**Toronto Water's Comments on Proposed amendments to wastewater operator licensing regulation to address impacts of emergencies**

**ERO number**

019-3515

**Notice type**

Regulation

**Act**

Ontario Water Resources Act, R.S.O. 1990

**Posted by**

Ministry of the Environment, Conservation and Parks

**Notice stage**

Proposal

**Proposal posted**

May 18, 2021

**Comment period**

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This consultation closes at 11:59 p.m. on:
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**Proposal summary**

The Ministry of the Environment, Conservation and Parks is proposing regulatory changes that would give the ministry and owners and operators of wastewater facilities the tools they need to act quickly to ensure waterways in Ontario are protected during an emergency, such as providing wastewater facility owners with temporary staffing options and extending operator licences.

**Consolidated Comments - Toronto Water:**

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| **Proposed emergency-related amendments** |
| **SECTION** | **COMMENT** |
| **1. Add a definition of “emergency” to the regulation as this term is not currently defined in the *Ontario Water Resources Act* or *O.Reg. 129/04*.**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. | No comments |
| **2. Specify the exceptional situations that could trigger the use of the proposed emergency related provisions by the ministry director with authority for *O.Reg. 129/04* or the owner of a wastewater facility, 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 facility and thereby pose a significant risk to human health or the natural environment.
 | No comments |
| 1. If Emergency Orders made under the EMCPA have been continued in successor legislation and remain in place during the aftermath of the emergency.
 | No comments |
| 1. If the director is of the opinion that an emergency exists or is impending and could result in a 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 an emergency situation.
 | No comments |
| **3. In situations described in items 2 (1), (2), and (3) above, provide the ministry director with the authority to extend the expiry date of a wastewater operator’s licence for up to 12 months if needed to help facilities focus on emergency response.**In order to perform their work, wastewater operators require a valid licence from the province. Currently, the ministry director does not have the power to change a licence’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’s licence without the need for an application to be submitted. This proposed change would allow operators dealing with an emergency to remain licensed and focused on operating their facility to help ensure the continued protection of our waterways. | No comments |
| **4. Allow owners to temporarily employ certain knowledgeable, experienced but non-licensed personnel to operate a wastewater facility to help ensure its continuity of operations in emergency situations.** |  |
| Owners 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 facility and thereby pose a significant risk to human health or the natural environment.
 | No comments |
| The proposed amendments would allow facility owners to temporarily employ the following types of substitute personnel to operate a wastewater facility so long as certain conditions are met:* Licensed Engineering Practitioners (e.g. Professional Engineers)
* people that previously held an operator’s licence 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 facility to be operated
* managers with at least 5 years of experience working in the type of facility to be operated
* maintenance or technical support personnel who are employed in wastewater facilities and who have at least 5 years of experience relating to the operation of the facility (e.g. millwright, electrician, instrumentation technician, maintenance mechanic, process control technician)

Certified Engineering Technologists or Technicians, managers and maintenance or technical support personnel employed as temporary substitute personnel would need to be trained by a licensed operator, or a person that previously held an operator’s licence 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 licence of the appropriate type and class (e.g. Class I licence for OIC, Class 3 or higher licence for ORO for a Class 3 facility | We agree with the proposed amendments in this section and have the following specific suggestions:* In the absence of an ORO/OIC who possess the same class, operators with one class lower than the class of the subsystem should be allowed.
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| An owner of a facility 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 wastewater facility
* 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 wastewater facility:
	+ the person’s name
	+ qualifications for employment as substitute personnel
	+ the position held while temporarily employed to operate the facility
	+ summary of operating duties performed (e.g. job description)
	+ time spent operating the facility
	+ 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 facility

Allowing these specified kinds of substitute personnel to temporarily operate a wastewater facility would:* provide staffing flexibility to facility owners by allowing them to access a greater pool of potential workers during an emergency
* help ensure continuity of operations if wastewater operations staff are impacted by an emergency
* allow recently retired wastewater operators to use their knowledge and skills to operate facilities quickly without the need to be licensed again
 | There is a risk to miss this one-day notification deadline, and would recommend to extend it to 14 calendar days instead of one day. |
| **5. Provide flexibility in terms of when wastewater operators need to complete training to meet their annual training requirements.**Currently, wastewater operators are required to complete 40 hours of training each year. The training may include, for example, training on new or revised operating procedures, reviews of existing operating procedures, safety training, and training related to studies and technical skills on environmental subjects.The proposed amendment would allow wastewater operators to complete 120 hours of training at any time over a period of three calendar years.Increased flexibility in terms of when such training may be completed would lessen the impact of emergencies on wastewater operators’ ability to complete their required training during the necessary timeframe. For example, if operators were to experience disruptions that temporarily limit the availability of training or the amount of time they can dedicate to attending training events in one year, they would be able to complete their required training in subsequent years. | No comments  |
| This change would further harmonize the training requirements applicable to wastewater operators and drinking water operators:* 75 percent of all operators already average their drinking water training over a three-year period
* approximately 7,600 operators are expected to benefit, including those who only hold wastewater licences and those who hold both wastewater licences and drinking water certificates

