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Guidance on Permits to Take Water in Ontario

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Permits to Take Water

Water taking activities in Ontario are regulated, because the capture and use of water (including withdrawal and diversion) can have environmental implications.

Under the [Ontario Water Resources Act](#) and [Ontario Regulation 387/04](#), a permit to take water (“PTTW”) is required when a business or entity is planning to take 50,000 or more litres of water in a day out of the environment, unless the activity expressly falls within certain limited exemptions.

PTTW Exemptions

A PTTW is not required in various circumstances, including domestic purposes, livestock and poultry watering, firefighting and other emergency purposes, wetland conservation activities, certain construction-related dewatering and diversion activities, and constructing or operating a dam associated with the production of electricity.

In addition, the Environmental Activity and Sector Registry (“EASR”) is an online registry that allows for self-registration of certain prescribed water-taking activities, which is a different process than obtaining a PTTW. For example, the following construction site activities should be registered in the EASR:

- construction site dewatering involving more than 50,000 litres per day and less than 400,000 litres per day (not including mining developments, pits or quarries)
- surface-water takings exceeding 50,000 litres per day for road construction, maintenance and repair that meet specific activity requirements listed under [Ontario Regulation 63/16](#)

PTTW Application Process

For a business or entity, there are several steps involved in applying for an Ontario PTTW, many of which are dependent on the specific water taking activity to be carried on:

Step 1: [Establish Ministry of the Environment, Conservation and Parks online account](#)

Step 2: Determine application category (as further described below in Table 1)

Step 3: Depending on category, engage qualified person to conduct technical studies

Step 4: Prepare application and supporting materials (as further described below in Table 1)

Step 5: Prior to submission, have pre-submission consultation with Ministry representatives to discuss application

Step 6: Submit application on online portal through Ministry account

Once submitted, some PTTW applications may be posted for public consultation on the Environmental Registry of Ontario ("ERO"). The [ERO](#) is a searchable, online database, established by the Government of Ontario in accordance with the Ontario *Environmental Bill of Rights, 1993*, to consult with the public on the provincial government's environmentally significant legislative or administrative proposals. Notices are posted on the ERO about proposed activities that may affect the environment within the Province of Ontario. The public is invited to comment on the proposals (within a prescribed comment period) and track the status of proposals, through use of the ERO. Comments submitted on the ERO generally will become part of the public record. Also, once a decision is made on a PTTW application, the decision will be posted on ERO.

Application Review Criteria

Ontario's PTTW program manages the taking of water from bodies including lakes, streams, rivers, ponds and groundwater to the standard of the [Great Lakes-St. Lawrence Basin Sustainable Water Resources Agreement](#) (the "Water Resources Agreement"). This includes ensuring that the decision-making standard is in line with the key factors listed in Article 203 of the Water Resources Agreement.

In addition, in reviewing a PTTW application, the Ministry will consider several factors to ensure that water takings are in compliance with applicable regulatory requirements, including: aboriginal and treaty rights, ecosystem impacts, water availability, intended water usage, impacts to other water users, source protection, and comments received from the public in respect of the application.

Categories of Water Taking Activities

Applications for water taking are categorized based upon potential environmental risk, with higher risk categories requiring additional submission materials. A summary of the categories and requisite filing requirements that a business or entity must consider, are set out in Table 1 below (For further details, see: Ontario Water Resources Act, Ontario Regulation 387/04, and [Guide to Permit to Take Water application](#) issued by the Ministry of the Environment, Conservation and Parks).

Table 1: Categories and Filing Requirements

Category 1 - Low environmental risk water takings (e.g. permit renewals; lower volume water takings)	
Filing requirements: - Scientific study not required - Summary of proposed water taking needs, including water use breakdown and rationale for requested water volume; how, when and where all water is obtained, stored, transferred, used and returned; calculation of water taking rates, amounts and time periods; source description and protection implications; source location and water takings mapping - For long-term water taking, summary of water management practices, including water efficiency measures - Such additional information as the Director under the <i>Ontario Water Resources Act</i> may require - Application Fee of C\$750	
Category 1 - Groundwater Taking conditions	Category 1 - Surface Water Taking conditions
<i>For renewal applications</i> - Must be taking the same or lesser amount of water for the same purpose from the same location and source - No past interference or impacts to the environment or other users	<i>For renewal applications</i> - Must be taking the same or lesser amount of water for the same purpose from the same location and source - No past interference or impacts to the environment or other users
<i>For ponds</i> - Ponds can be used for irrigation or agriculture - Ponds must not be connected to, nor receiving water from, surface water - Ponds must be less than 4m deep and over 100m away from sensitive features or less than 7m deep and over 250m away from sensitive features	<i>For ponds</i> - Must be less than 1500 cubic metres in volume - Must be ponds that collect runoff, and are not drawing from groundwater, watercourses, wetlands, other lakes or ponds
	<i>For Great Lakes and connecting channels</i> - Must be taking less than 1 million litres per day

