



Regulated Drinking Water Systems and the Building Code Act

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Overview

Definitions from the SDWA and BCA

General Principles

Scenarios

*NOT INTENDED TO PROVIDED LEGAL
ADVICE REGARDING DEVELOPMENT,
BUT FOR DISCUSSION PURPOSES
ONLY*

General Principle #1

How does one determine whether certain water pipes servicing a condominium development are plumbing or part of a drinking-water system, therefore requiring approval under the Building Code on the one hand, or is subject to the Safe Drinking Water Act, 2002 on the other?

Brief Conclusion:

The is no one rule that can be applied to a condominium to determine whether the piping servicing the condo is plumbing or whether it part of the piping is a drinking-water system. This determination must be made on a case-by-case basis after examining the description of the lands on which the condominium is built.

Definitions - SDWA

Drinking-water system means a system of works, excluding plumbing, that is established for the purpose of providing users of the system with drinking water and that includes,

- a. any thing used for the collection, production, treatment, storage, supply or distribution of water,
- b. any thing related to the management of residue from the treatment process or the management of the discharge of a substance into the natural environment from the treatment system, and
- c. a well or intake that serves as the source or entry point of raw water supply for the system.

“plumbing” means a system of works,

- (a) that comprise a “water system” for the purposes of the definition of “plumbing” in subsection 1 (1) of the Building Code Act, 1992, other than equipment installed in plumbing to treat water, and
- (b) that are connected to a drinking-water system;

Definitions – Building Code Act

The following definitions are taken from Building Code Act, 1992 and O. Reg. 350/06, (Building Code):

“Plumbing” means a drainage system, a venting system and a water system or part thereof.

“Water system” means a water service pipe, a private water supply, a water distribution system, a fire service main or any part of any of them.

“Water service pipe” means a pipe on the property that conveys potable water from a drinking water system or a private water supply to the inside of the building.

“Plumbing system” means a system of connected piping, fittings, valves, equipment, fixtures and appurtenances contained in plumbing.

“Private water supply” means piping that serves as a source of supply on the property to more than one water service pipe.

“Water distribution system” means an assembly of pipes, fittings, valves and appurtenances that convey potable water to water supply outlets, fixtures, plumbing appliances and devices from the water service pipe or from a point of entry treatment unit located in the building.

General Principle #2

These series of definitions indicate that piping that is on one property is plumbing even if it serves more than one building on the property. However, the private water supply can only convey water from a drinking-water system to one or more water service pipes that serve a building on the same property. If the piping also conveys water off the property and services a second property, that part of the system is no longer plumbing and should likely be considered to be a distribution system, a type of drinking-water system under the SDWA.

Definitions of Regulated Systems - SDWA

“Major residential development” means a development of six or more private residences on one or more properties;

“large municipal residential system” means a municipal drinking water system that serves a major residential development and serves more than 100 private residences;

“small municipal residential system” means a municipal drinking water system that serves a major residential development but serves fewer than 101 private residences

“non-municipal year-round residential system” means a non-municipal drinking water system, other than a non-municipal seasonal residential system, that serves,

- (a) a major residential development, or
- (b) a trailer park or campground that has more than five service connections;

Definition of Municipal Drinking Water System & Reg. 172/03

“municipal drinking-water system” means a drinking-water system or part of a drinking-water system,

- (a) that is owned by a municipality or by a municipal service board established under section 195 of the *Municipal Act, 2001*,
- (b) that is owned by a corporation established under section 203 of the *Municipal Act, 2001*,
- (c) from which a municipality obtains or will obtain water under the terms of a contract between the municipality and the owner of the system, or
- (d) that is in a prescribed class;

Reg. 172/03

A drinking-water system or part of a drinking-water system that serves a major residential development and is established after this Regulation comes into force under an agreement with a municipality pursuant to Part VI of the *Planning Act*, if the agreement provides that ownership of the system may be transferred to the municipality, a municipal service board established under section 195 of the *Municipal Act, 2001* or a corporation established under section 203 of the *Municipal Act, 2001*.

Prohibition of Development, Non-municipal systems, SDWA s.53

Prohibition, development

53. (1) No person shall construct a non-municipal drinking-water system that is intended to serve a major residential development within the geographic area of a municipality or extend an existing non-municipal drinking-water system within the geographic area of a municipality to serve a major residential development, unless the person obtains the written consent of the municipality to do so

(2) If a non-municipal drinking-water system crosses a municipal boundary and requires a consent for its construction or extension under subsection (1), a consent shall be obtained from each municipality in which the system is or will be located. 2002, c. 32, s. 53 (2).

