

Navigable Waters Protection Act Regulatory Development

November 4, 2009



RDIMS# 5254997



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Purposes

To provide an overview of the Regulatory Development activities pursuant to the amended *Navigable Waters Protection Act*.

To solicit comments on this topic from stakeholders and interested parties.

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Background

- The *Navigable Waters Protection Act (NWPA)* was enacted to approve interference to the common law right of navigation in Canada.
- On March 12, 2009, the amended *NWPA* received Royal Assent. Prior to that, the Act had not been significantly changed since 1882.
- On June 7, 2009 the *Minor Works and Waters (NWPA) Order* came into force, made by the Minister of Transport under the authority of Section 13 of the amended Act.
- Transport Canada has initiated an activity to convert that Ministerial Order into proposed regulations.

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Amended NWPA – Key Changes

March 2009 – Royal Assent – NWPA amendments implemented

- New provision specifying that the NWPA is binding on Her Majesty in right of Canada, a province and the Territories.
- New definition of “work” providing greater clarity to applicants and greater flexibility for the Minister.
- New provision permitting the ‘Grandfathering’ of Crown Works.
- Deletion of specific reference to the four “named” works under subsection 5(2) of the NWPA.
- Creating the Authority in the Act for the Minister to make Orders.
- Creating new Regulation-making powers in the Act.
- New inspection and investigative powers, increased fine limits and newly created continuing offence provision in the Act.
- Inclusion of a five-year review clause.

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Minor Works and Waters (NWPA) Ministerial Order

Defines the classes of works which are exempt from the approval process normally required under the NWPA.*

- Erosion Protection Works
- Docks and Boathouses
- Winter Crossings
- Aerial Cables – Power and Communication
- Submarine Cables – Power and Communication
- Pipeline Crossings
- Water Intakes
- Dredging
- Temporary Works

Defines the classes of waters which are exempt from the approval process normally required under the NWPA.*

- Sections of Navigable Waters
- Artificial Irrigation Channels and Drainage Ditches
- Private Lakes

* Note that the specific criteria which must be met are defined in more detail on the Order, available at <http://www.tc.gc.ca/acts-regulations/acts/1985cn-22/menu.htm>.



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Consultation Strategy

1. Consultation initially will focus on Minor Works and Waters.
2. The existing Ministerial Order on Minor Works and Waters will be the basis for the proposed regulations.
3. The purpose of consultation on Minor Works and Waters is to 'fine-tune' the criteria that are already defined.
4. Efforts will focus on ensuring coverage of stakeholders and interested parties in the following areas
 - Geography
 - Proponents
 - Users
 - Aboriginal Peoples
5. Communication channels will include presentations, teleconferences, registered letters, existing forum (TAC, CMAC, FCM, etc.) and other venues as opportunities arise.

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Regulatory Development Timelines

Minor Works and Waters

September 2009	Consultation begins
January 2010	Analysis of feedback and comments begins
August 2010	Pre-publication in Part 1 of the Canada Gazette
September 2010	30-day comment period
March 2011	Publication in Part 2 of the Canada Gazette

Other NWPP Regulatory Activities

November 2009	Proposed NWPA Regulatory Structure defined
January 2010	Consultation continues
June 2010	Analysis of feedback and comments begins

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Stakeholder and Interested Parties

Comments, concerns, issues, feedback on any area of the *Ministerial Order* are of interest. For example

- Should the list of classes of works be modified, either by adding new classes, or removing existing classes?
- Are there ambiguities in the criteria defined in the *Ministerial Order*?
- Are there contradictions or inconsistencies between criteria?
- Is the rationale for some criteria not evident?
- Are some criteria too onerous? Too lenient?
- Anything else?

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Minor Works and Waters (NWP) Ministerial Order

Classes of Minor Works

- Erosion Protection Works
- Docks and Boathouses
- Winter Crossings
- Aerial Cables – Power and Communication
- Submarine Cables – Power and Communication
- Pipeline Crossings
- Water Intakes
- Dredging
- Temporary Works

Classes of Minor Waters

- Sections of Navigable Waters
- Artificial Irrigation Channels and Drainage Ditches
- Private Lakes

* Note that the specific criteria, definitions, and the terms and conditions which must be met are defined in more detail on the Ministerial Order.