Category 2 - Short-term elevated environmental risk water takings	
Filing requirements: - Technical scientific review of water taking activities, conducted by prescribed qualified person, to confirm no unacceptable impacts or interference with the environment or other water users - Summary of proposed water taking needs, including water use breakdown and rationale for requested water volume; how, when and where all water is obtained, stored, transferred, used and returned; calculation of water taking rates, amounts and time periods; source description and protection implications; source location and water takings mapping - For long-term water taking, summary of water management practices, including water efficiency measures - Such additional information as the Director under the <i>Ontario Water Resources Act</i> may require - Application fee of C\$750	
Category 2 - Groundwater Taking conditions	Category 2 - Surface Water Taking conditions
<i>For short-term, non-recurring taking:</i> - Less than 7 days, or - Less than 30 consecutive days and less than 400,000 litres per day	<i>When taking from sources with previous assessments</i> - Further to a previous study, using previously established controls
	<i>For Great Lakes and connecting channels</i> - When taking less than the <i>Great Lakes-St. Lawrence River Basin Sustainable Resources Agreement</i> threshold of 19 million litres per day
	<i>For rivers and streams (3rd order or higher)</i> - When taking less than 5% of the "7Q20" low flow (the annual minimum 7-day streamflow exceeded in 19 out of 20 years on average)
	<i>For transitional permits</i> - Where Ministry has previously requested an existing permit holder to modify or upgrade water taking activities
	<i>For takings and returns</i> - Where water is temporarily removed for a short time and returned to a nearby point and no significant change to the water quantity or quality (e.g. for cooling, hydrostatic testing, hydraulic lake dredging)
	<i>For lakes and ponds</i> - When taking less than 1 million litres per day twice per week from water bodies greater than 10 ha in size that are not on-stream and not a part of watercourse headwaters

Category 3 - Water takings that do not fall under Category 1 or 2	
Filing requirements: - Hydrogeological and/or surface water study, prepared by a prescribed qualified person to evaluate any unacceptable impacts or interference with the environment or other users - Summary of: proposed water taking needs, including water use breakdown and rationale for requested water volume; how, when and where all water is obtained, stored, transferred, used and returned; calculation of water taking rates, amounts and time periods; source description and protection implications; source location and water takings mapping - For long-term water taking, summary of water management practices, including water efficiency measures - Such additional information as the Director under the <i>Ontario Water Resources Act</i> may require - Application fee of C\$3000	
Category 3 - Groundwater Taking conditions	Category 3 - Surface Water Taking conditions
unless subject to registration in the EASR, this category covers all groundwater takings not included in categories 1 and 2	unless subject to registration in the EASR, this category covers all surface water takings that are not included in categories 1 and 2
	- Also applies to new takings from 1st or 2nd order watercourses, wetlands, new on-stream reservoirs, impoundments and ponds, and groundwater sources that have the potential to affect surface waters

How to Seek Leave to Appeal of PTTW Decision

Under section 41 of the *Environmental Bill of Rights* ("EBR"), residents of Ontario who have an "interest" in a particular PTTW application, can, as a third party, seek leave to appeal to the Ontario Land Tribunal ("OLT") of a PTTW decision that is posted to ERO. An appeal is the actual legal challenge of a decision. In many legal matters, you have an automatic right to appeal, and your concerns must be heard by a higher adjudicative body. However, for certain types of decisions, such as an appeal of a PTTW, there is no automatic right to appeal, and you must file an application for leave to appeal to convince the higher adjudicative body that your reasons to want to appeal satisfy certain legal thresholds to warrant that permission be given to you to start a process.

Leave to appeal application must be filed within 15 calendar days of such decision being posted on the ERO. Applications for leave to appeal are reviewed by the OLT, and the appellant must satisfy two significant legal tests:

1. Section 38(1) Standing Test, which requires that there be a sufficient connection between the appellant and the decision such that it is appropriate to grant a right of appeal; AND
2. Section 41 Leave to Appeal Test, which requires that: (i) there is good reason to believe that no reasonable person, having regard to the relevant laws and policies, could have made the decision, and (ii) the decision could result in significant harm to the environment.

Both tests must be satisfied for leave to appeal to be granted.

As a first step, an application for leave to appeal must be prepared. [The following information should be included in an application:](#)

- Application form with:
 - your name, phone number, fax number (if any), and/or email address
 - the ERO number and ministry reference number (located on the ERO page)
 - a statement about whether you are a resident in Ontario
 - your interest in the decision, and any facts you want taken into account in deciding whether you have an interest in the decision
 - the parts of the instrument that are being challenged
 - whether the decision could result in significant harm to the environment
 - the reason(s) why you believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision
 - the grounds (facts) you will be using to appeal
 - the outcome you would like to see
- A copy of the item that you are seeking leave to appeal, which is included in the decision notice from ERO
- A copy of any supporting documents, facts or evidence that will be used for appeal

Next, a notice that you are seeking leave to appeal must also be provided to the Ministry. The notice should include a short description of:

- decision that you wish to appeal

- grounds for granting leave to appeal

The notice can be emailed to minister.mecp@ontario.ca or mailed to College Park 5th Floor, 777 Bay St., Toronto, ON, M7A 2J3.

Finally, your application must be mailed to the three parties listed below:

1. The appellate body

- Appellate body in Instrument decision
 - Registrar, Ontario Land Tribunal
 - 655 Bay Street, Suite 1500, Toronto, Ontario, M5G 1E5
 - (416) 212-6349/(866) 448-2248 | OLT.Registrar@ontario.ca

2. The issuing authority (the Ministry official who issued the instrument)

3. The proponent (the company or individual to whom the instrument was issued)]

Ensure that you include the ERO number and Ministry reference number in your application, which can be found in the instructions for “How to Appeal” under a particular instrument’s posting.

Monitoring, Renewing and Other Ongoing PTTW Obligations

PTTW holders have ongoing obligations, including recording and periodic reporting of daily volumes of water taken, and updating certain previously submitted information (including land ownership changes). PTTWs should be renewed six months prior to the applicable expiry date (and renewal may be subject to additional conditions).