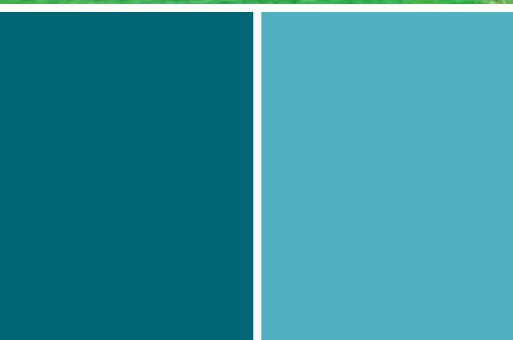




RESIDENTIAL AND
CIVIL
CONSTRUCTION
ALLIANCE OF
ONTARIO
Constructing Ontario's Future

An Independent Study Commissioned by



Comparing Ontario's Municipal Class EA System to Other Jurisdictions:

Public Intervention in Local Infrastructure Projects



RCCAO

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The Residential and Civil Construction Alliance of Ontario (RCCAO) is composed of management and labour groups that represents a wide spectrum of the Ontario construction industry. The RCCAO's goal is to work in cooperation with governments and related stakeholders to offer realistic solutions to a variety of challenges facing the construction industry and which also have wider societal benefits.

RCCAO has independently commissioned more than 30 reports on planning, procuring, financing, and building infrastructure, and we have submitted position papers to politicians and staff to help influence government decisions.

For more information on the RCCAO or to view copies of other studies and submissions, please visit the RCCAO website at **rccao.com**

RCCAO members include:

- Carpenters' Union
- Greater Toronto Sewer and Watermain Contractors Association
- Heavy Construction Association of Toronto
- International Union of Operating Engineers, Local 793
- International Union of Painters and Allied Trades, District Council 46
- Joint Residential Construction Council
- LIUNA Local 183
- Ontario Formwork Association
- Residential Carpentry Contractors Association
- Toronto and Area Road Builders Association

Comparing Ontario's Municipal Class EA System to Other Jurisdictions:

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An independent research study prepared for the Residential
and Civil Construction Alliance of Ontario (RCCAO)

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EXECUTIVE SUMMARY

When Ontario municipalities build basic infrastructure, additional costs and delays are experienced which other municipalities across Canada do not because of Ontario's municipal class environmental assessment system ("MCEA System"). A comparison to other jurisdictions suggests that there are other options to improve the MCEA System.

RCCAO and other stakeholders have expressed serious concerns with growing delays associated with completion of reports and the higher costs to go through the Class EA process. In addition to completing environmental assessment ("EA Reports"), many municipal projects face further delays because of the Part II Order system to request a full environmental hearing. These are known as "Bump-Up requests"¹ and, currently, a response from the Minister of the Environment and Climate Change is required as to whether the request will be granted or denied.

This report will examine the Bump-Up request rights of Ontario residents to the rights in other jurisdictions to escalate the environmental review process for certain municipal projects.

In 2014, RCCAO commissioned a follow-up study to one done four years earlier. It was found that the MCEA System is getting worse because the time to complete EA Reports is taking longer. In 2010, the time to complete a Class EA process was 19 months on average whereas the 2014 follow-up indicated that the average delay was more than 26 months.² The financial costs of such delays can represent more than 10% of total project budgets. Additional delays are imposed on about one-quarter of all Ontario municipal class infrastructure projects through a Part II Order request³ after the EA Report has been published.

According to Ministry of the Environment and Climate Change (MOECC or Ministry) data reviewed by the Municipal Engineers Association, responding to Bump-Up requests adds, on average, more than 10 months to project schedules.⁴ Shortening the time to complete EA Reports can reduce total infrastructure costs, not merely administration costs, by anywhere

from 2% to more than 10%. Reducing the scope and complexity of EA Reports can provide further municipal budget savings.⁵

Although RCCAO's 2010 commissioned research was written in the context of providing economic stimulus through timely municipal infrastructure project approvals, a major theme from the report remains relevant today: "... there is an inefficient use of limited financial resources for basic municipal infrastructure." Reform of the system will "enable governments to stretch scarce infrastructure funding dollars even further."

The MCEA System was intended to increase public awareness regarding the potential environmental impacts of local infrastructure projects to local residents and other stakeholders. In most cases, the MCEA public consultation process provides an opportunity to raise concerns which can result in mitigative measures. Even though the Ministry is aware that some stakeholders will use Bump-Up requests as a tool to delay and/or oppose specific municipal infrastructure project proposals, the government must still review the merit of each request.

Many municipal infrastructure projects have requirements for public consultation under both the *Planning Act* and under the MCEA system. This of course results in duplication in consultation processes and appeal processes. As the planning system in Ontario now has evolved to incorporate environmental considerations for municipal infrastructure projects, there is an opportunity to eliminate such duplication. One concept used in the United Kingdom is simply to ensure that the environmental assessment requirements form part of the planning process and eliminate a separate EA process.

To ensure that one is comparing "apples to apples," this study examines the environmental assessment laws in 20 foreign jurisdictions to compare public rights for three common infrastructure projects ("Subject Projects"): a) Sanitary Sewer Extensions (either within or outside of an existing right of way); b) replacement of roadway or highway bridges and c) a widening of an existing road by adding one lane in each direction.

Outside of Canada there is more emphasis on larger scope projects and initiatives. For example, the United Kingdom, Austria, Japan, South Korea and the Netherlands focus more effort on environmental reviews of new roads rather than on reviews of road widenings. Similarly, many other jurisdictions will do impact assessments of new bridges and are less concerned about bridge replacements. With respect to new wastewater treatment plants, a thorough environmental review is applied in many jurisdictions whereas local officials have the authority to set standards for sanitary sewer collection systems for those plants.

While there was no single jurisdiction that offered an EA system for local infrastructure that would, in the view of this report's author, be ideal for Ontario, a number of jurisdictions did have practices and procedures that should be considered by the Queen's Park to reduce costs and delays. The following recommendations should be considered for incorporation into the MCEA System:

- Follow the European Union's annex criteria by providing **greater differentiation between widening existing roads** and constructing new roads along a new route, (e.g. a new road x km long would trigger a Schedule C or a road widening project that is at least 2x km long);
- **Reduce Bump-Up rights for a broad class of local municipal projects** (leave discretion to local officials and departments as per most U.S. states and countries such as Japan, Germany and the U.K.);
- **Delegate review of Bump-Up Requests to other Ministry officials.** No other jurisdiction in this study had laws prohibiting a Minister from delegating authority to respond to escalation requests similar to Bump-Ups;
- **Eliminate Capital Cost thresholds** in favour of easily measured physical criteria;

-
- Transition towards the U.K. system of one statute to regulate both municipal planning and environmental assessments by **phasing out EA Reports for municipal infrastructure** in favour of addressing environmental issues through the municipal planning process (e.g. during any official plan or official plan amendment);
 - **Set a higher threshold for Bump-Up Requests.** Follow the Minnesota system by requiring more than one citizen to trigger a Bump-Up request (e.g. at least 500 separate requests or a petition representing a minimum percentage such as 2% of residents within a prescribed distance from the proposed project);

Given the growing impact of climate change, several jurisdictions, including Japan and the United States, have streamlined procedures or limited exemptions for the replacement of infrastructure in the event of natural disasters such as tsunamis and earthquakes. With the exception of Hurricane Hazel in 1954,⁶ Ontario has been fortunate to avoid significant infrastructure devastation similar to that of northern Japan's 2011 tsunami, southern Alberta's 2013 floods, or earthquakes in Turkey and Chile. After Hurricane Hazel, reconstruction of municipal infrastructure proceeded quickly in Ontario⁷ and was unhindered by the need to undertake environmental assessment studies for new road alignments and bridge replacements or expanded waste water treatment plant capacity.

If Ontario is impacted by severe weather events, we must ensure that the MCEA system does not hinder our efforts to rebuild resilient infrastructure where different alignments or capacities are required to mitigate future damage.

All of these changes could be implemented without reducing the high environmental standards which Ontario has put in place. A more streamlined MCEA system would facilitate the timely construction of local infrastructure which is necessary to maintain a modern and thriving society.

1.0 INTRODUCTION AND PURPOSE OF THIS REPORT



1.1 Introduction

This report is the fifth in a series of studies commissioned by RCCAO on Municipal Class Environmental Assessments. Prior studies commissioned by RCCAO include:

- i *Environmental Assessment Reform – A Tool for Economic Prosperity* (February 2009);
- ii *Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs?* (March 2010);
- iii. *Municipal Class Environmental Assessments – Categorization Review Study* (January 2012); and
- iv. *Are Ontario's Municipal Class Environmental Assessments Worth the Added Time and Costs?— 2014 Edition* (March 2014).

Unlike any other province in Canada, Ontario municipalities face additional environmental assessment hurdles in order to proceed with certain traditional municipal infrastructure projects such as road extensions, road widenings, bridge replacements and alterations or expansions of sewer and water infrastructure (the “Subject Projects”).

A large number of stakeholders, including the RCCAO, have expressed concerns about the growing delays associated with completion of Municipal Class Environment Assessments, the high costs of reports and further delays associated with opponents to the project who apply for a Part II Order to request a full environmental hearing.⁹ This report compares the rights of Ontario residents to the rights of local citizens in other jurisdictions to oppose or escalate the environmental review process for the Subject Projects.

The Municipal Class Environmental System in Ontario is governed by the *Environmental Assessment Act* (“EA Act”). The EA Act is administered and enforced by the Ministry of the Environment and Climate Change (“MOECC” or “the Ministry”). The EA Act was passed in 1976 in response to public concern that protection of the natural environment was not adequately addressed by the then-existing planning legislation and procedures for new government projects and infrastructure. The EA Act applies to all developments and infrastructure projects by municipalities.⁹ Other jurisdictions either created a list of specific projects that are subject to some form of environmental assessment¹⁰ or provided a list of excluded or exempted projects with many local municipal infrastructure projects such as municipal road widening, bridge replacements and sanitary sewer extensions not subject to a formal environmental assessment. Ontario opted to establish three specific “schedules” of projects (A, B and C) under the Class EA system, depending on the potential environmental impact of the project, that would undergo a study and public consultation process, and maintain the option that the project might be bumped up to a full environmental assessment project and hearing.

The Municipal Engineers Association found that responding to Bump-Up requests adds, on average, more than 10 months to project schedules.

The EA Act provides a structure for communication of intentions and issues regarding local infrastructure projects that may be of concern to local residents, businesses and other stakeholders. In many cases, stakeholders have chosen to use EA stakeholder rights to make requests for Part II Orders (“Bump-Up requests”) to trigger an Individual EA process (full hearing) to assert their position.

A major goal of this study is to contrast Ontario’s MCEA system with the system used in other jurisdictions in terms of opportunities to comment on and to oppose Subject Projects. How does one assert a particular position to decision makers and/or formally request a full environmental assessment hearing for the proposed development?

