



September 5, 2018

The Honourable Jonathan Wilkinson
Minister, Fisheries and Oceans Canada
200 Kent St
Station 15N100
Ottawa ON K1A 0E6

Re: Enforcement of Federal Fisheries Act deleterious substances provisions

Dear Minister Wilkinson

The Canadian Water and Wastewater Association (the “Association”) is the national voice of the water and wastewater sector. The Association’s primary role is to monitor federal legislation and national policies for relevance and impact on the municipal water and wastewater sector and advocate on its behalf. We are writing to express the Association’s ongoing concern about the interpretation and enforcement of the deleterious substance provisions of the Fisheries Act (the “Act”).

Section 36 (3) of the Act prohibits the release of a deleterious substance defined in section 34(1) as:

“(a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

(b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water”

We recognize that the Act is an important tool in the protection of fish habitat and populations and our industry is committed to ensuring the highest quality effluent and to address emergencies and accidental releases as quickly as possible. However, the Association’s ongoing concern is the lack of clarity around defining a deleterious substance. While the Wastewater Systems Effluent Regulations have given clarity regarding the substances regulated by the Regulation, there is still uncertainty around additional substances found in effluent and for drinking water utilities which also discharge to the environment.

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Recent issues have centered around the release of chlorinated water from drinking water systems into water bodies. Water utilities use chlorine for disinfection of drinking water and for the protection of public health. Provincial drinking water regulations generally mandate a minimum concentration of chlorine in treated and distributed drinking water. Without an amendment to the regulation, the release of any amount of chlorinated water at virtually any chlorine concentration (including that of a typical drinking water) can be considered to be a release of a deleterious substance under Section 36(3) of the Act, whether the release poses an actual risk of harm or not. Environment Canada compliance officers have been clear on this interpretation in warning letters issued to our members. There have been incidents where municipalities have been issued formal warning letters under the Act for even minor discharges. In these cases, the chlorine concentration in the released water was so low and/or the flow so small such that, after considering dilution in the receiving body posed, there was no actual risk to fish populations.

This leaves many of our members who operate drinking water systems vulnerable to warnings and even prosecutions under the Act, as the drinking water, which must be treated to meet health regulations is, by definition, a deleterious substance as a result of the mandatory treatment. Many utilities are investing in dechlorination systems and procedures based on the use of neutralizing chemicals for both planned discharges and inadvertent releases. These systems are costly and introduce other risks related to storage and handling of the neutralizing chemicals. Our concern is that at a time when municipal funds are stretched to the limit, a significant amount of resources may be spent on an issue that poses no genuine threat to fish populations. While we agree that water utilities should take reasonable measures to minimize the release of chlorinated water to water bodies, it is difficult and often impractical to eliminate each and every release from a water system. We believe there are diminishing returns in attempting to do so when the release of relatively small amounts of chlorinated water without alteration, poses no risk to fish populations and the cost of implementing treatment technology or methods is significant.

We respectfully ask Environment Canada and the Department of Fisheries to consider enacting a regulation specifying the circumstances under which chlorinated drinking water is a deleterious substance keeping in mind the ultimate goal – preventing actual risk of harm to fish populations. This would provide clarity for the members of the Association and enhanced consistency in enforcement.

Sincerely,

Kara Parisien
Manager, Communications
Canadian Water and Wastewater Association