



Laura Bowman

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

The Honourable Minister Jeff Yurek
Minister of the Environment, Conservation and Parks
777 Bay Street, 7th Floor
Toronto, Ontario M7A2J3

Dear Minister Yurek and EA Modernization Team,

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

Ecojustice is a national environmental law organization with offices across Canada. For more than 25 years we have gone to court to protect wilderness and wildlife, challenge industrial projects, and keep harmful chemicals out of the air, water, and ecosystems we all depend on. We represent community groups, non-profits, Indigenous communities and individual Canadians in the frontlines of the fight for environmental justice. This submission is made on behalf of Ecojustice and not on behalf of any client organization.

As noted in our letter dated October 29, 2020 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, 1993 (EBR)* or explain the environmental consequences of the proposal as required under s.27 of the EBR and is therefore unlawful. We require that you re-post the proposal so that we may provide meaningful comments. The below comments are under protest as our comments are made from a position of not having a meaningful understanding of the proposal or its environmental consequences.

General comments

There is no factual basis for the identification of projects in the project list

The project list is not defensible or reasonable. No rationale is provided explaining why specific categories of projects were included or excluded. The posting indicates that this was done based on the Ministry's experience with the significance of effects. However, we are aware that the Ministry does not audit completed EAs to determine if the effects that were predicted were accurate. Accordingly, the Ministry does not have "experience" sufficient to make this determination.

Even in the case of individual EAs under Part II of the former Act, the Auditor General noted in 2016 that the Ministry "cannot determine if the environmental assessment process is effective in preventing and/or mitigating the negative environmental impact of assessed projects."¹ The Ministry does not ensure that project owners submit information on effects monitoring.² Even where it is submitted, it is not clear that the Ministry actually reviews the monitoring data or ensures that it complies with the requirements in the EA or subsequent approvals. For example, in the case of the Victor Mine, our client, Wildlands League, identified failures to report that were not known to the Ministry. The Auditor's report contains other examples. The Auditor's 2018 report found there was little or no progress on identifying the effectiveness of assessments.³

The Auditor also noted that "The type of assessment required for a particular project is often not based on the project's potential for environmental impact."⁴ The 2018 Auditor's report notes that little or no progress was made on improving the criteria for assessments.⁵ There have been only minor proposed amendments to Class EAs to address this. By essentially maintaining this flawed system, the proposed project list continues to exempt projects from comprehensive EA that may have significant adverse effects.

Failure to include higher tier assessments from Class EAs

The vast majority of existing EA processes entailing potentially significant effects are with respect to Class EAs, or streamlined EAs under various regulations which are self-approval processes. The Ministry does not approve or oversee these projects, nor does it audit them for compliance or to determine if the effects are significant. In 2016, the Auditor General reviewed Ontario's Environmental Assessment regime. The Auditor also noted that "The Ministry has no assurance that streamlined assessments are conducted properly."⁶ In fact, the Ministry does not have information on or even an estimate of how many streamlined assessments are completed each year. The Auditor found that project owners did not even notify the Ministry that these

¹ Auditor General of Ontario, *2016 Annual Report*, Chapter 3, section 3.06 – Environmental Assessments p.368 ["Auditor 2016"] https://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1_306en16.pdf.

² Ibid p.370.

³ Auditor General of Ontario, *2018 Annual Report*, Chapter 1, section 1.06 –Environmental Assessments, p.99 ["Auditor 2018"].

⁴ Auditor 2016, p.339.

⁵ Auditor 2018 p.92.

⁶ Auditor 2016, p.340

assessments were being completed.⁷ The Ministry has no knowledge of whether there are significant effects from these projects. Indeed many Class EA documents acknowledge that projects in higher-tiers of the Class EAs, have the potential for significant environmental effects. Examples are set out in Schedule A to these comments. **It is our position that all such elevated Class EA projects merit consideration for inclusion in the project list.**

With the removal of Part II order requests through amendments to s.16 of the *Environmental Assessment Act (EAA)* in Bill 197, there is now no Ministry oversight or procedure capable of migrating elevated Class EA projects to comprehensive EA. As noted above, the Ministry has no procedure to monitor or identify projects such that the Minister would be in a position to identify projects requiring elevation. The Ministry will have to rely on informal Part II.3 order requests to identify projects which may have significant effects. By virtue of the amendments to s.16 it is not clear if the Minister has jurisdiction to entertain such requests. The result is that there is no realistic mechanism for elevating streamlined EA to comprehensive EA under the new scheme. Further, many of the existing Class EAs use a screening process to either exempt or elevate projects covered by them to individual EA. There is no screening process in Bill 197 to identify streamlined EAs that may require a comprehensive EA. The Ministry will simply be unaware of the significance of effects for these projects.

Ontario is out of step with other jurisdictions

Taken as a whole, the project list is not in line with the scope of projects included in other jurisdictions particularly with respect to private sector projects. In her 2016 Annual Report, the Auditor noted that “many private-sector projects with the potential to harm the environment go ahead without adequate consideration of their impacts, or even without determining whether the project should proceed in the first place.”⁸ The 2005 program review by the Environmental Assessment Advisory Panel also recommended that whether or not EA was applied “should depend on the environmental benefits and risks of a project rather than merely whether the project is undertaken by the public or private sector.” However, the proposed project list merely maintains this distinction with few exceptions. Appendix 9 of the Auditor General’s 2016 report provides examples of how private sector projects are handled in other jurisdictions. Examples of projects which are still excluded include exploration, mining, quarries, large tourist resorts, manufacturing, and oil drilling.

Ontario unreasonably identifies duplication as a rationale for excluding some projects, but not others

On the issue of duplication, Ontario has fundamentally misunderstood the role of other regulatory processes and their serious limitations.

