



Josh Annett, Policy Officer  
Ministry of Natural Resources and Forestry  
Policy Division  
Crown Forests and Lands Policy Branch  
300 Water Street  
Peterborough Ontario, K9J 8M5

November 9, 2015

Dear Mr. Annett:

**Re:** *Lakes and Rivers Improvement Act* Administration of Section 16: Alterations, Improvements and Repairs to Existing Dams Technical Bulletin (EBR # 012-5093)

Thank you for the opportunity to comment on the draft *Lakes and Rivers Improvement Act* (LRIA) Administration of Section 16: Alterations, Improvements and Repairs to Existing Dams Technical Bulletin. Conservation Ontario (CO) represents Ontario's 36 Conservation Authorities (CAs), which are local watershed management agencies, whose mandate includes a variety of responsibilities related to natural hazards and water resource management. Collectively, CAs own, operate and/or maintain more than 300 dams and dykes/floodwalls to protect life and property in Ontario.

The following comments are submitted for your consideration based upon a review by CAs. These comments are not intended to limit consideration of comments shared individually by CAs

1. The Bulletin should provide a disclaimer regarding potential approval requirements of other agencies (i.e. local municipalities, CAs, other provincial government, Fisheries and Oceans Canada (DFO), etc.). The Bulletin should clearly state that obtaining a LRIA approval does not exempt the applicant from requiring approvals from other agencies. For example, some of the works identified in Section 3.2 may be subject to an Environmental Assessment.
2. Emergency works:
  - Guidelines are needed to define the process of dealing with "emergency works" that are time sensitive and must be completed prior to gaining approvals. The Bulletin should include a section written to clarify emergency works, even if MNRF wishes to examine emergency works on a case-by-case basis. The section should specify what course of action should be followed when an emergency work has been identified and provide a list of actions that the owner is allowed to undertake during an emergency in advance of approvals.

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- It is suggested that some environmental threats, such as a sediment spill into a trout spawning area, should be considered to qualify as an emergency. In these situations, through consultation with MNRF, works should be permitted in advance of gaining approvals in order to address the situation prior to great ecological damage.

3. Section 3.2:

- Is it the responsibility of the dam owner to determine if proposed works are subject to Section 16 approval based on the description provided? A statement on whose responsibility this is would be beneficial in the Bulletin.
- The works identified by the Ministry in Section 3.2 as requiring Section 16 approval are reasonable, with the exception of “reconstruction”. It is believed that this activity goes beyond the intended definition of alterations, improvements or repairs.

4. Section 4.1 allows the Ministry 60 days to review a Section 16 application to confirm if it is complete and notify the owner. If an application is deemed to be incomplete, the 60 day review period is put on hold while more information is supplied. The question has been raised whether this would extend the review period by another 60 days to determine if the new information allows for a complete application, and then another 60 days to review the application. This would be undesirable and it is recommended that the wording in this section be clarified.

5. Section 4.3:

- It is suggested that this section should also include a requirement for consultation with other agencies (CAs, DFO, Ministry of the Environment and Climate Change (MOECC), municipalities, etc.) where the structure and any proposed changes may affect the regulations of those agencies or the areas/activities that are regulated by those agencies. This will help ensure the design process, and applications, will include additional information that the other agencies may have available to consider, such as floodplains or setbacks.
- Required Information – The guidelines require “*Three copies of final plans and technical specifications stamped ‘For Construction’, signed and sealed...*” for the Ministry to begin their review process. Generally there has been justifiable resistance by the design engineers to provide ‘for construction’ drawings to begin the review and approval process. MNRF is urged to review the report by the Professional Engineers Ontario entitled “Use of the Professional Engineer’s Seal” found here: [http://www.peo.on.ca/index.php/ci\\_id/22148/la\\_id/1.htm](http://www.peo.on.ca/index.php/ci_id/22148/la_id/1.htm). Per this information, it is suggested that the guidelines remove the reference requiring “*For construction, signed and sealed by the design engineer*” for the review submission. It is recommended that the requirement of ‘for construction’ drawings be requested as part of the final approval requirements, once the reviews are advanced.
- It is recommended the Bulletin encourage both the submission of preliminary information for review, and consultation with various agencies, as part of the pre-consultation process/meeting.
- Section 4.3 allows for a memorandum of understanding (MOU) for proponents with a portfolio of dams. This initiative is supported and it is recommended that the MOU option be limited to those proponents with extensive experience in the operation and maintenance of dams.

