

# Source Protection Planning Bulletin – Permits to Take Water



May 2011

## Introduction

The purpose of the Clean Water Act, 2006 (“the Act” or “CWA”) is to protect Ontario’s existing and future drinking water sources, as part of an overall commitment to safeguard human health and the environment. A key focus of the legislation is the preparation of locally developed terms of reference, science-based assessment reports and source protection plans. For additional information on the CWA and how the terms of reference and assessment reports were developed, readers may refer to the Ministry of the Environment’s website [www.Ontario.ca/cleanwater](http://www.Ontario.ca/cleanwater).

The source protection plans will consist of a range of policies that together will reduce the risks posed by threats to water quality and quantity. This document is one in a series of planning bulletins intended to assist local source protection committees in preparing source protection plans and policies.

## Purpose

This document provides source protection committee (SPC) members with information related to Permit To Take Water (PTTW) issued under the *Ontario Water Resources Act*. PTTW is a prescribed instrument under the CWA and may be used as a tool to address threats to drinking water. There are seven (7) additional bulletins that set out details about each of the instruments prescribed in the General Regulation - Ontario Regulation 287/07 (“the Regulation”) and a general Overview Bulletin about policy development as it relates to prescribed instruments. The bulletins will help SPC members understand the general scope of each of the prescribed instruments, the types of drinking water threats each instrument may have the mandate to address and how terms and conditions are used within the instrument to manage the threats.

Together the Act and its regulations (“the legislation”), in particular the General Regulation - Ontario Regulation 287/07 (“the Regulation”), establish a legal framework for drinking water source protection in Ontario. Amendments to the Regulation setting out some of these requirements took effect on July 1, 2010. All



section references relate to the Regulation unless otherwise stated.

While every effort has been made to ensure the accuracy of the information in this document, it should not be construed as legal advice or relied on as a substitute for the legislation.

## Legislative/Regulatory Authority

The purpose of the Permit To Take Water (PTTW) program is to manage the taking of water to ensure fair sharing of water, promote stewardship and prevent unacceptable interference with other uses of water. The *Ontario Water Resources Act* (OWRA) sets out the legislative requirement to have a permit to take more than 50,000 litres of water per day. Permits allow taking from surface water or from groundwater (aquifer) sources or both depending on the details listed in the permit.

The Water Taking Regulation (O. Reg. 387/04), under the OWRA, establishes that every permit holder must report annually to the ministry on their daily water taking. This obligation is in addition to any monitoring requirements specified in the terms and conditions of the water taker's permit.

## Creation/Issuing of Instrument

A person (or business) that is proposing to take more than 50,000 litres of water per day, for a purpose that is listed in regulation is required to get a PTTW from the Ministry of the Environment. Complete applications are received by the ministry's Environmental Assessment and Approvals Branch (EAAB). The requirements for a complete application are outlined in the [Guide To Permit To Take Water Application Form](#) (MOE, Sept 2007; publication 5046e).

The ministry summarizes information in the application to publish a Proposal Notice on the Environmental Bill of Rights (EBR) Environmental Registry for those water taking proposals that are required to be posted. Water taking proposals for agricultural purposes, for a period of less than one year or that are related to the implementation of an undertaking approved under the Environmental Assessment Act (EAA) are not required to be posted to the Registry.

Applications for proposed water takings are evaluated by Ministry regional offices. The Technical Support Section's Water Resources Unit Supervisor is the Director authorized under s. 34 of the OWRA to make the decision to issue or deny a permit. The Director signs and issues permits or informs applicants when a permit application has been denied.

The ministry uses a risk-based approach for processing and evaluating applications for permits. Persons applying for a water taking permit are required to classify their applications (Category 1, 2 or 3) to reflect increased risk and to submit the category-specific documents outlined in the PTTW Manual or the Guide to PTTW Application Form. The higher the potential for impact from a water taking proposal, the more detailed information is needed to support an

application. Category 2 and 3 applications must be supported by information provided by a qualified person<sup>1</sup>. It is the responsibility of water taking proponents (i.e. the applicants and any required qualified persons) to include all necessary technical information with their submissions so that the PTTW Director can make an informed decision to either issue or deny the requested permit.

When reviewing an application for a water taking permit, a Director must consider the following matters to the extent that information is available to the Director and to the extent that the matters are relevant to the water taking or proposed taking in the particular proposal:

- Natural functions of the ecosystem including potential impact on the natural water flow or level and the habitat that depends on that water flow/level;
- The interrelationship between ground and surface water that may be affected by the proposed taking;
- Water availability including water balance and existing uses from various sources including municipal residential drinking water systems, sewage disposal, livestock, agricultural and other uses;
- Low water conditions, and if the watershed is high or medium use;
- Planned municipal use of the water;
- Water conservation;
- The purpose for the water taking and current uses of that same source;
- If there is an intended use of the proposed water – the assessment of this prospect may be subject to other approvals being granted by other agencies; and
- Other issues including interests of other persons and other matters the Director considers relevant.