First, the federal *Impact Assessment Act (IAA)* only requires assessments for projects that have “effects within federal jurisdiction” such as on fisheries, species at risk or migratory birds (IAA s.9(1)). The fact of designation of a project does not mean that it would be assessed federally or

⁷ *Ibid.* p.356-7.

⁸ Auditor 2016, p.348.

that the scope of factors in a federal assessment would necessarily be equivalent to those reviewed in a provincial EA. The IAA has ample provisions addressing harmonization to avoid duplication with any provincial EA. It is therefore illogical to scope provincial EA in relation to federal EA. The only relevance of federal EA is that the designated projects are ones for which the Minister has considered potential adverse impacts to be potentially significant.

Second, the Auditor General has already commented in her 2016 Annual Report that other regulatory processes are “no substitute for environmental assessment” because they do not consider issues like need, alternatives, or the social, cultural or economic impacts of the projects or their associated impacts. A diverse range of projects have some sort of regulatory approval – for example under the *Environmental Protection Act* associated with their operations. These approvals work out the operational details of the project, such as emissions limits and operational procedure, or reporting requirements. They do not review whether – taken as a whole – the project is good policy from the point of view of environmental, social, cultural or economic considerations. These processes typically do not provide for broad public participation, they do not assess need, alternatives or cumulative effects. Many of these processes actually rely on the documentation provided in the EA process to develop regulatory conditions and parameters. In the absence of EA there will be inadequate information about potential project effects to inform permitting. Ontario has shown again and again through numerous regulatory postings on the environmental registry that it simply and fundamentally does not understand the difference between detailed approvals and a broad planning process like EA. This posting is no different.

Failure to include proposals, plans and programs

The new definition of “project” includes a proposal, plan or program in respect of an enterprise or activity. However, no “proposals, plans or programs” have been included in the proposed project list.

On this point, the Registry notice claims that the former Act’s automatic inclusion of governmental plans under the EAA resulted in the “need” to exempt such plans from EA coverage. A similar claim is made in the MECP’s consultation materials. We are not aware of any rationale for this alleged “need”. The types of projects which have been exempted in the past are provincial planning policies, power system planning and other major strategic policy decisions with wide ranging impacts on the environment. The Ministry does not explain why no policies, plans or programs have the potential for significant environmental effects.

The Auditor General of Ontario has correctly concluded that: “the impact of government plans and programs can have a broader and longer-term impact compared to individual projects, and therefore warrant a thorough assessment beyond that which is possible for individual projects”.⁹ Ontario has provided no information regarding why they have excluded strategic policy assessments from the project list. The failure to include these is not in line with international best practices.

⁹ Auditor 2016.

Specific Comments – Proposed Project List

Transition provisions

The transition provisions are unclear and impossible to comment on. In principle it is agreed that all Part II projects should be transitioned in as Part II.3 projects. However, the ERO posting conflicts with other ERO postings proposing exemptions for existing Part II projects.

Accordingly, it is impossible to comment as it is entirely unclear what the intention of this proposal actually is. No regulatory language is provided and the wording of the ERO posting is incredibly vague and difficult to understand. All Part II projects should be transitioned in, including those for which there are currently exemptions or proposed exemptions dated from this year including:

- Land claims related projects
- Projects in parks and conservation reserves
- Forestry
- Highways

For example, with respect to highways, would existing highway EAs be continued or would they be modified in accordance with the above ERO proposals? Would they be exempted altogether? The transition commentary in the ERO posting is incomprehensible in this regard. All such projects should be transitioned as Part II.3 projects.

Electricity projects

Currently, electricity projects are governed by a combination of different EA processes including Regulation 116/01, Regulation 101/07 and Class EAs such as the Waterpower Class EA and the Hydro One Class EA.

Fundamentally, the features proposed to determine whether an electricity project should be subject to EA are unreasonable and have no relationship to potential environmental impact. The number of kv in a transmission project, for example, is not a relevant factor in determining whether the project may have significant adverse effects. To the extent that these types of thresholds are used, they are far higher than those used in other jurisdictions, where projects in the range of 5 or 10 MW (for example in Quebec). Ontario has not explained why these projects may cause significant effects in other jurisdictions but not in Ontario.

The proposal claims that it proposes no change from the existing Regulation 116/01. However, the more specific language underneath this comment in the proposal contains numerous differences and appears to be drawn from the *Guide* not the regulation itself:

- Reg 116/01 refers to the designation of “planning, designing, establishing, constructing, operating, changing, expanding or retiring...” and it provides that “significant modifications” are subject to various levels of screening process. The list of designated projects refers only to the designation of “new” projects. Then “significant modifications” appear also to be designated in some way. It is not

clear how modifications and expansions are actually being treated.

- Reg 116/01 appears to provide for the designation of transformer stations over 115 kv, however the *Guide* to the regulation references category C EA of transformer stations greater than 500 kv. This proposal would designate using the 500 kv threshold.
- Reg 116/01 excluded transmission associated with another listed project, it is not clear if this exemption is being maintained.
- Reg 116/01 uses the terminology “uses water power as its primary power source” whereas this proposal uses the term “hydroelectric facility” and the latter is not defined.
- Reg 116/01 designates a generation facility that “uses coal as its primary power source” (s.3(1)1) although the *Guide* to the regulation claims that coal is exempt. The EBR decision posting for Reg 116/01 confirms that “all coal fired generation will be subject to an individual EA.” This proposal would exclude the designation of coal.
- According to the *Guide*, Reg 116/01 designated Municipal solid waste for which an EPA s.30 hearing would be required (1,500 persons domestic waste or more) or that incinerates more than 100 tonnes per day MSW.
- According to the *Guide*, Reg 116/01 also designated incineration of industrial or hazardous waste generated offsite.
- Reg 116/01 provides various exemptions – for example for transmission associated with another project. It is not clear if these are being maintained or not.
- The posting does not indicate whether the existing definitions and terms in Reg 116/01 will be used or if different definitions would be proposed.

