

PERMIT TO TAKE WATER PROGRAM

Guidelines and Procedures Manual

(Revised April 14, 1999)

*This edition of the manual was prepared to update the statutory references in the 1984 edition. No changes in substance have been made except those discussed in this paragraph. Therefore any statement of policy or law in the manual is subject to any changes that have taken place since 1984. This edition will form the basis of a more complete updating and revision of the manual which will be posted as a proposal on the EBR registry for comment before it is finalized.*

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## **i** **INTRODUCTION**

On March 29, 1961, an amendment to the Ontario Water Resources Commission Act was passed, authorizing the regulation of water takings. This legislation, with subsequent amendments, is now designated as Section 34 of the Ontario Water Resources Act (R.S.O., 1990).

Based on this legislation, a water management program for Ontario was developed. The purpose of this program is to control the taking of water by promoting its efficient development and beneficial use through a permit system which involves the regulation of withdrawals and the settlement of interference complaints.

In implementing this water management program, policies, guidelines and procedures have been developed to enforce the legislation. These range from procedural matters, developed by working-level staff to facilitate the routine administration of the programs, to decisions approved by senior management concerning significant water management policies.

This manual has been compiled to summarize the guidelines and procedures that have been developed since the program came into effect. It is designed to assist all Ministry staff in the maintenance of the permit program and in the investigation of water shortage complaints. The manual is designed to serve two basic purposes: to set out the details of the program, as it presently (1999) exists, for regional staff who administer it, and to provide a basis for general uniformity in the enforcement of the legislation throughout the various Ministry regions.

It should be emphasized that the existing guidelines and procedures do not represent a rigid, unchanging set of decisions. Rather, the process to date has been one in which changes and refinements have been introduced to meet changing circumstances. In cases where studies have indicated a weakness or an unforeseen result of existing procedures, these have generally resulted in a formulation of guidelines to deal more effectively with the case and with future cases of a similar nature.

This edition of the manual was prepared to update the statutory references in the 1984 edition. No changes in substance have been made except those discussed in this paragraph. Therefore any statement of policy or law in the manual is subject to any changes that have taken place since 1984. This edition will form the basis of a more complete updating and revision of the manual which will be posted as a proposal on the EBR registry for comment before it is finalized.

There have been many changes in the statute law and regulations as well as Ministry practices and procedures since 1984, therefore this manual can only be regarded as a preliminary guide. If there is a conflict between a statement in this manual and laws, or practices or policies made since 1984, the newer will prevail. It should also be noted that when originally prepared this manual was for the use of Ministry staff administering the permit to take water program and therefore places emphasis on practical issues which commonly came up as administrative questions and did not purport to deal exhaustively with all permit to take water questions.

In addition to the important changes to administrative process brought about by the Environmental Bill of Rights, persons dealing with permit to take water issues should be aware of two recent changes in the law and policy related to permits to take water. The Government of Ontario has entered into an

agreement with the governments of the Great Lakes States relating to the Great Lakes. A copy of this agreement, known as the Great Lakes Charter is found in Appendix II.

In addition the Water Taking and Transfer Regulation, O. Reg. 285/99, which prohibits water transfers out of a water basin as defined in the regulation and sets out matters for a Director to consider when dealing with permits to take water, has been made under the Ontario Water Resources Act. A copy of the regulation is found in Appendix III. The effects of these and other changes in law practice and policy which now apply will be integrated into the next major revision of this manual.

# 1 PERMIT TO TAKE WATER LEGISLATION AND ITS INTENT

## 1.1 Section 34 of the OWR Act

Section 34 of the Ontario Water Resources Act (R.S.O., 1990) reads as follows:

- (1) In this section, reference to the taking of water for use for domestic or farm purposes means the taking of water by any person other than a municipality or a company public utility for ordinary household purposes or for the watering of livestock, poultry, home gardens or lawns, but does not include the watering or irrigation of crops grown for sale.
- (2) In subsection (4), the reference to the taking of water for the watering of livestock or poultry does not include the taking of surface water into storage for the watering of livestock or poultry.
- (3) Despite any general or special Act or any regulation or order made thereunder and subject to subsection (5), no person shall take more than a total of 50,000 litres of water in a day,
  - (a) by means of a well or wells that are constructed or deepened after the 29th day of March, 1961; or
  - (b) by means of an inlet or inlets from a surface source of supply, where the inlet or inlets is or are installed in the source of supply or is or are enlarged after the 29th day of March, 1961; or
  - (c) by means of a structure or works constructed after the 29th day of March, 1961 for the diversion or storage of water; or
  - (d) by any combination of the means referred to in clauses (a), (b) and (c),without a permit issued by a Director.
- (4) Despite any general or special Act or any regulation or order made thereunder, where the taking of water for any purpose, other than the taking of water by any person except a municipality or company public utility for use for ordinary household purposes, or for the watering of livestock or poultry and other than the taking of water by any person for firefighting, interferes, in the opinion of a Director, with any public or private interest in any water, the Director may, by notice serve on or sent by registered mail to the person who is taking or is responsible for the taking of water that so interferes, prohibit the person from so taking water without a permit issued by the Director.
- (5) Subsection (3) does not apply to the taking of water by any person for use for domestic or farm purposes or for firefighting.
- (6) A Director may in his or her discretion issue, refuse to issue or cancel a permit, may impose such terms and conditions in issuing a permit as he or she considers proper and may alter the terms and conditions of a permit after it is issued.
- (7) Where the flowing or leaking of water from a well, or the diversion, flowing or release of

water from or by means of a hole or excavation made in the ground for any purpose other than the taking of water, interferes, in the opinion of a Director, with any public or private interest in any water, the Director may, by notice served on or sent to the person who constructed or made such well, hole or excavation or to the registered owner of the land in which such well, hole or excavation is located, require the person or owner to stop or regulate such flowing, leaking, diversion or release of water in such manner and within such time as the Director may direct, or require such person or owner to take such measures in relation to such flowing, leaking, diversion or release of water as the notice may require. R.S.O. 1980, c. 361, s. 20(1-7).

- (8) Every person who contravenes,  
(a) subsection (3) or (4);  
(b) a notice served on him, her or it or received by him, her or it or on his, her or its behalf under subsection (4) or (7); or  
(c) any of the terms and conditions of a permit issued by a Director,  
is guilty of an offence. R.S.O. 1990, c. O, 40 s. 34.

## **1.2 Relationship Between the Permit Legislation and Riparian Rights**

While Section 34 of the Ontario Water Resources Act is designed to manage the use of water resources in the province, it does not supersede common-law riparian rights to the use of water, but is an added control. A person must comply with both and would generally be subject to the more limiting provisions. Thus, while riparian rights are not superseded, they may be limited in some cases by the permit legislation. A brief summary of riparian rights is given in Appendix I.

In contrast to the riparian doctrine, which is part of the unwritten body of common law, Section 34 of the Ontario Water Resources Act is a statute, i.e., a written law of a legislative body. The purpose of Section 34 is to create an obligation by statute with penalty sanctions, while avoiding any interference with the property rights of riparian owners.

It is impossible within the scope of this manual to attempt to clarify the inter-relationship between riparian rights and the permit system. However, it is essential to keep in mind that the discretionary power of the Ministry in Section 34(6), for example, does not necessarily permit the Ministry to take whatever action it considers proper, if such action would contravene a person's riparian rights.

The riparian right/permit program inter-relationship is one of the basic Surface Water quantity management problems involved in enforcing Section 34. Efforts to avoid infringing on riparian rights have been inherent in the development of many of the water-permit policies and guidelines described elsewhere in this manual.

## **1.3 Definition of Taking of Water**

For purposes of this manual, "taking of water" is defined as the pumping or drawing of water from a well, lake, stream or other Surface Water body, or as the storage of water into a pond by means of works such as dams, diversion channels, gravity intakes, etc. Such operations are carried out with the main

intent to take water for specific consumptive or non-consumptive uses. In special cases involving environmentally sensitive issues, the emptying of a reservoir for maintenance or construction purposes can be classified as a taking of water.

Section 34 of the Ontario Water Resources Act does not specifically define the term "taking of water". The following specific water takings, categorized broadly by major water uses, provide a reference to the types of takings commonly authorized under permit, providing that the taking is in excess of 50,000 litres in a day, and the pump intakes or the works were installed or constructed after March 29, 1961.

- commercial** - service stations, motels, snow making, car washes, arenas, shopping plazas, laundromats, restaurants, cold storage sheds, fish hatcheries.
- industrial** - thermal and hydro-electric power generation, cheese factories, milk or food processing plants, factories, industrial cooling, air conditioning, steam boilers, hydrostatic testing of pipelines, mining and ore milling operations, gravel and crushed stone washing, dewatering of gravel pits, mines, quarries, construction excavations, road cuts, sewer and water main excavations.
- municipal** - water pumped and distributed to industrial, commercial and residential areas.
- public supply** - schools, hospitals, churches, public washrooms, campgrounds, picnic grounds, conservation areas, defense installations.
- irrigation** - the watering of crops grown for sale, i.e., tobacco, market garden vegetables, nursery stock, orchards, sod, irrigation of golf courses, pasture, greenhouses, public parks, institutional grounds.
- recreational** - pond construction for recreational uses, swimming, stocking fish, aesthetic purposes, or storage of water.
- heating and air conditioning** - water source heat pumps and air conditioning units.

Takings that are always exempt from the permit legislation, regardless of the date of construction or the amount of water taken, are as follows:

- takings by an individual for ordinary household purposes;
- takings for the watering of livestock or poultry;
- takings for fire fighting.

Certain takings normally do not require a permit, but depending on the circumstances, if these takings are liable to cause interference, they can be regulated under Section 34(4). Situations that are normally exempt from the permit legislation but to which the above applies, include:



- takings by means of works installed prior to March 29, 1961;
- takings of less than 50,000 litres in a day;
- takings of water into storage for subsequent use in watering poultry or livestock.

If a taking in this category interferes, in the opinion of a Director, with any public or private interest in any water, a Notice can be issued under Section 34(4) prohibiting the taking without a permit. The taking in question can then be handled in the same manner as takings normally requiring authorization by permit.

