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Permissions Modernization Team
Ministry of the Environment, Conservation and Parks
Client Services and Permissions Branch
135 St. Clair Avenue West
Toronto, Ontario
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Subject: **Comments on Environmental Registry of Ontario posting #019-6928,
“Streamlining environmental permissions for stormwater
management under the Environmental Activity and Sector Registry”**

Dear Sir/Madam,

Rideau Valley Conservation Authority staff have reviewed the proposal “Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry” (ERO #019-6928). We are one of 36 conservation authorities with mandatory programs and services for water resources and natural hazards management under the *Conservation Authorities Act*, and Drinking Water Source Protection under the *Clean Water Act*. We have decades of experience reviewing stormwater management proposals relative to our role in the management of natural hazards, drinking water source protection and our previous role in natural heritage. We also have extensive experience with the preparation of subwatershed studies, master servicing studies and the implementation of study guidance and recommendations. These comments have been prepared in consultation with a team of engineering, geo-science, source water and planning professionals.

We understand the proposed regulatory changes to be:

- A new regulation under the *Environmental Protection Act (EPA)* to allow some privately owned stormwater management works to be self-registered under the Environmental Activity and Sector Registry (EASR).

**Proudly working in partnership
with our 18 watershed municipalities**

Athens, Augusta, Beckwith, Central Frontenac, Clarence-Rockland,
Drummond/North Elmsley, Elizabethtown-Kitley, Merrickville-Wolford, Montague,
North Dundas, North Grenville, Ottawa, Perth, Rideau Lakes, Smiths Falls, South Frontenac, Tay Valley, Westport

- Amending O. Reg. 525/98 under the *Ontario Water Resources Act* to remove the need for low impact development works to obtain an Environmental Compliance Approval (ECA).
- Amending O. Reg. 287/07 under the *Clean Water Act* by removing or restricting policies in source protection plans where a significant drinking water threat is to be managed through an EASR registration or prohibition.

We offer the following comments for your consideration.

EASR for Privately Owned Stormwater Management Works

Significant development occurs with our cities, towns and villages by way of the developments that are proposed to be exempt from the ECA process. The proposed approach could facilitate a shift from publicly owned and maintained centralized stormwater management infrastructure, which currently benefits from robust assessment of environmental impacts and mitigations, to one which exclusively relies on self-regulation with limited oversight by approval authorities that are ultimately responsible for managing the environmental integrity of the receiving watercourses. Most stormwater management systems do not contain runoff within property boundaries. They discharge to adjacent watercourses and waterbodies or to municipal infrastructure that ultimately discharges to these features.

Although the discussion paper identifies information requirements that must be addressed in the submission to be registered, the 2003 Stormwater Management Planning and Design Manual identifies the preferred approach to, and information requirements for, integrated stormwater management. Our experience in stormwater reviews confirms that:

- Licensed engineering practitioners (LEP) do not consistently adhere to the applicable policies and guidance for stormwater management planning, design and implementation.
- The best practice guidance for preparation of site-specific water budgets that are necessary to maintain site hydrology and to inform stormwater design is not followed.
- In the absence of properly prepared water budgets, the design targets for stormwater management plans are not identified and therefore impact on site hydrology is mostly unmitigated.
- The best practice hierarchy for stormwater management, which emphasizes source (lot level) and conveyance controls over end-of-pipe solutions is often overlooked.
- Information to confirm adherence to Section 1.6.6 Sewage, Water and Stormwater and Section 2.2 Water of the Provincial Policy Statement (2020) is often inadequate or dismissed.

The demonstrated lack of adherence to the existing Provincial guidance and direction for stormwater management planning and design, is in no way aligned with the current initiative to allow certain stormwater management works to proceed via the EASR. In the absence of scrutiny through peer review, there will be significant risk that the specified standards will not be met, resulting in unmitigated disruption of the natural water cycle, degradation of water quality, potential threats to drinking water and exacerbation of natural hazards (flooding, erosion control, slope instability).

The proposal provides for MECP audits of the EASR and for inspection of stormwater works. This shifts the process from proactive review of a stormwater management plan, whereby deficiencies can be identified and corrected before construction, to a reactive post-construction approach. This is ineffective and inefficient because the focus becomes one of compliance rather than prevention. It shifts the burden of responsibility away from the development sector and Licensed Engineering Practitioner (LEP) to MECP and the municipality. It is extremely onerous and costly to rectify deficiencies post-construction and voluntary compliance is not a reasonable expectation. The proposal does not include an audit, compliance and enforcement framework and is therefore incomplete and premature.