Accordingly, the posting is misleading to the extent that it suggests that it aligns with the existing Reg 116/01.

Further, the proposal does not include any projects, even larger more complex projects that are included in the existing Hydro One Class EA. The Rationale for the Hydro One Class EA is said to be that it includes projects which “occur frequently.” This is not relevant to whether these projects may cause significant effects. Further, the Hydro One Class EA states that it relates to projects that are “small in scale and have a predictable range of effects”, however, no evidence is publically available and no audits have been conducted of these projects to demonstrate this. We disagree with the claim in the Class EA that “the large number of projects that have successfully

been carried out using the Class EA process to date suggests that the process has been satisfactory.” There is no factual justification for the exclusion of these projects from comprehensive EA.

The Waterpower Class EA includes new waterpower projects associated with existing infrastructure, and new projects on managed and unmanaged waterways. It notes that such projects have “the potential for site specific effects” or “the potential for localized and up and downstream effects” or “potential broad scale effects and/or regional concerns”. The Waterpower Class EA identifies Category C projects as projects with the potential for significant net effects – these currently require a full EA. The proposed comprehensive EA project list only includes hydroelectric facilities that have a capacity equal to or greater than 200 MW. It fails to include significant modifications of existing generation facilities with a capacity of 200 MW or more which are currently included in the Waterpower Class EA. There is no demonstrated relationship between the number of megawatts and the environmental risks of waterpower projects. Further, there is no explanation regarding modifications to existing waterpower facilities which are currently grandfathered in under the electricity projects regulation or Waterpower Class EA.

Ecojustice does not support the electricity projects proposal. It contains no rationale for the current scheme in Reg 116/01, nor any explanation of the proposed changes. The potential impacts of Electricity Projects are site specific and project specific. They do not relate to the criteria used in the Hydro One Class EA or Reg 166/01.

It is particularly unjustifiable to maintain a streamlined process for the remaining electricity projects in the absence of any process for oversight by the Ministry under Bill 197. There is no opportunity for the public to request that the Ministry review the streamlined projects for potential site specific or project specific impacts after Bill 197. Accordingly, this requires a very broad scoping of projects for individual EA to ensure that there is a ministerial approval process for projects that may have serious impacts. The Ministry cannot just robotically adopt the previous process as the context has fundamentally changed after Bill 197.

Because the Ministry has, without any public consultation, decided to eliminate Part II order requests – the rationale for broad inclusion of electricity projects in the Class EA process rather than the comprehensive EA process no longer exists. As noted above, the Ministry provides no oversight for such projects and has no knowledge of whether they are accurately predicting effects, whether the effects are significant, and whether they have a predictable range of effects. There is simply no factual basis for Cabinet to enact this regulation excluding such projects from Comprehensive EA and to do so would be manifestly unreasonable.

Notable items that are absent from the list are diverse and include smaller transmission and hydropower facilities, wind, solar, hydrogen fuel, any “other” fuel source, natural gas, biomass, landfill gas/biogas, waste biomass, cogeneration, nuclear power, small nuclear reactors, petroleum coke, coal, and energy from waste. **All of these should be included in the project list as they have the potential for significant adverse environmental effects.** The thresholds used in the existing Reg 116/01 are not environmentally justified as they have no relationship to the potential environmental impacts of the project. There is no apparent logic or environmental

justification to the thresholds used or the projects which are included. Under this project list proposal, a proposal for a new transmission line on a new right of way through pristine Caribou habitat is treated the same as one using an existing urban right of way. Consideration of fossil fuel use and greenhouse gas emissions, odour, noise or air emissions is entirely absent.

All nuclear facilities for energy production as well as the storage of nuclear waste should receive an individual EA on the basis that they have the potential for significant environmental impacts. Small nuclear reactors are currently exempt from federal impact assessment. Large nuclear reactors are subject to impact assessment only in respect of federal effects. No explanation is provided why these are not included.

Waste management projects

As with the electricity projects section, the proposal claims that it would maintain existing thresholds under Regulation 101/07. Again, as with the electricity projects there is no justification for maintaining existing thresholds in light of the removal of public Part II order requests. The original waste management project regulation was posted for comment in 2006.

Refusal to include energy from waste projects is unjustifiable

At the time of passing Regulation 101/07 the exemption of energy from waste projects from comprehensive EA was extremely controversial and this is reflected in the posting. The EBR posting notes as follows:

Comments were received indicating that energy from waste sites should not benefit from the Environmental Screening process, but should instead be subject to an individual Environmental Assessment process. The government considered a number of factors in maintaining the Environmental Screening process for these sites, including land use impacts, benefits of energy generation, predictability of emissions and reliability of contemporary pollution controls.

This analysis has proven untrue. The last energy from waste facility which we are aware of that received an individual EA was the Durham-York incinerator. The effects and emissions from this facility have been anything but predictable and the emissions controls have not proven reliable. The Durham-York facility has reportedly experienced major dioxin/furan exceedances of unknown duration and frequency as well as carbon monoxide exceedances, ambient air exceedances for benzopyrene, and other substances. The original EA predicted considerable increases in NO₂, resulting in the identification of health concerns. Moreover, such facilities have frequently suffered from cumulative effects issues related to air and water quality which are not adequately addressed in a streamlined regulatory process. EFW facilities as well as expansions and modifications to those facilities require a full comprehensive EA to accurately identify and mitigate potential environmental and health impacts.