In order to compare “apples to apples” and without requiring an intensive analysis of environmental assessment rights and procedures in other jurisdictions, this paper looks at three types of Subject Projects and identifies the rights of local residents and other stakeholders to assert opposing views or require a full hearing of all issues of concern.

1.2 Scope and Methodology

General

This paper compares public opportunities to comment on and/or oppose the Subject Projects, which in Ontario would be characterized as either a Schedule ‘B’ or a Schedule ‘C’ municipal class environmental assessment, with comparable projects in other jurisdictions. The Subject Projects are:

- A. Extension of an existing sanitary sewer;
- B. Replacement of a road bridge; and
- C. A road-widening project.

Additional information regarding each of the Subject Projects is provided in sections 1.3 and 2.3 below.

1.3 List of Jurisdictions

In order to provide a meaningful comparison, 10 states from various regions within the United States including the west coast, east coast and a number of states in close proximity to the Province of Ontario were chosen. The list of jurisdictions also includes five countries within Europe and at least one country from the continents of Africa, Australia, South America and Asia. The Asian countries of South Korea and Japan have relatively high population densities, democratic governments and large infrastructure budgets. South Africa is one of the few countries on that continent with a stable parliamentary system of government and modern infrastructure. Australia is a large country that is a member of the British commonwealth with modern and growing infrastructure needs. The other European countries have a heightened awareness of environmental protection, relatively dense populations and modern infrastructure needs. Consequently the list of jurisdictions examined includes the following:

UNITED STATES OF AMERICA: The States of Arizona; California; Colorado; Georgia; Indiana; Michigan; Minnesota; Ohio; Tennessee and Wisconsin.

ARGENTINA, AUSTRALIA, JAPAN, SOUTH AFRICA, SOUTH KOREA, AUSTRIA, GERMANY, IRELAND, NETHERLANDS and the UNITED KINGDOM.

The primary research tool was through Internet sites of foreign jurisdictions including their respective ministries, departments or other bodies having responsibilities for environmental assessments of infrastructure projects. Other sites included foreign news media. In several instances, examples of environmental impact statements were available via the Internet to confirm statutory and regulatory interpretations. Free online translation services were also used to translate foreign language documents.

1.4 Subject Projects

The definitions in the Municipal Class Environmental Assessment manual¹¹ are as follows for the Subject Projects:

Sewer Extension: Means the extension of service branches, trunk or local sewers and appurtenances which include catch basins, inlet control devices, leads, manholes and outfalls, all for purposes of conveying sewage, but does not include sewage treatment facilities, sewage retention/detention tanks/ponds or their respective outfalls.

Bridge Replacement: Means replacing a structure that provides a roadway or walkway for the passage of vehicles, pedestrians, cyclists across an obstruction, gap or facility that is greater than three metres in span.

Road Widening: Means increasing the number of lanes of an existing road and may include the widening of the right-of-way but does not include localized operational improvements.

A discussion of the relevant characterization of the Subject Projects in Ontario is outlined in section 2.4 of this report.

1.5 Potential Improvements to Ontario's Municipal Class EA System

In the course of reviewing other jurisdictions, several processes and procedures were identified as potentially beneficial to incorporate into the MCEA Process. Section 6.0 of this report lists specific processes and/or procedures from other jurisdictions that should be considered by the Ontario government to not only improve the efficiency and effectiveness of the MCEA System but also to address concerns raised by various Ontario-based stakeholders, including the Municipal Engineers Association and the RCCAO.

2.0 THE CURRENT PROCESS FOR MUNICIPAL CLASS ENVIRONMENTAL ASSESSMENTS IN ONTARIO



A construction worker directs traffic at a construction site in downtown Toronto.

2.1 The *Environmental Assessment Act*

Ontario's *Environmental Assessment Act* (the "EA Act") was first introduced in the 1970s at about the same time as the introduction of Ontario's *Environmental Protection Act*. The purpose of the EA Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment. The mechanism used by the EA Act is to require municipal proponents of projects to consult with the public and file terms of reference and an assessment of environmental impact of a proposed undertaking for the Ministry's approval.

Part II.1 of the EA Act allows for class environmental assessments so that there would not be a requirement to formulate and consult with the public on terms of reference for projects falling within a defined class. As of December 31, 2014, there exist 10 separate class environmental assessments that have been approved by the Ministry, and one of those classes is the Municipal Class.

2.2 Municipal Class EAs

The Municipal Engineers Association (“MEA”) was established to provide unity and focus for licensed engineers employed by Ontario’s municipalities to address issues of common concern and to facilitate the sharing of knowledge and information.

The MCEA system is a collaborative effort among MOECC, the Ministry of Municipal Affairs and Housing, and the MEA to allow municipal infrastructure projects to both comply with the provisions of the EA Act and proceed in an efficient and timely manner.

In terms of formal MEA involvement, the MCEA process officially began in 1987 and was used initially for local road projects and municipal water and sewer projects. In 2000, the Class EAs for municipal road projects and municipal water and wastewater projects were consolidated, updated and approved under Part II.1 of the EA Act.

Even though there is an opportunity to go through an integrated public consultation process under the Planning Act and the EA Act, relatively few municipalities have taken advantage of this because of the significant potential for two appeals processes for a single infrastructure project.

The MCEA consists of three separate schedules of municipal projects:

Schedule ‘A’ and **Schedule ‘A+’** projects. Schedule ‘A’ projects are deemed to be pre-approved by the Ministry and consist of routine maintenance and replacement of municipal infrastructure elements, such as the repaving of roads, the replacement of cracked sidewalks, aging water pipes, with works of similar design and capacity. Schedule ‘A+’ projects are also pre-approved but the public is to be advised prior to project implementation.

Schedule ‘B’ projects generally include improvements and minor expansions to existing facilities. The estimated capital cost of the proposed expansion is often used as a means of distinguishing between minor and major expansions.

Schedule ‘C’ projects generally include the construction of new facilities and major expansions to existing facilities. In 2008, municipal transit projects were added to the Municipal Class Schedule ‘C’ list.

Schedule ‘B’ projects are concluded by the issuance of a Project file report, whereas Schedule ‘C’ projects are concluded by the issuance of an Environmental Study Report.

2.3 Integrating Planning and Environmental Assessment Processes

Prior to 1900, municipal regulation of urban development was limited to a few specific nuisance and public health issues and building construction standards. Landowners were virtually free to build what they wanted and where.¹² By 1917, the Province had passed the *Planning and Development Act*, the precursor to the present day *Planning Act*.

The *Planning Act* sets the rules in Ontario for land use planning and describes how land uses may be controlled, and who may control them. The *Planning Act* directly impacts land use zoning (e.g. industrial vs. residential), the approval of plans of subdivisions and the establishment and amendment of a municipality’s Official Plan and amendments thereto.

The *Planning Act* allows the Minister of Municipal Affairs and Housing to issue policy statements, approved by cabinet on land use planning matters. Collectively referred to as the Provincial Policy Statement (PPS), all decisions made by municipal councils, provincial ministries and the Ontario Municipal Board were previously required to “have regard to” the PPS.¹³

In 2004 and 2005, the PPS was broadened to address a spectrum of environmental issues including energy conservation, clean air and water, protection of wetlands, endangered and threatened species, and all decisions by municipalities and ministries had to comply with the PPS.¹⁴ As the planning process in Ontario now has evolved to incorporate environmental considerations for municipal infrastructure projects, there is duplication when those same projects must also go through the MCEA process. If the duplication is eliminated, municipal infrastructure project approvals should be processed quicker and with reduced municipal administrative costs.

Even though the current regime provides an opportunity to go through an integrated or harmonized public consultation process under *Planning Act* and EA Act, relatively few municipalities have taken advantage of this because of the significant potential for two appeals processes through separate statutes (the EA Act and the *Planning Act*) for a single infrastructure project. In 2011, the Minister promised to address this issue, but there has been no resolution to date.

2.4 EA Characterization of the Subject Projects in Ontario

In Ontario, a sanitary sewer extension will be exempt if it is within an existing road allowance or public utility corridor and if outside those areas it will be characterized as a Schedule ‘B’ Municipal Class EA project, requiring public disclosure of the project, public consultation and completion and publication of a Phase 2 Summary Report. Any member of the public has the right to request a Part II Order (Bump-Up request) within 30 days of the publication of the report.

A bridge-replacement project of an Ontario bridge that may have some cultural heritage value, by a municipality, will normally be characterized as a Schedule ‘B’ Municipal Class EA project if the capital cost is less than \$2.4 million and a Schedule ‘C’ project if the capital cost is more than \$2.4 million. If the bridge is more than 40 years old and has no cultural heritage value, it is characterized as a Schedule ‘A’ project and the public will not have an opportunity to oppose the project or request a Part II Order under the Municipal Class Environmental Assessment system. Schedule ‘B’ and ‘C’ projects require public disclosure of the project, public consultation, and completion and publication of an appropriate report. Any member of the public has the right to request a Part II Order within 30 days of the publication of the report.

In Ontario, a road-widening project will normally be characterized as a Schedule ‘B’ Municipal Class EA project if the capital cost is less than \$2.4 million and a Schedule ‘C’ project if the capital cost is more than \$2.4 million. Schedule ‘B’ and ‘C’ projects require public disclosure of the project, public consultation, and completion and publication of an appropriate report. Any member of the public has the right to request a Part II Order within 30 days of the publication of the report.

2.5 Part II Order Requests (“Bump-Up” Requests)

With respect to any MCEA Schedule ‘B’ or Schedule ‘C’ project, a notice of completion must be posted by the proponent for a 30-day public comment period. During that period, any interested person may, pursuant to section 16 of the EA Act, make a request to the Minister for an order under Part II of the EA Act to hold an environmental assessment hearing for the proposed project. The project is effectively frozen and cannot proceed with construction until the Minister responds to each and every Part II Order request.

Although the Ministry had in December 2009 resolved to make decisions on Bump-Up requests within 30 to 66 days, those time-frames have not yet been achieved. While there was significant improvement in turn-around times for Bump-Up decisions issued in 2009 and 2010, processing times began to increase again afterwards. RCCAO had previously recommended that the Ministry should ensure that it has adequate resources to issue Part II Order request decisions within 180 days.¹⁵ Recent information from the MEA¹⁶ showed that in 2013, the Minister took anywhere from 148 to 581 days (with an average of 304 days) to respond and deny a request for a Part II Order. Indeed, the MEA continues to advocate for improvements in the resources and time-frames for responding to Bump-Up requests.¹⁷

2.6 Emergency Reconstruction Projects

Ontario has been relatively fortunate as compared to other jurisdictions with respect to major storms, floods and earthquakes that might destroy significant amounts of infrastructure. The most noteworthy exception is of course Hurricane Hazel in October 1954, but there have been other severe weather events in Ontario.