The perception that peer review and the ECA process contributes to regulatory burden and delay is incorrect. Peer review and due process is not red tape. It is the exercise of due diligence to protect water resources on which all Ontarians rely for safe drinking water, recreational opportunities and thriving ecosystems. Delay in the review and approvals process is rooted in poor quality submissions that do not conform to the provincial guidance and local subwatershed and master servicing studies, as described above, and inadequate resources to administer the ECA process. We recommend that opportunities for process improvements be explored and implemented without deferring to the EASR registry approach. These improvements would include reiteration and reinforcement of MECP's expectations for adherence to existing or updated guidelines and best practice standards.

MECP has already developed and is implementing the Constructed Linear Infrastructure Environmental Compliance Approval (CLI ECA) for municipalities, which has been subject to robust consultation and training. The CLI ECA is a streamlined and efficient approach that aligns with 2003 manual and maintains a science-based approach to stormwater management, which facilitates conformity to the PPS and provides for long-term operation of maintenance of stormwater infrastructure by municipalities. It is in the public interest to have this infrastructure owned, operated and maintained by municipalities such that there is no reliance on private interests to protect our water resources. If the EASR approach is implemented, the EASR requirements should fully

align with the mandatory stormwater management criteria for the CLI ECA for mandatory treatment trains.

We further recommend that EASRs not be used in areas:

- With noted or potential floodplains, erosion and landslide hazards where existing development is already or may be under significant risk,
- Within several hundred metres of slopes within the marine clay plain,
- Around at capacity lakes,
- Within privately serviced urban enclaves
- That are privately serviced for water and sewage,
- Within drinking water source protection vulnerable areas where they are a significant drinking water threat.
- With historical and operating dumps/landfills.

These areas and features could be significantly impacted by stormwater management and should be subject to the current rigor of the ECA process.

Regulatory Amendments under the *Ontario Water Resources Act*

The Ministry is proposing to amend O. Reg. 525/98 to expand the list of low-risk sewage works that are exempt from an ECA. The regulation would be amended to exempt all LID works and drainage works for roadways and railway projects by Metrolinx.

LID approaches to stormwater management rely on source and conveyance controls to promote reuse and infiltration of precipitation, with a view to emulating a site's natural water cycle and preventing or minimizing off-site impacts. The long-term functionality and efficacy of LID measures are dependent on proper design, construction and maintenance, all of which are reviewed by MECP prior to the issuance of the ECA. If all LID works are to be exempt from ECAs, the Ministry should develop an alternative approach to ensure that long term operation and maintenance will be provided by the owner. This should include documented operations, inspection and maintenance manuals and schedules. The Ministry should also develop a framework for its own inspections and audits. We consider the proposal premature in the absence of practical and effective options for long term oversight of LID works.

LID works, given that they promote retention and infiltration of stormwater, could be a threat to drinking water if they are exempt from ECAs. The current ECA process provides for assessment of risk. In the absence of that process, SPAs would need an alternative to address this threat, which would likely be a risk management plan under

Section 58 of the Clean Water Act. The Ministry would need to add risk management measures for LID works to the Management Measures Catalogue and include training for risk management officials. If LID works are in a source protection vulnerable area, they should not be exempt from the more rigorous scrutiny provided by the ECA review.

Source Water Protection

It is not evident in the proposal how the EASR approach will provide for the protection of municipal drinking water sources that currently benefit from source protection plans. The policies and procedures for source protection have proven to be efficient and effective and are not a hinderance for the approval of stormwater works if such works are deemed not to be a threat. The proposed change, whereby the assessment of the threat is transferred from the current MECP ECA process to the LEP, removes a warranted level of scrutiny.