In general, the expansion provisions of the existing regulation are illogical, particularly for landfills. There is no relationship between the landfill expansion provisions and potential environmental impact as it does not differentiate based on footprint, proximity to waterways, residences, groundwater resources or natural heritage, nor on the type of waste, liner or other

considerations relevant to impact. No rationale is used why the ECA limit is not the threshold for an EA in landfill expansions, as it is in regards to expansions of thermal treatment and hazardous waste facilities.

The original Reg 101/07 EBR posting claimed that individual EA would be required for “large-scale projects with potential significant impacts”, while those with “predictable environmental impacts that can be readily mitigated” would be subject to streamlined EA. Reg 101/07 never lived up to this criteria and the current proposal does not either. The posting does not provide any rationale or evidence for maintaining this diminished EA process for waste projects. By comparison, Alberta designates the construction, operation or reclamation of a fixed facility where more than 10 tonnes per month of waste are treated by physical, chemical, thermal or biological processes and “the construction, operation or reclamation of a facility for the collection and processing of waste or recyclables to produce fuel, where more than 10 tonnes of recyclables per month are used to produce the fuel. It is unclear why Ontario’s waste management EA process is proposed to be maintained in a manner that is so narrow in scope. Notably absent from the proposal are any EA requirements for transfer/processing sites, contaminated soil repositories for disposal or storage, onsite and offsite industrial, commercial or manufacturing facilities, composting facilities etc.

We note that back in 2007 we commented on the proposal for Regulation 101/07 that “EFWs and small landfills should remain subject to the individual EA process, as should large landfills and all forms of “thermal degradation” (with or without energy recovery).” This remains our position.

Transportation

The proposal would exempt a wide range of environmentally harmful projects currently subject to the Individual EA process, the Group A and B projects under the Ministry of Transportation Class EA, and Schedule B and C projects under the Municipal Class EA (MCEA), which are required to undergo detailed assessments and public consultation based on their potential for environmental impact. For example, the MCEA (A.1.2.2) acknowledges that “Schedule C projects have the potential for significant environmental effects” and generally include new construction and “major expansions” and that Schedule B projects “have the potential for some adverse environmental effects” and cover improvements and minor expansions to existing facilities.

The posting is entirely inconsistent with the July 8, 2020 ERO posting proposing to move several municipal road projects to a Schedule C EA on the basis that they have severe environmental impacts based on requiring new right of ways or crossing rivers. No rationale is provided why these projects have not been included in the comprehensive EA project list.

Transportation emissions are among the most important emissions sources in Ontario and an increase in road kilometres and capacity is strongly correlated with increased emissions. We refer you to our comments submitted previously on ERO 019-1712 and 019-1883. The proposal to include only highways and extensions to highways that are longer than 75 kilometres is completely unconscionable and incompatible with managing or mitigating climate risk. It functionally represents a full exemption for all transportation projects in Ontario with rare

exceptions. There is no factual basis for any claim that this level of exemption is associated with reduced, or easily managed environmental impacts and no rationale is provided. The assertion appears to be inconsistent with the 50-kilometre threshold proposed for railway corridors. This sweeping exemption appears to be merely a self-serving attempt to fast-track certain highway projects for which this government is already on the record as proposing be completed without any of the normal procedural safeguards for people or the environment.

Expansion of roads and parking facilities present risks of significant impacts that are inconsistent with Ontario's climate goals and should generally be subject to individual EA. Our position is that at a minimum individual EA should be required for all transportation projects that have historically been subject to a Schedule B or C Municipal Class Environmental Assessment and for all Group A and B MTO projects. The level of EA should be based on potential for environmental impact, particularly in relation to footprint and air pollution, not engineering or financial criteria.

Railways

The designation of railways is supported. However we do not support the use of a 50-kilometre threshold, as the Ministry has provided no evidence that railways shorter than 50 kilometres have no potential for significant adverse environmental effects, nor that the effects would be predictable or easily managed. In other jurisdictions, the thresholds are much smaller. For example in Quebec the threshold is 5 or 2 kilometres depending on the location. Related facilities (eg. Railyards) should also be designated, as they are in other jurisdictions and maintenance of railways in sensitive areas should be designated using effects based criteria.

Mining

In principle, the addition of private mining operations is supported, however the proposal is so lacking in detail it is impossible to comment in a meaningful way. Our position is that exploration, claims, changes to mining policy, planning, decommissioning as operation of mining projects should be subject to individual EA. There should be no threshold for the size of the mining project.

Conservation projects

The proposal discusses in very general terms requiring comprehensive EA for certain conservation projects. It uses as an example various naturalization and flood protection projects. The rationale is that in-water works may have the potential for "greater" environmental effects. The intent of the proposal is not clear. No other projects, as noted below, that constitute in-water works with potential adverse effects are included. In general, such projects are undertaken by conservation authorities who have a strong environmental track-record. It is unclear why certain (seemingly somewhat arbitrary) projects by these proponents are specifically being included in the comprehensive EA list. Ecojustice notes that Ontario has restricted conservation authority activities and created an unsustainable and unworkable funding model that has severely harmed environmental protection in Ontario. It is therefore unclear why conservation authority resources should be spent on this type of EA when it has not been required before. It is our view that these should be low priority for inclusion. However, Ecojustice does not object to the inclusion of large flood protection or remediation projects. Curiously, Ontario has provided no justification

for excluding similar projects (shoreline stabilization for example) currently covered under MNRF's stewardship Class EA from the comprehensive project list. These should also be included.

Missing items

It is impossible to catalogue the entire suite of items missing from Ontario's proposed comprehensive EA project list. To do so would require knowledge of the site specific characteristics, technical details and potential cumulative effects of every possible project. Examples of obvious omissions include, but are not limited to, the projects identified below.

