

#14

Frequently Asked Environmental Law Questions

ALTERATION OF WATER HABITAT

Q:

I run a small restaurant located beside a lake. I would like to extend my patio by filling in a marshy area along the shoreline and building a platform over the filled area. Do I need permission from somebody to do this?

A:

You will need permission to deposit substances into the lake. Potentially, all levels of government – federal, provincial and municipal – will be interested in regulating your activities.

Federal Government

Pursuant to the *Fisheries Act* and the *Navigable Waters Protection Act*, the federal government may be interested in your activities.

The *Fisheries Act* prohibits any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.¹ Any water that provides the spawning grounds and nursery, rearing, food supply or migration areas on which fish depend to carry out their life processes is considered fish habitat.²

In addition, the *Fisheries Act* prohibits the deposition of a deleterious substance in water frequented by fish or in any place where the deleterious substance might enter such water.³

A deleterious substance is any substance that would alter or degrade the quality of water so that it is, or is likely to be, rendered deleterious to fish, fish habitat or to the use by people of fish that frequent the water.

Permission to commence an undertaking that alters, disrupts or destroys fish habitat may be obtained from the Minister of Fisheries and Oceans.⁴ Similarly, the Minister may grant permission to deposit a deleterious substance into water frequented by fish.⁵

The federal government may also be interested in your activities pursuant to the *Navigable Waters Protection Act*. This Act applies to navigable water. This means the waters must be capable of carrying a

vessel for travel or transport for trade, communication or recreation purposes.⁶ To be considered navigable, a water body must be more than a small pond isolated from other waters, and more than a prairie slough that fills with spring melt and virtually dries up in summer.

This Act prohibits any “work” that is built or placed in, on, over, under, through or across any navigable water unless the work, the site and the plans have been approved by the Minister of Fisheries and Oceans.⁷ A work includes any dumping of fill or excavation of materials from the bed of a navigable water.⁸

It should be noted that the *Canadian Environmental Assessment Act* might be triggered by the grant of Ministerial approval pursuant to either the *Fisheries Act* or the *Navigable Waters Protection Act*.

Provincial

Provincial authorities may also be interested in your activities pursuant to the *Water Act* and the *Environmental Protection and Enhancement Act*.

The *Water Act* prohibits the commencement or continuation of an activity except pursuant to an approval⁹. An “activity”¹⁰ includes maintaining, removing or disturbing ground, vegetation or other material, or carrying out any undertaking in or on any land, water or water body that:

1. alters, may alter or may become capable of altering the flow or level of water, or
2. causes, may cause or may become capable of causing an effect on the aquatic environment.

The *Water (Ministerial) Regulation* further defines activity for the purposes of the Act as anything that causes or may cause a significant adverse effect on the aquatic environment, human health, property or public safety.¹¹

Your activities may also fall into the scope of the *Environmental Protection and Enhancement Act*. This Act prohibits the release into the environment of a substance in an amount or at a rate of release that causes or may cause a significant adverse effect.¹² A substance means any matter that is capable of being dispersed in the environment and would likely include your fill materials. However, an approval allowing release of a substance may be obtained from the Minister of the Environment.¹³

In addition, an EPEA approval or registration will be required of any activity that requires an approval under the *Water Act* and that has been designated by regulation. To date, activities such as you propose have not been designated by regulation.

There is a possibility that activities which require an approval under the *Environmental Protection and Enhancement Act* will be subject to an environment assessment.

Municipal

Finally, the municipal government may be interested in your activities. Pursuant to the *Municipal Government Act*, a municipality has the direction, control and management of the rivers, streams, watercourses, lakes and other natural bodies of water within the municipality.¹⁴ As such, there may be municipal by-laws that prohibit or restrict your activities.

¹ *Fisheries Act*, s. 35(1).

² *Fisheries Act*, s. 34(1).

³ *Fisheries Act*, s. 36(3).

⁴ *Fisheries Act*, s. 35(2).

⁵ *Fisheries Act*, s. 36(4).

⁶ See for instance *International Minerals & Chemicals Corporation (Canada) Limited v. Canada (Minister of Transport)*, [1992] T-1354-92 (Fed. T.D.).

⁷ *Navigable Waters Protection Act*, s.5.

⁸ *Navigable Waters Protection Act*, s.3.

⁹ *Water Act*, s. 36(1).

¹⁰ *Water Act*, s. 1(1)(b).

¹¹ *Water (Ministerial) Regulation*, s. 1(4).

¹² *Environmental Enhancement and Protection Act*, s. 98(1) and 98(2).

¹³ *Environmental Enhancement and Protection Act*, s. 98(3).

¹⁴ *Municipal Government Act*, s.60.



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Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a non-profit charitable organization operating in Alberta since 1982. The Society believes in making the law work to protect the environment and in support of this objective, provides services in environmental law education and assistance, environmental law reform, and environmental law research. The Society operates the Environmental Law Centre which is staffed by four full-time lawyers.

Funding is provided to the Society in part by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Society's objectives.

