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This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

This consultation draft regulation was prepared to support consultation on the proposal [Moving to a Project List Approach under the Environmental Assessment Act](#) that was originally published to the Environmental Registry of Ontario on November 26, 2021.

The consultation draft regulation has not been updated to reflect the revised proposal of March 10, 2023, which can be found in the updated posting.

Cette publication hautement spécialisée “Moving to a Project List Approach under the Environmental Assessment Act” n'est disponible qu'en anglais conformément au Règlement 671/92, selon lequel il n'est pas obligatoire de la traduire en vertu de la *Loi sur les services en français*. Pour obtenir des renseignements en français, veuillez communiquer avec le ministère de l'Environnement, de la Protection de la nature et des Parcs au eamodernization.mecp@ontario.ca.

CONSULTATION DRAFT

ONTARIO REGULATION

to be made under the

ENVIRONMENTAL ASSESSMENT ACT

PART II.3 PROJECTS — DESIGNATIONS AND EXEMPTIONS

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PART I
INTERPRETATION AND APPLICATION

Definitions

1. (1) In this Regulation,

“biogas” means gas collected from the decomposition of organic materials in sewage sludge;
 (“FRENCH”)

“biomass” means, except in paragraph 5 of subsection 11 (2) and paragraph 3 of subsection 26
 (2),

(a) peat,

(b) wood, other than woodwaste, or

(c) organic materials that are grown or harvested for the purpose of being burned to
 generate electricity; (“FRENCH”)

“distributor” has the same meaning as in the *Electricity Act, 1998*; (“FRENCH”)

“energy” includes electricity or steam; (“FRENCH”)

“forest products operations” includes the operations of a lumber mill, saw mill, pulp mill or
 similar facility; (“FRENCH”)

“generation facility” has the same meaning as in the *Electricity Act, 1998*, except that for the
 purpose of this Regulation two or more generation facilities that function together as an
 integrated system for generating electricity are deemed to be a single generation facility;
 (“FRENCH”)

“generator” has the same meaning as in the *Electricity Act, 1998*; (“FRENCH”)

“grade separation” means a crossing of rail and a road at different levels or a crossing of two
 roads at different levels; (“FRENCH”)

“IESO-administered markets” has the same meaning as in the *Electricity Act, 1998*;
 (“FRENCH”)

“IESO-controlled grid” has the same meaning as in the *Electricity Act, 1998*; (“FRENCH”)

“landfill gas” means gas collected from the decomposition of organic materials in a landfilling
 site; (“FRENCH”)

“landfilling site” means a waste disposal site where landfilling occurs; (“FRENCH”)

“maintenance facility” means a facility for the servicing or repairing of major mechanical components of rail or transit vehicles; (“FRENCH”)

“name plate capacity” means, with respect to a generation facility, the total of the design electricity generating capacities of all the generation units in the facility; (“FRENCH”)

“park-and-ride lot” means a parking lot associated with a station for the purposes of passenger transfer between personal motor vehicles and rail or bus services; (“FRENCH”)

“passenger pick-up/drop off area” means an area at a station where a passenger can be dropped off or picked up; (“FRENCH”)

“primary power source” means, with respect to a generation facility, the primary power source used by the facility to generate electricity, based on the annual energy input of the power sources used by the facility to generate electricity; (“FRENCH”)

“rail line” means the right of way and track upon which rail service is provided; (“FRENCH”)

“rail yard” means a yard containing a series of non-main tracks for switching, storing, sorting, loading or unloading rail cars and includes any associated facilities within the yard such as maintenance facilities, storage yards and facilities for loading and unloading rail cars; (“FRENCH”)

“renewable energy generation facility” has the same meaning as in the *Electricity Act, 1998*; (“FRENCH”)

“renewable energy source” has the same meaning as in the *Electricity Act, 1998*; (“FRENCH”)

“station” means a facility along a rail or bus route where passengers can embark or disembark to transfer between rail or bus routes or other travel modes but does not include a facility which is only a transit stop; (“FRENCH”)

“sensitive area” means,

- (a) an area of residential land use, or
- (b) an environmentally-sensitive area such as an area that includes natural heritage features, cultural heritage or archaeological resources, recreational land uses or other sensitive land uses. (“FRENCH”)

“storage yard” means a facility for the storage of rail or transit vehicles and may include facilities used for fuelling or washing vehicles, loading and unloading goods or performing

minor running maintenance. A storage yard may be tracks adjacent to a rail line;
("FRENCH")

"thermal treatment" includes incineration, gasification, pyrolysis or plasma arc treatment;
("FRENCH")

"thermal treatment site" means a waste disposal site where thermal treatment is used;
("FRENCH")

"total waste disposal volume" means, for a landfilling site or dump, the maximum volume of waste, including the volume of any daily or intermediate cover, to be deposited at the landfilling site or dump in the space extending from the base of the waste fill zone or the top of any engineered facilities located on the base of the landfilling site or dump to the bottom of the final cover; ("FRENCH")

"transit stop" means a location along a rail or bus route that is used by passengers to embark or disembark and has no structures other than simple structures such as passenger shelters and benches; ("FRENCH")

"waste biomass" means agricultural waste, sewage, woodwaste and gases generated from the decomposition of organic materials, but does not include biogas or landfill gas;
("FRENCH")

"waste disposal site" has the same meaning as in Part V of the *Environmental Protection Act*.
("FRENCH")

(2) In this Regulation, the following words and expressions have the same meanings as in Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*:

1. Dump.
2. Hazardous waste.
3. Landfilling.
4. Liquid industrial waste.
5. Municipal waste.
6. Woodwaste.

Associated transmission lines, transmission stations etc.

2. (1) For the purposes of this Regulation, a transmission line is associated with a generation facility if the line is used to transmit electricity at the facility or from the facility to the IESO-controlled grid.

(2) For the purposes of this Regulation, a transmission station is associated with a generation facility or a renewable energy generation facility that is not described in paragraph 3 of section 7 if the station is used to transform the voltage of electricity at the facility or on a transmission line associated with the facility.

