



RESIDENTIAL AND
CIVIL
CONSTRUCTION
ALLIANCE OF
ONTARIO

An Independent Study Commissioned by

Constructing Ontario's Future



Are Ontario's
**Municipal Class
Environmental
Assessments**
Worth the Added
Time and Costs?

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The Residential and Civil Construction Alliance of Ontario (RCCAO) is an alliance 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. For more information on the RCCAO or to view copies of other studies and submissions, please visit the RCCAO website at www.rccao.com

Table of Contents

Executive Summary	6
1.0 Introduction and Purpose of the Paper	8
1.1 Genesis for the Study	8
1.2 Why this Study is Relevant and Timely	8
1.3 Scope and Methodology	9
2.0 The Current Process for Municipal Class Environmental Assessments in Ontario	12
2.1 The <i>Environmental Assessment Act</i>	12
2.2 Municipal Class EAs and the Municipal Engineers Association	13
2.3 The 2007 Amendments to the Municipal Class EA System	14
2.4 Post-2007 Amendments to the Municipal Class EA System	16
2.5 Part II Order Requests (Bump-up Requests)	16
2.6 Other Challenges to Municipal Class EA Projects	18
3.0 Relevant Studies on Ontario's Municipal Class EA System	19
3.1 Annual Reports of the Environmental Commissioner of Ontario	19
3.2 The RCCAO February 2009 Study on EA Reform	20
3.3 CELA – A Review of Environmental Assessment in Ontario	21
3.4 CELA Submission on the Draft Regulation under the <i>Environmental Assessment Act</i> for Public Transit Projects: EBR Registry No. 010-2760; and Draft Transit Priority Statement: EBR Registry No. 010-3128	21
4.0 Key Data Analysis	22
4.1 General	22
4.2 Anonymity of Specific Projects and Municipalities	23
4.3 Duration of EAs	24
4.4 Additional Time for Bump-up Requests	26
4.5 Cost of EAs	27

5.0	The Duration and Costs of the Municipal Class EA Process	30
5.1	Actual versus Expected Durations for Municipal Class EA Reports	30
5.2	Actual versus Expected Costs for Municipal Class EA Reports	30
5.3	Are Municipal Class EAs worth the Added Costs and Delays?	31
6.0	Alternatives to Reduce EA Study Delays and Costs	32
6.1	Redraft the Criteria for Schedule A+ and Schedule B Projects	32
6.2	Fast Track Certain Municipal Class EAs	32
6.3	Establish Automatic Indexing of Threshold Capital Costs	33
6.4	Reduce Abuses of the Part II Order Request Rights	34
6.5	Establish Protocols with Federal Agencies	34
6.6	Extend the ‘Shelf Life’ of pre-2007 EA Study Reports	35
6.7	Expand the Recognition of Prior <i>Planning Act</i> Consultations	35
6.8	Establish Transparency for the Municipal Class EA Process	35
6.9	Continue to Reduce the Time Frames for EA Bump-up Requests	35
	Appendix A: Recommendations from “Environmental Assessment Reform – A Tool for Economic Recovery”	36
	Appendix B-1: Case Study – Bradford Sewage Treatment Plant expansion	38
	Appendix B-2: Case Study – Bloor Street Transformation Project, Toronto	42
	Appendix C: MOE letter to Municipal Engineers Association re. Municipal Class EA amendments, 2007	44
	Appendix D: RCCAO letter to MOE re. proposed Transit EA Regulation, 2008	46
	Endnotes	49

Executive Summary

The purpose of this study was to conduct a follow up to the study released by RCCAO in February 2009 on Environmental Assessment (EA) Reform by analyzing recently completed Municipal Assessments. A total of 99 Municipal Class EA Class B and C construction projects – such as new or improved roads, intersections, bridges, sewer or water works – were reviewed.

The main finding of this study is that the lengthy time frames and higher costs to comply with the Municipal Class EA process are not providing additional environmental or other benefits. Significant municipal resources are being allocated to meet the requirements for Municipal Class EA approval. Even if government budgets were not as tight as they are now, this is an inefficient use of limited financial resources for basic municipal infrastructure.

In 2010, the bulk of federal and provincial infrastructure stimulus funding will be translated into “shovels in the ground” municipal projects. This report is particularly relevant now that senior levels of government are experiencing high deficits and are now contemplating ways to reduce those deficits, including reducing the levels of funding for municipal infrastructure projects. Following through with this report’s recommendations will enable governments to stretch scarce infrastructure funding dollars even further.

Unlike any other municipalities in Canada, Ontario’s municipalities face additional EA procedures in order to proceed with certain traditional infrastructure projects, such as road extensions, road widening, bridge replacements and alterations or expansions of sewer and water infrastructure.

Based on the 99 projects evaluated for this report, Ontario municipalities face delays of 19 months or more compared to similar municipal projects outside of Ontario. The magnitude of the additional costs and delays was higher than expected.

Not only has progress slowed for these projects, but findings reveal that they also face substantially higher costs through the EA process. The cumulative value of all of the 99 construction projects in this study is \$1.120 billion. Adding together the costs paid to third parties for EA reports and the inflationary increases of construction for the duration of the EA reports, results in a total cost of \$162 million to the 99 projects, or an average of 14.5% incremental costs. It is estimated that across Ontario, about 140 Schedule B or Schedule C projects are initiated every year. Applying the data from the 99 projects reviewed as part of this report, means that Ontario’s Municipal Class EA system is adding \$232 million in extra costs every year. Based on typical labour/material/overhead ratios for basic municipal infrastructure projects, the delays are holding back about 10,000 full time equivalent jobs annually.

The study raises the question of whether or not Ontario Municipal Class EAs are worth the added time and costs. Projects such as intersection improvements, road widening and bridge replacements have faced significant delays and added costs of about 14% to comply with the EA process for municipal infrastructure projects. These costs and delays are unique to Ontario as other Canadian jurisdictions have minimal or no EA requirements for basic infrastructure projects.

In late 2007, Ontario made some changes to the Municipal Class EA process designed to speed up project studies and reduce costs, but even the 15 projects in this report that were started after 2007 are showing average EA-related delays of 11 months. That 11-month delay estimate is likely understated because many EA studies that commenced in 2008 were excluded from the 99 projects

included in this report because they were still not complete as of October 31, 2009. The data from those excluded projects would increase the average EA time frame beyond 11 months.

It is estimated that about 140 Municipal Class Schedule B or Schedule C studies were initiated in each of the 2008 and 2009 calendar years. Applying the data associated with the 99 projects in this report means that there are delays ranging from 6 to 18 months on more than \$3 billion of basic municipal infrastructure projects across Ontario that would otherwise have proceeded in 2008 and 2009¹.

The report has 9 specific recommendations to reduce delays and incremental costs associated with Municipal Class Schedule B or Schedule C projects, namely:

1. Redraft the criteria for Schedule A+ and Schedule B projects to move more current Schedule B projects into the Schedule A+ category. Examples of potential changes from Schedule B to Schedule A+ might include straight replacements of an existing one-lane bridge with a two-lane structure or the addition of bicycle lanes to existing municipal roads.
2. Fast track certain Municipal Class EAs by creating a Municipal Class EA Regulation in the same manner as Ontario Regulation 231/08 has 'fast tracked' Transit EAs. The scope of reports for most Municipal Class EAs such as road widening and intersection improvements could be streamlined by removing the need to consider alternatives. There simply is no need to retain a consultant to undertake a further study and review of alternatives for basic infrastructure where there has already been public scrutiny through the *Planning Act* processes, the *Places to Grow* and Greenbelt legislation and public debate for municipal capital budgets.
3. Establish automatic indexing of threshold capital costs that otherwise distinguish a Schedule A or A+ project from a Schedule B project or a Schedule B project to the Schedule C project. The preferred indexing source is the Ontario Ministry of Transportation (MTO)'s Tender Price Index, which is a composite of more than 400 separate inputs related to infrastructure construction in Ontario.
4. Reduce abuses of the Part II order request rights that are used to bolster compensation for land acquisitions or expropriations.
5. Establish protocols with federal agencies such as Transport Canada, in relation to bridge replacement EAs, as to which agency will have the final say on issues such as appropriate clearance distances between bridges and navigable waters.
6. Extend the 'shelf life' of pre-2007 EA Study Reports from 5 years to 10 years to reduce the need for addendum EA reports.
7. Expand the recognition of prior *Planning Act* consultations for certain short distance road extensions so that they would be characterized as a Schedule A+ project.
8. Establish transparency for the Municipal Class EA process by establishing a publicly accessible database of Notices of Completion for current as well as historical projects.
9. Continue with current and additional measures to reduce the time frames related to bump-up requests.

1.0 Introduction and Purpose of this Paper

1.1. Genesis for the Study

The RCCAO has over the years expressed concerns held by its members that the Environmental Assessment process for municipal infrastructure projects in Ontario is too time-consuming and expensive relative to the outcomes. Various reform measures have either been implemented or contemplated over a number of years, but opportunities exist to further streamline and rationalize EA processes. Indeed, efforts have been ongoing on ways to streamline federal and Ontario EA processes by having one jurisdiction recognize the EA work that has been conducted by the other jurisdiction or having the studies run concurrently rather than consecutively.

Notwithstanding the Ontario government announcements about streamlining and other improvements for Municipal Class EAs in 2006² and in 2007³ the RCCAO determined in 2008 that the potential impact of Municipal Class EAs and Federal EAs on what was then anticipated infrastructure stimulus funding by both the Ontario and federal governments warranted a study called “Environmental Assessment Reform as a Tool for Economic Recovery.” The MMM Study was completed in February 2009 and can be viewed and downloaded through the RCCAO website.⁴

The MMM Study provided a series of recommendations (summarized in Appendix A) as well as anecdotal examples of several municipal construction projects, but the report did not quantify the trends and experiences across the Province of Ontario.

Many RCCAO contacts suggested that, in addition to the normal tendering processes, a significant number of Municipal Class Schedule B and Schedule C EA studies by municipalities in and near the GTA would hold up project approvals to proceed with a range of road, water and sewer work. The RCCAO therefore concluded that a subsequent study was warranted providing actual data related to completed EA studies. The author recommended that such a study should address provincial trends as any potential reform would have to be implemented across Ontario.

1.2. Why this Study is Relevant and Timely

Both the Canadian and Ontario governments collaborated on fiscal investments into municipal infrastructure in early 2009 for new projects through to the end of the 2011 fiscal year in an effort to stave off a prolonged recessionary cycle. The Ontario and federal governments jointly announced in June 2009 that about 1,400 municipal infrastructure projects worth a total of \$3.4 billion were being partially financed by both governments. Of those projects, approximately \$1 billion were for water and wastewater projects and about another \$1 billion was for road and bridge projects with the balance related to transit, cultural infrastructure, municipal buildings and local airport improvements.

Added to those projects is the one-time Ontario Municipal Infrastructure Investment Initiative valued at \$450 million and announced in early 2009. Overall Ontario has announced that it will spend \$27.5 billion over the next two years. When added to a federal government contribution of \$5 billion, the total investment is \$32.5 billion is the largest two-year investment ever in Ontario’s infrastructure. Transit projects will receive the most funding over the next two

years, at \$9 billion, followed by health care at \$7 billion, and education at \$4 billion, leaving a substantial sum for municipal infrastructure such as roads, bridges, water and wastewater.

These investments, coupled with reduced tax revenues have resulted in huge fiscal deficits for both the federal and the Ontario provincial governments. The magnitude of the fiscal deficits puts immense pressure on senior levels of government to make difficult decisions on future priorities. For instance, will Ottawa and Queen's Park continue to make strategic investments in infrastructure, or will spending reductions be made beyond 2010 on vital structures such as roads, bridges, sewer and water systems? The focus will undoubtedly shift back to Ontario municipalities to stretch their limited resources as far as possible even though infrastructure continues to age and deteriorate.

Municipalities applying for infrastructure stimulus funding in a number of instances did not put forward projects that would require a lengthy EA process because federal funding criteria specified that project funding would have to be spent by March 31, 2011.⁵ This report further concludes that a significant portion of funds intended for "shovels in the ground" projects are being used to fund expensive and time consuming EA studies. It is prudent to review actual recent project costs and experiences to identify additional improvements that can be implemented for future investments in infrastructure projects beyond the 2010-2011 fiscal year.

1.3 Scope and Methodology

General

This study examined 99 Ontario Municipal Class EA Schedule B or C reports to determine:

- a) What types of time frames and costs are municipalities experiencing when they have a basic infrastructure project that triggers either a Schedule B or a Schedule C Municipal Class EEA as a condition precedent to tendering and construction?
- b) To what extent are any of these projects triggering a Part II application (bump-up request) from affected stakeholders such as local residents?
- c) To the extent that data are available about any bump-up requests, are there any changes or alternative procedures that should be considered or implemented as part of the Municipal Class EA process? and,
- d) Beyond the changes that were implemented in late 2007, what additional changes, if any, should be proposed for the Municipal Class EA system to reduce both delays and costs?

Although the Municipal Engineers Association (MEA) has summarized some information related to Municipal Class EAs through their website, such information only relates to EA studies and reports that were completed as of December 31, 2007.⁶ Furthermore that limited amount of data excludes any Municipal Class EAs that were completed during the 2005 and 2006 calendar years as the MEA was focusing its resources on the review of the Municipal Class EA process that led to the 2007 changes.

