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The *Green Energy Act* - The Devil in the Detail

The Ontario Ministry of the Environment (MOE) has provided some of the performance standards to implement its *Green Energy and Green Economy Act, 2009*. While both environmentalists and the environmental industry sector remain generally supportive, there is concern over the attendant technical and administrative requirements.

The MOE discussion paper, “*Proposed Content for the Renewable Energy Approval Regulation under the Environmental Protection Act*,” was posted for comment June 9, 2009. The paper outlines the MOE’s requirements—including the requisite plans, studies, public consultation and technology-specific requirements—for application, review and decision-making for Renewable Energy Approvals.

At the same time, MNR released its draft “Approval and Permitting Requirements for Renewable Energy Projects,” which sets out the process for reviewing renewable energy projects under section 13.2 of the *Ministry of Natural Resources Act*. Together, the two documents describe what is intended to be a more prescriptive and streamlined approval process for renewable energy projects. The deadline for public comment on both documents was July 24, 2009.

Much of the early criticism of the Act has centered on the controversial—and, as yet, unsubstantiated—health effects of wind turbines. To help allay public fears, MOE has proposed a generous setback regime for land-based wind turbine facilities. The setback is the distance separating the centre of a “Point of Reception”, essentially dwellings and other sensitive receptors, and the base of the closest wind turbine. The setback will vary according to the number of turbines in a three kilometre radius and the collective noise they generate.

The proposed setbacks are consistent with MOE’s *Noise Guidelines for Wind Farms* (October 2008). There is some flexibility save for the minimum setback. A proponent can apply for a more modest setback by completing a site-specific noise study, as set out in the guidelines. The project must comply with a noise level limit of 40 dBA at the nearest Point of Reception and must provide a minimum 550 metres setback.

“That minimum setback alone could jeopardize three-quarters of the wind energy projects currently under development in Southern Ontario,” says Dr. Don McKay, principal of renewable energy for ORTECH Consulting Inc. and a director of the Ontario Environment Industry Association. “With today’s modern turbine technology, you don’t



need 550 metres to achieve the MOE's 2008 noise guidelines for wind farms. The Ministry should be setting setbacks on a case-by-case basis," McKay says, "so long as a proponent can demonstrate through strong scientific analysis that it can meet the 40 dBA limit."

The MOE discussion paper also proposes setbacks to protect natural heritage sites and sensitive water bodies. Again, a proponent can challenge these by completing an environmental impact study—prepared in accordance with the procedures and guidance established by MNR—that demonstrates the ability to mitigate negative impacts associated with a reduced setback. However, at no time will a renewable energy generation facility be permitted closer than 30 metres to a sensitive hydrologic feature.

While setbacks have received much of the early attention, a number of other concerns have been raised about the proposed implementation of the *Green Energy and Green Economy Act*:

- ◆ Generators are concerned about the risk, delay and cost that they say will arise from the obligation to present a complete application for a Renewable Energy Approval. That obligation will require work, such as detailed design, to be completed well in advance of the usual timeframe for energy project development.
- ◆ Generators are seeking clarification of the Province's requirements (now reflected in the OPA's draft Feed-in Tariff documents) for "local content" in the materials and services used in renewable energy projects.
- ◆ Proponents of energy-from-waste (EFW) and combined heat and power (CHP) projects hope that, in due course, the government will rethink the exclusion of these sectors from the streamlined approval process.
- ◆ Some generators anxiously await the definition of "biomass", "biogas" and "biofuel" as renewable energy sources. These remain to be defined by regulation. These sectors are concerned that detailed definitions may result in the exclusion of their fuel sources from the streamlined approvals process.
- ◆ Some proponents feel that the transitional arrangements are unfair. The current proposal requires the return of all unresolved applications for a Certificate of Approval or Permit to Take Water to the applicant for resubmission under the Renewable Energy Approval regime. The application of new regulatory standards will prevent the development of some projects that are already planned and in the approvals pipeline.
- ◆ Objectors' rights to be consulted are significantly reduced by the new legislation. Nonetheless, industry critics caution that the new obligation for proponents to notify residents within a 1.5 km radius of the project will be a logistical nightmare, especially in an urban setting.



- ◆ Potential objectors are concerned that the new third party right of appeal imposes an unacceptably onerous burden to demonstrate that the grant of the Renewable Energy Approval will result in serious harm to human health or serious, irreversible harm to plant life, animal life or the natural environment.
- ◆ Municipalities and their constituents are concerned that the Act overrides municipal planning powers.
- ◆ Consumers are concerned that infrastructure costs to implement the Act and the rates to be paid under the Feed-in Tariff to renewable energy generators will result in higher electricity rates. It is still unclear whether the Province will underwrite the increased costs or provide relief to ratepayers such as low income consumers and struggling energy-intensive sectors (e.g. the auto and forestry industries), using new powers in the amended *Ontario Energy Board Act*.
- ◆ Some ENGOs want Class 1 agricultural lands to be excluded from the Renewable Energy Projects regime. Wind power energy proponents say this would negate a lot of planned renewable energy generation development.

To see earlier W&SEL briefings on the *GEA*:

Ontario Government introduces the *Green Energy Act*: [E-Alert: Green Energy Act](#)

Ontario quickly passes *Green Energy Act* with some interesting revisions: [E-Alert: Green Energy and Green Economy Act, 2009](#)

Ontario moves to replace environmental assessment for renewable energy projects with streamlined approval process: [E-Alert: Ontario moves to replace environmental assessment for renewable energy](#)

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