

## **NEW Regulation(s) for the Municipal Class EA Process**

**October 21, 2020**

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### **1. INTRODUCTION**

The Residential and Civil Construction Alliance of Ontario (RCCAO) congratulates the Ontario government for taking significant steps, through the passage of Schedule 6 of the *COVID-19 Economic Recovery Act, 2020* (the Act), to make major changes to the Environmental Assessment Act and improve the environmental assessment process as it relates to municipal infrastructure such as roads, bridges, drinking water supply systems and non-rail public transit.

Provincial officials, including Municipal Affairs Minister Steve Clark, have said that the Act would help industry avoid unnecessary delays as the Province recovers from COVID-19. The Province recognizes that environmental assessments for projects such as replacing a box culvert in a rural community should not bear the same level of scrutiny as wastewater treatment plants and landfills.<sup>1</sup> The Province also indicated that specific and meaningful changes are to be dealt with through new regulations to provide a streamlined environmental assessment process for all project proponents, including but not limited to, municipalities. RCCAO has been advocating for more than a decade for improvements to the Municipal Class Environmental Assessment (MCEA) process and is providing comments and recommendations regarding the scope and content of the proposed new regulations.

The purpose of this submission is to assist the MECP in determining the preferred content of any new regulations dealing with the MCEA process, given the changes that were already made through recent legislation, including Ontario's omnibus legislation.

### **2. ABOUT RCCAO**

RCCAO is a not-for-profit industry association that represents both labour and management in the residential and civil sectors of Ontario's construction industry. RCCAO and its members strive to provide real solutions to complex issues and has commissioned independent research on topics such as the MCEA process.

In recent years the MCEA process has often resulted in delays of more than 26 months for municipal infrastructure projects, including new bicycle lanes, expansion of sanitary sewer systems, widening of municipal roads, replacement of bridges or the establishment of new water treatment plants. Studies and reports associated with such environmental assessments can add up to 10% or more to the capital cost of the proposed project. RCCAO's independent reports and regulatory submissions on the MCEA process can be viewed on our [website](#).

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<sup>1</sup> Information sourced from National Observer article published July 12, 2020

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**3. MCEA PROCESS IMPROVEMENTS THAT NEED TO BE MADE AFTER PASSAGE OF BILL 197****A. PART II 'BUMP UP' REQUESTS AND ORDERS****A.1 Eligibility to make request now restricted to Indigenous Persons**

RCCAO and other stakeholders, including but not limited to the Municipal Engineers Association (MEA) and Ontario Good Roads Association (OGRA), had advocated for streamlining not only the process for submitting Part II Order Requests (PIORs) but more importantly the timeliness and manner in which the Ministry responds to PIORs. RCCAO submits that local residents who have participated in the consultation process for major projects, such as a new arterial road, should still have an opportunity to request additional conditions for the project to proceed.

**A.2 Post PIOR's and outcomes on Ministry website and/or ERO registry**

There are many MCEA projects where a PIOR has been issued but construction has not yet commenced. RCCAO submits that the Ministry should post relevant information on the Ministry website or the ERO registry regarding the nature of all current and recent PIORs and information on whether the MCEA project was subject to additional conditions. Those additional conditions may relate to the manner in which the relevant MCEA project is constructed or operated, and therefore the PIORs and related information should still be readily accessible to the public through either a portal on the MECP website or through the ERO registry.

**B. DUPLICATION/CONFLICT REGARDING PLANNING ACT APPROVALS****B.1 MCEA Projects which are already included in Official Plans**

Many projects such as additional lanes for an existing arterial road and upgrading or replacement of bridges have already been the subject of public consultations through the Planning Act, but are still subject to Schedule B or Schedule C MCEA requirements for public consultations and reports. Any amendment of Schedule B or Schedule C requirements or any new regulation government MCEA-type projects should minimize duplication of reports and consultations already completed pursuant to the Planning Act.

