

Code of Practice

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# **Preparing, Reviewing and Using Class Environmental Assessments in Ontario**

Legislative Authority:

Environmental Assessment Act, RSO 1990, Chapter E.18

November 2008



This Code of Practice was developed in consultation with government agencies and other interested persons including academics, environmental assessment practitioners, environmental groups, industry associations, professional associations and proponents. We appreciate the contributions that these individuals and groups have made to finalize this document and look forward to continued input to maintain it as an effective tool for use during the environmental assessment process.

Readers should check the Ministry of the Environment's website or call the Environmental Assessment and Approvals Branch to find out if there have been any revisions.

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This Code of Practice is published as a living document that will be reviewed and revised as necessary. Any comments, suggestions for revision or clarification are welcomed and should be sent to the Director of the Environmental Assessment and Approvals Branch at the address listed above.

Ce document est aussi disponible en français.

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## Glossary

The definitions in this glossary are intended to assist the reader in understanding the terms used in this Code of Practice. To understand these terms completely, the Ministry of the Environment recommends that both the definitions in here and in the legislation be consulted. In all cases, the wording contained in the *Environmental Assessment Act* shall prevail.

### **Aboriginal Peoples**

The *Constitution Act, 1982* specifies that Aboriginal peoples include Indian, Inuit and Métis peoples of Canada.

### **Alternative Design**

A type of alternative method.

### **Alternative Methods**

Alternative methods of carrying out the proposed undertaking are different ways of doing the same activity.

Alternative methods could include consideration of one or more of the following: alternative technologies; alternative methods of applying specific technologies; alternative sites for a proposed undertaking; alternative design methods; and, alternative methods of operating any facilities associated with a proposed undertaking.

### **Alternatives**

Both alternative methods and alternatives to a proposed undertaking.

### **Alternatives To**

Alternatives to the proposed undertaking are functionally different ways of approaching and dealing with a problem or opportunity.

### **Amendment**

A change to a class environmental assessment which can be initiated by the applicant or Minister:

- Before a Notice of Completion of Review is given under subsection 7.1(2) of the *Environmental Assessment Act*;
- After a Notice of Completion of Review subject to conditions, if any, imposed by the Minister; or
- In accordance with the amending procedures specified in an approved class environmental assessment.

When the amendments are made, and the class environmental assessment has been resubmitted, a decision to approve, approve with terms and conditions or refuse the undertaking can be considered.

**Applicant**

The person seeking approval of a class environmental assessment.

**Application**

An application for approval to proceed with an undertaking under subsection 5(1) of the *Environmental Assessment Act*.

**Approval**

Approval in the context of this Code of Practice refers to the approval of Cabinet in respect of a Minister's decision to approve an application under section 13 of the *Environmental Assessment Act*.

As the class environmental assessment process is a self-assessment process, section 5 of the *Environmental Assessment Act* (approval for an undertaking) does not apply to projects as long as they proceed in accordance with the approved class environmental assessment.

**Branch**

Environmental Assessment and Approvals Branch, Ministry of the Environment.

**Class Environmental Assessment**

A document that sets out a standardized planning process for those classes or groups of activities for which the applicant is responsible. It is also known as a "parent" document in some class environmental assessments. A class environmental assessment is approved under the *Environmental Assessment Act* and applies to projects that are carried out routinely and have predictable environmental effects that can be readily managed. Projects defined within a class environmental assessment require no further environmental approval under section 5 of the *Environmental Assessment Act*, conditional upon being planned according to the procedures set out in the document and not being subject to a Part II Order. All class environmental assessments have a mechanism where the Minister may order that an "individual" environmental assessment be carried out for a particular project, if warranted (Part II Order or "bump-up").

**Class Environmental Assessment Project**

An undertaking that does not require any further approval under the *Environmental Assessment Act* if the planning process set out in the class environmental assessment document is followed and successfully completed. Any interested person may request the Minister or delegate to order that a class environmental assessment project be bumped up to an "individual" environmental assessment by making a Part II Order.

## **Commitment**

Represents a guarantee from a proponent about a certain course of action, that is, "I will do this, at this time, in this way." Proponents acknowledge these guarantees by documenting obligations and responsibilities, which they agree to follow, in environmental assessment documentation (terms of reference and environmental assessment). Once the Minister and Cabinet approve an application, the commitments within the document are often made legally binding as a condition of approval. Commitments are also found in environmental reports for class environmental assessment projects. Although not approved by the Minister and Cabinet, they represent guarantees from a proponent about a certain course of action.

## **Consultation**

A two-way communication process to involve interested persons in the planning, implementation and monitoring of a proposed undertaking, or in the context of class environmental assessments, in the determination of the planning process itself. Consultation is intended to:

- Identify concerns;
- Identify relevant information;
- Identify relevant guidelines, policies and standards;
- Facilitate the development of a list of all required approvals, licences or permits;
- Provide guidance to the proponent about the preparation of the terms of reference and class environmental assessment;
- Ensure that relevant information is shared about the proposed undertaking;
- Encourage the submission of requests for further information and analysis early in the class environmental assessment process;
- Enable the ministry to make a fair and balanced decision.

## **Deadlines Regulation**

Refers to Ontario Regulation 616/98, which establishes the timing of reviews and decisions for terms of references, environmental assessments and class environmental assessments by the ministry.

## **Director\***

Director of the Environmental Assessment and Approvals Branch, Ministry of the Environment.

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

## **Do Nothing Alternative**

An alternative that is typically included in the evaluation of alternatives that identifies the implications of doing nothing to address the problem or opportunity that has been identified. Also referred to as the “null” alternative in some class environmental assessments.

## **Environment\***

The *Environmental Assessment Act* defines environment to mean:

- (a) Air, land or water;
- (b) Plant and animal life, including human life;
- (c) The social, economic and cultural conditions that influence the life of humans or a community;
- (d) Any building, structure, machine or other device or thing made by humans;
- (e) Any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities; or,
- (f) Any part or combination of the foregoing and the interrelationships between any two or more of them.

## **Environmental Assessment**

Environmental assessment is a study, which assesses the potential environmental effects (positive or negative) of an individual proposal. Key components of an environmental assessment include consultation with government agencies and the public; consideration and evaluation of alternatives; and, the management of potential environmental effects. Conducting an environmental assessment promotes good environmental planning before decisions are made about proceeding with a proposal. This is also referred to as an “individual” environmental assessment.

## **Environmental Assessment Act**

The *Environmental Assessment Act* (and amendments and regulations thereto) is a provincial statute that sets out a planning and decision-making process to evaluate the potential environmental effects of a proposed undertaking. Proponents wishing to proceed with an undertaking must document their planning and decision-making process and submit the results from their environmental assessment to the Minister for approval.

## **Environmental Assessment Coordinator**

The assigned staff person from one of the ministry's five regional offices. Environmental Assessment Coordinators administer provincial environmental assessment requirements by managing the ministry's technical review, ensuring

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\* An asterisk (\*) beside a defined term indicates that the term is defined in the *Environmental Assessment Act*.

that concerns specific to the ministry's mandate are provided to the proponent to be addressed, and providing guidance on the specific processes, provisions and requirements of class environmental assessments and Environmental Screening Processes.

### **Environmental Effect**

The effect that a proposed undertaking or its alternatives has or could potentially have on the environment, either positive or negative, direct or indirect, short- or long-term.

### **Environmental Report**

Any report or documentation prepared for a class environmental assessment project which describes how the class environmental assessment project was planned to meet the requirements of the approved class environmental assessment. It is typically called an environmental study report. Also known as project plan, project file, environmental screening report, environmental study report, consultation and documentation record. The names vary by class environmental assessment.

### **Government Review Team**

Staff from government ministries and agencies (federal; provincial, including local Conservation Authorities; and, municipal, including local Boards of Health) who contribute to the review of environmental assessment documentation (terms of reference, environmental assessment and class environmental assessment) by providing comments from their mandated areas of responsibility. In the class environmental assessment context, there is no formal Government Review Team.

### **Impact Management Measures**

Measures which can lessen potential negative environmental effects or enhance positive environmental effects. These measures could include mitigation, compensation, or community enhancement.

### **Interested Persons**

Individuals or organizations with an interest in a particular undertaking. Persons with an interest in a particular undertaking often include neighbours and individuals, environmental groups or clubs, naturalist organizations, agricultural organizations, sports or recreational groups, organizations from the local community, municipal heritage committees, ratepayers associations, cottage associations, Aboriginal peoples and businesses.

Interested persons are not required to demonstrate that they will personally be affected by a particular undertaking. Interested persons are often called stakeholders.

**Master Plans**

Master Plans are long range plans, integrating infrastructure requirements for present and future land use with environmental planning principles. These plans examine the whole infrastructure system in order to outline a framework for planning for subsequent projects and/or developments.

**Mediation**

A dispute resolution process in which a neutral third party (mediator) who is acceptable to all parties assists disputants in reaching a mutually acceptable agreement. The mediator has no authority to impose a settlement and participation in the process is voluntary.

**Minister\***

Minister of the Environment.

**Ministry\***

Ministry of the Environment.

**Ministry Technical Reviewers**

Ministry of the Environment staff, other than the Project Officer, who contribute to the review of the draft and proposed terms of reference. They form part of the Government Review Team for the proposal.

**Monitoring**

The activities carried out by the applicant after approval of an undertaking to determine the environmental effects of the undertaking ("effects monitoring"). Monitoring can also refer to those activities carried out by the Ministry of the Environment to ensure that an applicant complies with the conditions of approval of the class environmental assessment ("compliance monitoring").

Effectiveness monitoring is a third type of monitoring in which an applicant evaluates how effectively its class environmental assessment is working in the planning and implementation of its class environmental assessment projects.

**Part II Order**

Formerly known as a "bump-up," a Part II Order is an order issued by the Minister that makes a class environmental assessment project an undertaking that is subject to Part II of the *Environmental Assessment Act*.

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**Project Evaluator**

The assigned staff person from the Environmental Assessment and Approvals Branch who manages and coordinates the review of requests for Part II Orders for class environmental assessment projects or elevation requests on electricity or waste projects, subject to the *Environmental Assessment Act*.

**Project Officer**

The assigned staff person from the Environmental Assessment and Approvals Branch who manages and coordinates the review of the components of an *Environmental Assessment Act* application (that is, a terms of reference or an environmental assessment) for approval. The Project Officer also provides guidance on the environmental assessment process to proponents, government agencies and other interested persons.

**Proponent\***

A person, agency, group or organization that carries out or proposes to carry out an undertaking or is the owner or person having charge, management or control of an undertaking. In the context of this Code of Practice the proponent is the person, agency group or organization that proposed to carry out a class environmental assessment project, rather than the development of the class environmental assessment itself.

**Public Record File**

A record of every undertaking for which there is an application for approval under the *Environmental Assessment Act* which is maintained by the Environmental Assessment and Approvals Branch in accordance with section 30 of the *Environmental Assessment Act* for the purpose of creating a record that is available to any interested persons. This does not extend to all class environmental assessment projects, only those for which a Part II Order is proposed.

**Record of Consultation**

A document submitted with the proposed terms of reference that describes the consultation carried out during the preparation of the terms of reference and the results of that consultation.

**Stand-alone Document**

Additional documentation prepared separately from the terms of reference, which provides more information, but is not subject to the approval of the Minister (for example, Record of Consultation and supporting documentation).

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### **Supporting Documentation**

Documentation that is submitted to the ministry, in addition to the proposed terms of reference, which provides further information on issues discussed in the proposed terms of reference. Information contained in the supporting documentation should support the proponent's request that the terms of reference be approved by providing justification for the choices made and details of processes or methodologies to be used. These are routinely submitted as stand-alone documents.

### **Terms of Reference**

A document prepared by the proponent and submitted to the Ministry of the Environment for approval. The terms of reference sets out the framework for the planning and decision-making process to be followed by the proponent during the preparation of an environmental assessment or class environmental assessment. In other words, it is the proponent's work plan for what is going to be studied and includes a consultation plan. If approved, the environmental assessment must be prepared according to the terms of reference.

### **Undertaking\***

An enterprise, activity or a proposal, plan, or program that a proponent initiates or proposes to initiate.

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# 1. Introduction

Environmental assessment is a planning and decision-making process used to promote environmentally responsible decision-making. In Ontario, this process is defined and finds its authority in the *Environmental Assessment Act*. The purpose of the *Environmental Assessment Act* is to provide for the protection, conservation and wise management of Ontario's environment. To achieve this purpose, the *Environmental Assessment Act* promotes responsible environmental decision-making and ensures that interested persons have an opportunity to comment on undertakings that may affect them. In the *Environmental Assessment Act*, environment is broadly defined to include the natural, social, economic, cultural and built environments.

It should be noted that environmental assessment is a planning process that allows proponents to assess the potential for environmental effects using best information available in order to make an informed decision about whether a project should proceed. It is not the proponent's responsibility to achieve consensus about whether a project should proceed or attempt to resolve issues outside the scope of the project. While the objective is to avoid or minimize potential negative environmental effects, it may not always be possible to do so. There will be times where individuals may be affected by a project that would benefit society as a whole. The objective is to ensure that projects are planned in an environmentally responsible manner so that the environment is protected.

Subsection 13(1) of the *Environmental Assessment Act* allows a person to apply to the Minister of the Environment to approve a class environmental assessment with respect to a class of undertakings. The application consists of a proposed terms of reference and subsequently a class environmental assessment.

While the content of an environmental assessment focuses on the potential environmental effects of a particular undertaking and the documentation of the planning and decision-making process for the undertaking, the class environmental assessment seeks approval for an appropriate planning process for a class of undertakings.

Projects that form part of the class of undertakings (class environmental assessment projects) can proceed without seeking further approval if they have been planned in accordance with the planning process outlined in the approved class environmental assessment. The *Environmental Assessment Act* allows an interested person to ask the Minister to make a Part II Order (the proponent of the project must prepare and submit an environmental assessment for approval)

The *Environmental Assessment Act* provides for two types of environmental assessment planning and approval processes for undertakings subject to the act: environmental assessments and class environmental assessments.

This Code of Practice provides guidance on the development and use of a class environmental assessment.

if there are concerns with the project or if there is the potential for significant environmental effects.

There are a number of key things to differentiate a class environmental assessment from an environmental assessment. When a class environmental assessment is approved by the Minister and Cabinet, the approval is for both the class of undertakings defined in the class environmental assessment and the planning process set out in the document. An environmental assessment approval is for a single undertaking and is subject to conditions of approval related only to that undertaking.

The inclusion of a planning process in the class environmental assessment is important. It ensures that when a class environmental assessment is approved by the Minister and Cabinet, projects falling within the class of undertakings will be planned in accordance with the approved planning process and other procedures set out in the class environmental assessment.

## 1.1 Purpose of This Code of Practice

This Code of Practice is intended to provide direction on procedural requirements to applicants preparing and revising class environmental assessments and proponents of class environmental assessment projects. It is also intended to clarify and make more consistent class environmental assessment requirements.

This Code also provides stakeholders with a reference document that can be consulted for an understanding of expectations associated with the application of the class environmental assessment process to a given project.

While it is appropriate for each class environmental assessment to be unique to the group of undertakings it is addressing, there are some standard components that should consistently be addressed in order to help ensure that the purpose and principles of the *Environmental Assessment Act* are being met both during the development of the class environmental assessment planning documents and in their application in a project-specific context.

This Code of Practice is intended for use by:

- ≈ Applicants and their consultants who are either developing a class environmental assessment or proponents undertaking a class environmental assessment project.
- ≈ Stakeholders who are involved in the review of a class environmental assessment or class environmental assessment project.
- ≈ Government agencies involved in the review of a class environmental assessment or class environmental assessment project.

This Code of Practice has been divided into three parts:

- Part A provides direction on the preparation and review of a new terms of reference and a new class environmental assessment;
- Part B provides guidance about how existing approved class environmental assessments can reflect, to the extent possible the requirements outlined in Part A; and
- Part C provides guidance on how to use a class environmental assessment and about how government agencies, interested persons and Aboriginal peoples can effectively participate in the development of projects planned under an approved class environmental assessment. This guidance is intended to support the processes in the approved class environmental assessments.

This Code of Practice provides additional direction in support of the process outlined within an approved class environmental assessment. This Code complements all of the approved class environmental assessments.

While this Code of Practice is intended to provide general guidance and ministry expectations, each approved class environmental assessment should be consulted for detailed requirements on its planning process.

Requirements set out in Part A of this Code of Practice will not apply to currently approved class environmental assessments until their next review is complete or their approval has been renewed. After this Code of Practice is approved by the Minister, new class environmental assessments will be assessed on how well they reflect the class environmental assessment expectations set out in the Code of Practice.

## **1.2 What Is a Class Environmental Assessment?**

All projects undertaken by a provincial ministry, municipality or designated public body are subject to the requirements of the *Environmental Assessment Act*, unless explicitly exempt. The *Environmental Assessment Act* can also be made to apply to private sector proponents through a designation regulation. An environmental assessment must then be prepared for their projects. These projects can include a variety of activities required to fulfil public legislative mandates, such as:

- The management and operation of provincial parks and conservation reserves;
- The management and operation of provincial transportation facilities including provincial highways, freeways, provincial transitways and ferryboats;
- The construction of new commuter rail stations, bus terminals or storage yards;

- Remedial flood and erosion control activities by conservation authorities;
- The management of Ontario government's buildings and land;
- The planning and design of municipal infrastructure for roads, transit, water and wastewater facilities;
- Forest management planning.

Because these activities occur on a frequent basis, are generally small in scale, and the impacts are generally predictable or well understood, proponents may complete a streamlined self-assessment process in order to fulfil the requirements of the *Environmental Assessment Act* without submitting an environmental assessment to the ministry for a decision for each project. This allows for a planning process that is appropriate for the project which can be completed in a timelier manner.

The class environmental assessment process allows an applicant to assess certain groups or classes of projects. A planning document, called a class environmental assessment is prepared and approved, following the same process for an "individual" environmental assessment. Once it is approved, it provides an environmental assessment planning framework which can be used by a proponent for a specific project that falls within the approved class of undertakings.

Class environmental assessments are an important part of the environmental assessment program in Ontario. Currently, there are 10 approved class environmental assessments in Ontario (see Appendix A for list of currently approved class environmental assessments). The class environmental assessment process is one of six program areas administered by the ministry under the *Environmental Assessment Act*. Approximately 90 per cent of all projects undertaken by a public body are planned and implemented under an approved class environmental assessment planning process.

### **1.3 What Is a Class Environmental Assessment Project?**

A class environmental assessment project is a project that is planned and developed in accordance with an approved class environmental assessment. A class environmental assessment project does not require any further approval under the *Environmental Assessment Act* if the planning process set out in the class environmental assessment is followed, unless the Minister or delegate orders the class environmental assessment project to be bumped up to an environmental assessment (generally referred to as a "Part II Order"). Examples of class environmental assessment projects include:

- Canoe route development on a particular river;
- Reconstruction of a county road;
- New commuter rail station;
- Expansion of an existing sewage treatment plant;

- Construction of a transformer station;
- Disposition of a Crown resource to permit construction of an access road on Crown land;
- New interchange on an existing highway;
- Sale or lease of government-owned land;
- Stream channel realignment to prevent flooding.

Once the class environmental assessment planning document is approved, it provides an environmental assessment planning framework which can be used by a proponent. Proponents do not need to receive project-specific approval from the Minister for projects included in the class environmental assessment, provided they follow and successfully complete the approved planning and assessment process defined in the class environmental assessment.

#### **1.4 Private Sector Activities and Class Environmental Assessments**

Section 39 of the *Environmental Assessment Act* identifies that the Lieutenant Governor in Council can make a regulation designating major commercial or business enterprises or activities, plans or proposals subject to the requirements of the *Environmental Assessment Act*. Generally speaking designation regulations are made to ensure that both the public and private sectors are treated equally under the *Environmental Assessment Act* for activities that are thought to have the potential to cause significant environmental effects. This applies to activities and to classes of activities. Examples of regulations that have captured classes of activities routinely undertaken by the private sector include:

- Waste Management Projects Regulation  
Ontario Regulation 101/07
- Electricity Projects Regulation  
Ontario Regulation 116/01
- Private Sector Developers  
Ontario Regulation 345/93

Ontario Regulations 101/07 and 116/01 allow proponents to follow a streamlined self-assessment process for most waste management and electricity projects. It includes an environmental screening process, similar to a class environmental assessment planning process for groups of activities which have the potential for environmental effects that can be managed through routine mitigation and impact management measures. A waste management or electricity project is exempt from *Environmental Assessment Act* requirements provided it follows a prescribed planning process.

Ontario Regulation 345/93 designates private sector developers of land who construct certain road, water and wastewater projects that are provided to

residents of a municipality and requires them to follow a Schedule C planning process outlined under the Municipal Class Environmental Assessment.

