



May 15, 2012

Alyssa Cates  
Project Manager  
Ministry of the Environment  
Environmental Programs Division  
Modernization of Approvals Project  
Green Energy Approvals  
135 St. Clair Avenue West  
Toronto, ON M4V 1P5

**Re: Conservation Ontario's Comments on the "Amendments to O. Reg. 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act), Reg. 334 (General) and the Technical Guide to Renewable Energy Approvals" (EBR # 011-5932)**

Dear Ms. Cates:

Thank you for the opportunity to comment on the Ministry of the Environment's "Amendments to O.Reg. 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act), Reg. 334 (General) and the Technical Guide to Renewable Energy Approvals". The following comments are submitted for your consideration by Conservation Ontario, which is the network of Ontario's 36 Conservation Authorities (CAs). Conservation Ontario commends the Ministry of the Environment for encouraging proponents to proactively engage Conservation Authorities throughout the regulatory process. Directing proponents to CAs early in the process will better enable CAs to outline information requirements and advice in a timely manner, thus facilitating timely approvals.

**General Comments:**

***Alternative Investigation of the Site***

Conservation Ontario's March 14, 2011 comments on the proposed "Technical Bulletin – Guidance for Preparing the Water Assessment and Water Body Reports (EBR #011-1962)" raised concerns with the use of alternative site investigations that do not involve on-site field work. As outlined in the March 14, 2011 letter, concern was expressed that alternative site investigations may not be able to identify features such as seepage areas or significant habitat of endangered species. It is recommended that Ontario Regulation 359/09 Section 31(1) be amended as follows:

Subject to subsection (3), for the purposes of conducting a site investigation mentioned in paragraph 2 subsection 29 (1), a person who proposes to engage in a renewable energy project shall ensure that an

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investigation of the land and water within 120 metres of the project location is conducted, either by visiting the site or by an alternative investigation of the site, in order to determine,

...

~~(3) The person mentioned in subsection (1) may, for the purposes of subsection (1) or (2), conduct an alternative investigation of the site only if he or she determines that it is not reasonable to conduct a site investigation by visiting the site.~~

The accompanying text on page 37 of the “Technical Guide to Renewable Energy Approvals” should likewise be amended to remove the option for alternative site investigations.

### **Partnership with Fisheries and Oceans Canada**

The “Technical Guide to Renewable Energy Approvals” correctly notes that CAs have partnerships with Fisheries and Oceans Canada (DFO). Through this partnership, CAs review proposed development for its potential harmful alteration, disruption or destruction (HADD) of fish habitat pursuant to Section 35 of the Federal *Fisheries Act*. Many Conservation Authorities also screen proposals for potential impacts to species listed under the *Species at Risk Act* on behalf of DFO.

Throughout the document there are references to “permits” under the *Fisheries Act* (see the Table on page 31 for an example), however, there are no permits issued under Section 35. Through their review of development proposals Conservation Authorities issue Letters of Advice or refer applications to DFO for Authorization. It is recommended that the references to “permits” under the *Fisheries Act* be removed from this document. Furthermore, references to “Department of Fisheries and Oceans Canada”, should be updated to “Fisheries and Oceans Canada” throughout the document.

### **Role of CAs**

Throughout the “Technical Guide to Renewable Energy Approvals” there are many references to CAs providing information and, at times, direction to the proponent. While CAs appreciate these requirements for pre-consultation, it is unclear what weight the technical information and direction from CAs would be afforded. For example, on page 159 the guide states that “Applicants are encouraged to consult with the MOE REA [Renewable Energy Approvals] team, local Conservation Authority and local MNR District Office in determining the need for expanding the [study] area beyond the 30 metres”. While Conservation Authorities, as local watershed experts are often sufficiently knowledgeable to make these recommendations, it is unclear what legislative authority Conservation Authority staff would use to request that an applicant consider impacts beyond the 30 m of land around the water body as part of a Water Body Report Study.

### **Definition of Water Body**

Page 151 of the “Technical Guide to Renewable Energy Approvals” and O. Reg. 359/09 identify those features that do not constitute a “water body”. 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 Guide 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).

