

MUNICIPAL
ENGINEERS
ASSOCIATION



COMPANION GUIDE

FOR THE

MUNICIPAL CLASS

ENVIRONMENTAL

ASSESSMENT MANUAL

December 2016

This document is a Companion Guide for the Municipal Class Environmental Assessment Manual. It contains clarifications for the following sections of the manual:

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| 1 | A.3.7 | First Nations |
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Quote from the MCEA

A.3.7 FIRST NATIONS AND ABORIGINAL PEOPLES

First Nations and Aboriginal peoples are an important stakeholder group for municipal consultation. Municipalities are directed to contact the Ontario Ministry of the Environment, the Ontario Ministry of Aboriginal Affairs and the Department of Indian and Northern Affairs for direction on consultation with First Nations.

Related section in Companion Guide

Proponents undertaking a Municipal Class Environmental Assessment are required to consult with interested persons and with First Nations and Métis communities who may be affected by the proposed undertaking. In some cases, special efforts may be required to ensure that Aboriginal communities are made aware of the project and are afforded opportunities to provide comments.

As an early part of the consultation process, proponents are required to visit Aboriginal Affairs and Northern Development Canada's (AANDC) Aboriginal and Treaty Rights Information System (ATRIS) to help identify which First Nation and Métis communities may be interested in or may have established or credibly asserted Aboriginal or treaty rights in the area that may be potentially impacted by their proposed projects. ATRIS can be accessed through the Aboriginal Affairs and Northern Development Canada website:

http://sidait-atris.aadnc-aandc.gc.ca/atris_online/

After visiting the above website, proponents should also contact the relevant Ministry of the Environment and Climate Change Regional Office (the Regional EA Coordinator) for further input/confirmation of the First Nation and Métis communities that should be notified about the proposed project.

Proponents should provide project information directly to all of the identified First Nation and Métis communities. Generally, proponents should contact First Nation communities through their Chief and Band Council, and Metis communities through their elected leadership.

Rights-based consultation with First Nation and Métis Communities

MCEA proponents regularly undertake interest-based consultation with a variety of stakeholders that may have an interest in a project. In addition, proponents should note that a project may have the potential to adversely affect the ability of a First Nation or Métis community to exercise its Aboriginal and/or treaty rights. In such cases, the Crown/Province may have a duty to consult those Aboriginal communities. This is known as rights-based consultation.

Activities which may restrict or reduce access to unoccupied Crown lands, or other harvestable areas, or which could otherwise result in a potential adverse impact to land or water resources in which harvesting rights are exercised, may have the potential to impact Aboriginal or treaty rights. If there is likely to be an adverse impact to Aboriginal or treaty rights, or archaeological sites, consultation is usually required and accommodation may be required to avoid or minimize the adverse impacts.

For assistance in determining whether your proposed project could potentially negatively affect Aboriginal or treaty rights, please refer to the attached "Preliminary

Assessment Checklist: First Nation and Métis Community Interest.” Answer the questions and keep related notes as part of your consultation record. A “Yes” response indicates that a project has the potential to negatively affect an Aboriginal or treaty right and therefore, rights-based consultation may be required.

Preliminary Assessment Checklist: First Nation and Métis Community Interest

| | YES | NO |
|--|-----|----|
| <p>1. Are you aware of concerns from First Nation and Métis communities about your project or a similar project in the area?</p> <p>The types of concerns can range from interested inquiries to environmental complaints, and even to land use concerns. You should consider whether the interest represents on-going, acute and/or widespread concern.</p> | | |
| <p>2. Is your project occurring on Crown land, or is it close to a water body? Might it change access to either?</p> | | |
| <p>3. Is the project located in an open or forested area where hunting or trapping could take place?</p> | | |
| <p>4. Does the project involve the clearing of forested land?</p> | | |
| <p>5. Is the project located away from developed, urban areas?</p> | | |
| <p>6. Is your project close to, or adjacent to, an existing reserve?</p> <p>Projects in areas near reserves may be of interest to the First Nation and Métis communities living there.</p> | | |
| <p>7. Is there potential the project affect First Nations and/or Métis’ ability to access areas of significance to them?</p> | | |
| <p>8. Is the area subject to a land claim?</p> <p>Information about land claims filed in Ontario is available from the Ministry of Aboriginal Affairs; information about land claims filed with the federal government is available from Aboriginal Affairs and Northern Development Canada.</p> | | |
| <p>9. Does the project have the potential to impact any archaeological sites?</p> | | |