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**B.2 Confirm that developers can utilize their Planning Act approvals to address their EA Act requirements regarding private on-site water systems.**

In recent months, the Ministry has established a new and controversial interpretation of Ontario Regulation 345/93 with respect to private projects, such as group retirement homes, that require a private well to provide potable water to residents. Stakeholder concerns regarding the new interpretation were sent to the Minister in recent letters by the MEA (July 28, 2020) and RCCAO ([July 31, 2020](#)). Both letters highlighted a specific seniors residential project in the County of Haliburton, which is currently under construction and was expected to be open for residents in early spring 2021. The time required to undertake and complete a Schedule C MCEA project consultation and report could delay occupation of the residences by more than a year.

The Ministry's response to the stakeholder letters was to defer the issue until a proposed 'Projects List' Regulation is expected to be passed. The subject retirement facility was already approved under the Planning Act, and the owners are still required to obtain MECP approval under the Ontario Water Resources Act and the Safe Drinking Water Act. The Ministry should immediately restore MEA's historical interpretation of Ontario Regulation 345/93 so that private proponents can rely on Planning Act approval and not have such water facilities subjected to delays and duplicative requirements under the EA Act. Any new regulations by the Ministry related to municipal infrastructure projects should continue to allow private developers to rely on Planning Act approvals, and not impose additional assessment burdens under the EA Act.

**C. EXEMPTIONS FROM EA REQUIREMENTS LIST OF MUNICIPAL PROJECTS REQUIRING A FULL EA****C.1 List of Municipal Projects Requiring a Full EA**

RCCAO will be making a separate submission on the proposed list of municipal projects requiring a full EA through its response to the ERO instrument #019-2377 which was posted on September 10, 2020.

**D. PUBLIC NOTICES AND ACCESS TO EA REPORTS****D.1 Public Access to EA Documentation**

For more than the past decade, the completion of a Schedule B or Schedule C project often precedes the start of actual construction of the project by several years, and in many cases, construction requires several years to complete. To enhance transparency, the public should have

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access to the relevant MCEA reports and consultation documents throughout the process, including the period after construction has been completed, either through a portal on the MECP website or through the ERO.

**E. ENHANCING CONSULTATION WITH INDIGENOUS COMMUNITIES****E.1 Participation in the EA Processes by Indigenous Stakeholders**

Many municipalities, including smaller municipalities in rural areas, have a responsibility to consult with Indigenous communities in the MCEA process. In certain cases, Indigenous communities have responded to these municipalities with requests for funding from the proponent municipality to cover the cost of the Indigenous community retaining consultants to review the project proposal and provide feedback. Smaller or rural municipalities simply do not have the funds or other resources to assist the Indigenous communities which, in turn, triggers a postponement or perhaps a cancellation of the municipal project. The Province should establish a fund and policy to assist Indigenous communities participate in the EA process for municipal projects that are likely to impact these local communities.

**E.2 Provincially Administered Screening and Information**

Expanding on the comments noted in item E.1 above, some municipal infrastructure projects in rural areas are of interest to multiple Indigenous communities. In such circumstances, the Province should work with Indigenous communities, and to the extent necessary, federal authorities, so that information is shared to allow for a possible joint submission through one consultant on behalf of multiple Indigenous communities.

**E.3 MECP Indigenous Contacts List**

To the extent that the Ministry has identified the key contacts for various Indigenous communities across the Province, such list (or regional lists) should be shared with all municipalities.

**F. FASTER AND SIMPLER PROCESSES FOR EMERGENCY PROJECTS**

More frequent and severe weather events have caused intense flooding which has adversely impacted municipal infrastructure. Such events include the ice storm of December 2013, widespread flooding in Muskoka in 2013 and 2019, as well as flooding in southern and eastern Ontario during the summers of 2018 and 2020. In the event that future storms result in damage to infrastructure assets such as washing out bridges or arterial roadways or destroying portions of municipal sewer systems, a change in procedures is necessary. Currently, a structurally-damaged

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bridge that must be rebuilt in a new location would be subject to the MCEA process. Therefore, the Province should develop a policy and mechanism that would allow emergency repairs or replacements to alter the original design or location without triggering an EA process. Such policies and mechanisms should be sufficiently broad as to cover the current and any future emergencies to the extent that the normal structure and use of municipal infrastructure is significantly impaired.

