

# East Coast Environmental Law

## PEI Water Act Quick Q & A

### What are PEI's main water-related problems?

---

Water issues that concern Islanders include:

- Contamination with nitrates, pesticides, and bacteria;
- Erosion and siltation;
- Groundwater depletion;
- Development, competing water users, and high-capacity wells;
- Ineffective land-use planning and top-down governance; and
- Impacts of climate change.

The province faces unique water-challenges, being an Island, which relies completely on groundwater for its drinking water.<sup>1</sup>

Islanders know water is an important resource that must be protected, and for good reason. To take an extreme example from another country of what can happen when proper measures are not taken, 600 million Indians face high-to-extreme water stress and 40% of the population will not have access to drinking water by 2030. While PEI uses much less of its respective available groundwater than India, this exemplifies what can happen when governments and residents do not use precaution.<sup>2</sup>

### What is the PEI Water Act?

---

The *Water Act* (the "Act") allows the Province to protect and manage the Island's water resources and the ecosystems that support them.<sup>3</sup> Some of the Act is transferred directly from the *Environmental Protection Act* (EPA) and is designed to consolidate and streamline existing legislation.<sup>4</sup> Other provisions are completely new and respond to Islanders' concerns.

---

<sup>1</sup> Prince Edward Island, Environmental Advisory Council, *Water Act Public Consultation Report* (May 2016), online: <[http://www.gov.pe.ca/photos/original/CLE\\_EAC\\_WARep.pdf](http://www.gov.pe.ca/photos/original/CLE_EAC_WARep.pdf)>.

<sup>2</sup> Bhasker Tripathi, "40% of Indians will have no access to drinking water by 2030: NITI Aayog", *Business Standard* (25 June 2018), online: <[https://www.business-standard.com/article/current-affairs/40-of-indians-will-have-no-access-to-drinking-water-by-2030-niti-aayog-118062500074\\_1.html](https://www.business-standard.com/article/current-affairs/40-of-indians-will-have-no-access-to-drinking-water-by-2030-niti-aayog-118062500074_1.html)>; Sally Pitt, "Province posts locations and use of P.E.I.'s 288 high capacity wells", *CBC News* (12 April 2017), online: <<https://www.cbc.ca/news/canada/prince-edward-island/pei-high-capacity-wells-agricultural-moratorium-meters-1.4054995>>.

<sup>3</sup> *Water Act*, SPEI 2017, c 17.

<sup>4</sup> *Environmental Protection Act*, RSPEI 1988, c E-9.

## What's new in the PEI *Water Act*?

---

### Water withdrawals and approvals

- Any daily withdrawal of water exceeding 25 cubic metres requires an approval (s 40(1)). The old daily limit triggering an approval was 346 cubic metres.<sup>5</sup>
- When a person has multiple wells, their daily allowance is based on the total withdrawal from their wells (s 40(2)). Under the EPA, if an owner had multiple high capacity wells in close proximity to each other (a well field), they were approved under one extraction permit. However, under the EPA, multiple wells each pumping less than 4 litres per second did not require an approval.
- The Minister can refuse to grant withdrawal approvals for explicit reasons including,
  - the onset of water-limiting natural events (s 11(g),
  - the proposed withdrawal's interference with domestic or environmental flow needs (s 8),
  - the decision to hold water in-reserve for future generations (s 9),
  - the approval not being in the public interest (s 7).
- Approvals don't transfer with new land ownership automatically (s 12(1)). This makes explicit the provisions of the EPA. Under the EPA, there are no provisions to transfer approvals. Water extraction approvals had to be revoked, then an application from the new owner had to be approved. This will likely be the case under the *Water Act*.

### Water monitoring

- The Minister is required to monitor and track water quality and quantity so that trends may be detected, and effectiveness of legislation and policies may be assessed (s 16).