Consent and Financial Assurance for Non-municipal Systems, s.53 SDWA

May Impose Condition

53(3) A municipality may give a written consent under subsection (1) subject to such conditions and limits as it considers necessary to prevent a deficiency in connection with the system.

Financial assurance

(4) If a municipality grants a consent mentioned in subsection (1), the municipality may, as a condition of granting the consent, require the owner of the system to provide cash, a

letter of credit from a bank, a bond or another form of financial assurance that the municipality

considers appropriate in any amount the municipality believes is necessary to ensure that the

municipality has sufficient funds to deal with any failure by the owner or a future owner to comply with an order issued under this Act,

(a) that relates to a deficiency with the system; or

(b) that arises after the system or part of the

Prohibition, Fragmentation, SDWA s. 52

“fragmentation” means,

- (a) in respect of a municipal drinking-water system, the replacement of all or part of the system with all or part of a non-municipal drinking-water system,

Prohibition, fragmentation

52(2) No person shall cause or permit the fragmentation of a non-municipal drinking water system that is a regulated non-municipal drinking-water system for the purposes of this subsection unless the person first obtains the written consent of the Director. 2002

The establishment of a non-municipal drinking water system under the SDWA or a water system under the BCA is not fragmentation, unless it is replacing part of a a municipal drinking water system

General Principle #3

Usually, a single property would be equivalent to a single lot or parcel of land as registered under either the Land Titles Act or Registry Act. However, determining whether piping is on a single “property” becomes more complicated when a condominium is involved.

A unit is not a separate property under the Condominium Act yet, at the same time, each unit in a Condominium is registered as a separate lot or parcel and assigned a property identifier number under the Land Titles Act. Therefore, a particular unit could be considered to be a separate “property” as that term is used in the Building Code.

Types of Condominiums

Standard freehold condominium: property divided into units and common elements. Units owned by individuals, common elements are shared by all the unit owners.

Common elements condominium: one or more properties composed of common elements only, no condo units. To own interests in a common elements condo, individuals must be owners of freehold properties within the same Land Registry Division.

Phased condominium: units and common elements are added in phases to the initial registered plan of condominium.

Vacant land condominium: land is divided into two types of legal parcels. The unit is a parcel of land on which a building or structure may be constructed and the common element is the parcel of land to accommodate common services and facilities intended to serve the units. The common services often include roads, water mains, sanitary and storm sewers, pools etc. The main difference from a standard condo is the units do not have to be built prior to registration. This type of condo is another way of subdividing land.

Leasehold condominium: allows for the development of common elements and units on leased land. The landowner retains ownership of the land. Leasehold unit owners may sell, rent and mortgage their unit

General Principle #4

Common element condominiums do not have any units. Therefore, if piping is located on land that is part of a common element condominium, the piping is most likely designed to serve the separate freehold properties that each have an interest in the condominium. In this case, this piping cannot service a single property and therefore is likely not plumbing.

General Principle #5

Phased condominiums and vacant land condominiums can be set up in a variety of different ways. There is no way to make a general rule regarding these types of condominiums. Each will have to be looked at on a case-by-case basis.

General Principle #6

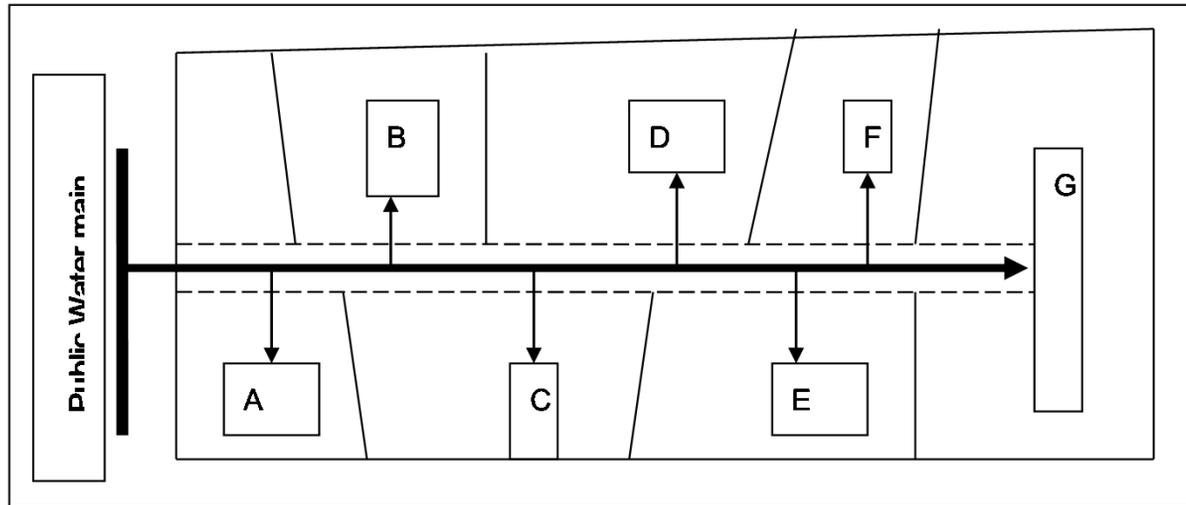
The piping servicing a standard freehold condominium or a leasehold condominium has the greatest potential to qualify as plumbing. Where one of these condominium developments is serviced by a single service connection (as defined in O. Reg. 170/03) from a drinking-water system and the remainder of the pipes are wholly contained on the original property as it was described prior to being converted to a condominium, and the property has not been otherwise divided into separate properties, then it is likely plumbing. However, the description registered (and any subsequent amendments) would have to be examined in each case to determine whether in fact the condominium meets these requirements.

