

# Operational Policy on Submission of Part II Order Requests under the *Environmental Assessment Act*

The Ministry of the Environment and Climate Change has developed this Operational Policy regarding the submission and processing of Part II Order requests to the Minister of the Environment and Climate Change (Minister) under the *Environmental Assessment Act*.

## Background

The *Environmental Assessment Act* generally applies to undertakings by provincial ministries, municipalities, and prescribed public bodies unless specifically exempt. Private sector proponents and/or projects may be made subject to the *Act* by regulation or by entering into a voluntary agreement with the Minister. There are two main types of environmental assessment processes:

1. An “individual” environmental assessment application, consisting of a Terms of Reference and Environmental Assessment.
2. A streamlined process, such as a Class Environmental Assessment.

A Class Environmental Assessment may be used for classes of undertakings that are routine, with predictable and manageable environmental effects. Proponents of these types of projects follow a self-assessment and decision-making process. The proponent of a project subject to a Class Environmental Assessment process must follow the process set out in the Class Environmental Assessment Approval document. The Class Environmental Assessment process often involves public and Indigenous consultation.

Under section 16 of the *Act*, the Minister (or delegate) has the authority to make several types of orders with respect to an undertaking proceeding in accordance with a Class Environmental Assessment. The Minister may issue an order requiring a proponent to: conduct a higher level of review on a project (i.e. an individual environmental assessment), or impose additional conditions on the project, including further studies, before the project can proceed.

A person may submit a request for an order to the Minister. This is referred to as a Part II Order request. If the Minister receives a Part II Order request, the Minister (or delegate) can make one of the following decisions:

1. Deny the request with or without conditions;
2. Require the proponent to fulfill conditions before deciding on the request;
3. Refer the matter to mediation before making a decision; or
4. Require the proponent of the project to prepare an individual environmental assessment for the project.

The purpose of this Operational Policy is to provide clarity and direction to any person wishing to submit a Part II Order request. Specifically, how a Part II Order request is to be submitted, and what information needs to be included. This is intended to help the ministry in determining the need for further review of the proposed project and to assist the Minister (or delegate) in issuing a timely decision on the request.

### **Basis for Minister's Order**

The *Environmental Assessment Act* sets out the factors that the Minister (or delegate) must consider before deciding whether to make an order pursuant to section 16(4) of the *Environmental Assessment Act*. The factors include:

1. The purpose of the *Act*.
2. The factors suggesting that the proposed undertaking differs from other undertakings in the class to which the class environmental assessment applies.
3. The significance of the factors and of the differences mentioned in paragraph 2.
4. Any reasons given by a person who requests the order.
5. The mediators' report, if any, following a referral under subsection (6).
6. Such other matters as may be prescribed.
7. Such other matters as the Minister considers appropriate.

### **Process for Submitting Part II Order Requests**

Any person concerned about the environmental impacts of a project proceeding under a Class Environmental Assessment should first address their concerns with the proponent, as early in the Class Environmental Assessment process as possible.

If the concerns cannot be resolved between the parties, the person raising the concerns may submit a written request to the Minister, asking that the Minister make an order under section 16 of the *Environmental Assessment Act*. The written request should be sent to:

- Minister of the Environment and Climate Change, and
- Director of the Environmental Approvals Branch, and
- The proponent.

Requests for a Part II Order are to be sent within the comment period outlined in the Notice of Completion for the project. The Minister (or delegate) can consider the timing of the request and whether or not the person has been involved in the Class Environmental Assessment Process to date when deciding whether or not to make an order.

## **Content of the Part II Order Request**

Persons submitting a request to the Minister under section 16 of the *Environmental Assessment Act* need to provide sufficient information in their request to allow the Minister (or delegate) to make a decision. As indicated above, the the Minister (or delegate) must consider the factors set out in section 16(4) of the *Act* in coming to a decision.

