

Gerry:

I will not be able to review the most recent material from AENV this afternoon. I'll rely on you to incorporate the comments from Dave and myself in the response. You should probably include a comment on the flow chart and sequence of approvals (GoA regulators first). Should also indicate that there are other comments that can be discussed at future meetings.

I didn't get a chance to have a final conversation with Dave about more formal involvement with this initiative. Include his name as a contact for FWD (the other e-mail you sent indicated FWD involvement). I'll talk to Dave next week (he's in another meeting for the rest of the day).

Terry

From: Gerry Haekel
Sent: Friday, June 25, 2010 11:40 AM
To: Terry Kosinski; Barb Grunau
Subject: Aggregate Extraction Response
Importance: High

Terry/Barb, below is my draft response to the e-mail we received from Ernie Hui, ADM in AENV. Terry do you wish to add anything else? I assume F&W will be participating through the Lands committee member (as per ToR) but you may wish to confirm with Ernie that F&W participate directly. If so, we should probably identify that person for Ernie as well.

Ernie:

Thank you for sending a copy of the draft aggregate extraction policy to SRD for our review. I am pleased to advise that staff resources have now been allocated to work on this initiative and will participate in future meetings as the development of this policy progresses. Douglas Knight will be the primary participant in this initiative from the Lands Division. (?David Park? will be the primary participant in this initiative from the Fish and Wildlife Division.

We just received an updated draft of the policy late yesterday and I provide the following general comments. Specific details can be worked out in future meetings.

- (1) In general, SRD supports the intent of the initiative to confirm the government's direction regarding aggregate extraction within the active area of a water body as well as to those areas immediately in proximity to a water body. I do not believe the intent is to address extraction in all upland areas on private and public lands. This should be clarified and reflected in the Terms of Reference. I note that the TOR is still incomplete and should define the scope of this exercise for the participants working on this initiative.
- (2) As this proposes to be a GoA policy, it needs to read less like an Alberta Environment policy and be more inclusive of the language other regulators require for clarity. Although this draft is currently premised on the Water Act definition of a water body, titling the policy as a water body aggregate extraction policy is confusing to other regulators and stakeholders, and implies it is a policy for in-water extraction. We believe one of the primary objectives is to address extraction of aggregate in areas that are immediately proximal to water bodies. In addition, the policy does not recognize one of the key relationships to the wider GoA priorities that includes the objective of the Premier's Alberta Competitiveness Act. Removing all extraction out of floodplains may be viewed as unreasonable and contrary to provincial objectives.
- (3) For the above reason, it is imperative that both the risk-based assessment and the use of qualified third parties be further defined and included as part of the policy framework as they are key elements of the policy direction. These elements will also have impacts on how decisions are made in allocation of aggregate on public land, as well as requiring potential changes to the Code of Practice for Pits. The policy should address these implications and describe the relationship and how it will change.
- (4) The implementation plan currently outlined in the draft should be separated from the policy document. It is not policy. The policy needs to be able to stand on its own and give guidance for decision making. Anticipated future work does not add to policy direction.
- (5) The glossary needs work. A number of the terms have incorrect definitions (e.g. aggregate, ordinary high water mark) and others are included but not used in the draft text (e.g. reject).


We look forward to working with you to develop a policy document that provides the necessary clarity the regulators


require for decision making.

Please advise us of the next proposed meeting dates of the committee. Thank you.

Gerry Haekel, P.Biol.
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Land Management Branch, Lands Division
Alberta Sustainable Resource Development
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From: Augustus Archampong
Sent: Monday, July 19, 2010 9:40 AM
To: 'Dwight Oliver'; Bruce Blue; David Park; 'Tom.Olson@dfo-mpo.gc.ca'; Brent Welsh; Patricia Stevenson; Louise Brennan; Ryan Puhmann; Douglas Knight; 'Brock Helm'; Robert George
Subject: FW: GoA Water Body Aggregate Extraction Policy
Attachments: Aggregate Extraction Policy_v4_20100715.doc; Aggregate Extraction Policy_v3_20100621.doc



Aggregate
xtraction Policy_v4..

Here is the latest draft of the above document as promised in my earlier email. We will use this document version for discussion at our meeting tomorrow - July 20, 2010. Please note that comment from the Environmental Law Section has not been incorporated as they will be meeting with me on Thursday to provide clarification of the comments. SRD will also be providing additional comment by Friday.

Cheers, Archie.

From: Augustus Archampong
Sent: Monday, July 12, 2010 4:51 PM
To: 'Dwight Oliver'; Bruce Blue; David Park; 'Tom.Olson@dfo-mpo.gc.ca'; Brent Welsh; Patricia Stevenson; Louise Brennan; Robert George; Ryan Puhmann; Douglas Knight; 'Brock Helm'
Cc: Terry Kosinski; Gerry Haekel
Subject: GoA Water Body Aggregate Extraction Policy



Aggregate
xtraction Policy_v3..

Hello,

This is your invitation to attend a review meeting regarding the above policy draft.

Attached is Draft 3 of the policy which was submitted to ADM Ernie Hui's office. Comments on the draft policy have been received from Regional Services of AENV, and SRD, etc. Additional comments are expected from the Environmental Law Section by midmonth. All comments received will be addressed in draft document no. 4 to be sent to you prior to the meeting. Ernie is expecting draft document no. 5 in his office by August 12, 2010.

Please send an alternate rep. if you are unable to attend the meeting.

Meeting Agenda

1. Date July 20, 2010
2. Location Crowsnest Room, Twin Atria Building,
Edmonton

3. Start (Roundtable introductions; any additions to the agenda?) 9:30 am
4. Review of draft policy 10:00
5. Lunch (to be provided) 12:00
6. Review – continued 1:00
7. Discussion – New agenda items TBA
8. End TBA or 3:00 pm

****Bio-breaks as needed.

**GoA Water Body Aggregate Extraction Policy
(Operational approval procedures)
Draft 3**

Purpose

Develop GoA guidelines to support the regulatory approval processes for aggregate extraction operations in active and non-active areas of water bodies.

Vision and Outcomes

Water body aggregate extraction operations are carried out responsibly to ensure the maintenance and protection of the natural morphology of water body systems, including aquifers, and the quality of water they contain (natural habitat).

- Water body aggregate extraction is permitted to occur only in areas where it would not adversely impact the environment or aquatic ecosystems
- The GoA has a common and consistent approach to requests for water body aggregate extraction
- The roles and responsibilities of regulators are clearly defined

Assumptions and Principles

1. This policy promotes a risk-based approach to water body aggregate extraction.
2. Water body aggregate extraction in any active area of a water body will have adverse impacts
3. Water body aggregate extraction in a non-active area of a water body may have an adverse impact
4. All water body aggregate extraction applications will be processed according to the guidance outlined in this policy (which considers all regulatory mandates)

Policy Guidelines

1. **New Aggregate Extraction Operations**
 - 1.1. For proposed operations located within the active area of a water body no approvals will be issued.
 - 1.2. For proposed operations located within the non-active area of a water body approvals will only be considered when:
 - 1.2.1. A risk assessment of the environmental and third-party impacts is completed by a qualified third party [For 'qualified third party requirements']

see: <http://environment.alberta.ca/documents/Reclamation-Certificates-Professional-Declaration-Requirements.pdf>

- Any adverse effects on the land and/or aquatic environment (including but not limited to fisheries and wildlife resources, water quality, groundwater and river dynamics) resulting from the aggregate extraction operations must be identified.
 - The proponent must demonstrate the ability to mitigate or compensate for the above effects in a manner acceptable to all regulatory mandates.
- 1.2.2. All municipal bylaws and provincial and federal regulations, statutes, and policies have been met.

2. Existing Aggregate Extraction Operations

2.1. Will be allowed to continue for the remaining term of the *Public Lands Act*, *Environmental Protection and Enhancement Act*, or *Water Act* authorizations, subject to the requirements under the *Fisheries Act*. After this time, a renewal of an authorization will include a plan, where necessary, to bring the existing operation into compliance with the requirements outlined for new aggregate operations.

3. Undeveloped Aggregate Extraction Operations

3.1. Undeveloped aggregate extraction operations that have a *Public Lands Act* approval but no *Environmental Protection and Enhancement Act* or *Water Act* approvals will be considered a new operation and are subject to similar classifications and requirements.

4. Emergency Situations

4.1. Applications will be reviewed and approved by regulatory authorities on a case-by-case basis. The above guidelines may not be applicable.

Tools and Responsibilities

The following table indicates how the above guidelines will be implemented by the parties to this agreement, the tools used, and the party's role in the water body aggregate extraction authorization process.

Organization	Tools	Roles/Activities
AENV	<i>Water Act</i> & <i>EPEA</i> authorizations	(i) assess application for: - water quantity impacts, including on upstream and downstream users - water quality impacts for both surface and ground water - impact on river morphology, including bed and bank stability - impact on riparian areas
	Compliance programs (<i>Water</i>	(ii) enforce authorizations with

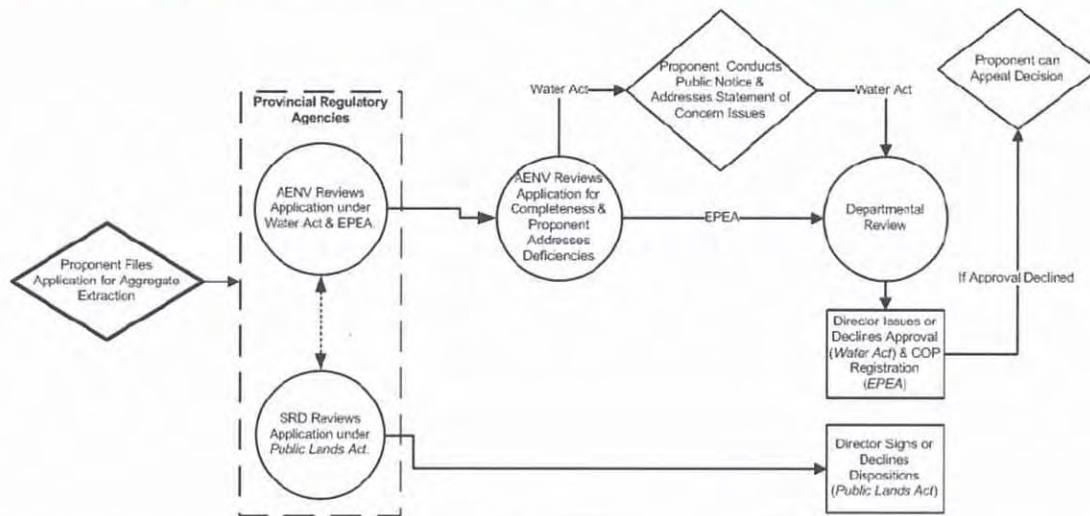
	<p><i>Act & EPEA)</i></p> <p>Alberta First Nations Policy for Consultation</p> <p><i>Conservation & Reclamation Regulation, including Code of Practice for Pits (and Guide) and registrations, Conservation & Reclamation plan and program</i></p>	<p>appropriate action/tools through compliance programs</p> <p>(iii) may require First Nations consultation</p> <p>(iv) use the Regulation to:</p> <ul style="list-style-type: none"> - administer securities - identify conservation and reclamation requirements
SRD	<p><i>Public Lands Act</i></p> <p>Fish & Wildlife objectives</p> <p>Guidelines for Acquiring Surface Material Dispositions on Public Land</p> <p><i>Disposition & Fees Regulation</i></p> <p>Compliance???</p> <p>Policy???</p>	<p>(i) delineate non-active areas of water bodies where extraction could be considered</p> <p>(ii) assess application for effects on habitat using Fish & Wildlife objectives.</p> <p>(iii) assess application for ... (looking for input from SRD)</p> <p>(iv) identify conservation and reclamation requirements</p> <p>(v) assess application for ... (looking for input from SRD)</p> <p>(vi) may require First Nations consultation</p>

Proponents may also need to consider the following (and associated regulatory requirements):

- Species at Risk (*Species at Risk Act*, Environment Canada)
- Fisheries (*Fisheries Act* – Environment Canada)
- Migratory Birds (*Migratory Birds Convention Act* – Environment Canada)
- Navigability (*Navigable Waters Protection Act*, Environment Canada)
- Wildlife (*Alberta Wildlife Act* – Sustainable Resources Development)
- Land Use Regulations (*Alberta Land Stewardship Act*, Sustainable Resource Development)
- Local Land Use Restrictions (Bylaws, Local Municipalities)
- Cultural and Archaeological Sensitivities – See the *Historical Resources Act*, Department of Culture and Community Spirit)
- Traditional Use – See the *Historical Resources Act*; also see the *Alberta 2006 Consultation Policy*, Department of Culture and Community Spirit)

Application Approval Process

The flow chart below is intended to show the interactions between the regulatory bodies that are party to this agreement and the review processes that are triggered within each department. It is not intended to illustrate the details of each departmental review process.



In order for the proponent to be able to initiate water body aggregate extraction, several applications for authorization may be required (depending on which organizations and which tools are triggered). The list below details the required provincial regulatory applications. Note that regulatory requirements external to the two parties to this agreement are excluded.

Documents Required for Submission by Proponent:

- SRD *Public Lands Act* dispositions
- AENV *Water Act* approval and/or licence application
- AENV *EPEA* Code of Practice for Pits application

Implementation Plan

Policy would be effective immediately following Ministerial approval of the participating departments. No legislative changes are required.

1. Develop a strategy to coordinate regulatory review.
 - 1.1. Establish a consistent referral process.
 - 1.2. Streamline review process.
 - 1.3. Clarify roles of regulatory agencies, particularly with respect to emergency procedures.

- 1.4. Consider developing a single 'Water Body Aggregate Extraction Application Package'.
2. Develop a strategy for sharing and educating on the Water Body Aggregate Extraction Policy.
 - 2.1. GoA Departments;
 - 2.2. Partners & public;
 - 2.3. Proponents.
3. Develop guidance around the required Risk Assessment.

Monitoring and Evaluation Plan

- Adaptive management approach. Suggest policy review every 10 years, which is compatible with the Regional Planning process.

