

NORTHWATCH

July 24, 2009

Marcia Wallace, Manager
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
55 St. Clair Avenue West, Floor 7
Toronto ON M4V 2Y7

Sent by email <Marcia.Wallace2@ontario.ca>

EBR Registry Number: 010-6516

Dear Ms. Wallace:

Re. Proposed Ministry of the Environment Regulations to Implement the Green Energy and Green Economy Act, 2009

On June 9th, the Ministry of the Environment posted on the Environmental Bill of Rights electronic registry notice a proposed new regulation under the Environmental Protection Act related to the approvals of renewable energy projects. In addition proposed amendments to five existing regulations were proposed. Comments were to be made in the same 45 day period as had been provided for public review and comment on a draft Approval and Permitting Requirements Document for Renewable Energy Projects posted by the Ministry of Natural Resources on the same day.

Northwatch is a public interest organization concerned with environmental protection and social development in northeastern Ontario. Founded in 1988 to provide a representative regional voice in environmental decision-making and to address regional concerns with respect to energy, waste, mining and forestry related activities and initiatives, Northwatch has a long term and consistent interest in electricity planning in Ontario. In particular, Northwatch's interests are with respect to electricity generation and transmission in northeastern Ontario, conservation and efficiency measures, and rates and rate structures. Northwatch was a full time intervener in the Environmental Assessment of Ontario Hydro's Demand Supply Plan, and intervened in Ontario Energy Board reviews HR-22 and HR-23 with respect to electricity matters. More recently, Northwatch has engaged with the Ontario Power Authority and the Minister and Ministry of Energy with respect to various aspects of electricity supply planning and is participating as an intervenor in the Integrated Power Supply Plan ("IPSP") hearing before the Ontario Energy Board.

We have reviewed the draft regulation and the proposed amendments to five existing regulations, and have a number of concerns. Our first concern is with the review process itself: providing only 45 days, in the summer period, for the review and comment on seven related regulations is not supportive of public participation. In addition, our limited review has led us to the conclusion that the proposed regulation and proposed changes are not in the public interest, for reasons outlined below.

Environmental Protection Act, New Regulation

EBR Summary: The 24 page document outlines the proposed content of this regulation. It identifies the complete submission requirements that an application for a Renewable Energy Approval would be required to meet, including plans, studies, consultation, and technology-specific requirements such as setbacks where applicable

General Comment:

In general, the proposed new regulation is too permissive, and appears to be largely written for southern Ontario. As noted below, this is ironic given that the majority of the (potential for) renewable energy projects that have been mapped by the Ontario Power Authority in the preparation of their 20 Year Integrated Power Supply Plan is in northern Ontario.

We also found the proposed new regulation to be weak in the areas of public consultation and regard for the natural environment. Examples of these concerns are included in the following comments.

Specific Comments on the Proposed New Regulation:

Section of the Proposed New Regulation

“A key element of this proposal is a streamlined provincial approval process for renewable energy projects, based on the concept of a complete submission. The complete submission integrates into a coordinated process all provincial government requirements for the review and decision making on proposed renewable energy facilities. While this approach provides for transparency and coordination, it retains the existing legislative requirements set out by various Ministries”

It is anticipated that the Ministry of Energy and Infrastructure will bring forward a regulation under the Electricity Act, 1998 to clarify that “associated or ancillary equipment, systems, and technologies” will include transmission connecting a proposed renewable energy facility to the existing transmission or distribution electricity grid, and roads and other transportation infrastructure (e.g. access roads, ferry dock) required to connect the renewable energy project to existing transportation systems. These associated or ancillary equipment, systems, and technologies will be reviewed as part of the Renewable Energy Approval application.

Northwatch Comment

While we do not disagree with this approach on principle, it is certainly not an approach that is reflecting in the draft permitting document posted by the Ministry of Natural Resources, which is hallmarked by it highly discretionary approach

This clarification should have been brought forward in tandem with or advance of this proposed regulation, as it has direct bearing on several key aspects of the regulation, including project description.

It is anticipated that the Ministry of Energy and Infrastructure will be defining the terms “biomass”, “biogas” and “biofuel” in a proposed regulation under the Electricity Act, 1998. In defining these terms it is expected that the Ministry of Energy and Infrastructure will confirm existing usage of these terms to exclude energy generated from non-organic waste.

