**Proposed amendments to drinking water operator and water quality analyst certification regulation to address impacts of emergencies**

**ERO number**

019-3513

**Notice type**

Regulation

**Act**

Safe Drinking Water Act, 2002

**Posted by**

Ministry of the Environment, Conservation and Parks

**Notice stage**

Proposal

**Proposal posted**

May 18, 2021

**Comment period**

May 18, 2021 - July 2, 2021 (45 days) Open

**Last updated**

May 18, 2021

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**Proposal summary**

We are proposing regulatory changes that would give the ministry and drinking water systems the tools they need to act quickly to help ensure the province’s drinking water is protected during an emergency, such as providing systems with temporary staffing options, and operators with temporary relief from training and certification requirements.

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**Proposal details**

We are proposing regulatory changes that would allow the ministry to act quickly to help ensure the province’s drinking water is protected during an emergency.

The proposed changes include extending operator certificates and allowing certain qualified but non-certified staff to temporarily maintain system operations, and would only be enacted during an emergency.

These proposed changes align with temporary measures we enacted during the COVID-19 pandemic and would ensure that system owners and operators can maintain continuity of operations and focus on providing safe drinking water in emergency situations.

Ontario’s drinking water remains among the best protected in the world. Working with our partners and municipalities, we will continue to ensure our drinking water is held to Ontario’s high safety standards, and that the environment continues to be protected.

An overview of the specific changes we’re proposing to *Ontario Regulation 128/04* made under the *Safe Drinking Water Act, 2002* are outlined below.

To be clear, the following proposed changes are not intended to override applicable labour laws or collective agreements. Employers would remain obliged to work within their respective labour relations frameworks when availing themselves of any of the proposed amendments.

**Proposed emergency-related amendments**

**1. Add a definition of “emergency” to the regulation as this term is not currently defined in the *Safe Drinking Water Act, 2002* or *Ontario Regulation 128/04*.**

The definition is proposed to be consistent with that in the *Emergency Management and Civil Protection Act* (EMCPA), namely:

“emergency” means a situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise.

**2. Specify the exceptional situations that could trigger the use of the proposed emergency related provisions by the ministry director with authority for *Ontario Regulation 128/04* or the owner or operating authority of a drinking water system, namely:**

1. If an emergency is declared under the EMCPA (e.g. province-wide, regional or municipal level emergency), and the nature of that emergency is such that it could adversely affect the operation of the subsystem and thereby result in a drinking water health hazard or pose a significant risk to human health or the natural environment.
2. If Emergency Orders made under the EMCPA have been continued in successor legislation and remain in place during the aftermath of the emergency.
3. If the ministry director is of the opinion that an emergency exists or is impending and could result in a drinking water health hazard or significant risk to human health or the environment, and a provincial officer, a director or the minister has issued or is considering issuing an order related to that emergency situation.

**3. In situations described in items 2 (1), (2), and (3) above, provide the ministry director with the authority to:**

a) Extend the expiry date of a drinking water operator’s certificate or water quality analyst’s certificate for up to 12 months if needed to help systems focus on emergency response.

In order to perform their work, drinking water operators and water quality analysts require a valid certificate from the province. Currently, the ministry director does not have the power to change a certificate’s expiry date without receiving an application and associated fee from an operator.

The proposed amendment would give the ministry director the authority to quickly extend an operator or water quality analyst’s certificate without the need for an application to be submitted. This proposed change would:

* allow operators and water quality analysts dealing with an emergency to remain certified and focused on operating their system to help ensure the continued provision of safe drinking water
* provide drinking water operators and water quality analysts more time to complete the training required to renew their certificates, as their ability to complete training may be disrupted because of the emergency

b) Extend the maximum duration of temporary certificate renewals from 6 months to up to 12 months.

Currently, the ministry director may temporarily renew a drinking water certificate for up to 6 months if an operator or water quality analyst has a valid reason for not meeting the usual annual training requirements by the time his or her certificate is set to expire.