Appendices

- Explanation of Problem & Current Policy Context
- Key Stakeholders & Consultation Plan
- Glossary
- Diagram of active area of a water body and non-active area of a water body

Endorsement

- The following parties agree to adhere to the principles and process outlined above.
- These guidelines are effective from the date of signature. Amendments may be made at any time by mutual consent and sign-off of the parties below.

Signatures: Participating Organizations

Government of Alberta: Alberta Sustainable Resource Development

, Minister

Date

Government of Alberta: Alberta Environment

, Minister

Date

Appendix 1: Explanation of Problem & Current Policy Context

Explanation of Problem

Aggregate extraction within the active and non-active areas of surface water bodies has occurred in the province for several decades. The ease of access to the aggregate and associated low development cost may have influence on this choice. Aggregate extraction is an important contributor to economic activity in Alberta.

Aggregate extraction is a concern as the associated operations have been shown to have significant adverse effects on aquatic species and habitat, water quality, and the configuration of the bed, banks and shores of water bodies. Physical changes to a water body, as a result of extraction operations, have also been shown to have an adverse effect on adjacent lands and infrastructure upstream and downstream of the operation location.

Background/Current Regulatory State

Provincial:

Aggregate extraction operations on public and private lands in Alberta are regulated under three provincial enactments: the *Water Act* (Alberta Environment), the *Public Lands Act* (Alberta Sustainable Resource Development), and the *Environmental Protection and Enhancement Act* (Alberta Environment). These have separate and distinct regulatory processes that are not well integrated, which sometimes has led to differing approval terms, conditions and requirements.

Municipal:

The *Municipal Government Act* (Municipal Affairs) authorizes municipal governments to create bylaws. Through these bylaws municipalities may have a development approval process and require a development permit for aggregate extraction. Provincial ministries, including Alberta Transportation, are not bound by this *Act* or the regulations or bylaws it enables.

Federal:

Aggregate extraction operations situated in or adjacent to water bodies must also meet federal regulatory requirements under the *Fisheries Act* (Department of Fisheries and Oceans), the *Navigable Waters Protection Act* (Transportation Canada), and possibly the *Canadian Environmental Assessment Act* (Environment Canada) or the *Species at Risk Act* (Environment Canada). Meeting provincial standards and requirements (including the Code of Practice for Pits with respect to species at risk and rare plants) does not ensure that federal regulatory requirements will be met.

In the past 10 years, DFO has declined issuing authorizations under the *Fisheries Act* (Canada) and AENV has declined issuing approvals under the *Water Act* for aggregate extraction related activities; potentially SRD may also exercise the option to decline issuing a surface materials lease in support of SRD fisheries objectives.

Any work or undertaking that causes the harmful alteration, disruption or destruction (HADD) of fish habitat is prohibited unless authorized under the Federal *Fisheries Act*.

DFO will review proposed works or undertakings using the Risk Management Framework as outlined in the Practitioners Guide to the Risk Management Framework for DFO Habitat Management Staff. DFO may choose not to issue an authorization where:

- the magnitude and duration of the HADD is unacceptable;
- the fish habitat affected is critical to the maintenance of fish populations;
- the works or undertakings would result in the deposit of a deleterious substance into fish bearing habitat;
- no acceptable compensation, to replace affected fish habitat, can be achieved.

Prior to issuing any authorization, the potential environmental effects of the project must also be assessed pursuant to the *Canadian Environmental Assessment Act* and a determination of 'no significant adverse environmental effects' be made.

This approach is consistent with the objectives of SRD, under the *Public Lands Act*, and AENV, under the *Water Act* and the *Environmental Protection and Enhancement Act*, who are required to consider the protection of aquatic environment when issuing approvals.

Work to Date

Numerous attempts have been made at a GoA Water Body Aggregate Extraction policy. Due to the number of parties involved, it has been difficult to obtain consensus. AENV has decided that it is time to take the lead on the development of the GoA's interim position on water body aggregate extractions until a GoA-Canada policy can be negotiated.

The Joint Technical Issues Working Group (JTIWG) has provided recommendations for aggregate extraction in the active area of water bodies. Their consensus is not to permit any extraction in any active area of any water body at any time. The Group proposes that this be adopted by the GoA and Canada.

Drivers for Project and Key Decision Maker

There is no formal provincial policy on water body aggregate extraction. The approach to water body aggregate extraction requires clarity, as requests from the public are increasing and the GoA requires a consistent and fair course of action.

Clear and consistent guidelines for both new and existing aggregate extraction operations will ensure a higher level of protection for the environment.

There is an increasing demand for aggregate resources. This demand is countered by public opposition to allowing aggregate extraction operations in water bodies.

In recent years there has been increased demand from some counties (Brazeau/Wetaskiwin) to extract aggregate from the active portion of river systems. This increased demand comes from a shortfall in the counties' resource ownership and the significant costs associated with buying aggregate privately. Additionally, the counties are dealing with rising development pressures and resistance to aggregate extraction

operations close to current residential developments. Counties also want to develop consistent bylaws and area structural plans and have requested GoA presence to discuss aggregate extraction, both in active and non-active areas of water bodies.

Occasionally there may be demand from local governments to extract aggregate for the purposes of River Training.

Key decision-makers: Alberta's Minister of ENV, Minister of SRD

- For this interim GoA policy, the Minister of AENV would be the principal decision-maker

Relationship to Wider GoA Priorities

Land-Use Framework

- Strategy 1: Develop seven regional land-use plans based on seven new land-use regions.
 - Need to provide guidance to LUF regional plans as to where aggregate extraction from water bodies may be acceptable.
 - Would enable 'place-based' responses to aggregate extraction approval applications, but provide a provincially consistent policy to determine whether or not it would be acceptable in the provincial policy and regulatory contexts.
- Strategy 3: Cumulative effects management will be used at the regional level to manage the impacts of development on land, water, and air.
 - Need to have a consistent policy so that the cumulative effects of aggregate extraction are considered and managed.
- Strategy 4: Develop a strategy for conservation and stewardship on private and public lands
 - Aggregate extraction policy would be applicable to public and private lands. Environmental impacts would be the primary focus of the risk assessments required for proponents to obtain approvals.

Water for Life Strategy

- Supports Healthy Aquatic Ecosystems outcome through the required risk assessments that would ensure the maintenance and preservation of natural habitat.
 - Action 2.1: Enforce protection of known critical aquatic ecosystems using existing legislation
 - Action 2.6: Implement aquatic restoration plan and conserve key aquatic ecosystems through regional land-use approaches and identified partnerships

Appendix 2: Key Stakeholders & Consultation Plan

Key Stakeholders

- Proponents – Commercial users of aggregate
 - Alberta Ministry of Transportation
 - Municipalities
 - First Nations
- Regulatory Agencies –
 - Municipalities
 - AENV – Approvals (WA & EPEA)
 - SRD –
 - DFO –
- Affected by environmental outcomes –
 - First Nations
 - Public

Consultation Plan

Sector	When consultation should occur	Group needs/special requirements	Desired outcome of consultation	Appropriate methods of consultation
AENV	Policy Development	Consider regions, EPEA and WA approvals	Water Body Aggregate Extraction Policy	Committee Representation
SRD	Policy Development		Approval of proposed policy. Agreement to develop a ToR.	Committee Representation
DFO	Policy Development		Acceptance of proposed policy. Agreement to develop a ToR.	Committee Representation
Municipal and Local Govts	Policy Development	Particularly AAMD&C, AUMA	Awareness of policy changes & understanding of required process.	Committee Representation
	Communications Phase			Membership Poll
Proponents	Policy Development	Particularly Alberta Sand & Gravel Association; Alberta Ministry of Transportation	Awareness of policy changes & understanding of required process.	Committee Representation
	Communications Phase			Notification & Review; Letter to all registered pit owners

First Nations	Communications Phase	Both a Proponent and an Affected Party	Awareness of policy changes & understanding of required process.	Meetings – likely require presence of our FN advisors/consultation specialists. TBD
Partners	Communications Phase	Alberta Water Council; WPACs	Awareness of policy changes & understanding of required process.	Internet-based questionnaire
Public	Communications Phase	Level of consultation should reflect level of policy and degree of changes	Awareness of policy changes.	Internet-based questionnaire

Appendix 3: Glossary

Active area of a water body: Area lying between the ordinary high water marks on each bank.

Aggregate: Any sand, gravel, clay or marl that is excavated from a pit, whether in a processed or unprocessed form, but does not include reject.

Emergency Situation: Any situation that may jeopardize human life or infrastructure

Extraction: Includes the stripping and stockpiling of soil, overburden, and aggregate materials and the transport of said materials within the site.

Non-active area of a water body: Any area of a water body that is not included in the definition of an active area.

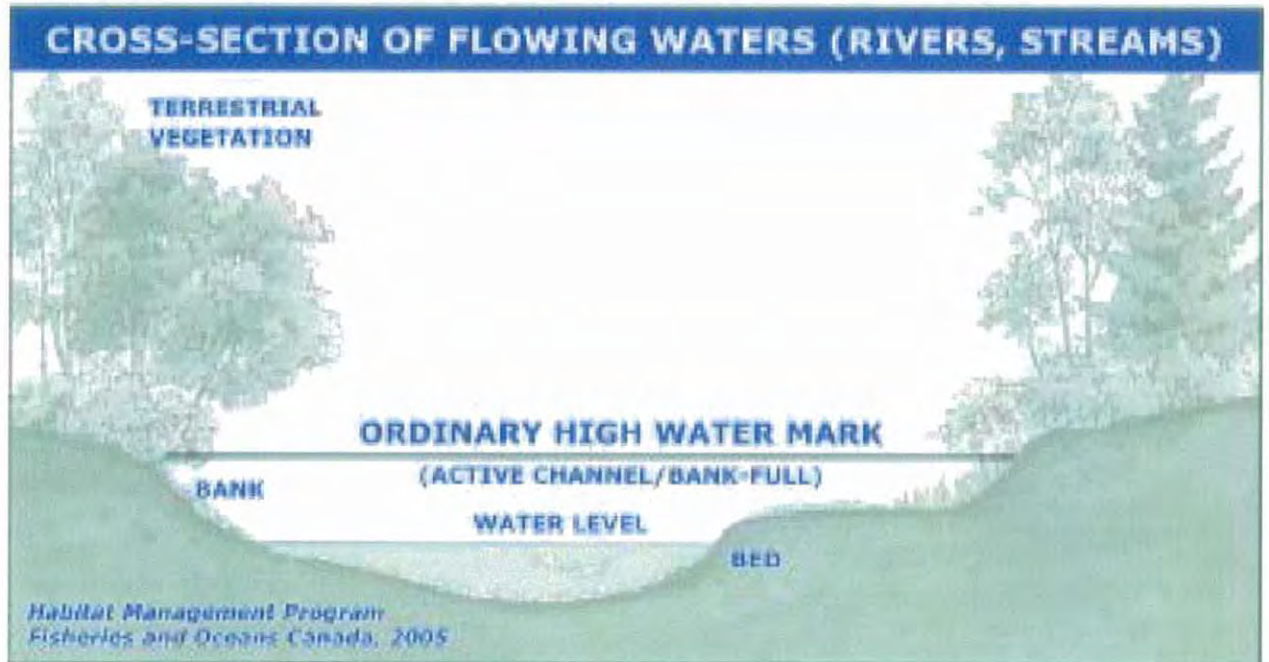
Ordinary high water mark: The usual average level to which a body of water rises at its highest point and remains for sufficient time so as to change the characteristics of the land. In flowing waters (rivers, streams) this refers to the “active area of a water body/bank-full level” which is often the 1:2 year flood flow return level.

Reject: Aggregate that is expected to be unsuitable for use as a product, or for blending with other aggregate to form a product, and is therefore expected to be used for reclamation of the pit.

Water body (*Water Act*): Any location where water flows or is present, whether or not the flow or the presence of water is continuous, intermittent or occurs only during a flood, and includes but is not limited to wetlands and aquifers but does not include except for clause (m) and section 99 “water body” that is part of an irrigation works if the irrigation works is subject to a licence and the irrigation works is owned by the licensee, unless the regulations specify that the location is included in the definition of water body.

Appendix 4: Active and non-active area of a water body

Ordinary high water mark – The usual or average level to which a body of water rises at its highest point and remains for sufficient time so as to change the characteristics of the land. In **flowing waters (rivers, streams)** this refers to the “active channel/bank-full level” which is often the 1:2 year flood flow return level.



Water body Aggregate Extraction Policy

Government of Alberta

2010

DRAFT



I. Endorsement

The following parties agree to adhere to the principles and process outlined above. These guidelines are effective from the date of signature. Amendments may be made at any time by mutual consent and sign-off of the parties below.

Signatures: Participating Organizations

Government of Alberta: Alberta Sustainable Resource Development

Hon. Mel Knight, Minister

Date

Government of Alberta: Alberta Environment

Hon. Rob Renner, Minister

Date

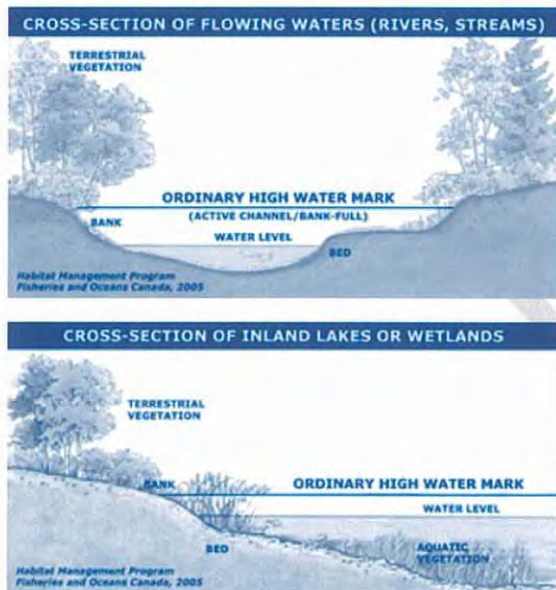
II. List of Acronyms

AAMD&C	Alberta Association of Municipal Districts & Counties
AENV	Alberta Environment
SRD	Alberta Sustainable Resource Development
AUMA	Alberta Urban Municipalities Association
CRBP	Conservation and Reclamation Business Plan
DFO	Department of Fisheries and Oceans (Canada)
EPEA	<i>Environmental Protection and Enhancement Act</i>
GoA	Government of Alberta
HADD	Harmful Alteration, Disruption, or Destruction
JTIWG	Joint Technical Issues Working Group
LUF	Land-use Framework
ToR	Terms of Reference
WA	<i>Water Act</i>

III. Glossary

Active area of a water body: Area lying between the *ordinary high water marks* on each bank [see diagrams below]. [Note that aquifers will be assessed on an individual basis.]

