



**ONTARIO
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ALLIANCE**

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24 January 2022

EA Modernization Project Team
Environmental Assessment Modernization Branch
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By email to: EAmodernization.MECP@ontario.ca

Re: ERO 019-4219 – Moving to a project list approach under the *EAA*

Dear Sirs:

The Ontario Rivers Alliance (ORA) is a not-for-profit grassroots organization with a mission to protect, conserve and restore riverine ecosystems in Ontario. ORA advocates for effective policy and legislation to ensure that development affecting Ontario rivers is environmentally and socially sustainable.

The ORA is responding to the Ministry of Environment, Conservation and Parks (MECP) Environmental Registry Posting ERO-019-4219, proposing regulations and related actions to move toward a project-list approach for projects that will require a comprehensive environmental assessment under the *Environmental Assessment Act* (EAA). The MECP staff has assured me that a Project List will also be developed and proposed for projects that do not meet the threshold of the Comprehensive Project List, and that the Class Environmental Assessments (Class EA) will remain in place until such time as the Project List for smaller projects is in place.

ORA has commented extensively on these proposed amendments to the *EAA* and the proposal to implement a Project List, and I ask that you take all of these concerns and recommendations into account, along with the contents of this submission:

1. 24 May 2019 – [ERO-013-5101 & ERO-013-5102, Modernizing Ontario's *EAA* Program](#)
2. 10 Nov 2020 – [ERO-019-2377, Proposed Comprehensive Project List under the *EAA*](#)
3. 22 Aug 2020 – [ERO 019-1712, Environmental Assessment Modernization: Amendment proposals for Class Environmental Assessments](#)

This ERO posting follows severe amendments to the *Act* in 2019 and 2020 which, among other things, removed the automatic application of EA requirements to public sector regulations specifying which types of projects would be subject to the *Act*.

The scope and content of this draft regulation are vast because proponents of any projects not included in the regulatory Project List would not legally be required to undertake an EA, consult with the public, or seek approval under Part II.3 of the *Act*.



For projects not included in this regulatory Project List, statutory approvals may still be required under environmental planning laws, and it remains possible for a proponent to voluntarily agree to conduct an EA if it chooses to do so. It is also open to the provincial cabinet on a case-by-case basis to use its discretionary authority to designate a non-listed project to be subject to the *Act*; however, it is doubtful that this discretion will easily be exercised, and there are no criteria laid out to identify how or when a non-listed project could be made subject to the EA requirements.

While the government claims that this draft regulation will provide more clarity and transparency for proponents, stakeholders, government officials, and the public on the types of projects that will or will not require an EA, it couldn't be further from the truth. It totally leaves the public and stakeholders in the dark about whether there will even be an EA process for the projects that are not listed; and whether communities will have any say in projects that will impact on them.

When these unregulated projects come home to roost, and the environmental impacts begin to damage or destroy highly valued public interests, such as our lakes and rivers, endangered species, our drinking water, and the economy, the government will pay a very high price. Unfortunately, the damage that will result from these irresponsible and negligent actions will not easily be undone, and in many cases will not be resolved in our lifetimes.

If the government wants to incorporate “one-project, one review”, then it must be a robust EA process with fulsome public and Indigenous consultation, or it may find the process much longer than it might have intended.

Recommendation 1:

Given the government's overall objective of clarity and transparency, it is essential that the regulatory Project List include all public and private undertakings that may cause significant adverse environmental or socio-economic impacts. All new projects must be subject to the detailed information-gathering and decision-making provisions in Part II.3 of the *Act*.

Environmental Risk:

In 2019 this government put out a Discussion Paper on Modernizing Ontario's EA Program, which set out their proposal to “*ensure better alignment between the level of assessment and the level of environmental risk associated with a project*”. However, to this day, there has not been any evidence or science-based justification for the projects or thresholds that have been included or excluded from the proposed Project List. Unfortunately, this flaw has not been rectified in this draft regulation.

Under the draft regulation, this proposed Project List also fails to include environmentally significant public undertakings such as climate change plans, governmental plans and programs, provincial land use plans, and long-term energy plans. This deficit excludes the public from having a say or providing input into projects and plans that have a longer-term impact on communities compared to individual projects.