#### **1.4 Flowing, Leaking or Release of Water from a Well or Excavation (Subsection (7))**

In some instances, water-supply interference can occur through the unintended release of water as a result of construction activities such as road cuts, sewer or water main trenching, or from gravel pit excavations. In the process of constructing such excavations, a significant amount of ground water may flow out, leak out or be released, thereby causing a lowering of the water level in nearby wells. In such cases, the flowing, leaking or release of water occurs naturally under the force of gravity, as opposed to being mechanically pumped, or "taken". It is important to note that since there is no intent to take water for a specific use, as defined in the section entitled "Definition of Taking of Water", the permit requirements do not apply.

Interference problems of this nature are handled under subsection (7) of Section 34. This subsection allows the Ministry to take action without the use of the permit mechanism, but by the issuance of a Notice. The Notice, issued by a Ministry Director, requires that the flow, release, etc., be stopped or regulated, or that such measures be taken in relation to the flowing, release, etc., as the Notice may require. The Notice is discussed in the chapter entitled "Enforcement Procedures".

One of the intentions of Section 34(7) was to authorize the Director to require the restoration of an affected water supply or to compensate the party affected for costs incurred in restoring his supply. Although these requirements can be stipulated in a Notice issued under Section 34(7), it is important to realize that this option may not stand up in court, and that every endeavour should be made to achieve a resolution of the complaint prior to the stage of the issuance of a Notice.

#### **1.5 Interpretation of "Public or Private Interest in Water"**

Specified activities can be regulated under Sections 34(4) and 34(7) of the Ontario Water Resources Act if the action "interferes, in the opinion of the Director, with any public or private interest in any water". There is no specific definition of the underlined phrase above. It has been worded broadly in order to cover all water-related effects of water takings and its interpretation in each particular case is left to the Director's judgment.

For example, evidence of the total stoppage of flow for several days in a stream used by several downstream owners to water livestock, would clearly fall within the scope of this legislation. On the other hand, if a person temporarily caused a 50 per cent reduction in flow in a stream, thereby affecting the interests of one or two downstream owners who made no direct use of the stream water, legitimate questions arise as to whether issuance of a Notice under Section 34(4) would be appropriate.

## **1.6 Violations of Section 34**

Violations of Section 34 of the Ontario Water Resources Act can be divided into three main categories:

### **1.6.1 Taking water without a permit**

A person whose taking of water requires authorization by permit may persist in taking water without obtaining a Permit To Take Water. This is in violation of subsections (3) and (4).

### **1.6.2 Contravention of the terms and conditions of a permit**

A permittee may fail to comply or refuse to comply with the terms and conditions of his permit.

### **1.6.3 Contravention of a Notice under Section 34, subsection (4) or (7)**

A person may fail to comply with the terms of a Notice served under subsection (4), or a Notice under subsection (7).

## **2 ENFORCEMENT PROCEDURES**

### **2.1 General Usage**

The response of the Ministry to a contravention of Section 34 will depend on a variety of factors, including:

- frequency and duration of the violation;
- degree of enforcement required to reach a solution;
- magnitude of the problem in terms of its effect on other users or on the environment.

A range of responses can be employed by the Ministry, depending on the circumstances. These include written warnings, amendment or cancellation of a permit, refusal to issue a permit, issuance of a Notice, issuance of an on-the-spot ticket (Offence Notice) or legal prosecution.

For example, a person with a strong aversion to "government bureaucracy" might refuse to apply for a permit for a taking of 60,000 litres a day, for a few days in a year, from Lake Ontario for irrigation. It would generally be difficult to justify prosecution of such an individual in these circumstances if no interference is apparent. On the other hand, if a large commercial irrigator persisted in stopping streamflow and thus seriously interfered with downstream uses, prosecution might be the only method of resolving the problem.

A brief summary of each action which the Ministry can take, depending on the circumstances, is given below.

## **2.2 Written Warning**

A person whose activities have resulted in a contravention of the Act may be advised in writing that a repetition of the violation may result in legal action against him.

The Legal Services Branch has indicated that this correspondence should not give the impression of threatening the party through the use of such expressions as "... obligated to recommend prosecution..." since the courts frown on such action. It is preferable to use a phrase such as " .... liable to prosecution .... ."

## **2.3 Amendment of a Permit**

If conditions warrant, a permit could be amended to include a Special Condition stipulating what action should be taken to prevent or resolve an interference problem. For example, a Special Condition could be added to a permit requiring that a specified minimum downstream flow be maintained at all times. Amendments are commonly used to make minor changes in a permit at the permittee's request because of a change in the water-taking operation.

## **2.4 Cancellation of a Permit**

Several permits are cancelled routinely each year for clerical purposes, e.g., because a taking is discontinued or because there is a change in ownership of the property for which the permit is issued. However, a permit can be cancelled for just cause, e.g., failure to comply with the terms and conditions of the permit. Normally, however, such action would not be considered, because other action might be more appropriate in correcting the problem.

## **2.5 Refusal to Issue a Permit**

Refusal to issue a permit is one course of action which can be used to prevent interference; however, it has been used on only a few occasions to date. The normal practice is to issue a permit containing special terms and conditions designed to prevent or alleviate interference.

Refusal to issue would be a recommended course of action if there is strong evidence to conclude that a proposed taking will cause interference, and it is known that the applicant has an alternate source of water from which to take that will not cause interference. However, at the same time, it would be necessary to recommend the use of the alternate water source. As an example, if a construction company applied to take water from a small stream for road watering and dust control, and it was concluded that downstream interference might result, then the application could be refused and an alternate source (i.e., municipal source, gravel pit, lake, etc.) recommended. When an application is refused, the applicant is advised by letter from the Director, outlining the reasons for his refusal to issue a permit. A Notice of Refusal is also included with the letter, entitling the applicant to appeal the Ministry's decision.

## **2.6 Issuance of a Notice under Section 34(4) or 34(7)**

To resolve a water-supply interference problem caused by an exempted taking of water, or by a release of water from works constructed for any purpose other than a taking of water, a Notice may be issued

under Section 34(4) or 34(7) respectively, of the Ontario Water Resources Act. In serving the Notice, a letter concerning the Notice, the intention to issue it, and the reasons, is prepared in co-operation with Legal Services Branch, and is forwarded by registered mail or is delivered in person to the party causing the interference. As required under Section 100 of the Ontario Water Resources Act, the party is advised that the Notice will be issued 15 days after receipt of the intent to issue and that he may make submission to the Director prior to issuance of the Notice.

If a submission is not made or if the problem is not resolved, the Notice may be served subsequently by the Director, in accordance with the Act. The party causing the interference may appeal to the Director and the Environmental Appeal Board within 15 days after service of the Notice and require a hearing by the Environmental Appeal Board.

The Notice may be placed in effect after final disposition of an appeal or if the time for making an appeal has passed. Thus, if the violation continues, prosecution proceedings may be considered under Section 34(8) of the Ontario Water Resources Act.

Further details concerning the use of the Notice as associated with the Permit To Take Water mechanism are given in the following section.

## **2.7** **Procedures under Section 100 Relating to Serving Notice**

Section 100 of the Ontario Water Resources Act provides an appeal mechanism to a person affected by such actions as the issuance, amendment, cancellation or refusal of a permit, or the alteration of the terms and conditions of a permit. In each case, the Director must issue a Notice of the action, together with written reasons for the action. The recipient may, within 15 days, require a hearing by the Environmental Appeal Board. The following example will illustrate the appeal procedures.

A Permit To Take Water is issued containing terms and conditions relating to the taking. The permit is accompanied by a written Notice advising the permittee of his right of appeal, within fifteen days of the date of receipt of the Notice, under Section 100 of the Ontario Water Resources Act. If the permittee wishes to appeal the terms and conditions, the permittee must submit a Notice of Appeal to the Director and to the Environmental Appeal Board.

The Environmental Appeal Board then sets a hearing date, listens to arguments of the permittee and of the Director, and may then confirm, alter or revoke the Notice.

## **2.8** **Offence Notices Under the *Provincial Offences Act***

A more direct method of dealing with contravention of the Ontario Water Resources Act is by the issuance of a ticket (or an Offence Notice) under the Provincial Offences Act. This program went into effect in 1982, and applies to specific sections and regulations under the Environmental Protection Act, the Ontario Water Resources Act and the Pesticides Act.

Specifically, five types of contravention of Section 34 of the Ontario Water Resources Act can be handled under the Provincial Offences Act, each liable to a fine of \$305.00 (plus the Victim Fine Surcharge). These are:

- 1) taking more than 50,000 litres of water in a day without a permit (subsection (3));
- 2) failure to comply with a Notice to stop taking water without a permit (subsection (4));
- 3) failure to comply with a Notice to control the flowing of water (subsection (7));
- 4) failure to comply with a term of a permit (subsection (8)); and
- 5) failure to comply with a condition of a permit (subsection (8)).

The specific intentions of enforcement procedures under the Provincial Offences Act, as opposed to the other enforcement mechanisms outlined earlier in this chapter are, to provide an efficient and more direct prosecution alternative for dealing with water taking violations, to reduce the time period between the date of the offence and prosecution and to allow regional staff more direct participation and responsibility in the enforcement of the Ministry's legislation.

Issuance of the tickets (Offence Notices) is restricted to specially-designated Provincial Officers, as well as trained staff of the Investigations and Enforcement Branch (or its successor). Detailed procedures on the issuance of tickets are outlined in Section A of the Provincial Offences Act ticketing booklet. The same booklet lists the short wording for each offence and the related Act number, section number, or Regulation number, all of which must be included on each ticket.

Ticket issuance under the Provincial Offences Act should be used only under special circumstances where a flagrant violation of Section 34 is occurring. Issuance of a ticket should be done with careful preparation, execution and documentation, in the event that subsequent court prosecution is necessary. Use of the Provincial Offences Act may assist in a more prompt resolution of interference problems if properly administered, but could lead to legal entanglements if improperly applied.

## **2.9** **Prosecution**

Any person who takes water without a permit when one is required, contravenes the terms and conditions of a permit, or contravenes a Notice served under subsection (4) or (7) of Section 34, is guilty of an offence, and is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$10,000 on a first conviction and not more than \$25,000 on each subsequent conviction (plus the Victim Fine Surcharge).

