

Saturday, August 22, 2020

Sent via Email Address: Callee.Robinson@ontario.ca

Callee Robinson
Project Officer
Ministry of the Environment, Conservation and Parks

Dear Callee Robinson,

RE: Environmental assessment modernization: amendment proposals for Class Environmental Assessments (ERO 019-1712)

The City of Guelph (City) appreciates the opportunity to review and comment on the proposed changes posted on the environmental registry pertaining to:

1. Environmental assessment modernization: amendment proposals for Class Environmental Assessments (ERO 019-1712)
2. Proposed Environmental Assessment Act (EAA) Amendments in the COVID 19- Economic Recovery Act (ERO 019-1712).

The following letter is in response to these proposed amendments.

The Municipal Class Environmental Assessment (MCEA) process was first developed by the Municipal Engineers Association (MEA) in the 1980s. The current version of the MCEA Manual was originally written and released in 2000 and amended in 2007, 2011 and 2015. While past amendments addressed specific issues that developed since 2000, the majority of the MCEA Manual content is 20 years old.

Environmental assessment modernization: amendment proposals for Class Environmental Assessments (ERO 019-1712)

Overall, the City is supportive of the proposed amendments. In particular, the City offers support for the following changes:

- changing the project schedules for some projects to better align study requirements with the potential environmental impact of the project and reduce duplication, including:

- exempting 28 project types that are considered to be low impact (e.g. modifications to traffic signals), where there is duplication with other processes, or the project types would be needed in cases of emergency
- upgrading or downgrading assessment requirements for projects (e.g. shifting project schedules from B to C, or from C to B)
- removing cost thresholds for road projects
- clarifying and modernizing current process requirements (e.g. removing the requirement to publish project notices in newspapers)
- updating the requirements for transit projects to be more consistent with *O. Reg. 231/08: Transit Projects* and Metrolinx Undertakings under the Act and proposing additional exemptions

The current amendments are intended to change process, not outcomes. The MEA believes that with the approval of the amendments, timelines and costs for carrying out EA approvals will be reduced.

The key principles MEA followed to amend the MCEA process included:

1. Providing Clearer Project Descriptions in Appendix 1 of the Manual 2
2. Classifying Project Schedules Based on Environmental Risk
3. Recognizing the Value of Other Approvals
4. Eliminating Duplication with the Planning Act
5. Recognizing the Role of Local Government/Councils

In addition to the general comments above, the City has the following comments specific to Table of Proposed Class EA Amendments – Water/Wastewater (Version 4, December 23, 2019):

- Administrative question: Is “Water Treatment Facilities” a distinct category under “Drinking Water Systems”?
- W6 – Retire a facility – Rationale states “Minor change made to advise proponents retiring water facilities planned under schedule B or C projects to provide notice to residents”, however both items were already Schedule A+ so there doesn’t seem to be any change other than combining items (administrative change).
- W29 – replacement of intake – Rationale states that “technical merits of project are evaluated and approved through the ECA and PTTW process”. It does seem reasonable for this to be an A+ activity - however, the ECA process doesn’t seem to apply to this scenario and if the capacity isn’t being

increased, the PTTW may not need to be changed either. However, agree that permit from CAs or DFO may also be needed.

- W30 – WTP process WW – wondering how common it would be that a WTP would not be located in SP vulnerable area?
- W32- expand WTP beyond 50% - should this reference 'including intake' (as W31 does above)?
- W55 – water crossings – what heading will this appear under? "*Shoreline / In Water Works*"? Rationale does not say.
- W69 - Standby power – Rationale – will this appear under new heading '*Other Approvals*'?
- W74 – emergency work – the rationale does not seem to align with the proposed change.
- General note – inconsistency in use of "wastewater treatment plant vs. sewage treatment plant amongst items (eg. W44 vs W46)

And we have the following comments specific to the communication and consultation:

Section A.3.1

- Consultation is a recognized level of engagement. We recommend using internationally-recognized language (public participation or engagement) that doesn't presuppose the level of participation that should be used in each situation. Consultation is actually mostly one-way. Also recommend referring to iap2 (international) standards for participation/engagement to ensure that this process doesn't continue to be viewed as a box to check through the EA process, and instead provides meaningful opportunities for participation in decisions that affect the public.
- Can the change dealing with compliance with public policy and regulation be broken down and clarified to help ensure the process is followed and requirements are met?
- Were there any changes to the appendices?

Section A.3.5.1

- If following iap2 standards, records and reporting back are part of proper engagement (i.e. the plan outlines how you will record and use data, and a plan for evaluation and reporting back).
- Participation/engagement could be added to the minimum mandatory requirements as could needing to know what the decision is and what can be influenced.

- The consultation record should include surveys or any type of engagement.
- In the case where the procedural aspects of rights-based consultation has been delegated to the proponent, is this duty to consult? How does the proponent know when this has been delegated to them?
- Consultation records are a best-practice as recognized by international (iap2) public participation standards: reporting back to the public about what was heard and how it influenced the decision is critical to sustainable decision-making.

Section A.3.5.2

- Has Appendix 5 been updated to include social media (including paid promotions), digital advertising, municipal apps and websites?