Comment [LB1]: Do we want to include a statement such as this?



Source:
Appendix C, DFO Operational Statements – Beaver Dam Removal/Culvert Maintenance, 2010 [http://www.4lanehighway17kenora.ca/highway17/pdf/Appendix%20C.pdf]

Aggregate: Any sand, gravel, clay or marl that is excavated from a pit, whether in a processed or unprocessed form, but does not include *reject*.

Emergency situation: Any situation that may jeopardize human life or infrastructure

Comment [LB2]: Keep or remove based on July 20 discussion

Extraction: Includes the stripping and stockpiling of soil, overburden, and aggregate materials and the transport of said materials within the site.

Non-active area of a water body: Any area of a water body that is not included in the definition of an active area.

Ordinary high water mark: The usual average level to which a body of water rises at its highest point and remains for sufficient time so as to change the characteristics of the

Comment [LB3]: Common Law: The point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristic [Wisconsin Supreme Court, 1914]

land. In flowing waters (rivers, streams) this refers to the “active area of a water body/bank-full level” which is often the 1:2 year flood flow return level.

Qualified professional: see Code of Practice for Pits [AENV] requirements [<http://environment.alberta.ca/documents/Reclamation-Certificates-Professional-Declaration-Requirements.pdf>]

Reject: Aggregate that is expected to be unsuitable for use as a product, or for blending with other aggregate to form a product, and is therefore expected to be used for reclamation of the pit.

River Training:

Water body (*Water Act*): Any location where water flows or is present, whether or not the flow or the presence of water is continuous, intermittent or occurs only during a flood, and includes but is not limited to wetlands and aquifers but does not include except for clause (nn) and section 99 “water body” that is part of an irrigation works if the irrigation works is subject to a licence and the irrigation works is owned by the licensee, unless the regulations specify that the location is included in the definition of water body.

IV. Water body Aggregate Extraction Policy

A. Purpose

Develop GoA guidelines to support the regulatory approval processes for *aggregate extraction* operations in *active* and *non-active* areas of *water bodies*.

B. Vision and Outcomes

Water body aggregate extraction operations are carried out responsibly to ensure the maintenance and protection of the natural morphology of water body systems, including aquifers, and the quality of water they contain. (This is important to maintain aquatic and terrestrial habitat.)

- Water body aggregate extraction is permitted to occur only in areas where it would not adversely impact the environment or aquatic ecosystems
- The GoA has a common and consistent approach to requests for water body aggregate extraction
- The roles and responsibilities of regulators are clearly defined

C. Assumptions and Principles

1. This policy promotes a risk-based approach to water body aggregate extraction.
2. Water body aggregate extraction in any active area of a water body will have adverse impacts.
3. Water body aggregate extraction in a non-active area of a water body may have adverse impacts.
4. All water body aggregate extraction applications will be processed according to the guidance outlined in this policy (which considers all regulatory mandates).

D. Policy Guidelines

1. New Aggregate Extraction Operations

1.1. Active Area of a Water Body

For proposed operations located within the active area of a water body no authorizations will be issued.

1.2. Non-active Area of a Water Body

For proposed operations located within the non-active area of a water body approvals will only be considered when the proponent:

- Provides a risk assessment of the environmental impacts completed by a *qualified professional*. The risk assessment should identify:
 - Any adverse effects on the land and/or aquatic environment (including but not limited to fisheries and wildlife resources, water quality, hydrogeology, geomorphology and river dynamics) resulting from the aggregate extraction operations
 - How the proponent will mitigate or compensate for the above effects in a manner acceptable to all regulatory mandates
- Demonstrates how all municipal bylaws and provincial and federal regulations, statutes, and policies will be met.

1.3. Disaster Assistance

If aggregate extraction is authorized within the non-active area in a location that is within the 1:100 year floodplain, the proponent would not be eligible for disaster assistance unless the flood event exceeds the 1:100 year event.

1.4. Liability

Proponents are liable for any damages (for example, downstream bank erosion), and the mitigation thereof that, in the GoA's opinion, can be attributed to their projects.

Comment [LB4]: Let's discuss

2. Existing Aggregate Extraction Operations

This will be allowed to continue for the remaining term of the *Public Lands Act*, *Mines & Minerals Act*, *Environmental Protection and Enhancement Act*, or *Water Act* authorizations, subject to the requirements under the *Fisheries Act*. After this time, a renewal of an authorization will include a plan, where necessary, to bring the existing operation into compliance with the requirements outlined for new aggregate operations.

3. Undeveloped Aggregate Extraction Operations

Undeveloped aggregate extraction operations that have a *Public Lands Act* approval but no *Environmental Protection and Enhancement Act* or *Water Act* approvals will be considered a new operation and are subject to similar classifications and requirements.

4. Emergency situations

Applications will be reviewed and approved by regulatory authorities on a case-by-case basis. The above guidelines may not be applicable.

Comment [LB5]: Leave this in or take this out?
 In: Completeness
 Out: Don't want to issue approvals for emergencies
 Difficult to define 'emergency' Can't create a policy that applies in ALL situations – some discretion is always necessary

E. Tools and Responsibilities

1. Signatories to this Agreement

The following table indicates how the above guidelines will be implemented by the parties to this agreement, the tools used, and the party's role in the water body aggregate extraction authorization process.

Organization	Tools	Roles/Activities
AENV	<i>Water Act & EPEA</i> authorizations	Assess application for: <ul style="list-style-type: none"> • Water quantity impacts, including upstream and downstream users, for both surface and ground water • Water quality impacts for both surface and ground water • Impact on river morphology, including bed and bank stability upstream and downstream of the site • Impact on riparian areas • Compliance with provincial wetland policies for any potentially disturbed wetlands
	Compliance programs (<i>Water Act & EPEA</i>)	Enforce authorizations with appropriate action/tools through compliance programs

	Alberta First Nations Policy for Consultation	May require First Nations consultation	
	<i>Conservation & Reclamation Regulation, including Code of Practice for Pits (and Guide) and registrations, Conservation & Reclamation plan and program</i>	Use the Regulation to: <ul style="list-style-type: none"> • Administer securities • Identify conservation and reclamation requirements 	
SRD	<i>Public Lands Act</i>	(i)	Comment [LB6]: Need SRD input on what must be done regarding the PLA with respect to aggregate extractions?
	<i>Mines & Minerals Act</i>	(x)	Comment [LB7]: Need SRD input on what is done under the MMA with respect to aggregate extractions?
	Fish & Wildlife objectives	Assess application for effects on habitat using Fish & Wildlife objectives	
	Guidelines for Acquiring Surface Material Dispositions on Public Land	Assess application to determine if the activity is acceptable land use	
	Conservation and Reclamation Business Plan	(iv) identify conservation and reclamation requirements	
	<i>Disposition & Fees Regulation</i>	(x)	Comment [LB8]: Need SRD input on what they do under this regulation with respect to aggregate extractions?
	Compliance programs	Enforce compliance with approved CRBP and operating conditions	
	Policy	May require First Nations consultation	Comment [LB9]: Does SRD have a FN consultation policy?

2. Other Regulatory Agencies

Proponents may also need to consider the following (and associated regulatory requirements):

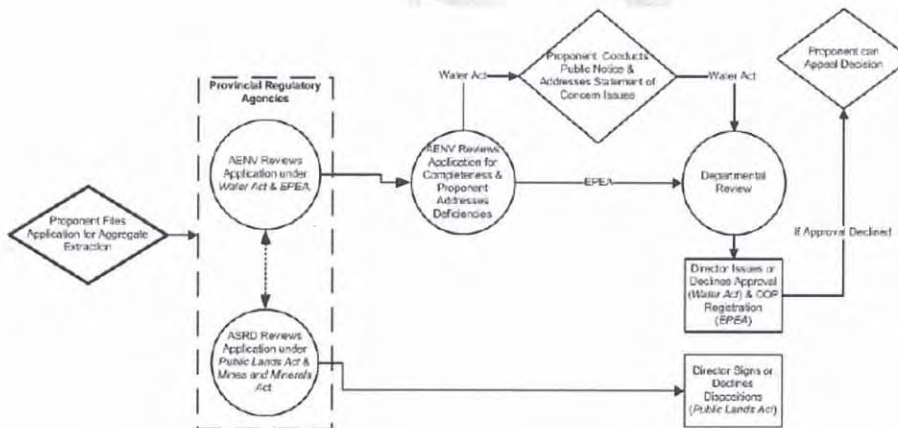
Organization	Tool
Environment Canada	<i>Species at Risk Act</i>
	<i>Migratory Birds Convention Act</i>
	<i>Canadian Environmental Assessment Act</i>
Transportation Canada	<i>Navigable Waters Protection Act</i>
Department of Fisheries and Oceans	<i>Fisheries Act</i>

Alberta Sustainable Resource Development	<i>Alberta Wildlife Act</i> <i>Alberta Land Stewardship Act</i>
Alberta Department of Culture and Community Spirit	<i>Historical Resources Act</i>
Government of Alberta	Alberta 2006 First Nations Consultation Policy
Local Municipalities	Bylaws

F. Application Authorization Process

1. Regulatory Process

The flow chart below is intended to show the interactions between the regulatory bodies that are party to this agreement and the review processes that are triggered within each department. It is not intended to illustrate the details of each departmental review process. (Each department reviews the application for different components and anticipated impacts, and then issues authorizations based on their own regulatory mandates [see Tools & Responsibilities]. However, communication between departments to ensure a coordinated response is expected.)



2. Required Documentation

In order for the proponent to be able to initiate water body aggregate extraction, several applications for authorization may be required (depending on which organizations and which tools are triggered). The list below details the provincial regulatory applications required for submission by the Proponent. Note that regulatory requirements external to the two signatories to this agreement are excluded.

- SRD *Public Lands Act* dispositions
- AENV *Water Act* approval and/or licence application
- AENV *EPEA* Code of Practice for Pits application

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V. Implementation Plan

Policy would be effective immediately following Ministerial approval of the participating departments. No legislative changes are required.

A. Develop a strategy to coordinate regulatory review

1. Establish a consistent referral process.
2. Streamline review process.
3. Clarify roles of regulatory agencies, particularly with respect to emergency procedures.
4. Consider developing a single 'Water body Aggregate Extraction Application Package'.

B. Develop a strategy for sharing and educating on the Water body Aggregate Extraction Policy

(See draft engagement strategy in Appendix 2.)

1. GoA Departments;
2. Partners & public;
3. Proponents.

C. Develop guidance around the required Risk Assessment

D. Develop a monitoring and evaluation plan to review intent and efficacy of policy

1. Develop approach and timeline to evaluate efficacy of policy in mitigating environmental effects of aggregate extraction
2. Develop approach and timeline to evaluate intent of policy, considering evolving knowledge and circumstances
3. Update policy as required to incorporate new information
4. Update policy as required to reflect other inter-related provincial policies

VI. Appendix 1: Current Policy Context

A. Explanation of Problem

Aggregate extraction within the active and non-active areas of surface water bodies has occurred in the province for decades. The ease of access to the aggregate may have influence on this choice. Aggregate extraction is an important contributor to economic activity in Alberta.

Aggregate extraction is a concern as the associated operations have been shown to have significant adverse effects on aquatic species and habitat, water quality, and the configuration of the bed, banks and shores of water bodies. Riparian area is important terrestrial habitat. Physical changes to a water body, as a result of extraction operations, have also been shown to have an adverse effect on adjacent lands and infrastructure upstream and downstream of the operation location.

B. Background/Current Regulatory State

1. Municipal

The *Municipal Government Act* (Municipal Affairs) authorizes municipal governments to create bylaws. Through these bylaws municipalities may have a development approval process and require a development permit for aggregate extraction. Provincial ministries, including Alberta Transportation, are not bound by this *Act* or the regulations or bylaws it enables.

2. Provincial

Aggregate extraction operations on public and private lands in Alberta are regulated under three provincial enactments: the *Water Act* (Alberta Environment), the *Public Lands Act* (Alberta Sustainable Resource Development), and the *Environmental Protection and Enhancement Act* (Alberta Environment). These have separate and distinct regulatory processes that are not well integrated, and sometimes have led to differing approval terms, conditions and requirements.

3. Federal

Aggregate extraction operations situated in or adjacent to water bodies must also meet federal regulatory requirements under the *Fisheries Act* (Department of Fisheries and Oceans), the *Navigable Waters Protection Act* (Transportation Canada), and possibly the *Canadian Environmental Assessment Act* (Environment Canada) or the *Species at Risk*

Act (Environment Canada). Meeting provincial standards and requirements (including the *Code of Practice for Pits* with respect to species at risk and rare plants) does not ensure that federal regulatory requirements will be met.

In the past 10 years, DFO has declined issuing authorizations in Alberta under the Fisheries Act (Canada) for extraction within the active channel of fish bearing watercourses. AENV has declined issuing approvals under the *Water Act* for aggregate extraction related activities in or adjacent to water bodies; potentially SRD may also exercise the option to decline issuing a surface materials lease in support of SRD fisheries objectives.

Any work or undertaking that causes the harmful alteration, disruption or destruction (HADD) of fish habitat is prohibited unless authorized under the *Federal Fisheries Act*. DFO will review proposed works or undertakings using the Risk Management Framework as outlined in the Practitioners Guide to the Risk Management Framework for DFO Habitat Management Staff. DFO may choose NOT to issue an authorization where:

- the magnitude and duration of the HADD is unacceptable;
- the fish habitat affected is critical to the maintenance of fish populations;
- the works or undertakings would result in the deposit of a deleterious substance into fish bearing habitat;
- no acceptable compensation (to replace affected fish habitat) can be achieved.

Prior to issuing any authorization, the potential environmental effects of the project must also be assessed pursuant to the *Canadian Environmental Assessment Act* and a determination of 'no significant adverse environmental effects' be made.