This Code of Practice does not contemplate these regulations.

## **1.5 Benefits of a Class Environmental Assessment**

The benefits of a class environmental assessment are:

- It is a self-assessment process that allows proponents the flexibility to plan and implement a range of projects without receiving environmental assessment approval by the Minister under the *Environmental Assessment Act* for each project.
- It provides clear and consistent direction on how to complete and document the assessment process for a range of projects.
- It provides clear and consistent direction on how to engage and consult on a range of projects.
- It provides certainty for both proponents, affected stakeholders, and the public with respect to the consultation process and how to participate in the process.
- It provides flexibility to proponents to adapt the process to the level of interest and complexity of the project.
- That it significantly reduces the administrative timelines for the review and approval of projects undertaken on a frequent basis.

While the direct involvement of interested persons is integral, the class environmental assessment process is not a consensus building exercise. Participants in the process do have the opportunity to contribute to the preparation of a class environmental assessment and the decision-making process by providing input and information, and by raising issues and concerns with respect to any aspect of the process or the class environmental assessment and for projects planned in accordance with an approved class environmental assessment.

## **1.6 Overview of the Class Environmental Assessment Process**

An approved class environmental assessment describes the planning and assessment process that a proponent must follow for a class of undertakings. There are specific elements that must be included in an approved class environmental assessment document as defined in subsection 14(2) of the *Environmental Assessment Act*.

Once the class environmental assessment is approved under the *Environmental Assessment Act*, all undertakings included in the class can proceed without seeking further environmental assessment approval on condition that they are

planned and evaluated in accordance with the approved process provided for in the class environmental assessment.

Typically, class environmental assessments will set out a process that provides for the characterization of the problem or opportunity, the consideration of alternative solutions and designs, the preparation of environmental assessment documentation, and implementation. Integral to the process is notification/consultation with interested persons and government agencies.

Different groupings of projects covered by a class environmental assessment may not include all process steps or any steps at all if the project category has been determined to have insignificant effects such as physical control of nuisance animals; or normal or emergency operational activities.

A class environmental assessment process provides a decision-making framework that is:

- ≈ An efficient, timely and environmentally responsible approach for proponents to pursue projects.
- ≈ A consistent, streamlined and easily understood process for planning and implementing infrastructure projects.
- ≈ Sufficiently flexible to allow a planning process to be tailored to a specific project, taking into account the environmental setting, local public interests and unique project requirements.
- ≈ Based on a staged decision-making process where level of detail (both engineering and environmental) increases as the planning process progresses.

## 2. Who Should Use This Code of Practice

This Code of Practice has been developed for use by:

- Applicants who are responsible for preparing a new class environmental assessment;
- Proponents who plan and develop projects in accordance with an approved class environmental assessment;
- Government Review Team members who participate in the preparation and review of a new class environmental assessment or the review of class environmental assessment projects;
- Aboriginal peoples and communities who participate in the preparation of a new class environmental assessment or review of a class environmental assessment project;
- Interested persons who may wish to participate in the preparation and review process for a class environmental assessment or a class environmental assessment project by providing comments;
- Ministry of the Environment staff who review new class environmental assessment applications, class environmental assessment projects and/or Part II Order requests.

This section outlines the roles and responsibilities of the various participants involved in the preparation of the class environmental assessment and the application of the class environmental assessment to projects.

It is important to note that the information outlined herein is not meant to be exhaustive and that other participants, roles and/or responsibilities may apply depending on the nature and complexity of a proposed project.

Participants who may be involved in a class environmental assessment:

- ≈ Applicants and proponents
- ≈ Government Review Team
- ≈ Aboriginal peoples and communities
- ≈ Interested persons
- ≈ Ministry of the Environment staff

### 2.1 Applicants and Proponents

Applicants are those who apply for approval of a class environmental assessment. Proponents are those who plan and develop projects in accordance with an approved class environmental assessment.

Applicants who initiate the preparation of class environmental assessments as provided for under Part II.1 of the *Environmental Assessment Act* are responsible for the preparation and submission of a terms of reference and class environmental assessment to the ministry for approval.

Specific roles and responsibilities are described below.

In preparing the terms of reference and class environmental assessment, applicants are required to:

- Consult with Environmental Assessment and Approvals Branch staff to discuss preparation, consultation and submission requirements;
- Identify government ministries and agencies, municipalities, Aboriginal peoples and communities, members of the public and other persons who may have an interest in the terms of reference and the class environmental assessment;
- Engage in meaningful consultation with all interested persons and government agencies to identify and respond to needs and concerns associated with the terms of reference and the class environmental assessment;
- Ensure that issues and concerns are identified and considered early in the planning process before irreversible decisions are made;
- Document the results of the consultation process;
- Prepare a terms of reference and class environmental assessment in consultation with the ministry, other government ministries and agencies, municipalities, Aboriginal peoples and communities, the public and all other interested persons;
- Attempt to resolve issues as best as practicable;
- Prepare and submit a terms of reference and class environmental assessment in accordance with applicable ministry legislation and standards (for example, *Environmental Assessment Act* and its regulations, applicable Codes of Practice).

In using the approved class environmental assessment for a particular project, a proponent is required to:

- Adhere to the approved process defined in the class environmental assessment when planning and developing projects under that process;
- Apply good environmental assessment and project management principles when carrying out the class environmental assessment process (see Section 3);
- Undertake meaningful public, Aboriginal communities and government agency consultation during the development of a class environmental assessment project as required, including providing appropriate notice;
- Prepare documentation consistent with the specified requirements of the approved class environmental assessment and make this information available for public, Aboriginal communities, and government agency review;
- Seek to resolve issues raised by the public, government agencies or Aboriginal communities.

## **2.2 Government Review Team**

Members of the Government Review Team include select provincial government agencies, municipal agencies and federal departments. Government Review Team members should assist applicants and proponents by identifying issues and reviewing information associated with their mandates.

During the preparation of a terms of reference and the class environmental assessment, members of the Government Review Team are responsible for:

- Providing information and guidance in a timely manner within their mandated areas of responsibility that the applicant should consider when preparing the terms of reference and class environmental assessment (for example legislative requirements, policies, standards, potential environmental criteria);
- Participating in the government review of both a draft and final proposed terms of reference and class environmental assessment.

When a project is being planned and developed under an approved class environmental assessment, Government Review Team members are responsible for:

- Providing information and guidance to proponents in a timely manner;
- Participating in the project-specific planning and assessment process as requested;
- Participating in the government review of class environmental assessment projects referred to their ministry/agency/department;
- Referring outstanding concerns to proponent as early in the planning process as possible;
- Providing input to the Branch on Part II Order requests in accordance with Branch timelines.

## **2.3 Aboriginal Peoples and Communities**

Potentially affected Aboriginal peoples and communities are strongly encouraged to participate during the preparation of any new class environmental assessments and the planning of specific class environmental assessment projects.

During the preparation of the terms of reference and the class environmental assessment, potentially affected Aboriginal peoples and communities should:

- Identify for the applicant, an appropriate contact to maintain consistency throughout the planning process in a timely manner;
- Identify any issues and concerns that may affect their community while the terms of reference and the class environmental assessment are being prepared;

- If applicable, outline their claims with clarity, focusing on the scope and nature of the Aboriginal rights asserted and on the nature of the infringements;
- Suggest modifications to the terms of reference and class environmental assessment that may address their concerns;
- Respond to the government's attempt to meet their concerns and suggestions, and to try to reach some mutually satisfactory solution during the ministry's review of the terms of reference or the class environmental assessment;
- Be mindful of the prescribed deadlines once the proposed terms of reference or class environmental assessment is submitted to the ministry for review and a decision.

When a project is being planned and developed under an approved class environmental assessment, Aboriginal peoples and communities potentially affected by the proposed project should:

- Identify for the proponent, an appropriate community contact to maintain consistency throughout the planning process;
- Identify potential interests in the particular project in a timely manner;
- Engage in the project-specific planning process and suggest modifications to the proposed project that may address their issues or concerns;
- Work with the proponent to try to resolve all concerns, including using mediation or negotiation methods as necessary;
- Consider submitting a Part II Order request if, after all efforts during consultation, negotiation, or mediation have been exhausted, an outstanding issue with the project cannot be resolved in accordance with the requirements of the class environmental assessment.

Some class environmental assessment projects may have the potential to infringe upon existing and asserted Aboriginal or treaty rights and thereby trigger the Crown's duty to consult under section 35 of the federal *Constitution Act, 1982*. In such situations, the Crown must determine the level and extent of consultation required and how the consultation should be undertaken. The Crown should assess:

- How the class environmental assessment project may affect the existing asserted rights of Aboriginal peoples and communities;
- The nature and strength of these rights;
- How concerns may be addressed and accommodated.

This assessment may involve consulting with the affected Aboriginal community and the proponent.

For their part, Aboriginal peoples and communities should:

- Outline with clarity the source, scope and nature of the existing or asserted rights and the nature of the alleged infringement;
- Suggest modifications to the project to address their concerns;
- Respond to the government's attempt to meet their concerns and suggestions, and to try to reach some mutually satisfactory solution.

## **2.4 Interested Persons**

Interested persons are encouraged to participate in the preparation and review of the terms of reference, the class environmental assessment and class environmental assessment projects.

During the preparation of a terms of reference and a class environmental assessment, interested persons are responsible for:

- Suggesting modifications to the terms of reference and class environmental assessment that may address concerns, for example, a different category for a particular activity or project, or the proposed planning process;
- Providing comments within required timelines once the proposed terms of reference and class environmental assessment are submitted to the ministry for a decision.

When a project is being planned and developed under a class environmental assessment, interested persons are responsible for:

- Identifying environmental issues related to the class environmental assessment project to the proponent as soon as possible in the planning process;
- Participating in discussions with the proponent to address concerns. If during the evaluation of a class environmental assessment project, interested persons have not participated and later request a Part II Order, the lack of participation in the process will be considered by the Minister or delegate when making a decision on whether or not to grant the request;
- Focusing on matters relating to the class environmental assessment process and the proposed project: for example, potential effects of the project, appropriate notification, the nature of the public consultation process, mitigation measures and design features;
- Suggesting modifications to the specific project or environmental assessment documentation that may address concerns, for example, changing the orientation of the project on the site, screening to minimize visual impact, or changing the location of site access.

## 2.5 Ministry of the Environment Staff

Staff from a number of sections of the ministry are involved in various ways at various stages of the class environmental assessment process.

Staff from the Environmental Assessment and Approvals Branch provide guidance to the applicant in the preparation of a terms of reference and a class environmental assessment and coordinate the review of these documents once they are submitted to the ministry for review and a decision. Branch staff also review and make recommendations about Part II Order requests when they are submitted to the ministry.

Specific responsibilities for Branch staff in the development of a terms of reference and class environmental assessment include:

- Providing guidance about the requirements of the *Environmental Assessment Act* and other ministry environmental legislation, regulations or procedures;
- Evaluating the draft and final terms of reference and class environmental assessment to ensure that all legislative requirements are met and procedures established by the ministry are followed;
- Coordinating the ministry's technical review of the draft and final terms of reference and class environmental assessment;
- Facilitating coordination with other environmental review processes such as the federal environmental assessment process to minimize unnecessary duplication of effort;
- Leading the overall government review of the proposed terms of reference and class environmental assessment when they are submitted to the ministry for review and a decision;
- Maintaining the public record file for the application;
- Encouraging all participants to resolve outstanding issues as necessary;
- Evaluating the final terms of reference and class environmental assessment and providing a recommendation to the Minister to enable the Minister to make an informed decision;
- Ensuring that the applicant is in compliance with conditions of approval if the class environmental assessment is approved.

Requests for Part II Orders are made to the ministry. Staff at the Branch process the requests and make recommendations to the Minister or delegate about whether to make a Part II Order.

Specifically, Branch staff are responsible for:

- Providing guidance on the Part II Order process to all participants;
- Determining whether a Part II Order request is premature;

- Reviewing the Part II Order request against criteria in the applicable class environmental assessment and other criteria established by the ministry;
- Making a recommendation to the Minister or delegate about whether or not to make a Part II Order.

Ministry regional Environmental Assessment Coordinators take a leading role for class environmental assessment projects. They are the first point of contact for the proponent, providing guidance on the class environmental assessment planning process as outlined in approved class environmental assessments. They may also provide technical comments on a proposed class environmental assessment project.

Regional Environmental Assessment Coordinators are responsible for:

- Reviewing the draft and final terms of reference and class environmental assessment if required;
- Being the first point of contact at the ministry for general class environmental assessment questions;
- Providing guidance to proponents, the public and government agencies and other participants on the class environmental assessment process for specific projects;
- Coordinating ministry technical comments from regional and district staff on class environmental assessment projects as part of the proponent's consultation with government agencies;
- Providing guidance to the proponent about consulting with other government agencies if, during the region's review of the class environmental assessment project documentation, it is apparent that another government agency should be consulted on a particular matter;
- Coordinating regional and district technical comments for Part II Order requests if required by the Branch;
- Providing local knowledge about class environmental assessment projects.

## 3. Considerations for Good Environmental Planning

### 3.1 Environmental Assessment Principles

There are a number of environmental assessment principles which are key to successful planning and approval under the *Environmental Assessment Act*. These principles form the foundation for the overall guidance of an environmental assessment process and provide direction when challenges present themselves. The applicant and proponent should incorporate these principles into its environmental planning process to increase the likelihood that the requirements of the *Environmental Assessment Act* will be met. The class environmental assessment will be evaluated against these principles, amongst other things. The principles include:

- Consult with potentially affected and other interested persons;
- Consider a reasonable range of alternatives;
- Consider all aspects of the environment;
- Systematically evaluate net environmental effects;
- Provide clear, complete documentation.

#### 3.1.1 Consult with Potentially Affected and Other Interested Persons

**Make the planning process a cooperative venture with potentially affected and other interested persons. Early consultation with interested persons is essential.**

Consultation with interested persons is a cornerstone of the class environmental assessment process and is a legal requirement of the *Environmental Assessment Act*. The applicant and proponent should seek to involve all interested persons as early as possible in the planning process so that their concerns can be identified and considered before irreversible decisions and commitments are made on the chosen approach or specific proposals. Applicants and proponents should present sufficient and varied opportunities for consultation and interested persons should take advantage of the opportunities and become involved in the planning process. The results of the consultation must be documented at the end of the planning process. Consultation, when done well, can improve the outcome of the planning process. To achieve this, the planning process must be constructed, in part, around the involvement and contribution of potentially affected and other interested persons. The benefits of doing this include:

- Improving the understanding of environmental concerns before irreversible decisions are made and focusing the proponent's planning on matters of concern;

- Encouraging the identification and consideration of issues before the class environmental assessment or project documentation is made available for review to reduce the time required during the formal decision-making process to resolve outstanding issues;
- Promoting mutually acceptable, environmentally sound solutions.

### 3.1.2 Consider a Reasonable Range of Alternatives

#### **A reasonable range of alternatives must be considered.**

During the class environmental assessment process, applicants and proponents should consider a reasonable range of alternatives. This should include examining “alternatives to” which are functionally different ways of approaching and dealing with the defined problem or opportunity, and “alternative methods” of carrying out the proposed project which are different ways of doing the same activity. Depending on the problem or opportunity identified, there may be a limited number of appropriate alternatives to consider. If that is the case then there should be clear rationale for limiting the examination of alternatives. The “do nothing” alternative must also be considered.

### 3.1.3 Consider All Aspects of the Environment

#### **Identify and consider the potential effects of each alternative on all aspects of the environment.**

The *Environmental Assessment Act* broadly defines environment to include the natural, social, economic, cultural and built environments. During the preparation of the class environmental assessment project, the proponent must consider not only the potential environmental effects on the natural environment, but also the social, economic, cultural and built environments and how they interrelate for every alternative being considered. The level of detail required will vary depending on the significance of the potential environmental effect and the stage in the class environmental assessment process; that is, more detail will be needed once a preferred alternative has been selected.

### 3.1.4 Systematically Evaluate Net Environmental Effects

#### **Effectively evaluate alternatives in light of their advantages and disadvantages developed through a net effects analysis.**

Environmental assessment typically includes the evaluation of the alternatives given the advantages and disadvantages of each alternative. During the class environmental assessment process, there are distinct points where alternatives are evaluated and the net environmental effects associated with any alternative; that is, the potential environmental effects after impact management measures have been applied, are clearly identified.

Decision-making should be phased, narrowing progressively to a preferred alternative. This results in a process where alternatives will be eliminated from consideration at different points in the planning process. Decisions on what type or combination of alternatives are preferred are generally made earlier in the planning process and more detailed decisions on how to implement the preferred alternative made later.

It must be recognized that the project planning and decision-making process is dynamic. When preparing a class environmental assessment project, the proponent must be sensitive to changing conditions and new information and must provide flexibility to deal with changing circumstances. This approach, if carried out effectively, will result in the identification of a preferred alternative which has a rational justification for environmental approval.

### 3.1.5 Provide Clear, Complete Documentation

**The applicant and proponent must ensure that the class environmental assessment represents accurately the planning and decision-making process that was followed in a clear and understandable way and must communicate that clearly in the class environmental assessment document.**

The class environmental assessment document which is submitted to the ministry for approval and the class environmental assessment project documentation made available for review by interested persons should explain clearly the environmental planning and decision-making process followed to reach the conclusions. Any interested person reading the class environmental assessment document should be able to easily follow the process used by the applicant in determining the undertaking including the rationale for making certain choices. Clarity, simplicity, completeness and precision are objectives for which to strive when preparing the class environmental assessment document.

Information about how these features can be incorporated in the class environmental assessment planning process and the preparation of the class environmental assessment document is provided in Section 4 in this Code of Practice.

## 3.2 Project Management Principles

In addition to the environmental assessment principles outlined above, there are a number of project management principles that can, when followed, assist a proponent in navigating the class environmental assessment process successfully for a specific project. These project management principles, when followed by the proponent should result in better project documentation for review by interested persons and timelier decisions. These project management principles include:

- Timeliness
- Clarity and Consistency
- Openness and Transparency
- Coordination of Approvals
- Best Available Information
- Appropriate Level of Detail
- Minimize Potential Harm and Enhance Benefits to the Environment

### 3.2.1 Timeliness

The proponent should commence its class environmental assessment project as early in the planning process as possible. This will allow sufficient time to assess the project implications so that the proposed project can be modified as required. It will also allow for any potential coordination with other approvals where possible.

Timeliness is also important from the perspective of consultation. The proponent should involve interested persons early in the project planning process in order to identify and consider issues or concerns.

Expectations for a timely process also apply to interested persons. Members of the public participating in the class environmental assessment project planning process should make their submissions about proposed projects in a timely manner and by the required deadlines so that there is sufficient time for the proponent to evaluate the submission and incorporate it in its decision-making process.

The ministry should also be timely in its decision-making about Part II Order requests, following required deadlines while taking time to thoroughly evaluate the requests.

### 3.2.2 Clarity and Consistency

The class environmental assessment process should be clear and consistent. The *Environmental Assessment Act* should be applied consistently to similar undertakings and the ministry's expectations of all participants in the process should be articulated clearly. Proponents and interested persons should be able to expect generally how the class environmental assessment process will be carried out in similar circumstances in a manner that is rational and transparent.

### 3.2.3 Openness and Transparency

The class environmental assessment process should be open and transparent. This will enable all interested persons to follow the project through its various stages of project planning and decision-making until the final project details are

known. Anyone should be able to trace the results of the class environmental assessment project planning process using the evaluation approaches set out therein.

Means of achieving transparency can include, but are not limited to:

- Using appropriate, well-established and easily understood evaluation methods;
- Making the process clear, rational and logical;
- Sharing complete information with all interested persons to support conclusions and recommendations at each phase in the process;
- Documenting the process in easy to understand language with explanations of the rationale for making certain choices.

### 3.2.4 Coordination of Approvals

Often *Environmental Assessment Act* approval is one of many approvals required by a proponent before its project can be implemented. As early as possible in the planning process, proponents should determine whether approvals under other provincial legislation (for example, *Environmental Protection Act*, *Public Lands Act*, *Lakes and Rivers Improvement Act*, *Conservation Authorities Act*) or federal legislation (for example, *Canadian Environmental Assessment Act*, *Canadian Fisheries Act*) are required.

Where an environmental assessment is required by another jurisdiction, to the extent possible, these multiple environmental assessment approvals should be coordinated where appropriate. At minimum, the class environmental assessment project documentation should identify the other approvals required and address how they will be coordinated where possible. The ministry recognizes the benefits of coordination, but also understands that there are times when differences in approval requirements may make it impossible to coordinate environmental assessment approvals.

