

# In the Absence of Regulations

The drinking water situation in First Nations communities.

By Sven Peterson and James Gibson

Many native communities have to treat very poor quality raw water sources. Without proper treatment processes, no amount of training and regulations can make these waters safe to drink.

When we turn on the tap, we assume the water has been treated properly and is safe to drink. We know someone is responsible for ensuring this is safe and if it causes illness, that they will be held accountable. We believe the money spent by the government results in better drinking water. But for many First Nations communities, this simply is not the case. A major reason is that, unlike in other communities, there are no legally enforceable regulations with clear standards and responsibilities that are monitored by an independent body.

In 2005 the Office of the Auditor General released a highly critical report of Indian and Northern Affairs Canada (INAC) and Health Canada's performance in ensuring that First Nations have safe drinking water. The report found that, "despite the hundreds of millions in federal funds invested, a significant proportion of drinking water systems in First Nations communities continue to deliver drinking water whose quality or safety is at risk." One action plan and two years later, INAC and Health Canada's own evaluation concluded that: "Water and wastewater systems on many First Nations communities continue to be inadequate and continue to pose undue health risks."

How is this possible in a country as wealthy as Canada?

Without comprehensive regulations, there are significant gaps in responsibility. In the current system, INAC funds and approves the design of water treatment plants while Health Canada assists in monitoring the quality of the drinking water. According to the federal government, the ultimate responsibility to provide drinking water rests with chief and council, yet First Nations don't make the key decisions or control the way resources are used. This raises a number of questions. For example, are First Nations communities responsible

for the numerous water treatment plants that have failed to provide safe drinking water, some of which could not do so from the first day they were opened?

While the disastrous impact is evident in many communities, we still don't have a clear picture of the scale of the problem. Health Canada reports there are 95 active drinking water advisories, affecting 15 per cent of First Nations reserves. INAC rates 85 community

water systems as having a high risk of threatening public health, either now or in the near future.

Furthermore, these numbers don't cover the substantial but unknown percentage of First Nations families that get their water from private wells or surface water sources. For example, Dayle Bomberry, director of public works for the Six Nations Council reported to the federal government's Expert Panel on Safe Drinking Water for First Nations in 2006 that 80 per cent of Six Nations' wells had been under a boil water

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advisory since 1995. Private wells are also not regulated by INAC and many other individual wells currently in use cannot meet drinking water guidelines without extensive treatment. Given the difficulties in regulating and ensuring these wells provide safe drinking water, it certainly calls into question an Apr. 15, 2008 statement by INAC's Minister, Chuck Strahl:

"It might make sense, rather than have



Organic foam generates as the wind hits the shore at Saddle Creek.

a water treatment plant, it may make sense depending on the area to have well water and septic systems, for example, or cisterns or other ways to make sure water is potable and safe.”

In the absence of legally enforceable standards, INAC has had to develop internal protocols to guide the treatment of drinking water in First Nations communities. Even here though, these protocols are often not followed. An internal evaluation by INAC found that less than half of First Nations communities monitored their water every week as required. Government agencies also do not meet the standards they set. The same evaluation found that Health Canada did not test almost half of communities for trihalomethanes (THMs) quarterly and 77 per cent were not tested for various other chemical contaminants annually as required. Nor did INAC annually inspect all water treatment systems as required. There have also been situations where Health Canada refused to call for a boil water advisory despite its own guidance for when to call a boil water advisory (loss of chlorine residuals in the distribution system, Saddle Lake Cree Nation, Alta.).

Finally, there is the issue of resources. Without sufficient resources, good regulations will simply create standards that cannot be met. Until there is enough funding for adequate treatment plants, regulations will have little impact.

After the auditor general released her report condemning the drinking water

situation in First Nations communities, and INAC’s and Health Canada’s handling of the situation, INAC called for the aforementioned expert panel to look into the situation further. The panel was tasked with reviewing the situation and making recommendations for regulatory options.

The report confirmed that the absence of binding regulations that clearly establish responsibilities and standards is a major obstacle to providing First Nations with safe drinking water. It also laid out a number of regulatory options for addressing these issues. Addressing this situation will be very difficult, requiring close collaboration with First Nations communities, and the political will on behalf of the government to implement an effective regulatory system.

In July 2008, INAC is scheduled to release a discussion paper that will propose a solution to the current regulatory vacuum. In the fall, it will hold a series of two-day consultation sessions throughout Canada to discuss the regulatory options. The outcome could address many of the current regulatory issues, but a solution is not guaranteed. Those concerned with First Nations drinking water should ask important questions about the outcome:

- Will the proposed legislation establish an effective independent regulator?
- Will there be legally enforceable standards?

- Will the regulator be able to ensure adequate funds are provided to build treatment plants that work?
- Will First Nations’ communities and the federal government be able to agree on a regulatory framework that defines responsibilities fairly and effectively?

These questions need to be answered in the coming months. Hopefully, this rare opportunity can be used to remedy a situation that is unacceptable for any Canadian. The stakes are high for communities across Canada. **W**



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