Transit projects were expressly excluded from the scope of this study because the Province implemented new regulatory procedures in 2008 to streamline approvals for municipal transit projects⁷. These changes shorten the environmental assessment process to six months for selected projects and exempts other specified transit projects from the requirements of the *Environmental Assessment Act*.

The Ministry of Environment does not maintain any central registry accessible to the public listing the commencement or completion of Municipal Class EA studies. While many municipalities post notices of commencement and notices of completion on their public websites, such information is often there for a limited time. Several municipalities post copies of portions of Municipal Class EA reports, but these are often removed from the websites once construction commences. There is no requirement by municipalities or the Ministry of the Environment to advise the public if a Part II request has been made for any particular project and even where such information is obtained from reports to council, copies of the actual Part II requests are only available through a lengthy and tedious freedom of information (FOI) request. Also, there is no mechanism to search for Municipal Class EA reports through the Ontario Environmental Bill of Rights Registry.⁸

The purpose of this study was to review data from a statistically significant number of Municipal Class EA Schedule B or C projects to assess the effectiveness and efficiency of the Municipal Class EA system for basic municipal infrastructure. To be considered, eligible Municipal Class EA Reports must have been completed as of November 2009 and actual construction must be complete, or will have commenced by the end of 2011. The selected projects must also have a reasonable diversity of geographic regions and sizes of municipalities as well as relate to one or more of the following basic infrastructure projects:

- Road widening, reconstructions or extensions;
- Bridge replacement or reconstruction work;
- Sewer works, either storm, sanitary or combined, but excluding waste water treatment plants⁹;
- Water distribution works, including pumping stations and reservoirs, but excluding water treatment plants¹⁰; and
- Other works such as flood control works, traffic calming devices and recreation trails.

On the question of whether 99 Schedule B and C projects is a reasonable sampling, it is worth noting that for the year ending December 31, 2002, MEA data indicates that there were a total of 97 Schedule B and C studies completed¹¹, for the year ending December 31, 2003 the MEA reported that there were notices of completion for 140 Schedule B and Schedule C projects and for the year ending December 31, 2007 the MEA data shows that there were notices of completion for 114 Schedule B and Schedule C projects.

The 99 projects forming the basis of this report were sourced by examining each and every website for the more than 400 separate municipalities across the Province of Ontario, downloading what information was available related to the commencement or completion of Municipal Class EA studies and then initiating numerous phone calls, messages and emails to the respective works departments, engineering departments and their external consultants to obtain the relevant data.

Anonymity

In order to gain the assistance of municipalities and not be forced to pursue data through a prolonged and costly FOI request, participating municipalities were advised that no individual project would be identified, but that the data would be presented in aggregated and statistical form.

Where specific examples were appropriate, a generic description such as “a road extension in a mid-sized municipality in Eastern and Central Ontario” would be used.

This anonymous approach provided a level of comfort for many participating municipalities and might in fact encourage other municipalities who have not yet participated to come forward with data should the RCCAO, the MEA or the Province of Ontario wish to undertake an update or supplement to this study.

2.0 The Current Process for Municipal Class Environmental Assessments in Ontario

2.1 The Environmental Assessment Act

Ontario's *Environmental Assessment Act* was first introduced in the early 1970s at about the same time as the introduction of Ontario's *Environmental Protection Act*. The purpose of the Environmental Assessment 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 Act requires 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 of Environment's approval.

Part II.1 of the Act allows for class environmental assessments so that projects falling within a defined class would not be required to formulate and consult with the public on terms of reference. As of November 30, 2009 there are 10 separate class environmental assessments that have been approved by the Ministry, as below.

Table 2.1: CLASS ENVIRONMENTAL ASSESSMENTS¹²

NAME	DATE APPROVED	PROPONENT
Municipal Class	October 2000 Amended September 2007	Municipal Engineers Association
Provincial Transportation Facilities	December 1997 and July 2000	Ministry of Transportation
GO Transit Class	December 2003	GO Transit
Minor Transmission Facilities	April 1992	Hydro One
Ministry of Energy and Infrastructure for Realty Activities Other Than Electricity Projects	April 2004	Ministry of Energy and Infrastructure ¹³
Remedial Flood and Erosion Control Projects	June 2002	Conservation Ontario
MNR Resource Stewardship and Facility Development Projects	March 2003	Ministry of Natural Resources
Provincial Parks and Conservation Reserves	December 2004	Ministry of Natural Resources
MNR Forest Management on Crown Lands	June 2003 Amended March 21, 2007	Ministry of Natural Resources
Waterpower Projects	October 2008	Ontario Waterpower Association

2.2 Municipal Class EAs and the Municipal Engineers Association

The Municipal Engineers Association (MEA) was established to provide unity and focus for licensed engineers employed by Ontario's municipalities by addressing issues of common concern and by facilitating the sharing of knowledge and information.

The Municipal Class EA system is a collaborative effort among the Ontario Ministry of the Environment, the Ministry of Municipal Affairs and Housing and the Municipal Engineers Association to allow municipal infrastructure projects to both comply with the provisions of the *Environmental Assessment Act* and proceed in an efficient and timely manner.

The Municipal Class EA dates back to 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 amended Ontario *Environmental Assessment Act*.

Regulation 334 made under the *Environmental Assessment Act* establishes that any municipality in Ontario and private sector developers designated under Ontario Regulation 345/93 may use the Municipal Class EA to obtain Environmental Assessment Act approval.

The Municipal Class EA system dated June 2000 was approved by Order of Cabinet on October 4, 2000 and thereafter the Municipal Class EA system was to be reviewed every five years. That approval established three separate classes of municipal projects:

Schedule A projects, which are deemed to be pre-approved by the Ministry of the Environment and consisted of routine repairs, maintenance and replacement of municipal infrastructure elements, such as the repaving of roads, the replacement of cracked or crumbled curbs or sidewalks, aging water pipes, with works of similar design and capacity.

Schedule B projects, generally includes 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 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.

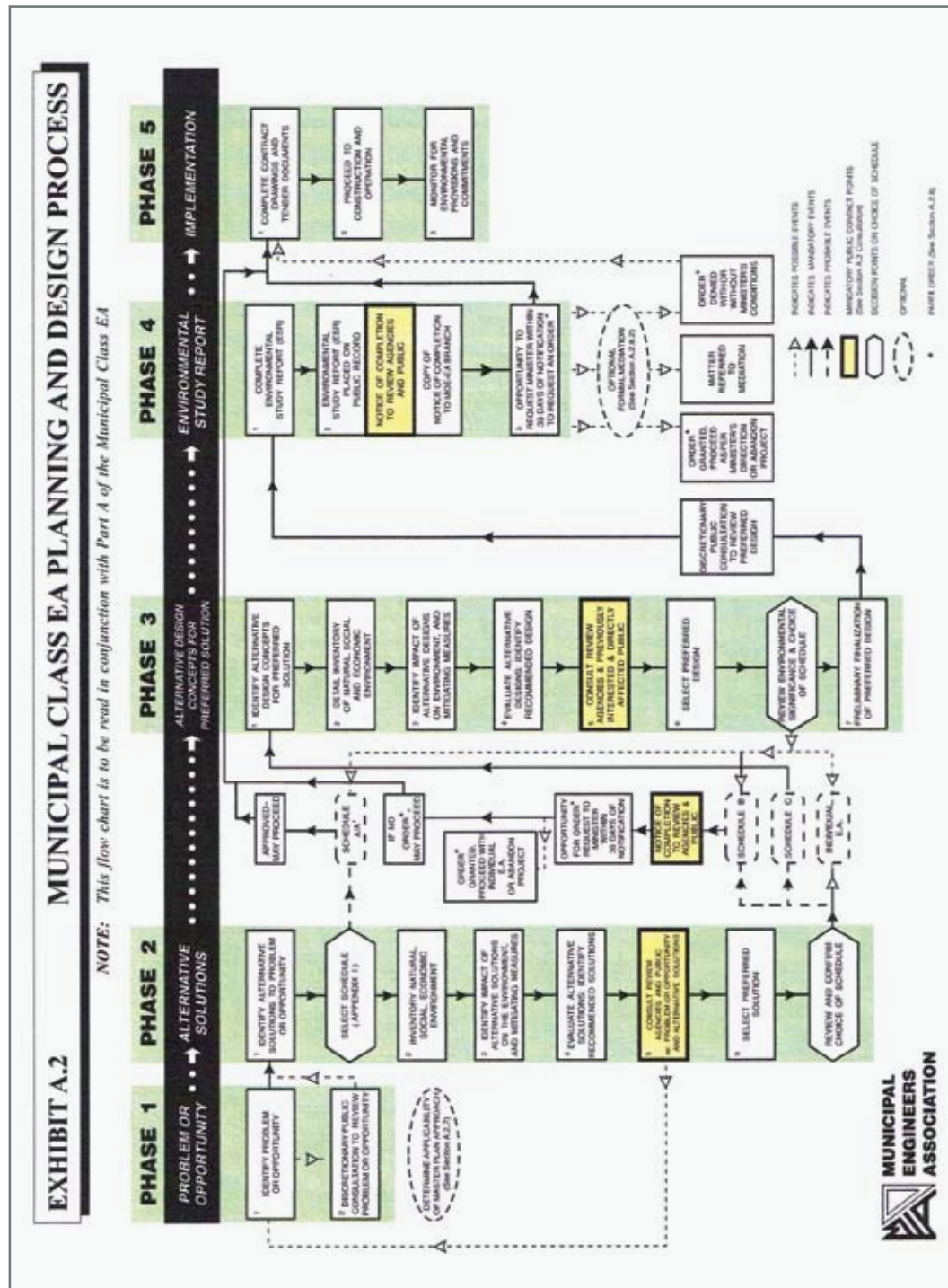
Schedule C projects, generally includes the construction of new facilities and major expansions to existing facilities.

2.3 The 2007 Amendments to the Municipal Class EA Systems

Several changes were proposed by the MEA throughout 2005 and 2006 as part of the Ministry's five-year review of the Municipal Class EA and were approved by the Ministry of the Environment in November 2007. These changes included the following:

- The establishment of a Municipal Class Schedule A+. These projects are pre-approved; however, the public is to be advised prior to project implementation.
- An increase of cost thresholds that would otherwise distinguish a Schedule A project from a Schedule B project or a Schedule B project to a Schedule C project.
- The addition of municipal transit projects within the Municipal Class EA system.
- The extension of the shelf life of a Schedule B, or a Schedule C Environmental Project Report from 5 years to 10 years between the notice of completion of the File Report or Environmental Project Report and the commencement of construction activities.

Figure 2.1: Outline of Municipal Class EA process¹⁴



2.4 Post 2007 Amendments to the Municipal Class EA Systems

Code of Practice

Although it is not focused on Municipal Class EAs, the Ontario Ministry of Environment recently published a Code of Practice¹⁵ for use by both proponents seeking approval of a new or revised class environmental assessment pursuant to subsection 13(1) of the *Environmental Assessment Act*, as well as proponents undertaking a class environmental assessment for a specific project. Communication about this Code of Practice should be encouraged at all levels so that proponents can proceed through the Municipal Class EA process with better certainty.

Adjustment of Capital Cost Thresholds

In April 2009, the MEA forwarded a request to the Ministry of the Environment for a minor amendment to the cost thresholds within the Municipal Class EA system to reflect increases in the cost of infrastructure construction during the 2008 calendar year as outlined in the Ministry of Transport's Tender Price Index for the fiscal year ending March 31, 2009 of 10.24%. It may be appropriate to address this issue through a permanent measure rather than a series of year-by-year requests by having the threshold values indexed to the MTO's Tender Price Index. A more detailed discussion of this alternative is discussed in sections 4.5 and 6.3 of this study.

Notices of Completion

On April 22, 2009 the Ministry of the Environment advised the MEA that in order to better track copies of the Notice of Completion for each Schedule B project and the Notice of Completion of Environmental Study Report for each Schedule C project, ministry staff have created an e-mail address (MEA.Notices.EAAB@ontario.ca) with the intention of having all future Notices sent to this location. There was no suggestion or other indication that sending an electronic copy to the designated email address for the Ministry would or could be used to enhance any notices to the public.

2.5 Part II Order Requests (Bump-up Requests)

Upon the completion of the EA Study report, a Notice of Completion must be posted by the proponent municipality for a 30-day public comment period. There is no requirement for the municipality to actually post a copy of the report, but they must make the report reasonably available for inspection during the comment period at a public place such as the municipal offices. During that period, any interested person may, pursuant to section 16 of the *Environmental Assessment Act*, make a request to the Minister of the Environment for an order under Part II of the Act to hold an environmental assessment hearing for the proposed project.

Of the 99 projects reviewed in this study, 17 projects were the subject of bump-up requests. Detailed information on bump-up requests is very difficult to obtain. There is no central public registry available to identify the number or nature of Part II bump-up requests and since bump-up requests occur after the Notice of Study Completion, it is not included in the study report. However about one third of the 17 projects that were the subject of a bump-up request

also required land expropriation and it was suggested by the consultants that part of the motive for making these request was to get a higher price during the land expropriation process.

The MEA notes that the MOE received and reviewed requests for Part II orders for 7 projects in 2003. The MEA did not provide any data on bump-up requests in either 2005 or 2006 as the MEA's efforts were focused on a review of the Municipal Class EA System. The MEA's data for 2007 indicates that 20 projects, out of the 113 Notices of Completion that were filed that year, were the subject of bump-up requests in 2007.

