



Title:	<i>Environmental Permissions Modernization Policy Proposals, Hamilton Water Response to Environmental Registry of Ontario Postings</i>
Date:	<i>November, 2023</i>

Hamilton Water provided comments as follows, on October 30, 2023 in response to the Environmental Permissions Modernization Policy Proposals.

ERO Posting #019-6928 - Streamlining Environmental Permissions for Stormwater Management Under Environmental Activity and Sector Registry

As currently drafted, the proposal would require the Licenced Engineering Practitioner to undertake a site-specific technical assessment to determine whether the works are identified as a significant drinking water threat in a Source Protection Plan. The Ministry of Environment Conservation and Parks (Ministry) is currently responsible for issuing Environmental Compliance Approvals for stormwater while the Halton-Hamilton Source Protection Plan includes prescribed instrument policies addressing stormwater that require the province to ensure compliance with the applicable policies. Furthermore, Source Protection Plan policies cannot be legally binding on private developers / consultants in the absence of Part IV tools.

The proposal, as currently drafted, would transfer that responsibility to the proponent and would not only be inconsistent with the source protection plans but would weaken oversight of the management of the stormwater works. Through the Environmental Compliance Approval framework, the Ministry review provides critical technical oversight to ensure that the detailed design of a proposal reflects site-specific conditions and design needs in relation to source water protection. The Environmental Compliance Approval review and approval approach further provide a higher level of due diligence which includes consultation and addressing requirements for receiving water (including any source water protection areas). By transferring these works from the Environmental Compliance Approval to the Environmental Activity Sector Registry framework, a lack of provincial oversight may result in weakened protections for sources of drinking water.

The number of Licenced Engineering Practitioner who would be working on stormwater projects and also be familiar with the requirements of drinking water source protection is very limited. Minimum standards for drinking water source protection training should be established through the Ministry and all Licenced Engineering Practitioner dealing with significant drinking water threats be required to successfully complete the training in advance of pursuing an Environmental Activity Sector Registry in these areas. In addition to training, consideration should be given to including checklists with each Environmental Sector Registry registration to verify that the stormwater management design report includes all required information (e.g., applicable water quality, erosion, and quantity targets for the site). The



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municipalities should be kept appraised on the monitoring and operating information associated with these stormwater private facilities.

Given the fact that the Ministry will have less oversight over the local activities, consideration for municipal access to the Environmental Activity and Sector Registry information is recommended.

Hamilton Water is also concerned that moving to an Environmental Activity and Sector Registry approach removes any right to appeal, should the municipality disagree with the Licenced Engineering Practitioner assessment. If new municipal wells are placed in areas with existing private stormwater facilities, it is understood that this proposal would also prohibit the identification of any new threats. Furthermore, the Source Protection Plan would have to create a different set of policies for private vs municipally owned facilities. This approach goes against the principle of using the best science available as well as the proactive, multi-barrier approach to protecting our sources of drinking water.

Inspection / Audit of EASR Registrations:

While the proposal notes that the Ministry will continue to audit the registry and inspect stormwater management works as needed to enforce compliance with the rules, no details have been provided about the proposed compliance framework. Further, this approach represents a significant shift away from proactive review to a reactive approach where inspections may not occur in time to address non-compliance with Environmental Activity and Sector Registry registrations (e.g., works may be underway or already completed). With little information regarding the Ministry's audit approach, including whether or not the Ministry intends to increase audits given the proposed increased use of the Environmental Activity and Sector Registry for stormwater works, there is concern that the Ministry is seeking to potentially revise current approaches that represent protections to safe drinking water.

Concerns that private stormwater that is not operating properly may be assumed by the municipality later should be also noted.

Regulatory Amendments under the Ontario Water Resources Act to Remove the Need for Low Impact Development Works to Obtain an Environment Compliance Approval

The Ministry is proposing to expand the list of existing exemptions under O. Reg. 525/98 for certain low risk sewage works to obtain an Environmental Compliance Approval. The list currently allows low impact development works on residential properties, foundation drainage works, ultraviolet treatment to control mussels in water pipes and sewage works related to construction site dewatering to proceed



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without an Environmental Compliance Approval. It is now proposed that the regulation be amended to provide an exemption for all low impact development works, as well as drainage works for roadways and railway projects by Metrolinx.

Proper maintenance of any low impact development feature is directly linked to its performance. While the implementation of low impact development works on single private residences is supported, there needs to be assurance that proper ongoing maintenance will take place to achieve optimal outcomes and provide for long-term operation (e.g., continuity of operation, providing credit(s) for peak flows, phosphorus reduction, water balance and volume control and prevention of flooding, erosion, and pollution issues). In lieu of the requirement for an Environment Compliance Approval (which would include operation and maintenance responsibilities for the low impact development feature), it is recommended that measures be put in place to ensure proper operation and maintenance of the low impact development feature over time. One potential solution could be to require agreements between municipalities and landowners to ensure a specified party is accountable for the operation and maintenance of the low impact development feature; this could potentially be achieved using the Drainage Act. Guidance for municipalities and others will be required. Without measures in place to ensure ongoing maintenance and proper operation, it is possible that this proposed exemption could result in a gradual degradation of the efficacy of the low impact development feature.

Under the lens of source water protection, if low impact developments works, which may be a significant threat to drinking water, were exempted from the need for an Environmental Compliance Approval as proposed by the Ministry, Source Protection Committees would need to assess other ways of addressing any such threat, including the development of Risk Management Plan policies (under section 58 of the Clean Water Act). In that case, the Ministry may need to add Risk Management Measures appropriate for residential low impact development works to the Risk Management Measures Catalogue and may wish to add content specific to low impact developments works to the Risk Management Official training (including how to recognize the difference between a residential low impact developments feature and an aesthetic feature, and how to properly maintain low impact developments features to mitigate risks to drinking water).

