

# ENVIRONMENTAL ASSESSMENTS Worth the Added Time and Costs?

Delays of up to 19 months. An extra \$232 million in costs every year. Are environmental assessments for municipal infrastructure worth the added time and cost? Not according to a recent study by the Residential and Civil Construction Alliance of Ontario.

"The lengthy timeframes and higher costs to comply with the Municipal Class EA process are not providing additional environmental benefits," says Andy Manahan, RCCAO executive director.

"We need to eliminate the duplication and streamline the EA process for basic infrastructure work."

In 2004, a municipality in southwestern Ontario closed a small dilapidated single-lane bridge that had been in service since World War One because it was no longer safe. It took seventeen months to complete the environmental assessment and more than a year after that to complete the construction of the new bridge.

Meanwhile, in northern Ontario, another municipality spent 29 months completing an environmental assessment study for a controversial road extension. Unhappy with the proposal, special interest groups appealed to the Ministry of the Environment. It took MOE 24 months to deal with the bump-up requests, at the end of which it imposed conditions requiring an addendum to the original EA study. Not surprisingly, the posting of the addendum triggered another bump-up request.

The delays and added costs associated with the environmental review process come as no surprise to Andy Manahan, the executive director of the Residential and Civil Construction Alliance of Ontario.

Compared to other provinces in Canada where basic municipal infrastructure projects such as road expansions, bridge replacements and alterations to sewer and water systems are completed with minimal or no environmental assessments, Ontario's EA process, he says, "is cumbersome, expensive and time consuming."

According to a recently released independent study of the environmental assessment process for Ontario municipal infrastructure projects commissioned by the RCCAO, the EA process can delay projects by as much as 20 months and increase infrastructure costs by more than \$200 million annually.

"We need to eliminate the duplication and streamline the EA process for basic infrastructure work," he says. "Ontario's infrastructure is aging and we should be doing everything we can to ensure that the available tax dollars are being spent wisely. The cost of the Municipal Class EA process far exceeds its benefits."

## InSight

### Municipal Class Environmental Assessments

**The Study:** Environmental Assessments Worth the Added Time and Costs? (March 2010)

**The Findings:**

- 140 municipal Schedule B and C projects initiated annually
- Project delays of about 19 months
- \$230 million in additional costs annually

**The Recommendations:**

- Redraft the criteria for Schedule A+ and Schedule B projects
- Fast track certain municipal class EAs through a new regulation
- Establish automatic indexing of threshold capital costs
- Reduce abuses of Part II order requests
- Establish protocols with federal agencies
- Extend the 'shelf life' of pre-2007 EA study reports
- Recognize prior Planning Act consultations
- Establish transparency for completed EA reports
- Reduce the timeframe for EA bump-up requests

**The Organization:**

The Residential and Civil Construction Alliance of Ontario – a construction industry alliance of management and labour

**More Information:**

The report is available at [www.rccao.com](http://www.rccao.com)

### Making the Case

In March 2010, the RCCAO released an independent study by Frank Zechner, a lawyer practising environmental and construction law, called "Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs?"

Zechner reviewed a total of 99 Municipal Class EA Schedule B and C projects<sup>1</sup>, covering new and improved roads, intersections, bridges, sewer and water works in municipalities in all regions of the province. Transit projects were expressly excluded from the study because the Province introduced new regulatory procedures in 2008 to streamline approvals for these types of projects.

<sup>1</sup>For an explanation of the Schedule classifications, see the accompanying Backgrounder

### *The Projects*

The study reviewed 99 municipal Schedule B and C infrastructure projects in the province with an aggregate value of more than \$1.1 billion. Information on individual projects was kept confidential.

	<b>Golden Horseshoe</b>	<b>Central &amp; Eastern</b>	<b>Northern</b>	<b>Southern &amp; Western</b>	<b>Total</b>
Road widening and extensions	38	10	4	7	59
Bridge reconstruction and replacement	5	1	0	5	11
Sewer, water pipes and facilities	12	1	0	4	17
Other (flood control / rail underpasses)	8	1	0	3	12
<b>Totals</b>	<b>63</b>	<b>13</b>	<b>4</b>	<b>19</b>	<b>99</b>

### *Length of Time for Environmental Assessment*

The average time between notice of commencement and notice of completion for the 99 projects was just over 19 months.

As a result of the EA, eleven of the 99 projects required design changes.

