Water Act Regulations

Proposed Water Withdrawal Regulations
Plain Language Summary

INTRODUCTION

The Prince Edward Island *Water Act* was passed in the legislature in the fall of 2017. The *Water Act* demonstrates the Province's commitment to protecting the Island's water resources and the ecosystems that support them. To operationalize the Act, there are three sets of regulations that are initially required to replace the previous regulations of the *Environmental Protection Act (EPA)* as listed below.

- **Well Construction Regulations**
- **Water Supply and Wastewater Treatment Regulations**
- **Water Withdrawal Regulations**

This document summarizes the proposed Water Withdrawal Regulations only. The other two regulations are discussed in separate documents.

The purpose of the Water Withdrawal Regulations is to control the extraction and use of water for the best benefit of Islanders while protecting the water required for healthy aquatic habitat and wildlife. The control must strike a balance on achieving these two goals while meeting the goals and objectives of the parent *Water Act*. The regulations must not be any more onerous or bureaucratic than need be yet it must still be effective at protecting water resources. They must also describe the factors to be considered when authorizing water extraction.

Highlights of the Water Withdrawal Regulations

- Wells are now categorized as domestic, low capacity and high capacity. The criteria for the definition of high capacity wells and the requirement for an approval is unchanged, but low capacity wells are a new category, and will require approvals for wells not previously regulated by the Province. Domestic wells for residential use will not require permits (although a licensed well driller is required under the Well Construction Regulations).
    - The approval process for low capacity wells will be less demanding than that for high capacity wells.
    - The combined impact on the environment of multiple low capacity wells located in close proximity and connected together will be assessed.
- When making decisions, government policy will be required to consider:
    - Limitations needed in times of scarcity,
    - Priorities for water use,
    - Cumulative withdrawals within a watershed,
    - Limiting withdrawals to sustainable amounts, and
    - Protecting stream flows for aquatic life.
- Water withdrawal policy for high capacity well use will be informed by research-based scientific advice and adjusted as appropriate.

- The existing moratorium on new high capacity wells for agricultural irrigation will be replaced by regulatory prohibition.

- Fees for acquiring and renewing water withdrawal permits will be introduced.

- Approvals for water withdrawal will now have expiry dates, with renewal being dependent on a review of factors such as impact on the environment and the latest policy on withdrawal.

- A procedure for transfer of permits, amendments or revocation of permits is established.

SECTION 1 - INTERPRETATION AND APPLICATION
Section 1 sets out the definitions for the terms used within the regulations. Low capacity wells are defined as those used to withdraw more 25 m^3 per day, but less than the 345 m^3 per day (equivalent to 50 imperial gallons per minute) threshold for high capacity wells.

SECTION 2 – Groundwater Exploration Permits
Groundwater Exploration Permits are required prior to drilling or reconstructing a high capacity well. They are not required for either domestic wells or low capacity wells.

The purpose of requiring exploration permits for high capacity wells is to ensure that the wells can operate to meet the goals of the owner and that they will not have an undue impact on groundwater, watercourses and other wells.

This section of the regulations explains how and who can acquire a Groundwater Exploration Permit and what conditions may be attached to the approval. Holding such a permit is not guarantee that a Water Withdrawal Permit will be issued for the well later. The permit will require assessing possible effects of any water withdrawals on water resources and associated human or animal health or on the aquatic ecosystem. Depending upon the expected impact, a detailed assessment including groundwater modelling may also be required.

Issuance of Groundwater Exploration Permits
A Groundwater Exploration Permit will only be issued if the high capacity well is

(a) not expected to an unacceptable adverse effect;
(b) not for the purpose of agricultural irrigation; and
(c) consistent with policies and objectives for managing water resources in the watershed.

Factors determining unacceptable adverse effect
Factors to be considered in deciding whether the drilling, construction or reconstruction of a high capacity well will have an unacceptable adverse effect, include the

(a) availability of water in the watershed;
(b) proximity of the well to other wells, watercourses and wetlands;
(c) potential impact of the well on the watershed, on other wells, watercourses and wetlands in the watershed; and
(d) potential for salt water intrusion into the well.

A groundwater exploration permit is valid for a period of one year. A single extension may be granted for a further year.

SECTIONS 3, 4 and 5 – WATER WITHDRAWAL PERMIT

A Water Withdrawal Permit is required when more than 25 cubic metres of water is being withdrawn per day from a well, watercourse or wetland. A permit is also required if a total of more than 25 cubic metres of water is withdrawn per day from more than one well, watercourse or wetland site, or a combination and the

(a) water is directed to a single water supply network or water storage;
(b) wells or withdrawal points are within a radius of 15 metres of each other; or
(c) effect of the withdrawals is similar to that if it were to occur from a single well.

Water Withdrawal Permits for the purpose of agricultural irrigation **may not be issued** for any high capacity well that is constructed after the regulations come into force. This extends the moratorium on high capacity wells established in 2002 for new high capacity wells for agricultural irrigation. The *Water Act* also prohibits the withdrawal of water for the purpose of exporting from the province.