It would appear from the limited data available that delays to resolve bump-up requests were still significant as the end of 2007.¹⁶ Part of the changes to the EA process made in late 2007 were to delegate certain bump-up requests from the Minister to the Director and set time limits for the response from the Ministry. Consequently it is the Ministry's position as of December 2009 that a decision is made on a bump-up request in 30 to 66 days.¹⁷

Table 2.2: Summary of Minister of Environment Decisions in 2007¹⁸

Proponent	Appeal Date	Decision Date	Review Time	Decision	Number of Conditions
Loyalist	2005-02-09	2007-05-30	840	Deny	2
Chatham-Kent	2005-05-20	2007-01-24	614	Deny	16
London	2005-06-02	2007-06-25	753	Deny	14
Brampton	2005-12-10	2007-04-05	481	Deny	6
Peel	2005-12-14	2007-08-29	623	Deny	0
Hamilton	2005-12-15	2007-01-16	397	Deny	0
Brampton	2006-02-14	2007-06-05	476	Deny	3
Barrie	2006-02-26	2007-01-10	318	Deny	0
Sault Ste. Marie	2006-03-28	2008-01-15	658	Deny	0
York	2006-04-10	2007-05-15	400	Deny	0
London		2007-07-04		Deny	0
Mississauga	2006-05-09	2007-01-08	244	Deny	3
London	2006-06-08	2008-01-15	586	Deny	0
Brantford	2006-06-12	2007-01-10	212	Deny	0
Wellington North	2006-07-23	2007-03-27	247	Deny	0
Ottawa	2006-08-21	2007-07-07	320	Deny	1
Cavan-Millbrook-North Monaghan	2006-09-22	2007-04-27	217	Deny	5
Central Huron	2006-09-26	2007-08-29	337	Deny	0
York-Durham	2006-10-23	2007-03-21	149	Deny	15
Prince Edward County	2006-11-10	2007-09-10	304	Deny	0

Requirement for Proponents to Promptly Respond to Part II Request Issues

The Ministry issued a notice of altered procedures in April 2009 recognizing that in the past, Part II Order requests have sometimes caused significant delays for projects. The Ministry now requires that the practice will now be to focus the review to the key issues raised in the Part II Order Request, and proponents are advised to be prepared to provide written responses to the key issues raised to the Ministry within two (2) weeks. Otherwise, the Class EA could be deemed incomplete and the Notice of Completion may need to be re-issued.

2.6 Other Challenges to Municipal Class EA Projects

To the extent that a project may have been misclassified by a municipality as a Schedule A+ instead of a Schedule B or misclassified as a Schedule B project instead of a Schedule C project, there have been several complaints launched through the Courts and through the Environmental Commissioner of Ontario. Two of those complaints are summarized in Appendices B-1 and B-2 to this Study.

3.0 Relevant Studies Related to Ontario's Municipal Class EA System

3.1 Annual Reports of the Environmental Commissioner of Ontario

Who Enforces the Class EA? The ORC Case¹⁹

The 2007/2008 Annual Report by the Environmental Commissioner of Ontario reviews an earlier challenge in relation to the Ontario Realty Corporation (ORC). Purchases and sales by the ORC fall under another EA class, they are not part of the Municipal Class EA system. The allegation against ORC was that it failed to follow the prescribed steps and procedures for the relevant Class EA because the transaction was wrongly characterized as a Schedule B transaction instead of a Schedule C transaction. The Ministry reviewed the complaint and denied the request for further prosecution or action in the matter.

The applicants, not satisfied with the outcome through the Ministry of the Environment retained counsel to conduct a private prosecution of the alleged ORC infraction of failing to correctly characterize the proposed transaction and follow the public consultation steps associated with a Schedule C transaction. In 2004, a Justice of the Peace hearing the private prosecution found the ORC guilty of violating the *Environmental Assessment Act* and imposed a fine of \$7,500, being 75% of the maximum prescribed penalty through the *Provincial Offences Act*.

Although this particular Environmental Commissioner of Ontario report dealt with a different Class EA systems, the Class EA for ORC Realty Activities, and not the Municipal Class EA system, the case still raises the question of whether a person could challenge the mischaracterization of the Schedule of a Municipal Class EA project, and what remedies, if any, the courts might provide.²⁰

The Environmental Commissioner of Ontario's 2007/2008 Report to the Legislature²¹

The ECO's annual report for 2007/08 entitled 'Getting to K(no)w' included a section entitled Environmental Assessment: A Vision Lost, which addressed continuing calls from various stakeholders for improvements to the EA process. The section reviewed several site-specific EA cases, as opposed to Class EA cases. The report states that the MOE has embarked on a course of EA improvements with a stated goal of delivering a faster 'Yes' or 'No' to transit and transportation sector projects while still protecting the environment. For transit projects, the changes include a new class EA for surface transit projects and a proposal to compress Transit EAs into six months by waiving the need to prepare terms of reference or consider alternatives to the proposed project.

The report confirms public concerns that a “No” decision is not a possible outcome to Municipal Class EA project, that the only remedy becomes a bump-up request. The report recommended:

- More effective decision-making at the provincial level and a greater willingness to engage in big picture planning;
- A renewed emphasis on grappling with front end questions of need and alternatives;
- A commitment to a more precautionary approach, and
- More effective compliance and enforcement capacity to protect the quality and integrity of EA processes.

Transit Assessments: Is Faster Always Better?²²

The report focused on recent changes under the *Environmental Assessment Act* for transit projects, and specifically comments on O. Reg. 231/08. The concern is that the new Transit EA regulation explicitly limits the grounds upon which public concerns will trigger government intervention. This is of significant concern to the ECO, as social and economic considerations are often key issues that local citizens raise in opposition to proposed transit projects. It is likely that citizens will find alternative means, such as legal challenges or requests for judicial review, to express their concerns over issues such as these. Another concern expressed by the ECO is the “one size fits all” approach under which large projects such as the Union Station – Pearson Airport Rail Link are subject to the same assessment process as much smaller projects with fewer potential impacts. Unlike other streamlined EA processes that MOE introduced, there is no “classification” or categorization for transit projects within O. Reg. 231/08 based on the type or size of the project or the scale of potential environmental impacts.

3.2 The RCCAO February 2009 Study on EA Reform

The RCCAO commissioned a study by the MMM Group Limited²³ on Environmental Assessment Reform as a Tool for Economic Recovery. The study (the MMM Study) was completed in February 2009 and can be viewed and downloaded through the RCCAO website.²⁴

The MMM Study provided a series of recommendations (summarized in Appendix A) as well as anecdotal examples of several municipal construction projects. This study is a follow-up to the MMM Study and quantifies the trends and experiences across the Province of Ontario with Municipal Class Schedule B and Schedule C infrastructure construction projects.

3.3 CELA - A Review of Environmental Assessment in Ontario

The Canadian Environmental Law Association (CELA) is a non-profit, public interest organization established in 1970 to use existing laws to protect the environment and to advocate for environmental law reforms. In 2000 CELA initiated a review of the provincial EA regime which resulted in the publication *A Review of Environmental Assessment in Ontario* in the *Journal of Environmental Law and Policy*²⁵.

That report examined the full spectrum of Class EAs in Ontario and concluded that environmental planning law in Ontario was a “dismal failure”²⁶. The report was not focused upon nor limited to a review of the Municipal Class EA system²⁷. CELA expressed concerns about the widespread use of Class EAs because “Class” assessments may also reduce public participation and avoids or obscures a review of cumulative impacts of a large number of small projects. Part of the perceived problem from CELA’s perspective is that the subject matter for the “Class” is not restricted to only those projects that occur frequently, have a predictable range of effects, and are likely to have only minor impacts on the environment.

CELA’s comments most likely were not directed so much at Municipal Class EAs as they were at other Class EAs such as the MNR Resource Stewardship class. There is nothing in the CELA report that specifically addresses intersection improvements, streetscaping changes, road widening or the replacement of antiquated bridges in an urban setting.

3.4 CELA Submission on the Draft Regulation under the *Environmental Assessment Act* for Public Transit Projects: EBR Registry No.010-2760; and Draft Transit Priority Statement: EBR Registry No.010-3128

In its submission dated May 12, 2008 to the Ministry of the Environment on the Ministry’s proposed regulation for public transit projects²⁸, CELA expressed general support for the initiative primarily due to the fact that it would assist in the timely and orderly development of environmentally sustainable modes of public transit across Ontario.

CELA recognizes that there are numerous environmental and socio-economic benefits associated with suitably located, well-designed and properly operated public transit services and systems, particularly within highly urbanized areas.

At the same time, CELA qualified its support by adding that its general support for this new assessment process in the public transit context should not be construed as support for utilizing a similar approach for other projects, or classes of projects, in non-transit sectors. CELA also added that it takes no position on whether it is preferable to use a new regulatory exemption in the proposed regulation, or current Class EAs, in order to facilitate public transit projects.²⁹

4.0 Key Data Analysis

4.1 General

This study consisted of a review of 99 separate Municipal Class EA construction projects in Ontario. The following are the relevant study parameters and facts:

- i. The projects are municipal construction projects that were or will be completed sometime between December 31, 2006 and January 1, 2013;
- ii. The projects consist of the construction, reconstruction or replacement of roads, including road widening and extensions, bridges, water or wastewater infrastructure as well as a small number of other projects such as flood control works and railway underpasses;
- iii. The 99 projects have a cumulative value of \$1,120,500,000;
- iv. The projects triggered a Municipal Class Schedule B or Schedule C EA study, and the study was completed by November 30, 2009; and
- v. Projects were selected to reflect geographic diversity as well as a range of sizes of the respective municipalities.

Figure 4.1: Map showing the four geographical regions of Ontario

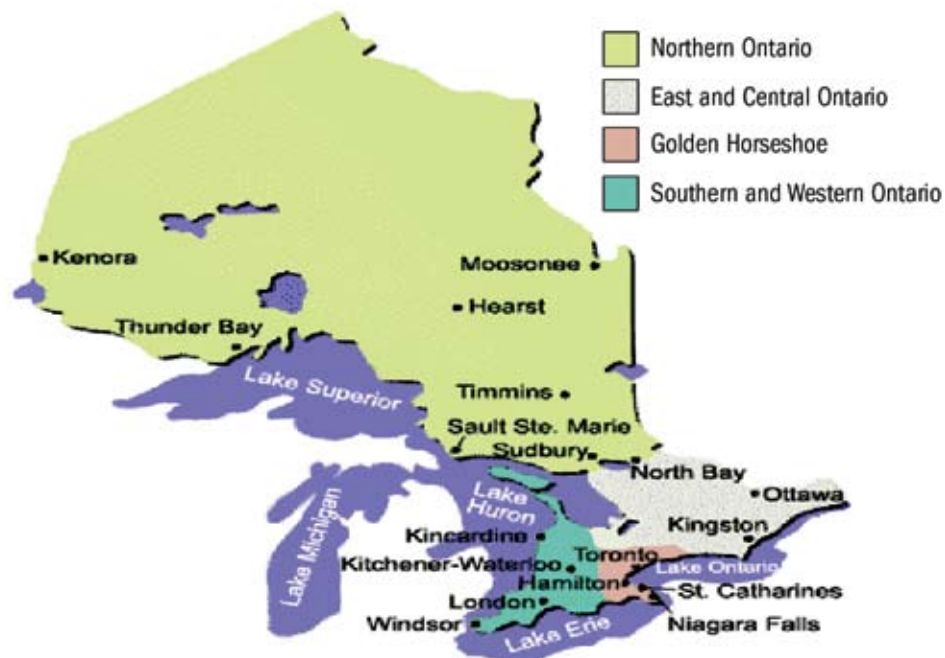


Table 4.2: Project Type and Regional Location for 99 Class EA Projects

PROJECT TYPE	GOLDEN HORSESHOE	EASTERN AND CENTRAL	NORTHERN	SOUTHERN AND WESTERN	TOTAL
Road widening and extensions	38	10	4	7	59
Bridge reconstructions and replacements	5	1	0	5	11
Sewer, water pipes and facilities	12	1	0	4	17
Other, including traffic calming devices, flood control and rail underpasses	8	1	0	3	12
Totals	63	13	4	19	99

4.2 Anonymity of Specific Projects and Municipalities

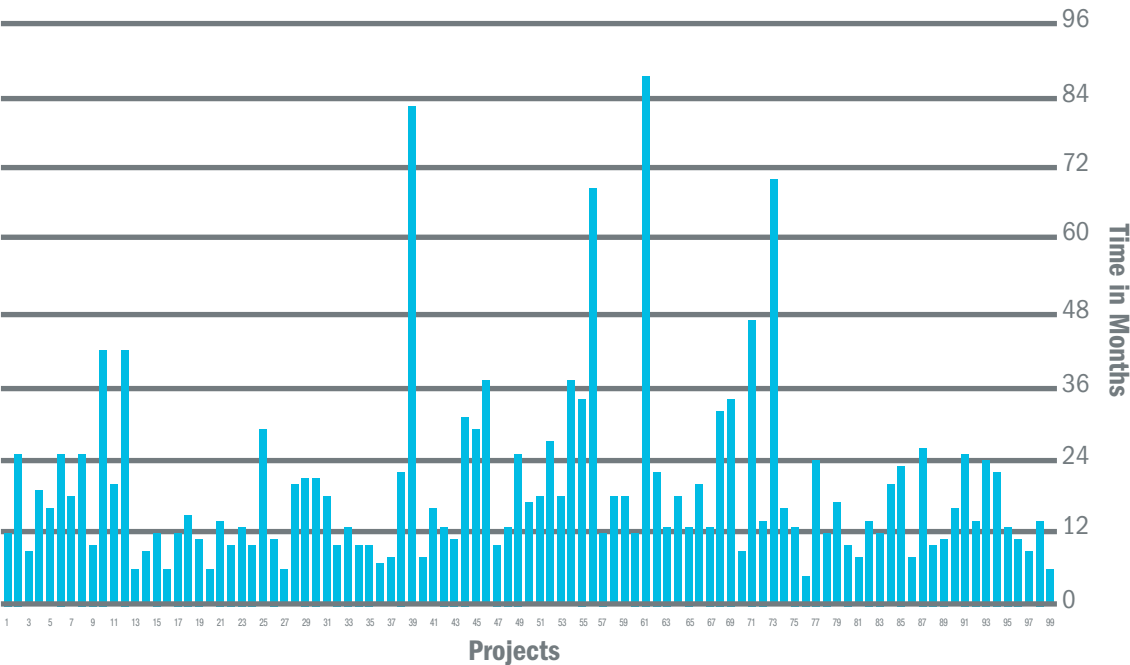
Please refer to the discussion in section 1 of this paper under the heading “Anonymity”.

