Safeguarding and Sustaining Ontario's Water Act, 2007

EXPLANATORY NOTE

The Bill amends the *Ontario Water Resources Act* and makes changes to related statutes. Some of the features of the Bill are as follows:

1. Amendments are made to the *Ontario Water Resources Act* to provide for the implementation in Ontario of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, which was agreed to on December 13, 2005 by the Premiers of Ontario and Quebec and the Governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin. Complementary amendments are made to the *Safe Drinking Water Act, 2002.* The unproclaimed *Water Transfer Control Act* is repealed.

2. The *Ontario Water Resources Act* is also amended to authorize regulations requiring the payment of charges to promote the conservation, protection and management of Ontario's waters and their efficient and sustainable use, or to recover costs the Government of Ontario incurs for that purpose in the administration of the *Ontario Water Resources Act* or any other Act.

3. Other amendments to the *Ontario Water Resources Act* modernize the water taking permits system and make consequential changes.

Bill **2007**

An Act to amend the Ontario Water Resources Act to safeguard and sustain Ontario's water, to make related amendments to the Safe Drinking Water Act, 2002 and to repeal the Water Transfer Control Act

Note: This Act amends or repeals more than one Act. For the legislative history of these Acts, see Public Statutes – Detailed Legislative History on www.e-Laws.gov.on.ca.

Preamble

The conservation, protection and management of Ontario's waters and their efficient and sustainable use are matters of vital importance to the people of Ontario. The people of other jurisdictions that depend on the waters of the Great Lakes-St. Lawrence River Basin share similar concerns. With this in mind, the Premiers of Ontario and Quebec and the Governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin signed the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement in December 2005. The Agreement recognizes, among other matters, that,

(a) the waters of the Basin are a shared public treasure and the parties to the Agreement as stewards have a shared duty to protect, conserve and manage these renewable but finite waters;

(b) managing to conserve and restore these waters will improve them as well as the water dependent natural resources of the Basin; and

(c) continued sustainable, accessible and adequate water supplies for the people and economy of the Basin are of vital importance.

In addition, the conservation, protection and management of water and the efficient and sustainable use of water would be promoted by the imposition of regulatory charges.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Ontario Water Resources Act

1. (1) The *Ontario Water Resources Act* is amended by adding the following section:

Purpose

0.1 The purpose of this Act is to provide for the conservation, protection and management of Ontario's waters and for their efficient and sustainable use, in order to promote Ontario's long-term environmental, social and economic well-being.

(2) Subsection 1 (1) of the Act is amended by adding the following definitions:

"Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005" means the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement dated December 13, 2005 and signed by the Premiers of Ontario and Quebec and the Governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin; ("Entente de 2005 sur les ressources en eaux durables du bassin des Grands Lacs et du fleuve Saint-Laurent")

"holder", when used in reference to a licence, permit or approval, means a person who is bound by the licence, permit or approval; ("titulaire")

"well" means a hole made in the ground to locate or to obtain ground water or to test or to obtain information in respect of ground water or an aquifer, and includes a spring around or in which works are made or equipment is installed for collection or transmission of water and that is or is likely to be used as a source of water for human consumption. ("puits")

(3) Section 1 of the Act is amended by adding the following subsections:

Consumptive use

(6) For the purposes of this Act, if water is taken from a water basin described in subsection 34.3 (1), the portion that, as a result of evaporation, incorporation in a product or any other process, is not returned to that basin is lost through consumptive use.

Water taking

(7) For the purposes of this Act, a reference to water taking includes water taking by means of,

(a) a well;

(b) an intake from a surface source of supply;

(c) a structure or works constructed for the diversion or storage of water; or

(d) any combination of the means referred to in clauses (a), (b) and (c).

(4) Subsections 13 (8), (9), (10) and (11) of the Act are repealed.

(5) The Act is amended by adding the following section:

Index record re instruments

13.1 (1) The Ministry shall maintain an alphabetical index record of the names of all persons to whom instruments are directed under this Act.

Expiry, etc.

(2) When an instrument has expired or is revoked or set aside, the Ministry shall note that fact in the index record.

Search of index record

(3) The Ministry shall, on any person's request,

(a) make a search of the index record and inform the person making the request whether the name of a particular person appears in the index record; and

(b) permit inspection of any instrument directed to that person.

Definition

(4) In this section,

"instrument" means an approval, permit, licence, direction, notice, order or report.

(6) Section 34 of the Act is repealed and the following substituted:

Water taking

34. (1) Despite any other Act, a person shall not take more than 50,000 litres of water on any day by any means except in accordance with a permit issued under section 34.1.

Exceptions

(2) Subsection (1) does not apply to the following takings of water:

1. The taking of water for domestic purposes, other than by a municipal drinking-water system within the meaning of the *Safe Drinking Water Act, 2002* or by a company public utility, as long as the amount of water taken,

    i. is always less than 379,000 litres, or the lower amount that is prescribed by the regulations, per day, or

    ii. if a regulation is made prescribing the manner of calculating average amounts of water, is less than an average of 379,000 litres, or the lower amount that is prescribed by the regulations, per day.

2. The taking of water by any person for the watering of livestock or poultry, as long as water is not taken into storage for that purpose and the amount of water taken,

i. is always less than 379,000 litres per day, or

ii. if a regulation is made prescribing the manner of calculating average amounts of water, is less than an average of 379,000 litres per day.

