


**Item No. 11.1.3**  
**Halifax Regional Council**  
**September 27, 2011**

**TO:** Mayor Kelly and Members of Halifax Regional Council

Original signed by 

**SUBMITTED BY:**

\_\_\_\_\_  
Richard Butts, Chief Administrative Officer

Original Signed by 

\_\_\_\_\_  
Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** September 16, 2011

**SUBJECT:** Five Year Review of the Environment Act

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**ORIGIN**

- Regional Council, August 9, 2011: Request for Mayor's Letter Re: Environment Act
- ESSC, August 4, 2011: Proposed Changes to the Environment Act

**RECOMMENDATION**

It is recommended that Halifax Regional Council forward this Report to the Department of Environment to act as the Halifax Regional Municipality's (HRM) comments for the 2011 Environment Act Review.

## **BACKGROUND**

The Province of Nova Scotia is mandated to review the Environment Act every five years. Information on the proposed revisions can be viewed at:

<http://www.gov.ns.ca/nse/dept/division.pcs.policy.environment.act.review.asp>

The original consultation timeline enabled less than one month for feedback. At the Regional Council on August 9, 2011, Council approved a motion that Mayor Kelly send a letter to the Minister of Environment requesting an extension.

A summary of their proposed changes are as follows:

### **Goal #1: Matching Resource Use to the Level of Risk to the Environment and Human Health**

- Change #1:** Add new sections to the Environment Act, granting Nova Scotia Environment (NSE) the authority to take a more flexible approach to regulation;
- Change #2:** Ensure the Environment Act permits the effective enforcement of new regulatory processes;
- Change #3:** Ensure we can effectively monitor compliance with new regulatory processes;
- Change #4:** Clarify potential wording issues in the Environment Act; and
- Change #5:** Increase the flexibility of approvals.

### **Goal #2: Using Resources More Efficiently and Effectively**

- Change #1:** Revise the definition of "adverse effect";
- Change #2:** Provide greater flexibility to draw on the expertise of independent experts and advisers;
- Change #3:** Require reviews of the Environment Act every ten years (instead of five);
- Change #4:** Update the timelines for processing approval applications;
- Change #5:** Streamline the process for issuing emergency orders; and
- Change #6:** Reduce the potential for redundancy in the collection of air emissions data.

### **Goal #3: Strengthening Protection for the Environment and Human Health**

- Change #1:** Enhance the duty to report spills or releases;
- Change #2:** Create an offence for failing to comply with Protected Water Areas regulations;
- Change #3:** Clarify inspectors' power to issue directives to require compliance;
- Change #4:** Clarify NSE's authority to seek enforcement measures;
- Change #5:** Update the authority to cancel or suspend approvals;
- Change #6:** Update the authority to amend approvals issued before 1995;
- Change #7:** Update the authority to enact a new set of contaminated sites regulations;
- Change #8:** Revise the definition of the term "Substance"; and
- Change #9:** Clarify the provisions relating to the appeal of orders.

### **Goal #4: Correcting Errors and Inconsistencies in the Environment Act**

#### **Administrative Penalties**

## **DISCUSSION**

Following the announcement of the Review, Regional Council requested that the Mayor send a letter to the Minister of Environment asking for an extension until November, 2011, to complete comments from Regional Council.

Following receipt of this letter, NSE staff met with a collection of HRM staff to discuss the preliminary comments and questions from HRM. HRM staff has been advised that in order to meet the fall legislature timeline, the November extension cannot be accommodated. As such, Staff offers the following points of comments that, upon Regional Council acceptance, will be submitted to NSE to form the HRM response.

### **General Comments**

- Generally, the four goals of the review are logical and laudable.
- HRM supports the focus for more efforts on auditing, inspection and enforcement and other options for regulating activities. If NSE seeks to focus resources on enforcement efforts, a “code of practice” should be a requirement, not voluntary and hence the powers to enforce and seek compliance are recognized.
- Increased flexibility in approval processes will improve efficiencies with multiple stakeholders.
- A ten year review is likely reasonable under the condition that municipalities are able to continue to advocate for changes and improvements collectively. However, that review should be more robust and consultative than this review.
- It should not be a requirement to educate before other punishments in the Act. Serious violations require appropriate measures.
- The ability to cancel or suspend approvals if there is the likelihood of an adverse effect is encouraged.
- Administrative penalties appear to be an efficient way to improve enforcement.
- With respect to the enhanced duty to report spills, it is understood that HRM’s outside staff will not be burdened with this requirement – which is intended to focus on professional consultants.

**Erosion and Sedimentation Control**

- HRM supports the inclusion of a more rigorous approach to erosion and sediment control management through a permit, license or code of practice approach.
- Impacts of erosion and sedimentation should be included in the updates to the definition of “substance”.

