



**EXPEDITING REGULATORY APPROVALS:
UNDERSTANDING KEY ISSUES FOR
RENEWABLE ENERGY PROJECTS**

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**DISTRIBUTED GENERATION AND
THE FUTURE OF ONTARIO'S ELECTRICITY GRID**

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EXPEDITING REGULATORY APPROVALS: UNDERSTANDING KEY ISSUES FOR RENEWABLE ENERGY PROJECTS

By Paul Manning and Jennifer Agnolin¹

1 INTRODUCTION

Everyone wants renewable energy but no one, it seems, wants it in their backyard. The tension between the energy sector's need for speed and certainty and the public's desire for consultation and due process has produced a complex, multi-layered and multi-jurisdictional approval regime in Canada. Although recent efforts to streamline the process are beginning to have an effect, the approval regime for energy projects remains slow, costly, uncertain and duplicative.

This paper reviews the approvals regime in Canada, with particular focus on renewable energy projects in Ontario, and explores opportunities to avoid or minimize duplication and delay.

2 NAVIGATING THE APPROVAL MAZE

Jurisdictions define renewable energy differently. Most definitions include various forms of energy generation from sun, wind, water and biomass. In Ontario, the *Electricity Act* defines a renewable energy source as:

[A]n energy source that is renewed by natural processes and includes wind, water, a biomass resource or product, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed...²

Ontario is looking to replace much of its traditional coal-fired generation capacity with renewable energy generated from wind, solar, renewable biomass, biogas, biofuel, landfill gas or waterpower³.

An aspiring proponent of a renewable energy project is confronted by approval requirements at all three levels of government: federal, provincial and municipal. A list of the more important approvals is set out in the chart attached at Appendix A. The chart contains details of the triggers, responsible authorities and timelines for each approval.

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² *Electricity Act*, R.S.O. 1998, c. 15, s. 2(1).

³ See section 2.4 post and the Ontario Power Authority's Integrated Power Supply Plan (IPSP).



In addition to the challenge of effectively managing the multiplicity of approvals that are required, a renewable energy proponent faces three significant challenges: environmental assessment, Aboriginal consultation and municipal planning approvals.

This paper considers each of these three issues in detail and deals with the remaining approvals in two groups: approvals specific to the energy regime and other approvals.

2.1 ENVIRONMENTAL ASSESSMENT

Environmental assessment (EA) lies at the heart of and is often the first step in the approval process. EA regimes exist at federal and provincial levels. A project may engage both regimes. With proper planning and implementation, an EA has the potential to expedite subsequent approvals, facilitate public approval of a project and save a proponent time and money.

2.1.1 FEDERAL ENVIRONMENTAL ASSESSMENT

Unless specifically exempted by regulation, a federal EA is required when a project is designated by regulation, involves a federal proponent, involves use or disposal of federal lands, needs a federal permit or uses federal funding.⁴ The Law List Regulation under CEEA specifies a number of provisions of federal acts and regulations that will trigger a federal environmental assessment. Examples include hydro-electric project approvals under the *Dominion Water Power Act*⁵ and prescribed permits under the *Fisheries Act*⁶.

Charge and management of the EA lies with the “responsible authority” – the federal department or authority whose jurisdiction triggers the EA or who is the proponent. Where these triggers engage more than one responsible authority, their efforts will be coordinated by committee or, more frequently, by the responsible authority that has the greatest interest in the project.

⁴ *Canadian Environmental Assessment Act*, R.S.C. 1992, c. 37, s. 5 and s. 7; *Exclusion List Regulations*, S.O.R./2007-108 and *Inclusion List Regulations*, S.O.R./94-637, *Law List Regulation* SOR/94-936.

⁵ R.S., 1985, c. W-4.

⁶ R.S.C. 1985, c. F-14.



A proponent may be prohibited by ministerial order from doing anything to carry out the project that would affect the environment.⁷ Powers, duties and functions of the federal authorities are suspended where a project is described in the comprehensive study list or is referred to a mediator or a review panel under the *Canadian Environmental Assessment Act*.⁸

The Act establishes four levels of environmental assessment process: screening (including class screening)⁹, comprehensive study, mediation and review panel.

Most projects do not progress beyond a screening stage. Screening is a self assessment by the proponent through a streamlined review of the potential environmental effects of proposed projects and methods of eliminating or minimizing those environmental effects. Screenings vary in length and cost, depending on size of the project and the extent and nature of the potential environmental impacts. The process requires the extent, terms and timelines of the EA screening to be scoped at the initial stages.

The proponent must prepare an EA report in accordance with the scoping. The responsible authority will review the report for adequacy and accuracy and decide whether adverse environmental effects are likely to be significant. The federal Minister of the Environment may decide that the project should proceed or continue to the next stage of review.

Large scale projects that have the potential for significant adverse environmental effects require the more detailed comprehensive study.¹⁰ Examples include: hydro-electric generation facilities of 200 or more and tidal power electrical generating stations with a production capacity of 5 MW or more. As with screenings, the federal Minister of the Environment may require further review by a review panel, after the completion of a comprehensive study. Few renewable energy projects to date have been required to undergo the review panel process.

⁷ *Ibid* at s. 11.1.

⁸ *Ibid* at s. 13.

⁹ A class screening is a streamlined environmental assessment of a specific type of project where the resulting environmental effects are relatively predictable and known. To date no renewable energy projects have been subject to class screening.

¹⁰ *Comprehensive Study List Regulations*, S.O.R./94-638.



Where the project was previously subject to an EA but did not proceed, the responsible authority must use that EA, provided adjustments are made to reflect significant changes.¹¹

Projects may be subject to both federal and provincial EA legislation. In an effort to prevent duplication, amendments were made to the *Canadian Environmental Assessment Act* in 2003 to allow the federal Minister of the Environment to enter into agreements with any jurisdiction for the purpose of assessing the environmental effects of projects where both parties have authorization responsibilities.¹² These bilateral agreements, known as harmonization agreements, provide guidelines for cooperating on EAs, including roles and responsibilities of joint panels, mediation, screening, notification, and cost-sharing.

Most provinces have signed harmonization agreements with the federal government allowing proponents to prepare a single EA that satisfies both federal and applicable provincial EA requirements. In Ontario, the *Canada-Ontario Agreement* establishes a process for harmonized EA. Federal EA may have requirements beyond those of provincial EA legislation, such as consideration of cumulative effects of the project and other existing or anticipated projects. A harmonized EA permits a proponent to complete the EA in accordance with provincial requirements with accommodation for any additional requirements of the federal EA.

2.1.2 PROVINCIAL ENVIRONMENTAL ASSESSMENT

In Ontario, EA legislation applies to both public and private energy undertakings unless specifically exempted by regulation or by order of the provincial Minister of the Environment. A project must receive approval under the *Environmental Assessment Act*, where required, before receiving other approvals.¹³

A project may be required to undergo one of three types of EA by the *Environmental Assessment Act*: an individual EA, a class EA, or a screened EA. The type of EA required varies depending on the type and size of the project.

¹¹ *Supra* note 4 at s. 24.

¹² *Ibid* at s. 54.

¹³ *Environmental Assessment Act*, R.S.O. 1990 c. E-18, s. 12.2(2).