The regulation also omits numerous types of private sector projects and activities that could seriously impact on the health and safety of the environment and the public.



The draft regulation doesn't cover sewage treatment plants, pits and quarries, refineries, intra-provincial pipelines, pulp mills, logging, smelters, dams, dikes, reservoirs, water diversion, land drainage, irrigation projects, fish hatcheries, aquaculture facilities..., and is seriously deficient in its approach to hydroelectric projects.

ORA submits that the proposed Project List is not credible because it is not grounded in science or evidence-based considerations and omits numerous environmentally significant projects that should merit rigorous EA requirements.

Recommendation 2:

The draft regulation and Project List must include sewage treatment plants, pits and quarries, refineries, intra-provincial pipelines, pulp mills, logging, smelters, dams, dikes, reservoirs, water diversion, land drainage, irrigation projects, fish hatcheries, aquaculture facilities, and any other project that has the potential to do environmental harm and/ or place communities at risk.

Hydroelectric Projects:

The ministry is proposing that the electricity projects that currently require a comprehensive EA would continue to require one, such as a "*new hydroelectric facility with a capacity greater than or equal to 200 MW*". However, the federal Impact Assessment could consider much smaller hydroelectric projects that do not meet that 200 MW threshold - projects that are of federal interest for their potential effects on fish and fish habitat.

While the numerous negative effects of large hydroelectric projects have been well known and documented since their widespread construction began in the early 1900s, small hydro projects involve many of the same impacts per unit of power generated and, cumulatively, the environmental degradation can exceed that of large hydro projects. In addition, small hydro, like large hydro projects, will also alter the river's flow regime and have significant impacts on the aquatic environment, as flow is a major determinant of a river's ecological characteristics and its aquatic biodiversity.

If the province is interested in streamlining to bring more certainty to the environmental assessment process, then it would be prudent to have a suitable and more rigorous provincial process that would negate the necessity of the public having to take it to the federal Impact Assessment level.

In the past, it was a mistake to place hydroelectric development under a Class Environmental Assessment, which is a streamlined process, as these projects are never routine and predictable, nor are they always mitigable. That's one reason why these types of projects often go way overestimated costs and timelines, and many of these projects in the last hydroelectric push never made it through to the construction phase.

It is irresponsible and inexcusable that of the 241 hydroelectric projects throughout Ontario, there are only 3 that include fish passage. It is also our observation that in many instances, the significant and ongoing adverse environmental effects resulting from waterpower projects using impoundments, diversions and cycling and peaking operating strategies were not being adequately identified, much less properly addressed through the Class EA for Waterpower.



ORA submits that identification of environmental effects from hydroelectric has been inadequate, with piecemeal planning and studies, and insufficient consideration of cumulative effects. In addition, potential negative effects were not adequately assessed or mitigated when many kilometers of potentially impacted zones of influence were never studied.

Both drought and flooding can compromise hydroelectric infrastructure, aquatic ecosystems, and place the public at risk. Therefore, it is essential that more rigorous environmental assessment legislation and policy is in place to protect communities and the environment.

Recommendation 3:

All hydroelectric projects with a generating capacity of greater than or equal to 10 MW must be included in the Comprehensive Project List under this draft regulation. All hydroelectric projects less than 10 MW must be included in a Project List that is, at the very least, greater than the rigour of the Class EA for Waterpower and must seriously consider requiring fish passage at all new facilities where fish have traditionally passed.

Recommendation 4:

All new and upgraded hydroelectric projects must include fulsome, inclusive, and meaningful public and Indigenous consultation and participation.

Mining Projects:

It is incomprehensible that mining projects will not automatically trigger a Comprehensive Environmental Assessment under the *Act* and would not be included on the proposed Project List.

