

Français

Environmental Protection Act

ONTARIO REGULATION 63/16 REGISTRATIONS UNDER PART II.2 OF THE ACT — WATER TAKING

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[PART I](#) DEFINITIONS

Definitions

1. In this Regulation,
- “Ministry’s electronic system” has the same meaning as in section 1 of Ontario Regulation 245/11; (“système électronique du ministère”)
- “Ontario Regulation 245/11” means Ontario Regulation 245/11 (Registrations under Part II.2 of the Act — General) made under the Act; (“Règlement de l’Ontario 245/11”)
- “undertaking” has the same meaning as in the *Environmental Assessment Act*; (“entreprise”)
- “water body” has the same meaning as in Ontario Regulation 359/09. (“étendue d’eau”) O. Reg. 63/16, s. 1; O. Reg. 300/21, s. 1.

PART II WATER TAKING FOR HIGHWAY PROJECTS AND TRANSIT PROJECTS

Definitions

1.1 In this Part,

- “highway” has the same meaning as in the *Highway Traffic Act*; (“voie publique”)
- “highway project” means the construction, maintenance or repair of a highway; (“chantier routier”)
- “permanent stream” has the same meaning as in Ontario Regulation 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act) made under the Act; (“cours d’eau pérenne”)
- “stream order” means the ordering of streams in which the smallest unbranched channels are considered first order, the joining of such channels forms a second order and subsequent unions of similar stream orders results in successively higher stream orders; (“ordre de cours d’eau”)
- “transit project” means the construction, maintenance or repair of infrastructure, not including terminals, related to transportation by a service that, aside from any incidental use for walking, bicycling or other means of transporting people by human power,
- (a) is used exclusively for the transportation of passengers by bus or rail, and
 - (b) provides regular and continuing transportation to the public; (“projet de transport en commun”)
- “water body report” means the report referred to in paragraph 1 of subsection 4 (1). (“rapport sur l’étendue d’eau”) O. Reg. 300/21, s. 2 (2).

Prescribed activities, s. 20.21 (1) and (5) of the Act

2. (1) Subject to subsections (3) to (5), the taking of water from a water body that meets the criteria set out in subsection (2) for one of the following uses during a highway project or transit project is a prescribed activity for the purposes of subsections 20.21 (1) and (5) of the Act:

1. Hydrodemolition.
2. Cleaning and flushing, including the cleaning and flushing of culverts.
3. Seeding, mulching, sodding or landscaping.
4. Dust suppression.
5. Compaction of earth and granular materials.
6. On-site preparation of materials to be used in the highway project or transit project. O. Reg. 63/16, s. 2 (1); O. Reg. 118/16, s. 1 (1); O. Reg. 300/21, s. 3 (1-3).

(2) The criteria referred to in subsection (1) with respect to a water body are the following:

1. The water body is a lake, pond or permanent stream.
2. If the water body is a lake, the surface area of the lake is greater than 10 hectares.
3. If the water body is a pond, the pond is not connected to another water body that is a creek, stream or river.
4. If the water body is a permanent stream, it is of a stream order of three or greater. O. Reg. 63/16, s. 2 (2).

(3) Subsection (1) does not apply in respect of the taking of water unless more than 50,000 litres of water will be taken on at least one day. O. Reg. 63/16, s. 2 (3).

(4) Subsection (1) does not apply in respect of the taking of water if the taking of water would involve a transfer from a water basin described in subsection 34.3 (1) of the *Ontario Water Resources Act* or a transfer as defined in subsection 34.5 (1) of that Act. O. Reg. 63/16, s. 2 (4).

(5) Subsection (1) does not apply in respect of the taking of water if,

- (a) a permit to take water was issued for the water taking under the *Ontario Water Resources Act*;
- (b) the permit was in effect on July 1, 2021; and
- (c) the permit has not expired or been revoked. O. Reg. 118/16, s. 1 (2); O. Reg. 300/21, s. 3 (4).

Registration exemptions, s. 20.21 (1) (a) and (b) of the Act

3. A person who engages in an activity prescribed by section 2 of this Regulation in respect of a highway project or transit project is exempt from clauses 20.21 (1) (a) and (b) of the Act in respect of the activity if,

Commented [A1]: We reference “a person”, “the person”, etc., but use it differently. See notes below

- (a) the person has previously registered an activity prescribed by section 2 in respect of the highway project or transit project; and
- (b) the registration in respect of the previously registered activity is not suspended and has not been removed from the Registry. O. Reg. 63/16, s. 3; O. Reg. 300/21, s. 4.

