

Wednesday, October 25, 2023

## **Online Portal Submission**

Client Services and Permissions Branch  
(Policy and Program Development Section)  
Ministry of the Environment, Conservation and Parks  
135 St. Clair Avenue West, Floor 1  
Toronto, ON M4V 1P5

### **RE: Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry (ERO 019-6928)**

The City of Guelph (City) has received notice through the Environmental Registry of Ontario (ERO 019-6928 - <https://ero.ontario.ca/notice/019-6928>) regarding proposed policy changes to streamline environmental permissions for stormwater management (SWM) under the Environmental Activity and Sector Registry (EASR). We appreciate the opportunity to comment on this policy proposal – this submission contains the City's response to this consultation notice.

The Ministry of the Environment, Conservation and Parks (Ministry) is proposing the following changes to streamline environmental permissions for stormwater management:

1. A new regulation under the Environmental Protection Act, to allow owners of certain stormwater management works to self-register on the Environmental Activity and Sector Registry (EASR).
2. To amend Ontario Regulation 525/98 under the Ontario Water Resources Act, to exempt some stormwater management works in residential areas from approval requirements.
3. To amend Ontario Regulation 287/07, made under the Clean Water Act, 2006, 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 registration on the EASR, and to allow for amendments to existing source protection plans without following the usual process.

Based on our review of this notice we are generally in support of the proposed changes, and we appreciate the Ministry's efforts to streamline the permitting process by exempting certain low-risk stormwater management works from an Environmental Compliance Approval (ECA). However, we have concerns about the proposed changes where stormwater management works which are considered a

Significant Drinking Water Threat (SDWT). Our response is organized into two sections: first, we address the discussion questions raised in the discussion paper, after which we provide some specific source protection concerns.

## **Discussion Questions:**

### **Discussion Question 2: Eligibility Criteria**

- The discharge from stormwater management systems to the city's sewer system from institutional, commercial, and light industrial sites requires that the City's Sewer Use By-law or area of natural significance (e.g., wetland or rivers, creeks, tributaries etc.), where the City could be monitoring the water quality (chemical, physical and biological parameters) as part of the Consolidated Linear Infrastructure Environmental Compliance Approval's (CLI ECA) Monitoring Plan. Would these systems still meet the eligible criteria? If so, can the MECP ensure that the City receives all the pre and post construction documentation for our records and reference?

### **Discussion Question 3: Owner Requirements**

- Can the MECP also add a Salt Management Plan to Preregistration requirements to be prepared/stamped by a Licensed Engineering Professional (LEP)?
- We request that City be provided with all documentation associated with Operational requirements that MECP receives or requires from the owner.

### **Discussion Question 4: Operation and Maintenance (O&M) Manual**

- How will MECP ensure on-going O&M of these private works?
- We request that City be provided O&M manual that MECP receives or requires from the owner.

### **Discussion Question 5: Erosion and Sediment Control (ESC) Plan**

- We request that City be provided ESC Plan that MECP receives or requires from the owner.

### **Discussion Question 6: Spill Contingency Plan (SCP)**

- We request that City be provided SPC that the MECP receives or requires from the owner.

## **Comments on Source Protection Concerns:**

The City is relatively unique within Ontario with respect to source protection requirements. The City has water quality Wellhead Protection Areas (WHPA) that cover large portions of the City and water quantity WHPA (WHPA-Q) that cover all of the City. In addition, the entire City is considered to be a recharge area for its municipal water supply. The great extent of these vulnerable areas makes the City

cautious with respect to any proposed regulatory changes that may reduce water quality or quantity protections and reduce regulatory oversight. The proposed changes to the EASR process whereby some SWM systems are self-regulated and some SWM systems are exempt, will reduce the environmental protections currently available to protect the City's water supply.

Within the City's WHPA's, a stormwater management system may be considered a Significant Drinking Water Threat (SDWT) in a WHPA-A and WHPA-B with a vulnerability score of 10, in a WHPA-E with a vulnerability score of greater than 8, and in a Nitrate Issues Contributing Area. The City is concerned that these SDWT will not have the appropriate Ministry oversight which may result in degradation of water quality used for municipal drinking water. The City currently has Source Protection Plan policies (i.e., Prescribed Instrument Policies) for SWM systems that are managed by the Ministry through Environmental Compliance Approvals (ECA).