Where you have identified that your project may trigger rights-based consultation, you should arrange for a meeting with the Environmental Assessment and Planning Coordinator at the Ministry’s appropriate regional office to provide an early opportunity to confirm whether the Crown’s (Provincial) duty to consult is triggered and to discuss roles and responsibilities in that event.

For more information about the duty to consult, please see the Ministry's website at:
www.ontario.ca/government/duty-consult-aboriginal-peoples-ontario

And

<http://www.ontario.ca/page/environmental-assessments-consulting-aboriginal-communities>

Quote from the MCEA

A.3.5.3 Public Notices

Each of the points of contact with the public shall be advertised by means of published Notices to the public. In some cases, the notice itself may constitute contact with the public and no further dialogue may be necessary other than to invite input. For larger projects, however, a public notice will give details about information centres or workshops, availability of information for review, or some other means of contact between the proponent and the public.

Definition of a published notice and number of notices.

For the purposes of this Class EA, a published notice shall mean a notice published in a local newspaper having general circulation in the area of the project. Two (2) published notices shall mean two (2) notices appearing in separate issues of the same newspaper. Where no such newspaper exists, the proponent shall be responsible for determining the equivalent local means of achieving the same objective of adequate notification to the general public. In cases where a municipality has elected to establish a procedure for notifying the public regarding similar projects under other applicable provincial legislation, the proponent may use that procedure to fulfill their requirements for “published notice”.

Proponents are encouraged to establish a procedure to coordinate the public notices for Schedule B and C projects with other municipal notice procedures. For example, notices for Schedule B and C projects, which are associated with a Planning Act application, should be coordinated with the notice required by the Planning Act. Municipalities should establish notice procedures for other Schedule B and C projects in a similar fashion to the notice procedures which they have adopted as required by the Municipal Act.

Related section in Companion Guide

When the MCEA was first written in the 1980s, public notice via a newspaper was the generally accepted method for public consultation. However, many smaller newspapers have ceased operations and technological advances now offer a variety of new ways to communicate with stakeholders.

Section A.3.5.3 of the MCEA sets out notice requirements but allows municipalities the option to create their own notice procedures that best suit their municipality. As early as 2004, MEA issued a clarification which explained the rationale for a municipality to develop their own custom notice procedure. Section 270(1)(4) of the Municipal Act, 2001 requires municipalities to adopt policies for providing notice to the public for a variety of circumstances and normally municipalities have complied with this section by adopting a municipal notice bylaw. Proponents are encouraged to develop notice procedures that suit their individual municipalities and work with the Municipal Clerk to incorporate these notice procedures into their municipal notice bylaw. Once incorporated into their municipal notice bylaw, proponents will comply with section A.3.5.3 of the MCEA if they follow the notice procedures set out in their municipal notice bylaw.

For example, instead of the traditional “***two notices in a local newspaper***” a municipality could decide that notices will be provided to stakeholders “**on the municipal web site a minimum of 10 days prior to the meeting**”. The consultation plan for each individual MCEA project would then set out specific details for consultation.

Alternatively, a municipality may decide to adopt a detailed notice procedure that sets out the consultation process for all MCEA projects. A sample of a detailed process follows:

Township of Dartford

Minimum Notice Requirements for Municipal Class EA Projects

| Notice Type | Government Agencies | Public Stakeholders | First Nations |
|--|--|---|--|
| Schedule B Notice of Commencement | Notice via email | Signage at project location Notice on Municipal web site and Mail to directly impacted (adjacent) owners | Mail or email with minimum of one follow up communication and offer for a special meeting |
| Schedule C Notice of Commencement | Notice via email | Signage at project location and Notice on Municipal web site | Mail or email with minimum of one follow up communication |
| Schedule C Notice of Public Consultation (Minimum 10 days prior to meeting date) | Notice via email | Email to anyone that responded to the Notice of Commencement and Mail to directly impacted (adjacent) owners and Notice on Municipal web site | Mail or email with minimum of one follow up communication and offer for a special meeting |
| Schedule B & C Notice of Completion | Notice via email to all agencies that have expressed interest in the project. Email to MOECC | Email to anyone that has expressed interest in the project and Notice on Municipal web site | Mail or email with minimum of one follow up communication |

Quote from the MCEA

A.2.1.1 Level of Complexity

The process is flexible to meet the specific needs of a project

The following sections describe the planning process in this Class EA. It is important, however, to recognize that there is flexibility within the process to be responsive to specific project and consultation needs, while ensuring that the requirements of the Class EA are met.

Level of complexity or sensitivity can relate to the nature of the problem or opportunity being addressed, the level of investigation required to assess alternatives and environmental effects, and public and agency issues and concerns. The level of complexity may affect the selection of the project schedule, and the scope of each phase in the Class EA process as well as the need to revisit steps in the process. **The level of complexity will therefore affect the manner in which a project proceeds through the process.**

Determination of level of complexity is an inherent function of the management of a project.

The complexity of a project is based on many components, including environmental effects, public and agency input and technical considerations, and how these interrelate on a specific project. **Accordingly, the determination of complexity (and its ongoing assessment) requires sound professional judgement, is an inherent function of the management of a project and, is the responsibility of the proponent.**

Divisions amongst project schedules are often not distinct.

Given the varying levels of complexity, the divisions amongst Schedules A, B and C projects are therefore often not distinct. For example, a Schedule B project with many issues and broad community interest could approach the complexity of a Schedule C project. As a result, some proponents may choose to follow the process for a Schedule B, while others may decide to follow the process for a Schedule C. **While the Class EA document defines the minimum requirements for environmental assessment planning, the proponent is responsible for “customizing” it to reflect the specific complexities and needs of a project.**

The proponent is responsible for taking the minimum requirements and “customizing” them to meet a specific project’s consultation and technical needs.

The foregoing should be considered not only at the outset of project planning but as one proceeds through the process and reviews and confirms the project schedule

All activities undertaken in the planning process must be documented and records maintained in a form which can be presented to the public for review. However, the proponent need only gather and document information which is likely to have a direct bearing on impacts and mitigating measures. The level of detail of the information to be inventoried should reflect the potential severity of the impacts predicted

Lastly, it should also be noted that the process outlined in the following sections is not necessarily sequential. It can be an iterative process whereby the results of one Step may necessitate re-evaluation of a previous Step.

Related section in Companion Guide

Section A.2.1.1 states “there is flexibility within the (MCEA) process to be responsive to specific project and consultation needs”. Proponents should use this flexibility to better serve the community. For example, a particularly complex or controversial Schedule A or A+ project would likely warrant efforts beyond the minimum described in the MCEA. However, before deciding to elevate the project to a Schedule B process, the proponent should ask - for this particular project, would the community benefit from:

- 1) More opportunity for public engagement? If so, then the proponent should organize more opportunities for public engagement. But this can be accomplished without elevating to a Schedule B process – just organized the public engagement.
- 2) A very detailed consideration of alternatives? If so, then the proponent should complete a detailed evaluation of alternatives. But this can be accomplished without elevating to a Schedule B process – just complete the detailed consideration of alternatives.
- 3) Thorough documentation of the preferred solution and associated mitigating measures? If so, then the proponent should complete the documentation. But this can be accomplished without elevating to a Schedule B process – just complete the documentation.
- 4) Having the ultimate decision regarding the project made outside the community? If so, then the proponent should elevate the project to a Schedule B or C process and allow the community the opportunity to file a Part II Order Request and the Minister will make the final determination regarding the project.

In summary, there is no need to automatically follow all of the steps of a higher Schedule. Instead, the proponent should expand the process to incorporate the components that will actually provide benefit to the community.

