Ontario Water Resources Act  
Loi sur les ressources en eau de l’Ontario

[ONTARIO REGULATION 387/04](https://www.ontario.ca/laws/regulation/R04387)

WATER TAKING AND TRANSFER

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This Regulation is made in English only.

CONTENTS

|  |  |
| --- | --- |
| [General](#BK0" \o "General) | |
| [2.](#BK1" \o "Section 2.) | Definitions |
| [2.1](#BK2" \o "Section 2.1) | Water taking, clarification |
| [3.](#BK3" \o "Section 3.) | Maps |
| [Permits](#BK4" \o "Permits) | |
| [4.](#BK5" \o "Section 4.) | Matters to be considered by the Director |
| [4.1](#BK6" \o "Section 4.1) | Prescribed water takings |
| [4.2](#BK7" \o "Section 4.2) | Exemption from s. 34 (1) of the Act |
| [5.](#BK8" \o "Section 5.) | High use watersheds |
| [6.](#BK9" \o "Section 6.) | Compliance with Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement |
| [7.](#BK10" \o "Section 7.) | Notice and consultation |
| [8.](#BK11" \o "Section 8.) | Transition |
| [Data and Reporting](#BK12" \o "Data and Reporting) | |
| [9.](#BK13" \o "Section 9.) | Duties of permit holders |
| [10.](#BK14" \o "Section 10.) | Manner of calculating average amount of water per day |
| [Transfers](#BK15" \o "Transfers) | |
| [11.](#BK16" \o "Section 11.) | Related transferor |
| [12.](#BK17" \o "Section 12.) | Great Lakes watersheds |
| [13.](#BK18" \o "Section 13.) | Connecting channels of Great Lakes watersheds |
| [14.](#BK19" \o "Section 14.) | Determination of threshold amount |
| [15.](#BK20" \o "Section 15.) | Exemption from s. 34.6 (1) of the Act |
| [16.](#BK21" \o "Section 16.) | Exemptions from ss. 34.5 to 34.8 of the Act |
| [17.](#BK22" \o "Section 17.) | Determination of amount re consumptive use |
| [18.](#BK23" \o "Section 18.) | Permits, inclusion of specifically directed terms and conditions |
| [19.](#BK24" \o "Section 19.) | Determining amount of water currently being transferred |
| [20.](#BK25" \o "Section 20.) | Reciprocating jurisdictions |

General

**1.**Revoked: O. Reg. 451/07, s. 2.

Definitions

**2.**(1)  In this Regulation,

“application” means an application to the Director for a permit,

(a) made under section 34.1 of the Act, if the application is made on or after the day section 34.1 of the Act comes into force, or

(b) made under section 34 of the Act as it read before section 34.1 of the Act came into force;

“Average Annual Flow Map” means the map entitled “Water Use — Average Annual Flow Conditions”, dated November, 2004 and on file in the offices of the Ministry of the Environment and Climate Change at Toronto and available on a website of the Government of Ontario;

“Drinking Water Systems” means Ontario Regulation 170/03 (Drinking Water Systems) made under the Safe Drinking Water Act, 2002;

“Great Lakes Charter” means the Great Lakes Charter signed by the premiers of Ontario and Quebec and the governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin on February 11, 1985 and amended by the Great Lakes Charter Annex, dated June 18, 2001;

“Municipal Class Environmental Assessment” means the Municipal Class Environmental Assessment prepared by the Municipal Engineers Association, dated October, 2000 and as amended in 2007 and afterwards from time to time;

“municipal drinking water system” means a municipal drinking water system within the meaning of the Safe Drinking Water Act, 2002;

“permit” means a permit issued under section 34 of the Act, as it read before section 34.1 of the Act came into force, or under section 34.1 of the Act;

“sewer” has the same meaning as in Ontario Regulation 525/98 (Approval Exemptions) made under the Act;

“Summer Low Flow Map” means the map entitled “Water Use — Summer Low Flow Conditions”, dated November, 2004 and on file in the offices of the Ministry of the Environment and Climate Change at Toronto and available on a website of the Government of Ontario;

“water body” has the same meaning as in Ontario Regulation 359/09 (Renewable Energy Approvals Under Part V.0.1 of the Act) made under the Environmental Protection Act;

“wetland” has the same meaning as in the Conservation Land Act. O. Reg. 387/04, s. 2; O. Reg. 225/14, s. 2 (1-4); O. Reg. 64/16, s. 1.

