



Ontario
Home Builders'
Association

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Modernization of Approvals Branch
Ministry of the Environment
135 St. Clair Avenue West, 4th Floor
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Re: Proposed approaches to the Modernization of MOE Approvals

About the Ontario Home Builders' Association (OHBA)

The Ontario Home Builders' Association is the voice of the residential construction industry in Ontario. OHBA represents over 4,000 member companies, organized through 30 local associations across the province. Our membership includes home builders, commercial and residential land developers, renovators, manufacturers, suppliers, planners, architects, engineers and lawyers.

Introduction:

OHBA is pleased to be given an opportunity to present our comments as part of the input towards the modernization of the Ministry of the Environment (MOE) approvals initiative.

OHBA understands that the Ministry has heard from many sectors, organizations and individuals about challenges in implementing various permitting and approval functions that fall under the jurisdiction of the MOE. OHBA members have experiences and expertise under a wide range of approvals and permits issued by the MOE, OHBA therefore has a number of recommended approaches for MOE to consider that will ultimately enable a streamlined alternative regulatory approach to permitting processes, 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. This submission will cover two broad topic areas:

- Permits to take Water (PTTW)
- Environmental Compliance Approval certificates (ECAs)

Lastly, OHBA appreciates the dialogue and engagement that MOE staff have undertaken with our members and we look forward to the opportunity for additional consultation in the future.

MOE – Modernization

MOE 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. OHBA has previously worked with the Ministry of Natural Resources (MNR) on similar aspects of the *Transformation MNR* plan to achieve regulatory improvements to better facilitate the implementation of the *Endangered Species Act*. OHBA supports the provincial objective to transform MOE's operations 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.

Permits to take Water – General Issues Identified by OHBA

- There is currently a limit imposed whereby a Permit to take Water (PTTW) is required for pumping in excess of 50,000 litres per day of overland/surface drainage on a construction site. While this regulatory framework has existed for many years it was not typical for the regulation to be applied to construction work for unwatering. Furthermore, OHBA is concerned by the lack of ministerial delineation between actually “taking” water vs unwatering construction sites and “moving” water out of construction work areas to locations where the water would have naturally flowed prior to the construction taking place. This type of activity is temporary in nature during the construction stage and would only occur following a rainfall event as rainfall is the only source of water to these construction areas. The primary concern for OHBA members is the terms and conditions which may be imposed with a permit and the enforcement of those terms and conditions for what is essentially a temporary unwatering activity following rainfall events. OHBA believes this type of activity should be a candidate for modernization through an exemption from the permitting process.
- During land development, some of our members recently have been prohibited from pumping surface rainwater water from an excavation (unwatering) into a storm water management pond, temporary sediment pond or a storm sewer even though they were designed as such, without a PTTW. OHBA is concerned with the apparent change to the legal definition of a SWM pond and/or storm sewer, as it now appears to be considered by MOE inspectors as part of the “natural environment” vs. part of a “treatment system”, despite the fact the MNR and Conservation Authorities (CA's) consider it as the latter. If it has been changed to the former, our members will be required to obtain a PTTW and are then not authorized to exceed a water quality limit of 25 mg/l of Total Suspended Solids (TSS) within the discharge even though it goes through an approved treatment system before discharge to the ultimate natural environment. This potential interpretive change is a major concern that could be clarified by MOE within the modernization initiative.
- The third issue is related to erosion and property lines, whereby a land owner can be charged if sediment reaches a prohibited level downstream across from their property line. Our members are required to obtain a PTTW and, again, would not be permitted to exceed a water quality limit of 25 mg/l TSS at the property line. It should be noted that large land development projects often include multiple property owners working together (often referred to as a 'block') and that sediment and erosion control plans typically ignore internal property lines during the development stage in order to create an efficient and robust ESC program. OHBA notes, that throughout the process water quality

objectives are still met by the block approach to ensure environmental protection. Obtaining a PTTW is an onerous process and compliance with terms and conditions while managing erosion and sediment control over a large scale block is impractical, unnecessary and virtually impossible.

OHBA continues to support a balanced approach in implementing the environmental, social and economic goals of the Province, to ensure a high-quality of life and prosperity for Ontario citizens. With respect to the PTTWs, OHBA believes that an exemption could function well for lower-risk activities that have high degrees of standardization and predictability in terms of industry practice across Ontario. A rules-in-regulation approach could be utilized for activities with a moderate degree of risk that also have high degrees of standardization and predictability.

Permits to take Water – Standard Industry Practices – Consideration for an Exemption from PTTWs

The imposition of PTTWs and various compliance requirements have been problematic on some development sites and by extension may require unnecessary MOE resources in terms of administration. Through the MOE Modernization initiative, the Provincial Government should undertake an increased focus on implementation improvements such as full exemptions and a rules-in-regulation approach and streamlining of ministry processes with a stronger focus on outcomes.

Construction dewatering activities often involve the displacement of water from excavations or the interception of groundwater that would otherwise fill excavations. OHBA recommends MOE consider an exemption from obtaining a PTTW for lower risk activities where the pumping of water that accumulates in excavations exceeds 50,000 litres in any day. OHBA notes that the main reason that water accumulates in excavations are:

- a) Precipitation and related overland or subsurface drainage flow; and
- b) Groundwater inflow because the excavation intercepts the water table.

