



Ontario
Home Builders'
Association

20 Upjohn Rd., Suite 101 (416) 443-1545
North York, Ontario Toll Free 1-800-387-0109
M3B 2V9 Fax: (416) 443-9982
www.ohba.ca info@ohba.ca

January 4, 2016

Ben Hatcher
Program Advisor
Ministry of the Environment and Climate Change
Environmental Programs Division
135 St. Clair Avenue West, Floor 4
Toronto, ON M4V 1P5

Re: Regulations prescribing certain short term water takings as EASR activities - EBR 012-0580

About the Ontario Home Builders' Association (OHBA)

OHBA is the voice of the residential construction industry in Ontario representing over 4,000 member companies, organized through 30 local associations across the province. OHBA has been engaged with the Ministry of the Environment and Climate Change (MOECC) for the past few years on the Modernization initiative and specifically with respect to short-term water takings / Permits To Take Water. OHBA previously provided comments on Short-Term Water Takings responding to the April Technical paper on Environmental Activity and Sector Registry and Short-Term Water Takings (EBR 012-0580). OHBA is represented on the MOECC Modernization Stakeholder Group and has worked in close collaboration with other construction industry stakeholders to improve the Permits To Take Water regulatory framework.

Purpose of Proposed Policy:

The MOECC has implemented an Environmental Activity and Sector Registry (EASR) that requires people to register certain activities with the Ministry. The EASR is a public, online system where people engaging in specific activities are required to register the activity and meet operating requirements set out in regulation rather than seek an approval through an application submission and review process. These requirements could be comprised of, but not limited to, design requirements, pollution control measures and best management practices. The Ministry will enforce compliance with the EASR regulation according to its compliance strategy, as it does for all approvals today.

As part of the MOECC's ongoing work to implement a risk-based environmental approvals program, additional activities and sectors are being evaluated for their potential inclusion on the EASR. A Technical Discussion Paper, posted to the Environmental Registry (EBR 012-0580) in the spring summarized the proposed rationale for moving specific short-term, non-recurring water taking activities from the Permit To Take Water process under the *Ontario Water Resources Act* to the self-registration process on the EASR. OHBA believes that the exemptions and activities proposed for the EASR (EBR 012-5724) will improve the regulatory process for short-term lower-risk activities and allow the MOECC to focus on projects that have the potential for greater environmental impact.

Ministry of the Environment and Climate Change – Key Proposals:

- A. Proposal to clarify that certain activities are not considered water takings by the Ministry, specifically:
- Diversion of a watercourse for the purpose of creating and maintaining a construction site located wholly or partially within the watercourse where the water is returned back to the watercourse.

- B. Proposal to provide exemption from Permit to Take Water (PTTW) requirements with conditions for the following:
- To encourage wetlands, a taking of water by means of a structure or works constructed for the diversion or storage of water from a surface source of supply, if the structure or works are designed solely for the restoration, managing, conserving or enhancement of wetlands;
 - A taking of water by means of an existing structure or works built across a watercourse for the diversion or storage of water from a surface source of supply if the structure or works is intended solely to allow all natural watercourse flow to pass freely over the crest of the structure. (i.e. weir). The proposed exemption would not include any structures that are utilized in hydro-electric projects (i.e. waterpower projects); and
 - Pumping of water for the purpose of creating and maintaining a construction site located wholly or partially within the watercourse and where the water that has been pumped is returned back to the same watercourse, if prescribed requirements for discharge are met.
- C. Proposal to regulate the following water takings to be prescribed activities for the purposes of the EASR:
- Surface water takings that are restricted to specific purposes involved in road construction;
 - Short-term construction dewatering less than 400,000 L/day; and
 - The use, operation, establishment, alteration, extension or replacement of sewage works used for the purpose of collecting, transmitting and disposal of storm water in construction dewatering.

Introduction:

OHBA is generally supportive of the broader MOECC Modernization of Approvals vision to enable a streamlined alternative regulatory approach to permitting processes. This will achieve administrative efficiencies, create more business certainty and reduce duplication while continuing to provide a balance between the protection of environmental resources and economic development. OHBA has been actively engaged with our members and a number of other construction sector stakeholders in discussing the proposed approaches and regulations posted to the Environmental Registry for consultation.

Water takings in Ontario are governed under the *Ontario Water Resources Act* (OWRA) and the Water Taking Regulation (O. Reg 387/04) made under the Act. Subsection 34(3) of the OWRA requires any person taking more than a total of 50,000 L/day of water on any day, by any means, to do so in accordance with a PTTW issued by the Director. Over the past couple of years, OHBA and a number of other construction stakeholders raised a number of issues with the MOECC regarding certain water taking activities issued under Sec 34 of the OWRA with particular consideration of short-term, non-recurring water taking activities. OHBA appreciates the dialogue and engagement that MOECC staff have undertaken with our members, including site visits, and we look forward to the opportunity for additional discussion in the future.