One of the longer EAs was project #10, a Schedule 'B' intersection improvement in the Golden Horseshoe that took 42 months to complete. There was no major obstacle or cause for the delay, but more a series of smaller delay issues. For instance, the baseline and peak traffic density studies were done in early January 2001. It was subsequently determined that a more representative traffic pattern study was required, and it was conducted in October 2003.

4.3 Duration of EAs

Figure 4.3 shows the length of time take for each of 99 projects to go through the Municipal Class EA process. The average time between notice of commencement and notice of completion for the 99 projects was 19.3 months.

Figure 4.3: Time to Complete EAs



These projects are randomly numbered on the bar graph. For instance Project #1 and Project #64 are road projects in the Golden Horseshoe while Project #3 is a water infrastructure project in Eastern and Central Ontario and do not, for example, represent a specific geographic region or type of project.

Table 4.4: Duration of EAs by Provincial Region (months)

	GOLDEN HORSESHOE	EASTERN AND CENTRAL	NORTHERN	SOUTHERN AND WESTERN
Minimum	5	7	10	6
Average	21	16	22	17
Maximum	87	37	29	69

Table 4.5: Durations of EAs by Project Type (months)

	MINIMUM	AVERAGE	MAXIMUM
Schedule “B” Roads	6	20	42
Schedule “C” Roads	6	22	87
Schedule “B” Bridges	6	14	29
Schedule “C” Bridges	13	17	22
Schedule “B” Sewer and Water	8	21	82
Schedule “C” Sewer and Water	10	18	34
Schedule “B” Other	5	11	24
Schedule “C” Other	13	15	18

The Schedule ‘C’ EA Report for Project #71 required 47 months to complete. One of the causes for the delay appears to be uncertainty as to which aboriginal nations should be included as part of the consultation process, and the time that it took to initiate notice and receive comments.

Table 4.6: Durations of EAs by Year EA Started (months)³⁰

	MINIMUM	AVERAGE	MAXIMUM
Before 2005	8	31	87
During 2005	11	20	37
During 2006	6	16	26
During 2007	5	12	18
During 2008	5	11	20

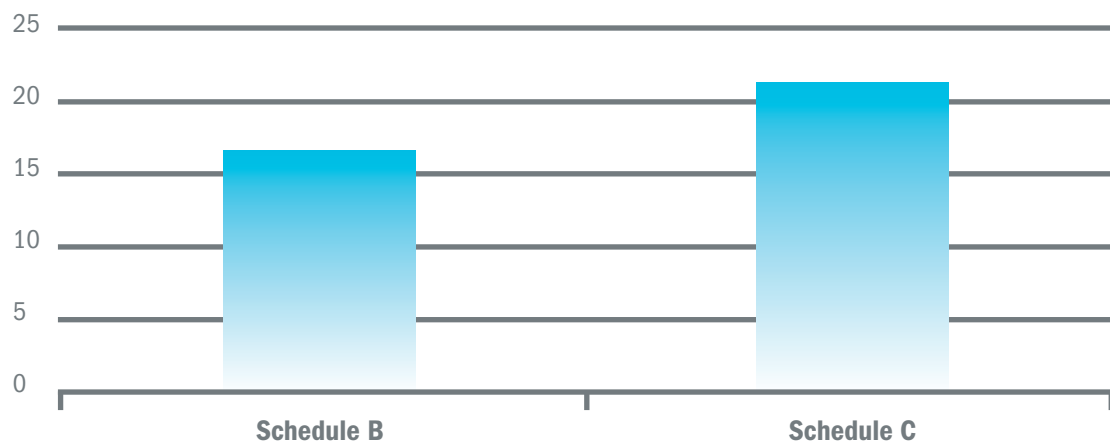
Table 4.7: Durations of EAs by Year EA Completed (months)

	MINIMUM	AVERAGE	MAXIMUM
Before 2006	8	21	42
During 2006	6	21	68
During 2007	5	24	87
During 2008	5	16	37
During 2009	6	14	26

Table 4.8: Durations of EAs by Population of Municipality (months)

POPULATION OF MUNICIPALITY	MINIMUM	AVERAGE	MAXIMUM
59,000 or less	6	13	20
59,001 to 199,000	6	16	42
199,001 to 600,000	5	22	87
600,001 or more	5	22	68

Figure 4.9: Average delays (in months) for EAs by Schedule Type



Based on MEA data for prior years and various provincial budget measures and investments into basic infrastructure, it is estimated that there were about 140 Municipal Class Schedule B or Schedule C studies initiated in each of the 2008 and 2009 calendar years. If we apply the average project value of \$11.3 million associated with the 99 projects in this report that would mean that there are delays ranging from 6 to 18 months on more than \$3 billion³¹ of basic municipal infrastructure projects across Ontario that would otherwise have proceeded in 2008 and 2009. Based on typical labour/material/overhead ratios for basic municipal infrastructure projects, the delays are holding back about 10,000 full time equivalent jobs annually.³²

4.4 Additional Time for Bump-up Requests

Of the 99 projects reviewed in this study, 17 of the projects received requests for Part II orders (bump-up requests). All of the bump-up requests related to the 17 projects examined in this

report were eventually withdrawn or denied by the Minister, however the process to resolve the bump-up requests submitted prior to the end of 2007 added anywhere from 4 to 24 months to the overall process. While the delays for the projects where bump-up requests were significant, only two of the bump-up requests were made after December 31, 2007. Given the nature of the data available on bump-up requests, the additional time to address those requests was excluded from the EA delay and cost estimates presented in this paper.

4.5 Cost of EAs

The cost of EAs for the purposes of this report has two components, the costs of the study or report itself and the inflationary costs for the period spanned between the commencement and completion of the EA study.

The first component of the total costs of EAs is the costs paid to third party consultants to conduct all related investigations and studies such as traffic study reports, archeological and heritage investigations, etc. that comprise the full EA report. Actual cost data for the EA study was obtained in about one third of the 99 projects. With the exception of three instances, those costs were in a relatively narrow range from a low of \$35,000 to a high of about \$165,000. For the remaining two thirds of the projects where actual EA study costs were unavailable, an estimate was used in this report of between \$40,000 and \$120,000 depending on the length and nature of the EA report and consultation periods.

In most cases where data are available, the actual costs of preparing the EA study documents represented about 1% of the total project cost. The balance of the estimated 14.5% of the construction costs is attributed to the delays in moving the project forward.

One of the recommendations made in this report is to remove the obligation for EA Study Reports to consider alternatives in cases such as road widening and intersection improvements. There is insufficient information available in the data for the 99 projects to estimate a percentage cost savings, however it might be in the order of 10% to 25%. Most of the savings would be realized through a faster turnaround for the EA report, as the scope of review and public commentary would be significantly reduced.

The part of the costs of an EA that is paid to third party consultants is normally about 1% of the capital cost of the construction project. The other portion of the costs, and the largest (on average about 13.5% of capital construction costs), is the increase in construction costs that occurs during the period of time it takes to complete the Municipal Class EA Study Report.

Over the past decade construction costs have increased at a significantly faster rate than most consumer prices as many construction costs are tied to the cost of energy and other resources. This study estimated the rise in construction costs as the increase in construction costs during the period starting with the publication of the notice of commencement of the EA study and ending upon the publication date of the notice of completion of the EA study. The inflation rate used is not the Statistics Canada consumer price index but is the MTO Tender Price Index for the Province of Ontario which is submitted to be a fair and impartial indicator of the costs of basic municipal infrastructure construction by municipalities.

Project #65 involved a road widening in the Golden Horseshoe area. The amount paid to third parties consultants for preparation of the investigations such as traffic and archeological, as well as the final EA document was \$144,000. Construction costs escalated from about \$10.606 million to \$11.328 million during the 13 months that it took to complete the EA Study Report. The total cost of the Schedule C EA Report for project #65 is therefore calculated to be \$866,000.

Table 4.10: MTO's Tender Price Index³³

YEAR END	TENDER PRICE INDEX	YEAR OVER YEAR CHANGE
1992/1993 Q4	100.0	0%
1999/2000 Q4	116.77	1.44%
2000/2001 Q4	129.96	11.30%
2001/2002 Q4	131.42	1.12%
2002/2003 Q4	134.75	2.53%
2003/2004 Q4	137.01	1.67%
2004/2005 Q4	150.56	9.89%
2005/2006 Q4	163.90	8.86%
2006/2007 Q4	172.25	5.09%
2007/2008 Q4	189.89	10.24%
2008/2009 Q4	213.22	12.28%
2009/2010 Q2	201.27	-5.60%

In addition to the foregoing it is arguable that there is a third component of costs for an EA, being the staff time and municipal resources expended to initiate and support an EA Study report. No estimate has been made for internal municipal costs for the EA process such as staff time and resources for tendering or selection of the EA consultant, publication of notices, etc. or any legal fees related to the EA. Such costs would be in addition to the costs outlined in this report.

The cumulative value of all of the 99 construction projects in this study is \$1.120 billion. Adding together the costs paid to third parties for EA reports and the inflationary increases of construction for the duration of the EA reports, brings the cost of the EA studies for the 99 projects to \$162 million or an average of 14.5% of total project cost. It is estimated that across Ontario, about 140 Schedule B or Schedule C projects are initiated every year. Applying the data from the 99 projects reviewed as part of this report, means that Ontario's Municipal Class EA system is adding \$232 million in extra costs every year.

Figure 4.11: Average Cost of EAs by Geographic Region

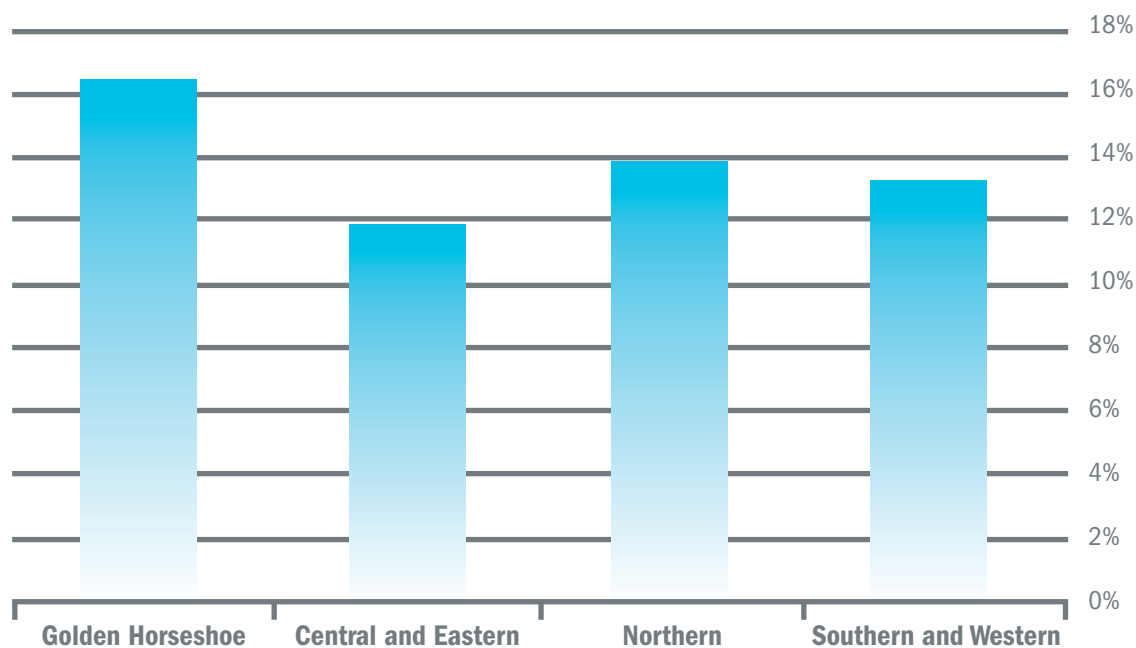
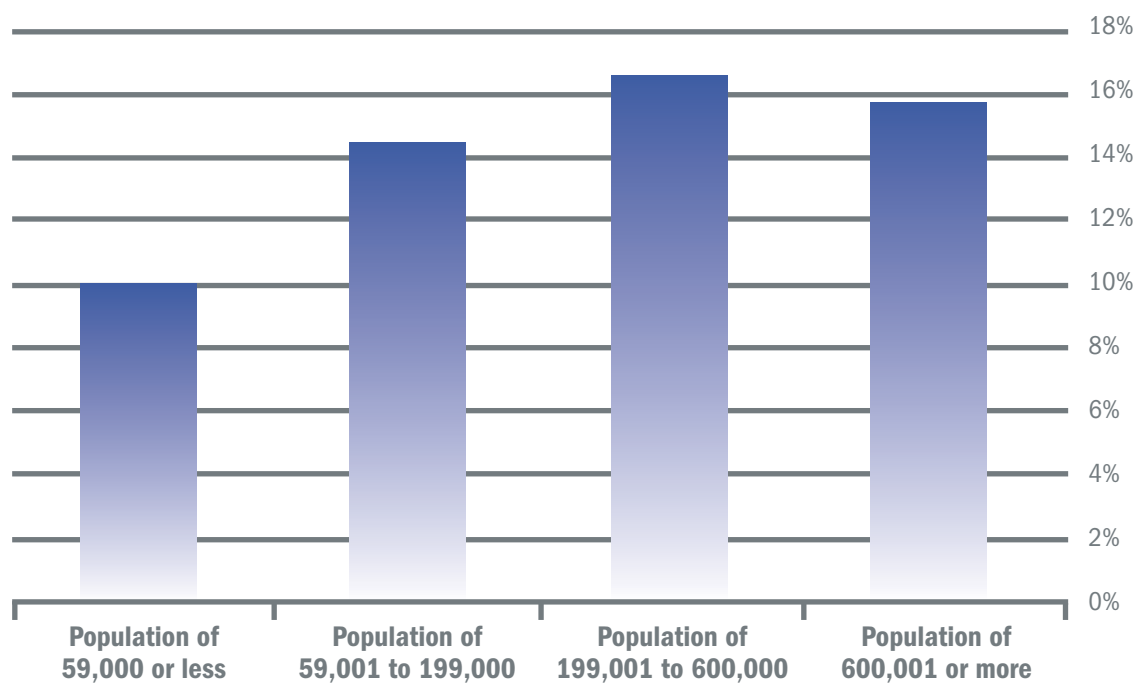


