

ENVIRONMENTAL LAW

EAA REFORM – NO QUICK FIX

ONTARIO EAA REFORM PANEL RULES, REGS, POLICIES, “GREEN PROJECT” PRIORITY

Nobody should be surprised that Ontario’s EAA Advisory Panel could not find a quick way to reform the EA process.

The 2 volume report *Improving Environmental Assessment in Ontario: A Framework for Reform* includes controversial proposals to fix Ontario’s *Environmental Assessment Act* (EA) process. It includes a set of comprehensive, high-level recommendations by the Executive Group (EG) of four lawyers and an academic. More recommendations are provided by sector waste, energy and transit/transportation panels.

While pronouncing the EA Act “fundamentally sound”, the EG concluded there are “significant policy gaps, procedural inconsistencies, and administrative shortcomings that must be addressed as soon as possible.” Critics welcome some of the proposals from the

IN THIS ISSUE

- ◆ ONTARIO ENVIRONMENTAL ASSESSMENT REFORM
- ◆ IS USED TIRE LEVY BLOWN?
- ◆ SPILLS BILL 133 IN FORCE
- ◆ BROWNFIELDS MANDATORY CLEAN-UP OCTOBER 1, 2005

sector panels, but see the overall picture as overly complex, expensive and inefficient.

The Panel found a need for clearer rules, more transparency, more MOE policies, regulations and guidelines, plus integration with provincial land use policies. It recommended a new 5 level classification system with streamlining for “green” projects, plus an EAA advisory committee and a “green facilitator.” The recommendations amount to a complete overhaul of EA principles, policies and guidelines, plus new sector-specific policies and regulations. For example, the Waste Panel recommends that MOE “clearly articulate in a policy the provincial need

EAA Reform (Continued on page 2)

“TIRE TAX” HYPE MAKES PREMIER BLOW UP

On June 3rd, Ontario Premier Dalton McGuinty appeared to put the brakes on a proposal rolled out by Ontario Tire Stewardship (OTS). The OTS stewardship plan was to be funded by a point-of-purchase fee on each new tire sold in Ontario. OTS had proposed building a war chest to properly manage

scrap tires by levying a fee of \$4 on new passenger tires and \$6 on truck tires. The fees, to be collected from consumers by retailers, were proposed to raise \$35-41 million a year over the first five years of the program.

OTS, representing tire producers and sellers, prepared its draft plan for approval by Waste Diversion Ontario (WDO) and submitted it to the Minister of Environment in December of 2004. In June, prompted by an alternative scheme floated by tire dealers and collectors, critics and media baited the Premier by labelling the fees a “tire tax.” The Premier reacted, declaring “there’ll be no tire tax. Everybody get that one? There will be no tire tax.”

Will this chill plans of other product stewards to collect advance disposal fees or other front end charges? It remains to be seen, for example, how this fuss will affect a proposed consumer levy on shopping bags, to be imposed at the cash register, in line with recent developments in Ireland and several U.S. cities?

WDO Executive Director Glenda Gies says the whole mix-up is “a misunderstanding and media hype.” The stewardship fees are not a tax on consumers: they are collected and used by the product stewards themselves, says Gies. Stewards can choose to either swallow the fees as a cost of doing business or incorporate the cost into the price of the product and pass it on to the consumer. The OTS has opted to take the latter route and collect the fees at the retail level.

While the Environment Minister reviews and approves the individual industry stewardship plans, neither she

Tire Trouble (Continued on page 2)

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Tire Trouble

(Continued from page 1)

nor the Premier has the authority under the *Waste Diversion Act* to impose a tax on consumers or prescribe how stewards collect the fees they will use to manage the waste. Under the OTS Plan, the government would have no role in the collection of the stewards' fee or the management of the resulting fund. Any kind of consumer tax "is outside the control of the Act," says Gies. Indeed, the fee itself is subject to PST and will likely be incorporated into the consumer price of the product.