(2)  The definitions in subsection 34.5 (1) of the Act apply for the purposes of this Regulation. O. Reg. 225/14, s. 2 (5).

Water taking, clarification

**2.1**(1)  The activity of diverting the waters of a water body for the purpose of creating and maintaining a dewatered work area located in whole or in part in the water body for a project described in subsection (2) is not water taking as described in subsection 1 (7) of the Act and does not otherwise constitute a water taking for the purposes of the Act if,

(a) the water levels upstream and downstream of the work area are not affected by the diversion; and

(b) the water that is diverted,

(i) is not removed from the water body, or

(ii) is removed from the water body without the use of a pump and is directly returned to the same water body. O. Reg. 64/16, s. 2.

(2)  A project referred to in subsection (1) includes the following:

1. The construction, repair, alteration, extension or replacement of a bridge, culvert, pier or other structure.

2. The construction, repair, alteration, extension or replacement of a sewer or water works other than a sewer or water works situated under a watercourse that was or will be installed using open-cut trench techniques. O. Reg. 64/16, s. 2.

Maps

**3.**(1)  Revoked: O. Reg. 225/14, s. 3 (1).

(2)  Whether water taking or proposed water taking is located in a high use watershed or medium use watershed as shown on the Average Annual Flow Map or on the Summer Low Flow Map is determined by reference to,

(a) the Average Annual Flow Map or the Summer Low Flow Map, as the case may be;

(b) the geographic co-ordinates of the location; and

(c) the applicable watershed boundaries as defined in “Metadata Reference: Ministry of Natural Resources, Land Information Ontario, 2002, Watersheds, Tertiary, Queen’s Printer for Ontario”, which is available on a website of the Government of Ontario. O. Reg. 387/04, s. 3 (2); O. Reg. 225/14, s. 3 (2).

Permits

Matters to be considered by the Director

**4.** (1)  This section applies,

(a) when the Director is considering an application, other than an application for a new transfer or an increased transfer that does not involve a new water taking or an increased water taking; and

(b) when the Director is otherwise considering whether to cancel or amend a permit or issue a new permit, but not,

(i) when the Director is considering whether to amend a permit or issue a new permit for the purpose of responding to a request made under section 34.8 of the Act, or

(ii) when the Director is considering whether to impose conditions under subsection 34.7 (2) of the Act or amendments to conditions imposed under that subsection. O. Reg. 225/14, s. 4 (1).

(2)  The Director shall consider the following matters, to the extent that information is available to the Director, and to the extent that the matters are relevant to the water taking or proposed taking in the particular case:

1. Issues relating to the need to protect the natural functions of the ecosystem, including,

i. the impact or potential impact of the water taking or proposed water taking on,

A. the natural variability of water flow or water levels,

B. minimum stream flow, and

C. habitat that depends on water flow or water levels,

ii. ground water and surface water and their interrelationships that affect or are affected by, or may affect or be affected by, the water taking or proposed water taking, including its impact or potential impact on water quantity and quality, and

iii. the potential to restore the hydrologic conditions and functions of the source watershed.

2. Issues relating to water availability, including,

i. the impact or potential impact of the water taking or proposed water taking on,

A. water balance and sustainable aquifer yield, and

B. existing uses of water for large municipal residential systems and small municipal residential systems, both as defined in subsection 1 (1) of Drinking Water Systems, for sewage disposal, livestock and other agricultural purposes, for private domestic purposes, and for other purposes,

ii. low water conditions, if any,

iii. whether the water taking or proposed water taking is in a high use watershed or a medium use watershed,

A. as shown on the Average Annual Flow Map, or

B. as shown on the Summer Low Flow Map, and

iv. any planned municipal use of water that has been approved,

A. under a municipal official plan in accordance with Part III of the Planning Act, or

B. under the Environmental Assessment Act.

3. Issues relating to the use of water, including,

i. whether water conservation is being implemented or is proposed to be implemented in the use of the water, in accordance with best water management standards and practices for the relevant sector if these are available,

ii. the purpose for which the water is being used or is proposed to be used, including the amount of water that is or will be lost through consumptive use, and

iii. if the water is not currently being used, whether there is a reasonable prospect that the person will actually use the water in the near future.

3.1 Issues relating to the return, after use, of water, including,

i. the manner in which the water is being returned or is proposed to be returned, and

ii. the location or area to which the water is being returned or is proposed to be returned.