6. Section 4.3.1:

- The last sentence on page 6 states “physically attached and logically connected” whereas all other references state “physically attached or logically connected”. Please clarify the use of *and* vs. *or*

with respect to physically attached and logically connected. It is suggested that “logically connected” is not well defined, and perhaps “functionally connected to the dam” or “impoundment” may be better descriptors.

- Under this section there is a reference to dams that have not been previously approved, and a requirement to provide additional information on the dam to support a Section 16 approval. This requirement is supported; dams not originally approved for construction should not be exempted from LRIA approvals.
- The final paragraph of this section refers to permanent flooding of land and an additional requirement for information. It is suggested that in the case of dams that are decades old, the flooded zone is well established, and it does not seem appropriate for the Ministry to require consent from landowners for flooding that was initiated decades earlier.
- It would be helpful to owners if the Bulletin included guidance on how the Ministry will deal with older dams that have no prior LRIA approval.

7. MNRF and dam owners are encouraged to assess and include ecological mitigation options such as bottom draw conversions, fish ladders, by-pass channels and new operational practices when applying for LRIA approvals. This would help offset impacts associated with dams where through the proposed works their lifespan will be significantly extended and cannot demonstrate beneficial purposes beyond e.g. landscape aesthetics. Under Section 4.5, MNRF could require ecological mitigation options while approving applications ‘subject to conditions or changes’. Similarly MNRF could require such ecological mitigation options where failure has occurred due to the lack of maintenance or an operational plan, or where Fisheries Management Plans have identified mitigation or removal as a priority. It is believed that MNRF could go further and deny any repairs or rebuilding of dams that fail.
8. Section 5: It is recommended that fish ladders or by-pass channels not touching a dam should be exempted from approvals. In addition, it is suggested that works that are generally positive in reducing the impacts of dams should not require LRIA approval. Clarification would however be needed as these structures do divert water flow and thus may meet the definition of a dam. The MOECC has recently exempted some of these diversions from requiring Permits to Take Water or at least charged a lesser permit fee that is supportive of these restoration efforts.
9. After reviewing Section 3.2 and Section 5, it is unclear if the following activities require MNRF approval:
  - Geotechnical borehole drilling (for piezometer, inclinometer or other purpose) through an embankment
  - Permanent removal of stop logs. Is this considered decommissioning of a dam and requires approval?
  - Annual removal of debris. In the past many CAs have applied for permits for works relating to the annual removal of debris, with some CAs receiving 5 year permits for this work as recently as 2015. However, the exemption works list (Section 5, #23) appears to waive future permitting requirements for work of this nature. In cases where CAs were previously issued a permit for this work that is still valid, are CAs still obligated to conform to the permit conditions? Please clarify.
  - With regard to works under Section 3.2, bullet (e), would changing rule curves be included? It is suggested that this would typically be done in most cases with minimal review from any outside agencies as they usually are small changes.

10. There are several references that state the use of cofferdams or lowering of the headpond may still require approval. These works are generally associated with the construction period. Commonly we have seen the potential for negative impacts related to the reduction of flows downstream even for short periods during construction. This issue needs to be addressed more clearly and could be included in the list of activities where approval may still be required (Section 3.2).

Thank you once again for the opportunity to comment on the draft *Lakes and Rivers Improvement Act* Administration of Section 16: Alterations, Improvements and Repairs to Existing Dams Technical Bulletin (EBR # 012-5093). The Province is taking a positive step in updating this Bulletin. CAs look forward to future opportunities to contribute to policies that are developed under the LRIA and other dam related business. Should you have any questions regarding the above comments please contact myself (ext. 223) or Taylor Knapp (Policy and Planning Officer) at 905-895-0716 ext. 226.

Sincerely,



Bonnie Fox  
Manager, Policy and Planning

c.c. All Conservation Authorities' CAOs