3. The taking of water for firefighting or other emergency purposes.

Additional exceptions

(3) Subsection (1) does not apply to the following takings of water unless they are prescribed by the regulations:

1. A taking of water by means of a well that was constructed before March 30, 1961 and was not reconstructed, improved, deepened, altered or replaced on or after that date.

2. A taking of water by means of an intake from a surface source of supply, if the intake was installed before March 30, 1961 and was not reinstalled, reconstructed, improved, extended, altered or replaced on or after that date.

3. A taking of water by means of a structure or works for the diversion or storage of water, if the structure or works was constructed before March 30, 1961 and was not reconstructed, improved, extended, altered or replaced on or after that date.

4. A taking of water by any combination of the means referred to in paragraphs 1, 2 and 3.

Exception, application for permit

(4) When a person takes water by a means described in subsection (3) and the water taking is prescribed by the regulations, subsection (1) does not apply to the person if the person has applied for a permit under section 34.1 and the application has not yet been finally disposed of.

Director's prohibition

(5) Despite any other Act and despite subsections (1), (2) and (3) and any regulation made under this Act, the Director may, by order, prohibit any person from taking water by any means except in accordance with a permit issued under section 34.1, if the Director is of the opinion that the prohibition is necessary for the purpose of this Act.

Transition

(6) A permit issued under this section before the coming into force of subsection 1 (6) of the *Safeguarding and Sustaining Ontario's Water Act, 2007* is deemed, for the purpose of subsection (1), to have been issued under section 34.1.

Permits

Issuance or renewal

34.1 (1) The Director may, on application, issue or renew a permit for the purpose of section 34.

Amendment or revocation

(2) The Director may, on application or on his or her own initiative, amend or revoke a permit.

Expiry

(3) A permit expires on the date set out in the permit.

Application

(4) An application to the Director for the issuance, renewal, amendment or revocation of a permit shall be made in a form and in a manner approved by the Director, shall contain any information that is required by the Director, and shall be accompanied by any fee established in respect of the application under section 96.

Same

(5) Without limiting the generality of subsection (4), the Director may require the applicant to,

(a) undertake tests or studies specified by the Director relating to,

(i) the water taking,

(ii) any term or condition to which the permit may be subject, or

(iii) any other matter that the Director considers advisable for the purpose of this Act;

(b) submit to the Director,

(i) the results of tests or studies conducted under clause (a),

(ii) any plans, specifications, reports and other information and documents relating to the matters listed in subclauses (a) (i), (ii) and (iii);

(c) engage a person with qualifications specified by the Director to certify the accuracy of a test, study, plan, specification, report or other information or document described in clause (a) or (b);

(d) consult with other persons or bodies about the application and report to the Director on the results of the consultation.

Delay in deciding application for renewal

(6) If an application for the renewal of a permit is made at least 90 days before it expires or within the shorter period that is approved in writing by the Director, and the Director has not made a decision to renew the permit or to refuse the renewal by the expiry date, the permit is deemed to continue in force until the earlier of the following dates:

1. The date the Director makes a decision to renew the permit or to refuse the renewal.

2. The first anniversary of the expiry date.

Prescribed terms and conditions

(7) A permit is subject to the terms and conditions that are prescribed by the regulations.

Terms and conditions in permit

(8) A permit is subject to any other terms and conditions that the Director considers appropriate and that are specified in the permit.

Same

(9) Without limiting the generality of subsection (8), the Director may include terms and conditions in a permit,

(a) limiting the amount of water that may be taken under the permit;

(b) limiting the rate at which water may be taken under the permit;

(c) governing the manner in which water may be taken under the permit;

(d) governing the return, after use, of water taken under the permit;

(e) governing the monitoring and reporting of,

(i) the amount of water taken under the permit, including amounts of water that are returned after use,

(ii) the rate at which water is taken under the permit,

(iii) the use of water taken under the permit, and

(iv) the effects of water takings under the permit, including their effects on water quantity and quality;

(f) governing the keeping of records with respect to the matters that are monitored and reported as described in clause (e);

(g) requiring reports referred to in clause (e) to be made to the Director, to other persons or both;

(h) governing the use and conservation of water taken under the permit, including requiring the holder,

(i) to implement specified measures to promote the efficient use of the water or reduce the consumptive use of the water,

(ii) to ensure that an audit is conducted by a specified person or body in order to evaluate whether the water is being used efficiently, and

(iii) to provide the results of the audit to the Director, to other persons or both;

(i) requiring the holder to restrict the amount of water taken under the permit, in the circumstances specified in the permit;

(j) requiring the holder to implement specified measures,

(i) to prevent the water taking under the permit from causing interference with other water takings, and

(ii) to remedy any interference with other water takings that is caused by the water taking under the permit; and

(k) requiring the holder to use specified laboratories or testing methods.

Same

(10) Without limiting the generality of clause (9) (d), a term or condition governing the return of water may,

(a) govern the manner in which water may be returned, the quantity of water that must be returned and the quality of water that may be returned; and

(b) govern the location or area to which water may be returned, including restricting the amount that may be returned to a location or area different from the one from which it was taken.

Not transferable

(11) A permit is not transferable without the Director's written consent.