Individual EAs are required for large and complex projects that have the potential for a wide range of environmental effects. An individual EA requires that all potential impacts be considered, including need and alternatives. The process begins the submission of a terms of reference document (ToR) that outlines the framework for the EA study, including the consultation process, to be undertaken. The ToR must be approved by the Ministry of the Environment before the EA study itself commences.

A Class EA is a pre-approved decision-making framework that applies to a range of similar projects that have predictable and mitigable environmental effects. Approved classes include work for projects such as highway maintenance, minor transmission facilities, and forest management projects.

Screened EAs are, in effect, exemptions from individual EA for projects that successfully complete an “Environmental Screening Process” prescribed by regulation. It is a proponent-driven self assessment process that does not require the submission and approval of a ToR.

Only specified activities related to the project are permitted prior to receiving EA approval, including: acquiring the necessary property rights, conducting feasibility and other research studies and establishing financing.¹⁴ Where the provincial Minister of Municipal Affairs and Housing makes a zoning order under section 47 of the *Planning Act*, a person may also secure appropriate land use zoning and ‘ready the land’ from an administrative planning perspective only.¹⁵

EA of energy projects in Ontario, other than certain energy from waste projects, is governed by O. Reg. 116/01, the Electricity Project Regulation, and its accompanying “Guide to Environmental Assessment Requirements for Electricity Projects” published by the Ministry of the Environment in 2001. The regulation classifies electricity projects into three categories based on capacity and size and stipulates different EA requirements for each. The classification of projects is shown in the chart attached as Appendix B.

Category C projects are large projects that require a full individual EA. At the other end of the spectrum, Category A projects are exempt from the *Environmental Assessment Act* and may proceed directly to seek other approvals. These include renewable energy projects such as wind turbines with a generating capacity under 2 MW and all solar photovoltaic projects.

¹⁴ *Ibid* at s. 12.2(1).

¹⁵ Ontario, R.R.O. 1990, Reg. 334, s. 15.2.



Category B projects are exempt from the *Environmental Assessment Act* if the proponent completes a streamlined EA Environmental Screening Process. These projects include renewable energy projects such as wind turbines with a generating capacity of 2 MW or more, and hydroelectric projects with a generating capacity less than 200 MW. The Electricity Projects Regulation states that a Class EA shall be used instead of the Environmental Screening Process for projects where a Class EA has been approved.¹⁶

The Environmental Screening Process is divided into four stages: project classification, screening, environmental review, and elevation of project status. A project reaches the third and fourth stages only where there is a request from an interested party to the Director of the Environmental Assessment and Approvals Branch of the provincial Ministry of the Environment to elevate the project to a full individual EA status. The provincial Minister of the Environment may review the Director's decision if so requested.¹⁷ The screening stage requires notice to the public of the commencement of the project, public consultation and the preparation, notice of completion and public review of a "Screening Report". The Environmental Screening Process does not require a public hearing.

Early, regular and pro-active engagement with First Nations and stakeholders such as local conservation authorities, municipalities, environmental groups, and residents, may give proponents the opportunity to resolve issues early on and so minimize the risk of elevation requests.¹⁸

The Environmental Screening Process appears to have served proponents well in streamlining EA approvals. As of March 31, 2007, thirty-one energy projects had successfully completed the Environmental Screening Process. Twelve projects received elevation requests. The elevation requests were eventually withdrawn in three of those projects, and the Director denied the nine

¹⁶ In October 2007, Ontario approved the Class EA for Waterpower Projects. The Class EA for Waterpower Projects applies to specified water power projects including all those that would otherwise be subject to the Environmental Screening Process. The Class EA is similar to the Environmental Screening Process but requires the completion of a formal Environmental Report that goes beyond the screening required under the Environmental Screening Process. The Class EA was developed by the Ontario Waterpower Association and is available at its website at www.owa.ca.

¹⁷ This right to require ministerial review of the Director's decision will disappear in proposed amendments to the Electricity Projects Regulation, bringing it into line with the more recent Waste Management Projects Regulation, O. Reg 101/07.

¹⁸ See the Ministry of Environment's "Code of Practice on Consultation in Ontario's Environmental Assessment Process", published in June, 2007, for further information on developing an effective consultation plan.



remaining elevation requests. The provincial Minister of the Environment concurred with the Director's decision to deny elevation each time the Minister was requested to review the decision.¹⁹

Certain energy from waste projects are now governed by O. Reg 101/07, the Waste Management Projects Regulation, and its accompanying "Guide to Environmental Assessment Requirements for Waste Management Projects". The Waste Project Management Regulation regime is similar to the Electricity Projects Regulation regime, with designation of different classes of projects that are either exempt, require a full individual EA, or require completion of the Environmental Screening Process. The classification of projects is shown in charts attached as Appendix C. Where a project is subject to the Waste Management Projects Regulation and the Electricity Projects Regulation, the Waste Management Projects Regulation prevails subject to certain transitional provisions.²⁰

Those projects requiring an Environmental Screening Process under the Waste Management Projects Regulation include thermal treatment sites that do not use coal, oil or petroleum cake as fuel for thermal treatment and that produce energy from waste that is not all used in the thermal treatment process.

The Environmental Screening Process was intended to expedite EA approval for certain projects by not requiring a full individual EA, which on average takes a minimum of two years. In practice, however, the Environmental Screening Process may prove to be as long and costly as a full individual EA if, for example, the provincial Ministry of the Environment requires additional studies and consultation. The proponent has no effective appeal or other sanction to expedite the process. A remedy or an application to the court for a judicial review is lengthy, costly and uncertain of success. Abandoning the streamlined screening process means resorting to the lengthier, more onerous and costlier full individual EA. Both alternatives defeat the objective of saving time and money.

A more effective approach is to engage provincial Ministry of the Environment staff early, regularly and pro-actively. The Ministry of the Environment has a team dedicated to electricity projects that will work with the proponent, the Ministry of Natural Resources and the Ministry of Energy to develop a one-window management approach designed to deal with issues early on. As part of an

¹⁹ "An Overview of Environmental Assessment of Energy Projects in Ontario", presentation to the Ontario Energy Association by the Ministry of the Environment, Environmental Assessment and Approvals Branch, November 2, 2007.

²⁰ Ontario, O. Reg. 101/07, s. 20.



EA improvements initiative, the Ministry of the Environment has developed Codes of Practice for key components of the EA program. These Codes are intended to provide clear direction and guidance on Ministry of the Environment expectations about the content of EA documents and to guide the conduct of proponents and the public in the EA process. This collaborative effort should facilitate obtaining other approvals.

While collaboration is a keynote of this approach, it does not imply unquestioning obedience. It is important for the proponent to keep its dialogue with the Ministry staff focussed on what are legitimate requirements based on the requirements of the EAA, the Electricity Projects Regulation and the Waste Management Projects Regulation and their respective Guidelines.

2.2 ABORIGINAL CONSULTATION AND APPROVALS FOR PROJECTS ON ABORIGINAL RESERVE LANDS

2.2.1 CONSULTATION

The Supreme Court of Canada has held that the honour of the Crown places the government under a duty to consult Aboriginal peoples when Aboriginal land or rights may be adversely affected by government conduct.²¹ “Aboriginal peoples” includes First Nations, Métis and Inuit peoples. Government conduct can involve giving regulatory approvals to private project proponents.

