

November 19, 2020

Memorandum

To: Ontario Ministry of the Environment, Conservation and Parks, 135 St. Clair Avenue West, 1st Floor, Toronto, ON, waterpolicy@ontario.ca

Submitted Online: Via Environmental Registry of Ontario website

From: Kyle Davis, Risk Management Official, Wellington Source Water Protection

RE: Environmental Registry Number 019-2422, 019-2525 and 019-2517 – Proposals to Amend Legislation related to Water Takings

On October 6, 2020, the Ontario Ministry of the Environment, Conservation and Parks (MECP) posted three regulatory proposals on the Environmental Registry of Ontario (ERO) related to water taking. The proposals are:

- [019-2422: Proposal to require municipal support for new or increased bottled water takings;](#)
- [019-2525: Proposal to make modifications to Environmental Activity and Sector Registry requirements and exemptions for low risk, short-term water taking activities;](#) and
- [019-2517: Proposal to exempt dams from requiring a Permit to Take Water.](#)

The public consultation period is for 45 days from October 6, 2020 until November 20, 2020. These proposals follow up on the previously released *Ontario's Water Quantity Framework* and the Ontario government's moratorium for new and increasing bottled water takings. The moratorium is currently set to expire on April 1, 2021.

For reference, a brief background and summaries of the three regulatory proposals are provided at the end of this memorandum in Appendix A, however, our comments are provided in the body of this memorandum. These staff comments are provided by Wellington Source Water Protection, a partnership of the Wellington County municipalities, on behalf of the Townships of Centre Wellington, Guelph / Eramosa, Mapleton, Puslinch and Wellington North, the Towns of Erin and Minto and the County of Wellington. Some of our municipalities may also provide comments separately from either staff or Council.

Comments on ERO Proposal 019-2422: Proposal to require municipal support for new or increased bottled water takings;

1. Staff are supportive of this amendment and the concept to seek support from host municipalities when applying for a bottled water PTTW is reasonable. Although originally proposed in ERO posting 019-1340 that Council resolutions would have to meet certain scientific or technical grounds to object to an application, the current proposal [019-2422: Proposal to require](#)

[municipal support for new or increased bottled water takings](#) does not require these grounds. Instead, the requirement is simply that a local host municipality provide a Council resolution either in support of or objecting to the application. The rationale for the Council resolution is left up to the local host municipal Council. Staff are supportive of this change and of the definitions of local host municipality and local municipality.

2. Staff are supportive of the Council resolution requirement not applying to renewals of existing PTTWs for the same or lower volume, the same purpose and the same location; replacement of an existing water source (ie well); administrative changes to the PTTW; and short-term pumping tests.
3. The threshold for local host municipal Council resolutions is 379,000 litres or more of groundwater per day from one or more locations in the local host municipality for the purpose of producing bottled water. Therefore below this threshold, PTTW applications for new or increased groundwater takings will not require local host municipal Council resolutions even though the threshold for applying for a PTTW is 50,000 litres per day. In staff's opinion, the threshold for local host municipal Council resolutions should be reduced to the PTTW threshold of 50,000 litres. Although it is understood the proposed threshold of 379,000 litres is the Great Lakes / St. Lawrence River Basin Agreement target, that threshold is set to determine water takings or diversions that may have a significant impact on a Great Lakes basis while the 50,000 litres per day threshold is more suitable to assess local or regional impacts especially in areas with multiple water takings where cumulative impact may be a concern. Therefore, it is recommended that the threshold should be 50,000 litres per day, so the cumulative impact of all new or expanded bottled water takings can be considered by the host municipality and input provided. This is particularly critical within areas where there are many water takings for different industrial, commercial and municipal purposes. The need to properly manage the cumulative impacts of the resource outweigh the business impact to a water taker between 50,000 and 379,000 litres per day and it is noted that a change to 50,000 litres per day would not result in a large increase to the number of bottled water, PTTW applications being subject to this proposal.
4. As provided in Wellington Source Water Protection comments for ERO posting 019-1340, within our municipalities there are a variety of opinions regarding whether the host municipality requirement should be expanded, beyond water bottling PTTWs, to include any new or expanded water taking especially within stressed areas, Wellhead Protection Areas for Quantity as identified pursuant to the *Clean Water Act* or areas with a high number of PTTWs. Within the Wellington County municipalities, there is support for it being only focused on water bottling as proposed and there is support for expanding the requirement to all new or expanded water

takings requiring a PTTW. It is understood that this proposal is only focused on water bottling. It is noted that the MECP's concluded in ERO Posting [019-1340](#) that the impact of bottled water takings was less compared to other permitted water takings, therefore, the MECP may wish to consider and consult on whether the local host municipal Council requirement should be expanded to include any PTTW within stressed areas, Wellhead Protection Areas for Quantity as identified pursuant to the *Clean Water Act* or areas with a high number of PTTWs. Some of our municipalities may forward additional comments on this aspect of the proposal.

