



July 24, 2009

Marcia Wallace  
Manager  
Ministry of the Environment  
Environmental Programs Division  
Program Planning and Implementation Branch  
55 St. Clair Avenue West  
Floor 7  
Toronto Ontario  
M4V 2Y7

Dear Ms Wallace:

**Re: Proposed Ministry of the Environment Regulations to Implement the Green Energy and Green Economy Act, 2009:  
EBR Registry Number 010-6516**

On behalf of the Ontario Professional Planners Institute (OPPI), we would like to thank the Ministry of the Environment for the opportunity to comment on the Regulations to Implement the Green Energy and Green Economy Act, 2009.

On March 26, 2009, OPPI provided a submission to the Ministry of Energy and Infrastructure on the Green Energy and Green Economy Act. While we expressed our support for the increased generation and use of green energy, we had reservations about the proposed approach in implementing the Act's objectives, though few details had been made available at that time. To summarize, the submission advised against the creation of a separate approval process for renewable energy facilities, and provided a rationale for adapting the existing policy framework for this purpose. Our submission noted that municipalities are best suited to review renewable energy proposals that affect local communities, and that it would be difficult for the Ministry of the Environment (MOE) to generate the capacity and expertise required to undertake this role.

Now that the Discussion Paper, "Proposed Content for the Renewable Energy Approval Regulation under the Environmental Protection Act" has been posted on the Environmental Bill of Rights (EBR) Registry, OPPI is taking this opportunity to comment on the details of the proposed Renewable Energy Approvals (REA) process. While OPPI continues to have significant concerns with the overall proposed approach, these comments are provided to assist in the development of a fair, comprehensive and effective process, to the extent possible.

**1. Assumptions and Principles:**

- i. The Province needs a reliable electrical energy supply as demand is increasing. Renewable energy has an important role to play. There is a significant net environmental benefit to a renewable energy shift.
- ii. Renewable energy development must provide a balance of impact and benefit to agriculture, sensitive land uses, energy developers and the community at large,

related to the reduction in CO2 and other emissions compared to conventional electrical energy production.

- iii. The siting of renewable energy must promote the efficient and effective use of solar and wind energy and other resources, consistent with the protection of amenities and public health in both urban and rural communities.
- iv. The approval process should be accessible, transparent, fair, and timely to effectively streamline the construction of renewable energy facilities.

The regulations should be reasonable, fair, consistent, understandable, and effective in the context of what they are achieving. The regulations should provide measurements relative to the form of impact, such as sound mitigation, safety (comparable to existing risks at that location); access (maintenance, construction); shadowing and environmental impacts.

## **2. The Proposed Approvals Process:**

- i. We suggest that the product of this consultation be presented as a Regulation and a plain-language guide to its implementation, as is the case with other MOE-generated processes such as those under the electricity and waste process regulations.
- ii. The supporting material should be clear as to what constitutes a “complete submission”. Under the current Planning Act and Aggregate Resources Act processes, the assessment of whether an application is complete does not address the technical merits of the materials, simply whether the prescribed documents have been submitted. Will the MOE (and other agencies) ‘assessment of completeness’ determine whether the information submitted is sufficient for it to reach a decision? This could be critical in view of the proposed six-month “service guarantee”.
- iii. The MOE proposes that the definition of a renewable energy facility be expanded to include ancillary infrastructure such as road connections and transmission. Would the setbacks proposed in the Discussion Paper apply to these ancillary facilities? While we would support the application of these setbacks where possible, there are instances, such as where linear infrastructure must cross a linear natural heritage or hydrological feature, where the application of setbacks would be impractical and a “least impact” choice must be made. We believe that this is the basis of the different requirements that apply to “development” versus “infrastructure” in the current Provincial Policy Statement.
- iv. A draft version of the required site plan should be made available to the municipality and other consultees at an early stage of the consultation process.
- v. The Regulation should specify how minor changes to a facility would be considered, and the triggers that would require a new REA application in support of a proposed change to a facility.
- vi. The Discussion Paper should have included detailed definitions of “biomass” and “biofuel” so reviewers would be able to assess the proposed process in terms of the actual materials and wastes that would be involved.
- vii. Since the process is designed to streamline renewable energy facility approvals, facilities should be able to meet minimum thresholds in terms of energy production and efficiency so that the process is not used to approve facilities that are primarily oriented towards waste disposal and not energy production.

viii. While the scope of the REA process is required to reflect the definition of the environment in the Environmental Assessment Act, the requirements in the Discussion Paper reflect a much narrower Environmental Protection Act focus, excluding socio-economic matters and the interrelationships between effects. The proposed grounds for appeal of a REA Decision are too narrow to address many of the real land use compatibility and other environmental concerns – such as those outlined in the following Section - that might be raised by a renewable energy proposal.

