



19 May 2020

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Ministry of Natural Resources and Forestry
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Via Email: John.Dungavell@Ontario.ca

Re: Lakes and Rivers Improvement Act, Ontario Regulation 102/20
Monitoring of Mercury Near Dams

Dear Sirs:

The Ontario Rivers Alliance (ORA) is writing further to our [submission dated 22 November 2019](#) and [5 December 2019](#), with regard to the new regulation under the Lakes and Rivers Improvement Act (LRIA), Ontario Regulation 102/20, Monitoring of Mercury Near Dams.

ORA has had an opportunity to review the LRIA, Ontario Regulation 102/20, and we have a few questions and concerns.

ERO-019-0732 set out the Ministry of Natural Resources and Forestry (MNRF) proposal for the new Minister's regulation under the *Lakes and Rivers Improvement Act (LRIA)*. *The new regulation would "where necessary, assess, monitor and report on methyl mercury related impacts to water and fish" and "amend an existing authority to incorporate guidelines by reference in the regulations."*¹

The proposal also stipulated that this requirement would apply to the *"owners of the twelve existing dams that currently have mercury assessment, monitoring and reporting requirements established through the Ministry of Environment Conservation and Parks issued PTTW, and if regulations are made would continue these requirements under the authority of the Lakes and Rivers Improvement Act"*.

1. Were all of the 12 existing dams that had mercury assessment, monitoring and reporting requirements at the time of the consultation period for ERO-019-0732 consolidated and included for reporting under this new Ontario Regulation 102/20?

The reporting requirements for the 12 existing dams should be reviewed and assessed to ensure their monitoring and reporting requirements and mitigation efforts are sufficient and effective. This especially applies to the older risk management plans for mercury that may not be as comprehensive as the newer plans.



2. What will happen with older facilities with reporting requirements that were transferred over from the Permit to Take Water (PTTW) process that may need to be reviewed or renewed to ensure mercury reporting efforts and risk management plans are sufficient?

The ERO proposal also goes on to say that *“new or significantly redeveloped electricity-producing dams may, if the regulation is made, require assessment, monitoring and reporting of mercury, where there is a new or expanded head pond area and/or where there are identified risks associated with human consumption of fish”*.²

3. There is no mention of new or significantly redeveloped dams in this Regulation. Can you please provide a timeline and strategy for when this Regulation will include *“new or significantly redeveloped electricity-producing dams”* requiring *“assessment, monitoring and reporting of mercury, where there is a new or expanded head pond area and/or where there are identified risks associated with human consumption of fish”*?
4. What will be the minimum head pond inundation increase for any new or significantly redeveloped dams for assessment, monitoring and reporting requirements?
5. Since there is no monitoring or knowledge of the stream flow regime now that waterpower has been exempted from the PTTW process, how will the MNRF know how far below the dam that fish should be monitored for mercury?

Methylmercury contamination of fish tissue from newly inundated head ponds poses a serious risk to public health and safety and must be regulated at all new and upgraded waterpower facilities where head ponds are used or expanded in size. This is especially concerning where Indigenous communities rely on fish as a main staple in their diet.

ORA is very concerned about the extreme deregulation that occurred with the recent waterpower exemption to the Permit to Take Water, and in this new Mercury Regulation where new and significantly redeveloped electricity producing dams have not been addressed. These important legislative requirements were designed to ensure hydroelectric facilities are held accountable for environmental and socio-economic impacts and risks to communities and riverine ecosystems.

We are also aware that the Ontario Waterpower Association continues to work behind the scenes lobbying for the continued gutting of policy and legislation that was implemented to instill confidence and ensure environmentally sustainable, responsible and safe waterpower development. It is crucial that this government and its regulators place the protection of the public's best interests and our freshwater resources ahead of private for-profit corporations.

ORA requests your attention to this important matter and looks forward to your response.

Respectfully,

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Cc: The Honourable Minister John Yakabuski, MNRF – Minister.MNRF@Ontario.ca
The Honourable Minister Jeff Yurek, MECP – Minister.MECP@Ontario.ca
Jerry DeMarco, Environmental Commissioner – Jerry.Demarco@Auditor.on.ca



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¹ *ERO 019-0732, Amendments to Three Statutes administered by the Ministry of Natural Resources and Forestry to support the proposed Better for People, Smarter for Business Act, 2019 and a proposal for a new regulation under the Lakes and Rivers Improvement.*

² *Ibid.*