

Need for Environmental Assessment Reform for Ontario

CANADIAN ENVIRONMENTAL LAW ASSOCIATION, MININGWATCH CANADA, CPAWS WILDLANDS LEAGUE, AND WILDLIFE CONSERVATION SOCIETY CANADA submit that a review and revision of Ontario’s environmental assessment program is badly needed to ensure the legislated purpose¹ of the program is met. Such a review must include consideration of potential amendments to the *Environmental Assessment Act* (EAA), the six regulations made under the authority of the EAA, and related policy documents. We also recommend that the review be as open, accessible, timely, and comprehensive as possible, to serve the vital public policy needs outlined below.

Restoring clarity and credibility in Ontario’s environmental assessment program

Ontario’s current environmental assessment program fails to provide a predictable, rigorous, and credible process for all interested parties. Properly conceived, environmental assessment processes can provide a futures-oriented planning process that ensures environmental, social, and economic well-being. For example, environmental assessment hearings for the proposed Demand/Supply Plan in the early 1990s forced Ontario Hydro to withdraw an ill-conceived plan, saving the province billions of dollars.

More recently, a disturbing trend of exemptions, “streamlining”, and inconsistent application of environmental assessment approvals has emerged. In the past several years, numerous government “proposals, plans, or programs” have been legislatively exempted from the EAA, including the Oak Ridges Moraine Conservation Plan, the Greenbelt Plan, the Lake Simcoe Protection Plan, Growth Plans, transportation planning policy, land-use plans on public lands, Far North policy statements, the Far North land use strategy, and geographically focused initiatives in the Great Lakes Basin.

Controversial projects are currently being addressed with inadequate tools, such as designation and declaration orders, which were used for the proposed Melancthon mega-quarry and for the extension of the Area of Undertaking for timber management on Crown lands. In addition, private proponents such as mining companies can be subject to dramatically different conditions. For example, Noront’s proposed Eagle’s Nest nickel-copper-platinum-palladium project and De Beers’ Victor Diamond Mine are in the same northern Ontario watershed; the former subject to rigorous Terms of Reference, including consideration of cumulative effects, climate change, and extensive consultations, and the latter with no provincial environmental assessment at all.





Striving for continuous improvement in environmental decision-making

It has been more than 20 years since the Ontario environmental assessment regime has been substantially reformed and a decade since the Ontario government last formally considered reforms to the environmental assessment program. The recommendations of the Minister's Environmental Assessment Advisory Panel (2004-05)² regarding necessary environmental assessment reforms were never fully implemented. As a result, Ontario is falling behind other Canadian jurisdictions and international best practices, particularly with respect to applying cumulative effects assessment and strategic/regional environmental assessment.

Criticisms of Ontario's environmental assessment program have been raised by, among others, the Environmental Commissioner of Ontario (ECO) in Annual Reports submitted to the Legislature in October 2008 and 2014³. The ECO described the "vision lost" in our environmental assessment program and recommended that the government "restore" the vision through a public review of the EAA and related regulations.

Meanwhile, the federal government has committed to a review of its environmental assessment program in order "to regain public trust and help get resources to market and introduce new, fair processes."⁴ Quebec and British Columbia are also currently reviewing or have been reviewing their environmental assessment programs. In comparison to these other jurisdictions, a particular concern is that Ontario is the largest mining jurisdiction in Canada and its renewed Mineral Development Strategy includes an objective focusing on improving "regulatory efficiency, predictability and transparency [...] including looking at approaches to environmental assessment."⁵ Yet, Ontario remains the only Canadian jurisdiction where mines are not automatically subjected to a provincial environmental assessment and public consultation process.⁶

Smoothing the transition to a prosperous, low-carbon economy

Ontario's Climate Change Strategy is the government's "plan to reduce greenhouse gas emissions to 80% below 1990 levels by 2050, and build a prosperous low-carbon economy."⁷ As we transition to a low-carbon economy, environmental planning will need to integrate climate change mitigation and adaptation into decision-making.

The EAA and all associated guidance documents are silent on the need to integrate climate change considerations into environmental assessment, both in terms of considering a project's greenhouse gas emissions profile and considering the options for and alternatives to a project in a changing future climate. Further, energy planning, including the Integrated Power System Plan and the Long-Term Energy Plan, have not been subjected to environmental assessment to date. Ontario needs to modernize its environmental assessment program to fully account for climate change impacts and meet its long-term strategy objectives.

Meaningful public engagement in government decision-making

"Ontario's Open Government Initiative is about creating a more open and transparent government for the people of Ontario."⁸ In particular, Ontario has committed to improving opportunities for public input into government decision-making and to increased sharing of government data and other information. However, Ontario's current environmental assessment program fails to meet the Ontario government's commitment to Open Government.

