

Ontario proposes project list for Comprehensive Environmental Assessment

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The Government of Ontario has released a proposed list of projects that will be subject to Comprehensive Environmental Assessment (EA) under the Ontario *Environmental Assessment Act* (EAA). This proposal is a key step in Ontario's efforts to modernize the provincial EA process, moving toward a project list approach that is consistent with the federal impact assessment and other provincial EA frameworks. In the coming months, Ontario plans to release a second list of projects that will be subject to a less onerous, streamlined EA process.

What you need to know

- According to the proposal by the Ministry of the Environment, Conservation and Parks (MECP), the Comprehensive EA project list covers large-scale projects in six categories:
 1. **Electricity**—including certain transmission lines, transformer stations, hydroelectric facilities, and generation facilities that use oil as a fuel (but excluding wind and solar facilities).
 2. **Waste management**—including certain landfills, disposal sites for hazardous or liquid industrial waste, and thermal treatment sites.
 3. **Transportation**—including certain provincial freeways and municipal expressways.
 4. **Conservation projects** related to flood and erosion control.
 5. **Intra-provincial railways.**
 6. **Certain mining projects.** Some of these categories—such as mining projects—are not specifically covered under Ontario's current EA regime.
- Public comments on the proposal can be submitted (via the [Environmental Registry](#) or direct [email](#)) until November 10, 2020. In the coming months, the MECP will be developing a second proposed project list for Streamlined EA.

Highlights of proposed project list

On July 21, the *COVID-19 Economic Recovery Act, 2020* received royal assent, enacting a suite of legislative changes that included significant amendments to the EAA. Notably, Part II (Individual EAs) and Part II.1 (Class EAs) of the EAA will be replaced with a new Part II.3 (Comprehensive EAs) and Part II.4 (Streamlined EAs), respectively; and projects required to undergo either type of EA will be designated via regulation.

By shifting to a project list approach, the MECP will focus its regulatory oversight on high impact (Comprehensive EA) and medium impact (Streamlined EA) projects while minimizing duplicative requirements and burden on low-impact projects. To date, many projects have been subject to several different provincial EA processes, often triggering multiple Class EAs for one large-scale project, which has proven challenging for both proponents and the MECP. In addition, the current regime involves a complex series of regulatory designations and exemptions, many of which will be revoked or amended once the prescribed project lists are in place. The adoption of project list regulations will not affect the Minister's authority to designate non-listed projects for review.

With respect to electricity, waste management and transportation projects, the MECP's proposal includes projects that are currently designated for Individual EAs (largely maintaining the same trigger thresholds)¹, and for which no regulatory exemptions are available (including by way of allowing a less onerous EA screening). These project categories include:

- Electricity—including certain large-scale transmission lines, transformer stations, hydroelectric facilities, generation facilities that use oil as a fuel, as well as significant modifications to existing electricity projects of these types.
- Waste Management—including certain landfills, disposal sites for hazardous or liquid industrial waste, thermal treatment sites, and significant changes to existing waste disposal sites.
- Transportation—including certain provincial freeways and municipal expressways. While most provincial and municipal transportation projects are subject to streamlined class EA under the current O. Reg. 231/08, the MECP is proposing to set the threshold for Comprehensive EA at 75 km (either new or extension) in alignment with the federal impact assessment threshold.

The MECP also proposes to include three additional project types for Comprehensive EA:

- Conservation—significant flood and erosion control projects, excluding projects on previously developed lands. Example criteria include: land area, total shoreline affected, proximity to major settlement areas, amount of river re-aligned, siting in an area of concern, and natural heritage impact.
- Railway—intra-provincial rail lines capable of carrying freight or passengers between cities and requiring at least 50 km of new right of way (or an extension of 50 km or more on a new right of way), which aligns with the federal impact assessment threshold.
- Mining—MECP is looking for feedback on whether to include certain mining projects to the Comprehensive EA project list.

According to the proposal, transition provisions will be in place to ensure that projects already undergoing an Individual EA (i.e., projects for which, at a minimum, Terms of Reference have been submitted to the MECP) can continue uninterrupted and not have to duplicate or re-do any work solely as a consequence of the new project list. Once the project list is finalized, the MECP will proceed to develop specific regulatory language for posting and public comment.

¹ See: O. Reg. 116/01 (Electricity Projects), 101/07 (Waste Management Projects) and 231/08 (Transit Projects and Metrolinx Undertakings).

To discuss these issues, please contact the author(s).

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