With the removal of environmentally based Part II order requests in Bill 197, these omissions have become even more serious since a streamlined assessment, if it is required, can no longer be brought to the attention of the Ministry on the basis of project-specific or site specific impacts.

Agricultural activities

Agricultural activities, such as manure spreading, should be subject to Environmental Assessment requirements. Currently, nutrient management in Ontario is opaque. Any farm that requires a nutrient management strategy, a non-agricultural source material plan or a nutrient management plan under the *Nutrient Management Act* should be subject to a comprehensive EA requirement. Nutrients from agricultural operations are causing significant harm to Ontario's waterways. In Quebec, animal production sites and liquid manure are subject to assessment. Similarly, Quebec requires assessment for the application of pesticides.

Operational activities

Certain high-risk operational activities should also be subject to comprehensive EA, such as fish stocking, the sale, transport or release or dissemination of non-native or invasive species, road, parking lot or sidewalk or pathway salting and brining within 100 metres of a waterway. Maintenance activities are prescribed in other jurisdictions (for example in Quebec) where they impact on certain environmental natural heritage features (such as wetlands). This should be the case in Ontario as well.

Aquaculture

Aquaculture, particularly open-cage aquaculture, can cause serious aquatic pollution, introduce invasive species, create genetic contamination, cause and spread disease, and cause other serious environmental impacts. All cage aquaculture operations should be subject to comprehensive EA. This is even more so given the MNRF's modernization plan for cage aquaculture, which contemplates 20-year licences for aquaculture operations (a plan that we oppose). The inherent environmental risks associated with aquaculture operations, coupled with prolonged licence terms and a regulatory framework that lacks effective oversight over open-cage aquaculture operations highlights the need for a robust and thorough assessment of the environmental impacts associated with open-cage aquaculture operations.

Airports

Airports should be included where they are of sufficient size. For example, in Quebec, airports are subject to EA when they involve a landing strip or expansion of a landing strip so that it is more than one kilometre.

Industrial facilities

The proposed regulation should prescribe the following projects, many of which are prescribed in other jurisdictions on the basis of potential substance release, odour or related issues:

The establishment, operation, modification, expansion, decommissioning or reclamation of facilities for the manufacturing, processing or storage of: chemicals, fertilizers, explosives, pesticides, petrochemicals, petroleum, oil coke, carbon, brine, cement, asphalt, insulation, food or animal by-products, metals and metallurgy (eg. smelters, electroplating, foundries, iron and steel mills), natural gas liquefaction or biomethane, minerals (eg. glass, lime), wood products, pulp and paper, biotechnology, ore (eg. Uranium ore), motor vehicles, bricks, tires or electrical components.

The establishment, operation, modification, expansion, decommissioning or reclamation of facilities for the incineration of waste, whether or not they produce energy, should be subject to comprehensive EA.

Contaminated soils

The establishment, operation, modification, expansion, decommissioning or reclamation of facilities for treatment of contaminated soils and transport of contaminated soils are subject to environmental assessment in other jurisdictions. Ontario has a history of improperly or inadequately regulating the movement, storage and disposal of contaminated soil. These projects should be subject to comprehensive EA as they have the potential to create severe noise and dust issues, and to contaminate ground and surface water.

Oil and gas

In Quebec, the construction of an oil and gas pipeline over 2 kilometres is designated and Ontario has provided no basis for omitting designation of pipelines. Similarly, petroleum exploration and production is designated in other jurisdictions. Ontario has provided not rationale for excluding these projects.

Wastewater projects

Wastewater projects such as sewage and stormwater infrastructure for transport, management and disposal are notably absent in the proposal. No rationale is provided for not including wastewater projects, or their private equivalents, many of which would historically receive a Schedule B or C Municipal Class EA on the comprehensive EA project list. Such projects are already admitted through approved Class EAs to have significant or potentially significant environmental impacts justifying heightened public consultation and environmental study. When such projects are subject to Class EAs they are frequently the subject of Part II order requests. With the elimination of Part II orders a streamlined assessment – without any meaningful possibility of Ministry oversight – cannot be justified. All new wastewater treatment facilities, municipal or otherwise, should receive comprehensive EAs. So should expansions, modifications or alterations to wastewater treatment facilities. Similarly, new stormwater or significant modifications to stormwater facilities should receive an individual EA, and infrastructure for the transport, storage or handling of wastewater such as pipelines should also be subject to individual EA. We refer you to our comments on the proposed changes to the Municipal Class

EA for further comment on the proposed use of inappropriately high thresholds for Schedule C wastewater treatment and stormwater EAs. It is our view that all such projects have the potential for significant adverse environmental impacts. At a minimum, water, stormwater, and wastewater master plans must be required and must be subjected to a comprehensive EA.

The failure to include wastewater projects is also inconsistent with provincial planning policy. For example, the *Lake Simcoe Protection Plan* (4.1-DP) requires an individual EA for all wastewater projects. *A Place To Grow* (3.2.6.2) requires a comprehensive assessment using watershed planning that demonstrates acceptable effects, while the *Provincial Policy Statement 2020* (1.6.6.1, 1.6.6.7) requires that sewage and water services are provided in a manner that can be sustained by water resources and that minimizes or where possible prevents increases in contaminant loads, and mitigates environmental risks. There is nothing to gain from exempting such projects from comprehensive EA and a decision to further streamline EA for these projects would significantly undermine existing planning policies.

The project list should be amended to require comprehensive EA for the establishment, modification, decommissioning, expansion or alteration to a wastewater system including sewage treatment, stormwater and associated infrastructure.