This approach is consistent with the objectives of SRD, under the *Public Lands Act*, and AENV, under the *Water Act* and the *Environmental Protection and Enhancement Act*, who are required to consider the protection of aquatic environment when issuing approvals.

C. Work to Date

Numerous attempts have been made at drafting a GoA Water body Aggregate Extraction policy. Due to the number of parties involved, it has been difficult to obtain consensus. AENV has decided that it is time to take the lead on the development of the GoA's interim position on water body aggregate extractions until a GoA-Canada policy can be negotiated.

The Joint Technical Issues Working Group (JTIWG) has provided recommendations for aggregate extraction in the active area of water bodies. Their consensus is not to permit any extraction in any active area of any water body at any time. The Group proposes that this be adopted by the GoA and Canada.

D. Drivers for Project and Key Decision Maker

There is no formal provincial policy on water body aggregate extraction. The approach to water body aggregate extraction requires clarity, as requests from the public are increasing and the GoA requires a consistent and fair course of action.

Clear and consistent guidelines for both new and existing aggregate extraction operations will ensure a higher level of protection for the environment.

There is an increasing demand for aggregate resources. This demand is countered by public opposition to allowing aggregate extraction operations in water bodies.

In recent years there has been increased demand from some counties to extract aggregate from the active portion of river systems. This increased demand comes from a shortfall in the counties' resource ownership and the significant costs associated with buying aggregate privately. Additionally, the counties are dealing with rising development pressures and resistance to aggregate extraction operations close to current residential developments. Counties also want to develop consistent bylaws and area structural plans and have requested GoA presence to discuss aggregate extraction, both in active and non-active areas of water bodies.

Occasionally there may be demand from local governments to handle aggregate for the purposes of *River Training* or emergency situations.

Comment [LB10]: Is this the correct term? Or is it River re-alignment? How are we going to address emergency situations?

E. Key decision-makers

Alberta's Minister of Environment
Alberta's Minister of Sustainable Resource Development

F. Relationship to Wider GoA Priorities

1. Land-use Framework

- Need to provide guidance to LUF regional plans as to where aggregate extraction from water bodies may be acceptable.
- Would enable 'place-based' responses to aggregate extraction approval applications, but provide a provincially consistent policy to determine whether or not it would be acceptable in the provincial policy and regulatory contexts.
- Need to have a consistent policy so that the cumulative effects of aggregate extraction are considered and managed.
- Aggregate extraction policy would be applicable to public and private lands. Environmental impacts would be the primary focus of the risk assessments required for proponents to obtain approvals.

- **Relevant Strategies:**
 - Strategy 1: Develop seven regional land-use plans based on seven new land-use regions.
 - Strategy 3: Cumulative effects management will be used at the regional level to manage the impacts of development on land, water, and air.
 - Strategy 4: Develop a strategy for conservation and stewardship on private and public lands

2. Water for Life Strategy

- Supports Healthy Aquatic Ecosystems outcome through the required risk assessments that would ensure the maintenance and preservation of natural habitat.
- **Relevant Action Plan items:**
 - Action 2.1: Enforce protection of known critical aquatic ecosystems using existing legislation
 - Action 2.6: Implement aquatic restoration plan and conserve key aquatic ecosystems through regional land-use approaches and identified partnerships

VII. Appendix 2: Draft Stakeholder Consultation Plan

A. Stakeholders

1. Proponents – Commercial Users of Aggregate

- Alberta Ministry of Transportation
- Municipalities
- First Nations

2. Regulatory Agencies

- Municipalities
- AENV
- SRD
- DFO

3. Affected by Environmental Outcomes

- First Nations
- Public

B. Consultation Plan

Sector	When consultation should occur	Group needs/special requirements	Desired outcome of consultation	Appropriate methods of consultation
AENV	Policy Development	Consider regions, EPEA and WA approvals	Water body Aggregate Extraction Policy	Committee Representation
SRD	Policy Development		Water body Aggregate Extraction Policy	Committee Representation
DFO	Policy Development		Acceptance of proposed policy. Agreement to develop a ToR.	Committee Representation

Municipal and Local Govts	Policy Development	Particularly AAMD&C, AUMA	Awareness of policy changes & understanding of required process.	Committee Representation
	Communications Phase			Membership Poll
Proponents	Policy Development	Particularly Alberta Sand & Gravel Association; Alberta Ministry of Transportation	Awareness of policy changes & understanding of required process.	Committee Representation
	Communications Phase			Notification & Review; Letter to all registered pit owners
First Nations	Communications Phase	Both a Proponent and an Affected Party	Awareness of policy changes & understanding of required process.	Meetings – likely require presence of our FN advisors/consultation specialists.
Partners	Communications Phase	Alberta Water Council; WPACs	Awareness of policy changes & understanding of required process.	Internet-based questionnaire
Public	Communications Phase	Level of consultation should reflect level of policy and degree of changes	Awareness of policy changes.	Internet-based questionnaire

From: Augustus Archampong
Sent: Friday, July 30, 2010 2:14 PM
To: 'doliver@aamdc.com'; 'Tom.Olson@dfo-mpo.gc.ca'; David Park; Bruce Blue; Patricia Stevenson; Robert George; Larry Kuchmak; Ryan Puhlmann; 'kjohn@lehighcement.com'; Douglas Knight
Cc: Louise Brennan; Gerry Haekel; 'David.Fraser@dfo-mpo.gc.ca'; 'Orr, Richard'; Don Watson (AENV); Neil Hollands; 'Brock Helm'; 'Orr, Richard'
Subject: Aggregate Extraction Policy_v5_20100730 (2).doc
Attachments: Aggregate Extraction Policy_v5_20100730 (2).doc



Aggregate
xtraction Policy_v5..

I would like to thank all of you for the many comments received, both at the discussion meetings and online. Attached is the penultimate draft which addresses the comments received after our last meeting.

If you have any additional comments please forward them to me and Louise on or before August 4, 2010. Pardon me for the rather tight deadline; additional time is needed to route the draft through management and executive and finally to the Minister.

When you respond, please carbon-copy Louise; just in case I am away.

Thank you again for your support dedication and patience.

Many regards, Archie.

Surface Water body Aggregate Policy

Government of Alberta

September 2010

DRAFT

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I. Endorsement

The following parties agree to adhere to the policy outlined below. This policy is effective from the date of signature. Amendments may be made at any time by mutual consent and sign-off of the parties below.

Signatures: Participating Organizations

Government of Alberta: Alberta Sustainable Resource Development

Hon. Mel Knight, Minister

Date

Government of Alberta: Alberta Environment

Hon. Rob Renner, Minister

Date

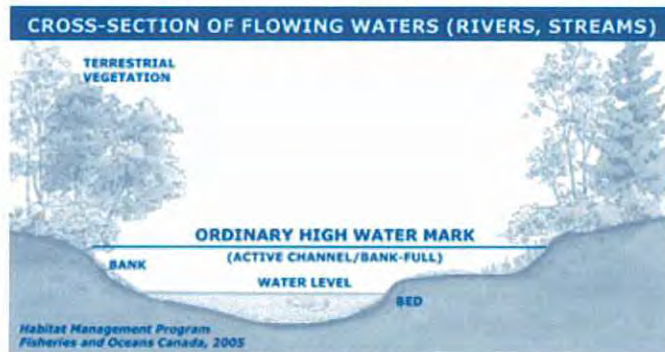
II. List of Acronyms

AAMDC	Alberta Association of Municipal Districts & Counties
AENV	Alberta Environment
ASGA	Alberta Sand and Gravel Association
ASRD	Alberta Sustainable Resource Development
AUMA	Alberta Urban Municipalities Association
CRBP	Conservation and Reclamation Business Plan
DFO	Fisheries and Oceans Canada
EPEA	<i>Environmental Protection and Enhancement Act</i>
GoA	Government of Alberta
HADD	Harmful Alteration, Disruption, or Destruction
JTIWG	Joint Technical Issues Working Group
LOC	Licence of Occupation
LUF	Land-use Framework
PLA	<i>Public Lands Act</i>
SMC	Surface Materials Licence
SME	Surface Materials Exploration Permit
SML	Surface Materials Lease
ToR	Terms of Reference
WA	<i>Water Act</i>

III. Glossary

For the purposes of this policy, the following definitions have been adopted:

Active area of a water body: Area lying between the *ordinary high water marks* on each bank [see diagrams below].



Source:

Appendix C, DFO Operational Statements – Beaver Dam Removal/Culvert Maintenance, 2010 [<http://www.4lanehighway17kenora.ca/highway17/pdf/Appendix%20C.pdf>]

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Aggregate: Any sand, gravel, clay or marl that is excavated from a pit, whether in a processed or unprocessed form, but does not include *reject*.

Emergency situation: Any situation that may jeopardize human life or capital infrastructure and where aggregate removal is incidental to the activities required to alleviate that threat.

Extraction: Includes the stripping and stockpiling of soil, overburden, and aggregate materials and the transport of said materials within the site.

Non-active area of a water body: Any area in the drainage basin of a surface water body that is not included in the active area.

Ordinary high water mark: The point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristic.

Qualified professional: Alberta Environment and Alberta Sustainable Resource Development recognize the following seven professional regulatory organizations (PROs) and whose members may have the scope of practice to conduct risk assessments for proposed aggregate operations:

- Alberta Institute of Agrologists (AIA)
- Alberta Society of Professional Biologists (ASPB)
- Association of the Chemical Profession of Alberta (ACPA)
- Association of Professional Engineers
- Geologists and Geophysicists of Alberta (APEGGA)
- College of Alberta Professional Foresters (CAPF)
- College of Alberta Professional Forest Technologists (CAPFT).

For specific recommendations see requirements for Reclamation Certification:
[<http://environment.alberta.ca/documents/Reclamation-Certificates-Professional-Declaration-Requirements.pdf>]

Reject: Aggregate that is expected to be unsuitable for use as a product, or for blending with other aggregate to form a product, and is therefore expected to be used for reclamation of the pit.

Water body (*Water Act*): Any location where water flows or is present, whether or not the flow or the presence of water is continuous, intermittent or occurs only during a flood, and includes but is not limited to wetlands and aquifers but does not include except for clause (nn) and section 99 "water body" that is part of an irrigation works if the irrigation works is subject to a licence and the irrigation works is owned by the licensee, unless the regulations specify that the location is included in the definition of water body.

IV. Current Policy Context

A. Explanation of Problem & Drivers for Project

Aggregate extraction within the active and non-active areas of surface water bodies has occurred in the province for decades. The apparent ease of access to the aggregate may have influenced this choice. Aggregate extraction is an important contributor to economic activity in Alberta and there is an increasing demand from local governments and industry to extract aggregate resources from surface water bodies for commercial purposes. Occasionally there may be demand from local governments to handle aggregate from surface water bodies as a preventative or mitigative measure, or in emergency situations. This demand is countered by public opposition to allowing aggregate extraction operations in water bodies.

Aggregate extraction in surface water bodies is a concern as the associated operations have been shown to have significant adverse effects on aquatic species and habitat, water quality, the configuration of the bed, banks and shores of water bodies, and riparian terrestrial habitat. Physical changes to a surface water body as a result of extraction operations have also been shown to have an adverse effect on adjacent lands and infrastructure, both upstream and downstream of the operation location.

There is no formal provincial policy on surface water body aggregate extraction. Clear and consistent policy to guide review of applications for regulatory authorizations will ensure a higher level of protection for the environment.

B. Current Regulatory State

1. Municipal

The *Municipal Government Act* (Municipal Affairs) authorizes municipal governments to create bylaws. Through these bylaws municipalities may have a development approval process and require a development permit for aggregate extraction, including from surface water bodies. Provincial ministries, including Alberta Transportation, are not bound by this *Act* or the regulations or bylaws it enables.

2. Provincial

Aggregate extraction operations on public and private lands in Alberta are regulated under three provincial enactments: the *Water Act* (Alberta Environment), the *Public Lands Act* (Alberta Sustainable Resource Development), and the *Environmental Protection and Enhancement Act* (Alberta Environment). These have separate and distinct regulatory processes that are not well integrated. Meeting provincial standards and requirements (including the *Code of Practice for Pits* with respect to species at risk and rare plants) does not ensure that federal regulatory requirements will be met.

3. Federal

Aggregate extraction operations situated in either/both the active or /and non-active area of surface water bodies must also meet federal regulatory requirements under the *Fisheries Act*, the *Navigable Waters Protection Act*, and possibly the *Canadian Environmental Assessment Act* or the *Species at Risk Act*.

Any work or undertaking that causes the harmful alteration, disruption or destruction (HADD) of fish habitat is prohibited unless authorized under the Federal *Fisheries Act*. DFO will review proposed works or undertakings using the Risk Management Framework as outlined in the Practitioners Guide to the Risk Management Framework for DFO Habitat Management Staff. DFO may choose NOT to issue an authorization where:

- the magnitude and duration of the HADD is unacceptable;
- the fish habitat affected is critical to the maintenance of fish populations;
- the works or undertakings would result in the deposit of a deleterious substance into fish bearing habitat;
- no acceptable compensation (to replace affected fish habitat) can be achieved.

Prior to issuing any authorization, the potential environmental effects of the project must also be assessed pursuant to the *Canadian Environmental Assessment Act* and a determination of 'no significant adverse environmental effects' be made.

This approach is consistent with the objectives of ASRD, under the *Public Lands Act*, and AENV, under the *Water Act* and the *Environmental Protection and Enhancement Act*, who are required to consider the protection of aquatic environment when issuing authorizations.

In the past 10 years, DFO has declined issuing authorizations in Alberta under the *Fisheries Act* (Canada) for extraction within the active channel of fish bearing surface water bodies. AENV and ASRD similarly have not issued any provincial approvals.

4. Other Jurisdictions

Aggregate extraction from the active area of surface water bodies "has been prohibited in the United Kingdom, Germany, France, The Netherlands, and Switzerland and is being reduced in rivers in Italy, Portugal, and New Zealand".

[Source: Knodholf, G.M (1997) Hungry water: effects of dams and gravel mining on river channels. *Environ. Manage.* 21:533-551. IN Meador and Layher (1998) Instream sand and gravel mining: Environmental issues and regulatory process in the United States. *Fisheries Habitat.* 23(11): 6-13.]

