

ONTARIO REGULATION 242/05

COMPLIANCE AND ENFORCEMENT

Consolidation Period: From December 1, 2008 to the e-Laws currency date.

Last amendment: O. Reg. 328/08.

This Regulation is made in English only.

PART I

INTERPRETATION

Definitions

1. In this Regulation,
“conservation authority” means an authority established under section 3 of the Conservation Authorities Act;
“deficiency” means anything prescribed as a deficiency in section 1 of Ontario Regulation 172/03 (Definitions of “Deficiency” and “Municipal Drinking Water System”) made under the Act;
“enforcement action” means a prosecution under the Provincial Offences Act;
“enforcement branch” means the branch of the Ministry that is responsible for investigating and enforcing the Act and the regulations;
“existing drinking water health hazard” means, in respect of a drinking water system, a condition of the system or a condition associated with the system’s waters, including any thing found in the waters,
 (a) that is adversely affecting the health of the users of the system,
 (b) that is deterring or hindering the prevention or suppression of disease, or
 (c) that is endangering public health;
“municipal residential drinking water system” means a large municipal residential system or a small municipal residential system as defined in Ontario Regulation 170/03 (Drinking Water Systems) made under the Act. O. Reg. 242/05, s. 1.

PART II

MUNICIPAL RESIDENTIAL DRINKING WATER SYSTEMS

Inspections

2. (1) Subject to subsection (2), the Director shall ensure that all municipal residential drinking water systems are fully inspected through an annual cycle of inspections. O. Reg. 242/05, s. 2 (1).

(2) If a municipal residential drinking water system has been fully inspected on three consecutive occasions and no deficiency has been found, the Director may satisfy the requirement to conduct an inspection under subsection (1) through a focused inspection that only examines what the Director considers to be the key elements of the drinking water system if in the Director’s opinion it is appropriate to do so. O. Reg. 242/05, s. 2 (2).

(3) The Director shall ensure that at least one in every three inspections of a municipal residential drinking water system is unannounced. O. Reg. 242/05, s. 2 (3).

(4) Within 45 days of completing an inspection of a municipal residential drinking water system, the Director shall ensure that a report is sent to the following persons:

1. The owner of the drinking water system.
2. The operating authority, if any.
3. The medical officer of health.
4. The conservation authority that has authority over the area in which the drinking water system is situated or, where there is no conservation authority, the appropriate office of the Ministry of Natural Resources.

5. The Director appointed for the purposes of section 32 of the Act. O. Reg. 242/05, s. 2 (4).

(5) If an adverse test result or other problem is reported with respect to a municipal residential drinking water system in accordance with section 18 of the Act or Schedule 16 to Ontario Regulation 170/03 (Drinking Water Systems) made under the Act, the Director shall ensure that the Ministry responds to the

report in a means satisfactory to the Director and that the actions taken in response are recorded. O. Reg. 242/05, s. 2 (5).

Deficiencies and other contraventions

3. (1) Subject to subsection (2), in response to finding a deficiency during an inspection at a municipal residential drinking water system, the Director shall ensure that a mandatory action is taken by the Ministry within 14 days, unless the deficiency, in the opinion of the Director, represents an existing drinking water health hazard, in which case the Director shall ensure that a mandatory action is taken by the Ministry immediately. O. Reg. 242/05, s. 3 (1).

(2) If the Minister issues an order under section 108 of the Act with respect to a deficiency, the Director is not required to ensure that a mandatory action is taken. O. Reg. 242/05, s. 3 (2).

(3) In response to finding at a municipal residential drinking water system a contravention, other than a deficiency, with respect to any requirement under the Act or an approval, licence, permit or order, the Director or provincial officer shall consider the following factors in determining whether to take mandatory action:

1. The known, anticipated or potential health consequences of the contravention.
2. The known, anticipated or potential environmental consequences of the contravention.
3. Whether the contravention is ongoing.
4. Whether any person responsible for the contravention hindered or obstructed or provided false or misleading information to a provincial officer or Ministry employee.
5. The compliance history of any person responsible for the contravention, including,
 - i. previous convictions, and
 - ii. previous contraventions. O. Reg. 242/05, s. 3 (3).

(4) If a provincial officer's order or Director's order is issued with respect to a deficiency, the order shall include a requirement for the person to submit a compliance report no later than 60 days following the receipt of the order outlining how the owner has complied or is complying with the requirements of the order. O. Reg. 242/05, s. 3 (4).

(5) If a provincial officer's order or Director's order is issued with respect to a deficiency, and the order requires the person to install or alter any equipment to comply with Schedule 1, 2, 7, 8 or 9 to Ontario Regulation 170/03 (Drinking Water Systems) made under the Act, the order shall include a requirement that the person submit a report in which a professional engineer certifies that he or she has visited the drinking water system and that, in his or her opinion, all equipment required in order to comply with the order is being provided. O. Reg. 242/05, s. 3 (5).