Ontario has not had any events equivalent to the earthquake and tsunami that destroyed a significant portion of infrastructure in Japan's northern islands in March 2011, the tsunami and earthquake in Indonesia in 2004, the Haitian earthquake of 2010 or the Louisiana flood devastation in May 2011.¹⁸

Repair of existing infrastructure is exempt from the EA Act; however, if the reconstruction involves different routing or capacities, such emergency infrastructure work might be further impeded by the MCEA process.¹⁹

3.0 ENVIRONMENTAL IMPACT ASSESSMENT PROCESSES FOR LOCAL INFRASTRUCTURE IN OTHER CANADIAN PROVINCES



3.1. General

While most Canadian provinces have introduced their own environmental assessment statutes or amended other environmental statutes to include environmental assessment obligations, Ontario is the only Canadian jurisdiction that imposes environmental assessment obligations on routine municipal infrastructure projects, including the Subject Projects.

One of the possible reasons is that Ontario was the first Canadian province to introduce EA legislation and chose to enact a statute of broad application to all government agencies and municipalities. Having established a broad framework, it is a question of political will for a provincial government to reduce the scope of the EA with specific exemptions and exclusions.

3.2 Manitoba

In Manitoba, projects (including certain municipal projects) are categorized as either a Class 1, Class 2 or as a Class 3 development for environmental assessment purposes.²⁰

Manitoba Class 1 developments include wastewater treatment plants but not wastewater collection systems. In the case of Class 1 projects, the proponent must submit a description of the proposal with the Province and advertise it to the public in a local newspaper or by radio. Within specified time-frames (approx. two to four months), the Province then will determine what, if any, additional measures must be taken by the proponent. The Province may also decide to characterize the project as a Class 2 project.²¹

Manitoba Class 2 developments only include road widenings in areas that are deemed sensitive, e.g. provincial parks. Road widenings and new roads previously approved in a plan of subdivision are exempt from EA requirements. Class 2 projects, may at the discretion of the director, be subject to one or more of the following requirements:

- (a) require from the proponent additional information;
- (b) impose terms and conditions for the assessment, including public consultations;
- (c) require additional studies and research on specific issues;
- (d) conduct or cause to be conducted a review of the assessment report;
- (e) request the minister to require a public hearing.

Manitoba Class 3 projects include roads at new locations consisting of four lanes or more.

Where a municipality intends to construct, alter or operate a Class 2 or Class 3 development which, in the opinion of the minister, will not have an environmental impact beyond the municipality and which has been or will be the subject of an appropriate environmental assessment by the municipality that includes public consultation and addresses environmental issues, then such a municipal development is exempted from the requirements under the Act.

3.3 British Columbia

British Columbia requires environmental assessments for various classes of industrial and electrical energy projects, but there are no separate environmental assessment requirements for basic municipal infrastructure such as sewers, bridges or roads.²²

3.4 Quebec

With respect to typical municipal infrastructure, roads including road widenings, more than one kilometre in length with four or more lanes, where the right-of-way was acquired by the municipality after 1980 are subject to the environmental assessment and review process.²³ The Minister reviews the prescribed project description and notice, and determines the scope of assessment reporting and public consultation to be provided by the proponent.²⁴

Sewer extensions are regulated by permits by the Ministry of Sustainable Development, Environment and the Fight against Climate Change, but do not require any form of public environmental assessment.

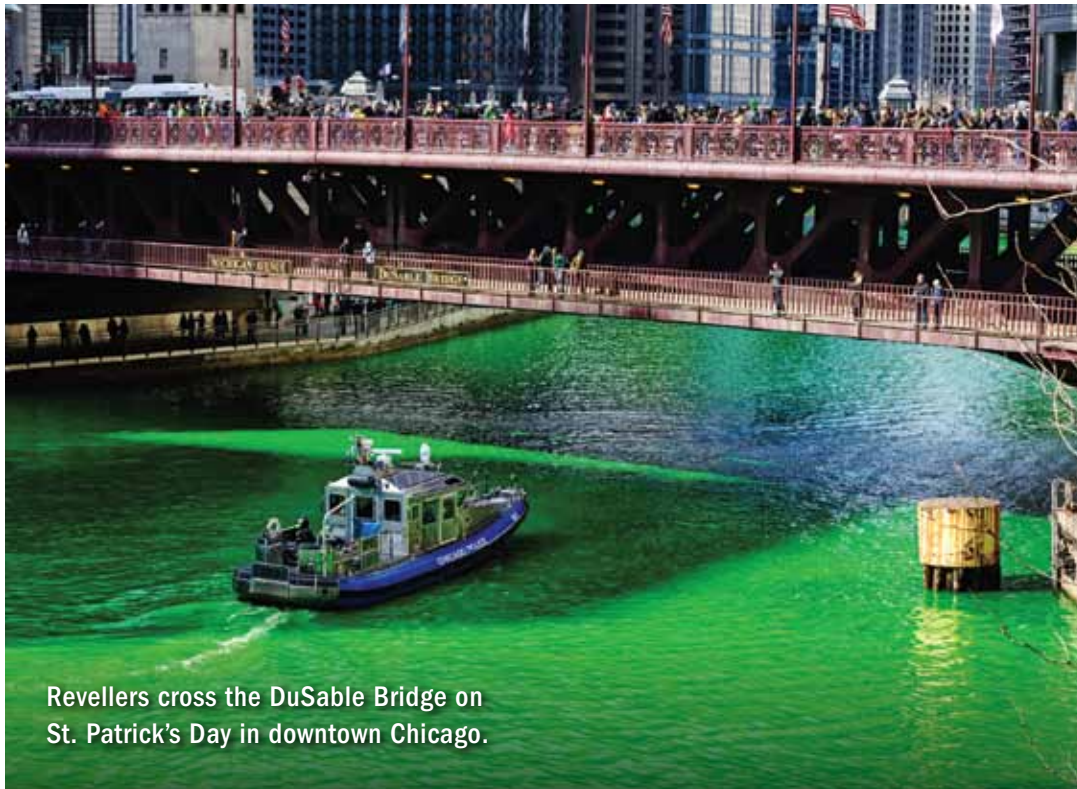
3.5 Nova Scotia

In Nova Scotia, there two classes of projects requiring a form of environmental assessment: “Class 1 Undertakings,” which include road widenings longer than two kilometres and bridge construction where a portion of the structure is over or within three metres of the edge of the watercourse. “Class 2 Undertakings” include large electrical, industrial or waste-management facilities.

Notice of a Class 1 Undertaking must be advertised and public comments can be submitted within 30 days. The Minister may then make a decision to allow the project to proceed or to require a focus report or a full environmental assessment report for a Class 1 undertaking.

In Ontario, repair of existing infrastructure is exempt from the EA Act; however, if the reconstruction involves different routing or capacities, such emergency infrastructure work might be further impeded by the MCEA process.

4.0 ENVIRONMENTAL IMPACT ASSESSMENT PROCESSES FOR LOCAL INFRASTRUCTURE IN THE UNITED STATES OF AMERICA



Revellers cross the DuSable Bridge on
St. Patrick's Day in downtown Chicago.

4.1. The U.S. Federal *National Environmental Policy Act*

In December 1969, the U.S. Congress enacted the *National Environmental Policy Act*²⁵ to establish a set of environmental policy goals and a system of assessing environmental consequences prior to implementing funding or approval decisions for government projects including the construction or expansion of infrastructure. NEPA applies to any federal agency proposals for “actions,” which can include projects that receive federal funding or require federal permits. Given the relatively large number of federal funding grants for state and local roads and other infrastructure projects, NEPA’s impact is not limited to interstate infrastructure but applies to local roads, bridges and sewers. A number of U.S. states have entered into memorandums of understanding with the federal government that allow local state agencies to administer NEPA requirements.²⁶

In the U.S., there are two classes of environmental assessments, the more rigorous Environmental Impact Statement (or EIS)²⁷ and the less onerous Environmental Impact Assessment (EIA), which is essentially a mini-EIS designed to provide sufficient information to allow the agency to decide whether the preparation of a full-blown EIS is necessary.²⁸

NEPA generally requires other federal agencies to oversee and administer the EIA and EIS processes. Primary responsibility is vested in the Council on Environmental Quality. The number of “Environmental Assessments” filed every year “has vastly overtaken the number of more rigorous Environmental Impact Statements.”²⁹

NEPA also lists a number of infrastructure construction projects that are not subject to either an EIS or an EIA and fall within the categorical exclusions.³⁰ Such excluded projects include bicycle and pedestrian lanes, paths and facilities; adding shoulders or auxiliary turn lanes to roads and most bridge replacements.

In July 2012, the list of exclusions was expanded to include any reconstruction of infrastructure that is damaged or destroyed by a disaster (earthquake, flood, hurricane, etc.) provide that the replacement structure is similar in design and specifications to the original structure. Generally speaking, designs that are outdated (weight capacities) need not be replicated to qualify for the exemption.

Many road-widening projects taking place entirely within an existing right of way also will be excluded from NEPA environmental assessments.

With respect to thresholds of federal funding, infrastructure projects exempted from NEPA are those projects receiving less than \$5 million in federal funding, or in cases where the federal funding exceeds \$5 million, the total project value is less than \$30 million.³¹ Although the exclusions can be challenged through the courts, such an application must be filed within 150 days of the decision of the original agency decision.

There are also procedures in the United States that permit a person to bring an application through the U.S. courts to review whether the agency erred in proceeding with an EA instead of an EIS. The determining test is whether or not the EA followed the technical and other procedures established under NEPA.³²

4.2. The Federal Highway Administration

The Federal Highway Administration (FHWA) is an agency within the U.S. Department of Transportation that supports state and local governments in the design, construction and maintenance of the Nation's highway system (Federal Aid Highway Program), and various federal and tribal lands (Federal Lands Highway Program).

Through financial and technical assistance to state and local governments, the FHWA is responsible for ensuring that America's roads and highways continue to be among the safest and most technologically sound in the world. As federal financial assistance normally triggers a NEPA EA or EIS, it can be assumed that any project involving FHWA assistance or oversight will follow NEPA assessment requirements.

4.3 State of Arizona

There is no state environmental policy legislation similar to the federal NEPA. Discretion as to how to proceed is retained by the relevant state approval agencies such as the Arizona Department of Transportation (DOT) and the Arizona Corporation Commission. Projects involving federal departments or federal funding are subject to NEPA environmental assessment requirements.

New Local Sewer Mains: Public utilities are required to obtain Certificates of Convenience and Necessity (CCNs) from the Arizona Corporation Commission (ACC) for the construction and operation of “collection mains.” Mitigation measures for potential environmental impacts are reviewed by the ACC as part of the CCN application process.

Bridge Replacements: Approval must be obtained from the Arizona DOT.

Widening of Local Roads: Approval must be obtained from the Arizona DOT.

4.4 State of California

The *California Environmental Quality Act* (“CEQA”) requires that state and local agencies consider the environmental impact of their decisions when approving a public or private project.

New Local Sewer Mains: An initial study will indicate whether the project has no environmental impacts or whether the project will be subject to an environmental assessment or the more rigorous environmental impact statement. While the public will have an opportunity to express its views, it will not have a veto or rights similar to an Ontario Part II Bump-Up.