C. Work to Date

Numerous attempts have been made at drafting a GoA Surface Water body Aggregate Policy. Due to the number of parties involved, it has been difficult to obtain consensus. AENV has decided that it is time to take the lead on the development of the GoA's position on aggregate extraction from surface water bodies.

The Joint Technical Issues Working Group (JTIWG) has provided recommendations for aggregate extraction in the active area of surface water bodies. Their consensus is not to permit any extraction in any active area of any surface water body at any time. The group proposes that this be adopted by the Government of Alberta and Fisheries & Oceans Canada.

D. Relationship to GoA Strategic Policy

1. Land-use Framework

- Need to provide guidance to LUF regional plans as to where aggregate extraction from surface water bodies may be acceptable.
- Would enable 'place-based' responses to aggregate extraction regulatory applications, but provide a provincially consistent policy to determine whether or not it would be acceptable in the provincial policy and regulatory contexts.
- Need to have a consistent policy so that the cumulative effects of aggregate extraction are considered and managed.
- Surface Water Aggregate Policy would be applicable to public and private lands, as per proposed Guidelines for Risk Assessments.
- Relevant Strategies:
 - Strategy 1: Develop seven regional land-use plans based on seven new land-use regions.
 - Strategy 3: Cumulative effects management will be used at the regional level to manage the impacts of development on land, water, and air.
 - Strategy 4: Develop a strategy for conservation and stewardship on private and public lands

2. Water for Life Strategy

- Supports Healthy Aquatic Ecosystems outcome through the proposed Guidance for Risk Assessments, which would help to ensure the maintenance and preservation of natural habitat.
- Relevant Action Plan items:
 - Action 2.1: Enforce protection of known critical aquatic ecosystems using existing legislation
 - Action 2.6: Implement aquatic restoration plan and conserve key aquatic ecosystems through regional land-use approaches and identified partnerships

V. Draft Stakeholder Consultation Plan

A. Stakeholders

1. Proponents

- Industry
- Alberta Transportation
- Municipalities
- First Nations

2. Regulatory Agencies

- Municipalities
- AENV
- ASRD
- DFO

3. Affected by Environmental Outcomes

- First Nations
- Public
- Partners
- Municipalities

B. Consultation Plan

Sector	When consultation should occur	Target audiences	Desired outcome of consultation	Appropriate methods of consultation
AENV	Policy Development	Water Policy Branch; Regional Staff; River Forecasting	Surface Water body Aggregate Policy	Committee Representation & Email requests for comments
	Communications Phase		Awareness of policy changes & understanding of required process.	Tbd

ASRD	Policy Development		Surface Water body Aggregate Policy	Committee Representation; Meetings; Email requests for comments
	Communications Phase		Awareness of policy changes & understanding of required process.	Tbd
Other GoA Ministries	Policy Development	Alberta Transportation	Awareness of policy changes & understanding of required process.	Committee Representation
	Communications Phase	Other Ministries	Awareness of policy changes & understanding of required process.	Tbd
Federal Regulatory Agencies	Policy Development	DFO	Awareness of policy changes & understanding of required process. Ensure consistency with DFO legislation.	Committee Representation
	Communications Phase	Other Agencies	Awareness of policy changes & understanding of required process.	Tbd
Municipal and Local Govts	Policy Development	AAMDC	Awareness of policy changes & understanding of required process.	Committee Representation
	Communications Phase	AAMDC; AUMA	Awareness of policy changes & understanding of required process.	Membership Poll; Fact Sheets

Other Proponents	Policy Development	ASGA	Awareness of policy changes & understanding of required process.	Committee Representation
	Communications Phase	ASGA; Registered pit owners		Membership notification; Letter to all registered pit owners; Fact Sheets
First Nations	Communications Phase		Awareness of policy changes & understanding of required process.	Meetings – likely require presence of our FN advisors/consultation specialists.
Partners	Communications Phase	Alberta Water Council; Watershed Planning and Advisory Councils	Awareness of policy changes & understanding of required process.	Internet-based questionnaire; Fact Sheets
Public	Communications Phase		Awareness of policy changes.	Internet-based questionnaire; Fact Sheets

VI. Surface Water body Aggregate Extraction Policy

A. Purpose

Develop GoA policy to support the provincial regulatory decision-making processes for proposed *aggregate extraction* operations in *active* and *non-active* areas of all surface *water bodies*.

B. Authority

This policy gives guidance to processing applications for authorizations to initiate aggregate extraction operations under the *Public Lands Act*, the *Water Act*, and the *Environmental Protection and Enhancement Act*.

For the purposes of this policy, the definition of 'water body' from the *Water Act* has been used, which includes aquifers and wetlands. Although this policy is for aggregate extraction from surface water bodies, excluding wetlands, impacts on aquifers and wetlands will be considered in the risk assessment required of each application.

- In the case of contradiction between this policy and any Act, Regulation, or Code, the Act, Regulation, or Code prevails.
- For aggregate extraction from aquifers, refer to Groundwater Evaluation Guidelines [currently under review]
- For aggregate extraction from wetlands, refer to the Alberta wetlands policy [interim policy currently effective; provincial policy currently being designed]

This policy is only applicable to aggregate extraction from surface water bodies.

C. Assumptions and Principles

1. Aggregate extraction in any active area of a surface water body will have adverse impacts.
2. Aggregate extraction in a non-active area of a surface water body may have adverse impacts.
3. This policy promotes a risk-based approach to water body aggregate extraction.
4. Applications for authorizations to initiate aggregate extraction from surface water bodies will be processed according to the guidance outlined in this policy, which considers all regulatory mandates.

D. Vision and Outcomes

Surface water body aggregate extraction operations are carried out responsibly to ensure the maintenance and protection of the natural morphology of water body systems,

including aquifers and wetlands, the quality of water they contain, and the maintenance of aquatic and terrestrial habitat.

- Aggregate extraction from surface water bodies is permitted to occur only in areas where it would not adversely impact the environment or aquatic ecosystems
- The GoA has a common and consistent approach to applications for authorizations of water body aggregate extraction
- The roles and responsibilities of regulators are clearly defined

E. Policy Guidelines for Aggregate Extraction from Surface Water bodies

1. New Aggregate Extraction Operations

1.1. Active Area of a Surface Water body

Proposed operations located within the active area of a surface water body will not be approved.

1.2. Non-active Area of a Surface Water body

For proposed operations located within the non-active area of a surface water body approvals will only be considered when the proponent provides a risk assessment of the impacts, completed by a *qualified professional*.

Proponents must ensure that all municipal bylaws, provincial and federal regulations, statutes, and policies will be met.

1.3. Risk Assessment

The risk assessment will evaluate environmental impacts of the proposed operation and define the strategies that will be employed to mitigate or compensate for those impacts. The risk assessment is to include, but is not limited to, the following components:

- Fish and Wildlife, including aquatic species, terrestrial species, and species at risk
- Land, including vegetation and soils
- Hydrogeology and Hydrology, including flood risk
- River Engineering, including channel morphology and bank stability
- Limnology, including water quality and sediment
- Wetlands

If the proposed work is for preventative measures or emergency situations, the proponent is required to assess the effects that the proposed work will have on bank and channel stability of the water body, including upstream and downstream of the proposed operations.

Proponents should contact ASRD and AENV for details at the application stage.

1.4. Disaster Assistance

If aggregate extraction is authorized within the non-active area of a surface water body that is within the 1:100 year flood level, the proponent would not be eligible for assistance under the Disaster Recovery Program (Regulation 51/94, Alberta *Emergency Management Act*).

1.5. Liability

Proponents are liable for any damages that may occur downstream, upstream, and/or on the banks as a result of implementing or mitigating their projects.

2. Existing Aggregate Extraction Operations

Will be allowed to continue for the remaining term of the *Public Lands Act*, *Environmental Protection and Enhancement Act*, or *Water Act* authorizations, subject to the requirements under the *Fisheries Act*. After this time, a renewal of an authorization will include a plan, where necessary, to bring the existing operation into compliance with the requirements outlined for new aggregate operations.

3. Undeveloped Aggregate Extraction Operations

Undeveloped aggregate extraction operations that have a *Public Lands Act* authorization but no *Environmental Protection and Enhancement Act* or *Water Act* authorizations will be considered a new operation and are subject to similar classifications and requirements.

4. Emergency Situations

In rare circumstances, measures to protect human life or infrastructure in emergency situations may require aggregate relocation from surface water bodies as part of the emergency response. The various regulatory authorities have appropriate regulations and procedures in place to address emergencies and will review applications for emergency work on a case-by-case basis. Emergency situations will not be viewed as an opportunity to remove aggregates from water bodies for commercial purposes. Any aggregate removal will be strictly incidental to the emergency works and subject to approval conditions of regulatory authorities.

5. Preventative & Mitigative Measures

Occasionally municipalities and other agencies responsible for capital infrastructure may need to conduct activities in the active area of a surface water body to prevent or mitigate damage to infrastructure and avoid future emergency situations. In these situations, time lines are not generally critical and normal departmental review procedures can be applied. In some circumstances, aggregate removal and/or relocation may be a component of the works. However, all reasonable options must be considered and the project will not be treated as an opportunity for aggregate extraction for commercial purposes.

F. Regulatory Instruments

1. Regulations and Guidelines

The applicability of legislation is dependent upon the location of the desired aggregate and, particularly, whether it is associated with public or private lands and/or is near a water body or may influence a water body, including aquifers and wetlands. The primary legislative considerations for surface water body aggregate extraction are listed below.

1.1. Public Lands Act (ASRD)

The *PLA* pertains to the ownership and management of public land, including the beds and shores of watercourses and water bodies. The *PLA* also provides for the allocation of aggregate, royalties, access, and enforcement.

Regulations include:

- Surface Materials Regulation
- Disposition & Fees Regulation

Guidelines include:

- Guidelines for Acquiring Surface Material Dispositions on Public Land (including preparation of a risk assessment)

Possible Operator Requirements:

- Surface materials exploration (SME) permit
- Surface materials lease (SML), licence (SMC), reservation, or public pit licence
Includes risk assessment and payment of fees.
- Licence of Occupation (LOC)
- Conservation and Reclamation Business Plan

1.2. Environmental Protection and Enhancement Act (AENV)

The *EPEA* pertains to environmental assessment, approvals, appeals, air and water emissions, conservation and reclamation, and enhancement. This legislation has application on all lands, private or public or water-related.

Regulations include:

- Activities Designation Regulation
- Approvals Procedure Regulation
- Conservation and Reclamation Regulation, including the Code of Practice for Pits

Guidelines include:

- Environmental Protection Guidelines for Pits (Conservation & Reclamation Information letter 96-95)

Possible Operator Requirements:

- **Registration**
For private land pits with potential surface area disturbances exceeding five hectares (Class 1 Pits)
- **Reclamation Certificate**
Includes Conservation & Reclamation Plan and payment of securities.

1.3. *Water Act* (AENV)

The *WA* pertains to management, use, allocation and environmental protection in conjunction with activities that may influence water. Hence, washing operations diversions, activities in floodplains and creation of water bodies are activities associated with aggregate extraction that may have application.

Regulations include:

- Water (Ministerial) Regulation

Possible Operator Requirements:

- Licence
For diversion of water
- Approval
For the establishment/operation of works in a water body

1.4. Other Applicable Guidelines

Aggregate extraction operations should also comply with the following:

- Fish & Wildlife Objectives (ASRD)
- First Nations Consultation Policy (ASRD)
- Alberta's First Nations Consultation Guidelines on Land Management and Resource Development (AENV 2007)

2. Potential Regulatory Requirements

Depending on location and/or scope of the operation, proponents may also need to consider regulatory requirements under the following:

Legislation	Organization	Function
<i>Canadian Environmental Assessment Act</i>	Multi-agency (Federal)	Assessment of specified developments that may affect the environment
<i>Fisheries Act</i>	Environment Canada	Regulation of the release of deleterious substances (section 36(3)) for the purposes of protecting fish and fish habitat

	Fisheries and Oceans Canada	Protection of fish and fish habitat
<i>Migratory Birds Convention Act</i>	Environment Canada	Protection of migratory birds
<i>Species at Risk Act</i>	Environment Canada	Protection of terrestrial species designated as 'at risk'
	Fisheries and Oceans Canada	Protection of aquatic species designated as 'at risk'
<i>Navigable Waters Protection Act</i>	Transportation Canada	Security of Canada's waters for navigation purposes
<i>Alberta Land Stewardship Act</i>	Alberta Sustainable Resource Development	Provides for the development of regional land use plans
<i>Alberta Wildlife Act</i>	Alberta Sustainable Resource Development	Protection of wildlife
<i>Forest and Prairie Protection Act</i>	Alberta Sustainable Resource Development	Protection and salvage of timber resources on public land
<i>Historical Resources Act</i>	Alberta Department of Culture and Community Spirit	Preservation of historic, archaeological and paleontological resources and sites
<i>Emergency Management Act</i>	Alberta Department of Municipal Affairs	Provides for the disbursement of disaster recovery assistance if the event meets the criteria outlined in Regulation 51/94
<i>Municipal Government Act</i>	Local Municipalities	Provides local municipalities with authority to regulate land use through land use plans, bylaws and development permits.