Figure 4.12: Average Cost of EAs by Size (population) of Municipality



5.0 The Overall Costs of the Municipal Class EA Process

In Project #17, a sanitary sewer extension in Southwest Ontario, the EA study was completed in 2005, 12 months after it started, but was subject to several bump-up requests. While the bump-up requests were denied, the Ministry did impose additional conditions for extra studies and measures that added costs of \$250,000 to the project. Due to the added charges, the municipality was unable to proceed to tender until late October 2007.

5.1 Actual versus Expected Durations for Municipal Class EA Reports

There are very few if any references to what the expected timeframes and costs are for conducting Schedule B or Schedule C Municipal Class EAs, so it is difficult to measure whether the actual costs and time frames are generally expected or acceptable to all stakeholders.

The MMM Study did not cite any official time expectations but did indicate that the most effective Class EA processes still typically take six to eighteen months to conclude. While not indicative of time frames for streamlined Class EAs, the prescribed deadlines under Ontario Regulation 616/98 for a full EA after the Minister has approved the Terms of Reference are 17 weeks from completion of the EA to completion of the end of public inspection and consultations. The time frame between notice of commencement and the completion of the EA study report is a maximum of 120 days for a Transit EA under the new Transit Projects EA Regulation³⁴.

The average time between notice of commencement and notice of completion for the 99 projects was 19.3 months, and even if we only looked at Municipal Class EAs that were started in 2008, the average duration was still 11 months and there were dozens of Municipal Class EA studies that were identified as being started in 2008 but not yet complete as of October 31, 2009, which would further increase the average duration of post-2007 Municipal Class EA studies.

5.2 Actual versus Expected Costs for Municipal Class EA Reports

There are very few, if any, references to what the expected costs are for conducting Schedule B or Schedule C Municipal Class EAs. Many observers unofficially suggest that the expected cost ranges to complete a Schedule B or Schedule C study and report is in the order of 5% to 10% of the total capital costs of the proposed project. This study supports the view that the time cost of money has not been taken into account by governments when they are estimating the cost of the Municipal Class EA process.

The third party costs for the preparation of a Schedule B or Schedule C report, including all relevant traffic pattern and volume studies, archeological assessments and endangered species assessments are generally below 3% in the vast majority of the 99 projects reviewed through this study. However the capital cost estimates of the projects that are included by the consultants as part of the Environmental Study Report are often well below the actual capital costs incurred by the proponent municipality. In some cases the actual capital costs were double the original study estimates, particularly where lengthy delays were triggered by a 'bump-up' request for a Part II order.

There have been other cases of added costs beyond those attributable to the time needed to complete the EA Study Report or the costs of responding to bump-up requests.

5.3 Are Municipal Class EAs Worth the Added Costs and Delays?

Urban growth in the post war period was rapid. By the mid-1970s Ontario and almost every other economy had experienced the first energy price shocks and it was recognized that conservation and wise resource management of the environment was important to future prosperity. This mindset fostered the introduction of Ontario's *Environmental Assessment Act* (OEAA) in 1975, the first legislation of its kind in Canada. The original intent of the OEAA was to ensure that public infrastructure projects were subject to the scrutiny of an environmental review process.

It is appropriate to ask the question at any time, but particularly appropriate to ask the question in 2010, of whether the added opportunity for the public and other stakeholders to comment and oppose basic municipal infrastructure projects such as road widening, intersection improvements, new water and waste water infrastructure for existing communities and bridge replacements is worth added costs of 14% or more and delays of almost 20 months on average? The answer may vary on which person or organization you choose to ask. While some EA advocates may state that there are environmental and economic benefits that accrue from the EA process, they rarely respond with quantifiable savings.

Let us briefly examine the design changes that occurred as a result of the Municipal Class EA process for the projects evaluated in this report. Of those 99 projects, 25 projects are believed to have had some form of design change as a result of the EA Report and related public consultations. Of those 25 projects, the design changes in about nine of those projects were described by the municipality or consultant as "minor" or "minimal" and a further five of the projects that were changed were in relation to additional monitoring or testing imposed by the Ministry in response to bump-up requests. The result is that there was some form of design change in about 11 of the 99 projects.

Examples of design changes in the 11 projects include: moving the alignment for a new road by 5 metres (project #54); a changed radius road realignment that would avoid the need to construct a culvert (project #50); new connections from the road to accommodate a multi-use trail that is being constructed beside the municipal road allowance (project #15) and an added requirement to tunnel several creek crossings instead of open cut (project #55).

6.0 Alternatives to Reduce EA Study Delays and EA Study Costs

6.1 Redraft the Criteria for Schedule A+ and Schedule B Projects

Of the construction projects examined as part of this study, 36 of the 99 (36%) were Schedule B projects. Collectively they accounted for \$26.6 million of incremental costs on the 36 separate projects or approximately \$740,000 per project. The average delay for a Schedule B construction project to complete the EA study was about 16 months.

Only 1 of 36 Schedule B projects was the subject of a Part II order request, as compared to 16 of the 63 Schedule C projects, suggesting that Schedule B projects may have far less potential impact than Schedule C projects.

If the Schedule B projects had been characterized as Schedule A+ projects, participating municipalities could have saved the vast majority of those incremental costs, totalling \$26.5 million, for investment in other infrastructure construction projects or services.

6.2 Fast Track Certain Municipal Class EAs

On September 11, 2007 the Ontario Ministry of the Environment announced the approval of a new “Class” EA process for municipal transit projects that would help streamline the approval process for major transit infrastructure improvements. Prior to the approval many transit projects were required to follow the full “Individual” EA process. The Province concluded that without the need for developing and obtaining Ministry approval of detailed Terms of Reference for a project the new Transit Class EA process would be completed and approved up to one year faster than had previously been possible.

Although the Ministry claimed that Transit Class EAs would result in a process that would save one year and thus accelerate the construction process, the Province sought to further speed up the approval of new transit projects through a new transit regulation proposal³⁵. Under the new Regulation, proponents are not required to assess different alternatives to the project, which is in contrast to a continuing requirement under the Municipal Class EA. The new regulation also sets a time limit of four months from the posting of a Notice of Commencement to completion of the Environmental Project Report, to consult with interested persons. The regulation does not prescribe the manner in which consultations must occur; this is left to the proponent to determine. The Regulation was made as of June 4, 2008 and published in the July 12, 2008 edition of the Ontario Gazette.³⁶

The review of alternatives to the proposal is still an integral part of the Municipal Class EA framework and there is no time frame limit for the completion of any reports under the Municipal Class EAs.

In most of the road widening and intersection improvement related EAs reviewed in this study, the alternatives considered and canvassed as part of the EA included:

- a) Do nothing;
- b) Make improvements to other nearby roads and/or intersections;
- c) Restrict traffic and development; and,
- d) Improve local transit.

Clearly each of these alternatives are an integral part of most municipal official planning and budgetary debates and arguably do not require a “re-vetting” through the EA process. The same alternatives were often repeated in most of the bridge replacement EAs.

Consideration should therefore be given to a Municipal Class EA regulation that would remove the need to consider alternatives for road widening and intersection improvements as well as bridge replacements, and would also establish the same time limits for Municipal Class EAs that apply to transit projects under Ontario Regulation 231/08.

It is noted that the Ministry has implemented some new time frames as of April 2009, as more particularly described in section 2.5 of this report, however those time frames only relate to municipal responses within two weeks to key issues raised in any Part II order requests. The notice does not imply or require that the Ministry would resolve a Part II order request within any specified time frame.

There may however be some argument for new roads (as compared to road widening) or new bridges (not a replacement for an existing water crossing) that alternative alignments should continue to be addressed as part of the Municipal Class EA process.

6.3 Establish Automatic Indexing of Threshold Capital Costs

The cost of construction, particularly for basic municipal infrastructure, continues to increase at a rate that is significantly higher than the consumer price index reported by Statistics Canada. There are undoubtedly a number of reasons for this difference, such as shortages of materials such as steel and concrete, higher fuel costs, higher risk management and WSIB premiums, more onerous and slower regulatory approvals such as water taking permits. It is beyond the scope of this paper to determine what the exact differences are or whether they are justified, but they are significant.

Several government and other organizations track this information. The Ontario Ministry of Transport has maintained a Tender Price Index dating back to 1992. For the period December 31, 2006 to December 31, 2007, the Ministry of Transport reported an increase of 10.2%. For the year ending December 31, 2008 the Ontario Construction Exchange reported a year over increase of a further 7.8%. The net result is that a basic municipal infrastructure project that might have cost \$2 million at the end of 2006 would now cost \$2.376 million. Such an inflationary impact over two years, has not only added more than 18% to the construction costs, it has likely reclassified a project such as a streetscaping project from a Schedule A+ to a Schedule B Municipal Class EA, thereby adding further significant costs and delays of between 6 and 24 months. If the project was a road widening, it might have been reclassified from a Schedule B to a Schedule C Municipal Class EA.

It is therefore recommended that the threshold values in the Municipal Engineers Association guideline document be automatically indexed on an annual basis to an objective construction index such as the MTO tender price index or the Ontario Construction Exchange’s non-residential construction price index.

Project #23 involved a bridge replacement: the original structure was a single-lane bridge dating back to WWI. Over time and due to corrosion, the bridge was taken out of service for safety reasons in mid-2004. The notice of commencement for the EA to replace the structure was posted 4 months after the bridge was closed, and took a further 13 months to completion. Construction of the replacement bridge took over a year and was completed in late 2007. During the period from mid 2004 to late 2007 nearby residents were subjected to additional risks as alternative routes were significantly longer in the event that any emergency services were required.

In project #21, the time to complete the EA study for a road extension was 14 months, but it took the Ontario Ministry of the Environment a further 22 months to resolve the bump-up requests.

6.4 Reduce Abuses of the Part II Order Request Rights

Of the 99 projects reviewed in this study, 17 of the projects received requests for Part II orders (bump-up requests). All bump-up requests were eventually withdrawn or denied by the Minister, however the process to resolve the bump-up requests added anywhere from 4 to 24 months to the overall process. In several instances the direct costs of responding to bump-up requests and the increase in construction costs during the period of addressing the bump-up requests, pushed the project costs beyond the capital budget limits of the municipality, necessitating further delays until additional funding became available.

The MMM Study had suggested three separate measures to reduce the most frivolous or abusive requests³⁷, including:

- A nominal fee be charged to any person requesting a Part II Order (e.g., \$125.00 as is used for the Ontario Municipal Board);
- Give the Director at the Ministry of the Environment the power to dismiss a “Part II Order Request” when it is being used frivolously to frustrate the implementation of a project that has already had extensive public process; and
- Provide general criteria in the legislation for the Minister to grant a Part II Order, and as in other legislation, include a specific prohibition for requests that are frivolous, vexatious or for the purpose of delay. These are requests that are apparently intended to serve the interests of an individual, at the expense of broader public interests, or which have no reasonable environmental grounds and are merely attempts to frustrate or slow a project.

While the first measures would likely reduce some frivolous Part II order requests, it would be unlikely to deter property owners who are seeking additional compensation for lands that might be sold to or expropriated by the proponent municipality to carry out the proposed project. The second and third measures recommended in the MMM report have the potential to remove Part II order requests that are made purely for financial land compensation reasons, but such Part II order requests are likely to be masked by other issues and there is a concern that the application might be wrongly interpreted and thereby restrict the raising of legitimate environmental assessment issues.