Bridge Replacements: Ordinarily the local road authority will commission an Initial Study/Mitigated Negative Declaration confirming that the proposed bridge replacement project falls within the exclusion/exemption criteria under the CEQA.

Widening of Local Roads: An initial study is required to determine whether (a) the project could not have a significant effect on the environment (negative declaration), (b) it may have a significant effect, but will not because of specific mitigation measures, or (c) it may have a significant environmental impact necessitating an environmental impact report.

4.5 State of Colorado

The State of Colorado does not mandate environmental impact assessments or environmental impact reports for local state infrastructure such as bridge replacements, road widenings or new sewer lines, beyond those required by the federal NEPA, except in relation to certain projects in state parks or involving water resources.

New Local Sewer Mains: A construction permit is obtained by the local public works department from the Colorado Department of Public Health and Environment; however, there is no process for the public to request a project environmental review of any decision by the Colorado Department of Public Health and Environment.

Bridge Replacements: Approval is required from the Colorado Department of Transport, but no environmental assessment is required unless the project becomes subject to NEPA or involves a bridge that is designated as a “Historical Bridge.”

Widening of Local Roads: There are no categorical exclusions and such projects are normally subject to the requirement to complete an EA and possibly an EIS.

4.6 State of Georgia

With respect to road widenings and bridge replacements funded by the State of Georgia, in addition to potential NEPA requirements, the proponent must comply with the *Georgia Environmental Policy Act* (GEPA) by completing a GEPA environmental evaluation. A notice of the project must be published and the public has 30 days to file a notice of objection. If 100 or more residents file an objection, then a hearing may be called.

New Local Sewer Mains: A construction permit is required from the Environmental Protection Division of the Georgia Department of Natural Resources. There is no process for the public to request a project environmental review of an approval that is issued by the EPD.

Bridge Replacements: A bridge replacement is generally a categorical exclusion and exempt under the GEPA unless it triggers a federal NEPA element that requires a NEPA EA or EIS.

Widening of Local Roads: There are no categorical exclusions and such projects are normally subject to the requirement to complete an EA. Very few projects, however, will trigger an EIS.

4.7 State of Indiana

Since 1972, government infrastructure projects are subject to the *Indiana Environmental Policy Act* (IEPA), which closely matches NEPA in terms of scope and requirements. Local governments are expressly exempted, however, so that construction by government agencies of public infrastructure will normally fall outside of IEPA scrutiny.

New Local Sewer Mains: A permit is required from the Indiana Department of Environmental Management and notice of the permit issuance is normally made public. There is no opportunity for the public to demand an environmental assessment study where the project is initiated by a public body such as a municipal works department.

Bridge Replacements: Indiana DOT approval is required and most bridge replacement projects fall within the categorical exclusions under the IEPA for both the scope of the bridge and the local government exemption unless the proponent has identified that the project is likely to have a significant environmental impact.

Widening of Local Roads: As part of the process of applying to the Indiana DOT, an environmental review must be made to identify whether or not there are any environmental impacts. However, if the conclusion is that there are no significant environmental impacts, there is no formal mechanism for the public to require a broader investigation such as an environmental impact study.

4.8 State of Michigan

The State of Michigan has an independent requirement for environmental assessments similar to NEPA under the *Natural Resources and Environmental Protection Act*, 1994.

New Local Sewer Mains: The construction of any new system or alteration of an existing sewerage system to serve the public is required to receive a construction permit from the Department of Environmental Quality (DEQ). The DEQ provides for an expedited process for certain smaller projects including any new sewers or sewer extensions that are less than 10,000 feet in length. For projects not qualifying for an expedited process, the applicant must complete an initial study to indicate whether the project has any environmental impacts or whether the project will be subject to an Environmental Impact Statement (EIS) and a notice of a preliminary decision by the DEQ is posted for public comment for 30 calendar days. In the absence of what the DEQ considers to be substantive comments, the preliminary decision will be confirmed.

Bridge Replacements: Permits are required from both the Michigan Department of Transport and the Michigan DEQ. The Michigan DEQ has an expedited process for bridges over water crossings on an emergency basis. The applicant must complete an initial study to indicate whether the project has any environmental impacts or whether the project will be subject to an EIS and a notice of a preliminary decision by the DEQ is posted for public comment for 30 calendar days. In the absence of what the DEQ considers to be substantive comments, the preliminary decision will be confirmed.

Widening of Local Roads: Permits are required from both the Michigan Department of Transport and the Michigan DEQ. However, under a Memorandum of Understanding between the two state agencies, an expedited process is provided for road widenings and grade changes within the original road allowance, but the expedited process does not apply to the addition of extra lanes. Where the expedited process does not apply, the applicant must complete an initial study to indicate whether the project has any environmental impacts or whether the project will be subject to an EIS and a notice of a preliminary decision by the DEQ is posted for public comment for 30 calendar days. In the absence of what the DEQ considers to be substantive comments, the preliminary decision normally will be quickly confirmed by the DEQ.

4.9 State of Minnesota

Many government infrastructure projects are subject to the *Minnesota Environmental Policy Act* (MEPA).

MEPA, like NEPA, mandates the use of environmental impact analyses which significantly impact or that could potentially significantly impact the environment and that do not fall under designated exceptions must first have an Environmental Assessment Worksheet (EAW) completed. If the EAW results in a Finding of No Significant Impact (FONSI), further review is not necessary. If the EAW determines that significant environmental impacts are likely, then an Environmental Impact Statement (EIS) must be prepared and submitted to the state agency with the greatest approval authority over the project. Only upon approval of the EIS by the agency may the action be legally undertaken.

New Local Sewer Mains: A permit is required from the Minnesota Pollution Control Agency and a determination must be made whether the project requires an EA or a more comprehensive EIS. There is an opportunity for public comment.

Bridge Replacements: A bridge replacement is generally a categorical exclusion but will still require a thorough analysis of the full range of potential environmental issues to confirm that there is no impact on endangered species, historic structures or other impacts.

Widening of Local Roads: Provided that Minnesota DOT approval has been obtained. The exemption will not apply if 500 or more voters make a written submission requesting an EIS.

4.10 State of Ohio

There is no Ohio state environmental policy legislation similar to the federal NEPA. Discretion as to how to proceed is retained by the relevant Ohio state approval agencies such as the Ohio Environmental Protection Agency and the Ohio Department of Transport. Projects involving federal departments or federal funding are subject to NEPA environmental assessment requirements.

New Local Sewer Mains: Public utilities are required to obtain approval from the Ohio EPA. The proposal is subject to department review and approval but if there is no environmental assessment, likely environmental impacts are subject to a review by the Ohio EPA without public scrutiny.

Bridge Replacements: Approval must be obtained from the Ohio DOT who will normally review the approval in consultation with the federal FHWA. There is no venue for the public to oppose a bridge replacement project or to require an environmental assessment.

Widening of Local Roads: Approval is only required from the Ohio DOT if the road has been designated as a state road even though the Ohio DOT does not maintain such roadway. Local governments generally have the authority to construct or widen roads in conformance with applicable engineering standards. There is no venue for the public to oppose a road-widening project or to require an environmental assessment.

4.11 State of Tennessee

There is no Tennessee state environmental policy legislation similar to the federal NEPA. Discretion as to how to proceed is retained by the relevant Tennessee state approval agencies such as the Tennessee Environmental Protection Agency and the Tennessee Department of Transport. Projects involving federal departments or federal funding are subject to NEPA environmental assessment requirements.

The Tennessee Valley Authority (TVA) is also frequently involved in approving infrastructure projects. It is a corporation owned by the U.S. federal government, established in 1933 to address a wide range of environmental, economic and other issues, including management of natural resources. TVA's territory includes most of Tennessee and parts of other neighbouring states, including Alabama and Georgia.

New Local Sewer Mains: Public utilities are required to obtain approval from the TVA and the Tennessee Department of Environment and Conservation, but there is no public EA process.

Bridge Replacements: Approval must be obtained from the Tennessee DOT and will normally require a determination of whether or not there are any significant environmental impacts. Except to the extent that the project triggers NEPA federal rules, there is no venue for the public to oppose a bridge replacement project or to require an environmental assessment.

Widening of Local Roads: Approval must be obtained from the Tennessee DOT and will normally require a determination of whether or not there are any significant environmental impacts. Except to the extent that the project triggers NEPA federal rules, there is no venue for the public to oppose a bridge replacement project or to require an environmental assessment.

4.12 State of Wisconsin

The *Wisconsin Environmental Policy Act* (WEPA), passed in 1972, is very similar to NEPA. Unlike some other states, Environmental Impact Assessments are required for applicable actions before permits or approvals are granted.

New Local Sewer Mains: The municipality must obtain a certificate of public convenience and necessity or other approval from the Public Service Commission. A separate submission must be made to the Wisconsin Department of Natural Resources (WDNR) for environmental approval identifying whether or not the project has any environmental impacts and what mitigation measures are proposed. Amendments to the WEPA process in 2014 appear to have removed the requirement to allow for public comments on such projects.

Bridge Replacements: In addition to approval from the Wisconsin DOT, an environmental evaluation is required for potential environmental impacts. Notice of the evaluation document is posted for public comment and the WDNR retains discretion as to whether or not to require further studies, information or a hearing.

Widening of Local Roads: The approval process is similar to that of bridge replacements. In addition to approval from the Wisconsin DOT, an environmental evaluation is required for potential environmental impacts. Notice of the evaluation document is posted for public comment and the WDNR retains discretion as to whether or not to require further studies, information or a hearing.

Table 4.1 EA Comparison: Ontario to U.S. States
for **SANITARY SEWER EXTENSION PROJECTS**

Jurisdiction	EA Requirements	Comments
Ontario	Report Sometimes Required	Either exempt or a Schedule 'B' project, may require public notice and providing a 30-day public comment period.
Arizona	EA Report EXEMPT	EA Exempt, public scrutiny through utility regulatory board.
California	Report Sometimes Required	Subject to Screening Study, but no Bump-Up rights.
Colorado	EA Report EXEMPT	EA Exempt, but activities are regulated by Department of Public Health and the Environment.
Georgia	EA Report EXEMPT	EA Exempt, but activities are regulated by Department of Natural Resources.
Indiana	EA Report EXEMPT	EA Exempt, but public notice of project required, activities are regulated by Department of Environmental Management.
Michigan	Report Sometimes Required	Subject to Screening if length exceeds 10,000 ft., public comment within 30 days, no escalation unless Department of Environmental Quality sees substantive issue.
Minnesota	Report ALWAYS Required	Subject to Screening, public comment within 30 days, must have either EA report or more comprehensive EIS.
Ohio	EA Report EXEMPT	EA Exempt, but activities are regulated by Ohio Environmental Protection Agency.
Tennessee	EA Report EXEMPT	EA Exempt, but approval required from both the Tennessee Valley Authority and the Tennessee Department of Environment and Conservation.
Wisconsin	EA Report EXEMPT	EA Exempt, but approval required from both the Public Service Commission and the Wisconsin Department of Natural Resources.

