

DRINKING WATER SOURCE PROTECTION

ACT FOR CLEAN WATER

South Georgian Bay
Lake Simcoe
Source Protection
Region

Section 88 of the Clean Water Act – Powers of Entry

&

Property Entry Training

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Clean Water Act, 2006

Section 88 – Powers of Entry



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Purpose of Section 88:

To provide legislative authority to conduct site visits for the purpose of collecting scientific information under clauses 88(1)(a) and (b).

Goal:

To be able to perform the above tasks and responsibilities in partnership and with the cooperation of the land owner.

Powers of Entry - Other Legislative Authorities

- Nutrient Management Act, 2002
- Environmental Protection Act, 1990
- Ontario Water Resources Act, 1990
- Conservation Authorities Act, 1990

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Section 88 – Powers of Entry

A person entering property under section 88 of the Act must:

- Be an employee of a Source Protection Authority
- Be an agent of a Source Protection Authority
- Be a person designated by a Source Protection Authority

This person may enter property, without the consent of the owner or occupier and without warrant to collect information in support of: the **assessment report**, the source protection plan, interim progress reports, monitoring programs, and annual progress reports.

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Section 88 – Powers of Entry

Designation by source protection authority

(2) A Source Protection Authority (SPA) may identify an individual or a group of people who are employees or agents of a Municipality that are authorized to act on behalf of the SPA for the purpose of subsection 1. This authority and the identification must be in writing and on record.

Municipality

An employee or agent of the municipality that has entered into a s.26 agreement with the Minister may exercise the powers under ss.88 (3) to enter property for the purpose of preparing the plan

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Section 88 – Powers of Entry

Training

(4) A person shall not enter property unless the person has received training prescribed by the regulation.

Dwellings

(5) A person shall not enter a room actually used as a dwelling without the consent of the occupier except under the authority of a warrant under subsection 62 (11)

Applications

(6) Subsection 62 (4) to (19) apply, with necessary modifications, to entries to property under this section.



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Section 62 (4) - (19) – Powers of Entry



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Section 62 – Powers of Entry

- This section applies to Risk Management Officials who conduct inspections. The role of the risk management official/inspector is to negotiate and enforce risk Management plans.
- Section 88 requires all work to be carried out within the parameters outlined in the sections making reference to Risk Management Officials.

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Section 62 – Powers of Entry

Rules...

- A person entering property may be accompanied by someone possessing expert or special knowledge.
- Site visits must be carried out at a reasonable hour
- Notification must be given to the land owner or occupier prior to any person entering property under s. 88
- No force can be used for any purpose.

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Rules Cont...

- The person entering the property has the following powers and may conduct the following activities:
 - Excavate the soil
 - Operate, use or set in motion any machine or thing that the person requires to be operating in order to facilitate the responsibility of the legislation
 - Secure samples for further research.
 - Perform tests, and collect data
 - Make copies of any form or data by any means necessary
 - Request the land owner or occupier to produce any document or data that is relevant to the visit to the property
 - Take possession of and remove any document in order to make copies
 - Keep the copies as long as is necessary to perform the objectives of the visit.
 - Request assistance from anyone present
 - Ask questions with the expectation of an answer either orally or in writing.

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Rules Cont...

- The person entering the property who has removed data and/or documents must provide a receipt for the material AND must promptly return everything once the information is used.
- The person entering the property must promptly provide the following information if requested:
 - Identification
 - The purpose and intent of the visit

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Rules Cont...

- In the event a person entering property under s.88 has attempted to use all avenues and resources for the purpose of carrying out the intent of the Clean Water Act without success, a Justice may issue a warrant but only under the following conditions:
 - No one having authority or control of the property is available to let you in.
 - Someone is preventing you from doing your job
 - There are reasonable grounds (factors that go beyond mere suspicion) that lead you to a strong belief that someone or something might prevent you from carrying out your responsibilities.
 - The property is so far away that if confronted with challenges as previously stated, it would be impracticable to leave, get the warrant and return in a reasonable amount of time.
 - There are reasonable grounds to believe that a person entering property under s. 88 might not accomplish their responsibilities without the warrant.