A corporation that takes water without a permit when one is required, contravenes the terms and conditions of a permit, or contravenes a Notice served under subsection (4) or (7) of Section 34, is guilty of an offence, and is liable on conviction for each day or part of a day on which the offence occurs or continues to a fine of not more than \$25,000 on a first conviction and not more than \$100,000 on each subsequent conviction (plus the Victim Fine Surcharge). Prosecution is considered if a contravention continues after written warning has been given to the offending party. The prosecution procedure and the collection of evidence, etc. must be closely co-ordinated with the Legal Services Branch.

### **3 WATER SUPPLY INTERFERENCE GUIDELINES**

#### **3.1 Introduction**

The main purpose of the permit legislation is to control the taking of water to promote its efficient development and beneficial use. The permit mechanism, with its associated General Terms and Conditions, is utilized to prevent water-supply interference problems where possible, and to resolve them when this is not the case.

In any area where there is insufficient water to meet established and new uses, an evaluation of the relative importance of the various uses is necessary before the issuance of permits. The taking of water for domestic, farm purposes and fire protection are considered the most important uses, generally followed by takings for municipal water supply, then the taking of water for industrial, commercial and irrigation purposes. The concepts of water management for pollution control, flood control, recreation and biological preservation are also important considerations when dealing with the review of permit applications and the assignment of Special Conditions where required.

##### **3.1.1 Preventing Serious Interference**

In cases where interference can be predicted before the issuance of a permit, based on information obtained from prior testing (such as found in a consultant's report), the party proposing the taking can be required to take preventive action such as modifying pumping systems or deepening wells that are likely to be interfered with by long-term production pumping. These requirements can be set out in the terms and conditions of the permit.

If data are insufficient to predict the extent and amount of interference but the potential for interference exists, a Special Condition can be included in the permit requiring the permittee to measure water levels in observation wells and submit the data for analysis to the Ministry. Furthermore, the Special Condition could stipulate minimum observation well levels at which the taking would be cut back in order to alleviate interference. Such contingency plans should be worked out before hand with the permittee to ensure his understanding of his obligations under the permit program and his continued co-operation with Ministry objectives.

##### **3.1.2 Prompt Resolution of Complaints**

Ideally, the permit program should be utilized to swiftly resolve the interference problems where critical situations affecting fish life or livestock can result from a short-term stoppage of flow. If the problem is reported immediately, if a staff member can reach the scene promptly, if he can deal with the problem "on-the-spot", and if the parties are prepared to listen to reason, then the ideal can be achieved.

Unfortunately, this is seldom the case, and commonly prompt solutions of interference problems cannot be obtained through the permit program. In addition to the points listed above, gathering sufficient evidence may be time consuming, as can obtaining authorizing signatures. If a new permit or a Notice is involved, the recipient can appeal the terms and conditions to the Environmental Appeal Board. The issuance of a "ticket" under the Provincial Offences Act may hasten a solution to the complaint investigation, as long as the circumstances are suitable for employing this method.

### **3.2 Groundwater Interference Guidelines**

With respect to groundwater takings, the permit program is designed to provide protection to prior users of the groundwater resource, a protection generally lacking under common law. Priority of time is therefore a basic consideration in assessing groundwater interference problems. The adequacy of the affected supply prior to interference is also a basic consideration.

Taken together, these two factors mean that if a new groundwater taking under permit interferes with another water supply obtained from an adequate source which was in use prior to the date of issuance of the permit, the permittee is required to restore the supply or reduce the taking so as to eliminate the interference.

In applying this basic concept to the wide variety of groundwater interference complaints which have been investigated, it became necessary to develop a series of guidelines and procedures applicable to specific types of interference problems. These are dealt with in the following paragraphs.

#### **3.2.1 Investigation of Groundwater Interference**

When investigating a complaint of groundwater interference, it is advisable to have the complainant present during the investigation to provide access to the well and the history of the water supply. If a well cannot be measured and the information is needed to determine the validity of the complaint, it is the well owner's responsibility to make the well accessible. If the complaint is later deemed to be valid, the costs incurred in exposing the well may be itemized by the complainant on the Affidavit of Claim (see figure 1) as a justifiable expense to be borne by the party responsible for the interference.

Complainants should be advised that it is their responsibility to restore their own water supplies, as quite often the results of the complaint investigation are not known until a later date, and if the complaint were deemed invalid then restoration would have to be carried out by the complainant just the same. If restoration has already been carried out by the well owner, he should be advised to keep receipts for expenses incurred in water-supply restoration. If interference is conclusively demonstrated, costs directly associated with water-supply restoration can be considered for reimbursement from the permittee, at the Ministry's recommendation.

Normally there are three courses of corrective action available to the permittee. He may:

- 1) reduce the rate of taking so as to eliminate the interference; pending recovery of the affected water supply, the permittee is required to make satisfactory arrangements for provision of a temporary water supply;
- 2) arrange for the necessary corrective action to be taken, at his own expense, for those persons still experiencing shortages;
- 3) agree that those persons still experiencing shortages should arrange for the necessary corrective action and reimburse them for the costs incurred.

Parties causing short-term interference with existing well supplies are required to make available a temporary supply of water to those experiencing interference. This applies to interference resulting from such operations as pumping tests, excavation dewatering and other short-term water takings.

### **3.2.2 Affidavit of Claim**

Each complainant is advised individually by letter of the findings in his case. If a person has taken action on his own behalf and incurred expenses in restoring his water supply, he is provided with an Affidavit of Claim form (see figure 1) to complete, notarize and submit to the Ministry, together with receipted invoices for review and scrutiny. Only out-of-pocket expenses directly associated with water-supply restoration are recognized as justified and considered for compensation. This would not include such items as personal labour, legal fees, interest on money, charges for inconvenience or for property devaluation.

The submission of an Affidavit of Claim and receipt of reimbursement does not constitute a final release. Should water levels continue to lower as a result of interference, additional work may still be required to restore affected water supplies.

### **3.2.3 Interference with Flowing Wells**

The free flow from a flowing well is not protected under existing policy. If it were, it would curtail the beneficial use of ground water simply to preserve the flowing condition of a well. The development of as much water as possible from an aquifer within the limits of its perennial recharge is recognized as good water management practice. It allows for the maximum use of a renewable resource for beneficial uses for as many people as possible.

In the event of interference with a flowing well supply, restoration of the supply is required, provided that the well was equipped with at least a shallow-lift pump having an adequate intake located in the portion of the well that is in direct hydraulic connection with the water-bearing formation. Further, the well had to be capable of meeting the daily water demands on a continuous basis by a combination of its storage, water-yielding and pumping capacities, prior to interference.

An improved spring used as a water supply is considered as a well. It should be deepened when the flow is interfered with, but the owner should be expected to supply a pump.

If interference is caused by a flowing well the action taken would depend on the circumstances. In a case where a complaint of interference is against a flowing well used for domestic or farm purposes, no protection is provided, as the taking is exempt from the permit legislation. The owner of the flowing well can be requested to co-operate and control the flow of water from the well to reduce interference. Under Regulation 903 s. 11 (7) of the Ontario Water Resources Act, the well contractor who constructs a flowing well is required to install a device that is capable of controlling the discharge of water from within the well casing.

If the flow exceeds 50,000 litres per day and the water is put to a specific use, it can be considered a taking of water requiring a permit and dealt with as a groundwater interference problem. If the water is not put to a specific use (e.g., the water flows to waste) it does not constitute a taking under the permit legislation.



### **3.2.4 High Groundwater Levels**

In areas of the province where long-term high capacity pumping has stopped (e.g., abandoned municipal well fields), groundwater levels have recovered to their pre-development levels. In many such areas urbanization has occurred during the period when groundwater levels were depressed. The ensuing problems related to rises in the groundwater table include spring discharges at the ground surface, erosion caused by overland flow, basement flooding of buildings, and foundation instability of buildings and structures. Likewise, the return of flowing well conditions can cause water management problems related to free flow at the ground surface, flooding, erosion and well construction instability.

There is no provision within the Ontario Water Resources Act or the permit program to deal with such problems. The Ministry can provide technical advice in such cases, but is unable to take or recommend legal action.

### **3.2.5 Groundwater Withdrawals Affecting Streamflow**

The taking of water from high-capacity wells can cause interference with streamflow by reducing baseflow and stopping the flow of water from natural springs. Ministry policy requires the maintenance of sufficient streamflow where downstream water uses are seriously interfered with. Restoration is normally carried out by piping water from the wells and discharging it into the watercourse to meet established downstream water uses. It may also be accomplished by reducing the rate of taking at the well.

### **3.2.6 Water Supply Restoration in a Water-Serviced Area**

The practice of restoration of water supplies in a water-serviced area was established as a policy by the OWRC in 1968. The restoration of a water supply, whether it is private, commercial or industrial, is not required in an area where a property has community water service available, if the interference is caused by the construction or operation of works designed and operated for the improvement and service of the community. An area would be considered serviced where a water main exists for the purpose of servicing a property, but an area would not be considered serviced where a water main has not yet been constructed, or where only a feeder line, not intended for service connections, exists.

In other words, when municipal projects built for the benefit of the community cause interference with private well supplies within a water-serviced area, the affected parties should connect to and use the community water supply system when one is available. The normal costs of connection and ensuing service should be borne by the affected parties. Temporary water supplies should be made available by the party causing interference until a permanent connection is made, provided that this is accomplished within a reasonable length of time.

Works considered as community improvements would include municipal wells, sewers, water mains, roads, bridges and those items built by civil agencies for urban development or similar works carried out under municipal take-over agreements. Where interference in a water-serviced area is caused by an operation not associated with a community improvement, restoration of a water supply would then be recommended. Those located outside the water-serviced area still continue to receive water supply protection against interference.

To: Ministry of the Environment

In the matter of \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and in the matter of a claim for compensation due  
to well interference.

### AFFIDAVIT OF CLAIM

I, \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Mailing Address)

make oath and say as follows:

1. I am property owner (tenant) of land in Lot \_\_\_\_\_, Concession \_\_\_\_\_  
in the \_\_\_\_\_ of \_\_\_\_\_  
where I believe there has been interference with water levels in my well(s) by reason of the  
operation of \_\_\_\_\_ by \_\_\_\_\_.
  
