Municipal Liability Related to Extreme Weather

Note for remarks to
The Great Lakes and St. Lawrence Cities Initiative Conference
By Brian Kelly, Manager of Sustainability, Region of Durham
June 14, 2018
Future Climate in Durham
2040s compared to 2010s: SENES Study

- **Warmer**: 4°C warmer overall; 5.8°C average in winter; 2.6°C in summer; heat wave temps 7.1°C warmer; humidex readings up to 54°C

- **Wetter**: 16% more precipitation overall; 50% increase in one day max. rainfall; 100% increase in days with over 25 mm rainfall; 72% more rain in July and 79% more in Aug.; 217% more rain and 75% less snow in Feb.

- **Wilder**: more intense rainfall; 15% increase in pot’l for violent storms and 53% increase in pot’l for tornados

- Changes are locked in; typical for southern Ontario
Future Climate 2040s

• You’ve already ordered it
• There’s no returns (final sale)
• There’s no escaping delivery
• You will pay later
• It’s a package deal (no substitutions)
• Doesn’t come with a manual

• IPCC 5th AR: “Severe, Pervasive and Irreversible”
Background

- Started in late 2013 with the SENES Study of future climate conditions in Durham region
- 7 Expert Task Forces, 62 experts from the Region of Durham, 8 local municipalities, 5 Conservation Authorities and 3 electrical utilities
- Approved in principle by all local municipalities, CAs and electrical utilities in 2017
- 18 programs to be further jointly developed for approval and funding by responsible agencies
- DCCAP won FCM climate award in February 2018
- Recognized as “the gold standard”
Phase 1

Climate Projections

Impacts

Likelihood x Consequence

Output: Risks

Phase 2

Actions

Implementation Tools

Sectoral Programs

Output: Plan

Output: Risks
Legal Liability (3Ds x 2)

• Municipal decision makers (senior staff and elected officials) face civil liability for failing to anticipate changing weather and manage risks accordingly
• Protection against liability is the demonstration of due diligence
• data, decisions, dedication
• Don’t have to do everything possible (do what’s reasonable, make rational decisions)
• One additional benefit of an Adaptation Plan is to “keep the Mayor’s ass out of jail”
The 3D Effect

One of these:  
Can prevent this:

TOWARDS RESILIENCE
Durham Community Climate Adaptation Plan 2016
Municipalities Aren’t the Only Ones on the Hook

• Liability of fossil fuel industry for Climate Change adaptation costs born by municipalities is being pursued
• A possible source of funds for adaptation
• Examples: NYC, Bolder CO, CA coastline cities, Victoria BC
• A legal hint: “nuisance” for changing the composition of the atmosphere
Discussion and Questions