



CITY OF HAMILTON
PUBLIC HEALTH SERVICES
Healthy Environments Division

TO:	Mayor and Members Board of Health
COMMITTEE DATE:	April 20, 2017
SUBJECT/REPORT NO:	Ground Water Extraction for Commercial Water Bottling (BOH17011) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Eric Mathews (905) 546-2424, Ext. 2186
SUBMITTED BY:	Kevin McDonald (A) Director, Healthy Environments Division Public Health Services Department
SIGNATURE:	

RECOMMENDATION

- (a) That the comments submitted by Hamilton Water to the Ontario Environmental Bill of Rights Registry website on November 30, 2016, respecting the Ministry of Environment and Climate Change proposed water-taking permit requirements for commercial water-bottling facilities, and attached as Appendix "A" to Report BOH17011, be approved;
- (b) That a copy of the comments from Hamilton Water submitted to the Ontario Environmental Bill of Rights Registry website on November 30, 2016, respecting the Ministry of Environment and Climate Change proposed water-taking permit requirements for commercial water-bottling facilities, accompany an endorsement letter from Council to the Premier and the Minister of Environment and Climate Change; and
- (c) That staff report back to the Board of Health on the outcome of the Province of Ontario's review of the regulation of water-taking by commercial water-bottling facilities under Ontario Water Resources Act, expected to be completed before the Ministry of the Environment and Climate Change's two year moratorium on water-taking permits for these facilities expires on January 1, 2019.

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EXECUTIVE SUMMARY

At its meeting on February 1, 2017, General Issues Committee passed the following motion:

- (a) That staff be directed to report to the Board of Health, at its meeting of March 20, 2017, on the proposed submissions to the Province on water-taking by water bottling facilities in response to the provincial moratorium and associated Environmental Registry proposals, having regard to the City of Guelph's submissions, as approved by its Council on November 28, 2016;
- (b) That the report include the feasibility of a permanent ban on water-taking by water bottling facilities (commercial, not agricultural or residential water-taking) within the geographical area of the City of Hamilton; and
- (c) That this resolution be copied to the Halton-Hamilton Water Source Protection Committee, local MPPs and the Association of Municipalities of Ontario.

In correspondence dated February 12, 2017, the Ontario Ministry of Environment and Climate Change (MOECC) provided an up-to-date description of the Permit To Take Water (PTTW) approval process (see Appendix C). The MOECC will approve a PTTW only after thorough scientific and technical studies demonstrate that the water taking will not have adverse effects on other water users and on the natural environment.

Currently there is a provincial moratorium on the issuance of a new or increasing a PTTW for water bottling. The moratorium will be in effect until January 1, 2019. During the moratorium MOECC has invited feedback on three postings:

- 1) Environmental Bill of Rights Registry Number 012-8783 O. Reg. 463/16: Taking Ground Water to Produce Bottled Water.
- 2) Environmental Bill of Rights Registry Number 012-9151: Bottled Water Technical Guidance Document.
- 3) Environmental Bill of Rights Registry Number 012-9574: A regulation establishing a new water bottling charge.

Appendix A to Report BOH17011 is comments submitted to the Environmental Bill of Rights Registry by the City of Hamilton Public Works Department regarding the first posting O.Reg 463/16 to establish a moratorium on the issuance of new or increasing permits to take water for water bottling. At the time of writing this report, the Province was in the process of public consultations for the third posting regarding a regulation establishing a new regulatory charge (fee) that would apply to water bottling facilities that take groundwater. Staff proposes to report back to update Council on the outcome of the Provincial review and identify any implications or opportunities for the City.

The Province maintains authority over all water-taking under the Ontario Water Resources Act. Although the City has no authority to ban water-taking by commercial water-bottling facilities, the City has the authority to regulate commercial water bottling land use, and has done so under the *Planning Act*. Commercial water-taking is not permitted unless a Zoning By-law Amendment and Site Plan Approval are obtained. This requirement affects new and not existing businesses with legal non-conforming status. Business licensing is not available as the *Municipal Act* explicitly prohibits regulation by this means for water extraction.

