

MOECC announces that changes to the PTTW process now in effect

By Simon Gautrey, MSc, MBA, P.Geo.

Early in April, the Ministry of Environment and Climate Change (MOECC) announced that its planned changes to the Permit To Take Water (PTTW) process had been approved in late March, 2016 and are now in effect.

The changes were explained in a series of well attended workshops held across the province by the MOECC in late March and early April. These changes included the introduction of new water taking regulations that allow for certain types of takings to fall within the Environmental Activity and Sector Registry (EASR) framework as long as criteria are met. These EASR eligible takings will no longer require a PTTW. They include groundwater or storm water takings for construction dewatering, and surface water takings for specific road construction purposes (e.g. dust suppression, seeding, compaction, amongst others).

In addition to new EASR regulations, the MOECC announced amendments to the Water Taking and Transfer Regulations that identify specific water taking or diversions that do not require either a PTTW or listing on the EASR. These include some passive instream diversions, active in-stream construction by-passes, as well as takings for wetlands restoration and construction. Water diversions for existing weirs are also exempt.

For the most part, the changes are in line with draft regulations and guidelines posted for comment in December of last year. Amongst the changes made, the upper limit for a groundwater taking for construction dewatering to be eligible for an EASR remained at 400,000 L/day under normal circumstances, but extended to cover the life span of the project instead of one year. Normal circumstances were clarified to include things like a typical summer storm or the expected spring freshet depending on the proposed season of construction. Surface water takings for road construction purposes are limited to takings from larger creeks, lakes, and offline ponds. The taking from a creek is not to exceed 5% of the flow in the creek on the day the water taking occurs (instead of 5% of 7Q20 in the proposed regulations). Discharge from excavations under the EASR framework still requires a discharge plan prepared by a Qualified Person (QP), however there is also a new “water taking report” requirement for groundwater takings registered in the EASR.

A water taking report should also be prepared by a QP, and is to include an assessment of the potential effects of the water taking and the required mitigation measures to offset impacts should they occur. The addition of the water taking report requirement to the final version of the regulations appears to have been in response to comments received on the draft regulations, including those submitted by the APGO Environmental Subcommittee as well as individual hydrogeologists.

What is not included in the new framework are pumping tests. Long term EASR takings of 400,000 L/day, particularly when drawn from a confined aquifer at a single location can generate sizeable drawdown cones. These types of takings maybe well served by a pumping test to evaluate their effects, but project constraints frequently do not allow enough time for a PTTW approval from the MOECC for such testing. As a result hydrogeologists may have to rely on sometimes inadequate, small scale tests to support the water taking report evaluations. This failure to include pumping tests in the new legislation is illogical and handicaps a proper evaluation of impacts. Pumping tests are slated for future regulatory changes, but the timing and drive to make such changes is uncertain.

There are several advantages of registering water takings under the EASR framework. To begin with the EASR framework not only replaces the requirement for PTTW, but also for the Section 53 approval for discharge, meaning it is not necessary to apply for Environmental Compliance Approval (ECA) for the discharge. Furthermore, the approval is instantaneous upon completion of the online form and payment of a \$1,190 fee. This is possible because the MOECC will not review any of the applications. However, during the workshops the MOECC stressed that simply obtaining an EASR does not mean that the work is not subject to other permitting by other agencies, or that it is acceptable that the taking or the discharge have a deleterious environmental effect. Where a deleterious environmental effect occurs or complaints by the public are

received, the activity is still subject to investigations and potential penalties under the Environmental Protection Act and other legislation. In this way, consultants acting as a QP for EASR applications will need to carefully consider the liabilities that they are accepting when completing discharge plans or water taking reports.

The series of workshops held in March and April by the MOECC included only an overview of the changes and the EASR application process. However, the MOECC is in the process of developing guidelines that further explain the changes. Further refinements should be expected as the process comes into effect.

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