



Environment

Water Resources Branch

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Whitehorse, Yukon Y1A 2C6

Fact Sheet: *Waters Act* Requirements for Proposed Flood Protection Work

Purpose

This fact sheet sets out *Waters Act* requirements for Yukon residents who plan on doing works relating to watercourse training or flood protection which involves the indirect use of water. It contains a summary of the legislative requirements as it relates to this activity.

Summary of Requirements

Section 6 of the *Waters Act* states that: "...no person shall use, or permit the use of, waters in a water management area except in accordance with the conditions of a licence." This subsection does not apply in respect of the use of waters for the purpose of controlling or preventing a flood on an emergency basis, however (s.6(2)(c)(ii), *Waters Act*). Section 7 prohibits the deposit of waste except in accordance with the conditions of a licence or as authorized by the Regulations.

Work to prepare for a future flood situation would not be considered work to be done on an emergency basis. (An emergency basis is defined in the Merriam-Webster dictionary as: "an unforeseen combination of circumstances or the resulting state that calls for immediate action.") In addition, the *Waters Act* provides that a person diverting water for controlling or preventing a flood on an emergency basis shall discontinue the diversion and restore the original channel conditions when the need for the diversion has ceased (s.6(3)).

A person may use water or deposit waste without a water licence if:

- The proposed use or deposit has no potential for significant adverse environmental effects;
- It does not interfere with existing rights of other water users or waste depositors; and
- Satisfies the criteria set out... in respect of a miscellaneous undertaking, in column 2 of Schedule 10 (s.4, *Waters Regulation*).

Special attention should be given to the criteria set out in relation to channel and bank alterations, artificial accretion, spurs, docks, culverts, and erosion control. The *Waters Regulation* refers to these things as “watercourse training.”

No water licence is required for the training of intermittent (seasonal) watercourses or for the training of watercourses that are less than 5 metres wide at ordinary high water mark at point of training. The ordinary high water mark is the point at which water has been maintained for a sufficient time to leave evidence upon the landscape. Generally, it is the point where the natural vegetation changes from predominately aquatic to upland species. For streams, the ordinary high water mark is generally the top of the bank of the channel. The ordinary high water is generally the elevation from which building and sewage setbacks are measured. All other watercourse training of this nature requires a type “B” water licence.

No water licence is needed for watercourse training involving the removal or placement of less than 100 m³ of material, where the cross-sectional area across the watercourse is not significantly changed at the point of removal or placement. All other watercourse training of this type requires a type “B” water licence.

With respect to the indirect use of water for flood control, the construction of a temporary structure is permitted without a water licence. Temporary would be for the period of time that the flood occurs, and the structure is to be removed when the flooding event is over. A type “B” water licence is required for the construction of a permanent structure where there is no potential for significant adverse environmental effects. A type “A” water licence is required for the construction of a permanent structure where there is a potential for significant adverse environmental effects.

It should be noted that there are other criteria that may also be triggered such that a licence is required, depending upon the work being proposed. Readers should refer to Schedule 10 in the Regulations for further information on the criteria to consider.

For more information about the legislation or regulations, you can view the *Waters Act* and its regulations on-line at www.gov.yk.ca/legislation/pages/page_w.html or pick up a paper version from the Water Resources Branch office.

For further information on the application of the <i>Waters Act</i> or <i>Regulations</i> , please contact the Manager of Inspections at (867) 667-3227 or drop in to room 310, 300 Main St., Elijah Smith Building (Whitehorse) during regular office hours.