4. Other issues, including,

i. the interests of other persons who have an interest in the water taking or proposed water taking, to the extent that the Director is made aware of those interests,

ii. whether the water taking or proposed water taking is in compliance with,

A. the Boundary Waters Treaty of 1909, and

B. the International Boundary Waters Treaty Act (Canada), and

iii. any other matters that the Director considers relevant. O. Reg. 225/14, s. 4 (2-5).

(3)  If clause (1) (a) applies, the Director may, in order to be able to consider the matters set out in subsection (2), require the applicant to submit further information, including plans, specifications, reports and other materials and documents relating to the water taking or proposed water taking. O. Reg. 387/04, s. 4 (3).

Prescribed water takings

**4.1**For the purposes of subsection 34 (3) of the Act, subsection 34 (1) of the Act applies to a person who takes water by any of the means described in paragraphs 1 to 4 of subsection 34 (3) of the Act if the person takes the water for use in a facility that falls into a class described in subsection 3 (1) of Ontario Regulation 450/07 (Charges for Industrial and Commercial Water Users) made under the Act. O. Reg. 225/14, s. 5.

Exemption from s. 34 (1) of the Act

**4.2**(1)  Subject to subsection (2), subsection 34 (1) of the Act does not apply to a person who takes water only for,

(a) domestic purposes, if the taking of the water is not done by a municipal drinking water system or by a public utility company;

(b) watering livestock or poultry; or

(c) both of the purposes described in clauses (a) and (b). O. Reg. 225/14, s. 6.

(2)  Subsection (1) does not apply to a person who takes water on or after the day this section comes into force if the taking of the water causes or permits a new transfer or an increased transfer of the threshold amount. O. Reg. 225/14, s. 6.

(3)  Subsection 34 (1) of the Act does not apply to a person who takes water by means of a pump for the purpose of diverting water to create and maintain a dewatered work area located in whole or in part in the water body for a project described in subsection (4) if the following conditions are satisfied:

1. The water taken from the water body is returned directly to the same water body.

2. There is no visible petroleum hydrocarbon film or sheen present in the returned water.

3. Measures are implemented to control the rate of the water taking and the flow rate of the returned water in order to ensure that water quantity and quality are not affected upstream or downstream of the work area.

4. Erosion and sediment control measures are used during the return of the water to the water body.

5. All erosion and sediment control measures referred to in paragraph 4 are used, operated and maintained in accordance with recommendations provided by the manufacturers of the control measures.

6. All erosion and sediment control measures referred to in paragraph 4 and all materials collected or trapped by those measures are recovered and disposed of when the water is no longer being taken.

7. No pump is refuelled within 30 meters of the water body. O. Reg. 64/16, s. 3.

(4)  A project referred to in subsection (3) includes the following:

1. The construction, repair, alteration, extension or replacement of a bridge, culvert, pier or other structure.

2. The construction, repair, alteration, extension or replacement of a sewer or water works other than a sewer or water works situated under a watercourse that was or will be installed using open-cut trench techniques. O. Reg. 64/16, s. 3.

(5)  Subsection 34 (1) of the Act does not apply to a person who takes water from a water body by means of a structure or works for the diversion or storage of water if the structure or works was constructed solely for the conservation, development, restoration or management of a wetland. O. Reg. 64/16, s. 3.

(6)  Subject to subsections (7) and (8), subsection 34 (1) of the Act does not apply to a person who takes water by means of a structure or works constructed across a water body for the diversion or storage of water if,

(a) the structure or works is designed in a manner that permits the flow of water to pass freely over the structure or works while remaining part of the same water body;

(b) the structure or works does not include any mechanisms that may be operated to alter the flow rates or levels of the water upstream or downstream of the structure or works; and

(c) the structure or works is not used for the purpose of generating electricity. O. Reg. 64/16, s. 3.

(7)  Subsection (6) applies only if the structure or works was constructed before the day section 3 of Ontario Regulation 64/16 made under the Act comes into force. O. Reg. 64/16, s. 3.

(8)  Despite subsection (6), the natural flow of the water body may be impeded by the presence of a fishway within the structure or works. O. Reg. 64/16, s. 3.

(9)  Subsection 34 (1) of the Act does not apply to a person who takes water at a site if the activity has been prescribed by the regulations made under the Environmental Protection Act for the purposes of subsection 20.21 (1) of that Act, unless the Director has issued an order under 20.18 of that Act in respect of the activity and the site. O. Reg. 64/16, s. 3.