(7) Section 34.1 of the Act, as enacted by subsection (6), is amended by adding the following subsections:

Applications re certain large transfers referred to Minister

(12) The Director shall refer an application for the issuance or amendment of a permit to the Minister if,

(a) in the absence of paragraph 3 of subsection 34.6 (2), subsection 34.6 (1) would prohibit the issuance or amendment of the permit; and

(b) the applicant seeks to rely on paragraph 3 of subsection 34.6 (2).

Minister to determine application

(13) The Minister shall determine an application that is referred to him or her under subsection (12) and, for that purpose, a reference to the Director in this section shall be read as a reference to the Minister.

Procedure applicable to Minister's decisions

(14) If an application is referred to the Minister under subsection (12),

(a) the Minister shall ensure that notice of the application is given to the Great Lakes-St. Lawrence River Water Resources Regional Body in accordance with Chapter 5 of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005;

(b) the Minister shall not make a decision on the application until he or she has given the body referred to in clause (a) a reasonable opportunity to conduct a review of the application under Chapter 5 of the agreement referred to in clause (a); and

(c) the Minister shall, before making a decision on the application, consider any declaration of finding issued with respect to the application under Chapter 5 of the agreement referred to in clause (a).

(8) The Act is amended by adding the following sections:

Provincial officer's order

34.2 (1) A provincial officer may issue an order under this section to any person if the provincial officer reasonably believes that,

(a) the person is taking water; and

(b) the means used to take the water has the capacity to take water in an amount exceeding 50,000 litres per day.

Information to be included in order

(2) The order shall,

(a) briefly describe the reasons for the order and the circumstances on which the reasons are based; and

(b) state that a review of the order may be requested in accordance with subsection (4).

What the order may require

(3) The order may require the person to whom it is directed,

(a) to monitor and record the amount of water taken each day, for a period specified in the order; and

(b) to submit to a provincial officer, within the time specified in the order, a report setting out the amounts recorded.

Amendment, revocation and review

(4) Sections 16.3 and 16.4 apply, with necessary modifications, to an order under subsection (1).

Water transfers: Great Lakes-St. Lawrence River, Nelson and Hudson Bay Basins

34.3 (1) For the purposes of this Act, Ontario is divided into the following three water basins:

1. The Great Lakes-St. Lawrence River Basin, which consists of,

    i. the part of Ontario the water of which drains into the Great Lakes or the St. Lawrence River, including the parts of the Great Lakes and of the St. Lawrence River that are within Ontario, or

    ii. if the boundaries of the area described by subparagraph i are described more specifically by the regulations, the area within those boundaries.

2. The Nelson Basin, which consists of,

    i. the part of Ontario the water of which drains into the Nelson River, or

    ii. if the boundaries of the area described by subparagraph i are described more specifically by the regulations, the area within those boundaries.

3. The Hudson Bay Basin, which consists of,

    i. the part of Ontario, not included in the Nelson Basin, the water of which drains into Hudson Bay or James Bay, or

ii. if the boundaries of the area described by subparagraph i are described more specifically by the regulations, the area within those boundaries.

Prohibition

(2) A person shall not take water from a water basin described in subsection (1) if the person will cause or permit the water to be transferred out of the basin.

Exceptions

(3) Subsection (2) does not apply if the transfer of water out of the water basin is one of the following:

1. A transfer of water that is in a container having a volume of 20 litres or less.

2. A transfer of water that occurs when a product other than water is manufactured or produced in the water basin, using water from that basin, and the product is then transferred out of that basin.

3. A transfer of water that is necessary for the operation of a vehicle, vessel or other form of transport that the water is transferred in, including water that is for the use of people, livestock or poultry in or on the vehicle, vessel or other form of transport.

4. A transfer of water for the purpose of firefighting or other emergency purposes.

5. A transfer of water by an undertaking that commenced before January 1, 1998, if the amount of water transferred out of the water basin in any calendar year after December 31, 1997 does not exceed the highest amount of water transferred out of the basin by the undertaking in any calendar year after December 31, 1960 and before January 1, 1998.

6. A transfer of water pursuant to the order of the Lieutenant Governor in Council dated October 2, 1913 respecting the Greater Winnipeg Water District.

No permit

(4) A permit shall not be issued, amended or renewed under section 34 if water taken under the permit is to be taken from a water basin described in subsection (1) and transferred out of the basin contrary to subsection (2).

Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005

34.4 (1) The Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005 is recognized as one of the means by which the waters of the Great Lakes-St. Lawrence River Basin are conserved, protected and managed.

Agreement's recognition of precautionary principle

(2) The agreement referred to in subsection (1) recognizes that, where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(9) Subsection 34.3 (4) of the Act, as enacted by subsection (8), is amended by striking out "section 34" and substituting "section 34.1".