Alternatives for Consideration – see Page 9

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: No financial implications.

Staffing: No staffing implications.

Legal: No legal implications.

HISTORICAL BACKGROUND

The MOECC has made three recent postings on the Environmental Bill of Rights Registry (EBR) regarding the use of groundwater for water bottling;

1. EBR Registry Number 012-8783 O. Reg. 463/16: Taking Ground Water to Produce Bottled Water. This proposal was posted for a 45 day public review and comment period starting October 17, 2016. Comments were to be received by December 01, 2016. Ontario Regulation 436/16 made under the *Ontario Water Resources Act* came into force on December 16, 2016. This regulation established a moratorium until January 1, 2019 prohibiting the issuance of new water-taking permits to commercial water-bottling facilities or increases the amount of water-taking under existing permits. Comments submitted to this EBR posting by the City of Hamilton Public Works are attached as Appendix A. Comments submitted to this EBR posting by Guelph Council are attached as Appendix B.
2. EBR Registry Number 012-9151: Bottled Water Technical Guidance Document. This proposal was posted for a 60 day public review and comment period starting December 02, 2016. Deadline for comments was January 31, 2017. In general, the Document contains procedural requirements to increase public reporting and technical requirements to improve data collection.
3. EBR Registry Number 012-9574: A regulation establishing a new water bottling charge. The fee would be \$500 per million litres taken in a calendar year. The current per-litre fee appears to be \$3.71 per million litres taken in a calendar year. The per-litre fee is in addition to a fee of \$3,000 for a first permit and \$750 for renewals. The new per-litre fee is intended to be used to finance activities and programs that the Ontario government is establishing to more effectively manage

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groundwater takings by commercial water bottlers. Deadline for comments was March 20, 2017.

Present Status of Groundwater Taking in Hamilton for Commercial Water Bottling and Other Purposes

There is one valid PTTW in Hamilton to take groundwater for commercial water-bottling purposes. A PTTW was issued by the MOECC on September 19, 2014 for the taking of water from one well, for the purpose of bottling water in City of Hamilton, Ontario, described as follows:

- Source Name: Well #2 WWR#6811368
- Purpose: Bottled Water
- Maximum rate per minute (Litres): 566
- Maximum number of hours of taking per day: 4
- Maximum volume per day (Litres): 58,000
- Maximum number of days of taking per year: 365

The above PTTW is valid for 10 years. Our understanding at this time, is that the water well to which this PTTW applies is actively in operation for water bottling. The location where the water is bottled is not located in Hamilton, nor is the bottled water sold in Hamilton.

Hamilton Water Source Protection Planning provided comments to the MOECC for the Flamborough Springs PTTW renewal in both 2009 and 2014. Based on the information that was provided by the permit holder and the MOECC, water monitoring data indicated that surface water had not been unacceptably impacted and that nearby private wells were not impacted during the initial pumping test investigation. In 2014, Flamborough Springs was not aware of any complaints from nearby private well owners regarding impacted water quantity or quality. The groundwater model simulation conducted in 2009 to support the water taking indicated that the drawdown from the water bottling source well is not impacting the municipal wells in the Carlisle community.

Hamilton Water Source Protection Planning did make the MOECC aware that if the City intends to increase water takings from the Carlisle municipal wells or add a new supply well to the Carlisle community, then Flamborough Springs could be located within the Wellhead Protection Area and be subject to applicable source water protection policies. From MOECC open data publically available on the internet, there are approximately 342 active PTTW's for all water sources in Hamilton for a variety of purposes, such as golf course irrigation, agriculture, water supply, quarry dewatering, etc. The maximum amount of water that is approved for taking per year for all purposes in Hamilton is estimated to be 206 billion litres. This is approximately equivalent to filling 82,000 Olympic sized swimming pools or filling 130 SkyDomes full of water every year. The

one PTTW approved for water bottling purposes in Hamilton represents approximately 0.01% of the estimated annual and Hamilton-wide maximum amount of water that is approved for taking.