The City's policy (CG-MC-15) requires the Ministry to "ensure that the ECA's that governs the stormwater management facility includes appropriate terms and conditions to ensure that the activity ceases to be and/or never becomes a significant drinking water threat". Transferring this requirement to the registrants/LEP will undermine the SPP policies approved by the Ministry. To compensate for the loss of this policy, the City would have to develop a Source Protection Policy that prohibits the SWM works, which, because of the large areas of the WHPA's would be very problematic and have far reaching implications for existing and future SWM works. The City is concerned that the self-registration will result in less technical oversight and poorer controls on SWM works which could result in general water quality degradation. Since the City relies on groundwater for its municipal drinking water, degradation of water quality could either result in additional treatment costs or less water quantity for municipal use.

### **Our Recommendations:**

The City would prefer that the Ministry modify the proposal to make SWM works that would be a SDWT ineligible for the EASR process. If the Ministry chooses to proceed with the proposal as currently presented, we would request the Ministry include additional oversight to address source protection concerns. The ERO Notice and Discussion Paper notes that the Licensed Environmental Professional (LEP) is to identify whether the SWM works would be a SDWT. The City would recommend that the determination of a SDWT designation be done in consultation with the Risk Management Official (RMO) for the WHPA. We would also recommend that the Ministry provide training with respect to stormwater management works and Significant Drinking Water Threats to better educate the LEP's on source protection requirements under the Clean Water Act. Reliance on Ministry documents may not incorporate any recent changes to WHPA's or local source protection policies.

Similarly, the notification of the proposed SWM works should include notification and consultation with the RMO. Where the SWM works would be a SDWT, the Design Report should be provided significantly in advance of implementation so the

RMO can conduct a review of the proposal to ensure that the enhanced water quality protection is sufficient such that source waters will be adequately protected. The RMO would want to review the risk management measures or best management practices that will be applied to the SDWT to ensure that the threat ceases to be or never becomes a SDWT. This requirement may provide the equivalent protections currently found in the City Policy CG-MC-15. In addition, the RMO should be able to provide oversight on other aspects of the Design Report (such as the design aspects and monitoring program), the Operation and Maintenance Manual and the Spill Contingency Plan with respect to SDWT protections. Where the SWM works is a SDWT, the Ministry should consider delegating review and approval authority to the RMO, similarly as may be provided in a Risk Management Plan under the Clean Water Act.

Without technical reviews of the SWM works and through self-regulation, the City is concerned about how the Ministry will ensure compliance and source protection. We note that the Ministry has stated it will apply its compliance processes to the EASR process and conduct audits to ensure compliance, but it has not provided details on how this may occur or how effective it might be. The City is concerned that lack of regulatory oversight will result in poor quality SWM works, which, over time, may lead to general water quality degradation which, in turn, may result in degradation of sources used for drinking water.

The City is concerned with privately owned SWM works that will now be eligible for EASRs in WHPAs. While we note that the proposal states that these private SWM will not be assumed by the municipality as eligibility criteria, there is no guarantee that these SWM will remain private in perpetuity. If these works are transferred to municipalities without having gone through a formal review by the province, there may be increased risks to the municipality.

### **Final Recommendations:**

With the above considerations, the City recommends that:

1. SWM sites that are Significant Drinking Water Threats should not be eligible to register on EASR.
2. If the Ministry proceeds with the changes to SWM works as proposed, the City recommends:
  - The proposal does not take effect until Source Protection Plans (SPP) have been updated and modified to provide an equivalent level of source protection as current exists.
  - The EASR process should include notification and consultation with the RMO where the SWM works would be considered a SDWT. Consultation should include, at a minimum, the identification of the SDWT and reviews of the Design Report, the Operation and Maintenance Plan and the Spill Contingency Plan. The consultation should be sufficient to ensure the same level of source protection as may be found in an ECA application.

- The Ministry should consider providing training to the LEP's with respect to source protection requirements and local policies under the Clean Water Act.
- The Ministry should ensure that the requirements for an EASR for a SWM system where it is designated as a SDWT, will achieve the same level of source protection as may be provided by a SPP policy (i.e., the SWM activity ceases to be or never becomes a SDWT).
- Documents in support of the EASR (such as the Design Report, Operations and Maintenance Manual and Spill Contingency Plan) should be provided to the RMO as part of the EASR process where the SWM works is a SDWT.

We appreciate the opportunity to provide input and trust that our comments outlined above will be given due consideration. Should you have any questions, please do not hesitate to get in touch.

Sincerely,

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