

Report To: Halton-Hamilton Source Protection Committee
Report No.: SPC-23-12-07
From: Martin Keller, Senior Manager, Watershed Planning and Source Protection
Date: December 5, 2023
Subject: Conservation Halton Comments on Environmental Registry Notices

Recommendation

THAT the Halton-Hamilton Source Protection Committee receives for information the staff report SPC-23-12-07 Conservation Halton Comments on Environmental Registry Notices

Executive Summary

Conservation Halton (CH) has reviewed and commented on several recent Environmental Registry of Ontario (ERO) notices that potentially affect drinking water source protection. They include streamlining permissions for water takings for construction site dewatering activities and foundation drains and for stormwater management under the Environmental Activity and Sector Registry (EASR), and proposed regulatory amendments to encourage greater reuse of excess soil including salt-impacted soil. CH is concerned that the proposals weaken protection of drinking water sources, and recommended that the Ministry of the Environment, Conservation and Parks (MECP) should retain oversight through current existing regulatory processes where activities are identified as significant drinking water threats or where drinking water sources are potentially impacted.

Report

Conservation Halton (CH) has commented on several recent notices posted on the Environmental Registry of Ontario (ERO) that may affect drinking water sources. A summary of the proposals and CH comments are provided in this report. Submission letters are attached as appendices.

Streamlining permissions for water takings for construction site dewatering activities and foundation drains ([ERO 019-6853](#))

For construction dewatering, the proposal includes removing the current water taking limit of 400,000 litres per day (L/day) within a construction site. This would allow self-registration on the Environmental Activity and Sector Registry (EASR) for the taking of any quantity water from a dewatered work area at a construction site if all other current eligibility requirements are met. The existing exemption from a permission for water takings of 50,000 L/day or less remains in place. Also, the MECP is proposing to remove the current requirements to notify the local conservation authority of the water taking.

For foundation drains, the MECP is also proposing changes to simplify permissions for residential foundation drainage. The MECP is proposing to make residential foundation drainage systems exempt from requiring a Permit to Take Water (PTTW) for water takings of up to 379,000 L/day. For water taking of more than 379,000 L/day from residential foundation drainage systems, a PTTW will still be required.

CH is concerned with the use of the EASR for construction site dewatering and permanent foundation drains where consumptive water taking is a significant drinking water threat.

As proposed, the proposal does not consider the potential impacts to sources of drinking water and does not allow for the assessment of cumulative impacts. CH recommended that temporary dewatering activities from construction sites of more than 400,000 Litres per day and permanent foundation drains for water takings up to 379,000 Litres per day continue to be regulated through the Permit to Take Water (PTTW) program under the Ontario Water Resources Act (OWRA) where: 1) the consumptive water taking is a significant drinking water threats as per the Clean Water Act, 2006, or 2) where an OWRA section 34 Director has determined a ground or surface water source of supply to be under stress in accordance with subsection 4(5) of the Water Taking and Transfer Regulation (O. Reg. 387/04).

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

The MECP is proposing three 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 EASR rather than requiring an Environmental Compliance Approval (ECA).
2. Amendments to O. Reg. 525/98 under the Ontario Water Resources Act to exempt certain stormwater management works in residential areas from approval requirements.
3. Amendments to O. Reg. 287/07 made under the Clean Water Act, 2006, to remove the need for, limiting, or restricting the types of policies that can 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.

CH is concerned that the proposed amendments to O. Reg 287/07 would fetter our ability to address significant drinking water threats proposed to be managed through an EASR registration and weaken the protection of municipal drinking water sources by allowing self-registration of activities that have a proven potential to impact surface and

groundwater. Specifically, transferring responsibility for compliance with applicable source protection plan policies to the proponent would weaken oversight of management of the stormwater management works. With respect to drinking water source protection, CH recommended that all stormwater management (SWM) works that are significant drinking water threats, including those currently managed by prescribed instrument or Part IV policies, be added to the list of ineligible activities for EASR registration.

Proposed regulatory amendments to encourage greater reuse of excess soil including salt-impacted soil ([ERO 019-7636](#))

The MECP is proposing several amendments, two of which are of specific importance to drinking water source protection.

