

Please find attached a Report from the Regional Municipality of the Durham regarding the EBR Posting (EBR Registry No. 010-3036) relating to the implementation of the Lake Simcoe Protection Plan (LSPP). The Township of Uxbridge is forwarding this Report as their comments on the EBR Posting. Council will formally be reviewing this Report and endorsing the comments at their meeting on June 7, 2010.

Thank you for your consideration of the comments raised herein.

Yours truly,

Richard Vandezande  
Manager – Development Services  
Township of Uxbridge



The Regional  
Municipality  
of Durham

Clerk's Department

605 ROSSLAND RD. E.  
PO BOX 623  
WHITBY ON L1N 6A3  
CANADA  
905-668-7711  
1-800-372-1102  
Fax: 905-668-9963  
E-mail: clerks@durham.ca  
www.durham.ca

Pat M. Madill, A.M.C.T., CMM III  
Regional Clerk

May 26, 2010

Ms. D. Leroux  
Clerk  
Township of Uxbridge  
51 Toronto Street South, P.O. Box 190  
Uxbridge ON L9P 1T1

THIS CORRESPONDENCE HAS  
ALSO BEEN SENT TO THE  
MUNICIPALITIES OF BROCK AND  
SCUGOG

RE: PROPOSED AMENDMENTS TO THE ONTARIO BUILDING  
CODE (OBC) (O. REG. 350/06) RESPECTING ON-SITE  
SEWAGE MAINTENANCE INSPECTION PROGRAMS. (EBR  
POSTING: 010-9557)

THE CURRENT POSTING INCLUDES A PROPOSAL FOR  
FURTHER REGULATORY CHANGES ARISING FROM  
POLICIES SET OUT IN THE LAKE SIMCOE PROTECTION PLAN  
(LSPP). THIS POSTING IS SUPPLEMENTAL TO THE  
PREVIOUS POSTING (EBR REGISTRY NUMBER: 010-3036) ON  
MARCH 14, 2008. (2010-J-26) OUR FILE: D07-00

Ms. Leroux, please be advised the Joint Health & Social Services,  
Planning and Works Committee of Regional Council considered the  
above matter at a meeting held on May 25, 2010. At this meeting it was  
requested that Report #2010-J-26 be forwarded to the Councils of the  
Municipalities of Uxbridge, Scugog, and Brock for their consideration and  
should they decide, subsequent response to the EBR posting. Please  
note the deadline for responses to the posting is May 28, 2010.

For your information the Joint Committee adopted the following  
recommendations which have been forwarded as the Region's response  
to the EBR posting:

- "a) THAT the comments and concerns outlined in Report #2010-J-26  
be submitted as the Region's response to the Environmental Bill of  
Rights (EBR) posting of the proposed amendments to the Ontario  
Building Code (EBR # 010-9557) re: onsite sewage maintenance  
inspection programs; and further
- b) THAT Council specifically recommends to the Province that:
  - i. It develops a cost estimate and/or cost/benefit analysis  
associated with this program so that municipalities have  
estimated costs associated with the implementation of this  
program. The Province also has to support the  
implementation of this program with proper funding;
  - ii. It extends the deadline for the start of the first phase of this  
program to allow for a more thorough review, assessment  
and planning process. This is critical as our northern  
municipalities are key partners;

"Service Excellence  
for our Communities"



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On-Site Sewage Maintenance Inspection Programs

May 26, 2010

- iii. The LSPP or the Regulation recognize, for circumstances where there are severe problems not easily resolved by the remediation of on-site sewage systems, the opportunity to extend municipal sanitary sewer or water supply services. To be effective the Province should put funding in place to facilitate this approach;
  - iv. All on-site sewage systems that are five years old or less should be exempt from the legislation. Existing documentation (building permits & final inspection reports) associated with these sewage systems offers validation that they were constructed according to the OBC and have no technical reason to be malfunctioning or failing. Attention should be concentrated on older sewage systems that due to lack of maintenance or other factors could possibly be a problem;
  - v. It extends the deadline for the start of the second phase of this program to allow the municipalities to be able to properly plan, assess and complete the enforcement of the first phase of this new legislation;
- c) THAT a copy of Joint Report #2010-J-26 be forwarded to the Ministers of the Environment and Municipal Affairs and Housing; the Association of Municipalities of Ontario; the GTA Countryside Mayors Alliance; the Townships of Brock, Scugog and Uxbridge; and the Lake Simcoe Region Conservation Authority."