Applications for a Renewable Energy Approval will include the following:

- ? Description of Project
- ? Construction Plan
- ? Site Plan
- ? Stormwater Management Plan
- ? Response Plan..
- ? Consultation Summary
- ? Cultural Heritage
- ? Natural Heritage
- ? Water Bodies
- ? Provincial Policy Plans
- ? Technology-Specific Requirements

These definitions should have been brought forward in tandem with or advance of this proposed regulation, as it has direct bearing on several key aspects of the regulation

The information required as part of the Application should be expanded to clearly include:

- ? a description of the environment
- ? a demonstration of need for the project
- ? a consideration of alternatives to the project
- ? a description of the related infrastructure including transmission and access and an evaluation of their potential affects on the physical and social environments
- ? an examination of cumulative effects

- ? identification of the Project’s possible effect on any of the following values: Great Lakes Heritage Coast, Areas of Natural and Scientific Interest, Areas of Concern that have been identified in the Forest Management Planning Process, values listed in the Natural Resource Values Information System, Conservation Reserves, Forest Reserves, and Parks
- ? “zones of influence” should be added to all project descriptions,
- ? consideration of the effects of project-related activity on the ecological integrity of the areas
- ? other interests on Crown land
- ? the discussion of access and infrastructure issues
- ? post-construction monitoring
- ? a decommissioning plan that indicates what condition the land is to be returned to, such as pre-industrial or an

alternative use standard; financial assurances should be required to support the decommissioning plan

Once the Ministry has determined that an application is complete, it will post a proposal notice on the Environmental Bill of Rights Registry. Following the public comment period, the Ministry will begin its formal review of the application.

The comment period should be for at least 60 days; other notice requirements should include letters to nearby residents and local and regional media

It is proposed that additional public notification of the decision on the project be made in a suitable manner (e.g. a local newspaper).

Notice of a decision should be provided in the same matter as initial notice, plus to any who have commented on the project or requested information or attended a public meeting or meeting with the regulator or proponent.

Third Party Appeal of Director's Decision

A third party must request an appeal within 15 days of the notice of the decision respecting the Renewable Energy Approval being posted on the Environmental Registry.

How this will differ from the EBR rights to seek leave to appeal is not clear; nor is the rationale for substituting this right of appeal for the right of appeal under the EBR. This should be clarified and comment sought on the clarified proposal prior to a final decision.

Public Notice and Community Consultation

It is proposed that renewable energy project proponents will be required to provide public notice within no less than a 1.5 km radius of the proposed renewable energy generation facility at a preliminary stage of project planning. Proponents will also be required to post notice of the proposed project in a local newspaper of general circulation within the municipality where the project is located. It is also proposed that the proponent would be required to hold a community consultation meeting at this stage, so that local residents and interested parties can be consulted in the early stages of project development.

?the 1.5 km radius will be inadequate instances

?it should be clarified that transmission and other infrastructure are part of the project, and that notice will also be given to those in proximity to transmission lines and newly created access

The proponent will then be required to commence any required studies and project design work. Once ready to submit the application for Ministry of the Environment review, the proponent will be required to hold at least one community consultation meeting to discuss the project and its potential local impact. Any required studies must be made available for public review 30 days prior to the date of the community consultation meeting,

?the regulation assumes that projects will be within municipalities; the majority of the land base north of the French River is outside of municipal boundaries

?regional media will be more effective than local media in many instances and should be recognized accordingly

?it should be clarified that studies will be made available electronically or in hard copy at the request of an interested member of the public

?if documents are to be available 30 days in advance of a community consultation

or, if there is more than one meeting, before the final meeting.

The proponent will be required to provide documentation of all community consultation efforts, and explain how it attempted to address issues raised during the community consultation

.Municipal Consultation

It is proposed that renewable energy project proponents will be required to consult with the municipality related to the following matters

Aboriginal Consultation

The Crown proposes to clarify, through subsequent guidance materials, its responsibilities for the substantive and procedural aspects of consultation and the appropriate accommodation of Aboriginal communities.

Cultural Heritage

It is proposed that proponents would be required to undertake a self-assessment to identify any known or potential effects to archaeological or heritage resources that could result from the project. If any known or potential negative impacts are identified, then it is further proposed that proponents would undertake an archaeological and/or heritage assessment to confirm findings and to mitigate any potential negative impacts, and to provide written confirmation that the Ministry of Culture reviewed the assessment(s)

Natural Heritage

The proposed policies associated with natural heritage features do not apply to renewable energy generation facilities that maintain a minimum setback distance. Nor do they apply where a more stringent requirement exists in section 7 of this document.