1. Exempt specified excess soil management operations from a waste environmental compliance approval (ECA) subject to rules.
2. Enhanced reuse opportunities for salt-impacted soil (Section D, Part I in the Soil Rules)

As proposed, the exemption for the specified excess soil management operations from needing a waste ECA would weaken the provincial oversight of these activities currently in place through the ECA process in areas where municipal drinking water sources need protection from contamination. CH recommended that the exemption should not apply to excess soil management operations where the activities are identified as significant drinking water threats under the Clean Water Act, 2006. In addition, CH is concerned that proposed amendments to Soil Rules (Section D, Part I) would allow the use of salt-impacted soils in areas where they may impact drinking water sources. CH recommends that the use of salt-impacted soils should not be allowed in protection zones identified under the Clean Water Act, 2006 where the vulnerability score is 10, and in Issue Contributing Areas (ICA) for chloride identified under the Clean Water Act, 2006.

Signed & respectfully submitted:



Martin Keller
Senior Manager, Watershed Planning and Source Protection

October 30, 2023
Client Services and Permissions Branch
(Policy and Program Development Section)
135 St. Clair Avenue West
Floor 1
Toronto, ON M4V 1P5

BY EMAIL

**RE: Streamlining permissions for water takings for construction site dewatering activities and foundation drains
ERO No. 019-6853**

Thank you for the opportunity to provide comments on the Province's proposal to streamline permissions for water takings for construction site dewatering activities and foundation drains, as posted to the Environmental Registry of Ontario ([ERO No. 019-6853](http://ero.gov.on.ca)).

General Comments

Conservation Halton (CH) has reviewed the proposal and is concerned with the use of the EASR for construction site dewatering and permanent foundation drains where consumptive water taking is a significant drinking water threat.

As proposed, the proposal does not consider the potential impacts to sources of drinking water and does not allow for the assessment of cumulative impacts. CH recommends that temporary dewatering activities from construction sites of more than 400,000 Litres per day and permanent foundation drains for water takings up to 379,000 Litres per day continue to be regulated through the Permit to Take Water (PTTW) program under the Ontario Water Resources Act (OWRA) where: 1) the consumptive water taking is a significant drinking water threats as per the Clean Water Act, 2006, or 2) where an OWRA section 34 Director has determined a ground or surface water source of supply to be under stress in accordance with subsection 4(5) of the Water Taking and Transfer Regulation (O. Reg. 387/04).

Specific Comments

- a) CH is concerned that the removal of the volumetric threshold of 400,000 Litres per day for temporary dewatering activities that can be self registered through the EASR preclude the assessment of cumulative impacts. As proposed, potentially very large water takings will no longer be assessed by MECP. This lack of oversight may lead to multiple EASR registrations at the same time and in the same area which may impair groundwater levels
- b) CH is concerned with the removal of the current requirement to notify the local conservation authority of the water taking. It is important that conservation authorities be notified of proposed water takings so that natural hazards are not aggravated and drinking water

source protection is not negatively affected. CH proposes that the EASR regulation be amended to require notification of and meaningful consultation with Source Protection Authorities, conservation authorities, and municipalities for EASR registrations.

- c) CH is concerned with the proposal to exempt residential foundation drainage systems from requiring a PTTW for water takings of up to 379,000 Litres per day. The proposed lack of MECP oversight for potentially large water taking in perpetuity (for the lifetime of the building) may cause detrimental water quality and quantity impacts on the environment and water supplies in the zone of influence. It is not clear what agency would be responsible for ensuring that there are no adverse impacts on groundwater from potential contaminant migration, discharge of contaminants into surface water bodies, or how cumulative impacts would be assessed. The proposal also does not consider different geological conditions in the Province and the potential impacts that water takings proposed to be exempted may have on the surroundings. These potential issues can only be avoided through proper assessment and oversight.
- d) It is unclear how to determine whether a foundation drain water taking exceeds the 379,000 Litres per day threshold and how water taking data would be reported to the MECP. If the proposal is implemented unchanged, CH recommends that flow meters be required for these and all registered water takings under the self registration rules.