### *Duration of Environmental Assessments by Region (Months)*

	<b>Golden Horseshoe</b>	<b>Central &amp; Eastern</b>	<b>Northern</b>	<b>Southern &amp; Western</b>
Minimum	5	7	10	6
Average	21	16	22	17
Maximum	87	37	29	69

### *Duration of Environmental Assessments by Type of Project (Months)*

	<b>Minimum</b>	<b>Average</b>	<b>Maximum</b>
Schedule "B" Roads	6	20	42
Schedule "C" Roads	6	22	87
Schedule "B" Bridges	6	14	29
Schedule "C" Bridges	13	17	22
Schedule "B" Sewer and Water	8	21	82
Schedule "C" Sewer and Water	10	18	34
Schedule "B" Other	5	11	24
Schedule "C" Other	13	15	18

### *Additional Time for Bump-up Requests*

Of the 99 projects reviewed in this study, 17 were referred to the Ministry of the Environment, a process known as a bump-up request.

While all the bump-up requests were either withdrawn or denied by the Minister, resolving the requests added from 4 to 24 months to the overall process.

### *The Cost of Environmental Assessments*

The RCCAO study looked at two types of costs associated with

the environmental assessment process: the costs of the study and the inflationary costs of construction during the time it took to complete the study.

The cost to complete an EA study (based on a third of the projects reviewed) ranged between \$35,000 and \$165,000 – typically about 1 percent of the project cost.

The impact of inflationary costs is considerably higher. The Ministry of Transportation of Ontario's Tender Price

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Index, assumed to be a fair and impartial indicator of the costs of basic municipal infrastructure construction, shows just how much construction costs have increased compared to the consumer price index. The Tender Price Index increased 5 percent in 2007, 10 percent in 2008, and 12 percent in 2009 although it did decline 5.6 percent from the fourth quarter of 2009 to the second quarter of 2010. Based on these types of inflationary increases and the time needed to complete an environmental assessment, delays in EA approval increased

project costs by an additional 13.5 percent.

In total, the environmental assessment process increases the cost of municipal infrastructure projects by 14.5 percent. That does not include any additional costs such as municipal staff time and resources, publication of notices, or legal fees related to the EA.

Since about 140 Schedule B and C municipal projects are initiated every year, extrapolating the costs based on the 99 projects reviewed in the report suggests that the incremental cost of Ontario's Municipal Class EA system is about \$230 million annually.

### **How to Reduce Environmental Assessment Costs**

While changes over the past few years have improved the environmental assessment process, the RCCAO study offers a number of recommendations to make it more efficient.

*Redraft the Criteria for Schedule A+ and Schedule B Projects:* Only one of 36 Schedule B projects was the subject of a Part II order request, compared to 16 of the 63 Schedule C projects, suggesting that Schedule B projects have far less potential impact.

If the Schedule B projects had been designated as Schedule A+ projects (pre-approved projects that do not need an EA), participating municipalities would have saved about \$26.5 million in environmental assessment process costs.

*Fast Track Certain Municipal Class EAs:* In most road widening, intersection improvement and bridge related EAs, the alternatives (do nothing; make improvements to nearby roads; improve local transit) have already been considered in the course of normal municipal planning and budgetary debates and therefore do not require a "re-vetting" through the EA process.

*Establish Automatic Indexing of Threshold Capital Costs:* Construction costs have risen rapidly in the past few years. A municipal infrastructure project that cost, for example, \$2 million at the end of 2006 would now cost about \$2.4 million. Since the type of environmental assessment is defined in part by the cost of the project, inflation can bump up a project from one

class to another, triggering a more rigorous and costly review even though the environmental impact of the project has not changed.

The threshold values for environmental assessments should be automatically indexed to an objective construction index such as the MTO tender price index or the Ontario Construction Exchange's non-residential construction price index.

*Reduce Abuses of the Part II Order Requests:* Based on the study, resolving Part II orders (bump-up requests) takes between 4 and 24 months, significantly increasing costs, in some cases beyond the municipality's capital budget limits.

Frivolous and abusive requests can be reduced by:

- Charging a nominal fee to any person requesting a Part II Order.
- Giving the MOE the power to dismiss a "Part II Order Request" when it is being used to delay the implementation of a project that has already had extensive public process.
- Adding a legislative prohibition of frivolous and vexatious requests designed to frustrate or slow a project.

*Establish Protocols with Federal Agencies:* Environmental assessments for bridge reconstruction and bridge replacement projects are often prolonged because of conflicting positions between the Ontario Ministry of the Environment and federal government agencies. Ontario agencies should defer to federal authorities on matters such as clearances for navigable waters and protection of local fish habitats.

*Extend the 'Shelf Life' of pre-2007 EA Study Reports:* In November 2007, the MOE extended the shelf life of EA reports for Schedule B and C projects completed after 2007 from 5 years to 10 years. In other words, the findings are allowed to stand without additional study. The same provision should apply to EA studies completed since 2000.

*Recognize Prior Planning Act Consultations:* Relatively small projects, minor road extensions for example, that have been approved through the Planning Act, should be classified as Schedule A+ projects.

*Establish Transparency for Completed EA Reports:* Provide public access to all notices of completion.