### 3.2.5 Best Available Information

The proponent should provide sufficient information about the potential environmental effects (both positive and negative) of a proposed project in order to demonstrate that the proposed project should proceed. Proponents should prepare technical studies using the best available data; carefully select their assessment and evaluation methods to analyze their proposal; and use sound scientific, engineering and planning practices in the preparation of the class environmental assessment project documentation. Consultation with the public may assist the proponent in selecting appropriate analytical tools or information to be included in the planning process.

Proponents should be aware that while available and published data can be used in the earlier steps in the project planning process, it is expected that there will be a transition to original field work, surveys, etc. for analysis and evaluation in the later stages of the planning process. The level of detail will increase as the process proceeds.

### 3.2.6 Appropriate Level of Detail

Each class environmental assessment project is unique. As a result, the level of detail of required information will vary by project or stage in the planning process. The appropriate level of detail depends on a number of factors such as the number of approvals required; the nature and complexity of the proposed project; the potential for environmental effects; and the level of public interest. The level of detail presented in class environmental assessment project documentation should be sufficient to fulfil the requirements of the approved class environmental assessment and to assure interested persons that the proposed undertaking is technically feasible and achieves environmental protection.

### 3.2.7 Minimize Potential Harm and Enhance Benefits to the Environment

The class environmental assessment planning process consists of a systematic evaluation of the potential environmental effects of alternatives, and weighing the advantages and disadvantages of proceeding with the proposed project. In doing so, the proponent should attempt to prevent, avoid or minimize adverse environmental effects through the application of impact management measures. At the same time, proponents should consider societal benefits of the projects to the environment in their evaluation process.

Proponents should make every effort to avoid or minimize potential adverse environmental effects through the application of impact management measures; however, it may not be possible to manage all of them. There will be times when some individuals may be affected by a project that would benefit society as a whole and this will have to be considered during the project planning process.

## **PART A**

# **Preparing the Terms of Reference and Class Environmental Assessment**



## 4. Document Preparation

Preparing a class environmental assessment can be challenging because for the most part, it covers the whole of the province in a wide variety of geographic areas with a broad range of potentially interested persons. Frequently the interest in a class environmental assessment is low since it is not related to a particular project, yet the majority of projects subject to the *Environmental Assessment Act* go through a class environmental assessment process. Applicants should keep this in mind when preparing a class environmental assessment.

An application for approval of a new class environmental assessment, commonly known as a “parent” document, consists of two parts: the terms of reference and the class environmental assessment. If the terms of reference is approved by the Minister of the Environment, the class environmental assessment must be prepared in accordance with the work plan, consultation plan and the framework of the terms of reference.

The rest of this section describes the terms of reference requirements. Sections 5 and 6 outline the class environmental assessment requirements.

### 4.1 Terms of Reference Process

The first step in the preparation of a class environmental assessment is receiving approval from the Minister for a terms of reference submitted under subsection 13.2(1) of the *Environmental Assessment Act*.

The terms of reference provides a framework for the preparation of the class environmental assessment. It sets out the applicant’s work plan for addressing the legislated requirements of the *Environmental Assessment Act* for the preparation of and the content of the class environmental assessment.

On average, applicants take from six to nine months to prepare the terms of reference. However, this timeline is dependent on the scale and complexity of the proposed class environmental assessment, the availability of information and the level of public interest. There are no prescribed deadlines for the preparation of the terms of reference, only for the ministry’s review of the application.

Before initiating the development of a class environmental assessment, an applicant should contact the Branch. The purpose of the call is to discuss the initiative and to identify a Branch Project Officer that will be assigned to the file. The Project Officer will provide a one-window ministry contact during the terms of reference development process. The Project Officer will also offer guidance and advice to the applicant and all interested persons about the planning process.

The Project Officer will ask the applicant to develop a program for consulting with interested persons during the preparation of the terms of reference. Applicants should identify key milestones in the development of the terms of reference and consult with interested persons at those times. The applicant will refer to the ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process*, for guidance in developing the consultation program. The Project Officer will give the applicant a copy of the Branch's master Government Review Team list which will help the applicant identify the government agencies and ministries to be consulted who may have a mandated interest in their proposal. Appendix B contains a list of the main agencies that make up the Government Review Team.

As a tool to keep interested persons informed, the applicant is advised to maintain a website with information about their proposal. The website, which is to be kept up-to-date, can be used as a depository for notices (of consultation events, for example) and the terms of reference.

When the applicant submits the terms of reference to the ministry for a decision, it must be accompanied by a description and results of the consultation carried out during the preparation of the terms of reference (subsection 6(3) of the *Environmental Assessment Act*). The Minister will consider this documentation when making a decision about the terms of reference.

The applicant must prepare a Notice of Commencement of Terms of Reference, an example of which can be found in Appendix C. The Notice will announce the start of the planning process and will provide information to interested persons about what is being proposed and how to become involved. The applicant should discuss with the Project Officer about to whom and how the Notice is to be given. Generally, the Notice should be given in an accessible location, such as a newspaper and on the website that will be maintained. An electronic copy of the Notice is to be sent to the Project Officer.

#### 4.1.1 Consultation with Aboriginal Peoples and Communities

Consultation by the applicant with interested persons is required under section 13.1 of the *Environmental Assessment Act*. When preparing the terms of reference, a variety of consultation opportunities should be made available to a wide range of interested persons including Aboriginal communities.

In addition, the Crown has a duty to consult with and accommodate Aboriginal communities when it has knowledge, real or constructive, of the existence or potential existence of an Aboriginal or treaty right and contemplates conduct that might adversely affect it. The steps described below will help to set the framework to ensure that:

- The applicant complies with section 13.1 of the *Environmental Assessment Act*.

- The Crown's duty to consult, if it arises, is satisfied with respect to the class of contemplated undertakings.
- The class environmental assessment establishes a process that meets the needs of potentially affected Aboriginal communities.

During the preparation of the terms of reference, applicants are required to prepare a list of Aboriginal communities and/or organizations that may have an interest in the development of the class environmental assessment. This list is to be developed in consultation with the Project Officer and governmental organizations such as the Ministry of Aboriginal Affairs and Indian and Northern Affairs Canada. Applicants should consult the environmental assessment page of the ministry's website<sup>1</sup> for the list of these governmental organizations. It is the ministry's intent that the list will serve to identify the appropriate Aboriginal communities and organizations to engage during the preparation of the terms of reference and subsequent class environmental assessment.

Depending on the class of activities to be included in the class environmental assessment, applicants may wish to focus their efforts on engaging only key Aboriginal organizations or consult more broadly with all Aboriginal communities who may have an interest in the class environmental assessment if that is warranted. However, applicants must at a minimum make good faith efforts to engage the Aboriginal communities and organizations that are identified in the list developed in consultation with the Project Officer and government organizations.

Applicants should include a consultation plan with their terms of reference outlining the consultation opportunities and with whom they intend to consult during the preparation of the class environmental assessment. The consultation plan should also include how consultation is to take place with potentially affected Aboriginal communities. Applicants should consider flexibility, additional time needed to review documents and the unique needs of Aboriginal communities when designing a consultation plan including language, remoteness, communication styles/preferences and access to communication tools.

## **4.2 Preparing the Terms of Reference**

After developing the consultation program and issuing the Notice of Commencement of Terms of Reference, the applicant can start preparing the terms of reference. The applicant should consult with the Project Officer as needed while preparing the terms of reference. It is the applicant's responsibility to submit a terms of reference that will result in a class environmental assessment about which the Minister can make an informed decision.

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<sup>1</sup> The environmental assessment page of the ministry's website can be found at [www.ene.gov.on.ca/envision/ea/index.htm](http://www.ene.gov.on.ca/envision/ea/index.htm)

Subsection 13.2(2) of the *Environmental Assessment Act* states that the proposed terms of reference must indicate how the class environmental assessment will be prepared. The ministry suggests that an applicant indicate that the class environmental assessment will be prepared in accordance with subsection 14(2) of the *Environmental Assessment Act*. Deviation from the subsection 14(2) requirements is allowed but before choosing this option, applicants should discuss the merits of it with the Project Officer.

The subsection 14(2) requirements are discussed in detail in Section 6 of this Code of Practice. In the terms of reference, the applicant should provide some general information about how the class environmental assessment will deal with the subsection 14(2) requirements. Only an overview is required for the terms of reference. The details will be required for the class environmental assessment.

The draft terms of reference must be clearly written. Use of jargon should be limited. The document needs to contain sufficient information to ensure that both the expert and the lay reader can understand what is being proposed.

### **4.3 Draft Terms of Reference**

There is no legal requirement in the *Environmental Assessment Act* to prepare and allow for a review of a draft terms of reference, but the ministry strongly suggests that an applicant do so. As the *Environmental Assessment Act* requires consultation with all interested persons, preparation and review of a draft terms of reference is one method that a proponent can use to fulfil its consultation obligations. The rest of this section applies if the applicant decides to prepare and allow review of a draft terms of reference. If the applicant chooses not to do so, it can proceed to Section 4.4.

If a draft is prepared, the Project Officer will lead the ministry's review of the draft terms of reference. The applicant will be responsible for consulting the Government Review Team, Aboriginal peoples and communities, local municipalities, the general public and other interested persons.

The applicant is responsible for identifying and resolving (or attempting to resolve) any issues raised before the final terms of reference is submitted. As required, the applicant will revise the draft terms of reference to address any issues that were raised during its review before submitting the final document to the ministry. The consultation summary component of the final document will reflect the results of the review of the draft terms of reference.

#### Review of Draft Terms of Reference by Ministry Staff

Once a copy of the draft terms of reference is received, the Project Officer will quickly review it to ensure that it is complete and meets the requirements of the *Environmental Assessment Act* and this Code of Practice before requesting

sufficient copies for distribution to the ministry's technical review team. The Project Officer may suggest changes or request that additional work be done before the draft terms of reference is sent for review by the ministry technical reviewers. The Project Officer will let the applicant know how much time is required for the ministry to conduct its review of the draft terms of reference. Once the ministry technical reviewers complete their review, they will send their comments to the Project Officer who will then pass them on to the applicant.

#### Non-ministry Review of Draft Terms of Reference

The applicant is responsible for consulting non-ministry persons about the draft terms of reference. This includes the Government Review Team, Aboriginal communities, local municipalities, the general public and other interested persons.

Government reviewers are not obligated to review a terms of reference and will not necessarily respond to an unexpected request to review it by a particular deadline. Applicants should contact (phone, e-mail) each prospective reviewer to discuss the conditions under which a review can be conducted before sending them the draft terms of reference for review. The applicant should discuss with the reviewer the reasons for requesting a review, what information is needed to do a review, and the amount of time that will be needed for the review. As required, a copy of the draft terms of reference and any other relevant materials should be sent to each interested member of the Government Review Team for their review.

The applicant will send the draft terms of reference and any other relevant materials to any interested Aboriginal community for its information and comment. Contact should be made with each interested community before the draft document is sent. A process similar to that used for the Government Review Team should be followed, unless discussions with a particular community have determined otherwise.

The applicant will also make sufficient copies of the draft terms of reference available in publicly accessible locations to allow municipalities, the general public and other interested persons the opportunity to comment on the document which will then provide the applicant with an early opportunity to respond to any concerns. A copy of the draft terms of reference and accompanying materials is also to be placed on the project website maintained by the applicant.

It is important that notice of the availability of the draft terms of reference for review be given in an accessible forum (for example, newspaper notice, website, direct mail). A minimum of 30 days should be provided for inspection of the draft document.

All comments about the draft terms of reference are to be sent directly to the applicant with a copy sent to the Project Officer for information only. Comments

sent only to the Project Officer or anyone else in the ministry will be forwarded to the applicant for its consideration.

#### **4.4 Submission and Evaluation of the Terms of Reference**

The steps for submission and evaluation of a terms of reference for a class environmental assessment are similar to those for a terms of reference for an "individual" environmental assessment. Sections 5, 6 and 7 of the ministry's Code of Practice entitled, *Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario* should be consulted for detailed guidance about this portion of the process. Exceptions to this are noted below:

- Notice of Commencement of Terms of Reference
  - use template in Appendix C of this Code of Practice
- Notice of Submission of Terms of Reference
  - use template in Appendix C of this Code of Practice
  - a location map is not necessary for the Notice of Submission
  - discuss with the Project Officer how and where to give the Notice, especially for proposals with provincewide significance.

## 5. Class Environmental Assessment

Once the applicant receives approval for the terms of reference, it can begin preparing the class environmental assessment. The class environmental assessment must be prepared in accordance with the approved terms of reference (subsection 14(1) of the *Environmental Assessment Act*).

### 5.1 Initiating the Process

The applicant will prepare a Notice of Commencement to inform interested persons that the applicant is moving on from the terms of reference stage to the preparation of the class environmental assessment. A template for the Notice can be found in Appendix C. The applicant shall make the Notice available in a public forum, such as a newspaper and on a website that is maintained for the proposal. An electronic copy of the Notice should also be sent to the Project Officer at the ministry.

It is the responsibility of the applicant to consult with interested persons during the preparation of the class environmental assessment, consistent with the consultation plan that was included in the approved terms of reference. Modifications to the consultation plan may be possible if the approved terms of reference allows for it, otherwise the consultation plan must be implemented as described. More opportunities for consultation over and above what was outlined in the approved terms of reference can also be provided. This determination can be made as the applicant proceeds with the preparation of the class environmental assessment having regard for the level of interest in the proposal. Please refer to the ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process* for further guidance.

The Project Officer will give the applicant an updated Government Review Team list to assist in identifying the proper contacts, or additional contacts to be consulted during the preparation of the class environmental assessment. The applicant is also responsible for documenting the consultation activities and the results of them. This documentation will be appended to the class environmental assessment when it is submitted for a decision.

#### 5.1.1 Consultation with Aboriginal Peoples and Communities

Consultation with Aboriginal communities and organizations during the preparation of the class environmental assessment should build on the process that was started during the preparation of the terms of reference. This applicant-led consultation is intended to allow the applicant to identify and consider potential concerns and issues that these Aboriginal communities and organizations might have and to provide them with further opportunities to receive information about, and have meaningful input into, the preparation of the class environmental assessment.

The applicant should be prepared to listen with an open mind to what the Aboriginal communities and organizations have to say and to make changes to the process in its proposed class environmental assessment based on information obtained through consultation.

The applicant must ensure that the consultation undertaken during the preparation of the class environmental assessment and the results of the consultation are documented and accompany the class environmental assessment when it is submitted to the ministry for a decision. The ministry will make a determination as to what, if any further steps are required with respect to consultation in light of the information.

The Crown may have a duty to consult with and accommodate Aboriginal communities based on the nature of the proposed class environmental assessment. If the duty to consult has been triggered, and the Crown is the applicant of a proposed class environmental assessment, the Crown applicant should lead the consultation efforts. If the applicant of the proposed class environmental assessment is not the Crown, the ministry may discharge the duty to consult. Regardless, all applicants should be prepared to engage Aboriginal communities and organizations early in the preparation of the class environmental assessment in order that their concerns and issues can be considered. This will help set the framework to ensure that the Crown's duty to consult is satisfied, if it arises, with respect to the approval of the class environmental assessment.

All applicants should understand that:

- The nature, scope, and content of the duty to consult and accommodate varies with the circumstances.
- Meaningful consultation requires the applicants and the Crown to listen with an open mind to what the Aboriginal communities have to say.
- There may be a requirement to make changes to the class environmental assessment process based on information obtained through consultations.
- Accommodation requires a process of balancing interests.
- Responsiveness is a key element of both consultation and accommodation.

## **5.2 Preparing the Class Environmental Assessment**

After the Notice of Commencement is issued, the preparation of the class environmental assessment has begun. The applicant will conduct studies and consult interested persons and government agencies as part of the preparation of the class environmental assessment.

The required content of the class environmental assessment is described in detail in Section 6 of this Code of Practice.

The applicant should consult with the Project Officer as needed while drafting the class environmental assessment. However, it is the applicant's responsibility to submit a class environmental assessment prepared in accordance with the approved terms of reference and with enough detail so that the Minister can make an informed decision about the class environmental assessment application.

As with a draft terms of reference, there is no legal requirement in the *Environmental Assessment Act* to prepare and allow for a review of a draft class environmental assessment, but the ministry strongly suggests that an applicant do so. If a commitment was made in the approved terms of reference to provide a draft environmental assessment, then the applicant must do so. If a draft class environmental assessment is prepared, the process for reviewing drafts is the same as when a draft terms of reference is prepared. Please refer to Section 4.3 of this Code of Practice for the necessary provisions.

### **5.3 Submission of the Class Environmental Assessment**

The steps for submission and evaluation of a class environmental assessment are similar to those for an "individual" environmental assessment. Sections 5 and 6 of the ministry's Code of Practice entitled, *Preparing and Reviewing Environmental Assessments in Ontario* should be consulted for detailed guidance about this portion of the process.

Once the applicant determines that the class environmental assessment is suitable for submission to the Minister of the Environment, it should discuss submission requirements with the Project Officer.

The applicant must notify the Project Officer before it intends to formally submit its class environmental assessment so that a firm submission date and start of the formal review period can be established.

Steps in the process:

- Three weeks before start of the formal review period – notify Project Officer that a formal submission is coming.
- Two weeks before start of the formal review period – submit Class Environmental Assessment Summary Form and prepare a Notice of Submission to Project Officer (see Appendix C for example templates).
- One week before start of the formal review period – submit required number of hard copies of class environmental assessment plus an electronic version on compact disc to Project Officer.

Section 5 of the ministry's Code of Practice entitled, *Preparing and Reviewing Environmental Assessments in Ontario* explains what is required for these steps. The exception is that the applicant should use the Notices and Form for class

environmental assessments that are found in Appendix C of this Code of Practice. Also, for the Notice of Submission a map is not required.

#### **5.4 Evaluation of the Class Environmental Assessment**

Once submitted, the class environmental assessment will proceed through a public, Aboriginal peoples and communities, and government agency review. Appendix D shows the different steps in the review process.

There are several phases in the evaluation of the class environmental assessment which take place between the submission of the document and the decision about the application. The phases are briefly summarized below. Additional information on these phases is available in Section 6 of the ministry's Code of Practice entitled, *Preparing and Reviewing Environmental Assessments in Ontario*.

There are regulated timelines associated with the evaluation of the class environmental assessment. These are outlined in the Deadlines Regulation (Ontario Regulation 616/98). The timelines are not concurrent but for ease of understanding, it is generally accepted that it takes approximately 30 weeks to complete the process provided that the applicant does not require additional time to make major revisions to the class environmental assessment. Additional time (from one to three weeks) is required to translate, publish and distribute the ministry Review.

Regulated timelines provide for the Minister to make a decision on an environmental assessment submission within approximately 30 weeks of the submission to the ministry. The Minister's decision is subject to approval by the Lieutenant Governor in Council, which is not subject to specific timelines.

##### **Phase 1: Inspection of class environmental assessment (7 weeks)**

The regulated timelines provide for an initial seven-week comment period for written submissions to be made to the ministry. Any comments on the class environmental assessment must be provided in writing to the Project Officer named in the Notice of Submission. If they are submitted by the required deadline, they will be considered by the Project Officer in the preparation of the ministry Review for the class environmental assessment. Copies of all comments will be forwarded to the applicant for a response.

##### **Phase 2: Preparation of ministry Review (5 weeks)**

The ministry Review is a document that allows for the identification of shortcomings as well as an assessment of whether the requirements of the *Environmental Assessment Act* have been addressed. The ministry Review will also identify whether the class environmental assessment has been prepared in accordance with the approved terms of reference.

### **Phase 3: Notice of Completion issued and inspection of ministry Review (5 weeks)**

Once the ministry Review has been prepared it will be made available for a final review and comment period. The Branch provides public notice requesting comments on the ministry Review, providing the public, Aboriginal peoples and communities, and government agencies with five weeks to respond.

Interested persons may review the ministry Review and provide feedback identifying:

- What issues are outstanding;
- How these issues might be resolved through specific considerations of approval; or
- Whether some or all matters related to the application should be referred to the Environmental Review Tribunal for a hearing.

### **Phase 4: Final ministry evaluation period (13 weeks)**

After the final inspection period, the Minister may decide to refer the class environmental assessment or a particular issue to mediation<sup>2</sup>. If mediation occurs, once it is completed, or if mediation does not occur, the Minister will generally make one of the following decisions about the proposed class environmental assessment:

- Refer the class environmental assessment or specific matters related to the class environmental assessment to the Environmental Review Tribunal for a hearing, or to another tribunal for a decision;
- Approve the proposed class environmental assessment with or without conditions of approval; or
- Refuse to give approval of the class environmental assessment.

If the Minister refers the application to the Environmental Review Tribunal for a hearing, the Tribunal must schedule and provide notification of the hearing. The Tribunal may approve or refuse approval of the undertaking. The Minister, with Cabinet approval, may decide to vary the Tribunal decision or require the Tribunal to carry out a new hearing.