2. That the following is a correct and complete statement of my claim for compensation against  
\_\_\_\_\_ for my cost of restoring the  
water supply as a result of the said interference so far as such costs are presently known to me:
  - i) Description of interference problem including depths to the water from the land surface and  
dates on which measurements were taken.
  - ii) Statement of expense incurred to restore water. Attach invoices for work done. If invoices  
are not available, give the name(s) of the contractor(s) or person(s) who did the work.
  - iii) Statement of action that is required to restore satisfactory water supply. Give the name(s) of  
any person(s) approached to do this work with an estimate of the costs.

Sworn before me at the \_\_\_\_\_  
of \_\_\_\_\_  
in the Province of Ontario, this \_\_\_\_\_ day of \_\_\_\_\_.

Figure 1: Affidavit of Claim

### **3.2.7 Interference from a Release of Groundwater**

Water-supply interference complaints may arise from construction projects, excavations, gravel pits or quarries, where ground water is encountered and, without pumping, drains by gravity either out of the excavation or along a granular trench bed. This may cause the lowering of water levels in nearby wells and result in interference with water supplies. This type of interference is dealt with under subsection (7) of Section 34.

It is important to note that subsection (7) does not require that a gravity leakage or release of ground water from an excavation be authorized by Permit To Take Water, as in a normal taking. Instead, in the event of interference, the subsection makes use of a Notice issued by the Regional Director ordering the stoppage of such leakage, or the taking of such action in relation to the leakage as the Notice may require. In this manner, the Director may require that the excavation be filled in, or that measures be taken by the person causing the interference to restore the affected supplies. In most cases of this nature, the Ministry normally achieves its objectives on behalf of the party who experienced interference without having to go through with the issuance of a Notice.

### **3.2.8 Drainage Works Constructed Under the Drainage Act**

Complaints of water-supply interference due to the installation of drainage works completed under the Drainage Act occur occasionally. However, it has not been Ministry practice to classify drainage works as "water takings" and as such, Permits To Take Water are not normally issued for such works. The solution to such complaints of interference can be attempted through the use of subsection (7), or simply through the Ministry's mediation capabilities in effecting a settlement between the municipality who constructed the drainage works and the party who was interfered with.

Although the Drainage Act does not provide for compensation or for water-supply restoration, in some instances provision might be made for water-supply restoration if the potential for interference was brought to the attention of the engineer at the design stage.

### **3.2.9 Land Subsidence Caused by Groundwater Takings**

The possibility of land subsidence may exist whenever large takings of ground water cause substantial lowering in static water levels. Two main types of water takings that may lead to subsidence are of concern:

- 1) takings that result in large declines in water levels in confined aquifers and possible lowering of water tables; this results in the consolidation of aquifers and overlying materials and may lead to land subsidence. Dewatering of shallow, confined aquifers may be most critical;
- 2) dewatering (lowering of water table) and permanent drying of fine-grained surficial deposits, especially of "swelling clays" (montmorillonite and illite), which lead to shrinking of the surficial deposits and hence (differential) land subsidence.

Subsidence occurring evenly over large widespread areas is generally of less concern than uneven subsidence in small, localized areas. For example, land subsidence in the order of 13 feet during this century in California has produced large-scale lowering of the ground surface, but no reported damage to

buildings. On the other hand, only small amounts of local subsidence, in the order of inches, in areas of Sweden have produced many cases of damage to buildings.

Geologically, it appears that areas of surficial, fine-grained materials (sands, silts, clays), and especially areas of surficial clays, may be notably sensitive to land subsidence. Of special note are the marine (Champlain Sea) clay areas in eastern Ontario. These clays shrink greatly on drying. It is expected that settlement in till is minimal, if any, because of its generally compact nature.

The following guidelines should be borne in mind when reviewing applications for Permit To Take Water with respect to land subsidence:

- 1) If the proposed location of taking is shown on surficial geology maps to be in an area of clay or silt (remembering that montmorillonite clays are most susceptible to shrinkage), the regional hydrogeologist should be asked to comment.
- 2) Where, in the Opinion of the hydrogeologist, a substantial number of factors exist that may lead to subsidence and damage to buildings and structures, it should be recommended that the applicant hire a qualified consultant to determine the likelihood and extent of subsidence.
- 3) If land subsidence due to the proposed water taking is likely, a permit may have to be denied unless the applicant indicates what measures will be taken to prevent damage from land subsidence. If a permit is given, its terms and conditions violated, and land subsidence occurs, the permittee is liable for damages; however, if the terms and conditions are not violated, but land subsidence still occurs, the Ministry may be liable for damages in the event that it has not used reasonable care or has not exercised the degree of skill ordinarily expected of a reasonably competent hydrogeologist (or other qualified person, as the case may be) in the circumstances.

### **3.2.10 Interference Complaints Against Ministry of Transportation**

The Ministry of Transportation also calls on our Ministry's services to assist in resolving complaints of well interference that arise from road, bridge and other construction projects. Before the Ministry's staff get involved, the MTO construction engineer or field staff are expected to have already investigated the problem. Our staff are called upon after MTO has been unable to arrange for a mutually satisfactory resolution of the problem, or requires an unbiased expert opinion. The complaint would be assessed and, if information is insufficient, a field investigation would be carried out. The report to the MTO is usually in memorandum form, which presents conclusions with no directives. Suggestions are offered as to how the water supply can best be restored and the likely reason for its failure. These reports are usually requested by and sent to the Insurance and Claims Section of that Ministry (or its successor).

### **3.2.11 Federal Government Projects**

The Federal Government and its agencies are not subject to all provincial legislation and may not be obligated to follow the requirements set out in the Ontario Water Resources Act. In some cases, the federal agencies do obtain water-taking permits from our Ministry and have our staff carry out investigations and resolve water-supply interference complaints if they should occur. However, if a federal agency chooses not to obtain a permit, it would deal with water-supply interference complaints on its own, without assistance of staff of this Ministry.

### **3.2.12 Takings for Groundwater Heat Pumps**

With the advent of higher heating costs, a recent innovation in the heating of houses and buildings has been the development of the water-to-air groundwater source heat pump. This type of taking has the potential for causing water-level interference and requires a Permit To Take Water. The main guidelines to consider when assessing takings of this nature are as follows:

- 1) Permits To Take Water are required for heat pump takings in excess of 50,000 litres in a day. The daily taking is based on a continuous 24 hour period, even though the particular system may be designed to operate for a shorter period. Therefore, systems of 34.7 litres per minute (7.65 gpm) capacity or more would be subject to the permit requirements. This type of taking is classified in the same way as cooling or air conditioning, and is not considered a normal domestic taking.
- 2) Water quality analyses of the intake water, consisting of the common inorganic parameters, may be required in support of an application for a permit; similar water quality analyses may be required of water in the aquifer, stream or lake into which the discharge water will be disposed, to ensure that contamination will not occur.
- 3) An adequate evaluation of the yield of the supply well may be required in support of a permit application; for large takings the applicant should assess the potential for interference with any nearby supplies.
- 4) Particulars regarding the disposal of discharge water may be included in the Special Condition of the permit.

### **3.2.13 Interference Between Private Domestic Wells**

In cases where one person makes a complaint of water-supply interference against a neighbour who has constructed a private domestic well, protection is not provided as the domestic taking is exempt from the permit legislation. Interference of this type is unlikely.

## **3.3 Surface Water Interference Guidelines**

In handling Surface Water interference problems, the basic policy is to promote, where possible, and enforce, when necessary, a fair sharing of the available water supply so as to protect downstream uses of water and the natural functions of the stream. To achieve this, Permits To Take Water authorizing withdrawals directly from a stream contain a condition stating that "The taking of water shall be carried out in such a manner that downstream flow is not stopped or reduced to a rate that will interfere with downstream uses of water or the natural functions of the stream".

### **3.3.1 Investigation of Surface Water Interference**

Similar to the investigation of a groundwater complaint, it is advisable during a Surface Water complaint investigation for the complainant to be present so that all aspects of the complaint can be documented. Unlike the groundwater investigation guidelines and procedures, the Surface Water interference program does not allow for any claim for damages and expenses on behalf of the complainant by way of the Affidavit of Claim. Any claims for damages (which have been rare in the past) are left for the

complainant to pursue on his own initiative. These claims would be administered through the courts under riparian common law.

### **3.3.2 Interference Caused by a Single Taking**

The Majority of the Surface Water interference complaints handled by the Ministry involve a single taking interfering with one or more downstream users. Common examples include the stoppage or serious reduction in flow caused by:

- the storage of water in private recreational ponds formed by dams;
- the taking of water for irrigation of golf courses, sod or nursery farms.

Problems of this type frequently result when a seasonally high-volume user commences taking from a small watercourse with low summer flows. The stream in question is typically one with sufficient flow for established in-place uses (e.g., fishing or swimming) and for minor withdrawal uses (e.g., livestock watering, domestic supplies, etc.), but not for a high-capacity taking.

Problems caused by the storage of water by damming can be resolved by arranging for the pond to be filled or refilled during periods of high flow, or by installing works to maintain a portion of the flow at all times.

If the problem is due to a taking directly from a stream, the permittee can be required to reduce his rate of taking. If the problem becomes recurrent, it may be necessary to require that off-stream storage works be constructed, so that peak requirements can be met using the storage capacity, supplemented by refilling from the stream at a low rate during low-flow periods and during periods of high flow.

Another approach is to require that a specified minimum downstream flow be maintained at all times. There is no set criterion as to what percentage of flow must be maintained. The minimum flow requirement has to be established on a case-by-case basis, taking into account the available supply and downstream requirements.

### **3.3.3 Interference Caused by Several Takings**

In certain areas of the province, such as the "tobacco belt" and market-gardening areas, streamflow interference may result because of the simultaneous taking by several irrigators. This can become acute during prolonged dry spells, since streamflow will be below normal at the time of peak demand.

One procedure is to attempt to make arrangements for the permittees to agree to a schedule of irrigating on alternate days, or at different times of the day, so that each obtains his fair share of the limited supply. Alternatively, the Director can require all permittees taking from the stream in question to reduce their takings by pumping at a lower rate.

### **3.3.4 Takings from Intermittent Streams**

Some permittees take water from streams or store water in ponds or streams which cease to flow seasonally due to natural causes. The general policy is to require that downstream flow be maintained whenever there is flow into the pond. In other words, a permittee would not be required to release water from storage to maintain downstream flow if there was no inflow.