A duty that extends beyond consultation and requires the Crown (or proponent) to accommodate the impacted Aboriginal community may also arise where the evidence of an Aboriginal right is strong and the adverse effect significant²². The Supreme Court of Canada has confirmed that the duty to consult and accommodate applies to treaty lands.²³ Most Aboriginal lands in Ontario are subject to treaties.

The scope of the duty to consult is a spectrum that varies with the circumstances of each project. The duty is proportionate to a preliminary assessment of the strength of the case supporting the existence of the Aboriginal right or title, and to the seriousness of the potentially adverse effect on the right or

²¹ *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, *Taku River Tlingit First Nation v. British Columbia*, [2004] 3 S.C.R. 550.

²² *Haida Nation*, *supra* note 21 at 49.

²³ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388.



title claimed.²⁴ At one end of the spectrum, where the claim to title is weak and the Aboriginal right limited, the only duty may be to give notice, disclose information, and discuss any issues raised.

At the other end of the spectrum are situations where a strong case for the Aboriginal claim has been established, the right and potential infringement is significant to the Aboriginal community and the risk of damage is high. Such cases require extensive consultation aimed at finding a satisfactory solution. This may involve affording the Aboriginal community the opportunity to make submissions and to participate in the decision-making process.

Aboriginal groups also have a reciprocal duty to make their concerns known, to respond to efforts to consult and accommodate and to try to reach a mutually satisfactory solution²⁵.

The consultation must be meaningful, in good faith and with a willingness of the Crown to make changes based on the information that emerges during the consultation process.²⁶ Meaningful consultation may oblige the Crown to make changes to its proposed action based on information obtained through consultations.²⁷

Sharp dealing is not permitted, but mere hard bargaining will not offend the right of the Aboriginal group to be consulted.²⁸ There is no duty to reach an agreement and Aboriginal groups do not have a veto power over what can be done with land claimed by them; rather it is a process of balancing interests.²⁹

To substantially address Aboriginal concerns, communication must be unique to the group addressed and not the same as with all stakeholders.³⁰

²⁴ *Haida Nation*, *supra* note 21 at para. 39.

²⁵ *Platinex Inc. v. Kitchenuhmaykoosib Inninuwug First Nation* [2006] O.J. No. 3140.

²⁶ *Taku River Tlingit First Nation* *supra* note 22 at para. 29.

²⁷ *Haida Nation*, *supra* note 22 at para. 46.

²⁸ *Haida Nation*, *supra* note 22 at para. 42.

²⁹ *Haida Nation*, *supra* note 22 at paras. 10 and 48.

³⁰ *Huu-Ay-Aht First Nation et al v. The Minister of Forests et al*, 2005 BCSC 697.



The Supreme Court of Canada provided the following guidance on minimum requirements for consultation and accommodation in decisions related to surrendered treaty lands.³¹ The Crown must:

- ◆ provide notice to the treaty nation and engage directly with them;
- ◆ inform itself of the impact of a proposed project on the treaty nation in question and communicate its findings to the affected treaty nation;
- ◆ disclose information about the project and anticipated potential adverse impact on those interests;
- ◆ solicit and listen carefully to the expressed concerns and attempt to minimize the adverse impact on the treaty interests, and
- ◆ seriously consider the concerns of the treaty nation and whenever possible, demonstrably integrate the concerns into the proposed plan of action.

The honour of the Crown, and therefore the duty to consult, applies to government at federal and provincial levels.

Governments may delegate certain procedural aspects of consultation to private proponents through environmental assessment legislation. So, for example, the *Canadian Environmental Assessment Act* includes “the current use of lands and resources for traditional purposes by aboriginal purposes” as an environmental effect to be included in an EA.

The government of Ontario has issued various policy documents that provide guidance to proponents on Aboriginal consultation. In July 2007, the Ontario Ministry of the Environment released a Code of Practice entitled “Consultation in Ontario’s Environmental Assessment Process”. Amendments consistent with this Code are proposed to Ontario’s “Guide for Environmental Assessment Requirements for Electricity Projects”.³² These consultation obligations apply not only to government proponents, but also to private sector proponents whose projects are subject to EA.

³¹ *Mikisew Cree First Nation, Supra note 23.*

³² A draft Aboriginal Consultation Policy issued by the Ontario Energy Board in June, 2007 is currently held in abeyance.



It is essential that project proponents identify Aboriginal communities that may be impacted by an undertaking, do so early in the development process and consult early and often as part of the EA process.

Private sector proponents who ignore Aboriginal consultation, or who rely on government to conduct adequate consultation, do so at their own risk. Where the government fails to undertake the necessary consultation, the proponent's approval becomes vulnerable to legal challenge³³.

In practice, Aboriginal consultation should not necessarily be limited to elected Band officials. For example, Band elections may be scheduled before the project is approved. There may also be other important voices in the community who should be part of the consultation. For example, consider whether elders, clan mothers and heritage chiefs, should be consulted in order to achieve a consensus decision.

2.2.2 APPROVAL REGIME FOR PROJECTS ON ABORIGINAL RESERVE LANDS

It is clear that federal regulatory approval requirements apply to Aboriginal reserve lands because "lands reserved for Indians" are subject to exclusive federal jurisdiction³⁴ Federal EAs may be triggered by development on a reserve, usually by federal funding or a lease of or permit to use the land.³⁵

It is less clear if and when provincial and municipal regulatory approval requirements apply to Aboriginal reserve lands.

The question is too broad to allow a detailed treatment in this paper. In overview,

- ♦ provincial and municipal regulatory approval requirements do not, in principle, apply to Aboriginal reserve lands because they are subject to exclusive federal jurisdiction

³³ *Haldimand Against Landfill Transfers v. Ontario* [2005] O.E.R.T.D. No. 29, June 21, 2005.

³⁴ *Constitution Act 1867*, at s. 92(4).

³⁵ See the list of triggers discussed above at Section 2.1.1.



- ◆ some cases have applied provincial and municipal laws to reserve land on the basis that they are permitted by s. 88 of the *Indian Act*³⁶, as laws of general application that do not affect “Indianness” and that are applicable to “Indians”, as distinct from “lands reserved for Indians”
- ◆ the situation is further complicated where the proponent of the on-reserve energy project is not “Indian”. For example, some provinces and municipalities have successfully taxed the interests of non-“Indian” occupiers of land on the basis that it is a tax on the occupier’s interest, not on the land itself.

It is unlikely that provincial regulatory approvals, such as provincial EA approval, are required for on-reserve energy projects. However, where these projects may have significant environmental impacts on off-reserve lands, those may invite the appropriate exercise of provincial regulatory jurisdiction.

Similarly, municipal zoning by-laws should not, in principle, apply to reserve land within municipal boundaries. Note, however, the decision in *Oka c. Simon*³⁷, which suggests that municipal zoning and construction by-laws apply to reserve land if they are directed at general rather than “Indian” use of the land.

A proponent of an energy project on reserve land should consider carefully in each case the potential application of provincial and/or municipal laws to the project and the requirement for regulatory approval under those laws.

Pursuant to the *Indian Act*, the approvals of the Band Council and the Band Chief will be required for any major project on reserve land. Band Council also has authority under the *Indian Act* to pass zoning by-laws on reserve land. Development on reserve must conform to any existing zoning by-laws.