General Principle #7

Read General Principle #1!

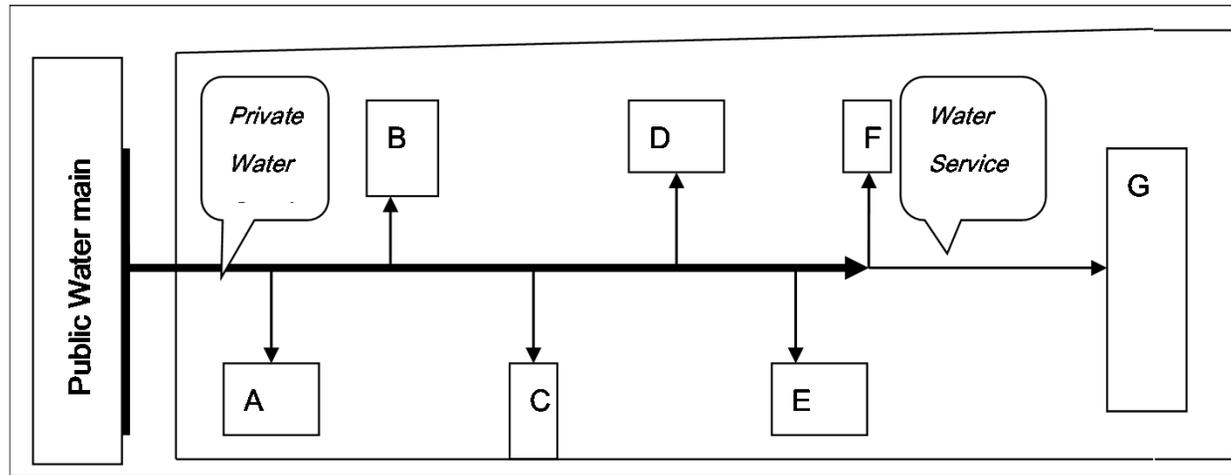
Municipal drinking water systems need to work with their development departments to ensure that condominium developments within their boundaries are capable of providing safe drinking water and to prevent problems in the municipal system

Example 1: Subdivision



ABCDEF G are private houses located within a subdivision developed by a private developer. See Figure 3 below. The developer has also constructed and initially owns the services for the subdivision. Under an agreement with the municipality, the legal ownership of the water mains will be transferred from the developer to the municipality after maintenance period under an agreement with a municipality pursuant to Part VI of the Planning Act. This is the traditional method of establishing and providing municipal servicing for subdivisions in Ontario.

Example 2: Town house complex / Gated community



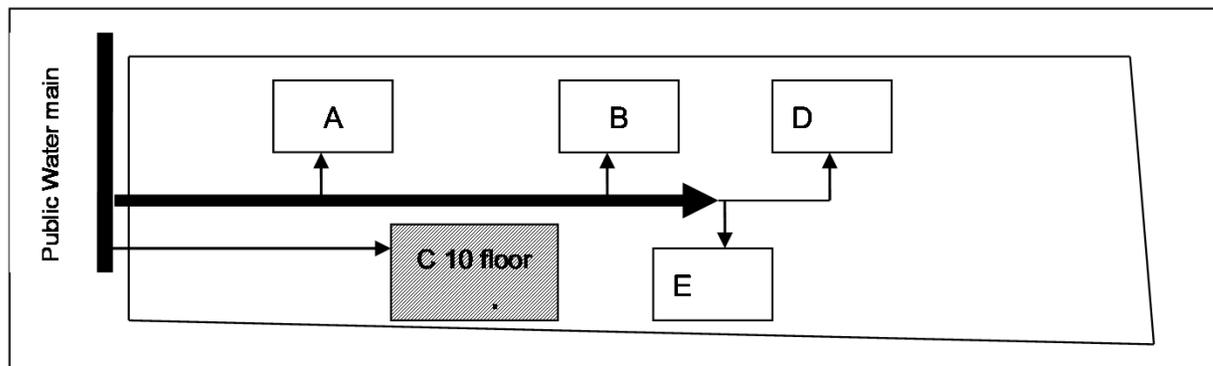
According to *Building Code Act* a pipe connecting a house is called “*water service pipe*”.

