

By-law 2015-xx

A By-Law of the City of Greater Sudbury respecting Enforcement of the *Clean Water Act*, 2006

Whereas section 5 of the *Municipal Act, 2001*, S.O. 2001, c. 25 requires that a municipal power be exercised by by-law;

And Whereas section 55 of the *Clean Water Act, 2006*, S.O. 2006, c. 22 provides that a municipality may pass by-laws prescribing classes of risk management plans and classes of risk assessments, establishing and governing an inspection program to enforce Part IV of that Act, providing for applications under certain sections of that Act and requiring applications to be accompanied by plans, specifications, documents and other information, prescribing fees for applications, acceptances, approvals, issuance of notices and inspections, prescribing forms respecting risk management plans, acceptances of risk assessments and notices, and providing for their use;

And Whereas section 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that a municipality may pass by-laws respecting the environmental well-being of the municipality and the health, safety and well-being of persons;

And Whereas section 391 of the *Municipal Act, 2001*, S.O. 2001, c. 25 provides that a municipality may impose fees or charges on persons for services or activities provided or done by the municipality, whether the service or activity is mandatory or not;

And Whereas Council of the City of Greater Sudbury adopted the report of the General Manager of Infrastructure Services presented to the Community Services Committee dated February 2, 2015;

Now therefore the Council of the City of Greater Sudbury hereby enacts as follows:

PART 1: INTERPRETATION

Definitions

1. (1) In this By-law:

“Act” means the *Clean Water Act, 2006*, S.O. 2006, c. 22 as amended;

“Applicant” means a Person making application pursuant to Part IV of the Act or this By-law;

“City” means the municipal corporation of the City of Greater Sudbury or the geographic area of the City of Greater Sudbury, as the context requires;

“City Council” means the municipal council of the City of Greater Sudbury;

“Minister” means the Minister of the Environment and Climate Change or such other member of the Executive Council as may be assigned the administration of the Act under the *Executive Council Act*;

“Person” includes any natural person, firm, partnership, association, corporation, company or organization of any kind;

“Property Owner” means the registered owner of the property and includes a lessee, mortgagee in possession and the Person in charge of the property;

“Risk Management Inspector” means a Risk Management Inspector appointed by by-law of the City for the purpose of enforcing the Act;

“Risk Management Official” means a Risk Management Official appointed by by-law of the City for the purpose of enforcing the Act;

“Records Retention By-law” means a by-law of the City establishing retention

periods for records of the municipality;

“Risk Assessment” has the same meaning as defined in the Act;

“Risk Management Plan” has the same meaning as defined in the Act;

“Source Protection Plan” means the City of Greater Sudbury Source Protection Plan approved by the Minister in accordance with this Act;

“Supporting Documents” means any or all of forms, documents, plans, specifications, drawings, surveys, expert or technical reports, and other information;

“Verification Inspection” means an inspection and any subsequent inspection performed by a Risk Management Inspector to verify compliance with a warning or an order issued under the Act; and

“Zoning By-law” means a City By-law passed under the authority of section 34 of the *Planning Act*, R.S.O. 1990, c. P. 13.

PART 2: ENFORCEMENT

2. (1) Enforcement of the Act shall be the responsibility of the City and enforcement shall be performed by the Risk Management Official and Risk Management Inspector in accordance with Part IV of the Act.

(2) The Risk Management Official shall, where required by the Act, receive and consider:

- a. Applications for a review to determine whether a notice shall be issued pursuant to section 59 of the Act,
- b. Applications for establishment of and agreements to Risk Management Plans and amendments to Risk Management Plans,
- c. Applications for acceptances of Risk Assessments, and

- d. Applications to obtain consent for transfer of a Risk Management Plan and agreement.

