

# Partial Decision: August 2023 (ERO #019- 4219) Changes to the EA program in advance of the proposed move to a project list

## Summary:

This document summarizes the decision on implementing certain policy elements consulted on as part of the “proposed move to a project list” by amending existing regulations and taking related actions before making decisions on the full suite of changes to the EA program included in the proposal, “Moving to a Project List Under the Environmental Assessment Act (ERO# 019-4219)”. This proposal notice was originally published on November 26, 2021, for 60 days comment period ending January 25, 2022. We have made decisions on certain policy elements, amended three regulations have been made and two related guides have been updated to be consistent with the regulations. This document provides the details of the decision.

A key element of the EA modernization initiative is identifying projects that would be subject to EA requirements in a regulation. The move to a project list approach is a shift from the current framework where EA requirements are based on who is undertaking the project.

In November 2021, the ministry began consultation on proposed regulations and related actions to move to a project list approach for projects. Those proposed regulations reflect a number of policy elements. The ministry has now proceeded with certain of those policy elements by amending existing regulations in advance of the decision on “moving to a project list” and the making of a new comprehensive EA regulation and related regulations and actions.

Specifically, the ministry has amended the following existing regulations under the *Environmental Assessment Act*:

- *Waste Management Projects regulation (Ontario Regulation 101/07)*
- *Transit Projects and Metrolinx Undertakings regulation (Ontario Regulation 231/08)*
- *General regulation (Regulation 334)*

The Guide to Environmental Assessment Requirements for Waste Management Projects (Waste Guide) and the Guide to Environmental Assessment Requirements for Electricity Projects (Electricity Guide) have been amended to:

- implement the proposals
- align with the amended *Waste Management Projects regulation*
- make other updates

These changes that were consulted on in 2021 will implement process efficiencies and new exemptions while allowing us to continue efforts to bring forward decisions in relation to the comprehensive EA project list proposal. The remaining elements of the comprehensive EA projects regulation proposal are under consideration.

## Decision details:

### Regulatory amendments

We made changes to the following three regulations:

#### 1. Ontario Regulation 101/07 (Waste Management Projects) under the Environmental Assessment Act

The *Waste Management Projects regulation* was amended to:

- change the environmental assessment requirements for certain landfill expansion projects
- make the Minister the decision-maker for requiring that a particular waste management project following the streamlined environmental assessment process complete an individual environmental assessment

The following describes the two changes in *Waste Management Projects regulation* in further detail.

#### *Change to Environmental Assessment Requirements for Certain Landfill Expansions*

The change allows a landfill or dump proposing to increase the total waste disposal volume up to 375,000 cubic metres to follow the streamlined environmental assessment process rather than obtaining an individual environmental assessment approval, if the expansion would increase the total approved waste disposal volume of the landfill or dump by 25% or less.

These landfill expansions are exempted from requiring an individual environmental assessment approval on the condition that the streamlined assessment process, set out

in the incorporated Guide to Environmental Assessment Requirements for Waste Management Projects, is followed.

A 10-year limitation is included to prevent a proponent from doing multiple smaller expansions in quick succession to avoid having to seek an individual environmental assessment approval.

This change provides flexibility in meeting Ontario's waste management needs while maintaining appropriate environmental protections by allowing some smaller landfill expansion projects to follow a streamlined environmental assessment process rather than an individual environmental assessment process.

#### *Change to decision maker for Elevation Requests*

Under the streamlined environmental assessment process for waste management projects, there is a mechanism at the end of the process that allows a person to request a higher level of assessment (that is, an elevation request for an individual environmental assessment).

For consistency with other streamlined processes, we proposed changing the decision maker from Director to Minister, for decisions on elevation requests (e.g., requiring that a particular waste management project following the streamlined environmental assessment process set out in the Waste Guide complete an individual environmental assessment).

This change has been implemented by amending the *Waste Management Projects regulation* and the incorporated Waste Guide.

#### 2. Ontario Regulation 231/08 (Transit Projects and Metrolinx Undertakings) under the Environmental Assessment Act

The *Transit Projects and Metrolinx Undertakings regulation* was amended to authorize the Minister to amend or revoke conditions that were imposed in a notice given by the Minister to allow the proponent to proceed with a transit project.

In the event that any condition(s) are no longer needed or otherwise applicable, this amendment allows the Minister to amend or revoke the condition(s). Please note that the Minister must take into account the reasons why the condition(s) were included in the notice in the first place, including whether a condition was placed on a transit project to mitigate potential adverse impacts on Aboriginal or treaty rights. The ministry will ensure that any duty to consult is met prior to making any decisions that could impact Aboriginal or treaty rights.

This amendment provides flexibility and supports implementation, given that circumstances can change over time and updates may be warranted to keep the imposed conditions relevant.