(3) For the purposes of this Regulation, if a transmission station is designed to operate at more than one voltage level, the nominal operating voltage of the station is deemed to be the highest voltage at which the transmission station is designed to operate.

(4) For greater certainty, a transmission station includes a transformer station that transfers power of a voltage level used for transmission of electricity to a voltage level used for distribution of electricity and vice versa.

Change includes expansion etc.

3. (1) In this Regulation a reference to a change, with respect to a waste disposal site, includes an alteration, enlargement or extension of the site but does not include the decommissioning or retirement of the site.

(2) In this Regulation a reference to a change, with respect to a generation facility, transmission line or transmission station, includes an expansion of the facility, line or station but does not include the decommissioning or retirement of the facility, line or station.

Clarification, establishing

4. In this Regulation, a reference to establishing a thing does not include,

- (a) planning the thing;
- (b) acquiring property or an interest in property in respect of the thing; or
- (c) issuing or granting a licence, permit, approval, permission or consent in respect of the thing.

Conflict with other approvals

5. If under section 12, 19, 20, 27 or 31, a project is exempt from Part II.3 of the Act and proceeding with the project would conflict with a condition imposed by an approval under the Act that applies to another project, subsections 17.2 (5) and 17.27 (6) and section 38 of the Act do not apply to the condition to the extent of the conflict.

PART II ELECTRICITY PROJECTS

Interpretation

6. (1) In this Part,

“Environmental Screening Process for Electricity Projects” means Part B of the Ministry publication entitled “Guide to Environmental Assessment Requirements for Electricity Projects” January 2011, as amended from time to time, and available on a website of the Government of Ontario;

“significant modification” means a change described in subsection (3).

(2) In this Part, a reference to municipal waste is a reference to municipal waste that does not include waste biomass.

(3) Each of the following changes constitutes a significant change:

1. With respect to a generation facility that does not use coal, hazardous waste, liquid industrial waste, municipal waste or oil as a power source, a change that would result in the facility using coal, hazardous waste, liquid industrial waste, municipal waste or oil as a power source.
2. With respect to a generation facility that uses coal as its primary power source, a change that would increase the name plate capacity of the facility.
3. With respect to a generation facility that uses oil as its primary power source, a change that would increase the name plate capacity of the facility by one megawatt or more.
4. With respect to a generation facility that uses hazardous waste, liquid industrial waste, municipal waste or wind energy as its primary power source, a change that would increase the name plate capacity of the facility by two megawatts or more.
5. With respect to a generation facility that uses biomass or natural gas as its primary power source, a change that would increase the name plate capacity of the facility by five megawatts or more.
6. With respect to a generation facility that uses waste biomass as its primary power source, a change that would increase the name plate capacity of the facility by 10 megawatts or more.

7. With respect to a generation facility that uses biogas or landfill gas as its primary power source, a change that would increase the name plate capacity of the facility by 25 megawatts or more.
8. With respect to a generation facility that uses municipal waste as its primary power source, a change that would,
 - i. increase the name plate capacity of the facility, and
 - ii. increase the capacity of the facility to burn municipal waste by five tonnes or more on any day.
9. With respect to a generation facility that uses water power as its primary power source, a change that would increase the name plate capacity of the facility by 25 per cent or more.
10. With respect to a transmission line that is designed to operate at a nominal voltage of 115 kilovolts or more, a change in the line that would include one or more of the following if, after the change in the line, the line would still be designed to operate at a nominal voltage of 115 kilovolts or more:
 - i. The replacement of a pole or tower.
 - ii. A change in a right-of-way for the line.
11. With respect to a transmission station, a change in the station that would include the installation of additional transmission equipment, if,
 - i. the installation of the additional equipment requires an extension of the site where the station is located, and
 - ii. after the installation of the additional equipment, the station would be capable of operating at a nominal voltage of 115 kilovolts or more.
12. With respect to a transmission station that is capable of operating from 230 kilovolts or less, a change in the station that would include the installation of additional transmission equipment, if the installation of the additional equipment would increase the nominal voltage at which the station is capable of operating to more than 230 kilovolts.

Part II.3 electricity projects, comprehensive environmental assessments

7. Subject to section 11, establishing any of the following things is designated as a project to which Part II.3 of the Act applies:

1. A generation facility that uses coal as its primary power source.
2. A generation facility that has a name plate capacity of five megawatts or more and that uses oil as its primary power source.
3. A generation facility that has a name plate capacity of 200 megawatts or more and that uses water power as its primary power source.
4. A transmission line that is,
 - i. not associated with a generation facility described in paragraphs 1 to 7 of section 9,
 - ii. more than two kilometres in length, and
 - iii. designed to operate at a nominal voltage of 115 kilovolts or more.
5. A transmission station that is designed to operate at a nominal voltage of 115 kilovolts or more and is not associated with a generation facility described in paragraphs 1 to 7 of section 9.

Same, changes

8. Subject to section 11, making one or more of the following changes is designated as a project to which Part II.3 of the Act applies:

1. A change to a generation facility, transmission line or transmission station not described in section 7 if making the change results in the facility, line or station becoming a facility, line or station described in that section.
2. A change to a generation facility, transmission line or transmission station described in section 7 if the change is a significant modification.

Electricity projects, environmental screening

9. Subject to sections 11 and 12, establishing any of the following things is designated as a project to which Part II.3 of the Act applies:

1. A generation facility that has a name plate capacity of one megawatt or more but less than five megawatts and that uses oil as its primary power source.
2. A generation facility that has a name plate capacity of less than 200 megawatts and that uses water power as its primary power source.
3. A generation facility that has a name plate capacity of two megawatts or more and that uses wind energy as its primary power source.

4. A generation facility that has a name plate capacity of five megawatts or more and that uses biomass or natural gas as its primary power source.
5. A generation facility that has a name plate capacity of 10 megawatts or more and that uses waste biomass as its primary power source.
6. A generation facility that has a name plate capacity of 25 megawatts or more and that uses biogas as its primary power source.
7. A generation facility that has a name plate capacity of 25 megawatts or more, uses landfill gas as its primary power source and is located at a waste disposal site the establishment of which does not or did not require approval under the Act.
8. A transmission line that is designed to transmit electricity at a nominal voltage of 115 kilovolts or more and is associated with a generation facility described in this section.
9. A transmission station that is designed to operate at a nominal voltage of 115 kilovolts or more and is associated with a generation facility described in this section.