High use watersheds

**5.**(1)  Subsections (3) and (4) apply to applications that relate to water taking for a purpose described in subsection (5). O. Reg. 387/04, s. 5 (1).

(2)  Subsections (3) and (4) do not apply,

(a) if the applicant is a municipality; or

(b) if the application relates to water taking from,

(i) Lake Ontario, Lake Erie, Lake Huron, Lake Superior, the St. Mary’s River, the St. Clair River, Lake St. Clair, the Detroit River and the Niagara River,

(ii) the Welland Canal,

(iii) the St. Lawrence River, or

(iv) the Ottawa River. O. Reg. 387/04, s. 5 (2); O. Reg. 225/14, s. 7 (1).

(3)  If the proposed water taking is in a high use watershed as shown on the Average Annual Flow Map, the Director shall refuse the application unless,

(a) at the time of the application, the applicant or another person held an unexpired permit; and

(b) the application is for a new permit to authorize the taking of the same or a lesser amount of water at the same location and for the same purpose as was authorized by the unexpired permit. O. Reg. 387/04, s. 5 (3); O. Reg. 225/14, s. 7 (2).

(4)  If the proposed water taking is in a high use watershed as shown on the Summer Low Flow Map, the Director shall refuse the application unless,

(a) the permit includes a condition prohibiting the person from taking water during the six-week period from August 1 to September 11, or during a specified longer period that includes the six-week period; or

(b) at the time of the application, the applicant or another person held an unexpired permit, and the application is for a new permit to authorize the taking of the same or a lesser amount of water at the same location and for the same purpose as was authorized by the unexpired permit. O. Reg. 387/04, s. 5 (4); O. Reg. 225/14, s. 7 (3).

(5)  The purposes referred to in subsection (1) are:

1. Beverage manufacturing, including the manufacturing or production of bottled water or water in other containers.

2. Fruit or vegetable canning or pickling.

3. Ready-mix concrete manufacturing, not including concrete manufactured at a portable ready-mix concrete manufacturing facility.

4. Aggregate processing, if the aggregate and the water that is taken are incorporated into a product in the form of a slurry.

5. Product manufacturing or production, if, in the normal course of the manufacturing or production, more than a total of 50,000 litres of the water that is taken may be incorporated in a single day into the products being manufactured or produced. O. Reg. 387/04, s. 5 (5).

(6)  Paragraph 2 of subsection (5) does not apply in respect of water that is taken only for washing in the course of the canning or pickling. O. Reg. 387/04, s. 5 (6).

(7)  Paragraph 4 of subsection (5) does not apply in respect of the extraction of aggregates where the water taking is incidental. O. Reg. 387/04, s. 5 (7).

(8)  Paragraph 5 of subsection (5) does not apply in respect of the manufacturing or production of,

(a) pulp and paper; or

(b) ethanol. O. Reg. 387/04, s. 5 (8).

(9)  Subsection (5) does not apply in respect of water that is taken for agricultural purposes, including aquaculture, nurseries, tree farms and sod farms. O. Reg. 387/04, s. 5 (9).

Compliance with Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement

**6.**(1)  For the purposes of this section,

“Agreement” means the Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement of 2005. O. Reg. 225/14, s. 8.

(2)  Subject to subsection (6), this section applies to an application for a permit to authorize a new or increased taking of water from the Great Lakes - St. Lawrence River Basin if the Director is of the opinion that the amount of water that would be lost through consumptive use, if the proposed new or increased taking of water were authorized, is an amount that triggers Ontario’s obligations under Article 205 of the Agreement to provide prior notice of and an opportunity to comment on the proposal. O. Reg. 225/14, s. 8.

(3)  Before a decision is made on the application, the Director shall ensure that the prior notice and opportunity to comment on the proposal is provided in accordance with Article 205 of the Agreement. O. Reg. 225/14, s. 8.

(4)  For the purposes of determining if the application triggers Ontario’s obligations under Article 205 of the Agreement, the determination of the amount of water lost through consumptive use as a result of the proposed new or increased taking shall be made,

(a) in accordance with a method specified by the Director and made available on a website of the Government of Ontario; and

(b) subject to subsections (5) and (7), by taking into consideration all amounts of water lost through consumptive use as a result of the holder’s new or increased takings under the permit that were approved during the period set out in subsection (8). O. Reg. 225/14, s. 8.