Aggregates

The proposal does not designate any aggregate operations (proposed operations, expansions, modifications and decommissioning). These should receive an individual EA as they have a long track record in Ontario of presenting serious environmental impacts and concerns such as air quality impacts, groundwater contamination and impacts to species at risk. In particular, it is egregious that below water table aggregates are still permitted and are not subject to any comprehensive EA or even streamlined EA process. Aggregates are considered significant in terms of air, groundwater, and other impacts in numerous other Canadian jurisdictions. We do not understand why, given the ability to include private sector projects, such projects would not be included and we strongly object to this omission.

Effects-based categories

We propose that a series of effects –based categories be used to ensure that there is a screening process for projects not included in the project list that can be used by the Ministry to identify projects that should be subject to comprehensive EA. There are a variety of approaches that can be used to accomplish this. The potential effects are merely triggers for the EA process – on the basis that these are signs that and should not be used to narrowly scope the EA.

The comprehensive project list regulation should include a screening process to identify potential effects-based triggers for comprehensive EA. The definition of “project” is permissive of effects based definitions because it includes “one or more enterprises or activities, or a proposal, plan, or program in respect of an enterprise or activity”.

Air Pollution

In addition to the inclusion of industrial, commercial and manufacturing facilities above, we recommend that new, modified or expanded facilities that would emit, cause or contribute to

emissions of criteria air pollutants (sulphur oxides, nitrogen oxides, VOCs, particulate matter, carbon monoxide, and ammonia) directly or indirectly in air zones 2 and 3 at environmentally appropriate thresholds should be subject to comprehensive environmental assessment. Even at low levels, air pollution leads to disease, increased hospitalization and premature death. Such facilities may create serious risks of adverse environmental and health effects.

Land use designation and natural heritage

The proposal for conservation projects singles out projects that facilitate or anticipate development and proposes to use land use criteria such as “number of hectares, total shoreline affected, proximity to settlement areas, amount of river aligned, and impact to significant natural heritage features.” Ontario provides no rationale why *ALL* projects which have these impacts or meet relevant thresholds should not be included in the comprehensive EA project list. Environmental impact does not relate to the purpose of the project (flood protection, erosion control etc.) but to these impacts. Since Ontario concedes that these types of activities have potentially significant adverse effects and create significant public concern Ontario should include other projects with these types of impacts.

Where a project would have potential adverse physical, chemical or qualitative impacts on:

- a listed species, or known habitat of a listed species under the Ontario *Endangered Species Act*
- A natural heritage feature or area (provincially significant wetland, significant coastal wetlands, fish habitat, significant woodlands, significant valley lands, significant wildlife habitat, or areas of natural and scientific interest)

Or its connectivity to other natural heritage features, a comprehensive EA should be required to consider the effects of the project.

Similarly, where a project would have potential adverse effects on:

- Prime agricultural areas
- Hydrologic functions

A comprehensive EA should be required to consider the effects of the project.

The current definitions in the Provincial Policy Statement should be expressly replicated in the regulation.

Climate change

Comprehensive EA should be required for:

1. the construction of a plant or any other type of establishment or installation that, once in operation, would produce, facilitate or result in the release of emissions attributable to fixed processes or combustion, other than those that would result from mobile equipment, that could reach 100,000 metric tons or more per year of greenhouse gas expressed in CO₂ equivalents;

2. any modification to a plant or any other type of establishment or installation in operation that would produce, facilitate or result in the release of process or combustion emissions, of an additional 100,000 metric tons or more of greenhouse gas expressed in CO₂ equivalents per year.

It is trite that Ontario is in the midst of a climate crisis and that proper evaluation of climate emissions is essential. Other jurisdictions such as Quebec and British Columbia use effects based thresholds expressed in tons of CO₂e and Ontario has not explained why this is not done here.

Shoreline or waterbed alterations

Where a project involves an alteration to a shoreline or use or alteration of the bottom of a waterway it has the potential for significant adverse impacts on aquatic habitat. These projects should be subject to Comprehensive EA. It is not clear why Ontario proposes to require Comprehensive EA only for conservation authority projects which impact shoreline. The same thresholds identified for conservation projects should be used for other shoreline alterations.

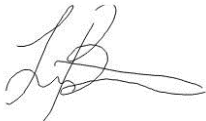
Other missing items

As noted above, it is impossible to annotate every possible missing item from the Comprehensive EA project list. Missing items include forestry operations, peat operations, integrated power system planning, intra-basin transfers, residential development and countless others. The use of a project list requires the ability to predict effects. This fundamentally undermines the planning function of environmental assessment. At a minimum, projects which the Ministry has already identified as having potentially significant effects such as Schedule B and C projects under the MCEA, Group A Provincial Transportation projects and Group B projects under the MNRF Stewardship EA should be included.

Conclusion

Ecojustice opposes the proposed project list and requests that it be re-posted at a later date after a more complete stakeholder consultation. Ontario's challenges with EA – including the cost and time that EA requires – flows not from regulatory duplication or over-assessment but from Ontario's failure to craft clear policies on things like climate change, limiting sprawl, clean water and the refusal to simply prohibit many categories of routinely controversial or problematic projects. The result is that communities and proponents must engage in a policy discussion about these items anew each time a project is proposed. This is a policy failure not a process failure. We urge the Ministry to expand the proposed comprehensive EA project list to ensure that there is a meaningful forum for discussions about the sustainability of environmentally risky projects in Ontario, and transparency about potential environmental risks that would flow from them.

Sincerely,

A handwritten signature in black ink, appearing to read 'L.B.', with a long, sweeping horizontal stroke extending to the right.

Laura Bowman
Staff Lawyer

Schedule A – Projects which have been identified as having the potential for significant effects in Class EAs and which should be considered for inclusion in the comprehensive project list.