Registration requirements

4. (1) A person who proposes to engage in an activity prescribed by section 2 shall not register the activity in the Registry until the following conditions are met:

Commented [A2]: This person is probably the contractor/developer, not the hydrogeologist

- 1. The person proposing to engage in the activity has received a copy of a water body report that is prepared by a person who meets the qualifications set out in subsection (2) and includes the information and statements set out in subsection (3).
- 2. If the highway project or transit project forms part of an undertaking to which the *Environmental Assessment Act* applies,
 - i. all of the requirements that are necessary to proceed with the undertaking under Ontario Regulation 231/08 (Transit Projects and Metrolinx Undertakings) made under the *Environmental Assessment Act* have been met, and
 - ii. if applicable, an approval has been given under Part II of that Act to proceed with the undertaking or a class environmental assessment approved under Part II.1 of that Act applies to the undertaking and all of the requirements that are necessary to proceed with the undertaking under the class environmental assessment have been satisfied and no order has been issued under subsection 16 (1) of that Act. O. Reg. 300/21, s. 5 (1).

(2) A person meets the qualifications referred to in paragraph 1 of subsection (1) if the person holds, at a minimum, a bachelor's degree with a specialization in hydrology, aquatic ecology, limnology, biology, physical geography or water resources management or engineering. O. Reg. 63/16, s. 4 (2); O. Reg. 300/21, s. 5 (2).

(3) The following information and statements must be included in a water body report referred to in paragraph 1 of subsection (1):

Commented [A3]: What about fisheries and spawning seasons?

- 1. The name and location of the water body.
 - 2. An identification of the criteria set out in paragraph 1 of subsection 2 (2) that the water body meets.
 - 3. If the water body is a lake, the surface area of the lake.
 - 4. If the water body is a permanent stream, the order of the stream and a methodology to calculate the flow rate of the stream.
 - 5. A statement that in the opinion of the person who has prepared the report, the water body meets the criteria set out in subsection 2 (2).
 - 6. A summary of the qualifications and experience of the person who prepared the report.
 - 7. The date the report is prepared.
 - 8. A description of the water taking activity including the rate at which the water will be taken or the volume that may be taken.
 - 9. An analysis to determine whether a water monitoring plan is required to monitor the potential impacts of the water taking.
 - 10. If the analysis referred to in paragraph 9 determined that a water monitoring plan would be needed, a description of the plan and the circumstances in which it would be needed. O. Reg. 63/16, s. 4 (3); O. Reg. 300/21, s. 5 (3, 4).
- (4) REVOKED: O. Reg. 300/21, s. 5 (5).

Activity requirements, s. 20.21 (1) (c) of the Act

4.1 (1) For the purposes of clause 20.21 (1) (c) of the Act, a person who engages in an activity prescribed by section 2 of this Regulation and registered in the Registry in accordance with section 4 shall ensure that all of the following applicable requirements and all of the applicable measures and requirements set out in the water body report prepared for the activity are complied with:

- 1. If the water body from which the water is to be taken is a permanent stream,
 - i. the instantaneous rate of water taking from the water body shall not exceed 5 per cent of the stream flow rate at the point of the water taking, and
 - ii. before the taking of water each day, the flow rate of the stream shall be calculated using the methodology set out in the water body report referred to in paragraph 1 of subsection 4 (1) or another methodology prepared by a person who meets the qualifications set out in subsection 4 (2).

2. A water monitoring plan shall be implemented in accordance with the plan set out in the water body report, if the applicable circumstances arise.
3. A copy of the water body report shall be provided in paper or electronic format for inspection upon request.
4. A log shall be maintained at the location of the water taking that sets out, with respect to each day water is taken from the water body,
 - i. the date,
 - ii. the name of the water body,
 - iii. the location of each water taking,
 - iv. the average rate at which water was taken in litres per second,
 - v. if the water body is a stream, the flow rate of the stream as calculated under subparagraph 1 ii,
 - vi. the total volume of water taken in litres, and
 - vii. any additional information required by the water body report.
5. On or before March 31 in each year, the person **engaging** in the activity shall provide the Director with a report, in a form and manner approved by the Director, setting out the volume of water taken daily with respect to each water body from which water was taken in the previous calendar year.
6. Spill clean-up and containment equipment that is designed to contain or absorb oil, fuel and lubricant shall be available at the site of the water taking for the period during which the taking of water occurs.
7. If the person **receives** a complaint with respect to the taking of water and the complaint relates to the natural environment, the Ministry shall be notified of the complaint immediately after the complaint is received.
8. If the taking of water is intended to continue for more than 365 days, the person proposing to engage in the activity has given written notice that includes the information set out in subsection (2) to,
 - i. the upper-tier and lower-tier municipalities or the single-tier municipality, as the case may be, within whose area of jurisdiction the proposed water taking is located, and
 - ii. any conservation authority within whose area of jurisdiction the proposed water taking is located.
9. If the taking of water continues for 10 years from the day it began, the person shall ensure that the information referred to in subsection 4 (3) with respect to the water body report is updated within 30 days.
10. If the taking of water is no longer needed, within 30 days after the day the person has ceased to engage in the activity they shall give notice to the Ministry that the water taking is complete by filing that information in the Ministry's electronic system. O. Reg. 300/21, s. 6.
- (2) The following information must be included in a notice referred to in paragraph 8 of subsection (1):
 1. The name of the person proposing to engage in the activity.
 2. The dates on which the activity is to occur.
 3. An identification of the water body from which water will be taken and the location of the water taking. O. Reg. 300/21, s. 6.