## **5.5 Decision about the Class Environmental Assessment**

The Minister's decision about the class environmental assessment must be approved by the Lieutenant Governor in Council. After the final decision about the application has been made, the Minister will notify the applicant of the

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<sup>2</sup> See the ministry's Code of Practice entitled, *Using Mediation in Ontario's Environmental Assessment Process*.

decision. A Notice of Approval or a Notice of Refusal will be issued. Written reasons for the decision and any conditions will be provided in the Notice.

In most instances, those persons who submitted comments during the second inspection period will also be notified of the decision by the Minister. When a large number of submissions are received, the ministry may determine that it is not practical to notify each person individually and will provide some form of community notification, such as a newspaper posting.

The Project Officer will provide notification of the Minister's decision to applicable Aboriginal communities and those members of the Government Review Team who provided comments.

In addition, notice of the decision will be posted on the environmental assessment page of the ministry's website.

If the class environmental assessment is approved, applicants should post a copy of it on the website it has been maintaining throughout the planning process. That site can also be used to provide information to interested persons about any projects that are being planned under the approved class environmental assessment.

If the class environmental assessment is not approved, the applicant can choose to either abandon its proposal, or modify it and start the process over again from the beginning with the preparation of a new terms of reference.

## 6. Provisions to Be Included in the Class Environmental Assessment

This section sets out the content requirements for a class environmental assessment submitted in support of an application for *Environmental Assessment Act* approval.

### 6.1 Provisions from Section 14

Subsection 14(2) of the *Environmental Assessment Act* specifies the content of the proposed class environmental assessment as:

1. A description of the class of undertakings to which it applies.
2. A description of the reasons for using a class environmental assessment with respect to undertakings in the class.
3. A description of the similarities and differences to be expected among the undertakings in the class.
4. A description of the expected range of environmental effects that may result from proceeding with undertakings in the class.
5. A description of measures that could be taken to mitigate adverse environmental effects that may result from proceeding with undertakings in the class.
6. A description of the process to be used by a proponent of a proposed undertaking to consult with the public and with persons who may be affected by the undertaking.
7. A description of the methods to be used to evaluate a proposed undertaking with respect to the matters described in paragraphs 4 to 6.
8. A description of the methods to be used to determine the final design of a proposed undertaking based upon the evaluation described in paragraph 7.
9. Such other information as may be prescribed.

As with all environmental assessments, a key component of the preparation of a class environmental assessment is the consultation process carried out with the public, Aboriginal peoples and communities and government agencies.

### 6.1.1 Description of the Class of Undertakings

The description of the class of undertakings identifies the types of projects for which the class environmental assessment can be used to obtain *Environmental Assessment Act* approval. In defining what will be covered by the class of undertakings, applicants may also identify what activities will not be covered. The intent of this information will be to provide as much certainty as possible about what is covered by the class environmental assessment. Often, the class of undertakings is divided into groupings of similar projects or activities.

The applicant must provide a detailed description of the activities that constitute the class of undertakings for which they are seeking approval. This description must be clear as only the activities described in this section will be permitted to use the class environmental assessment process if the class environmental assessment is approved.

Only activities that have been identified in the class environmental assessment can be assessed through the class environmental assessment process.

The applicant may choose to provide the description in two stages, for example, as a general description of the class in the main document and detailed description of the activities in the list of groupings sometimes referred to as schedules or categories in an appendix.

### 6.1.2 Reasons for Using a Class Environmental Assessment

In the class environmental assessment, the applicant must also provide a description of the general reasons why the class environmental assessment is needed and why the class of undertakings are appropriately addressed through a class environmental assessment process.

For example, the reasons may note that the class of undertakings has predictable and mitigable environmental effects due to the applicant's considerable experience with this type of project, the net effects are not of a size or scale warranting an environmental assessment requiring Minister's approval or that the class of undertakings typically does not give rise to significant public concern or opposition. The reasons given will be considered by the Minister in deciding whether or not to approve the class environmental assessment.

### 6.1.3 Description of Similarities and Differences to Be Expected among the Undertakings in a Class

The applicant must provide a detailed description of the similarities and differences between the classes of undertakings in the class environmental assessment for which they are seeking approval. This can be done by identifying a list of activities and identifying a grouping within which each activity would fall.

For example, there may be a grouping of projects which are “pre-approved,” that is, they need no consultation or documentation, a grouping of projects which require consultation and the preparation of an environmental report and a third grouping of projects that fall in between with a requirement for some consultation and a less-detailed level of documentation. The groupings can be based on expected environmental effects, or may be a function of such things as type of facility or the range of applicable alternatives. Regardless of how groupings are determined, the class environmental assessment should provide for flexibility within the process to be responsive to the complexity of a given project.

If the applicant has defined a “pre-approved” category of activities, it will need to demonstrate that the “pre-approved” activities do not have significant environmental effects and identify what mitigation measures, if any, will be used at the construction or implementation stage.

The use of predefined categories is the most common approach taken for existing class environmental assessments. This approach identifies those projects that will receive a common level of assessment. Applicants have found that this approach provides predictability and certainty. If the approach of predefining groupings of projects is used, the rationale for the groupings will need to be included in the class environmental assessment.

Another approach, which was taken by the Ministry of Natural Resources in their Class Environmental Assessment for Resource Stewardship and Facility Development Projects, is to include a screening process to assign projects to categories (or classes) for projects not otherwise “pre-approved.” The process of screening assigns undertakings to categories with similar types of environmental effects. Conservation Ontario’s class environmental assessment uses a similar screening process.

There may be many different types of potential projects. The examples provided in the schedules or categories may not be exhaustive. Applicants of the class environmental assessment, particularly where there may be many users of the class environmental assessment may wish to develop criteria for their users or their consultants to assist in determining which schedule a particular class environmental assessment project will fall under if it is not listed in the schedule or category.

#### 6.1.4 Description of Range of Environmental Effects

A class environmental assessment must describe the environmental effects typically associated with the types of undertakings included in the class environmental assessment. Some classes of projects will potentially affect multiple components of the environment and therefore the existing environment and potential effects may not be easily described, even in general terms.

The *Environmental Assessment Act* defines "environment" as including natural, social, economic, cultural, built conditions and human-made works, as well as the relationship amongst them. Therefore, a broad definition of environment must be considered in describing the range of environmental effects.

The description of environmental effects in the class environmental assessment will be generic in nature, yet targeted to the nature of the class of undertakings. It should provide guidance to the proponent on what environmental effects they should be thinking about when a specific project is being planned. This description would then be refined and augmented based on site-specific investigations and studies when proponents are assessing a specific class environmental assessment project.

Recommendations on the site-specific information to be considered would be beneficial to include in the class environmental assessment.

The *Environmental Assessment Act* defines environment to mean:

- (a) Air, land or water;
- (b) Plant and animal life, including human life;
- (c) The social, economic and cultural conditions that influence the life of humans or a community;
- (d) Any building, structure, machine or other device or thing made by humans;
- (e) Any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities; or,
- (f) Any part or combination of the foregoing and the interrelationships between any two or more of them.

#### 6.1.5 Description of Impact Management Measures

The class environmental assessment must identify standard measures typically used to mitigate, manage or compensate for the potential negative environmental effects associated with the types of undertakings included in the class environmental assessment. Enhancement measures should also be identified. The impact management or enhancement measures will be generic in nature, but will provide guidance to the proponent during project planning. It is expected that the measures will be further developed to address the specific requirements of any one project, given the nature of the project and the site conditions.

#### 6.1.6 Process for Consulting with Interested Persons (Including Aboriginal Peoples) Affected by the Undertaking

Effective and meaningful involvement of interested persons and government agencies in the planning and implementation of class environmental assessment projects is imperative. The class environmental assessment process must provide for appropriate consultation with interested

Consultation with interested persons (general public, Aboriginal peoples and government agencies) is intrinsic to the planning process.

persons at clearly defined points in the class environmental assessment process so interested persons can understand the nature of the proposal, issues and can contribute to the decision-making for a class environmental assessment project.

The applicant may assign projects within the class to categories. Others may require a screening process to assign specific projects to categories. Regardless of the approach, the assignment of project categories recognizes that not all projects require the same level of consultation, depending on the potential for environmental effects and the potential for the mitigation of these environmental effects. The consultation requirements will vary between classes of undertakings in terms of type and frequency of consultation.

Additional guidance on consultation practices can be found in the ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process*.

The class environmental assessment should clearly define the applicant's requirements for consultation while providing flexibility to adapt to the needs of a given project. The information that should be provided includes:

- The range of interested persons that are likely to be involved in the class environmental assessment of specific projects (people who live in proximity to the proposed project, Aboriginal communities, government agencies, and/or local municipalities).
- The range of consultation tools that will be used and activities that will be undertaken during the project planning process.
- Methods of notifying interested persons about a project such as a newspaper advertisement, website, or other appropriate means.
- The role of government agencies.
- Expectations for interested persons participation.
- Alternative dispute resolution provisions.

In designing the consultation program to be used for a given project, there should be a provision in the class environmental assessment that outlines what the proponent should consider:

- ≈ The existing environment;
- ≈ Nature of concerns;
- ≈ Provision of appropriate amount of time for comments from interested persons;
- ≈ Whether any government agencies wish to take part in consultation activities;
- ≈ Phase of class environmental assessment planning process.

Meaningful and timely consultation will allow the proponent to identify the issues of importance to interested persons and provide a forum for the resolution of concerns as the project planning process proceeds. This will likely reduce the number of issues that would otherwise need to be resolved at the end of the planning process.

Consultation typically has two components: information out and information in. The purpose of information out is for the proponent to advise interested persons about the proposed project and the process by which it is being assessed. The purpose of information in is for interested persons to advise proponents about comments, issues of concern with the proposed project or planning process.

The information out component may address the following information:

- The purpose of the project.
- Why the project is necessary.
- What past planning or decision-making processes have been undertaken and whether these processes committed the proponent to pursue the proposed project.
- What the purpose of the planning process is and what it is intended to accomplish.
- An overview of the class environmental assessment process.
- Overview of when there will be formal consultation opportunities.
- How the proponent proposes to deal with issues or concerns.
- Contact information so interested persons know who to speak to and how to reach them.
- Opportunities for any advisory committees.
- Related approval processes that will need to be addressed and how those processes do or do not tie into the class environmental assessment process.
- Explanation of what a Part II Order is and how and when a request for a Part II Order may be made.

Consultation typically has two components: information out and information in. Information out advises interested persons about the proposed project and the process by which it is being assessed while information in allows interested persons to advise proponents about issues of concern.

Information in would include:

- Identification of issues and concerns.
- Information about how issues and concerns may be addressed.
- Provision of accurate contact information by interested persons so proponents can have one-on-one discussions to address issues if applicable.

Some form of consultation should take place in each of the decision-making phases. This could be as simple as providing information and opportunity for input for each phase or decision, but need not be done specifically at each phase. For example, for simple projects such as intersection improvements, the alternatives to assessment could be included with the preliminary design phase at a public information centre. Most commonly, class environmental assessment processes will include mandatory consultation when alternative solutions and alternative concepts or designs are being considered. The amount and level of consultation will depend on the nature and complexity of the project.

Consultation with interested persons informs the proponent of the breadth, severity and complexity of issues associated with a project so that reasonable options for addressing them can be explored as early as possible in the planning process.

After the assessment has been completed, documentation, for example, an environmental report, is prepared. There will be a mandatory consultation process associated with the review of this documentation.

Timing considerations are also important. Interested persons need sufficient time to review materials and particularly in the case of community groups, pull together consolidated input. Adequate response time may make the difference between the elevation of an issue or the ability to deal with it in a timely manner. While this needs to be balanced against the timing needs of the proponent, it is important to note, that rarely will a project with public concerns move forward expediently without the concerns being considered and addressed to the extent possible. A minimum of 30 days should be provided for interested persons to provide input whenever a review of documentation is requested. Proponents should take the time to address concerns.

It may be appropriate for further communication with potentially affected persons after the project planning process is complete. This is especially the case where substantial concerns have been raised and are proposed to be addressed through impact management measures. It should be noted that continued communication during the construction phase may only be appropriate in certain circumstances, and should only take place if required. The applicant should describe provisions for this type of communication in the class environmental assessment (for example, under what circumstance would it occur and how).

#### Notification Process

The class environmental assessment process should provide for at least two mandatory points when the public, Aboriginal peoples and communities, and government agencies are notified of the progress of the development of the class environmental assessment project. This would be the case for class environmental assessment projects which are not in the "pre-approved" category. The first notice is to be given at the beginning of the project planning process when a Notice of Commencement of the class environmental assessment project is issued. The second notification point is after the assessment has been completed when a Notice of Completion is published and the project documentation is available for review.

Other times for points of contact can also be specified in the class environmental assessment, if appropriate. For example, contact could be made during the process of identifying alternative solutions to address the problem or opportunity. Consultation must include information and opportunities for input about each phase or decision point, but need not be done specifically at each

phase. Depending on the complexity of the project, some stages could be combined. For example, the public discussion of alternatives could be done in conjunction with preliminary design for a simple project. The class environmental assessment should identify under what circumstances any additional consultation would be carried out.

A Notice of Commencement should include at minimum:

- The name of the proposed class environmental assessment project.
- A brief description of the problem, opportunity or project.
- The geographical location of the study area (with a map that is clear and legible and shows major landmarks and familiar linear facilities such as highways, rail lines, etc.).
- The name of the proponent.
- The name of the approved class environmental assessment under which the project is being planned.
- An invitation to participate in the project planning process.
- The names and addresses of contact people within the proponent's organization who can provide further details on the project.
- The physical location(s) and website address where individuals will be able to review any project files or documentation.

A Notice of Completion should include at minimum:

- The name of the proposed class environmental assessment project.
- A brief description of the proposed project.
- The geographic location of the project (with a map that is clear and legible and shows major landmarks and familiar linear facilities such as highways and rail lines).
- The name of the proponent of the project.
- The name of the approved class environmental assessment under which the project has been planned.
- A notification that a class environmental assessment documentation has been prepared and that it is available for review by interested persons.
- The names and addresses of contact people within the proponent's organization that can provide further detail on the project.
- The locations (the proponent's office, local municipal offices, public libraries, proponent's website) where the documentation can be reviewed.
- Duration of the review period.
- Notification that, if any individual feels there are outstanding concerns associated with the project, they can formally request that the Minister or delegate to make a Part II Order.

- Notification that any requests should be received on or before the end of the specified review period.
- The address of the Ministry of the Environment where any Part II Order requests should be sent.
- A statement that the proponent can legally proceed with the project under the *Environmental Assessment Act* if no Part II Order requests are submitted during the review period.
- The date of publication of the Notice.

Examples of the required Notices can be placed in an appendix of the class environmental assessment. Class environmental assessments should also set out that all Notices must be sent to the appropriate regional office of the ministry.

### 6.1.7 Description of the Class Environmental Assessment Planning Process

Each class environmental assessment must provide for a planning process for the site-specific consideration of alternatives (if appropriate), environmental effects to the environment, mitigation and other impact management measures, in the planning of a class environmental assessment project in order to be consistent with the requirements of the *Environmental Assessment Act*.

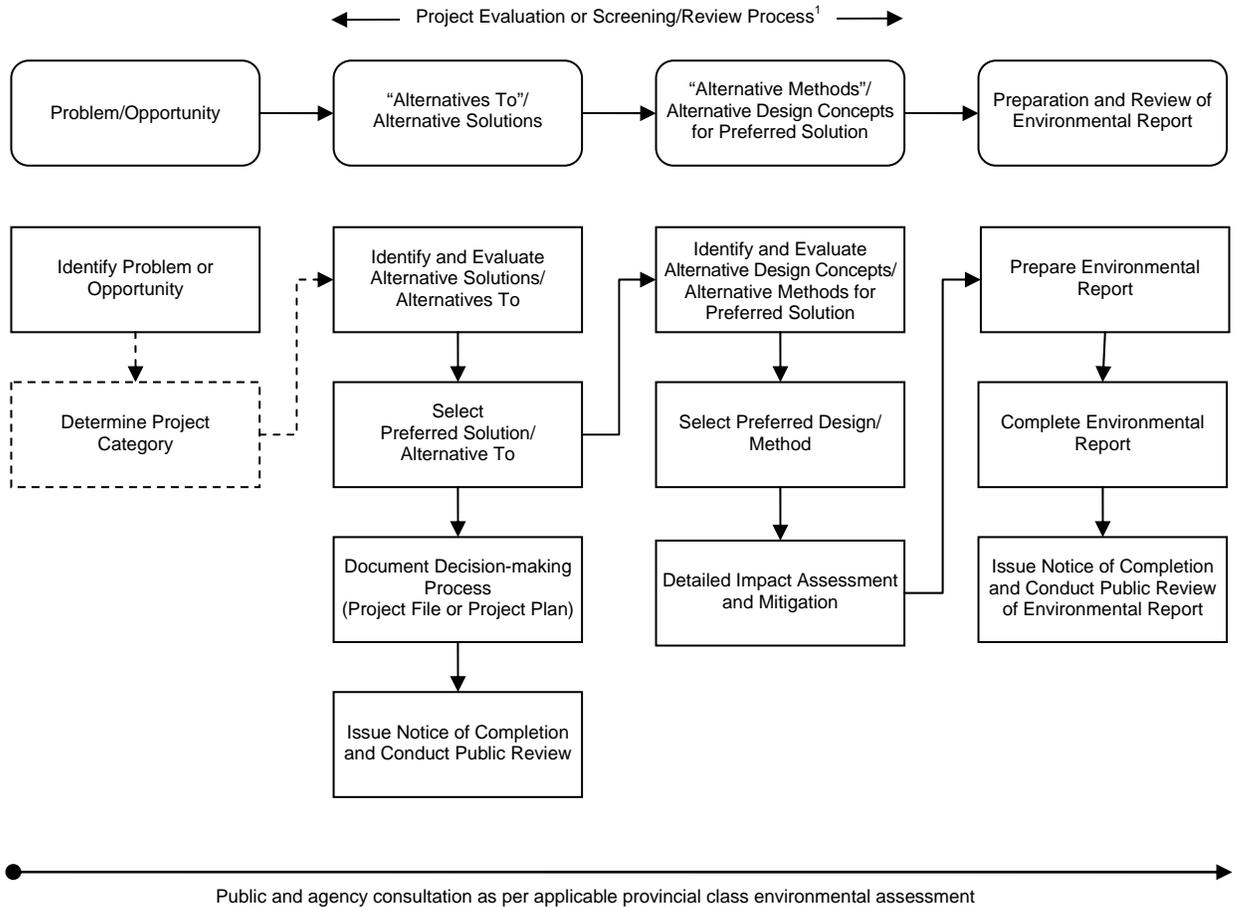
If the planning process as set out below is not appropriate for any applicant's class of undertakings, the applicant may design its own planning process, provided it documents how and why their planning process differs from the one described in this Code of Practice.

To provide guidance to applicants, the ministry suggests a five-phase process for the planning and implementation of class environmental assessment projects. This will ensure consistency between class environmental assessments and will make it easier for applicants as they will not have to “reinvent the wheel” when describing the class environmental assessment planning process in their new class environmental assessment.

The ministry recognizes that due to the breadth of activities and projects that could be planned and implemented using a class environmental assessment process, a single planning process cannot be appropriate for class environmental assessments. The process that will be described in this section is flexible and can be adjusted to suit the characteristics of the class of undertakings and the needs of the applicant.

Each class environmental assessment should adopt a five-phase planning process where feasible. The level of detail required in the planning process and some aspects can be flexible and will depend on the class of undertakings. This section illustrates in a general sense, how a class environmental assessment planning process might look (see also Figure 1).

Figure 1: Generic Project Planning Process



¹ Project evaluation or screening/review process may or may not include a requirement to consider alternatives.

----- Optional or may occur at a different point in the process.

Note: This generic process does not illustrate provisions for Part II Order requests or mandatory public and agency consultation.

## Generic Project Planning Process

The generic project planning process is broken down into five phases. Phases I to III represent the actual “planning” of a project, while Phases IV and V address documentation and implementation. The process is iterative and proponents of class environmental assessment projects may have to go back and repeat steps in the process as a result of new information, changed circumstances, or public/government agency input. The proponent may also conduct some of the steps concurrently.

### Generic Project Planning Process

Phase I	Identification of the problem or opportunity and preliminary planning
Phase II	Evaluation of alternatives to the undertaking
Phase III	Evaluation of alternative methods of carrying out the undertaking
Phase IV	Documentation of the planning process
Phase V	Implementation and monitoring of class environmental assessment projects

#### *Phase I – Identification of the Problem or Opportunity and Preliminary Planning*

- Determine if the *Environmental Assessment Act* applies to the project being contemplated.
- Determine if the project is covered by the class environmental assessment.
- Determine proponentcy (see Section 6.2.1).
- Consider if previous planning work such as a master plan can be used and incorporated into the planning for the project (see Section 6.2.9).
- Preliminary determination of the project category or whether a screening process is to be used (this may vary depending on the class environmental assessment).
- Publish a Notice of Commencement (see Section 6.1.6).

