



Environmental Law Bulletin

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Ontario Bill 198 & Proposed Regulations - Commercial and Industrial Water Take Use Charges

The Ontario government is proposing to charge commercial/industrial users for taking water. On April 3, 2007, Bill 198 was given first reading in the Ontario Legislature. The Bill would make changes to the water-taking permit system, prevent water transfers between certain watersheds and give the government authority to charge commercial and industrial users for taking water (hydro power production and agricultural use are exempt). The Bill amends the *Ontario Water Resources Act* (OWRA) and the *Safe Drinking Water Act, 2002*.

Significant Features of Bill 198

Bill 98, the *Safeguarding and Sustaining Ontario's Water Act, 2007*, would allow the government to establish a regulatory regime to charge for water use for industrial or commercial purposes. High consumptive users would be the first to be targeted. Other commercial and industrial uses would be phased-in later. Water use for hydro power production or agricultural uses would not be subject to the charge.

The regulation-making authority could be used to:

- set charges on a volumetric basis for water withdrawn directly from a water source or from municipal water supplies
- phase-in the charge for different sectors based on their types of water use (e.g., incorporation into a product, processing, cooling)
- allow for reduction in charge under certain conditions (e.g., implementing water conservation and efficiency measures; economic considerations)
- provide specific authority to charge different rates for different types of uses
- provide authority to recover costs of water management programs carried out under authority of other complimentary statutes (e.g., *Lakes and Rivers Improvement Act, Clean Water Act, 2006*)
- provide for consequence for failure to pay a charge, including payment of interest,

penalties and suspensions of, or refusal to issue a permit until the charge is paid

In addition to the charge, proposed amendments to the OWRA would give the government authority, by regulation, to require a permit to take water for water takers who are currently grandfathered to ensure that the charge is applied equitably across Ontario. Until the government makes a regulation, grandfathered water-takers would not be required to obtain a permit. At present, no permit is required for water takings that commenced on or before March 29, 1961, subject to certain conditions.

Water Conservation Charges Proposal

A *Water Conservation Charges Proposal* for a regulatory regime was posted on the Environmental Bill of Rights registry on April 3, 2007 for public review and comment. This 25-page document lays out the details of the proposed water taking charges including:

- the key assumptions underlying the proposed regulatory framework
- the sectors that would be charged and those exempted
- proposed charge rates for sectors included in the first phase of implementation
- how the charge would be implemented

Who Would Pay the Charges?

The water charge would be recovered from commercial and industrial water takers who require a permit to take water under the OWRA and from commercial and industrial users on municipal supplies. The charge would be phased-in according to consumptive use (see table below). Only highly consumptive users would be subject to the proposed initial regulation. Other commercial and industrial users would be phased-in later through amendments to the proposed regulation, except agriculture and hydropower.

Ontario is also proposing to make a regulation requiring historical water takers that use water in a highly consumptive manner to apply for a permit and pay the charge. Highly consumptive water users who are currently grandfathered would be required to obtain a permit prior to 2009.

Table 1

Sectors to be charged in the first Phase	Future Phase (s)
Commercial and industrial uses (water in products), such as: <i>beverage production</i> <i>fruit & vegetable canning</i> <i>ready-mix cement products</i>	Other commercial and industrial users, such as: <i>mining</i> <i>iron & steel products</i> <i>pulp & paper</i> <i>recreational facilities</i>
	Other power production, such as: <i>nuclear</i> <i>fossil fuel</i>

Who Would the Charge Not Apply to?

The water conservation charge would not apply to the following water users:

- hydro power production (because this is largely an in-stream use of water that has minimal impact on water quantity and quality)
- agricultural water use (because many farmers are already engaging in provincial programs to manage impacts of their operations on water sources)

Water Users on Municipal Systems

Water users taking water from the municipal water system would also be charged although the government does not intend to charge for

municipal water use for domestic and other non-commercial purposes. The charge would be applied through regulation either directly to highly consumptive commercial and industrial users on municipally supplied water or to the municipality directly for the portion of its taking that is highly consumptive.

What are the Proposed Charge Rates?

Commercial and industrial water users would be charged using a volumetric rate for their total water withdrawals, whether the water is withdrawn directly from a water source or from a municipal supply. All companies within a sector would be charged the same rate. Different rates would be applied to sectors according to the overall consumptive nature of water use in that sector, with the more highly consumptive water users paying a higher rate and greater proportion of the water management cost. Ontario proposes to categorize water users into four (4) use categories: high, medium, low and very low consumptive use. Initially, the proposed charge would apply only to the high consumptive category. Companies in the medium and low categories would be phased-in later and the rates would be determined after the first phase of implementation.

Table 2

High Consumptive Users	Rate (\$/dam*)
Abrasive products	\$3.71
Bottled water	\$3.71
Breweries	\$3.71
Fruit & vegetable products (canning and pickling)	\$3.71
Gypsum products	\$3.71
Inorganic chemical manufacturing	\$3.71
Lime products	\$3.71
Other non-metallic mineral products	\$3.71
Ready-mix concrete	\$3.71
Wineries	\$3.71
Other commercial and industrial users to be phased-in in future	TBD
*One dam equals one million litres. Note that the list of high consumptive users is not definitive; others may be included.	

Public Comment Timeframe

The Water Conservation Charges Proposal states that the proposed charge would cause a negligible increase in the operating expenses for affected companies. The charge rate is said to be small compared to current municipal rates.

Comments on the Water Conservation Charges Proposal may be made to the MOE by June 4, 2007. (See EBR Registry No. 010-0163). The MOE is also consulting on other proposed regulations: (a) a regulation to require the grandfathered industrial and commercial water takers to which the charge would apply to obtain a permit to take water; and (b) a regulation requiring information on the amounts of water used by the commercial and industrial users to which the charge would apply.

For assistance in determining the potential impact of Bill 198 and the water charges proposal, kindly contact:

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