Class EA document	Projects with significant effects	Comment
Class Environmental Assessment for Provincial Transportation Facilities	<p>Group A projects: New provincial highways and freeways New provincial transitways (separate transit facilities directly associated with a provincial highway) New provincial ferryboat connections/docks/terminals Major realignments and bypasses to existing provincial highways/freeways and transitways that do not follow the existing right of way; and Extensions to existing provincial highways/freeways and transitways.</p> <p>For all new provincial freeways the planning for the project must be conducted as an Individual EA</p>	<p>Group A and B environmental assessment resembles individual or comprehensive EA. Nowhere has the government previously contended that such projects <u>do not have</u> the potential for significant environmental effects.</p>
Class Environmental Assessment for Provincial Transportation Facilities	<p>Group B projects – Major improvements to existing provincial transportation facilities improvements that provide significant increase in traffic capacity significant expansion of footprint improvements to existing provincial transitways and ferryboat doc terminals; Establishment of, or improvements to service, maintenance and operatison facilities;</p>	
<p>Municipal Class Environmental Assessment Municipal Roads</p>	<p>Schedule B& C projects, Road reconstruction or widening where new purpose, use or capacity Construction of new roads or other linear paved facilities Reconstruction of water crossing with new purpose, use or capacity</p>	<p>Schedule C projects, “generally include construction of new facilities and major expansions to existing facilities” and are described as projects which “have the potential</p>

	<p>Construction of new water crossings and ferry docks New grade separations Construction of underpasses and overpasses for certain uses. Construction of new interchanges Other road related works</p>	<p>for significant environmental effects” (A.1.2.2) They are described as being “more complex and often require detailed studies, investigations and analyses and require the preparation of a formal Environmental Study Report. (A.4) Schedule B projects are described as projects which “have the potential for some adverse environmental effects” and “generally include improvements and minor expansions to existing facilities” The traditional differentiation between B and C for most projects was based on cost, not environmental impact.</p>
<p>Municipal Class Environmental Assessment Water and wastewater works</p>	<p>Schedule C projects, include:</p> <ul style="list-style-type: none"> • Construct new water system including new well and distribution system • Construct new water treatment plant or expand existing water treatment plant beyond existing rated capacity • Establish a new surface water source • Artificially recharge an aquifer from a surface water source • Construct new sewage system, including outfall to receiving water body and/or a constructed wetland for treatment. • Construct new sewage treatment plant or expand existing sewage treatment 	<p>Schedule C projects, “generally include construction of new facilities and major expansions to existing facilities” and are described as projects which “have the potential for significant environmental effects” (A.1.2.2) They are described as being “more complex and often require detailed studies, investigations and analyses and require the preparation of a formal Environmental Study Report. (A.4) Schedule B projects are described as projects which “have the potential for some adverse</p>