The pipe connecting the municipal service connection (solid line) up to the house F is called “*private water supply*”.

The *water service pipes* and the *private water supply* pipe are part of *plumbing* and not a DWS under the SDWA.

Example 3: Condominium Corporation

ABCDE are residential buildings located within one property belonging to a condominium corporation. The property is serviced by the City of Vaughn's public water main via two (2) municipal service connections at the property boundary, as shown below.



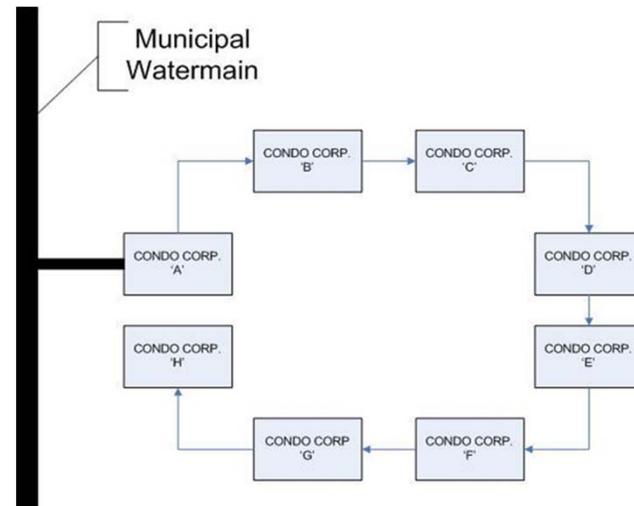
According to the *Building Code Act*:

A pipe connecting a building is a “*water service pipe*”. The pipe connecting the municipal service connection to more than one “*water service pipe*” is a “*private water supply*”.

The *water service pipes* and the *private water supply* are part of plumbing and are therefore not a DWS under SDWA.

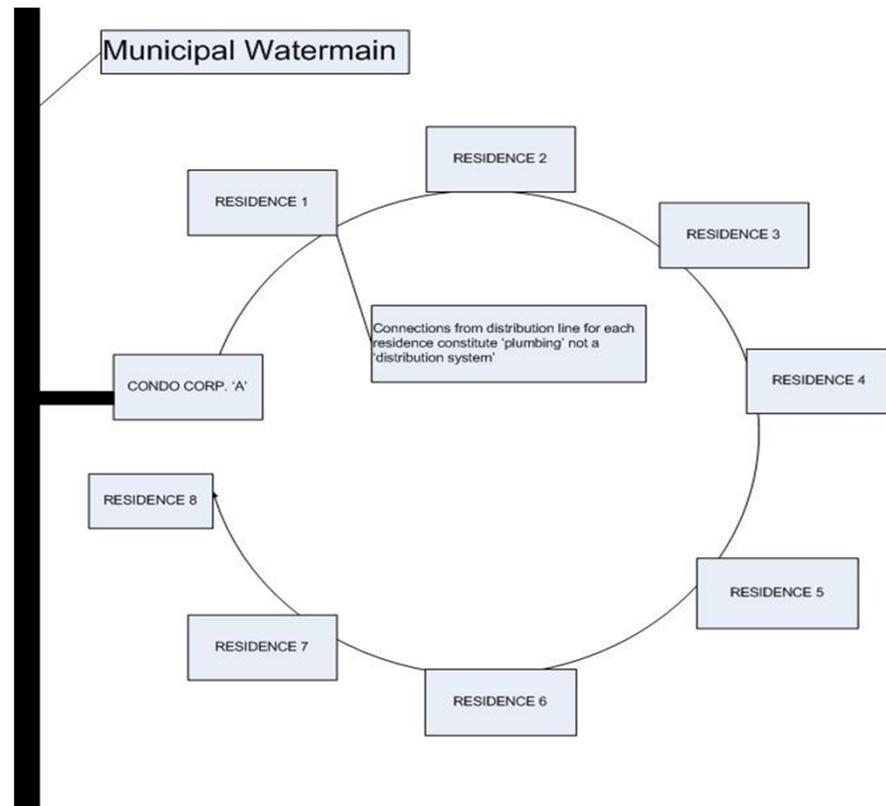
Example 4: Multiple Condominium Corporations