Processing applications for PTTWs should reflect a risk-based approach as proposed by the Ontario Sewer and Watermain Contractors Association (OSWCA), whereby the prospect of potential risk associated with proposed water taking is used to classify applications into three risk-based Categories (1, 2 and 3). Category 1 applications are deemed unlikely to pose adverse environmental impacts and should not be subject to technical evaluation by the MOE. Category 2 applications pose medium risk and Category 3 applications pose highest potential risk of unacceptable interference.

The displacement of surface water drainage from excavations will pose low risk of adverse environmental impact when return flow is appropriately managed. When managed appropriately, this movement of water is unlikely to pose adverse environmental impacts and thus, should not be subject to technical evaluation by the MOE.

Please refer to *Appendix A, a Risk Assessment Framework* for water taking proposals (construction dewatering) as proposed OSWCA. OHBA is supportive of exempting “category 1” type applications from the PTTW permitting process within the proposed framework that OSWCA has development for consideration by MOE.

OHBA has the following recommendations that could be considered for a standardized ‘envelope’ of common unwatering practices that should not require a PTTW and therefore should be considered by the MOE for an exemption from obtaining a permit.

- Cut/Fill areas that are ponded after heavy rains during site pre-grading. These areas are commonly unwatered through a pump system with a filter to existing vegetated areas (a minimum of 30m away from valleylands or watercourses etc.) or are commonly pumped to a temporary sediment pond or SWM facility.
- Perched water encountered during site servicing or site pre-grading(cut areas) may also be commonly pumped as described above.
- Newly installed sewer systems on tableland that are temporarily bulk-headed may be pumped directly to an existing sewer (outletting to a SWM Facility) or temporary sediment pond until such time that the proposed storm outfalls are fully approved and functional.
- Builders/Contractors generally pump pre-graded lots, during the new home construction process. The surface water is commonly pumped to the storm sewer which discharges to the appropriate SWM Facility.
- Ultimately SWM Ponds are unwatered to expedite silt removal, prior to assumption of the facility by the municipality. Water is pumped slowly through a filter to a vegetated area adjacent to the storm outfall. Pumps are equipped with floats to prevent the inadvertent discharge of silt to a natural feature.

OHBA recognizes that higher risk activities or activities that may negatively impact the natural environment would not qualify for an exemption or a rules-in-regulation with registration approach. Furthermore, OHBA recognizes and supports some specific situational/contextual conditions that would place conditions/restrictions on certain activities covered by the regulation and/or place limits on quantities of water to be taken/moved.

Environmental Compliance Approval Certificates (ECAs)

Environmental Compliance Approval certificates (ECAs, formerly C of As) are required to be issued by MOE for all sanitary and storm sewers, water-mains and SWM ponds constructed in Ontario. Under the *Transfer of Review* program, the review of the design of the sanitary sewers and water-mains are completed by the regional municipalities and/or municipalities and the review of the design of the storm sewers are completed by the municipalities. Both are then sent to MOE for final approval and ECA issuance which typically takes three to four weeks. This is usually at the most critical juncture in a project when the development proponent is in the process of commencing site servicing.

In the case of SWM ponds, the design review is completed by the municipality (as they are the ultimate owners of these works), the conservation authority, in some cases MNR (if the pond outfall is to a Redside Dace receiving stream) and then finally to MOE. MOE's review time is typically eight weeks and again, this is occurring at a time when the development proponent is at a critical juncture in terms of proceeding with site servicing. OHBA suggests, ECA reviews by MOE are a duplicative and redundant process step given Ontario's sophisticated review process, it is therefore OHBA's contention that ECAs are a potential candidate for a streamlined registration model under the Modernization initiative.

Rules in Regulation Approach

Greater efficiency in the approvals/permitting process with respect to 'streamlining' would be beneficial to both the MOE and also provide greater efficiency and clarity for proponents. Therefore, the MOE should 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. Projects that suit this approach would generally be those that are common and repeatable where there is confidence in the outcome or mitigation methods and where there is an acceptable lower-to-medium risk. Furthermore, MOE should implement an automated approvals / self-execution of an online approval application approach to improve efficiency and effectiveness. OHBA strongly supports the modernization of MOE approvals through streamlining and a rules-in-regulation with registration approach.

OHBA supports the provincial objective for the MOE to transform its operations to make it easier, faster and more efficient for businesses, municipalities and individuals to access its services. OHBA believes this transformation will provide the Ministry with long-term financial sustainability and support economic growth and job creation, while ensuring that the MOE can continue to meet its mandate with respect to environmental protection.

Conclusion

Greater efficiency in the approvals process through exemptions and streamlining (rules in regulation) would support the Ministry's modernization efforts while providing business certainty and process efficiency for proponents. Improvements are required due to delays, uncertainty and conditions attached to receiving permit approvals.

OHBA is generally supportive of the modernization approach to streamlining MOE approvals through standardized conditional approaches (Rules in Regulation with Registration) and exemptions for lower-risk activities. The displacement of surface water drainage from excavations poses a low risk of adverse environmental impacts if managed appropriately when return flow is appropriately managed. This movement of water is unlikely to pose adverse environmental impacts and thus, should not be subject to technical evaluation by the MOE. OHBA notes industry concern that MOE has been without the resources to respond to ECAs in a timely fashion, creating significant delays on many projects. The industry is keen to find workable efficient solutions that will eliminate duplication and redundancies while protecting the environment and not unduly constraining the Province's economic interests.

OHBA appreciates the opportunity to provide comments to the Ministry of the Environment and to provide advice on the potential regulatory improvements. OHBA strongly supports a balanced approach to the environmental, social and economic goals of the province to ensure a prosperous and high quality of life for Ontario citizens.

Sincerely,



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Ontario Home Builders' Association