

Subject Waterpower Site Release and Development Review		Policy PL 4.10.05	Revised
Compiled by Lands and Waters	Section Renewable Energy	Date Issued May 21, 2007	
Replaces Directive Title Waterpower Site Release and Development Review	Number PL.4.10.05	Dated November 10, 2004	Page 1 of 9

1.0 DEFINITIONS

“Applicant” means an individual or entity eligible to legally hold land in Ontario responding to a call for Expressions of Interest or a Competitive Release Package, or applying for a Non-Competitive or a Direct Site Release opportunity, or for an MNR dam.

“Applicant of Record (AR)” means the individual/company/community including Aboriginal community that is awarded an opportunity, through a site release process, to pursue potential waterpower development.

“Greenfield” means a new opportunity for waterpower development on Crown land where there is no existing water control dam(s).

“Installed Capacity” means the sum of the manufacturer’s rated power capacity of all turbines making up a waterpower facility measured in megawatts (MW).

“Identified Aboriginal Community” means an Aboriginal community located within or adjacent to the tertiary watershed where a potential Greenfield waterpower development, located wholly on Crown land, may be located.

“Local Aboriginal Community” means the Aboriginal Communities that are not Identified Aboriginal Communities but may claim the area contemplated for site release as their traditional land use area.

“MNR” means the Ontario Ministry of Natural Resources.

“MNR District Office (District)” means the local field office(s) of the Ontario Ministry of Natural Resources.

“MNR Extranet” means the password-secured website provided to authorized waterpower applicants and other users to securely share information related to waterpower development in Ontario.

“MNR Main Office” means the Renewable Energy Section, Lands and Waters Branch, Natural Resource Management Division, Ministry of Natural Resources.

“Policy” means the Waterpower Site Release and Development Review policy.

“Riparian Owner” means any owner of land in fee simple directly bounded (lapped) by water; or through which a body of water flows.

Policy No. PL 4.10.05	Date Issued	New Revised <input checked="" type="checkbox"/>	Page 2 of 9
------------------------------	-------------	--	----------------

1.0 DEFINITIONS (cont'd)

“Site” means a reach of a river or an individual location for the purposes of this policy. The “site” will be defined on a case-by-case basis to allow for local flexibility when considering new site release.

“Site Release” means the completion of the process to select an Applicant of Record for a potential waterpower development opportunity. The Applicant of Record will be offered the opportunity to apply for the necessary approvals to construct and operate a waterpower facility. There are no rights or tenure associated with the offering of this opportunity. Site Release may be through Direct, Non-Competitive or Competitive processes, or the process to release an MNR dam.

“Water Control Dam” means a structure that holds back water in a river, lake, pond or stream to raise the water level, create a reservoir, or divert the flow of water.

“Waterpower Facility” means any number or combination of electrical energy producing water-powered turbines and supporting infrastructure, including pump storage facilities, reservoirs and water control dams.

2.0 INTRODUCTION

Waterpower has been used in Ontario for over three centuries. The first developments were used to produce mechanical power for grist and lumber mills. It was not until the late 1800’s that waterpower was used to produce electricity and hydroelectric developments were undertaken. By 1906, the Hydro-Electric Power Commission of Ontario (later known as Ontario Hydro) had been established and for the next 90 years, this Crown Corporation would play a dominant role in the development of the province’s electricity generation and transmission grid, including the development of its waterpower resources. The bulk of the province’s current installed capacity was in service by the mid-1970s.

In the past, the Ministry of Natural Resources (MNR) did not proactively identify potential waterpower development opportunities, or release these opportunities to the private sector, but rather approved small waterpower opportunities for Non-Utility Generators (NUGs). These NUGs frequently provided generation for industrial purposes, such as mills or mines, and often, the potential producer had a power purchase agreement with Ontario Hydro. These opportunities were released on a “first come, first served basis”, with Ontario Hydro playing a significant role in application review, to ensure developments complemented other proposed development opportunities.

In May 2002, MNR acquired a lead public policy role in the identification and release of new waterpower opportunities. This change was due to the restructuring of Ontario’s electricity market, which included:

- introduction of the *Energy Competition Act*;

Policy No. PL 4.10.05	Date Issued	New Revised <input checked="" type="checkbox"/>	Page 3 of 9
------------------------------	-------------	--	----------------

- associated restructuring of Ontario Hydro into five separate corporations, Ontario Power Generation being the successor generating company and Hydro One the successor electricity transmission company; and
- opening of the electricity sector to competition.