Under the *Conservation Authorities Act* the definition of “watercourse” is “an identifiable depression in the ground in which a flow of water regularly or continuously occurs”. The Technical Guide should identify that there may be situations when a water feature would be regulated under the *Conservation*

*Authorities Act* (i.e. a permit from the CA would be required for development) but not meet the definition of water body under O. Reg. 359/09.

### **Specific Comments on the Technical Guide to Renewable Energy Approvals**

Page 24; Water Power Facilities- please add that a permit under the *Conservation Authorities Act* may also be required for the development.

Page 38; Natural Heritage Assessment- This section should also identify that CAs may request an Environmental Impact Study (EIS) for development in the “other areas” within 30-120 m [depending upon their individual regulation] of wetlands within their regulatory jurisdiction. This EIS would address the hydrologic impacts which may occur as a result of the proposed development. Identifying that CAs may also have EIS requirements within this document would help to reduce confusion amongst applicants and would encourage opportunities to streamline EIS requirements amongst agencies.

Page 95; Natural Heritage- As watershed managers, CAs play an important role in the collection and review of natural heritage information. Applicants should be encouraged to consult with Conservation Authority staff related to natural heritage features in the proposed development area.

Page 104; Temporary Use of Land- Under Section 28 (25) (d) of the *Conservation Authorities Act* permission from a Conservation Authority may be required for the “temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere”. It should be noted in this section that permissions may be required for construction activities that result in temporary changes to land surfaces, grading or the installation of temporary structures.

Page 107; Impacts on Water Bodies- the start of the second paragraph contains a typo, “In addition...”.

Page 134; Lake Simcoe Watershed- It is recommended that the following edits be made to this section:

If the project location is in the Lake Simcoe watershed, applicants must provide additional documentation as a component of the Design and Operations Report. The documentation should demonstrate how the project adheres to the goals of the Lake Simcoe Protection Plan (**LSPP**) by mitigating negative environmental effects on the shore of Lake Simcoe, the shore of fresh water estuaries of a stream connected to Lake Simcoe, **a Key Hydrologic Feature as outlined in the LSPP including permanent or intermittent streams, a lake other than Lake Simcoe and wetlands in the Lake Simcoe Watershed.** ~~or the shores of any other water bodies in the Lake Simcoe watershed.~~

The documentation must include a description of:

- Whether the project requires alteration **to the shorelines and/or a Key Hydrologic Feature as listed within the Plan** ~~of the shore of Lake Simcoe, the shore of a fresh water estuary of a stream connected to Lake Simcoe or other lakes or any permanent or intermittent streams in the Lake Simcoe watershed~~
- How the project may impact ~~any~~ **the shorelines and/or Key Hydrologic Features**, including their ecological functions
- How the project will be engaged in so as to:
  - Maintain the natural contour of the shoreline by planting natural vegetation and bioengineering as mitigation strategies

- Use a vegetative riparian area in respect of water bodies, except where the land is and will continue to be used for agricultural purposes
- **Maintain the ecological function of the affected Key Hydrologic Feature**

Further information on the goals of the Lake Simcoe Protection Plan and suggested mitigation strategies to guide development of a renewable energy project in the watershed can be found in the Plan itself. This Ministry of the Environment publication is entitled “Lake Simcoe Protection Plan” (2009, Publication #6932e01). Applicants proposing projects in the Lake Simcoe watershed are also advised to contact the Lake Simcoe Region Conservation Authority to discuss any potential permits that may be required.

Page 149; Potential Additional Requirements- It is recommended that the *Species at Risk Act* be included as an example as well as the *Conservation Authorities Act*, *Fisheries Act* and *Endangered Species Act, 2007*.

Page 155; Source Protection Areas- This section should read, “Under the Clean Water Act, **2006**”.

Page 164; Lake Simcoe Protection Area- it is recommended that this section be amended as per the recommended changes to the Lake Simcoe Watershed section.

Appendix 2; Local Conservation Authorities- the contact information on this list is out of date. Please consult <http://conservationontario.ca/about/cas.html> for up-to-date contact information.

Thank you again for the opportunity to provide comments on the proposed amendment to “O.Reg. 359/09 (Renewable Energy Approvals under Part V.0.1 of the Act), Reg. 334 (General) and the Technical Guide to Renewable Energy Approvals”. If you have any questions regarding these comments please feel free to contact me at 905-895-0716 ext 228.

Sincerely,



Leslie Rich  
Policy and Planning Officer