PART 3: APPLICATIONS

General Requirements for Making Application

3. (1) Every Applicant, in addition to meeting all other application requirements set out in this By-law and the Act, shall:

- a. make application on the prescribed form in writing, or where applicable electronically, and such application shall include:
 - i. the legal description, municipal address, assessment roll number, and where appropriate, the unit number of the property where the Applicant is engaging or proposes to engage in an activity or land use and which forms the subject of the application;
 - ii. the name, address, email address and telephone number of the Applicant and the Property Owner, and if the Property Owner is not the Applicant, the Applicant's name, address and telephone number and the signed statement of the Property Owner consenting to the application;
 - iii. identify and describe the activity or land use in which the Applicant is engaging or proposes to engage and provide Supporting Documents which show the location where the Applicant is engaging or proposes to engage in that activity or land use;
 - iv. such additional Supporting Documents as may be required by the Risk Management Official;
 - v. contain the Applicant's declaration as to the truth of the contents of the

application; and

vi. payment of the prescribed fee, where applicable; and

b. submit the application to the Risk Management Official.

4. (1) Each application shall, unless otherwise specified by the Risk Management Official, be accompanied by one additional copy of the application in order for the application to be deemed as complete.

5. (1) Plans, specifications or drawings submitted by the Applicant as part of the application shall be legible and drawn to scale on paper or in an electronic medium approved by the Risk Management Official. If so required by the Risk Management Official, the plans, specifications or drawings shall be submitted in an electronic medium approved by the City.

(2) If a survey is required by the Risk Management Official, the survey required shall be a current survey certified by a registered Ontario Land Surveyor and a copy of the survey shall be filed with the Risk Management Official.

Application for Notice Issued Pursuant to Section 59 of the Act

6. (1) In addition to complying with sections 2, 3, 4 and 5, when applying for a notice issued pursuant to section 59 of the Act, the Applicant shall submit Supporting Documents that contain sufficient information to establish whether the activity or land use in which the Applicant is engaging or proposes to engage is subject to sections 57, 58 or 59 of the Act.

Application for Establishment of or Agreement to a Risk Management Plan or an Agreement to Amend a Risk Management Plan

7. (1) In addition to complying with sections 2, 3, 4 and 5, when applying for an

agreement to a Risk Management Plan, an agreement to an amendment to a Risk Management Plan, or establishment of a Risk Management Plan, the Applicant shall submit:

- (a) Supporting Documents that contain sufficient information for the Risk Management Official to agree to, agree to amend or establish a Risk Management Plan; and
- (b) where applicable, the proposed Risk Management Plan or amendment to the Risk Management Plan.

Application for Acceptance of Risk Assessment

8. (1) In addition to complying with sections 2, 3, 4 and 5, when applying for an acceptance of a Risk Assessment, the Applicant shall submit:
- (a) Supporting Documents that contain sufficient information for the Risk Management Official to accept the Risk Assessment; and
 - (b) the Risk Assessment.

Authority to Delete Requirement

9. (1) Where compliance with all of the requirements for an application is unnecessary or unreasonable, the Risk Management Official may, in cases where the Risk Management Official deems appropriate and permissible at law, authorize deletion of one or more of the requirements provided in this By-law provided that the intent and purpose of this By-law and the Act are maintained.

Incomplete Application

10. (1) Where the Risk Management Official determines that an application is incomplete, the Risk Management Official may:

(a) commence processing of the application if the Applicant acknowledges that the application is incomplete; or

(b) refuse to process the application.

11.(1) An application shall be deemed to be incomplete if:

(a) any of the prescribed information or documentation, including additional information or documentation or Supporting Documents, is not submitted to the Risk Management Official with the application; or

(b) the required fees have not been paid in full.

PART 4: ACCEPTANCES AND AGREEMENTS

12.(1) Where the Applicant has complied with this By-law and where authorized by the Act, the Risk Management Official may:

(a) execute a notice issued pursuant to section 59 of the Act,

(b) execute an agreement to a Risk Management Plan or amendment to a Risk Management Plan, or

(c) execute an acceptance of a Risk Assessment.

13.(1) Every agreement to a Risk Management Plan or agreement to an amendment to a Risk Management Plan shall include:

(a) as a term of the agreement, that the Applicant shall indemnify the City;

(b) the agreed upon Risk Management Plan or amendment to a Risk Management Plan as a schedule to the agreement;

(c) the signature of the Applicant or its duly authorized signing officers; and

(d) such additional terms, conditions or information as deemed appropriate by the Risk Management Official in the Risk Management Official's sole determination.

14.(1) Every acceptance of a Risk Assessment shall:

(a) include the Risk Assessment as a schedule to the acceptance letter.