*Reduce the Time Frame for EA Bump-up Requests:* In December 2009 the Ministry resolved to make decisions on bump-up requests within 66 days. This does not, however, take into account the time municipalities need to prepare a response nor does it deal with the problem of an amended study triggering additional bump-up requests.

## Consultation and Follow-Up

On April 7 2010, the Residential and Civil Construction Alliance of Ontario met with senior Queen's Park officials from the Premier's office, the Ministry of Environment and the Ministry of Energy and Infrastructure and the results were encouraging, says Andy Manahan.

"The officials we met with had clearly given the issue some serious consideration and thought as to what can be done," he says.

When the environmental process was brought forward in the 1970s land use planning was fairly rudimentary but now consideration of environmental issues is embedded in key pieces of legislation such as Ontario's Growth Plan and the Greenbelt Plan.

"Municipal infrastructure projects are scrutinized through the Planning Act processes, the Places to Grow and Greenbelt legislation and public debate over municipal capital budgets. There is a lot of duplication. The province is looking at an integrated planning and environmental process and that would go a long way to allay concerns that any rationalization of the EA process would diminish the very necessary oversight and due diligence that is needed."

Many of the study's recommendations can be implemented relatively easily and without any detriment to the environmental process, Manahan maintains, and he adds, the precedent for simplifying and speeding up the process has been set. A couple of years ago, MOE introduced a fast track process for municipal transit projects that shortened the environmental assessment process to six months for selected projects and exempted other specified transit projects from the requirements of the Environmental Assessment Act.

"We have to keep on making our case and we have our work cut out persuading the powers that be," Manahan concludes. "The government is going to tread carefully so as not to give the impression that simplifying the process will negate environmental assessment. That is not the case. We are not trying to circumvent the need for a sound environmental assessment and we have to make that point as persuasively as possible."

"It is quite clear from an industry perspective that the Class EA process is a regulatory hurdle but improving the process needs municipal support. The Municipal Engineers Association will be surveying its members to see what changes they would like to see in the EA process and MOE would like to see a quick delivery of the results."

"We are trying to work with government to develop a more rational and streamlined process," he concludes. "Governments across the board are in fiscal straits and have to stretch their budgets as much as possible. We need to spend more money on infrastructure and less on processes."

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## Backgrounder Municipal Class Environmental Assessment

### *The Types of Projects*

Municipal water supply, sanitary sewerage, and transportation projects are categorized under various “Schedules”:

Schedule ‘A’ Projects are limited in scale with minimal environmental effects. These projects include the majority of municipal maintenance and operational activities, such as repairing watermain breaks, cleaning sanitary sewers, fixing sidewalks and curbs, repaving roads, or adding turning lanes or traffic control signals to an intersection.

Schedule ‘A’ projects are pre-approved and can proceed without the full Municipal Class EA process.

Schedule A+ Projects are pre-approved but the public is advised prior to implementation. The public can comment to municipal council but there is no appeal to the Ministry of Environment.

Schedule ‘B’ Projects may have adverse environmental impacts and must go through a screening process. Parties that may be affected are consulted and if there are no concerns, the project can proceed.

Schedule ‘B’ projects generally involve minor modifications to existing facilities, such as increasing the depth of a municipal well, retiring a water pollution control plant, or constructing a minor expansion to a road. The capital cost is often used to distinguish between Schedule B and Schedule C projects.

Schedule ‘C’ Projects have the potential for significant environmental effects, and must follow the full planning and design process under the Municipal Class EA. A municipality must provide an Environmental Study Report for public and regulatory review.

Schedule ‘C’ projects generally involve the construction of new facilities or major modifications to existing facilities, such as a new water treatment plant, expanding an existing water pollution control plant, or construction of new shorelines.

### *The Process*

The Municipal Class EA has five phases, depending on the project Schedule.

- Phase 1 - Develop a clear statement of the issues.
- Phase 2 - Identify alternative solutions to address the issues and the preferred solution based on an assessment of the environmental impact and stakeholder input.
- Phase 3 - Identify alternative methods of implementing the preferred solution and the preferred method.
- Phase 4 - Compile an Environmental Study Report for review by interested parties that covers environmental considerations, the consultation process and recommendations.
- Phase 5 - Monitor the project (and the operation of the completed facility, if needed) to ensure that it meets environmental provisions and commitments.

### *Consultation*

The Municipal Class EA process identifies a minimum number of mandatory points where the general public, interest groups, and regulatory review agencies must be consulted.

It is up to the municipality to tailor a consultation program that reflects the needs of the project and the stakeholders.

### *Public Appeal*

If at the end of the planning process they believe that their concerns have not been addressed, the public, interest groups and regulatory agencies can ask MOE to review the project.

The Minister can deny the request, impose certain conditions, refer the matter to arbitration, or order a planning and design process known as an “Individual Environmental Assessment”. The minister’s decision is final. **M**

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