A proponent submitting an application for a Renewable Energy Approval must demonstrate the proposed facility will meet the minimum setbacks identified below. If the proponent wishes to locate its facility within the applicable setback, the proponent must provide documentation of the proposed mitigation approach, and

(a minimum) then notice must be provided at least 60 days in advance to allow distribution of the documents 30 days in advance of the consultation

?the regulation assumes that projects will be within municipalities; the majority of the land base north of the French River is outside of municipal boundaries; in areas outside of municipal boundaries, the regulation should stipulate that the service board or residents associations will be consulted

The proposal that the crown will clarify its responsibilities for the substantive and procedural aspects of consultation and accommodation through subsequent guidance materials is inadequate.

While “self-assessments” may produce reliable results, they are inherently unreliable. If this approach is to be taken, there must be clear guidance provided on how the “self-assessment” is to be undertaken, and documentation provided that the procedure has been followed, with site verification conducted on a regular and timely basis by either Ministry staff or knowledgeable third-party contractees.

As with other parts of this proposed regulation, the natural heritage provisions appear to be largely written for and by southern Ontario, which is ironic given that the majority of the renewable energy projects that have been identified by the Ontario Power Authority are in northern Ontario. The setback requirements should apply to:

- ?Great Lakes Heritage Coast,
- ?Areas of Natural and Scientific Interest,

provide written confirmation that the Ministry of Natural Resources reviewed the approach.

Exception

Since all hydro electric facilities and off-shore wind turbine facilities will be required to assess effects and document mitigation measures that will be used to protect the natural environment including natural heritage features, such renewable energy projects are not subject to requirements regarding natural heritage features. The proponent can voluntarily use the setbacks instead of undertaking an Environmental Impact Study when siting land-based components of the facility (e.g. transmission, roads, etc.).

Water Bodies

The proposed policies associated with sensitive hydrologic features do not apply to renewable energy generation facilities that maintain a minimum setback distance. Nor do they apply where a more stringent requirement exists as set out in section 7 of this document.

Sensitive hydrologic features include the following: lakes, permanent and intermittent streams seepage areas and springs that are particularly susceptible to impacts from activities or events including, but not limited to, water withdrawals, and additions of pollutants.

Provincial Policy Plans

It is proposed that the Regulation will incorporate aspects of the following Provincial Policy Plan Areas and the protection that Provincial Policy Plans afford the natural environment through policies controlling development and site alteration

Noise Setbacks

It is also proposed that if the wind turbine project proponent should be interested in obtaining a lower setback than indicated for transformer substations it would have the option to complete a site-specific noise

? Areas of Concern that have been identified in the Forest Management Planning Process,
? values listed in the Natural Resource Values Information System,
? Conservation Reserves, Forest Reserves, and Parks

The application of the set-backs when siting land-based components (eg. transmission, roads, etc.) should be required, rather than voluntary. There is no rationale for this exemption of the land based components.

It is not clear whether recharge areas are included in the “seepage areas and springs” that are recognized by this regulation as a “sensitive hydrologic feature”; the 120 metre setback should be maintained in all instances, with the option a proponent demonstrating “the ability to mitigate negative impacts” allowing the application of a setback of only 30 metre distance from the feature

We note that these “provincial” policies apply only in southern Ontario.

We do not support proponents being able to apply for a lower setback. Without prejudice to our view that lowered setbacks should not be considered, if the Ministry was to accept a noise study

study consistent with the Ministry of the Environment's *NPC-233 Noise Guideline* and the noise level limit of 40 dBA at the Point of Reception.

Decommissioning Plan

It is proposed that proponents will be required to submit a decommissioning plan, which would address, among other matters, procedures for equipment/building, dismantling and demolition, site restoration and final residue disposal.

Conditions of Approval

It is proposed that proponents would be required to monitor and address any perceptible infrasound (vibration) or low frequency noise as a condition of the Renewable Energy Approval. The Ministry of the Environment intends to develop technical guidance on the monitoring of infrasound and low frequency noise to assist proponents in this.

It is anticipated that in appropriate circumstances shut-down conditions for land-based wind energy facilities may also be addressed through conditions of approval.

Large Scale Water Power Projects

For a hydro power project with a name plate capacity equal to or greater than 200 MW or more, it is anticipated that the proponent will incorporate as appropriate the requirements of the Renewable Energy Approval as part of its individual Environmental Assessment. It is anticipated that if these requirements are incorporated in the individual Environmental Assessment, the same requirements will not be duplicated in the course of an application to obtain a Renewable Energy Approval.

