



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

May 14, 2012

Attn.: Chris Goode
Senior Advisor
Ministry of the Environment Environmental Proposals Division
Modernization of Approvals Project
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**SMALL SCALE RENEWABLE ENERGY FACILITIES AND THE ENVIRONMENTAL ACTIVITY AND SECTOR
REGISTRY**

Re: EBR posting number 011-5695, Environmental Activity and Sector Registry Group 3 Technical
Discussion Papers

Introduction

CELA is an Ontario legal aid specialty clinic, and a national ENGO. We have diverse expertise and extensive background in the related subjects of this proposal, including renewable energy policy, environmental approvals, nutrient management, and landfill management. Our current priority areas of focus of relevance to this proposal include environmental health, energy sustainability, water sustainability, and community planning. We work for improvements in environmental law and policy, and assist members of the public to participate in environmental decision making. Our mandate includes legal representation and advocacy, law reform, public legal education and community support.

We write to provide comments with respect to the Environmental Activity and Sector Registry with respect to the proposed addition of certain Renewable Energy Sector approvals.

General Comments

The addition of Small Ground-Mounted Solar, On-Farm Anaerobic Digestion, and Landfill Gas Electricity Generation as proposed in this EBR posting should fit within the criteria intended for the EASR registration system. In general CELA agrees that these projects as described in this proposal are small scale, have predictable impacts and are amendable to standardized requirements.

CELA would also like to make the important point that the particular proposals in question here are those which are also appropriate to support and encourage as provincial policy. For example, we

support the continued expansion of renewable energy in Ontario. Anaerobic digestors have multiple benefits including the reduction of pathogen loads in addition to the potential for energy recovery, before manure and other nutrients are land-applied to agricultural soils. Landfill gas energy recovery assists in preventing methane accumulation in landfills, reducing nuisance odour problems, as well as reduction of health and safety hazards where such methane has been accumulating. In addition to the removal of the methane, it makes sense to recover energy from that methane and to reduce greenhouse gas emissions and this approach has been in place in Ontario for at least the last two decades and is a technology which is well understood¹.

For those individual cases where concerns or issues are not standard, such as those due to site-specific issues, we also note that there is the potential for a “bump-up” to a requirement for an Environmental Compliance Approval pursuant to section 20.18 of the Ontario Environmental Protection Act. That section states that even if an activity has been prescribed by regulation for registration, a person may still be required to apply to the Director for an Environmental Compliance Approval, provided the Director issues an order. The availability of this provision is an important safe guard for certain cases which merit this individualized approach.

It is also important for the ongoing viability and credibility of an EASR system, that it continue to apply in sectors which continue to fit the criteria of the program, such as continued predictable impacts. It is thus important to ensure that there is ongoing auditing and monitoring within each sector, and tracking of operational experience, so as to provide the Ministry of the Environment with records to assess the continued applicability of each sector which has been subject to the EASR program. This point is not limited to the Renewable Energy sector proposals under discussion here, but the point is valid for all matters dealt with in the registration program.

¹ However we feel compelled as an aside to make clear that this example of landfill gas energy recovery is NOT a case of burning garbage, incinerating garbage, or using garbage as an energy feedstock. We do not support those latter examples; they are highly inappropriate approaches to waste management. Rather, in cases where a decision has been made under other approvals processes to operate landfill, methane removal and energy recovery is a best practice. CELA has long supported cradle to cradle approaches to materials management and supported the Ontario government’s recent Zero Waste discussion paper, with recommendations from the ENGO community. But in the meantime landfills must be appropriately managed. Similarly, in the case of anaerobic digestion, manure production and sewage sludge production must be managed in the best possible manner, and as noted earlier these energy recovery approaches provide co-benefits while managing the material for later use. This is not to discredit other approaches such as composting those materials along with other alternative existing or new practices which are also proven to be beneficial.

In all three cases, CELA notes that the activities appropriately continue to be subject to appropriate other approvals as the case may be, such as Nutrient Management Plans and Nutrient Management Strategies under the Nutrient Management Act or Environmental Compliance Approvals under the Environmental Protection Act. CELA and CELA counsel have provided extensive input into these regulatory regimes in the past, for landfill operations and nutrient management issues. These regulatory approvals provide appropriate frameworks for the continued regulation of these activities as outlined in this proposal, either by way of continuation of those approvals, or by replication in operational requirements set out in the EASR proposal. CELA's general position in support of this proposal is subject to the outline currently presented, including the discussions as to size of facility, and discussions of current applicable approvals. If the Ministry were to propose changes to this proposal, we might provide different or additional comments. We also intend to review the proposed regulation at the next stage of public consultation (which the proposal notes will provide additional detail).

Specific Comments relating to the proposal:

CELA recommends that the definition of properties to which notice is to be provided in all three proposals be modified to include property owners located across roadways from the subject property; the current definition implies that only abutting owners would be notified.

We strongly endorse the emergency measures proposals and the complaints procedures provided in respect of all three activities. In addition we strongly endorse the documentation requirements, and the Ministry's plans for auditing, as well as utilization of compliance mechanisms where necessary.

In the case of on-farm anaerobic digestors we also note the importance of the provisions pertaining to maintenance of minimum temperatures at all times during the process, in order to ensure that one of the primary benefits of pathogen reduction is achieved. Similarly for both landfill gas provisions and the anaerobic digestion facilities, provision of the requirements for flares for both emergencies and for maintenance are significant requirements which must be maintained.

CELA also agrees with the requirement that anaerobic digestors be subject to engineering design, and that for landfill gas collection, of course the landfill gas operations are subject to the Environmental Compliance approval and are not subject to this EASR proposal.

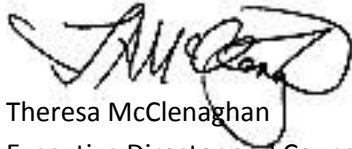
CELA also agrees that ensuring there is no adverse impact from noise is an important requirement for all of the proposals, although they are not expected to generate significant noise.

In terms of the provisions for line of sight blocking for ground-mounted solar facilities covered by this proposal, CELA suggests a modification to this proposal such that there be an option that this requirement may be modified depending on circumstances. One of the potential reasons for installation of ground-mounted solar is for renewable energy demonstration. Thus a significant objective may be visibility of the facility in the community. Similarly, abutting properties may or may not have a concern

with line of sight and this requirement could be modified depending upon canvassing of those abutting property owners.

CELA agrees that the Green Energy Act policies are of significant importance and welcomes the opportunity to comment on this proposal as an appropriate approach to the EASR. We would be pleased to discuss these brief submissions at any time.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Theresa McClenaghan', written over a rectangular stamp area.

Theresa McClenaghan
Executive Director and Counsel