MOE – Modernization

The MOECC is moving forward with a plan to modernize and more sustainably manage Ontario's environmental resources. OHBA is supportive of the main components of the modernization plan, including: streamlining approvals processes and operation delivery transformation to make it easier, faster and more efficient for businesses and individuals to access its services.

OHBA believes this modernization initiative will provide the Ministry with long-term financial sustainability and support economic growth and job creation, while ensuring that Ontario's environmental resources are protected for future generations.

General Comments

OHBA is generally supportive of proposed clarifications by regulation that certain specified activities are not considered water takings for the purposes of the OWRA. In September 2013, OHBA recommended that the MOECC adopt a risk-based standardized approach to approvals, including full exemptions based on a prescribed standard set of conditions instead of proceeding through the regular, uncertain and time consuming negotiated approvals process. OHBA is generally supportive of the direction the MOECC has proposed in the technical discussion paper-regulating select short-term, non-recurring water taking activities through the Ministry's EASR program rather than requiring a person to obtain a PTTW before conducting these activities. This process essentially follows a rules-in-regulation with electronic registration process that OHBA supported in a previous submission to the Ministry of the Environment in September 2013.

The regulatory change proposal by the Ministry delineates "dewatering" a construction site vs "water taking" activities. The Ministry has identified a number of low-risk, predictable activities and either provides exemptions from the permitting process or alternatively allows for the activities to be registered through the EASR. OHBA is generally supportive that the Ministry clarify that "*Diversion of the natural flow of a watercourse or lake for the purpose of isolating, creating or maintaining a construction site located wholly or partially within the water body where the water is directly returned to, or remains in, the same water body,*" is not a water taking for the purposes of the OWRA. OHBA believes that this will assist to update and streamline the cumbersome approval process for the majority of short-term low-risk water taking activities. OHBA and a number of other construction associations have suggested the regulatory changes could go further to encompass more low-risk construction activities and to expand on the limits being proposed for the EASR, however, OHBA is supportive of the currently proposed regulatory package as a good starting point.

Specific Comments on the Regulatory Change Proposal

OHBA supports the regulatory proposal, but has a few comments on specific areas of the proposal:

- Groundwater pumping tests should be added to the list of exempted items from the PTTW process.
- The 400,000 limit [section 7.3(1) in the proposed EPA change] should be reconsidered given the nature of the types of pumping that are occurring on these job-sites.
- Remove the requirement for a QP to develop a discharge plan [sec 9.1 in the proposed EPA change].
- Modify the language in section 9.1.3(ii) requiring the water discharge point to be at least 30 meters away from any waterbody. OHBA is concerned that the 30m limitation may not be practical in some site specific situations. OHBA recommends that this operating criteria should not be a fixed number, but rather allow for some flexibility based on site characteristics on a case-by-case basis.
- OHBA would however appreciate a clarification on what the MOECC means by a construction site. For example a large site may include 20 or more housing foundation excavations and, following a heavy rain event, the basement foundations may require dewatering – is each housing basement foundation considered separately under the 400,000 L/day limit or is the site all considered together?

This proposal is a positive initiative that will reduce the red-tape, speed up the construction process and reduce the administrative burden on both contractors and the MOECC staff for a process that is an excellent candidate for a rules-by-regulation process or exemption.

Conclusion

OHBA appreciates the MOECC movement towards creating greater efficiency in the regulatory process by reducing “red tape” and streamlining its permitting process for low-risk, predictable activities in the construction industry. OHBA supports the proposed approach by the MOECC to adopt a risk-based standardized approach to approvals, including exemptions and a shift to self-registration on the EASR based on a standard set of conditions instead of proceeding through the regular, uncertain and time consuming negotiated approvals process.

Adopting a risk-based approach to the regulatory process, including granting exemptions for certain construction related activities that will no longer be defined as water taking, is an approach that the OHBA and our industry association partners have been advocating for a number of years. We are encouraged to see the MOECC moving towards this type of rules-in-regulation model for predictable and recurring activities. OHBA notes that the regulatory proposal does not contemplate relieving proponents of the need to comply with regulatory requirements beyond the PTTW. Proponents undertaking work remain responsible for complying with all municipal, provincial or federal legislation that applies to the work being carried out, or for the impact that their actions have on the natural environment.

OHBA appreciates the opportunity to provide comments to the Ministry and to provide advice on the proposed regulatory improvements. OHBA is supportive of the regulatory proposal with a very few minor changes/clarifications being requested.

Sincerely,



Michael Collins-Williams, MCIP, RPP
Director, Policy
Ontario Home Builders' Association