In an emergency or its aftermath, an operator or water quality analyst may need more time than usual to complete training needed to meet certificate renewal requirements.

The proposed amendment would allow drinking water system owners and operating authorities greater flexibility when scheduling training in the aftermath of an emergency. This increased flexibility would also help owners and operating authorities continue to meet their staffing and regulatory requirements related to operator certification (e.g. Operator-in-Charge and Overall Responsible Operator).

c) Postpone completion of mandatory training.

Currently, a drinking water operator or water quality analyst seeking to have his or her certificate either renewed or re-issued must complete the appropriate mandatory ministry course provided by the Walkerton Clean Water Centre. For example, Operators-in-Training must complete the Entry-level Course for Drinking Water Operators in order to renew their certificates or upgrade to a Class I certificate. All Class I to IV drinking water operators must complete the Mandatory Renewal Course every three years to renew their certificate.

The proposed amendment would allow for a drinking water operator or water quality analyst’s certificate to be renewed or re-issued while deferring the need to complete this mandatory training for 12 months, if needed to help systems focus on emergency response.

Allowing mandatory training to be postponed in this way would:

* enable knowledgeable and skilled personnel with expired certificates to become recertified even during an emergency
* enable drinking water operators and water quality analysts to maintain their certification if they cannot compete mandatory training due to emergency related impacts, or if the mandatory training is temporarily not available

**4. Allow owners and operating authorities to temporarily employ certain knowledgeable, experienced, but non-certified personnel to operate a drinking water subsystem to help ensure its continuity of operations in emergency situations.**

Owners and operating authorities would only be able to use this power if:

* an emergency is declared under the EMCPA or if Emergency Orders made under the EMCPA have been continued in successor legislation (as set out in situations 2(1) and 2(2) above)
* the nature of that emergency is such that it could adversely affect the operation of the subsystem and thereby result in a drinking water health hazard or pose a significant risk to human health or the natural environment

The proposed amendments would allow subsystem owners and operating authorities to temporarily employ the following types of substitute personnel to operate a drinking water subsystem so long as certain conditions are met:

* Licensed Engineering Practitioners (e.g. Professional Engineers)
* people that previously held an operator’s certificate within the last 5 years (e.g. retired operators)
* Certified Engineering Technologists or Technicians with at least 3 years of experience working in the type of drinking water subsystem to be operated
* managers with at least 5 years of experience working in the type of drinking water subsystem to be operated
* maintenance or technical support personnel who are employed in drinking water systems and who have at least 5 years of experience relating to the operation of the subsystem (e.g. millwright, electrician, instrumentation technician, maintenance mechanic, process control technician or water quality analyst)

Certified Engineering Technologists or Technicians, managers and maintenance or technical support personnel employed as temporary substitute personnel would need to be trained by a certified operator, or a person that previously held an operator’s certificate within the past 5 years, on the operating duties to be performed.

These temporary substitute personnel would only be able to carry out the responsibilities and duties of an Operator-in-Charge (OIC) or Overall Responsible Operator (ORO) if they are Licensed Engineering Practitioners or people who previously held an operator’s certificate of the appropriate type and class (e.g. Class I certificate for OIC, Class 3 or higher certificate for ORO for a Class 3 subsystem).

An owner or operating authority of a subsystem that uses this power to temporarily employ substitute personnel would be required to:

* notify the ministry director within one day after the first time that substitute personnel are temporarily employed to operate a drinking water subsystem
* provide a written report to the ministry director within 90 days of the end of the emergency that includes the following for each person temporarily employed to operate a drinking water subsystem:
  + the person’s name
  + qualifications for employment as substitute personnel
  + the position held while temporarily employed to operate the subsystem
  + summary of operating duties performed (e.g. job description)
  + time spent operating the subsystem
  + the person’s level of responsibility (e.g. Operator-in-Charge or Overall Responsible Operator)
  + the reasons why employing the person was necessary to ensure the continued operation of the subsystem