6.5 Establish Protocols with Federal Agencies

Eleven of the 99 municipal construction projects involved either bridge reconstruction or bridge replacements.

It appears that one of the reasons for the prolonged EA study was to resolve conflicting positions between the Ontario Ministry of the Environment and federal government agencies on matters such as the clearance between the high water level and the bottom of the proposed bridge structure where the water body was navigable water. It is recommended that Ontario agencies defer to federal authorities on matters such as clearances for navigable waters and construction practices, procedures and schedules to protect local fish habitats.

6.6 Extend ‘Shelf Life’ of pre-2007 EA Study Reports

Seven of the 99 projects reviewed in this study required an addendum due to the passage of more than five years since the completion of the original EA report before any construction commenced. The changes to the Municipal Class advanced by the MEA and approved by the Ministry in November 2007 extended the shelf life of EA reports for both Schedule B and Schedule C projects from 5 years to 10 years. While this may appear to reduce the need for a growing number of addendum studies, the Ministry appears to have interpreted the new ‘shelf life’ as applying to projects that were initiated under the post-2007 criteria and would not extend the life of pre-November 2007 study reports beyond five years. A copy of the Ministry’s interpretation letter is attached as Appendix C of this report.

It is recommended that the MEA position that the shelf life of all post-2000 study reports be extended from 5 to 10 years, including those predating November 2007, be implemented.

6.7 Expand the Recognition of Prior Planning Act Consultations

A few of the 99 projects reviewed through this study involved a minor road extension along an existing municipal right of way that had been previously approved through the *Planning Act*. Where no land acquisitions are required and the connecting link is a relatively short distance (e.g. less than 1 kilometre), consideration should be given to classifying such projects as a Schedule A+ project.

6.8 Establish Transparency for Completed EA Reports

The Ministry of the Environment has already advised the MEA that in order to better track copies of the Notice of Completion for each Municipal Class EA Schedule B project and the Notice of Completion of Environmental Study Report for each Municipal Class EA Schedule C project, all future notices of completion should be sent to a newly created ministry e-mail address (MEA.Notices.EAAB@ontario.ca). There has been no indication that the next logical step will be taken, that is to allow public internet access to view MEA notices of completion.

It is strongly recommended as a measure of transparency and comparability that there should be public viewing access to all notices of completion both current and historical. This recommendation is an after-the-fact filing and is not intended to slow or further delay the completion of EA reports or the construction of the subject basic municipal infrastructure project.

6.9 Continue to Reduce the Time Frames for EA Bump-up Requests

The Municipal Engineers Association and the Environmental Commissioner of Ontario have both indicated a need for faster responses from the Ministry of Environment to Part II bump-up requests from proponents. In December 2009 the Ministry resolved to make decisions on bump-up requests in 30 to 66 days.³⁸ This shorter time frame excludes any preparation or consultation times by the municipality. In addition, there are also concerns about multiple bump-up requests. As was the case with project #45, where a bump-up request results in an amended study, will a bump-up request on the amended study also trigger a delay of one to two months?

In project #31, the time to complete an EA study for a road reconstruction was 18 months, but a further 18 months was required to resolve two bump-up requests.

In project #45, the time to complete the EA study for a road extension was 29 months, which was followed by several bump-up requests. The Ministry’s resolution of the bump-up requests took a further 24 months. The imposition of the Ministry’s conditions required an addendum to the original EA study. Not surprisingly, the posting of the addendum triggered a further bump-up request.

In project #73, a bump-up request was only addressed after 10 months by a Minister’s decision.

In project #95, another road extension, the Minister’s response to a bump-up request also took an additional 10 months.

Appendix A: Recommendations from “Environmental Assessment Reform – A Tool for Economic Recovery”

Recommendations from the “Environmental Assessment Reform – a Tool for Economic Recovery” report dated February 2009 by the MMM Group

- a) Projects of Special Status: In the short term, as part of the economic recovery process, the Province should either adopt a special regulation or issue a Declaration Order² for all economic stimulus projects to remove the requirement for consideration of alternatives for this defined list of projects.
- b) Where a piece of infrastructure is shown in a provincial growth management plan, a proponent should not be required to consider “Alternative Solutions” for the undertaking, as recognition should be given to the broader planning exercise done by the Province or Metrolinx.
- c) Clarify and improve the process of harmonization between land use planning and environmental assessment processes, so that there are not independent or ‘dueling processes’. This includes improving the way land use planning considers alternatives, but then allowing the land use planning process to fulfill EA requirements. This would also require clarifying the role of the Ontario Municipal Board, and the role of private players in the process. Figure 3 illustrates potential coordination between the planning process and EA processes.
- d) Give the Director the power to dismiss a “Part II Order Request” when it is being used frivolously to frustrate the implementation of a project that has already had extensive public process.
- e) Provide general criteria in the legislation for the Minister to grant a Part II Order, and as in other legislation, include a specific prohibition for requests that are frivolous, vexatious or for the purpose of delay. These are requests that are apparently intended to serve the interests of an individual, at the expense of broader public interests, or which have no reasonable environmental grounds and are merely attempts to frustrate or slow a project. There are certainly legitimate concerns raised on many projects, but there must be some limits on blatant abuse and delay tactics.
- f) Implement a requirement to pay a nominal fee to request a Part II Order (e.g., \$125.00 as is used for the Ontario Municipal Board), so that it would eliminate the most frivolous requests.
- g) Conduct a detailed review of Schedule B Municipal Class EA projects. Many could be reclassified as Schedule A+ projects. This would expand the list of “pre-approved projects”, even if the proponent is still required to do some form of public notification. Others might be reclassified as Schedule C if the range of environmental interests routinely merits a more extensive process. The result may be that Schedule B is redundant. Examples of potential reclassifications are included in Appendix A of this report.
- h) In the event that Schedule B remains valid, the intent, content and documentation requirements of the “Project File Report” should be clarified.

i) Provide additional education to municipalities and the public on effective participation in the process, including providing more information on best practices for environmental management and mitigation of construction projects. Better education on these basic process parameters will create benchmarks against which processes can be tested in the event of a process-related Part II Order request.

j) The Agency should be charged with developing a procedure for screening routine projects, including sample Screening forms. They should encourage a consistent approach to and simplified screenings among Departments. They should encourage streamlining of the matters considered in the screenings when funding is the only trigger, and/or when routine federal permits are the trigger.

k) The Agency should be charged with working with each Federal Department to develop a two-track Screening process. “Routine Screenings” for projects that are common, limited environmental impact, or for which comparable approval processes have addressed environmental management issues should have a proportionately simple Screening form and process. In particular, this should be targeted to projects where the only Federal participation is in the funding of a project. “Complex Screenings” should remain the case for projects that merit a more rigorous review, where Federal environmental commitments are more significant, or where there is a demonstrated controversy of the project in the general public. Projects could be elevated at the discretion of the RA from “Routine” to “Complex Screening”. No legislative change is required for this.

l) Federal Departments are required to post information on screenings on a computer registry, but this tool is still difficult to use, and it is not used effectively as a management tool to track screenings. The Agency should upgrade the site as both an information and as a management tool to avoid these problems;

m) In the event of a conflict between the activities of multiple departments, or merely in the event of excessive delay in a single department, the Agency should be given the mandate to assist project proponents to resolve these issues in the most expedited manner possible.

n) The Agency should be charged with developing procedures for the earlier assessment of projects, and earlier participation of Federal departments, even if triggers for Canadian Environmental Assessment Act (“CEAA”) are not fully known.

o) The Agency should be empowered to be a “one-window” for approaching the Federal government on all CEAA Screenings. They should be able to coordinate Federal participation in a project, even if triggers are not fully certain (the “in the process until you are certain you are not” principle). They should be legally empowered to be the “coordinating Responsible Authority” where no other clear RA is identified.

p) The RAs should be instructed to defer to or “harmonize” the Screenings with comparable environmental management processes of other levels of government.

Appendix B-1: Case Study – Bradford Sewage Treatment Plant expansion

Review of Application I2006011: 6.1.4 Alleged Contravention of EAA (Obligation to Consult)
re: Bradford STP

- *Investigation Denied by MOE*

Background/Summary of Issues

In February 2007, two applicants submitted an application for investigation to the Ministry of the Environment (MOE). They were concerned that they were denied the opportunity to participate in consultations on a sewage treatment plant expansion because they believed that the expansion did not include their hamlet of Bond Head.

Bond Head, located 30 kilometres north of Toronto in Simcoe County, is a quiet rural hamlet with approximately 500 residents. The Town of Bradford-West Gwillimbury (the “Town”), Bond Head and the surrounding area are experiencing intense pressure to develop. In 2003, a controversial large-scale development project, covering 2,500 hectares and accommodating 114,000 people, was proposed by a development corporation to urbanize the lands between Bond Head and Bradford. Bond Head would see its population grow to 4,400. The proposal also called for a Servicing Master Plan in collaboration with the Town to address water and sewer servicing solutions for the Bradford and Bond Head areas.

In their application, the applicants alleged that the Town contravened the Class Environmental Assessment (“Class EA”) provisions of the *Environmental Assessment Act* (EAA) with respect to its proposed expansion of the Bradford sewage treatment plant (“STP”). These provisions include an obligation to consult with interested persons. The applicants asserted that the Town intends to enlarge its plans for the STP expansion to include the rural hamlet of Bond Head, located six kilometres west of Bradford but the Town failed to include the Bond Head expansion in their environmental assessment process. By not including Bond Head in the Class EA, the applicants stated the Town did not properly consult with the residents of the hamlet of Bond Head as required under the EAA.

The EAA sets out a decision-making process for project proponents to ensure that all environmental impacts of a project are considered and any negative effects are mitigated prior to the project’s implementation. The Class EAs are designed to streamline the process for certain groups of projects with shared, predictable effects. The Town’s STP is covered by Schedule C of the Municipal Class EA, which is the category for undertakings with the potential for significant environmental effects. Schedule C projects are required to follow the full planning and design process. These projects require the production of an Environmental Study Report (“ESR”) that compiles all information that must be available for review by the public. The process has built in mandatory public consultation points. Under the Municipal Class EA process, a person with concerns at the conclusion of the planning process may request that the Ontario Minister of the Environment review the status of the project.

The Town undertook a Class EA to increase the size of the Bradford STP for the approved Official Plan Urban Service Area of Bradford. The Town’s Class EA process did not cover Bond Head. The applicants allege that they did not believe they needed to comment on the STP expansion because documents stated that Bond Head was excluded from the Class EA. The

affected residents of Bond Head stated they were not informed of plans to include Bond Head in the proposed expansion or of the environmental implications of the proposed expansion on their community. Subsequent decisions by the Town alerted the applicants that the Town was planning to include Bond Head in the STP expansion. The applicants are concerned about the phosphorus loading from the wastewater discharged from the expanded STP into the Holland River, and the impacts on the water quality of the Nottawasaga River watershed and Lake Simcoe watershed, which is already phosphorus-stressed.

A public information centre was held in January 2005, for the Municipal Class EA process for the Bradford STP. The applicants stated that the documents provided at the centre clearly declared that the session was for the Official Plan Urban Service Area of Bradford. In other words, the STP expansion was for the area that does not include Bond Head. Furthermore, the applicants noted that Bond Head was mentioned in the ESR, which stated “new development would be required to provide a community based wastewater treatment facility, separate from services in the existing urban development area.” The applicants and other Bond Head residents relied on this statement and believed that Bond Head would not be affected by this particular expansion and therefore did not necessitate their comment on the Class EA.

However, in May 2005, and June 2005, the Town passed a by-law and signed an agreement worth \$5.4 million with a development corporation to provide the STP with additional sewage treatment capacity to service the hamlet of Bond Head and the area in between the Town and the hamlet (Highway 400/88 Special Policy Area) in the event that the Town determined that the Bradford STP was the best means to service all or part of these areas. There was no opportunity for the public to comment on this agreement. A new Class EA for Bond Head was not planned.

The applicants also allege that the Town is planning to expand the STP by 2,000 m³/day in excess of the capacity approved in the Certificate of Approval (C of A) issued to the Town in May 2006. The May 2006 C of A allowed the Town to expand the STP from 7,400 m³/day in two stages to 17,400 m³/day, which would cover service for the urban centre but not the additional area covered by the Bond Head agreement.

In February 2007, the Town council approved a contract with a construction company to complete both stages of the STP expansion and indicated that the development corporation would be formally advised of the tender results, and its Letter of Credit would be drawn up as per their agreement. The applicants submitted the report from the Town outlining this transaction with their application.

The applicants also stated that according to a local newspaper editor, the development corporation was paying \$6.1 million of the \$7.3 million of the STP expansion costs, although they do not own any property in urban Bradford. The Town's Notes to the Consolidated Financial Statements as at December 31, 2005 also state under paragraph 12 (b) “During the year, the Town entered into an agreement to expand the sewage treatment plant beyond what was outlined in the Environmental Study Report dated February 2005. This agreement will provide additional sewage allocation in the special policy area at Highways 88 and 400 and the Bond Head expansion area. A letter of credit for \$6.7 million is held by the Town regarding this project.”

Ministry of Environment Response

In May 2007, MOE denied the Application for Investigation because the ministry did not find that the Town provided service outside the approved service area outlined in the Class EA. MOE considered sub-section A.1.2.3 of the Municipal Class EA to assess whether the Town had breached the Class EA in contravention of the *EAA*. If the Act was contravened, the Town would be subject to section 38 of the *EAA*, which deals with offences and penalties.