(6) A deficiency with a municipal residential drinking water system is prescribed for the purposes of section 103 of the Act. O. Reg. 242/05, s. 3 (6).

(7) For the purposes of this section, "mandatory action" includes,

- (a) issuing or amending a provincial officer's order under section 105 or 106 of the Act,
- (b) issuing or amending a Director's order under section 109, 111, 112 or 114 of the Act,
- (c) issuing or amending a Director's notice under section 110 or 113 of the Act,
- (d) issuing a certificate of offence and an offence notice or summons under Part I of the Provincial Offences Act,
- (e) referring the matter to the enforcement branch, and
- (f) taking any other action that imposes a legal requirement on a person in response to the deficiency. O. Reg. 242/05, s. 3 (7).

PART III

LABORATORIES

Inspections

4. (1) Subject to subsection (2), the Director shall ensure that all licensed laboratories are fully inspected at least twice a year. O. Reg. 242/05, s. 4 (1).

(2) If a licensed laboratory has been inspected on three consecutive occasions and no infractions have been found, the Director may satisfy the requirement to conduct inspections under subsection (1) through a focused inspection that only examines what the Director considers to be the key elements of the laboratory if in the Director's opinion it is appropriate to do so. O. Reg. 242/05, s. 4 (2).

(3) The Director shall ensure that at least one in every two inspections of a licensed laboratory is unannounced. O. Reg. 242/05, s. 4 (3).

(4) Within 45 days of completing an inspection of a licensed laboratory, the Director shall ensure that a report is sent to the laboratory. O. Reg. 242/05, s. 4 (4).

Infractions and other contraventions

5. (1) In this section and section 4, “infraction” means, in respect of a laboratory,

(a) a contravention of any of subsection 18 (1) or (4), subsection 18.1 (1) or (3), subsection 63 (1) or section 67 or 69 of the Act, or

(b) a contravention of any of section 9, 10, 11, 12 or 13 of Ontario Regulation 248/03 (Drinking Water Testing Services) made under the Act. O. Reg. 242/05, s. 5 (1); O. Reg. 328/08, s. 1.

(2) In response to finding an infraction at a laboratory, the Director shall ensure that a mandatory action is taken by the Ministry within 14 days unless the infraction, in the opinion of the Director, represents an existing drinking water health hazard, in which case the Director shall ensure that a mandatory action is taken by the Ministry immediately. O. Reg. 242/05, s. 5 (2).

(3) If the Minister issues an order under section 108 of the Act with respect to an infraction, the Director is not required to ensure that a mandatory action is taken. O. Reg. 242/05, s. 5 (3).

(4) If a provincial officer finds on an inspection or search of a laboratory that there is an infraction, the Director shall direct a provincial officer to carry out a new inspection no later than 180 days after the last day of the inspection in which the infraction was found. O. Reg. 242/05, s. 5 (4).

(5) In response to finding a contravention, other than an infraction, at a laboratory with respect to any requirement under the Act or a licence or an order, the Director or a provincial officer shall consider the following factors in determining whether to take mandatory action:

1. The known, anticipated or potential health consequences of the contravention.
2. The known, anticipated or potential environmental consequences of the contravention.
3. Whether the contravention is ongoing.
4. Whether any person responsible for the contravention hindered or obstructed or provided

false or misleading information to a provincial officer or Ministry employee.

5. The compliance history of any person responsible for the contravention, including, in order of importance,

- i. previous convictions, and
- ii. previous contraventions. O. Reg. 242/05, s. 5 (5).

(6) If a provincial officer’s order or Director’s order is issued with respect to an infraction, the order shall include a requirement for the person to submit a compliance report within 60 days of receipt of the order outlining how the owner has complied with the requirements of the order. O. Reg. 242/05, s. 5 (6).

(7) For the purposes of this section, “mandatory action” includes,

- (a) issuing or amending a Director’s direction under section 76 of the Act,
- (b) issuing or amending a provincial officer’s order under section 105 or 106 of the Act,
- (c) issuing a certificate of offence and an offence notice or summons under Part I of the

Provincial Offences Act,

- (d) referring the matter to the enforcement branch, and

(e) taking any other action that imposes a legal requirement on a person in response to the infraction. O. Reg. 242/05, s. 5 (7).

PART IV

ENFORCEMENT

Investigations

6. (1) Where a matter is referred to the enforcement branch, the enforcement branch shall consider the factors set out in subsections 3 (3) and 5 (5) to determine whether an investigation is warranted. O. Reg. 242/05, s. 6 (1).

