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Environmental Protection Act

[ONTARIO REGULATION 63/16](https://www.ontario.ca/laws/regulation/R16063)

REGISTRATIONS UNDER PART II.2 OF THE ACT - WATER TAKING

**Consolidation Period:** From May 5, 2016 to the [e-Laws currency date](http://www.e-laws.gov.on.ca/navigation?file=currencyDates&lang=en).

Last amendment: [118/16](https://www.ontario.ca/laws/regulation/R16118).

Legislative History: [118/16](https://www.ontario.ca/laws/regulation/R16118).

This is the English version of a bilingual regulation.

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Part I  
Definitions

Definitions

**1.**In this Regulation,

“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”);

“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”)

Part Ii  
Water Taking for Road Construction purposes

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 is a prescribed activity for the purposes of subsections 20.21 (1) and (5) of the Act:

1. Hydrodemolition.

2. Cleaning of the highway, 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 construction, maintenance or repair of the highway. O. Reg. 63/16, s. 2 (1); O. Reg. 118/16, s. 1 (1).

(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.

(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.

(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.

(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 March 29, 2016; and

(c) the permit has not expired or been revoked. O. Reg. 118/16, s. 1 (2).

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 is exempt from clauses 20.21 (1) (a) and (b) of the Act in respect of the activity if,

(a) the person has previously registered an activity prescribed by section 2 in respect of the highway project; and

(b) the registration in respect of the previously registered activity is not suspended and has not been removed from the Registry.

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

**4.**(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 shall ensure that the following requirements are complied with:

1. The taking of water from a water body shall not commence unless,

i. the person proposing to engage in the activity has received a copy of a report that is prepared by a person who meets the qualifications set out in subsection (2) and that includes the information and statements set out in subsection (3),

ii. the person proposing to engage in the activity has given written notice that includes the information set out in subsection (4) to,

A. 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

B. any conservation authority within whose area of jurisdiction the proposed water taking is located, and

iii. if the highway project forms part of an undertaking to which the Environmental Assessment Act applies,

A. an approval has been given under Part II of that Act to proceed with the undertaking, or

B. 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.

2. 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 report referred to in subparagraph 1 i or another methodology prepared by a person who meets the qualifications set out in subsection (2).

3. 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 intake using Universal Transverse Mercator co-ordinates,

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 2 ii, and

vi. the total volume of water taken in litres.

4. 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.

5. The refuelling of any equipment used for the purposes of the activity prescribed by section 2 shall not occur within 30 metres of any water body.

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.

(2)  A person meets the qualifications referred to in subparagraph 1 i 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.

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

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.

(4)  The following information must be included in a notice referred to in subparagraph 1 ii 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.

Records

**5.**(1)  A person who engages in an activity prescribed by section 2 shall retain a copy of each report referred to in subparagraph 1 i of subsection 4 (1) for a period of five years from the day it was prepared.

(2)  A person who engages in an activity prescribed by section 2 shall, if a methodology other than the methodology set out in the report referred to in subparagraph 1 i of subsection 4 (1) is used, retain a copy of the methodology for a period of five years from the day the methodology was prepared.

(3)  A person who engages in an activity prescribed by section 2 shall retain a copy of each log referred to in paragraph 3 of subsection 4 (1) for a period of five years from the last day on which water is taken from the water body.

(4)  A person who engages in an activity prescribed by section 2 shall create a record of the following information with respect to each complaint referred to in paragraph 7 of subsection 4 (1) and retain the record for a period of five years from the day it is created:

1. The date and time the complaint was received.

2. A copy of the complaint, if it is a written complaint.

3. A summary of the complaint, if it is not a written complaint.

4. A summary of measures taken, if any, to address the complaint.

Part iIi  
Water Taking for Construction site Dewatering

Definitions

**6.**In this Part,

“100 year storm event” means a rainfall event in which the total amount of rainfall is such that the event statistically has a 1 per cent chance of occurring at a given location in any given year; (“événement pluvio-hydrologique centennal”)

“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; (“rayon d’influence”)

“construction site” does not include a site at which any work or undertaking occurs that is associated with mine development, pits or quarries; (“chantier de construction”)

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

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 dewatering a construction site.

2. The taking of storm water for the purpose of dewatering a construction site.

3. The use, operation, establishment, alteration, extension or replacement of a sewage works that is used solely for the collection, transmission and disposal of storm water to dewater a construction site.

(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.

(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.

(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.

(5)  Subsection (1) does not apply in respect of the taking of ground water and the taking of storm water if more than 400,000 litres of ground water, storm water or a combination of ground water and storm water will be taken on any single day under normal operation.

(5.1)  Subsection (1) does not apply in respect of the taking of ground water or the taking of storm 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 March 29, 2016; and

(c) the permit has not expired or been revoked. O. Reg. 118/16, s. 2 (1).