MOE did note that on March 2005, the Town completed the Class EA to increase the size of the STP in two stages to accommodate growth in its approved service area. MOE also confirmed that the STP's Class EA does not provide for service to the hamlet of Bond Head by noting that the ESR defined the service area as the OMB-approved Urban Boundary for the Town of Bradford.

However, based on the evidence provided in the application, the ministry did not conclude that the Town provided service outside the approved service area as outlined in the Class EA. The ministry stated that "While actions by the Town may suggest an expansion to the [STP] service area in the future, insufficient evidence was provided that the expansion of the service area had taken place."

In its decision letter to the applicants and the Town, MOE clearly stated that if the Town proceeded with the expansion to include Bond Head, additional public consultation requirements under the Municipal Class EA would be required, and the Town must:

- Complete an addendum to the completed ESR to revise the current service area to include Bond Head or BPI development lands and redistribute the available capacity of 17,400 m³/day from an expanded WPCP; or
- Complete a new Municipal Class EA to expand the service area of the plant to include Bond Head or BPI development lands and redistribute the available capacity of 17,400 m³/day from an expanded WPCP; or
- Complete a new Municipal Class EA to expand the service area of the WPCP and expand the capacity of the WPCP to accommodate Bond Head or BPI development lands; and,
- Obtain approvals required under the Ontario Water Resources Act for any works required to expand the existing service area of the WPCP.

The ministry also noted that if the Town decides to increase the capacity of the STP beyond 17,400 m³/day, it would be required to make an application to the ministry to amend its C of A and satisfy any Municipal Class EA requirements.

ECO Comment

The ECO believes that the MOE decision was reasonable. The ministry examined the *EAA* and the Municipal Class EA, and considered the applicants' allegations and the evidence included in their application. MOE explained its reasons in clear language and sufficient detail. However, the ECO notes that this application reveals concerns regarding the environmental assessment process.

MOE clearly articulated that if the Town actually proceeds to expand the STP area beyond the approved service area it must include Bond Head into the Class EA process and apply for an amendment to its C of A. This addressed the main concerns outlined by the applicants. According to MOE, the affected residents will have an opportunity to participate in public consultations related to Bond Head when the Town commences the STP expansion. MOE's decision also affirmed that the Town must comply with the requirements outlined by the Municipal Class EA or they may be found to have committed an offence (i.e., breach of the EA approval) and subject to fines under the *EAA*.

This application raised questions regarding what MOE deems to be the actual commencement of a project under the *EAA*. One may argue that a project commences when the shovel breaks ground on a project, while others would argue that this would constitute one of the end points of the project. The applicants believed that the expansion project commenced when the Town entered into agreements with companies who will oversee the project. The Notes to the Consolidated Financial Statement indicate the Town's intention to expand the STP to include Bond Head. The ECO believes based on evidence that MOE could have concluded that the expansion of the STP project commenced when the intention was formed and contracts were entered into.

In a related matter, MOE's decision did not specify what action would trigger the requirement for a new Class EA for Bond Head. It could conceivably be a public announcement by the Town announcing the proposed expansion any time prior to the actual construction of the expansion project – after numerous critical (and possibly irreversible) decisions have been made already. The ECO cautions that once contracts have been entered into, prior to a Class EA being conducted, the outcome of a Class EA will tend to favour the project over environmental considerations. Moreover public input will not be given the full weight it is owed, thereby undermining the purposes of the *EAA*. This is particularly true in this situation where the expanded sewage treatment plant is necessary for the proposed controversial large-scale urban development to succeed. Since the Town has demonstrated its intention to include Bond Head in the STP expansion, the ECO encourages the Town to undertake a Class EA for Bond Head sooner rather than later – when critical decisions are already made.

The ECO also notes that there is significant local opposition to the proposed large-scale development project, which would drastically change the nature of the Bond Head community. In such situations, sewage infrastructure expansions can set the stage – perhaps irrevocably – for development to proceed, and local residents deserve opportunities to fully participate in such decisions.

Appendix B-2: Case Study – Bloor Street Transformation Project, Toronto

In August 2008, an application for investigation was filed on behalf of two cycling advocacy groups alleging that in misclassifying the Bloor Street Transformation Project under the Municipal Class Environmental Assessment (MCEA), the City of Toronto contravened the *Environmental Assessment Act* (EAA). The applicants argued that as a result, the city failed to hold broad public consultations or consider design alternatives that would make more room for cyclists on the redesigned street.

The purpose of the project is to beautify Bloor Street in Toronto between Church Street and Avenue Road by widening and resurfacing sidewalks and reconstructing the road. The road construction, which will retain the four existing traffic lanes, will be paid for by the city. The remaining work will be paid for through a city loan to the members of the Bloor Street Business Improvement Area (BSBIA). The project was classified in 2001 under the MCEA as a Schedule A project (which, being the lowest classification, does not require public consultation).

After the MCEA was revised and approved by the Ministry of the Environment (MOE) in 2007, the project was re-classified as a Schedule A+ project. Since the estimated cost of the project is \$25 million, the applicants argued that the project exceeds the MCEA threshold and requires at least a Schedule B designation and perhaps even a Schedule C designation.

The applicants argued that if the project had been properly classified as a Schedule B project,

the public would have been consulted and able to promote the consideration of cycling infrastructure in the street's redesign. The applicants also alleged that the city is ignoring directions in provincial planning laws and policies that require consideration of cyclists' safety in municipal planning decisions. Furthermore, the applicants submitted evidence of the adverse impacts of motor vehicle pollution to support their claim that the project would cause environmental harm.

In August 2008, a group called the Concerned About Bloor Coalition (CABC) announced it would seek a judicial review (JR) of the city's classification of the project. Two months later, Ontario's Divisional Court dismissed the JR application, concluding that the classification of the project was reasonable and that the project appeared to fit within Schedule A in 2001 and, subsequently, within the new Schedule A+.

On October 21, 2008, MOE denied the application for investigation, stating that it had already considered the applicants' concerns and received the relevant environmental assessment documents from the city. MOE went on to describe the obligations of a proponent under the MCEA, noting that "the description of the undertaking is determined by the proponent and may be defined in broad terms or in very specific terms." In MOE's opinion, the city complied with the MCEA and, therefore, an investigation into whether a contravention had occurred was unwarranted.

ECO Comment

While we believe that MOE's decision not to investigate was reasonable, the ECO is troubled by some of the implications of the application and the MCEA process followed by the City of Toronto. For more than a decade, the ECO has raised concerns about consultation processes used for projects approved under Class EAs. In our 2007/2008 Annual Report, we noted public complaints about problems and deficiencies with proponent consultation processes, and MOE's apparent lack of interest in promoting fairness and adherence to Class EA requirements outlined in approval documents such as the MCEA.

This application also illustrates how difficult it can be for the public to gain access to (or even learn about the existence of) EA approval documents. The ECO is disappointed that MOE was slow to provide documents requested by the applicants, forcing them to make requests under the *Freedom of Information and Protection of Privacy Act*. The ECO is also concerned that MOE provided the public with incorrect information about the MCEA and the *EAA* on a number of occasions and that MOE staff were confused as to the proponent of the project, the legal status of the BSBIA and its relationship to the city.

These observations suggest that MOE does not have sufficient resources to properly monitor the large number of Class EA approvals being issued under the *EAA*, and that MOE staff need better training and information about the nuances of the MCEA and other Class EAs. This review also demonstrates that MOE continues to rely on a complaint-based compliance model, and the ministry is reluctant to prosecute proponents for failures to comply with the terms of approvals under Class EAs and the *EAA*. The ECO urges MOE to develop an enforcement policy that applies to alleged contraventions of the *EAA*.

The ECO believes that the city could have undertaken a more transparent consultation process in this case, and MOE should have dealt with this aspect of the application more thoroughly. Some of the applicants' concerns could have been avoided, in part, if the MCEA required municipalities to publicize the classification of all MCEA projects. The ECO urges MOE to review these provisions of the MCEA and consider ordering appropriate amendments.

The application raises broad societal implications related to the sharing of roads by motorists and cyclists. While its straightforward street grid and relatively flat topography give Toronto the potential to become a great cycling city, this potential is unlikely to be achieved without leadership and support from the Ontario government to develop a cycling infrastructure. We urge Ontario ministries that oversee municipal planning to encourage municipalities and planners to engage cyclists in their deliberations on planning and uphold the spirit of the Provincial Policy Statement, 2005. To facilitate improved planning that promotes cycling and walking in Ontario communities, MOE should consider ordering the Municipal Engineers Association (MEA) to prepare modifications of the MCEA, as it did in 2007 to promote public transit.

Recommendation 4: The ECO recommends that MOE consider ordering the Municipal Engineers Association to amend the Municipal Class Environmental Assessment to explicitly promote cycling and walking as modes of transport.

Appendix C: MOE letter to Municipal Engineers Association re. Municipal Class EA amendments, 2007

Ministry
of the
Environment

2 St. Clair Ave. West
Toronto ON M4V 1L5

Ministère
de
l'Environnement

2, avenue St. Clair Ouest
Toronto ON M4V 1L5



January 10, 2008

Mr. P. Jeffrey (Jeff) Seaton
Municipal Engineers Association
Executive Director
6355 Kennedy Road, Unit 2
Mississauga ON L5T 2L5

Dear Mr. Seaton:

Further to our discussion on December 13, 2007, I have outlined below the ministry's interpretation of Section A.1.4 (Phase-In Provisions) of the Municipal Engineers Association (MEA) Municipal Class Environmental Assessment (Class EA), as amended in 2007.

Section A.1.4. states:

"Any Schedule B or C project for which a Notice of Completion has been issued under the 2000 Class EA, may continue under the 2000 Class EA until the project is completed.

Since there have been no substantive changes to the process or mandatory consultation requirements, and only minor revisions to the schedules, all other projects, as described in this document, are subject to the requirements of this Class EA as of the date of approval of this Municipal Class EA. Where changes to the Municipal Class EA do affect a project currently underway, then proponents can consult the EAA branch to discuss the appropriate approach.

For transit projects, phase-in provisions are provided in Section D.1.1. "Implementation and Transition Provisions."

MEA has advised that proponents wish to take advantage of the amendments to Section A.4.3 which include increasing the time frame for the implementation of a project from 5 to 10 years. MEA is of the opinion that the word "may" in the above noted provision provides proponents with the option of using either the 2000 or 2007 version of the Class EA regardless of when a Notice of Completion was issued.

The ministry does not concur with your interpretation of the word "may" and how it applies to grandfathering projects completed under the 2000 Class EA process. While the word "may" is not ideal, we do not believe it was intended to allow a proponent to elect between the 2000 and 2007 process.



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Mr. P. Jeffrey (Jeff) Seaton
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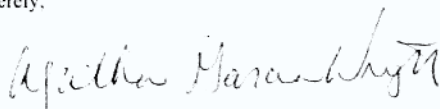
MEA's 2007 Class EA amendments superseded certain provisions of the Class EA approved in October 2000 and it is important that proponents follow one consistent planning process. Allowing proponents the discretion to choose between the 2000 or 2007 version of the Class EA once a Notice of Completion has been issued, either before or after the approval of the amendments, would lead to an inconsistent application of the *Environmental Assessment Act* and uncertainty for both the proponents and the public.

The ministry's interpretation of Section A.1.4. is that proponents who issued a Notice of Completion prior to September 6, 2007, are subject to the 2000 version of the Class EA. Proponents who issued a Notice of Completion after September 6, 2007, are subject to the 2007 version of the Class EA.

Section A.1.4. does not include any grandfathering provisions. Grandfathering provisions could be included in the Class EA, which would allow proponents to take advantage of the 2007 amendments. As you know, this was not something that the MEA explicitly pursued as part of the last round of amendments. If this is something the MEA now wishes to pursue it is our view that MEA would be required to undertake a major amendment to its Class EA. The ministry considers this to be a major amendment as it has the potential to allow projects to be subject to new process requirements. Should MEA wish to pursue a major amendment it would have to identify a reasonable transition period from the time in which a project was completed under the 2000 version of the Class EA until September 6, 2007. MEA would also have to specify what provisions of the 2007 amendments would apply.

Thank you for discussing these issues with the ministry. Should you have further questions please contact Ms. Gemma Connolly, Special Project Officer of the Environmental Assessment and Approvals Branch, at 416-314-7213 or by email at gemma.connolly@ontario.ca.

Sincerely,



Agatha Garcia-Wright
A/Director
Environmental Assessment and Approvals Branch

c: Ministry of the Environment's Regional EA Coordinators
Michael Harrison, EAAB

Appendix D: RCCAO letter to MOE re. proposed Transit EA Regulation, 2008



**Residential & Civil
Construction Alliance
of Ontario**
Constructing Ontario's Future

May 12, 2008

Mr. Blair Rohaly, Project Manager
Ministry of the Environment
Strategic Policy Branch
135 St. Clair Ave. West, 11th Floor
Toronto, ON M4V 1P5

Dear Mr. Rohaly:

Re.: Proposed Regulation under the Environmental Assessment Act for Public Transit
Projects (EBR Registry #010-2760)

The Residential and Civil Construction Alliance of Ontario takes transportation investment issues most seriously and in the past year and a half, our labour-management alliance has released three reports on Transportation. Last summer, RCCAO also responded to MEA's Environmental Study Report and provided a strong endorsement of the proposed amendment to the Municipal Class Environmental Assessment document. Our response noted that "[r]emoving the need to carry out Individual Environmental Assessments (IEA) with the front end time consuming process of developing and seeking approval of the Terms of Reference for an IEA will condense the EA phase by one to two years or more depending on the scale and complexity of the transit project."

