



November 25, 2010

Suchaet Bhardwaj
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Program Planning and Implementation Branch
Ministry of the Environment
135 St. Clair Avenue West
Toronto, Ontario M4V 1P5

RE: Proposed Amendments to O.Reg 359/09 (Renewable Energy Approvals) (EBR #011-0181)

Dear Mr. Bhardwaj,

Thank you for the opportunity to provide input to the proposed amendments to the Renewable Energy Approval (REA) Regulation (O.Reg 359/09) made under the *Environmental Protection Act* (EBR #011-0181). The following comments are submitted for consideration by the Ministry of the Environment (MOE) on behalf of Conservation Ontario, which is the network of Ontario's 36 Conservation Authorities (CAs).

The comments below are submitted in response to the proposed amendments to the REA Regulation, as well, additional amendments are proposed to strengthen and clarify it.

Where specific wording has been recommended, text additions are identified through bolded (**bolded**) text whereas deletions are identified with strikethroughs (~~strikethroughs~~).

1.0 Notification and Consultation Requirements

Amendments are being proposed by Conservation Ontario (CO) to clarify and strengthen the regulation with respect to requirements for proponents to notify and consult with specific groups/agencies/stakeholders. It is noted that a requirement to notify or consult with CAs on proposed projects has not been added to the draft regulation.

This is considered a significant gap in REA, and a missed opportunity to facilitate timely project approvals for applicants and enhance coordination amongst approval agencies. MOE has acknowledged the need to coordinate and streamline renewable energy approvals with CAs and a Memorandum of Understanding (MOU) is being worked on for Coordinating Service Delivery for Renewable Energy Project Approvals with MNR and CO. The MOU is intended to encourage timely communication and information sharing between the signatory parties and with the applicant. Inclusion of a requirement in the regulation for proponents to consult with CAs would be consistent with the intent of the MOU and the direction provided to proponents to consult with other stakeholder groups. Additionally, the lack of references to notification and consultation with CAs is a source of ambiguity in the regulation because the tables in Sections 25 (Natural heritage, records review) and 30 (Water, records review) state that records maintained by CAs must be searched by proponents as part of their complete application requirements. Therefore, for clarity, MOE is strongly urged to ensconce within the

REA Regulation a requirement for proponents to notify and consult with CAs through amendments to the following sections:

- 1.1 15(6)5 (Notices of project and meetings). It is recommended that this subsection be revised as follows:

5. A copy of the notice must be given to,
(x) the conservation authority within the jurisdiction of which the project is proposed.

- 1.2 18(1) (Consultation with municipalities, local authorities). It is recommended that this subsection be revised as follows:

18. (1) A person who proposes to engage in a renewable energy project shall, in accordance with subsections (3) and (4), distribute drafts of the documents mentioned in subsection (2) to,
(x) the conservation authority within the jurisdiction of which the project is proposed.

- 1.3 54.1 (Wind turbine location publication). It is recommended that this subsection be revised as follows:

4. Notice of making the site plan available shall be given in a form approved by the Director and the notice shall be distributed in accordance with the following rules:

v. A copy of the notice must be given to,
(X) the conservation authority within the jurisdiction of which the project is proposed.

- 1.4 Table 1, Item 2 (Consultation Report). It is recommended that this subsection be revised as follows:

1. A summary of communication with any members of the public, aboriginal communities, municipalities, **the local conservation authority**, local roads boards and Local Services Boards regarding the project.

6. A description of whether and how,
i. comments from members of the public, aboriginal communities, municipalities, **the local conservation authority**, local roads boards and Local Services Boards were considered by the person who is engaging in the project,

Please note that this amendment would require revisions to the Technical Bulletin #5 (Guidance for preparing the Consultation Report as part of an application under O.Reg 359/09).

- 1.5 Table 1, Item 4(5) (Design and operations report). It is recommended that this subsection be revised as follows:

5. Include a response plan setting out a description of the activities to be taken while engaging in the renewable energy project to inform the public, aboriginal communities, ~~and~~ municipalities, **local conservation authority**, local roads boards and Local Services Boards with respect to the project, including..."

Please note that this amendment would require revisions to the Technical Bulletin #2 (Guidance for preparing the Design and Operations Report as part of an application under O.Reg 359/09).

2.0 Natural Heritage Assessment and Water Assessment

The following comments apply to Sections 26(1.1) (Natural heritage, site investigation) and 31(2) (Water, site investigation).

Currently proponents are required to complete natural heritage and water site assessments through a physical investigation of the area within 120 m of the proposed project site. An amendment to the regulation is proposed to address situations where “it is not possible despite all reasonable efforts” to physically access the area. This amendment would allow for alternative forms of site investigation provided they follow evaluation criteria and procedures that have been established/approved by MNR.

“Not reasonable” has not been defined in the regulation, which allows for subjectivity and interpretation. It is our assumption that this provision would apply where private landowners will not allow access to the property. However, it should be noted that CAs do not permit activities without the approval of the landowner, so access issues would have to be resolved early in the proponents’ planning process should a *Conservation Authorities Act* permit be required.

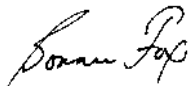
- 2.1 It is recommended that the wording of Section 26 (1.1) be revised as follows to ensure there is clarity with respect to when an alternative method of site investigation would be acceptable. The following wording is proposed for your consideration:

*If the person mentioned in subsection (1) determines that ~~it is not reasonable to conduct~~ a physical investigation of any...referred to in subsection (1) **is not possible due to access restrictions...***

- 2.2 It is recommended that the regulation require proponents to demonstrate that they have made all reasonable efforts to gain access to non-participating landowners’ property(ies) prior to pursuing an alternative method of site investigation. As well, the Province is encouraged to specify the agency (i.e., MOE or MNR) that will confirm that all reasonable efforts to access the site have been made.

Thank you again for the opportunity to provide comments on the proposed amendments to the Renewable Energy Approvals Regulation (O.Reg 359/09). If you have any questions regarding these comments please contact myself at (905) 895-0716 ext. 223, or Natasha Leahy at ext. 228.

Sincerely,



Bonnie Fox
Manager, Policy and Planning

c.c. Gord Miller, Environmental Commissioner of Ontario
All Conservation Authority CAOs/GMs