(2) Where the enforcement branch determines that an investigation is warranted, the branch shall conduct an investigation to determine if reasonable and probable grounds exist for taking enforcement action. O. Reg. 242/05, s. 6 (2).

(3) In addition to determining whether reasonable and probable grounds exist, the following factors shall be considered when deciding whether enforcement action should be undertaken:

1. Whether the contravention is continuing and has not been resolved since the matter was referred to the enforcement branch.

2. The deterrent effect of enforcement action on similar or other activities.

3. Whether enforcement action is necessary to maintain the integrity of the regulatory process.
4. Whether failure to pursue enforcement action would tend to bring the law into disrepute.
5. The factors described in subsections 3 (3) and 5 (5). O. Reg. 242/05, s. 6 (3).

Public enforcement right

7. (1) Any person resident in Ontario who believes that the Act, or a regulation or instrument under the Act has been contravened may submit an application to the Director for an investigation of the alleged contravention by the enforcement branch. O. Reg. 242/05, s. 7 (1).

(2) An application shall be in the form provided for the purpose by the Director and shall include,

- (a) the name and address of the applicants;
- (b) a statement of the nature of the alleged contravention;
- (c) the names and addresses of each person alleged to have been involved in the commission of the contravention, to the extent that this information is available to the applicant;
- (d) a summary of the evidence supporting the allegations of the applicant;
- (e) the names and addresses of each person who might be able to give evidence about the alleged contravention, together with a summary of the evidence they might give, to the extent that this information is available to the applicant;
- (f) a description of any document or other material that the applicant believes should be considered in the investigation; and

(g) a copy of any document referred to in clause (f), where reasonable. O. Reg. 242/05, s. 7 (2).

(3) An application under this section shall also include a statement by the applicant or, where an applicant is a corporation, by a Director or officer of the corporation, that he or she believes that the facts alleged in the application are true. O. Reg. 242/05, s. 7 (3).

Acknowledgement

8. The Director shall acknowledge receipt of the application in writing to the applicant within 20 days of receiving the application. O. Reg. 242/05, s. 8.

Duty to investigate

9. (1) The Director shall investigate all matters to the extent that the Director considers necessary in relation to a contravention alleged in an application. O. Reg. 242/05, s. 9 (1).

(2) Nothing in this section requires a Director to conduct an investigation in relation to a contravention alleged in an application if the Director considers that,

- (a) the application is frivolous or vexatious; or
- (b) the alleged contravention is not serious enough to warrant an investigation. O. Reg. 242/05, s. 9 (2).

(3) Nothing in this section requires a Director to duplicate an ongoing or completed investigation. O. Reg. 242/05, s. 9 (3).

Notice of decision not to investigate

10. (1) If the Director decides that an investigation is not required under section 9, the Director shall give notice of the decision, together with a brief statement of the reasons for the decision to the applicant. O. Reg. 242/05, s. 10 (1).

(2) If the Director decides that an investigation is not required under section 9 because there is an ongoing investigation in relation to the contravention alleged in the application, the Director shall indicate in the notice that the applicant will be notified of the outcome of that investigation. O. Reg. 242/05, s. 10 (2).

(3) A notice under subsection (1) shall be given within 60 days of receiving the application. O. Reg. 242/05, s. 10 (3).

Time required for investigation

11. (1) Within 120 days of receiving an application in respect of which no notice is given under section 10, the Director shall either complete the investigation or give the applicant a written estimate of the time required to complete it. O. Reg. 242/05, s. 11 (1).

(2) Within the time given in an estimate under subsection (1), the Director shall either complete the investigation or give the applicant a revised written estimate of the time required to complete it. O. Reg. 242/05, s. 11 (2).

(3) Subsection (2) applies to a revised estimate given under subsection (2) as if it were an estimate given under subsection (1). O. Reg. 242/05, s. 11 (3).

Notice of completion of investigation

12. (1) Within 30 days of completing an investigation, the Director shall give notice of the outcome of the investigation to the applicant. O. Reg. 242/05, s. 12 (1).

(2) The notice referred to in subsection (1) shall state what action, if any, the Director has taken or proposes to take as a result of the investigation. O. Reg. 242/05, s. 12 (2).

(3) Where the Director decided that an investigation was not required under section 9 because there was an ongoing investigation in relation to the contravention alleged in the application, the Director shall give notice of the outcome of that investigation to the applicant. O. Reg. 242/05, s. 12 (3).

No disclosure of personal information about applicants

13. The Director shall not disclose the name or address of the applicant or any other personal information about the applicant unless required by law. O. Reg. 242/05, s. 13.

Chief Inspector's annual report

14. The Chief Inspector shall provide a summary of the receipt, handling and disposition of applications under sections 7 to 13 in the annual report required under subsection 7 (2) of the Act. O. Reg. 242/05, s. 14.

15. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 242/05, s. 15.