### 3. Regulation 334 (General) under the *Environmental Assessment Act*

#### *Algonquin Land Claim Settlement Exemption*

Regulation 334 (General) made under the *Environmental Assessment Act* sets out certain exemptions from the Act, including an exemption for certain Crown activities related to land claim settlement agreements.

The land claim settlement exemption was extended to include Crown undertakings related to any settlement of the Algonquins of Ontario land claim. It applies:

- where consultation on particular undertakings has not yet commenced under the existing Algonquin Land Claim Declaration Order
- to modifications to any Crown undertakings that have completed the process under that Order

The Algonquin Land Claim Declaration Order was also amended to align with the exemption in the regulation.

The Ministry of Indigenous Affairs has a robust Indigenous land claim consultation process that provides a mechanism to address consultation with Indigenous communities, government agencies, and the public that applies to the exempted undertakings and applies to Crown undertakings related to the Algonquin land claim settlement.

This change aligns the process for the Algonquin land claim settlement with the approach for other land claims in terms of consultation requirements, reduced regulatory burden and elimination of duplication, consistent with environmental assessment modernization efforts.

#### Regulations effective date

The regulations were filed August 8, 2023 and came into effect upon filing.

### **Guide updates for Electricity and Waste**

#### 1. Updated Guide to Environmental Assessment Requirements for Waste Management

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##### Projects

The ministry has made updates to the Waste Guide to align with amendments made to *Waste Management Project regulation*, including:

- updating the description of EA requirements for certain landfill expansion projects
- making the Minister the decision-maker in relation to elevation requests
- updating the regulatory terminology and description of EA requirements related to thermal treatment to include advanced recycling and the resulting recovery of materials, and identifying information to be included when undertaking the Environmental Screening Process for an advanced recycling project\*
- adding guidance for documentation of Indigenous Consultation for the Crown to assess its duty to consult
- making administrative changes to improve clarity and reflect changes since the guide was developed in 2007

\* Amendments to the *Waste Management Project regulation* effective July 1, 2022 changed the EA requirements for certain thermal treatment sites engaged in advanced recycling. These changes were consulted on as part of the proposal 019-4867: Environmental Assessment requirements for advanced recycling facilities under the *Environmental Assessment Act*.

## 2. Updated Guide to Environmental Assessment Requirements for Electricity Projects

The ministry has made updates to the Guide for Environmental Assessment Requirements for Electricity Projects including:

- making the Minister the only decision maker in relation to elevation requests
- adding information to Section A.6.2.3 (Consultation with Indigenous Communities) to align with the Waste Guide, including on the Crown's duty to consult, contacting the ministry for a list of Indigenous communities for consultation, and documenting the consultation process. This reflects current approaches and the ministry's expectations for streamlined processes.
- updating references to waterpower projects to recognize the approval of the Class EA for Waterpower Project that was approved in 2008, and the projects that follow that process.
- making administrative changes to improve clarity and reflect changes since the guide was last update in 2011.

### Guides effective date

The update guides came into effect on August 8, 2023.

## Effects of consultation

On the November 26, 2021 proposal posting, the ministry received a total of 69 comment submissions of which 13 were from or on behalf Indigenous communities

or organizations on the Comprehensive Environmental Assessment Projects regulation proposal described above, which included the proposals in this submission. The vast majority of the comments were about moving to a project list and not specific to the elements of the partial decision.

Following is the summary of concerns raised in the comments and our responses to the concerns for this partial decision.

Questions were raised about environmental assessment requirements for landfill expansions, excavations or for closed sites, and liquid industrial waste management. Concerns were raised about project splitting and archaeological requirements for landfill projects, and some interest was raised in advanced recycling technologies. The ministry notes that EA requirements for the vast majority of waste projects have not changed. Smaller landfill expansions can now follow a streamlined process that ensures environmental oversight and consultation opportunities are maintained.

For the Algonquin Land Claim exemption, Indigenous communities asked for examples of activities under the Algonquin land claim that would now be exempt from environmental assessment requirements and whether agreements with other communities would be impacted. Responses to these questions or concerns were provided.

No concerns were raised concerning changing the decision maker on elevation requests for waste or electricity projects or providing the minister with the authority to amend or revoke conditions of a notice the minister issued to allow a proponent to proceed with a transit project.

Comments related to advanced recycling were considered through the proposal Environmental Assessment Requirements for Advanced Recycling Facilities under the *Environmental Assessment Act* (ERO #019-4867).

## Connect With Us

If you have questions, you can contact the EA Modernization Team at [EAModernization.mecp@ontario.ca](mailto:EAModernization.mecp@ontario.ca) or by calling us at 1-800-461-6290.