



March 14, 2011

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**RE: *Technical Bulletin - Guidance for Preparing the Water Assessment and Water Body Reports (EBR #011-1962)***

Dear Ms. Postacioglu,

Thank you for the opportunity to comment on the Ministry of the Environment's Renewable Energy Approvals *Technical Bulletin - Guidance for Preparing the Water Assessment and Water Body Reports*, which was posted for public comment on the Environmental Registry (EBR #011-1962). The following comments are submitted for your consideration by Conservation Ontario, which is the network of Ontario's 36 Conservation Authorities (CAs). These comments are not intended to limit your consideration of comments submitted individually by CAs.

Conservation Ontario acknowledges the importance of renewable energy for sustainable growth, to combat climate change and to protect, maintain and restore the health of our watersheds. Conservation Ontario supports the Province's intent to develop legislation, regulations and other policies that facilitate renewable energy projects and streamline the application process for these projects.

General Comments:

This Technical Bulletin provides guidance on the preparation of Water Assessment and Water Body Reports to facilitate a Renewable Energy Approval (REA) under *Ontario Regulation 359/09*. Given the prominent role afforded to Conservation Authorities (CAs) in the provision of information to support these reports, training should be provided to CAs so that staff can be fully prepared to address questions and information needs that will result from *Green Energy Act* proposals. This training would assist CAs to provide information requirements and advice in a timely manner, thus facilitating timely approvals.

MOE is commended for including information in the draft Technical Bulletin that directs proponents to the other agencies they may need to contact before beginning their project, such as CAs. Additional detail is requested to be provided (see requested amendment #6 to Section 2.2a) as it is believed the inclusion of this information will mitigate the risk of costly project delays or violations occurring.

Conservation Ontario is concerned that the Water Body Report is not proposed to include potential impacts to fish habitat (although proponents are asked to collect it in Sec 2.3 Baseline Information) or aquatic species at risk. This appears to be a significant gap within the reporting process and is not consistent with the definition of environment in the REA regulation, nor sections 2.2.1 c) and 2.2.1 e) (note definition of natural heritage features and areas) of the Provincial Policy Statement. If fish habitat and aquatic species at risk are felt to be addressed separately from the Water Assessment and Water Body Reports, then MOE is encouraged to include in the Technical Bulletin some direction to proponents as to how/where it is expected that these identified environmental impacts are to be addressed.

### Specific Comments:

1. **Section 2.1.a (Water Bodies)** – this section identifies those water features that do not constitute a “water body” (consistent with wording in Regulation 359/09). Included in the list are “grassed waterways”, “temporary channels for surface drainage, such as furrows or small channels that can be tilled and driven through” and “dugout ponds”. It should be clarified in the technical bulletin that both a “grassed waterway” and a “temporary channel for surface drainage” could in fact be an intermittent stream and therefore a “water body”. Also, it should be clarified that the term “dugout pond” would be considered a “water body” when it is on a watercourse (i.e., an online pond).
2. It is recognized that permanent and intermittent streams are defined in Regulation 359/09. Within **Section 2.1.a, page 4**, the definition for intermittent streams is incomplete and should be consistent with that provided in Appendix 1 and per Regulation 359/09. The definition for “permanent streams” appears to be taken directly from the Greenbelt Plan however the definition for “intermittent streams” differs from the Greenbelt Plan definition. This guidance document, perhaps in Section 5 “Areas of Specific Considerations”, should provide additional clarification with regard to these differences.
3. **Section 2.1.a (Water Bodies)** – It is our understanding that MOE will be providing further guidance with respect to the identification of intermittent streams and seepage areas. MOE is encouraged to consider the definition of “watercourse” under the *Conservation Authorities Act*. CAs regulate interference with watercourses and the *Conservation Authorities Act* defines the term “watercourse” as an identifiable depression in the ground in which a flow of water regularly or continuously occurs”. It is our understanding that when a watercourse does not meet the definition of “intermittent” as defined in this Technical Bulletin, but it is regulated by a Conservation Authority, that MOE will consider it to be intermittent. This should be specified in guidance to proponents.
4. **Section 2.1.b. (Project Location)** – this section identifies that measurements should be taken from “the boundary of the natural feature or water body” however it does not identify who will determine the extent of the feature. This should be clarified in the document.
5. **Section 2.2.a (Records Review)** – this section states that high water mark information can be obtained from CAs. High water mark information would generally be identified by the Ministry of

Natural Resources under the *Public Lands Act* where this information is available. It is unclear as to why the high water mark has been chosen as the benchmark as it is not used in the Provincial Policy Statement which defines flood standards along waterbodies. Regulation 359/09 refers to the “average annual high water mark” and guidance should be provided as to how this is calculated. Conservation Authorities may be able to provide information on the bankfull channel of a watercourse under their jurisdiction however further clarification is requested as to whether or not the “high water mark” and “bankfull channel” should be considered to mean the same. It is noted however that along Great Lakes shorelines and large inland lakes high water mark information is not the only factor used in determining risk associated with natural hazards of flooding/wave uprush (per definitions set in the Provincial Policy Statement) and bankfull measurements do not apply; in these cases, generally, CAs would be able to provide the 100 year flood level plus wave uprush. For either lake shorelines or streams, where the information is not available, Conservation Authorities would require that the applicant provide this information as part of their technical background report through detailed field studies.

