

## Ontario municipal EA needs overhaul: report

by Lindsey Cole Mar 4, 2015

A report examining Ontario's municipal class environmental assessment (MCEA) system states the process is in need of an overhaul and should follow examples set by other jurisdictions in order to speed things up and save taxpayers' money.



The report, *Comparing Ontario's Municipal Class EA System to Other Jurisdictions*, was commissioned by the **Residential and Civil Construction Alliance of Ontario** (RCCAO) and is a follow up to reports conducted in 2010 and 2014.

"Ontario's Municipal Class EA system is out of step with other jurisdictions," states report author Frank Zechner, who is a lawyer practicing environmental and construction law.

"We should be willing to apply the best of what other jurisdictions have to offer."

The MCEA system is in place to raise awareness and encourage public input for municipal infrastructure projects. As part of the process, residents or stakeholders have the right to make requests for Part II Orders, commonly known as "Bump-Up requests," for a full environmental hearing. This can trigger delays and additional costs, states the report, as "the project is effectively frozen and cannot proceed with construction until the Minister (of the environment) responds to each and every Part II Order request."

"Sometimes you'll just get members of the public who are anti-development and they'll use the OMB (Ontario Municipal Board) to gum up the works, and then they'll use the bump up request," states RCCAO Executive Director Andy Manahan, adding Ontario municipalities are unlike other areas in Canada facing hurdles in order to proceed with 'basic' projects like bridge replacements, sewer expansions, and local road widening or extensions.

According to Zechner's findings, the average report/study costs of 99 separate Schedule B and C MCEA projects reviewed in 2010 was \$113,000. In 2014, the average costs of 28 Schedule B and C projects reviewed was \$386,500.

"Study costs have increased by 340 per cent over four years," he states, adding this excludes municipal staff time and costs as well as any costs associated with responding to Part II Order requests. He also notes that in 2014 the average duration of 28 separate Schedule B and C MCEA projects reviewed was 26.7 months.

"Because the MCEA process requires on average 27 months to complete, addressing the infrastructure backlog becomes that much more difficult once you factor in the time to make detailed designs, put the project to tender and actually undertake construction," he states.

Zechner suggests several areas where the MCEA system can be streamlined. For example, the United Kingdom addresses public involvement through a single statute that covers what Ontario does in its Planning Act and Environmental Assessment Act.

Manahan states this could help not only the process but the public as well.

"There's a good argument that could be made that we don't need two separate consultation processes, we don't need two separate appeal processes," he explains. "If we combine what's already done under the Planning Act and say that this is also going to be sufficient or better than having two separate processes, I think it's good for the public because you don't have to have those public meetings that are duplicative."

Another recommendation was to set a higher threshold for bump-up requests.

In some situations, only a single Part II Order request has to be made, and sometimes that can come from a person who "does not appear to have any discernable connection to the project."

In Minnesota more than one citizen is required to trigger the bump-up request; for example, at least 500 separate requests or a petition representing a minimum percentage of residents located within a certain distance of the proposed project.

Once a bump-up request is made, Manahan explains, it then goes to the minister of the environment to be approved or rejected. Both Zechner and the RCCAO state this responsibility can be delegated to ministry staff to speed up the process.

"If the director's providing the recommendation to the minister anyway, to save time, if there is a bump up request, why don't we just have the director of the EA approvals branch respond directly to the member of the public. It takes out the ministerial step," Manahan states.

"There's lots of other examples where staff within government have quite a wide range of power to do things."

Overall, Manahan says the RCCAO is hoping the province listens to the report's suggestions, as the alliance has been pushing for change for many years writing recently to both Minister of the Environment Glen Murray and Premier Kathleen Wynne.

"There is a certain degree of frustration that it's taking so long to do minor things, in our opinion, to improve the process," he states.