³⁶ *Indian Act*, R.S.C. 1985, c. I-5 at s. 18.

³⁷ *Oka (Municipalité) c. Simon* (1998), [1999] 2 C.N.L.R. 205 (C.A. Qué.).



Land management on reserves is governed by one of two possible procedures. The first procedure is under the *Indian Act* and requires that all reserve land transactions be granted, approved or consented to by the Minister of the Department of Indian and Northern Affairs or the Governor in Council.

Under the second procedure, a First Nation has a land code approved pursuant to the *First Nations Land Management Act* and is authorized to manage its land autonomously in accordance with the terms of the code. Federal approval is not required for land transactions where an approved land code is in place.

2.3 LAND USE PLANNING APPROVALS

Development within a municipality must conform to the upper tier (where applicable) and local municipality's Official Plan and zoning by-law. Projects will usually require approval of its site plan by the municipality.³⁸

A proponent should check the applicable Official Plan and zoning by-law to determine whether the project will comply with or require amendments to the Official Plan and/or the zoning by-law.

Some municipalities in Ontario have taken an initiative in the area of renewable energy by revising their Official Plans to permit renewable energy facilities in designated areas. Such areas typically include agricultural, rural and mining zones.

However, at the time of writing this paper, applications for an Official Plan amendment and zoning by-law amendment will be required in most circumstances. Several municipalities now also recommend that a proponent complete or be nearing completion of the Environmental Screening Process before submitting any planning applications. A proponent may be able to use studies, drawings, reports and public consultation efforts from the EA process to satisfy planning approval requirements.

³⁸ Renewable energy projects on provincial Crown lands are not subject to municipal planning approvals. The Ministry of Natural Resources has its own policy for approving renewable energy projects on its land, including a land disposition policy. See the Ministry of Natural Resource's web site at www.mnr.gov.on.ca/MNR/renewable for more information on the process. Other approvals that may be triggered by a project, such as EA requirements, still apply.



Ontario's *Planning Act* requires that municipal planning decisions be consistent with the Provincial Policy Statement³⁹ ("PPS"). The PPS provides some support for renewable energy systems:

1.8 Energy and Air Quality

1.8.1 ...

1.8.2 Increased energy supply should be promoted by providing opportunities for energy generation facilities to accommodate current and projected needs and the use of *renewable energy systems* and *alternative energy systems*, where feasible.

1.8.3 *Alternative energy systems* and *renewable energy systems* shall be permitted in *settlement areas*, *rural areas* and *prime agricultural areas* in accordance with *provincial and federal requirements*. In *rural areas* and *prime agricultural areas*, these systems should be designed and constructed to minimize impacts on agricultural operations.⁴⁰

Support for renewable energy projects may also emerge as a result of recent amendments to the *Planning Act*. These amendments will allow the provincial government to exempt, by regulation, energy projects or classes of energy projects from *Planning Act* requirements where that project has received approval or is otherwise exempt or designated under the *Environmental Assessment Act*.⁴¹ As of the date of writing, no regulations have been passed under this provision.

The documents and plans that are required for an Official Plan amendment and a zoning by-law amendment are similar. These applications should be made concurrently and use the same documents and plans, where possible. These documents and plans, together with materials from the EA process, may also be suitable for use in the site plan approval application.

Other municipal approvals may be required at various stages of the project, such as building permits and consent to lease land. The chart in Appendix A contains further information on municipal approvals.

³⁹ *Planning Act*, R.S.O. 1990, c. P-13, s. 3.

⁴⁰ Ontario, Ministry of Municipal Affairs and Housing, *Provincial Policy Statement*, (ISBN 0-7794-7484-8, revised March 1, 2005).

⁴¹ *Supra* note 29 at ss. 62.0.1(1).



2.4 ENERGY CONNECTION, DISTRIBUTION AND SALE

This section deals with provincial approvals specific to energy connection, distribution and sale. Although not itself an approval, there is also a brief discussion of Ontario's procurement of renewable energy through a series of requests for proposal ("Renewable RFP") and through its standard offer program ("RESOP"). The federal regulatory requirements relating to international and interprovincial transmission lines do not affect the vast majority of renewable energy projects and are not dealt with in this paper⁴².

2.4.1 POWER PURCHASE AGREEMENT

Under the McGuinty government, Ontario has procured energy supply from new sources of renewable energy through its Renewable RFP and RESOP.

The Ontario Power Authority ("OPA") has the primary responsibility in Ontario for the procurement of new energy generation. On August 27, 2007, the provincial Ministry for Energy issued a directive to the OPA to procure 2,000 MW of renewable energy supply from projects that are greater than 10 MW in size. The OPA responded by releasing a Request for Expressions of Interest on November 20, 2007, followed by a draft Request for Proposals on June 5, 2008 and its Final Request for Proposals and Final Contract on August 22, 2008.

The OPA initiated the Renewable Energy Standard Offer Program (RESOP) in November 2006 to promote the development of small renewable energy projects of 10 MW or less in the province. The RESOP does this by providing a stable power purchase price and easier access to the transmission grid.

The program offers small renewable energy projects 20 year contracts with the OPA at the following rates:

- ◆ All generators except solar are to be paid a base rate of 11 cents per kilowatt hour (kWh) for electricity that is delivered to the local distribution system. As of May 2007, 20% of the base rate is adjusted for inflation in accordance with the Ontario Consumer Price Index. An additional 3.52 cents per kWh is offered for electricity delivered during peak hours (peak hour bonus).

⁴² *National Energy Board Act*, R.S.C. 1985, c. N-7.



- ♦ Solar generators are paid a fixed rate of 42 cents per kWh for the duration of the contract.⁴³ They are not offered a peak hour bonus or inflation rate adjustment.

Before applying for a RESOP contract, a proponent must: complete and submit a “Connection Impact Assessment”, provide evidence that its EA is underway, demonstrate access to the site in question (land ownership, lease, etc...), and be prepared to provide other information requested by the OPA. OPA’s requirements will vary depending on the type of project that is the subject of the application.

RESOP contract terms include a requirement that projects, other than hydro projects, must be commercially operational within three years of the contract commencement date. Delay in obtaining requisite approvals will not extend this deadline.

2.4.2 GENERATION, CONNECTION AND DISTRIBUTION

A license or approval is required from the Ontario Energy Board (OEB) for the following activities in Ontario:

- ♦ electricity generation;
- ♦ electricity sales or provision of ancillary services through the IESO-administered markets or directly to another person, other than a consumer; and
- ♦ interconnection with an electricity transmission or distribution lines.⁴⁴

The OEB may impose conditions on licenses to generate and sell electricity.⁴⁵

Generators of 500 kilowatts or less do not have to obtain a generator’s license or approval from the OEB to construct a transmission or distribution system. A generator who has an RESOP contract with the OPA is not required to obtain a licence to sell.

⁴³ See the Ontario Power Authority’s Standard Offer Program website for more information at <http://www.powerauthority.on.ca/SOP/>.

⁴⁴ *Ontario Energy Board Act*, R.S.O. 1998, c. 15, at s. 57 and 92.

⁴⁵ *Supra* note 34 at ss. 70(1).