Table 4.2 EA Comparison: Ontario to U.S. States
for **BRIDGE REPLACEMENT PROJECTS**

Jurisdiction	EA Requirements	Comments
Ontario	Report Sometimes Required	Most are either Schedule 'B' or 'C' project. Trigger is capital cost above \$2.4 million. Certain bridges more than 40 years old with no heritage value are EA Exempt. Schedule 'B' and 'C' projects both require public notice and a 30-day public comment period.
Arizona	EA Report EXEMPT	EA Exempt but permit required from Arizona DOT.
California	Report ALWAYS Required	Screening report required to confirm that project within exclusions. California DOT approval also required.
Colorado	Report Sometimes Required	EA Exempt unless it is a Historical Bridge. Permit also required from Colorado DOT.
Georgia	Report ALWAYS Required	Screening report required to confirm that project within exclusions. Georgia DOT approval also required.
Indiana	Report ALWAYS Required	Screening report required to confirm that project within Categorical Exclusion. Indiana DOT approval also required.
Michigan	Report ALWAYS Required	Screening report required to confirm that project falls within exclusions. Notice subject to public comments within 30 days. Expedited process for emergency replacements. Michigan DOT approval also required.
Minnesota	Report ALWAYS Required	Screening report required to confirm that project falls within exclusions. Minnesota DOT approval also required.
Ohio	EA Report EXEMPT	EA Exempt but permit required from Ohio DOT.
Tennessee	EA Report EXEMPT	EA Exempt but permit required from Tennessee DOT.
Wisconsin	Report ALWAYS Required	Screening report required to confirm that project falls within exclusions. Notice subject to public comments within 30 days. Wisconsin DOT approval also required.

Table 4.3 EA Comparison: Ontario to U.S. States
for **ROAD WIDENING PROJECTS**

Jurisdiction	EA Requirements	Comments
Ontario	Report ALWAYS Required	Either a Schedule 'B' or 'C' project, trigger is whether capital cost is above \$2.4 million. Both require 30-day public comment period.
Arizona	EA Report EXEMPT	EA Exempt but permit required from Arizona DOT.
California	Report ALWAYS Required	Subject to Screening Study to determine if excluded, but no public rights to escalate the assessment. California DOT approval also required.
Colorado	Report ALWAYS Required	There are no exclusions, either EA or EIS required. Colorado DOT approval also needed.
Georgia	Report ALWAYS Required	There are no exclusions, either EA or EIS required. Georgia DOT approval also needed.
Indiana	Report ALWAYS Required	Subject to Screening Study to determine if excluded, but no Bump-Up rights. Indiana DOT approval also required.
Michigan	Report ALWAYS Required	There are no exclusions, either EA or EIS required. Michigan DOT approval also needed. Both require 30-day public comment period.
Minnesota	Report Sometimes Required	Widening projects are excluded; however, 30-day public comment period applies. EA or EIS required if more than 500 voters object.
Ohio	EA Report EXEMPT	EA Exempt but permit required from Ohio DOT.
Tennessee	Report ALWAYS Required	Subject to Screening Study to determine if excluded, but no public rights to escalate the assessment. Tennessee DOT approval also required.
Wisconsin	Report ALWAYS Required	Screening report required to confirm that project falls within exclusions. Notice subject to 30-day public comments. Wisconsin DOT approval also required.

5.0 ENVIRONMENTAL IMPACT ASSESSMENT PROCESSES FOR LOCAL INFRASTRUCTURE OUTSIDE OF CANADA AND THE U.S.A.



A train departs Sydney Central station in Sydney, Australia.

5.1 General

Environmental Assessment procedures and requirements across the globe are as diverse as the languages and cultures of various nations. A number of countries have modelled their environmental assessment laws on the U.S. NEPA legislation while others, most notably members of the European Union (EU), have established a consensus for model environmental legislation.

Ontario's MCEA System appears to be unique and quite distinct when compared to the jurisdictions reviewed in this report.

5.2 European Union - EIA Directive

Within the EU, a directive is a legal act of the Parliament of the European Union which requires member states to achieve a particular result without dictating the means of achieving that result. As opposed to regulations or a specific legal test, directives normally leave member states with a certain amount of leeway as to the exact rules to be adopted.

The EU established a directive for Environmental Impact Assessments in 1985 (EIA Directive 85/337/EEC) that outlines certain procedures for environmental assessments of infrastructure projects such as road and rail networks, electrical energy production and distribution as well as water and wastewater plants and networks.³³ The directive was amended three times with the most recent amendments coming in 2009.

The directive includes two annexes, Annex 1 being a list of mandatory projects that must be subject to an environmental assessment process, and Annex 2 being a list of other projects deemed to have fewer environmental impacts than Annex 1 projects, which member countries may opt to require or exempt from environmental assessment processes. All of the European countries considered in this report are signatories to the EU Directive on environmental assessments.

Although Environmental Assessment procedures across the globe are diverse, a number of countries have modelled their environmental assessment laws on the U.S. NEPA legislation. Members of the European Union have established a consensus for model environmental legislation. Ontario's MCEA System is unique compared to the jurisdictions reviewed in this report.

5.3 Argentina

Argentina is divided into 24 separate provinces. The largest province, Buenos Aires, has a population of more than 16 million – more than 43 times the population of any other province in the country. The smallest province Tierra Del Fuego has a population of less than 150,000.

Argentina made extensive revisions to its constitution in 1994 which, among other things, gave authority to the federal government to set minimum safety and environmental standards. The larger provinces of Buenos Aires and Cordoba had enacted environmental sustainability laws by the mid-1980s.

As of 2013, Argentina had proposed a draft environmental assessment law that would have general application across the country, but there is no indication that it has been passed as of early December 2014.

At this time, the focus to require some form of Environmental Impact Assessment is in the mining and petroleum industries as well as hazardous waste management.

A proposal by a local province or municipality to construct a sewer extension, replace a bridge or widen a road would not require a separate environmental assessment. Evaluation of potential environmental impacts rests with either the Department of the Interior and Transportation, Department of Planning and Public Utilities, or their respective provincial counterparts.

5.4 Australia

Australia has six provinces (including the Island of Tasmania) and three territories. Its government structure is loosely based on the British parliamentary model. In the event of a conflict between the laws of any Australian province or territory and those of the federal government, the federal legislation prevails.

The principal legislation governing environmental assessments is the *Environment Protection and Biodiversity Conservation Act* 1999. Before embarking on any infrastructure construction project, the proponent must complete and submit a referral document in which the proponent declares whether or not there are likely environmental impacts. Following the receipt of a valid referral, the minister has 20 business days to decide whether the proposed action will require assessment and approval under the EPBC Act. As part of the total 20 business days taken for the referral process, there is a 10-business-day public comment period. This provides an opportunity for relevant Australian provincial and territory government ministers and members of the public to comment on the proposed action.

Municipal and state infrastructure construction projects are all subject to the EA referral process. Upon the conclusion of the 20-business-day review period, the Department of the Environment will consider any public comments received and issue one of four potential decisions:

- A. The proposed action is NOT LIKELY to have a significant impact (does not need approval);
- B. The proposed action is NOT LIKELY to have a significant impact IF undertaken in a particular manner, and a set of mandatory conditions are listed;
- C. The proposed action is LIKELY to have a significant impact, e.g. impacts a species at risk, and does NEED the completion of a public environmental assessment process before a decision is made by the Department.
- D. The proposed action would have UNACCEPTABLE impacts and CANNOT proceed.

A proposal by a province, territory or municipality to construct a sewer extension, replace a bridge or widen a road would normally fall within a “Not Likely to have significant impact” and may or may not have a set of mandatory conditions. Public comments are permitted during the 10-business-day notice period.

5.5 Japan

Japan has a population of about 125 million and consists of 47 prefectures (which are analogous to states or provinces). Its government structure is a constitutional monarchy established under the 1946 constitution following the end of the Second World War. The federal government (national “diet”) has exclusive law-making powers of general application with the prefectures having jurisdiction over only local matters. In the event of a conflict between the laws of any Japanese prefecture and those of the federal government, the federal legislation prevails.

The principal legislation governing environmental assessments is the *Environment Impact Assessment Law* that was passed in 1997. There are three classes of projects: Category 1, being a mandatory full environmental impact review requiring public consultation, Category 2 being a screenable project that might either be subject to a full EIA or proceed as outlined by the proponent as determined by the Environmental Agency, and Category 3 projects which do not require any EIA. For screenable projects, the determination by the Environmental Agency must be made within 60 days of submission by the proponent. The Environmental Agency immediately publishes notice of the submission and the public has a limited opportunity to comment on whether or not the project should be exempt during the first 45 days.

The Environmental Impact Assessment Law also has enhanced exemptions and fast-tracked procedures in cases of emergency, with the most notable example being the tsunami and earthquakes in northern Japan in 2011.

New Local Sewer Mains: A proposal by a prefecture or municipality to construct a sewer extension within an existing residential or industrial development is considered to be part of a public utility operation and would normally be exempt from an Environmental Impact Assessment. However, if the sewer extension is part of a new residential or industrial development, then the area to be developed will determine whether an EIA is required. Infrastructure for new developments which occupy an area of 100 hectares or more require a full EIA. New developments more than 75 hectares but less than 100 are in the screenable category and the Environmental Agency will make such determination.

Bridge Replacements: Replacing a bridge would normally fall within the exempt category unless the bridge is part of a road construction project that is four lanes or more and at least 7.5 kilometres long, or two lanes and at least 15 kilometres long. If the bridge replacement is part of a road project of four lanes or more that is 10 kilometres or longer or two lanes wide and is 20 kilometres or longer, then such road construction projects, including any bridges, will fall within the EIA. Road construction projects between these two limits are screenable and the Environmental Agency will make such determination.

Road Widenings: A proposal by a prefecture or municipality to widen a road by adding lanes would normally fall within the exempt category unless the road construction project is at least 7.5 kilometres long. If the road construction project is 10 kilometres or longer, then such a road project must have a full EIA. Road construction projects between these two limits are screenable and the Environmental Agency will make such determination.

Outside of Canada there is more emphasis on larger scope projects and initiatives. For example, the United Kingdom, Austria, Japan, South Korea and the Netherlands focus more effort on environmental reviews of new roads rather than on reviews of road widenings.

5.6 South Africa

South Africa has a population of about 53 million and is divided into nine provinces. Its government structure is loosely based on the British parliamentary model.

The principal environmental assessment statute, the *National Environmental Management Act*, 1998, applies to all infrastructure projects by all levels of government as well as a number of private industry projects. The environmental assessment process consists of one of two levels – either a basic assessment, or a full Environmental Impact Assessment study that includes public consultations. Many projects are subject to the “basic assessment” requirement in which the proponent outlines the scope of the project, the likely environmental impacts, if any, as well as the mitigation measures proposed. Notice of the basic assessment is provided to any person owning or occupying property within 100 metres of the site of the proposed infrastructure or alternative route for such infrastructure. Published notices are also required in either a local newspaper or other approved publications.