For further information, pursue the following:

Environmental Law Centre Library Resources:

- THE ENVIRONMENTAL APPEAL BOARD'S ROLE UNDER ALBERTA'S WATER ACT / Tilleman, William A. -- In "National Symposium on Water Law" : Environmental Law CLE Programme, Toronto, Ontario, April 9-10, 1999. Canadian Bar Association, 1999.
- INTERJURISDICTIONAL ISSUES IN CANADIAN WATER MANAGEMENT / Saunders, J. Owen. -- Calgary: Canadian Institute of Resources Law, 1988.
- LAND-BASED SOURCES OF NON-POINT SOURCE WATER POLLUTION : A CANADIAN PERSPECTIVE / Jeffery, Michael I. -- In Water Pollution : Law and Liability : IBA (International Bar Association) Section on Business Law, Committee F (International Environmental Law) : The Edited Proceedings of Committee F's 8th Residential Seminar on International Environmental Law : 13-17 June 1992, San Francisco. Edited by Patricia Thomas. Pp.133-141. London: Graham & Trotman;International Bar Association, c1993.
- MANAGING INTERJURISDICTIONAL WATERS IN CANADA : A CONSTITUTIONAL ANALYSIS / Kennett, Steven A. -- Calgary: Canadian Institute of Resources Law, 1991.
- PROCEEDINGS OF THE ALBERTA LAKE MANAGEMENT SOCIETY'S 1996 ANNUAL WORKSHOP / Haekel, Gerry (ed.) / Alberta Lake Management Society. -- Sylvan Lake: Alberta Lake Management Society, 1996.
- SURFACE WATER QUALITY GUIDELINES FOR USE IN ALBERTA / Alberta Environment, Environmental Sciences Division, Water Management Division. -- Edmonton: Alberta Environment, 1999.
- WATER ACT : [A Seminar Presented by the Legal Education Society of Alberta], Calgary, Alberta, October 23, 1998

Websites:

- <http://www.acjnet.org/acjeng.html> This site contains federal and provincial legislation.
- http://www.ceaa.gc.ca/act/regulations_e.htm This document on the website for the Canadian Environmental Assessment Agency provides an introduction to the Regulations under the *Canadian Environmental Assessment Act*. It is useful for determining if an environmental impact assessment is required for a project.
- <http://www.gov.ab.ca/env/water.html> Alberta Environment's website for information on water management. It presents information on the legislation as well as other water-related information including water quality protection and enforcement.
- http://www.ec.gc.ca/envpriorities/cleanwater_e.htm This is Environment Canada's website for water information. For additional information, check their website at <http://www.ec.gc.ca/water/index.htm>. Follow the 'Water Policy and Legislation' icon for legislation and regulations as well information on how the federal and provincial responsibilities are separated. Check the 'Management of Water' icon for information on water pollution and water quality.
- http://www-heb.pac.dfo-mpo.gc.ca/english/habitat_policy/Default.htm This is the website of Fisheries and Oceans Canada, Habitat Enforcement Branch, Pacific Region. It contains information on enforcement policy, processes and activities.
- http://www.gov.edmonton.ab.ca/am_pw/drainage_services/cleanriver/ This is the website of the City of Edmonton's Drainage Services "Toward a Cleaner River" Campaign. It contains information on the river, its quality, human impacts on it, and has a section addressing frequently asked questions.
- http://www.gov.edmonton.ab.ca/corp_services/city_clerk/common_bylaws.htm This site provides a number of by-laws of the City of Edmonton, some of which pertain to maintaining river quality.

Contacts:

- To apply for an approval or licence contact Alberta Environment at the Regional Office for your area:

NORTHWEST BOREAL REGION

Regional Water Manager
Bag 900-5, Provincial Building
9621 - 96 Avenue
Peace River, AB T8S 1T4
Phone 780-624-6167
Fax 780-624-6335

NORTHERN EAST SLOPES REGION

Manager, Regional Support
52322 Golf Course Road
Stony Plain, AB T7Z 2K9
Phone 780-963-6131
Fax 780-963-4651

BOW REGION

Regional Water Manager
200, 3115 - 12 Street NE
Calgary, AB T2E 7J2
Phone 403-297-6582
Fax 403-297-2749

NORTHEAST BOREAL REGION

Manager, Regional Support
Floor 7, Oxbridge Place
9820 - 106 Street
Edmonton, AB T5K 2J6
Phone 780-427-5296
Fax 780-422-0528

PARKLAND REGION

Manager, Regional Support
Room 501, Provincial Building
4920 - 51 Street
Red Deer, AB T4N 6K8
Phone 403-340-7654
Fax 403-340-7662

PRAIRIE REGION

Regional Water Manager
Floor 2, Provincial Building
200 - 5 Avenue, South
Lethbridge, AB T1J 4L1
Phone 403-382-4254
Fax: 403-381-5337

- Canadian Environmental Assessment Agency
Edmonton Office
Suite 100 Revillon Bldg.
10237 - 104 Street
Edmonton, AB T5J 1B1
Phone 780-422-7704
Fax 780-422-6202
E-mail CEAA.Alberta@ceaa.gc.ca



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The information provided is current to December 31, 1999. While every effort has been made to ensure the accuracy and timeliness of the information, the answer, of necessity, is of a general nature. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this publication.

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