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NOTICE OF PROPOSAL FOR REGULATION

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Proposal Title:

Regulatory Amendments to Facilitate Waste Recycling, Use of Alternative Fuels and New and Emerging Waste Management Technologies

Short Description:

The Ministry proposes to amend various regulations under the Environmental Protection Act (EPA) and the Environmental Assessment Act (EAA) to facilitate efforts of municipalities, waste generators and waste managers to divert more wastes from disposal and to better manage residual waste.

Waste managers and others will be able to make use of these regulatory provisions as tools in the development, implementation and operation of their waste management sites and systems, especially with respect to waste diversion. The proposed regulatory amendments pertain to activities for using select waste as alternative fuel, new and emerging technology and recyclable materials. The following sections describe the proposals (follow the hyperlink listed below for copies of regulatory proposals):

1) Waste Biomass Used to Produce Ethanol and Biodiesel

Regulatory amendments are proposed to permit the production of ethanol and biodiesel from biomass comprised of organic wastes and use as alternative fuels, without first obtaining ministry approval under EPA, Part V (Waste).

Biomass, which is a renewable source of energy, is a term that encompasses organic

matter derived from plants and animals. Waste biomass includes agricultural residues, waste from forestry operations and food processing wastes. Production of energy from biomass is generally considered to have a neutral impact on greenhouse gas emissions.

Biodiesel, which is a fuel made from biomass, is a clean burning alternative to traditional fuels, such as gasoline and diesel fuel, which are made from non-renewable petroleum resources. Biodiesel can be blended with petroleum diesel for use in diesel engines. Biodiesel will need to meet quality standards that are specified in the regulation.

Ethanol (ethyl alcohol or grain alcohol), which is also a fuel that can be made from biomass, can be blended with gasoline for use in gasoline engines.

Currently, processing and handling of waste materials, and therefore the production of ethanol or biodiesel from certain waste biomass, requires approval under EPA, Part V (Waste).

The proposed regulation removes these approval requirements; however, other approvals that may be required under the EPA, such as for air emissions, will remain unchanged.

2) Use of Woodwaste as Alternative Fuel

Currently, sites that combust a maximum of 100 tonnes per day of woodwaste as a fuel or fuel supplement are exempt from waste approval requirements under EPA, section s.27 through Regulation 347.

The ministry proposes to amend Regulation 347 to allow woodwaste combustor sites to combust any quantity of woodwaste as a fuel or fuel supplement without approval under EPA, s.27. The ministry is not proposing to amend the current 500 cubic metre limit on storage of woodwaste. This proposal also does not in any way affect other applicable requirements under the EPA, such as s.9 approvals for air emissions.

Facilities that burn woodwaste to produce electricity would continue to be subject to Regulation 116/01 under the Environmental Assessment Act.

3) Pilot and Demonstration Sites for New and Emerging Waste Management Technologies

The ministry proposes to amend Regulation 347 to provide a streamlined waste approvals process under EPA, Part V (Waste) for pilot and demonstration sites for new and emerging waste management technologies, including energy-from-waste (EFW) technologies. The ministry proposes that hearings for pilot and demonstration projects be discretionary rather than mandatory as may currently be the case. The ministry is also proposing regulatory amendments to exempt Pilot and Demonstration Sites from the EAA.

Pilot and demonstration sites will continue to require approval under EPA, Part V (Waste) and other applicable EPA requirements.

The regulation will limit the exemption to projects with a maximum capacity of 75 tonnes per day of municipal waste. In addition, the regulation will set a project time limit of three years. Proponents would be able to apply to the ministry to extend the project duration but only up to an overall maximum of five years.

The regulation will also require applicants to indicate that they wish to follow this alternative approvals process.

New and emerging waste management technologies, including EFW technologies such as gasification and plasma arc, are operating in other jurisdictions; however, facilities are generally small scale and are not well proven for use with municipal waste.

Ontario's existing approvals process does not, for the most part, distinguish between pilot, demonstration or full-scale operations or between proven and unproven technologies. In some cases this may hinder the testing and development of new and emerging technologies.

Pilot and demonstration facilities can greatly assist proponents in obtaining the information necessary to gain environmental approvals and technology acceptance. Although the Ministry accepts environmental data from other jurisdictions for approvals purposes, the available data may not address all of the contaminants or issues of concern in Ontario. A proponent therefore may wish to construct and operate a pilot or demonstration facility in Ontario to obtain the necessary information, confirm information obtained from other jurisdictions or show that the technology works effectively and efficiently in the Ontario situation.