Thank you for the opportunity to provide input on the ERO proposal Streamlining environmental permissions for water takings for construction site dewatering activities and foundation drains under the Environmental Activity and Sector Registry (EASR).

Sincerely,

A handwritten signature in black ink that reads "Barbara Veale". The script is cursive and fluid, with the first name and last name clearly distinguishable.

Barbara Veale, PhD, MCIP, RPP
Senior Director, Watershed Strategies and Climate Change
bveale@hrca.on.ca

October 30, 2023
Client Services and Permissions Branch
(Policy and Program Development Section)
135 St. Clair Avenue West
Floor 1
Toronto, ON M4V 1P5

BY EMAIL

**Re: Streamlining environmental permissions for stormwater management under the
Environmental Activity and Sector Registry
ERO No. 019-6928
CH File: APPO-85**

Conservation Halton (CH) has reviewed the proposal *Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry* posted on the Environmental Registry of Ontario ([ERO number 019-6928](#)). We had an opportunity to contribute to Conservation Ontario's submission and offer our key comments below and additional comments in Appendix A.


The proposed new regulation under the *Environmental Protection Act* would specify activities eligible to self-register through the Environmental Activity and Sector Registry (EASR) rather than requiring an Environmental Compliance Approval (ECA). CH recommends that the province retain full regulatory and enforcement authority for private stormwater works eligible for self-registry, and that private regulatory storm control facilities continue to require a provincial ECA. With respect to drinking water source protection, CH recommends that all stormwater management (SWM) works that are significant drinking water threats, including those currently managed by prescribed instrument or Part IV policies, be added to the list of ineligible activities for EASR registration.

The proposed amendments to *Ontario Regulation 525/98* made under the *Ontario Water Resources Act* would exempt low impact development (LID) works from the need to obtain an ECA. CH recommends against expanding the exemptions to all LIDs and recommends ECAs continue to be required for LIDs on private lands used to mitigate impacts to natural hazards and risks to human health, safety and property to ensure their proper design, operation and maintenance.

The proposed amendments to *Ontario Regulation 287/07* made under the *Clean Water Act, 2006* would remove, limit, or restrict the types of policies that can be included in source protection plans. This would fetter our ability to address significant drinking water threats proposed to be managed through an EASR registration and weaken the protection of municipal drinking water sources by allowing self-registration of activities that have a proven potential to impact surface and groundwater.

Thank you for the opportunity to provide input on the proposal *Streamlining environmental permissions for stormwater management under the Environmental Activity and Sector Registry*.

Sincerely,

A handwritten signature in black ink that reads "Barbara Veale". The signature is written in a cursive, flowing style.

Barbara Veale, PhD, MCIP, RPP
Senior Director, Watershed Strategies & Climate Change
bveale@hrca.on.ca

APPENDIX A

Table 1 – Comments on proposed new regulation under *Environmental Compliance Act* with respect to natural hazards

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| 1. | The list of eligible activities does not include specifications with respect to the type of quantity controls provided. Select municipalities within CH's watersheds are considering private SWM controls for the Regional Storm and relying on provincial ECA enforcement to ensure their operation and maintenance. Our understanding of the proposal is that private SWM works providing regulatory storm control could be eligible for registration on the EASR. Considering their importance in protecting downstream human health, safety and property, we recommend works providing regulatory storm controls not be eligible and continue to require an ECA. Alternatively, regulatory storm controls eligible for EASR should allow for additional requirements as set through the local municipality. |
| 2. | We are supportive of the proposal for Operation and Maintenance Manuals to be required for stormwater works under the EASR, but are not clear how enforcement of maintenance or remedial works will be achieved to ensure the works will function as designed. We recommend the MECP retain full regulatory and enforcement authority for self-registered works to ensure the protection of human health, safety and property. |
| 3. | The discussion paper prepared by the MECP describes self-registration for "well-understood SWM works". It is our experience that many LEPs are unfamiliar with local subwatershed targets and their applicability for sites included in the proposed list of eligible activities. We recommend the EASR registration include checklists to verify that the SWM design report includes all required information (e.g., do SWM works proposed meet TSS removal % as accredited by ETV Canada, what are the applicable water quality, erosion, and quantity targets applicable for the site, does the SWM meet the proposed targets and how?). |
| 4. | The list of eligible activities includes private SWM works for multi-unit residential properties. While other eligible activities listed would be subject to site plan approval, multi-unit residential (under 10 units on a single parcel) are excluded from being subject to municipal site plan control (unless located within 120 m of a regulated feature, or within 300 m of a railway). This creates an approvals gap where conservation authorities and municipalities do not have an instrument, other than the ECA process, to review the proposed SWM plan, including water quantity measures. Where quantity control may be required to prevent flooding and erosion, the ECA is currently the only avenue through which quantity control requirements can be imposed. EASR registration requirements include consultation with local agencies (e.g., CA and municipality); how will this be ensured where agencies are not involved through site plan approval? |