### **3. Land Use Compatibility Issues:**

- i. We are concerned that the setbacks applied to renewable energy facilities will prevent municipalities from achieving other local and provincial development objectives. For example, the PPS requires that communities be located within settlement areas that may not be fully developed, but are the basis for investments in land and servicing, and for the municipality's ability to meet development and intensification objectives. Setbacks between renewable energy facilities and sensitive uses should be reciprocal, however, facilities should not be developed so that proposed and potential development within settlement areas would breach setbacks. Also, the PPS advises against development and land use patterns that would prevent the efficient expansion of settlement areas, and this principle should be maintained in the proposed approval process.
- ii. Where approval is based on an assessment of potential effects rather than setbacks, there is potential for new and already approved development in proximity to biogas or biomass facilities to result in non-compliance with applicable air quality and noise standards, if the studies conducted in support of an Approval recognize only existing uses. The Renewable Energy Approval process should consider zoned, designated (Official Plan) and existing land uses in the surrounding area, as well as potential long-term changes in the development context of the facility.
- iii. Unbuilt lots of record should be protected in proximity to wind farms so that development rights can be exercised without breaching required setbacks. Also, setback requirements for receptors occupied by participating landowners on a wind farm should be clarified.
- iv. Non-farm-based biomass and biogas facilities should be subject to prescribed minimum setbacks (a principle that is enshrined in the MOE's D-Series Guidelines) as well as any additional mitigation arising from required studies.
- v. The supporting materials should provide advice on land use planning mechanisms available to municipalities to respond to renewable energy facilities and their potential impacts. For example, planning policies could require proponents of sensitive development within a specified distance of a facility to provide studies to ensure that air quality and noise compliance issues are resolved. There should be some mechanism for proponents and municipalities to obtain emissions and monitoring information from facility operators as baseline information for such studies.
- vi. There has been a debate in the press as to whether large-scale solar generation facilities should be developed on agricultural land. While this issue is not raised in the Discussion Paper, we are generally adverse to use of prime agricultural land (other

than solar panels mounted on buildings) for this purpose without strong mitigating circumstances. The issue of shading of solar facilities from adjacent development and vegetation is a further concern that could be dealt with by a combination of off-site and on-site setbacks.

- vii. We are also concerned that other non-farm renewable energy generation facilities will gravitate towards rural and agricultural land (including tender fruit land), based on lower land costs and a generally lower density of potential receptors. We would support provisions that direct non-farm biomass and biogas facilities to designated medium to heavy industrial areas.
- viii. As the Discussion Paper is currently written, the Regulation would permit wind turbines of less than 3 kW to be developed without any need for municipal or REA approvals. There should at least be property size and setback requirements and locational guidelines for this type of facility.
- ix. For wind turbine installations greater than 3kW with a sound power rating of less than 102 dBA no REA would be required, but the MOE would require provision of certain information. It is unclear whether this amounts to an approval mechanism for these facilities; we feel that some form of regulation is certainly required. More details of the approval mechanism and how it would differ from an REA should be provided. Care must be taken to avoid unacceptable noise impacts on sensitive uses, such as in residential areas.
- x. Applications for wind farms should include studies of shadow flicker, and consideration of mitigation for aircraft navigation lighting, safety issues related to aerodromes and airstrips, and property value protection.
- xi. The Ministry should give consideration to the appropriateness of locating some renewable energy generation facilities that require storage of hazardous chemicals or that may produce leachate in Wellhead Protection Areas, and include appropriate requirements or advice in the regulation or supporting materials.
- xii. The use of the term "Setback Required" in the natural heritage table on page 8 is misleading – "Setback Option" would be more appropriate.

#### **4. Municipal Infrastructure and Processing Issues:**

- i. The scope of required consultation with municipalities is inadequate and should include matters of immediate and long term compatibility with surrounding land uses. The process should provide an opportunity for municipalities to engage directly with the MOE rather than through a consultation "template".
- ii. While the Discussion Paper requires consultation with the municipality on the location and type of required servicing connections for some types of project, further advice is required regarding the Municipality's ability to manage assets such as rights-of-way for the benefit of the public. Also, municipalities are entitled to compensation for required investments such as road improvements, as they are under the Site Plan Control provisions of the Planning Act.
- iii. Applicants for municipal approvals are required to pay prescribed fees so that the costs of processing can be recovered. A fee structure should be developed for municipalities' involvement in the Renewable Energy Approvals process.

- iv. The role of Conservation Authorities in the approvals process should be clarified in this document, and not just in the MNR Guideline.
- v. The role of building permits for renewable energy facilities and the documents to be submitted to ensure all applicable law has been addressed should also be clarified.

**5. Conclusion:**

OPPI members will be closely involved in the implementation of the proposed regulation, and have a strong resource of expertise in addressing the types of issues raised above. The Institute would be pleased to be involved in any further consultation efforts to develop and refine these proposals towards their final form. For further information or to schedule a meeting, please contact Loretta Ryan, MCIP, RPP, Manager, Policy and Communications at 416-483-1873, x226.

Yours truly,



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President  
Ontario Professional Planners Institute

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