The proposed amendment would result in greater freedom for wastewater owners and operators when scheduling training. | No comments. |
| **Proposed administrative amendments** |
| **1. Harmonize the circumstances in which the ministry director may revoke or suspend a drinking water operator’s certificate or wastewater operator’s licence.**Currently, the circumstances in which a wastewater operator’s licence may be revoked or suspended are different than the circumstances in which a drinking water operator’s certificate may be revoked or suspended. The following proposed amendments would make the two regulations more consistent by permitting the ministry director to consider revoking or suspending a wastewater operator’s licence, if one or more of the following circumstances exist:* the person has worked as an operator for any length of time without holding a valid wastewater operator’s licence of the type or class of operator he or she worked as, or if the person has held himself or herself out to an owner, the ministry director or any ministry employee as holding a type or class of wastewater operator’s licence that he or she does not hold
* the person has previously had either a drinking water operator’s certificate or a wastewater operator’s licence revoked or suspended for any reason and the ministry director has reasonable grounds to believe that the person is not competent to be an operator
* the person has failed:
	+ to exercise the level of care, diligence and skill in the operation of a wastewater facility that a reasonably prudent operator would be expected to exercise in a similar situation, or
	+ to act honestly, competently and with integrity, with a view to ensuring the protection of human health or the environment
* the person has failed to meet or contravened the conditions of his or her licence
 | No comments |
| The ministry director already has comparable powers in relation to drinking water operators’ certificates, under *O. Reg. 128/04* made under the *Safe Drinking Water Act, 2002*. Adding the proposed equivalent provisions to *O. Reg. 129/04* would:* provide consistency in the reasoning for taking disciplinary action for all operators
* allow the ministry to implement an Operator Code of Ethics for Wastewater Operators that is similar to the new Operator Code of Ethics for Drinking Water Operators, which would provide clarity and consistency for operators who hold certification in both drinking water and wastewater
 | No comments |
| **Proposed strike and lock-out related amendments** |  |
| **1. Formalize and clarify the process though which a wastewater facility owner may request the ministry director’s direction to allow a temporary exemption from operator licensing related requirements during a strike or lock-out by:** |  |
| i) Requiring the owner to submit the facility’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 must submit the strike or lock-out plan to the ministry director. The addition of a 14-day submission deadline will help ensure that adequate time is available for the ministry director to review the initial plan, request updates by the owner as needed, and make a decision prior to the anticipated strike or lock-out date. | Comments under section 1. iii) below  |
| ii) Requiring facility owners to include in the strike or lock-out plan the information needed to satisfy the ministry director that the facility 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 facility owner proposes to employ in the facility 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 facility will be operated during the strike or lock-out, including:
	+ a description of the facility and its technical processes
	+ staffing requirements of the facility under normal operating conditions
	+ details about what training will be provided by the owner to temporary non-licensed staff
	+ information about any planned operational changes during the strike or lock-out period
	+ a statement confirming that non-licensed staff will be trained on operating procedures and that such procedures will be readily available to them
	+ a statement confirming that all non-licensed staff will have reviewed the emergency procedures for the facility before the strike or lock-out period begins
 | Comments below |
| 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. | Comments below |
| iii) Adding a step in which the ministry director would provide the wastewater facility owner 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 facility owner 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. | Toronto Water seeks a clear and reasonable timeline for MECP's acceptance or rejection of the submitted plan. |
| **Other public consultation opportunities** |
| The ministry is seeking comments or concerns 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 or operators of wastewater facilities 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.
 | Toronto Water proposes to allow remote/wireless technology (i.e. facetime, phone, chat, etc.) to be permitted to be used by a certified operator as a substitute of over-the-shoulder supervision of non-certified personnel during emergency situations. |
| 1. 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 of a facility?
 | Pandemics |
| 1. Questions on Proposed Emergency Related Amendment 4, i.e. Allowing substitute personnel to temporarily operate a facility:
 |  |
| 1. Are you supportive of the proposal to allow knowledgeable, non-licensed personnel to temporarily operate a wastewater facility 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 licensed operators at a wastewater facility due to illness and quarantine requirements.
 | Yes |
| 1. Do you agree with the proposed list of types of substitute personnel that could be employed to operate a wastewater facility 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?
 | Yes |
| 1. Do you agree that the condition requiring a Certified Engineering Technician or Certified Engineering Technologist have at least 3 years’ experience working in a facility is appropriate given the qualifications for these designations?
 | Yes |
| 1. 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 facility is appropriate?
 | We believe that 4 to 5 years’ experience working in a facility is appropriate. |
| 1. If operators of a wastewater facility 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 from readily being able to employ non-licensed substitute personnel temporarily to operate a wastewater facility in an emergency if needed? Please explain.
 | It doesn't affect the collective agreement. Toronto Water as the operating authority will have the ability to redeploy or hire as necessary to keep operations running.  However, we recognize that if the operating authority hires non-union staff it may generate a union response under the collective agreement. |
| 1. What possible alternatives, if any, do you see to the proposed approach of allowing owners to temporarily employ knowledgeable, experienced but non-licensed substitute personnel to operate a wastewater facility in an emergency if needed (e.g. critical shortage of licensed operators)? Please explain.
 | No comments |
| 1. 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?
 | 14-day period is reasonable |
| The ministry is also proposing similar regulatory amendments to the drinking water operator and water quality analyst certification regulation to address impacts of emergencies (ERO#: [**019-3513**](https://ero.ontario.ca/notice/019-3513)). | We have provided our comments on the proposed amendments to the drinking water operator and water quality analyst certification regulation separately.  |