(10) The Act is amended by adding the following sections:

Definitions, transfers between Great Lakes watersheds

34.5 (1) In this section and in sections 34.6 to 34.8,

"effective date" means the day subsection 1 (10) of the *Safeguarding and Sustaining Ontario's Water Act, 2007* comes into force; ("date d'entrée en vigueur")

"Great Lakes watershed" means a watershed listed in subsection (2); ("bassin hydrographique des Grands Lacs")

"increased transfer" means a transfer that would arise from an existing water taking where water is currently being transferred and an additional amount of water would be transferred; ("transfert augmenté")

"new or increased transfer amount" means,

(a) in the case of a new transfer, the amount of water that would be transferred, and

(b) in the case of an increased transfer, the additional amount of water that would be transferred; ("quantité d'eau du nouveau transfert ou du transfert augmenté")

"new transfer" means a transfer that would arise from,

(a) a new water taking, or

(b) an existing water taking where no water is currently being transferred; ("nouveau transfert")

"related transferor", when used with reference to a permit, means,

(a) a person who does not take water under the permit but transfers water that has been taken under the permit, or

(b) a person who,

(i) does not take water under the permit but distributes water that,

(A) has been taken under the permit, and

(B) has been or will be transferred, and

(ii) belongs to a class of persons that is prescribed by the regulations; ("auteur de transfert secondaire")

"threshold amount" means 379,000 litres or more of water on any day or, if a regulation is made prescribing the manner of calculating average amounts of water, an average of 379,000 litres or more of water per day; ("quantité seuil")

"transfer" means a transfer of water from one Great Lakes watershed to another. ("transfert")

Great Lakes watersheds

(2) For the purposes of this section and sections 34.6 to 34.8, the Great Lakes-St. Lawrence River Basin is divided into the following five watersheds, each of which consists of the area described by the regulations:

1. The Lake Superior watershed.

2. The Lake Huron watershed.

3. The Lake Erie watershed.

4. The Lake Ontario watershed.

5. The St. Lawrence River watershed.

Water transfers: Great Lakes watersheds

34.6 (1) A permit shall not be issued or amended under section 34.1 so as to authorize the taking of water from a Great Lakes watershed if,

(a) any of the water would be transferred; and

(b) the new or increased transfer amount would be the threshold amount.

Exceptions

(2) Subsection (1) does not apply to the following transfers:

1. A transfer that satisfies the following criteria:

i. The portion of the new or increased transfer amount that is lost through consumptive use,

A. is always less than 19 million litres, or the lower amount prescribed by the regulations, per day, or

B. if a regulation is made prescribing the manner of calculating average amounts of water, is less than an average of 19 million litres, or the lower amount prescribed by the regulations, per day.

ii. The water is taken by the operating authority of a municipal drinking-water system within the meaning of the *Safe Drinking Water Act, 2002* and the system serves a major residential development within the meaning of that Act.

iii. The criteria described in paragraphs 1 to 7 of subsection (3) are satisfied.

2. A transfer that satisfies the following criteria:

i. The portion of the new or increased transfer amount that is lost through consumptive use,

A. is always less than 19 million litres, or the lower amount prescribed by the regulations, per day, or

B. if a regulation is made prescribing the manner of calculating average amounts of water, is less than an average of 19 million litres, or the lower amount prescribed by the regulations, per day.

ii. The water is taken by the operating authority of a municipal drinking-water system within the meaning of the *Safe Drinking Water Act, 2002* or by any other person.

iii. It has been demonstrated that conservation of existing water supplies is not a feasible, environmentally sound and cost effective alternative to,

A. the transfer, in the case of a new transfer, or

B. the transfer of the additional amount, in the case of an increased transfer.

iv. There are no other feasible, environmentally sound and cost effective alternatives to,

A. the transfer, in the case of a new transfer, or

B. the transfer of the additional amount, in the case of an increased transfer.

regional review

v. The criterion described in paragraph 1 of subsection (3) is satisfied, or it is not feasible, environmentally sound or cost effective to satisfy that criterion.

vi. The criteria described in paragraphs 2 to 7 of subsection (3) are satisfied.

vii. Notice of the application for the permit or amendment has been given to the Province of Quebec, the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania in accordance with the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005.

3. A transfer that satisfies the following criteria:

i. The portion of the new or increased transfer amount that is lost through consumptive use,

A. is at least 19 million litres, or the lower amount prescribed by the regulations, on any day, or

B. if a regulation is made prescribing the manner of calculating average amounts of water, is at least an average of 19 million litres, or the lower amount prescribed by the regulations, per day.

ii. It has been demonstrated that conservation of existing water supplies is not a feasible, environmentally sound and cost effective alternative to,

A. the transfer, in the case of a new transfer, or

B. the transfer of the additional amount, in the case of an increased transfer.

iii. There are no other feasible, environmentally sound and cost effective alternatives to,

A. the transfer, in the case of a new transfer, or

B. the transfer of the additional amount, in the case of an increased transfer.

iv. The criteria described in paragraphs 1 to 7 of subsection (3) are satisfied.

v. The requirements of subsection 34.1 (14) have been complied with.

Criteria

(3) The criteria referred to in subparagraphs 1 iii, 2 v and vi and 3 iv of subsection (2) are:

1. The new or increased transfer amount is returned, either naturally or after use, to the same Great Lakes watershed from which it was taken, except for an amount prescribed by the regulations that may be lost through consumptive use.

2. The efficient use and conservation of existing water supplies cannot reasonably avoid,

    i. the transfer, in the case of a new transfer, or

    ii. the transfer of the additional amount, in the case of an increased transfer.

3. The new or increased transfer amount is reasonable, given the purposes for which,

    i. the transfer is done, in the case of a new transfer, or

    ii. the transfer of the additional amount is done, in the case of an increased transfer.