The written request for an order needs to include the following information:

- Clearly state that a Part II Order is being requested and whether:
  - An Individual Environmental Assessment under Part II of the *Environmental Assessment Act* is being requested;
  - an order imposing additional conditions is being requested; and
  - a referral of the matter to mediation before making a decision is being requested.
- The name and address of the requester so that the Ministry can follow up with any questions as needed.
- The name of the project and the proponent so the Ministry can link the request to the correct project.
- A description of how the requester was involved in the planning and consultation process for the proposed project, including for example:
  - did the requester raise their concerns with the proponent;
  - when, and how, did the requester raise their concerns with the proponent;
  - proponents response, and;
  - why concerns could not be resolved through discussions with the proponent.

- If requesting additional conditions, information on the types of conditions being requested and how the additional conditions would address the concerns raised.
- If requesting an individual environmental assessment under Part II of the *Environmental Assessment Act*, how the individual environmental assessment would address the concerns raised in a way that the Class Environmental Assessment did not.
- If requesting mediation, information on previous consultation and how mediation would address the concerns raised.

The request submitted to the Minister needs to focus on the potential environmental effects of the project, the Class Environmental Assessment process undertaken for the project, and how the order will provide information that should be considered before the project may proceed.

## **Importance of Providing Adequate Information**

Failure to provide the information set out above can be considered by the Minister (or delegate) as part of his/her decision as to whether an order should be made under section 16 of the *Environmental Assessment Act*.

For more information on Class Environmental Assessments and Part II Order Requests, please visit the [Part II Order information page on the government of Ontario's website](#).

## **Glossary**

The definitions in this glossary are intended to assist the reader in understanding the terms used in this Operational Policy.

### **Class Environmental Assessment**

A document approved under the *Environmental Assessment Act* that sets out a standardized planning process for classes or groups of activities. It is also known as a “parent” document in some class environmental assessments.

Projects defined within a class environmental assessment do not require approval under section 5 of the *Environmental Assessment Act* so long as they are planned according to the procedures set out in the document and the Minister has not made an order requiring that the proponent comply with the Part II Order.

There are currently 10 approved Class Environmental Assessments, including:

- Class Environmental Assessment for Activities of the Ministry of Northern Development and Mines under the Mining Act
- Class Environmental Assessment for Water Power
- Municipal Class Environmental Assessment
- Ministry of Infrastructure Public Works Class Environmental Assessment
- Go Transit Class Environmental Assessment Document
- Class Environmental Assessment for Provincial Parks and Conservation Reserves
- Class Environmental Assessment for Remedial Flood and Erosion Control Projects
- Class Environmental Assessment for Provincial Transportation Facilities
- Class Environmental Assessment for Minor Transmission Facilities

**minister (or delegate)**

The Minister of the Environment and Climate Change is the decision-maker on Part II Order requests. Section 31(2) of the *Environmental Assessment Act* allows the Minister to delegate decisions on Part II Order requests to an employee of the Ministry.

**environment\***

The *Environmental Assessment Act* defines environment to mean:

- Air, land or water;
- Plant and animal life, including human life;
- The social, economic and cultural conditions that influence the life of humans or a community;
- Any building, structure, machine or other device or thing made by humans;
- Any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities; or,
- Any part or combination of the foregoing and the interrelationships between any two or more of them.

**environmental assessment or individual environmental assessment**

An environmental assessment completed in accordance with Part II of the *Environmental Assessment Act*, including the terms of reference and environmental assessment.

***Environmental Assessment Act (EAA)***

The *Environmental Assessment Act* (and amendments and regulations thereto) is a provincial statute that sets out a planning and decision-making process to evaluate the potential environmental effects of a proposed undertaking.

**Indigenous peoples**

The *Constitution Act, 1982*, specifies that Indigenous peoples include Indian, Inuit and Métis peoples of Canada.

**mediation**

A dispute resolution process in which a neutral third party (mediator) who is acceptable to all parties assists disputants in reaching a mutually acceptable agreement. The mediator has no authority to impose a settlement and participation in the process is voluntary.

**Part II Order**

A Part II Order is an order issued by the Minister under section 16 of the *EAA*.

**proponent\***

A person that carries out or proposes to carry out an undertaking or is the owner or person having charge, management or control of an undertaking.

**person**

includes a municipality, Her Majesty in right of Ontario, a Crown agency within the meaning of the *Crown Agency Act*, a public body, a partnership, an unincorporated joint venture and an unincorporated association.

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.