

February 3, 2020

BY E-MAIL ONLY (stacey.vojtek@ontario.ca)

Stacey Vojtek
Crown Forests and Lands Policy Branch - Crown Lands Section
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Peterborough, ON
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Dear Ms. Vojtek:

Re: Proposal to Amend O. Reg 454/96 (Construction) under the Lakes and Rivers Improvement Act (ERO #019-1060)

Thank you for the opportunity to comment on the Ministry of Natural Resources and Forestry's Environmental Registry of Ontario (ERO) posting on the proposal to amend Ontario Regulation 454/96 (Construction), to provide alternative regulatory approval requirements for repairs to existing low hazard wetland dams under the *Lakes and Rivers Improvement Act* (LRIA).

The Toronto and Region Conservation Authority (TRCA) undertakes a dual role with respect to works affecting wetlands, lakes, and rivers within its watershed-based jurisdiction: as a regulator of wetlands, shorelines and watercourse alterations within regulated areas, and as a conservation land manager and proponent for construction and remediation projects, largely on TRCA-owned land.

TRCA conducts itself in accordance with the objects, powers, roles and responsibilities set out for conservation authorities (CA) under the *Conservation Authorities Act* and the MNR Procedural Manual chapter on CA policies and procedures, and the Class Environmental Assessment for Remedial Flood and Erosion Control Projects. TRCA's roles are:

- A public commenting body under the *Planning Act* and *Environmental Assessment Act*;
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement;
- A regulatory authority under section 28 of the *Conservation Authorities Act*;
- A service provider to municipal partners and other public agencies;
- A Source Protection Authority under the *Clean Water Act*;
- A resource management agency; and
- A major landowner in the Greater Toronto Area.

Proposed Regulatory Amendment

We understand the government's current proposal would amend Ontario Regulation 454/96 (Construction). If passed, this amendment would provide: "an alternative, optional rules in regulation approach" to wetland dam owners, to repair existing low hazard wetland dams without obtaining approval under Section 16 of the LRIA; these rules would only apply if dam owners meet the

requirements in the regulation. The proposal states that alterations, improvements and repairs to low hazard wetland dams are a low risk activity and do not need to be subject to the same requirements as larger, more complex dams that may have more significant public safety, dam safety or environmental interests. This risk based, streamlined process has been developed and supported through evidence collected by the Ministry over the past six years through a pilot project.

General Comments

TRCA is supportive of a risk based approach to streamlining approvals and that an amendment to Ontario Regulation 454/96 is being considered to exempt low risk works in order to expedite repairs to existing wetland dams.

Detailed Comments

While TRCA staff occasionally make repairs to wetland dams, the decommissioning of low risk dams for ecological restoration and conservation purposes is a more common undertaking. In TRCA's jurisdiction, there are many remnant structures in watercourses that no longer serve a function and should be removed in order to re-establish a more natural function to the watercourse. Enabling a proactive approach to decommissioning low risk dams is critical to improving stability and function within watercourses and is consistent with the objectives of the LRIA. Unfortunately, due to the length and cost of permitting processes, remnant structures are often left in the watercourse and are not maintained. Over time, they negatively impact channel stability, and overall natural system function. As well, they frequently lead to increases in stream temperature, negatively impacting habitat for fish and wildlife.

In light of the above, TRCA is requesting the current proposed amendment for alternative optional rules be expanded to include the removal of low risk dams for improved ecologic health, morphological and hydrologic function. Alternative, optional rules for removal of low risk dams within the LRIA regulation would not undermine requirements for sound hydrologic engineering and fluvial geomorphic design principles, given that legislation governing in-water works would remain applicable, such as the federal *Fisheries Act*, the *Endangered Species Act*, and the *Conservation Authorities Act*. In addition, including a requirement to publicly post the project plan, risk assessment report and mitigation measures would facilitate transparency and tracking of these projects. Benefits of this approach would include:

- Reducing permit backlog;
- Streamlining by allowing more time for MNRF to review higher-risk projects; and
- Promoting the completion of restoration and mitigation works in an efficient and cost-effective manner.

Further, the definition of "wetland dam" could benefit from being clearer and more concise. In this regard, the Province could consider using the 1999 Ontario Dam Safety Guidelines definition of dam as the criteria for defining what structures can be exempt from Section 16 approval. TRCA staff suggest that all dams that meet the criteria below could be exempt, contingent on the alteration or repair meeting LRIA Technical Bulletin requirements:

- dams with height less than 3.0 metres above the original stream bed;
- dams with height less than 2.0 metres above the original stream bed and a reservoir surface area of 2.0 hectares or less;
- the dam must have a low hazard potential classification, as determined by a licensed engineering practitioner;
- any alterations, improvements and repairs must not change the hazard potential classification of the dam.

This would create clear screening criteria for determining what constitutes a wetland dam and lead to a number of other benefits, such as:

- Encouraging dam owners to undertake repairs;
- Reducing regulatory burden and costs to dam owners;
- Decreasing the amount of time required to alter, improve and repair dams;
- Reducing Ministry workload.

TRCA Recommendations:

- 1) That the proposed regulatory amendment be expanded to apply to the decommissioning of low risk dams for ecological restoration and conservation purposes.
- 2) That projects meeting the proposed expanded amendment criteria be publicly posted to ensure transparency, accountability and tracking.
- 3) That the proposed regulatory amendment include a clear definition of what constitutes a “wetland dam”.
- 4) Additional criteria be included for exemption consisting of the specifications listed above for sizing and hazard classification.

We trust these comments and recommendations are clear and of assistance. Thank you once again for the opportunity to comment on the regulatory amendment for repairs to existing low hazard wetland dams. Should you have any questions or wish to meet to discuss our remarks, please contact the undersigned at 416.667.6290 or at john.mackenzie@trca.ca.

Sincerely,



John MacKenzie, M.Sc.(PI), MCIP, RPP
Chief Executive Officer

BY E-MAIL

cc:

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