	<p>plant beyond existing rated capacity including outfall to receiving water body.</p> <ul style="list-style-type: none"> • Establish new lagoons or expand existing lagoons or install new or additional sewage storage tanks which will increase beyond existing rated capacity. • Provide for land application of sewage effluent through spray irrigation system or overland flow. • Establish a new biosolids landfill site or new biosolids incineration site for purposes of biosolids disposal. • Establish a new transfer station or new storage lagoon not located at a sewage treatment plant, incinerator, landfill site, or organic soil conditioning site, for purposes of biosolids management. • Construct new or modify, retrofit or improve existing retention/detention facility or infiltration system for the purpose of stormwater quality control where chemical or biological treatment or disinfection is included, including outfall to receiving water body. • Construction of a diversion channel or sewer for the purpose of diverting flows from one watercourse to another. • Construct new shore line works, such as off-shore breakwaters, shore-connected breakwaters, groynes and sea walls. 	<p>environmental effects” and “generally include improvements and minor expansions to existing facilities”</p>
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	<ul style="list-style-type: none"> • Construct a new dam or weir in a watercourse. • Construct new sanitary or combined sewage retention / detention facility at a new location. • Schedule B projects include: • Establish, extend or enlarge a sewage collection system and all works necessary to connect the system to an existing sewage outlet where such facilities are not in an existing road allowance or an existing utility corridor. • Establish new stormwater retention/detention ponds and appurtenances or infiltration systems including outfall to receiving water body where additional property is required. • Enlarge stormwater retention/detention ponds/tanks or sanitary or combined sewage detention tanks by addition or replacement, at substantially the same location where additional property is required. • Establish sewage flow equalization tankage in existing sewer system or at existing sewage treatment plants, or at existing pumping stations for influent and/or effluent control. • Add additional lagoon cells or establish new lagoons, or install new or additional sewage storage tanks at an 	
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	<p>existing sewage system, where land acquisition is required but existing rated capacity will not be exceeded.</p> <ul style="list-style-type: none"> • Establish biosolids management facilities at: • A sewage treatment plant where the biosolids were not generated. • An existing landfill site, incinerator or organic soil conditioning site where the biosolids are not to be disposed of nor utilized. • Construct new pumping station or increase pumping station capacity by adding or replacing equipment and appurtenances, where new equipment is located in a new building or structure. • Expand sewage treatment plant, including relocation or replacement of outfall to receiving water body, up to existing rated capacity where new land acquisition is required. • Increase sewage treatment plant capacity beyond existing rated capacity through improvements to operations and maintenance activities only but without construction of works to expand, modify or retrofit the plant or the outfall to the receiving water body where there is an increase to total mass loading to the receiving water body as identified in the Certificate of Approval. • Expand, improve or modify existing patrol yards, 	
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	<p>equipment or material storage facilities and maintenance facilities where additional land acquisition is required.</p> <ul style="list-style-type: none"> • Communal sewage systems (new or expanded) with subsurface effluent disposal subject to approval under Section 53 of the Ontario Water Resources Act. • New service facilities (e.g. patrol yards, storage and maintenance facilities, parking lots for service vehicles). • Expansion of the buffer zone between a lagoon facility or land treatment area and adjacent uses, where the buffer zone extends onto lands not owned by the proponent. • Water crossing by a new or replacement sewage facility except for the use of Trenchless Technology for water crossings. • Construct berms along a watercourse for purposes of flood control in areas subject to damage by flooding. • Modify existing water crossings for the purposes of flood control. • Works undertaken in a watercourse for the purposes of flood control or erosion control, which may include: <ul style="list-style-type: none"> • bank or slope regrading • deepening the watercourse • relocation, realignment or channelization of watercourse revetment 	
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	<p>including soil bio-engineering techniques</p> <ul style="list-style-type: none"> • reconstruction of a weir or dam. • Construction of spillway facilities at existing outfalls for erosion or sedimentation control. • Construct a fishway or fish ladder in a natural watercourse, expressly for the purpose of providing a fishway. • Enclose a watercourse in a storm sewer. • Construct a stormwater control demonstration or pilot facility for the purpose of assessing new technology or procedures. • Reconstruct existing weir or dam at the same location where the purpose, use and capacity are changed. • Removal of an existing weir or dam. • Establish stormwater infiltration system for groundwater recharge. • A new holding tank that is designed for the total retention of all sanitary sewage disposed into it and requires periodic emptying. • Establish, extend or enlarge a water distribution system and all works necessary to connect the system to an existing system or water source, where such facilities are not in either an existing road allowance or an existing utility corridor. • Establish facilities for disposal of process wastewater (e.g. install 	
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	<p>sewer connection, construct holding pond, dewatering and hauling operations to disposal sites).</p> <ul style="list-style-type: none"> • Expand existing water treatment plant including intake up to existing rated capacity where land acquisition is required. • Increase pumping station capacity by adding or replacing equipment and appurtenances where new equipment is located in a new building or structure. • Expansions, improvements and modifications to existing patrol yards, equipment or materials storage facilities, and maintenance facilities where land acquisition is required. • Establish new or expand/replace existing water storage facilities. • New service facilities (e.g. patrol yards, storage and maintenance facilities, parking lots for service vehicles). • Establish a well at a new municipal well site, or install new wells or deepen existing wells or increase pump capacity of existing wells at an existing municipal well site where the existing rated yield will be exceeded. If a new water system is also required, this will become a Schedule C project. • Water crossing by a new or replacement water facility except for the use of 	
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	<p>Trenchless Technology for water crossings.</p> <ul style="list-style-type: none"> • Increase water treatment plant capacity including new or expanded water intake beyond existing rated capacity through improvements to operations and maintenance activities only but without construction of works to expand, modify or retrofit the plant. • Replacement of water intake pipe for a surface water source. 	
<p>Municipal Class EA Transit projects</p>	<p>Schedule B and C projects include:</p> <ul style="list-style-type: none"> • Installation, construction or reconstruction of traffic control devices (i.e. signing, signalization) with the potential for some adverse environmental effects • Installation of safety projects (i.e. lighting, glare screens, safety barriers, energy attenuation) with the potential for some adverse environmental effects. • Reconstruction of water crossing where the reconstructed facility will not be for the same purpose, use, capacity and at the same location as the facility being reconstructed (capacity refers to hydraulic capacity). • Reconstruction, widening or expansion of linear components of a transit system where the reconstructed facility will not be for the same purpose, use, and at the same 	

	<p>location as the facility being reconstructed (e.g. a change from an existing Reserved Bus Lane (RBL) that is separated from general purpose lanes by signage and pavement markings only to a Reserved Bus Lane (RBL) in an exclusive right-of-way (i.e. physically separated from general purpose lanes)</p> <ul style="list-style-type: none"> • Reconstruction of linear components of a transit system for different vehicle technology where there is no change in footprint or general purpose traffic operations. • Construction of new stations in or adjacent to residential land-use or an environmentally-sensitive area including natural heritage features, cultural heritage and archaeological resources, recreational or other sensitive land-uses. • Construction of new passenger pick-up/drop off areas (e.g. Kiss and Ride), and park and ride lots in or adjacent to residential land-use or an environmentally-sensitive area including natural heritage features, cultural heritage and archaeological resources, recreational or other sensitive land-uses. • Widening of an existing road to create new transit lanes for bus or light rail. • Construction of new grade separation. 	
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	<ul style="list-style-type: none"> • Construction of new maintenance facilities not in or adjacent to residential land-use or an environmentally-sensitive area including natural heritage features, cultural heritage and archaeological resources, recreational or other sensitive land-uses. • Construction of new maintenance facilities in or adjacent to residential land-use or an environmentally-sensitive area including natural heritage features, cultural heritage and archaeological resources, recreational or other sensitive land-uses. • Construction of new Transit System i.e. involving construction of new infrastructure. (For implementation of new transit services not requiring construction of new infrastructure i.e. using existing roads, see Project #2) 	
<p>MNRF Resource Stewardship EA</p>	<p>Category B projects include:</p> <ul style="list-style-type: none"> • access points and docks • dams and dykes • fish stocking • fishways • shoreline and stream bank stabilization • ponds • solid waste disposal • canoe routes • water related excavation • dredge and fill activities 	<p>Category B projects are identified as “Potential for moderate net negative effects and/or concerns” while Category C projects are identified as “potential for high net negative effects and/or concerns” Projects with potential for “very high” net negative effects and/or concerns are assessed outside the scope of the MNRF resource stewardship EA.</p>

	<p>plugging old oil and gas wells</p> <ul style="list-style-type: none">• sewage systems and water works• nuisance species control• Ontario ranger camps• disposition of rights to Crown resources• acquisition of property• capital construction and lease purchase projects• fish culture stations• Crown land cottage lot dispositions	
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