



February 23, 2011

Mr. Jeffrey Dea
Project Officer
Operations Division
Environmental Assessment and Approvals Branch
Project Coordination Section
Ministry of the Environment
2 St. Clair Avenue West, Floor 12A
Toronto, ON M4V 1L5

**Re: Proposed Changes to the Municipal Class Environmental Assessment:
Environmental Bill of Rights (EBR)
Registry Number 011-1391**

Dear Mr. Dea,

The Ontario Professional Planners Institute (OPPI) would like to thank the Ministry of the Environment (MOE) and the Municipal Engineers Association (MEA) for the opportunity to comment on the proposed changes to the MEA Class EA, as described in the EBR posting, Registry Number: 011-1391.

Established in 1986, OPPI is the recognized voice of the Province's planning profession and provides vision and leadership on key planning issues. Members work in a wide variety of fields including urban and rural community development, urban design, environment, transportation, health and social services, housing, and economic development. Government, private industry, agencies, and academic institutions employ more than 3,000 practicing planners. In addition, we have approximately 500 student members.

OPPI is committed to creating and fostering healthy communities in Ontario. Launched in 2006, our "Healthy Communities, Sustainable Communities" initiative emphasizes the importance of urban design, active transportation and green infrastructure, links between public health and land use planning, and strategies for collaborating on tangible actions for healthier communities. Planners have a pivotal role to play in bringing together multiple partners and disciplines and in engaging their communities.

The Municipal Class EA, and in particular Section A.2.9, is of interest to OPPI members since it establishes the framework for planning the required municipal infrastructure to serve communities in Ontario. Section A.2.9 provides an approach to integrating the infrastructure planning process under the Class EA with the land use planning process under the Planning Act for both municipal and private proponents. OPPI supports the wider understanding and use of the integrated approach, and any changes to the Class EA that would help facilitate this happening.

OPPI would like to raise an overall concern that the proposed wording of Section A.2.9, while substantively retaining the principles of the original wording, unduly adds procedural burdens to parties wishing to use the integrated approach. We would, therefore, respectfully request that additional time be taken to review the newer provisions, many of which are highlighted here, to ensure that the integrated approach remains a viable option for proponents and offers some incentives to streamline the Planning Act and Class EA processes.

OPPI has already been involved in the consultation process leading up to these proposed changes. Individual OPPI members were interviewed regarding this project in August 2010, and in September 2010, OPPI submitted comments on the changes proposed at that time to Ms. Kelly Roberts of Delcan. These comments may be found at:

<http://www.ontarioplanners.on.ca/pdf/MEAClassEAChangesAug2010.pdf>

OPPI's new response follows the overall format of our earlier response, with the addition of a "Clarifications" Section in response to the corresponding section in the proposed changes.

I. Proposed Changes to the Class EA/Planning Act Integration Process

Overall, OPPI supports MOE and the MEA in maintaining that the Class EA requirements should fully apply to the infrastructure component of an integrated Planning Act/Class EA process, and that information to support the EA component of a Planning Act application should be developed and submitted at the same time as the Planning Act application (i.e. it cannot be prepared retroactively). These principles are fully reflected in the proposed changes.

Study Area Boundaries Variation

We agree that off-site infrastructure must, at minimum, involve the municipality (upper or lower tier or both) as a consenting and cooperating participant. This is particularly the case where proposed infrastructure (whether on or off-site) would require a service agreement between a private proponent and a municipality. We are concerned, however that a requirement that municipalities act as co-proponents, as proposed in Section A.2.6.9.1, will result in an unnecessary duplication of effort.

Change Process/Implementation

We concur with the approach to project revisions (proposed A.2.9.6.2) and “lapse of time” (proposed A.2.9.6.3) described in the proposed changes.

Approvability and Opportunities for Appeal

The “Schedule A” provision in the current Project Schedule tables for integrated Class EA/Planning Act processes may not have been perfect, however, a statement that “Class EA matters involved in an integrated approach are appealed to the OMB” is not true in all cases and provides even less certainty. The proposed changes abandon this approach and do not replace it with a clearer and more useful mechanism.

The legal mechanism by which EA Act – related aspects of the integrated process can be appealed to the OMB through an appeal of a Planning Act application is unclear, and should be better explained.

Piecemealing

While the proposed text for Section A.2.9 includes frequent cross-references to other Sections of the Class EA for various types of requirements, there is no direct cross-reference to the piecemealing provisions contained in the “Project” definition in the Glossary or in Section A.2.2 (Step 1) of the Class EA.

In addition to cross-referencing these provisions, the Section A.2.9 should explain how the piecemealing requirements apply to groups of private sector that trigger the Class EA including a Schedule “C” project as well as Schedule “A”, “A+” and/or “B” projects which may well share land footprints and rights-of-way.

Requirements regarding piecemealing in an integrated Planning Act/Class EA process were the subject of expert evidence in the “Westhill” (Town of Aurora) Ontario Municipal Board hearing in the fall of 2010. No Decision on this appeal has been released to date, but when a Decision is issued it may be helpful in this interpretation and in the interpretation of other aspects of the integrated process requirements. (The OMB file number is PL030997.)¹

¹ It should be noted that two OPPI members provided expert testimony on the Aurora application; Janet Amos, MCIP, RPP and Steven Rowe, MCIP, RPP, who also contributed to this review.