The Ministry is also proposing to amend Regulation 347 to clarify that different types of thermal waste technologies have similar approval requirements. This is done by introducing a new term "thermal degradation" in Regulation 347 and making the necessary amendments to incorporate this new term elsewhere in Regulation 347. Administrative amendments to reflect the new term would also need to be made to affected regulations such as Ontario Regulation 419/05 (these administrative amendments are not being posted on EBR).

4) Production and Use of Recyclable Materials Recovered from Waste

The ministry shares the view held by many stakeholders that public policies should create incentives to recycle waste. The regulatory amendments dealing with recycling will strengthen the existing public policy underlying Ontario's overall waste diversion goal, which is to increase the amount of waste that is diverted from disposal.

Strengthening provincial policy support for recycling will result in more recycling. Apart

from the environmental benefits of reducing the amount of waste disposed, producers who use recyclable materials can conserve resources, and reduce both energy consumption and environmental emissions.

The goal of this proposal is to make it easier for proponents to develop and implement systems needed to recycle while ensuring that the environment is protected. The regulatory amendments only pertain to waste management controls. All wastes and activities that are outside the scope covered by the regulatory amendments will continue to be subject to EPA, Part V to the same extent that they were before. All exempt wastes, sites and systems will continue to be subject to the same EPA air approval requirements as before.

While many recycling activities already benefit under available exemptions, there is some concern that the Ministry stringently controls waste that is destined for recycling. Some cite this as a barrier to more recycling.

For example, existing controls require generators to ship some wastes directly to the site where they will be recycled if they wish to be exempted. This means that if the waste is to be stored, processed or transferred at an intermediate site prior to recycling, the intermediate site has to first obtain an EPA, s.27 approval.

Another requirement is that a recycler (e.g. manufacturer) must wholly use all the waste (i.e., all waste must be fed into the manufacturing process as received). Any manufacturer that needs to process the waste so that it can be fed into the process must obtain an EPA, s.27 approval to prepare the waste for recycling. This discourages recycling wastes that require any pre-processing.

The ministry has identified a number of wastes that are recycled but do not meet current exemption criteria for one reason or another. The ministry proposes to amend Regulation 347 to explicitly list the following wastes in Regulation 347, s.3 and thereby exempt them from EPA, Part V (Waste) as recyclable materials:

- * Waste paint or waste coatings recycled into paint.
- * Printed circuit boards recycled by smelters.
- * Emission control dust recycled by smelters.
- * Spent activated carbon recycled by being reactivated.
- * Metal bearing waste recycled by smelters.
- * Crumb Rubber recycled into products (not fuels).

The ministry has determined that recycling of certain end-of-life electronic and related products will be greatly assisted by reducing the regulatory controls on systems that collect, store and transfer these wastes. The ministry proposes to amend Regulation 347 to exempt collection, storage and transfer systems from EPA, s.27, 41 and 42 approvals requirements when they are used for the purpose of recycling. The exemption will apply

to systems for the following:

- * Batteries.
- * Mercury containing devices and materials (e.g. electrical switches, thermostats, fluorescent lamps).
- * Waste Electrical and Electronic Equipment (WEEE) (intact or disassembled).
- * Printed circuit boards.

In addition, the ministry proposes to amend Regulation 347 to exempt sites used for dismantling intact WEEE so that reusable components can be salvaged and non-reusable components can be sent to a processor for recovery of materials for recycling.

The ministry is also clarifying which activities are covered by the recyclable material exemption for the use of certain residual materials (e.g. used cooking oil). This will make it easier for proponents to understand the ministry's requirements.

5) Beneficial Use of Wastes

Sites where wastes are deposited on land require ministry approval under EPA, s.27. Waste is placed on land usually for purposes of disposal. In some cases, placement of waste materials on land is not for disposal but for some beneficial purpose that uses the waste. The ministry generally allows such uses without approvals; however, it is sometimes problematic to determine when land placement is a beneficial use and when it is disposal.

The ministry has identified that construction of walkways, roads and parking areas, which involve deposition of materials on land, are beneficial uses and not disposal. The ministry proposes to amend Regulation 347 to exempt these beneficial uses of waste from EPA, s.27, 40 and 41 when they involve the deposition on land as specified in the regulation of the following wastes:

- * Waste asphalt shingles.
- * Waste asphalt.
- * Waste glass.