In Ontario, the potential to increase the amount of electricity generated from waterpower arises from three sources:

- 1) **Redevelopment of Existing Waterpower facilities:** Redevelopments of and upgrades to existing waterpower facilities (such as efficiency improvements, turbine upgrades) by the owners of the facilities;
- 2) **Greenfield Opportunities:** New opportunities for waterpower development involving Crown land where there are no existing water control structures; and
- 3) **Retrofitting of Existing Water Control Dams:** Retrofitting, and redesigning of existing water control dams, such as MNR dams, to produce waterpower.

The MNR supports the development of new waterpower energy through the disposition of:

- 1) Greenfield opportunities on Crown land; and
- 2) Existing Crown owned water control structure opportunities.

Waterpower development usually involves Crown land under the administration and control of the MNR. The disposition and development of potential waterpower sites is governed by the *Public Lands Act* and the *Lakes and Rivers Improvement Act*. Various other statutes and regulations administered by provincial and federal agencies also govern or impact waterpower development such as the Ontario *Environmental Assessment Act* and the federal *Fisheries Act*. In cases involving Crown land, the final decision concerning the disposition and development of potential waterpower sites will be made by the MNR.

3.0 PROGRAM DIRECTION

3.1 Interpretation

This policy should be read in conjunction with MNR Procedure PL 4.10.05 (Waterpower Site Release and Development), which provides the detailed direction on the review of applications for Crown land for waterpower site release.

3.2 Application

This policy applies to:

- ungranted public lands (i.e. unpatented Crown land);
- acquired property which has been deemed to be public land in accordance with subsection 38 (2) of the *Public Lands Act* (including the issuance of a sale, lease, or easement);
- lands under water which are deemed public lands under provisions of the *Beds of Navigable Waters Act*;

Policy No. PL 4.10.05	Date Issued	New Revised <input checked="" type="checkbox"/>	Page 4 of 9
------------------------------	-------------	---	-------------

- the release of greenfield waterpower opportunities on Crown land;
- the release of Crown-owned water control infrastructure (“MNR dams”);
- the development of new facilities and redevelopment or upgrade of existing waterpower facilities on Crown or private land; and
- individual developments less than 25MW on the Severn, Winisk (Weenusk), Attawapiskat and Albany Rivers.

This policy does not apply to:

- waterpower development within the Moose River Basin, North of Highway 11. The development of these sites may be negotiated at a later date;
- individual developments greater than 25 megawatts (MW) within the basins of the Severn, Winisk (Weenusk), Attawapiskat and Albany Rivers (the “Northern Rivers Commitment”);
- waterpower development in a provincial park or conservation reserve as regulated according to the Provincial Parks and Conservation Reserves Act, 2006; or
- federal lands, including First Nation Reserve Lands.

3.3 Statement of Environmental Values

The MNR is responsible for managing Ontario’s natural resources on Crown land in accordance with the statutes it administers. As the Province’s lead conservation agency, the MNR is the steward of provincial parks, conservation reserves as well as other protected areas, forests, fisheries, wildlife, aggregates, fuel minerals and Crown lands and waters that comprise 87% of Ontario’s land base.

In 1994 the MNR finalized its Statement of Environmental Values (SEV) under the Environmental Bill of Rights (EBR). The SEV is a document that describes how the purposes of the EBR are to be considered whenever decisions that might significantly affect the environment are made in the Ministry. The Ministry’s SEV has been considered in the preparation of this policy, which has been developed to reflect the direction set out in the SEV and to further the objectives of managing Ontario’s resources on a sustainable basis.

3.4 Guiding Principles

When disposing of rights to use Crown land (e.g., land use permit or licence of occupation), or interests in Crown lands (e.g. easement, Crown lease, or sale), MNR will:

- Follow effective and efficient land management, sustainable development, environmental assessment and stakeholder consultation practices. This review will include having regard for all resource and land use planning policies;
- Meet its requirements under the Ontario *Environmental Assessment Act*;
- Consult with Aboriginal communities where a disposition will result in the infringement of an existing Aboriginal or treaty right, or where a disposition involves lands that are subject to an Aboriginal land claim;
- Integrate consideration of the purposes of the Environmental Bill of Rights with social, economic and scientific considerations when making decisions that might significantly affect

Policy No. PL 4.10.05	Date Issued	New Revised <input checked="" type="checkbox"/>	Page 5 of 9
------------------------------	-------------	--	----------------

the environment; and

- Promote economic partnerships between Aboriginal communities and the business and corporate sector using Crown land and natural resources as a basis for Aboriginal economic development.

3.5 Consultation with Aboriginal Peoples

The MNR has a duty to consult with Aboriginal peoples where its actions may adversely affect an established or asserted Aboriginal or treaty right. Canadian courts continue to clarify the nature of this duty. The MNR is committed to meeting its obligation to consult with Aboriginal people and, where appropriate, to accommodate the exercise of their rights.