Water User	Maximum Taking (L/year)	% of Total Annual Taking
Construction/Dewatering	73,889,994,285	35.80%
Pits and Quarries	36,975,612,520	17.92%
Miscellaneous	30,123,136,624	14.60%
Recreational	28,388,504,400	13.76%
Agricultural	16,336,008,090	7.92%
Golf Course Irrigation	12,977,252,560	6.29%
Water Supply	6,477,541,984	3.14%
Industrial	634,130,135	0.31%
Other - Commercial	510,422,040	0.25%
Remediation	47,829,600	0.02%
Bottled Water	21,170,000	0.01%
TOTAL	206,381,602,238	100%

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The applicable legislation is discussed under Analysis and Rationale for Recommendation section of this report.

RELEVANT CONSULTATION

The following internal City of Hamilton Departments and external agencies were consulted for the purpose of preparing this report:

- Hamilton Water
- Legal Services
- Planning and Economic Development Department
- Ontario Ministry of Environment and Climate Change
- Wellington-Dufferin-Guelph Public Health

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Ontario Water Resources Act and its Regulations

The Province of Ontario maintains authority over surface waters and ground waters, including water-taking from these sources under the *Ontario Water Resources Act* and its Regulations.

A permit is required for water-taking that exceeds 50,000 litres per day with some exceptions as set out in the *Ontario Water Resources Act*. The MOECC has established the moratorium on permits relating to commercial water-bottling facilities taking more than 50,000 litres a day and is proposing new procedural and technical requirements, as well as a new per-litre fee.

While no permit is required for water-taking for any purpose that does not exceed 50,000 litres a day, the Province maintains its authority over lesser water-takings, in addition to larger water-takings, under s. 34(5) of the *Ontario Water Resources Act*, which allows it to issue orders prohibiting any water-taking unless the water-taking is in accordance with a permit. As a result, there is no opportunity for the City of Hamilton to act to stop water-taking by commercial water-bottling facilities.

As per the November 2016 Technical Guidance Document for Permits to Take Water for bottled water from the MOECC, water takings shall not:

1. Cause unacceptable irreversible impacts to groundwater aquifers, such as those that may occur if an aquifer is over-pumped (e.g., aquifer mining). In addition, the taking of groundwater should not normally result in the deterioration of groundwater quantity or quality on a neighbouring property.
2. Cause unacceptable impacts to the natural functions of the ecosystem. This would include impacts to streams, impacts to water levels in wetlands or lakes, and ensuring that the taking does not interfere with habitat species or providing recharge to other aquifers.

Furthermore, if the scientific evidence shows that there will not be any unacceptable impacts, the water taker still must propose contingency and mitigative measures in case unexpected impacts arise.

How the Province will alter the regulation of water-taking by commercial water-taking facilities, including whether or not there is to be a stoppage of some description after January 1, 2019 when the moratorium ends is not yet known, as the Province is in the midst of its public consultations. Staff proposes to report back, updating Council on the progress of the Provincial review and identifying any opportunities for the City that may arise.

Ministry of Environment and Climate Change

See Appendix C of Report BOH17011; correspondence from the MOECC dated February 12, 2017 regarding the PTTW process and the current status of PTTW's to take groundwater for water bottling.

Local Public Health Impacts Related to the Taking of Groundwater for Commercial Water Bottling

There is no evidence that the present local state of groundwater taking for commercial water bottling poses an impact to local public health in the form of depleted or adversely affected groundwater quantity or quality. The current temporary stoppage of new or renewed PTTW's will prevent the creation of related public impacts. It is expected that the Provincial review and anticipated revision of the related legislation will diminish the potential risk (if any) of local public health impacts due to new (if any) PTTW's for taking groundwater for commercial water bottling activities.