Same, changes

10. Subject to sections 11 and 12, making one or more of the following changes is designated as a project to which Part II.3 of the Act applies:

1. A change to a generation facility, transmission line or transmission station not described in section 9 if making the change results in the facility, line or station becoming a facility, line or station described in that section.
2. A change to a generation facility, transmission line or transmission station described in section 9.
3. A change to a generation facility, transmission line or transmission station described in section 7 if the change is not a signification modification.

Exception, electricity projects

11. (1) Sections 7 to 10 do not apply to,

- (a) establishing or changing a generation facility that is constructed only for the purpose of providing electricity to the site where the generation facility is located in the event of a failure of a distributor to deliver electricity to the site;
- (b) establishing or changing a generation facility that uses biogas, biomass, landfill gas, natural gas or waste biomass as its primary power source, if the facility has a name plate capacity of 25 megawatts or less, and,

- (i) the ratio of the facility's output energy to its input energy is more than 0.60, or
 - (ii) none of the electricity generated by the facility is sold by the generator through the IESO-administered markets and none of the electricity generated by the facility is sold by the generator directly to persons who use the electricity at a location other than the site on which the facility is located;
- (c) establishing or changing a transmission line or transmission station associated with a generation facility described in clause (a) or (b);
- (d) with respect to a generation facility that uses coal, hazardous waste, liquid industrial waste, municipal waste or oil as its primary power source, making a change to the facility that would result in,
- (i) the facility using less coal, hazardous waste, liquid industrial waste, municipal waste or oil and not using more of any of those power sources, and
 - (ii) the name plate capacity of the facility being less than the maximum name plate capacity determined in accordance with the following formula,

$$A = B + ((C - D) \times 0.5)$$

where,

A = the maximum name plate capacity of the facility after the completion of the project,

B = the name plate capacity of the facility before the start of the project,

C = the capacity of the facility to generate electricity from coal, hazardous waste, liquid industrial waste, municipal waste or oil before the start of the project,

D = the capacity of the facility to generate electricity from coal, hazardous waste, liquid industrial waste, municipal waste or oil after the completion of the project;

- (e) changing a generation facility that was changed in the manner described in clause (d) if the facility no longer uses coal, hazardous waste, liquid industrial waste, municipal waste or oil as its primary power source;

- (f) making a change to a generation facility, transmission line or transmission station that was constructed before April 23, 2001 if,
 - (i) no approval under section 5 of the Act, as it read on April 23, 2001, was required to construct the thing, and
 - (ii) the change, together with any other change made since the thing was constructed, is not a significant modification;
- (g) an undertaking of a type to which an approved class environmental assessment applies;
- (h) a project that is designated under Part IV as a project to which Part II.3 of the Act applies;
- (i) a project that is designated under paragraph 2 or 3 of subsection 18 (1) as a project to which Part II.3 of the Act applies; or
- (j) establishing or changing a renewable energy generation facility.

(2) Despite clause (1) (j), sections 7 to 10 apply to a project described in that clause if any of the following criteria are met:

1. The renewable energy generation facility uses water power as its primary power source.
2. The renewable energy generation facility has a name plate capacity of less than or equal to 500 kW and on an annual basis, less than 90 per cent of the electricity generated at the facility is generated from a renewable energy source.
3. The renewable energy generation facility has a name plate capacity of greater than 500 kW and on an annual basis, less than 95 per cent of the electricity generated at the facility is generated from a renewable energy source.
4. The renewable energy generation facility is a thermal treatment facility as described in paragraph 12 of subsection 9 (1) of Ontario Regulation 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act) made under the *Environmental Protection Act*.
5. The renewable energy generation facility,
 - i. changes or was changed from a generation facility that uses or used coal as its primary power source, and

- ii. has a name plate capacity of greater than 500 kW and on an annual basis, generates at least 95 per cent of its electricity from biomass within the meaning of Ontario Regulation 160/99 (Definitions and Exemptions) made under the *Electricity Act, 1998*.
6. Before September 24, 2009, any of the following criteria were met:
- i. The proponent was authorized under Part II or II.1 of the Act to proceed with the project.
 - ii. The proponent issued or published a notice of completion in respect of the renewable energy generation facility and entered into a power purchase agreement with the Ontario Power Authority in respect of the supply of renewable energy from the facility.
 - iii. A statement of completion was filed with the Director of the Environmental Assessment and Approvals Branch in respect of the renewable energy generation facility and all of the approvals, permits and other instruments mentioned in subsection 47.3 (1) of the *Environmental Protection Act* that are required to construct, install, operate or use the facility have been obtained.

Part II.3 exemption — environmental screening process

12. (1) A project designated as a Part II.3 project under section 9 or 10 is exempt from Part II.3 of the Act if the project is carried out in accordance with the Environmental Screening Process for Electricity Projects.

- (2) Despite subsection (1), a project is not exempt from Part II.3 of the Act if,
- (a) the Minister issues a notice, in accordance with the Environmental Screening Process for Electricity Projects, requiring the proponent to prepare an environmental assessment in respect of the project;
 - (b) the proponent applies under subsection 17.2 (1) of the Act for approval to proceed with the Part II.3 project; or
 - (c) the project is deemed to be a Part II.3 project under section 38.3 of the Act.

PART III TRANSIT PROJECTS

Definition

13. In this Part,

“linear component of a transit system” means a road or rail that, aside from any incidental use for walking, biking or other means of transporting people by human power, is used exclusively for transportation of passengers by bus or rail. (“FRENCH”)

Application, rail line projects

14. This Part does not apply to a project that is designated under section 29 as a project to which Part II.3 of the Act applies.