Comments on ERO Proposal 019-2525: Proposal to make modifications to Environmental Activity and Sector Registry requirements and exemptions for low risk, short-term water taking activities;

1. The discussion paper outlines the technical requirements related to the pumping test design report. A review of the technical requirements was not completed as part of this review. Additional comments related to the technical requirements may be forwarded separately by our municipalities.

2. Included in the discussion paper, a notification protocol is required for the pumping test, construction de-watering and road construction activities. The notification protocol is to include written notice to water users or property owners with water resources that have the potential to be impacted by the water taking and related discharge. Staff recommend that three additional, mandatory notification requirements be added for all three activities. The rationale for these additional mandatory notification requirements are to ensure that all affected municipalities are aware of the EASR postings in order to be able to respond to complaints from their residents and / or to evaluate whether their municipality has an interest in the EASR registered water taking. It is understood that the MECP is collecting EASR registrations in an online database and perhaps these notifications could either be automated through the database or require the Qualified Persons be responsible through their notification protocol. Staff's preference would be that the MECP automates the notifications through the database as this will ensure consistency.
 - a. The first would be to require notification to the CAO and Clerk of the municipality where the pumping test, construction de-watering and / or road construction activity will occur.

 - b. Secondly, to include in the definition of water users that have the potential to be impacted by the water taking, the following: *where a water taking is located within a wellhead protection area for quality or quantity identified under the Clean Water Act and the applicable Source Protection Plan, the CAO and Clerk of the municipality whose water system the wellhead protection area protects, shall be notified.* It is noted that often this

will be the same municipality as listed in a), however, there are cross border situations where the wellhead protection area extends into neighbouring municipalities.

- c. Third, to require notification to the CAO and Clerk of neighbouring municipalities when the pumping test is for a municipal well that, if the municipal well is approved and the taking becomes permanent, would result in a wellhead protection area defined under the *Clean Water Act*, extending into the neighbouring municipality. This is recommended as there are cross border situations not covered by recommendation a) and b). This is the case where a municipal pumping is completed at a location within the municipality served by the municipal well, however, the municipal well is located close to the municipal boundary and the wellhead protection areas would extend into the neighbouring municipality. Currently neighbouring municipalities are not consistently notified of municipal pumping test PTTWs, even in areas where there is high public interest and scrutiny. This has been the case recently for our municipalities, even in situations where MECP staff are actively involved in the review of pumping test PTTW applications and therefore, without clear notification requirements stipulated in the EASR regulation, this trend could continue to be a concern under EASR when MECP staff are not routinely reviewing applications prior to registration.
3. With the exception of the concerns identified above, staff are generally supportive of the pumping test proposal. Although this proposal does mean that a pumping test for municipal or industrial water takings, including bottled water, will not require PTTWs, this proposal will result in faster completion of pumping tests which will result in the necessary hydrogeological data being available sooner in a decision making process. This will allow for review of potential impacts related to the permanent water taking (ie a new municipal, industrial or commercial well) to be completed sooner in the process, concerns identified sooner and therefore planning and design for the mitigation of the concerns or impacts occurring sooner. This will lead to more efficient management of the water resource as better data being available sooner will lead to more informed public and agency consultations and ultimately more timely and science based decisions by the appropriate regulatory agency. It is critical to note that regardless of whether pumping tests are registered on EASR or not, the criteria for requiring a PTTW for the permanent taking remains.
 4. With exception of the concerns identified above, staff agree with the proposed changes for construction dewatering and road construction. It is staff's interpretation that routine road maintenance activities, outside of the road construction period, such as water taking for dust suppressant purposes are also eligible for EASR registration. If this is incorrect, then the MECP

should consider adding municipal road maintenance activities to the list of eligible activities for EASR registration.

Comments on ERO Proposal 019-2517: Proposal to exempt dams from requiring a Permit to Take Water.

The third ERO proposal is [019-2517: Proposal to exempt dams from requiring a Permit to Take Water](#) and staff have no comments or concerns regarding this proposal.

In closing, thank you for this opportunity to provide comments on the above ERO postings, our municipalities welcome and appreciate the opportunity. Please note that these comments are provided from a staff level and are not provided as municipal Council comments from the municipalities that we represent. These comments may come under separate cover. If you have any questions or wish to discuss these comments further, please do not hesitate to contact the undersigned.

Sincerely,

Kyle Davis
Risk Management Official
Wellington Source Water Protection

Wellington Source Water Protection is a municipal partnership between the Townships of Centre Wellington, Guelph / Eramosa, Mapleton, Puslinch, Wellington North, the Towns of Erin and Minto and the County of Wellington created to protect existing and future sources of drinking water.

Attachment

Appendix A – Background

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In December 2016, the Ontario government put in place a temporary moratorium on new or increased permits to take groundwater to produce bottled water. A regulatory charge of \$500 per million litres of groundwater taken and updated technical guidance on water bottling applications were also put in place. Although there were a number of factors involved in establishing the moratorium, there was heightened public scrutiny and interest locally, as well as at a provincial level, related to Nestle Canada's operations in Wellington County, in particular the purchase of the Middlebrook well in the Township of Centre Wellington. At the time of the moratorium, the Ontario government also announced that the MECP would complete an assessment of water resources in the Province and review the Province's water taking programs, policies and science tools. The moratorium was extended a number of times, most recently in September 2020 and is currently set to expire on April 1, 2021.

