



Requirements Under the Water Act Section 9 “Changes in and About a Stream”

TO: Industry

This bulletin summarizes the requirements under Section 9 of the [Water Act](#) for oil and gas operators, and provides operational details for applications under Section 9 of the Water Act.

BACKGROUND:

“Changes in and about a stream” (or watercourse) require approvals under Section 9 of the Water Act from the BC Oil and Gas Commission (Commission).

Changes in and about a stream are defined in the Water Act as:

- (a) any modification to the nature of a stream including the land, vegetation, natural environment or flow of water within a stream, or
- (b) any activity or construction within the stream channel that has or may have an impact on a stream

Primary activities are the construction, maintenance and removal of watercourse crossings and crossing structures. Other types of works that comprise changes in and about a stream include, but are not limited to, stream diversion, stream bank erosion protection and/or stabilization, and debris removal.

Any oil and gas operator wishing to do work or make changes in and about a stream for the purposes of an oil and gas activity is required to apply for and obtain a Section 9 approval from the Commission prior to commencement of construction activities.

What is a Stream?

The requirement for approvals for changes in and about a stream under Section 9 of the Water Act refers to a “stream” as defined in the Water Act, which has a broader meaning than it does in everyday usage. A stream includes “a natural watercourse or source of water supply, whether usually containing water or not, and a lake, river, creek, spring, ravine, swamp and gulch.” Streams do not have to contain water at all times of the year, and can be ephemeral or intermittent.

The term “natural watercourse” is not defined in the Water Act. However, common usage indicates that a natural watercourse is a natural channel where water flows over a bed between defined banks. The flow of water does not need to be constant, but the channel must be a permanent and distinct feature on the landscape. The watercourse may also, at some point, spread over a level area without defined banks, before flowing again as a defined channel.

Section 9 of the Water Act does not refer to a stream as defined in the Environmental Protection and Management Regulation (EPMR) under the Oil and Gas Activities Act (OGAA). The presence or absence of fish, or connection to a fish-bearing stream or lake (as defined in the EPMR), are not components of the definition of a stream under the Water Act. Streams referred to in the Water Act capture a broader population of water features than streams referred to under OGAA.

Guidance on Operational Assessment:

Activities that will comprise or include changes in and about a stream, as defined above, require an approval in writing. Commission staff may need to make a determination during application or project review as to whether a Section 9 approval is required. Guidance on operational assessment is as follows:

- Streams, as mapped in the provincial Freshwater Atlas coverage (TRIM maps, at 1:20,000 scale), are assumed to be streams under the Water Act, unless demonstrated otherwise. The Commission is aware that the Freshwater Atlas over-represents first-order streams.
- An applicant for an activity that crosses or intersects a mapped stream, that would have “changes in and about a stream,” who believes there is no stream, should submit field-base evidence collected by a qualified individual to demonstrate there is no stream.
- The assessment of small streams, which can have subtle field expression, can be difficult for field surveys done in the winter season, when snow covers the ground. It should not be assumed because a stream cannot be seen under snow cover that a stream does not exist.
- The presence or absence of fish, or connection to a fish-bearing stream or lake (as defined in the EPMR), are irrelevant to the requirement for approvals for changes in and about a stream.
- There can be instances where a stream exists in the field but is not depicted on the provincial map base. The operator is still required to obtain a Section 9 approval for changes associated with the stream.
- If a feature depicted as a stream on the Freshwater Atlas coverage is not evident during field survey, the survey plan submitted in conjunction with the Section 9 application should note “No Stream Channel Found” (or something similar). These features should not be listed as NCD (Non-Classified Drainage) in the Section 9 application. The concept of a NCD is not referenced in the Water Act.
- Man-made ditches and ditch lines are not streams under the Water Act, and Section 9 approvals are not required for a person to do “works” associated with ditches. However, in some cases, where ditches are being used as fish habitat (this can occur commonly on floodplain areas), the requirements of the Federal Fisheries Act may apply.

Doing works or making changes in and about a stream without a written approval is a violation of the Water Act. This includes the construction of dugouts across streams, or the diversion of streams into dugouts, to enhance water capture and storage.

Should you have any questions regarding this Industry Bulletin, please contact:

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