Transit projects by municipalities or Metrolinx — project assessment

15. Subject to sections 19 and 20, the following activities are designated as projects to which Part II.3 of the Act applies if the activity is carried out by a municipality, Metrolinx or any of Metrolinx’s successors or assigns:

1. Constructing any of the following things in or adjacent to a sensitive area:
 - i. A new station.
 - ii. A new passenger pick-up/drop off area.
 - iii. A new park-and-ride lot.
 - iv. A new grade separation in respect of a linear component of a transit system.
 - v. A new storage yard.
 - vi. A new maintenance facility.
2. Constructing a new linear component of a transit system and constructing any thing referred to in paragraph 1 that is related to the new linear component of a transit system whether or not the thing is in a sensitive area.
3. Repairing or replacing a culvert associated with a linear component of a transit system, if the repair or replacement changes the capacity of the culvert or drainage area.
4. Reconstructing a water crossing associated with a linear component of a transit system, if the reconstructed water crossing will not have the same location, purpose, use or hydraulic capacity as it had before the reconstruction.
5. Reconstructing a linear component of a transit system if the reconstructed linear component will not have the same location, purpose or use as it has before the reconstruction.
6. Widening or extending a linear component of a transit system.

7. Widening a road to create transit lanes for bus or rail.

Transit projects by Metrolinx —project assessment

16. Subject to sections 19 and 20, the following activities are designated as projects to which Part II.3 of the Act applies if the activity is carried out by Metrolinx or its successors or assigns:

1. Constructing or making a change to tracks to increase the commuter rail service on an existing rail corridor, including:
 - i. Constructing additional mainline tracks or passing tracks.
 - ii. Making a change to existing mainline tracks or passing tracks.
 - iii. Constructing short sections of track to maintain continuity of an existing rail line or to address capacity requirements.
 - iv. Constructing or relocating a storage yard.
2. Making a change to a storage yard if,
 - i. the change requires an extension of the site where the storage yard is located, and
 - ii. the storage yard is located in or adjacent to a sensitive area.

Transit projects by Ministry of Transportation — project assessment

17. (1) Subject to sections 19 and 20, the following activities are designated as projects to which Part II.3 of the Act applies if the activity is carried out by the Ministry of Transportation:

1. Constructing new transit infrastructure.
2. Making a change to existing transit infrastructure.

(2) Making a change to a transitway or reserved bus lane under paragraph 2 of subsection (1) includes extending or realigning the transitway or reserved bus lane.

(3) In this section,

“transit infrastructure” includes transitways, reserved bus lanes, stations, park-and-ride lots, pick-up/drop-off areas, storage yards, maintenance facilities and traffic control centres.

Transit projects re electrification — project assessment

18. (1) Subject to sections 19 and 20, the following activities are designated as projects to which Part II.3 of the Act applies if the activity is in respect of the electrification of a new or existing commuter rail corridor:

1. The electrification of rail equipment propulsion, which may include establishing or making a change to an associated power distribution.
2. Establishing or making a change to a transmission line that is not associated with a generation facility mentioned in paragraph 1, 2, 3, 4, 5, 6 or 7 of section 9 and that,
 - i. can operate at nominal voltage of 115 kV and is greater than 2 kilometres in length, or
 - ii. can operate at nominal voltage of greater than 115 kV and less than 500 kV and is greater than 2 kilometres and less than 50 kilometres in length.
3. Establishing or making a change to a transmission station that is not associated with a generation facility mentioned in paragraph 1, 2, 3, 4, 5, 6 or 7 of section 9 and that can operate at nominal voltage of equal to or greater than 115kV and less than or equal to 500 kV.

(2) A project described in paragraph 2 of subsection (1) that involves making a change to a transmission line is designated as a project to which Part II.3 of the Act applies only if,

- (a) the work involved in changing the line requires the replacement of a pole or tower or changes in the right-of-way for existing transmission lines that are capable of operating at a nominal voltage equal to or greater than 115 kV and less than or equal to 500 kV; and
- (b) the changed line would operate at a nominal voltage of equal to or greater than 115 kV and less than or equal to 500 kV.

(3) A project described in paragraph 3 of subsection (1) that involves making a change to a transmission station is designated as a project to which Part II.3 of the Act applies only if,

- (a) the change requires the acquisition of property; and
- (b) the changed station is capable of operating at a nominal voltage of equal to or greater than 115 kV and less than or equal to 500 kV.

Part II.3 exemption — project assessment process

19. (1) If a project described in section 15, 16, 17 or 18 is not also an undertaking referred to in section 15 of the Act, the project is exempt from Part II.3 of the Act if the project is carried

out in accordance with the project assessment process set out in Ontario Regulation 231/08 (Transit and Ontario Northland Transportation Commission Project Assessment Process).

- (2) Despite subsection (1), a project is not exempt from Part II.3 of the Act if,
- (a) the Minister issues a notice, in accordance with the project assessment process set out in Ontario Regulation 231/08 (Transit and Ontario Northland Transportation Commission Project Assessment Process), requiring the proponent to prepare an environmental assessment in respect of the project;
 - (b) the proponent applies under subsection 17.2 (1) of the Act for approval to proceed with the Part II.3 project and gives written notice of the application to the Director of the Environmental Assessment Branch and the appropriate regional director of the Ministry; or
 - (c) the project is deemed to be a Part II.3 project under section 38.3 of the Act.

Part II.1 and II.3 exemption — project assessment process

20. (1) If a project described in section 15, 16, 17 or 18 is also an undertaking referred to in section 15 of the Act, the project is exempt from Part II.1 and Part II.3 of the Act if the project is carried out in accordance with the project assessment process set out in Ontario Regulation 231/08 (Transit and Ontario Northland Transportation Commission Project Assessment Process).

(2) Despite subsection (1), a project is exempt from Part II.3 of the Act but not exempt from Part II.1 of the Act if the proponent gives written notice to the Director of the Environmental Assessment Branch and the appropriate regional director of the Ministry that the proponent will proceed with the project in accordance with the approved class environmental assessment.