Table 2 – Comments on proposed amendment to O.Reg 525/98 with respect to natural hazards

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| 5. | LID measures are often used to mitigate potential impacts to natural hazards (erosion, flooding, unstable bedrock such as karst) and mitigate risks to human health, safety and property. This requires adequate design as well as proper maintenance to ensure their continued performance. We recommend against the proposed exemption of all LIDs from requiring an ECA; rather, we recommend ECAs (or EASR registration) continue to be required at a minimum for LIDs on private lands where they are used to mitigate risks to human health, safety, and property, to |
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| | ensure their proper design, operation, and maintenance. |
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Table 3 - Comments on proposal with respect to municipal drinking water sources

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| 8. | Transferring responsibility for compliance with applicable source protection plan policies to the proponent would weaken oversight of management of the stormwater management works. Prescribed instrument policies directed at the MECP using ECAs to manage the works are legally binding for the MECP. Any source protection plan policies directed at the developer/consultant (LEP) would be non-binding and recommendations only. |
| 9. | If the proposal is implemented unchanged, protecting drinking water sources from impacts from stormwater management works relies entirely on the effectiveness of ensuring compliance with the rules to be established in the new regulation. The proposal notes that audits of the EASR and inspections of the stormwater works will continue to enforce compliance. However, the proposal provides little information about the details of the planned compliance program. CH has concerns that given the MECP's current workload and capacity, inspections and follow-up would be limited for EASR sites. If the proposal is implemented unchanged, CH recommends that MECP allocates additional resources to strengthen the compliance and oversight of EASR sites. |
| 10. | CH is concerned with the lack of local review of an LEP's assessment with regards to identifying significant drinking water threats. It is integral to protecting drinking water sources that avenues and opportunities exist for a proponent's / consultant's assessment to be reviewed by the local experts administering the source protection program (i.e., Source Protection Authority staff). CH recommends that the EASR regulation be amended to require notification of and meaningful consultation with Source Protection Authorities and municipalities for EASR registrations. |
| 11. | In addition to comments above regarding LIDs, LID works located in Wellhead Protection Areas (WHPAs) and near municipal wells can potentially be preferential pathways and can introduce contaminants to municipal water supplies without proper oversight. As proposed, self registration under EASR does not allow for review and approval of the site-specific technical assessment undertaken by the LEP to ensure local considerations (e.g., different geological conditions) are properly addressed. CH recommends that LID works in source protection vulnerable areas where they would be identified as significant drinking water threats not be exempt from needing an ECA. |

November 28, 2023

Environmental Policy Branch
40 St. Clair Avenue West
10th Floor
Toronto, ON M4V 1M2

BY EMAIL

**RE: Proposed regulatory amendments to encourage greater reuse of excess soil
ERO No. 019-7636**

Thank you for the opportunity to provide comments on the Province's proposed regulatory amendments to encourage greater reuse of excess soil, as posted to the Environmental Registry of Ontario ([ERO No. 019-7636](#)).

General Comments

Conservation Halton (CH) has reviewed the proposal and is concerned the proposal will reduce the level of protection for drinking water sources.

