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**PROPOSED CHANGES TO THE WATER TAKING AND
TRANSFER REGULATION (O.REG. 285/99)**

The Transportation and Works Committee recommends:

- 1. The presentation by Lloyd Lemon, Program Manager, Water Resource Protection, be received; and**
- 2. The recommendations contained in the following report, August 25, 2004, from the Commissioner of Transportation and Works be adopted, subject to amending Recommendation 1 to read as follows:**

“1. The comments on the proposed amendments to the Water Taking and Transfer Regulation (O.Reg. 285/99) as forwarded by staff in response to Environmental Bill of Rights (EBR) Registry Number RA04E0011 within the comment period which closed on August 17, 2004 be endorsed and the Regional Clerk forward a copy of this report to the Minister of the Environment.”

1. RECOMMENDATIONS

It is recommended that:

1. The Regional Clerk forward a copy of this report to the Minister of the Environment as Regional Council’s endorsement of the comments on the proposed amendments to the Water Taking and Transfer Regulation (O.Reg. 285/99) as forwarded by staff in response to Environmental Bill of Rights (EBR) Registry Number RA04E0011 within the comment period which closed on August 17, 2004.
2. The Regional Clerk forward a copy of this report to:
 - The Association of Municipalities of Ontario (AMO).
 - Local Municipalities within York Region, The Regional Municipality of Peel, The Regional Municipality of Durham, The Township of Bradford-West Gwillimbury, The City of Toronto, The Toronto and Region Conservation Authority, and the Lake Simcoe Region Conservation Authority for their information.

2. PURPOSE

This report provides Transportation and Works Committee and Regional Council with an overview of the proposed “Amendments to the Water Taking and Transfer Regulation (O.Reg. 285/99)” (proposed amendment) and seeks endorsement of staff comments submitted to the Ministry of the Environment. The report also provides an assessment of

the potential impact of this proposed amendment on residents and businesses in The Regional Municipality of York.

3. BACKGROUND

On June 18, 2004, the Ontario Ministry of the Environment (MOE) posted “Proposed Amendments to the Water Taking and Transfer Regulation” (O.Reg. 285/99) to the EBR Registry. Comments were invited for a period of 60 days, ending August 17, 2004. The proposed amendments are part of the province’s commitment to protect the supply of drinking water in Ontario. The proposed amendments seek to toughen rules governing water taking and to ensure that MOE directors follow more stringent safeguards before granting large water takings.

The proposed amendments are primarily directed toward the process involved in approval of Permits To Take Water for private and commercial use, although many of the principals outlined are also relevant to the types of Permits To Take Water held by York Region for municipal water supplies or for temporary construction dewatering projects. Permits To Take Water for municipal water supplies typically require completion of a Class Environmental Assessment in support of the permit application. Temporary dewatering projects are typically a concern only during the time of active work and the time after completion required for systems to return to their original condition.

In view of the short time-line provided by the EBR Posting, York Region staff have already filed comments on the proposed amendments. These comments are appended to this report as *Attachment 1*. The issues addressed in this response are reviewed and summarized in the following sections.

4. ANALYSIS AND OPTIONS

The proposed amendments are the result of ongoing provincial initiatives to improve the management of water taking in Ontario.

4.1 Features of the Proposed Amendments

The proposed amendments are intended to:

- Strengthen the factors that the ministry directors must consider in making water-taking decisions.
- Explicitly include water conservation as a factor ministry directors must consider in making water-taking decisions.
- Set conditions for ministry directors to refuse permits that remove water from the watershed where there are concerns about the sustainability of the watershed.
- Require mandatory reporting of water takings by permit holders.
- Require enhanced notification to municipalities of water-taking permit applications.

From the technical side, the proposed amendments focus on the need to define and protect natural functions of the ecosystem; understand the availability of water both locally and regionally; to demonstrate that water use is needed and will be used efficiently; and to ensure that the interests of others are considered.

4.2 Issues

The proposed amendments present a good step forward to improving deficiencies in the current water taking system. In particular the intent to provide improved and clearer guidance documents and more direction for the MOE staff making decisions will be beneficial. It is apparent that the proposed amendments may not be a permanent measure and that additional changes to water management in the province may be included in Source Protection initiatives.

The proposed amendments also demonstrate a commitment to improving the science behind both assessments in support of proposed water taking and monitoring programs. This focus should ensure that these programs will be more defensible in the future.