Allowing these specified kinds of substitute personnel to temporarily operate a drinking water subsystem would:

* provide staffing flexibility to subsystem owners and operating authorities by allowing them to access a greater pool of potential workers during an emergency
* help ensure continuity of operations if drinking water operations staff are impacted by an emergency
* allow recently retired drinking water operators to use their knowledge and skills to operate systems quickly without the need to become re-certified

The ministry is also proposing consequential amendments to *O. Reg. 170/03 Drinking Water Systems*and *O. Reg. 248/03 Drinking Water Testing Services*, both under the *Safe Drinking Water Act, 2002*, to help ensure that owners and operating authorities who use the proposed substitute personnel provisions in *O. Reg. 128/04* can remain in compliance with certified operator requirements set out in those other regulations. Requirements to utilize certified operators arise in contexts including making adjustments to treatment equipment, responding to alarms, maintenance and operational checks, and drinking water testing.

**Administrative / housekeeping amendments**

**1. Revoke an outdated transitional provision (subsection 23 (3), *O. Reg. 128/04*) that dates to the transition from *O. Reg. 435/93* to *O. Reg. 128/04* and relates to operators designated as an Overall Responsible Operator of a subsystem.**

**Proposed strike and lock-out related amendments**

**1. Formalize and clarify the process through which an owner or operating authority of a drinking water subsystem may request the ministry director’s direction to allow a temporary exemption from operator certification related requirements during a strike or lock-out by:**

i) Requiring the owner or operating authority to submit the subsystem’s strike or lock-out plan to the ministry director at least 14 days in advance of the earliest possible legal strike or lock-out date.

Currently there is no deadline by which the owner or operating authority must submit the Strike or Lock-out Plan to the director. The addition of a 14-day submission deadline would help ensure that adequate time is available for the director to review the initial plan, request updates by the owner or operating authority as needed and make a decision prior to the anticipated strike or lock-out date.

ii) Requiring system owners or operating authorities to include in the strike or lock-out plan the information needed to satisfy the ministry director that the system will be operated without significant risk to human health or the natural environment. The information required would include, at a minimum:

* a list of all persons whom the system owner or operating authority proposes to employ in the subsystem during the strike or lock-out, including each person’s:
  + name
  + current position
  + relevant qualifications
  + proposed responsibilities during the strike or lock-out (e.g. operator, OIC, ORO)
* A plan for how the subsystem will be operated during the strike or lock-out, including:
  + a description of the subsystem and its technical processes
  + staffing requirements of the subsystem under normal operating conditions
  + details about what training will be provided by the owner to temporary non-certified staff
  + information about any planned operational changes during the strike or lock-out period
  + a statement confirming that non-certified staff will be trained on operating procedures and that such procedures will be readily available to them
  + a statement confirming that all non-certified staff will have reviewed the emergency procedures for the subsystem before the strike or lock-out period begins

The process and type of information currently required to satisfy the ministry director is set out in guidance including [**Obtaining Director’s Direction to Use Non-certified Operators in the Event of a Strike**](https://www.ontario.ca/page/obtaining-directors-direction-use-non-certified-operators-event-strike) and **[The Strike Plan Template](https://docs.ontario.ca/documents/1583/145-event-of-strike-form-en.pdf)**. Setting out the requirements in the regulation, as proposed, would clarify and formalize those expectations.

iii) Adding a step in which the ministry director would provide the drinking water system owner or operating authority with a formal notice that signals acceptance or rejection of the submitted strike or lock-out plan.

Currently, as part of the existing process, the ministry director sends a letter to the system owner or operating authority in question, to communicate the ministry director’s decision on the submitted strike and lock-out plan. The proposed amendment is intended to clarify and formalize this process.