**Solid Waste**

- Respecting the issuance of licenses, we would request consideration of the Ministers authority to include regulation of “waste hauler”. Such a regulation of this activity would recognize the role that the hauler has to support diversion activities respecting EGSPA.
- In alignment with Goal #2, we propose the following:

Part IX of the Act respecting Waste-Resource Management, the Minister be provided the authority to support diversion activity with the addition of the following section of the Act:

“Waste Diversion”, the Minister shall encourage waste diversion by:

- (a) Establishing requirements for source separation of banned materials;
- (b) Establishing licenses for waste haulers ( in order to allow for accountability to be shared across the industry); and
- (c) Regulating waste diversion practices at construction and demolition sites {to include the requirement for material handling plans, be a requirement of a demolition permit}

Currently, material bans only apply to municipalities and there is no ability of seeking compliance for diversion away from landfill from any other stakeholders in achievement of the EGSPA goals. This section, as noted above, is seeking to recognize the other stakeholders (those parties that generate waste and those parties that transport waste), to provide the Minister with the authority to introduce regulations and to seek compliance from the waste generators as well as haulers, as participants in the fulfillment and flow in the diversion process.

- Revise Section 3 (a): Definition of municipality does not recognize HRM as a Regional Municipality. Recommend “municipality” be defined to mean a regional municipality, an incorporated town, a municipality of a county or district or village commissioners “
- To recognize a “solid waste by-law” means a by-law pursuant to Section 325 of the Municipal Government Act.

### **Concern of Service Delivery Gaps**

- The revision of the definition of “adverse effect” and the perceived direction of the department to narrow the scope of enforcement, is of concern to HRM.

Following discussion with NSE staff, it is understood that this tightening of the scope of environment enforcement is not a “download”, where municipalities are expected to pick up those gaps. However, the municipalities will face increased service delivery pressures to fill the gaps in legislation with enforcement. The Municipality will have a choice at a high level on how to deal with these service delivery gaps:

1. Create new Municipal By-Laws and the appropriate service delivery support required (officers, prosecutors, etc.); or
2. Direct residents to seek remedy through the courts as Private Nuisance issues.

Generally, the enforcement issues that are anticipated to fall within these gaps are the peculiar instances that often involve local councillors and a high selection of staff. NS Environment staff has committed, as part of these consultations, to further discuss the legislative gaps that exist between provincial and municipal environmental legislation and by-laws.

### **BUDGET IMPLICATIONS**

There are no immediate Budget Implications of this report.

The long term implications from a governmental gap in meeting community expectations created by the province narrowing its scope of enforcement and the municipalities requirement to fill that gap with new by-laws, enforcement, and prosecution, could very easily exceed \$100,000/per year for HRM. It is difficult to precisely scope the volume of work that would be transferred, but if it is of significance to the Province to eliminate, it is of enough substance for HRM to have financial concerns. Additional Enforcement Officers, the costs of enforcement (i.e. vehicles, overhead, etc.) plus the costs of increased work in Legal Services (whether requiring new Legal staff or outsourced work), can very easily exceed \$100,000.

Other elements of the proposed legislative changes do not appear to carry impacts to the HRM operating and project budgets.

### **FINANCIAL MANAGEMENT POLICIES/BUSINESS PLAN**

This report complies with the Municipality’s Multi-Year Financial Strategy, the approved Operating, Project and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Project and Operating reserves, as well as any relevant legislation.

**COMMUNITY ENGAGEMENT**

There was no Community Engagement performed in preparation of this report.

**ALTERNATIVES**

None identified.

**ATTACHMENTS**

Correspondence between the Mayor and the Minister of Environment

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A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

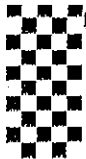
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Original Signed



## HALIFAX REGIONAL MUNICIPALITY

AUG 22 2011

S.G.

Halifax  
Regional  
Municipality

MUNICIPAL CLERK August 17, 2011

## MUNICIPAL CLERKS OFFICE

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Honourable Sterling Belliveau  
Minister of Environment  
Department of Environment  
5th Floor, 5151 Terminal Road  
P.O. Box 442  
Halifax, NS B3J 2P8

Dear Minister Belliveau

On its meeting of August 9, 2011, Halifax Regional Council asked that I write to you requesting an extension for comments for the review of the Environment Act.

The original review period of July 22 to August 22 is not sufficient for staff and Regional Council to review the proposed changes. Nor, does it provide time for Regional Council to recommend other opportunities for improvement of the Act. Particularly where this Review may be the last opportunity for ten years, Regional Council wishes a reasonable time period to review the recommended changes to assess the implications on our municipality and communities.

Of initial concern is the assessment of the budget implications on the municipality on potentially filling the service gap created by recommendation of reducing the enforcement of the Environment Act around "nuisance" issues.

In order to enable a reasonable timeframe for staff to prepare a report for Regional Council, and the appropriate Committees and Council to deliberate on comments, we request an extension to November 25, 2011.

On behalf of Halifax Regional Council, I look forward to a positive response to our request.

Respectfully, I remain

Peter Kelly  
Mayor

Peter Kelly  
Mayor

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