### **3.3.5 Installation and Proper Operation of Control Works**

Interference caused by the storage of water by damming can be resolved by arranging for the installation of works to maintain an adequate downstream flow at all times. This may simply require that stop logs be wedged open, or that siphons be installed, or it may involve the installation of works such as valves.

Frequently, the problem is simply that existing control works are not being used properly, either deliberately or through carelessness. In this case, directions can be given on their proper use. In many cases, future interference can be avoided by filling the pond during periods of high flow, rather than during a low-flow period.

If flooding is caused by the backwater from a dam, the matter is not within the jurisdiction of the permit legislation, and should be referred to the Ministry of Natural Resources, for possible action under the Lakes and Rivers Improvement Act. Otherwise, it should be suggested to the complainant that he contact a lawyer concerning the possibility of civil action.

### **3.3.6 Takings for Hydrostatic Pipeline Testing**

For the purposes of hydrostatic pressure testing of sections of newly constructed gas or oil pipelines, the taking of water from surface or groundwater sources in excess of 50,000 litres in a day must be authorized by permit. In most cases, water for pressure testing of pipeline sections is obtained from streams or lakes in the immediate vicinity of the testing area. Applications should be submitted at least six weeks in advance of any hydrostatic test.

As for most takings from stream sources, the terms and conditions of a permit require that the filling of the pipeline be carried out in such a manner that streamflow is not stopped or reduced to a rate that will interfere with downstream uses or with the natural functions of the stream. For proposed takings from streams in low-flow stages, the issuance of a permit may be postponed until a period of higher flow, or the proposed rate of taking may be proportionally reduced, as required. Permits for hydrostatic testing are usually issued for a one-year period, or less.

Not only is the method of taking of water for this purpose of concern to the Ministry, but also the release of the water after completion of the testing is of concern for environmental reasons. Specifically, erosion and water quality degradation have been known to result from the careless release of test water from pipeline sections. Therefore, the Special Condition of the permit can be used to ensure that the discharge of water from a pipeline section conforms to the following guidelines:

- 1) The discharge water should be returned to the watercourse from which the water was drawn, at a rate not exceeding the rate of withdrawal.
- 2) The force of water discharged should not produce scouring of the stream channel or lake bed. A splash pad installed at the discharge will help to prevent erosion.
- 3) The quality of the water returned to the watercourse or lake should be substantially the same as the water withdrawn.
- 4) The water should be discharged directly into the watercourse or lake to prevent bank erosion.

## **4 PERMIT PROCESSING**

Figure 2 is a general flow diagram outlining the permit process, while the text that follows summarizes the specified activities.

### **4.1 Initial Functions**

The permit staff may become aware of a water taking either through their own field investigations, or by information from associated government offices or private citizens. By review of preliminary information, the permit staff may be able to determine if the taking likely requires a permit. If so, the APL (advice of permit legislation) process is initiated. This process involves contact with the prospective permittee in person, in the field, by phone, or by correspondence to advise of legislative requirements and of procedures for permit application. At this stage, a completed application for a Permit To Take Water may be received, or further information may be received to indicate that a permit is not required. If the taking does not require a permit, the documents are collated and labelled "PNR" (Permit Not Required) to be filed according to location for reference. If an application is received, it is directed through the various stages of review.

### **4.2 Information and Policy Review**

Upon receipt of an application, the approvals reviewer ensures that all necessary information is contained in the application and that support materials for an adequate review of the water-taking situation are available. As well, the reviewer clarifies all distinguishing legal considerations associated with an application in light of permit policy and legislation.

### **4.3 Resource Review**

A resource review follows as the main component of water use regulation. At this time, variables of water availability and water use are considered as limiting factors to the terms and conditions of the subsequent permit. A data review, if necessary, may be augmented by a detailed study of the water taking. A detailed resource review is referred to as a pre-permit investigation and may include the collection and analysis of field data. The investigation is usually documented in a report with conclusions as to limitations to be imposed on permit conditions. Such limitations are intended to maximize efficient resource development and beneficial use, and minimize the possibility of interference.



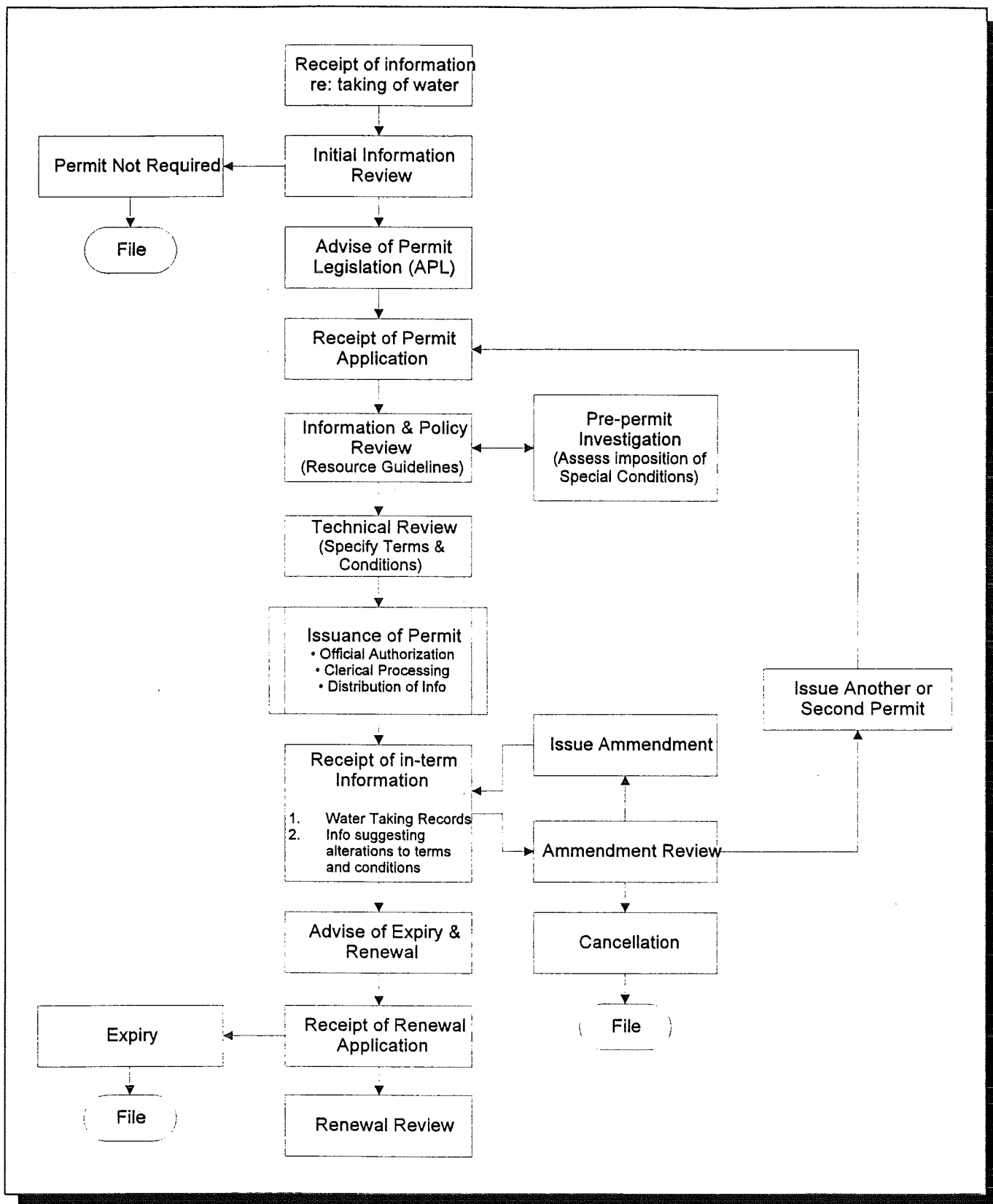


Figure 2: General Flow diagram of the Permit Process

#### **4.4 Technical Review**

The technical review is the stage at which the actual terms and conditions of a Permit To Take Water are formalized. The information included on the application/permit should be verified with respect to the following points:

- 1) informative and accurate map or diagram of the locality of taking;
- 2) source type and number;
- 3) location of taking in reference to political units (lot, concession, township, county, district, or regional municipality), proper georeferencing (either lat/long or UTM coordinates);
- 4) purpose of taking and intended use of water;
- 5) period of taking in reference to the type of source (or purpose of taking in certain cases);
- 6) rates and amounts in relation to requests, system capacities, water availability and water use as indicated in the resource review;
- 7) special conditions in relation to source type, water availability and use.

#### **4.5 Issuance of a Permit**

After the technical review stage the following procedures are followed to complete the issuance of the permit.

- 1) The Director or his designate signs the original permit form, the accompanying letter, and the Notice of Terms and Conditions (see example of the Notice of Terms and Conditions, figure 3).
- 2) A copy is made of the original permit and it is stamped by the following certification stamp and the requested information is filled in:

THIS IS A TRUE COPY OF THE ORIGINAL CERTIFICATE MAILED ON _____ _____ (Signed)
--

- 3) The original permit form together with the Notice of Terms and Conditions are sent to the applicant and the copies are filed.

#### **4.6 Water Taking Records**

As a special condition of a Permit To Take Water, the Director may specify that the permittee submit annual records of water taking over the term of the permit. Such records may be required in a situation where interference could occur, or where water taking data is required for water management or planning studies.

#### **4.7 Alterations in Terms and Conditions**

During the term of a permit, it is possible that alterations are necessary in its registration and/or terms and conditions. There are three alternative methods of handling such changes:

- 1) amend the existing permit
- 2) cancel the existing permit and issue a new permit
- 3) issue a second permit.

#### **4.8 Amendment of a Permit**

The concept of amendment was developed as a method of effectively handling minor alterations not affecting seriously the original intent of the terms and conditions in respect to effective water management in the locality. Otherwise, cancellation and issuance of a new permit would be necessary. Issuance of a second permit would be the method of dealing with a new taking from a different source, where the original taking is still in effect.

In the case where there are many amendments to be considered to the terms and conditions of a single permit, at the discretion of the Chief of Approvals, a decision will be made to cancel the existing permit and issue a new permit under the altered situation. As a general rule, three amendments are allowed before cancellation is considered. When a permit has been amended, an amendment letter accompanied in most instances with a Notice of Amendment of Terms and Conditions (see example, figure 4-) must be forwarded to the permittee. Note that a Notice of Amendment is not required in cases where only registration of the permit is amended (i.e., name, address, permit No.).