6. **Section 2.2.a (Records Review)** – Additionally, it would be helpful to include the following text in this section for information purposes to proponents:

**It is noted that renewable energy projects may require *Conservation Authorities Act* approval from the local Conservation Authority (where one exists). Through Conservation Authorities’ Development, Interference and Alteration Regulations, made under Section 28 of the *Conservation Authorities Act*, Conservation Authorities are empowered to regulate development and activities in or adjacent to wetlands, river or stream valleys, watercourses, Great Lakes and large inland lakes shorelines and hazardous lands. Development taking place on these lands may require permission from the Conservation Authority to confirm that the control of flooding, erosion, dynamic beaches or pollution is not affected. Conservation Authorities also regulate the straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream, watercourse or for changing or interfering in any way with a wetland. It is recommended that applicants contact the local Conservation Authority early in the Water Assessment and Water Body Report process to arrange a site visit (where possible) to determine specific application requirements for such permissions.**

Also, it should be referenced in this section that: **Conservation Authorities can also provide relevant watershed information including that related to drinking water source protection (i.e. location of vulnerable areas, water budget information, and local policies to protect drinking water sources).**

7. **Section 2.2.b (Site Investigation)** – this section identifies the requirement for a site investigation however, it notes that if a physical investigation is not possible, an alternative site investigation can be conducted. Concerns are raised with this approach since alternative site investigations (likely desktop reviews) that do not involve on-site field work may not be able to identify, for example, seepage areas, or natural heritage features and areas (e.g. significant wildlife habitat, significant habitat of endangered species) expected to be considered under 2.2.1 of the Provincial Policy Statement.
8. **Section 2.3 (Baseline information), p.8** - this section currently includes high-level details about the *Clean Water Act*. It is recommended that additional details be provided in this section to outline to the applicant available baseline information that has been developed through the drinking

water source protection process and the activities of Renewable Energy Projects which may be a drinking water threat. It should also be noted that Conservation Authorities can provide relevant watershed information including that related to drinking water source protection (i.e. location of vulnerable areas, water budget information, and local policies to protect drinking water sources). Edits are shown in bolded and strikethrough text.

**Ontario Regulation 287/07 under the *Clean Water Act, 2006 (CWA)* prescribes activities as drinking water threats that may be associated with some renewable energy projects. These include, but are not limited to, handling and storage of fuel, storage of waste, stormwater discharge, and sewage effluent.** Under the ~~*Clean Water Act CWA*~~, ~~Source Water Proposed Assessment Reports for source water protection areas in areas covered by~~ (generally Conservation Authority boundaries) have been prepared outlining surface water vulnerability (including identification of intake protection zones), groundwater vulnerability (including identification of wellhead protection areas, highly vulnerable aquifers, and significant groundwater recharge areas), water budgets and water quantity stress assessments, and drinking water quality threat assessments. ~~well head protection areas and surface water intake zones, as well as highly vulnerable aquifers, and significant groundwater recharge areas.~~ Proposed, draft and approved ~~Source Water~~ Assessment Reports can be accessed at [http://www.conservation-ontario.on.ca/source\\_protection/otherswpreionsindex.htm](http://www.conservation-ontario.on.ca/source_protection/otherswpreionsindex.htm) for drinking water related information. **The CWA prescribes Renewable Energy Approvals as an instrument that can be used to manage threats to our drinking water (e.g. through identification of specific terms and conditions of the permit/certificate).** After 2012, source protection plans will be ~~developed~~ **completed** with ~~site-specific protection~~ policies for each source protection area. **Applicants should document if they are within a vulnerable area identified in Assessment Reports and (post 2012) whether the Source Protection Plan identifies any policies related to Renewable Energy Approvals.**

9. **Section 2.3 (Baseline Information), p. 9-** in this section it is also noted that CAs have mandates “related to fish, fish habitat”. All Conservation Authorities (CA) have partnership agreements with the Department of Fisheries and Oceans for reviews under the *Fisheries Act*, however the *CA Act* does not provide CAs with a specific mandated related to fish. We suggest this section be amended to indicate “...agencies with ~~mandates related to fish/fish habitat~~ **partnership agreements whereby CAs review projects for approvals under the *Fisheries Act***”.

10. **Flowchart 1- Water Assessment Study and Water Body Reports Process-** the following should also be included under the “Considerations/Guidance” section of the flowchart to reflect the availability of local information to the applicant.