IMPORTANT NOTE – When a proponent has a particularly complex or controversial project and decides to add extra public engagement, more consideration of alternatives, extensive documentation or even to elevate a project to a higher Schedule, **you should not make this extra effort the norm.** Remember that this extra effort was justified for a specific project because of the unique circumstances. Unless the next project also has unique circumstances, the process should follow the process as outlined in the Municipal Class EA.

Quote from the MCEA –

A.2.8 CHANGING THE PROJECT STATUS – APPEAL PROCESS

A.2.8.1 Part II Order

It is recognized that the planning and design process, as outlined, is one which allows for concerns to be identified and resolved through the course of the project's planning. In some circumstances, however, it is possible that issues may be raised during public review of a project that cannot be easily accommodated. In cases where concerns are raised it is the proponent's obligation, as proponent, to use all reasonable means available to them to resolve these concerns. In circumstances where interested persons, Aboriginal communities, or government agencies feel that the proposed undertaking needs to be made subject to a more rigorous planning, design and documentation procedure, a Part II Order request can be made. The Part II Order is the legal mechanism whereby the status of an undertaking can be elevated from an undertaking within a Class EA to higher level of review, including an Individual EA. According to section 16 of the EAA, the Minister or delegate may by order require a proponent to comply with Part II of the EAA which requires the preparation of an individual EA before proceeding with a proposed undertaking to which a Class EA would otherwise apply. Under this same section of the EAA, the Minister or delegate may also deny the request and impose conditions with respect to a proposed undertaking.

It is the responsibility of the proponent to advise the public of their right to request a Part II Order in public notifications (see Appendix 6). Any interested persons, Aboriginal communities, or government agency may request the Minister or delegate to issue a Part II Order within the public review period for a Project File, Environmental Study Report or an Addendum. In the case of an Addendum, only the Addendum (the change to the project) shall be considered in a request for a Part II Order.

A valid Part II Order request:

- Must be made in writing to the Minister or delegate with a copy to the proponent.
- Must be made after all of the planning is complete (after the Notice of Completion is issued and within the specified review period outlined in the Notice) so that all of the potential environmental effects and impact management measures are understood.
- Must not be made for the sole purpose of delaying, stopping or frustrating the planning and implementation of a class environmental assessment project (such requests will not be considered).
- Must focus on potential environmental effects of the project, the class environmental assessment process, and not on decisions made outside the class environmental assessment process (for example, land use planning decisions made under the Planning Act or issues related to municipal funding of projects).
- Must not raise issues that are not related to the project.
- Should be withdrawn promptly by the requester if the proponent has satisfied the concerns of the requester.

A.2.8.2 Procedure to Request a Part II Order

The purpose of this Section is to outline the details surrounding a Part II Order request:

- 1) An interested person, Aboriginal community, or government agency with a concern about a project would bring the concern to the attention of the proponent.

Proponents are required to provide several opportunities for public notification and consultation throughout the Class EA planning process such as newspaper notices, workshops, open houses and request for comments. Those who are directly affected by the proposed project as well as the general public should share the responsibility for being involved in the planning process.

Members of the public having concerns about the potential environmental effects of a project or the planning process being followed have a responsibility to bring their concerns to the attention of the proponent early in the planning process, when the proponent has greater flexibility to accommodate changes in the project development and the process.

Proponents have the discretion of determining whether they need to delay or extend the completion of their project and can enter into discussions with stakeholders to address outstanding issues as part of the process. The proponent can also voluntarily elevate the status of the project from a Schedule B to a Schedule C process or to an individual EA. In order to ensure that the proponent's evaluation of the environmental impacts and the mitigating measures being proposed are fully understood by all stakeholders, members of the public expressing concerns should be advised not to make a request for a Part II Order until planning is complete. Requests for an order made before the 30-day review period will be considered by the Minister or delegate to be premature.

- 2) If any reasonable concerns relevant to the project cannot be resolved by any means employed by the proponent including self-directed mediation, the interested persons, Aboriginal communities, or government agencies may formally request that the proponent submit the undertaking to a higher level of assessment, such as a Schedule C process for a Schedule B activity or an Individual EA under Part II of the EAA.