Records

5. A person who engages in an activity prescribed by section 2 shall ensure that each of the following documents or records is retained for a period of five years from the day it is required to be created or from the last day it is updated, as the case may be:
 1. A copy of each water body report.
 2. If a methodology other than the methodology set out in the water body report is used, a copy of that methodology.
 3. Each log referred to in paragraph 4 of subsection 4.1 (1).
 4. A record of the following information with respect to each complaint referred to in paragraph 7 of subsection 4.1 (1):
 - i. The date and time the complaint was received.
 - ii. A copy of the complaint, if it is a written complaint.
 - iii. A summary of the complaint, if it is not a written complaint.
 - iv. A summary of measures taken, if any, to address the complaint. O. Reg. 300/21, s. 7.

Commented [A4]: This will be the consultant, not the hydrogeologist?

Commented [A5]: This won't be they hydrologist "the person" isn't correct

PART III WATER TAKING FOR CONSTRUCTION SITE DEWATERING

Definitions

6. In this Part,

“area of influence” means the area of the surface land that is directly above the area of a depression created in the water table or potentiometric surface as a result of a water taking to create a dewatered work area; (“rayon d’influence”)

“construction project” means any work or undertaking that occurs at a construction site; (“projet de construction”)

“construction site” means a site at which a construction project occurs, but does not include a site that is associated with mines, mine development, mine reclamation, pits or quarries; (“chantier de construction”)

“dewatered work area” means an area that is excavated for the purpose of removing ground water or storm water to facilitate construction; (“zone de travail asséchée”)

“discharge report” means the report referred to in clause 8 (1) (b); (“rapport sur le rejet”)

“storm water” means rainwater runoff, water runoff from roofs, snowmelt and surface runoff. (“eaux pluviales”)

“water taking report” means the report referred to in clause 8 (1) (a). (“rapport sur le prélèvement d’eau”) O. Reg. 63/16, s. 6; O. Reg. 300/21, s. 8.

Prescribed activities, s. 20.21 (1) of the Act

7. (1) Subject to subsections (2) to (6), the following are prescribed activities for the purposes of subsection 20.21 (1) of the Act:

1. The taking of ground water for the purpose of creating one or more dewatered work areas within a construction site for a single construction project.
2. The taking of storm water for the purpose of maintaining one or more dewatered work areas within a construction site for a single construction project.
3. The use, operation, establishment, alteration, extension or replacement of a sewage works that is used solely for the collection, transmission, treatment and disposal of storm water and ground water taken from one or more dewatered work areas within a construction site for a single construction project. O. Reg. 63/16, s. 7 (1); O. Reg. 300/21, s. 9 (1-3).

(2) Subsection (1) does not apply in respect of the taking of ground water and the taking of storm water unless more than 50,000 litres of ground water, storm water or a combination of ground water and storm water will be taken on at least one day. O. Reg. 63/16, s. 7 (2).

(3) Subsection (1) does not apply in respect of the taking of ground water if the water is used for human consumption, agriculture or in an industrial or manufacturing process. O. Reg. 63/16, s. 7 (3).

(4) Subsection (1) does not apply in respect of the taking of ground water if the taking would involve a transfer from a water basin described in subsection 34.3 (1) of the *Ontario Water Resources Act* or a transfer as defined in subsection 34.5 (1) of that Act. O. Reg. 63/16, s. 7 (4).

(5) Subsection (1) does not apply in respect of the taking of ground water in relation to one or more dewatered work areas within a construction site if,

- (a) with respect to an area of influence that does not overlap with another area of influence, the taking on any single day from that area of influence is more than 400,000 litres of ground water per day; or
- (b) with respect to an area of influence that overlaps with one or more other areas of influence, the combined volume of ground water taken from the overlapping areas of influence on any single day is more than 400,000 litres of ground water per day. O. Reg. 300/21, s. 9 (4).

(5.1) Subsection (1) does not apply in respect of the taking of ground water if,

- (a) a permit to take water was issued for the water taking under the *Ontario Water Resources Act*;
- (b) the permit was in effect on July 1, 2021; and
- (c) the permit has not expired or been revoked. O. Reg. 118/16, s. 2 (1); O. Reg. 300/21, s. 9 (5, 6).

(6) Subsection (1) does not apply in respect of an activity described in paragraph 3 of subsection (1) if the sewage works is in respect of a taking of storm water to which subsection (1) does not apply under subsection (2), (5) or (5.1). O. Reg. 63/16, s. 7 (6); O. Reg. 118/16, s. 2 (2).