#### *Phase II – Evaluation of Alternatives to the Undertaking*

- Identification of alternatives to, including the “do nothing” alternative (see Section 6.2.2).
  - identify evaluation criteria, some of which could be set out in the class environmental assessment but should also include project-specific criteria
- If other planning work has identified the preferred alternative, then the rationale for not looking at other alternatives must be included here.
  - can use exclusionary or screening criteria which would be identified and approved in the class environmental assessment to assist in determining alternatives to
- Define study area.
- Evaluation of alternatives to.

- describe baseline conditions in the study area of environment likely to be affected
- predict both positive and negative environmental effects for each alternative (see Section 6.1.4)
- identify impact management measures including mitigation (see Section 6.1.5)
- evaluate each alternative
- based on comparative evaluation of the alternative, identify the preferred alternative (one or more alternatives to could be brought forward)
- Consultation on evaluation of alternatives to.

*Phase III – Evaluation of Alternative Methods of Carrying out the Undertaking*

- Identification of alternative methods.
  - identify evaluation criteria, some of which could be set out in the class environmental assessment but should also include project-specific criteria
- Evaluation of alternative methods.
  - same general steps as described for the evaluation of alternatives to in Phase II
- Selection of preferred alternative (one or more could be chosen).
- Detailed impact assessment and mitigation.
- Re-assess project status to confirm that level of planning and assessment is still appropriate.
- Consultation on evaluation of alternative methods.

*Phase IV – Documentation of the Planning Process*

- Determine documentation requirements (see Section 6.2.4).
- Issue Notice of Completion (see Section 6.1.6).
- Opportunity for Part II Orders to be requested (see Section 6.2.3).
- Obtain other approvals as required (other than the *Environmental Assessment Act*).

*Phase V – Implementation and Monitoring of Class Environmental Assessment Projects*

- Implementation of the project as described in the documentation.
- Project monitoring and evaluation (see Section 6.2.6).

## **6.2 Other Provisions**

While not specified under subsection 14(2) of the *Environmental Assessment Act*, there are other provisions that should be included in the class environmental assessment in order to ensure there is sufficient information to document how

the class environmental assessments will be applied to specific projects. This additional information relates to:

- Proponency
- Alternatives
- Part II Order Requests
- Documentation
- Procedures for Amending a Class Environmental Assessment
- Monitoring and Reporting
- Class Environmental Assessment Review Requirements
- Federal-Provincial Coordination
- Integration and Coordination Procedures
- Changing a Project after the Planning Process Is Complete

Depending on the nature of the class of undertakings being contemplated in a class environmental assessment, the applicant may want to include other provisions than those listed above. These should be discussed with the Project Officer at the Branch.

#### 6.2.1 Proponency

Proponency is an important distinction for a class environmental assessment. The *Environmental Assessment Act* defines a proponent as a "person who,

- (a) carries out or proposes to carry out an undertaking, or
- (b) is the owner or person having charge, management or control of an undertaking."

"Person," under the *Environmental Assessment Act*, includes a municipality, Her Majesty in right of Ontario, a Crown agency within the meaning of the *Crown Agency Act*, a public body, a partnership, an unincorporated joint venture and an unincorporated association. A proponent is also any private sector person that has been designated subject to the requirements of the *Environmental Assessment Act*.

The definition of proponent under the *Environmental Assessment Act* needs to be appropriately reflected in any class environmental assessment.

#### Types of Persons for Class Environmental Assessments

There are two types of persons: the applicant seeking approval of a class environmental assessment, and the proponent who plans and develops projects using an approved class environmental assessment. There may be times when there are more than one applicant or more than one proponent. In addition, the

proponent of a project may not necessarily be the applicant of the class environmental assessment.

#### *Class Environmental Assessment Applicant*

The applicant is the person who is seeking approval under the *Environmental Assessment Act* for the class environmental assessment. Any approval issued by the Lieutenant Governor in Council will be issued to the applicant. The applicant is responsible for preparing the class environmental assessment and ensuring compliance with the approval. It also has certain responsibilities such as monitoring and reporting on the use and effectiveness of the class environmental assessment, carrying out amendments to the class environmental assessment, and carrying out periodic reviews of the class environmental assessment that may be required as a condition of *Environmental Assessment Act* approval. Applicants may also be responsible for such things as training and outreach activities. As noted above, a class environmental assessment may be approved for use by one or any number of proponents. For example, the Municipal Class Environmental Assessment was prepared by the Municipal Engineers Association on behalf of 12 municipalities. The Municipal Engineers Association is the applicant of the Municipal Class Environmental Assessment and acts on behalf of the 12 proponent municipalities. The Class Environmental Assessment for Ministry of Natural Resources Resource Stewardship and Facility Development Projects names one proponent – the Ministry of Natural Resources – in the *Environmental Assessment Act* approval.

When preparing a class environmental assessment, the decision as to who will be the applicant of the class environmental assessment needs to be made early. The applicant or applicants of any proposed class environmental assessment must be identified in the terms of reference at the time it is submitted for approval. It may be obvious, and it may, depending on the class of undertakings, be a slightly more complex matter. When determining the applicant or applicants for any class environmental assessment, care should be given to thinking about the role and responsibilities of the class environmental assessment applicant, some of which are referenced above.

#### *Class Environmental Assessment Project Proponent*

The second type of person is the proponent of any project carried out under an approved class environmental assessment. Again, there may be single or multiple proponents for any one class environmental assessment project.

It is critical that the class environmental assessment contain provisions that clearly identify who can use the document to plan and develop projects (the project proponents). Without this outlined in the class environmental assessment, the only other way a proponent may be granted the option of using a particular class environmental assessment is by a regulation made by the Lieutenant Governor in Council under the *Environmental Assessment Act*. Only those persons specifically identified by the class environmental assessment or by

a regulation will be permitted to use the class environmental assessment to obtain *Environmental Assessment Act* approval for a project. If a person is not identified as a proponent, it cannot use the class environmental assessment to obtain their approval.

For example, the Municipal Class Environmental Assessment identifies 12 proponent municipalities who may use that class environmental assessment to obtain *Environmental Assessment Act* approval. Regulation 334 made under the *Environmental Assessment Act* establishes that any municipality in Ontario and private sector developers designated under Ontario Regulation 345/93 may use the Municipal Class Environmental Assessment to obtain *Environmental Assessment Act* approval.

The Class Environmental Assessment for Remedial Flood and Erosion Control Projects is approved for Conservation Ontario, on behalf of all conservation authorities in the province. Provisions in the Conservation Ontario Class Environmental Assessments provide for its use by all conservation authorities.

The Ministry of Transportation's Class Environmental Assessment for Provincial Transportation Facilities provides for the use of the class environmental assessment by the Ministry of Transportation, as well as other proponents who may carry out works on provincial transportation facilities that are not needed by or which are not commitments of the Ministry of Transportation (for example, the construction of a new freeway interchange by a private-sector developer to facilitate access to a new development, where the Ministry of Transportation would not have otherwise built the interchange).

#### *Multiple Proponents for a Class Environmental Assessment Project*

For any one class environmental assessment project being planned and developed under an approved class environmental assessment, there may be more than one proponent. Two municipalities, for example, may agree to plan and develop a joint sewage system. Two conservation authorities may carry out a flood and erosion control project together. These are generally referred to as "co-proponents." Provisions can be included in a class environmental assessment to provide for co-proponency and the requirements for co-proponents in such circumstances. The provisions should establish the possible relationships of the co-proponents, insofar as responsibilities under the class environmental assessment are concerned. Variations of this include all proponents sharing equal responsibility for meeting the requirements of a class environmental assessment; or, one proponent accepting the role as lead proponent and assuming the responsibility for ensuring the class environmental assessment requirements are met. It should be noted that, even though one proponent may elect to be the lead, any and all proponents may be legally accountable for compliance with the class environmental assessment.

There may be circumstances when there are co-proponents for a project, both of which have an approved class environmental assessment that applies to that

particular project. Both proponents would require *Environmental Assessment Act* approval and if they were each working alone, would follow their respective class environmental assessments. However, provisions can be incorporated into class environmental assessments providing for the use of one or the other class environmental assessment in order for both proponents to obtain approval for the project. This can reduce redundancy and duplication of effort, simplify the planning and development of the project and eliminate confusion on the part of the public and other stakeholders. The class environmental assessments must have corresponding provisions providing for co-proponency under one or the other class environmental assessment. In the absence of such corresponding provisions for co-proponency, the two proponents would have to plan and develop the project to meet the requirements of both class environmental assessments.

There may be instances where there are public-sector and private-sector co-proponents for a project. The class environmental assessment should specify that, given the fact that one proponent is public-sector and even if the private-sector proponent is not subject to the *Environmental Assessment Act*, the public-sector proponent requires approval. Provisions in these circumstances can provide for the two to be equal proponents or for the public-sector proponent to be the lead proponent. The class environmental assessment should be clear that where a company or contractor is building a facility or works on behalf of a public-sector proponent, it is not considered a co-proponent and the requirements of the class environmental assessment would not apply.

By providing corresponding provisions in class environmental assessments, it gives proponents some certainty about which class environmental assessment process to follow. Guidance about how to choose which class environmental assessment to follow should also be provided (for example, use the document with the more rigorous requirements).

Notification and documentation requirements of a class environmental assessment must require proponents to provide information about proponency for any class environmental assessment project.

Any other proposals for proponency situations that may not have been anticipated by the ministry should be discussed with the ministry in advance.

### 6.2.2 Alternatives

When preparing a class environmental assessment, the applicant should include a description of alternatives to and alternative methods for the activities that form the class of undertakings where this is appropriate. These alternatives will then guide the proponent's examination of alternatives when they are

Alternatives to the undertaking are functionally different ways of approaching and dealing with a problem or opportunity.

Alternative methods of carrying out the undertaking are different ways of doing the same activity.

planning a project under the approved class environmental assessment. By describing the alternatives in the class environmental assessment, the applicant is able to have the alternatives “approved” as reasonable alternatives for consideration. This does not limit the proponent of a class environmental assessment project from examining other alternatives during project planning, but it does provide a logical starting point.

The applicant should provide a description and rationale for the alternatives to that would typically be examined for the types of activities in the class of undertakings.

The applicant should also provide a description and rationale for the alternative methods that would typically be examined for the types of activities in the class of undertakings.

The ministry recognizes that for class environmental assessments with many different activities it may not be possible to describe alternatives for every activity, but it may do so for groups of similar activities.

Applicants who have carried out previous planning work which meets the ministry’s criteria and the class environmental assessment project is a result of the previous planning work (see Section 8.2, Recognition of Previous Planning Work) may limit their examination of alternatives. This is also extended to projects resulting from a government announcement about a specific priority. It may be appropriate for the applicant to make allowances for this in the class environmental assessment.

Describing alternatives in a class environmental assessment allows for review and approval of the alternatives in advance – that is one issue less to deal with during project planning.

The ministry also recognizes that for certain classes of undertakings and certain applicants, it may not be appropriate to include a section on alternatives. If this is the case, the applicant must provide rationale for not doing so.

### 6.2.3 Part II Order Requests

All class environmental assessments must include provisions for Part II Order requests. Generally, class environmental assessments are appropriate for classes of undertakings that have predictable and mitigatable effects that are not of a size or scale that warrant an environmental assessment approved by the Minister. However, certain class environmental assessment projects may have potential environmental effects not contemplated when the class environmental assessment was prepared or have significant public, Aboriginal peoples or government agency concerns associated with them. In such circumstances, the status of the project can be elevated to require the preparation of an environmental assessment for submission and formal review by the ministry to

obtain approval under the *Environmental Assessment Act*. The change in status can be achieved through a “voluntary elevation” by the project proponent or by a Part II Order made by the Minister or delegate. The applicant should include in its environmental assessment considerations about when and how a project can be voluntarily elevated to a project category which requires a higher level of assessment.

The authority to make Part II Order is granted by subsection 16(1) of the *Environmental Assessment Act* which states:

“The Minister may by order require a proponent to comply with Part II before proceeding with a proposed undertaking to which a class environmental assessment would otherwise apply.”

This power may be delegated by the Minister of the Environment under the legislative authority of subsection 31(2) of the *Environmental Assessment Act*. The Minister or delegate's decision is final.

The ministry views the issuance of Part II Orders as an important matter to be used only when there are significant concerns with a proposed project, for example, concerns about the potential environmental effects of the project and an “individual” environmental assessment is required to conduct a more detailed assessment.

### Part II Order Process

All class environmental assessments must include a description of the Part II Order process. The process should include the following steps.

#### *Making a Request*

- The interested person(s) with a concern about a class environmental assessment project brings the concern to the attention of the proponent.
- If the concern cannot be resolved by the proponent, the interested person may request the proponent to elevate the project status to an environmental assessment.
- If the proponent decides not to elevate the status of the project, and the interested person(s) wish to pursue the matter, they may request that the Minister or delegate make a Part II Order and elevate the status of the project.
- The Part II Order request must be made in writing to the Minister or delegate with a copy to the proponent, be received by the ministry within the review period following issuance of the Notice of Completion, and must address the following issues as they relate to the identified concerns with the potential environmental effects of the project or the planning process followed:
  - The project name and proponent must be clearly outlined;

- Environmental effects of the project and their significance;
- The adequacy of the planning process followed – compliance with the approved class environmental assessment process;
- The availability of other alternatives to the project (where appropriate as some projects may not have any alternative);
- The adequacy of the public consultation program and the opportunities for consultation;
- The involvement of the requester in the planning of the project;
- The nature of the specific concerns which remain unresolved;
- Details of any discussions held between the requester and the proponent;
- The benefits of requiring the proponent to undertake an environmental assessment;
- Any other important matters considered relevant.

#### *Review of the Request*

- A Part II Order request will be considered by the Minister or delegate only after the following:
  - The proponent has issued a Notice of Completion (in accordance with Phase IV of the class environmental assessment planning process or the equivalent for categories of undertakings that may not have the same Notice requirements); and
  - The proponent has indicated to the Minister or delegate that it cannot resolve the issues.
- When the Minister or delegate receives a Part II Order request and the above two criteria are not met, the request shall be deemed premature by the ministry and directed to the proponent for consideration.
- Upon receipt of a valid Part II Order request, the Project Evaluator at the Branch shall request the proponent to provide a copy of any relevant project documentation and the proponent shall provide the information within the requested time frame.
- The Minister or delegate will consider the information submitted by the proponent, the requester(s) and any person the Minister or delegate chooses to consult before making a decision. The Minister or delegate will also consider the evaluation criteria for Part II Order requests found in subsection 16(4) of the *Environmental Assessment Act*.
- The Minister or delegate will make a decision within the decision time frame set out in the class environmental assessment and will decide to do one of the following:
  - Make a Part II Order;
  - Deny the Part II Order request with or without conditions;
  - Refer the Part II Order request to mediation before making a decision; or
  - Advise the proponent to redo its project planning where there is evidence that the project has not been prepared in accordance with the class

environmental assessment. Proceeding with the project in such circumstances is a violation of subsection 13(3)(a) of the *Environmental Assessment Act*.

- If none of the above has occurred by the required decision deadline, the proponent is entitled to proceed with the project. Before proceeding, proponents will confirm with the Branch that no decision has been made on the Part II Order request. Should the proponent proceed with the project without a Part II Order decision, it should recognize that it is doing so at its own risk, as a Part II Order could still be made or denied with conditions.
- If the Minister or delegate decides to elevate the status of the project, he/she will notify the proponent, the Part II Order requester(s) and other interested persons and provide them with reasons for that decision. The proponent shall then prepare an environmental assessment for formal submission, review and decision if they wish to pursue the project.
- If the Minister or delegate decides to deny the Part II Order request, he/she will notify the proponent, the Part II Order requester(s) and other interested persons and provide them with written reasons for that decision. The proponent shall then continue to plan and implement the project in accordance with the commitments set out in the project documentation. The proponent will also comply with any conditions specified by the Minister or delegate in deciding not to make a Part II Order.

#### Responsibilities of Interested Persons

The class environmental assessment should provide clear direction indicating that an interested person has responsibilities associated with the project planning process. Specifically, the interested person has the responsibility to take advantage of opportunities provided by proponents for public involvement during the development and planning of a class environmental assessment project.

Interested persons have the responsibility to take advantage of opportunities provided by proponents for public involvement during the planning and development of a class environmental assessment project.

The interested person should bring to the attention of the proponent, concerns that they may have about the potential environmental effects of the project or the planning process that is being followed as early as possible. The sooner the concerns are brought to the attention of the proponent, the greater flexibility the proponent has to accommodate changes in the project and in the planning process.

The resolution of concerns between the proponent and the person raising the concern is always preferable to having the Minister or delegate make a decision on the Part II Order. A conflict resolution technique such as Self-directed Mediation is therefore an important element of this stage of the planning process. Guidance on mediation is provided in the ministry's Code of Practice entitled, *Using Mediation in Ontario's Environmental Assessment Process*.

Interested persons should make their Part II Order request very clear and should focus on concerns associated with the potential environmental effects of the project or the class environmental assessment process. Previous planning decisions, broad policy, or not wanting the project in their community are outside the scope of the Part II Order request process.

If following the submission of a Part II Order request the proponent has satisfied the concerns of the requester, it is the responsibility of the requester to withdraw its Part II Order request. Written notice of a withdrawal should be sent to the Minister or delegate. Proponents for their part should accept their responsibilities as defined in their class environmental assessments, and should do their utmost to address all project considerations as best they can. However, there are cases where nothing more can reasonably be done to satisfy interested persons or groups with diverse interests.

#### 6.2.4 Documentation

The type of documentation required for each class environmental assessment project will depend on the level of assessment for a particular project. Most approved class environmental assessments have at least two categories that require documentation: a category for projects for which they may be some potential for negative environmental effects but the effects and mitigation measures are known, and a category for projects which have the potential for significant negative environmental effects. Less documentation could be used for projects with lesser anticipated negative environmental effects. When developing a class environmental assessment, it must clearly state what kind of documentation is required, the format and content of the required documentation (for example, environmental report, letter), how the documentation will be distributed to interested persons, and a process for addressing any concerns raised, if appropriate. In deciding how to address these requirements, proponents may consider a requirement for a short summary of class environmental assessment planning steps that were undertaken or they may simply include a requirement for the preparation of a project file that is made accessible to the public.

Regardless of the type of documentation, copies of the documents must be sent to the appropriate regional office of the ministry.

#### 6.2.5 Procedures for Amending a Class Environmental Assessment

There may be times when an applicant, an interested person or the ministry would like to make a change to the class environmental assessment because:

- There have been policy, regulatory or legislative changes that may affect the class environmental assessment;
- Activities should be removed from a category and placed in another, or there are new activities;

- There is a need to improve procedures based on experience working with the class environmental assessment and the results; or
- Procedures need to be updated to reflect current practice.

When preparing a class environmental assessment, the applicant should include provisions for amending the class environmental assessment. An amendment procedure would allow proponents to make modifications and or amendments through an approved amendment process included in the class environmental assessment. The types of amendments should include major or minor amendments to the class environmental assessment. The type of amendment procedure to be used would depend on the nature of the amendments anticipated and their potential environmental effects. Proponents should include an amendment procedure which outlines how amendments should be considered.

The components of the amendment procedure outlined within the class environmental assessment should include:

- Types of amendments that would be considered either minor or major amendments.
- Type of criteria that would be used to distinguish between a minor and major amendment. Generally speaking, a minor amendment would include administrative changes or clarification to existing text. A major amendment could include the removal of certain project activities from the class environmental assessment, moving project activities into a category where a lower level of assessment is required or the inclusion of a new group of project activities.
- How the amendments would be brought forward for consideration. Amendments can be brought forward by the applicant, members of the public, affected stakeholders or the ministry.
- Description of the purpose and rationale for the amendment.
- Public consultation requirements. Public consultation requirements would vary depending on the type of amendment proposed.
- Approval authority for the amendment, for example, the Director of the Environmental Assessment and Approvals Branch can approve minor amendments; the Minister will approve major amendments.
- Length of review and approval period. Review time can vary depending on the type of amendment and review procedures proposed by the applicant.

#### 6.2.6 Monitoring and Reporting

To assist both the applicant and the ministry in determining whether the class environmental assessment is fulfilling its intended purpose and to identify any opportunities to increase the effectiveness of the class environmental assessment, when preparing the class environmental assessment, provisions for

monitoring and reporting should be included. Monitoring in this context is used to help the applicant demonstrate compliance with the *Environmental Assessment Act* approval for the class environmental assessment, and is hereafter referred to as compliance monitoring. It should not be confused with monitoring the environmental effects of a class environmental assessment project.