### Some new prohibitions

- Hydraulic fracturing on PEI for the purpose of exploring or obtaining oil or natural gas is banned (s 19).
- Exporting water from the province is almost completely banned (s 41). Under the EPA, someone could bottle water for export so long as the containers were individually less than 25 litres.<sup>6</sup> Under the *Water Act*, any water export outside of everyday or humanitarian purposes is entirely prohibited, including water-bottling for export.
- Wastewater discharges, except as allowed by regulations, are banned (s 42).

### Water Management Areas

The Act allows the establishment of Water Management Areas (WMAs) (see Part IV). WMAs are designed to balance competing interests for water resources in designated geographic areas. Within each of these areas, special provisions can be applied. Depending on the type of WMA (there are four different kinds), regulations may be made allowing for different rules than the rest of the province. These provisions may be accompanied by requirements for consultation; monitoring; review of the status of the water resource to improve water quality; protection of important aquatic species; limits for water withdrawals or water approvals below the rest of the province; or even limits above the rest of the province.

---

<sup>5</sup> PEI Reg EC188/90, s 7(1) [PEI *Water Well Regulations* (s 7(1)) under section 25 of the *Environmental Protection Act*].

<sup>6</sup> *Environmental Protection Act*, *supra* note 3 at s 12.1.

## New Penalties

- The *Water Act* raises fines as compared to the EPA. A minimum fine for an individual is \$1,000 (s 73(1)) and \$10,000 for a corporation (s 73(2)). The minimum fines under the EPA for individuals and corporations were \$200 and \$1,000, respectively.<sup>7</sup> The *Water Act* also raises the maximum fines for corporations from \$50,000 to \$100,000.
- The Act explicitly allows a judge to impose higher fines, if in their opinion, the person committed the offence for financial advantage or to avoid financial burden (s 73(5)).

## What are some new ways to be involved?

---

- The *Water Act* specifies a public water registry holding scientific reports, annual state of the water reports, five year state of the water reports, approval information, usage (compliance) information, and water management area information. It will also hold water monitoring data. Water protection orders and water management area orders will be public information, as will information supplied by permit application. Finally, water quality and use information collected by the government will be public information
- Public input is required before Water Management Areas are established (s 25(2)).
- Any person who reasonably believes that someone has breached the Act may report this to the Minister or an environmental officer (s 70). This person may even report confidential information, and an action cannot be brought, nor can an employer take adverse employment action, against a person for providing information in good faith. However, nothing in the Act mandates the Minister to take any action upon receiving a report.
- Public input is required for the coming regulations and every subsequent major amendment (s 76(5)). The scope of these consultations is still unclear.

## What's not in the *Water Act*?

---

- Buffer zones and wetlands management and protection – these issues are regulated by the *Watercourse and Wetland Protection Regulations* under section 25 the *Environmental Protection Act*<sup>8</sup>
- Plumbing regulations – these are covered by *A Code for Plumbing Services Regulations* under clause 25(1)(f) of the *Environmental Protection Act*<sup>9</sup>
- A lift to the moratorium on high-capacity wells for irrigation – the Government has promised it will not be lifted until more scientific research is done<sup>10</sup>
- Irrigation ponds – could be further addressed in the regulations; wells feeding an irrigation pond are subject to the daily limit in section 40 or else will require approval<sup>11</sup>
- Operational details of the Minister's authority – in the coming regulations

---

<sup>7</sup> *Ibid* at s 32.

<sup>8</sup> PEI Reg EC720/08.

<sup>9</sup> PEI Reg EC666/86.

<sup>10</sup> Krystalle Ramlakhan, "Cavendish Farms reiterates call to lift moratorium on high-capacity wells", CBC News (14 May 2018), online: <<https://www.cbc.ca/news/canada/prince-edward-island/cavendish-farms-president-robert-irving-moratorium-high-capacity-wells-1.4662756>>.

<sup>11</sup> Prince Edward Island, Legislative Assembly, Hansard, 65th Leg, 3rd Session (12 December 2017) at 956-957.