



Friday, July 24, 2009

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Ministry of the Environment  
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Program Planning and Implementation Branch  
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Dear Ms. Wallace:

**Re: Comments on proposed Environment Regulations to Implement the Green Energy and Green Economy Act, 2009– EBR Registry Number 010- 6516**

### **Introduction**

The Ontario Bar Association (“OBA”) welcomes the opportunity to comment on your Ministry’s proposal to adopt regulations to implement the renewable energy approval component of the *Green Energy and Green Economy Act, 2009*. The OBA supports the Ministry’s vision to accelerate Ontario’s transition to a green energy economy.

### **Background**

The OBA consists of 17,000 lawyers from a broad range of sectors, including those working in private practice, government, non-governmental organizations and in-house counsel. Our members have, over the years, analyzed and provided comments to the Ontario government on numerous legislation and policy initiatives. More than 1,000 of these lawyers belong to our very active Environmental and Municipal Law Sections. Our members have considerable expertise and experience in how environmental laws and policy are interpreted and applied, and represent many points of view. The views expressed herein are the views of the OBA and its Environmental section as a whole, and are not necessarily the views of each individual member or other organizations with which they may be involved.

## Comments

Our principal comment is that several elements of the proposed regulations require increased clarity. For the proposed renewable energy approval regulation, our principal substantive concern is about the large mandatory setbacks for wind turbines, which will make it very difficult to site them in areas close to load. Instead, this setback, like others in the regulation, should be eligible for reduction in exchange for more detailed studies.

In particular, we have the following comments on the proposed renewable energy approval regulation:

Part I:

The proposed definition of “biomass” excludes “non-organic waste”. This definition requires clarification.

Part II:

It is unfair to simply return to the applicant all applications for approval that are under consideration in the Ministry when the Act is proclaimed, and require the applicant to start again from scratch. At a minimum, such applicants should have their application fees returned, and their resubmitted applications should receive appropriate priority.

The proposed nine-month deadline for completion of ERT appeals seems too long, given the need for rapid determination of renewable energy approvals.

Part III:

The proposed requirement to give personal notice of an application to everyone in a 1.5 km radius is impractical in urban areas.

The regulation should clearly provide what a proponent should do if the municipality declines to provide the required information.

Proponents urgently need clarity on what “accommodation” they will be required to provide for First Nations.

We support the general concept of allowing reduced setbacks with greater degrees of study and believe it should also be applied to wind turbines.

At page 10, it is unclear what sort of “advice” the proponent is intended to provide to the Minister.

“Sensitive” water bodies are not clearly defined.

Part IV:

The very large proposed setbacks for wind turbines from receptors, roads and railways and property lines will block a high percentage of planned wind projects, and especially those close to load. This will increase demand for long-distance transmission lines, which have significant environmental footprints.

Wind turbine setbacks should be subject to reduction through study, like the other proposed setbacks in the regulation.

It is unclear how cumulative effects will be calculated, and what counts as “planned”. This provision could have an adverse effect upon good planning by encouraging a “gold rush”, first-come first-served approach.

#### **Proposed amendment to environmental assessment regulation 116/01:**

The OBA recognizes that a clean energy future requires construction of significant new electrical transmission lines, something that has not occurred in Ontario since the adoption of the *Environmental Assessment Act*. (This need will be exacerbated if excessive setback requirements force renewable energy generation far from load centers). Still, this urgent need must be balanced with appropriate means to evaluate and mitigate the environmental impacts of new transmission lines. The extent and effect of the proposed exemption is unclear.

#### **Ministry of Natural Resources draft approval requirements:**

Proponents and neighbours require clarity on the “scope” of a renewable energy project. If all related water crossings, roads etc. are to be exempt from environmental assessment, it is essential to make sure they are properly examined (including consideration of alternatives, where appropriate) as part of the renewable energy approval. It is not clear how the province expects this to occur.

We support the priority given to the *Endangered Species Act*.

Page 25 – It is unclear why a forest resource processing facility approval is required if the forest is not the source of fibre. The reference to applying for the forest resource processing facility approval “at the beginning” is confusing, especially in reference to the timing of consultation for all required approvals with First Nations and other stakeholders.

Page 38 – The test for renewable energy development in provincial parks and other protected places is not sufficiently stringent. Parks should not be sacrificed to energy generation except in cases of extreme need and where there are no other practical alternatives.

Page 64 (and page 11) –The proposal should provide greater clarity on the relative timing for submission of federal and provincial applications for approval.

## **Conclusions**

We congratulate your government for moving energetically to implement the Green Energy and Green Economy Act, and hope that our comments will help avoid unnecessary legal disputes in the years to come.

Yours truly,

A handwritten signature in black ink, appearing to read "Jamie Trimble", with a large, stylized flourish above the name.

Jamie Trimble  
President  
Ontario Bar Association