(3) Despite subsection (1), a project is exempt from Part II.1 of the Act but not exempt from Part II.3 of the Act if,

- (a) the Minister issues a notice, in accordance with the project assessment process set out in Ontario Regulation 231/08 (Transit and Ontario Northland Transportation Commission Project Assessment Process), requiring the proponent to prepare an environmental assessment in respect of the project;
- (b) the proponent applies under subsection 17.2 (1) of the Act for approval to proceed with the Part II.3 project and gives written notice of the application to the Director of the Environmental Assessment Branch and the appropriate regional director of the Ministry; or
- (c) the project is deemed to be a Part II.3 project under section 38.3 of the Act.

**PART IV
WASTE MANAGEMENT PROJECTS**

Definition

21. In this Part,

“Environmental Screening Process for Waste Management Projects” means Part B of the Ministry of the Environment publication entitled “Guide to Environmental Assessment Requirements for Waste Management Projects” and dated March 15, 2007, as amended from time to time, and available on a website of the Government of Ontario.

Part II.3 waste projects, comprehensive environmental assessments

22. Subject to section 26, establishing any of the following waste disposal sites is designated as a project to which Part II.3 of the Act applies:

1. A landfilling site or dump with a total waste disposal volume of more than 100,000 cubic metres.
2. A thermal treatment site that uses coal, oil or petroleum coke as a fuel for thermal treatment at the site unless,
 - i. the site is located at a commercial, industrial or manufacturing facility,
 - ii. the primary purpose of the facility is not the management of municipal waste, hazardous waste, liquid industrial waste or any other kind of waste,
 - iii. more than 100 tonnes of waste are received at the facility per day, and
 - iv. of the energy or fuel generated by thermal treatment at the site that is used,
 - A. all of the energy or fuel is used at the facility, and
 - B. not all of the energy or fuel is used to dispose of waste.
3. A thermal treatment site, if,
 - i. the site does not use coal, oil or petroleum coke as a fuel for thermal treatment at the site,
 - ii. the maximum amount of waste that is subject to thermal treatment at the site on any day, measured by weight, is more than 10 tonnes, and
 - iii. of the energy or fuel generated by thermal treatment at the site that is used, all of the energy or fuel is used to dispose of waste.

4. A waste disposal site at which hazardous waste or liquid industrial waste is finally disposed of.

Same, changes

23. Subject to section 26, making one or more of the following changes is designated as a project to which Part II.3 of the Act applies:

1. A change to a waste disposal site not described in section 22 if making the change results in the site becoming a site described in paragraph 2, 3 or 4 of that section.

Note, we are proposing to include in this section the following changes to a landfilling site or dump:

- Changing a landfilling site or dump to increase the total waste disposal volume by more than 375,000 cubic metres
- Changing a landfilling site or dump to increase the total waste disposal volume by more than 100,000 cubic metres and less than or equal to 375,000 cubic metres if the change would increase the total waste disposal volume by more than 25%

3. A change to a landfilling site or dump if,
 - i. the change involves the excavation of waste that was previously disposed of at the landfilling site or dump, and
 - ii. the excavation would increase by more than 100,000 cubic metres the amount of waste that could be deposited at the landfilling site or dump without any increase in the total waste disposal volume that the landfilling site or dump is authorized to have under the *Environmental Protection Act*.
4. A change to a landfilling site or dump at which hazardous waste or liquid industrial waste is finally disposed of if,
 - i. the total waste disposal volume of the landfilling site or dump after the change would exceed the total waste disposal volume that the landfilling site or dump was authorized to have under the *Environmental Protection Act* before the change; or
 - ii. the change involves the excavation of waste that was previously disposed of at the landfilling site or dump.
5. A change to a thermal treatment site if,

- i. of the energy or fuel generated by thermal treatment at the site that is used before the change, not all of the energy or fuel is used to dispose of waste, and
 - ii. of the energy or fuel generated by thermal treatment at the site that would be used after the change, all of the energy or fuel would be used to dispose of waste.
6. A change to a thermal treatment site described in paragraph 2 or 3 of section 22 if the amount of waste that would be subject to thermal treatment at the site on any day after the change would exceed the amount of waste that was authorized under the *Environmental Protection Act* to be subject to thermal treatment at the site before the change.
7. A change to a thermal treatment site at which hazardous waste or liquid industrial waste is subject to thermal treatment if the amount of waste that would be subject to thermal treatment at the site on any day after the change would exceed the amount of waste that was authorized under the *Environmental Protection Act* to be subject to thermal treatment at the site before the change.

Waste projects — environmental screening

24. Subject to sections 26 and 27, establishing any of the following waste disposal sites is designated as a project to which Part II.3 of the Act applies:

1. A landfilling site or dump with a total waste disposal volume of 40,000 cubic metres or more but not more than 100,000 cubic metres.
2. A thermal treatment site, if,
 - i. the site does not use coal, oil or petroleum coke as a fuel for thermal treatment at the site, and
 - ii. of the energy or fuel generated by thermal treatment at the site that is used, not all of the energy or fuel is used to dispose of waste.
3. A thermal treatment site, if,
 - i. the site does not use coal, oil or petroleum coke as a fuel for thermal treatment at the site,
 - ii. the maximum amount of waste that is subject to thermal treatment at the site on any day, measured by weight, is 10 tonnes or less, and
 - iii. of the energy or fuel generated by thermal treatment at the site that is used, all of the energy or fuel is used to dispose of waste.

4. A waste disposal site at which waste is handled, treated or processed, if, on an annual basis, an average of more than 1,000 tonnes of waste per day is transferred from the site for final disposal.
5. A thermal treatment site that uses coal, oil or petroleum coke as a fuel for thermal treatment at the site if,
 - i. the site is located at a commercial, industrial or manufacturing facility,
 - ii. the primary purpose of the facility is not the management of municipal waste, hazardous waste, liquid industrial waste or any other kind of waste,
 - iii. more than 100 tonnes of waste are received at the facility per day, and
 - iv. of the energy or fuel generated by thermal treatment at the site that is used,
 - A. all of the energy or fuel is used at the facility, and
 - B. not all of the energy or fuel is used to dispose of waste.