PART 5: TERMINATION OR REVOCATION

15.(1) The Risk Management Official may, in writing, terminate an agreement to a Risk Management Plan or amendment to a Risk Management Plan or revoke acceptance of a Risk Assessment:

- (a) if it was issued on mistaken, false or incorrect information; or
- (b) if it was issued in error.

(2) Prior to terminating an agreement or revoking an acceptance, the Risk Management Official may serve a notice by personal service or registered mail on the Person with whom the agreement is made or the Person whose Risk Assessment was accepted at the last known address of the Person, and following a 30 day period from the date of service, the Risk Management Official may revoke the agreement or acceptance if the grounds for termination or revocation still exist without further notice.

(3) Within 30 days from the date of service of a notice under this Part, the Person with whom the agreement is made or the Person whose Risk Assessment was accepted may submit, with the prescribed fee, a request in writing that the Risk Management Official defer the termination or revocation by stating reasons why the agreement should not be terminated or the acceptance revoked. Having

regard to the Act or any applicable law, the Risk Management Official may, in writing, allow one deferral for a period of up to one year in the sole discretion of the Risk Management Official.

PART 6: TRANSFER OF RISK MANAGEMENT PLAN

16. (1) A person may submit, along with the prescribed fee, an application to the Risk Management Official to obtain consent to have a Risk Management Plan and agreement transferred to a different Person by completing and submitting the prescribed form and any Supporting Documents required by the Risk Management Official.

(2) A transfer shall not be effective until the Risk Management Official has provided consent for the transfer in writing.

PART 7: FEES

User Fees

17. (1) Fees shall be calculated in accordance with the amount set out in column B of Schedule "A" and the fees for activities conducted in accordance with this By-law and the Act shall be determined by the Risk Management Official.

(2) Where the fee is charged as an hourly rate, fees will be charged for the number of hours used to:

- (a) process and review the entire contents of an application, including reviewing Supporting Documents, time spent for the preparation and review of reports by Persons retained by the Risk Management Official and also includes time spent issuing a notice, agreement, or acceptance; and
- (b) conduct a Verification Inspection, including travel to and from inspections.

(3) Fees for matters not described in this By-law shall be a reasonable fee determined by the Risk Management Official.

(4) A decision of the Risk Management Official under this section is final.

Due and Payable

18. (1) Fees owing to the City are due and payable, where applicable, upon:

- (a) application for a notice issued pursuant to section 59 of the Act,
- (b) application for an agreement to a Risk Management Plan,
- (c) application for establishment of a Risk Management Plan,
- (c) application for an agreement to an amendment of a Risk Management Plan,
- (e) upon notice of the order establishing a Risk Management Plan under subsection 58(10) of the Act,
- (f) application for acceptance of a Risk Assessment,
- (g) application for a Transfer of Application,
- (h) completion of a Verification Inspection, and
- (i) upon commencement of the work caused to be done by the Risk Management Official pursuant to section 64 of the Act.

(2) Where the actual cost of the activities described in subsection (1) is not known by the Risk Management Official, the Risk Management Official will issue an estimate, the amount of which is due and payable as described in subsection (1).

(3) Where the actual cost of any of the activities described in subsection (1) is less than the amount estimated by the Risk Management Official, the Risk Management Official shall refund the amount of the difference in the amount paid by the Applicant and the actual cost to the Applicant.

(4) Where the actual cost of any of the activities described in subsection (1) is more than the amount estimated by the Risk Management Official, the amount of the difference between the amount paid by the Applicant and the actual cost is due and payable by the Applicant forthwith and the Risk Management Official may refuse to further process the application by the Applicant or conduct any further inspections until payment of the amount.

Refunds

19.(1) Subject to subsection (2), in the case of a withdrawal or abandonment of an application or in the event of the refusal of the City to agree to a Risk Management Plan or amendment to a Risk Management Plan, or to accept a Risk Assessment, and upon written request by the Applicant, the Risk Management Official shall determine the amount of paid fees that may be refunded to the Applicant, if any, and the decision of the Risk Management Official is final.

(2) In any event, no refund shall be made:

- (a) after a period ending 1 year after the application;
- (b) if the calculated refund for any individual application is less than \$110.00; or
- (c) for the withdrawal or abandonment of an application for a notice issued pursuant to section 59 of the Act.