**G. PROCESS FOR MUNICIPAL WATER AND WASTEWATER PROJECTS REQUIRING OTHER MECP APPROVALS**

The construction and operation of municipal water and wastewater infrastructure, including the drilling of water wells; design and capacity of water treatment plants; design and location of water storage facilities, sewage collection systems; testing of drinking water quality and the qualifications and certifications of operators of drinking water and wastewater systems are subject to detailed oversight by the MECP. Given the extent of regulatory oversight by the Ministry related to design, construction and operation of water and wastewater infrastructure, the MCEA process for such infrastructure should be streamlined to minimize duplication with designs, procedures, and other infrastructure attributes that are in the exclusive domain of the MECP. For instance, the site selection for a new sewage pumping station for an existing wastewater system is subject to detailed engineering and ministry requirements and must be located near relevant components of the wastewater system.

**H. THE MCEA MANUAL**

The current version of the MCEA Manual dates back to the year 2000, and during that period has provided municipalities with helpful guidance to conduct effective public consultation processes on a wide range of municipal infrastructure projects. During the past 20 years there has been better understanding of the MCEA process by both municipal proponents and local residents. While the Manual may have certain deficiencies, it should continue to be improved upon.

In September 2019, the MEA proposed major amendments to the MCEA Manual and since that time the MEA has been working closely with the MECP to optimize the MCEA process to reduce completion times and costs, while retaining an established process for public consultation and dialogue. RCCAO submits that the MCEA Manual, subject to the pending amendments, should continue to be administered by the MEA as the principal instrument for public consultation of municipal infrastructure under the EA Act.

While a new regulation under the EA Act should address the characterizations of municipal infrastructure projects and relevant processes and procedures, the MCEA Manual itself should not be transformed into a regulation. The review and

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amendment process for the Manual should continue to follow existing procedures and rely upon the MEA to initiate improvements on a regular basis.

**5. RECOMMENDATIONS FOR THE NEW MCEA REGULATION(S)****A. THE MCEA MANUAL**

Given the history and broad support by municipal proponents for the MCEA Manual, it should not be abandoned, but instead continue to serve as the primary guidance document for public consultation for municipal infrastructure projects under the EA Act. Any new EA regulation for municipal infrastructure projects should require that the MCEA Manual be followed. Any amendment of the MCEA Manual should follow the existing procedures and rely upon the MEA to initiate improvements to the Manual from time to time.

**B. PROJECTS SUBJECT TO NEW EA PROCESS**

Given the evolution of the MCEA process and the perceived level of acceptance with the process by both the public and municipalities, RCCAO submits that as a transitional measure, any Schedule B or Schedule C MCEA projects which were commenced but not yet completed under the current MCEA process when a new regulation is passed, should have the option to continue to follow the current MCEA procedures or follow the new regulation.

**C. ADEQUATE ADVANCE NOTICE BEFORE NEW MCEA REGULATION(S) COME INTO EFFECT**

At any point, there are hundreds of MCEA Schedule B and Schedule C projects in various stages of the regulatory process. In most cases, the proponents have already expended considerable effort to inform the public of the process to be followed and the opportunities for public input. Changing the process midstream may cause confusion and unnecessary delays to adjust to learn and implement new procedures and other consultation requirements. Making changes in the consultation process might also add significant costs to the project. Consequently, RCCAO recommends that any transition away from the current environmental assessment practices and procedures for municipal projects should be preceded by an extended notice of not less than twelve (12) months.

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### **6. CONCLUSIONS RE: THE NEW MCEA REGULATION(S)**

RCCAO, together with other stakeholders such as MEA and OGRA, share the Province's goal of reducing the time and costs required to complete environmental assessments for municipal infrastructure, while preserving the right of residents to be consulted and informed of any material environmental risks associated with such projects.

RCCAO submits that the combination of recent legislative changes, including the passage of *COVID-19 Economic Recovery Act, 2020*, when combined with the above-noted recommendations, including approval of MEA's most recent proposed amendments to the MCEA Manual, will achieve the shared goals of the MECP, RCCAO and various stakeholders.