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

**8.**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).

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

**9.**(1)  For the purposes of clause 20.21 (1) (c) of the Act, a person who engages in an activity prescribed by section 7 of this Regulation shall ensure that the following requirements are complied with:

1. The taking of ground water, storm water or both shall not commence unless,

i. the person proposing to engage in the activity has received a copy of a water taking plan that is prepared by a person who meets the qualifications set out in subsection (2) and that includes the information set out in subsection (4),

ii. the person proposing to engage in the activity has received a copy of a discharge plan that is prepared by a person who meets the qualifications set out in subsection (3) and that includes the information and statements set out in subsection (5), and

iii. the person proposing to engage in the activity has given written notice that includes the information set out in subsection (6) to 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.

2. Any measures identified in a water taking plan referred to in subparagraph 1 i to address the potential impact of soil settlement or the potential impact of the water taking on other water users shall be implemented if the applicable circumstances identified in the plan arise.

3. A water monitoring program shall be implemented in accordance with the water taking plan if the applicable circumstances set out in the plan arise.

4. Subject to paragraph 5, one of the following methods of transfer or discharge shall be employed with respect to the ground water, storm water or both that is taken for the purposes of dewatering the construction site:

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 storm sewer in accordance with municipal requirements, if any.

iv. Discharge, in accordance with a discharge plan referred to in subparagraph 1 ii, to surface land not enclosed in a building.

5. The method of transfer or discharge 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.

6. With respect to any ground water, storm water or both that is discharged to land or a storm sewer, there shall be no visible petroleum hydrocarbon film or sheen present in the water, storm water or both.

7. With respect to any ground water, 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.

8. All erosion, sediment and total suspended solids control measures identified in a discharge plan referred to in subparagraph 1 ii 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 ground 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, 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 a method of transfer or discharge of ground water, storm water or both set out in a discharge plan includes discharging to land or a storm sewer that is within 30 metres of a water body, the Ministry shall be notified of the method prior to the first discharge.

(2)  A person meets the qualifications referred to in subparagraph 1 i of 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.

(3)  A person meets the qualifications referred to in subparagraph 1 ii 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.

(4)  The following information must be included in a water taking plan referred to in subparagraph 1 i of subsection (1):

1. An identification of the expected area of influence, 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 and all calculations used to assess the potential impact.

3. 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 soil settlement.

4. An analysis of the potential impact of the proposed water taking on other water users in the expected area of influence, 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.

5. 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.

6. An analysis to determine whether a water monitoring program would be needed.

7. If the analysis referred to in paragraph 6 determines that a water monitoring program would be needed, a description of the program and the circumstances in which it would be needed.

8. A summary of the qualifications and experience of the person who prepared the plan.

9. The date the plan is prepared.

(5)  The following information and statements must be included in a discharge plan referred to in subparagraph 1 ii of subsection (1):

1. The maximum quantity of ground water, storm water or both to be discharged each day.

2. The location of discharge.

3. An identification of the method of transfer or discharge referred to in paragraph 4 of subsection (1) that is to be employed under normal operation.

4. An identification of the method of transfer or discharge referred to in paragraph 4 of subsection (1) that is to be employed in the event of a 100 year storm event.

5. If the method of transfer or discharge referred to in paragraph 3 or 4 is discharge to land or a storm sewer, an identification of the control measures required to minimize erosion and sedimentation from occurring as a result of the discharge of the water or storm water taken.

6. If the method of transfer or discharge referred to in paragraph 3 or 4 is discharge to land or a storm sewer that is within 30 metres of a water body, the turbidity of the discharge shall not exceed eight Nephelometric Turbidity Units above the background levels of the nearest water body.

7. If the method of discharge referred to in paragraph 3 or 4 is discharge to land or a storm sewer, a statement that in the opinion of the person who has prepared the plan, the discharge of the ground water, storm water or both will not cause an adverse effect to the environment.

8. A statement by the person who prepared the plan that the temperature of the ground water or storm water to be discharged was considered in determining the method of transfer or discharge referred to in paragraph 3 or 4.

9. A summary of the qualifications and experience of the person who prepared the plan.

10. The date the plan is prepared.

(6)  The following information must be included in a notice referred to in subparagraph 1 iii 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 method of transfer or discharge referred to in paragraph 4 of subsection (1) that is to be employed.

4. If the method of transfer or discharge referred to in paragraph 3 is discharge to land, the location of the discharge.

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 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 in litres per second.

3. The volume of ground water, storm water or both taken each day in litres.

4. A record of the following information with respect to each complaint referred to in paragraph 11 of subsection 9 (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.

(2)  A person who engages in an activity prescribed by section 7 shall retain a copy of each water taking plan referred to in subparagraph 1 i of subsection 9 (1) and each discharge plan referred to in subparagraph 1 ii of subsection 9 (1) for a period of five years from the day it was prepared.

Part IV (OMITTED)

**11.**  Omitted (provides for coming into force of provisions of this Regulation)

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