Registration requirements, s. 20.21 (1) (a) of the Act

Commented [A6]: What if a bunch of adjacent sites start taking this volume of water at the same time? What oversight will there be?

8. (1) A person who proposes to engage in an activity prescribed by section 7 shall not register the activity in the Registry until the person proposing to engage in the activity,

- (a) has received a copy of a water taking report that is prepared by a person who meets the qualifications set out in subsection (2) and includes the information set out in subsection (4); and
 - (b) has received a copy of a discharge report that is prepared by a person who meets the qualifications set out in subsection (3) and includes the information and statements set out in subsection (5). O. Reg. 300/21, s. 10.
- (2) A person meets the qualifications referred to in clause (1) (a) if the person,
- (a) holds a certificate of registration under the *Professional Geoscientists Act, 2000*, and is a practising member, temporary member or limited member of the Association of Professional Geoscientists of Ontario; or
 - (b) is a professional engineer who meets the requirements set out in paragraph 2 of subsection 3 (3) of the *Professional Geoscientists Act, 2000*. O. Reg. 300/21, s. 10.
- (3) A person meets the qualifications referred to in clause (1) (b) if the person holds, at a minimum, a bachelor's degree with a specialization in hydrology, aquatic ecology, limnology, biology, physical geography or water resources management or engineering. O. Reg. 300/21, s. 10.

Commented [A7]: Regardless of qualifications, the person preparing the report will be working for (and paid by) the developer. This has been found to be a conflict of interest (Norton, 2017).

- (4) The following information must be included in a water taking report referred to in clause (1) (a):
1. An identification of the expected area of influence for each dewatered work area within the construction site, having regard to the amount of ground water that will be taken and all calculations and assumptions used to identify the expected area of influence.
 2. An analysis of the potential impact of the soil settlement that would occur as a result of the proposed water taking, including an assessment of the impact of the soil settlement on the integrity of infrastructure located in the expected area of influence for each dewatered work area and all calculations used to assess the potential impact.
 3. An analysis of the potential impact of the proposed water taking on other water users and on natural functions of the ecosystem in the expected area of influence or areas of influence, as the case may be, including calculations determining whether the volume of water to be taken during the proposed water taking would limit the availability of water for other water users in the area.
 4. A contingency plan that includes the following information:
 - i. Identification of measures that should be implemented, if any, and the circumstances in which they should be implemented to address the potential impact of the proposed water taking on other water users in the expected area of influence for each dewatered work area within the construction site.
 - ii. A description of site-specific impacts, including any risks associated with land subsidence.
 - iii. An assessment of whether a shutdown protocol is required and, if required, a description of the shutdown protocol.
 5. A protocol for providing written notice to any other water users who may be impacted by the water taking and to the applicable district office of the Ministry at least 48 hours prior to the commencement of the initial taking of water that includes, at a minimum, the following information:
 - i. A description of where the water taking is to occur.
 - ii. The dates on which the water is intended to be taken.
 - iii. The approximate time and duration that each water taking will occur.
 - iv. The registration number that appears on the confirmation of registration in respect of the activity that is provided under subsection 2 (4) of Ontario Regulation 245/11.
 - v. The name and telephone number of a person who can be contacted to report any concerns about the water taking interfering with another water supply.
 6. An analysis to determine whether a water monitoring plan is required to monitor the potential impacts of the water taking.
 7. If the analysis referred to in paragraph 6 determines that a water monitoring plan would be needed, a detailed description of the plan and the circumstances in which it would be needed.
 8. A description of the water taking activity, including the rate at which the water will be taken or the volume that may be taken.
 9. A description of the construction site and the construction project.
 10. A summary of the qualifications and experience of the person who prepared the water taking report.

Commented [A8]: Why only within the development site?

Commented [A9]: Adjacent water takings will also affect this!

Commented [A10]: Adjacent sites?

Commented [A11]: This will be the site supervisor or project manager?

11. The date the water taking report was prepared. O. Reg. 300/21, s. 10.

(5) The following information and statements must be included in a discharge report referred to in clause (1) (b):