Environmental Assessment Act, Ontario Regulation 116/01 (Electricity Projects)

EBR Summary: It is proposed that O. Reg 116/01 be amended to create an exception for most renewable energy generation facilities, as this term is defined in the Electricity Act, 1998. The result is that, going forward, this regulation and the Environmental Assessment Act will not apply to the establishment or change of these renewable energy generation facilities.

from the proponent to support a proposed set back, the proponent should be required to fund a independent third-party study conducted by an expert selected by a group representing the community of interested persons to provide additional basis for a Ministry decision.

The Ministry should establish a standard for the remediation of the site. In addition, financial assurances should accompany the decommissioning plan in order to ensure that the work is completed.

We support these provisions. We would like to emphasize that there should be public involvement - particularly of nearby residents - in developing the conditions of approval.

The threshold of 200 MW is far too high. Environmental assessment requirements should apply to any projects larger than 10 MW. Class Environmental Assessments provisions could apply to projects under 25 MW, and individual environmental assessment provisions should apply to projects larger than 25 MW

This is subject to two exceptions: the establishment of hydro electric facilities 200 Megawatts (MW) or larger and expansions to existing hydro electric facilities that result in both a 25% increase in nameplate capacity and result in the facility having a nameplate capacity of 200 MW or more. For both of these situations, individual environmental assessments will be required.

In respect to renewable energy generation facilities that have already been authorized under the Environmental Assessment Act, the exception is proposed to be crafted so as to require proponents that have already completed an environmental assessment, class environmental assessment or the Environmental Screening Process to comply with the construction, operation and retirement of their project as originally authorized and to comply with any documented commitments made to the public or government agencies.

It is also proposed that the regulation be amended to clarify the application of exemptions for generation facilities by the Crown, Municipalities or public bodies.

General Comment:

We strongly disagree with this proposed amendment. Environmental assessment is a key planning tool, and should be applied to renewable energy generation projects. While there is potential to achieve efficiencies by assessing projects under a class environmental assessment where activities and effects are predictable and replicable, the application of an environmental assessment approach is essential and should not be eliminated.

We are strong supporters of renewable energy, and wish to see the supply of electricity through renewable sources increase dramatically over the next several years. But removing sound planning requirements has the regrettable potential of turning sound projects into huge public controversies, thereby delaying the construction of sound projects. It also has the potential of enabling less viable projects and projects with unacceptable environmental consequences to move forward, which will create more difficulties for the industry in the future.

Environmental Assessment Act, Revised Regulations of Ontario 1990, Regulation 334

EBR Summary: It is proposed that Regulation 334 be amended to state that renewable energy generation facilities and renewable energy testing facilities that are carried out by the Crown, municipalities or public bodies are exempt from the Environmental Assessment Act.

It is proposed that any undertakings of the Crown that are required to implement a renewable energy project or a renewable energy testing project (e.g. building an access road, a dock, a disposition of crown land, etc.) would be exempt from the Act.

It is also proposed that undertakings by a municipality that are roads and water crossings by municipality that are required for a renewable energy project will be exempt from the Act.

General Comment:

We strongly disagree with this proposed amendment. Environmental assessment is a key planning tool, and should be applied to renewable energy generation projects. While there is potential to achieve efficiencies by assessing projects under a class environmental assessment where activities and effects are

predictable and replicable, the application of an environmental assessment approach is essential and should not be eliminated.

We are strong supporters of renewable energy, and wish to see the supply of electricity through renewable sources increase dramatically over the next several years. But removing sound planning requirements has the regrettable potential of turning sound projects into huge public controversies, thereby delaying the construction of sound projects. It also has the potential of enabling less viable projects and projects with unacceptable environmental consequences to move forward, which will create more difficulties for the industry in the future.

Environmental Assessment Act, Ontario Regulation 101/07 (Waste Management Projects)

EBR Summary: It is proposed that O. Reg 101/07 be amended to create an exception for most renewable energy generation facilities, as this term is defined in the Electricity Act, 1998. The result is that, going forward, this regulation and the Environmental Assessment Act will not apply to renewable energy generation facilities that are also a waste disposal site (e.g. a waste disposal site where biomass is disposed of through thermal treatment).

In respect to renewable energy generation facilities that have already been authorized under the Environmental Assessment Act, the exception is proposed to be crafted so as to require proponents that have already completed an environmental assessment, class environmental assessment or the Environmental Screening Process to comply with the construction, operation and retirement of their project as originally authorized and to comply with any documented commitments made to the public or government agencies.