The Region's response to the EBR posting has been sent with the proviso that Regional Council will not be considering this matter until the next Council meeting scheduled to be held on June 2, 2010. Included with the Region's submission is a note stating that "The following municipal Councils: Township of Brock, Township of Uxbridge and Township of Scugog will also be considering the endorsement of the recommendations in this report."



Pat M. Madill, AMCT, CMM III  
Regional Clerk

PMM/lf  
Enclosure

- c: R.J. Kyle, Commissioner & Medical Officer of Health  
A. L. Georgieff, Commissioner of Planning  
C. Curtis, Commissioner of Works



**To: Health and Social Services, Planning and Works Committees**

**From: Commissioner & Medical Officer of Health  
Commissioner of Planning  
Commissioner of Works**

**Report No.: 2010-J-26**

**Date: May 25, 2010**

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**SUBJECT:**

**Proposed amendments to the Ontario Building Code (OBC) (O. Reg. 350/06) respecting on-site sewage maintenance inspection programs. (EBR Posting: 010-9557)**

**The current posting includes a proposal for further regulatory changes arising from policies set out in the Lake Simcoe Protection Plan (LSPP). This posting is supplemental to the previous posting (EBR Registry Number: 010-3036) on March 14, 2008.**

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**RECOMMENDATIONS:**

- a) **THAT the comments and concerns outlined in this report be submitted as the Region's response to the Environmental Bill of Rights (EBR) posting of the proposed amendments to the Ontario Building Code (EBR # 010-9557) re: onsite sewage maintenance inspection programs; and further**
  
- b) **THAT Council specifically recommends to the Province that :**
  - i. **It develops a cost estimate and/or cost/benefit analysis associated with this program so that municipalities have estimated costs associated with the implementation of this program. The Province also has to support the implementation of this program with the proper funding;**

- ii. **It extends the deadline for the start of the first phase of this program to allow for a more thorough review, assessment and planning process. This is critical as our northern municipalities are key partners;**
  - iii. **The LSPP or the Regulation recognize, for circumstances where there are severe problems not easily resolved by the remediation of on-site sewage systems, the opportunity to extend municipal sanitary sewer or water supply services. To be effective the Province should put funding in place to facilitate this approach;**
  - iv. **All on-site sewage systems that are five years old or less should be exempt from the legislation. Existing documentation (building permits & final inspection reports) associated with these sewage systems offers validation that they were constructed according to the OBC and have no technical reason to be malfunctioning or failing. Attention should be concentrated on older sewage systems that due to lack of maintenance or other factors could possibly be a problem;**
  - v. **It extends the deadline for the start of the second phase of this program to allow the municipalities to be able to properly plan, assess and complete the enforcement of the first phase of this new legislation;**
- c) **THAT a copy of Joint Report No. 2010-J-26 be forwarded to the Ministers of the Environment and Municipal Affairs and Housing; the Townships of Brock, Scugog and Uxbridge; and the Lake Simcoe Region Conservation Authority.**
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**REPORT:****1. PURPOSE**

- 1.1 The purpose of this report is to provide a summary of the Ministry of Municipal Affairs and Housing draft Regulations regarding sewage maintenance inspection program and highlight Durham's comments and concerns with the proposal, as input to the EBR review process. The deadline for submission is May 28, 2010.

**2. BACKGROUND**

- 2.1 About one-third of Durham Region's geographic area falls within the Lake Simcoe watershed and is affected by the proposed sewage maintenance inspection program. There are potentially hundreds of septic systems within the Lake Simcoe watershed within Durham Region. It is unknown at this time how many sewage systems would be impacted by the proposed regulatory amendment.