Calling the fee a "tire tax" pushed two government hot buttons at once: sensitivity over the Liberal's election promise not to impose new taxes, and the memories of the provincial tire surcharge fiasco. Implemented following the Hagersville tire fire and subsequently killed by the Tories in 1994, the surcharge raised almost \$120 million that disappeared into general revenues.

Is OTS ready to abandon its proposed consumer fee on tires? Apparently, the situation is "very fluid" and the group is actively involved in ongoing discussions with WDO and the MOE. "We have to comply with the Act, but it's way too premature to discuss other funding mechanisms yet." While favouring a fee imposed at the retail level -- ensuring that the stewardship fund would cover every tire entering the Ontario environment -- the OTS admits there are a myriad of other ways to fund its statutory obligations. Either way, tires are going to cost more.

Download details of the OTS plan from www.ontariotirestewardship.ca.

BROWNFIELDS MANDATORY RSCs IN EFFECT OCTOBER 1, 2005

Effective October 1, 2005, Ontario's Brownfields law will require the filing of a Record of Site Condition (RSC) on the Environmental Site Registry (ESR) for a wide range of land use changes. This affects land use changes from industrial or commercial use to residential or parkland use. Other changes requiring an RSC are prescribed in the Brownfields RSC regulation (O. Reg. 153/04). RSCs must certify that the property is not

**EAA REFORM:
MAJOR RECOMMENDATIONS**

The 41 major recommendations include having the province

- ◆ expand the definition of EA and provide for the strategic EA of energy policies, waste and transportation master plans;
- ◆ entrench the formal application of the precautionary principle, sustainability benefits, and the "avoidance first" concept to the EA process;
- ◆ impose EA application fees to pay for "prescribed EA activities" which could include more funding for project opponents;
- ◆ replace discretionary powers with clear rules, and establish sector-specific working groups to develop policies and EA procedures that are consistent, predictable and timely;
- ◆ set up a "high-level office" to fast track "green projects";
- ◆ more effectively involve First Nations in the EA process; and
- ◆ expand compliance monitoring and inspection.

contaminated, or that it has been cleaned-up to regulatory standards for the proposed use. Where an RSC is based on a risk assessment that specifies risk management measures such as remedial works or monitoring or limitations on the use of the property, the MOE may issue a Certificate of Property Use (CPU) requiring implementation of these measures and registration of a notice on title. Municipalities are prohibited from issuing building permits that would not comply with the restrictions in the CPU. Notice of a CPU will be registered on title.

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EAA Reform

(Continued from page 1)

for, and the interrelationship among, all elements of waste management in Ontario." Once comprehensive policies are adopted, individual assessments could omit consideration of need and alternatives. This could end the wasteful and redundant charade where proponents pretend to consider all alternatives, and opponents try to unravel the "process".

Unfortunately, despite best intentions, this route to EA reform will take years. Events of the last 15 years show that developing comprehensive policies for waste, transportation or energy will take extraordinary political will, government resources, public participation and more time. Examples include, the foundering of Ontario's EAA for an electricity demand-supply plan, the failed Interim Waste Authority process, the inconclusive and interminable Ontario Waste Management Corporation EA. The impending waste disposal crisis is exacerbated by the inability of successive provincial governments to develop a policy for managing "the other 40%".

Download from www.willmsshier.com.

**SPILLS BILL 133 PASSES
SOME PARTS NOW IN FORCE**

On June 13, Bill 133 -You Spill You Pay! received Royal Assent.

Expanded liability for corporate officers and directors, more stringent spill reporting requirements and harsher sentences are now in force. The controversial Environmental Penalties provisions have not yet been proclaimed. Now spills must be reported as soon as the spiller is aware that the spill "may cause" an adverse effect.

Exemptions are valid for companies having spill contingency plans that comply with O. Reg. 675/98.

We have posted a chart of Bill 133 changes, showing the sections that are now in force at www.willmsshier.com.

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