

Ontario Water Resources Act

Loi sur les ressources en eau de l'Ontario

**ONTARIO REGULATION 387/04**

**WATER TAKING**

Consolidation Period: From August 10, 2007 to the e-Laws currency date.

Last amendment: O. Reg. 451/07.

**GENERAL**

1. REVOKED: O. Reg. 451/07, s. 2.

**Definitions**

2. In this Regulation,

“application” means an application to a Director under section 34 of the Act for a permit to take water;  
“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 at Toronto;

“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;

“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 at Toronto. O. Reg. 387/04, s. 2.

**Maps**

3. (1) Copies of the Average Annual Flow Map and the Summer Low Flow Map are available for public inspection,

(a) at the Public Information Centre of the Ministry of the Environment located at 135 St. Clair Avenue West, Toronto; and

(b) at the Ministry of the Environment regional offices located at,

(i) 5775 Yonge Street, North York,

(ii) 133 Dalton Avenue, Kingston,

(iii) 435 James Street South, Thunder Bay,

(iv) 733 Exeter Road, London, and

(v) 119 King Street West, Hamilton. O. Reg. 387/04, 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 may be accessed at

[www.mnr.gov.on.ca/edwin/EDWINCGI.exe?IHID=10002428&Theme=WATER](http://www.mnr.gov.on.ca/edwin/EDWINCGI.exe?IHID=10002428&Theme=WATER). O. Reg. 387/04, s. 3 (2).

**PERMITS**

Matters to be considered by Director

4. (1) This section applies when a Director,

(a) is considering an application; or

(b) is otherwise considering under section 34 of the Act whether to cancel, amend or impose conditions on a permit to take water. O. Reg. 387/04, 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, and
  - 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.
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, 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.
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, and
  - ii. any other matters that the Director considers relevant. O. Reg. 387/04, s. 4 (2).

(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 (1) The taking of water by any of the means described in subsection 34 (3.1) of the Act by a person who takes the water for use in a facility that falls into a class described in subsection 3 (1) of Ontario Regulation 450/07 is a prescribed taking for the purposes of section 34 of the Act and subsection 34 (3) of the Act applies to the person as of January 1, 2009. O. Reg. 451/07, s. 3.

(2) A person whose taking of water is prescribed by subsection (1) shall apply to the Director for a permit under subsection 34 (6) of the Act on or before June 30, 2008. O. Reg. 451/07, 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 or Lake Superior or any of their connecting channels, namely the St. Mary's River, the St. Clair River, 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).

(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 to take water; 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).

(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 to take water, 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).

(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).

Great Lakes Charter

6. A Director who is considering an application shall ensure that Ontario's obligations under the Great Lakes Charter with respect to the application are complied with. O. Reg. 387/04, s. 6.

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 to take water,

(i) over a period of less than one year, or  
(ii) only for irrigation of agricultural crops;  
(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).

(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 the Great Lakes Charter. O. Reg. 387/04, s. 7 (6).

(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 applies to applications received on and after January 1, 2005. O. Reg. 387/04, s. 8 (1).

(2) An application that is received before January 1, 2005 shall be dealt with in accordance with Ontario Regulation 285/99 (Water Taking and Transfer) made under this Act, despite its revocation by section 11 of this Regulation. O. Reg. 387/04, s. 8 (2).

(3) This Regulation applies to decisions under section 34 of the Act to cancel, amend or impose conditions on a permit to take water, whether the permit is issued before, on or after January 1, 2005. O. Reg. 387/04, s. 8 (3).

#### DATA AND REPORTING

##### Duties of permit holders

9. (1) Every person to whom a permit has been issued under section 34 of the Act shall collect and record data on the volume of water taken daily. O. Reg. 387/04, s. 9 (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 (6) 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).

(5) Subsections (1) and (3) are phased in as follows:

1. Persons described in subsection (6) are governed by subsection (1) on and after July 1, 2005 and by subsection (3) in and after the year 2006.

2. Persons described in subsection (7) are governed by subsection (1) on and after January 1, 2006 and by subsection (3) in and after the year 2007.

3. Persons described in subsection (8) are governed by subsection (1) on and after January 1, 2007 and by subsection (3) in and after the year 2008. O. Reg. 387/04, s. 9 (5).

(6) Paragraph 1 of subsection (5) applies to every person to whom a permit has been issued under section 34 of the Act for taking water for any of the following purposes:

1. Large municipal residential systems and small municipal residential systems, both as defined in Drinking Water Systems,

2. The purposes listed in subsection 5 (5), subject to subsections 5 (6) to (9).

3. The operation of a plant governed by any of the following regulations, made under the Environmental Protection Act:

i. Ontario Regulation 560/94 (Effluent Monitoring and Effluent Limits — Metal Mining Sector).

ii. Ontario Regulation 215/95 (Effluent Monitoring and Effluent Limits — Electric Power Generation Sector).

iii. Ontario Regulation 561/94 (Effluent Monitoring and Effluent Limits — Industrial Minerals Sector).

iv. Ontario Regulation 64/95 (Effluent Monitoring and Effluent Limits — Inorganic Chemical Sector).

v. Ontario Regulation 214/95 (Effluent Monitoring and Effluent Limits — Iron and Steel Manufacturing Sector).

vi. Ontario Regulation 562/94 (Effluent Monitoring and Effluent Limits — Metal Casting Sector).

vii. Ontario Regulation 63/95 (Effluent Monitoring and Effluent Limits — Organic Chemical Manufacturing Sector).

viii. Ontario Regulation 537/93 (Effluent Monitoring and Effluent Limits — Petroleum Sector).

ix. Ontario Regulation 760/93 (Effluent Monitoring and Effluent Limits — Pulp and Paper Sector). O. Reg. 387/04, s. 9 (6).

(7) Paragraph 2 of subsection (5) applies to every person to whom a permit has been issued under section 34 of the Act for taking water for any of the following purposes:

1. Any industrial or commercial purpose not described in subsection (6).

2. Wildlife and conservation purposes. O. Reg. 387/04, s. 9 (7).

(8) Paragraph 3 of subsection (5) applies to every person to whom a permit has been issued under section 34 of the Act for taking water for any of the following purposes:

1. Any of the following, as defined in subsection 1 (1) of Drinking Water Systems:

i. A small municipal non-residential system.

ii. A large municipal non-residential system.

iii. A small non-municipal non-residential system.

iv. A large non-municipal non-residential system.

v. A non-municipal seasonal residential system.

vi. A non-municipal year-round residential system.

2. Agriculture.

3. Any purpose not described in subsection (6) or (7). O. Reg. 387/04, s. 9 (8).

10. REVOKED: O. Reg. 451/07, s. 4.

11. OMITTED (REVOKES OTHER REGULATIONS). O. Reg. 387/04, s. 11.

12. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 387/04, s. 12.