



COMMUNICATION UPDATE

TO:	Mayor and Members City Council
DATE:	November 24, 2023
SUBJECT:	Opposition to the Environmental Permissions Modernization Policy Proposals, Hamilton Water Response - HW.23.10
WARD(S) AFFECTED:	City Wide
SUBMITTED BY:	Nick Winters Director, Hamilton Water Public Works Department
SIGNATURE:	

The purpose of this Communication Update is to provide Council with an update on comments that Hamilton Water submitted related to proposed changes by the Ministry of Environment, Conservation and Parks to its approvals and permissions procedures relating to stormwater works, water taking and waste management systems. Specifically, this Communication Update addresses the Council Follow Up Notice request dated October 26, 2023, to provide Council with an update on comments submitted to the Environmental Registry of Ontario.

Background

In September 2023, the Ministry of Environment, Conservation and Parks posted the following postings on the Environmental Registry of Ontario (ERO) related to proposed changes to approvals and permissions procedures relating to stormwater works, water taking and waste management systems:

- ERO Posting #019-6928 - Streamlining Environmental Permissions for Stormwater Management Under Environmental Activity and Sector Registry;
- ERO Posting #019-6853 - Streamlining Permissions for Water Takings for Construction Site Dewatering Activities and Foundation Drains; and
- ERO Posting #019-6963 - Streamlining Environmental Permissions for Waste Management Systems under the Environmental Activity and Sector Registry

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Hamilton Water's comments on the above listed Environmental Registry of Ontario postings were submitted on October 30th, 2023 and are included as Appendix "A" to Communication Update HW.23.10.

Proposed Changes

If approved, ERO Posting #019-6928 - Streamlining Environmental Permissions for Stormwater Management Under Environmental Activity and Sector Registry would permit owners of certain privately owned stormwater management works to self-register the works on the Environmental Activity and Sector Registry and exempt the works from approvals under Ontario Regulation 525/98 of the *Ontario Water Resources Act*. In addition, this change would exempt these works from requirements of Ontario Regulation 287/07 under the *Clean Water Act*.

Ministry of Environment, Conservation and Parks is currently responsible for issuing Environmental Compliance Approvals for stormwater. In addition, Halton-Hamilton Source Protection Plan includes prescribed instrument policies addressing stormwater that require the province to ensure compliance with the applicable policies. The Environmental Registry of Ontario posting as drafted, would require a Licensed Engineer Practitioner to undertake a site-specific technical assessment to determine whether the stormwater works were a significant drinking water threat in the relevant Source Water Protection Plan.

If determined to be a significant drinking water threat, the Licensed Engineer Practitioner would be required to consider additional design measures and other requirements to mitigate the threat. Hamilton Water staff's concern is that the proposal would transfer oversight to the proponent and be inconsistent with applicable policies of the Halton-Hamilton Source Protection Plan. In addition, transferring the stormwater works from the Environmental Compliance Approvals process to the Environmental Activity and Sector Registry provides a lack of provincial oversight and may weaken protections for sources of drinking water.

Additional concerns of Hamilton Water staff are that:

- There is a limited number of Licensed Engineer Practitioner's familiar with drinking water source protection and that there is no requirement for Licensed Engineer Practitioners to complete training related to significant drinking water threats in advance of the work;
- Municipalities will not be aware of the monitoring and operating requirements of new private stormwater works;

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- The Environmental Activity and Sector Registry framework removes any right to appeal if Hamilton Water has concerns regarding the Licensed Engineer Practitioner's technical assessment; and
- The Environmental Registry of Ontario posting does not include any details related to the proposed audits of the Environmental Activity and Sector Registry and inspections of the stormwater works by the Ministry of the Environment, Conservation and Parks.

Overall, improperly designed and operating stormwater works may be assumed by the City of Hamilton in the future and therefore additional oversight of the proposed works is preferred.

The Environmental Registry of Ontario posting also includes expansion of exemptions under Ontario Regulation 525/98 for certain low risk sewage works to obtain an Environmental Compliance Approval. The exemptions are proposed to permit all Low Impact Development works as well as drainage works for roadways. Hamilton Water supports the implementation of Low Impact Development works on single private residences provided there is assurance that proper ongoing maintenance is undertaken to achieve their operational goals.

If approved, ERO Posting 019-6853 - Streamlining Permissions for Water Takings for Construction Site Dewatering Activities and Foundation Drains would streamline permissions for temporary water takings including removing the current water taking limit of 400,000 litres of groundwater per day from one or more dewatered work areas at a construction site. Hamilton Water has the following concerns regarding the proposed streamlined process for construction dewatering:

- Increased groundwater flows from construction sites could result in surcharging of storm, sanitary and/or combined sewers and increase combined sewage overflows;
- Environmental Activity and Sector Registry postings for water taking should include consideration for municipal notification regarding local Environmental Activity and Sector Registry applications and allow for municipal access to the supporting technical documentation; and
- Consumption of conveyance and pumping capacity reduces available municipal servicing capacity to support growth and development.

The Ministry of Environment, Conservation and Parks is also 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 which is significantly higher compared to the current limit of 50,000 litres per day. Hamilton Water is concerned that removal of 400,000 litres per day for construction areas and up to 379,000 litres per day

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for foundation drains could have negative cumulative impacts especially with multiple water takings within an area or proximity to contaminated sites. Hamilton Water recommends that the Ministry of Environment, Conservation and Parks maintain the upper limit of 400,000 litres/day and provide for Permits To Take Waters above the limit, to ensure appropriate environmental protections are in place. Hamilton Water made several potential recommendations in the Environmental Registry of Ontario submission on how to mitigate this concern.

If approved, ERO Posting #019-6963 – Streamlining Environmental Permissions for Waste Management Systems under the Environmental Activity and Sector Registry would expand the types of waste management systems that could register including asbestos waste, biomedical waste, hazardous waste, and liquid industrial waste. The Ministry of Environment, Conservation and Parks is proposing to require all eligible waste management systems to carry an insurance policy of a minimum of \$2M including systems that manage liquid industrial, hazardous and biomedical waste.

The proposed revisions to Ontario Regulation 351/12 would also require coverage for spill clean-up of at least \$100K arising out of any one incident for haulers of non-hazardous waste and at least \$500K of coverage arising out of any one incident for haulers transporting liquid industrial, hazardous, and biomedical waste. Hamilton Water did not submit any comments on ERO Posting #019-6963.

If you require any further information on the above matter, please contact the Manager of Compliance and Regulations by email at Charlene.McKay@hamilton.ca or at (905) 546-2424 Ext. 2671.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Communication Update HW.23.10 – Environmental Permissions Modernization Policy Proposals, Hamilton Water Response to Environmental Registry of Ontario Postings



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 projection 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 apprised 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.