



STORM DRAINAGE WORKS APPROVAL POLICY

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Approved By: Ron L'Esperance

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I. BACKGROUND

Watercourses have historically been considered an essential storm drainage component of land development. However, some storm water management practices associated with land development are not acceptable in terms of current departmental expectations for the protection of Nova Scotia's lakes and streams.

II. PURPOSE

The two-fold purpose of this policy is to promote the protection, enhancement, and prudent use of watercourses and wetlands, and to confirm specific administrative policies and criteria to be used by Nova Scotia Environment and Labour, including consultation between the Department and municipalities, in making decisions respecting the issuance of storm drainage works approvals.

III. LEGISLATION

1. Section 3(be) of the *Environment Act*, S.N.S. (1994-95, c. 1)(the "Act")

3(be) "watercourse" means

- (i) the bed and shore of every river, stream, lake, creek, pond, spring, lagoon or other natural body of water, and the water therein, within the jurisdiction of the Province, whether it contains water or not, and
- (ii) all ground water.

2. Subsections 8(2)(b) and (i) of the Act state:

8(2) The Minister, for the purposes of the administration and enforcement of this Act, and after engaging in such public review as the Minister considers appropriate, shall

- (b) establish and administer policies, programs, standards, guidelines, objectives, codes of practice, directives and approval processes pertaining to the protection and stewardship of the environment;
 - (i) establish criteria to be applied by an administrator or a person to whom responsibility is delegated pursuant to this Act in making any decision under this Act.
3. Section 52 of the Act states:
- 52(1)** Where the Minister is of the opinion that a proposed activity should not proceed because it is not in the public interest having regard to the purpose of this Act, the Minister may, at any time, decide that no approval be issued in respect of the proposed activity if notice is given to the proponent, together with reasons.
- (2)** When deciding, pursuant to subsection (1), whether a proposed activity should proceed, the Minister shall take into consideration such matters as whether the proposed activity contravenes a policy of the Government or the Department, whether the location of the proposed activity is unacceptable or whether adverse effects from the proposed activity are unacceptable.
4. Section 56(1) of the Act states:
- 56(1)** The Minister may issue or refuse to issue an approval.
5. Section 103 of the Act states:
- 103** Notwithstanding any enactment, or any grant, deed or transfer made on or before May 16, 1919, whether by Her Majesty or otherwise, or any possession, occupation, use or obstruction of any watercourse, or any use of any water by any person for any time whatever, but subject to subsection 3(2) of the *Water Act*, every watercourse and the sole and exclusive right to use, divert and appropriate any and all water at any time in any watercourse is vested forever in Her Majesty in right of the Province and is deemed conclusively to have been so vested since May 16, 1919, and is fully freed, discharged and released of and from every fishery, right to take fish, easement, *profit a prendre* and of and from every estate, interest, claim, right and privilege, whether or not of the kind hereinbefore enumerated, and is deemed conclusively to have been so fully freed, discharged and released since May 16, 1919.
6. Section 105(1) of the Act states:
- 105(1)** The Minister has supervision of the uses of all water resources and watercourses and the allocation of water in the Province.

7. Section 7(2) of the *Activities Designation Regulations* states:

- 7(2)** The construction, operation, or reclamation of
- (b) a storm drainage works, including
 - (i) storm collection systems and pumping stations,
 - (ii) retention or storage facilities,
 - (iii) treatment facilities,
 - (iv) outfalls;

is designated as an activity which requires an approval.

8. Section 8(1) of the *Approvals Procedure Regulations* states:

- 8(1)** The review of an application shall determine whether the impact on the environment of the activity conforms with regulations made pursuant to the Act, or with policies, standards or guidelines prescribed or adopted by the Minister.

IV. POLICY STATEMENT

1. Subsection 52(1) of the *Environment Act* authorizes the Minister to determine that an approval not be issued for a proposed activity where it is not in the public interest to do so. The Minister has determined that the following adverse effects resulting from the placement or creation of a proposed storm water detention, retention, storage or treatment facility in a watercourse are unacceptable and that approvals for this activity will not be issued:

- (a) destruction of aquatic habitat
- (b) impairment of fish passage
- (c) public safety hazard
- (d) degradation of water quality

2. The Minister will not issue a storm drainage works approval permitting discharges from storm drainage works to open ditches or a watercourse unless

- (a) the Application for Approval of Storm Drainage Works is accompanied by supporting documentation as specified in the current application form, including a site assessment as referenced in Part V, below, and
- (b) the site assessment satisfies the Department that potential off-site or downstream impacts have been properly identified and that the applicant is able to mitigate the impacts.

V. APPLICATION CRITERIA

1. “Potential impacts” may include, but are not limited to, baseflow reduction and impacts on groundwater, wetlands and downstream water uses, or may result from downstream or off-site flooding, erosion of the bed and banks of a storm drainage ditch or a watercourse, sedimentation and destruction of fish habitat.
2. An application for approval is not considered complete, or completed, pursuant to Section 54 of the Act or Sections 2(e) and 6(1) of the *Approvals Procedure Regulations* unless the applicant’s site assessment contains information relevant to the foregoing potential impacts, which may include:
 - (a) professional engineering analyses, drawings and calculations
 - (b) report(s) prepared by a qualified limnologist where lakes are located at outfalls or downstream from outfalls
 - (c) report(s) prepared by a qualified hydrogeologist
 - (d) report(s) prepared by a licensed Nova Scotia land surveyor
 - (e) written landowner agreement(s) respecting location of the applicant’s proposed overland discharge if the storm water drainage discharge would be directed at lands not owned by the applicant
 - (f) identified responsibility for the long-term operation and maintenance of the storm drainage works and storm drainage easements
 - (g) analysis of the pre and post development site runoff, with the objective of achieving zero increase in peak discharge from the fully developed site
 - (h) on-site soil erosion and sediment control and other water quality treatment facilities necessary to mitigate any impacts due to construction of the storm drainage works.

In accordance with Section 5 (2) of the *Approvals Procedure Regulations*, the Department may waive in writing any of the application criteria if satisfied that a requirement is not relevant to a particular application. Therefore applicants are encouraged to consult the Department prior to submitting applications. The Department may consult with municipalities and watershed advisory boards on any aspect of an application during preliminary consultation with the applicant or during review of the application.

3. Subject to IV (1), any proposed watercourse or wetland alteration must receive the approval of the Department in accordance with the *Activities Designation Regulations* and the consent of all property owners whose property abuts the watercourse or wetland where the alteration may occur.

VI. APPLICATION OF POLICY STATEMENT

1. This policy applies to storm drainage works designated under Division III, Section 7 (2) (b) of the *Activities Designation Regulations* and therefore does not apply to agricultural drainage ditches, or forest road drainage.
2. For greater certainty, with respect to Section V(2) of this policy, an approvals administrator may determine the extent to which this policy applies to minor extensions to existing storm drainage works, and advise an applicant in writing.

DATED at Halifax, in the Province of Nova Scotia, December 10, 2002 .

original signed by:
Ronald E. L'Esperance
Deputy Minister
NS Environment and Labour