With increased "streamlining" of environmental assessments, opportunities for public engagement have been removed or significantly reduced. For example, it is our understanding that there have been only two public hearings related to environmental assessments since 1996 despite the provision in the EAA that allows any person in Ontario to request that the Minister of the Environment and Climate Change refer a matter to the Environmental Review Tribunal. Transparency and meaningful public engagement provides for better informed decisions and sound public policies.



Improving the province's relationship with Canada's indigenous peoples


Land use and environmental planning frequently intersects with the interests of indigenous communities as there may be impacts on aboriginal rights, title or treaty rights. Current consultation protocols and decision processes are inadequate, resulting in potential conflict. Furthermore, consultations are often delegated to the proponents, rather than being based on a more appropriate government-to-government dialogue.

Recommendations

Our organizations recommend that the government proceed with a review and revision of Ontario's environmental assessment program in an open, accessible, timely and comprehensive manner. We submit that the following recommendations for reforms to Ontario's environmental assessment program can address some of the major shortcomings of the current program and close the gap between current good intentions around ensuring sustainability and achieving outcomes that properly address the large climate and environmental challenges we face. We anticipate that with engagement in a meaningful review process, these recommendations will be refined and updated to respond to concerns and solutions raised by other interested parties.

Package of preliminarily identified necessary reforms:

- **Retain the “Terms of Reference” (TOR) mechanism under the EAA**, while revising (or removing) the current Ministerial power to approve “focused” TORs which exclude key environmental planning considerations (e.g., “need”, “alternatives to”, and alternate sites);
- **Expand the types of projects that are subject to environmental assessment to include private activities** that have the potential to cause adverse environmental effects and/or private activities that will take place on public lands or sensitive areas (e.g., new/expanded landfills, new/expanded quarries, new/expanded mines);
- **Ensure meaningful public participation** by re-introducing an intervenor/participant funding program (funded by proponents) and by referring environmental assessments, in whole or in part, to the Environmental Review Tribunal for public hearings upon request by residents, organizations, municipalities, First Nations, or Métis communities;
- **Establish a credible mechanism (e.g., Environmental Review Tribunal written hearing or reinstating the Environmental Assessment Advisory Committee) for determining public requests for Part II orders** (aka “bump-up” or “elevation” requests) made under approved class environmental assessments and sectoral exemption regulations;
- **Ensure mandatory and meaningful cumulative-effects assessment;**
- **Integrate climate change considerations** into all environmental assessment activities under the EAA;
- **Ensure strategic or regional strategic environmental assessments occur** before region-opening new developments (e.g., Ring of Fire) and/or apply to specific sectors (e.g., energy and other types of infrastructure planning); and
- **Enhance consultation protocols or processes for engaging with First Nations and Métis communities** in a manner that aligns with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to free, prior, and informed consent.



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Endnotes

- 1 The purpose is the “betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment”, *Environmental Assessment Act*, RSO 1990, c E 18, section 2.
- 2 Minister’s Environmental Assessment Advisory Panel – Executive Group. Improving Environmental Assessment in Ontario: A Framework for Reform, Volume I. March 2005.
- 3 Environmental Commissioner of Ontario. 2008. “Environmental Assessment: a vision lost.” Getting to K(No)w, ECO Annual Report, 2007-08. Toronto, ON: Environmental Commissioner of Ontario. 28-48. http://www.ecoissues.ca/index.php/Environmental_Assessment:_A_Vision_Lost
Environmental Commissioner of Ontario. 2014. “Restoring a Vision Lost: Reforming Ontario’s Environmental Assessment Act.” Managing New Challenges, ECO Annual Report, 2013-14. Toronto, ON: Environmental Commission of Ontario. 132-139. http://ecoissues.ca/index.php?title=Reforming_Ontario%27s_Environmental_Assessment_Act_-_2014&redirect=no
- 4 Minister of Environment and Climate Change Mandate Letter. <http://pm.gc.ca/eng/minister-environment-and-climate-change-mandate-letter>
- 5 Ministry of Northern Development and Mines. 2015. Ontario’s Mineral Development Strategy, Objective 7, p.23. http://www.mndm.gov.on.ca/sites/default/files/mndm_mds_english_2015.pdf
- 6 MiningWatch Canada. The Big Hole: Environmental Assessment and Mining in Ontario. December 2014. <http://www.miningwatch.ca/publications/big-hole-environmental-assessment-and-mining-ontario>

Further, in the Auditor General of Ontario’s Annual Report submitted to the Legislature in December 2015 it was recommended that there should be an assessment of the benefits of subjecting mining projects to a provincial environmental assessment process similar to other Canadian jurisdictions. See: Auditor General of Ontario. 2015. 2015 Annual Report of the Office of the Auditor General of Ontario. “4.4.5 Provincial Environmental Assessment Not Mandatory for Mining Projects”. 460-461. <http://www.auditor.on.ca/en/content/annualreports/arreports/en15/3.11en15.pdf>

- 7 See <https://www.ontario.ca/page/climate-change-strategy>.
- 8 See <https://www.ontario.ca/page/open-government>.

