



Transportation and Works Department

August 13, 2004

Mr. Stephen Maude
Senior Analyst, Land Use Policy Branch
Ontario Ministry of the Environment
135 St. Clair Ave. West, 6th Floor
Toronto ON M4V 1M2

Dear Mr. Maude:

**Re: York Region Staff Comments on EBR Registry No. RA04E0011
Amendment to the Water Taking and Transfer Regulation - O.Reg. 285/99
Our File: WR052, P12**

The Province of Ontario posted a proposal to amend the Water Taking and Transfer Regulation (O.Reg. 285/99) (herein referred to as "Proposed Amendment") on the Environmental Bill of Rights (EBR) Registry on June 18, 2004 and allowed a 60 day period to receive comments. Staff of The Regional Municipality of York (York Region) have prepared the following comments to be considered by the Ministry of the Environment (MOE) in response to this EBR posting. Given timing constraints, these comments have not yet been endorsed by Regional Council. York Region will forward a copy of the Regional Council report addressing these comments to MOE after the next scheduled meeting of Regional Council on September 23, 2004.

The Proposed Amendment is clearly an indication of the Province's commitment to improving the process through which water taking is managed and ultimately to maintaining a sustainable supply of high quality drinking water for the Province. The Province and MOE in particular should be recognized for their leadership efforts in providing future sources of sustainable, high quality drinking water, and minimizing effects on our natural environment.

York Region staff comments on the Proposed Amendments to the Water Taking and Transfer Regulation (O.Reg. 285/99) are organized to address:

- 1) Co-ordination with Source Protection Initiatives;
- 2) Requirements for Guidance Documents and Standards;
- 3) Economic Consequences;
- 4) Monitoring and Reporting Requirements;
- 5) Sustainable Aquifer Yield;
- 6) New Roles for Municipalities and Conservation Authorities; and
- 7) Reference to Wellhead Protection Areas.

1) Co-ordination with Source Protection Initiatives

The management of water use will be a key component of effective source protection planning. The Proposed Amendment does not address the potential future regime for water use management that might occur under the proposed vision for Source Protection as outlined by the Draft Drinking Water Source Protection Act.

Forthcoming Source Protection legislation could result in a change in the way that water use is managed within watersheds. Under the proposed source protection regimes, responsibility for understanding water availability and planning to protect resources are proposed to be delivered to the Conservation Authorities. Specifics of these future regimes are not currently available to municipalities. The Proposed Amendment does not appear to address the breadth of concerns that will need to be addressed to deliver effective source protection.

Recommendation:

The MOE should ensure that the Proposed Amendments are either consistent with, or provide a framework for, the anticipated regime for water use management under proposed Drinking Water Source Protection Legislation.

2) Requirements for Guidance Documents and Standards

The proposed revisions to the "Permit To Take Water Program, Guidelines and Procedures Manual" (1999) were not provided in conjunction with the Proposed Amendment. The content of these documents need to be reviewed and appreciated to fully understand the potential consequences of the Proposed Amendment.

To date, the "Permit To Take Water Program, Guidelines and Procedures Manual" has primarily provided procedural information and some technical guidance. This focus should be maintained and the scope expanded to ensure that the document clearly identifies acceptable methodologies and approaches and either targets or methods for establishing targets to assess the effects of water taking. The guidance documents must also incorporate or refer to other guidance that will address similar topics such as, documents for assessment of Groundwater Under the Influence of Surface Water, source protection and watershed plan assessments, Oak Ridges Moraine Conservation Plan guidance etc. Ideally, the MOE should strive for this document to form the cornerstone for assessing the effects of water taking within context of all initiatives that encompass water resource management.

One of the key aspects of the guidance and standard documents that is required is clarity. York Region and other stakeholders will be either developing in-house procedures for staff, consultants, and contractors to undertake this work or will be contracting the work directly. Clear specifications in the guidance and standard documents will reduce costs, expenses, and hopefully approval time for proponents, the MOE, and reviewers.

Recommendation:

The Province should provide all Technical Standards and Guidance Documents relevant to the Proposed Amendment and the future Permit To Take Water process so that all parties can clearly understand the expected requirements and implications.

3) Economic Consequences

The Proposed Amendment could municipality's cost to deliver public water services in the following ways:

- Higher costs of technical studies to meet new standards
- Higher costs of monitoring and reporting
- New costs associated with application review and comments

Another interesting potential consequence associated with higher costs associated with the Proposed Amendment is that the existing or previously approved method of delivering water may no longer be the economically best option for the municipality. The MOE should also look to provide support and guidance to stakeholders to ensure that all aspects of the potential economic consequences of the Permit To Take Water are dealt with within the scope of Class Environmental Assessments.

Given that the guidance documents that accompany the Proposed Amendment have not yet been made available, there remains a strong possibility for all municipalities that work undertaken under previous provincially funded Municipal Groundwater Studies may not meet the new standards.

Recommendation:

The MOE should be prepared to provide additional financial assistance to municipalities in order to comply with technical study requirements of the Proposed Amendment.

The MOE should assist municipalities, both financially and with technical support and resources, in setting up the internal structure necessary to review and comment on Permit applications in a co-ordinated and consistent manner.