1. An assessment of the quality and quantity of the ground water and storm water being discharged
2. The location of the discharge, if applicable.
3. Subject to subsection (6), a recommendation of one of the following methods of transfer or discharge:
 - i. Transfer to a waste management system that is subject to an environmental compliance approval or in respect of which an activity has been registered for the purposes of subsection 20.21 (1) of the Act.
 - ii. Discharge to a sewage works that is subject to an environmental compliance approval.
 - iii. Discharge to a municipal sanitary sewer or a municipal storm sewer.
 - iv. Discharge to surface land not enclosed in a building or discharge to a storm sewer, as described in paragraph 4.
4. If the recommended method of discharge is discharge to surface land not enclosed in a building or discharge to a storm sewer,
 - i. a statement that, in the opinion of the person who prepared the discharge report, the discharge of the ground water and storm water will not cause an adverse effect to the environment,
 - ii. an identification of any treatment and control measures required to minimize erosion, flooding, scouring and sedimentation from occurring as a result of the discharge, and
 - iii. an identification of any treatment and control measures required to address the quality of the discharge to ensure that the discharge will not cause an adverse effect to the environment.
5. An analysis to determine whether a monitoring plan is required to monitor the potential impacts of the discharge.
6. If the analysis referred to in paragraph 5 determines that a monitoring plan would be needed, a description of the plan and the circumstances in which it would be needed.
7. A summary of the qualifications and experience of the person who prepared the discharge report.
8. The date the discharge report was prepared.
9. A contingency plan that outlines measures that shall be implemented to,
 - i. address the potential impacts related to the quality and quantity of the discharge,
 - ii. address any failures of recommended treatment or control measures,
 - iii. address other site-specific impacts, including any risks associated with mobilization of contaminants or flooding, if applicable, and
 - iv. assess whether a shutdown protocol is required and, if required, develop a shutdown protocol. O. Reg. 300/21, s. 10.

Commented [A12]: "each of" - we don't want mixing to improve Stormwater quality

Commented [A13]: It is illegal across Ontario, per Sewer Use ByLaws, to discharge rainwater or groundwater to the sanitary sewer. The sanitary sewer should not be mentioned.

Commented [A14]: We should include a maintenance plan for control measures. Silt fence, for example, is rarely maintained by contractors.

Commented [A15]: With clear triggers.

Commented [A16]: What about groundwater protection areas? (Waterloo Region)

(6) The method of transfer or discharge referred to in paragraph 3 of subsection (5) shall not include discharge to land that is within an area that is part of a wellhead protection area and that is identified as "WHPA-A" in a source protection plan approved by the Minister under the *Clean Water Act, 2006*. O. Reg. 300/21, s. 10.

Registration exemptions, s. 20.21 (1) (a), (b) and (d) of the Act

9. (1) A person who engages in the following activities prescribed by section 7 of this Regulation is exempt from clauses 20.21 (1) (a), (b) and (d) of the Act:

1. The taking of storm water for the purpose of dewatering a construction site, if only storm water is taken.
2. An activity referred to in paragraph 3 of subsection 7 (1). O. Reg. 300/21, s. 10.

(2) A person shall not engage in an activity referred to in subsection (1) until the person has received a copy of a discharge report that is prepared by a person who meets the qualifications set out in subsection 8 (3) and includes the information and statements set out in subsection 8 (5). O. Reg. 300/21, s. 10.

Activity requirements, s. 20.21 (1) (c) of the Act

9.1 (1) For the purposes of clause 20.21 (1) (c) of the Act,

- (a) a person who engages in an activity prescribed by section 7 of this Regulation that is not referred to in subsection 9 (1) shall ensure that all of the applicable requirements set out in subsection (2) of this section and in the water taking report and the discharge report prepared for the activity are complied with; and