4. The transfer, in the case of a new transfer, or the transfer of the additional amount, in the case of an increased transfer, is implemented so as to ensure that it does not result in any significant individual or cumulative adverse impacts on the quantity or quality of the waters, or the water-dependent natural resources, of the Great Lakes-St. Lawrence River Basin, considering the potential cumulative impacts of any precedent-setting consequences associated with the transfer or the transfer of the additional amount, as the case may be.

5. The transfer, in the case of a new transfer, or the transfer of the additional amount, in the case of an increased transfer, is implemented so as to incorporate feasible, environmentally sound and cost effective water conservation measures to minimize the taking of water and losses of water through consumptive use.

6. The transfer is implemented so as to ensure that it complies with,

    i. the Boundary Waters Treaty of 1909,

    ii. the *International Boundary Waters Treaty Act* (Canada), and

    iii. any other treaty, agreement or law that is prescribed by the regulations.

7. The transfer, in the case of a new transfer, or the transfer of the additional amount, in the case of an increased transfer, is implemented so as to ensure that it complies with any other criteria that are prescribed by the regulations for the purpose of implementing Article 209 (Amendments to the Standard and Exception Standard and Periodic Assessment of Cumulative Impacts) of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005, including criteria relating to climate change or other significant threats to the Great Lakes-St. Lawrence River Basin.

Terms and conditions re water transfer
Statutory terms and conditions

34.7 (1) If a permit issued under section 34.1 authorizes the taking of water from a Great Lakes watershed and any of the water taken is transferred or is to be transferred, the permit is subject to the following terms and conditions, whether they are specified in the permit or not:

1. The person who takes water and any related transferor shall not cause or permit a new transfer or increased transfer where the new or increased transfer amount is the threshold amount, unless a holder first obtains an amendment to the permit or a new permit under section 34.1 to authorize the new transfer or increased transfer.

2. Each holder shall comply with any other terms and conditions that are,

    i. prescribed by the regulations, and

    ii. directed to the holder.

Terms and conditions in permit

(2) If a permit issued under section 34.1 authorizes the taking of water from a Great Lakes watershed and any of the water taken is transferred or is to be transferred, the Director may include terms and conditions in the permit,

(a) governing the transfer of water, including limiting the amount of water that may be transferred;

(b) governing the return, after use, of transferred water, including,

    (i) governing the manner in which the water may be returned,

    (ii) governing the quality of the water that may be returned,

    (iii) prescribing a minimum amount of water that must be returned,

(iv) governing the location or area to which the water may be returned, including restricting the amount of water that may be returned to a different location or area from the one where the water was taken;

(c) governing monitoring and reporting of,

(i) the amount of water that is transferred, including the amount that is returned after use,

(ii) the rate at which water is transferred,

(iii) the use and conservation of transferred water, and

(iv) the effects of water transfers, including their effects on water quantity and quality;

(d) requiring that reports described in clause (c) be made to the Director, to other persons or to both;

(e) governing the keeping of records with respect to the matters that are monitored and reported as described in clause (c);

(f) governing the use and conservation of transferred water, including requiring the holder,

(i) to implement specified measures to promote the efficient use of the water or reduce the consumptive use of the water, and

(ii) to ensure that an audit is conducted by a specified person or body in order to evaluate whether the water is being used efficiently; and

(g) governing any other matter as the Director considers appropriate to ensure that the transfer of water complies with this section or section 34.6.

Same

(3) A term or condition described in subsection (2) may be directed to the person taking the water, to any related transferor, or to both.

Application of s. 34.1 re related transferors

(4) When a term or condition described in subsection (2) and directed to a related transferor is included in a permit, the related transferor is entitled to make applications under section 34.1 in relation to the permit.

Application of subs. (6)

(5) Subsection (6) applies in respect of a taking of water that,

(a) is described in subsection 34 (3);

(b) is from a Great Lakes watershed; and

(c) does not require a permit under section 34.

Prohibition, certain transfers

(6) On and after the effective date, a person who takes water by a means described in subsection (5) shall not cause or permit a new transfer or increased transfer where the new or increased transfer amount is the threshold amount, unless the person who takes the water first obtains a permit under section 34.1 to authorize the new transfer or increased transfer.

Exceptions

(7) Subsections (1) and (6) and subsection 34.6 (1) do not apply to the following transfers:

1. A transfer of water that is in a container having a volume of 20 litres or less.

2. A transfer of water that occurs when a product other than water is manufactured or produced in the Great Lakes watershed, using water from that watershed, and the product is then transferred.

3. A transfer of water that is necessary for the operation of a vehicle, vessel or other form of transport that the water is transferred in, including water that is for the use of people, livestock or poultry in or on the vehicle, vessel or other form of transport.

4. A transfer of water for the purpose of firefighting or other emergency purposes.

Amendment of related documents

(8) If a permit is issued or amended under section 34.1 so as to authorize the transfer of water and the transferred amount is the threshold amount, the Director may amend a document mentioned in subsection (9), for one or both of the following purposes:

1. To ensure that the document is consistent with the terms and conditions in the permit.

2. To ensure that the transfer satisfies one or more of the criteria described in subsection 34.6 (2) or (3).

Same

(9) Subsection (8) applies with respect to the following documents:

1. An approval granted under section 53 relating to a sewage works that returns the transferred water after use.

2. An approval, drinking-water works permit or municipal drinking-water licence issued under Part V of the *Safe Drinking Water Act, 2002* that relates to a drinking-water system that transfers water.