3. Required Applications

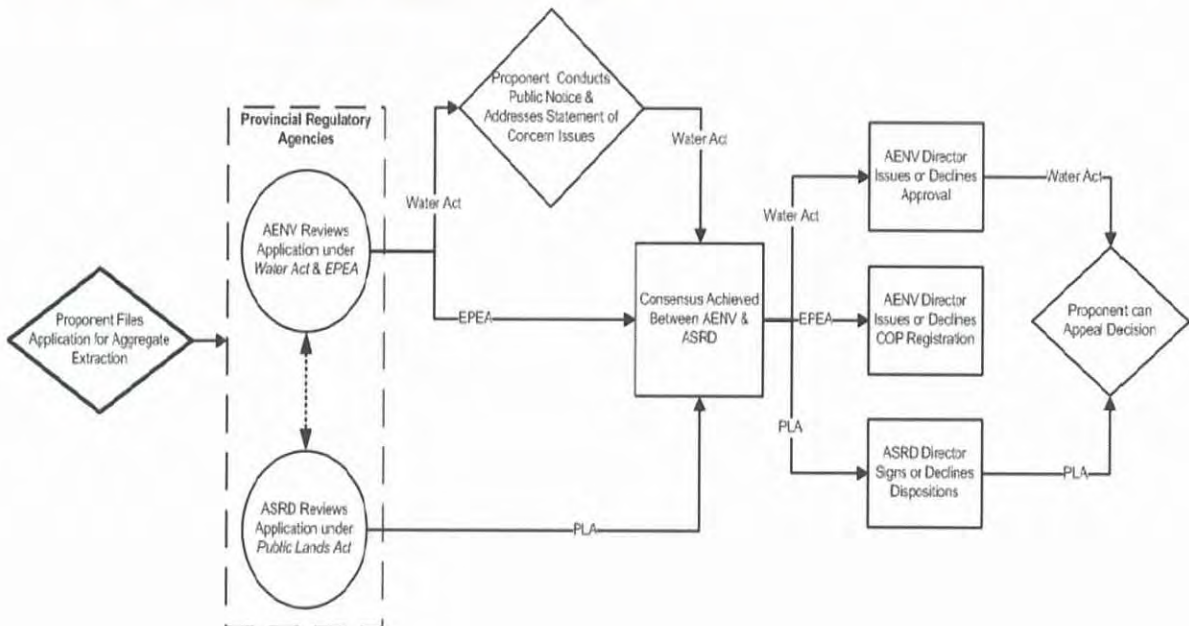
The list below includes provincial regulatory authorizations and links to the respective application forms. These applications are always required for initiation of the provincial regulatory review process.

- **ASRD Public Lands Act disposition**
<http://www.srd.alberta.ca/MapsFormsPublications/Forms/LandsForms/Default.aspx>
- **AENV Water Act approval and/or licence**
<http://environment.alberta.ca/01189.html>
- **AENV EPEA Code of Practice for Pits registration**
<http://environment.alberta.ca/01113.html>

It is assumed that each Ministry will share applications with other partner agencies, within the constraints of the *Freedom of Information and Protection of Privacy Act (FOIP)*.

G. Regulatory Review Process

The flow chart below is intended to show the interactions between the regulatory agencies that are signatory to this policy. It is not intended to illustrate the details of each departmental review process. Each department reviews the application for different components and anticipated impacts, and then issues authorizations based on their own regulatory mandates. However, communication between departments is expected to ensure a consistent and consensus-based outcome.



VII. Implementation Plan

This policy is effective immediately following Ministerial approval from the participating departments. No legislative changes are required.

To better implement the intent of this policy, the following actions are required:

I. Coordinate AENV & ASRD regulatory requirements and processes

1. Draft Guidelines for Risk Assessment to satisfy ASRD & AENV requirements
 - i. Based on current Guidelines for Acquiring Surface Material Dispositions on Public Land (ASRD 2008)
 - ii. Include AENV matters and factors to be considered by the Director when making a decision
 - iii. Maintain consistency with Risk Management Framework as outlined in the Practitioners Guide to the Risk Management Framework for DFO Habitat Management Staff
 - iv. Consider developing format guidelines to improve consistency between proponents
2. Identify operator monitoring and reporting requirements for both ASRD and AENV
 - i. Consider the requirements for Peat Mining as an example
3. Establish a consistent referral process between ASRD and AENV
4. Clarify roles of regulatory agencies, particularly with respect to emergency situations

II. Engage and educate on the Surface Water body Aggregate Policy

(See draft engagement strategy in Section V)

1. GoA Departments;
2. Partners & public;
3. Proponents.

III. Develop a Monitoring and Evaluation Plan for the Surface Water body Aggregate Policy

1. Develop approach and timeline to evaluate efficacy of policy in mitigating environmental effects of aggregate extraction
2. Develop approach and timeline to evaluate intent of policy, considering evolving knowledge and circumstances
3. Update policy as required to incorporate new information
4. Update policy as required to reflect other inter-related provincial policies

From: Augustus Archampong
Sent: Friday, August 06, 2010 3:50 PM
To: 'doliver@aamdc.com'; 'Tom.Olson@dfo-mpo.gc.ca'; Dave Park;
Bruce Blue; Patricia Stevenson; Robert George; Larry Kuchmak;
Ryan Puhlmann; 'kjohn@lehighcement.com'; Douglas Knight
Cc: Louise Brennan; Gerry Haekel; 'David.Fraser@dfo-mpo.gc.ca'; 'Orr,
Richard'; Don Watson (AENV); Neil Hollands; 'Brock Helm'; 'Orr,
Richard'
Subject: FW: Emailing: Background Information_20100805.doc,
Consultation and Implementation Plans_20100804.doc, Aggregate
Extraction Policy_v6_20100804.doc
Attachments: Background Information_20100805.doc; Consultation and
Implementation Plans_20100804.doc; Aggregate Extraction
Policy_v6_20100804.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Thanks for your previous review and comment on this subject.

We will be moving the above document to Ernie's office by August 12.

Thanks for your input.

Cheers, Archie.

The message is ready to be sent with the following file or link attachments:

Background Information_20100805.doc
Consultation and Implementation Plans_20100804.doc Aggregate Extraction Policy_v6_20100804.doc

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

Background Information & Policy Context

Surface Water Body Aggregate Policy

Document 1 of 3

Government of Alberta

September 2010

List of Acronyms

AAMDC	Alberta Association of Municipal Districts & Counties
AENV	Alberta Environment
ASGA	Alberta Sand and Gravel Association
ASRD	Alberta Sustainable Resource Development
AUMA	Alberta Urban Municipalities Association
CRBP	Conservation and Reclamation Business Plan
DFO	Fisheries and Oceans Canada
EPEA	<i>Environmental Protection and Enhancement Act</i>
GoA	Government of Alberta
HADD	Harmful Alteration, Disruption, or Destruction
JTIWG	Joint Technical Issues Working Group
LOC	Licence of Occupation
LUF	Land-use Framework
PLA	<i>Public Lands Act</i>
SMC	Surface Materials Licence
SME	Surface Materials Exploration Permit
SML	Surface Materials Lease
ToR	Terms of Reference
WA	<i>Water Act</i>

A. Explanation of Problem & Drivers for Policy

Aggregate extraction within the active and non-active areas of surface water bodies has occurred in the province for decades. The apparent ease of access to the aggregate may have influenced this choice. Aggregate extraction is an important contributor to economic activity in Alberta and there is an increasing demand from local governments and industry to extract aggregate resources from surface water bodies for commercial purposes.

Occasionally there may be demand from local governments to handle aggregate from surface water bodies as a preventative or mitigative measure, or in emergency situations. This demand is often countered by public concern about allowing aggregate extraction operations in surface water bodies, which is why authorizations have not been issued for the past ten years. Although this approach protected the aquatic environment, the public was not given any guidance as to where they can access aggregate resources.

Aggregate extraction in surface water bodies is a concern as the associated operations, in general, have been shown to have significant adverse effects on aquatic species and habitat, water quality, the configuration of the bed, banks and shores of water bodies, and riparian terrestrial habitat. Physical changes to a surface water body as a result of aggregate extraction operations have also been shown to have an adverse effect on adjacent lands and infrastructure, both upstream and downstream of the operation location.

There is no formal provincial policy on surface water body aggregate extraction. A clear and consistent policy to guide review of applications for regulatory authorizations will provide greater clarity for proponents of aggregate extraction operations. The strict approach adopted by this policy will lead to higher environmental protection.

B. Current Regulatory State

1. Municipal

The *Municipal Government Act* (Municipal Affairs) authorizes municipal governments to create bylaws, which may affect aggregate extraction from surface water bodies.

2. Provincial

Aggregate extraction operations on public and private lands in Alberta are regulated under three provincial enactments: the *Water Act* (Alberta Environment), the *Public Lands Act* (Alberta Sustainable Resource Development), and the *Environmental Protection and Enhancement Act* (Alberta Environment). These have separate and distinct regulatory processes that are not always well integrated. Meeting provincial standards and requirements does not ensure that federal regulatory requirements will be met.

3. Federal

Aggregate extraction operations situated in the active and/or non-active areas of surface water bodies must also meet federal regulatory requirements under the *Fisheries Act*, the *Navigable Waters Protection Act*, and possibly the *Canadian Environmental Assessment Act* or the *Species at Risk Act*.

Any work or undertaking that causes the harmful alteration, disruption or destruction (HADD) of fish habitat is prohibited unless authorized under the federal *Fisheries Act*. DFO will review proposed works or undertakings using the Risk Management Framework as outlined in the Practitioners Guide to the Risk Management Framework for DFO Habitat Management Staff. DFO may choose NOT to issue an authorization where:

- the magnitude and duration of the HADD is unacceptable;
- the fish habitat affected is critical to the maintenance of fish populations;
- the works or undertakings would result in the deposit of a deleterious substance into fish bearing habitat;
- no acceptable compensation (to replace affected fish habitat) can be achieved.

Prior to issuing any authorization, the potential environmental effects of the project must also be assessed pursuant to the *Canadian Environmental Assessment Act* and a determination of 'no significant adverse environmental effects' be made.

This approach is consistent with the objectives of ASRD, under the *Public Lands Act*, and AENV, under the *Water Act* and the *Environmental Protection and Enhancement Act*, who are required to consider the protection of the aquatic environment when issuing authorizations.

In the past 10 years, DFO has declined issuing authorizations in Alberta under the *Fisheries Act* (Canada) for extraction within the active channel of fish bearing surface water bodies. AENV and ASRD similarly have not issued any provincial approvals.

4. Other Jurisdictions

Aggregate extraction from the active area of surface water bodies "has been prohibited in the United Kingdom, Germany, France, The Netherlands, and Switzerland and is being reduced in rivers in Italy, Portugal, and New Zealand".

[Source: Kondolf, G.M (1997) Hungry water: effects of dams and gravel mining on river channels. *Environ. Manage.* 21:533-551. IN Meador and Layher (1998) Instream sand and gravel mining: Environmental issues and regulatory process in the United States. *Fisheries Habitat.* 23(11): 6-13.]

C. Relationship to GoA Strategic Policy

1. Land-use Framework

- Need to provide guidance to LUF regional plans as to where aggregate extraction from surface water bodies may be acceptable.
- Would enable ‘place-based’ responses to aggregate extraction regulatory applications, but provide a provincially consistent policy to determine whether or not it would be acceptable in the provincial policy and regulatory contexts.
- Need to have a consistent policy so that the cumulative effects of aggregate extraction are considered and managed.
- Surface Water Aggregate Policy would be applicable to public and private lands, as per Guidelines for Risk Assessments.
- Relevant Strategies:
 - Strategy 1: Develop seven regional land-use plans based on seven new land-use regions.
 - Strategy 3: Cumulative effects management will be used at the regional level to manage the impacts of development on land, water, and air.
 - Strategy 4: Develop a strategy for conservation and stewardship on private and public lands

2. Water for Life Strategy

- Supports the Healthy Aquatic Ecosystems outcome through the Guidelines for Risk Assessments, which would help to ensure the maintenance and preservation of natural habitat.
- Relevant Action Plan items:
 - Action 2.1: Enforce protection of known critical aquatic ecosystems using existing legislation
 - Action 2.6: Implement aquatic restoration plan and conserve key aquatic ecosystems through regional land-use approaches and identified partnerships

D. Work to Date

Numerous attempts have been made at drafting a GoA Surface Water Body Aggregate Policy. Due to the number of parties involved, it has been difficult to obtain consensus.

The Joint Technical Issues Working Group (JTIWG) has provided recommendations for aggregate extraction in the active area of surface water bodies. The consensus of the JTIWG is to not permit any extraction in any active area of any surface water body at any time. The group proposes that this be adopted by the Government of Alberta and Fisheries & Oceans Canada.

E. Current Work

Alberta’s Minister of Environment requested that a GoA policy be developed to transparently and consistently regulate at the provincial level aggregate extraction from

surface water bodies. AENV led the development of the GoA's position on aggregate extraction from surface water bodies in partnership with ASRD. Terms of Reference were drafted and the parties indicated below were included in the development of the attached Surface Water Body Aggregate Policy (Document 2).

Sector	Target audiences	Outcome of consultation	Methods of consultation
AENV	Water Policy Branch; Regional Staff; River Forecasting; First Nations advisors; Legal Services	Surface Water body Aggregate Policy	Committee Representation; Meetings; Email requests for comments
ASRD	Fish & Wildlife Division; Lands Division	Surface Water body Aggregate Policy	Committee Representation; Meetings; Email requests for comments
Other GoA Ministries	Alberta Transportation	Awareness of policy changes & understanding of required process.	Committee Representation
Federal Regulatory Agencies	DFO	Ensure consistency with DFO legislation. Awareness of policy changes & understanding of required process.	Committee Representation
Municipal and Local Governments	AAMDC	Awareness of policy changes & understanding of required process.	Committee Representation
Other Proponents	ASGA	Awareness of policy changes & understanding of required process.	Committee Representation

F. Proposed Future Work

- Consult with and educate stakeholders
- Develop Guidelines for Risk Assessment
- Develop a Monitoring and Evaluation Plan

For all of the above, see attached stakeholder consultation and implementation plans (Document 3).

ATTACH #2

Consultation and Implementation Plans
Surface Water Body Aggregate Policy
Document 3 of 3

Government of Alberta
September 2010

I. Draft Stakeholder Consultation Plan

Desired outcome is: Awareness of policy changes & understanding of required process.

Sector	Target audiences	Appropriate methods of consultation
AENV		Tbd
ASRD		Tbd
Other GoA Ministries	Alberta Transportation	Tbd
Federal Regulatory Agencies	DFO	Tbd
Municipal and Local Governments	AAMDC; AUMA	Membership Poll; Fact Sheets
Other Proponents	ASGA; Registered pit owners	Membership notification; Letter to all registered pit owners; Fact Sheets
First Nations		Meetings – likely require presence of our FN advisors/consultation specialists.
Partnerships	Alberta Water Council; Watershed Planning and Advisory Councils	Internet-based questionnaire; Fact Sheets
Public		Internet-based questionnaire; Fact Sheets

II. Implementation Plan

This policy is effective immediately following Ministerial approval from the participating departments. No legislative changes are required.