3.6 Aboriginal Economic Development

The MNR supports the creation of environmentally sustainable economic opportunities for Aboriginal communities through the disposition of Crown land for Greenfield sites. The MNR will demonstrate a preference for proposals that provide benefits to the Identified Aboriginal communities. Refer to Procedure PL 4.10.05 for detailed information about how this component of the policy will be applied.

3.7 Goal

The goal of this policy is to contribute to the environmental, social and economic well being of the people of Ontario, including Aboriginal communities, through the provision of opportunities for waterpower development and the sustainable development of Ontario's Crown land while recognizing the MNR's mission of ecological sustainability.

4.0 POLICY COMPONENTS

This policy consists of five components:

- 1) Greenfield Site Release: the release of "greenfield" opportunities for waterpower development involving Crown land (see Section 4.1);
- 2) Site Release for MNR dams: the release of MNR water control infrastructure for waterpower development (see Section 4.2);
- 3) Development Review of new and existing sites on both private and Crown land, (see Section 4.3);
- 4) Tenure (see Section 4.4); and
- 5) Rental Rates and Taxes (see Section 4.5).

General

The Site Release Process is an applicant driven process. MNR reserves the right to establish windows of opportunity during which applications may be accepted and reserves the right to limit the number of applications for site release from a single proponent.

MNR's review of the application includes:

Policy No. PL 4.10.05	Date Issued	New Revised <input checked="" type="checkbox"/>	Page 6 of 9
------------------------------	-------------	--	----------------

- **Eligibility:** Ensures site qualifies for the Site Release process under application and reasonably optimizes the site potential.
- **Availability:** Identifies conflicts with existing land use and resource management policies that may preclude waterpower development.
- **Applicant Competence:** Determines if the Applicant has sufficient financial means and acknowledges and demonstrates the need to ensure the appropriate technical expertise that will be required to proceed with waterpower development.

Applicants will also be required to attend meetings with MNR to review any known environmental, land use planning, resource or public interest issues and process steps related to the site. Applicants will also be required to prepare a site-specific response document outlining the proposed approach to waterpower development for review by MNR.

MNR reserves the right to determine if a site is appropriate for release and/or change or establish the site release process which will apply. While there is an Applicant associated with a potential site, MNR will not receive or accept applications for the same location.

The site release is not a disposition; it is the completion of a process to select an Applicant of Record for potential waterpower development. The Applicant of Record will be awarded the opportunity to apply for the necessary approvals to construct and operate a waterpower facility. There are no rights or tenure associated with this opportunity.

Applicants will be required to meet specified timelines. Failure to meet timelines may result in loss of status. MNR reserves the right to extend the timelines under exceptional circumstances.

The Applicant of Record status is non-transferable and applies to the successful Applicant identified through the Site Release Process only. The Applicant of Record is required to complete the *Environmental Assessment Act* requirements for the proposal prior to any authorizations or approvals being issued by MNR.

See Procedure PL 4.10.05 for further information on preparing an application, prescribed fees, site release and review processes, site development and development review.

4.1 Greenfield New Site Release

Greenfield Waterpower opportunities on Crown land will be released through one of three site release processes:

- 1) A Direct Site Release Process (see section 4.1.1);
- 2) A Non-Competitive Site Release Process (see section 4.1.2); or
- 3) A Competitive Site Release Process (see section 4.1.3).

4.1.1 Direct Site Release Process

Policy No. PL 4.10.05	Date Issued	New Revised <input checked="" type="checkbox"/>	Page 7 of 9
------------------------------	-------------	--	----------------

Applicants may participate in the Direct Site Release Process if the proposed development meets one of the three (3) tests below:

- a) The proposed development has an installed capacity of less than or equal to 1MW; or
- b) The development is proposed by the riparian owner; or
- c) The proposed development is:
 - i) found within the basins of the Severn, Winisk (Weenusk), Attawapiskat; Albany rivers; and
 - ii) is proposed by a local Aboriginal community(ies) and/or their partner; and
 - iii) is 25 MW or less.

4.1.2 Non-Competitive Site Release

Applicants may participate in the Non-Competitive Site Release if the proposed development is greater than 1MW and less than or equal to 10MW, and does not otherwise qualify for Direct Site Release.

4.1.3 Competitive Site Release Process

The MNR will release sites for potential waterpower development greater than 10 MW and that do not otherwise qualify for Direct Site Release through an applicant driven, MNR managed, competitive process. All Crown greenfield opportunities for waterpower, with the exceptions noted in section 4.1.1 (Direct Site Release) and section 4.1.2 (Non-Competitive Site Release) will be released through the Competitive Site Release Process.