To complete the assessment and review, the Province retained BluMetric Environmental Inc. (BluMetric). BluMetric completed seven reports including detailed reviews of water bottling and water quantity study areas, an overall science review, a jurisdictional review of best practices in other provinces, states and countries and summaries of recommendations, consultations, and overall work. In addition to the BluMetric reports, the Province also completed a plain language summary of the BluMetric reports and the main Provincial proposal paper. The Province also commissioned a third party review by a panel of independent experts assembled by the Professional Geoscientists Ontario, of the BluMetric reports and the Provincial proposal paper. Prior to the release of the water quantity framework on the Environmental Registry of Ontario, the Province also conducted consultations with a Water Quantity Protection External Working Group and municipal / conservation authority water managers. Various staff and consultants representing the Wellington County municipalities participated in the consultations in 2017 and 2018. The Wellington County Risk Management Official participates as part of the Water Quantity Protection External Working Group and another consultation session is tentatively planned by the MECP in Fall 2020.

On June 18, 2020, the MECP posted a regulatory proposal on the ERO numbered [019-1340](#) and entitled: *Updating Ontario's Water Quantity Management Framework*. ERO proposal 019-1340 provides the results of the Province's review of water taking programs, policies, and science tools and recommendations for provincial action. The public comment period closed on August 2, 2020. Wellington Source Water Protection, on behalf of the Wellington County municipalities, the Township of Centre Wellington and the Township of Puslinch all submitted comments.

The first ERO proposal is [019-2422: Proposal to require municipal support for new or increased bottled water takings](#). This proposal was outlined as Goal 4 in the water quantity framework released in ERO posting 019-1340 and discussed briefly in the background. This proposal will amend the *Ontario Water Resources Act* to add the requirement that a Council resolution will be required from the local host municipality to support an application for a Permit to Take Water (PTTW) for the purpose of producing bottled water. Bottled water is defined as potable water that is intended for human consumption and that is packaged in bottles or other portable containers. The details of the proposed legislative amendments are contained in [Bill 213, Better For People, Smarter For Business Act, 2020](#), Schedule 18.

The proposed amendments provide the legal requirement that a new or increased PTTW for the purpose of producing bottled water must request and have received a resolution in support of the proposed groundwater taking from the local host municipal Council. The local host municipality and local municipality are defined terms and in Wellington County would mean the Township of Puslinch, the Town of Erin and the Township of Centre Wellington. The requirement for a Council resolution would only apply to applications that intend to take a total of 379,000 litres or more of groundwater per day from one or more locations in the local host municipality for the purpose of producing bottled water. This applies whether the application is for a new PTTW or an increase to an existing PTTW. The proposed amendments provide rules for the process of requesting a Council resolution, the meaning of resolutions that are in support of or object to the application and the process if Council resolutions are changed from support to objection or vice versa. The Council resolutions apply to specific PTTW applications and therefore, individual applications would require individual resolutions. If the applicant has not applied within five years of the Council resolution, the resolution expires and a new Council resolution is required. It is noted that the resolution requirement does not apply to renewals of existing PTTWs for the same or lower volume, the same purpose and the same location; replacement of an existing water source (ie a well); administrative changes to the PTTW; and short-term pumping tests.

The second ERO proposal is [019-2525: Proposal to make modifications to Environmental Activity and Sector Registry requirements and exemptions for low risk, short-term water taking activities](#). This proposal will amend the *Environmental Protection Act* and the *Ontario Water Resources Act* to allow a greater number of short-term water taking activities, such as pumping tests, to be prescribed for registrations under the [Environmental Activity and Site Registry](#) (EASR). The EASR is a regulatory approval process that the MECP utilizes for air, waste and water taking activities deemed lower risk to the environment. It allows applicants to register directly with the MECP via the EASR for certain prescribed activities. An application must meet the prescribed activity definition and certain criteria to allow for registration. Once registered on EASR, the activity can proceed immediately, however, is subject to MECP inspection and review. Examples of prescribed activities under EASR include certain standby power generators, automotive refinishing facilities, commercial printing facilities, certain paint booths, automotive recycling facilities (ie scrap yards), small solar facilities, some construction de-watering among other activities.

The proposal is to prescribe under the EASR, pumping tests that take more than 50,000 litres per day and up to 3,000 000 litres per day in a period of 7 days or less within a single 30 day period. These pumping tests are typically used to assess an aquifer's suitability for future proposed activities, such as municipal wells, and are short-term. In addition there are eligibility criteria related to the pumping tests not being located in a contaminated area or cause movement of contaminants across a property boundary. This proposal also outlines changes to construction de-watering thresholds from 400,000 litres per day per site for any water taking to 400,000 litres per day, groundwater only and per excavation and modifies the road construction definition to include a wider variety of road construction and transit projects. Changes are also proposed to exempt well development from requiring a PTTW. The details of the proposed amendments are contained in a discussion paper available on the [ERO website](#).