The following list shows the most common reasons for the amendment of a Permit To Take Water.

- 1) Transfer of ownership of property between direct relations (i.e., father, mother, son, daughter, brother, sister).
- 2) Transfer of ownership within a partnership - amend to name of remaining owner(s).
- 3) In the case of the death of a permittee:
  - a) who had sole title and a written will naming an executor, amend to "John Doe, Executor under the will of John Smith",

- b) who had sole title but no written will, the court will appoint an administrator. Amend to "John Doe, Administrator of the estate of John Smith",
  - c) who was one of two or more persons who owned the property as "tenants in common", the registration of the permit should be amended in the name of the surviving party(ies) and the estate of the deceased.
  - d) who was one of two or more persons who owned the property as "joint tenants" the registration of the permit should be amended in the name of the surviving party(ies) only.
- 4) Change in the mailing address of a permittee.
  - 5) Addition of the same type of water source (no other changes).
  - 6) Deletion of a water source.
  - 7) Change in source location (no other changes).
  - 8) Change in location of use (no other changes).
  - 9) Change in purpose of taking (no other changes).
  - 10) Alteration in period of taking; usually carried out for road or pipeline construction projects where the period of taking requires an extension and all the terms and conditions of the permit remain the same. All other cases of extension of the authorized period is done by renewal or the issuance of a new permit.
  - 11) Increase in rate or amount - amendments may be allowed if;
    - a) it is determined that the increase will not likely cause interference with another person's water use,
    - b) the increase does not exceed 10% of the original authorized rate,otherwise, the original permit should be canceled and a new permit issued.
  - 12) Addition of, or a change in a Special Condition.

#### **4.9 Cancellation of a Permit**

When a Permit To Take Water is canceled, the permittee is advised by a letter of cancellation which is accompanied by a Notice of Cancellation of Permit To Take Water (see example, figure 5). An exception to this formal cancellation procedure occurs when the permittee is deceased and there is no known next-of-kin to address correspondence to, or if the permittee has moved and his new address cannot be determined. In such cases the permit is canceled by internal memorandum.

The following list shows the most common reasons for the cancellation of a Permit To Take Water.

- 1) Transfer of ownership of property between two non-related parties; new application required of new owner.
- 2) Change in land tenure from lessee to owner. Cancel old permit in name of lessee; obtain permit application from owner.
- 3) Change in land tenure from owner to lessee. Permit in name of the owner may remain unaltered or be cancelled, with a new permit being issued in the name of the lessee. This is a matter of discretion in light of the following:
  - a) length of leasehold agreement;
  - b) requests for parties involved;
  - c) water taking intentions of lessee.
- 4) Use of original water source discontinued; different type of source to be used.

## NOTICE OF TERMS AND CONDITIONS

In accordance with Section 100 of the **Ontario Water Resources Act**, R.S.O. 1990, notice is hereby given of the issuance of Permit to Take Water No. \_\_\_\_\_ which contains terms and conditions pertaining to the taking of water and to the results of the takings. The terms and conditions have been designed to allow for the development of water resources for beneficial purposes while providing reasonable protections to existing waters uses and to public interests in water. You may by written notice served upon me, the Environmental Appeal Board and the Environmental Commissioner, **Environmental Bill of Rights**, R.S.O. 1993, Chapter 28, within 15 days after receipt of this Notice, require a hearing by the Board. The Environmental Commissioner will place notice of your appeal on the Environmental Registry. Section 101 of the **Ontario Water Resources Act**, as amended provides that the Notice requiring a hearing shall state:

1. The portions of the approval or each Term or Condition in the permit in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

In addition to these legal requirements, the Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Permit to Take Water number;
6. The date of the Permit to Take Water;
7. The name of the Director;
8. The municipality within which the Works is location, and;

the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary Environmental Appeal Board P.O. Box 2382 2300 Yonge St., 12 <sup>th</sup> floor Toronto, ON M4P 1E4	The Director Section 34 <b>Ontario Water Resources Act</b> Ministry of the Environment (issuing office)	The Environmental Commissioner 1075 Bay St., 6 <sup>th</sup> floor Suite 605 Toronto, ON M5S 2W5
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This instrument is subject to Section 38 of the **Environmental Bill of Rights**, that allows residents of Ontario to seek leave to appeal the decision on this instrument. Residents of Ontario may seek to appeal for 15 days from the date this decision is placed on the Environmental Registry. By accessing the Environmental Registry, you can determine when the leave to appeal period ends.

Dated at \_\_\_\_\_ this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Director, Section 34

Figure 3; Notice of Terms and Conditions

## NOTICE OF AMENDMENT OF TERMS AND CONDITIONS

In accordance with Section 100 of the **Ontario Water Resources Act**, R.S.O. 1990, notice is hereby given of the amendment of Permit to Take Water No. \_\_\_\_\_ for the following reasons: \_\_\_\_\_.

You may by written notice served upon me, the Environmental Appeal Board and the Environmental Commissioner, **Environmental Bill of Rights**, R.S.O. 1993, Chapter 28, within 15 days after receipt of this Notice, require a hearing by the Board. The Environmental Commissioner will place notice of your appeal on the Environmental Registry. Section 101 of the **Ontario Water Resources Act**, as amended provides that the Notice requiring a hearing shall state:

1. The portions of the approval or each Term or Condition in the permit in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

In addition to these legal requirements, the Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Permit to Take Water number;
6. The date of the Permit to Take Water;
7. The name of the Director;
8. The municipality within which the Works is location, and;

the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary	The Director	The Environmental Commissioner
Environmental Appeal Board	Section 34	1075 Bay St., 6 <sup>th</sup> floor
P.O. Box 2382	<b>Ontario Water Resources Act</b>	Suite 605
2300 Yonge St., 12 <sup>th</sup> floor	Ministry of the Environment	Toronto, ON
Toronto, ON M4P 1E4	(issuing office)	M5S 2W5

This instrument is subject to Section 38 of the **Environmental Bill of Rights**, that allows residents of Ontario to seek leave to appeal the decision on this instrument. Residents of Ontario may seek to appeal for 15 days from the date this decision is placed on the Environmental Registry. By accessing the Environmental Registry, you can determine when the leave to appeal period ends.

Dated at \_\_\_\_\_ this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Director, Section 34  
**Ontario Water Resources Act**

**Figure 4; Notice of Amendment of Terms and Conditions**

#### **4.10 Issuing a Second Permit**

During the life of a water-taking operation, various modifications involving the source(s) of taking can often occur. In certain instances, amendment or cancellation of an existing permit is not desirable; therefore, the alternative approach of issuing a second permit is taken.

The following reasons are the most common for the issuance of a second Permit To Take Water.

- 1) Addition of another water source;
  - a) same type of source as original with other changes (e.g., increase rate and amount);
  - b) different type of source from original with no other changes;
  - c) different type of source from original with other changes.

#### **4.11 Expiry and Renewal of a Permit**

Expiry is the formal recognition of the completion of a permit's effective term. As the expiry date of a permit approaches, the permittee is advised of the impending expiry and is requested to apply for a renewal. If the permittee does not wish to renew the permit, it is allowed to expire. Renewal is an administrative device designed to ensure the continuing accuracy of permit information. Renewal review allows the permit staff an opportunity to scrutinize actual water-taking performances over the duration of the permit in relation to the terms and conditions of permits and to make adjustments where necessary. The actual review of a renewal application closely parallels that of a new application. Of specific interest in the renewal review are:

- 1) necessary alteration to terms and conditions as indicated in water-taking records, the renewal application itself, and associated complaint investigations, if any; and
- 2) changes in the water resource conditions of the locality which may have a bearing on the terms and conditions of the permit.

Permittees are advised in writing of expiry and, upon receipt of the renewal application, are sent a permit renewal and accompanying letter. The permit renewal is photocopied, stamped with the certification stamp, signed and filed for future reference.



## NOTICE OF CANCELLATION

In accordance with Section 100 of the **Ontario Water Resources Act**, R.S.O. 1990, notice is hereby given of the cancellation of Permit to Take Water No. \_\_\_\_\_ for the following reasons: \_\_\_\_\_.

You may by written notice served upon me, the Environmental Appeal Board and the Environmental Commissioner, **Environmental Bill of Rights**, R.S.O. 1993, Chapter 28, within 15 days after receipt of this Notice, require a hearing by the Board. The Environmental Commissioner will place notice of your appeal on the Environmental Registry. Section 101 of the **Ontario Water Resources Act**, as amended provides that the Notice requiring a hearing shall state:

1. The portions of the approval or each Term or Condition in the permit in respect of which the hearing is required, and;
2. The grounds on which you intend to rely at the hearing in relation to each portion appealed.

In addition to these legal requirements, the Notice should also include:

3. The name of the appellant;
4. The address of the appellant;
5. The Permit to Take Water number;
6. The date of the Permit to Take Water;
7. The name of the Director;
8. The municipality within which the Works is location, and;

the Notice should be signed and dated by the appellant.

This Notice must be served upon:

The Secretary Environmental Appeal Board P.O. Box 2382 2300 Yonge St., 12 <sup>th</sup> floor Toronto, ON M4P 1E4	The Director Section 34 <b>Ontario Water Resources Act</b> Ministry of the Environment (issuing office)	The Environmental Commissioner 1075 Bay St., 6 <sup>th</sup> floor Suite 605 Toronto, ON M5S 2W5
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This instrument is subject to Section 38 of the **Environmental Bill of Rights**, that allows residents of Ontario to seek leave to appeal the decision on this instrument. Residents of Ontario may seek to appeal for 15 days from the date this decision is placed on the Environmental Registry. By accessing the Environmental Registry, you can determine when the leave to appeal period ends.

Dated at \_\_\_\_\_ this \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Director, Section 34  
**Ontario Water Resources Act**

**Figure 5; Notice of Cancellation of a Permit to Take Water**

## APPENDIX I

### I. Doctrine of Riparian Rights

The doctrine of riparian rights originated under English common law, deriving authority from ancient usages and customs, and from the legacy of court judgements recognizing and enforcing such usages and customs. In effect, it is part of the unwritten body of law based on previous court decisions.

The riparian doctrine was developed in and for humid regions. It relates solely to watercourses, not to diffused surface water or to underground water. It is a right to the use of the renewable resource, and not a right to water as personal property.