### Purpose of Compliance Monitoring

The purpose of compliance monitoring is to help ensure that a proponent meets its legislative and regulatory requirements that have been defined through the Ontario environmental assessment process. Every class environmental assessment should include a compliance monitoring program.

The goals of the compliance monitoring program are to:

- Establish a framework for an applicant to evaluate compliance with conditions of their *Environmental Assessment Act* approval or Minister or delegate's decision (for example, Part II Order).
- Provide a forum for the applicant and proponents of class environmental assessment projects to provide information which would lead to the continuous improvement of the environmental assessment program.
- Provide the applicant and proponents with a better understanding of how to fulfil *Environmental Assessment Act* requirements.
- Provide applicants and proponents with an increased awareness of ministry compliance activities.
- Increase *Environmental Assessment Act* compliance rates.

### Annual Reporting

A key aspect of the monitoring program is the production of an annual compliance report. The annual report is prepared by the applicant of the class environmental assessment, with the assistance of the proponents who used the class environmental assessment to implement projects in the previous annual period. To help ensure that annual reporting of class environmental assessment projects is carried out with clear direction, consistency and timeliness, annual reporting requirements were developed by the ministry for inclusion in class environmental assessments. The format, content, submission and review requirements should be set out in the monitoring program as follows:

1. Annual reports are to be submitted to the ministry (Branch and the local regional office) within a specified time frame or on a specified date (for example, 90 days from the anniversary of the class environmental assessment approval, end of calendar year or end of fiscal year). The report should also set out the availability of the report to interested persons.

2. The annual report must include a statement of effectiveness of the class environmental assessment in providing an effective and efficient planning process, and in protecting the environment (include examples).
3. Identification of any changes to the class environmental assessment document or changes to the applicant's practices and procedures that would serve to improve the class environmental assessment itself or its administration. This might include any changes that have taken place during the year that may affect the implementation of the class environmental assessment (for example, changes to legislation, regulation, policy, practice, guidance).
4. Identification of any common problems experienced with the class environmental assessment projects that may suggest a problem in the class environmental assessment.
5. Action that the applicant has (or how each proponent has) or will be proposing to deal with problems, deficiencies and non-compliance with the class environmental assessment.
6. A statement by the applicant on how it has (or how each proponent has) complied with any conditions in the Notice of Approval of the class environmental assessment and the *Environmental Assessment Act*.
7. A copy of the Notice of Approval and any approved amendments to the class environmental assessment document. This is to ensure that the applicants revisit the conditions of the approvals on an annual basis as required.
8. The findings and recommendations of any internal audits or third party audits completed during the course of the year.
9. A summary table listing of all projects carried out following the class environmental assessment and a breakdown by classification and type (that is, schedule/group). Projects which are pre-approved would not need to be reported. This also would include routine or emergency operational activities, maintenance activities or administrative activities that have minimal environmental effects. The summary table would include the following information:
  - Name and brief description of the undertaking;
  - Name of contact person (for example, project manager);
  - Location of the undertaking;
  - Cost of project (where applicable).
10. A summary and percentage of class environmental assessment projects planned and completed in accordance with the class environmental assessment for which Part II Order requests were made to the Minister or delegate and the proponent; of these, the number and percentages of requests that were granted, denied or denied with conditions. This

summary is to include the project name, location and brief description of the undertaking.

### Monitoring Projects with Part II Orders

For Part II Orders, decision letters with conditions for Part II Order requests, will also include a report-back mechanism for the proponent to inform the Director about how the proponent has fulfilled its obligations and demonstrated compliance with the conditions that were imposed.

#### 6.2.7 Class Environmental Assessment Review Requirements

Applicants must include provisions in the class environmental assessment about how often a class environmental assessment will be reviewed. The ministry requires that at a minimum, a review of a class environmental assessment be undertaken every five years from the date of its approval. The review process should commence at the beginning of year four so that any required changes are completed by the end of year five. The rationale for reviewing a class environmental assessment on a regular basis is to ensure that the class environmental assessment remains compliant with applicable legislation, regulations and policies and the *Environmental Assessment Act*.

Applicants should make provisions in the class environmental assessment about how to review their class environmental assessment to ensure that it is still current. This procedure would specify when the review will occur, what will be considered during the review, who will review the proposed changes that may result from the review, consultation requirements and how to incorporate any changes resulting from the review. Should amendment procedures be included in the class environmental assessment, the applicant may elect to use these procedures to make any changes to their class environmental assessment as a result of the review rather than seeking another Cabinet approval. If the provision for a five-year review is not included in the class environmental assessment, it will likely be included as a condition of approval if the class environmental assessment is approved.

#### 6.2.8 Federal-Provincial Coordination

Class environmental assessment projects may also be subject to the requirements of the *Canadian Environmental Assessment Act* if the proposed project or proponent:

- Shares proponentcy with the federal government;
- Receives federal funding in support of the project;
- Involves federal lands; or
- Requires a permit or regulatory licence that is identified in the *Canadian Environmental Assessment Act* Law List Regulations.

The federal and provincial governments are committed to coordinating the review of federal and provincial environmental assessment processes where possible to minimize duplication and to provide clarity on environmental assessment requirements.

Additional guidance on federal-provincial environmental assessment coordination may be found in *Federal/Provincial Environmental Assessment Coordination in Ontario: A Guide for Proponents and the Public*.

General guidance on the need and mechanism for coordination of specific class environmental assessment projects with any *Canadian Environmental Assessment Act* requirements will need to be articulated in the class environmental assessment. The class environmental assessment should also recognize that depending on the nature of the project, some projects are not conducive to formal federal-provincial environmental assessment coordination.

The *Canadian Environmental Assessment Act* may also be triggered for some class environmental assessment projects. Consequently when developing a class environmental assessment process, it is important to provide direction to proponents on the need to involve federal agencies early in the planning process to determine if there will be *Canadian Environmental Assessment Act* requirements.

#### 6.2.9 Integration and Coordination Procedures

There are times when a project or activity being planned under a class environmental assessment may be subject to other approvals or has been subject to a planning process similar to a class environmental assessment in whole or in part. It may be appropriate to set out how various planning approval processes can be integrated or coordinated in a class environmental assessment. This will avoid duplication of effort, save time and money for proponents, and will simplify participation by interested persons.

If an applicant preparing a class environmental assessment thinks that there may be opportunities to integrate or coordinate with other approval processes with its class environmental assessment, provisions to do so should be included in the class environmental assessment. Integrating or coordinating approvals means that the planning for the class environmental assessment project must be undertaken at the same time as another regulatory approval; meet regulatory requirements jointly and result in one application.

There are a number of ways in which project activities being planned under a class environmental assessment can be integrated or coordinated with other approval processes. These include:

- Integration or coordination with other legislation outside of the mandate of the applicant (for example, integration with federal environmental assessment process).

- Integration or coordination with other legislation that must be followed by the applicant (for example, integration with the *Planning Act* by a municipality).
- Integration or coordination with other class environmental assessments (for example, where a project activity is subject to two class environmental assessments – transmission line going through a provincial park).

The class environmental assessment should make it clear that the onus will be on the proponent to ensure that it can meet the requirements of the different planning processes when integrating or coordinating project activities.

It is important to note that when integrating or coordinating other approval requirements with those in the class environmental assessment, it does not alleviate the proponent's requirements under the class environmental assessment. Integration and coordinating is about doing all of the work required in the class environmental assessment and in the other planning processes in such a way that reduces duplication and notification, shares consultation and documentation requirements so that the different planning processes are more timely and efficient.

Once the class environmental assessment is approved, proponents of projects must follow the commitments about integration or coordination. Therefore, the applicant of the class environmental assessment should consider whether there should be some flexibility for proponents who may not want to be tied to integration or coordination processes until they are proven to be effective.

#### Integration or Coordination with Other Approvals

There may be circumstances where activities being planned under a class environmental assessment require approvals under other federal, provincial or municipal legislation. In some cases, it may be appropriate to integrate or coordinate the class environmental assessment with the other legislation or planning processes. This would avoid duplicating similar planning processes for the same project; it would address information and consultation requirements of both the class environmental assessment and the other legislation or planning processes; and it will ensure that the project is subject to the appropriate level of review under the *Environmental Assessment Act*. Examples of other legislation which may be appropriate to integrate or coordinate with class environmental assessment processes would include approvals under the *Planning Act*, *Ontario Planning and Development Act*, *Niagara Escarpment Planning and Development Act*, *Places to Grow Act* and *Canadian Environmental Assessment Act*.

When developing integration or coordination provisions in a class environmental assessment, clear guidance should be provided on:

- The number of phases of planning in a class environmental assessment process that can be integrated or coordinated.

- How alternatives and their evaluation are to be considered in an integrated or coordinated process.
- How to recognize the needs of the class environmental assessment in the integrated or coordinated planning process and how to ensure that the planning process with which the class environmental assessment is being integrated or coordinated meets the intent of the class environmental assessment.
- At what stage of the class environmental assessment process would the other planning or approval process be integrated or coordinated.
- Which application and submission requirements may be changed to permit integration or coordination? For example, a *Planning Act* application combining public notification requirements to meet the requirements of other statutes instead of a Notice of Completion.
- To what extent would integration or coordination be appropriate in the class environmental assessment?
- How would appeals be dealt with in an integrated or coordinated process?
- How would disputes be resolved in an integrated or coordinated process?
- What level of review would be required to satisfy the different legislative requirements?
- A list of legislation or the approval processes which could be considered for integration or coordination and any special requirements to satisfy the requirements of both.
- Notification and consultation requirements for an integrated or coordinated process.
- A mandatory review period for documentation for the integrated or coordinated process which would be included in the Notice of Completion (minimum 30 days).
- Sample Notices which demonstrate how the processes are combined and show minimum information (for example, the relevant approvals or legislation to be integrated).
- A flow chart or diagram showing the key mandatory steps or milestones in each process and how they can be combined and integrated.
- Monitoring requirements on how requirements of both processes have been fulfilled.

#### Integration or Coordination with Other Class Environmental Assessments

When an applicant is preparing a class environmental assessment, there may be circumstances where an activity being planned under the class environmental assessment may also be subject to another class environmental assessment. For example, flood and erosion control measures is an activity included in both the Conservation Ontario Class Environmental Assessment and the Municipal Class Environmental Assessment.

There may also be circumstances where there is more than one proponent and each proponent has a class environmental assessment that applies. For example, the Ministry of Transportation makes modifications to a highway interchange to accommodate a new municipal arterial road. The two proponents would work together to ensure that the requirements of both class environmental assessments are satisfied. The easiest way to achieve this is to pick the most appropriate class environmental assessment and have both proponents follow the provisions of that class environmental assessment. If either of these scenarios is likely, then integration or coordination provisions should be included in the class environmental assessments.

The provisions in the class environmental assessment should set out:

- How to initiate the integration or coordination process with the proponents of other class environmental assessments.
- Which class environmental assessment would be followed under which circumstances.
- Provisions in each class environmental assessment that the other class environmental assessment can be used to satisfy the environmental assessment requirements for both.
- How to determine proponentcy.
- Public notification requirements for an integrated or coordinated class environmental assessment project planning process.
- How to confirm that requirements of the class environmental assessment have been met through the other class environmental assessment process.
- How to resolve issues if class environmental assessment requirements have not been met.

#### 6.2.10 Changing a Project after the Planning Process Is Complete

From time to time, it may not be possible or desirable to implement a project as it was originally planned and documented in the project's environmental report. A class environmental assessment should include provisions about how to make these changes after a Notice of Completion has been issued.

This provision in the class environmental assessment should include the following:

- Whether there are different processes for minor or major modifications.
- Who is to be consulted on the proposed modifications.
- The timing and duration of the consultation.
- Part II Order provisions.
- Process for when the proposed modification is due to an emergency situation.

- What work on the project can commence while modifications are being made.
- Documentation of the modifications.
- Notice provisions (Revised Notice of Completion/Notice of Filing of Addendum).

#### Addendum Procedure

Where there is a significant modification proposed for the project after the filing of the environmental report, the class environmental assessment should set out provisions by which an addendum is to be prepared by the proponent.

Addendum provisions in class environmental assessments should require that the addendum describes the following:

- Why the change is required (circumstances necessitating the change)?
- What are the potential impacts to the environment resulting from the proposed modification?
- What impact management measures can be implemented to lessen any potentially negative impacts?

The addendum, the environmental report and a Notice of Filing of Addendum or Revised Notice of Completion should be submitted to the ministry (the Branch and appropriate regional office), potentially affected persons, government review agencies as well as all those who were notified during the preparation of the original environmental report who may have an interest in the modifications. The Revised Notice of Completion or Notice of Filing of Addendum should also be placed in a local newspaper.

The Notice should provide for a public comment period for a specified length of time during which anyone may file a Part II Order request for the addendum component only.

If there are no Part II Order requests, the project can proceed. If there are Part II Order requests, the review process must be conducted before the project can be implemented.

#### Lapse of Time

There may be instances where a proponent may not implement a project for some time (for example, five years) after the project planning process is complete. The end of the project planning process in this context is defined as either the end of the review period after the Notice of Completion is issued (no Part II Order requests), or the Minister or delegate denies a Part II Order request.

The applicant should provide in the class environmental assessment a procedure for proponents to follow in these cases. When a lapse of time has occurred (exact time should be defined in class environmental assessment), the proponent must review the project to ensure that no changes are required. Changes could be required to the project because, for example, the environmental conditions have changed and the impact management measures are no longer valid. There could also be new government policies or standards or new engineering technologies.

The results of the review of the project should be documented. If any changes are required to the project, the proponent will append the new information to the existing project documentation and clearly note what has changed and why. The addendum procedures as outlined above shall then be followed. If no changes to the project are required, the proponent can proceed to implement the project.



## **PART B**

# **Applicants of Existing Class Environmental Assessments**



## **7. Procedures for Applicants of Approved Class Environmental Assessments**

The provisions set out in Part A of this Code of Practice are intended for applicants who plan to develop a class environmental assessment for a new class of undertakings. While each approved class environmental assessment is unique, there are many provisions which could be more consistent across all approved class environmental assessments. Since this Code sets out ministry expectations for the preparation, review and use of class environmental assessments, there is useful information that could be incorporated into the existing approved class environmental assessments. It is the intention of the ministry to make components of the class environmental assessments more consistent where possible. Applicants of approved class environmental assessments should consult with the Project Officer when their class environmental assessment review is scheduled to ensure that their class environmental assessment can be made consistent with this Code as applicable.

At the next five-year review, if a provision exists within the class environmental assessment or within five years of the approval of this Code for those class environmental assessments without a review requirement, it is expected that applicants will ensure that their class environmental assessment reflects, to the extent possible, more consistent:

- Category terminology
- Amending procedures for both the class environmental assessment and class environmental assessment projects
- Administrative provisions such as:
  - duration and renewal of approval
  - Part II Order request provisions
  - monitoring and compliance.

### **7.1 Provisions to Incorporate Within the Class Environmental Assessment**

The following deals with provisions that the ministry expects applicants to incorporate into their class environmental assessments. Please review the applicable sections in Part A of this Code of Practice for detailed discussion about these provisions. The ministry recognizes that there may be situations where adherence to the expectations herein will not be possible and this should be discussed with the Project Officer assigned to oversee the applicable class environmental assessment.

The provisions below are not exhaustive. There may also be things other than those listed below that applicants may wish to include in their class environmental assessments when they are reviewed.

### 7.1.1 Categories of Projects

Most class environmental assessments with predefined categories have three schedules, with a category for projects expected to have the least environmental effects and a category for projects with the potential for greater environmental effects. There is also a category for projects that may have some environmental effects, but they are well known and can be readily mitigated and managed.

The ministry encourages applicants that choose to define project schedules to categorize using the approach above. While the ministry is requiring more consistency between class environmental assessments with respect to the naming and defining of categories of projects, it recognizes that it may be difficult for the changes to be made in the existing approved class environmental assessments. If the changes cannot be made, then the categorization in the approved class environmental assessment will prevail.

Applicants should also review the project groupings within the class environmental assessment to determine whether any project activities listed within the class environmental assessment needs to be removed altogether or switched to another category. The applicant should also determine whether there are any additional activities they wish to add to the class environmental assessment.

### 7.1.2 Amending Procedures

If an existing class environmental assessment does not have amending procedures, this Code of Practice has provisions that could be incorporated into the class environmental assessment at the next review period. This will mean that when the applicant or the Minister would like to amend the class environmental assessment, it can be done without having to go through the process of submitting a new class environmental assessment for approval.

It is expected that all of the existing class environmental assessments include amending procedures.

### 7.1.3 Duration and Renewal of Approval

Where an existing approved class environmental assessment has no five-year review provision or expiry date, the applicant can continue to follow its approved class environmental assessment; however, the ministry expects that a regular five-year review provision be included so that the document can be updated to reflect the most current government direction.

#### 7.1.4 Part II Order Request Provisions

The *Environmental Assessment Act* has provisions that allow an interested person to ask for a higher level of assessment for a class environmental assessment project if they feel that there are outstanding issues that have not been adequately addressed. This is known as a Part II Order. Some of the older class environmental assessments refer to this as a “bump-up.” The ministry expects that the class environmental assessments are changed to use the correct term: Part II Order.

This Code of Practice also includes information about what a Part II Order request should be and what it should not be; what should be included in a Part II Order request; the timing of a Part II Order request and information about the review of Part II Order requests by the ministry. It also contains a reverse onus clause for receiving comments from government agencies when reviewing Part II Order requests which indicates that if comments are not received within a certain time period, the ministry will assume that the agency has no comments to make.

Applicants of class environmental assessments should update their Part II Order provisions to reflect these new ministry expectations.

#### 7.1.5 Monitoring and Compliance

The ministry has recently developed a monitoring and compliance strategy which is reflected in this Code of Practice. Existing class environmental assessments should include a provision for monitoring and compliance. If the class environmental assessment does not include a monitoring and compliance strategy, it should be amended to include such a strategy that is consistent with the ministry's strategy. If the class environmental assessment already includes a monitoring and compliance provision, it should be reviewed to ensure that it is consistent with the ministry's strategy.

#### 7.1.6 Consultation with Aboriginal Peoples and Communities

Recent court decisions have indicated that the Crown has a constitutional duty to consult with and accommodate Aboriginal communities when it has knowledge, real or constructive, of the existence or potential existence of an Aboriginal or treaty right and contemplates conduct that might adversely affect it.

While there is no guidance yet available on how this should be done, existing class environmental assessment should be updated to reflect that the Crown duty exists and that during the course of consultation on a class environmental assessment project, should the proponent have any indication that there may be an Aboriginal or treaty right, that it contact the Director of the Environmental Assessment and Approvals Branch to determine how to proceed.

### 7.1.7 Recognition of Previous Planning Work

The ministry recognizes that from time to time class environmental assessment projects are the result of previous planning work carried out by the applicant of the class environmental assessment but outside of the class environmental assessment process. In these cases, if the previous planning work meets certain criteria, then the proponent of the class environmental assessment project may limit the discussion of "need" and "alternatives to" if those elements are required in the class environmental assessment.

A class environmental assessment should be updated to reflect this direction from the ministry, if applicable.

## **PART C**

# **Using the Class Environmental Assessment for Projects**



## **8. Using the Class Environmental Assessment**

Once a class environmental assessment is approved, proponents of class environmental assessment projects may use it to plan projects that fall within the classes identified in the class environmental assessment. Since it is a self-assessment process, proponent's projects are either "pre-approved" and have no further environmental assessment requirements, or are approved as long as they successfully follow the planning process in the approved class environmental assessment.

This part of the Code provides guidance and ministry expectations on certain aspects of planning a class environmental assessment project that, based on the ministry's experience with class environmental assessments, warrant further clarification.

The additional guidance is intended to support the planning processes as set out in each approved class environmental assessment; not to replace or supersede what is in the approved class environmental assessment. Proponents of class environmental assessment projects must consult the approved class environmental assessment they are using and follow the planning process as outlined therein. The approved class environmental assessment prevails.

It should be remembered that environmental assessment is a planning process that allows proponents to assess the potential for environmental effects using best information available in order to make an informed decision about whether a project should proceed. It is not the proponent's responsibility to achieve consensus about whether a project should proceed or attempt to resolve issues outside the scope of the project. While the objective is to avoid or minimize potential negative environmental effects, it may not always be possible to do so. There will be times where individuals may be affected by a project that would benefit society as a whole. The objective is to ensure that projects are planned in an environmentally responsible manner so that the environment is protected.