In terms of the current regulatory proposal, we concur with the objective to put in place a six-month EA process for public transit projects. RCCAO is concerned, however, that the greatest weakness of the regulations pertains to the "time out" provisions. The use or misuse of these "time out" provisions could prove to be the "Achilles' heel" of this regulation in terms of the objective of achieving a six-month time frame. Suggestions to maintain an expedited EA schedule and other aspects of the draft regulation will be provided below.

RCCAO has reviewed the minutes of the Metrolinx board meeting held on March 28, 2008 where special guest speaker Environment Minister, the Hon. John Gerretsen, provided remarks upon the release of the draft regulation. We agree with the statement by the Minister that "although the time frame is accelerated, the result is not to reduce the importance of planning but rather to facilitate movement through the post-planning process by removing 'red tape' ... The regulation itself is grounded in the Ministry's commitment to invest in and protect the environment. Investment in public transit only serves to fulfill this mandate – as increased options for public transit are good for both the environment and quality of life."

An important distinction by the Minister is the “post-planning process” compared to earlier stages of the process. While a speedier process is important at the tail end of the process, it is equally important that the often cumbersome processes for the review of transportation projects be streamlined and rationalized wherever possible. The implementation of this six-month Transit EA regulation will not be a panacea to our traffic woes if proponents do not undertake comprehensive and balanced planning exercises and then perform rigorous reviews of these scoped alternatives through the EA process.

While this response is not meant to single out any one particular project, there is a sense of overzealousness in proceeding with a number of EAs for projects that are contained in Toronto’s Transit City “plan” even though development of the Regional Transportation Plan by Metrolinx remains in the formulation stages. It would be preferable to conduct proper planning and analysis for these proposed alignments first, otherwise the EA itself is too open-ended because the undertaking is not as well-defined as it could be.

In order to establish the most critical transportation priorities, input from a wide range of practitioners including governmental, private sector and public spheres will continue to be necessary. While we are not suggesting a change to the regulation with respect to providing evidence of consultation prior to undertaking an EA, we do wish to point out that the likelihood of more projects being completed within the six month time frame will be enhanced with proper planning and analyses.

Transit Priority Statement

RCCAO also supports the broad policy linkages that are enunciated in the draft “Transit Priority Statement” (dated April 2, 2008). For example, integrated transportation planning will support the objectives as set out in Ontario’s Growth Plan for the Greater Golden Horseshoe. Consideration should be given by the Province of Ontario to making the Transit Priority Statement a document that carries legal weight, much as the Provincial Policy Statement does.

Draft O. Reg. for Transit Projects and GTTA Undertakings

Definition of Transit Project (Schedule 1) – The proposed regulatory definition is too narrow and the exclusivity of bus or rail could prove to be short-sighted. Expanding or widening roads for the purpose of installing high occupancy vehicle lanes should be included. In many cases within the GTA, roadway cross-sections will not permit segregated lanes to be established, necessitating some degree of pavement widening within existing rights-of-way in order to accommodate transit facilities. Similarly, fast-tracking an HOV lane might help fill in the “missing pieces” of an integrated road network. In addition, with advanced tolling technologies, an expedited assessment for an HOV lane will help to raise revenues that can be directed to funding transit projects, in whole or in part.

Appendix D (Continued)

3

Notice of Issue (Time Out Provision) – RCCAO recommends that the appropriate sections (s.11; s.6(2)) in the draft regulation be modified to limit provincial interest “time outs” to a maximum of two (2) months. If these sections remain unmodified, these provisions could be construed as “loopholes” and will result in interminable delays and undercut the intent of expediting urgent transit investments. Consideration should be given to limiting the number of time outs that can be triggered by opponents of a transit project.

While RCCAO has been a strong advocate for an expedited EA process for municipal transit projects, our association remains committed to the principle of public consultation as a way to help guide decision-making. In this way, priorities and solutions can be arrived at that are more sensitive to local community concerns and that will help to enlighten development of a regional transportation plan. However, where consultation processes result in frivolous protests as a way to delay a project that has clear environmental and socio-economic benefits, the Province must clearly direct that the project proceed.

RCCAO urges adoption of the proposed regulation and Transit Priority Statement, with the suggested revisions, within the current legislative time period.

Yours truly,

Andy Manahan
Executive Director

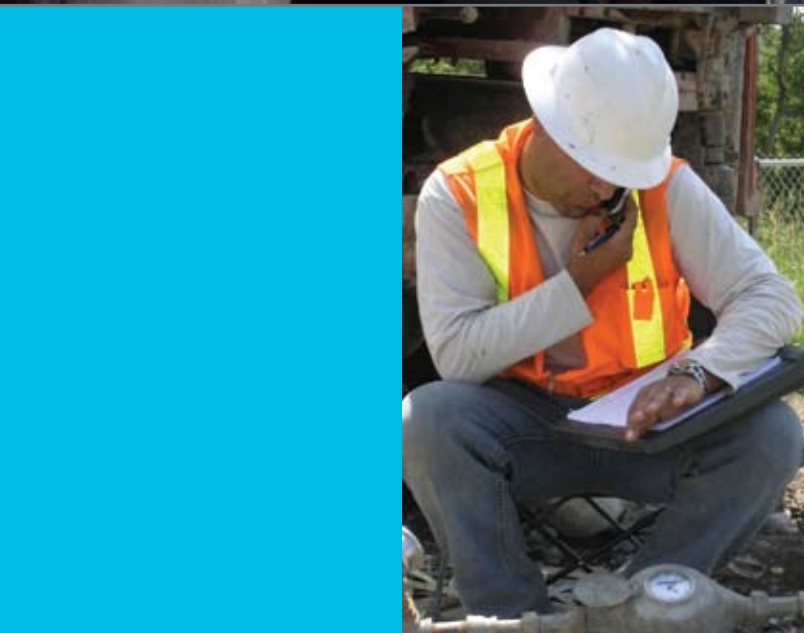
Copy to:

Rob MacIsaac, Chair, Metrolinx
Hon. Dwight Duncan, Minister of Finance
Hon. John Gerretsen, Minister of the Environment
Hon. David Caplan, Minister of Public Infrastructure Renewal
Hon. Jim Bradley, Minister of Transportation
Hon. Jim Watson, Minister of Municipal Affairs and Housing
Hon. Sandra Pupatello, Minister of Economic Development and Trade
David Livingston, Infrastructure Ontario
Alan Wells, Office of the Provincial Development Facilitator

Endnotes

- 1 The 99 projects in this study had a total value of \$1.12 billion. Extrapolating that value to 140 projects per year yields an annual project value of \$1.58 billion, or more than \$3 billion for the two fiscal years ending in 2008 and 2009.
- 2 See <http://www.ene.gov.on.ca/en/news/2006/060601.pdf>, http://www.ene.gov.on.ca/en/about/minister/speeches/060606_2.php?print=1 and <http://www.ene.gov.on.ca/envision/news/2006/060601at.htm>
- 3 See http://www.ene.gov.on.ca/envision/env_reg/er/documents/2007/ConsultationJune2007.pdf
- 4 See <http://www.rccao.com/news/files/RCCAO-EA-Reform-Report-02-2009.pdf>
- 5 A full list of the municipal shovel ready projects is accessible over the internet at <http://www.infrastructureapp.mei.gov.on.ca/en/default.asp?tab=2#tabs>. Most of the road projects are 'road reconstruction' other than widening or new routes or 'sidewalk' replacement or rehabilitation as these projects constitute a Schedule 'A' or a Schedule 'A+' Municipal Class EA project and therefore do not require an Environmental Study or detailed public consultation.
- 6 See data available at <http://www.municipalengineers.on.ca/classea/convertedPDFs/ClassEAWebPage.asp>
- 7 In June of 2008, the Transit Projects and Greater Toronto Transportation Authority Undertakings Regulation (O. Reg. 231/08) was made which applies to public transit projects.
- 8 See www.ebr.gov.on.ca and the Environmental Bill of Rights Registry Act.
- 9 Wastewater treatment plants were excluded as they form part of a separate Certificate of Approval process through the Ministry of the Environment pursuant to the Ontario Water Resources Act.
- 10 Water pumping stations are normally regarded as part of the water distribution system and water treatment plants have a separate Certificate of Approval process through the Ministry of the Environment pursuant to the Ontario Water Resources Act.
- 11 See the 2003/04 Annual Report of the Environmental Commissioner of Ontario at page 57.
- 12 As presented by the Ministry of the Environment at the following internet link <http://www.ene.gov.on.ca/en/eaab/parent-class-ea-list.php?print=1>
- 13 The Ministry was known as Public Infrastructure Renewal in the pre-2008 period.
- 14 Downloaded with the consent of the MEA from www.municipalengineers.on.ca
- 15 Code of Practice dated November 2008 and accessible via the internet at http://www.ene.gov.on.ca/envision/env_reg/er/documents/2008/010-1259b.pdf
- 16 The writer was unable to source any meaningful data for bump-up requests made in 2008 or 2009.
- 17 See Ministry internet posting at <http://www.ene.gov.on.ca/en/eaab/partlorders.php>
- 18 2008 MEA "Municipal Class EA Monitoring Report" dated September 2008
- 19 Annual Report of the Environmental Commissioner of Ontario 03/04, article separately accessible at http://www.ecoissues.ca/wiki/index.php?title=Who_Enforces_the_Class_EA%3F_The_ORC_Case
- 20 There appear to be no reported Ontario court decisions on the mischaracterization of the Schedule of a Municipal Class EA, however it is unlikely that the court would reverse the decision of the Ministry denying a bump-up request absent evidence that the Ministry's decision was made in bad faith or that it was unreasonable for the Ministry to render the decision. See also the 2006 Ontario Divisional Court decision on an appeal of a bump-up request in *SOS - Save Our St. Clair Inc. v. Toronto (City)*, a copy of which is accessible via the internet at <http://www.canlii.org/en/on/onscdc/doc/2006/2006canlii4945/2006canlii4945.html>

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- 21 Pages 28 to 48, Annual Report of the Environmental Commissioner of Ontario 2007-2008.
 - 22 From the 2008/09 Annual Report of the Environmental Commissioner of Ontario, accessible via the internet at http://www.ecoissues.ca/wiki//index.php?title=Streamlined_Environmental_Assessments_for_Transit_Projects
 - 23 Formerly known as Marshall Macklin Monaghan Limited (www.mmm.ca)
 - 24 See <http://www.rccao.com/news/files/RCCAO-EA-Reform-Report-02-2009.pdf>
 - 25 A report by the Canadian Environmental Law Association dated June 2002 and accessible via the internet at http://s.cela.ca/pdf/ea_review02.pdf?q=pdf/ea_review02.pdf
 - 26 See backgrounder published on the CELA website at <http://www.cela.ca/newsevents/backgrounder/environmental-planning-law-dismal-failure-published-report-finds-backgrounder>
 - 27 Ontario has 10 separate classes: Municipal, Provincial Transportation, GO Transit, Minor Transmission (electrical), Realty projects other than Electricity Projects, Remedial Flood and Erosion Control Projects, MNR Resource Stewardship projects, Provincial Parks and Conservation Reserves, Forest Management on Crown Lands and Waterpower projects.
 - 28 See CELA's 31 page submission dated May 12, 2008 and accessible via the internet at <http://www.cela.ca/publications/response-draft-regulations-under-emenvironmental-assessment-act-emfor-public-transit-pr>
 - 29 The RCCAO made a written submission to the Ministry of Environment on May 12, 2008 advocating that the Transit Reg. should be expanded to include road widening to accommodate high occupancy vehicles. A copy of the RCCAO submission is provided in Appendix D to this Report.
 - 30 The average and maximum duration of EAs started in 2008 are likely understated due to the fact that EA studies started in 2008 and not yet completed by October 2009 were excluded from the list of evaluated projects. Had the study been delayed, those projects are likely to have raised the average and maximum durations for EA studies commenced in calendar 2008.
 - 31 This report identified 99 separate Municipal Class EA Schedule B or C projects that had a cumulative value of \$1.12 billion or an average of \$11.3 million per project. If we extrapolate that to 140 projects per year for 2 years, the total value of projects that face delays is equal to $140 \times 2 \times \$11.3 \text{ million}$ or \$3.164 billion.
 - 32 Based on \$3 billion capital costs, 1/3 of capital costs being for direct labour, gross wages of \$50 per hour including benefits, WSIB premiums, etc. and based on full time work being 2,000 hours per year.
 - 33 Data taken from the Ministry of Transportation's Tender Price Index dated October 16, 2009 which uses 407 separate items.
 - 34 Ontario Regulation 231/08 Transit Projects and Greater Toronto Transportation Authority Undertakings.
 - 35 See http://ogov.newswire.ca/ontario/GPOE/2008/06/25/c7732.html?lmatch=&lang=_e.html
 - 36 See <http://www.ontario.ca/ontprodconsume/groups/content/@gopsp/@ontgazette/@gazettes/documents/infobundlecontent/247852.pdf>
 - 37 See MMM Study section 3.3 at pages 11 and 12.
 - 38 See Ministry internet posting at <http://www.ene.gov.on.ca/en/eaab/partllorders.php>



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