With the proposed new process, LEPs must undertake a threats verification exercise. LEPs are not familiar with the very technical threat circumstances, nor the *Clean Water Act*, 2006 and associated regulations. They are also not acquainted with the 22 Source Protection Plans across the Province and the different intricacies of each of the plans and policies. This exercise will be cumbersome and not consistent across the province if not managed by an experienced approval authority. LEPs will need Drinking Source Water Protection training to successfully execute this change. Currently, the threats verification process is undertaken by trained Ministry staff that are fully knowledgeable about the source protection plans, policies and procedures, which provides a predictable and consistent approach. If this proposal proceeds, all LEPs dealing with drinking water threats should complete training delivered by MECP, to be fully knowledgeable of requirements for source protection and the potential risks from stormwater management. Minimum standards checklists should also be established and included with each EASR registration to verify that the stormwater management design report includes all required information to inform a thorough assessment and support the conclusions. Also, Ministry staff confirmed on October 10, 2023, at the second session of Streamlining Permissions for Stormwater Management (Source Protection), that every stormwater ECA that is received and reviewed by MECP, receives comments back from Ministry staff regarding source water protection. If the Province proceeds with this proposal, provisions should be included to require peer review of the stormwater management plan in advance of EASR registration.

Many Source Protection Plans contain prescribed policy instruments for stormwater. Through the ECA process, the Ministry ensures compliance with these instruments. The proposal will diminish the Ministry's technical oversight which currently ensures that detailed design accounts for site-specific conditions and the requirements for source water protection. The transfer of this responsibility to the proponent is inconsistent with

the Source Protection Plans since the policy instruments are not legally binding on private developers and their consultants. Many stormwater management works are also subject to risk management plans if there is no prescribed instrument (i.e. ECA) to manage the threat. It is understood that in some cases, the stormwater management works may be subject to both an EASR and a risk management plan which would eliminate any perceived streamlining benefit. The EASR approach would be a duplication of effort, but with less rigor.

Source Protection Authorities (SPA) have a legislated obligation to manage significant drinking water threats. If the SPA does not have a high degree of confidence that the threats can be appropriately managed through the ESAR, the SPA may consider new prohibition policies to address deficiencies.

It is understood that this proposal would also prohibit the identification of any new threats in the areas subject to an EASR. This is not aligned with SPA obligations to track new, existing, and removed threats for annual reporting purposes and eliminates transparency for the manner in which threats are documented and tracked.

Regulatory Amendments under the *Clean Water Act*

SPAs have not had the opportunity to review the draft regulatory amendments. It would be helpful if a track changes version of O. Reg. 287/07 was shared to preview. Without this, the process is not transparent. SPAs are not able to thoroughly identify and consider the amendments and any unintended consequences of a yet unseen new regulatory framework.

Additional Comments

The terminology “Licensed Engineering Professional” is not consistent with terminology in the *Professional Engineers Act*. Qualified “professional engineer” would be consistent with the terminology used in the legislation.

The information requirements identified in the Design Aspects (pages 11 and 12 of the discussion paper) are incomplete:

- Section 1:
 - a) Include storm duration and intensity,
 - c) Include external drainage area (if any),
 - g) Include land use and surface/subsurface soil conditions
- Section 2:
 - a) include erosion control targets,

- b) include explanation of erosion control threshold and potential cumulative impacts.

Engineering Drawings (page 14 of the discussion paper):

- Section 3:
 - f) include overland flow route and 5 year and 100 year ponding limits
 - j) add requirement for cross sections, details drawing, plan and profile views as applicable.

In summary, the RVCA does not support the proposed EASR for private stormwater management works (new regulation under the Environmental Protection Act) and related amendments to the regulations under the *Ontario Water Resources Act* and the *Clean Water Act*. Surface and subsurface stormwater discharge are a potential threat to surface and groundwater quality and for the creation or aggravation of natural hazards due to flooding, erosion and slope instability. The inherent risk warrants a high level of scrutiny which is not provided by a self-registry process. Any perception of benefit is a false economy without prudent checks and balances in place to minimize the risk and unmitigable consequences of failure. A more rigorous and efficient process with the necessary checks and balances already exists through the current ECA process which is currently being streamlined through the CLI ECA.

Thank you for the opportunity to comment on this proposal. Should you have any questions, we would be pleased to discuss the proposal further. You can contact me at 613-692-3571 ext. 1133 or glen.mcdonald@rvca.ca.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Glen McDonald', with a stylized flourish at the end.

Glen McDonald MCIP RPP
Director of Planning and Science
Rideau Valley Conservation Authority