Ontario’s Proposed Project List under the *Environmental Assessment Act*

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Presentation Outline

1. Overview of Ontario’s proposed project list
2. Concerns about the proposed project list
3. Next steps & how you can get involved
4. Questions & answers
Overview (1)

- In July 2020, Ontario enacted Schedule 6 of Bill 197, which substantially amends the EA Act.
- One of the key changes in Bill 197 fundamentally shifts how the EA Act will be applied.
- Traditionally, the EA Act applied to all public sector undertakings (unless exempted), but did not generally apply to private sector undertakings (unless designated).
Overview (2)

- Under Bill 197, Part II.3 of the amended EA Act ("Comprehensive" EAs) will now only apply to "projects" listed under regulations made by the Ontario Cabinet.

- Non-listed projects will either be subject to "Streamlined" EA processes (tba), or to no EA at all.

- Proponents can voluntarily agree to be covered by EA Act; Cabinet can designate non-listed projects.
Overview (3)

- The proposed list is limited to a small handful of project types (most of which are already subject to the EA Act under O.Reg.116/01 & O.Reg.101/07)

- **Electricity Projects** (certain transmission lines, transformer stations, hydroelectric facilities, oil-fired electricity generating facilities)

- **Waste Management Projects** (certain landfills, hazardous waste sites, thermal treatment sites)
Overview (4)

- **Transportation Projects** (certain provincial freeways, municipal expressways, intra-provincial railways)

- **Conservation Projects** (certain “major” flood or erosion control projects)

- **Mining Projects?** no specific mine types are on the proposed list, but Ontario wants public input on whether mines should be subject to EA Act (yes!)
Overview (5)

Examples of proposed projects & thresholds:
- New transmission lines 50 + km & capacity between 115 – 500 kilovolts
- New/expanded landfills 100,000 + cubic metres of total disposal volume
- New/extended freeways & expressways 75 + km
- New/extended intra-provincial railways 50 + km
Concerns about the Proposed List (1)

- Overall intent of the list is to limit Part II.3 of the EA Act to projects deemed by Ontario to have the greatest potential for significant adverse effects.
- This criterion is not found in the amended EA Act, its purpose statement, or the definition of “project”.
- Concern is that Ontario has produced no evidence or analysis to justify its listing proposals, & has not explained how the enviro impacts of potential candidates were weighed/ranked (or screened out).
Concerns about the Proposed List (2)

- Ontario says the proposed list will end “duplication” between Part II.3 of EA Act & regulatory regimes.
- Concern is that unlike the EA Act, regulatory laws do not require an evidence-based analysis of: project purpose/rationale; alternatives to the project; alternative methods for carrying out the project; & the biophysical, social, cultural, economic effects of the project & its alternatives.
- No overlap or duplication, as per Auditor General.
Concerns about the Proposed List (3)

- Ontario says it used its “experience” to apply some enviro factors (e.g. magnitude, duration, extent of impacts) to develop the proposed list.
- These factors are not found in EA Act → discretion!
- Ontario has not disclosed the evidentiary basis for its conclusion that only the proposed projects (or thresholds) have greatest potential for impacts.
- Listing exercise is not credible or transparent.
Concerns about the Proposed List (4)

- If these factors had been rigorously applied, then mines should have been clearly identified on the proposed list; ditto for other environmentally significant activities or facilities that occur in Ontario.

- Unknown whether Ontario proposes to adopt the federal thresholds for mines or related activities (i.e. ) in order to “align” the EA Act with the Impact Assessment Act passed by Parliament in 2019.
Concerns about the Proposed List (5)

- Ontario’s Environment Minister is legally bound to ensure that the Statement of Enviro Values (SEV) under the EBR is considered during enviro decision-making (i.e. making regulations)

- SEV contains relevant enviro principles (science-based, precautionary approach; cumulative effects consideration; ecosystem approach, etc.)

- No evidence that the SEV was considered as the proposed list was being developed
Concerns about the Proposed List (6)

▶ The proposed list excludes environmentally significant provincial plans or programs (e.g. energy plans, climate change plans, land use plans, etc.), although these can be more impactful than individual projects, as per Auditor General’s 2016 report, EA practitioners, etc.

▶ The proposed list also inexplicably excludes many other physical works/activities (e.g. sewage treatment plants, quarries, refineries, smelters, etc.)
Concerns about the Proposed List (7)

- Bottom line: the narrow list uses stale-dated thresholds adapted from old sectoral regulations & omits environmentally significant undertakings.

- The list only includes 13 project types; in comparison, the federal project list under the *Impact Assessment Act* includes 61 project types; this Act also creates Ministerial power & criteria to be used to designate non-listed projects on public request; Ontario’s regulatory proposal does not.
Next Steps: What You Can Do

- The public comment period on the proposed list ends on November 10, 2020; be sure to submit comments on Registry Notice 019-2377!
- Ontario has stated there will be another round of public consultation on the draft regulation that sets out the project list (fall/winter?)
- There will also be upcoming consultations on the “streamlined” EA regulations & other measures that implement the Bill 197 amendments
Resources & References

For additional information, see:
https://ero.ontario.ca/notice/019-2377
https://www.ontario.ca/laws/statute/90e18
https://cela.ca/bill-197-update/
https://cela.ca/preliminary-review-proposed-project-list/

CELA will also circulate a sign-on letter
Questions or comments?