The Competent Authority having jurisdiction over the project must then within a 30-day period determine whether the basic assessment is satisfactory or whether the project will be subject to a full EIA. If the project goes to a full EIA, then additional notices are circulated and response timelines for public comment are established by the competent authority. A number of projects are automatically subject to a full EIA study and public consultation requirement.

New Local Sewer Mains: A proposed sewer extension project by a province or local municipality will be subject to a Basic Assessment if the sewer is larger than 0.36 metres (14 inches) in diameter or carries more than 120 litres per second. The competent authority may, upon review of the basic assessment, make a decision to require a full EIA.

Bridge Replacement: The construction project will trigger a basic assessment if the bridge is over or within 32 metres of the high water mark (10-year flood line) of any river or stream. Generally any bridge two lanes or wider will be subject to a full EIA.

Road Widenings: A road-widening project adding an extra lane in each direction, it will be subject to a full EIA. However, certain widenings of a one-lane road into a one-lane-in-each-direction road may qualify for just a basic assessment. A full EIA is mandated for a national road, a road administered by a provincial authority, a road having a road allowance of 30 metres or more, or a road wider than one lane in each direction.

5.7 South Korea

The Republic of South Korea occupies a land area that is less than one-tenth of Ontario yet has a population of just under 50 million. The country has nine provinces; the smallest province has more autonomous powers than the other eight. The government and constitutional structure of the modern South Korea was established in 1948 but following several constitutional amendments through to the early 1960s, now has many elements in common with the U.S. The South Korean federal government can pass laws of general application including environmental legislation.

The principal law governing environmental assessments is the *Environmental Impact Assessment Act* (1993) which, together with the *Basic Environmental Policy Act* (1990), govern public participation in sustainable environmental planning.

The *Environmental Impact Assessment Act* provides a list of 63 specific construction/development projects which are subject to a full EIA. That list includes new roads longer than four kilometres, road extensions longer than 10 kilometres as well as waste management projects. A person applying for a construction/development permit for the construction or alteration of a road system or other prescribed undertaking must prepare an EIA report, including any input from local residents, which report must be submitted to the relevant local government along with the construction permit application. The local government may consult with Ministry of Environment on deciding whether to grant a permit. Sewer systems are subject to several statutes including, the *Sewerage System Act* and the *Water Quality and Ecosystem Conservation Act*.

There is no mechanism or procedure under the legislation that provides the public with notice or a right to comment or trigger an EIA for a project unless the description of the project is one of the 63 project types.

Wastewater treatment systems having a capacity greater than 100,000 cubic metres per day require a full EIA, and the construction and operation of the wastewater collection system and discharges are separately regulated by the environmental authorities.

Projects requiring an EIA require a public announcement and display of between 30 and 50 days depending on the nature of the project. Public submissions can be made after notice is published and notice of a public hearing must be made at least seven days before the hearing commences.

New Local Sewer Mains: A proposal by a province or municipality to construct a sewer extension would normally not require a full EIA unless it is part of a new residential or industrial development or associated with a new wastewater treatment plant having a capacity of 100,000 cubic metres per day or more.

Bridge Replacement: Replacing a bridge would not normally require an EIA unless it is in a national reserve or near a designated water body.

Road Widenings: A proposal by a province or municipality to widen a road by adding lanes would normally not require a full EIA unless the length of the new lanes exceeded 10 kilometres.

5.8 Austria

Austria has a population of less than nine million and has a land area that is about one-twelfth of the area of Ontario. Austria has nine provinces and its constitution recognizes three levels of government: the federal state, the provinces and local municipalities.

Governmental responsibilities for environmental issues are divided between the federal state and the provinces. While certain environmental issues (for example, construction and maintenance of waterways) are entirely the

responsibility of the federal state, others (for example, nature conservation) rest entirely with the provinces. In some areas (for example, waste management and forestry), the federal state acts as legislator, while the provinces are responsible for administering environmental law adopted on a federal level.

The *Environmental Impact Assessment Act* (2000) is the primary environmental law in Austria and requires either a full EIA study or a simplified EIA procedure for specific infrastructure or private industry projects. The proponent must apply for an EIA permit and the local provincial government will conduct the EIA and process the application for a consolidated permit procedure. The EIA permit, once issued, comprises all other permits required for the project, such as a building permit or water use permit. There is no public notice or appeal system to convert a simplified EIA procedure to a full EIA study and there is no notice mechanism for projects that do not trigger some form of EIA. Applications for an EIA permit must provide a public review and comment period of six weeks and notice of the application is accessible via a government Internet site.

New Local Sewer Mains: There are no EIA requirements for sewer extensions; however, wastewater plants serving a population of 100,000 are subject to either a simplified or full EIA.

Bridge Replacement: These projects do not in themselves trigger an EIA. However, if a bridge is part of a new federal road of any length or a federal road-widening project of 10 kilometres or more, then the bridge and the road would be addressed by a full EIA. If a bridge is part of a federal road widening that is less than 10 kilometres, then a simplified EIA procedure is required.

Road Widenings: Widenings that are subject to a full EIA include federal roads over a continuous length of 10 kilometres or more. Road widenings of federal roads of less than 10 kilometres are subject to a simplified EIA procedure. Local road widenings are subject to a simplified EIA only if the project comes within a distance of 500 metres of a protected natural or heritage area. All other local road widenings are exempt from any EIA requirement.

5.9 Germany

The Federal Republic of Germany has a population of 81 million, a land area of 360,000 square kilometres and is divided into 16 states (Länder).

In Germany, jurisdiction for legislation is divided up between the Federation and the Länder. Where the EIA relates to federal projects, the Länder have issued separate EIA regulations.

The principal environmental assessment law is the *Environmental Impact Assessment Act* (EIAA). Annex 1 to the EIAA contains a list of all types of projects that must either perform an EIA, or undergo a general or location-specific preliminary examination, to determine whether an EIA is warranted. Some of the projects are screened by size, such as the length of a road-widening project or the capacity of a wastewater treatment plant.

With regard to large numbers of types of projects, such as with road infrastructure projects, the approval regulations under German law provide, by contrast, that approval is at the discretion of the authority, after receiving and reviewing the required information and public comments.

Project descriptions must be available for public inspection for a period of one month and public comments or objections must be submitted within two weeks of the end of the inspection period. After the deadline for objections, the consultation authorities must then debate objections to the plan which have been raised within the deadline and the statements of the authorities to the plan together with the project sponsor. Following the decision by the competent authority, the decision and reasons shall be made available to the public (normally by Internet posting).

New Local Sewer Mains: The proponent requires a permit pursuant to the *Water Resources Act* and the *Waste Water Ordinance and Directive*. There does not appear to be any requirement for an EIA for an extension of an existing sewer system, however, unless it involves a new or expanded wastewater treatment facility.

Bridge Replacement: A bridge replacement would not by itself trigger an EIA; however, if it was part of a reconstruction, widening or realignment exceeding 10 kilometres, it would be included in the EIA or preliminary screening for the entire widening or realignment project.

Road Widening: A mandatory EIA is required for federal roads only where the distance exceeds 10 kilometres. Lesser distances are subject to a preliminary screening.

5.10 Ireland

The Republic of Ireland has a population of less than five million and consists of about 70,000 square kilometres. While it has four provinces, there are no provincial governments in the Republic. The local governments consist of 31 councils and counties.

Much of Ireland's environmental legislation is based on EU directives. Environmental legislation is administered and enforced by the Environmental Protection Agency as well as the local counties and councils throughout Ireland and the Minister for the Environment, Community and Local Government.

There are two distinct types of environmental assessments, one is structured by the *Planning and Development Act, 2000*, which together with its regulations requires an Environmental Impact Statement for many local planning and development issues such as additions to a home, establishment of certain types of businesses, etc.

Public infrastructure generally falls under what is known as Strategic Environmental Assessments, which involve several statutes including the *Roads Act, 1993* for transport infrastructure including national roads, other roads, busways, etc., and the *Water Services Act* for wastewater treatment, sewers, etc. In 2012, Ireland took the unprecedented step of nationalizing all water utilities under a single national state corporation named “Irish Water.” That agency assumed all water and wastewater assets and operations of all of the 31 counties and councils in Ireland and is completing a national infrastructure and water management plan for various investments and initiatives through to 2040.

Under the Strategic Environmental Assessment Directive screening of a project does not require advance notice to the public but the responsible authority must make its decisions on screening known to the public. In some cases, the responsible authority may opt to provide a limited public opportunity to comment as part of the screening process. Public comment periods on an EIA are subject to the discretion of the responsible authority but generally are at least four weeks in duration.

New Local Sewer Mains: This type of infrastructure is now under the exclusive jurisdiction of Irish Water. That public body acts both as a utility and as a regulator and it is not clear that a proposal to extend a sanitary sewer would require an environmental impact assessment. However, the construction or expansion of wastewater treatment facilities would still trigger the need for an EIA.

Bridge Replacement: Any bridge that is 100 metres or longer is subject to a mandatory EIA screening. A mandatory EIA would be required if the bridge is part of a national road. If the bridge is not part of a national road and less than 100 metres in length, it would not trigger a screening for an EIA.

Road Widening: If the road widening is more than eight kilometres long in a rural region or more than 0.5 kilometres long in an urban region, such a project is subject to a mandatory EIA screening review. A mandatory EIA would be required if the widening was part of a national road.

5.11 The Netherlands

The Netherlands has a population of just under 17 million and a relatively small area of land – 42,000 square kilometres (less than 5% of the area of Ontario). Like many other European nations, it is a parliamentary democracy and has a constitutional monarchy. If one adjusts the population for inland water bodies, the Netherlands is the world's third most densely populated country.

The principal environmental legislation is the *Environmental Management Act* (EMA). Environmental assessment requirements are addressed in Chapter 7 of the EMA and date back to 1987. The Environmental Impact Assessment Decree provides prescriptive requirements for carrying out an environmental impact assessment. Environmental assessments fall within the mandate of the Ministry of Infrastructure and the Environment.

The legislation only provides for one level or intensity of Environmental Impact Statements. The proponent must prepare a description of the project for screening by the Ministry as to whether or not the project requires an EIA. Public participation and notice only arises after the screening process, there is no formal public comment mechanism to contest a screening in favour of requiring an EIA if the competent authority has determined that one is not required.

Activities which may have serious adverse effects on the environment shall be designated by order in council. The activities designation list is modelled on the EU model for Environmental Impact Assessments.

One or more decisions made by administrative authorities concerning the said activities shall be designated therein, in the preparation of which an environmental impact statement must be drawn up. The competent authority shall determine the times at which and the place where the documents may be inspected, provided that they may be inspected for at least four weeks. Public comments are due within four weeks from the date on which the documents are deposited for inspection.

The construction of new sanitary and storm sewer systems as well as wastewater treatment plants is regulated through Chapter 4.8 of the *Environmental Management Act*. Each municipality or authority must file plans regarding their physical infrastructure and seek approval before commencing any additions or other forms of construction.