Same, changes

25. Subject to sections 26 and 27, making one or more of the following changes is designated as a project to which Part II.3 of the Act applies:

1. A change to a waste disposal site not described in section 24 if making the change results in the site becoming a site described in paragraph 2, 3, 4 or 5 of that section.

Note, we are proposing to include in this section the following changes to a landfilling site or dump:

- Changing a landfilling site or dump to increase the total waste disposal volume by more than 375,000 cubic metres
- Changing a landfilling site or dump to increase the total waste disposal volume by more than 100,000 cubic metres and less than or equal to 375,000 cubic metres if the change would increase the total waste disposal volume by more than 25%

The proposed provisions will provide that proponents are not able to use the streamlined EA process to do a series of expansions over a defined period of time in order to avoid undertaking a comprehensive EA. The proposed updates to thresholds would not apply to hazardous or liquid industrial waste facilities.

3. A change to a landfilling site or dump if,
 - i. the change involves the excavation of waste that was previously disposed of at the landfilling site or dump, and
 - ii. the excavation would increase by 40,000 cubic metres or more but not more than 100,000 cubic metres the amount of waste that could be deposited at the landfilling site or dump without any increase in the total waste disposal volume that the landfilling site is authorized to have under the *Environmental Protection Act*.
4. A change to a landfilling site or dump described in paragraph 1 or 4 of section 22 or paragraph 1 of section 24 if the rate at which the landfilling site or dump is filled after the change would exceed the rate at which the landfilling site or dump was authorized to be filled under the *Environmental Protection Act* before the change:
5. A change to a thermal treatment site described in paragraph 2, 3 or 5 of section 24 if the amount of waste that would be subject to thermal treatment at the site on any day after the change would exceed the amount of waste that was authorized under the *Environmental Protection Act* to be subject to thermal treatment at the site before the change.
6. A change to a waste disposal site described in paragraph 4 of section 24 if, on an annual basis, the average amount of waste transferred from the site per day after the change would exceed by more than 1,000 tonnes the average amount of waste that was authorized to be transferred from the site for final disposal under the *Environmental Protection Act* before the change.
7. A change to a waste disposal site described in section 22 or section 24 if the geographic area from which the site receives waste after the change would include any area from which the site was not authorized to receive waste under the *Environmental Protection Act* before the change.

Exception, waste projects

- 26.** (1) Sections 22 to 25 do not apply to,
- (a) establishing a waste disposal site if establishing the site is exempt from section 27 of the *Environmental Protection Act* or section 53 of the *Ontario Water Resources Act*;
 - (b) making a change to a waste disposal site if making the change is exempt from section 27 of the *Environmental Protection Act* or section 53 of the *Ontario Water Resources Act*;

- (c) establishing or making a change to a waste disposal site if the only waste deposited, disposed of, handled, stored, transferred, treated or processed at the site is waste that, under Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*, is exempt from Part V of that Act;
- (d) making a change to a waste disposal site if making the change is required by an order made under the *Environmental Protection Act* or the *Ontario Water Resources Act*;
- (e) making a change to a waste disposal site that involves excavating waste that was previously disposed of at the site if the Director is of the opinion that,
 - (i) the primary purpose of the excavation is not to increase the amount of waste that will be deposited at the site, and
 - (ii) all of the purposes of the excavation are appropriate;
- (f) establishing or making a change to a waste disposal site, other than a waste disposal site where liquid industrial waste or hazardous waste is disposed of, if the Director is of the opinion that establishing or changing the site will alleviate an emergency situation that exists by reason of,
 - (i) danger to the health or safety of any person,
 - (ii) impairment or immediate risk of impairment of the quality of the natural environment for any use that can be made of it, or
 - (iii) injury or damage or immediate risk of injury or damage to any property or to any plant or animal life;
- (g) establishing a thermal treatment site and the site would cease operations within 12 months after waste is first received at the site;
- (h) establishing or making a change to a thermal treatment site if,
 - (i) the site is located at a commercial, industrial or manufacturing facility,
 - (ii) the primary purpose of the facility is not the management of municipal waste, hazardous waste, liquid industrial waste or any other kind of waste,
 - (iii) not more than 100 tonnes of waste are received at the facility per day, and
 - (iv) of the energy or fuel generated by thermal treatment at the site that is used,

- (A) all of the energy or fuel is used at the facility, and
 - (B) not all of the energy or fuel is used to dispose of waste;
- (i) establishing or making a change to a thermal treatment site if,
 - (i) the site is located at a commercial, industrial or manufacturing facility,
 - (ii) the primary purpose of the facility is not the management of municipal waste, hazardous waste, liquid industrial waste or any other kind of waste,
 - (iii) all the waste that is subject to thermal treatment at the site is generated at the facility, and
 - (iv) of the energy or fuel generated by thermal treatment at the site that is used, all of the energy or fuel is used to dispose of waste;
 - (j) establishing or making a change to a landfilling site or dump if,
 - (i) the landfilling site or dump is owned by a person engaged in forest products operations,
 - (ii) no hazardous waste or liquid industrial waste is deposited at the landfilling site or dump,
 - (iii) the only waste deposited at the landfilling site or dump is produced by the person who owns the landfilling site or dump or by other persons engaged in forest products operations, and
 - (iv) the waste deposited at the landfilling site or dump is predominantly solid process waste, such as woodwaste, effluent treatment solids, hog-fired boiler ash, recycling process rejects, lime mud, grits or dregs;
 - (k) making a change that is exempt from being the subject matter of a hearing under section 20.15 of the *Environmental Protection Act* under section 5.2 of Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act* if the change is to a landfilling site and the change increases,
 - (i) the service area of the landfilling site, or
 - (ii) the rate at which waste may be received at the landfilling site from areas within its service area;

- (l) The project is an undertaking of a type to which an approved class environmental assessment applies; or
- (m) The project is establishing or making a change to a waste disposal site that is a renewable energy generation facility.