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EROSION PROTECTION WORKS

An erosion protection project meeting all of the following criteria and standards is *considered* a minor work and *does not require* the submission of an application for review and approval under the NWPA:

1. the works are integrated with and parallel to the existing or natural shoreline or bank;
2. the base of the works is 5 m or less from the high-water mark;
3. the vertical to horizontal slope of the works from the navigable waters is greater than 33%;
4. the works are not associated with an existing or proposed structure, including a bridge, a boom, a dam or a road, across the navigable waters; and
5. the works do not include groynes or spurs or other devices to deflect the current.

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DOCKS AND BOATHOUSES

A dock or boathouse project meeting all of the following criteria and standards is *considered* a minor work and *does not require* the submission of an application for review and approval under the NWPA:

1. the works are at least 5 m from the adjacent property boundaries;
2. the works are at least 10 m from any dock, boathouse or other structure that is fully or partially in, on or over the navigable waters;
3. the extremity of the works that is furthest from the land is at least 30 m away from any navigation channel;
4. the works do not extend further in, on or over the navigable waters than any adjacent docks;
5. the works are not associated with any other proposed works, such as launch ramps, breakwaters, landfill, dredging and marinas; and
6. the works are not used for float planes or other aircraft equipment with floats.

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WINTER CROSSINGS

Crossings built or placed on, over or across navigable waters that are frozen to such an extent that navigating by a vessel other than an icebreaker is not possible *is considered* a minor work and *does not require* the submission of an application for review and approval under the NWPA.

The following terms and conditions must be strictly adhered to during construction:

1. Before spring break-up commences, all parts of the works, including piers, abutments, log fills and debris, shall be completely removed from the navigable waters, including the area from the waters' edge to the high-water mark; and
2. Before the navigable waters are thawed to such an extent that navigating by a vessel other than an icebreaker is possible, the bed of the navigable waters shall be restored to its natural contours if the works disturbed it.

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AERIAL CABLES (Power and Communication)

An aerial cable project meeting all of the following criteria and standards is *considered* a minor work and *does not require* the submission of an application for review and approval under the NWPA:

1. the width of the navigable waters that the cables are over or across is less than 15 m when measured from the high-water mark on one side to the high-water mark on the other side of the waters;
2. the works are more than 1 000 m from any lake or tidal waters;
3. the works are not over or across charted navigable waters;
4. the works are not or across a canal that is accessible to the public; and
5. the works do not include towers or poles within the navigable waters, including within the area from the waters' edge to the high-water mark.

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SUBMARINE CABLES (Power and Communication)

A submarine cable project meeting all of the following criteria and standards is *considered* a minor work and *does not require* the submission of an application for review and approval under the NWPA:

1. the works lie on or under the natural contours of the bed of the navigable waters;
2. the works are more than 10 m from any dock or boat launch;
3. the works are not in or under charted navigable waters;
4. the works are not across the entrance to any port, including any marina or yacht club.

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PIPELINE CROSSINGS

A submarine cable project meeting all of the following criteria and standards is *considered* a minor work and *does not require* the submission of an application for review and approval under the NWPA:

1. the pipeline crossing project is buried underneath the bed of the navigable water.

A pipeline crossing project meeting any of the following criteria is **not** considered a minor work:

1. the works are regulated under the *National Energy Board Act*;
2. the works are under charted navigable waters;
3. the works require the placement of temporary cables not lying on the bed of the waters, to facilitate the construction, placement, testing, alteration or repair of the works; or
4. the width of the waters at the crossing location exceeds 50 m.

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WATER INTAKES

A water intake project meeting all of the following criteria and standards is *considered* a minor work and *does not require* the submission of an application for review and approval under the NWPA:

1. the intake pipe is less than 10 cm in diameter and lies on the bed of the navigable waters;
2. the intake end of the work is:
 - a. in waters more than 2.5 m in depth, in the case of uncharted navigable waters, or
 - b. in waters less than 0.5 m, according to chart datum, in the case of charted navigable waters;
3. the work is more than 50 m from a navigation channel;
4. the work does not include a crib or other intake structure, such as an anchor, a collar or a weight, that extends more than 50 cm above the bed of the navigable waters;
5. the work is not associated with a dam, a weir, or a headpond, including a proposed dam, weir or headpond.

