

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/>

https://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1_306en16.pdf

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