(5)  For the purposes of clause (4) (b), if the application is made by a permit holder who is authorized to take water under more than one permit, consideration shall also be taken of the amount of water lost through consumptive use as a result of any new or increased takings under the other permit or permits that were approved during the period set out in subsection (8) if,

(a) the application is by a municipality and the water that is taken under the other permit or permits supplies water to a common distribution system to which the proposed new or increased taking relates; or

(b) the application is by a permit holder, other than a municipality, and the water that is taken under the other permit or permits supplies water to the same facility, undertaking or enterprise to which the proposed new or increased taking relates. O. Reg. 225/14, s. 8.

(6)  This section does not apply to an application that is made by a person to whom the Environmental Assessment Act applies if,

(a) the application is the result of an environmental assessment of an undertaking that was approved on or before December 31, 2014; or

(b) the application is the result of a Schedule B or C project considered under the Municipal Class Environmental Assessment and,

(i) a notice of completion was issued for the project in accordance with the Municipal Class Environmental Assessment on or before December 31, 2014, and

(ii) no request has been made for an order under Part II of the Environmental Assessment Act or, if such a request was made, the request was denied. O. Reg. 225/14, s. 8.

(7)  Clause (4) (b) does not apply to any new or increased takings that were approved during the period set out in subsection (8) if those takings were exempt as a result of the application of subsection (6). O. Reg. 225/14, s. 8.

(8)  The period referred to in clause (4) (b) is,

(a) if the application is made on or before December 31, 2024, the period starting January 1, 2015 until the application date; or

(b) if the application is made on or after January 1, 2025, the period starting 10 years before the date of the application until the application date. O. Reg. 225/14, s. 8.

(9)  After a decision has been made by the Director with respect to the application, the decision is subject to sections 34.10 and 34.11 of the Act. O. Reg. 225/14, s. 8.

Notice and consultation

**7.**(1)  Subject to subsection (2), a Director who is considering an application shall give the following persons notice of the application:

1. 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 conservation authority within whose area of jurisdiction the proposed water taking is located. O. Reg. 387/04, s. 7 (1).

(2)  Subsection (1) does not apply if,

(a) the application is for a permit that is exempt under subsection 3 (2) of Ontario Regulation 681/94 (Classification of Proposals for Instruments) made under the Environmental Bill of Rights, 1993 from being classified as a Class 1 proposal for an instrument;

(b) in the Director's opinion, the delay involved in giving notice to the persons listed in subsection (1) would result in,

(i) danger to the health or safety of any person,

(ii) harm or serious risk of harm to the environment, or

(iii) injury or damage or serious risk of injury or damage to any property; or

(c) in the Director’s opinion, the persons listed in subsection (1) have already received the information that would be included in the notice. O. Reg. 387/04, s. 7 (2); O. Reg. 225/14, s. 9 (1).

(3)  Subsection (2) does not prohibit the Director from giving any person notice of an application if the Director is of the opinion that it is consistent with the purposes of this Regulation to do so. O. Reg. 387/04, s. 7 (3).

(4)  The Director may require the applicant to,

(a) notify or consult with other persons who have an interest in the proposed water taking, including,

(i) persons mentioned in subsection (1), and

(ii) governmental authorities for other jurisdictions;

(b) provide the Director with information on the interests of and responses of the persons notified or consulted under clause (a);

(c) provide the Director with information on the efforts that the applicant has made to resolve any concerns raised by the persons notified or consulted under clause (a); and

(d) provide the Director with such other information as the Director specifies. O. Reg. 387/04, s. 7 (4).

(5)  Subsection (4) applies despite subsection (2), and any notice required by the Director under subsection (4) is in addition to the notice given by the Director under subsection (1). O. Reg. 387/04, s. 7 (5).

(6)  Subject to section 6, the Director may give governmental authorities for other jurisdictions notice of the application and consult them about it, even if notice and consultation are not required by Article 205 of the Great Lakes - St. Lawrence River Basin Sustainable Water Resources Agreement of 2005. O. Reg. 387/04, s. 7 (6); O. Reg. 225/14, s. 9 (2).

(7)  For the purposes of subsections (1) and (6), the Director may give a person notice of an application by,

(a) sending the person a brief description or a copy of the application by mail, by fax, by e-mail or by other electronic means; or

(b) delivering a brief description or a copy of the application to the person. O. Reg. 387/04, s. 7 (7).