To further implement the intent of this policy, the following actions are recommended:

I. Coordinate AENV & ASRD regulatory requirements and processes

1. Expand on the Risk Assessment guidelines in the policy to satisfy ASRD & AENV requirements by developing a Guidelines for Risk Assessments document
 - i. Based on current Guidelines for Acquiring Surface Material Dispositions on Public Land (ASRD 2008)
 - ii. Include AENV matters and factors to be considered by the Director when making a decision
 - iii. Maintain consistency with Risk Management Framework as outlined in the Practitioners Guide to the Risk Management Framework for DFO Habitat Management Staff
 - iv. Consider developing format guidelines to improve consistency between proponents
2. Identify operator monitoring and reporting requirements for both ASRD and AENV
3. Strengthen the referral process between ASRD and AENV
4. Clarify roles of regulatory agencies, particularly with respect to emergency situations

II. Engage and educate on the Surface Water body Aggregate Policy

1. GoA Departments;
2. Partners & public;
3. Proponents.

III. Develop a Monitoring and Evaluation Plan for the Surface Water body Aggregate Policy

1. Develop approach and timeline to evaluate efficacy of policy in mitigating environmental effects of aggregate extraction
2. Develop approach and timeline to evaluate intent of policy; consider evolving knowledge and circumstances
3. Update policy as required to incorporate new information
4. Update policy as required to reflect other inter-related provincial policies

ATTACH # 3.

Surface Water Body Aggregate Policy

Document 2 of 3

Government of Alberta

September 2010

DRAFT

I. Endorsement

The following parties agree to implement the policy outlined below, as well as the attached consultation and implementation plans.

This policy is effective from the date of signature. Amendments may be made at any time by mutual consent and sign-off of the parties below.

Signatures: Participating Organizations

Government of Alberta: Alberta Sustainable Resource Development

Hon. Mel Knight, Minister

Date

Government of Alberta: Alberta Environment

Hon. Rob Renner, Minister

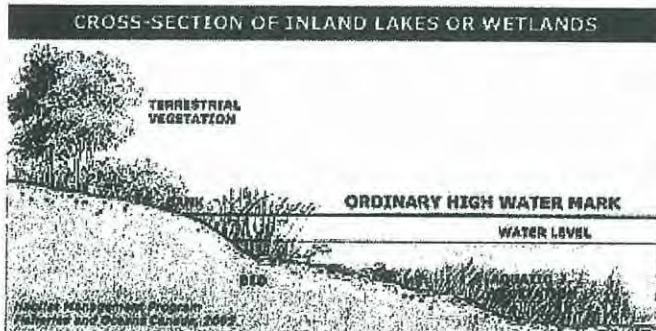
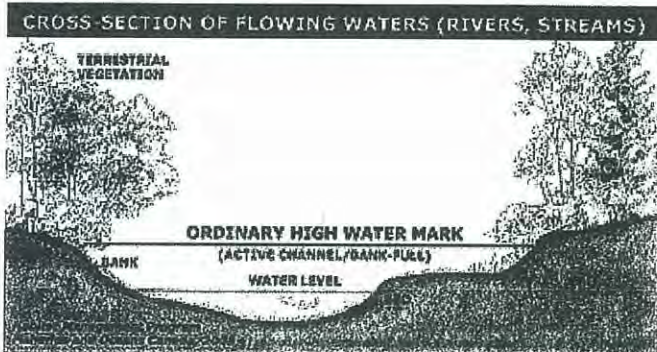
Date

DRAFT

II. Glossary

For the purposes of this policy, the following definitions have been adopted:

Active area of a surface water body: Area lying between the *ordinary high water marks* on each bank [see diagrams below].



Source:

Appendix C, DFO Operational Statements – Beaver Dam Removal/Culvert Maintenance, 2010 [<http://www.4lanehighway17kenora.ca/highway17/pdf/Appendix%20C.pdf>]

Reproduced with the permission of Fisheries and Oceans Canada

Aggregate: Any sand, gravel, clay or marl that is excavated from a pit, whether in a processed or unprocessed form, but does not include *reject*.

Emergency situation: Any situation that may jeopardize human life or capital infrastructure and where aggregate removal is incidental to the activities required to alleviate that threat.

Extraction: Includes the stripping and stockpiling of soil, overburden, and aggregate materials and the transport of said materials within the site.

Non-active area of a surface water body: Any area in the drainage basin of a surface water body that is not included in the active area.

Ordinary high water mark: The point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristic.

Qualified professional: Alberta Environment and Alberta Sustainable Resource Development recognize the following seven professional regulatory organizations (PROs) and whose members may have the scope of practice to conduct risk assessments for proposed aggregate operations:

- Alberta Institute of Agrologists (AIA)
- Alberta Society of Professional Biologists (ASPB)
- Association of the Chemical Profession of Alberta (ACPA)
- Association of Professional Engineers and Geologists and Geophysicists of Alberta (APEGGA)
- College of Alberta Professional Foresters (CAPF)
- College of Alberta Professional Forest Technologists (CAPFT)
- Qualified Aquatic Environment Specialist

For specific recommendations see requirements for Reclamation Certification: [<http://environment.alberta.ca/documents/Reclamation-Certificates-Professional-Declaration-Requirements.pdf>] or Code of Practice for Pits

Reject: Aggregate that is expected to be unsuitable for use as a product, or for blending with other aggregate to form a product, and is therefore expected to be used for reclamation of the pit.

Surface Water Body: A **Water Body**, as defined in the *Water Act*, excluding wetlands.

Water Body (*Water Act*): Any location where water flows or is present, whether or not the flow or the presence of water is continuous, intermittent or occurs only during a flood, and includes but is not limited to wetlands and aquifers but does not include except for clause (m) and section 99 "water body" that is part of an irrigation works if the irrigation works is subject to a licence and the irrigation works is owned by the licensee, unless the regulations specify that the location is included in the definition of water body.

III. Surface Water Body Aggregate Extraction Policy

A. Purpose

Develop GoA policy to support the provincial regulatory decision-making processes for proposed *aggregate extraction* operations in *active* and *non-active* areas of all surface *water bodies*.

B. Authority

This policy gives guidance to reviewing applications for authorizations to initiate aggregate extraction operations under the *Public Lands Act*, the *Water Act*, and the *Environmental Protection and Enhancement Act*.

Although this policy is for aggregate extraction from surface water bodies, excluding wetlands, impacts on aquifers and wetlands will be considered in the risk assessment required of each application.

- In the case of contradiction between this policy and any Act, Regulation, or Code, the Act, Regulation, or Code prevails.
- For aggregate extraction from aquifers, refer to Groundwater Evaluation Guidelines
- For aggregate extraction from wetlands, refer to the Alberta wetlands policy [interim policy currently effective; provincial policy currently being developed]

This policy is only applicable to aggregate extraction from surface water bodies.

C. Assumptions and Principles

1. Aggregate extraction in any active area of a surface water body will have adverse environmental impacts.
2. Aggregate extraction in a non-active area of a surface water body may have adverse environmental impacts if not carried out responsibly.
3. This policy promotes a risk-based approach to aggregate extraction in the non active area of surface water body.
4. Applications for authorizations to initiate aggregate extraction from surface water bodies will be processed according to the guidance outlined in this policy, which considers the regulatory mandates of AENV and ASRD.

D. Vision and Outcomes

Surface water body aggregate extraction operations are carried out responsibly to ensure the maintenance and protection of the natural morphology of water body systems, including aquifers and wetlands, the quality of water they contain, and the maintenance of aquatic and terrestrial habitat.

- Aggregate extraction from surface water is permitted to occur only in areas where it will not adversely impact the environment or aquatic ecosystems
- The GoA has a common and consistent approach to applications for authorizations for aggregate extraction from a surface water body
- The roles and responsibilities of regulators are clearly defined

E. Policy Guidelines for Aggregate Extraction from Surface Water Bodies

1. New Aggregate Extraction Operations

1.1. Active Area of a Surface Water Body

New aggregate extraction operations proposed within the active area of a surface water body will not be authorized by AENV or ASRD, with the possible limited exception of preventative and mitigative measures.

1.2. Non-active Area of a Surface Water Body

New aggregate extraction operations proposed within the non-active area of a surface water body will only be considered for authorizations when the proponent provides a risk assessment of the impacts, completed by a *qualified professional*.

Proponents of all aggregate extraction operations must also ensure that all municipal bylaws, provincial and federal regulations, statutes, and policies will be met.

2. Existing Approved Aggregate Extraction Operations

Existing approved aggregated extraction operations will be allowed to continue for the remaining term of their *Public Lands Act*, *Environmental Protection and Enhancement Act*, or *Water Act* authorizations, subject to the requirements under the *Fisheries Act*. After this time, a renewal of an existing authorization will include a plan, where necessary, to bring the existing operation into compliance with the requirements outlined under this policy for new aggregate extraction operations. This may include, but does not necessarily include, a risk assessment.

3. Undeveloped Aggregate Extraction Operations

Undeveloped aggregate extraction operations that have a *Public Lands Act* authorization but no *Environmental Protection and Enhancement Act* or *Water Act* authorizations as of the effective date of this policy will be considered a new aggregate extraction operation and are subject to this Policy as if they are "new" aggregate extraction operations. A risk assessment will be required.

4. Emergency Situations

In rare circumstances, measures to protect human life or capital infrastructure in emergency situations may require aggregate relocation from surface water bodies as part of the emergency response. The various regulatory authorities have appropriate

regulations and procedures in place to address emergencies and will review applications for emergency work on a case-by-case basis. This may include, but does not necessarily include, a risk assessment.

Emergency situations will not be viewed as an opportunity to remove aggregates from water bodies for commercial purposes. Any aggregate removal will be strictly incidental to the emergency works and subject to approval conditions of regulatory authorities.

5. Preventative & Mitigative Measures

Occasionally municipalities and other agencies responsible for capital infrastructure may need to conduct activities in the active area of a surface water body to prevent or mitigate damage to capital infrastructure and avoid future emergency situations. In these situations, time lines are not generally critical and normal departmental review procedures can be applied. In some circumstances, aggregate removal and/or relocation may be a component of the works, in which case a risk assessment will be required. However, all reasonable options must be considered and the project will not be treated as an opportunity for aggregate extraction for commercial purposes.

6. Risk Assessments

The risk assessment will evaluate environmental impacts of the proposed operation and define the strategies that will be employed to mitigate or compensate for those impacts. The risk assessment is to include, but is not limited to, the following components:

- Fish and wildlife, including aquatic species, terrestrial species, and species at risk
- Land, including vegetation and soils
- Hydrogeology and hydrology, including flood risk and base flow
- River engineering, including channel morphology and bank stability
- Limnology, including water quality and impact on biota
- Wetlands
- The Guidelines for Acquiring Surface Material Dispositions on Public Land (ASRD 2008)
- *Water Act* and *EPEA* requirements and factors the Director must consider when making a decision
- The Risk Management Framework as outlined in the Practitioners Guide to the Risk Management Framework for DFO Habitat Management Staff
- Other requirements identified in the Guidelines for Risk Assessments (to be developed pursuant to this policy by AENV and ASRD)
- Other requirements identified in the Monitoring and Evaluation Plan (to be developed pursuant to this policy by AENV and ASRD)

If the proposed includes preventative measures or emergency situations, the proponent is required to assess the effects that the proposed work will have on bank and channel stability of the water body, including upstream and downstream of the proposed operations.

Proponents should contact ASRD and AENV for details at the application stage.

F. Guidance on Common Regulatory Instruments

1. Applicable AENV & ASRD Regulations and Guidelines

The applicability of legislation is dependent upon the location of the desired aggregate and, particularly, whether it is associated with public or private lands and/or is near a water body or may influence a water body, including aquifers and wetlands. The primary legislative considerations for surface water body aggregate extraction are listed below.

1.1. Public Lands Act (ASRD)

The *PLA* pertains to the ownership and management of public land, including the beds and shores of watercourses and water bodies. The *PLA* also provides for the allocation of aggregate, royalties, access, and enforcement.

Regulations include:

- Surface Materials Regulation
- Disposition & Fees Regulation

Guidelines include:

- Guidelines for Acquiring Surface Material Dispositions on Public Land (including preparation of a risk assessment)

Possible Operator Requirements:

- Surface materials exploration (SME) permit
- Surface materials lease (SML), licence (SMC), reservation, or public pit licence
Includes risk assessment and payment of fees.
- Licence of Occupation (LOC)
- Conservation and Reclamation Business Plan

1.2. Environmental Protection and Enhancement Act (AENV)

The *EPEA* pertains to environmental assessment, approvals, appeals, air and water emissions, conservation and reclamation, and enhancement. This legislation has application on all lands, private or public or water-related.

Regulations include:

- Activities Designation Regulation
- Approvals Procedure Regulation
- Conservation and Reclamation Regulation, including Code of Practice for Pits

Guidelines include:

- Environmental Protection Guidelines for Pits (Conservation & Reclamation Information letter 96-95)

Possible Operator Requirements:

- Registration
For private land pits with potential surface area disturbances exceeding five hectares (Class 1 Pits)
- Reclamation Certificate
Includes Conservation & Reclamation Plan and payment of securities.

1.3. *Water Act* (AENV)

The *WA* pertains to management, use, allocation and environmental protection in conjunction with activities that may influence water. Hence, washing operations diversions, activities in floodplains and creation of water bodies are activities associated with aggregate extraction that may have application.

Regulations include:

- Water (Ministerial) Regulation

Possible Operator Requirements:

- Licence
For diversion of water
- Approval
For the establishment/operation of works in a water body

1.4. Other Applicable Guidelines

Aggregate extraction operations should also comply with the following:

- Fish & Wildlife Objectives (ASRD)
- First Nations Consultation Policy (ASRD)
- Alberta First Nations Consultation (AENV)

1.5. Required Applications

The list below includes provincial regulatory authorizations and links to the respective application forms. These applications are always required for initiation of the provincial regulatory review process.

