

Green Facts

Environmental Assessment in Ontario

Environmental Assessment (EA) is a decision-making process used to promote good environmental planning by assessing the potential effects of certain activities on the natural and human environment. In Ontario, this process is defined and finds its authority in the *Environmental Assessment Act* (EAA) and its associated regulations. The purpose of the EAA is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management of Ontario's environment. To achieve this, the EAA ensures that environmental problems or opportunities are considered and their effects are planned for before development or building takes place.

The EAA applies to undertakings (enterprises, activities, proposals, plans or programs) by provincial ministries, municipalities and prescribed public bodies such as conservation authorities and the Ontario Energy Commission. Some undertakings are designated by regulation, such as public or private projects designated under the Electricity Projects Regulation (O.Reg 116/01). The EAA can also apply to certain other private sector projects that are designated by regulation or where an agreement has been made between the Minister of the Environment and the proponent.

Public consultation is a key component of the EA process. Mandatory consultation enables potentially significant issues to be identified early in the decision-making process and enables the proponent to justify any restrictions in the scope of the EA.

Environmental Assessment

The EAA review and approval process (often referred to as "individual" EA) evaluates the possible environmental impacts of a project through the preparation of a Terms of Reference (ToR) and an EA document. The ToR focuses on environmentally significant issues of a project and sets out a framework that will guide and focus the preparation of an EA. The EA document will include a description of the purpose of the project, alternatives to the project, the environment that will or may be affected by the project, the environmental effects that may be caused by the project, the methods that will be used to prevent, change, or reduce the effects of the project on the environment, and the advantages and disadvantages of the project to the environment.

Approval of an Environmental Assessment

EAs require approval from the Minister of the Environment and Cabinet under the EAA.

Class Environmental Assessment

Not all undertakings subject to the EAA need to go through the individual EA process. Projects that are carried out routinely and have predictable and mitigable environmental effects may fall into groups or "classes" and therefore do not warrant an individual EA. Ontario currently has 10 approved Class EA's that cover routine activities related to such things as municipal road, sewage and water infrastructure, highway construction and

maintenance, forest management activities, conservation authorities works and other public-sector activities.

To ensure that environmental effects are considered for each project, proponents are required to follow the planning and design procedures set out in the approved Class EA (including public consultation). In this way approval is not directly granted for each individual project, but the requirements of the EAA are met through the fulfillment of the Class EA requirements.

Approval of a Class Environmental Assessment

Class EAs require approval by the Minister and Cabinet under the EAA. Terms of Reference are required for the preparation of the Class EA.

Part II Orders (Bump-ups)

Under the Class EAs, a Part II order (or Bump Up) is the mechanism under which any affected or interested party may request the Minister to order that an individual EA be prepared for any project normally carried out under any of the approved Class EAs. Any individual, group or agency may request the Minister to make a Part II order or the Minister may make an order upon his or her own (i.e., bump-up the status of the project under the EAA). Each Class EA has its own procedures for making a request to the Minister and generally requests relate to outstanding significant environmental concerns with a project that are not resolved through the Class EA process.

The Minister has the ability to deny, deny with conditions or grant a Part II order request. The Minister may also refer Part II order requests to mediation prior to making a final decision about whether an individual EA is required.

Legislated Timelines

The government has legislated deadlines on the decision-making process to ensure that the review of a ToR or an EA is completed within a reasonable time. The amount of time that the government has to finish each step in the environmental assessment review process is stated in the "Deadlines Regulation" made under the

EAA (O.Reg 616/98). The review of a ToR normally takes 12 weeks and the review of an EA takes 30 weeks. The review will take longer if the proponent takes a break in the process to change a report, if the project goes to a hearing, or if there is a break in the process for mediation. There are no legislated time frames for proponents to prepare a ToR or an EA.

Designation Requests

A Designation Request is a written request to the Minister of the Environment asking that an EA be prepared for a project that is not subject the EAA requirements. Such requests are implemented by way of a regulation made by Cabinet. Most Designation Requests have been for private activities such as waste projects. Any resident of Ontario can request the Minister to designate a specific project under the EAA. The request should be specific as to why the project should be subject to the EA process. It normally takes three to six months to reach a decision on a Designation Request (including public and government agency consultation).

Declaration Order Requests

A person may also make a request that the Minister make a Declaration Order declaring that a proponent be exempt from preparing an EA for a specific project or that the proponent need only comply with certain parts of the EAA. A decision on a request for a Declaration Order can take three to six months (including public and government agency consultation). Cabinet must approve the Minister's decision to make a declaration order.

Mediation

Under the EAA, the Minister may order mediation to resolve issues between the proponents and other interested parties when they are preparing both the ToR and the EA. Mediation may also be used for matters raised in Part II Order requests. In these discussions, the mediator tries to find ways to solve the disagreements to the satisfaction of all the involved parties, so that the EA process can continue. After mediation, the mediator will write a report regarding the issue and any agreements that were made. The Minister will use the report to assist with his/her decision on the project. The

Minister must make the report public promptly after the Minister makes his or her decision. The Minister can make the report public before then only if everyone involved in the mediation agrees. Timelines for the Minister to make a decision on an EA do not apply when the Minister refers a matter to mediation.

The Environmental Review Tribunal

The Environmental Assessment Review Tribunal is the successor to the Environmental Appeal Board and Environmental Assessment Board. The Environmental Review Tribunal is an independent board that hears disputes. After an EA has been reviewed by the government and the public, the Minister may on his own initiative, or at the request of any person, refer the application or any part of the application to the tribunal for a hearing and a decision. If the Minister decides that the proponent is to go to a hearing regarding the EA, the tribunal holds public hearings.

The information contained in this Fact Sheet is of a general nature only and is not intended to constitute advice for any specific situation. Please note that the text of many Ontario statutes and regulations are available on the Internet at www.e-laws.gov.on.ca.

For more information about Environmental Assessment in Ontario, please contact the Environmental Assessment and Approvals Branch locally at 416-314-8001 or toll free at 1-800-461-6290. Information is also available on the Ministry of the Environment Internet site at www.ene.gov.on.ca.

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