- (b) a person who engages in an activity prescribed by section 7 of this Regulation that is referred to in subsection 9 (1) shall ensure that all of the applicable requirements set out in subsection (2) of this section and in the discharge report prepared for the activity are complied with. O. Reg. 300/21, s. 10.
- (2) The requirements referred to in subsection (1) are the following:
1. Prior to the commencement of the activity, the notification protocol shall be implemented in accordance with the protocol set out in the water taking report pursuant to paragraph 5 of subsection 8 (4).
 2. A copy of the water taking report and the discharge report shall be provided in paper or electronic format for inspection upon request.
 3. A water monitoring plan shall be implemented in accordance with the plan set out in the water taking report, if the applicable circumstances arise.
 4. Subject to paragraphs 5 and 6, the method of transfer or discharge recommended in the discharge report shall be implemented with respect to the ground water or storm water, or both, that is taken for the purposes of dewatering the construction site.
 5. With respect to any ground water or storm water, or both, that is discharged to land or a storm sewer, there shall be no visible petroleum hydrocarbon film or sheen **present**.
 6. With respect to any ground water or storm water, or both, that is discharged to land or a storm sewer that is within 30 metres of a water body, turbidity of the discharge shall not exceed eight Nephelometric Turbidity Units above the background levels of the nearest water body.
 7. Any erosion, flooding, scouring, sediment and total suspended solids control measures identified in the discharge report shall be used, operated and maintained in a manner that satisfies the recommendations of the manufacturer of the control measures or as directed in the discharge report if no such recommendations exist.
 8. All control measures referred to in paragraph 7 and all materials collected or trapped by those measures shall be recovered and disposed **of** when the person is no longer engaging in the activity.
 9. A monitoring plan for the discharge shall be implemented in accordance with the plan set out in the discharge report, if the applicable circumstances arise.
 10. Any measures identified in the contingency plans set out in the water taking report, pursuant to paragraph 4 of subsection 8 (4), and the discharge report, pursuant to paragraph 9 of subsection 8 (5), shall be implemented if the applicable circumstances arise.
 11. On or before March 31 in each year, the person engaging in the activity shall provide the Director with a report, in a form and manner approved by the Director, setting out the volume of water taken daily for each dewatered work area in the previous calendar year.
 12. If the person receives a complaint with respect to the taking or discharging of ground water or storm water, or both, and the complaint relates to the natural **environment**, the Ministry shall be notified of the complaint immediately after the complaint is received.
 13. If the taking of water is intended to continue for more than 365 **days**, the person proposing to engage in the activity has given written notice that includes the information set out in subsection (3) to,
 - i. the upper-tier and lower-tier municipalities or the single-tier municipality, as the case may be, within whose area of jurisdiction the proposed water taking is located, and
 - ii. any conservation authority within whose area of jurisdiction the proposed water taking is located.
 14. If the taking of water is no longer needed, within 30 days after the day the person has ceased to engage in the activity they shall give notice to the Ministry that the water taking is complete by filing that information in the Ministry's electronic system. O. Reg. 300/21, s. 10.
- (3) The following information must be included in a notice referred to in paragraph 13 of subsection (2):
1. The name of the person proposing to engage in the activity.
 2. The dates on which the activity is to occur.
 3. An identification of the method of transfer or discharge referred to in paragraph 4 of subsection (2) that is to be implemented.
 4. If the method of transfer or discharge referred to in paragraph 3 is discharge to land, the location of the discharge. O. Reg. 300/21, s. 10.

Commented [A17]: This cannot be predicted with stormwater in built up areas?

Commented [A18]: Appropriately, depending on the quality of the materials

Commented [A19]: Why only the natural environment? Subsidence of buildings?

Commented [A20]: I thought we were talking about temporary water taking? We cannot allow 400,000 L/d to be dewatered for over a year?

Records

10. (1) A person who engages in an activity prescribed by section 7 shall ensure that each of the following records with respect to the taking of ground water, storm water or both is created and retained for a period of five years from the day it is required to be created:

1. The dates on which the person engaged in the activity prescribed by section 7.
2. For each day on which ground water, storm water or both was taken, the average rate at which it was taken from each dewatered work area in litres per second.
3. The volume of ground water, storm water or both taken from each dewatered work area each day in litres.
4. A record of the following information with respect to each complaint referred to in paragraph 12 of subsection 9.1 (2):
 - i. The date and time the complaint was received.
 - ii. A copy of the complaint, if it is a written complaint.
 - iii. A summary of the complaint, if it is not a written complaint.
 - iv. A summary of measures taken, if any, to address the complaint.
5. A record of any precipitation on the construction site.
6. A copy of any information or documents that demonstrate notice was provided in accordance with the protocol set out in a water taking report in accordance with paragraph 5 of subsection 8 (4).
7. A copy of the records related to the monitoring plans referred to in paragraphs 3 and 9 of subsection 9.1 (2). O. Reg. 63/16, s. 10 (1); O. Reg. 300/21, s. 11 (1-5).

(2) A person who engages in an activity prescribed by section 7 shall retain a copy of each water taking report referred to in clause 8 (1) (a) and each discharge report referred to in clause 8 (1) (b) for a period of five years from the day it was prepared. O. Reg. 63/16, s. 10 (2); O. Reg. 300/21, s. 11 (6).

Publication

10.1 The Director may publish on a Government of Ontario website or otherwise make available to the public the following data, whether collected before or after the coming into force of this section:

1. Any data reported to the Director under this Regulation related to a person's water taking.
2. Any other data that the Ministry collects from a person required to register an activity under this Regulation that relates to the person's water taking. O. Reg. 234/21, s. 1.

PART IV WATER TAKING FOR PUMPING TESTS

Definitions

11. In this Part,

"aquifer" means a water-bearing formation that is capable of transmitting water in sufficient quantities to serve as a source of water supply; ("formation aquifère")

"day" means a 24-hour period; ("jour")

"pumping test" means the taking of ground water from a well for the purpose of obtaining information about the aquifer from which the well takes its water; ("essai de pompage")

"pumping test design report" means the report referred to in subsection 13 (1); ("rapport de conception de l'essai de pompage")

"well" means a hole made in the ground to locate or to obtain ground water or to test or to obtain information in respect of ground water or an aquifer, and includes a spring around or in which works are made or equipment is installed for collection or transmission of water and that is or is likely to be used as a source of water for human consumption, but does not include any of the following:

1. A pond.
2. A reservoir.
3. A lagoon.
4. An artificial wetland.
5. A canal.
6. A trench.

Commented [A21]: It's not clear to me how someone could complain? Residents or even technical folks won't have access to the pumping records.