- 3) If the proponent is unwilling to elevate the status of the undertaking or determines that an elevation of the undertaking's status is inappropriate, the interested persons, Aboriginal community, or the government agency with the concern, may submit a Part II Order request within 30 days of the "Notice of Completion" or "Notice of Filing of an Addendum" date.

Requests made or received after the 30 calendar day comment period may not be considered by the ministry.

The request to issue a Part II Order must be made in writing to the Minister of the Environment and Climate Change or delegate, and be received by the ministry within the 30-day comment period following issuance of the Notice of Completion or Notice of Addendum. The request must include the name, address and contact information of the requester and clearly indicate that a request for a Part II Order is being made. The request must address the following issues as they relate to the identified concerns with the potential environmental effects of the project or the planning process followed.

- project name and proponent must be clearly outlined;
- environmental impacts of the project and their significance;
- the adequacy of the planning process;
- the availability of other alternatives to the project (where appropriate as some projects may not have any alternative);
- the adequacy of the public consultation program and the opportunities for public participation;
- the involvement of the requester in the planning of the project;
- the nature of the specific concerns which remain unresolved;
- details of any discussions held between the requester and the proponent;
- the benefits of requiring the proponent to undertake a higher level of assessment (e.g. an individual environmental assessment); and
- any other important matters considered relevant.

The requester shall forward a copy of the request to the proponent and the EAB at the same time as submitting it to the Minister or delegate. Please note that all personal information included in a submission – such as name, address, telephone number and property location – is collected, maintained and disclosed by the MOECC for the purpose of transparency and consultation. The information is collected under the authority of the EAA or is collected and maintained for the purpose of creating a record that is available to the general public as described in s.37 of the Freedom of Information and Protection of Privacy Act. Personal information that is submitted will become part of a public record that is available to the general public unless a request is made that personal information remain confidential. For more information, the ministry's Freedom of Information and Privacy Coordinator can be contacted at 416-327-1434.

- 4) The EAB will advise the proponent within 10 working days of the receipt of a Part II Order request and will provide the proponent with an opportunity of making a submission to address the issues raised in the Part II Order request. The proponent also has the option of advising the Director of the EAB in writing if they are prepared to voluntarily carry out an individual EA or a higher level of assessment (e.g. elevate from a Schedule B to a Schedule C project). This should be done within one week of being advised that there has been a Part II Order request or as soon as is reasonably possible. The Director of the EAB would then advise the requester that the individual EA or higher level of assessment will be carried out, which would negate the need for further review of the Part II Order requests by EAB.

The review of any Part II Order requests by EAB will commence after the end of the 30-day comment period following issuance of the Notice of Completion or Notice of Filing of

an Addendum, and upon receipt of all necessary and satisfactory information from the requester, the proponent, other government agencies and/or interested persons. The EAB may consult with other government agencies and/or other interested persons during the review of a Part II Order request. The EAB may also request additional documentation from the proponent or the requester. If there are critical deficiencies in the documentation submitted by the proponent, the EAB may require the proponent to submit additional information. The proponent will need to respond to the issues raised and provide a written record of their responses to the EAB. Proponents will also need to provide information (i.e. consultation summary / record of consultation) to EAB about how First Nation and Métis communities were consulted during the planning process. The proponent shall provide the information within the requested time frame. Within a minimum target of 45 days of receiving all necessary information, the EAB will review the information and prepare a recommendation for the Minister or delegate's consideration. The EAB will focus on the issues associated with the request, the review of the documentation, and the proponent's response. EAB will also review the proponent's Aboriginal consultation activities undertaken in accordance with Section A.4 (Documentation and Revisions - Addenda) and will make a recommendation to the Minister or delegate.