### **8.1 Identifying the Project Schedule or Category**

Since projects can vary in their potential for environmental effects, most class environmental assessments will have projects divided into different groupings that will have specific planning and design process requirements, depending on the level of complexity of the project. While these groupings are typically articulated within the class environmental assessment, it is important to recognize that there should be flexibility within a process to be responsive to specific project complexity. For example, while a project may be on a schedule that is pre-approved without any further assessment required and there is significant public interest in the project or there is the potential for significant negative environmental effects, a proponent may find it prudent to subject the project to some higher level of investigation in order to assess alternatives,

environmental effects and public, Aboriginal communities and government agency issues and concerns. While this is not a requirement, a proponent may wish to do this in order to avoid significant concerns at the end of the planning process.

For the most part, the existing groupings of projects are appropriate; the proponent must ensure that the right grouping is selected when commencing the planning process under the class environmental assessment.

The category or schedule of a project may not always be appropriate in light of the specific issues and concerns associated with a project. On some occasions a proponent may choose to subject the proposed project to greater scrutiny.

The complexity of a project is influenced by potential environmental effects, public, Aboriginal communities and government agency concerns and technical considerations. The proponent has a responsibility for using professional judgment to determine whether enhanced consultation and/or assessment is needed, beyond that which is required by the approved class environmental assessment.

## 8.2 Recognition of Previous Planning Work

There may be circumstances where project activities being considered in the preparation of a class environmental assessment may be the result of previous planning work carried out by the applicant of the class environmental assessment, but outside of the environmental assessment process; for example, a new sewage treatment plant that was identified in an Infrastructure Plan that supported a municipality's Official Plan.

When this is the case, there should be provisions in the class environmental assessment that permit the limitation of the examination of alternatives. Where the study of the existing environment was previously considered, the discussion can also be limited.

The circumstance where this would be permitted is if the earlier planning process had similar provisions to those of the *Environmental Assessment Act* such as:

- An examination of alternatives;
- Consideration of the environment and environmental effects;
- Public consultation with interested persons such as the public and municipalities;
- Ability for the public to inspect the planning document in its entirety;
- Approval by a recognized decision-making body in a transparent manner such as municipal council resolution or a government policy decision.

If the previous planning process meets the above criteria, then the proponent, when planning a project under an approved class environmental assessment, may propose to limit the discussion of previously examined alternatives or existing environment. Relevant information previously considered under Infrastructure Plans, Growth Plans and Official Plans are examples of documents that could be considered to support the selection of alternatives to be examined in the class environmental assessment planning process should they meet the above criteria.

Where proponents want to use previously approved planning work to limit the range of alternatives to be examined or the discussion of the existing environment, the proponent must provide sufficient rationale and documentation to demonstrate that the previous planning work has met the criteria and requirements of the *Environmental Assessment Act*.

There are also times when projects result from a provincial government priority initiative. In these cases it may be difficult to examine the usual range of alternatives as the actual project has been defined by the initiative. If this is the case, the project documentation should outline the rationale for not examining alternatives and the extent to which any previous planning supports the government priority.

### **8.3 Consultation on Projects Proceeding under an Approved Class Environmental Assessment**

Effective and meaningful involvement of interested persons, including Aboriginal peoples and communities, and government agencies, in the assessment of projects throughout the class environmental assessment process is imperative. Consultation is a process which facilitates the exchange of information and ideas between proponents and affected or interested persons. The intent of the process is to ensure there is accurate information available for a proposed project for interested persons to consider; and so that proponents can understand issues and potential environmental effects that may need to be considered if the proposed undertaking is to proceed. An effective consultation program may make the difference in the ability of a proponent to proceed with a project in a timely manner.

The Ministry of the Environment has produced a Code of Practice for guidance on Consultation. For additional guidance on good consultation practices please refer to the ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process*.

A typical class environmental assessment planning process will indicate the specific mandatory points of contact. These contact points should be considered a minimum level of effort for a proponent to undertake. For controversial, lengthy or complex projects, additional contacts with interested persons or

concerned groups may also be required. Proponents should adjust the consultation process to reflect the needs of the project and interested persons.

It is also important to remember the role of municipal councils and other governing bodies in the consultation process. Different councils or governing bodies will have different expectations on how they wish to be kept informed. Involvement from municipal councils or other governing bodies may range from receiving staff reports during the course of a study or the submission of a presentation or report at the conclusion of a study to seek council or other governmental approval before issuing a Notice of Completion. Project managers should confirm with the applicable councils or governing body what level of involvement they would like to have early in the planning process. In some communities council members or those from other governing bodies may wish to have representation at public meetings.

The approach to consultation should be customized to the project and the existing environment. A linear transportation project with a long corridor (for example, widening a provincial highway) will have very different consultation needs than a more spatially limited project (for example, municipal road intersection improvements) with a well-established and active citizen's group.

While proponents have a responsibility to provide appropriate information to interested persons in a timely manner and do their utmost to address all project considerations as best they can, interested persons have a responsibility to make sure they take the opportunity to learn about the project and the process so that they can effectively put issues and concerns forward in an attempt to have them addressed. It should be noted that there are times when not all issues can be addressed or negative impacts avoided or mitigated as a result of the proposed project despite the best efforts of the proponent. There will be projects where some individuals may be affected to benefit society at large.

The extent of the consultation will vary from project to project depending on the issues related to the project, the amount of interest in the project and the project's complexity. The proponent will need to decide what the most appropriate consultation strategy, or blend of strategies is for their particular class environmental assessment project or study.

### 8.3.1 Consulting with Aboriginal Communities for Projects Proceeding under a Class Environmental Assessment

Proponents are required to consult with interested persons about the potential effects of the proposed project proceeding under an approved class environmental assessment. In doing so, special consideration must be given to whether the rights or interests of Aboriginal communities may be affected by the proposed project.

When considering which Aboriginal communities to contact, proponents should be mindful that the traditional territories, treaty areas, or areas of rights claims involving Aboriginal or treaty rights of some Aboriginal communities are extensive. As a result, it may be insufficient to consult only with Aboriginal communities with reserve lands in the vicinity of the proposed project.

Proponents should consult the environmental assessment page of the ministry's website<sup>3</sup> for the list of governmental organizations such as the Ministry of Aboriginal Affairs and Indian and Northern Affairs Canada which can assist in the identification of Aboriginal communities to engage when proceeding under a class environmental assessment for a particular project.

Proponents must at a minimum make good faith efforts to engage the Aboriginal communities and organizations that are identified by these governmental organizations.

As part of the class environmental assessment process, the ministry expects the proponent to:

- Contact the Aboriginal communities normally through the Chief and Band Council;
- Provide the identified Aboriginal communities with the requisite Notices under the class environmental assessments;
- Provide the communities with notification of open houses and meetings;
- Provide project documentation and other information when requested.

The Crown has a duty to consult with and accommodate Aboriginal communities when it has knowledge, real or constructive, of the existence or potential existence of an Aboriginal or treaty right and contemplates conduct that might adversely affect it.

During the consultation and engagement process with Aboriginal communities, it may be determined that the proposed class environmental assessment project may potentially adversely affect an existing or asserted Aboriginal or treaty right protected under section 35 of the *Constitution Act, 1982* and that the Crown has a legal duty to consult. The procedural steps described above will help to set the framework to ensure that the Crown's duty to consult, if it arises, is satisfied with respect to the project proceeding under the approved class environmental assessment.

### Crown Proponents

If the proponent of the class environmental assessment project is clearly the Crown (for example, Ministry of Natural Resources, Ministry of Transportation),

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<sup>3</sup> The environmental assessment page of the ministry's website can be found at [www.ene.gov.on.ca/envision/ea/index.htm](http://www.ene.gov.on.ca/envision/ea/index.htm)

then the consultation efforts should be led by the Crown proponent. Where there is a potential adverse effect on an Aboriginal or treaty right, the Crown proponent should advise the Director of the Environmental Assessment and Approvals Branch of the consultation undertaken with Aboriginal communities. The Director and Crown proponent will discuss what next steps are required.

#### Non-Crown Proponents

If the proponent of a class environmental assessment project is not the Crown and an Aboriginal community has asserted that the Crown has a duty to consult based on the potential adverse effects on an Aboriginal or treaty right during the course of engagement about the potential effects of the class environmental assessment project, then the proponent should notify the Director of the Environmental Assessment and Approvals Branch.

Proponents can assist the ministry by providing it with correspondence from Indian and Northern Affairs Canada and the Ministry of Aboriginal Affairs, and the list of the Aboriginal communities that have been engaged and details of what has transpired to date between the proponent and the Aboriginal community(ies). The ministry will determine whether additional Aboriginal communities should be consulted by the Crown. The Director may request that the proponent seek and provide further particulars of the assertion where appropriate.

#### All Proponents

When the duty to consult has been engaged, all parties should understand that:

- The nature, scope, and content of the duty to consult and accommodate varies with the circumstances.
- Meaningful consultation requires the Crown to listen with an open mind to what the Aboriginal communities have to say.
- There may be a requirement to make changes to a proposal based on information obtained through consultations.
- Accommodation requires a process of balancing interests.
- Responsiveness is a key element of both consultation and accommodation.

### **8.4 Involvement of Government Review Agencies**

Early in the planning stages of a class environmental assessment project, the proponent should contact government review agencies to determine whether or not the various municipal, provincial or federal government review agencies have an interest in the project. Government review agencies should be involved throughout the planning process once they have been identified to review technical information about the environment, potential impacts and impact management measures that are in supporting technical reports. The

government review agencies should be circulated the technical reports and information bulletins on the project during the early stages of project planning, not at the time of the completion of the final environmental report. This is because government review agencies typically need more than 30 days to review technical information and provide meaningful comments. It would also be beneficial to have some early discussions with government review agencies to identify specific interests and/or issues of concern; and identify any technical or planning permits or further approvals that may be required.

Review agencies should be contacted early in the class environmental assessment project planning process to identify specific interests and/or issues of concern.

It is not sufficient just to provide Notices at the mandatory points of contact to the government review agencies and consider that the obligation for consultation with them has been fulfilled. While useful to have to determine the progress of the project planning, the Notices do not provide enough technical information that can be used by the government review agencies to determine whether they may have a concern. It is important for proponents to make early contact with government review agencies and keep them involved throughout the project planning if the agency has expressed an interest based on its mandate.

A list of government review agencies that have stated their desire to be circulated on relevant environmental assessments has been developed by the ministry and is included in Appendix B.

## 8.5 Other Legislation

While the class environmental assessment process can be conducted in a way that will help facilitate approval processes with other environmental legislation, it does not replace or exempt the project from other applicable, federal, provincial and municipal legislation. Where possible, duplication between the class environmental assessment process and other formal approval processes should be avoided. It is the responsibility of the proponent to ensure that all requirements of all legislation is identified and met.

As noted in Section 6.2.8, one piece of legislation that often needs to be addressed is the *Canadian Environmental Assessment Act*. The *Canadian Environmental Assessment Act* is legislation that applies to federal authorities when they are taking certain actions in support of a project or a component of the project such as providing:

- Federal land;
- Funds; or
- Regulatory approvals identified in the *Canadian Environmental Assessment Act* Law List Regulations.

In addition, where a federal authority is a proponent or co-proponent of a project, the *Canadian Environmental Assessment Act* may be triggered.

Since the *Canadian Environmental Assessment Act* applies to federal authorities, it will be their responsibility to identify the scope of the project and assessment and to ensure that an assessment fulfils the associated *Canadian Environmental Assessment Act* requirements.

An important point to note is that many of the triggers may not be known until late in the project when decisions on project location, funding and associated federal permits are identified. It is recommended that a proponent contact federal authorities that may have a potential interest in a project early in the class environmental assessment process to determine if it is likely that there may be a federal trigger. Key federal authorities and their responsibilities are noted in Appendix B.

It is recognized that there may be some projects that are being planned that are not conducive to coordination with the federal environmental assessment process. Whether or not federal-provincial coordination is possible or desirable should be determined early in the process.

Federal-Provincial coordination procedures have been developed to address multi-jurisdictional assessment matters. The *Federal/Provincial Environmental Assessment Coordination in Ontario: A Guide for Proponents and the Public* provides additional direction on coordination of class environmental assessments with *Canadian Environmental Assessment Act* requirements.

In addition, guidance on potential federal interests can also be obtained from:

Director, Ontario Region  
Canadian Environmental Assessment Agency  
55 St. Clair Avenue East, Room 907  
Toronto, ON M4T 1M2  
Telephone: 416-952-1576  
Fax: 416-952-1573  
E-mail: [ceaa.ontario@ceaa-acee.gc.ca](mailto:ceaa.ontario@ceaa-acee.gc.ca)

## **8.6 Issue Resolution**

Proponents are encouraged to work with government agencies and other interested persons to identify issues early and seek opportunities to address concerns. The timely completion of an environmental assessment process can be affected by unaddressed concerns surfacing late in the planning process. The ministry's Code of Practice entitled, *Consultation in Ontario's Environmental Assessment Process* provides useful guidance on designing a responsive consultation process. It is noted in the Code that by recognizing concerns early and throughout the planning process a proponent can:

- Minimize the possibility of having to revisit past irreversible decisions;
- Increase opportunities for proponents and interested persons to arrive at solutions before submission of the Notice of Completion and project documentation for public review;
- Reduce the likelihood that the timing of further technical approvals is held up.

Interested persons also have responsibilities to participate meaningfully in consultation processes. When interested persons raise concerns in a timely manner, the proponent may be able to explore options to address issues and identify workable solutions. Interested persons who have concerns about a project should be clear whether the issue relates to the effects of the project activity or the class environmental assessment process. Interested persons should not be requesting proponents to revisit concerns with previous planning decisions that have been made through another planning process. Proponents are only responsible for responding to concerns associated with the class environmental assessment planning process and the potential environmental effects of a project activity. For example, if a municipal land use planning decision has been made to allow for residential development in the northern part of the municipality and a class environmental assessment is being undertaken for sewer servicing, the class environmental assessment process will only address the environmental effects assessment of the servicing component, not whether the approved land development should occur.

"A proponent's failure to recognize concerns early in the process can result in participants rejecting the credibility of the proponent's consultation plan and refusing to participate in consultation opportunities because community concerns are not being recognized.

Participants are encouraged to inform the proponent of concerns as they arise, so that options can be fully explored and workable solutions developed before the proponent makes certain choices and before moving forward to the next step in the planning process.

If participants do not raise concerns in a timely manner, the proponent may be restricted from fully exploring alternatives and developing appropriate measures to address them later in the decision-making process."

Code of Practice: Consultation in Ontario's Environmental Assessment Process

## 8.7 Part II Order Requests

Each class environmental assessment establishes general procedures for requesting a Part II Order (also relates to bump-ups), timelines for the ministry's review of requests, and other administrative matters. These will vary between class environmental assessments. The procedures to be included in a class environmental assessment are discussed in Section 6.2.3 of this Code of Practice.

This section on Part II Order requests focuses on how Part II Order requests should be made and how the ministry reviews those requests.

### What a Part II Order Request Should Be

A Part II Order request should be:

- A way in which the proponent, an interested person, Aboriginal community, or government agency with a significant concern about the potential environmental effects of a proposed class environmental project, can request that a higher order of environmental assessment be undertaken so that the concerns can be addressed.

### What a Part II Order Request Should Not Be

A Part II Order request should not be:

- A mechanism to stop, delay or frustrate the planning and implementation of a class environmental assessment project.
- A mechanism to revisit issues with which the requester does not agree and that have already been decided through another planning process such as Official Plans, Growth Plans and Infrastructure Plans.
- A mechanism to be used simply because the project is not desired in a community.
- A means to resolve issues that can be dealt with through other methods such as permits, licences or other planning processes (local municipal by-laws, building permits).
- A mechanism to deal with broad policy issues that do not have government policy direction and are not directly related to the proposed class environmental assessment project such as adequacy of funding for transit or meeting the Kyoto Accord.

#### 8.7.1 Timing of a Part II Order Request

A Part II Order request is considered to be premature when it is received during the early planning stages of the class environmental assessment process, prior to the issuance of the Notice of Completion.

It may be that the nature of the issues and concerns raised in the request warrant the ministry's consideration of the issues at the time it is received. For example, it may be appropriate to address issues that deal with rationale and alternatives to early in the process, as early resolution of these matters would allow the process to proceed without revisiting the matter at a later stage. In this situation, the proponent should be asked to determine the validity of the issues and whether the proponent should continue to pursue the proposed solution. This dialogue should be documented.

If the request is premature, the Project Evaluator will advise the requestor by letter that it should bring its issues to the attention of the proponent. The

requester will also be advised that a Part II Order request may be made during the review period once the Notice of Completion has been published.

### 8.7.2 Making a Part II Order Request

When an interested person has concerns with the potential environmental effects of a project or the planning process that was followed that despite best efforts have not been able to be resolved by the proponent and the requester, then it may be appropriate to request a Part II Order.

A valid Part II Order request:

- Must be made in writing to the Minister or delegate with a copy to the proponent.
- Must be made after all of the planning is complete (after the Notice of Completion is issued and within the specified review period outlined in the Notice) so that all of the potential environmental effects and impact management measures are understood.
- Must not be made for the sole purpose of delaying, stopping or frustrating the planning and implementation of a class environmental assessment project (such requests will not be considered).
- Must focus on potential environmental effects of the project, the class environmental assessment process, and not on decisions made outside the class environmental assessment process (for example, land use planning decisions made under the *Planning Act* or issues related to municipal funding of projects).
- Should be withdrawn promptly by the requester if the proponent has satisfied the concerns of the requester.

Part II Order requests that raise issues that are not related to the project will not be considered.

Part II Order requests should include a rationale as to why a higher level of assessment would address the concerns raised in the request.

### 8.7.3 Reviewing a Part II Order Request

When a request is received, Project Evaluators will evaluate each request and develop the most appropriate recommendation based on the information available, technical review, government and ministry mandate and current legislative requirements. Project Evaluators will focus their attention on the specific issue raised in the Part II Order request as long as the class environmental assessment documentation (for example, environmental report) can demonstrate that the requirements of the particular class environmental assessment have been fulfilled. The Project Evaluator may comment on matters and raise concerns that go beyond the issues raised in the Part II Order request

as the ministry must determine that the requirements of the *Environmental Assessment Act* have been met.

A class environmental assessment defines the timelines for Part II Order requests. For example, for the Municipal Class Environmental Assessment process, a written request must be submitted to the Minister or delegate within the review period after the Notice of Completion has been issued.

It is the proponent's responsibility to provide the public with proper notification of their legal right of review under the class environmental assessment.

Once the Branch receives the request, the Project Evaluator will advise the proponent of the receipt of the request. Where appropriate, proponents are encouraged to carry out further discussions with the requesters to attempt to resolve any outstanding concerns and inform the ministry about the status of these discussions. The proponent has the option of making a submission addressing the issues to the Branch. The ministry may consult with other government agencies or other interested persons before a decision is made. The proponent also has the option of advising the Director in writing if they are prepared to carry out an environmental assessment. This should be done within one week of being advised that there has been a Part II Order request. The Director would then advise the requester that the environmental assessment will be required. This would then negate the need for further review of the request.

The Project Evaluator will review the information and prepare a report for the Minister or delegate's consideration within the time frame set out under each class environmental assessment. Where there is potential for significant environmental effects a longer review time may be necessary.

The Project Evaluator will focus on the issues associated with the request, the review of the documentation, and the proponent's response and will prepare a recommendation for the Minister or delegate. The level of review of the requests will be appropriate to the nature of the issues and the underlying principle of environmental protection will be maintained.

In order to meet the review time frame, the Project Evaluator will place stringent timelines on the proponent and/or government agencies who are responding to ministry questions about issues raised in requests. Once the ministry has advised a proponent of the receipt of a request, the proponent will need to respond to the issues raised and provide a written record of their responses to the Branch within two weeks.

Where significant environmental issues are raised and responses are insufficient, where project documentation is significantly deficient, or consultation has been inadequate, the Project Evaluator may consider that the class environmental assessment process is not complete. In this case, the proponent may be required to undertake additional studies, consultation and/or revisions to the documentation and to re-issue the Notice of Completion. This may be done

voluntarily by the proponent or may be through a decision on the Part II Order requests.

The timelines for government agency review follow a reverse onus model whereby agencies (for example, Ministry of Natural Resources, Department of Fisheries and Oceans, Conservation Authorities) will be asked to provide timely comments to the Project Evaluator (typically within two weeks). Depending upon the significance of the issues, the Project Evaluator will assume that if no comments are received that the agency has no concerns with the project that should be managed through the class environmental assessment process.

To avoid the consequences of the issues described above, proponents can proactively manage the outcomes of the class environmental assessment by appropriate consultation with the ministry and other agencies at key decision points in the process or by extending the Notice of Completion review period where it is anticipated that requesters may have significant concerns.