As proposed, the exemption for the specified excess soil management operations from needing a waste ECA would weaken the provincial oversight of these activities currently in place through the ECA process in areas where municipal drinking water sources need protection from contamination. CH recommends that the exemption should not apply to excess soil management operations where the activities are identified as significant drinking water threats under the Clean Water Act, 2006. In addition, CH is concerned that proposed amendments to Soil Rules (Section D, Part I) would allow the use of salt-impacted soils in areas where they may impact drinking water sources. CH recommends that the use of salt-impacted soils should not be allowed in protection zones identified under the Clean Water Act, 2006 where the vulnerability score is 10, and in Issue Contributing Areas (ICA) for chloride identified under the Clean Water Act, 2006.

In addition, the proposed amendment, and legislation in general, remains silent on natural hazards. Impacts as a result of natural hazards (e.g., loss of storage or transportation of salt during a flood event) can be significant and should be considered in the proposed amendments. Floodplains can extend significantly beyond 100m from a waterbody.

Specific Comments

| Proposed Amendments (per ERO supporting document) | Conservation Halton (CH) Comments |
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| <p>1. Exempt specified excess soil management operations from a waste environmental compliance approval (ECA) subject to rules</p> <p>A. Topsoil and landscaping reuse depots</p> <p>B. Aggregate reuse depots</p> <p>C. Small liquid soil depots</p> | <p>Source Protection Comments:</p> <ul style="list-style-type: none"> As proposed, the exemption for the specified excess soil management operations from needing a waste ECA would weaken the provincial oversight of these activities currently in place through the ECA process in areas where municipal drinking water sources need protection from contamination. The current framework allows these activities to be managed through prescribed instrument policies (i.e., ECAs) in source protection plans. The proposed exemption would take away the ability for local source protection plan policies to manage these activities through the ECA process. CH recommends that the exemption should <u>not</u> apply to excess soil management operations where the activities are identified as significant drinking water threats under the Clean Water Act, 2006. |
| <p>2. Enhanced reuse opportunities for salt-impacted soil (Section D, Part I in the Soil Rules)</p> | <ul style="list-style-type: none"> It is noted that this section speaks to ensuring salt impacted soils are 100m from wells and not in areas for growing crops etc. However, mention of impacts from natural hazards is not discussed (e.g. loss of storage or transportation of salt during a flood event). Such impacts as a result of natural hazards can be significant and should be considered in the proposed amendments. It is noted that floodplains can extend significantly further than 100m from a waterbody. <p>Source Protection Comments:</p> <ul style="list-style-type: none"> CH is concerned that the proposal does not adequately protect municipal drinking water sources. Specifically, the 100m setback from existing or planned potable wells or properties expected to use groundwater wells for potable purposes is insufficient to protect municipal drinking water sources from contamination from salt-impacted soil. Under the Clean Water Act, 2006, protection zones have been identified for each well and are based on best available science and technical assessment. Studies undertaken consider the vulnerability/permeability of the soil and time of travel of water and contaminants to the well. Protection zones where activities are identified as |

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| | <p>significant drinking water threats can exceed the 100m setback.</p> <ul style="list-style-type: none"> • CH recommends that the proposed rules should be amended to provide further protection for municipal drinking water sources. The current 100m setback as described should remain as proposed. <ul style="list-style-type: none"> ○ Use of salt-impacted soils should not be allowed in protection zones identified under the Clean Water Act, 2006 where the vulnerability score is 10. ○ Use of salt-impacted soils should not be allowed in Issue Contributing Areas for chloride identified under the Clean Water Act, 2006. |
| <p>8. Greater flexibility for storage of soil adjacent to waterbodies (storage rules in the Soil Rules document)</p> | <ul style="list-style-type: none"> • It is noted that the Rules for Soil Management and Excess Soil Quality Standards is silent on natural hazards. The concern for conservation authorities is that it would appear that an applicant could meet this legislation and, while being a distance from a waterbody, may still be within a floodplain. While conservation authorities generally do not allow fill within the floodplain, clarification of the need to avoid natural hazards could help coordinate legislation. |

Thank you for the opportunity to comment on the proposed regulatory amendments. If you have any questions please contact Martin Keller, Senior Manager Watershed Planning and Source Protection, at mkeller@hrca.on.ca.

Sincerely,



Barbara J. Veale, PhD, RPP, MCIP
Senior Director, Watershed Strategies and Climate Change
bveale@hrca.on.ca