6) Extended Producer Responsibility Systems (EPRS)

The ministry wants to facilitate the development of more programs based on the principle of Extended Producer Responsibility. These are seen as potentially important components of Ontario's future waste management initiatives. Producers set up these programs to manage products when they become waste or at their end-of-life for reuse, recycling or proper disposal. The government established the Waste Diversion Act, 2002 to help promote waste reduction, reuse and recycling programs based on the principle of Extended Producer Responsibility.

Such programs are a form of waste management and therefore require approvals under EPA, Part V. By providing a simpler regulatory mechanism for such systems, the ministry hopes to support the development of these programs, whether developed voluntarily or under the Waste Diversion Act, 2002.

The ministry is seeking public comments on a proposal for a regulatory approach that would exempt any EPR based system designed and operated in accordance with the regulatory requirements.

The ministry wishes to facilitate ongoing industry efforts to set up waste management systems (e.g. take back programs) by relieving proponents of EPA, s.27 approvals.

The proposed approach would involve defining a responsible entity and establishing the scope of key aspects of the system, such as wastes, processes, and reporting. There would be no approval requirements for these systems and this should make implementation quicker, simpler and less costly.

The system would be called an Extended Producer Responsibility System (EPRS) to reflect the primary driving force behind the system. The following describes the approach and key details of how the Extended Producer Responsibility System would be implemented as part of Regulation 347.

6a) Responsible Party

The responsible party would be responsible for development, implementation and operation of the system. The regulation would define the responsible party as the Producer, who could be a manufacturer, brand owner or first importer. A Producer could also designate an agent as the responsible party. A collective group of Producers could also be the responsible party.

6b) System Components

The operational component of an EPRS would include a system to collect or accept waste from consumers, one or more sites to receive waste and the transport of materials. At the sites, waste may undergo sorting, bulking, baling, consolidation, packaging, and temporary storage prior to being shipped to recyclers or disposal sites that were not part of the EPRS.

The regulation would define two system components for this purpose:

* "EPRS consolidation sites" would be sites where waste collected from consumers or deposited directly by consumers is temporarily stored or accumulated. The Producer or others under contract to the Producer would own or lease the sites. The regulation would limit activities at these sites to those specifically listed.

* "EPRS collection system" would be the equipment and activities involved in collection and transport of the waste from consumers to sites and between sites.

The EPRS would comprise an EPRS Collection System and one or more EPRS Consolidation Sites. Under EPA, Part V such components are considered 'waste management systems' and 'waste disposal sites'.

6c) Definition of Wastes

The regulation would define the wastes as 'spent products' to reflect their direct linkage to Producers. Spent products would be products that have become waste. Spent products could be wastes designated under the Waste Diversion Act, 2002, or could be spent products that were the subject of a voluntary EPR program.

It is intended that any EPRS could manage spent products of more than one Producer, provided that the products were similar in function and met specifications set by the Producer for quality, material composition, storage, handling or transportation method.

The following wastes are not to be included in an EPRS because they are either outside provincial jurisdiction, are especially problematic or represent significant risk to the environment, human health or safety:

- * Asbestos waste.
- * Biomedical waste, other than sharps (needles and syringes) and medical equipment and supplies from a person's residence.
- * Cytotoxic waste or human blood waste.
- * PCB waste.
- * Radioactive waste.
- * Severely toxic waste.

6d) Defining an EPRS

The regulation would define an EPRS as a system established and controlled by one or more Producers or by an agent named in a written product stewardship agreement. Any system outside the definition would not be an EPRS and would be subject to applicable requirements of Part V.

All costs for the EPRS would be paid for by the Producer. The Producer would determine how the spent product is to be managed and would have written agreements with all EPRS consolidation sites and EPRS collection systems. The Producer would have to submit a start-up notice to the ministry.

6e) Exemptions Provided for an EPRS

The regulation would exempt the following EPRS components from approval requirements under EPA, Part V:

- * All uses of spent products by the Producer except uses involving combustion or land application of the spent product.
- * EPRS consolidation sites.
- * EPRS collection systems for collection and transport of spent product or Municipal Hazardous or Special Waste to consolidation sites or to waste disposal sites authorized to process or recycle it.
- * Generator registration and manifesting of spent products en route to an EPRS consolidation site or a waste disposal site authorized to process or recycle it.