Transition

**8.**(1)  This Regulation, as it read on December 31, 2014, applies to applications received before January 1, 2015. O. Reg. 225/14, s. 10.

(2)  This Regulation, as it read on or after January 1, 2015, applies to applications received on and after January 1, 2015. O. Reg. 225/14, s. 10.

(3)  This Regulation, as it read on or after January 1, 2015, applies to decisions under section 34.1 of the Act to cancel or amend a permit or issue a new permit, whether the water taking is authorized by a permit that is issued before, on or after January 1, 2015. O. Reg. 225/14, s. 10.

Data and Reporting

Duties of permit holders

**9.** (1)  Every holder of a permit, other than a related transferor, shall collect and record data on the volume of water taken daily. O. Reg. 225/14, s. 11 (1).

(2)  The data collected under subsection (1) shall be measured by a flow meter or calculated using a method acceptable to a Director. O. Reg. 387/04, s. 9 (2).

(3)  On or before March 31 in every year, every person to whom subsection (1) applies shall submit to a Director, in the form and manner approved by the Director, the data collected and recorded under subsection (1) for the previous year. O. Reg. 387/04, s. 9 (3).

(4)  Subsections (1), (2) and (3) do not affect a Director’s discretion, under subsection 34.1 (8) or (9) or subsection 34.7 (2) of the Act, to impose terms and conditions in issuing a permit and to alter the terms and conditions of a permit after it is issued. O. Reg. 387/04, s. 9 (4); O. Reg. 225/14, s. 11 (2).

(5)-(8)  Revoked: O. Reg. 225/14, s. 11 (3).

Manner of calculating average amount of water per day

**10.**For the purposes of sections 34 to 34.11 of the Act and this Regulation, the average amount of water per day is the highest average amount of water per day that is determined by finding the simple moving averages of the amount of water per day for each consecutive 90-day period that falls within the longer period for which the calculation is made. O. Reg. 225/14, s. 12.

Transfers

Related transferor

**11.**For the purpose of subclause (b) (ii) of the definition of “related transferor” in subsection 34.5 (1) of the Act, a prescribed class of persons consists of persons who own or operate water works and in respect of whom the following circumstances apply:

1. The water works owned or operated by the persons,

i. are connected to another water works which distribute or will distribute water that is or will be transferred, and

ii. are capable of supplying the threshold amount.

2. The Director or the Minister, as the case may be, is of the opinion that the distribution of the transferred water by the water works owned or operated by the persons must be regulated by a permit in order for the transfer to satisfy the criteria set out in subsection 34.6 (3) of the Act. O. Reg. 225/14, s. 13.

Great Lakes watersheds

**12.**(1)  Subject to subsection (3), a Great Lakes watershed consists of the area shown to be within the boundaries of that watershed in a data file entitled “Great Lakes - St. Lawrence Basin Watersheds — Ontario Water Resources Act”, dated March 15, 2010, as amended from time to time, that is maintained by the Ministry of Natural Resources and Forestry as part of its Land Information Ontario initiative and available on a website of the Government of Ontario. O. Reg. 225/14, s. 13.

(2)  Subject to subsection (3), the watershed of each connecting channel of a Great Lake consists of the area shown to be within the boundaries of that watershed in the data file referred to in subsection (1). O. Reg. 225/14, s. 13.

(3)  If large scale mapping or information from an on-site field investigation establishes the location of all or part of the boundary of a Great Lakes watershed or a watershed of a connecting channel of a Great Lake with greater accuracy than the location shown in the data file referred to in subsection (1), the boundary of that watershed shall be adjusted accordingly. O. Reg. 225/14, s. 13.

Connecting channels of Great Lakes watersheds

**13.**The boundaries of a Great Lakes watershed include the upstream connecting channel, as set out in Column 2 of the Table to this section opposite the name of the Great Lake, and the downstream connecting channel, as set out in Column 3 of the Table opposite the name of the Great Lake.

TABLE

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| --- | --- | --- | --- |
| Item | Column 1  Name of Great Lake watershed | Column 2  Name of upstream connecting channel(s) | Column 3  Name of downstream connecting channel(s) |
| 1. | Lake Superior | N/A | St. Mary’s River |
| 2. | Lake Huron | St. Mary’s River | Detroit River  Lake St. Clair  St. Clair River |
| 3. | Lake Erie | Detroit River  Lake St. Clair  St. Clair River | Niagara River |
| 4. | Lake Ontario | Niagara River | N/A |

O. Reg. 225/14, s. 13.

Determination of threshold amount

**14.**(1)  Subject to subsection (2), for the purposes of subsection 34.6 (1) of the Act, the determination of whether an application fora new transfer or an increased transfer would be the threshold amount must take into consideration all amounts of water transferred by the permit holder between the same Great Lakes watersheds to which the application relates that were approved during the period set out in subsection (3). O. Reg. 225/14, s. 13.