7. A tile drain.
8. A wick drain.
9. A ditch. (“puits”) O. Reg. 300/21, s. 12.

Prescribed activities, s. 20.21 (1) of the Act

12. (1) Subject to subsections (2) and (3), the taking of ground water from a well for the purpose of conducting a pumping test is a prescribed activity for the purposes of subsection 20.21 (1) of the Act. O. Reg. 300/21, s. 12.

(2) Subsection (1) does not apply in respect of the taking of water unless the following conditions are met:

1. The amount of water taken is more than 50,000 litres on at least one day but not more than 5,000,000 litres on any day.
 2. The taking of water occurs over seven or fewer days within a 30-day period.
 3. The site where the water is taken is not a mine or a site where mine exploration is occurring.
 4. The taking of water does not involve a transfer from a water basin described in subsection 34.3 (1) of the *Ontario Water Resources Act* or a transfer as defined in subsection 34.5 (1) of that Act. O. Reg. 300/21, s. 12.
- (3) Subsection (1) does not apply in respect of the taking of water if,
- (a) a permit to take water was issued for the water taking under the *Ontario Water Resources Act*;
 - (b) the permit was in effect on July 1, 2021; and
 - (c) the permit has not expired or been revoked. O. Reg. 300/21, s. 12.

Registration requirements

13. (1) A person who proposes to engage in an activity prescribed by section 12 shall not register the activity in the Registry until the person proposing to engage in the activity has received a copy of the pumping test design report that is prepared by a person who meets the qualifications set out in subsection (2) and includes the information set out in subsection (3). O. Reg. 300/21, s. 12.

- (2) A person meets the qualifications referred to in subsection (1) if the person,
- (a) holds a certificate of registration under the *Professional Geoscientists Act, 2000*, and is a practising member, temporary member or limited member of the Association of Professional Geoscientists of Ontario; or
 - (b) is a professional engineer who meets the requirements set out in paragraph 2 of subsection 3 (3) of the *Professional Geoscientists Act, 2000*. O. Reg. 300/21, s. 12.
- (3) The following information must be included in a pumping test design report referred to in subsection (1):
1. A description of the pumping test, including the duration and the flow rate of the test.
 2. A statement that, in the opinion of the person who has prepared the report, the discharge of the ground water or storm water, or both, will not cause an adverse effect to the environment and will not interfere with the pumping test or water monitoring results.
 3. A site specific impact assessment of the surrounding ground water and surface water features, including other water users that could be impacted by the water taken during the pumping test or by the quantity or quality of the water discharged during the pumping test.
 4. A protocol for providing written notice to any other water users who may be impacted by the pumping test, as determined under paragraph 3, at least 48 hours prior to the commencement of the pumping test that includes, at a minimum, the following information:
 - i. A description of where the water taking is to occur.
 - ii. The dates on which the water is intended to be taken.
 - iii. The approximate time and duration that each water taking will occur.
 - iv. The registration number that appears on the confirmation of registration in respect of the activity that is provided under subsection 2 (4) of Ontario Regulation 245/11.
 - v. The name and telephone number of a person who can be contacted to report any concerns about the water taking interfering with another water supply.
 5. A monitoring plan to monitor the potential impacts of the water taking and, if necessary, discharge.
 6. A contingency plan that includes the following information:

Commented [A22]: That's an awful lot to permit absent an MECP review. Well owners may observe immediately impacts, but other watershed users (including water bodies, wildlife, etc.) won't be able to speak for themselves.

Commented [A23]: This isn't the hydrogeologist.

- i. An outline of the measures that address potential impacts of the pumping test on other water users in the area and, where the water supply is affected for other water users, a plan to,
 - A. make available a supply of water equivalent in quantity and quality to their normal takings, or compensation for their reasonable costs of doing so, and
 - B. if necessary, reduce the rate and amount of taking to prevent or otherwise alleviate the negative impact.
 - ii. A description of potential impacts related to the quality and quantity of discharge.
 - iii. A description of any failures of recommended treatment or control measures.
 - iv. A description of other site-specific impacts, as identified in the assessment provided under paragraph 3, including any risks associated with flooding.
 - v. An assessment of whether a test shutdown protocol is required and, if required, a description of the test shutdown protocol.
7. A discharge plan that includes the following information:
- i. An assessment of the quality and quantity of the ground water and storm water being discharged.
 - ii. The location of the discharge, if applicable.
 - iii. A recommendation of one of the following methods of transfer or discharge:
 - A. Transfer to a waste management system that is subject to an environmental compliance approval or in respect of which an activity has been registered for the purposes of subsection 20.21 (1) of the Act.
 - B. Discharge to a sewage works that is subject to an environmental compliance approval.
 - C. Discharge to a municipal sanitary sewer or a municipal storm sewer.
 - D. Discharge to surface land not enclosed in a building or discharge to a storm sewer, as described in subparagraph iv.
 - iv. If the recommended method of discharge is discharge to surface land not enclosed in a building or discharge to a storm sewer,
 - A. an identification of any treatment and control measures required to minimize erosion, flooding, scouring and sedimentation from occurring as a result of the discharge, and
 - B. an identification of any treatment and control measures required to address the quality of the discharge to ensure that the discharge will not cause an adverse effect to the environment.
8. A site map showing the location of all the features that were considered in the development of the pumping test design report, including the following features, if applicable:
- i. Pumping wells.
 - ii. Monitoring wells.
 - iii. Water supply wells.
 - iv. Surface water monitoring locations.
 - v. Locations of other sensitive features.
9. A summary of the qualifications of the person that prepared the report.
10. The date the report was prepared. O. Reg. 300/21, s. 12.