An MECP December 2021 slide presentation talked about Mineral Development Projects, and it acknowledged that “*Ontario has a long history of regulating mineral development and has a deep understanding of the environmental effects that mineral development can potentially create in some circumstances, as potential effects*”, and it was repeated in the ERO posting. However, the only EA framework we are aware of is the federal Impact Assessment for projects of federal interest that will extract over 5,000 tonnes/day of ore. There is no Class EA for mining, and there does not appear to be a provincial process for mining projects extracting under 5,000 tonnes/day or over 5,000 tonnes/day where there are no federal interests, such as Indigenous Treaty Rights or Species at Risk.

The ORA is intervening in the Upper Beaver Gold Project that was just designated under the federal *Impact Assessment Act*. The communities that will be impacted advocated strongly for a federal review because there is no longer a public process for mining in Ontario. This project will process over 10,000 tonnes/day of ore, divert the Misema River around York Lake, and drain the Lake to become an open pit mine. Mining effluent will be released into the Misema River, which will flow into the Englehart River, into Lake Temiskaming, down the Ottawa River, and on into the St. Lawrence River. If we had not secured a federal review under the *Impact Assessment Act*, there would have been no opportunity for the public to have any meaningful input into the project or to ensure the project is undertaken in an environmentally responsible manner. The federal minister decided to designate the Project for an Impact Assessment because there was no other regional or provincial environmental assessment process.



Again, because of the requirements under the Fisheries Act to protect fish and fish habitat, it would be prudent to have a sufficiently robust provincial process to ensure the public and Indigenous communities are provided the mechanism for meaningful consultation. There must also be confidence in the environmental protection and sustainability of the ecosystem before, during, and after the development and decommissioning of mining projects.

Recommendation 5:

Mining projects must be included in the Project List under the draft regulation.

Consultation:

The ORA strongly supports a modern approach through the creation of an online registry and electronic submission process. This type of transparency is of critical importance and would provide access to information on all projects. It should include the name of the proponent, project name, what and where the project is proposed, any notices, project status, any applications for permits and approvals, as well as the ability to register as a stakeholder to receive all related notices and information, similar to the Environmental Bill of Rights Registry.

It is essential that the public and Indigenous communities are properly consulted, with opportunities to have concerns addressed in a meaningful way, and with socio-economic and environmental effects being adequately mitigated.

Many times, ORA has raised concerns with projects over the lack of identification of environmental effects, deferral of often contentious decisions to permitting processes that do not provide for public input or transparency, and insufficient public and Indigenous consultation throughout the approvals process.

Recommendation 6:

A robust and comprehensive public and Indigenous consultation process must accompany the Comprehensive Project List regulation and an online registry as mentioned above to keep the public fully informed of all projects from the very beginning to the end of the process.

Resilience to Climate Change:

The climate emergency that we find ourselves in encompasses the entire globe and can only be successfully tackled through greater focus on adapting to the increasingly severe climate impacts we are already seeing. That can only be done through government regulation. The federal government has already issued initiatives to dam owners to increase climate resiliency and the ability to increase the capacity of infrastructure to pass more water. In addition, there are numerous reports and studies that predict increased temperatures, flooding, droughts, tornadoes, wildfires, and more..., along with advice to invest in adaptation and mitigation because the threat of climate-driven emergencies is only expected to grow in frequency and intensity.

The climate crisis is global, but its impacts are felt most intensively at the regional, community, and personal levels. For example, in British Columbia, a “heat dome” resulted in the death of ~600 people in the summer of 2021. Later in the year, “atmospheric rivers” caused torrential downpours



across southern BC. As a result, all key highways leading in and out of the Lower Mainland were closed, several people died in mudslides, and over 15,000 people were forced from their homes and farms due to flooding. Many other countries also experienced climate related disasters in 2021. For example, ~200 people died in a flooding disaster in Germany.

Recommendation 7:

It is crucial that this government develop strong policy and legislation and, in this case, a Comprehensive Project List and regulation that will ensure communities are protected from pollution and that the environment remains healthy and resilient to the effects of climate change and risky projects.

The ORA submits that there must be a serious rethink of the consequences of such a lacking and irresponsible draft regulation and its impact on government liability, on the environment, and on our communities.

Thank you for this opportunity to comment.

Respectfully,

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