

ONTARIO REGULATION  
made under the  
***ONTARIO WATER RESOURCES ACT***  
**WATER TAKING AND TRANSFER**

June 2004

The following proposed regulation is being provided for discussion and consultation purposes only. The format, content and structure of the proposed regulation are subject to change.

## 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.

## Definitions

2. In this regulation,

"application" means an application to a Director under section 34 of the Act for a permit to take water;

"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 and amended by the Great Lakes Charter Annex, dated June 18, 2001;

"large municipal residential system" has the same meaning as in Ontario Regulation 170/03 (Drinking-Water Systems) made under the *Safe Drinking Water Act, 2002*;

"municipal water supply" means the water supply of a large municipal residential system or of a small municipal residential system;

"small municipal residential system" has the same meaning as in Ontario Regulation 170/03;

"summer low flow period" means the six-week period that starts on August 1 and ends on September 11;

"sustainable aquifer yield" means the annual amount of water that can be taken from an aquifer without exceeding the average annual recharge to the aquifer;

"water balance" means a quantification of water input and output and changes in storage of the various components of the hydrologic cycle;

"water conservation" means a reduction in the use, loss or waste of water or an increase in the efficiency of water use;

"watershed" means the land drained by a river and its tributaries. *and includes groundwater*

## Permits for taking water

3. (1) This section applies when a Director,

- (a) is considering an application; or
- (b) is otherwise considering under section 34 of the Act whether to issue, cancel, amend or impose conditions on a permit to take water.

(2) The Director shall consider the following matters, to the extent that they are relevant and information is available to the Director:

1. Issues relating to the need to protect the natural functions of the ecosystem, including,
  - i. the impact or potential impact of the water taking or proposed water taking on,
    - A. the natural variability of water flow or water levels,
    - B. minimum stream flow, and
    - C. habitat that depends on water flow or water levels, and
  - ii. ground water and surface water and their interrelationships that affect or are affected by, or may affect or be affected by, the water taking or proposed water taking, including its impact or potential impact on water quantity and quality.
2. Issues relating to water availability, including,
  - i. the impact or potential impact of the water taking or proposed water taking on
    - A. water balance and sustainable aquifer yield, and
    - B. existing uses of water for municipal water supply and sewage disposal, livestock and other agricultural purposes, private domestic purposes, and other purposes,
  - ii. low water conditions, if any, and
  - iii. any planned municipal use of water that has been approved,
    - A. under a municipal official plan in accordance with Part III of the *Planning Act*, or
    - B. under the *Environmental Assessment Act*.
3. Issues relating to the use of water, including,
  - i. whether water conservation in accordance with sectoral standards is being implemented or is proposed to be implemented in the use of the water, *as these alternatives to water-use*
  - ii. the purpose for which the water is being used or is proposed to be used, and

- iii. if the water is not currently being used, whether there is a reasonable prospect that the person will actually use the water in the near future.
- 4. Other issues, including,
  - i. the interests of other persons who have an interest in the water taking or proposed water taking, to the extent that the Director is made aware of those interests, and
  - ii. any other matters that the Director considers relevant.

(3) In considering the matters set out in subsection (2), the Director shall take account of the Ministry of the Environment publication entitled "Permit to Take Water Program, Guidelines and Procedures Manual", dated April 14, 1999.

(4) If clause (1) (a) applies the Director may, in order to be able to consider the matters set out in subsection (2), require the applicant to submit further information, including plans, specifications, reports and other materials and documents relating to the water taking or proposed water taking.

#### **High use watersheds**

4. (1) In the case of an application that relates to water taking for a purpose described in subsection (5), the Director shall determine in accordance with subsection (8) whether the proposed water taking would be in a year-round high use watershed or seasonal high use watershed.

(2) Subsection (1) does not apply if the applicant is a municipality.

(3) If the proposed water taking would be in a year-round high use watershed, the Director shall refuse the application unless,

- (a) at the time of the application, the applicant or another person held an unexpired permit to take water; and
- (b) the application is for a new permit to authorize the taking of the same or a lesser amount of water at the same location and for the same purpose as was authorized by the unexpired permit.

(4) If the proposed water taking would be in a seasonal high use watershed, the Director shall refuse the application unless,

- (a) the permit includes a condition prohibiting the person from taking water during the summer low flow period; or

- (b) at the time of the application, the applicant or another person held an unexpired permit to take water, and the application is for a new permit to authorize the taking of the same or a lesser amount of water at the same location and for the same purpose as was authorized by the unexpired permit.

(5) The purposes referred to in subsection (1) are:

1. Beverage manufacturing, including the manufacturing or production of bottled water or water in other containers.
2. Fruit or vegetable canning or pickling.
3. Ready-mix concrete manufacturing, not including concrete manufactured at a portable ready-mix concrete manufacturing facility.
4. Aggregate processing, if the aggregate and the water that is taken are incorporated into a product in the form of a slurry.
5. Product manufacturing or production, if, in the normal course of the manufacturing or production, more than a total of 50,000 litres of the water that is taken may be incorporated in a single day into the products being manufactured or produced.

(6) Paragraph 2 of subsection (5) does not apply in respect of water that is taken only for washing in the course of the canning or pickling.

