
Regulatory Challenges for Dam Removal in Ontario

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So, You Want to Remove a Dam in Ontario

- Be prepared for a long and difficult process.
- Adjust your expectations.
- You are righteous, young and naïve. You want to remove a dam to achieve important environmental benefits.
- You expect that the environmental regulators will be in your corner and support you.
- You may be sadly disappointed!
- You may conclude it would be easier to build a new dam than take out an old decrepit dam!

What Permits do You Need? Who do You Need Them From?

- Let's assume that the dam owner not only wants to remove the dam, but they are also going to fund the entire project. In other words, you have almost achieved the impossible. You are elated. Then you need to apply to the regulators:
- Ministry of Natural Resources and Forestry (MNRF)
- Department of Fisheries and Oceans (DFO)
- Conservation Authority (CA)
- Ministry of Environment, Conservation and Parks (MECP)
- Transport Canada (TC)
- Aboriginal Communities.

MNRF – Lakes and Rivers Improvement Act (LRIA)

- The main permit required for dam removal.
- This is the principal Act for dam safety in Ontario. An application can take many months to process.
- Can be difficult to obtain a LRIA permit. MNRF staff do not normally provide pre - consultation to identify key issues.
- MNRF staff generally will not come to site and may not meet with you personally - even remotely.
- The Act was developed to protect life and property from the catastrophic damages that can result from the failure of a large dam.
- Why do we need a LRIA permit to remove a dam? Good question – as the safest dam is no dam at all.

MNRF – Lakes and Rivers Improvement Act (LRIA)...continued

- Yet – there is no minimal dam size exclusion in terms of dam height or head pond size. A 2 by 4 board across a 3' wide brook is a dam under LRIA.
- Completing the application process under LRIA for a *partial* dam removal is particularly complicated.

DFO – Letter of Advice

- DFO may come to your site and meet you for your project.
- Application time can take many months. Staff in Manitoba normally look after dam removal projects.
- The DFO Fisheries Act has massive teeth. My understanding is that the Federal Fisheries Act has levied some of the largest fines in Canadian court history.
- Release of sediment from your head pond can be deemed release of a Deleterious Substance and a violation of the Federal Fisheries Act.
- Your dam removal project will almost certainly release some sediment or create some turbidity. As such, you may be subject to prosecution under the Federal Fisheries Act for release of a Deleterious Substance.
- Your river likely runs very turbid with heavy sediment loads during the spring freshet. DFO does not seem to care about this “normal” turbidity or sediment.

CA's – General Permit

- In my experience your local CA will be willing to work with you.
- Remember – many CA's have inherited aging, derelict dams that are now a liability – not an asset. Because they are dam owners, they understand dam removal is expensive and difficult.
- Permit time compared to other regulators is likely relatively short.

MECP – Various Legislations

- If your dam removal temporarily releases sediment or creates temporary turbidity, you should call and report the turbidity to the MECP's Spills Action Center.
- I believe that creating turbidity could be violation under the Ontario Water Resources Act as it could be generally deemed as water pollution.
- Again – annual turbid water created by floods and spring freshet conditions does not appear to attract the attention of the MECP – likely because this is “normal”.
- Class Environmental Assessments – The Class EA process is part of the Environmental Assessment Act. Formerly, MECP advised me in writing that a Class EA was not required to remove a dam if the dam was constructed before proclamation of the Act in 1975. However, MECP has now changed this rule – apparently done through public consultation in 2020.
- A Class EA to remove a large municipally owned dam in Ontario can take 1 to 3 years to complete and could cost into the \$100,000's.

MECP – Various Legislations...continued

- If you propose to remove sediment from behind the dam you wish to remove – and move that sediment off site – such movement of sediment is subject to the almost new ***On-Site and Excess Soil Management Regulation (o. Reg 406/19)***.
- This regulation requires extensive testing of the sediment for many many different contaminants – for a large number of samples – all by an accredited person. Collecting these samples underwater from your head pond before you remove or drain the water away is no easy task.

Transport Canada (TC)

- We were advised by Transport Canada that we needed to complete their application under the Navigable Waters Act for the Howson Dam project on the North Maitland River.
- Transport Canada publishes a list of water bodies in Canada that are subject to the Navigable Waters Act. The North Maitland River is not on the list. None of our inland rivers in Southern Ontario are. However, we were advised that any river project in Canada such as ours is subject to the Navigable Waters Act.
- We completed the TC questionnaire, which led to a notice in the paper, and then a 30-day public comment period for TC to receive comments from the public.
- We eventually received a permit from TC.
- They did not offer to release comments received (if any) from the public during the 30-day notice period.
- The entire TC process took over three months during the crucial summer in water work period.

Aboriginal Communities

- Overall, working with local aboriginal communities has been relatively good. In general, local bands, as far as I know, generally support removal of derelict, industrial infrastructure from rivers within their traditional territories.
- MNRF in one case assisted with us as to which aboriginal communities to contact for a specific dam in a specific watershed.
- Contacting and engaging with aboriginal communities needs to be done properly and with respect.

THANK YOU!

Questions and Comments