The process for obtaining generation, connection, distribution and sale approvals is best assessed and planned by identifying the applicable approval authorities. The first approval authority a proponent should contact is the Local Distribution Company for an initial assessment on whether it will be possible to connect to the grid. This step occurs prior to applying to any approvals. The Local Distribution Company will send a proponent an information package on how to get started and a review of all approvals that will be required.

The approval of the Local Distribution Company is required to connect to a local distribution line as opposed to a main transmission line. A proponent must submit an application to the Local Distribution Company to conduct a Connection Impact Assessment to determine if there is sufficient capacity for the connection in the distribution system.

Once all approvals are complete, the proponent must sign a Connection Agreement with the Local Distribution Company that outlines the roles and responsibilities of the parties.

Electricity project proponents wanting to connect to the grid transmission system must obtain certain approvals from Hydro One. The approvals and agreements required are dependent on the type and size of the generation facility.

Prior to connecting to the grid, proponents of renewable energy projects producing more than 200 MW must:

- ◆ complete and sign a Preliminary Customer Impact Assessment Agreement at an early stage of the process;
- ◆ complete and sign a Transmission Preliminary Study Agreement where a Preliminary Customer Impact Assessment Agreement has not been completed; and
- ◆ complete the Transmission System Connection Application Form required for the project's Preliminary Customer Impact Assessment.

Hydro One will not permit connection to the grid if these requirements are not met.



Renewable projects generating less than 200 MW must still apply to Hydro One to connect to the transmission system but are not required to complete a Preliminary Customer Impact Assessment Agreement or Transmission Preliminary Study Agreement as part of their application.

The *Electrical Safety Authority* will inspect the facility to ensure that it and its connections meet the safety standards outlined in the *Electricity Act* and regulations promulgated thereunder, including the *Ontario Electrical Safety Code*, Ontario Regulation 164/99. Approval will be granted upon a successful inspection. This is the final approval prior to generation.

2.4.3 INDEPENDENT ELECTRICITY SYSTEM OPERATOR

The Independent Electricity System Operator (“IESO”) manages Ontario’s power grid and provides the market rules for participating in the Ontario electricity market.

All generators, including renewable energy generators, must become registered market participants to connect to the grid or participate in any of the IESO-administered markets. Registered market participants must comply with the IESO market rules including metering requirements.

A System Impact Assessment must be conducted by the IESO for all generating facilities connecting to the transmission system. Consultation with interested parties is not required.

2.5 OTHER APPROVALS

The chart at Appendix A details other federal, provincial and municipal approvals that may be required for specific circumstances or types of renewable energy project. Some of them are discussed below.

2.5.1 AVIATION

The *Canadian Aviation Regulations* are regulated by Transport Canada. They include height, lighting and marking requirements for structures such as wind turbines.

2.5.2 WILDLIFE

Species of flora and fauna at or in the vicinity of a proposed project may be protected by federal and provincial legislation.



After extensive consultation, Ontario passed an updated version of its *Endangered Species Act* in 2007. The updated Act came into force on June 30, 2008. The Act contains stronger enforcement measures than its predecessor, makes it an offence to harm listed species at risk and their habitats and contains stronger enforcement measures. Its predecessor made it an offence to harm wilfully any species threatened with extinction or their habitats. The new Act removes the requirement for wilfulness and greatly extends the number of protected species. A person may engage in activities likely to cause harm with a permit from the Minister of Natural Resources.

Similarly, the federal *Species at Risk Act* makes it an offence for anyone to damage or destroy the critical habitat or residence of any wildlife species listed in Schedule 1 of the Act as endangered, or threatened, or listed in Schedule 1 as extirpated where a recovery strategy has recommended the reintroduction of the species into the wild in Canada.

Activities that damage or destroy the habitat of such species may be permitted by the federal Minister of Environment (land-based species) or the federal Minister of the Department of Fisheries and Oceans (aquatic species), through a permit or agreement where affecting the species is incidental to the carrying out of the activity. The responsible Minister must be of the opinion that:

- a) all alternatives have been considered and the best solution adopted;
- b) all feasible measures will be taken to minimize adverse impact on the species; and
- c) the activity will not jeopardize the survival or recovery of the species.⁴⁶

Regulations passed under the federal *Migratory Birds Convention Act* prohibit the disturbance, destruction and taking of a nest or egg of a migratory bird without a permit. The federal government has developed a guideline for the consideration of birds in environmental assessments conducted for wind power projects.⁴⁷ It is therefore important to ascertain whether there are any migratory birds whose flight path may be affected by a proposed wind farm project.

⁴⁶ *Species At Risk Act*, R.S.C. 2002, c. 29 at s. 33, s. 53 and s. 73.

⁴⁷ The guideline can be accessed at http://www.canwea.ca/images/uploads/File/Resources/Wind_Turbines_and_Birds_Guidance_Document_FINAL.PDF.



Authorization will be required from the federal Minister of Fisheries and Oceans under the *Fisheries Act* to develop a project that is likely to harmfully alter, disrupt or destroy fish habitat. Such a project triggers a requirement for a federal EA.⁴⁸

2.5.3 ENVIRONMENTAL APPROVALS AND PERMITS

At the provincial level, certificates of approval may be required. For example, in Ontario

- ◆ a wind turbine may require a certificate of approval under the *Environmental Protection Act* (EPA) for noise and vibration.
- ◆ Biomass and biogas projects may require EPA certificates approval for air emissions and for waste.
- ◆ Waste management and/or disposal approvals may be required for dealing with process residues.
- ◆ Some projects may require a sewage works Certificate of Approval under the *Ontario Water Resources Act* (OWRA) where cooling or process water is discharged to ground or surface water with or without pre-treatment.
- ◆ An OWRA permit to take water (PTTW) may be required if the project will draw 50,000 litres per day or more from ground or surface water.

A decision under appeal in Ontario may result in Ontario's Ministry of the Environment having to consider the cumulative environmental effects of issuing an approval before doing so.⁴⁹

In addition to municipal land use planning approvals, municipalities also regulate discharges into municipal sewers through sewer use by-laws. Where significant amounts of process water will be discharged into the sewers, municipalities often require the discharger to enter into a "surcharge" or "overstrength" agreement, depending on the amount and nature of the discharge.

⁴⁸ *Inclusion List Regulations* at footnote 4.

⁴⁹ *Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal)* 2008 CANLII 30290 (ON S.C.).



3 CONCLUSIONS

A series of themes and strategies emerge from the discussion in this paper:

- 1 Proper site selection may: eliminate the need for some approvals, particularly municipal approvals, minimize the impact of the project on the environment and generate less opposition in the surrounding community.
- 2 A proponent should assemble an experienced team of consultants and legal advisers at an early stage to help manage the approval process proactively and to identify opportunities to avoid duplication of time, cost and effort.
- 3 Conducting a well prepared and thorough EA is a key to expediting the approval process.
- 4 Good communication is vital. A proponent should
 - a) consult early, often, and fully with all stakeholders: to ensure compliance with the federal and provincial EA process, to assist the government in discharging the “honour of the Crown” to Aboriginal communities and to identify and resolve potential problems throughout the development process;
 - b) adopt a collaborative but assertive approach with approval authorities, utilising streamlined procedures where available and with an eye to regulatory requirements, official guides, codes and other guidance documents.



