



Ontario

Ministry
of the
Environment

M.O.E. Policy Manual

POLICY TITLE	NO. 03-01-01
<u>Legislative Authority</u> The Environmental Assessment Act	
<u>Statement of Principles</u> The purpose of this policy is to define the role of the review and the review participants in the environmental assessment process. This policy conforms with the <u>Environmental Assessment Act</u> 's requirements and is intended to contribute to a high quality EA process. <u>Definitions</u> <u>Review Coordinator</u> The environmental planner from the Environmental Assessment Branch who coordinates the review is referred to as the Review Coordinator. <u>Reviewers</u> All other contributors to the review, including the Ministry of Environment technical reviewers (responsible for the Ministry of the Environment technical input based on the mandate as protector of natural environment) are referred to as the reviewers.	
<u>Point of Contact</u>	Director, Environmental Assessment Branch
<u>Effective Date</u>	

Review Participants

The review coordinator and the reviewers constitute the review participants.

1. Policy Objectives

The objectives of this policy are:

- i) consistency in the review process;
- ii) a clear separation of the functions between the review coordinator and the reviewers;
- iii) a clear separation of MOE roles in the EA process, (ie. a separation of the technical/scientific roles from the administration of the EA process);
- iv) a clarification of the role of the reviewers throughout the EA process;
- v) guidance to reviewers on the nature of commentary required of them;
- vi) a focus in the EA process on sound EA planning and its documentation in environmental assessments. Sound planning should lead to better undertakings with appropriate mitigation and monitoring measures;
- vii) a minimal number of conditions of approval.

2. The Role of the Review

Pursuant to Section 7(1) of the Act, the Minister of the Environment must have a review of the EA prepared and this has been made the responsibility of the EA Branch.

The role of the review is to:

- i) provide, in a single document, an evaluation of the strengths and weaknesses of the proponent's planning process and undertaking as described in the EA based on comments provided by provincial ministries, agencies and others;

The evaluation of the planning is based on the requirements of Section 5(3) of the Act, including Ministry policies for sound EA planning which interprets those requirements. The review of the undertaking is based on the effects of the undertaking and its alternatives on the mandate and interests of the Government Review Team;

- ii) identify any outstanding environmental issues;
- iii) provide information to the Minister (or a board if a hearing is required) on the EA and the undertaking;
- iv) advise the Minister (or a board) on how to improve the EA by pointing out what changes and/or research is required to obtain a satisfactory EA document;
- v) assist the public in evaluating the EA and provide information to parties interested in making a submission on the EA to the Minister;
- vi) help the proponent to identify information gaps and conflicts and provide advice on how to proceed in the EA process.

2.1 Contributors To The Review

The EA Branch, provincial Ministries and agencies are the main contributors to the review. However, agencies such as conservation authorities, local boards of health, Ontario Hydro and Environment Canada and others may also contribute.

2.2 Input To Minister's Decisions

Unless a hearing is held, the Minister has two decisions to make under the Environmental Assessment Act:

- . is the EA an acceptable document upon which to make his decision on whether the undertaking should be approved?
- . should the undertaking be approved?

The review is a direct input to the Minister's decision on the acceptability of the EA (Section 8 of the Act). However, the review does not directly address the question of approval of the undertaking (Section 14 of the Act).

The review is prepared at a time in the EA process when the Minister does not have the benefit of public feedback which will come after the EA and the review are provided to the public. The review does not contain recommendations on the acceptability of the EA or the approval of the undertaking. Rather, the review focuses on the proponent's planning as set out in the EA and, when necessary, on how to improve the EA.

3. The Role of the Review Coordinator and the EA Branch

The Environmental Assessment Branch is responsible for the administration of the EA process and performs a facilitator role to resolve conflicts among parties, where possible. The Branch contributes to and coordinates the preparation of the review of each EA. As well, it provides advice on the requirements of the EA Act.

