

Laura Bowman
Counsel
Ecojustice Canada
1910-777 Bay Street, PO Box 106
Toronto, Ontario M5G 2C8
Tel: 416-368-7533 ext. 522
Fax: 416-363-2746
Email: lbowman@ecojustice.ca
File No.: 0002015

October 29, 2020

The Honourable Minister Jeff Yurek
Ministry of the Environment, Conservation and Parks
777 Bay St., 7th Floor
Toronto, Ontario M7A2J3
minister.mecp@ontario.ca

Sarifa Wyndham-Nguyen
Client Services and Permissions Branch
EA Modernization team
Eamodernization.mecp@ontario.ca

Dear Ministers and EA Modernization Team,

Re: ERO 019-2377 – Proposed Project List for comprehensive assessments under the *Environmental Assessment Act*

We, the undersigned organizations are writing to object to the above ERO posting for the proposed regulatory project list on the grounds that it does not meet the mandatory requirements of Part II of the *Environmental Bill of Rights* (EBR).¹

In our view, the posting does not provide a “brief description of the proposal”, nor does it explain the objectives of the proposal or the environmental, social and economic impacts of the proposal as required by section 27 of the EBR. Accordingly, the notice is inadequate, does not permit meaningful consultation, and does not comply with the requirements of the EBR.

In particular, the proposal is vague and lacking in key details including but not limited to the absence of draft regulatory language, the absence of definitions, contradictions internal to the posting and with other recent ERO postings,² a complete lack of information on some proposals

¹ *Environmental Bill of Rights, 1993*, SO 1993, c 28

² Environmental Assessment: Amendment proposals for Class EAs (ERO 019-1712); Proposed exemptions for projects in parks and conservation reserves (ERO 019-1804); Proposal to exempt projects or activities related to land claim settlements from the EAA (019-1805); Proposal to exempt various Ministry of Transportation projects from the EAA (ERO 019-1883); Proposal regulation for a streamlined environmental assessment process for the Ministry Of Transportation’s GTA West Corridor project (ERO 019-1882).

and a complete lack of information about the nature, extent and scope streamlined EAs for the projects not on the list. In addition, contrary to section 11 of the EBR, neither the Registry notice nor the proposal itself explain how – or whether – the environmental principles in the MECP’s Statement of Environmental Values under the EBR (i.e. precautionary, science-based approach; ecosystem approach, etc.) were considered or applied during the development of the draft project list.

The absence of regulatory language absolutely prevents meaningful consultation. As the Environmental Commissioner has commented, the refusal or failure to produce regulatory language in a posting under s.16 of the EBR is not in keeping with the public consultation and environmental protection objectives of the EBR.³ It is our position that a “brief description of the proposal” requires regulatory language for a posting under s.16. Further, the Ministry in public consultations following the enactment of Bill 197 made a commitment in writing to consult on the proposed regulations themselves.⁴

As a practical matter, the intent of the proposal is unclear as a result of the lack of detail and lack of regulatory language. Numerous terms in the proposal are newly introduced and not defined anywhere. It is impossible to understand what is intended by the use of these terms. Without draft regulatory language the proposals are also difficult or impossible to compare to existing regulations and requirements.

It is impossible to meaningfully comment on the proposed comprehensive project list without any information about the proposed streamlined EA process. For example, some projects have traditionally been subject to elevated EA processes that are equivalent to a comprehensive EA in many respects through the Class EA processes. These include for example “Schedule C” projects under the Municipal Class EA process or “Group A” transportation projects under the MTO Class EA. These are not included in the proposed comprehensive project list but there is no explanation of these omissions given that the Class EA documents describe them as major new projects with the potential for significant effects. It is unknown whether they would be included in the streamlined EA list or whether a streamlined EA would be similar to these existing processes or not.