**3. EFFECT OF THE LAKE SIMCOE PROTECTION PLAN**

- 3.1 The purpose of the plan is to "protect and restore the ecological health of the Lake Simcoe watershed ecosystem".
- 3.2 In Chapter 4, Water Quality, the LSPP has a number of designated policies and strategic actions intended to address sources that cause water quality impairment including phosphorus and pathogens.
- 3.3 Designated water quality policies require:
- prohibition of new on-site sewage systems with 100 metres of the shoreline or any permanent stream with some exceptions;
- 3.4 Other strategic actions include:
- developing stormwater master plans, stormwater management plans and indicators;

- **developing a Regulation for mandatory on-site sewage maintenance inspection programs.**

#### **4. REGIONAL COMMENTS**

**4.1 The Health Department reviewed the proposed Regulation and prepared this report in collaboration with Regional Works and Planning Departments and the CAO's office.**

**4.2 The key areas of concern from a Regional perspective are:**

- **the extent and delivery of mandatory on-site sewage maintenance inspection programs;**
- **the creation of new financial demands on municipalities, hence the need for sustained funding for the LSPP;**
- **the language of the regulation is vague and non-specific and will be subject to different interpretation especially around the proposed inspection process and testing procedures;**
- **the additional responsibilities for data collection (information systems/databases) and reporting and impact on new staffing/resources;**
- **the need for more realistic timelines that allow for inter-agency collaboration and related funding to achieve the objectives.**

#### **4.3 Extent and delivery of sewage maintenance inspection programs**

**The proposed amendment of the OBC would require mandatory maintenance inspections of existing on-site sewage systems. Inspections will initially be required in priority areas (to be identified) within 100 metres of the Lake Simcoe shoreline and the mouth of the tributaries that discharge directly into the lake as of January 1, 2011. Inspections would need to be completed within 5 years of that date. Mandatory maintenance inspections of existing on-site sewage systems in the remainder of the areas (to be identified) will be required as of January 1, 2016. Inspections would need to be completed within 5 years of that date.**

Back in March 2008, the Province consulted on an OBC amendment to support source water protection, requiring sewage system re-inspections (maintenance) in municipal well head protection areas. The mandatory scope and scale of that proposal was quite small (i.e., municipalities could choose to expand a sewage system re-inspection (maintenance) program beyond the well head protection areas). The OBC amendment for sewage maintenance inspection programs as now proposed would be a huge expansion of the affected geography.

The proposed date to start the first phase of this new program does not allow a sufficient amount of time for municipalities to organize and prepare for the appropriate enforcement of this new legislation. The start date needs to be pushed back to at least January 1, 2012 to give authorities enough time to work out the details for this undertaking. The proposed date to start the second phase of this program needs to be pushed back by a year to January 1, 2017 in order for the municipalities to be able to complete the first phase within the previous 5 years as mandated.

All existing sewage systems that are 5 years old or less should be exempt from the legislation. Existing documentation (building permit & final inspection reports) associated with these sewage systems offers validation that they were constructed according to the OBC and have no technical reason to be malfunctioning or failing. Attention should be concentrated on older sewage systems that due to lack of maintenance or other factors would more likely be a problem.

Durham Region presently has a legal agreement (Sewage System Management Agreement) with seven of Durham's local municipalities. The agreements delegates the enforcement of part 8 (Sewage Systems) of the OBC within their respective municipality to the Health Department. A mandatory maintenance inspection program is presently NOT part of the agreements.

Durham Region does not currently have the in-house resources to carry out such a program on the scale anticipated. Such a program would require provincial start-up funding to establish the administrative function and to hire and train qualified personnel. The ongoing operating budget would require funding, possibly through inspection fees.

Further discussion will have to be held with the 3 northern local municipalities to determine the feasibility and the issues (i.e., staffing, training, resources, costs, number of properties, etc.) associated with setting-up a sewage maintenance inspection program. Ultimately the final decision on the implementation of such a program will rest with each individual local municipality.

#### 4.4 Proposed Technical Changes (EBR Registry Number: 010-3036)

##### 1.10.2.2. Time Periods for Inspections:

It is proposed that once the inspection of existing on-site sewage systems has been undertaken, thereafter, an inspection needs to be carried out once every 5 year period. This time frame is too short; once inspected, the cycle for another inspection to be undertaken needs to be extended to between a 7 and 10 year period.