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Responsibilities Under Section (89) of the Clean Water Act

Overview & Procedures for Persons
Designated Under Section 88

Section 89 – Notice of Drinking Water Health Hazard (DWHH)

A person entering property under s. 88 MUST notify the Ministry when:

1. When they become aware that a substance is being discharged or is going to be discharged into:
 - A raw water supply for a residential drinking water system
 - Another drinking water system that's part of an assessment report or a source protection plan; and
2. The person is of the opinion that if the substance is being discharged, it will create an imminent drinking water health hazard

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Requirements for Notification:

1. There must be a substance being or about to be discharged
2. The discharge must be into a raw water supply of drinking water system that is required to be considered in an assessment report or source protection plan,
3. The threat/impact to the system must be imminent in nature, and
4. It is the professional opinion, that the conditions could result in a human health hazard

****If all the above are true - call SAC and follow Section 89 notification requirements**



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Clean Water Act, 2006

Ontario Regulation 287/07 – General

**Section 21 Training – powers of entry – source
protection authority**



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Clean Water Act, 2006

Training

88(4) A Person shall not enter property unless the person has received training prescribed by the regulations. 2006, c. 22, s. 88 (4)

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O. Reg. 287/07

Training – powers of entry –source protection authority

21.1 (1) For the purpose of subsection 88 (4) of the Act, a person shall not enter property unless the person has, in the preceding five years, successfully completed a course that meets the following criteria:

1. The course includes,
 - i. an overview of the process for establishing a source protection plan under the Act,
 - ii. an explanation of the powers to enter property under this Act, and
 - iii. a discussion of protocols for exercising powers of entry under the Act.

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Course Objectives:

1. Overview of the Clean Water Act

- How to explain to a property owner key facts about the drinking water source protection process and the purpose of entering their property to collect information

2. Powers of Entry under the Clean Water Act

- Property entry under section 88
- Property entry under section 62

3. Practical protocols and best practices for conducting site-specific work

4. Communication strategies, conflict avoidance training and crisis management

Basic Property Entry Protocols

1) Before the Site Visit

- Review Property History
 - collect all the data/information available to prepare for a successful visit
- Notifying the Property Owner/Manager
 - Contact the property owner by mail and by phone
 - Set up an appointment well in advance
 - Invite the owner/manager to escort you around their property
 - Ask where you should park and arrange a meeting location
 - Provide notice before EVERY property visit

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Basic Property Entry Protocols

- Notifying the Property Owner/Manager continued...
 - Explain the information that will be collected during the visit and how it will be used
 - Ask if there are any protocols or practices that are unique to their site that you should be aware of, including Health & Safety (e.g. PPE requirements) or scheduled activities that should be avoided.
- Items to review with your supervisor/employer
 - Health & Safety
 - Your shared responsibilities under the Municipal Freedom of Information and Protection of Privacy Act
 - All other Legislated requirements you may have responsibilities under when administering your section 88 role

Basic Property Entry Protocols

2) Conducting the Site Visit

➤ Accessing the property

- Park appropriately
- Watch for dogs
- Work in pairs
- Bring maps, cell phone, GPS

➤ Making Contact with the Occupier

- Provide business card and show identification
- Explain why you are there
- Ask if there are any additional safety procedures

Basic Property Entry Protocols

3) Exit or Departure from the Property

- Advise the property owner that your site visit is complete and thank them for their time
- Provide assurances for the privacy protection of the data collected (re: use and storage)
- Respond to questions and requests
- Sign out (if applicable) and return any visitor identification or borrowed equipment

