

Changes in place for Ontario’s Environmental Assessment Act

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On July 8, 2020, the Ontario Government proposed significant amendments to the *Environmental Assessment Act* (“EAA”) included in the *COVID-19 Economic Recovery Act, 2020* (“Bill 197”). The changes stem from the Government’s Made-in-Ontario Environment Plan released by the Ministry of the Environment, Conservation and Parks (“MECP”) in November 2018 as well as a discussion paper, “Modernizing Ontario’s Environmental Assessment Program”, released in April 2019.

The *COVID-19 Economic Recovery Act, 2020* received Royal Assent less than two weeks later on July 21, 2020. Most of the amendments to the *Environmental Assessment Act*, set out in Schedule 6 of Bill 197 and set out below will take effect on a day to be proclaimed by the Lieutenant Governor. The purpose of the EAA remains for the betterment of the people of Ontario by providing for the protection, conservation and wise management of the environment. However, the EAA will change in significant ways.

Key changes to the EAA include:

Enacted in Bill 197 (in force on a day to be proclaimed)	To be enacted by regulation
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<p>Authority to develop Project Lists. A new definition defines projects as Part II.3 Projects and or Part II.4 Projects.</p> <p>Part II.3 Projects undergo a Comprehensive Environmental Assessment.</p> <p>Part II.4 Projects undergo a Streamlined Environmental Assessment.</p> <p>These will replace the current Individual and Class EA processes respectively.</p>	<p>Project List regulations will identify Part II.3 and Part II.4 Projects</p>
<p>Terms of Reference for Comprehensive EAs. EAA section 17.4 provides for prescribed terms of reference for proponents in certain sectors conducting Comprehensive EAs.</p>	<p>Regulations will be developed that prescribe requirements for terms of reference for Comprehensive EAs.</p>
<p>“Streamlined” EAs and Eliminating Class EAs. The EAA provided a process whereby stakeholders could develop Class EAs setting out a standardized planning process for certain classes or groups of activities. Class EAs apply to projects that are carried out routinely and have predictable environmental effects that can be readily managed.</p> <p>Under amended EAA, Class EAs will be replaced with a Streamlined EA process to be set out by regulation applying to certain designated projects. The existing Class EAs will remain in place until the new regulation is in place.</p>	<p>Regulations will be developed to govern aspects of Streamlined EAs including: the EA process, timeframes, required studies and consultations, conditions for mitigation, whether or not alternatives and alternative methods should be considered, and extent to which notice is required.</p>

<p>Limiting the “Bump-Up” or the Elevation Request Process. Under section 16 of Part II.1 of the EAA, the Minister may order an undertaking that would otherwise be assessed under an approved Class EA to be assessed as an Individual EA.</p> <p>Under EAA section 17.31(1), the Minister may make an order declaring a Part II.4 project to be a Part II.3 project for the purposes of EA. However, EAA section 17.31 (7) goes on to provide that a person may only request a bump up from a Streamlined EA to a Comprehensive EA on the grounds that it may prevent, mitigate or remedy adverse impacts on existing aboriginal and treaty rights.</p>	
<p>Change in Project. If a proponent wishes to change a project after commencing a Project under a Streamlined EA, it may apply to the Minister for an order regarding the change under EAA 17.31 (14).</p>	<p>Regulations will establish rules and procedures for changes to Streamlined Projects.</p>
<p>Setting Timelines and Expiry Dates. EAA section 17.11 provides for prescribed timelines for Ministry review, and sets timeframes for the Ministry providing proponents with lists of deficiencies and for Proponents to remedy the deficiencies. In addition, the EAA section 11.5 (2) provides for a 10-year expiry date for Individual EA projects not substantially commenced</p>	<p>Regulations will prescribe timelines for Ministry review.</p>

<p>Municipal Support for Large Landfill Projects. EAA section 17.5 requires proponents of new, large landfills (requiring a Comprehensive EA) to obtain resolutions in support from: (a) host municipalities; and (b) adjacent municipalities where there is land that is authorized for residential uses that is within a 3.5 km distance (or as may otherwise be prescribed) from the proposed new landfill site property boundary. Until such resolutions are received, the EA is deemed not have been received by the MECP.</p>	
<p>Improved Harmonization between Provincial and Federal EA Processes. EAA section 3.1 is intended to improve harmonization provisions to align with the federal <i>Impact Assessment Act</i> thus facilitating the “one project, one assessment” approach.</p>	

In addition to the foregoing, on June 30, 2020 the Government amended Regulation 334 to exempt most forestry activities that used to be subject to the forest management Class EA from the EAA.

The MECP is seeking public comment on proposed regulations as follows:

- ◆ Proposed amendments to 8 Class EAs (<https://ero.ontario.ca/notice/019-1712>)
- ◆ Proposed exemptions from the *Environmental Assessment Act* to eliminate duplication and reduce delays for projects and activities related to Indigenous land claim settlements and other agreements with Indigenous communities dealing with land (<https://ero.ontario.ca/notice/019-1805>), projects within provincial parks and conservation reserves (<https://ero.ontario.ca/notice/019-1804>), and certain highway projects being planned by the Ministry of Transportation (<https://ero.ontario.ca/notice/019-1882> and <https://ero.ontario.ca/notice/019-1883>).

The comment period on the foregoing proposed regulations closes on August 22, 2020.

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