

ONTARIO STREAMLINES ENVIRONMENTAL ASSESSMENT REQUIREMENTS FOR CERTAIN PROJECTS

MAY 2024



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Since 1975, Ontario has specified types of projects required to prepare environmental assessments (EAs) before construction, under evolving requirements of the provincial Environmental Assessment Act (EAA). EA requirements are designed to ensure that impacts are assessed, alternatives compared, and the government and affected communities consulted. These requirements generally apply to infrastructure and utility projects undertaken by public agencies.

Throughout the decades, politicians and regulators have refined EAA requirements to create levels of analysis and scrutiny that vary with the perceived environmental hazards posed, creating classifications of projects subject to reduced or streamlined requirements.

New “Modernization” of EAA Review Procedures

In an effort to reduce administrative resources and speed infrastructure project approvals, on February 16, 2024, Ontario narrowed EA requirements for a broad range of public agency infrastructure projects and took additional steps to reduce and expedite EAA reviews by the Ministry of the Environment, Conservation and Parks (the Ministry).

“ ‘On February 16, 2024, **ONTARIO NARROWED EA REQUIREMENTS** for a broad range of public agency infrastructure projects ”

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These revisions culminate six years of regulatory and legislative pronouncements, reviews, and amendments to EA requirements, framed as “modernization” of these standards and procedures. This article summarizes the latest changes and provides some background to the process.

What were EAA requirements just before February 2024?

The present Environmental Assessment Act dates from 1990 (recodifying one first enacted in 1975), although it has been amended regularly throughout this period. Immediately prior to the February amendments, EAA established definitions covering categories of activities, and directed the Ministry to provide additional details in regulations. Key terms included:

- “Undertakings.” The proponent had to submit an EA to the Ministry for review and approval before starting work.
- Categories of “enterprise or activity” that qualify as undertakings. These included undertakings by a governmental actor, and “major commercial or business enterprise or activity” defined by the Ministry. The only

private sector undertakings required to prepare an EA were for municipal road, water, and wastewater services, and power supply infrastructure for commuter rail corridor electrification.

Exempted Projects

The regulations also specified exemptions for certain categories of undertakings deemed to have limited environmental impacts. Over the years the Ministry also individually exempted specific projects.

“ The regulations also **SPECIFIED EXEMPTIONS** for certain categories of undertakings ”

Proponents of covered (exempted) activities submitted “terms of reference” on a Ministry form, and in compliance with the Ministry’s applicable Code of Practice, proposing the scope of an EA. EAA required each EA submission to include at least the following items:

- A description of the undertaking’s purpose,
- A statement of the undertaking’s rationale,
- A description of proposed undertaking and any alternatives,
- A description of the environment being affected and how, and actions that may prevent, change, mitigate or remedy the effects,
- An evaluation of the environmental advantages and disadvantages of the undertaking and any alternatives, and
- A description and results of any consultation about the undertaking by the proponent.

EAA requirements addressed:

- “Individual EAs” for larger and more complex undertakings, and
- “Streamlined EA” requirements for specified categories of smaller and/or more routine undertakings with predictable impacts supporting predictable evaluations and project conditions. These include “class EA” for common routine activities (the Ministry promulgated 11 by 2024, including municipal road, sewage, and water infrastructure; highway construction and maintenance;

conservation authority works; transit projects; and other public sector activities such as forestry, resource management, and transmission lines). Once a class EA process has been approved, a project that adheres to the appropriate class process can proceed without additional planning requirements.

EAA has provided for consultations with Indigenous peoples and the public, and review of the proposal, followed by Ministry review and decision (which may involve additional public participation).

How has Ontario’s recent EA “modernization” initiative progressed?

In an effort to modernize environmental regulation, including EAs the Government published “A Made-in-Ontario Environment Plan” in 2018. The plan states its intention to “modernize” environmental assessments “to address duplication, streamline processes, improve service standards to reduce delays, and better recognize other planning processes.”

“ The plan states its intention as to **“MODERNIZE”** environmental assessments ”

In April 2019, the Ministry followed up by issuing its “Modernizing Ontario’s Environmental Assessment Program Discussion Paper” and requesting public comments. This document discussed alternatives and approaches to accomplish the following:

- Ensure better alignment between the level of assessment and level of environmental risk associated with a project,
- Eliminate duplication between EAs and other planning and approvals processes,
- Find efficiencies in EA and related planning and approvals processes to shorten timelines, and
- Go digital.

After evaluating the consultation, the Government included EAA amendments among the many streamlining and updating provisions included in its 2020 “COVID-19 Economic Recovery Act” (Bill 197). However, those EAA revisions remained in abeyance until ordered into force last month, alongside conforming amendments to the Ministry’s rules.

How do the new statutory and regulatory provisions revise EAA procedures?

The newly-in-force provisions of the EAA, Ministry regulations and guidance do the following:

- Repeal pre-existing approaches to EA review tiers noted above — repeal individual EA provisions, and repeal or amend class EA provisions; existing assessments prepared under those provisions remain in force (repeals EAA Part II, II.1 and II.2; replace II.3; repeal General and class-specific regulations)
- Add new “project” categories — these provide for “streamlined environmental assessment” that further focuses and narrows required reviews (revised EAA Part II.3 and new II.4; new Regulation 50/24 (“Part II.3 Projects — Designations and Exemptions), and seven amended class EA regulations and EA guides). Projects that meet applicable screening criteria or fall below established thresholds can be exempt (size, capacity, etc., as appropriate). Initial project categories are:
 - Specified “electricity projects,” including generation facilities and transmission lines,
 - Specified “transit and rail projects,” including lines, stations, and other infrastructure, when led by the Ministry of Transportation (MTO), Ontario Northland Transportation Commission (ONTC), Metrolinx, and municipalities,
 - Specified “waste management projects,” including landfills and thermal treatment facilities,
 - Specified “waterfront projects”.
- Extend the expiry dates for existing EAA approvals for 8

- specific major landfill and transportation undertakings,
- Propose amendments to “higher-risk” municipal projects.

“Agencies and construction organizations
SUPPORT THE CHANGES”

What do these changes mean?

The latest changes narrow and reduce EA requirements, to save time and administrative resources devoted to infrastructure projects — primarily those conducted by governmental agencies — that the province has decided do not impose significant potential environmental burdens.

“Some environmental advocacy
groups complain that these additional
streamlining measures **WILL WEAKEN**
environmental protections”

Agencies and construction organizations support the changes, while some environmental advocacy groups complain that these additional streamlining measures will weaken environmental protections (notably protection of fragile ecosystems and species). The actual impacts of this rebalancing of environmental assessment requirements can only become clear as the new requirements are implemented.

Readers should also be aware that the provincial government is presently guiding Bill 162 (the “Get It Done Act, 2024”) through Parliament. Bill 162 presently includes a provision adding into EAA a provision affirming that a project proponent’s ability to acquire project property before an EA includes acquisition by expropriation -- a power only available to government agencies. It therefore seems that passage of Bill 162 with this provision would allow agencies to acquire land for public projects and then make use of the newly-streamlined EA rules for “projects” and save themselves further environmental assessment and planning time and expense. Interested readers should therefore watch the bill’s progress to see what finally is enacted and whether the Government provides more clarity about its intentions. 🏡

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