- ASRD Public Lands Act disposition
<http://www.srd.alberta.ca/MapsFormsPublications/Forms/LandsForms/Default.aspx>
- AENV Water Act approval and/or licence
<http://environment.alberta.ca/01189.html>
- AENV EPEA Code of Practice for Pits registration
<http://environment.alberta.ca/01113.html>

It is assumed that each Ministry will share applications with other partner agencies, within the constraints of the *Freedom of Information and Protection of Privacy Act (FOIP)*.

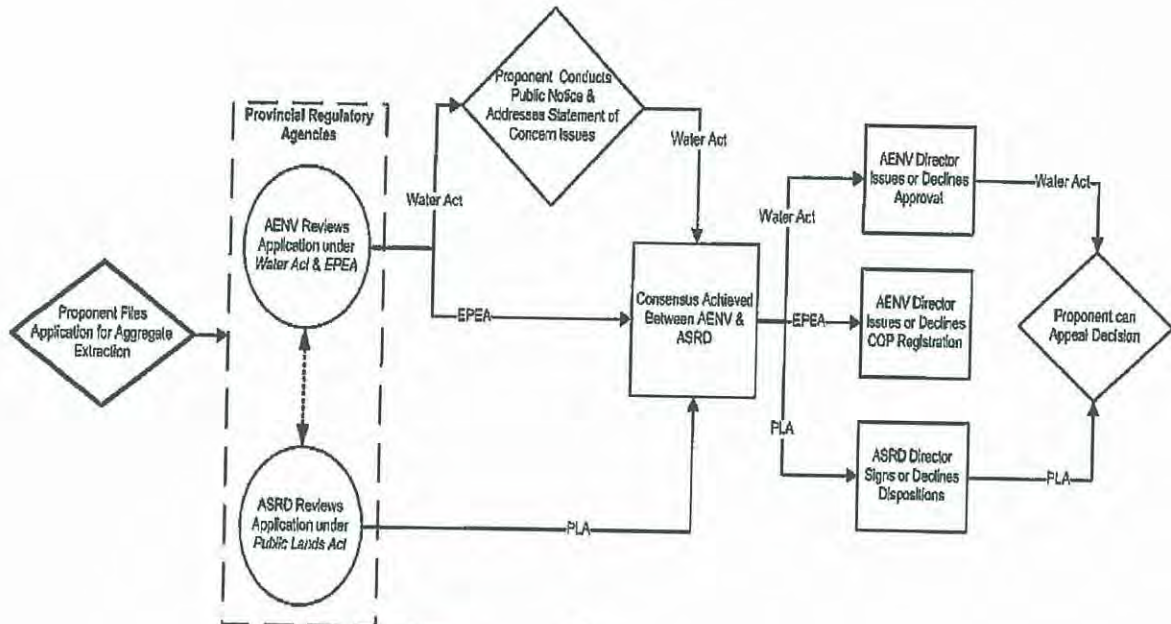
2. Potential Regulatory Requirements

Depending on location and/or scope of the operation, proponents may also need to consider other regulatory requirements, which may include but are not necessarily limited to the following:

Legislation	Organization	Function
<i>Canadian Environmental Assessment Act</i>	Multi-agency (Federal)	Assessment of specified developments that may affect the environment
<i>Fisheries Act</i>	Environment Canada	Regulation of the release of deleterious substances (section 36(3)) for the purposes of protecting fish and fish habitat
	Fisheries and Oceans Canada	Protection of fish and fish habitat
<i>Migratory Birds Convention Act</i>	Environment Canada	Protection of migratory birds
<i>Species at Risk Act</i>	Environment Canada	Protection of terrestrial species designated as 'at risk'
	Fisheries and Oceans Canada	Protection of aquatic species designated as 'at risk'
<i>Navigable Waters Protection Act</i>	Transport Canada	Security of Canada's waters for navigation purposes
<i>Alberta Land Stewardship Act</i>	Alberta Sustainable Resource Development	Provides for the development of regional land use plans
<i>Alberta Wildlife Act</i>	Alberta Sustainable Resource Development	Protection of wildlife
<i>Forest and Prairie Protection Act</i>	Alberta Sustainable Resource Development	Protection and salvage of timber resources on public land
<i>Historical Resources Act</i>	Alberta Department of Culture and Community Spirit	Preservation of historic, archaeological and paleontological resources and sites
<i>Emergency Management Act</i>	Alberta Department of Municipal Affairs	Provides for the disbursement of disaster recovery assistance if the event meets the criteria outlined in Regulation 51/94
<i>Municipal Government Act</i>	Local Municipalities	Provides local municipalities with authority to regulate land use through land use plans, bylaws and development permits.

G. Regulatory Review Process

The flow chart below is intended to show the interactions between the regulatory agencies that are signatories to this policy. It is not intended to illustrate the details of each departmental review process. Each department reviews the application for different components and anticipated impacts, and then issues authorizations based on their own regulatory mandates. However, communication between departments is expected to ensure a consistent and consensus-based decision.



DRAFT

From: Bruce Blue
Sent: Tuesday, August 10, 2010 11:30 AM
To: Augustus Archampong
Cc: Louise Brennan; Ryan Puhlmann; 'doliver@aamdc.com'; David Park; 'Tom.Olson@dfo-mpo.gc.ca'; Brent Welsh; Patricia Stevenson; Louise Brennan; Douglas Knight; 'brock@sureway.ca'; Robert George; Dana Becker; Marta Juhasz
Subject: Intent to finalize Draft6 of Aggregate Extraction Policy.

I have been in discussion with Dana Becker and there still appears to be a misunderstanding of the major concerns identified.
For these and other reasons, we are of the opinion that this department cannot support the policy in its current format.
We will be providing a briefing note to both our ADM and DM and will provide a formal response in due course.

In the interim, I would ask that the documents previously requested be provided for further review by us and other committee members.

Bruce Blue
780-415-1389

From: Augustus Archampong
Sent: Tuesday, August 10, 2010 10:09 AM
To: Bruce Blue
Cc: Louise Brennan; Ryan Puhlmann; Augustus Archampong; 'doliver@aamdc.com'; David Park; 'Tom.Olson@dfo-mpo.gc.ca'; Brent Welsh; Patricia Stevenson; Louise Brennan; Douglas Knight; 'brock@sureway.ca'; Robert George
Subject: FW: GoA Water Body Aggregate Extraction Policy Draft 5.

Hello Bruce,
This is a follow-up to my August 9 email. The deadline for submitting the draft policy is near and as I have not been able to reach you by phone or email Louise and I decided to review your comments relative to the draft policy documents. We note that many of your concerns have already been addressed in the current drafts. We also tweaked the document to address issues in items 1 and 2 of your August 6, 2010 email. A copy of the revised document is attached.

We are proceeding to move the draft policy documents to Ernie's office.

Thanks for help.

Archie.

From: Augustus Archampong
Sent: Monday, August 09, 2010 10:30 AM
To: Bruce Blue
Subject: FW: GoA Water Body Aggregate Extraction Policy Draft 5.

From: Augustus Archampong

Sent: Monday, August 09, 2010 10:27 AM

To: Bruce Blue

Cc: Ryan Puhlmann; Dwight; David Park; Tom.Olson@dfo-mpo.gc.ca; Brent Welsh; Patricia Stevenson; Louise Brennan; Douglas Knight; brock@sureway.ca; Robert George

Subject: RE: GoA Water Body Aggregate Extraction Policy Draft 5.

Thank you Bruce for your comment.

I suggest that you review the most recent version of the policy draft and the two supporting documents (dated September 2010) to assess if any of your concern and questions have already been addressed.

The nature of your request is such that it would be appropriate for other members of the policy committee to participate in addressing the issues. This can be done effectively at a meeting of the committee. If you feel that your request can be addressed between you and I, that would be okay as well.

The deadline for moving the policy draft to the ADM's office is August 12, 2010. I called your office this morning to determine how we may proceed on your request but your voice mail would not accept messages. I intend to start my vacation sometime this week.

Please give me a call as soon as you can. If I cannot be reached, please call Louise Brennan.

Archie.

From: Bruce Blue

Sent: Friday, August 06, 2010 2:18 PM

To: Ryan Puhlmann; Augustus Archampong; 'Dwight Oliver'; David Park; Tom.Olson@dfo-mpo.gc.ca; Brent Welsh; Patricia Stevenson; Louise Brennan; Douglas Knight; 'Brock Helm'; Robert George

Cc: Marta Juhasz

Subject: RE: GoA Water Body Aggregate Extraction Policy Draft 5.

Non-Responsive Information Removed

Archie, between version 4 and 5 but had provided preliminary comments. Regarding the final draft, I agree with the portions dealing with the active channel, Emergency Situations, and Preventative and Mitigative Measures.

I also agree with the need have a coordinated review of crown dispositions that may require a Water Act approvals or licenses, but would have preferred that have been addressed as a separate initiative.

This policy review started out as a great way to deal with requests for mining in the active channel, and how to protect fish and fish habitat from the potential effects of siltation during a flood event. I believe we need to refocus the intent of this policy.

Below specific portions of the policy are referenced, followed by bulleted suggested changes and concerns:

1) A mandatory risk assessment signed off by a PRO (E1 1.2).

This risk assessment with PRO sign-off should only apply in the following instances:

- E1.4 Emergency Situations
- E1.5 Preventative and Mitigative Measures
- where the proponent wants buffers less than the minimum undisturbed buffers zones, identified in the Guide to the Code of Practice for Pits, or CRBP/SML Lease conditions, subject to a WA approval
- AFTER Environment/SRD have reviewed the conceptual plan and the recommendation requires a risk assessment, as opposed to just requesting additional information or clarification of the plan,

Mandating risk assessments and PRO sign-off will be very costly.

- AT has successfully obtained over 200 COP/CRBP and many associated WA approvals and licenses through the use of Civil Engineering Technologists; Biologists or Engineers only being hired on occasion. The proposal as is will increase the cost of pit development for all gravel operators monumentally and unnecessarily.
- it supersedes the requirements of the *COP-Pits* and *Guidelines for Acquiring Surface Materials on Public land*.
- To my knowledge SRD is currently updating their manual and risk assessments as suggested in this policy are not part of the proposed changes, and;
- This policy should not be used as a method to circumvent the routine review of the applicable guide documents.

2) Detailed requirements of the risk assessment (1.3 Risk Assessment)

- To mandate that the risk assessment contain all six bulleted items may not always be necessary.
- For crown lands, section 6 and Table 3 of the *Guidelines for Acquiring Surface Materials on Public land* adequately addresses potential adverse effects
- The code for pits already suggests an Engineer design the buffers
- The components of the risk assessment would require the employ of many different professions. It is doubtful that any one professional would be willing to sign-off on all components. What discussions have been held with these PROs?
- Requirements should be established during the application process or part of the review of the conceptual plan.
- Mitigation and compensation for Terrestrial Species, Limnology, soils!?! The list has grown substantially since draft 1.

The risk assessment should be confined to those items that are directly related to the issuance of the Water Act approval or license. I.e. geotechnical, hydrologic.

3) VII Implementation Plan-I1iii ..."Practitioners Guide to Risk Management Framework for DFO Habitat Management Staff"

- My guess is that this relates to the Canadian Environmental Assessment Act (Federal) which is not applicable to mining outside the buffer zones normally associated to the "active area of a water body",
- Please provide a copy of the directive for review so we can understand how it would apply.

4) VII Implementation Plan- I2i "Consider the requirements for Peat mining, as an example"

- Please provide a copy of the document for review to provide an understanding of reporting requirements and if they would be applicable.

5) 4 Other Jurisdictions.

- Please note mining has occurred recently at Golden on the Kicking Horse River from within the active area, likely under dry conditions.

6) IV -E 1.4 Disaster Assistance/ 1.5 Liability.

- These sections have nothing to do with the purpose of this policy (refer to VI -A Purpose) but may belong in a Fact Sheet.

7) IV A Paragraph 2.

- Recommend change to read "Aggregate extraction in the active area of surface water bodies..."

8) IV B.1.

- remove reference to "including Alberta Transportation". We are considered a provincial ministry

9) the minutes referenced input from SRD. Please provide a copy of their comments.

Please call if you wish to review these concern with me.

Bruce Blue
Aggregates Administrator
Alberta Transportation

From: Ryan Puhlmann

Sent: Wednesday, July 21, 2010 2:11 PM

To: Augustus Archampong; 'Dwight Oliver'; Bruce Blue; David Park; 'Tom.Olson@dfo-mpo.gc.ca'; Brent Welsh; Patricia Stevenson; Louise Brennan; Douglas Knight; 'Brock Helm'; Robert George

Subject: RE: GoA Water Body Aggregate Extraction Policy

Archie:

A couple of quick comments further to yesterday, and an assortment of thoughts for modification/inclusion or not.

1) Surrounding the "waterbody" (Water Act) definition, I thought it might be helpful to include or place within a qualifier in the document. I was kicking around the following:

- Further the purposes of this policy, the definition of "Waterbody", as obtained from the Water Act has been used. However, it should be noted that under most circumstances the inclusion of aquifers and wetlands under this policy is not envisioned, i.e. it is focused upon river systems, creeks and streams, as related to an aquatic environment. Aquifers and wetlands are considered normally in the context of each application review and within the current legislation, policy approach and standards specific to these items.

This can further be elaborated upon with an eventual Q&A style sheet if needed.

2) I defer entirely to Pat on this item as it is her expertise, however was playing around and another such suggestion, surrounding River Training.

River Training - for the purposes of this document, river training is perceived to be a 'preventative measure' designed to protect the public and infrastructure, and it is intended to include: channel redesign, flood control, and potentially water supply and navigation improvement. Concerning these works it is perceived that gravel or aggregate material will be used to improve habitat or to remain in channel but in a different placement, commercial use of gravel is not intended.

3) Respecting the reference to "qualified professional" - while I do not disagree with this reference and/or this as it relates to Reclamation Certification, it is not a component of the Code of Practice for Pits or currently the guide. We have suggested this modification to the process, and advise to the use of a professional or to a firm with qualified persons, however the application does not currently have this set in stone.

I will still have to dig on the FN stuff, but this can be resolved potentially in the future or as part of communication/consultation efforts to stakeholders.

Thanks,

Ryan

Duplicate of email dated July 19, 2010 9:40AM, removed as non-responsive.