(2)  If the application is made by a permit holder who is authorized to transfer water under more than one permit, consideration shall also be taken of the amount of water transferred as a result of any new transfers or increased transfers under the other permit or permits that were approved during the period set out in subsection (3) if,

(a) the application is by a municipality and the water that is transferred under the other permit or permits supplies water to a common distribution system to which the proposed new transfer or increased transfer relates; or

(b) the application is by a permit holder, other than a municipality, and the water that is transferred under the other permit or permits supplies water to the same facility, undertaking or enterprise to which the proposed new transfer or the increased transfer relates. O. Reg. 225/14, s. 13.

(3)  The period referred to in subsection (1) is,

(a) if the application is made on or before December 31, 2024, the period starting January 1, 2015 until the application date; or

(b) if the application is made on or after January 1, 2025, the period starting 10 years before the date of the application until the application date. O. Reg. 225/14, s. 13.

Exemption from s. 34.6 (1) of the Act

**15.**Subsection 34.6 (1) of the Act does not apply in respect of an amendment to a permit or issuance of a new permit to authorize a new or increased taking of water where some or all of the water is to be transferred if,

(a) the Environmental Assessment Act applies to the holder of the permit; and

(b) the issuance of or amendment to the permit to increase the amount of water the holder is permitted to take is authorized as a result of,

(i) an environmental assessment of an undertaking that was approved on or before December 31, 2014, or

(ii) a Schedule B or C project considered under the Municipal Class Environmental Assessment if,

(A) a notice of completion was issued for the project in accordance with the Municipal Class Environmental Assessment on or before December 31, 2014, and

(B) no request has been made for an order under Part II of the Environmental Assessment Act or, if such a request was made, the request was denied. O. Reg. 225/14, s. 13.

Exemptions from ss. 34.5 to 34.8 of the Act

**16.**Sections 34.5 to 34.8 of the Act and sections 17 to 19 of this Regulation do not apply to the transfer of water in each of the following circumstances:

1. The transfer of water is from a Great Lakes watershed to a watershed of a downstream connecting channel of that Great Lake as set out in section 13.

2. The transfer of water is from a watershed of a downstream connecting channel of a Great Lake to the watershed of that Great Lake as set out in section 13.

3. The water is taken from a location in the St. Lawrence River that is within 10 kilometres of the point at which Lake Ontario flows into the St. Lawrence River and transferred to the Lake Ontario watershed.

4. The water is taken from a location in Lake Ontario that is within 10 kilometres of the point at which Lake Ontario flows into the St. Lawrence River and transferred to the St. Lawrence River watershed. O. Reg. 225/14, s. 13.

Determination of amount re consumptive use

**17.**(1)  For the purposes of subparagraphs 1 i , 2 i and 3 i of subsection 34.6 (2) of the Act and paragraph 1 of subsection 34.6 (3) of the Act, the determination of the amount of water lost through consumptive use shall be made in accordance with a method specified by the Director and made available on a website of the Government of Ontario. O. Reg. 225/14, s. 13.

(2)  For the purposes of subparagraph 3 i of subsection 34.6 (2) of the Act and for determining if an application for a new transfer or an increased transfer is to be referred to the Minister in accordance with subsection 34.1 (12) of the Act, the determination of the amount of water that would be lost through consumptive use as a result of the proposed new transfer or increased transfer shall be made,

(a) in accordance with the method identified in subsection (1); and

(b) subject to subsection (3), by taking into consideration all amounts of water lost through consumptive use as a result of the holder’s new transfers and increased transfers between the same Great Lakes watersheds to which the application relates that were approved during the period set out in subsection (4). O. Reg. 225/14, s. 13.