3. A document that is prescribed by the regulations.

Conflict

(10) If there is a conflict between a term or condition of a document referred to in subsection (9) and a term or condition included in a permit under subsection (2), the term or condition that provides the greatest protection to the quality and quantity of water prevails.

Transition — deemed current transfers

34.8 (1) The Director may, on the request of a holder and in accordance with the regulations, deem the holder to currently be transferring an amount of water specified by the Director for the purposes of sections 34.5 to 34.7.

Deadline for request

(2) Subsection (1) applies only if the request is made before the second anniversary of the day subsection 1 (10) of the *Safeguarding and Sustaining Ontario's Water Act, 2007* comes into force.

Information

(3) If a request is made under subsection (1), the holder shall submit with the request any information prescribed by the regulations and any additional information specified by the Director.

Reciprocating jurisdictions

34.9 In sections 34.10 and 34.11,

"reciprocating jurisdiction" means any of the following that has been prescribed as a reciprocating jurisdiction by the regulations:

1. The Province of Quebec.

2. The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin.

3. The Commonwealth of Pennsylvania.

Proceedings before the Tribunal
Notice

34.10 (1) The Director shall give written notice of a decision described in subsection (2) to each reciprocating jurisdiction.

Application of subs. (1)

(2) Subsection (1) applies to a decision of the Director under section 34.1 that relates to a taking of water from the Great Lakes-St. Lawrence River Basin if,

(a) one or more criteria described in subsection 34.6 (3) apply to the decision; or

(b) the decision is one that is specified in the regulations made under clause 75 (1.2) (b).

Entitlement to require hearing

(3) Each reciprocating jurisdiction may, by written notice served on the Director and the Tribunal within 15 days after notice is given under subsection (1), require a hearing by the Tribunal.

Extension of time

(4) The Tribunal shall extend the time in which notice may be given under subsection (3) if, in the opinion of the Tribunal, it is just to do so because service of the notice referred to in subsection (1) did not give the reciprocating jurisdiction notice of the decision.

Parties

(5) The parties to the hearing are:

1. The reciprocating jurisdiction that requires the hearing.

2. The Director.

3. The applicant or permit holder to whom the decision under section 34.1 relates.

4. Any other persons specified by the Tribunal.

New hearing

(6) The hearing shall be a new hearing.

Powers of Tribunal

(7) The Tribunal may,

(a) confirm, alter or revoke the decision of the Director that is the subject-matter of the hearing;

(b) by order, direct the Director to take any action that the Tribunal considers he or she should take in accordance with this Act and the regulations; and

(c) for the purposes of clauses (a) and (b), substitute its opinion for that of the Director.

Application of ss. 101, 102 and 102.3

(8) Subject to subsection (9), sections 101, 102 and 102.3 apply, with necessary modifications, with respect to the hearing.

Contents of notice

(9) In addition to the information required by subsection 101 (1), a reciprocating jurisdiction that requires a hearing under this section shall, in the notice requiring the hearing, set out,

(a) the criteria described in subsection 34.6 (3) that should have been satisfied, and the reasons why they should have been satisfied; or

(b) why the decision is one that is specified in the regulations made under clause 75 (1.2) (b).

Judicial review

34.11 When a decision relating to taking water from the Great Lakes-St. Lawrence River Basin is made under section 34.1, each reciprocating jurisdiction has the same standing as the person most directly affected by the decision to bring an application for judicial review under the *Judicial Review Procedure Act,* but only if one of the following conditions is satisfied:

1. The decision is alleged to have contravened subsection 34.3 (4).

2. In the case of a decision made by the Director,

    i. one or more of the criteria set out in subsection 34.6 (3) apply, or

    ii. the decision is one that is specified in the regulations made under clause 75 (1.2) (b).

3. The decision is made by the Minister.

(11) The definition of "well" in subsection 35 (1) of the Act is repealed.

(12) The French version of subsection 53 (1) of the Act is amended by striking out "station de purification de l'eau" and substituting "station d'épuration des eaux d'égout".

(13) Section 75 of the Act is amended by adding the following subsection:

Regulations, water taking, general

(1.1) The Lieutenant Governor in Council may make regulations,

(a) clarifying whether or not an activity is water taking as described in subsection 1 (7) or otherwise constitutes a water taking for the purposes of this Act;

(b) describing more specifically the boundaries of the Great Lakes-St. Lawrence River Basin, the Nelson Basin and the Hudson Bay Basin for the purposes of subsection 34.3 (1);

(c) requiring persons who take or use water, including persons who are not required to obtain a permit under this Act for a water taking,

(i) to monitor and report to the Director on the amounts of water taken or used and the rate at which it is taken or used, and

(ii) to provide to the Director other information that is related to the taking or use, as specified by the Director.

(14) Section 75 of the Act is amended by adding the following subsection:

Regulations, water taking, ss. 34 to 34.4

(1.2) The Lieutenant Governor in Council may make regulations relating to sections 34 to 34.4,

(a) prescribing an amount of water for the purpose of paragraph 1 of subsection 34 (2);

(b) governing the manner in which quantities of water are determined for the purposes of sections 34 to 34.4, including prescribing the manner of calculating average amounts of water;

(c) prescribing takings of water or classes of takings of water for the purposes of subsection 34 (3);

(d) prescribing terms and conditions for the purposes of subsection 34.1 (7).