Under the doctrine, a riparian owner had a right incidental to his ownership of the land to take water from the stream flowing through his property for ordinary purposes. His obligation was not to affect the corresponding rights of other riparian owners.

Under the original, strict interpretation of riparian law, every riparian owner was entitled to the full flow of the stream through his property, undiminished in quality and quantity except by "natural" uses, which included domestic uses for the riparian owner, watering stock and minor gardening. It excluded "artificial" uses, such as large scale irrigation or industrial use.

Following the Industrial Revolution, this interpretation was modified by the courts in England and the United States into the reasonable use doctrine. This permits the use of water for irrigation and industrial uses; in fact, for all beneficial uses. In the event of a court contest between riparian owners, their needs are balanced and each is given a share in the supply without regard to when the use was initiated.

The above brief outline summarizes the development of the riparian doctrine in England and the United States, where considerable attention was given to the question of water rights.

However, there is considerable uncertainty as to what constitutes riparian rights in Ontario. Relatively little attention has been given to the subject, and there is little written material on it. In 1792, the riparian common laws of England were introduced into what is now Ontario, with the provision that their interpretation was to be as flexible as possible to meet geographic conditions, which were quite different from England.

During the 1840's and 1850's, there was a sudden increase in riparian disputes caused by industrial water demand for grist mills, etc. However, there was no satisfactory judicial resolution of the problem. In part, this was because the application of English common law was held to be open, and its introduction dependent on adaptability to local circumstances. As precedent, these views made the later role and effectiveness of the judiciary very uncertain in water management in Ontario. As a result, the passing of Section 34 of the Ontario Water Resources Act attempted to make up for the uncertainty inherent with the riparian doctrine in light of modern developments in water use and water management.

## APPENDIX II

### *The Great Lakes Charter Principles for the Management of Great Lakes Water Resources*

#### **FINDINGS**

*The Governors and Premiers of the Great Lakes States and Provinces jointly find and declare that:*

*The water resources of the Great Lakes Basin are precious public natural resources, shared and held in trust by the Great Lakes States and Provinces.*

*The Great Lakes are valuable regional, national and international resources for which the federal governments of the United States and Canada and the International Joint Commission have, in partnership with the States and Provinces, and important, continuing and abiding role and responsibility.*

*The Waters of the Great Lakes Basin are interconnected and part of a single hydrologic system. The multiple uses of these resources for municipal, industrial and agricultural water supply; mining; navigation; hydroelectric power and energy production; recreation; and the maintenance of fish and wildlife habitat and a balanced ecosystem are interdependent.*

*Studies conducted by the International Joint Commission, the Great Lakes States and Provinces, and other agencies have found that without careful and prudent management, the future development of diversions and consumptive uses of the water resources of the Great Lakes Basin may have significant adverse impacts on the environment, economy, and welfare of the Great Lakes region.*

*As trustees of the Basin's natural resources, the Great Lakes States and Provinces have a shared duty to protect, conserve, and manage the renewable but finite waters of the Great Lakes Basin for the use, benefit, and enjoyment of all their citizens, including generations yet to come. The most effective means of protecting, conserving and managing the water resources of the Great Lakes is through the joint pursuit of unified and cooperative principles, policies and programs mutually agreed upon, enacted and adhered to by each and every Great Lakes State and Province.*

*Management of the water resources of the Basin is subject to the jurisdiction, rights and responsibilities of the signatory States and Provinces. Effective management of the water resources of the Great Lakes requires the exercise of such jurisdiction, rights, and responsibilities in the interest of all the people of the Great Lakes Region, acting in a continuing spirit of comity and mutual cooperation. The Great Lakes States and Provinces reaffirm the mutual rights and obligations of all Basin jurisdictions to use, conserve, and protect Basin water resources, as expressed in the Boundary Waters Treaty of 1909, the Great Lakes Water Quality Agreement, of 1978, and the principles of other applicable international agreements.*

#### **PURPOSE**

*The purposes of this Charter are to conserve the levels and flows of the Great Lakes and their tributary and connecting waters; to protect and conserve the environmental balance of the Great Lakes Basin*

*ecosystem; to provide for cooperative programs and management of the water resources of the Great Lakes Basin by the signatory States and Provinces; to make secure and protect present developments within the region; and to provide a secure foundation for future investment and development within the region.*

## **PRINCIPLES FOR THE MANAGEMENT OF GREAT LAKES WATER RESOURCES**

*In order to achieve the purposes of this Charter, the Governors and Premiers of the Great Lakes States and Provinces agree to the following principles.*

### **Principle I**

#### ***Integrity of the Great Lakes Basin***

*The planning and management of the water resources of the Great Lakes Basin should recognize and be founded upon the integrity of the natural resources and ecosystem of the Great Lakes Basin. The water resources of the Basin transcend political boundaries within the Basin, and should be recognized and treated as a single hydrologic system. In managing Great Lakes Basin waters, the natural resources and ecosystem of the Basin should be considered as a unified whole.*

### **Principle II**

#### ***Cooperation Among Jurisdictions***

*The signatory States and Provinces recognize and commit to a spirit of cooperation among local, state, and provincial agencies, the federal governments of Canada and the United States, and the International Joint Commission in the study, monitoring, planning, and conservation of the water resources of the Great Lakes Basin.*

### **Principle III**

#### ***Protection of the Water Resources of the Great Lakes***

*The signatory States and Provinces agree that new or increased diversions and consumptive uses of Great Lakes Basin water resources are of serious concern. In recognition of their shared responsibility to conserve and protect the water resources of the Great Lakes Basin for the use, benefit, and enjoyment of all their citizens, the States and Provinces agree to seek (where necessary) and to implement legislation establishing programs to manage and regulate the diversion and consumptive use of Basin water resources. It is the intent of the signatory states and provinces that diversions of Basin water resources will not be allowed if individually or cumulatively they would have any significant adverse impacts on lake levels, in-basin uses, and the Great Lakes Ecosystem.*

### **Principle IV**

#### ***Prior Notice and Consultation***

*It is the intent of the signatory States and Provinces that no Great Lakes State or Province will approve or permit any major new or increased diversion or consumptive use of the water resources of the Great Lakes Basin without notifying and consulting with and seeking the consent and concurrence of all affected Great Lakes States and Provinces.*

## ***Principle V***

### ***Cooperative Programs and Practices***

*The Governors and Premiers of the Great Lakes States and Provinces commit to pursue the development and maintenance of a common base of data and information regarding the use and management of the Basin water resources, to the establishment of a systematic arrangements for the exchange of water data and information, to the creation of a Water Resources Management Committee, to the development of a Great Lakes Water Resources Management Program, and to additional and concerted and coordinated research efforts to provide improved information for future water planning and management decisions.*

## **IMPLEMENTATION OF PRINCIPLES**

### ***Common Base of Data***

*The Great Lakes States and Provinces will pursue the development and maintenance of a common base of data and information regarding the use and management of Basin water resources and the establishment of systematic arrangements for the exchange of water data and information. The common base of data will include the following:*

- 1. Each State and Province will collect and maintain, in comparable form, data regarding the location, type, and qualities of water use, diversion, and consumptive use, and information regarding projections of current and future needs.*
- 2. In order to provide accurate information as a basis for future water resources planning and management, each State and Province will establish and maintain a system for the collection of data on major water uses, diversions, and consumptive uses in the Basin. The States and Provinces, in cooperation with the Federal Governments of Canada and the United States and the International Joint Commission, will seek appropriate vehicles and institutions to assure responsibility for coordinated collation, analysis, and dissemination of data and information.*
- 3. The Great Lakes States and Provinces will exchange on a regular basis plans, data, and other information on water use, conservation, and development, and will consult with each other in the development of programs and plans to carry out these provisions.*

### ***Water Resources Management Committee***

*A Water Resources Management Committee will be formed, composed of representatives appointed by the Governors and Premiers of each of the Great Lakes States and Provinces. Appropriate agencies of the federal governments, the International Joint Commission, and other interested and expert organizations will be invited to participate in discussions of the Committee.*

*The Committee will be charged with responsibility to identify specific common water data needs; to develop and design a system for the collection and exchange of comparable water resources management data; to recommend institutional arrangements to facilitate the exchange and maintenance of such information; and to develop procedures to implement the prior notice and consultation process established*

*in this Charter. The Committee will report its findings to the Governors and Premiers of the Great Lakes States and Provinces within 15 months of the appointment of the Committee.*

### **Consultation Procedures**

*The principle of prior notice and consultation will apply to any new or increased diversion or consumptive use of the water resources of the Great Lakes Basin which exceeds 5,000,000 gallons (19 million litres) per day average in any 30-day period.*

*The consultation process will include the following procedures:*

- 1. The State or Province with responsibility for issuing the approval or permit, after receiving an application for such diversion or consumptive use, will notify the Offices of the Governors and Premiers of the respective Great Lakes States and Provinces, the appropriate water management agencies of the Great Lakes States and Provinces and, where appropriate, the International Joint Commission.*
- 2. The permitting State or Province will solicit and carefully consider the comments and concerns of the other Great Lakes States and Provinces, and where applicable the International Joint Commission, prior to rendering a decision on an application.*
- 3. Any State or Province which believes itself to be affected may file a written objection to the proposed diversion or consumptive use. Notice of such objection stating the reasons therefore will be given to the permitting State or Province and all other Great Lakes States and Provinces.*
- 4. In the event of an objection to a proposed diversion or consumptive use, the permitting State or Province will convene a consultation process of the affected Great Lakes States and Provinces to investigate and consider the issues involved, and to seek and provide mutually agreeable recommendations to the permitting State or Province.*
- 5. The permitting State or Province will carefully consider the concerns and objections expressed by other Great Lakes States and Provinces, and the recommendations of any consultation process convened under this Charter.*
- 6. The permitting State or Province will have lead responsibility for resolution of water management permit issues. The permitting State or Province will notify each affected Great Lakes State or Province of its final decision to issue, issue with conditions, or deny a permit.*

*The prior notice and consultation process will be formally initiated following the development of procedures by the Water Resources Management Committee and approval of those procedures by the Governors and Premiers. During the interim period prior to approval of formal procedures, any State or Province may voluntarily undertake the notice and consultation procedures as it deems appropriate.*