(7) Subsection (5) does not apply in respect of water that is taken for agricultural purposes, including aquaculture, nurseries, tree farms and sod farms.

(8) In determining whether a watershed is a year-round high use watershed or a seasonal high use watershed, the Director shall consider,

- (a) with respect to water that is being taken in the watershed under permits issued under section 34 of the Act,
  - (i) the total amount taken,
  - (ii) the number of days per year that water is taken and the time of year when water is taken,
  - (iii) the proportion of available water that is taken, and
  - (iv) the proportion of water taken that is removed from the watershed;
- (b) annual average stream flow and seasonal low stream flow at the mouth of the watershed; and

- (c) minimum stream flows.

### **Great Lakes Charter**

5. A Director who is considering an application shall ensure that Ontario's obligations under the Great Lakes Charter with respect to the application are complied with.

### **Notice and consultation**

6. (1) Subject to subsection (2), a Director who is considering an application shall give the following persons notice of the application:

1. The upper-tier and lower-tier municipalities or the single-tier municipality, as the case may be, within whose area of jurisdiction the proposed water taking is located.
2. Any conservation authority within whose area of jurisdiction the proposed water taking is located.

(2) Subsection (1) does not apply if,

- (a) the application is for a permit to take water,
  - (i) over a period of less than one year, or
  - (ii) only for irrigation of agricultural crops;
- (b) in the Director's opinion, the delay involved in giving notice to the persons listed in subsection (1) would result in,
  - (i) danger to the health or safety of any person,
  - (ii) harm or serious risk of harm to the environment, or
  - (iii) injury or damage or serious risk of injury or damage to any property; or
- (c) in the Director's opinion, the persons listed in subsection (1) have already received the information that would be included in the notice.

(3) Subsection (2) does not prohibit the Director from giving any person notice of an application if the Director is of the opinion that it is consistent with the purposes of this regulation to do so.

(4) The Director may require the applicant to,

- (a) notify or consult with other persons who have an interest in the proposed water taking, including,

- (i) persons mentioned in subsection (1), and
- (ii) governmental authorities for other jurisdictions;
- (b) provide the Director with information on the interests of and responses of the persons notified or consulted under clause (a);
- (c) provide the Director with information on the efforts that the applicant has made to resolve any concerns raised by the persons notified or consulted under clause (a); and
- (d) provide the Director with such other information as the Director specifies.

(5) Subsection (4) applies despite subsection (2), and any notice required by the Director under subsection (4) is in addition to the notice given by the Director under subsection (1).

(6) Subject to section 5, the Director may give governmental authorities for other jurisdictions notice of the application and consult them about it, even if notice and consultation are not required by the Great Lakes Charter.

(7) For the purposes of subsections (1) and (6), the Director may give a person notice of an application by,

- (a) sending the person a brief description of the application by mail, by fax, by e-mail or by other electronic means; or
- (b) delivering a brief description of the application to the person.

### **Data and reporting**

7. (1) On and after July 1, 2005, every person to whom a permit has been issued under section 34 of the Act for taking water for a purpose set out in subsection (2) shall collect and record data on the volume of water taken daily.

(2) The purposes mentioned in subsection (1) are:

- 1. Use in a municipal water supply.
- 2. The purposes listed in paragraphs 1 to 5 of subsection 4 (5), subject to subsections 4 (6) and (7).
- 3. The operation of a plant governed by any of the following regulations, made under the *Environmental Protection Act*:
  - i. Ontario Regulation 560/94 (Effluent Monitoring and Effluent Limits – Metal Mining Sector).

- ii. Ontario Regulation 215/95 (Effluent Monitoring and Effluent Limits – Electric Power Generation Sector).
- iii. Ontario Regulation 561/94 (Effluent Monitoring and Effluent Limits – Industrial Minerals Sector).
- iv. Ontario Regulation 64/95 (Effluent Monitoring and Effluent Limits – Inorganic Chemicals Sector).
- v. Ontario Regulation 214/95 (Effluent Monitoring and Effluent Limits – Iron and Steel Manufacturing Sector).
- vi. Ontario Regulation 562/94 (Effluent Monitoring and Effluent Limits – Metal Casting Sector).
- vii. Ontario Regulation 63/95 (Effluent Monitoring and Effluent Limits – Organic Chemical Manufacturing Sector).
- viii. Ontario Regulation 537/93 (Effluent Monitoring and Effluent Limits – Petroleum Sector).
- ix. Ontario Regulation 760/93 (Effluent Monitoring and Effluent Limits – Pulp and Paper Sector).

(3) Data collected under subsection (1) shall be measured by a flow meter or calculated using a method acceptable to a Director.

(4) On or before March 31 in every year beginning with the year 2006, every person to whom subsection (1) applies shall submit to a Director, in the form and manner approved by the Director, the data collected and recorded under subsection (1) for the previous year.

(5) Subsections (1) to (4) do not affect a Director's discretion, under subsection 34 (6) of the Act, to impose terms and conditions in issuing a permit and to alter the terms and conditions of a permit after it is issued.

#### **Water transfer**

8. (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.

*No interbasin transfers between Great Lakes*

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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.

#### **Revocation**

9. Ontario Regulation 285/99 is revoked.

#### **Commencement**

10. This Regulation comes into force on January 1, 2005.