Drinking Water- Source Protection  
**Low Assessment Reports**  
**Local Source Protection Plans (to be completed by 2012)**

11. In this section it notes that “transmission lines and roads can be built **within the water body of 30 metres setbacks...**”. Recognizing that the bolded part of this statement is unclear and assuming that the statement is allowing this infrastructure within 30 metres of a water body, pre-consultation with the appropriate Conservation Authority should be recommended as early in the process as possible. For example, the Conservation Authority could not issue a development permit if the infrastructure is under an unacceptable flooding or erosion risk.

12. **Table 1: Setback Requirements** – the 3<sup>rd</sup> column is labeled “Exceptions to Prohibitions based on Water Body Report” however, the majority of the items listed in this column are actually the prohibitions rather than the exceptions. This should be revised.
13. **Table 1, 2<sup>nd</sup> row (Any Lake), 2<sup>nd</sup> column** – currently reads, “Within 120 metres of the average annual high water mark”. Should read, “Between 30-120m of the average annual high water mark”, given that the works are prohibited within 30 metres of the feature.
14. **Table 1, 3<sup>rd</sup> row (Seepage Area), 2<sup>nd</sup> column (Within 120 metres)** – should read, “Between 30-120 metres”. Similar comment for the 4<sup>th</sup> row (Lake Trout Lake) – should read “Between 30-300 metres of the annual high water mark”.
15. **Section 3.2 (Identifying and Assessing Potential Negative Environmental Effects), 2<sup>nd</sup> paragraph** - in this section additional clarification is required around who will determine when the WBR should consider an area larger than 30 metres around the water body. Moreover, this section should be encouraging pre-consultation with the relevant agencies (including CAs) so that the proponent can be aware of requirements prior to commencing any studies.
16. **Section 3.3 (Mitigation Measures)** - this section notes that contingency plans may be required as part of the submission. The plans are to outline how to minimize negative environmental effect on water bodies and “where possible, improve or restore the health, diversity and *size* of the water body”. Additional clarification is required around this statement as often the enlargement of the size of a water body (e.g. the expansion of an on-line pond) can result in negative environmental effect.  
  
This section highlights the value of lake management and shoreline management plans, and should also note that: **Additionally, fisheries and watershed management plans may be available through local CAs.**
17. **Section 4.1 (Consideration of Potential Effects from Surface Water Run-off/Stormwater)** – this section states that the applicants “could” use the MOE’s stormwater management manual. It is recommended that this should read, “should” given that the MOE manual guides stormwater management in the Province. One exception would be where a watershed or subwatershed study has identified more restrictive stormwater management requirements than the MOE manual. As such, it is recommended that this sentence be revised to read, “If there is surface run off and stormwater considerations, applicants *should* use the MOE’s stormwater management manual: Stormwater Management Planning and Design Manual 2003 as guidance *as well as any current applicable watershed and/or subwatershed study for the area*”. The reference to watershed and subwatershed studies should be carried throughout the document wherever the MOE manual is referenced. Reference to watershed/subwatershed studies is consistent with section 2.2.1 of the Provincial Policy Statement.
18. **Section 4.2 (Consideration of Potential Effects from Water Taking Activities)** - The first bullet point on page 21 states that the dewatering of excavations for foundations tends to be relatively short term and a non-recurring water taking. Concern is raised however, that there could be long term pumping of groundwater necessary in association with the construction of foundations depending on the depth of the foundation below the ground surface and the depth of (and fluctuations of) the ground water table at the facility development site. A long term lowering of the water table could affect groundwater contributions to Lake Trout Lakes, Brook Trout streams,

wetlands etc. which could affect the viability and health of these types of natural systems. It is suggested that these types of potential impacts be addressed in the Technical Bulletin.

19. Section 5.2 (Lake Simcoe Protection Area)- this section makes reference to the Greenbelt Plan and the Niagara Escarpment Plan Development Area, but does not elaborate on any additional information requirements if a project is located in those plan areas.
20. **Appendix 1 (Key Definitions)** – it is noted that O.R. 359/09 definitions for “wetland” and “wildlife habitat” provided in this Appendix are not consistent with those in the Provincial Policy Statement. The Technical Bulletin should provide additional clarification with regard to the differences in the definitions.
21. **Appendix 2** – the appendix and chart require titles.
22. **Appendix 4 (Conservation Authority Contact Information)** – Before the document is finalized, Conservation Ontario would appreciate an opportunity to update the contact information contained within Appendix 4 to ensure that the proponent is provided with the most appropriate contact person. Currently Appendix 4 provides the CA contact for permits under Section 28 of the Conservation Authorities Act and given the broader range of issues for contacting a CA for green energy projects, some CAs would like to identify a different person for coordination of all green energy project requests.

Thank you again for the opportunity to provide comments on the proposed amendments to the *Technical Bulletin - Guidance for Preparing the Water Assessment and Water Body Reports*. If you have any questions regarding these comments please contact myself at 905-895-0716 ext. 223, or Leslie Rich at ext. 228.

Sincerely,

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Manager, Policy and Planning

c.c. All Conservation Authority CAOS  
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