

Technical Bulletin (Wells): Applicability of the Endangered Species Act, 2007 to the proper maintenance, repair, alteration, or abandonment (decommissioning) of a well as required by the Wells Regulation

Ministry of the Environment
Ministry of Natural Resources

Purpose

This bulletin provides information on the application of the [Endangered Species Act, 2007](#) (ESA) where a well subject to the [Wells Regulation](#) (Reg. 903) under the [Ontario Water Resources Act](#) (OWRA) contains a species listed as threatened or endangered in the [Species at Risk in Ontario](#) (SARO) list¹. Some species at risk, including snakes, have been found to use wells as habitat for hibernation.

Introduction

The Endangered Species Act (ESA)

The ESA protects species listed as threatened or endangered on the SARO (“species at risk”) list as well as their habitats by prohibiting persons from:

- killing, harming or harassing of members of these species, or
- damaging or destroying their habitats

O. Reg. 242/08 (the ESA Regulation) provides conditional exemptions from these prohibitions for specific types of activities. Subsection 8 (1) of the regulation exempts a person from the ESA’s prohibitions against harming, killing or harassing a species at risk or damaging or destroying its habitat, provided the person satisfies the following two requirements:

- the person is acting to protect a human being or animal, and
- the person reasonably believes that there is an imminent risk to the health of a human being or animal

The Wells Regulation

The Ministry of the Environment administers the Wells Regulation. Under that regulation and the OWRA, a “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

The Wells Regulation requires an owner of a well to maintain the well at all times in a manner sufficient to prevent the entry into the well of surface water and other foreign materials.

A well owner must immediately abandon the well in accordance with the Wells Regulation if it is not being used or maintained for future use as a well.

Species at risk in wells and the risks to human health or public safety

An improperly maintained or abandoned well poses a serious and imminent risk to human health, public safety and local groundwater resources.

Several snake species at risk in Ontario are known to use wells as over-wintering habitat. A snake’s ability to access a well indicates:

- foreign materials, insects and animals are able to enter the well and cause a bacterial contamination of the water in the well and groundwater resource that could be used as a source of drinking water
- the condition of the well constitutes a human health or public safety concern, due to the potential for water contamination
- the well is not properly maintained or not properly abandoned in accordance with the Wells Regulation

Additional examples of potential risks to human health or public safety as a result of not properly maintaining or abandoning a well include:

- allowing pesticide or bacterial contamination of well water used for drinking from agricultural run-off
- posing a threat to people or animals that may fall into large openings and become trapped or injured

- interconnecting fresh groundwater with salty, mineralized or contaminated groundwater zones and allowing the mineralized or contaminated water to enter fresh water zones
- presenting a hazard to equipment and vehicles
- uncontrollable flow of groundwater at the surface resulting in wasting groundwater, nuisance or flooding problems

Activities carried out to properly maintain, repair, alter or abandon a well in accordance with the Wells Regulation are necessary to protect human health, public safety and local groundwater resources. A person who carries out one of these activities will satisfy both requirements of the exemption set out in subsection 8 (1) of the ESA Regulation.

What to do if a species-at-risk animal is found in a well

If a species-at-risk animal is found in a well, and if the well is used for drinking water purposes, then:

- stop drinking the water from the well immediately
- the well owner must contact the local medical officer of health and follow the medical officer's direction
- the well owner should also [contact the Ministry of Natural Resources](#) for advice on how to avoid or minimize impacts to species at risk
- the well owner must arrange for the well to be *either*:
 - repaired or upgraded to prevent surface water and other foreign materials, including insects and animals, from entering the well, or
 - properly abandoned (plugged and sealed) in accordance with the Wells Regulation

If a species at risk is found in a well not being used or maintained for future use as a well, the well owner must immediately abandon (plug and seal) the well in accordance with the Wells Regulation to protect human health, public safety and the local groundwater resources.

When properly maintaining or abandoning a well where a snake or other species-at-risk animal has been found, the well owner should also contact the Ministry of Natural Resources regarding where and how the species may be moved.

Where feasible, actions that satisfy the requirements of the exemption in subsection 8(1) of the ESA Regulation should be carried out in a manner that will minimize adverse effects to the protected species. For example, the proper abandonment of a well may impact both protected species and their habitat.

There may be practices, however, which would minimize or avoid direct impacts to the species despite the loss of the habitat feature.

Efforts should be made to determine if snake or other species at risk are known to use or occupy a well prior to the commencement of well maintenance or abandonment activities.

ⁱ Ontario Regulation 230/08 under the ESA.