General Comment:

We strongly disagree with this proposed amendment. Environmental assessment is a key planning tool, and should be applied to renewable energy generation projects. While there is potential to achieve efficiencies by assessing projects under a class environmental assessment where activities and effects are predictable and replicable, the application of an environmental assessment approach is essential and should not be eliminated.

We are strong supporters of renewable energy, and wish to see the supply of electricity through renewable sources increase dramatically over the next several years. But removing sound planning requirements has the regrettable potential of turning sound projects into huge public controversies, thereby delaying the construction of sound projects. It also has the potential of enabling less viable projects and projects with unacceptable environmental consequences to move forward, which will create more difficulties for the industry in the future. This is particularly the case with waste-related projects.

Environmental Bill of Rights, 1993, Ontario Regulation 681/94 (Classification of Proposals for Instruments)

EBR Summary: It is proposed that an amendment to O. Reg. 681/94 be made to classify the Renewable Energy Approval as a Class II instrument under the Environmental Bill of Rights, 1993. This would require the Ministry of the Environment to give notice of proposals for a Renewable

Energy Approval in accordance with the Environmental Bill of Rights Act, 1993 and subject to any relevant exceptions.

General Comment:

We strongly support the Environmental Bill of Rights electronic registry being used to give notice of proposals for renewable energy projects.

Environmental Bill of Rights, 1993, Ontario Regulation 73/94 (General)

EBR Summary: It is proposed that an amendment to O. Reg. 73/94 be made to specify that the provisions of the Environmental Bill of Rights, 1993 relating to leave to appeal do not apply to a proposal to issue, amend or revoke a Renewable Energy Approval. The leave to appeal process under the EBR is proposed to be replaced by an appeal as of right for third parties under the Environmental Protection Act.

It is also proposed that the regulation be amended to reflect the current names of the following ministries: Ministry of Economic Development; Ministry of Energy and Infrastructure; Ministry of Government Services; Ministry of Small Business and Consumer Services

It is also proposed that the regulation be amended to reflect the repeal of the Energy Conservation Leadership Act, 2006 and the Energy Efficiency Act. In addition, the regulation is proposed to be amended to prescribe the Green Energy Act, 2009 and the Ontario Heritage Act.

General Comment:

We are concerned that denying the leave to appeal provisions of the Environmental Bill of Rights for renewable energy projects that have been posted on the EBR registry for public comment will be an inconsistency of process that will reduce the public's ability to effectively exercise their rights to participate in environmental decision-making.

Environmental Protection Act, Revised Regulations of Ontario 1990, Regulation 347 (General – Waste Management).

EBR Summary: The Ministry of the Environment is considering making complementary amendments to Reg. 347 to facilitate:

- intermediate processing of biomass materials, if needed before being sent to a renewable energy generation facility to generate electricity, and*
- the use of biomass materials from processing agricultural products as green energy for purposes other than electricity generation, such as for energy in a manufacturing process.*

These regulations have not been developed or included here, but comments and suggestions concerning the nature of these possible amendments would be welcome through this Environmental Registry Posting. For example, comments and suggestions would be welcome on matters such as the following:

- the types of biomass materials to be dealt with in the possible amendments,*
- possible rules and limitations on the handling, processing and use of these materials, and*
- possible changes to existing waste management approval requirements to facilitate the use of these materials.*

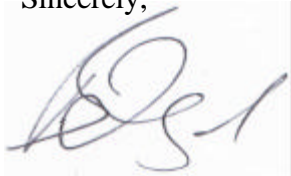
General Comment:

We would encourage the Ministry to prepare and disseminate a discussion paper on this important topic and seek public comment on that discussion paper as a means of evaluating the need and potential substance of a regulation on the use of biomass material in the generation of electricity. Currently, the promotion of forest biofibre as an energy source is being undertaken in an unprepared policy environment, with potentially unsatisfactory results. Current legislation and policy were developed by the Ministry of Natural Resources without considering the cumulative impacts of intensifying forestry through biofibre harvesting for the purpose of energy production. The only apparent adjustment has been the development of the Ministry of Natural Resource's draft "biofibre policy" which stresses economic benefits while lacking biodiversity consideration. A considered approach is required, and this could be supported by the Ministry of the Environment's preparation and dissemination of a discussion paper, as suggested above.

While we are highly supportive of renewable energy, we do not believe that the generation of energy from renewable sources has to be done at the expense of the environment, at the cost of other land uses, or without sound public process.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brennain Lloyd', is enclosed in a thin black rectangular border.

Brennain Lloyd
Northwatch

cc. Mr. Gord Miller, Environmental Commissioner for Ontario