3.1 Pre-Submission Consultation (PSC)

The roles and responsibilities of the review coordinator during PSC are described in detail in MOE's policy on "Pre-Submission Consultation in the EA Process". During PSC, the review coordinator advises the proponent on its planning so it will meet the spirit and requirements of the Act; and on the extent to which these requirements (especially Section 5(3)), have been met as the process proceeds. The review coordinator's comments will be consistent with those given in PSC unless sound reasons can be given for the change.

3.2 Preparation of the Review

The EA Branch planner designated as the review coordinator obtains the written comments from the numerous Government agencies on an EA and a proposed undertaking and prepares a Government review by:

- . setting deadlines for receipt of reviewers' comments and a schedule for the process up to issuance of the Notice of Completion of the review.
- . determining the need to retain outside experts to assist in the Review.
- . obtaining and highlighting comments from reviewers, which may include requirements for additional information, to make the EA under review satisfactory and suggestions for improvements to

- . ensuring reviewers' comments are complete, logical, understandable and substantiated.
- . facilitating consultation with the proponent and the concerned reviewer(s) to resolve outstanding issues where possible.
- . evaluating the planning process described in the EA to determine if it meets the requirements of Section 5(3) of the Act. This includes determining if the EA contains the proper scope, method of analysis and range of alternatives, and conforms to Ministry policies for sound EA planning.
- . writing the review to present the positions of the members of the review team and setting out the conclusions on the compliance of the proponent's planning process with Section 5(3). Complete comments received from all reviewers are reproduced in the Appendices of the Review.
- . arranging for the preparation, signing and posting of the appropriate notices in accordance with the specifics of each situation.

During the review period, reviewers' comments are made available for inspection in the EA Branch files as they are received.

3.3 Acceptability of the EA

After the Public Review period, the review coordinator will prepare the documentation for the Ministry to advise the Minister on the acceptability of the EA. The Branch will outline the major issues and options related to these matters including the need for amendments to the EA or further research and will advise on appropriate courses of action. The documentation will be prepared taking into account all submissions which have been received by the Minister.

3.4 Research

The review coordinator will prepare advice to permit the Ministry to advise the Minister if research is warranted to address problems with the EA - both before and after the Notice of Completion. It is preferable for a proponent to volunteer to carry out the

required research and submit it as an amendment to the EA rather than for the Minister to order that the research be done.

Should the Minister order the proponent to carry out research before the Notice of Completion, then the research can be considered by the reviewers together with the EA. The review would then be prepared based on reviewers' comments and input from the review coordinator.

If, after the Notice of Completion, the Minister orders further research, the research documentation will be circulated to the appropriate reviewers for their evaluation.

A supplementary review will then be prepared by the review coordinator from the EA Branch. The review coordinator will provide copies of research reports to everyone who made submissions to the Minister after the Notice of Completion.

Once the supplementary review is published, the Minister may either decide on the acceptability of the EA, or issue a notice that the review has been revised and allow time for further comment on the supplementary review, before deciding on the acceptability of the EA. The need for this notice will depend on the research received and on the content of the supplementary review.

3.5 Comment on Approval

The review coordinator will prepare advice to permit the Ministry to advise the Minister on the approval of the undertaking and any conditions which are necessary for that approval. Conditions of approval are generally used to address any deficiencies in the EA or concerns with the undertaking or both. The number of conditions will be minimized wherever possible by amending the EA before the Notice of Completion.

3.6 Hearings

When hearings on EA matters are held by either the Environmental Assessment Board or a joint board under the Consolidated Hearings Act, the review coordinator and other EA Branch staff may be called upon to provide:

. an interpretation of the Environmental Assessment Act

- . explanations of the role of the review and the review participants in the EA process;
- . an opinion on whether or not the EA complies with Section 5(3) of the Act;
- . an explanation of how the review was carried out and how the review coordinator came to the conclusions in the review;

The review coordinator may also assist legal counsel representing the Minister during the hearings.