Sections 3, 4 and 5 of the regulations detail the considerations that must be taken into account when assessing an application for a Water Withdrawal Permit including any further requirements for providing tests, data and reports.

Exceptions

A Water Withdrawal Permit is not required to withdraw water from a well or watercourse if the water is used to:

(a) fill a swimming pool not exceeding 100 cubic metres in volume;
(b) fill a mobile container for use in the application of crop protectants;
(c) fill a mobile container for use in dust suppression on roads; or
(d) remediate contaminated water (when approved by government).

If a watercourse is used as the water source for these exceptions, it must be at least 1 metre wide.

Application for Water Withdrawal Permit

Landowners, or a person with written permission from the landowner, may apply for a Water Withdrawal Permit to withdraw water from a well, watercourse or wetland. A permit may be issued provided that the water withdrawal will:

(a) not have unacceptable adverse effects on human health or the aquatic environment; and
(b) is consistent with the policies and objectives of government for the management of water resources in the watershed.

In addition, a Water Withdrawal Permit cannot be issued for agricultural irrigation unless it replaces an already existing permit. This prohibition continues the previous moratorium on new high capacity wells for agricultural irrigation.

Factors to be considered in assessing an application

An applicant may be required to conduct tests, and collect data in support of their application. When assessing an application, some factors that must be considered are the,

(a) cumulative effect of water withdrawal from all sources within the watershed;
(b) effect on fish health;
(c) availability of water for existing permits and the application;
(d) effect on withdrawal by other users of water;
(e) effect on the water flow on watercourses; and
(f) consistency with the goals of water management area plans.

Priority of uses

Where there is not enough water in a watershed to meet human needs and still support the aquatic environment, the allocation of water available for human use is to be prioritized in the following descending order of importance:

(a) fire suppression;
(b) domestic water use by household wells or through municipal water supply systems;
(c) industrial, commercial or other water uses prioritized by how much the use serves the public interest.

SECTIONS 6, 7 and 8 – TERMS OF PERMIT ISSUANCE, RENEWAL and REVOCATION

These sections explain the terms for issuing, renewing and revoking a Water Withdrawal Permit. A permit may be valid for a period of **up to five years**. Permits cease to be valid when

(a) there is a change in ownership of the land; or
(b) where the holder of the permit is not the owner of the land and the owner of the land rescinds their permission.

The holder of a Water Withdrawal Permit may apply for its renewal within the 60 days before or following the expiry of the permit. The applicant may be required to conduct tests and collect data as part of the renewal process.

Renewal of a Water Withdrawal Permit normally will be approved if the withdrawal of water is up to the same maximum rate and amount, and for the same purpose as before and will not cause an unacceptable adverse effect. It must also match the policies and objectives for managing water resources in the watershed. Permit holders are required to provide data collected from water measuring devices upon request by government.

SECTIONS 9 and 10 –AMENDING OR TRANSFERRING A PERMIT

The holder of a Water Withdrawal Permit may apply to amend a permit to alter the maximum rate and amount of water to be withdrawn, or alter the purpose for which the water may be used. The applicant may be required to conduct tests, collect data or obtain information in support of the request. An approval to amend a permit may be granted providing the changes will not have an unacceptable adverse effect and are consistent with the policies and objectives for managing water resources in the watershed. A Water Withdrawal Permit may not be amended to authorize the withdrawal of water from a high capacity well for the purpose of agricultural irrigation.

Section 10 outlines the rules for transferring a Water Withdrawal Permit to another person. This process is new and is designed to make the process of changing a permit holder easier than under previous regulations. The transferee must agree to accept the transfer and abide by the terms and conditions of the original permit, including the expiry date, unless a change is authorised.

SECTION 11 - REASONS FOR DECISION and RIGHT TO APPEAL

The notice of and reasons for a decision regarding a Groundwater Exploration Permit or Water Withdrawal Permit will be provided to an applicant or permit holder within 14 days of the decision.

An applicant or the holder of a Groundwater Exploration Permit or Water Withdrawal Permit may appeal any decision made in respect of their permit.

SECTIONS 12 and 13 – TRANSITIONAL ARRANGEMENTS and COMMENCEMENT

Where water is already being withdrawn from a well, watercourse or wetland in a way that does not comply with the Act, regulations, or current government policies and objectives, the permit holder may be required to submit a plan indicating how they will bring their water withdrawal practices into compliance before expiry of their permit, or within five years of the Act coming into force, whichever occurs first. Section 13 indicates when the regulations come into force.

SCHEDULE

The fees payable for permits, their renewals and extensions are provided in the schedule located after Section 13. Fees may be pro-rated when the permit is valid for less than 5 years. Fees are established to partially pay for the cost of administering permits, monitoring compliance and monitoring of the environment in relation to potential impacts. Fees for permits that withdraw more water are higher due to the greater amount of work of assessing applications. There are no fees for the water itself that is being withdrawn.