Public Notices and Meetings

By requiring that a proponent of an integrated approach provide a 30-day period for public viewing of Class EA documentation at the conclusion of the integrated approach, the amendment takes away one of the incentives of combining the Planning Act and Class EA processes. The Class EA requires one or two public information meetings at a minimum to meet its process. Under the Planning Act, an applicant (or municipality) while often informally holding one or more public information meetings, is also required to advertise and host a statutory meeting with municipal committee or Council.

The original integrated approach provided a proponent with the opportunity to provide notice of the availability of the infrastructure documentation in a publically available report **in the same format** used for the Planning Act application (i.e., 20 days for an Official Plan amendment) and not demanding 30 days as would have been the case in a Class EA study (e.g., Notice of Study Completion). The integrated approach, by its reliance on the Planning Act results in an “extra” public opportunity provided by the Planning Act statutory public meeting. The original Section A.2.9 version was simpler to follow and deferred to the Planning Act timeframes. The original approach continues to be reasonable and we recommend that it not be altered.

II. Proposed Clarifications in the Class EA

Dams and Weirs

The reference to Appendix 1 (ii) appears not to be correct.

Both the Waterpower Class EA and the Conservation Ontario Class EA for Remedial Flood and Erosion Control Projects anticipate a need for individual EAs for similar types of project to those described here, where facilities exceed a particular scale (200 MW for waterpower) or where major flood and erosion control undertakings are proposed (Conservation Ontario Class EA). For the sake of consistency, some explanation is needed as to why there is no requirement for an individual EA for municipal dams and weirs that exceed a defined threshold.

Project Identification and Piecemealing

As discussed above there should be a cross reference to this text, with further explanation of its application to private sector projects, in Section A.2.9

III. Proposed Project Schedule Changes in the Class EA (Appendix 1)

Changes re: Patrol Yards and Maintenance and Service Facilities (Roads items 37 and 38, Wastewater items 12 and 14, water items 7, 9 and 11)

We continue to have concerns with the proposal to remove all Class EA process requirements for patrol yards and maintenance and service facilities.

The rationale provided in the table that municipalities routinely process and approve applications for commercial /industrial projects with similar impacts is simply misleading, as explained in our September 9 response. New commercial/industrial projects require Planning Act approval, and the public notice, consultation and appeal provisions that go with that. Patrol yards and maintenance and service facilities, on the other hand, are often permitted in all zones in a municipal zoning by-law and, in these cases, new facilities and expansions may require no Planning Act approvals (other than site plan control, which requires no public notice). If the proposed change is implemented, facilities that may be incompatible with nearby sensitive uses could be introduced with no planning, notice or consultation obligations and no appeal provisions. We strongly advise that these facilities should at least be shown as Schedule A+ projects so that notice and an opportunity for comment are provided.

Other Class EA-Specific Items

We continue to have concerns as reflected in our earlier comments regarding the need for a Class EA registry, infrastructure for approved development projects, and the relationship between Class EA and provincial policy. Also as indicated in our earlier response we continue to have concerns with the “bump-up” provisions in the Parent Class EA.

Planning Context of the Municipal Class EA

We reiterate our earlier comments in the September 9 letter regarding the Municipal Class EA and the development of healthy communities.

Summary of our Comments:

Integrated Approach

1. Provide additional time to review the amendments to the Class EA to ensure that the integrated approach remains a viable option for proponents and offers some incentives to streamline the Planning Act and Class EA processes.
2. Municipal concurrence with integrated approach – required when undertaking an integrated approach but do not require municipality to be co-proponent.

3. Lapse of time – agree to refer to Planning Act provisions.
4. Approvability and opportunities for appeal to OMB – clarify.
5. Piecemealing – clarify.
6. Maintain provision to provide notice of the availability of the infrastructure documentation in a publically available report **in the same format** used for the Planning Act application (i.e., 20 days for an Official Plan amendment) and not demanding 30 days as would have been the case in a Class EA study (e.g., Notice of Study Completion).

Clarifications

7. Dams and weirs – clarify/consider alignment with other Class EA's.

Schedule Changes

8. Patrol yards – consider making a Schedule A+.

Other

9. Class EA Registry – an electronic registry should be created to aid practitioners and the public.
10. Consider role of healthy communities when planning infrastructure projects.

Conclusion

Thank you again for the opportunity to comment. We hope these comments will be helpful in your review of the MEA Class EA. Representatives from OPPI would be happy to meet with you, your staff and with MEA members to further discuss our submission, if you. To schedule a meeting or for further information, please contact Loretta Ryan, MCIP, RPP, Director, Public Affairs 416-483-1873, x226 or by e-mail at policy@ontarioplanners.on.ca

Sincerely,



Sue Cumming, MCIP, RPP
President
Ontario Professional Planners Institute