The regulation also specifies:

- how permitting must be done for specified water taking purposes in high use watersheds;
- that permitting must be in accordance with Ontario's obligations under the Great Lakes Charter; and
- that notice and consultation with municipalities and conservation authorities must occur for proposals published to the Environmental Registry.

The regulation also provides a Director with the authority to require an applicant to consult with persons with an interest in the proposed water taking, and then report on this consultation.

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<sup>1</sup> Qualified person: for the purpose of the PTTW program, a qualified person is defined in the application guidance material.

For those applications that required Proposal Notices, the decision to issue or deny a permit must be published as a Decision Notice on the Environmental Registry. The decision is then subject to appeal by any person with an interest in the proposed water taking. Where a Decision Notice notes that a permit has been issued, the notice will provide a link to the actual instrument (the PTTW) for public viewing.

Each permit issued has an expiry date. Generally, the expiry date for permits is less than 10 years from the date of issue. A new application must be submitted to renew the permit. Permits can be canceled or altered after they are issued. If the permit is canceled or changed, the Director will notify the permit holder and the permit holder has the opportunity to appeal the decision.

At the end of each fiscal year, the ministry creates a list of all active PTTWs. On March 31, 2011, there were 6,139 such permits, of which 38% allow water taking for agricultural purposes and another 18% for water taking to supply drinking water systems. Other water taking purposes include wildlife conservation and wetlands (9%) and golf course irrigation (9%). Water taking for bottled water accounted for 16 permits on March 31, 2011.

## Content of each instrument

Permits contain general and specific terms and conditions that must be complied with. These terms and conditions safeguard other interests in the watershed and require that water takings do not cause unacceptable interference with other uses of the water or natural functions of the ecosystem. Determining whether the taking will cause interference can be subjective and sometimes only occurs a result of a complaint. Complaints may claim that a water taking has caused a negative impact on the quality or quantity of surface water or groundwater supplies. In these cases, ministry Environmental Officers will select appropriate corrective actions to restore compliance with the permit and resolve interference with other public or private interests in the water.

Every permit identifies a person or body that is taking water and the water taking locations, the source of water for the taking (surface water or groundwater), the purpose(s) for the water taking (e.g., irrigation). The permit allows water taking in accordance with the application, unless modified by the terms and conditions in the permit itself. This means that the water taker must carry out the taking in a manner that is consistent with the information provided in the application that proposed the taking as well as the requirements in the permit document itself.

General terms and conditions may include, but are not limited to:

- specific maximum taking rate (litres per minute), duration (hours/day; days/year), and daily amount (litres/day); where these 'upper' limits may only occur when water taking in that manner will not cause interference.

- requirements for the permit holder to keep records of when water is being taken. This ensures that permit holders can comply with their regulatory obligation to report daily water taking each year set out in the regulation.
- requirements for the permit holder to notify the Director of any complaints about the water taking and the actions taken to resolve those complaints.
- special terms and conditions to regulate or limit any other relevant aspect of the water taking.

In addition to this list of terms and conditions, there are other statements or language in permits that let the holder of the permit know of their or the ministry's authorities or obligations. For example:

- Every permit states that the Director can suspend or reduce the permitted taking by issuing a notice to the permit holder (this action can be appealed).
- Every permit states that the water taker is not relieved of any obligation to obtain any other necessary approval, including for example to access another property to take water.
- Every permit states that it does not allocate a right to the water – permits do not allocate water or guarantee a supply of water for any taking event.

When developing source protection plan policies to manage an activity that takes water from an aquifer or surface water body without returning the water taken to the same aquifer or surface water body, it may be useful to consider the general terms and conditions of a PTTW. Examples of this kind of activity include dewatering operations for quarries and water bottling facilities.

## Limitations of Instrument

Some water takings are exempt from getting a PTTW. The taking of water for domestic (ordinary household use) and farm purposes (other than for irrigation of crops for sale), or by using means that existed prior to March 30, 1961 and not since changed, is not required to have a permit. A PTTW is also not required for water taking for firefighting. A few other exemptions are discussed in the following paragraphs.

A PTTW does not regulate the construction, installation or operation of a means to take water, including the operation of a water supply system. However, the applicant for a drinking water license must first obtain a PTTW (if one is required).

A permit does not generally regulate point-source discharge quality, and especially when this may be subject to other approvals such as a sewage works approval issued under section 53 of the OWRA. However, a Director that issues a PTTW must consider the potential impacts associated with the return flow of taken water to ensure this does not cause negative impacts (for example, flooding or erosion) and conditions in a PTTW may impose restrictions on the return flow.