Addition to Tax Roll

20.(1) If payment of any amount owing in accordance with this By-law is not made within thirty days of the date upon which the amount owing becomes due and payable, the City Treasurer may, in addition to any other remedy the City may

have at law, add the balance outstanding to the tax roll of property and collect the balance outstanding in the same manner as municipal taxes.

PART 8: ADMINISTRATION

Delegation

21.(1) Subject to the provisions of this By-law and the Act, the administration of this By-law is assigned to the Risk Management Official who is also delegated the authority to make all decisions required of the Risk Management Official under this By-law and to perform all administrative functions identified herein and those incidental to and necessary for the due administration of this By-law and for the enforcement of Part IV of the Act, including:

- (a) subject to the Act, the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M. 56, the Records Retention By-law and any other applicable legislation or by-law, decisions relating to the disposal, use and retention of records;
- (b) collection of personal information for the purpose of enforcing Part IV of the Act; and
- (c) prescribing, from time to time, forms for use by the Risk Management Official, Risk Management Inspectors and Persons making application under this Act.

(2) Subject to the provisions of this By-law and the Act, the Risk Management Official may delegate the performance of any one or more of the Risk Management Official's functions under this By-law to one or more City employees or contractors as the occasion requires and may impose conditions upon such delegation and may revoke any such delegation.

PART 9: OWNERSHIP OF RECORDS

22. (1) Records submitted to or required by the Risk Management Official or filed with the City in accordance with this By-law or the Act are the property of the City.

PART 10: MISCELLANEOUS

Interpretation

23. (1) Whenever this By-law refers to a natural person or thing with reference to gender or the gender neutral, the intention is to read the By-law with the gender applicable to the circumstances.
- (2) References to items in the plural include the singular, as applicable.
- (3) The words “include”, “including” and “includes” are not to be read as limiting the phrases or descriptions that precede them.
- (4) Headings are inserted for ease of reference only and are not to be used as interpretation aids.
- (5) Terms not defined in this by-law shall have the meanings ascribed to them in the Act.
- (6) Specific references to laws in the By-law are printed in italic font and are meant to refer to the current laws applicable at the time the By-law was enacted, as they are amended from time to time.
- (7) Any reference to periods of time, stated in numbers of days, shall be deemed applicable on the first business day after a weekend or statutory holiday if the expiration of the time period occurs on a weekend or statutory holiday.
24. (1) Whenever this By-law refers to an Act of the Province of Ontario or Canada, the reference includes reference to regulations under that Act.

Schedules

25. (1) Each of the following Schedules is incorporated into and forms a part of this By-law:

(a) Schedule "A": Prescribed Fees

Severability / Conflict

26. (1) If any section, subsection, part or parts of this By-law is declared by any court of law to be bad, illegal or *ultra vires*, such section, subsection, part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

Compliance with Other Laws

27. (1) Nothing in this By-law relieves any Person from complying with any provision of any federal or provincial legislation or any other by-law of the City.

(2) Where a provision of this by-law conflicts with the provisions of another by-law in force in the City of Greater Sudbury, the provision that establishes the higher standard to protect the health, safety and welfare of the public shall prevail.

Short Title

28. (1) This By-law shall be known as the "Source Protection By-law".

Effective Date

29. (1) This By-law shall come into force on April 1, 2015.

Expiry Date

30.(1) This By-law expires at the end of March 31, 2020.

Read and Passed In Open Council this 10th day of March, 2015

Mayor

Clerk

DRAFT

SCHEDULE “A”
PRESCRIBED FEES

1. (1) Fees

DESCRIPTION OF ACTIVITY FOR WHICH FEE IS PRESCRIBED	AMOUNT OF FEE
A review to determine whether a notice shall be issued pursuant to section 59 of the Act	\$35.00 per review
Agreement to a Risk Management Plan	\$55.00 per hour
Agreement to an Amendment to a Risk Management Plan	\$55.00 per hour
Establishment of a Risk Management Plan (whether upon application or in response to a failure to agree to a Risk Management Plan)	\$55.00 per hour
Acceptance of a Risk Assessment	\$55.00 per hour
Verification Inspection	\$55.00 per hour
Obtain Consent to Transfer a Risk Management Plan and Agreement	\$55.00 per hour