(2) Despite clause (1) (m), a project described in that clause is designated as a project to which Part II.3 of the Act applies if any of the following criteria are met:

1. The facility has a name plate capacity of less than or equal to 500 kW and on an annual basis, less than 90 per cent of the electricity generated at the facility is generated from a renewable energy source.
2. The facility has a name plate capacity of greater than 500 kW and on an annual basis, less than 95 per cent of the electricity generated at the facility is generated from a renewable energy source.
3. The facility,
 - i. changes or was changed from a generation facility that uses or used coal as its primary power source, and
 - ii. has a name plate capacity of greater than 500 kW and on an annual basis, generates at least 95 per cent of its electricity from biomass within the meaning of Ontario Regulation 160/99 (Definitions and Exemptions) made under the *Electricity Act, 1998*.
4. The renewable energy generation facility is a thermal treatment facility as described in paragraph 12 of subsection 9 (1) of Ontario Regulation 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act) made under the *Environmental Protection Act*.
5. Before September 24, 2009 any of the following criteria were met:
 - i. The proponent was authorized under Part II or II.1 of the Act to proceed with the project.
 - ii. The proponent issued or published a notice of completion in respect of the renewable energy generation facility and entered into a power purchase agreement with the Ontario Power Authority in respect of the supply of renewable energy from the facility.
 - iii. A statement of completion was filed with the Director of the Environmental Assessment and Approvals Branch in respect of the renewable energy generation facility and all of the approvals, permits and other instruments

mentioned in subsection 47.3 (1) of the *Environmental Protection Act* that are required to construct, install, operate or use the facility have been obtained.

Part II.3 exemption — environmental screening process

27. (1) A project designated as a Part II.3 project under section 24 or 25 is exempt from Part II.3 of the Act if,

- (a) the project is not described in section 22 or 23; and
 - (b) the project is carried out in accordance with the Environmental Screening Process for Waste Management Projects.
- (2) Despite subsection (1), a project is not exempt from Part II.3 of the Act if,
- (a) the Minister issues a notice, in accordance with the Environmental Screening Process for Waste Management Projects, requiring the proponent to prepare an environmental assessment in respect of the project;
 - (b) the proponent applies under subsection 17.2 (1) of the Act to proceed with the Part II.3 project; or
 - (c) the project is deemed to be a Part II.3 project under section 38.3 of the Act.

**PART V
OTHER PROJECTS**

Part II.3 highway projects, comprehensive environmental assessments

28. (1) Establishing a highway is designated as a project to which Part II.3 of the Act applies if the highway,

- (a) is at least 75 kilometres in length;
 - (b) has at least two lanes in each direction;
 - (c) has a median strip that divides traffic moving in opposite directions;
 - (d) has access points that are primarily grade-separated interchanges; and
 - (e) has a posted speed limit of at least 80 kilometres per hour.
- (2) The length of highway referred to in clause (1) (a) does not include,
- (a) the length of any existing highway; or

- (b) the length of any highway that is part of a project or undertaking that has been authorized to proceed under the Act.

(3) For the purposes of subsection 3 (3) of the Act, activities that are ancillary to a project described in subsection (1) include the following activities:

1. Making a change to an existing highway as part of establishing a highway under subsection (1).
2. Constructing any of the following as part of establishing a highway under subsection (1):
 - i. Patrol yards.
 - ii. Truck inspection stations.
 - iii. Rest areas.
 - iv. Commuter parking lots.
 - v. Travel information centres.
 - vi. Service centres.
 - vii. Facilities where road maintenance materials such as salt or sand are stored.
 - viii. Road weather information stations.
 - ix. Any other thing related to the maintenance or operation of the highway.

(4) In this section,

“grade-separated interchange” means an intersection that uses a highway ramp to connect two intersecting highways vertically separated by means of a bridge or other structure;
 (“FRENCH”)

“highway” has the same meaning as in subsection 1 (1) of the *Highway Traffic Act*; (“voie publique”)

“median strip” has the same meaning as in subsection 1 (1) of the *Highway Traffic Act*. (“terre-plein central”)

Part II.3 rail line projects, comprehensive environmental assessments

29. (1) Establishing a rail line that is at least 50 kilometres in length and that is used for passenger or freight is designated as a project to which Part II.3 of the Act applies.

(2) The length of rail line referred to in subsection (1) does not include,

- (a) the length of any existing rail line;
- (b) the length of any rail line that is alongside and contiguous to an existing rail line;
- (c) the length of any rail line that is part of a project or undertaking that has been authorized to proceed under the Act; or
- (d) the length of any rail line that is to be established in a right of way that contained a rail line within the 10-year period before the day the construction of the length of rail line begins.

(3) For the purposes of subsection 3 (3) of the Act, activities that are ancillary to a project described in subsection (1) include the following activities:

- 1. Making a change to an existing rail line as part of establishing a rail line under subsection (1).
- 2. Constructing any of the following as part of establishing a rail line under subsection (1):
 - i. A new station.
 - ii. A new passenger pick-up/drop off area.
 - iii. A new park-and-ride lot.
 - iv. A new grade separation.
 - v. A new storage yard.
 - vi. A new maintenance facility.
 - vii. A new rail yard.
 - viii. Any other thing related to the maintenance or operation of the rail line.

ONTC transportation projects — project assessment

30. (1) Subject to section 31, the following activities are designated as projects to which Part II.3 of the Act applies if the activity is carried out by the Ontario Northland Transportation Commission:

1. Establishing a rail line for passengers or freight if the establishment is not designated under section 29 as a project to which Part II.3 of the Act applies.
2. Constructing any of the following in or adjacent to a sensitive area:
 - i. A new station.
 - ii. A new passenger pick-up/drop off area.
 - iii. A new park-and-ride lot.
 - iv. A new grade separation.
 - v. A new storage yard.
 - vi. A new maintenance facility.
 - vii. A new rail yard.
3. Repairing or replacing a culvert associated with a rail line, if the repair or replacement changes the capacity of the culvert or drainage area.
4. Reconstructing a water crossing associated with a rail line, if the reconstructed water crossing will not have the same location, purpose, use or hydraulic capacity as it had before the reconstruction.
5. Constructing or making a change to tracks to increase the rail service on an existing rail line, including:
 - i. Constructing additional mainline tracks or passing tracks.
 - ii. Making a change to existing mainline tracks or passing tracks.
 - iii. Constructing short sections of track to maintain continuity of an existing rail line or to address capacity requirements.
 - iv. Constructing or relocating a storage yard.