The issues identified and raised by York Region staff in their comments to the MOE in response to the proposed amendments are provided in *Attachment 1*. These issues include:

- A need to more clearly define how these proposed amendments fit with the initiatives to develop and implement Source Protection Planning in Ontario.
- A need to provide technical guidance documents and standards to existing and future water takers and their technical staff or consultants to help them better understand the needs for studies in support of applications.
- A need to understand the economic consequences of the proposed amendments on water takers and in particular on municipalities and conservation authorities who will be expected to take a more direct and expanded role in the water taking process.
- A need to ensure that the reporting requirements include provisions for larger water takers, particularly regional municipalities, to share data electronically rather than undertake an annual reporting exercise.
- A need to revisit the definition of “sustainable aquifer yield” to ensure that it considers the minimum requirements of the ecosystem.
- A need to review the proposed role for municipalities and conservation authorities to play a more direct and compulsory role in review and approval of water-takings.
- A need to provide reference or requirements for local wellhead protection to be in place for at least municipal water supplies.

Given the current and proposed distribution of responsibilities in water and land use management and planning between various levels of government and the conservation authorities, a substantial change to the way water taking is managed will help to ensure that our resources are protected for the future. The biggest challenge in this process will be to ensure that all levels of government can maintain an appropriate role and voice in the process so as not to limit the growth opportunities in the province, municipalities, or by individual businesses.

4.3 Potential Effects on York Region

An ongoing inventory of water use has shown that water taking for municipal drinking water supplies represents the largest permitted use of water in York Region. This inventory addressed only “long-term” permits that are used to supply water to our municipalities. Currently all water supplied through public systems in the Towns of Georgina, East Gwillimbury, Newmarket, Aurora, Whitchurch-Stouffville, and in King Township and the community of Kleinburg is provided under authority of a Permit To Take Water issued to York Region. The City of Toronto obtains and manages the Permit To Take Water for the Lake Ontario based municipal water supplies that support the developed areas of the Towns of Markham, Richmond Hill and the City of Vaughan.

The proposed amendments are directed specifically at “long-term” water takings and will not specifically affect “temporary water takings” such as required for dewatering during construction projects. It is anticipated that the new guidance documents and rules by which ministry directors assess water takings will result in an increased effort required in technical studies and Class Environmental Assessments that accompany either construction projects or new water taking developments. These changes will likely result in an increased cost of technical studies.

Permits to Take Water received by York Region for municipal water supplies in the past five years have had variable requirements for monitoring and reporting. All have included a requirement to document the amount of water used. Some of the Permits include requirements to report on water level monitoring and water quality monitoring. The increased requirements for monitoring and reporting in the proposed amendments may require York Region to increase the staff complement for this work, or to hire external forces to assist. There is a clear advantage to York Region to develop a data-sharing approach to fulfill this reporting requirement through sharing of current relevant databases rather than in preparing stand-alone annual reports.

The Water Resources Protection section has been working over the past three years to expand and standardize the scope of assessment studies that accompany Permit To Take Water applications in York Region. The improvement of technical guidance from the MOE will greatly assist in this process. It is likely that costs associated with these types of studies and on-going monitoring will increase.

The proposed amendments allow for municipalities and conservation authorities to be notified of Permit To Take Water applications and invited to provide comment. This is at least a step forward, however, there would be a greater advantage to our municipalities if

this option to comment were compulsory and could ensure that other municipal considerations were addressed before a Permit To Take Water was issued. While this process will improve York Region's abilities to manage groundwater resources and land use, it will also incur additional costs to participate in a more formal public process and to provide effective comments. The MOE should also be encouraged to provide specific guidance on review procedures for municipalities.

Unless provincial funding is provided to assist municipalities, the proposed amendments will likely result in a higher cost to municipalities to provide safe drinking water.

5. FINANCIAL IMPLICATIONS

There are no immediate and direct financial implications of this report.

The proposed amendments will likely result in higher quality and more expensive technical assessments for Regional projects that involve water taking. Aspects of the proposed amendment that invite municipalities to comment on applications for Permits To Take Water will result in increased expenses, either in the form of technical staff or additional consulting services. This would potentially result in a higher cost of providing safe drinking water to the public. In the absence of any indications of possible funding from the province to assist municipalities, the potential economic effect of the proposed amendment cannot be evaluated at this time.

6. LOCAL MUNICIPAL IMPACT

Local municipalities will have an interest in commenting on applications for Permits to Take Water in their jurisdictions. Local municipalities do not likely have the staff resources in house to participate in this review.

7. CONCLUSION

The proposed amendments to the Water Taking and Transfer Regulation will improve the science used to understand and manage water resource use in Ontario and will provide greater confidence that long-term water takings can be sustained. York Region staff have provided the MOE with comments on the proposed amendments as outlined in *Attachment 1*. The improved understanding and confidence in water resource management that will be obtained through the proposed changes will be accompanied by increased costs to municipalities for providing water services and for managing water resources and land use in their jurisdictions.

The Senior Management Group has reviewed this report.

(A copy of the attachment referred to in the foregoing is included with this report and is also on file in the Regional Clerk's office.)