### **Basin Water Resources Management Program**

*In order to guide the future development, management, and conservation of the water resources of the Great Lakes Basin, the signatory States and Provinces commit to the development of a cooperative water resources management program for the Great Lakes Basin.*

*Such a program should include consideration of the following elements:*

- 1. An inventory of the Basin's surface and groundwater resources;*
- 2. An identification and assessment of existing and future demands for diversions, into as well as out of the Basin, withdrawals, and consumptive uses for municipal, domestic, agricultural, manufacturing, mining, navigation, power production, recreation, fish and wildlife, and other uses and ecological considerations;*
- 3. The development of cooperative policies and practices to minimize the consumptive use of the Basin's water resources; and*
- 4. Recommended policies to guide the coordinated conservation, development, protection, use, and management of the water resources of the Great Lakes Basin.*

### **Research Program**

*The Great Lakes States and Provinces recognize the need for and support additional research in the area of flows and lake levels required to protect fisheries and wildlife, a balanced aquatic environment, navigation, important recreational uses, and the assimilative capacity of the Great Lakes system. Through appropriate state, provincial, federal and international agencies and other institutions, the Great Lakes States and Provinces will encourage coordinated and concerted research efforts in these areas, in order to provide improved information for future water planning and management decisions.*

### **PROGRESS TOWARD IMPLEMENTATION**

*The Governors and Premiers of the Great Lakes States and Provinces commit to the coordinated implementation of this Charter. To this end, the Governors and Premiers shall, no less than once per year, review progress toward implementation of this Charter and advise one another on actions taken to carry out the principles of the Charter together with recommendations for further action or improvements to the management of the Great Lakes Basin water resources.*

*The signatory States and Provinces consider each of the principles and implementing provisions of this Charter to be material and interdependent. The rights of each State and Province under this Charter are mutually dependent upon the good faith performance by each State and Province of its commitments and obligations under the Charter.*

*The following sequence will be adhered to by the Great Lakes States and Provinces in implementing the provisions of this Charter:*

- 1. The Water Resources Management Committee will be appointed by the Governors and Premiers within 60 days of the effective date of this Charter and will submit its recommendations to the Governors and Premiers of the Great Lakes States and Provinces within 15 months of the appointment of the Committee.*
- 2. Upon the signing of the Charter, and concurrent with the activities of the Water Resources Management Committee, the Great Lakes States and Provinces will commence collecting and assembling existing Great*

*Lakes water use data and information. The water use data collected and assembled by the States and Provinces will include, but not be limited to, the data and information specified under the "Common Base of Data" provisions of the Charter.*

*Copies of the data and information collected and assembled by the States and Provinces will be submitted to the Water Resources Management Committee. The Great Lakes States and Provinces will pursue: the collection of data and information on the use and management of Basin water resources; the establishment of systematic arrangements for the exchange of water data and information on a continuing basis as enabled by existing state and provincial data collection and regulatory programs; and where necessary, the enactment of water withdrawal registration and diversion and consumptive use management and regulatory programs pursuant to the provisions of the Charter.*

*3. To assist in the ongoing collection of Great Lakes water use data and information, and in the development of the Basin Water Resources Management Program, States and Provinces will pursue the enactment of legislation where it is needed for the purpose of gathering accurate and comparable information on any new or increased withdrawal of Great Lakes Basin water resources in excess of 100,000 gallons (380,000 litres) per day average in any 30-day period.*

*4. The prior notice and consultation process will be formally initiated following the development of procedures by the Water Resources Management Committee and approval of those procedures by the Governors and Premiers. Any State or Province may voluntarily undertake additional notice and consultation procedures as it deems appropriate. However, the right of any individual State or Province to participate in the prior notice and consultation process, either before or after approval of formal procedures by the Governors and Premiers, is contingent upon its ability to provide accurate and comparable information on water withdrawals in excess of 100,000 gallons (380,000 litres) per day average in any 30-day period and its authority to manage and regulate water withdrawals involving a total diversion or consumptive use of Great Lakes Basin water resources in excess of 2,000,000 gallons (7,600,000 litres) per day average in any 30-day period.*

*5. Development of the Basin Water Resources Management Program will commence upon receipt and formal approval by the Great Lakes Governors and Premiers of the recommendations of the Water Resources Management Committee.*

## **RESERVATION OF RIGHTS**

*The Great Lakes States and Provinces mutually recognize the rights and standing of all Great Lakes States and Provinces to represent and protect the rights and interests of their respective jurisdictions and citizens in the shared water and other natural resources of the Great Lakes region.*

*Each Great Lakes State and Province reserves and retains all rights and authority to seek, in any state, provincial, federal, or other appropriate court or forum, adjudication or protection of their respective rights in and to Basin water resources, in such manner as may now or hereafter be provided by law.*

*In entering into this Charter, no Great Lakes State or Province shall be deemed to imply its consent to any diversion or consumptive use of Great Lakes Basin water resources now or in the future.*



## **DEFINITIONS**

*For purposes of this Charter:*

***Withdrawal*** means the removal or taking of water from surface or groundwater.

***Consumptive use*** means that portion of water withdrawn or withheld from the Great Lakes Basin and assumed to be lost or otherwise not returned to the Great Lakes Basin due to evaporation, incorporation into products, or other processes.

***Diversion*** means a transfer of water from the Great Lakes Basin into another watershed, or from the watershed of one of the Great Lakes into that of another.

***Interbasin diversion*** means a transfer of water from the Great Lakes Basin into another watershed.

***Great Lakes Basin*** means the watershed of the Great Lakes and the St. Lawrence River upstream from Trois Rivieres, Quebec.

***Great Lakes Basin water resources*** means the Great Lakes and all streams, rivers, lakes, connecting channels, and other bodies of water, including tributary groundwater, within the Great Lakes Basin.

***Great Lakes Basin Ecosystem*** means the interacting components of air, land, water and living organisms, including humankind, within the Great Lakes Basin.

***Great Lakes States and Provinces*** means the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, and Wisconsin, the Commonwealth of Pennsylvania, and the Provinces of Ontario and Quebec.

***Great Lakes Region*** means the geographic region comprised of the Great Lakes States and Provinces.

## APPENDIX III

### ONTARIO REGULATION 285/99 MADE UNDER THE ONTARIO WATER RESOURCES ACT WATER TAKING AND TRANSFER

#### GENERAL

1. The purpose of this Regulation is to provide for the conservation, protection and wise use and management of Ontario's waters, because Ontario's water resources are essential to the long-term environmental, social and economic well-being of Ontario.

#### PERMITS FOR TAKING WATER

2. (1) A Director who is considering an application under section 34 of the Act for a permit to take water shall consider the following matters, to the extent that each is relevant, in accordance with the procedures set out in the Ministry of the Environment publication entitled "Permits to Take Water, Guidelines and Procedures Manual, 1999", as amended from time to time:

1. Protection of the natural functions of the ecosystem.
2. Ground water that may affect or be affected by the proposed surface water taking, if the application is for a permit to take surface water.
3. Surface water that may affect or be affected by the proposed ground water taking, if the application is for a permit to take ground water.

(2) A Director who is considering an application under section 34 of the Act for a permit to take water shall consider the interests of persons who have an interest in the taking, to the extent that those interests are relevant.

(3) A Director who is considering an application under section 34 of the Act for a permit to take water may consider the following matters in accordance with the procedures set out in the Ministry of the Environment publication entitled "Permits to Take Water, Guidelines and Procedures Manual, 1999", as amended from time to time:

1. Existing and planned livestock uses of the water.
2. Existing and planned municipal water supply and sewage disposal uses of the water.
3. Existing and planned agricultural uses of the water, other than livestock uses.
4. Existing and planned private domestic uses of the water.

5. Other existing and planned uses of the water.
6. Whether it is in the public interest to grant the permit.
7. Such other matters as the Director considers relevant.

(4) A Director who is considering an application under section 34 of the Act for a permit to take water shall ensure that Ontario's obligations under the Great Lakes Charter with respect to the application are complied with.

(5) Subject to subsection (4), a Director who is considering an application under section 34 of the Act for a permit to take water may ensure that governmental authorities for other jurisdictions are notified of the application and consulted, even if notification and consultation are not required by the Great Lakes Charter.

(6) A Director who is considering an application under section 34 of the Act for a permit to take water may require the applicant to,

- (a) consult with other persons who have an interest in the taking, including governmental authorities for other jurisdictions;
- (b) provide the Director with information on the interests of and responses of the persons consulted under clause (a); and
- (c) provide the Director with such other information as is specified by the Director.

(7) In this section, "Great Lakes Charter" means the Great Lakes Charter signed by the premiers of Ontario and Quebec and the governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin on February 11, 1985.

#### WATER TRANSFER

3. (1) For the purposes of this section, Ontario is divided into the following three water basins:

1. The Great Lakes-St. Lawrence Basin, which consists of Lake Ontario, Lake Erie, Lake Huron, Lake Superior, the St. Lawrence River and the part of Ontario the water of which drains into any of them, including the Ottawa River and the part of Ontario the water of which drains into the Ottawa River.
2. The Nelson Basin, which consists of the part of Ontario the water of which drains into the Nelson River.
3. The Hudson Bay Basin, which consists of the part of Ontario, not included in the Nelson Basin, the water of which drains into Hudson Bay or James Bay.

(2) No person shall use water by transferring it out of a water basin.

(3) Subsection (2) does not apply to water that is used in the water basin to manufacture or produce a

product that is then transferred out of the water basin.

(4) For the purpose of subsection (3), potable or other water is not a manufactured or produced product.

(5) Subsection (2) does not apply to water that is being transported and that is necessary for the operation of the vehicle, vessel or other form of transport that the water is being transported in, including water that is for the use of people or livestock in or on the vehicle, vessel or other form of transport.

(6) Subsection (2) does not apply to water packaged in a container having a volume of 20 litres or less.

(7) Subsection (2) does not apply to an undertaking that commenced before January 1, 1998 if the amount of water transferred out of a water basin by the undertaking in any calendar year after December 31, 1997 does not exceed the highest amount of water transferred out of the water basin by the undertaking in any calendar year after December 31, 1960 and before January 1, 1998.

(8) Subsection (2) does not apply to water taken pursuant to the order of the Lieutenant Governor in Council dated October 2, 1913 respecting the Greater Winnipeg Water District.