Regulatory Amendments under the Clean Water Act:

The Ministry is proposing to amend O. Reg. 287/07 under the Clean Water Act by removing the need for, limiting, or restricting the types of policies to be included in source protection plans where a significant drinking water threat is being managed through an Environmental Activity and Sector Registry registration. The Ministry is



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also proposing to amend the regulation to allow for amendments to be made to source protection plans without undergoing the existing amendment processes where the amendment is to remove policies that are no longer operative.

The removal of Risk Management Plans or Environmental Compliance Approvals requirements for Significant Drinking Water Threats is a fundamental change in the Source Protection Planning process that weakens the Clean Water Act.

It is recommended that the Ministry work with the Source Protection Authorities on any requested changes to a Source Protection Plan. This process should maintain the intended rigor under the Clean Water Act, as contemplated under the prescribed instrument policies of a Source Protection Plan.

In addition, Hamilton Water believes that the Risk Management Officer should be notified of works that could be a significant drinking water threat. The City currently has awareness and influence of development within Source Water Protection Areas under existing legislation. The proposal to use the streamlined Environmental Activity and Sector Registry process would limit visibility and stakeholder consultation on proposals.

ERO Posting #019-6853 - Streamlining Permissions for Water Takings for Construction Site Dewatering Activities and Foundation Drains

Construction Site Dewatering Activities:

The Ministry is proposing to streamline permissions for temporary water takings, including removing the current water taking limit of 400,000 litres of ground water per day from one or more dewatered work areas at a construction site. The self-registration rules provided in O. Reg. 63/16 would continue to apply to all water takings of greater than 50,000 litres per day, including necessary measures to ensure that water quantity and quality are not affected upstream or downstream of the work area, and that discharges associated with the water taking do not cause adverse effects to the environment. To ensure compliance with the Environmental Activity and Sector Registry rules-in-regulation, the Ministry would retain the ability to inspect such water taking activities to ensure they comply with all necessary legal requirements.

Hamilton Water has the following concerns regarding proposed streamlined process for construction dewatering:

- Potential for surcharging of storm, sanitary and/or combined sewers and increases combined sewage overflows.



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- Environmental Activity and Sector Registry postings for water taking will mean that there is no or limited public or municipal knowledge of water taking. Consideration for municipal notification about local Environmental Activity and Sector Registry applications and access to the Environmental Activity and Sector Registry information is recommended.
- Consumption of conveyance and pumping capacity reduces available municipal servicing capacity to support growth and development.

Foundation Drains and Permanent Dewatering:

Exemptions for Residential Foundation Drainage Systems

The Ministry is proposing regulatory amendments to O. Reg. 387/04 under the Ontario Water Resources Act to exempt residential foundation drainage systems from requiring a Permit to Take Water for water takings of up to 379,000 litres of water per day. Currently, water takings of over 50,000 litres per day from residential foundation drainage systems would require a permit to take water per section 34 of the Ontario Water Resources Act. The proposed regulatory change would result in water takings for residential foundation drainage systems under 379,000L/day no longer requiring an Environment Compliance Approval or registration on the Environmental Activity and Sector Registry. Limited exceptions for certain types of water takings are provided in subsections 34(2) and (3) of the Act.

Hamilton Water is concerned that removal of 400,000 L per day for water takings will have a negative impact to the environment due to cumulative impacts associated with multiple water takings within an area or proximity to contaminated sites.

The following is recommended:

- That water takings proposed in water quantity stressed areas and Significant Groundwater Recharge Areas are appropriately screened to consider potential cumulative impacts, including those outside of any overlapping areas of influence.
- That discharge locations should be in accordance with the City Sewer By-Law or any other local policies.
- That the Ministry create guidance for developers as well as the municipality on how to assess the impacts and integrate the provincial and local processes.
- The City is looking to limit foundation discharges. The current Ministry Environmental Registry Ontario posting contradicts the City's position on permanent dewatering which requires waterproofing for foundations to



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remove the need for permanent discharging of groundwater into the municipal system.

- The Ministry has not adequately considered alternatives to permanent dewatering such as industry accepted practices such as waterproof foundations, discharges to surface, rein filtration in soak away pits, dry wells, and infiltration trenches.
- Residents are adversely impacted by permanent dewatering by the noise nuisance associated with continuous or frequent pumping and are further burdened by the increased cost associated with shortened lifecycle of dewatering infrastructure.
- Currently, the municipal planning authority shall only provide final approval for new developments that require a Permit to Take Water once Ministry has determined that the proposed taking does not become a significant water quantity threat.

The water taking activity would be considered a Significant Drinking Water Threat in an area where there is a significant water quantity stress. Since the Ministry is proposing to remove the water quantity restriction on construction dewatering wherein a Permit to Take Water would be required, the Ministry is removing a potential source protection policy tool; a Prescribed Instrument policy would no longer apply to the drinking water threat activity.

The Ministry has stated that "the proposed amendments will ensure appropriate environmental protections are in place..." but with the removal of a source protection tool, the Ministry should explain how appropriate environmental protections are assured for these Significant Drinking Water Threat areas. If the City needs to compensate for the loss of this policy tool, the City will need to develop, approve and implement new water quantity policy tools to address foundation drains. The City recommends that the Ministry maintain the upper limit of 400,000 L/day and provide for Permits to Take Water above the limit, to ensure appropriate environmental protections are in place.