##### A-1.10. Sewage System Maintenance Program:

###### Inspection Notification

It is proposed that the principal authority may find it helpful to notify property owners of the intention to inspect their property. In order to have consistency by all jurisdictions throughout the Lake Simcoe watershed, notification to property owners must be made mandatory. Details of what to include on the notice needs to be prescribed so each municipality is approaching the notification process the same way.

###### Inspections

It is proposed that principal authorities follow a two phase system to complete their sewage maintenance inspections. The document has

wording such as; may be inspected, generally follow, may be identified, also consider and is based on multi-layered examination processes.

The proposed phased approach is complex, time consuming, and will be difficult to implement. In order to have consistency of application in all jurisdictions, the maintenance inspection procedures must be clearly defined in the legislation. Language in the regulation must be more direct so it is clear to all regulators.

A mandatory sewage system maintenance inspection should involve one site visit that spells out unmistakably what steps are to be taken by the inspector (and the owner) in order to determine compliance, including what specific inspection/testing procedures are to be performed and/or what equipment is to be used.

Some of the inspection methods mentioned (e.g. conducting leak diagnostics, conducting flow trial, excavating cross section of a leaching bed) are not presently being performed by the Health Department. Inspection procedures need to be clearly mandated by legislation so that the principal authorities can then plan accordingly for the acquisition of the appropriate equipment and relevant training of personnel. The present wording leaves it wide open for interpretation and will result in inconsistent enforcement between adjacent municipalities around the Lake Simcoe watershed boundary.

#### **Inspection Reports**

It is proposed the documentation in respect to sewage maintenance inspections would be left to be developed by each principal authority.

Common inspection report forms for sewage maintenance inspections need to be developed by the Ministry for all jurisdictions in order to ensure consistency of the inspection procedures mentioned above are met. Prescribed forms should be utilized by all principal authorities and should also be specified in regulation similar to building permit applications

**4.5 Ability to improve or extend municipal infrastructure**

The Greenbelt Plan permits the extension of municipal sewage or water services outside of a settlement boundary but only “in the case of health issues or to service existing uses and the expansion thereof adjacent to the settlement”. Accordingly, the LSP or regulation should recognize this opportunity to remediate private systems in areas close to urban services. This approach can complicate the remediation process. Affected properties will only be known after the re-inspections have taken place. A coordinated extension of services can then be considered where efficiencies can mitigate cost. Nevertheless, the extension of municipal services is potentially a costly solution for the individual land owner and a complex/time consuming undertaking for the agency having jurisdiction. Provincial funding is essential for this to be implemented. Currently, the Regional Official Plan does not permit the extension of Regional services to areas outside of urban areas. The Plan will have to be amended to allow such extensions and establish financial responsibility should this approach be considered.

**4.6 Creation of new responsibilities and financial demands on municipalities requires sustained funding sources**

The timing and demands of the proposed regulation will overwhelm already-scarce financial and staff resources. Additional revenues will be needed and changes will have to be phased-in.

The Province needs to review and provide to the municipalities an assessment of the estimated costs involved in the implementation of this program and support such analysis with the proper funding.

There is no indication that training will be conducted by the Ministry to enhance knowledge and skill associated with sewage maintenance inspection programs.

4.7 The monitoring policies in the LSPP plan may require municipalities to acquire new software, then collect and store new kinds of data and performance indicators for the proposed regulation.

4.8 **Unrealistic timelines**

The proposed timeline to begin implementation as of January 2011 is unrealistic. Further discussion and negotiation will have to be held with the three northern municipalities to determine the feasibility and all the other issues (i.e., staffing, training, resources, costs, number of properties, etc) associated with setting up such a program.

5. **NEXT STEPS**

5.1 An OBC amendment which considers the input received through the EBR posting will be brought forward later this year.

6. **CONCLUSION**

6.1 This report provides comments and recommends changes to the proposed amendments to the Ontario Building Code. It also highlights the ongoing concerns about the potential financial and operational impacts on the Region and the northern municipalities. An ongoing provincial commitment to the regulation and funding to deliver the proposed mandatory sewage maintenance program is required in order to ensure its success.