This diagram shows a single service connection from the municipal watermain supplying a condominium residence (Condo Corp. 'A'). The water supply then continues from Condo Corp. 'A' and connects to Condo Corp's B through H in series. In this case each one of the condo corporations is independent of the others. Under this scenario each condominium corporation (or box on the diagram) would have to be registered as it's own non-municipal year round residential drinking water system.

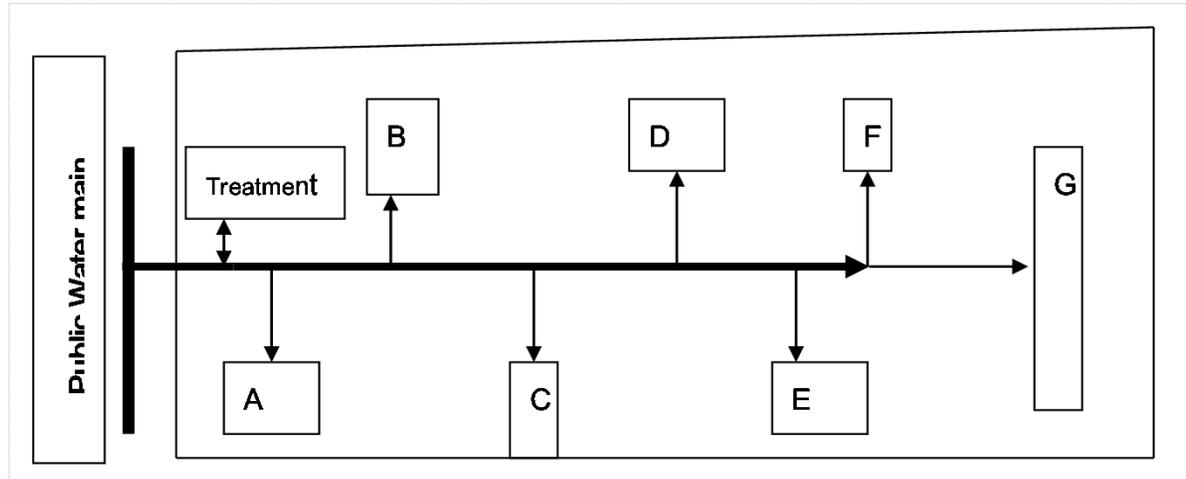


Example 4: Condominium Corporation, Multiple Properties

This diagram shows a single entity (Condo Corp. 'A') as the sole owner and operator of all of the water supply/service pipes and distribution system, however each residence is a home that sits on privately owned property (not commonly owned property as described in example 4). In this case because the number of service connections to each of the residences exceed five, Condo Corp. 'A' is required to be registered as a NMYRR DWS under the SDWA.



Example 5: Non- municipal year-round residential DWS with Re-Chlorination



ABCDEFGH are residential houses located within one property belonging to a private owner. The houses are served by the municipal water main via one service connection at the property boundary. The owner rents out the houses. See Figure 5 above.

As the property is located at the edge of the municipality, the owner re-chlorinates the water before it is distributed to his renters. This is considered as a *major residential development* since it has over six (6) **private residences**.

All works starting from the property line to the treatment building, treatment works and piping up to the external wall of the treatment building comprise a non- municipal year- round residential DWS treating and distributing drinking water to six (6) or more private residences (major residential development). The treatment facility is a DWS under SDWA and is subject to the Act and its regulations.

But, all piping starting from the treatment building that serves the individual houses is a “water system” consisting of “private water supply” and “water service pipe”. The “water system” is plumbing and is subject to the Building Code Act.

Municipal Concerns

Potential for water services to be designed below municipal standards

Potential for low chlorine

Potential for improper maintenance

Potential for backflow into municipal system

Significant size of these developments, yet some are unregulated

Solutions

Consult with your legal counsel and building department to ensure development takes place that protects your system

Can also control development so it is of a type regulated under Reg. 170

If it is a regulated system, can use municipal powers of consent and financial assurance

If it is regulated, can enter into Reg. 170 s.5 agreements to sample

~~If it is not regulated, can require backflow prevention~~

Questions

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