

From: Ken Cain

Date: Sunday, March 29, 2020 at 8:37 PM

To: Linda Heron **Cc:** Joanna

Subject: Lakes and Rivers Improvement Act - Regulation 454/96 - ORA Submission

Ms. Heron,

Thank you for the ORA's submission of February 3rd, 2020 regarding the proposal for a regulatory amendment to modernize the administration of the *Lakes and Rivers Improvement Act* (LRIA), Ontario Regulation 454/96 (Construction) (ERO 019-1060). The Ministry appreciates the input of the ORA and would like to update the ORA on the status of the regulation and respond to key ORA comments.

The amendment to Ontario Regulation 454/96 was passed and is now in effect. A Decision Notice on the Environmental Registry of Ontario, which provides more information on the decision, can be found here: <https://ero.ontario.ca/notice/019-1060>. The amended regulation can be found here: <https://www.ontario.ca/laws/regulation/960454>.

In response to ORA Recommendations 1 and 2, while the regulation does not specifically define 'wetland dam', it does describe the criteria a dam must meet to be eligible for the rules in regulation approach. The dam must have a low hazard classification. Also, as described in 2.1(3)(a) of the regulation, the dam:

- (i) is an existing earth embankment, concrete gravity, timber crib, or flow through rock fill dam,
- (ii) holds back, forwards or diverts water in a river, lake, pond or stream that forms part of a wetland or is contiguous with a wetland, and
- (iii) directly maintains or enhances the form or function of a wetland.

A definition of wetland is provided in the regulation itself.

In response to ORA Recommendations 3 and 4, the alterations that are permitted under this regulation amendment are any alterations, improvement or repairs to a low hazard wetland dam, that do not change the hazard potential classification and does not include decommissioning. Given the limited size and head of these dams, it is very unlikely that a dam owner would seek to use this regulatory option to retrofit a dam to insert a hydro electric turbine.

In response to ORA Recommendations 5, 6, 7 and 8, the Ministry acknowledges the ORA recommendation that MNRF also look to streamline the regulatory process for the removal of obsolete dams, that may no longer serve their original purpose. Decommissioning of dams currently requires individual, project approval from the Ministry and at times, other regulatory agencies. Evidence collected to date, does not provide sufficient evidence that decommissioning always has predictable outcomes and hence this activity remained out of scope of this regulatory amendment. MNRF will however consider this recommendation on a go forward basis, as part of MNRF's ongoing efforts to improve the administration of the LRIA. Guidance on the removal of small dams, which can be found here <https://www.ontario.ca/page/small-dam-removal>.

In response to ORA Recommendations 9 and 10, the regulation requires that any alteration, improvement or repair completed under the rules in regulation approach must not change the low

hazard potential classification. However, all repairs, alterations and improvements could be considered, except for decommissioning, which is out of scope.

In response to ORA Recommendations 11, 12, 13, 14, evidence collected to date suggests that alterations, improvements and repairs have a very low risk to the environment, and that any risk is sufficiently mitigated by the involvement of a licenced engineering practitioner. Dam owners and licenced engineering practitioners are able to rely on the existing suite of LRIA Technical Bulletins, the Administrative Guide, and the Best Management Practices. The Ministry is considering updates to these documents to reflect amended regulation and to assist in dam owner understanding and compliance with the regulation.

And finally in response to ORA Recommendation 15, in addition to use of the Environmental Registry of Ontario and the Regulatory Registry, MNRF sent letters seeking comments on the proposal to all First Nation communities and Indigenous organizations in Ontario. Due to the nature of a rules in regulation scheme, there is no regulatory requirement for dam owners to consult prior to conducting alterations, improvements or repairs. However, evidence collected to date suggests that alterations, improvements and repairs to low hazard wetland dams do not have impacts to adjacent property owners.

If the ORA would like to discuss the amended regulation further, please feel free to contact Joanna Samson, Water Management Policy and Program Advisor at joanna.samson@ontario.ca. Thank you again for the submission of the Ontario Rivers Alliance.

Sincerely,

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