Activity requirements, s. 20.21 (1) (c) of the Act

14. For the purposes of clause 20.21 (1) (c) of the Act, a person who engages in an activity prescribed by section 12 of this Regulation shall ensure that all of the following applicable requirements and all of the applicable measures and requirements set out in the pumping test design report prepared for the activity are complied with:

- 1. Prior to the commencement of the activity, the notification protocol shall be implemented in accordance with the protocol set out in the pumping test design report pursuant to paragraph 4 of subsection 13 (3).
- 2. A copy of the pumping test design report shall be provided in paper or electronic format for inspection upon request.
- 3. The pumping test shall be performed in accordance with the pumping test design report and in accordance with any subsequent modifications to the report that have been approved by the person who prepared the report.
- 4. A monitoring plan shall be implemented in accordance with the plan set out in the pumping test design report.

Commented [A24]: No. It is illegal to discharge groundwater to sewers in Ontario per all Sewer Use By-Laws

Commented [A25]: See above

Commented [A26]: To the Ministry?

5. Any measures identified in the contingency plan set out in the pumping test design report pursuant to paragraph 6 of subsection 13 (3) shall be implemented if the applicable circumstances arise.
6. With respect to any ground water or storm water, or both, that is discharged to land or a storm sewer, there shall be no visible petroleum hydrocarbon film or sheen present.
7. The method of transfer or discharge recommended by the discharge plan set out in the pumping test design report shall be implemented with respect to the ground water or storm water, or both, that is taken for the purposes of the pumping test.
8. Any erosion, sediment and total suspended solids control measures identified in the pumping test design report pursuant to sub-subparagraphs 7 iv A and B of subsection 13 (3) shall be used, operated and maintained in a manner that satisfies the recommendations of the manufacturer of the control measures or as directed in the discharge plan if no such recommendations exist.
9. All control measures referred to in paragraph 8 and all materials collected or trapped by those measures shall be recovered and disposed of when the person is no longer engaging in the activity.
10. On or before March 31 in each year, the person engaging in the activity shall provide the Director with a report, in a form and manner approved by the Director, setting out the volume of water taken daily in the previous calendar year.
11. If the person receives a complaint with respect to the taking or discharging of ground water or storm water, or both, and the complaint relates to the natural environment, the Ministry shall be notified of the complaint immediately after the complaint is received.
12. If the taking of water is no longer needed, within 30 days after the day the person has ceased to engage in the activity they shall give notice to the Ministry that the water taking is complete by filing that information in the Ministry's electronic system. O. Reg. 300/21, s. 12.

Commented [A27]: Where are the checks and balances on this? A hydrogeo company will be performing the test, where is the third party (not in the employ of the developer) to identify if the applicable circumstances arise?

Commented [A28]: That means we need to specify that the operations manual of such control measures is required to be on site and available to everyone, including inspectors, etc.

Commented [A29]: Which person

Records

15. A person who engages in an activity prescribed by section 12 shall ensure that a record is created that contains the following information and is retained for a period of one year from the day it is created:

1. Any wells from which water is being taken, including well tag numbers if available.
2. The date and duration of each water taking.
3. The rate of taking in litres per second for each water taking.
4. The total volume of ground water taken per day in litres for each water taking.
5. The results of any other monitoring, measurements or observations required by the pumping test design report.
6. Any deviations made from the pumping test design report that occurred during the execution of the pumping test, including any use of the contingency plan.
7. A copy of all notifications sent in accordance with the notification protocol set out in the pumping test design report.
8. A copy of the pumping test design report.
9. A record of the following information with respect to each complaint referred to in paragraph 11 of section 14:
 - i. The date and time the complaint was received.
 - ii. A copy of the complaint, if it is a written complaint.
 - iii. A summary of the complaint, if it is not a written complaint.
 - iv. A summary of measures taken, if any, to address the complaint. O. Reg. 300/21, s. 12.

Français

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