

NORTHWATCH

July 24, 2009

Sue Jones
Technical Officer
Ministry of Natural Resources
Lands and Waters Branch
300 Water Street , Floor 5, PO Box 7000
Peterborough ON K9J 8M5

Sent by email <susan.jones@ontario.ca>

EBR Registry Number: 010-6708

Dear Ms. Jones:

Re. Approval and Permitting Requirements Document for Renewable Energy Projects

On June 09, 2009 the Ministry of Natural Resources posted a proposed requirements document for the approval and permitting of renewable energy projects on the Environmental Bill of Rights electronic registry for public comment. The document outlines the Ministry of Natural Resources' requirements for review and approval of renewable energy projects as per section 13.2 of the Ministry of Natural Resources Act. According to the EBR posting, the proposed requirements document covers all aspects of renewable energy development relevant to the ministry's core business with the aim of providing as much up-front clarity as possible on requirements, while ensuring environmental protection and public health and safety.

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 Approval and Permitting Requirements Document for Renewable Energy Projects, and have a number of concerns with the document as currently drafted.

Our general concerns include the following:

- ? the document and the permitting requirements are very permissive, using a “may” approach instead of a “will” approach, for example, with respect to monitoring
- ? the document’s address of public consultation is very weak
- ? the document creates an environment that will allow an inconsistent approach to permitting, with too much discretion and too much variability in requirements
- ? the document - and the permitting regime in general - raise important questions of capacity within the Ministry of Natural Resources, and generates concerns about the Ministry’s ability to provide adequate regulatory oversight at current staffing levels, particularly in areas such as post-construction monitoring

Our specific comments are provided on a section-by-section basis, as follows:

Section 1

- ? as indicated above, there are concerns about capacity within the Ministry of Natural Resources and the ability of the Ministry to meet its regulatory responsibilities at current staffing levels

Section 2

- ? the document should more clearly demonstrate the relationship of the permitting requirements outlined in this draft document with the full suite of permitting and licensing requirements that would apply to various projects
- ? the discussion of the potential to reduce the scope of requirements should be accompanied by clear criteria and rationale for any reduction of scope; the mechanism for public consultation on any proposal to reduce the scope of requirements should also be clearly outlined
- ? the document is unclear on the application of Section 2.1.1 and Section 2.2.2 to related transmission, access and other infrastructure projects

Section 3

- ? the document should be clear that an electronic copy of the complete submission will be required, and that the electronic copy of the complete submission will be readily available to interested members of the public as part of the public review process; this should establish a consistent approach that provides the public with ready access to full project information; this information must be available if the public rights to review and comment in an informed manner on proposed projects are to be respected
- ? this section should clarify the relationship between and sequencing of provincial and federal permitting, review and approvals processes
- ? the established time frame referenced in Section 3.4 should be detailed in this draft document
- ? the opportunities for public comment on proposed disposition of crown land should either be detailed in this section or summarized with a reference to a more detailed description that can be readily found elsewhere

Section 4

- ? the public notice and consultation requirements related to testing projects should be outlined in this section
- ? the decommissioning plan referenced in Section 4.1.3 should include details of removal and

remediation of and site disturbance, including disturbance or environmental damage related to access

Section 5

- ? the first line of Section 5 should be clarified; what is meant by the bracketed statement “unless otherwise indicated in writing by the Ministry”? This statement suggests that broad exemptions are possible, and this is a matter of great concern; the permitting process should be consistent and predictable, with clearly set out requirements for each project, including the requirements for environmental studies and public consultation; introducing the broad option of having a different set of requirements if “indicated in writing by the Ministry” is unacceptable
- ? the reference in Section 5.1 to the public consultation requirements outlined in the Ministry of the Environment’s Renewable Energy Project regulation should be supplemented by a summary of those requirements as they related to the permitting requirements proposed by the Ministry of Natural Resources
- ? the section on Aboriginal consultation is weak and is not supported by case law; the contention that the Crown may delegate some aspects of consultation to proponents is questionable, and 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
- ? the description of the project is inadequate and 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
- ? the suggestion that the study area “may be required to reflect” and identification by the Ministry that “cumulative effects may be large” is not sound, and the statement that the Ministry will raise these concerns with the proponent “where possible” is extremely weak; the proponent should be addressing cumulative effects in each instance, as a matter of sound environmental planning, and the inclusion of such an evaluation should not be dependent on the Ministry “raising these concerns where possible”
- ? 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 should be added to the list of natural features to be considered in 5.5.1; the version of the list included in the draft permitting document appears to apply only to southern Ontario
- ? “zones of influence” should be added to all project descriptions, as per the water power project description
- ? consideration of the effects of project-related activity on the ecological integrity of the areas and an evaluation of cumulative effects should be added to Section 5.5.3
- ? the requirements outlined in Section 5.6 for addressing other interests on Crown land should be requirements that apply in each instance; the language should be changed from “may” to “will”; at present the section is too permissive and will not result in consistent application of planning approaches
- ? the discussion of access and infrastructure issues identified in Section 5.7 (e.g. road

construction and upgrades, water crossing, bridges, culverts, and transmission) should also be described in the Project Description

- ? post-construction monitoring should be required in each project; the “may” in Section 5.9 of the current draft should be replaced with “will”
- ? the standard set for the decommissioning is too low; the standard should indicate 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

Section 6

- ? section 6.3 should address more than biomass, biogas and biofuels from forest resources; the section should include a broader range of fuel sources, including but not limited to agricultural waste and food waste
- ? the application requirements for a forest resource processing license are extremely weak and the listed requirements are highly discretionary; in addition, the public consultation component of the evaluation process is not described
- ? the promotion of forest biofibre as an energy source is being undertaken in **an** unprepared policy environment; current legislation and policy were developed without considering the cumulative impacts of intensifying forestry through biofibre harvesting while 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
- ? the extent of information and documentation required should not be wholly discretionary and left to the Ministry to determine on a site-by-site basis; this is particularly a concern given the issue of capacity within the MNR
- ? the ecological information required as part of Plans and Specifications Approval should include an evaluation of cumulative effects

Section 7

- ? we are surprised to see “projects proposed in Provincial Parks and Conservation Reserves” included on the list of projects where there would be additional requirements related to the protection of the natural environment, given that such projects are inconsistent with Park policy; these project should be excluded from provincial parks and conservation reserves
- ? notwithstanding our immediately previous comment, we generally support the provision of section 7.4
- ? it is not clear whether hazard lands included at the top of page 41 includes hazard lands which are not natural hazards, such as abandoned or orphaned mines; if these types of hazard lands are to be included, the requirement should be to remediate the site as part of the project development and operation

Section 9

- ? the document should clearly state that permits issued as part of this regime are subject to the appeal provisions provided under the Environmental Bill of Rights

Section 10

- ? any proposal to amend decommissioning plans prior to decommissioning must be the subject of public comment

Section 11

? the review requirements for any proposal to expand, modify or redevelop a commissioned site should be clearly set out and be consistently applied; the current proposed approach is too discretionary; at minimum, the review process must include a public comment opportunity as part of the “government” identifying the specific requirements of the review

In summary, we find the document to be highly discretionary and to not demonstrate its ability to adequately protect the environment and other land uses when considering proposals for renewable energy projects.

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 black 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