New Local Sewer Mains: There is no requirement to undergo an EIA, a permit to proceed with construction is required from the Ministry of Infrastructure and the Environment pursuant to the *Environmental Management Act*.

Bridge Replacements: A bridge replacement would not by itself trigger an EIA. However, if it was part of a reconstruction, widening or realignment exceeding 10 kilometres, it would be included in the EIA for the entire widening or realignment project.

Road Widenings: Where the section of widening exceeds 10 kilometres, a mandatory EIA is required.

5.12 United Kingdom

The United Kingdom of Britain and Northern Ireland has a population of just over 60 million and occupies a combined territory of about 245,000 square kilometres. It has a constitutional monarchy and a parliamentary system. The United Kingdom is comprised of four countries – England, Wales, Scotland and Northern Ireland – each of which has unique constitutional powers. Each of the countries in turn are comprised of counties or districts.

The *Planning Act*, 2008 is the principal statute of the United Kingdom requiring environmental impact assessments for the construction of specific developments and infrastructure. Wales, Scotland and England have established their own separate regulations under that Act. With respect to the English regulations, the list of triggering projects is very similar to those advocated by the European Union.

An environmental statement must be submitted with an application for planning permission or development consent for certain developments that require an EIA under the Environmental Impact Assessment Regulations (2011 in England, 1999 in Wales) as set out in:

- **Schedule 1:** developments most likely to have a major environmental impact (for example, crude oil refineries, power stations and motorways) must be subject to an EIA.
- **Schedule 2:** other projects (including, for example, infrastructure) are only subject to an EIA if, after completion of the screening process, it is determined by the relevant authority that the project is likely to have a significant effect on the environment due to factors such as their nature, size or location.

The screening decision must be made within 21 days of receipt of the application. There is no formal process for challenging a screening. However, any person may petition the Secretary of State to reconsider the screening result. Such an application does not stay or freeze the project.

With respect to a full EIA, notice must be provided to the public via newspapers or other approved media, for at least two consecutive weeks. The public will have a minimum of 28 days following the last publication of the Impact Statement to submit comments.

New Local Sewer Mains: There are no EIA requirements for sewer extensions. However, wastewater plants serving a population of 150,000 are subject to a full EIA.

Bridge Replacements: Such projects would not in themselves trigger an EIA. However, if the bridges are part of an expressway of any length or any other road of 10 kilometres or more, then the bridge and the road would be addressed by a full EIA.

Road Widenings: Projects subject to a full EIA include expressways or any length or any other roads over a continuous length of 10 kilometres or more. Most other local road widenings are exempt from any EIA requirement.

Table 5.1 EA Comparison: Ontario to Other Countries (excluding the U.S.)
for **SANITARY SEWER EXTENSION PROJECTS**

Jurisdiction	EA Requirements	Comments
Ontario	Report Sometimes Required	Either exempt or a Schedule 'B' project, may require public notice and providing a 30-day public comment period.
Argentina	EA Report EXEMPT	EA Exempt, public scrutiny through local utility regulators, Federal Dept. of the Interior or Federal Dept. of Public Utilities.
Australia	Report Sometimes Required	Most projects with sanitary sewer extensions would be EA Exempt but still require utilities board approval. There is, however, a 10-business-day-comment period required by EA laws.
Japan	EA Report EXEMPT	EA Exempt, but subject to approvals from local public utilities regulator.
South Africa	Report Sometimes Required	EA Exempt if less than 14 inches in diameter or less than 120 litres per second, minimal documentation likely required. Local authority may require a full EA but no public comment rights unless EA is triggered.
South Korea	EA Report EXEMPT	EA Exempt, but new wastewater treatment plants of certain capacity and new residential developments subject to EA procedures and public comments.
Austria	EA Report EXEMPT	EA Exempt, but new wastewater treatment plants of certain capacity subject to EA procedures and public comments.
Germany	EA Report EXEMPT	EA Exempt, but sewer extensions require other environmental approvals but not public notice. New wastewater treatment plants of certain capacity subject to EA procedures and public comments.
Ireland	EA Report EXEMPT	In 2014, all municipal wastewater infrastructure part of "Irish Water." No EA for sewer extensions.
The Netherlands	EA Report EXEMPT	EA Exempt, but approval through environmental permit required from national environmental agency.
United Kingdom	EA Report EXEMPT	EA Exempt, but new wastewater treatment plants of certain capacity subject to EA procedures and public comments.

Table 5.2 EA Comparison: Ontario to Other Countries (excluding the U.S.)
for **BRIDGE REPLACEMENT PROJECTS**

Jurisdiction	EA Requirements	Comments
Ontario	Report Sometimes Required	Most are either Schedule 'B' or 'C' projects. Trigger is capital cost above \$2.4 million. Certain bridges more than 40 years old with no heritage value are EA Exempt. Schedule 'B' and 'C' projects both require public notice and a 30-day public comment period.
Argentina	EA Report EXEMPT	EA Exempt but permit required from Dept. of Interior and Dept. of Transport or provincial equivalents.
Australia	Report Sometimes Required	EA not required, but subject to escalation by Minister through the 10-business-day public comment period.
Japan	Report Sometimes Required	EA Exempt unless it is part of a larger road construction or road-widening project. Transport authority approval is required.
South Africa	Report Sometimes Required	EA required for all bridges within 32 metres of the high water mark of any water body. Process has 30-day public comment period.
South Korea	Report Sometimes Required	EA exempt unless part of larger road project, within a national reserve or near designated water body. Public comment period of at least 30 days if EA applies.
Austria	Report Sometimes Required	EA exempt unless part of larger road project, near designated water body or heritage area. Public comment period of at least four weeks if EA applies.
Germany	Report Sometimes Required	EA exempt unless part of a larger road project or near designated area. Public comment period of at least four weeks if EA applies.
Ireland	Report Sometimes Required	EA exempt unless part of a national road project or the bridge is longer than 100 metres. Public comment period of at least four weeks if EA applies.
The Netherlands	Report Sometimes Required	EA exempt unless it is part of a larger road construction or road-widening project. Transport authority approval is required.
United Kingdom	Report Sometimes Required	EA exempt unless part of a larger road project or near designated area. Public comment period of at least four weeks if EIA applies.

Table 5.3 EA Comparison: Ontario to Other Countries (excluding the U.S.)
for **ROAD WIDENING PROJECTS**

Jurisdiction	EA Requirements	Comments
Ontario	Report ALWAYS Required	Either a Schedule 'B' or 'C' project. Trigger is whether capital cost is above \$2.4 million. Both require 30-day public comment period.
Argentina	EA Report EXEMPT	EA Exempt but permit required from Dept. of Interior and Dept. of Transport or provincial equivalents.
Australia	Report Sometimes Required	EA not required, but subject to escalation by Minister through the 10-business-day public comment period.
Japan	Report Sometimes Required	Projects less than 7.5 kilometres are exempt; between 7.5 and 10 km subject to fast-track EA process; 10 km full EIA with public comment of 45 days.
South Africa	Report ALWAYS Required	Full EA normally required if one lane in each direction is added. Public comment periods vary but generally at least 30 days.
South Korea	Report ALWAYS Required	Screening report required for all projects. Full EIA required for road extensions of 10 km or more. Public comment period at least 30 days but for full EIAs only.
Austria	Report Sometimes Required	Local road widenings less 10 kilometres in most areas are exempted. Public comment period of four weeks or more if EA applies.
Germany	Report ALWAYS Required	Widening any local roads of 10 kilometres or more or any national roads need full EA. Other road widenings trigger simplified EA. Public comment period within two weeks of end of inspection period.
Ireland	Report Sometimes Required	Local road widenings less than 500 metres in urban areas or eight kilometres in rural areas are exempted. Other roads subject to screening reports. Any national road widening subject to full EA. Public comment period of at least four weeks if EA applies.
The Netherlands	Report ALWAYS Required	Screening report required for all projects. Full EIA required for road extensions of 10 kilometres or more. Public comment period at least 30 days.
United Kingdom	Report ALWAYS Required	Screening report required, widening of any local road of 10 km or more or national road subject to full EIA. Public comment period of at least four weeks for EIAs.

6.0 FOREIGN EA PROCEDURES THAT SHOULD BE CONSIDERED FOR ONTARIO'S MUNICIPAL CLASS EA PROCESS



6.1 Eliminate All Capital Cost Thresholds

Ontario still relies on capital costs as a screening threshold for different levels of environmental assessment for road widenings and bridge replacements. The only other jurisdiction that uses capital costs in any manner is the United States where federal funding meeting a certain minimum level triggers the application of the federal NEPA assessment process. Where projects must follow the NEPA process, none of the thresholds for categorical exclusions, EAs or a full EIS are based on project capital costs. As advocated by the RCCAO in its Categorization Review Study of January 2012,³⁴ capital cost thresholds under the EA Act should be replaced with physical criteria.

To better understand the difficulty that might be associated with Ontario's use of cost thresholds to distinguish different levels of environmental assessment consider the following example. A road widening project is established as a Schedule 'B' project at the start of the EA process in year 1 because it is \$500,000 less than the applicable threshold of \$9.5 million. Through the consultation process, the proponent makes minor changes to the design, however those minor design changes add \$700,000 to the capital cost, thereby making it a Schedule 'C' project. The other possibility is that the project's costs remain fixed at \$9 million, but the threshold value drops from \$9.5 million to \$8.8 million in year 2 due to an economic downturn (as occurred during the period 2008 to 2009). The drop in threshold values transforms the proposed road widening into a Schedule 'C' project. These changes would not likely affect the characterization of the project if the threshold was road widening projects less 10 km in length.

It is interesting to note that countries belonging to the EU as well as a number of other countries have longer distance thresholds for road-widening projects than are applicable for new roads.

Ontario still relies on capital costs as a screening threshold for different levels of environmental assessment for road widenings and bridge replacements. As advocated by the RCCAO in its Categorization Review Study of January 2012, capital cost thresholds under the EA Act should be replaced with physical criteria.

6.2 Harmonization of Municipal Planning with Class Environmental Assessments

A number of Ontario-based stakeholders, including the RCCAO, have previously advocated for more harmonization of the public consultation requirements in Ontario's *Planning Act*, with those under Ontario's EA Act. The United Kingdom, and to a lesser extent Ireland, go one step further by mandating that the establishment or amendment of municipal and regional official plans to include the relevant environmental assessment review for any proposed infrastructure.

In theory, amendment of Ontario's *Planning Act* and EA Act could be made so that, as of a particular date, any new *Planning Act* proposals for municipal infrastructure such as roads and sewers be carried out to satisfy all EA Act requirements. In the United Kingdom, the requirement for infrastructure environmental assessments is actually part of its planning legislation and not a separate environmental assessment statute.

6.3 Link Part II Order Consideration to Minimum Number of Objections

In Ontario, a single individual can submit a Bump-Up request which requires the Minister to consider and respond to such an application. In the State of Minnesota, a minimum of 500 voters must file formal objections before any changes to the EA are to be considered. However, none of the other jurisdictions reviewed in this report require more than a single person to object.