Section A.3.5.3

- Can the public notice language be modified to stipulate digital (two weeks in a row) or print (two issues)?
- A modern day example of a public stakeholder type of notice could include social media. Social media has become the primary way people get info about local government, and Redbrick Communications reports that all Ontario municipalities currently use at least one social media channel (100% are on Twitter; 97% on Facebook).
- With respect to the format for notice, providing a real example would be helpful. These notices are typically overly long (and confusing) because of a lack of clarity on what this looks like. Efforts should be made to keep this as simple as possible so more people read about and understand the project and their opportunity to participate, and offer ways to get more info (i.e. web address and contact info).

Section A.3.8

- With respect to locations for the report to be viewed by the public, we suggest that the amendment specify that the locations need to be convenient to stakeholders (not the proponent) i.e. accessible after hours.

Proposed Environmental Assessment Act (EAA) Amendments in the COVID 19- Economic Recovery Act (ERO 019-1712).

On July 21, 2020, the Province passed the COVID-19 Economic Recovery Act, which included important amendments to the Environmental Assessment Act (EA Act).

The amendments to the EA Act make two important changes that will affect municipalities. Specifically, the Act changes the Part II Order Request (PIIOR) process and sets up the authority for the Ministry of Environment Conservation and Parks (MECP) to create new regulations that would replace all Class EAs, including the Municipal Class Environmental Assessment (MCEA) process.

The Act changes the Part II Order appeal process (PIIOR) for MCEA projects. The former PIIOR process added significant delays (often more than 12 months) to the MCEA process. The Auditor General had previously identified this problem and the MEA, Ontario Good Roads Association (OGRA) and Residential Civil Construction Association of Ontario (RCCAO), along with the support of other groups, sought out a way to change to the process.

With the new appeal process implemented by the amendments to the EA Act, proponents will continue to issue a Notice of Completion and still place the EA documentation/Environmental Study Report (ESR) on the public record for 30-days. However, instead of concerns being filed with the Ministry, concerns will be addressed to the proponent. The PIIOR process will only apply if the objection deals with aboriginal or treaty rights.

For all other concerns, the PIIOR process has been replaced with an additional 30-day window for the Ministry to decide if the Minister should take any action. Regional coordinators from the Ministry of Environment, Conservation and Parks (MECP) will continue their role of monitoring MCEA projects. During the additional 30 days the Minister will decide if the project will be elevated (PIIOR granted) or if it will be approved with conditions. If the Minister advises the proponent that the project will be approved but with conditions, the Minister has more time to draft these conditions. If there is no response from the Minister within the additional 30-days the proponent may proceed with the project. This is similar to the process included in O Reg 231/08, Transit Project Assessment Process (TPAP).

Generally, for projects with serious concerns raised by the public that would have resulted in a PIIOR, the new process is an improvement as there are legislative deadlines for decisions. However, the additional 30-day review period applies to all projects, even those projects where no concerns were raised during the first 30-day review period. This will introduce a new/additional opportunity for MECP review and delay non-controversial projects by 30-days.

The City is generally supportive of this process however clarity is required on the notification process between the appellant, proponent and the Ministry. For example if certain concerns are dealt with directly between the appellant and the proponent, how does the Ministry get involved to determine the appropriate course of action?

Previously, in 2008, the government created O Reg 231/08 (TPAP) that essentially replaced section D of the MCEA. It is the MEA's assumption that if this transit regulation is used as a model for the new regulation(s) that will replace the MCEA, there will be some potential significant impacts to municipalities such as:

- Section A of the MCEA manual sets out the steps that must be followed to obtain EA approval for municipal projects. In a similar way, O Reg 231/08 sets out the following steps in Section 6 (1);
 - I. Prepare and distribute a notice of commencement of the transit project assessment process under Section 7.
 - II. Conduct consultations under Section 8.
 - III. Prepare an environmental project report under Section 9. IV. Prepare and distribute a notice of completion of the environmental project report under Section 11.
 - V. Submit statements of completion of the transit project assessment process to the Director of the Environmental Assessment Branch and the appropriate regional director of the Ministry

It is noteworthy that identifying the problem, preparing an inventory of the environment, and evaluating alternatives are not included in the above list steps in the EA process. This would be significant departure from the established MCEA process.

- Completing the MCEA Schedule C process often takes 12 – 24 months or more. Section 6 (2) of O Reg 231/08 states that the notice of completion must be within 120-days of the Notice of Commencement which is significantly less time than for the current MCEA process. Given the 120-day timeline, any studies, inventory of the environment and consideration of alternatives must all occur prior to the notice of commencement.

This is a significant departure from the MCEA process where the public is to be consulted early in the process and participates in the selection of the final solution. This is similar to the Planning Act process where an application will not be accepted until it is deemed complete – studies/inventory, the conceptual design and proposed mitigating measures are all completed. The Planning Act consultation only occurs after this complete package is submitted. If the new MCEA regulation follows the process in O Reg 231/08 and the time to complete the EA work is capped at say 120-days, proponents will still need to plan for time to assemble the information that will be required before issuing the notice of commencement.

These are just a couple of examples that the MEA has identified through its review of the proposed amendments that has potential to impact how municipalities will undertake MCEAs.

The amendments are intended to be phased in over time to allow for the modernization of the EA program through new regulations which will be developed in consultation with the public and stakeholders in the coming months, while maintaining environmental oversight now and in the future.

The City looks forward to participating in these discussions and providing relevant feedback to the proposed amendments as part of Ontario's environmental assessment program.

All of which is respectfully submitted:

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