(15) Subsection 75 (1.2) of the Act, as enacted by subsection (14), is repealed and the following substituted:

Regulations, water taking, ss. 34 to 34.11

(1.2) The Lieutenant Governor in Council may make regulations relating to sections 34 to 34.11,

(a) prescribing an amount of water for the purpose of paragraph 1 of subsection 34 (2);

(b) governing the implementation of the provisions listed in subsection (1.3), prescribing requirements that apply to the Director under section 34.1 for the purpose of implementing those provisions, and specifying which decisions of the Director that are subject to the prescribed requirements are also subject to sections 34.10 and 34.11;

(c) governing the manner in which quantities of water are determined for the purposes of sections 34 to 34.11, including,

(i) prescribing the manner of calculating average amounts of water,

(ii) requiring or authorizing the inclusion, in a quantity of water, of,

(A) quantities of water that were previously transferred from a Great Lakes watershed listed in subsection 34.5 (2) to another Great Lakes watershed listed in that subsection,

(B) quantities of water for which other applications have been made under section 34.1 for permits, or amendments to permits, that would authorize the transfer of water from a Great Lakes watershed listed in subsection 34.5 (2) to another Great Lakes watershed listed in that subsection,

(C) quantities of water that were previously taken from the Great Lakes-St. Lawrence River Basin, or

(D) quantities of water for which other applications have been made under section 34.1 for permits, or amendments to permits, that would authorize the taking of water from the Great Lakes-St. Lawrence River Basin;

(d) prescribing takings of water or classes of takings of water for the purposes of subsection 34 (3);

(e) prescribing terms and conditions for the purposes of subsection 34.1 (7);

(f) prescribing classes of persons for the purpose of subclause (b) (ii) of the definition of "related transferor" in subsection 34.5 (1);

(g) describing the Great Lakes watersheds listed in subsection 34.5 (2);

(h) governing the interpretation of subsections 34.6 (2) and (3) and, for that purpose, defining words and expressions used in those subsections;

(i) governing the determination of the amount of water that may be lost through consumptive use for different classes of water takings;

(j) prescribing an amount for the purpose of paragraph 1 of subsection 34.6 (3), including prescribing different amounts with respect to different classes of water takings;

(k) prescribing a treaty, agreement or law for the purpose of subparagraph 6 iii of subsection 34.6 (3);

(l) prescribing criteria for the purpose of paragraph 7 of subsection 34.6 (3);

(m) prescribing terms and conditions for the purposes of paragraph 2 of subsection 34.7 (1), and directing different terms and conditions to different holders or classes of holders;

(n) prescribing documents for the purposes of paragraph 3 of subsection 34.7 (9);

(o) governing decisions made by the Director under subsection 34.8 (1), including,

(i) prescribing circumstances in which the Director is required or authorized to deem the holder to currently be transferring an amount of water, and

(ii) prescribing methods of determining the amount of water that the holder is deemed to currently be transferring, including methods that take into account paragraph 1 of Article 207 (Applicability) of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005;

(p) prescribing information for the purposes of subsection 34.8 (2);

(q) prescribing reciprocating jurisdictions for the purposes of section 34.9.

Implementation of listed provisions

(1.3) The provisions mentioned in clause (1.2) (b) are Articles 203 (The Decision-Making Standard for Management of Withdrawals and Consumptive Uses), 205 (Proposals Subject to Prior Notice), 209 (Amendments to the Standard and Exception Standard and Periodic Assessment of Cumulative Impacts) and 304 (Water Conservation and Efficiency Program) of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005.

Connecting channels of Great Lakes watersheds

(1.4) A regulation made under clause (1.2) (g) may describe the Great Lakes watersheds so that they overlap to include the upstream and downstream connecting channels of each Great Lake.

(16) Section 75 of the Act is amended by adding the following subsections:

Regulations, water conservation charges

(1.5) The Lieutenant Governor in Council may make regulations establishing and governing charges to promote the conservation, protection and management of Ontario's waters and their efficient and sustainable use, or to recover costs the Government of Ontario incurs for that purpose in the administration of this or any other Act, including,

(a) prescribing the classes of persons who are required to pay the charges;

(b) prescribing methods for determining the amounts of the charges;

(c) prescribing the manner and timing of payment of the charges;

(d) governing the consequences of failing to pay the charges within the required time, including,

(i) requiring the payment of interest and late payment penalties, and prescribing how the amounts of interest and late payment penalties are determined,

(ii) authorizing the Director to suspend, by order, any licence, permit or approval that has been issued to the person under this Act until the charges, and any interest and late payment penalties, are paid,

(iii) authorizing the Director to refuse to issue any licence, permit or approval to the person under this Act until the charges, and any interest and late payment penalties, are paid;

(e) governing the refund of the charges;

(f) governing any other matter necessary for the administration of the charges.

Same

(1.6) A regulation under subsection (1.5) shall not require a person to pay a charge in respect of water unless,

(a) the person uses the water for commercial or industrial purposes; or

(b) the person takes the water, a permit is required under section 34 to take the water, and another person uses the water for commercial or industrial purposes.

(17) Clause 76 (a) of the Act is amended by striking out "licence holder, permit holder, licence, permit" and substituting "licence, permit, approval, holder of a licence, permit or approval".

