



Backgrounder Navigation Protection Act

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The federal government dropped the other shoe last week with Part 2 of its budget implementation bill. Like the first part, which passed the House of Commons in June, 2012, this 443-page document combines changes in many unrelated Acts, all in the name of promoting jobs and prosperity. One of the casualties is the Ministry of Transport's Navigable Waters Protection Act (NWPA), a long-standing piece of legislation that required review of any building or development work that impacted any water body that is navigable, even if just by canoe. Along with the now-weakened Fisheries Act and Environmental Assessment Act, NWPA has been one of the key mechanisms used to protect the integrity of lakes and rivers when projects such as bridge-building, dams, pipeline or power-line crossings, docks and riverbed changes are being proposed.

The NWPA is to be replaced by a new "Navigation Protection Act". The name change is significant – it is now "navigation" that is to be protected, rather than "navigable waters", so the new Act focuses on ensuring that Canada's busiest waterways remain navigable. Pipelines below river beds don't interfere with navigation, so this will certainly simplify the process of getting approval for pipelines that cross hundreds of streams and rivers as they extend from Alberta to the west coast. Moreover, by restricting the reach of the Act to a list of 97 lakes, 62 rivers and 3 oceans, construction projects on hundreds of thousands of water bodies in Canada will no longer require review and permitting by the Ministry of Transport.

It's interesting to look at the list of water bodies that are still protected – and to discover that the only ones in Saskatchewan on that list are Lake Athabasca, and the North and South Saskatchewan Rivers until they join at the Forks. Apparently the volume (or value) of traffic on all but one of our northern lakes, on the Churchill River, and on the Saskatchewan River east of the Forks is insufficient to be of concern.

Reaction to the new omnibus bill has been swift. Not surprisingly, Brenda Kenny, President and CEO of the Canadian Energy Pipeline Association told the Vancouver Observer that the changes give the pipeline industry exactly what it hoped for: "more focus, more certainty, more transparency". Meanwhile, the Athabasca Chipewyan First Nation suggests that the new legislation gives industry a green light to destroy vital waterways in its community, violating existing treaty rights. Chief Allan Adam is quoted in the Globe and Mail as saying " We hope there will be an outcry that echoes our sentiment".



An example of the significance of the legislative change is explained by Keith Stewart of Greenpeace in the case of the expansion of Shell's Jackpine oil sand project in Alberta. This project requires re-routing of 21 km. of the Muskeg River. In a review process started under the old NWPA, Transport Canada is currently asking questions about how the project will affect the river. If the project had been proposed under the new act, these questions would not have been asked because the Muskeg River is not on the protected list. The project would still be reviewed by the National Energy Board, but the Board's responsibility is to look at the technical feasibility of the project, not its environmental effects.

We are told that developments on these "unprotected" waterways will still be covered by municipal and provincial regulations and by the Canadian Environmental Assessment Act (CEAA), which has already been severely weakened. However, under the CEAA, Transport Canada is identified as a responsible authority with expertise in navigation, including boating, fishing and recreation. In the past they have looked at issues such as the health impacts (via fish) of mine wastes deposited in lakes, issues that have little to do with navigability. Presumably their expertise will no longer be relevant for most our waterways.