(3)  For the purposes of clause (2) (b), if the application is made by a permit holder who is authorized to transfer water under more than one permit, consideration shall also be taken of the amount of water lost through consumptive use as a result of any new transfers or increased transfers under the other permit or permits that were approved during the period set out in subsection (4) if,

(a) the application is by a municipality and the water that is taken under the other permit or permits supplies water to a common distribution system to which the proposed new transfer or increased transfer relates; or

(b) the application is by a permit holder, other than a municipality, and the water that is taken under the other permit or permits supplies water to the same facility, undertaking or enterprise to which the proposed new transfer or increased transfer relates. O. Reg. 225/14, s. 13.

(4)  The period referred to in clause (2) (b) is,

(a) if the application is made on or before December 31, 2024, the period starting January 1, 2015 until the application date; or

(b) if the application is made on or after January 1, 2025, the period starting 10 years before the date of the application until the application date. O. Reg. 225/14, s. 13.

Permits, inclusion of specifically directed terms and conditions

**18.**If, under subsection 34.7 (3) of the Act, the Director directs a term or condition described in subsection 34.7 (2) of the Act to a particular holder of a permit who is or will be taking water under the permit or who is or will be a related transferor with respect to the permit or to any two or more of them, the term or condition must be included in the part or parts of the permit or any schedule or schedules to the permit that are applicable to the holder or holders to whom the term or condition is directed. O. Reg. 225/14, s. 13.

Determining amount of water currently being transferred

**19.**(1)  If a holder of a permit is a person who transfers water that is taken under the authority of two or more permits, the holder may make a request under section 34.8 of the Act for a determination in respect of all the permits that relate to the holder’s transfers, and subsections (2) to (6) of this section apply to the request with necessary modifications. O. Reg. 225/14, s. 13.

(2)  Subject to subsections (3), (4) and (5), for the purposes of section 34.8 of the Act, the amount of water the Director may specify is deemed to currently be transferred by a holder shall be the amount of water any holder is authorized to takeunder the holder’s permit as of the day this section comes into force. O. Reg. 225/14, s. 13.

(3)  Despite subsection (2), if the Environmental Assessment Act applies to a permit holder and the holder’s permit is amended or a new permit is issued on or after the day this section comes into force to increase the amount of water the holder is permitted to take, the amount of water the Director may specify is deemed to currently be transferred by the holder shall be the increased amount of water the holder is authorized to take, but only if that increased amount is authorized as a result of,

(a) an environmental assessment of an undertaking that was approved on or before December 31, 2014; or

(b) a Schedule B or C project considered under the Municipal Class Environmental Assessment if,

(i) a notice of completion was issued for the project in accordance with the Municipal Class Environmental Assessment on or before December 31, 2014, and

(ii) no request has been made for an order under Part II of the Environmental Assessment Act or, if such a request was made, the request was denied. O. Reg. 225/14, s. 13.

(4)  Despite subsection (2), if water is taken under a permit by a municipality and the majority of the water that is being transferred under the permit is for use by another municipality, the Director may specify that the amount of water that is deemed to currently be transferred by the permit holder is lower than the amount authorized under the permit if the Director is of the opinion that it is reasonable to do so under the circumstances. O. Reg. 225/14, s. 13.

(5)  Despite subsection (2), if a proposed new transfer or increased transfer has undergone the prior notice and consultation process under the Great Lakes Charter or that process was begun on or before December 31, 2014, the Director shall deem the person making the request to currently be transferring under the permit the amount of water considered under the Great Lakes Charter if the Ministry of Natural Resources and Forestry has notified the Director that Ontario’s prior notice and consultation obligations under the Great Lakes Charter in respect of the proposed new transfer or increased transfer have been satisfied. O. Reg. 225/14, s. 13.

(6)  After determining the amount of water that is currently deemed to be transferred for the purpose of section 34.8 of the Act, the Director shall amend the permit or issue a new permit to,

(a) specify the amount of water that is deemed to be currently transferred under the permit;

(b) designate, for each person who is a related transferor with respect to the permit, a part of or schedule to the permit that will apply to the person and include any conditions the Director considers appropriate to be directed specifically to that person in that part or schedule; and

(c) with respect to each holder of the permit who makes a transfer, specify all other permits in respect of which the holder makes transfers and the total amount of water under all of the permits that the holder is authorized to transfer. O. Reg. 225/14, s. 13.

Reciprocating jurisdictions

**20.**For the purpose of the definition of “reciprocating jurisdiction” in section 34.9 of the Act, the following are prescribed as reciprocating jurisdictions:

1. The Province of Quebec.

2. The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin.

3. The Commonwealth of Pennsylvania. O. Reg. 225/14, s. 13.

[Back to top](#Top)