APPENDIX A: REGULATORY APPROVAL PROCESS FOR RENEWABLE ENERGY PROJECTS IN ONTARIO

| Federal | | | | |
|-------------------------------|----------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| Approval/Standard | Source and Authority (Ontario) | Trigger | Timeline | Comments |
| Environmental Assessment | <i>Canadian Environmental Assessment Act, s. 5</i> Canadian Environmental Assessment Agency | Specifically included or federal involvement: project proponent, funding, federal land, prescribed permits or approvals under <i>Law List Regulation</i> <i>See Canadian Environmental Assessment Act, s. 5, Inclusions List Regulation, SOR/94-637 and Law List Regulation SOR/94-936</i> | As early as possible | Harmonize with provincial EA if both are required. |
| Aeronautical obstruction | <i>Canadian Aviation Regulations</i> Transport Canada | The height, lighting and marking of towers must meet requirements | Approval must be granted after EA however communication with the approval authority should occur during the EA | Applicable to wind projects |
| Authorization re fish habitat | <i>Fisheries Act, s. 35(2)</i> Department of Fisheries and Oceans | Project that will harmfully alter, disrupt or destroy fish habitat | Approval must be granted after EA however communication with the approval authority should occur during the EA | Applicable to wind projects |



| Federal | | | | |
|----------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| Approval/Standard | Source and Authority (Ontario) | Trigger | Timeline | Comments |
| Approval, navigable waters | <i>Navigable Waters Protection Act</i> , s. 5(1) Transport Canada | Works being “built or placed in, on, over, under, through or across any navigable water” | Approval must be granted after EA however communication with the approval authority should occur during the EA | Approval not required if the project does not substantially interfere with navigation. |
| Permit re migratory birds | <i>Migratory Birds Regulations</i> under the <i>Migratory Birds Convention Act</i> | Kill a migratory bird or disturb, destroy or take of a nest or egg of a migratory bird | Approval must be granted after EA however communication with the approval authority should occur during the EA | Applicable to wind projects |
| Minister’s permit or agreement re activities near threatened species | <i>Species At Risk Act</i> , s. 73(1) Environment Canada and/or Department of Fisheries and Oceans | Activity that affects a listed wildlife species, any part of its critical habitat or the residences of its individuals. | Approval must be granted after EA however communication with the approval authority should occur during the EA | Potentially applicable to all projects. Site selection key to preventing this trigger. |
| Environmental Assessment | Ministry of the Environment <i>Environmental Assessment Act</i> , s. 5 and the <i>Electricity Projects Regulation</i> | Category A, B or C electricity project under the <i>Electricity Projects Regulation</i> | As early as possible | See Appendix B for project classification. Category projects do not require an EA. |



| Federal | | | | |
|---------------------------------------------|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|----------------------------------------|
| Approval/Standard | Source and Authority (Ontario) | Trigger | Timeline | Comments |
| Certificate of Approval, Air | Ministry of the Environment <i>Environmental Protection Act, s. 9</i> | Discharging a contaminant into the air (noise). | Approval must be granted after EA however communication with the approval authority should occur during the EA | Applicable to wind projects |
| Provincial (Ontario) | | | | |
| Approval/Standard | Source and Authority (Ontario) | Trigger | Timeline | Comments |
| Certificate of Approval, Waste | Ministry of Environment <i>Environmental Protection Act, s. 27 and the General – Waste Management Regulation</i> | If facility will be accepting, handling, processing or transferring materials that are deemed to be “waste”. | Approval must be granted after EA however communication with the approval authority should occur during the EA | Biogas facilities/anaerobic digesters. |
| Certificate of Approval discharges to water | <i>Ontario Water Resources Act, s. 53</i> Ministry of the Environment | Discharge from an industrial sewage system to ground and surface water. | Approval must be granted after EA however communication with the approval authority should occur during the EA. | |



| Provincial (Ontario) | | | | |
|---------------------------------|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Approval/Standard | Source and Authority (Ontario) | Trigger | Timeline | Comments |
| Permit to take water | <i>Ontario Water Resources Act</i> , s. 34 Ministry of the Environment | Water takings of more than 50,000 litres per day | Approval must be granted after EA however communication with the approval authority should occur during the EA. | |
| Standard Offer Program contract | Ontario Power Authority | Wind, solar, biomass, biogas, biofuel, landfill gas and hydro projects in Ontario with an installed capacity less than 10 MW are eligible | After EA process has commenced | Must be able to connect to an eligible electricity distribution system in Ontario of 50 kV or less and have conducted a Connection Impact Assessment before applying. |
| Licence to generate electricity | <i>Ontario Energy Board Act</i> , s. 57(c) Ontario Energy Board | Generating electricity in Ontario | Approval must be granted after EA however communication with the approval authority should occur during the EA. | Exempt if generating less than 500 kilowatts of electricity |
| Licence to sell electricity | <i>Ontario Energy Board Act</i> , s. 57(f) Ontario Energy Board | Sale of electricity in Ontario through IESO administered markets or directly to another person other than a consumer | After other provincial approvals | Also required to register with IESO and meet all IESO requirements for connection to the grid |
| Connection | OEB, Licensed Market Participants | Connection local distribution system | After EA. | Communicate with local distribution system in the pre-planning stage to assess feasibility. |



| Provincial (Ontario) | | | | |
|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|----------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Approval/Standard | Source and Authority (Ontario) | Trigger | Timeline | Comments |
| Safety inspection | Safety standards as outlined in the <i>Electricity Act</i> and the <i>Ontario Electrical Safety Code</i> Electrical Safety Authority | Installation and connection electricity generation equipment | After all provincial approvals are granted and before generation commences | In accordance with the Electricity Act and regulations promulgated thereunder, including the Ontario Electrical Safety Code, Ontario Regulation 164/99 |
| Municipal | | | | |
| Approval/Standard | Source and Authority (Ontario) | Trigger | Timeline | Comments |
| Official Plan Amendment | Consult applicable Official Plan and local authority Applicable municipality | Inconsistent with the municipalities Official Plan | After EA however communication with the municipality should occur during the EA. | Do concurrently with other municipal approvals in first round of planning approvals |
| Zoning By-law amendment | Consult applicable zoning by-laws and local authority Applicable municipality | Inconsistent with applicable zoning by-law | After EA however communication with the municipality should occur during the EA. | Do concurrently with other municipal approvals in first round of planning approvals |
| Consent to sever/lease | <i>Planning Act</i> , s. 53 and applicable by-laws Applicable municipality | | After EA however communication with the municipality should occur during the EA | Do concurrently with other municipal approvals in first round of planning approvals |



| Municipal | | | | |
|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|---------------------------------------------------------------------------------------|
| Approval/Standard | Source and Authority (Ontario) | Trigger | Timeline | Comments |
| Site Plan Control Agreement | Consult applicable local authority | If required by applicable Site Plan Control By-Law or if a condition of an application for rezoning or severance | After Official Plan and zoning amendments | If possible, use technical drawings prepared for the EA and other planning approvals. |
| Building permits | <i>Development Permits Regulation</i> under the <i>Planning Act</i> and applicable by-laws and requirements Chief Building Official at your municipality | Additional structures are required. Wind turbines, biogas generation projects. | After EA approval. | After all planning documents are approved. |
| Municipal Sewer Use By-law Surcharge Agreement | Regional or local Sewer Use By-law. Public works, environment or water works department | Discharge limits for quantity and quality are usually set out in the SU By-law, and vary according to the municipality, and the nature and content of the effluent. | After EA approval | |