(2) Subsection (1) does not apply to,

- (a) establishing a rail line wholly within a right of way that contained a rail line at any time during the 10-year period before the day the construction of the rail line begins; or
- (b) constructing tracks if the only tracks being constructed are passing tracks or tracks for a spur line that are,
 - (i) less than 1.5 kilometres in length; and
 - (ii) not located in or adjacent to a sensitive area.

(3) For the purposes of subsection 3 (3) of the Act, activities that are ancillary to a project described in paragraph 1 of subsection (1) include the following activities:

1. Making a change to an existing rail line as part of establishing a rail line under paragraph 1 of subsection (1).
2. Constructing any of the things listed in paragraph 2 of subsection (1) as part of establishing a rail line under paragraph 1 of subsection (1), whether or not the thing is constructed in or adjacent to a sensitive area.
3. Constructing any other thing related to the maintenance or operation of the rail line as part of establishing a rail line under paragraph 1 of subsection (1).

(4) In this section,

“passing tracks” means rail tracks adjacent and parallel to a main rail line with a switching point at each end that are used to allow trains to pass one another; (“FRENCH”)

“spur line” means a rail line connected to a main rail line with a single switching point that is used to provide persons with access to a train for the purposes of loading and unloading goods from the train. (“FRENCH”)

Part II.3 exemption – project assessment process

31. (1) A project designated as a Part II.3 project under section 30 is exempt from Part II.3 of the Act if the project is carried out in accordance with the project assessment process set out in Ontario Regulation 231/08 (Transit and Ontario Northland Transportation Commission Project Assessment Process).

(2) Despite subsection (1), a project is not exempt from Part II.3 of the Act if,

- (a) the Minister issues a notice, in accordance with the project assessment process set out in Ontario Regulation 231/08 (Transit and Ontario Northland Transportation

Commission Project Assessment Process), requiring the proponent to prepare an environmental assessment in respect of the project;

- (b) the proponent applies under subsection 17.2 (1) of the Act for approval to proceed with the Part II.3 project;
- (c) the project is deemed to be a Part II.3 project under section 38.3 of the Act; or
- (d) the project is an enterprise or activity that is ancillary to a project described in section 29.

Part II.3 waterfront projects, comprehensive environmental assessments

32. (1) Establishing one or more works is designated as a project to which Part II.3 of the Act applies if the works, taken together,

- (a) alter at least one kilometre of shoreline in the Great Lakes-St. Lawrence River system; and
- (b) require at least four hectares of lakebed or riverbed in the Great Lakes-St. Lawrence River system to be filled.

(2) For greater certainty, if a single works or any combination of works satisfies clause (1) (a) and (b), the works or combination of works is a Part II.3 project.

(3) The length of shoreline in clause (1) (a) and the area of lakebed or riverbed in clause (1) (b) does not include the length of any shoreline or area of any lakebed or riverbed, respectively, of a tributary of the Great Lakes-St. Lawrence River system, other than the mouth of the tributary.

(4) In this section,

“Great Lakes-St. Lawrence River system” means the major water system consisting of,

- (a) Lake Ontario, Lake Erie, Lake Huron, Lake Superior and Lake St. Clair,
- (b) the St. Marys, St. Clair, Detroit, Niagara and St. Lawrence Rivers, and
- (c) the mouth of any tributary to a water body mentioned in clause (a) and (b);

“works” means any thing that may be established on or near a waterfront including a beach, berm, breakwall, channel, island, marina, pier or riprap.

PART VI
EXEMPTIONS — PRE-TRANSITION DATE PROJECTS

Definition

33. In this Part,

“Part II.3 transition date” means the day section 29 of Schedule 6 to the *COVID-19 Economic Recovery Act, 2020* comes into force. (“FRENCH”)

Establishing — rail lines

34. (1) Any project designated as a Part II.3 project under section 29 is exempt from Part II.3 of the Act if,

- (a) construction of the thing commenced before the Part II.3 transition date; and
- (b) when the construction of the thing commenced, the Act did not apply in respect of the project.

(2) The exemption in subsection (1) ceases to apply on the fifth anniversary of the Part II.3 transition date unless the construction of the thing is substantially completed before that date.

Establishing — ONTC projects

35. (1) Any project designated as a Part II.3 project under section 30 is exempt from Part II.3 of the Act if,

- (a) construction of the thing commences before October 31, 2022; and
- (b) before the Part II.3 transition date, construction of the thing was exempt from the Act.

(2) The exemption in subsection (1) ceases to apply on October 31, 2027 unless the construction of the thing is substantially completed before that date.

Establishing — waterfront projects

36. (1) A project designated as a Part II.3 project under section 32 is exempt from Part II.3 of the Act if,

- (a) before the Part II.3 transition date,
 - (i) the Remedial Flood and Erosion Control Projects Class Environmental Assessment applied to the project, and
 - (ii) a Notice of Intent was published in respect of the project under the Remedial Flood and Erosion Control Projects Class Environmental Assessment; or

(b) construction of the thing commenced before the Part II.3 transition date and, when the construction of the thing commenced, the Act did not apply in respect of the project.

(2) For greater certainty, a reference to a project in clause (1) (a) is a reference to a project that was an undertaking or a part of an undertaking before the Part II.3 transition date.

(3) The exemption in clause (1) (b) ceases to apply on the fifth anniversary of the Part II.3 transition date unless the construction of the thing is substantially completed before that date.

(4) In this section,

“Remedial Flood and Erosion Control Projects Class Environmental Assessment” means the Class Environmental Assessment for Remedial Flood and Erosion Control Projects approved by the Lieutenant Governor in Council on June 26, 2002 under Order in Council 1381/2002 as amended or renamed from time to time.

PART VII REVOCATION OF OTHER REGULATIONS AND COMMENCEMENT

Revocation

37. The following Regulations are revoked:

1. Ontario Regulation 116/01.
2. Ontario Regulation 101/07.

Commencement

38. [Commencement]