The proposal also conflicts with and/or contradicts several other July 8, 2020 ERO postings including postings amending various class EA processes, and proposing exemptions for various categories of EAs. For example, in relation to the proposal to transition existing individual EAs as comprehensive EAs, no mention is made of the recent governmental decisions and proposals to exempt forestry, parks and conservation reserves, highway and land claims projects from the existing EA process. It is therefore unclear if numerous categories of projects as well as individual projects are proposed for transition or not. No draft regulatory language for a

³ Environmental Commissioner of Ontario, “Serving the Public” Annual Report 2012/2013, p.13; Environmental Commissioner of Ontario, “Managing New Challenges” Annual Report 2013/2014, p.13-14.

⁴ Public Consultation (Zoom) regarding Bill 197, July 21, 2020 at 14:52pm Laura Bowman from Ecojustice asked “will the regulations also be posted for comment?” and at 14:55 Sharifa Wyndham-Ngueyen (MECP) responded “Proposed regulations will be posted for public comment.” (emphasis added).

transition regulation is provided. Questions about specific projects and categories sent to the Ministry during the consultation period on this proposal have gone unanswered.

Further, the proposal is internally inconsistent and conflicting. For example, in the portions of the MECP chart dealing with electricity projects, the language introducing the proposals suggest that no change is proposed from existing regulations. However, numerous changes are included within the text (including uses of different terms and language), and coverage of some projects that currently require an individual EA under those regulations, but not others.

The proposal is also inconsistent with other open ERO postings from this year. The Ministry has included several postings on the ERO registry that cover the same subject matter but propose entirely different things. This includes the July 8th ERO proposals mentioned above, making changes to both Class and individual EAs, as well as a recent posting proposing streamlined EA for certain electricity projects.

To make matters worse, some proposals in the project list (e.g. conservation projects and mining) are not actually proposals but general requests for feedback. There is no detail whatsoever about what mining or conservation projects are proposed to be included. This is compounded by the absence of a proposed regulation.

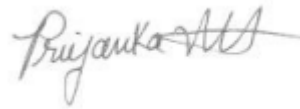
Finally, since Schedule 6 of Bill 197 was enacted without any public notice/comment opportunities under Part II of the EBR, we were deprived of a meaningful opportunity to comment on the fact of the use of the project list, which we strongly oppose. The Ministry has provided no information on the predictability of the effects or the severity of the potential effects of projects with which to generate such a list, and no rationale or explanation for the proposed project entries or thresholds are provided in the ERO posting. The ERO posting is therefore further defective in that it does not explain the effect of these proposals on the environment as required in s.27(5) of the EBR.

Our position is that this proposal cannot and does not meet the definition of a “brief description of the proposal” for the purposes of mandatory consultation under s.16 of the *Environmental Bill of Rights*. We require that you re-post the proposal, together with adequate particulars and supporting documentation, so that we may provide meaningful comments. Any comments submitted on this proposal within the comment deadline by the undersigned organizations are accordingly under protest until such time as draft regulatory language for the comprehensive project list and the streamlined project list and process is included in the EBR and provided for at least 30 days of public comment.

Sincerely,



Laura Bowman
Staff Lawyer
Ecojustice



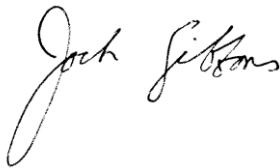
Priyanka Vittal
Legal Counsel
Greenpeace Canada



Tim Grey
Executive Director
Environmental Defence



environmental
defence



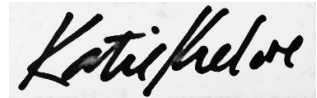
Jack Gibbons
Ontario Clean Air Alliance



ONTARIO
CLEAN AIR
ALLIANCE



Anna Baggio
Conservation Director
Wildlands League



Katie Krelove
Ontario Campaigner
Wilderness Committee



WILDERNESS
COMMITTEE

Cc: Auditor General of Ontario

The Honourable Minister Steve Clark minister.mmah@ontario.ca

The Honourable Minister Caroline Mulroney minister.mto@ontario.ca

The Honourable Minister John Yakabuski minister.mnrf@ontario.ca

The Honourable Minister Greg Rickford minister.mndmia@ontario.ca