

April 13, 2018

BY EMAIL

Kristina Rudzki
Environmental Assessment and Permissions Branch
Ministry of the Environment and Climate Change
135 St. Clair Avenue West, Floor 1
Toronto, Ontario
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Dear Ms. Rudzki:

RE: *Proposed Operational Policy on Submission of Part II Order Requests under the Environmental Assessment Act - Registry Notice #013-2099*

These are the submissions of the Canadian Environmental Law Association (“CELA”) to the Ministry of the Environment and Climate Change (“MOECC”) in relation to the proposed *Operational Policy on Submission of Part II Order Requests under the Environmental Assessment Act* (“Policy”). These comments are being provided to you in accordance with the above-noted Registry posting.

Over the years, CELA has assisted numerous Ontarians who are engaged in project planning and/or submitting Part II order requests under Class EAs. In light of this experience, we generally support the development of clear, concise and prescriptive directions in relation to filing, processing and deciding requests for Part II orders.

However, CELA questions whether the proposed Policy actually achieves this goal, particularly since the draft content does not materially differ from the description of the Part II process already found within approved Class EAs. We therefore conclude that the proposed Policy does not break new ground, provide any additional clarity, or otherwise improve upon the Part II descriptions in the current suite of Class EAs in Ontario.

We further observe that the 6 page Policy contains a 1 page “background”, and a 2.5 page glossary of key terms. Thus, the substance of the Policy is confined to approximately 3 pages of high-level discussion of the Part II process. In our view, if the Policy is intended to provide meaningful guidance to proponents, stakeholders or MOECC staff, then it would be helpful to provide further and better information (or illustrative examples) in the Policy about key implementation details, such as the types of evidence or supporting documentation that a requestor should provide to the MOECC.

In addition, while the Policy describes the Minister’s decision-making powers (and the relevant statutory considerations), the Policy does not specifically require the Minister to provide written reasons for decision. To enhance transparency in the decision-making process, CELA submits that this oversight should be rectified in the Policy. In particular, the Policy should ensure that the

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Minister's reasons do not just parrot the language of subsection 16(4) of the *Environmental Assessment Act*. Instead, the Minister's reasons for decision should provide a cogent evidence-based explanation of why he/she decided to grant or refuse the Part II order request (with or without conditions).

CELA further submits that it would be beneficial for the Policy to suggest approximate timelines (X weeks or months) for making the Ministerial decision to grant/refuse Part II order requests. We recognize that flexibility will be required in some complex or controversial cases, but in our experience, the Part II decision-making process often drags on for considerable time, leaving proponents and requestors unaware of when a decision can be anticipated. Accordingly, the Policy should specify that if the Ministerial decision is not made within the specified timeframe, then the MOECC should be required to provide status updates to the parties.

CELA is also unclear why the Policy is confined to Part II orders under Class EAs, when similar direction would be helpful in relation to the substantially similar process for "elevation requests" under environmental screening processes (e.g. O.Reg.116/01 (electricity projects) and O.Reg.101/07 (waste projects)), and under the MNR-71 Declaration Order in relation to forest management planning. In our view, expanding the proposed Policy to address these other processes would provide timely and importance assistance to persons requesting individual EAs under those other mechanisms.

Finally, CELA notes that the Policy is merely descriptive of the status quo, and does nothing to fix or improve the widely criticized Part II process under Class EAs. In this regard, we acknowledge that the Registry notice suggests that the MOECC has an "action plan" for improving Class EAs, including the Municipal Class EA. We are unclear what this "action plan" actually entails, but CELA strongly urges the MOECC to pursue an open and accessible public review of all Class EAs. We also remind the MOECC that the various Class EA reforms recommended in 2005 by the Minister's EA Advisory Panel¹ (including changes to make the Part II order process more credible, coherent and accountable) have not been implemented to date and are long overdue.

We trust that CELA's comments will be taken into account and acted upon as the MOECC determines its next steps regarding the proposed Policy. If you have any questions arising from this submission, please contact the undersigned.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



Richard D. Lindgren
Counsel

¹ Minister's EA Advisory Panel, *Improving Environmental Assessment in Ontario: A Framework for Reform – Volume I* (March 2005), pages 90-99.