4.2 MNR Dams Site Release

Applicants may participate in the MNR Dams Site Release process if the proposed development is for an MNR Dam.

MNR will generally require that the successful Applicant, upon being granted development approvals, assume full responsibility for the maintenance, control, long-term structural integrity and liability for the MNR dam(s) under application. In addition, MNR may require the successful Applicant also assume full control of other associated MNR dams on the same reservoir to ensure appropriate water management regimes.

4.3 Development Review

It has been determined that a co-ordinated planning framework including the Environmental Assessment process in conjunction with the requirements of other permits and approvals may meet the intent of water management planning. MNR supports coordination efforts to streamline these application and approvals processes.

To facilitate this, an Applicant of Record will be required to meet with the MNR District Office to discuss the coordination of these information needs. Applicants are advised that failure engage in coordination efforts may result in significant delays for approvals and permitting.

Policy No. PL 4.10.05	Date Issued	New Revised ✓	Page 8 of 9
-----------------------	-------------	------------------	----------------

Applicants undertaking Greenfield site development or redevelopment of existing waterpower facilities, on Crown or private land, including MNR Dams may be subject to environmental assessment review and other approvals including, but not limited to, the Ontario *Environmental Assessment Act*, *Water Resources Act*, *Lakes and Rivers Improvement Act*, *Public Lands Act*, and the *Canadian Environmental Assessment Act* and *Fisheries Act* etc.

4.4 Tenure

The importance of tenure security has been recognized as a critical issue from a waterpower development perspective. Recognizing this need, the Ministry of Natural Resources, in consultation with Ontario's waterpower industry, has developed a generic Waterpower Lease Agreement (WPLA) that provides greater security and long-term tenure for Applicants. This WPLA will be used to authorize new facilities on Crown land, and will replace any existing Waterpower Lease Agreements that expire in the future. The MNR will authorize new facilities with an installed capacity of 75kW or less with a Land Use Permit, if deemed appropriate.

The WPLA has a rolling term. In the case of a new facility this means the WPLA is issued for an initial term of thirty (30) years; extensions are available.

In recognition of the need for secure tenure during the construction period and up until the WPLA is issued, the MNR will issue a Crown Lease for this interim period of time, subject to the Applicant meeting required conditions.

4.5 Rents & Taxes

WPLA Lessees are required to pay three charges: the water rental charge and the taxes laid out in the *Electricity Act*; and the land rents as set out in the various tenure documents issued under the authority of the *Public Lands Act*. Waterpower leaseholders currently benefit from a 10-year exemption on the water rental charges and taxes. This exemption is intended to provide an incentive to those considering waterpower development in Ontario.

4.5.1 Water Rental Charge

The water rental charge is the main rent paid by the waterpower facility owner for the use of Crown land to produce power. Facilities on private land are not subject to this charge.

The charge for the use of Crown land is dependent on the amount of power produced by the facility on an annual basis.

4.5.2 Taxes

Taxes are payable on all waterpower facilities, including those situated on private land. The taxes are also calculated as a percentage of gross revenue from annual generation as defined in regulation under the *Electricity Act* and collected by the Ministry of Finance. The percentage being charged is set on a stepped scale based on the amount of electricity generated annually by the facility. In general, the more electricity generated, the higher the percentage being charged. This rate schedule is set out in Subsection 92.1(4) of the *Electricity Act*.

Policy No. PL 4.10.05	Date Issued	New Revised <input checked="" type="checkbox"/>	Page 9 of 9
------------------------------	-------------	--	----------------

4.5.3 Land Rent

Land rents only apply to the occupation and use of Crown land and are established and collected by the MNR. The WPLA and other tenure documents issued (i.e. easements, Land Use Permits) require the holder to pay land rents that are set by current MNR policy. The land rents for tenure documents authorizing flooding, roads and transmission lines are set by Land Management policies.

5.0 DIRECTIVE CROSS REFERENCES

PL 4.01.01 (PRO) “Obtaining Orders In Council”
 PL 4.02.01(POL&PRO) “Application, Review and Land Disposition”
 PL 4.10.03 (POL) “Utility Corridor Management”
 PL 4.10.05 (PRO) “Waterpower Site Release and Development Review”
 PL 4.11.03 “Road Allowances and Crown reserves – Disposition”
 PL 4.11.04 (POL) “Easements (Grant Of)”
 PL 6.01.02 (POL) “Crown Land Rental”
 Water Management Planning Guidelines for Waterpower, May 2002
Lakes and Rivers Improvement Act Technical Guidelines 2004
 Inland Ontario Lakes Designated for Lake Trout Management, May 2006