6f) Prior Notification

Before start-up of an EPRS a Producer would have to submit the following information to the ministry and municipal governments:

- * Identification of the Producer, agents and operators.
- * Description of handling, storage, transport, processing, use and disposal operations.
- * Description of spent products and quality controls for accepting them.
- * Description of monitoring and tracking procedures for spent product movements in the system.
- * Agreements with agents and consolidation sites and collection systems.

6g) Operating Rules

Every EPRS would have to operate according to specified rules including:

- * Spent product to meet specifications of the original product manufacturers.
- * Leaks, spills, damage or deterioration of storage containers to be prevented.
- * Spill containment and clean-up equipment to be available.
- * Reasonable care taken to control items such as dust, litter, odour, noise, rodents or other animals and insects.
- * Control site access to authorized persons.
- * Quick removal (e.g. 90 days) of waste from sites that are no longer part of the EPRS.
- * Storage containers labelled with type of waste.
- * Notice present at the site and in all vehicles used to transport spent product.
- * Limit storage of spent product to six months.
- * Notify the Director and municipalities when information in the notice changes.

6h) Record Keeping

The regulation would require a Producer to record the following information and submit a summary to the Director annually (e.g. by February for the preceding year):

- * Types, amounts and sources of spent products accepted.
- * Problems that occurred and actions taken.
- * Final destination and fate of all spent product

Purpose of the Proposal:

The purpose of the proposal is to make regulatory amendments that will facilitate efforts of municipalities and other waste managers to divert more waste from disposal and to better manage residual wastes.

Other Relevant Information:

The EPA includes provisions applicable to the development and operation of waste management facilities. Any waste disposal site or waste management system is prohibited without a proponent first obtaining approval of the Ministry of the Environment. Sections 27, 40 and 41 of the EPA stipulate a range of prohibited activities encompassing virtually all aspects of waste management.

Regulation 347 under the EPA establishes specific controls on defined wastes and waste management activities. The regulation provides relief from some or all of these controls for some wastes and activities, especially where the activity involves use of waste rather than disposal of waste. The regulation achieves this by defining the specific waste materials, the management activities or other aspects that describe the situation and then exempting the waste or activity.

While EPA, Part V, specifically addresses controls on wastes, waste disposal sites and waste management systems, there are many other provisions that ensure the environment is protected, especially general provisions prohibiting release of contaminants. None of the proposals affect these requirements in any way. Not only will all wastes, sites and systems that are outside the scope of the proposed policies continue to be subject to all EPA, Part V controls, but all wastes, sites and systems subject to the exemptions will continue to be subject to all other EPA requirements.

The ministry is soliciting comments from the public on the specific proposals contained in this posting, especially with respect to terminology, waste definitions and alternative language that could clarify the regulation.

The ministry is also seeking input on other wastes or beneficial uses that merit consideration for similar treatment under Part V of the EPA.

The ministry would appreciate receiving comments in electronic form (preferably in Word format) emailed to adam.ciulini@ene.gov.on.ca

Other Public Consultation:

The ministry conducted a public consultation on various proposals with respect to waste

diversion in 2004. The results of that consultation were considered during the development of this proposal.

Comments should be directed to the following Contact Person:

Adam Ciulini, Team Leader
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135 St. Clair Ave. W.
Toronto, Ontario, M4V 1P5
PHONE: (416) 314-4633 FAX: (416) 325-4437

Some Government offices have additional information on this proposal for viewing. These are listed below:

Waste Management Policy Branch
135 St. Clair Avenue West
7th floor, Toronto, Ontario, M4V 1P5
PHONE: (416) 325-4100 FAX: (416) 325-4437

Additional material in support of this notice is available by clicking the following hyperlink(s):

http://www.ene.gov.on.ca/envision/env_reg/er/documents/2006/Reg347_Amendments.pdf
http://www.ene.gov.on.ca/envision/env_reg/er/documents/2006/Reg116_Amendments.pdf
http://www.ene.gov.on.ca/envision/env_reg/er/documents/2006/Reg334_Amendments.pdf

All comments will be considered as part of the decision-making by the Ministry if they:

- a. are submitted in writing;**
- b. reference the EBR Registry number; and**
- c. are received by the Contact person within the specified comment period.**

Please Note: No acknowledgment or individual response will be provided to those who comment. All comments and submissions received will become part of the public record.