Planning Act: Official Plan, Zoning and Site Plan Control

Rural Hamilton Official Plan

Commercial Water Taking (bottling or bulk transfer) is considered as a *resource based commercial use* in the Rural Hamilton Official Plan (RHOP).

Resource-Based: means, when used in reference to a use or activity, those rural commercial, industrial, recreational or tourism uses that by their very nature require certain natural attributes or resources for their location including the availability of large lots or land areas.

Specific policies related to resource based uses include:

D.4.1.1 *Resource-Based Commercial and Resource-Based Industrial Uses* are permitted provided the following conditions are met:

- a) The use must be directly related to and require a location on or in close proximity to a rural resource. Permitted *resource-based* commercial and *resource-based* industrial uses shall include kennels, commercial tree farms, retail greenhouses and nurseries, cement/concrete production, commercial water-taking, and sawmills;
- e) A Zoning By-law amendment and Site Plan approval shall be required to permit the use and address appropriate setbacks, building size and location, parking, lighting, drainage, buffering, screening and landscaping, and any other matters.

D.4.1.1.2 In addition to the above policies, specific *resource-based* uses shall be subject to added criteria as set out below:

- a) Commercial water-taking for bottling and bulk transport uses, requiring the issuance of a Permit to Take Water under provincial statute that involve the taking of water in excess of 50,000 litres per day for commercial sale, shall require hydrogeological studies to ensure the quality and quantity of ground and surface water available to other users of the aquifer are maintained and to address any impacts on natural heritage system features and functions prior to approval of a Zoning By-law amendment for the size and location of buildings and other facilities associated with the use.”

Based on these policies Commercial Water Taking operation is a permitted use provided the policies of the RHOP are met for the rezoning and site plan applications.

Zoning By-law 05-200

A rezoning application for a commercial water-taking use is required. As part of the application, several studies would be required to be completed prior to any approval of the use. A site specific set of regulations would be required to permit the use.

Site Plan Control By-law 15-176

The use is subject to Site Plan Control; therefore an application would be required to address the matters identified in Policy D.4.4.1 e) of the RHOP.

Municipal Act: Business Licensing

The City does not have the power in a business licensing by-law to licence water-taking. Section 152 of the *Municipal Act*, lists the businesses that municipalities may not licence (Ontario Regulation 583/06 expands that list) which includes the extraction of natural resources. Section 152 is as follows:

Restriction Re: Systems of Licences

152.(1) A municipality shall not pass a business licensing by-law providing for a system of licences which makes it illegal for a business listed below to carry on or engage in the business without a licence:

1. A manufacturing or an industrial business, except to the extent that it sells its products or raw material by retail.
2. The sale of goods by wholesale.
3. The generation, exploitation, extraction, harvesting, processing, renewal or transportation of natural resources.

(2) Nothing in subsection (1) prevents a municipality from providing for a system of licences for a business under any by-law, other than a business licensing by-law.

Since water is considered to be a natural resource, S.152(1)(3) explicitly prohibits the City from passing a business licensing by-law addressing water extraction.

ALTERNATIVES FOR CONSIDERATION

The City could request that the Province of Ontario, under its authority for all water-takings in Ontario, consider stopping the approval of all new Permits To Take Water in the City of Hamilton for commercial water bottling facilities permanently. This request would not apply to water-takings for existing commercial water bottling facilities in the City of Hamilton.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

APPENDICES AND SCHEDULES ATTACHED

Appendix A to Report BOH17011 - Comments submitted by Hamilton Water to the MOECC Regarding Watertaking Regulations

Appendix B to Report BOH17011 - City of Guelph's Submission to the MOECC Regarding Watertaking Regulations

Appendix C to Report BOH17011 - Correspondence from the MOECC dated February 12, 2017 regarding the PTTW process and the current status of PTTW's to take groundwater for water bottling.