6.4 Reduce Bump-Up Rights for a Broad Class of Municipal Projects

Every Schedule 'B' and Schedule 'C' MCEA project in Ontario is subject to a Bump-Up request by a single resident. A number of jurisdictions – including Austria, the Netherlands, South Korea and to a lesser extent the United Kingdom – require certain agencies or departments to review the

screening reports and accept those screening decisions as final. They do not generally provide the public with a right to challenge that screening decision. It is submitted that most if not all Schedule ‘B’ MCEA projects and many Schedule ‘C’ projects have such limited potential for adverse environmental impacts as to warrant the right to make a Bump-Up request, particularly those projects requiring the approval of a professional engineer or other professional whose mandate includes public safety.

6.5 Delegate Review of Bump-Up Requests to Other Ministry Officials

Where there is a right of the public to escalate the degree of environmental assessment, none of the 20 jurisdictions reviewed appear to limit the authority to grant or deny such a request to the respective ministry or department executive officer. Given the broad discretion and reliance placed upon various directors of the Ministry for matters such as waste management certificates of approval pursuant to the *Environmental Protection Act*, there is no rational basis to restrict the decision-making powers for Bump-Up requests solely to the Minister.

6.6 Emergency Construction - Fast Track and Exemptions of Environmental Assessment Requirements

Several jurisdictions, including Japan and the United States, have legislated that in the event of a natural disaster such as a massive earthquake or flood, or some other emergency that has damaged or destroyed significant municipal infrastructure, that emergency construction can proceed with streamlined or minimal environmental assessment procedures.

While Ontario has been relatively fortunate in not facing disasters such as those that have impacted the U.S. State of Louisiana, southern New Zealand, northern Japan or parts of Turkey, it may be appropriate to consider reducing MCEA process requirements or providing shorter time frames for review before the need for emergency work arises.

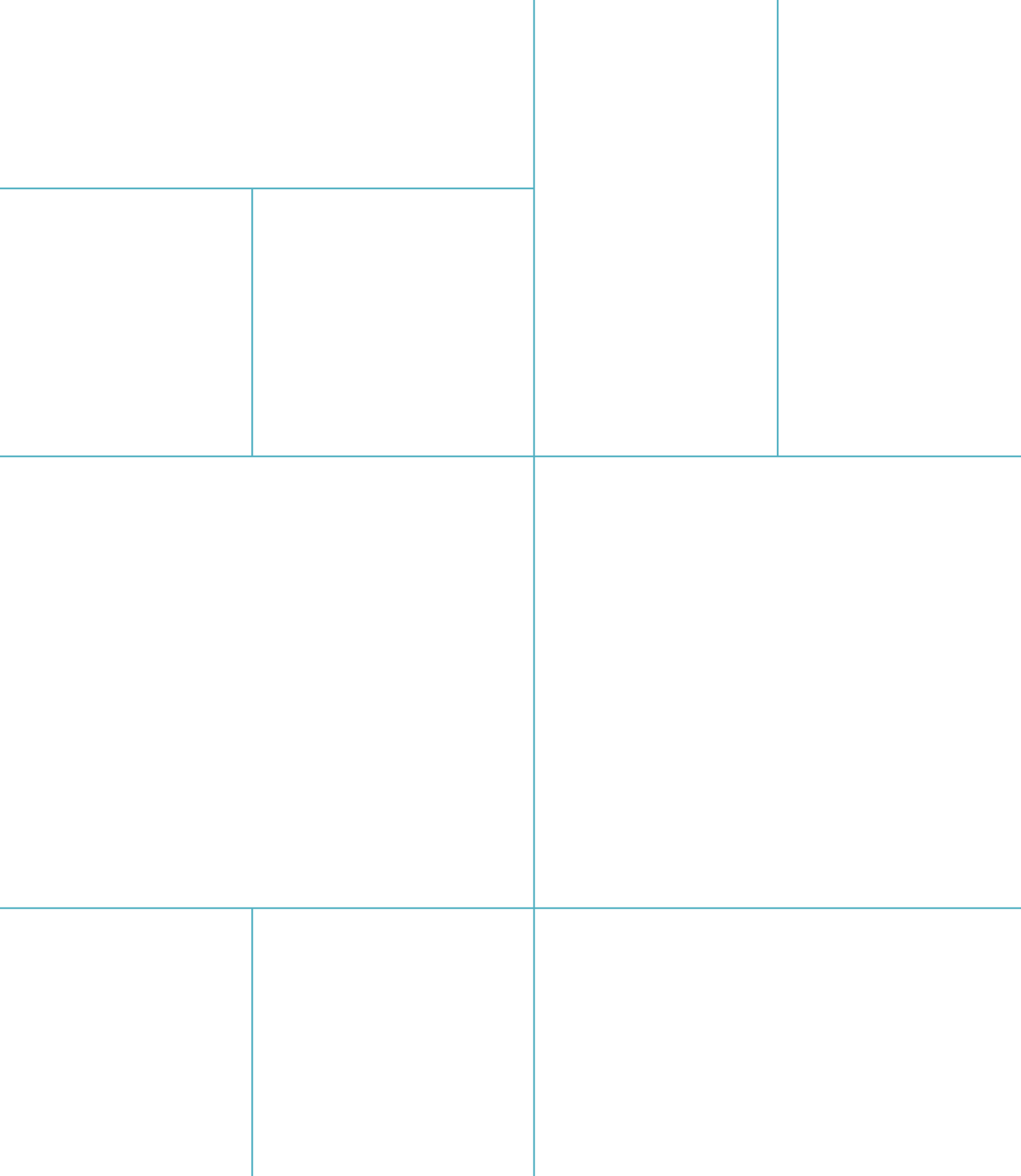
ENDNOTES

- 1 See various RCCAO independent reports at <http://www.rccao.com/research/municipalAssessments.asp> as well as a Region of Peel report at <http://www.peelregion.ca/council/agendas/2014/6.1%20discussion%20paper.pdf>
- 2 See RCCAO report dated March 2014 at <http://www.rccao.com/research/municipalAssessments.asp>
- 3 Only Schedule 'B' and Schedule 'C' projects as defined by Ontario's Municipal Class EA System
- 4 See section 3.5 of the 2014 MEA monitoring report at <http://www.municipalclassea.ca/AnnualMonitoringReports.aspx>
- 5 See various RCCAO reports at <http://www.rccao.com/research/municipalAssessments.asp>
- 6 Hurricane Hazel started as a tropical storm in October 1954 and resulted in more than 280 mm of rain in a 48 hour period, destroying or damaging more than 40 bridges and numerous roads in the Humber River basin
- 7 See report on transportation infrastructure by Toronto Conservation Authority at http://www.hurricanehazel.ca/ssi/about_transport.shtml
- 8 See various RCCAO independent reports at <http://www.rccao.com/research/municipalAssessments.asp> as well as a Region of Peel report at <http://www.peelregion.ca/council/agendas/2014/6.1%20discussion%20paper.pdf>
- 9 See section 3 of the *Environmental Assessment Act*, at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90e18_e.htm

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- 10 The Province of Manitoba, for example, through the *Environment Act*, has three types of projects requiring some form of EA: class 1, 2 and 3. The US National *Environmental Policy Act* has a list of ‘categorical exclusions’ for projects that are deemed to have minimal environmental impact
 - 11 Accessible at <http://manual.municipalclassea.ca/classea/manual/manualSimple.asp?section={E455B693-CF34-411C-BF74-898CCE3F056D}&heading={C04C51CA-9A9B-47C6-9FEE-C3C3F4E63E8B}>
 - 12 See “The Evolution of Ontario’s Early Urban Land Use Planning Regulations, 1900-1920” a research paper presented at the Canadian-American Comparative Urban History Conference, University of Guelph by David Hulchanski in August 1982
 - 13 See “Having Regard to the *Planning Act*?” in Thinking Beyond the Near and Now – Environmental Commissioner of Ontario Annual Report 2002-2003.
 - 14 See 2005 Provincial Policy Statement at www.mah.gov.on.ca/Page1485.aspx#1.6
 - 15 See recommendation #8 in the report “Are Ontario’s Municipal Class Environmental Assessments Worth the Added Time and Costs? – 2014 Edition” at <http://www.rccao.com/news/files/RCCAO-Municipal-Class-EA-Report-Feb2014-WEB.pdf>
 - 16 See the MEA 2014 report accessible via internet at <http://www.municipalclassea.ca/AnnualMonitoringReports.aspx>
 - 17 See all recent MEA reports accessible via internet at <http://www.municipalclassea.ca/AnnualMonitoringReports.aspx>

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- 18 There have been several local extreme weather events such as the Toronto floods of July 2013 and the ice storm of December 2013 but such weather events did not require any significant road or other municipal infrastructure construction.
- 19 The extensive flooding of southern Alberta in June 2013 did however require the replacement of bridges and the reconstruction of roads along different routes and/or grades.
- 20 *Classes of Development Regulation* – Man. Reg. 164/88
- 21 *The Environment Act*, C.C.S.M. c. E125
- 22 *Reviewable Projects Regulation* B.C. Reg. 2370/2002 to the Environmental Assessment Act, S.B.C. 2002, c.43
- 23 *Regulation respecting environmental impact assessment and review procedure*, CQLR c.Q-2, r 23
- 24 Division IV.1, *Environment Quality Act*, CQLR c. Q-2
- 25 42 U.S.C. §4321 et seq. (1969)
- 26 http://www.dot.ca.gov/hq/env/nepa_pilot/pdf/MOU_Final_draft_23_USC_326_CE_to_FHWA_4_2_2013.pdf
- 27 See National Environmental Policy Act of 1969, as amended, 42 USC Sections 4321-4347
- 28 See ‘A Citizen’s Guide to the NEPA’ at https://ceq.doe.gov/nepa/Citizens_Guide_Dec07.pdf
- 29 See http://www.historylink.org/index.cfm?DisplayPage=output.cfm&file_id=9903

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- 30 See <http://www.ecfr.gov/cgi-bin/text-idx?rgn=div8&no de=23:1.0.1.8.43.0.1.9>
- 31 See <http://www.nlc.org/Documents/Influence%20Federal%20Policy/Advocacy/Legislative/summary-map21-transportation-jul2012.pdf>
- 32 In the case of *HAMILTON v. UNITED STATES DEPARTMENT OF TRANSPORTATION* (Washington, 2010) involving a road expansion plan that is part of the Spokane Corridor Project, in Washington State, the Plaintiffs alleged that the Agencies violated NEPA by failing to prepare an EIS instead of an EA. The Court found that the final EA included a relatively extensive cumulative impacts analysis section, detailing impacts in 16 subject areas such as noise, air, water, community, land use, etc. After review, the Court found that the EA contained the kind of “detailed information” required by the case law, and that the Agencies’ review was both well informed and well considered.
- 33 See <http://ec.europa.eu/environment/eia/eia-legalcontext.htm>
- 34 See report at http://www.rccao.com/news/files/RCCAO_Report_JAN2012.pdf





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