4. The Role of Reviewers

Reviewers including the reviewer from the Ministry of the Environment are responsible for providing technical/ scientific information to proponents throughout the EA process based on their mandates. This includes commentary on the quality and completeness of the components in an EA. In addition, reviewers provide advice to proponents on how well the undertaking addresses the policy interests of their respective agency.

Reviewers are normally expected to focus their requirements for additional information on significant matters, while making suggestions on improvements to future EAs for the proponent to consider.

4.1 Pre-Submission Consultation (PSC)

The roles and responsibilities of reviewers during PSC are described in detail in MOE's policy on "Pre-Submission Consultation in the EA Process". During PSC, reviewers provide advice to the proponent on the type of information required in the EA, the level of detail appropriate for that information, the range of alternatives the proponent should investigate, and the weight the policy interests of the reviewer's agency should be given in selecting the undertaking.

The Ministry encourages reviewer agencies to produce guidelines which outline their requirements for EAs (i.e., MTC One Stage Environmental Assessment Procedural Guideline). Such guidelines assist both the proponent and the public in understanding the agencies' expectations and thereby reduce

Any pertinent information that reviewers have should be made available to the proponent.

4.2 Preparation of the Review

Reviewers provide an evaluation of the EA based on their mandate, and advise on any reasonable changes and/or research needed to obtain a satisfactory EA document. Their position during the review should be consistent with that taken during PSC, unless sound reasons are provided for the change.

When significant weaknesses are identified, reviewers should indicate what changes are required and/or what research is needed to obtain a satisfactory EA document. They should also advise the proponent on possible data sources to address the concerns.

To contribute to the review of an EA, each reviewer is asked to carry out an evaluation by responding to a number of standard questions which are supplied by the review coordinator. The questions are designed to obtain advice from reviewers on the quality of the environmental assessment and if necessary, how to improve it. All the questions should be answered. Reviewers are also asked to provide a summary statement of their position on the EA and the undertaking.

Reviewers are requested to indicate the significance of any strengths or weaknesses identified; and if the weaknesses are significant, to indicate what changes and/or research is required to obtain a satisfactory EA document.

In preparing their overall evaluation, reviewers are requested to take account of the following considerations:

- . Reasons, with substantiation, should be given for conclusions;
- . Adequate consideration should be given to all alternatives, not just the recommended one(s);
- . Any changes to the pre-submission consultation position and the associated reasons.

Reviewers are advised that the standard questions are not meant to restrict the scope of the review. They are asked to provide any additional comments from the perspective of their mandate which they feel are important to the evaluation.

If reviewers have questions or suggestions on aspects of the EA outside their mandate, they are asked to bring them to the attention of the proponent or the agency with the mandate as soon as they become known. These questions or suggestions are encouraged as they promote dialogue among members of the review team and can enhance the quality of the review.

After formally submitting their agency's comments, reviewers should be available to assist the review coordinator to ensure that the important points of the official position are captured by the review coordinator in the text of the review.

4.3 Acceptability of the EA

Each review agency may make a submission to the Minister on the acceptability of the EA and the requirement for a hearing. Reviewers (on behalf of their agency) can make a submission to the Minister on the acceptability of the EA prior to the Notice of Completion or during the minimum 30-day public review period.

All submissions to the Minister are placed on the Public Record. To require a hearing during the minimum 15-day period for submissions on the approval of the undertaking, a review agency must already have made a submission to the Minister during the notice period provided after the Notice of Completion.

4.4 Research

If, prior to the Notice of Completion of the review the Minister orders the proponent to carry out research, relevant reviewers will be requested by the review coordinator to comment on any research documentation which the Minister obtains. These comments will contribute to the review which the EA Branch will prepare for publication. If research is conducted after the publication of the review, then the reviewers' comments will contribute to a supplementary review which will also be prepared by the EA Branch.