#### 8.7.4 Considerations Affecting a Part II Order Decision

The basis for the Part II Order is defined under subsection 16(4) of the *Environmental Assessment Act*:

"The Minister shall consider the following matters when making an order under this section:

1. The purpose of the Act.
2. The factors suggesting that the proposed undertaking differs from other undertakings in the class to which the class environmental assessment applies.
3. The significance of the factors and of the differences mentioned in paragraph 2.
4. Any reasons given by a person who requests the order.
5. The mediators' report, if any, following a referral under subsection (6).
6. Such other matters as may be prescribed.
7. Such other matters as the Minister considers appropriate."

Other matters as the Minister may consider appropriate could include but are not limited to:

- Extent and nature of public concern;
- Potential for significant adverse environmental effects;
- Consideration of alternatives by the proponent;

- Considerations of urgency;
- Participation of the requester in the planning process;
- Nature of request;
- Implications for matters of significant provincial interest;
- Degree to which public consultation and dispute resolution have taken place.

Following the receipt of the Branch's recommendation, the Minister or delegate will decide whether to refer the matter to mediation under the provisions of subsection 16(6) of the *Environmental Assessment Act*. For more information about mediation, please refer to the ministry's Code of Practice entitled, *Using Mediation in Ontario's Environmental Assessment Process*. If mediation is not carried out or is unsuccessful, the Minister or delegate will make one of the following decisions:

- Deny the request for an order and inform the proponent and requester of the decision and rationale;
- Deny the request for an order but impose conditions; or
- Require the proponent to comply with Part II of the *Environmental Assessment Act*.

Once a decision has been made the proponent may in the case of a Part II Order denial, proceed with the implementation of the project subject to any conditions imposed, or where a Part II Order has been granted, may begin to prepare a terms of reference for an environmental assessment. If a Part II Order is made for its project, a proponent does not need to proceed with the project. It just means that if the proponent wishes to receive approval for the project under the *Environmental Assessment Act*, it must do so in accordance with the Part II of the *Environmental Assessment Act*.

This Code of Practice is intended to provide proponents and other interested persons with an understanding of how to prepare, review and use a class environmental assessment. Specific questions about a class environmental assessment should be referred to the Project Officer assigned to the proposed class environmental assessment.

Those interested in information about Ontario's environmental assessment process should consult the Ministry of the Environment's website or contact the ministry at the address below to obtain process, consultation and mediation guidance.

Ministry of the Environment  
Environmental Assessment and Approvals Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5 Canada

Telephone: 416-314-8001  
Toll Free: 1-800-461-6290  
Fax: 416-314-8452  
E-mail: [eaabgen.moe@ontario.ca](mailto:eaabgen.moe@ontario.ca)  
Website: [www.ene.gov.on.ca/envision/ea/index.htm](http://www.ene.gov.on.ca/envision/ea/index.htm)

In addition, the ministry has developed guidance materials for the following key elements of the environmental assessment process:

- Terms of reference (*Code of Practice: Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario*).
- Consultation (*Code of Practice: Consultation in Ontario's Environmental Assessment Process*).
- Mediation (*Code of Practice: Using Mediation in Ontario's Environmental Assessment Process*).
- Environmental assessments (*Code of Practice: Preparing and Reviewing Environmental Assessments in Ontario*).
- Coordinating federal and provincial environmental assessment requirements (*Federal/Provincial Environmental Assessment Coordination in Ontario: A Guide for Proponents and the Public*).
- Electricity projects (*Guide to Environmental Assessment Requirements for Electricity Projects*).
- Waste management projects (*Guide to Environmental Assessment Requirements for Waste Management Projects*).

## Appendix A List of Provincial Class Environmental Assessments

The following lists current class environmental assessments in Ontario, at the time of printing of this Code of Practice. For an updated list, please refer to the ministry's website at [www.ene.gov.on.ca/envision/ea/index.htm](http://www.ene.gov.on.ca/envision/ea/index.htm).

Applicant	Class Environmental Assessment Title
Ministry of Natural Resources	Resource Stewardship and Facility Development Projects
Ministry of Natural Resources	Provincial Parks and Conservation Reserves
Ministry of Natural Resources	Forest Management on Crown Lands in Ontario (a Declaration Order) and Forest Management Planning Manual
Ontario Hydro (now known as Hydro One)	Minor Transmission Facilities
Ministry of Transportation	Provincial Transportation Facilities
Municipal Engineers Association	Municipal Class Environmental Assessment
GO Transit	GO Transit Class Environmental Assessment Document
Ontario Realty Corporation	Class Environmental Assessment Process for Management Board Secretariat and Ontario Realty Corporation
Conservation Ontario	Remedial Flood and Erosion Control Projects
Ontario Waterpower Association	Class Environmental Assessment for Waterpower Projects

## Appendix B Government Agencies and Their Areas of Interest

This information is a subset of the Government Review Team list that is provided to applicants/proponents at the start of their planning process. This is for information only, and the particular agency or ministry must be contacted to determine if they have a mandated interest in the proposal.

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
FEDERAL AGENCIES	
Canadian Environmental Assessment Agency	Undertakings that: <ul style="list-style-type: none"> <li>• will require federal approvals, financing;</li> <li>• are on or abutting federal lands;</li> <li>• will require federal funding.</li> </ul>
Canadian Transportation Agency	Undertakings with the potential to affect railway lines or property.
Indian and Northern Affairs Canada	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• Aboriginal communities;</li> <li>• traditional territories, and reserves;</li> <li>• lands/waters surrounding reserves.</li> </ul>
Environment Canada	Undertakings with the potential to: <ul style="list-style-type: none"> <li>• result in the deposit of deleterious substances into fisheries water;</li> <li>• affect migratory birds;</li> <li>• affect federal wetlands;</li> <li>• affect natural wildlife areas and national parks;</li> <li>• cause transboundary effects on air or water quality;</li> <li>• endanger or threaten species at risk.</li> </ul>
Fisheries and Oceans Canada	Undertakings in or near water that have the potential to: <ul style="list-style-type: none"> <li>• harmfully alter disrupt or destroy fish or fish habitat;</li> <li>• impact passage of fish around migration barriers;</li> <li>• impact provision of sufficient water flows;</li> <li>• result in the destruction of fish by means other than fishing (blasting);</li> <li>• impact aquatic species at risk.</li> </ul>
Health Canada	Undertakings with human health implications.
Transport Canada	Undertakings that: <ul style="list-style-type: none"> <li>• are located in the vicinity of a federal airport and may attract birds;</li> <li>• may cause electrical interference to navigational aids;</li> <li>• may affect a navigable waterway.</li> </ul>

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
PROVINCIAL AGENCIES & MINISTRIES	
GO Transit	Undertakings with the potential to affect GO Transit service or property.
Ontario Realty Corporation	Undertakings whose associated lands are adjacent or proximate to lands owned by the Ministry of Energy and Infrastructure.
Niagara Escarpment Commission	Undertakings in or with the potential to affect the Niagara Escarpment Planning Area.
Ministry of Aboriginal Affairs	For identification of Aboriginal communities potentially affected by an undertaking. Also for undertakings with the potential to affect Crown land and resource usage.
Ministry of Agriculture, Food and Rural Affairs	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• prime agricultural areas (areas of classes 1–3 agricultural soils);</li> <li>• specialty crop areas;</li> <li>• agricultural uses, agriculture-related uses and secondary uses on farms.</li> </ul>
Ministry of Culture	Undertakings that may affect properties having recognized or potential cultural heritage value or interest, which may include: <ul style="list-style-type: none"> <li>• built heritage resources;</li> <li>• cultural heritage landscapes;</li> <li>• areas of archaeological potential;</li> <li>• undertakings whose associated lands are adjacent or proximate to lands owned by the Royal Botanical Gardens, the McMichael Canadian Collection, or owned or protected by the Ontario Heritage Trust.</li> </ul>
Ministry of Tourism	Undertakings with the potential to affect sport/recreational areas or tourist facilities.
Ministry of Education (consult local school board)  Ministry of Training, Colleges and Universities (consult local institution)	Undertakings with the potential to affect school/institution, building property, or staff and students.
Ministry of Community Safety and Correctional Services	Undertakings with the potential to have a direct physical impact on a Correctional Services correctional centre, jail or a detention centre.
Ontario Provincial Police	Undertakings with the potential to have a direct physical impact on an Ontario Provincial Police correctional centre, jail or detention centre.
Ministry of Economic Development	Undertakings which involve investments in large-scale manufacturing facilities or co-generation projects.

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Ministry of Energy and Infrastructure	Undertakings with energy implications, including renewable energy such as small hydro or wind. Undertakings within an area covered by the Growth Plan for the Greater Golden Horseshoe or the <i>Places to Grow Act</i> .
Ministry of Health and Long-Term Care (Local Medical Officers of Health)	Undertakings with potential health impacts such as groundwater contamination and air quality impacts.
Ministry of Municipal Affairs and Housing	Undertakings that: <ul style="list-style-type: none"> <li>• relate to municipal services;</li> <li>• involve a municipal proponent;</li> <li>• may have an effect on the Oak Ridges Moraine Conservation Plan Area.</li> </ul>
Ministry of Natural Resources	Undertakings that may have a potential effect on: <ul style="list-style-type: none"> <li>• permanent and intermittent watercourses or water bodies;</li> <li>• rare, vulnerable, threatened, endangered or otherwise significant species;</li> <li>• Areas on Natural and Scientific Interest or an Environmentally Significant Area;</li> <li>• mineral aggregate resources;</li> <li>• Crown land/resources;</li> <li>• provincially significant wetlands.</li> </ul>
Ministry of Northern Development and Mines	Undertakings that may potentially affect: <ul style="list-style-type: none"> <li>• geological and mineral resources;</li> <li>• economic development in northern Ontario;</li> <li>• tourism in northern Ontario.</li> </ul>
Ministry of Transportation	Undertakings within: <ul style="list-style-type: none"> <li>• any study area for a transportation corridor or route planning project;</li> <li>• 800 metres of any existing/designated provincial highway or other provincial transportation facility;</li> <li>• adjacent to Ministry of Transportation property (i.e. patrol yards, carpool lots, etc.).</li> </ul>
<b>OTHER</b>	
Ontario Power Generation	Undertakings that could potentially directly affect an Ontario Power Generation generating site.
Hydro One Networks Inc.	Undertakings that could potentially directly have an impact on Hydro One facilities or plants (includes transmission/distribution lines or transformer/distribution stations).

AGENCY/MINISTRY	TYPE OF PROJECT/ POTENTIAL AREAS OF INTEREST
Local Conservation Authority	Undertakings with the potential to affect: <ul style="list-style-type: none"> <li>• area in and adjacent to watercourses (including valley lands), wetlands, shorelines of inland lakes and the Great Lakes-St. Lawrence System and other hazard lands;</li> <li>• fish and fish habitat;</li> <li>• drinking water sources;</li> <li>• sensitive natural features;</li> <li>• hydrology and storm water.</li> </ul>

Note: Municipalities and Aboriginal peoples, while not formally on the Government Review Team, are consulted about a class environmental assessment project if it is located in their municipality or community or if it may affect their municipality or community as required by the *Environmental Assessment Act*.

## Appendix C Notification Templates

### (1) Notice of Commencement of Terms of Reference Template

Notice of Commencement of Terms of Reference  
for a Class Environmental Assessment  
<insert Name of Proposed Class Environmental Assessment, Name of Applicant>

The <name of applicant> has initiated a study under the *Environmental Assessment Act* to <preliminary purpose of study>.

The Process

This study will be carried out in accordance with the requirements of the *Environmental Assessment Act*. The first step in the process is the preparation of a terms of reference. The terms of reference will set out the applicant's framework and work plan for addressing the *Environmental Assessment Act* requirements when preparing the class environmental assessment, including such things as the alternatives that will be considered and the public consultation activities that will be carried out. If approved by the Minister, the terms of reference will provide the framework and requirements for the preparation of the class environmental assessment.

<applicant to insert any more information into the paragraph that it thinks is important>

Consultation

Members of the public, agencies and other interested persons are encouraged to actively participate in the planning process by attending consultation opportunities or contacting staff directly with comments or questions. Consultation opportunities are planned throughout the planning process and will be advertised <how – for example, website, newspaper, direct mail out>.

<insert any more information the applicant thinks is important>

For further information on the proposed study please contact:

<insert applicant and/or consultant contact information>  
<insert project website address>

Under the *Freedom of Information and Protection of Privacy Act* and the *Environmental Assessment Act*, unless otherwise stated in the submission, any personal information such as name, address, telephone number and property location included in a submission will become part of the public record files for this matter and will be released, if requested, to any person.

(2) Notice of Submission of Terms of Reference Template

**Notice of Submission of Terms of Reference  
for a Class Environmental Assessment  
<insert Name of Proposed Class Environmental Assessment, Name of Applicant>**

As part of the planning process for the <name of class environmental assessment>, a terms of reference was submitted to the Ministry of the Environment for review as required under the *Environmental Assessment Act*. If approved, the terms of reference will serve as a framework for the preparation and review of the class environmental assessment for the proposed undertaking.

**<briefly describe proposed class environmental assessment>**

**<insert study area map, if possible>**

You may inspect the proposed terms of reference during normal business hours at the following locations:

1. Ministry of the Environment  
Environmental Assessment and Approvals Branch  
St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
416-314-8001/1-800-461-6290  
Monday to Friday 8:30 am – 5:00 pm
2. Ministry of the Environment regional and/or district office closest to study area
3. Applicant's office
4. Other public viewing locations (for example, municipal offices, libraries)
5. Website address where the terms of reference is posted

Your written comments about the terms of reference must be received before **<insert last day in the 30-day comment period>**. All comments should be submitted to:

**<name of Project Officer>**, Project Officer  
Ministry of the Environment  
Environmental Assessment and Approvals Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
Tel: 416-314-**<XXXX>**/1-800-461-6290  
Fax: 416-314-8452

A copy of all comments will be forwarded to the applicant for its consideration.

For further information on the proposed study please contact:

**<insert applicant and/or consultant contact information>**

Under the *Freedom of Information and Protection of Privacy Act* and the *Environmental Assessment Act*, unless otherwise stated in the submission, any personal information such as name, address, telephone number and property location included in a submission will become part of the public record files for this matter and will be released, if requested, to any person.

(3) Notice of Commencement of Class Environmental Assessment Template

Notice of Commencement of Class Environmental Assessment  
<insert Name of Class Environmental Assessment, Name of Applicant>

The <name of applicant> is beginning a class environmental assessment under the *Environmental Assessment Act* to <purpose of class environmental assessment>.

<provide additional pertinent information about the class environmental assessment>

The Process

In <insert date terms of reference was approved>, the Minister of the Environment approved the terms of reference for the <name of class environmental assessment>. A copy of the approved terms of reference is available at:

<provide website address where the terms of reference may be accessed>

<identify other locations where the approved terms of reference is available, for example, applicant office, libraries>

This class environmental assessment planning process will be carried out according to the approved terms of reference and the requirements of the *Environmental Assessment Act*. The results of the planning process will be documented in a class environmental assessment, which will be submitted to the ministry for review. At that time, the public and other interested persons will be informed when and where the class environmental assessment can be reviewed.

Consultation

Members of the public, agencies and other interested persons are encouraged to actively participate in the planning of this class environmental assessment by attending consultation opportunities or contacting staff directly with information, comments or questions. Consultation opportunities are planned throughout the planning process <if known, indicate purpose, number, timing and nature of additional public contacts> and will be advertised <identify how – for example, on a project website, local newspapers, direct mail out>.

<provide additional relevant information for example, timing for an upcoming consultation event; seeking input, information, knowledge about the local community, environmental conditions; alternatives being investigated>

If you would like to be added to our project mailing list or have project-related questions, please contact:

<provide applicant and/or consultant contact information>

<provide website address for viewing information about the class environmental assessment>

Under the *Freedom of Information and Protection of Privacy Act* and the *Environmental Assessment Act*, unless otherwise stated in the submission, any personal information such as name, address, telephone number and property location included in a submission will become part of the public record files for this matter and will be released, if requested, to any person.

(4) Notice of Submission of Class Environmental Assessment Template

**Notice of Submission of Class Environmental Assessment**  
**<insert Name of Class Environmental Assessment, Name of Applicant>**

The **<name of applicant>** has completed the **<name of class environmental assessment>**. As required under section 6.2(1) of the *Environmental Assessment Act* and according to the terms of reference approved by the Minister of the Environment on **<insert date terms of reference was approved>**, the **<name of applicant>** has submitted its class environmental assessment to the Ministry of the Environment for review and approval.

**<briefly describe the class environmental assessment and its purpose>**

As required under the *Environmental Assessment Act*, the class environmental assessment will be available for public review and comment from **<insert start date of review period>** to **<insert last day in the seven-week review period>**

You may review the class environmental assessment during normal business hours at the following locations:

1. Ministry of the Environment  
Environmental Assessment and Approvals Branch  
St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
416-314-8001/1-800-461-6290  
Monday to Friday 8:30 am – 5:00 pm
2. Ministry of the Environment regional and/or district office closest to study area
3. Applicant's office
4. Other public viewing locations (for example, municipal offices, libraries)
5. Website address where the a copy of the class environmental assessment can be accessed

Anyone wishing to provide comments on the class environmental assessment must submit their comments in writing and/or by fax to the Ministry of the Environment by **<insert last day in the seven-week review period>**. All comments must be submitted to:

**<name of Project Officer>**, Project Officer  
Ministry of the Environment  
Environmental Assessment and Approvals Branch  
2 St. Clair Avenue West, Floor 12A  
Toronto, Ontario M4V 1L5  
Tel: 416-314-**<XXXX>**/1-800-461-6290  
Fax: 416-314-8452

A copy of all comments will be forwarded to the applicant for its consideration.

If you have any questions or need further information about this project, please contact:

**<insert applicant and/or consultant contact information>**

Under the *Freedom of Information and Protection of Privacy Act* and the *Environmental Assessment Act*, unless otherwise stated in the submission, any personal information such as name, address, telephone number and property location included in a submission will become part of the public record files for this matter and will be released, if requested, to any person.

**<insert date this notice is published>**

(5) Class Environmental Assessment Summary Form



**Class Environmental Assessment Summary  
for the Environmental Assessment Site**

**General Information and Instructions**

**General:**

Information requested by this form is collected under the authority of the *Environmental Assessment Act*. The summary information provided in this form will be posted on the environmental assessment page of the Ministry of the Environment's website.

This form requires French translation before it is posted on the website. The Ministry requires 5 to 10 business days for French translation services. Therefore, the completed form should be submitted (electronic copy and hard copy) to the Environmental Assessment and Approvals Branch at least two weeks prior to the posting date.

The applicant is responsible for ensuring that copies of the class environmental assessment are delivered to the appropriate government reviewers, other interested persons and the places of public record on or before the posting date. The applicant must contact the Branch to determine an agreed upon **posting date** for the class environmental assessment summary. The posting of the class environmental assessment summary information also represents the commencement of the regulated timeline for the review and decision about the proposed undertaking.

**Instructions:**

1. This form must be accurately completed. Questions regarding the completion and submission of this form should be directed to the Project Officer at the Environmental Assessment and Approvals Branch. **AN INCOMPLETE FORM WILL BE RETURNED TO THE APPLICANT.**
2. Please ensure that you have included the proposed **distribution list**, the **study area map** and a copy of the proposed class **environmental assessment** with this form.
3. Please send the completed form to:  
Director, Environmental Assessment and Approvals Branch  
Attention: Project Officer  
Ministry of the Environment  
2 St. Clair Avenue West, Floor 12A  
Toronto ON M4V 1L5
4. This form should not exceed two pages.

**Applicant Information**

Applicant Name (*region, county, municipality or private sector company*)

Applicant Type

- Crown Corporation     Federal Government     Municipal Government     Provincial Government     Private Sector  
 Other (*describe*)

Civic Address – Street Information (*includes street number, name, type and direction*)

Unit Identifier (*identifies type of unit, such as suite and number*)

Delivery Designator

- Rural Route     Suburban Service     Mobile Route     General Delivery

Delivery Identifier (*a number identifying a Rural Route, Suburban Service or Mobile Route delivery mode*)

Municipality

Postal Station

Province/State

Country

Postal Code

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**Summary** - should identify type (*transportation, electricity, waste management*), purpose of study (*problem or opportunity*), undertaking, consultation, other approvals required, contact person, and where the documents may be reviewed. (*Further use of subheadings may be appropriate for the specific class environmental assessment.*)

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**French Translation of Summary Form** (translation of the class environmental assessment is not required)

French translation requested to be done by Ministry of the Environment       French translation to be done by applicant

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**Statement of Applicant**

I, the undersigned hereby declare that, to the best of my knowledge, the information contained herein and the information submitted in support of this form is complete and accurate in every way.

Name (*please print*)

Title

Signature

Date (*yyyy/mm/dd*)

# Appendix D Class Environmental Assessment Process

Prescribed Deadlines  
(Ontario Regulation 616/98)

