

Summary - Report of the Québec Ombudsman

Control and monitoring of private waterworks systems in Québec

In recent years, the Québec Ombudsman has received complaints from citizens concerning the private waterworks system supplying their home with drinking water. One of these citizens had just learned that his private waterworks system had been operating without a permit for 13 years, and that there had never been any oversight by the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (Department) of the rates payable by him to the operator, which worried him. This irregular situation also sparked fears concerning the quality of the water supplied by this system and used by his family all this time. Another citizen deplored the fact that the private waterworks system that supplied the household's drinking water had been under a boil-water advisory for 10 years and, so far, no solution had been found that would make the water used by his family safe to drink.

The problems observed when these complaints were analyzed prompted the Québec Ombudsman to look further into the question of the Department's control and monitoring of private waterworks systems serving the residential client population. Approximately 60,000 citizens get their drinking water from such systems. Control and monitoring of these waterworks systems by the Department is therefore important.

In Québec, in terms of drinking water distribution, the Department is responsible for ensuring compliance with obligations regarding the distribution of water for human consumption, notably by the people in charge of private waterworks systems.

Thus, any person who makes water intended for human consumption available to users must ensure that the water meets the standards of quality of drinking water prescribed by regulation. For systems serving 20 people or less, quality control is the responsibility of the people in charge (owner or operator) and of the users of the system (internal monitoring). For systems that serve more than 20 people, whether or not there are operating permits, water quality monitoring by an accredited laboratory is mandatory. In cases of fecal contamination, the results of the laboratory tests must be sent immediately to the Department, and the person in charge must issue users a boil-water advisory informing them that the water must not be ingested unless it has been boiled for at least one minute. The advisory must be re-issued until the situation returns to normal. In cases of contamination with other substances, the results must be transmitted as soon as possible during business hours. The person in charge must then notify the Minister and the regional public health directorate, which will specify what action is expected based on the risk associated with the instance of non-compliance by taking into account the extent of the exceedance, its length, and the presence of vulnerable populations. In some situations, the directorate will recommend issuing a do-not-drink-water advisory stating that the water must not be ingested under any circumstance.

Every operator of a waterworks system with at least one subscriber must also comply with certain quality standards for water distribution, unless the operator is not considered an "operator of a waterworks system" within the meaning of the *Environment Quality Act* (waterworks cooperatives or co-owned waterworks, for example, are not considered operators). Furthermore, a person must not operate a private waterworks system without an operating permit and must not bill rates to the users of this system (in other words, require payment in exchange for the water supply) without having submitted the rates for authorization to the Department beforehand. For the enforcement of these rules, the Department has numerous powers aimed at protection, notably, protection of the environment and of public health.

After receiving and analyzing the data provided by the Department and talking with its representatives and those of the Ministère de la Santé et des Services sociaux (MSSS), the Direction régionale de santé publique de la Capitale-Nationale, the Ministère des Affaires municipales et de l'Occupation du territoire (MAMOT), as well as the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation du Québec (MAPAQ), the Québec Ombudsman collated seven findings:

- ▶ private waterworks systems remain under boil-water or do-not-drink-water advisories for years before solutions enabling users to have access to drinking water can be implemented;
- ▶ there are no Department guidelines for the Department's civil servants regarding what they are to do when boil-water or do-not-drink-water advisories have been in effect for long periods. The upshot is a case-by-case approach that can vary depending on the regional directorates. Consequently, the timeframes for resolving these problems are highly variable;
- ▶ not all system users and those in charge of public waterworks systems are aware of their rights and obligations with regard to drinking water and distribution service quality and of operating permits and rate control;
- ▶ 332 private waterworks systems out of 526 (63%) currently operate without a permit even though some of them should have one (the Department does not know how many of these there are, and this is a problem);
- ▶ the Department does not ensure that all operators who must obtain a permit have done so;
- ▶ operators of public waterworks systems charge system users rates without holding a permit, which contravenes the *Environment Quality Act*;
- ▶ the Department does not systematically exercise the responsibilities incumbent on it pursuant to the *Environment Quality Act* with respect to controlling the rates required by operators of private waterworks systems, which leaves the door open for improper billing.

Given these findings, the Québec Ombudsman considers that the Department, vested with the crucial responsibility of controlling and monitoring private waterworks systems in Québec, must ensure that Quebecers have access to clean drinking water quickly further to a boil-water advisory, with, above all, a view to their health. The Department must be proactive and diligent in order to ensure that operators and users know their rights and obligations and so that it can better fulfill its responsibilities regarding the control and monitoring entrusted to it pursuant to the legal and regulatory framework in force.

Keeping in mind the importance, given the current conjuncture, of developing solutions that do not strain the public coffers unduly, the Québec Ombudsman has made the following nine recommendations to the Department as well as four recommendations specific to MSSS and MAMOT.