Reviewers are encouraged to assist the proponent in addressing outstanding issues wherever appropriate.

4.5 Comment on Approval

Each reviewer can make submissions to the Minister on the approval of the undertaking and on any conditions which the reviewer feels are required on that approval prior to the Notice of Completion and/or during the formal submission period prior to the Notice of Approval. All submissions to the Minister will be placed in the Public Record.

4.6 Hearings

For hearings on EA matters, all reviewers are responsible for preparing and presenting their agency's concerns as they deem appropriate. The decision on whether to participate in a hearing will usually be based upon:

- . the importance of expressing the interests of the agency;
- . the types of issues to be dealt with.

Comments and suggestions for improvements to this policy are welcome and should be sent to the Director, Environmental Assessment Branch, Ministry of the Environment. The Ministry of the Environment has established an Environmental Assessment Program Improvement Project (EAPIP). All comments which are received will be forwarded to EAPIP for consideration as part of the Program Improvement Project.

SUMMARY OF ROLES

<u>REVIEW COORDINATOR EA BRANCH</u>	<u>PRE-SUBMISSION CONSULTATION</u>	<u>FORMAL REVIEW PERIOD</u>	<u>POST-REVIEW PERIOD</u>	<u>HEARING</u>
	Follow "Pre-Submission Consultation in the EA Process". Discuss with the proponent the components of the EA. Advise proponent as to possible existing data source.	Set deadlines for reviewers' comments and the completion of the review. Determine the contributors to the review in consultation with the reviewers. Keep proponent and review team informed periodically on the progress of the review and assist in resolving issues raised. Coordinate and prepare the review. Evaluate the EA to determine if the planning process described in the EA is consistent with the requirements of Section 5(3) of the Act. Provide advice on how to improve the EA, if deficient. Work with reviewers to ensure that their comments are accurately reflected in the review, are logical, understandable, substantiated, and respond to all questions which should be addressed by the review. Obtain and highlight reviewers' comments. Conclude on compliance with 5(3).	In consultation with Legal Services Branch advise the Minister on the type of notices required. Advise the Minister on the acceptability of the EA. Coordinate and contribute to a revised review, if one is necessary. Advise the Minister on the approval of the undertaking.	Prepare and present evidence which addresses the interpretation of the EAA; the role of the review, participants in the EA process; whether or not the EA has complied with Section 5(3), and how the EA should be improved, if significant deficiencies are found.

SUMMARY OF ROLES (Continued)

<u>REVIEWERS</u>	<u>PRE-SUBMISSION CONSULTATION</u>	<u>FORMAL REVIEW PERIOD</u>	<u>POST-REVIEW PERIOD</u>	<u>HEARING</u>
	To follow (Pre-Submission Consultation in the EA Process" Advise the proponent based on the review Ministry's guide-lines on how to prepare EAs. Advise the proponent about the agency's existing data. Discuss with the proponent the technical quality and completeness of the EA and the policy interests of the reviewer. Provide copies of any written comments made in PSC to EA Advisor for EA Branch Files.	Meet deadlines set by the review coordinator for reviewers' comments. If an extension of time is required, advise the Review Coordinator and state reasons. Contribute to the review by: - evaluating the EA to determine if the technical quality and completeness of the components of the EA are satisfactory; - providing advice on how well the EA addresses the policy interests of the reviewer's agency, as appropriate; - providing advice on how the EA should be improved, if significant deficiencies are found, by pointing out what changes and/or research should be carried out to obtain a satisfactory EA. - preparing a summary statement of their position on the EA and the undertaking. Ensure that their comments are accurately reflected in the review, are logical, understandable, substantiated, and deal with all the areas which should be addressed by the reviewer.	Make submissions to the Minister, in special circumstances, on the acceptability of the EA, the approval of the undertaking, (including any conditions of approval) and the requirement for a hearing.	Prepare and present the agency's views, as required.