over-Application of Winter Maintenance Chemicals be received;
2. AND THAT the recommended actions presented in the Lake Erie Region Source Protection Committee Report SPC-19-12-02 dated December 12, 2019 and included as Attachment 1 to Report RDS-01-2020, be supported;
3. AND THAT a copy of this motion be forwarded to the Ministry of Environment, Conservation and Parks, Ministry of Transportation, Ministry of Municipal Affairs and Housing and the Attorney General of Ontario.

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Respectfully submitted: Philip Mete, P. Eng., General Manager of Public Works Operations

Approved: Craig Manley, MCIP, RPP, Chief Administrative Officer

EXECUTIVE SUMMARY:

The Lake Erie Source Protection Committee (LESPC) has the statutory responsibility to develop and update source protection plans and report on implementation. The committee oversees work in four Source Protection Areas (watersheds): Catfish Creek, Grand River, Kettle Creek and Long Point Region.

The committee has 24 members who represent those with a stake in drinking water issues:

- seven representing municipalities,
- seven representing economic sectors including three from agriculture, three from business and industry and one from the aggregate industry,
- seven representing the public interest, and
- three representing First Nations.

On December 12, 2019, the Lake Erie Source Protection Committee received a report from SPC-19-12-02, Winter Maintenance Chemicals: Challenges and Opportunities for Change, relating to proposed changes to Provincial regulations that affect winter maintenance chemicals including salt application to municipal roads as well as sidewalks and parking areas. The Committee passed the following resolution:

AND THAT the Lake Erie Region Source Protection Committee direct staff to forward report SPC-19-12-02 to the Councils of single, upper and lower tier municipalities within the Lake Erie Source Protection Region, all Source Protection Committees, Ontario Good Roads Association, Association of Municipalities of Ontario and Rural Ontario Municipal Association, to request resolutions to the Minister of Environment, Conservation and Parks, Ontario Ministry of Transportation, Ontario Minister of Municipal Affairs and Housing and Attorney General of Ontario.

The recommended actions in report SPC-19-12-02 to address the concerns of over-application of winter maintenance chemicals are listed as follows;

1. THAT the province of Ontario explore ways to reduce the factors that contribute to excess application of winter maintenance chemicals on roadways and parking lots through a review of the liability framework in Ontario.
2. THAT the Province of Ontario work with municipalities to strengthen training programs for road agencies that apply winter maintenance chemicals on roads and sidewalks to reduce application rates without compromising safety that would assist with mitigating risks to municipal drinking water systems.
3. THAT the Province of Ontario require property owners and contractors responsible for maintaining safe parking lots and sidewalks be trained and certified in the application of winter maintenance chemicals.
4. THAT the Province of Ontario change the Prescribed Drinking Water Threats, “the application of road salt” and “the handling and storage of road salt” to “the application of winter maintenance chemicals” and “the handling and storage of winter maintenance chemicals” and define the term in the regulation.
5. THAT the Province of Ontario change the Table of Circumstances related to the application of winter maintenance chemicals to differentiate between application on roads, sidewalks and parking lots to reflect the different liability issues and the nature of winter maintenance conducted for each surface type.
6. THAT the Province of Ontario amend the Clean Water Act’s Director’s Technical Rules to enable municipalities to proactively protect their municipal drinking water supplies from the application and storage of winter maintenance chemicals.

Staff is recommending that Haldimand County support these initiatives.

BACKGROUND:

Report SPC-19-12-02 (attached) provides an overview of the ongoing issue and implications of over-application of winter maintenance chemicals, highlighting trends in the Lakes Erie Source Protection Region. The impacted municipal supply wells range from small rural centers (Elora, Fergus – Center Wellington, Guelph-Eramosa, Paris – County of Brant) to medium cities (City of Guelph, Orangeville) to large urban areas (Region of Waterloo). The report recommends the Province of Ontario explore ways to reduce the factors that contribute to excess application of winter maintenance chemicals on roadways and parking lots through a review of the liability framework in Ontario.

Liability and Other Factors That Influence the Amount of Salt Applied

In 2001 Environment and Climate Change Canada (ECCC) developed a Code of Practice and a parallel Synthesis of Best Practices document was also created by Transportation Association of Canada. The Synthesis is a detailed resource on winter maintenance practices and supplements the recommendations made within the Code. The two main recommendations of the Code are the

development of a salt management plan and the implementation of best management practices. However, the Code is voluntary and only applies to road authorities that use more than 500 tonnes of salt per year, and does not apply to parking lots or sidewalks. The ECCC assessment report concluded that application of salt on parking lots represents less than 10% of the total amount of salt being applied on roads. However, the contribution of parking lots in urban areas is much greater due to the increased density of paved surfaces and the higher potential application rates needed to address private property liability concerns. Specifically, in parts of Cambridge, Kitchener and Waterloo, salt loading to ground water from parking lots is equal to or greater than the salt loading from roads.

Several pieces of legislation provide the legal context for the application of winter maintenance chemicals.

For roads, municipal transportation agencies are required under Section 44 of the Municipal Act to maintain roads in a “reasonable state of repair” and to maintain them in accordance with the Minimum Maintenance Standards.

For building owners (parking lots) and managers, the Occupiers Liability Act requires a duty of care to maintain “reasonably” safe conditions for persons while on their premises. Unlike for roads, the definition of what is reasonably safe is not stipulated and there are no standards. For parking lots, what is reasonable is determined through awareness of legal case studies.

As noted above, the obligations to maintain roads arise from the Municipal Act and the Minimum Maintenance Standards. This legislation provides some level of liability defence for municipalities in the event of vehicle accidents or slip and fall claims on roads. The impact of “joint and several” liability often results in municipalities paying the majority of the costs resulting from an accident claim even if their contribution to the fault is minimal. Many Road Authorities in Ontario including Haldimand County have made considerable improvements in technology, operational approaches and procedures and training to help improve the application of road salts and reduce the impacts to the environment. Further changes in salt applications will be difficult to achieve in part due to the risks associated with liability.

ANALYSIS:

The factors outlined in report SPC-19-12-02 pertaining to the root causes of the increased sodium chloride concentrations within the groundwater drinking sources in the LESPR indicate that two pieces of legislation provide a framework that supports the over-application of winter maintenance salt applications. The report also points out that this behaviour is condoned and/or accepted by the public as necessary to ensure the protection of the travelling public and society as a whole. The report also suggests that in a general sense there is little evidence of any recognition that possible over-applications of salt in winter maintenance activities may not be necessary as the focus is that the protection from liability is paramount. From a Road Authority perspective the recommendations in report SPC-19-12-02 are viewed as a proactive approach in addressing ground water infiltration however, a complete review of the current liability framework specifically related to municipal winter maintenance is of equal importance in terms of salt application reduction and change in the current “*joint and several liability*” framework is viewed as essential in order to achieve the desired outcome of reduced salt applications in municipal winter road maintenance.

FINANCIAL/LEGAL IMPLICATIONS:

If there are future changes to winter control protocols, any budget impacts would need to be included in the tax supported operating budget of the applicable year as a new initiative.

STAKEHOLDER IMPACTS:

If the Province of Ontario proceeds with some of or all of the recommendations in report SPC-19-12-02, private contractors may experience increased costs in staff training and certifications, improved technologies and equipment, upgrading storage facilities etc. Municipalities may experience procedural and/or methodology changes and adjustments in winter control maintenance operations.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Lake Erie Region Source Protection Committee – Report SPC-19-12-02 Winter Maintenance Chemicals: Challenges and Opportunities