The MOE should review all aspects of the Proposed Amendment to ensure that there is sufficient flexibility provided to municipalities to maintain low, yet sustainable, costs of providing water to the public or develop programs to deliver financial assistance.

4) Monitoring and Reporting Requirements

Over the past five years, the MOE has been requiring major water takers, and particularly municipalities, to maintain records of the volume of water taken and also records of groundwater levels. This type of data is essential for maintaining an understanding of the water system and the effects of pumping.

The requirements for preparing an annual report to document that the information is being collected and reviewed obviously has a value to the province. For small operations the data management, assessment and reporting task can be relatively straightforward and easily accomplished. For larger operators, these data are integral to their efforts to manage their water taking. These data are being collected in vast quantities by electronic systems and the objective is that the data can be available for review and assessment at any time, although in reality we're still working to minimize the time frame.

York Region has been working to prepare an integrated data management system that will allow operators, and other users of the data immediate access to view recent (within days to weeks) and historical information (up to 30 years). While tabular "annual reports" can be prepared from these data, the true value in this approach is the ability to look at the results on a scale necessary for the inquiry at any time (for example, one week or 10 years). There would be a considerable advantage to York Region in terms of the effort to review data, prepare and deliver annual reports of tabular data, if the reporting requirement could be satisfied by establishing data access or sharing arrangements with MOE. This will be particularly important in areas where MOE is also conducting water level monitoring and there is a benefit for all parties to have access to the entire dataset.

Recommendation:

The MOE should provide flexibility in the reporting requirements to allow for sharing of large databases and provision of summary reports on what the data means in place of providing large documents containing tabular data.

5) Sustainable Aquifer Yield

The proposed definition for "sustainable aquifer yield" should be revised to be consistent with the overall intent of proposed water taking management. The new definition currently defines sustainable aquifer yield as the average annual recharge to the aquifer. While this is a perfectly suitable definition from a theoretical hydrogeological position, it is not appropriate under the intent of the Proposed Amendment to incorporate ecological needs and water use.

The concept of sustainability for water management should now address not only the total amount of recharge, but also the amount of water that is needed to sustain the natural function of the system and in theory existing uses. Sustainable yield, therefore becomes the difference

between the total average recharge and the proportion of discharge required to maintain existing functions (either as water taking or ecological needs).

Incorporating this change into the definition will reduce future opportunities for confusion in water resource development projects as it will not be possible for a proponent to state that the system would be sustainable because the amount of extraction could be equal to the entire volume of recharge without consideration of the needs of the natural system and other users.

Also, consideration should be given to defining the scale or area to which these types of definition apply. In some instances, the proposed water taking will have a substantial effect on local water budgets, but potentially not compromise the budget for either the aquifer or the watershed. The guidance documents should address the issues of scale on water budgets and evaluation of sustainability.

Recommendation:

The definition for Sustainable Aquifer Yield should be revised to "means the annual amount of water that can be taken from an aquifer without affecting the essential natural functions of the ecosystem."

The Guidance Document should clearly address the issues surrounding water budgets, water budget planning, defining ecosystem targets, scale, and appropriate assessment methods, including the use of analytical or modelling tools.

6) New Roles for Municipalities and Conservation Authorities

The Proposed Amendment will provide an opportunity for municipalities and conservation authorities to participate more directly in the process for approving applications for Permits to Take Water, particularly for applications that involve transfer of water out of the watershed.

There is question as to whether this increased participation is sufficient or whether a more formal, role in the process is required. As mentioned above, the pending roles for municipalities and conservation authorities in source protection will likely include managing current and future water use (primarily municipalities) and understanding water availability (conservation authorities). Under the Proposed Amendment, the MOE Director could potentially allocate water in a sensitive watershed without regard to potential concerns of municipalities or conservation authorities (particularly if comments were not provided).

Recommendation:

The MOE should review section 6 of the Proposed Amendment and provide for a more direct and compulsory role in approvals by municipalities and Conservation Authorities.

7) Reference to Wellhead Protection Areas

The Proposed Amendment contains no direct reference to wellhead/source protection initiatives. Wellhead Protection is a priority for municipalities serviced by groundwater. Municipalities have been working to define wellhead protection areas and develop wellhead protection plans. York Region has also been asked to provide these to MOE inspectors and to include these in Permit To Take Water Applications.

Given the purpose of wellhead protection areas and wellhead protection plans, it is logical that municipalities should be required to demonstrate that appropriate wellhead protection measures are in place when applying to renew the Permit to Take Water. This will be most important for new water sources, but also relevant for existing sources as the information on which wellhead protection areas are based is expected to improve in quality over time. The Permit To Take Water seems to be an appropriate place for this type of checkpoint.

At this point, it is premature to include reference to "Wellhead Protection Plans" as the provincial standard for these, and legislation that will enable effective enforcement, is not available. These requirements are expected to be clarified by Source Protection legislation.

Recommendation:

The Proposed Amendment should be revised to include requirements for Wellhead Protection Areas to be established for municipal water supplies.

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Amendment to the Water Taking and Transfer Regulation - O.Reg. 285/99

We trust that these comments will be considered appropriately. Please do not hesitate to contact me should you have any questions or require further clarification.

Sincerely,



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Program Manager, Water Resources Protection

LAL/BJ/ch

Copy to: Michael Garrett, Chief Administrative Officer
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