APPENDIX B: ELECTRICITY PROJECTS ENVIRONMENTAL ASSESSMENT CLASSIFICATION IN ONTARIO

Chart 1: Electricity Project Classification

The information in this chart is provided for the convenience of the reader only.
A copy of the Electricity Projects Regulation should be used in conjunction with this chart.

| Electricity Project Type | Category A: No EAA Requirements ¹ | Category B: ² Environmental Screening Process ³ | Category C: Individual EA |
|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Solar Photovoltaic | all | - | - |
| Any technology using an energy source not designated in the Regulation (e.g., fuel cells using hydrogen as fuel) | all | - | - |
| Emergency Generators | all | - | - |
| Transmission lines | <ul style="list-style-type: none"> • < 115 kV • ≥ 115 kV and ≤ 2 km, unless associated with a Category B generation project | <ul style="list-style-type: none"> • if associated with a Category B generation project and ≥ 115 kV, subject to Environmental Screening Process • if not associated with a Category B generation project and <ul style="list-style-type: none"> ▸ 115 kV and > 2 km; or ▸ > 115 kV and < 500 kV and > 2 km and < 50 km, subject to the Class EA for Minor Transmission Facilities | <ul style="list-style-type: none"> • > 115 kV and < 500 kV and ≥ 50 km • ≥ 500 kV and > 2 km |
| Transformer Stations | < 115 kV | <ul style="list-style-type: none"> • if associated with a Category B generation project and ≥ 115 kV, subject to Environmental Screening Process • if not associated with a Category B generation project and <ul style="list-style-type: none"> ▸ ≥ 115 kV and ≤ 500 kV, subject to the Class EA for Minor Transmission Facilities | > 500 kV |
| Wind turbines | < 2 MW | ≥ 2 MW | - |
| Hydroelectric facilities | - | < 200 MW | ≥ 200 MW |
| Natural gas ⁴ | < 5 MW | ≥ 5 MW | - |



| Electricity Project Type | Category A: No EAA Requirements ¹ | Category B: ² Environmental Screening Process ³ | Category C: Individual EA |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Biomass (not including waste material) ⁴ | < 5 MW | ≥ 5 MW | - |
| Landfill Gas/ Biogas | < 25 MW | ≥ 25 MW | - |
| Waste biomass (includes woodwaste) ⁴ | < 10 MW | ≥ 10 MW | - |
| Cogeneration - natural gas, biomass and waste biomass facilities with an efficiency of > 60% | < 25 MW | ≥ 25 MW | - |
| Generation for use on-site - natural gas, biomass, waste biomass and on-site municipal waste facilities, where none of the electricity generated is being sold to the grid | < 25 MW | ≥ 25 MW | - |
| Oil | < 1 MW | 1 to < 5 MW | ≥ 5 MW |
| Coal | - | - | all |
| Municipal Solid Waste | - | <ul style="list-style-type: none"> for which an EPA s.30 hearing is not required (facilities incinerating less than 1500 persons domestic waste); or that incinerates ≤ 100 tonnes/day municipal waste | <ul style="list-style-type: none"> for which an EPA s.30 hearing would be required (facilities incinerating 1500 persons domestic waste or more); or that incinerates > 100 tonnes/day municipal waste |
| Liquid Industrial or Hazardous Waste | - | sites incinerating only waste generated on-site | sites receiving and incinerating waste generated off-site |

Source: “Guide to Environmental Assessment Requirements for Electricity Projects”, March 2001, Ministry of the Environment, Environmental Assessment and Approvals Branch, Ontario, PIBS 4021e, p. 9 - 10.



APPENDIX C: WASTE PROJECTS ENVIRONMENTAL ASSESSMENT CLASSIFICATION IN ONTARIO

Projects requiring a full individual EA:

Table 1: Projects Subject to Part II of the Act

| Type of Waste Disposal Site | Action | Description | Section |
|------------------------------------------------------------|-----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| Landfill or Dump | Establish | A landfill or dump greater than 100,000m ³ | 2(1)1 |
| Thermal Treatment Site | Establish | A thermal treatment site that uses coal, oil or petroleum coke as a fuel for thermal treatment. | 2(1)2 |
| Thermal Treatment Site | Establish | A thermal treatment site (i) that does not use coal, oil or petroleum coke as a fuel for thermal treatment; (ii) where more than 10 tonnes per day (tpd) is the maximum amount of waste subject to thermal treatment; and (iii) of the energy or fuel generated by thermal treatment at the site that is used, all of the energy or fuel is used to dispose of waste (i.e. No Energy From Waste [No EFW]). | 2(1)3 |
| Waste Disposal Site – Hazardous or Liquid Industrial Waste | Establish | A site at which hazardous or liquid industrial waste is finally disposed of. | 2(1)4 |
| Waste Disposal Site | Change | A site that is not previously ^{Note 1} , but changes to become: (i) A landfill or dump greater than 100,000m ³ ; ^{Note 2} (ii) A thermal treatment site that uses coal, oil or petroleum coke as a fuel for thermal treatment; (iii) A thermal treatment site that does not use coal, oil or petroleum coke, where No EFW is produced and where more than 10 tpd is the maximum amount of waste subject to thermal treatment; or (iv) A waste disposal site at which hazardous or liquid industrial waste is finally disposed of. <u>Note 1:</u> a site that is not designated in the Regulation or a site that is designated in Part III (Environmental Screening Process). <u>Note 2:</u> This subsection does not apply if the change adds 100,000m ³ or less. | 3(1) <u>Note 2:</u> 3(2) |
| Landfill or Dump | Change | The change would add more than 100,000m ³ to the total waste disposal volume. | 4 |



| Type of Waste Disposal Site | Action | Description | Section |
|----------------------------------------------------------------|--------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Landfill or Dump | Change | The change: (i) involves the excavation of waste previously disposed of at the landfill or dump; and (ii) the excavation would increase by more than 100,000m ³ the amount of waste that could be deposited at the site without any increase in the total waste disposal volume. | 5 |
| Landfill or Dump – Hazardous or Liquid Industrial Waste | Change | The change: (i) results in an increase in the total waste disposal volume of the site; or (ii) involves the excavation of previously disposed of waste. | 6 |
| Thermal Treatment Site | Change | A change to a thermal treatment site where: (i) before the change, of the energy or fuel generated by thermal treatment at the site that is used, not all of the energy or fuel is used to dispose of waste (i.e. Energy From Waste [EFW]); and (ii) after the change, the site produces No EFW. | 7 |
| Thermal Treatment Site – described in section: 2(1)2 or 2(1) 3 | Change | A change that increases the amount of waste that is authorized to be thermally treated at the site on any day. | 8(1) |
| Thermal Treatment Site – Hazardous or Liquid Industrial Waste | Change | A change that increases the amount of waste that is authorized to be thermally treated at the site on any day. | 8(2) |



Projects subject to Environmental Screening:

Table 2: Projects Exempted Subject to Fulfilling the Environmental Screening Process

| Type of Waste Disposal Site | Action | Description | Section |
|----------------------------------------|-----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Landfill or Dump | Establish | A landfill or dump 40,000m ³ or more but not more than 100,000m ³ | 11(1)1 |
| Thermal Treatment Site | Establish | A thermal treatment site that does not use coal, oil or petroleum coke as a fuel for thermal treatment and that produces EFW. | 11(1)2 |
| Thermal Treatment Site | Establish | A thermal treatment site (i) that does not use coal, oil or petroleum coke as a fuel for thermal treatment; (ii) where 10 tpd or less is the maximum amount of waste subject to thermal treatment; and (iii) where No EFW is produced. | 11(1)3 |
| Waste Disposal Site – Transfer Station | Establish | A site at which: (i) waste is handled, treated or processed; and (ii) on an annual basis, an average of more than 1,000 tpd is transferred from the site for final disposal. | 11(1)4 |
| Thermal Treatment Site | Establish | A thermal treatment site that uses coal, oil or petroleum coke as a fuel for thermal treatment, if: (i) the site is located at a commercial, industrial or manufacturing facility; (ii) the primary purpose of the facility is not waste management; (iii) more than 100 tpd are received at the facility; and (vi) EFW is produced at the site and all of the EFW produced is used at the facility. | 11(2) |
| Waste Disposal Site | Change | A site that is not previously ^{Note 1} , but changes to become: (i) A landfill or dump 40,000m ³ or more but not more than 100,000m ³ ; ^{Note 2} (ii) A thermal treatment site that does not use coal, oil or petroleum coke as a fuel for thermal treatment and that produces EFW; (iii) A thermal treatment site: (a) that does not use coal, oil or petroleum coke as a fuel for thermal treatment, (b) where 10 tpd or less is the maximum amount of waste subject to thermal treatment, and (c) where No EFW is produced; (iv) A waste disposal site at which waste is handled, treated or processed and on an annual basis, an average of more than 1,000 tpd is transferred from the site for final disposal; or (v) A thermal treatment site that uses coal, oil or petroleum coke as a fuel for thermal treatment, if: | 12(1) |



| Type of Waste Disposal Site | Action | Description | Section |
|------------------------------------------------------------------------|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| | | <p>(a) the site is located at a commercial, industrial or manufacturing facility,</p> <p>(b) the primary purpose of the facility is not waste management,</p> <p>(c) more than 100 tpd are received at the facility, and</p> <p>(d) EFW is produced at the site and all of the EFW produced is used at the facility.</p> <p><u>Note 1:</u> a site that is not designated in the Regulation or a site that is designated in Part II (Environmental Assessment under Part II of the Act.).</p> <p><u>Note 2:</u> This subsection does not apply if the change adds less than 40,000m³.</p> | <u>Note 2:</u> 12(2) |
| Landfill or Dump | Change | The change would add 40,000m ³ or more but not more than 100,000m ³ to the total waste disposal volume. | 13 |
| Landfill or Dump | Change | The change: (i) involves the excavation of waste previously disposed of at the landfill or dump; and (ii) the excavation would increase by 40,000m ³ or more but not more than 100,000m ³ the amount of waste that could be deposited without an increase in the total waste disposal volume. | 14 |
| Landfill or Dump - described in section: 11(1)1, 2(1)1 or 2(1)4 | Change | The change would increase the rate at which the landfill or dump is filled. | 15 |
| Thermal Treatment Site – described in section: 11(1)2, 11(1)3 or 11(2) | Change | A change that increases the amount of waste that is authorized to be thermally treated at the site on any day. | 16 |
| Waste Disposal Site – Transfer Station | Change | The change would increase, on an annual basis, the average amount of waste transferred off of the site for final disposal by an average, on an annual basis, of more than 1,000 tpd. | 17 |
| Waste Disposal Site – described in section: 2(1), 11(1) or 11(2) | Change | The change would include new area to the geographic area from which the site is authorized to receive waste. | 18 |



Projects exempt from conducting an EA:

Table 3: Exemptions from Part II of the Act

| Type of Waste Disposal Site | Action | Description | Section |
|-----------------------------|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Waste Disposal Site | | An undertaking in respect of a waste disposal site by or on behalf of Her Majesty in right of Ontario or by a public body or public bodies or by a municipality or municipalities, unless, if the undertaking were not an undertaking by or on behalf of Her Majesty in right of Ontario or by a public body or public bodies or by a municipality or municipalities, the undertaking would be designated under Part II or III as an undertaking to which the Act applies. | 23 ¶ 1 |
| Waste Disposal Site | Change | The change: (i) is required by an order made under the Environmental Protection Act (EPA) or the Ontario Water Resources Act (OWRA); or (ii) involves the excavation of waste that was previously disposed of at the site, and a Director appointed under s.5 of the EPA or the OWRA is of the opinion that, (a) the primary purpose of the excavation is not to increase the amount of waste that will be deposited at the site, and (b) all of the purposes of the excavation are appropriate. | 23 ¶ 2 |
| Thermal Treatment Site | Establish | A thermal treatment site that would cease operation within 12 months of waste first being received at the site. | 23 ¶ 3 |
| Thermal Treatment Site | Establish or Change | A thermal treatment site, if: (i) the site is located at a commercial, industrial or manufacturing facility, (ii) the primary purpose of the facility is not waste management, (iii) not more than 100 tpd are received at the facility, and (iv) EFW is produced at the site and all of the EFW produced is used at the facility. | 23 ¶ 4 |
| Thermal Treatment Site | Establish or Change | A thermal treatment site, if: (i) the site is located at a commercial, industrial or manufacturing facility, (ii) the primary purpose of the facility is not waste management, (iii) all of the waste that is subject to thermal treatment at the site is generated at the facility, and (iv) No EFW is produced. | 23 ¶ 5 |
| | | | |



| Type of Waste Disposal Site | Action | Description | Section |
|----------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| Landfill | Change | The change is: (i) an increase in the service area of the site or an increase in the rate at which waste may be received from areas within the site's service area; and (ii) this increase is exempt from sections 30 and 32 of the EPA under s.5.2 of O.Reg 347. | 23 ¶ 6 |
| Waste Disposal Site – no Hazardous or Hauled Liquid Industrial Waste | Establish or Change | A certificate of approval for establishing or changing the site is issued pursuant to s.31 of the EPA (Emergency Provisions) without requiring the Tribunal to hold a hearing. | 23 ¶ 7 |
| Landfill or Dump – Owned by a Person Engaged in Forest Products Operations | Establish or Change | Where: (i) no hazardous waste or liquid industrial waste is deposited at the landfill or dump, (ii) the only waste deposited at the landfill or dump is produced by the person who owns the landfill or dump or by other persons engaged in forest products operations, and (iii) the waste deposited at the landfill or dump is predominantly solid process waste. | 23 ¶ 8 |
| Waste Disposal Site – Exempt Wastes | Establish or Change | Where the only waste deposited, disposed of, handled, stored, transferred, treated or processed at the site is waste that, under O.Reg 347, is exempt from Part V of the EPA. | 23 ¶ 9 |

Source: “Guide to Environmental Assessment Requirements for Waste Management Projects”, March 15, 2007, Ministry of the Environment, Environmental Assessment and Approvals Branch, Ontario, p. 6 - 12.