Recommendation concerning control of drinking water and distribution service quality

Whereas:

- The Department is obliged to monitor legal and regulatory compliance in matters of drinking water for private waterworks systems that serve more than 20 persons;
- There is no systematic control by the Department of the quality of water from private waterworks systems serving 20 persons or less, whose operators are not obliged to have the water sampled;
- The quality standards prescribed in the Act and the Regulation (section 45 of the *Environment Quality Act* and section 3 of the *Regulation respecting the quality of drinking water*) are stringent in terms of the quality of drinking water;
- Not all the rights and obligations regarding water and distribution service quality are known by the people in charge or by the users of these systems;
- In Québec there are currently 526 private waterworks systems that provide water to approximately 60,000 citizens;

The Québec Ombudsman recommends that the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques:

R-1 Establish a communication program aimed at informing the people in charge and the users of private waterworks systems about all of their respective responsibilities and rights regarding water and distribution service quality, particularly concerning systems whose water quality is not subject to the mandatory regular control prescribed in the Act.

Recommendations concerning obtaining of the operating permit

Whereas:

- Pursuant to section 32.1 of the *Environment Quality Act*, a person cannot operate a private waterworks system without an operating permit;
- Pursuant to section 39 of the *Environment Quality Act*, an operating permit is required in order for an operator to charge rates to users in exchange for the water supply;
- 332 of the 526 private waterworks systems (63% of known systems) currently operate without an operating permit and a certain number of them, that is, operators within the meaning of the Act, should have obtained one;
- The Department does not know how many waterworks systems are subject to the obligation to hold a permit;

- According to the Department, the issuance of a permit is the best time to inform operators about their obligations regarding drinking water distribution and the operation of a private waterworks system;
- It is appropriate to no longer tolerate the illegal situation whereby system operators without an operating permit charge rates to the users of their systems;

The Québec Ombudsman recommends that the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques:

R-2 Obtain the missing information needed to identify the systems subject to the obligation to obtain an operating permit;

R-3 Produce an action plan with a timeframe for the gradual compliance with the *Environment Quality Act* of all private waterworks systems currently operating without a permit and that require one.

Recommendations concerning the control of the rates charged in exchange for a water supply

Whereas:

- The distribution of drinking water is an essential service;
- Pursuant to section 32.9 of the *Environment Quality Act*, an operator of a waterworks system cannot establish or modify rates without first submitting them to the Department for authorization;
- Adequate control of the rates charged would make it possible to prevent improper billing for this essential service;
- The situation of non-compliance in which many private systems find themselves could give rise to legal suits;
- The operators and users of private waterworks systems do not seem to know their rights and obligations regarding rates;

The Québec Ombudsman recommends that the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques:

R-4 Ensure enforcement of the legal framework so that the prescribed rights and obligations regarding rates can be duly exercised and controlled and so that an effective monitoring procedure is implemented;

R-5 Establish a communication program aimed at informing the operators and users of private waterworks systems about all of their rights and obligations, as well as existing recourse concerning the rates required.

Recommendations concerning the situation of private waterworks systems under boil-water or do-not-drink-water advisories for a long period

Whereas:

- Pursuant to the *Regulation respecting the quality of drinking water*, any person who makes water intended for human consumption available to users must ensure that the water meets the standards of quality of drinking water;
- There are major health risks associated with ingesting water that is unfit to drink;
- Compliance with boil-water and do-not-drink-water advisories decreases with time;
- On August 6, 2014, 42 waterworks systems had been under a boil-water or do-not-drink-water advisory for more than six years;
- There are no Department guidelines regarding what it must do when boil-water or do-not-drink-water advisories have been in effect for long periods;

The Québec Ombudsman recommends that the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques:

- R-6 Produce an intervention framework for its action regarding waterworks systems under boil-water or do-not-drink-water advisories;**
- R-7 Involve all players whose contribution is considered relevant by the Department, in particular, the Ministère de la Santé et des Services sociaux and the Ministère des Affaires municipales et de l'Occupation du territoire, in the production process;**
- R-8 Ensure that this intervention framework is put in place and followed within all regional directorates, so that all noncompliance is dealt with promptly, rigorously and consistently;**
- R-9 By January 30, 2015, submit an action plan for following up on the recommendations contained herein and keep the Québec Ombudsman informed of whether the action plan is on schedule according to a timetable to be agreed upon.**

The Québec Ombudsman recommends that the Ministère de la Santé et des Services sociaux:

- R-10 Collaborate in the production and implementation of this intervention framework in keeping with its area of expertise and jurisdiction;**
- R-11 By January 30, 2015, transmit to the Québec Ombudsman its response to this recommendation.**

The Québec Ombudsman recommends that the Ministère des Affaires municipales et de l'Occupation du territoire:

- R-12 Collaborate in the production and implementation of this intervention framework in keeping with its area of expertise and jurisdiction;**
- R-13 By January 30, 2015, transmit to the Québec Ombudsman its response to this recommendation.**

Follow-up to Recommendations 9, 11 and 13:

The Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques sent the Québec Ombudsman its action plan. The Ministère de la Santé et des Services sociaux and the Ministère des Affaires municipales et de l'Occupation du territoire informed the Québec Ombudsman that they concurred with the recommendations that concerned them.