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DREDGING

A dredging project meeting all of the following criteria is *considered* a minor work and *does not require* the submission of an application for review and approval under the NWPA:

1. the works consist of regular maintenance around docks, retaining walls, marina basins or other structures;
2. the works and associated marine equipment are more than 30 m from a navigation channel;
3. all dredged materials are disposed of above the high-water mark;
4. no suction dredging that includes any floating or submerged pipes is used;
5. the works have no cables that cross on, over or through any portion of the navigable waters; and
6. the works do not include blasting.

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TEMPORARY WORKS

Temporary* works that are required for the construction or placement of any other work determined to be a minor work are *also considered* minor works and *do not require* the submission of an application for review and approval under the NWPA, unless the temporary works:

1. are roads, bridges, dams, cofferdams, berms or booms;
2. change the course of the navigation channel in the navigable waters;
3. cross more than halfway from one side of the navigable waters to the other side; or
4. are in, on, over, under, through or across a navigation channel.

* The the temporary works must be completely removed; and if the temporary works disturbed the bed of the navigable waters, it must be restored to its natural contours.

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Sections of Navigable Waters (1)

200 meter sections of navigable waters *is considered* a minor water and works that affect its navigability *do not require* the submission of an application for review and approval under the NWPA if :

1. The average width of the navigable waters measured at the high-water level is less than 1.20 meters;

OR

1. The average depth of the navigable waters measured at the high-water level is less than 0.30 meters.

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Sections of Navigable Waters (2)

A 200 meter section of navigable water *is considered* a minor water and works affecting its navigability *do not require* the submission of an application for review and approval under the NWPA if

1. the average width of the navigable waters measured at the high-water level is between 1.20 m and 3.00 m;

and any one of the following conditions are met:

- a. The average depth of the navigable waters measured at the high-water level is less than .60 m;
- b. The slope of the navigable waters measured at the high-water level is greater than 4%;
- c. The sinuosity ratio is greater than 2;
- d. There are more than two natural obstacles in the navigable waters, at least one of which is upstream, and another which is downstream from the midpoint of the centre line of the navigable waters.

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Artificial Irrigation Channels and Drainage Ditches

Artificial irrigation channels and drainage ditches *is considered* a minor water *is considered* a minor water and works affecting its navigability *do not require* the submission of an application for review and approval under the NWPA if

1. They are not created or built in whole or in part from a natural body of water;
2. They have an average width of less than 3.00 m.

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Private Lakes

A lake that is 5 hectares or less in area *is considered* a minor water and works affecting its navigability *do not require* the submission of an application for review and approval under the NWPA if

1. One person is the registered owner of all the land abutting the lake;
2. There are no navigable waters that enter into or exit from the lake;
3. There is no current or past public access to the lake; and
4. There are no easements or servitudes that allow access to the lake.

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Additional Regulations, pursuant to Section 12. (1)

12. (1) The Governor in Council may make any orders or regulations that the Governor in Council deems expedient for navigation purposes respecting any work to which this Part applies or that is approved or the plans and site of which are approved under any Act of Parliament or order of the Governor in Council, and may make regulations
- a) prescribing the fees payable to the Minister on an application for an approval under this Part;
 - b) respecting the grant, amendment, renewal, suspension and cancellation of approvals under this Part;
 - c) prescribing the period for which an approval under this Part is valid;
 - d) respecting notification requirements for a change in ownership in a work;
 - e) establishing classes of works or navigable waters for the purposes of subsection 5.1(1);
 - f) respecting the placement, construction, maintenance, operation, safety, use and removal of works; and
 - g) for carrying out the purposes and provisions of this Part.

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In Summary

On June 7, 2009 the *Minor Works and Waters (NWPA) Order* came into force, made by the Minister of Transport under the authority of Section 13 of the amended Act.

Transport Canada has initiated an activity to convert that Ministerial Order into proposed regulations. We are currently consulting with interested parties, stakeholders and the general public.

Please contact Ken Hahn (at Kenneth.Hahn@tc.gc.ca or 613-998-6442) for additional information, clarifications, and to provide comments on the existing criteria for minor works and waters.

We would appreciate your comments by December 31, 2009.

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