While a permit does not evaluate the viability of a land use or a development undertaking, planning approvals under the Planning Act, the Environmental Assessment Act (EAA) or other similar decision making processes should consider the sustainability water taking requirements related to the proposal. In a similar way, approval of water-related construction, for example, under the Public Lands Act, the Lakes and Rivers Improvement Act, or in accordance with Conservation Authority regulations, should consider the potential impacts associated with the water taking required for the proposed use or activity. This ensures that possible issues and delays can be identified and avoided before these projects are implemented and before they would apply for a PTTW.

A PTTW allows one aspect (water taking) of a proposed development to be implemented. In this context, the focus of PTTWs is reasonably narrow and can be seen as different from other approvals for the construction or operation of facilities and complex processes. Where these approvals regulate activities, the evaluation of a related application for a PTTW is not intended to revisit decisions made in those other approvals.

Since some of these development sites have varying stages of work or approvals, the person applying for the PTTW should consider these timelines. A PTTW can not be issued if other enabling approvals are still pending. For example, a PTTW can not be issued until a Notice of Completion (under the EAA) has been closed, or a Niagara Escarpment Commission Development Permit has been issued. The ministry's PTTW Application Service Standard requires that a decision on the application for a PTTW be provided to the applicant no later than 90 days after the ministry receives the complete application. Accordingly, the ministry will advise an applicant for a PTTW not to submit a complete application until it can be processed. This means that the application for a PTTW should be submitted at, or about the same time as, planning approvals are issued to allow the implementation of activities such as water taking to be considered.

A permit is not used to prioritize water use, other than establishing the general requirement that a permitted water taking may not cause unacceptable interference with other private or public use of the water.

There are also situations where persons taking water would not normally be required to have a PTTW may be required to obtain one. For example, a permit can be required of a person taking surface water and storing it to watering livestock and poultry when, in the opinion of a Director, the taking is causing interference with other interests in the water. In such case, the Director must notify this person that they need a permit.

## Compliance program

Every permit may be subject to inspection by a Provincial Officer at any time to assess compliance with its terms and conditions. Inspections are carried out by the ministry both proactively and in response to complaints about interference or other concerns. When a water taking is found to be non-compliant with the terms

and conditions of the PTTW, it is usually an administrative matter, including failure to produce a permit upon request, taking water under an expired permit, failing to keep records, etc. and rarely causes significant health or environmental consequences.

A site or facility may be regulated under many approvals, including those issued by other agencies. If the site or facility includes water management activities that requires a PTTW, the ministry coordinates its approvals with other approval agencies, whenever possible. In this way, a requirement to change a process that uses water that is being considered for other approvals (i.e., Certificates of Approval) may also necessitate a change to a water taking practice and this can be reflected in the PTTW accordingly.

## Appeal and/or Review mechanisms

Permit decisions can be appealed by the applicant or by any Ontario resident by first applying for leave to appeal to the Environmental Review Tribunal (ERT). The Decision Notice for a permit includes instructions for persons wishing to appeal a decision. In considering an appeal of a decision to issue a PTTW, the ERT applies two tests and both must be satisfied:

- Did the PTTW director act unreasonably?
- Could the decision result in significant harm to the environment?

A decision made by the Environmental Review Tribunal may be appealed either to Divisional Court on a question of law (“Judicial Review”) or to the Minister of the Environment on any other matter.

## Example of Instrument

For every Decision Notice posted on the EBR Registry ([www.ebr.gov.on.ca](http://www.ebr.gov.on.ca)), a link to the related PTTW is included. To view an example of a permit, type in “PTTW” in the search box and select an EBR Registry Number for an Instrument Decision posting.

## History

Water takings in the province have been managed under the Permit to Take Water program since 1961. Regulation and policy changes in 2004 introduced more stringent requirements for water taking proponents and consultation requirements for the ministry. These changes also saw the adoption of a risk-based approach to processing and evaluating applications for permits. Applications for water taking proposals with a higher potential to cause impacts must be supported more information.

Amendments to the OWRA made by the *Safeguarding and Sustaining Ontario’s Water Resources Act* (2007) have not yet been proclaimed. Once proclaimed, these changes would place additional requirements on the ministry and water taking proponents. These changes specifically address Great Lakes intra-basin

water transfers and add a new threshold for domestic water taking, which was previously fully exempted.

## Where to Get Additional Information

Ministry of the Environment's Clean Water Act Website –  
[www.Ontario.ca/cleanwater](http://www.Ontario.ca/cleanwater)

Clean Water Act, 2006 and O. Reg. 287/07 "General" on the e-Laws Website  
([www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca))

Ministry of the Environment – Permit to Take Water program  
<http://www.ene.gov.on.ca/envision/water/pttw.htm>