**Other public consultation opportunities**

The ministry is seeking comments on any or all of the proposed regulatory amendments from any interested stakeholders. The following questions highlight areas of interest to the ministry with respect to some of the proposed changes, but interested stakeholders need not limit comments/concerns exclusively to these questions:

1. Are there any other types of issues or challenges faced by owners, operating authorities or operators of drinking water systems related to emergencies, or the aftermath of emergencies, that you would also want to be addressed through the proposed amendments? If so, please explain the issues and ideas for addressing them, if the proposed amendments would not do so.
2. Are there any other types of exceptional situations that should trigger the use of the proposed emergency related provisions by the ministry director, or by the owner or operating authority of a subsystem?
3. Questions on Proposed Emergency Related Amendment 4, i.e. Allowing substitute personnel to temporarily operate a subsystem:
   1. Are you supportive of the proposal to allow knowledgeable, non-certified personnel to temporarily operate drinking water subsystems if needed to maintain the safe continuity of operations in an emergency? For example, if a disease outbreak were to cause a critical shortage of certified operators at a water treatment plant due to illness and quarantine requirements.
   2. Do you agree with the proposed list of types of substitute personnel that could be employed to temporarily operate a drinking water subsystem in an emergency? Are there any types of substitute personnel not listed that should be included? Alternatively, are there types of substitute personnel listed that should be removed?
   3. Do you agree that the condition requiring a Certified Engineering Technician or a Certified Engineering Technologist have at least 3 years experience working in a subsystem is appropriate given the qualifications for these designations?
   4. Do you agree that the condition requiring a manager, or maintenance or technical support personnel, to have at least 5 years’ experience working in a subsystem is appropriate?
   5. If operators of a drinking water subsystem work in a unionized setting, is there a possibility that the proposed amendments to permit the use of temporary personnel in an emergency would conflict with any aspect of a collective agreement? If so, would these conflicts prevent owners and operating authorities from readily being able to employ non-certified substitute personnel temporarily to operate a drinking water subsystem in an emergency if needed? Please explain.
   6. What possible alternatives, if any, do you see to the proposed approach of allowing owners and operating authorities to temporarily employ knowledgeable, experienced but non-certified substitute personnel to operate a drinking water subsystem in an emergency if needed (e.g. critical shortage of certified operators)? Please explain.
4. Questions on temporary substitute personnel in relation to drinking water testing. Please refer to Proposed Emergency Related Amendment 4 above and Schedules 7 and 8 of *O. Reg. 170/03* for context:
   1. To ensure that drinking water testing is conducted properly during emergency situations, would it be reasonable to stipulate that the only types of substitute personnel who could act in the place of a certified operator for the purposes of conducting or supervising drinking water testing would be licensed engineering practitioners (e.g. Professional Engineers) or people who previously held an operator’s certificate within the last 5 years (e.g. retired operators)? Or do you think that, in emergencies, substitute personnel other than Professional Engineers and retired operators should be able to act temporarily in the place of certified operators when it comes to drinking water testing? Please explain.
   2. Should substitute personnel including managers, certified engineering technicians/technologists, and maintenance and technical support personnel (excluding water quality analysts) who conduct drinking water testing do so under the following conditions?
      * be trained by a certified operator to conduct tests
      * work under the supervision of a certified operator
      * immediately advise a supervising certified operator of the test results
5. Do you agree that the 14-day deadline for the initial submission of the strike-plan is reasonable? If not, should the proposed number of days be increased or decreased?

The ministry is also proposing similar regulatory amendments to the wastewater operator licensing regulation to address impacts of emergencies (ERO#: [**019-3515**](https://ero.ontario.ca/notice/019-3515)).

**Analysis of regulatory impact**

A costing analysis was carried out by the Ministry of the Environment, Conservation and Parks with the support of tools provided by the Ministry of Economic Development, Job Creation and Trade. It is estimated that the proposed regulatory amendments will result in administrative costs of approximately $7,171 in 2021 for all drinking water systems combined, associated with time taken to learn about the regulatory amendments. There are no other administrative costs anticipated to be associated with these proposed amendments. The analysis indicates negligible impacts to the regulated community.