(18) Subclause 76 (b) (vi) of the Act is repealed and the following substituted:

(vi) the taking, use or transfer of water from any source of supply,

(19) Clause 76 (b) of the Act is amended by adding the following subclause:

(vi.1) the transfer of sewage between Great Lakes watersheds listed in subsection 34.5 (2),

(20) Section 76 of the Act is amended by adding the following clause:

(b.1) requiring the taking of measures to promote the conservation of water, including measures to promote the efficient use of water or reduce the consumptive use of water;

(21) Section 76 of the Act is amended by adding the following clauses:

(f.1) governing applications for the issue, renewal and revocation of approvals, permits and licences;

(f.2) governing the inclusion of terms and conditions in approvals, permits and licences;

(22) Clause 100 (3) (a) of the Act is repealed and the following substituted:

(a) refuses to issue, grant or renew, or cancels, revokes or suspends, a licence, permit or approval;

(23) Clause 100 (3) (e) of the Act is amended by striking out "notice, direction, report or order" and substituting "direction, report or order".

(24) Subsection 100 (3) of the Act is amended by striking out "cancellation or suspension" in the portion after clause (e) and substituting "cancellation, revocation or suspension".

(25) Subsection 100 (3) of the Act is amended by,

(a) striking out "a written copy of the notice, direction, report or order" in the portion after clause (e) and substituting "a written copy of the direction, report or order"; and

(b) striking out "to whom the licence, permit, approval, direction, order, report or notice" in the portion after clause (e) and substituting "to whom the licence, permit, approval, direction, order or report".

(26) Subsection 100 (7) of the Act is repealed and the following substituted:

Notice to municipalities

(7) When the Director makes a direction, report, order or other decision under this Act of a class prescribed by the regulations, the Director shall serve notice of the direction, report, order or other decision, together with written reasons therefor, on the clerk of any local municipality in which there is land on which the direction, report, order or other decision requires something to be done, permits something to be done or prohibits something from being done.

(27) Clause 101 (1) (a) of the Act is amended by striking out "report, notice, term, condition, suspension, revocation or licence" and substituting "report, term, condition, suspension, revocation or licence".

(28) Subsection 101 (2) of the Act is amended by striking out "report, notice, term, condition, suspension, revocation or licence" and substituting "report, term, condition, suspension, revocation or licence".

(29) Subsection 102 (1) of the Act is amended by striking out "report, notice or decision" in the portion before clause (a) and substituting "report or decision".

(30) Subsection 102 (2) of the Act is amended by,

(a) striking out "report, notice or decision" in the portion before clause (a) and substituting "report or decision"; and

(b) striking out "order, report or notice" in clause (a) and substituting "order or report".

(31) Subsection 102 (3) of the Act is amended by striking out "report, notice or decision" in the portion before clause (a) and substituting "report or decision".

(32) The definition of "order" in subsection 104 (1) of the Act is amended by striking out "requirement, report or notice" at the end and substituting "requirement or report".

Safe Drinking Water Act, 2002

2. (1) Subparagraph 2 iv of subsection 32 (5) of the *Safe Drinking Water Act, 2002* is repealed and the following substituted:

iv. proof satisfactory to the Director that a permit to take water has been issued under the *Ontario Water Resources Act* that,

A. authorizes the system to take water, if water will be taken by the system from a raw water supply and the permit is required under the *Ontario Water Resources Act* in order to take the water, and

B. authorizes the system to transfer water between Great Lakes watersheds as defined in section 34.5 of the *Ontario Water Resources Act*, if water will be transferred by the system between Great Lakes watersheds as defined in that section and the permit is required under that Act in order to transfer the water.

(2) Clause 44 (1) (e) of the Act is repealed and the following substituted:

(e) a permit to take water has been issued under the *Ontario Water Resources Act* that,

(i) authorizes the system to take water, if water will be taken by the system from a raw water supply and the permit is required under the *Ontario Water Resources Act* in order to take the water, and

(ii) authorizes the system to transfer water between Great Lakes watersheds as defined in section 34.5 of the *Ontario Water Resources Act*, if water will be transferred by the system between Great Lakes watersheds as defined in that section and the permit is required under that Act in order to transfer the water; and

(3) Clause 47 (f) of the Act is repealed and the following substituted:

(f) a permit to take water has been issued under the *Ontario Water Resources Act* that,

(i) authorizes the system to take water, if water will be taken by the system from a raw water supply and the permit is required under the *Ontario Water Resources Act* in order to take the water, and

(ii) authorizes the system to transfer water between Great Lakes watersheds as defined in section 34.5 of the *Ontario Water Resources Act*, if water will be transferred by the system between Great Lakes watersheds as defined in that section and the permit is required under that Act in order to transfer the water.

(4) Subsection 127 of the Act is amended by adding the following subsection:

Same

(1.1) A decision of a Director to amend a document as described in subsection 34.7 (8) of the *Ontario Water Resources Act* is a reviewable decision for the purposes of this Part.

(5) Subsection 127 (2) of the Act is amended by striking out "Subsection (1) does not apply" at the beginning and substituting "Subsections (1) and (1.1) do not apply".

Water Transfer Control Act

3. The *Water Transfer Control Act* is repealed.

Commencement

4. (1) Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

(2) Subsections 1 (6), (7), (9), (10), (14), (15), (16), (19), (20), (23) and (25) to (32) and section 2 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

5. The short title of this Act is the *Safeguarding and Sustaining Ontario's Water Act, 2007*.