Basic Property Entry Protocols

4) Post-Visit Activities

➤ Information Management

- Ensure your information management practices are observant of FIPPA & MFIPPA
- Proper record keeping and information management will allow for your employer and colleagues to easily reference back to the site visit should a property owner/manager want to follow-up on a s.88 person's visit to their property

Roles and Responsibilities

- Agricultural Property Entry Protocols
- Industrial Property Entry Protocols
- Record-Keeping Protocols
- Professional Code of Conduct

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Agricultural Property Entry Protocol

Additional Considerations for Site Visits

- Set up appointments in advance, and be prepared for cancellations or changes, especially during planting and harvesting seasons
- Avoid conducting site visits during milking and/or feeding times of the day, and spring planting and harvest times of the year.
- Follow the Ministry of Agriculture, Food and Rural Affairs' biosecurity protocols, but ask the producer if there are any additional biosecurity measures in place on their farm.
- For both health & safety and biosecurity reasons, no part of the operation should be entered without permission, including fields.

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Agricultural Property Entry Protocols

Biosecurity protocol equipment:

- Washable or disposable gloves
- Disposable boot covers (heavy gauge 6mil thick)
- Launderable or disposable coveralls
- Plastic pail and boot brush
- Chemical disinfectant or detergent (e.g. Virkon)
- Container of water (5-10L)
- Spray bottle of disinfectant solution
- Germicidal hand lotion
- Garbage bags
- Paper Towels
- N95 Dust Mask and hair nets

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Agricultural Property Entry Protocols

Biosecurity Protocols – General Procedure

- Park Vehicle away from barn, traffic areas and feed storage, not under ventilation inlet/exhaust (i.e. avoid contamination)
- Park facing in the direction you will drive on exiting the operation
- Drive slowly with windows closed, avoiding mud and puddles
- Wait at your vehicle for the owner/operator to meet you
- Ask if the farm has biosecurity protocols. Additional measures required by the owner/manager should be respected
- Sign In and Out

Agricultural Property Entry Protocols

Biosecurity Protocols – General Procedure Cont...

- Clean washable or disposable footwear must be worn when on the premises where there is a reasonable risk of contamination
- Clean or disposable coveralls must be worn when in contact with livestock or in livestock housing facilities; lab coat may be worn in greenhouses
- Wear clothing, footwear and other equipment provided by the farm operator when possible
- Only enter livestock or greenhouse facilities when necessary and avoid handling animals
- Don't enter any building without permission

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Agricultural Property Entry Protocols

Biosecurity Protocols – General Procedure Cont...

- Leave disposable materials with the facility manager, or store in sealed plastic bag or washable container for later disposal.
- Clean boots and equipment prior to leaving the facility (or store in sealed container for later cleaning), and wash hands
- Sampling equipment must be properly disposed of or disinfected.
- Wash car if another farm visit is to be made that day
- More than one farm visit can be made per day, only if the farms have different livestock (e.g. one dairy and one sheep)
- Exception – Leave 72 hours between poultry or swine visits

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Industrial Property Entry Protocols & Hazards

- When arranging for the visit ensure you gain an understanding of the potential hazards and the property-specific protocols
- Upon arrival at the site inquire about and follow signing in protocols
- During sign-in process ask about site security & safety procedures
- Ask for and escort if one hasn't been available
- Check to ensure your equipment is intrinsically safe with site operations
- Maintain strict compliance with site security & safety protocols
- Upon leaving the site return any loaned equipment or passes and sign-out

Record-Keeping Protocols

- The 'Rules of Good Note Taking' should be followed
- To record details to support observed facts and demonstrate the thoroughness of a site visit
- To record all bio-security protocols conducted before, during and upon leaving a landowner/business owner property
- To refresh memory of events that may have taken place some time in the past so that they can be relayed to you employer or the landowner
- Creditability

Professional Code of Conduct

1. Honesty and Integrity
2. Confidentiality
3. Respect
4. Timeliness
5. Knowledge & Competencies
6. Objectivity
7. Risk Management