It is possible that proponents can continue discussions with requesters during the ministry review period of the Part II Order request as long as EAB is notified in writing and a reasonable timeframe is set for those discussions (e.g. 30-days). The requester shall not unreasonably delay the project in this regard. If longer periods of time are required to continue discussions, proponents and the ministry will have to consider if the project needs to be withdrawn and whether the notices need to be reissued. Should the ministry review period for the Part II Order be extended, the start of timelines for the review of any Part II Order request by EAB will be deferred accordingly. If the proponent satisfies the concerns of the requester, it is the requester's responsibility to withdraw the request for a Part II Order as soon as possible. Such withdrawals should be in writing to the Minister or delegate and should be copied to the proponent and the EAB. The Director of the EAB may accept and may act upon such withdrawals on behalf of the Minister.

A.2.8.3 Minister's Decision

As part of the Minister or their delegate's decision-making process, the Minister or their delegate will consider the information submitted by the proponent, the person requesting the Part II Order and any interested persons, Aboriginal community, or government agency, the Minister or delegate chooses to consult before making a decision. The Minister or delegate will also consider the evaluation criteria for Part II Order requests found in subsection 16(4) of the EAA and other matters that the Minister may consider appropriate, as follows:

- the purpose of the EAA;
- extent and nature of public concern;
- potential for significant adverse environmental effects;
- need for broader consideration of alternatives by the proponent;
- consideration of urgency;

- participation of the requester in the planning process;
- nature of request (i.e. substantiation of claims with regard to identification of factors that suggest that the proposed undertaking differs from other undertakings in the class to which the Class EA project applies);
- degree to which public consultation and dispute resolution have taken place;
- any reasons given by a person who requests the order;
- the mediator's report, if any;
- the timeliness of the request and the timeliness of the requester raising the issues and/or concerns with the proponent;
- Ministry's Statement of Environmental Values; and
- any other important matters as the Minister considers appropriate.

The Minister or delegate will make a decision to do one of the following:

If the Minister or delegate issues a Part II Order, then he/she shall give notice, with reasons, to the proponent, the person requesting the Part II Order, and to any other interested persons, Aboriginal community, or government agency as the Minister or delegate considers appropriate. The proponent shall then adhere to the Order if it wishes to pursue implementation of the undertaking.

If the Minister or delegate refers the matter to mediation then he/she shall give notice, with reasons, to the proponent, the person(s) requesting the Part II Order, and to any other interested persons, Aboriginal community, or government agency as the Minister or delegate considers appropriate. When referring a matter to mediation, section 8 of the EAA will apply, including the appointment, by the Minister or delegate, of one or more neutral persons to act as mediators; the preparation of a report by the mediator to the Minister or delegate within 60 days of appointment, and the payment of the fees and reasonable expenses of the mediators by the proponent.

If the Minister or delegate denies the Part II Order request with or without conditions, he/she shall give notice, with reasons, to the person requesting the Part II Order, the proponent and to any other interested persons, Aboriginal community, or government agency as the Minister or delegate considers appropriate. The proponent then continues to plan and implement the undertaking under this Class EA. Any conditions which the Minister or delegate might apply to the decision to deny the Part II Order request must be adhered to by the proponent when implementing the project. It is noted that it is possible that a higher level of assessment (such as requiring the proponent to undertake a Schedule C process for a Schedule B activity) may be required through a condition of the denial.

Related Section in Companion Guide

As part of the ‘Cycling’ amendment to the MCEA which was approved in October 2015, Section A.2.8 was completely re-written by the Ministry. This new section is titled Changing the Project Status – Appeal Process to re-inforce that MCEA projects are not like a Planning Act decision. Planning Act decisions can be appealed to the Ontario Municipal Board and the Board can deny the application and stop the project. For an MCEA project, the only ‘appeal’ is to request that the Minister require the proponent to undertake a higher level of assessment before the project can proceed. Important points in the section include;

- 1) Responsibilities of the Public** – Section A.2.8.2 explains the responsibilities of the public related to submitting a Part II Order request. However, this is not helpful if the public is not made aware of these responsibilities. The proponent, should be explaining that the public needs to identify issues early in the planning process, when the proponent has greater flexibility to accommodate changes.

Planning Act notices generally all include statements like;

“If a person or public body does not make oral submission at a public meeting or make written submissions to the Town of XXXX before the proposed XXXX is adopted the person or public body is not entitled to appeal the decision to the Ontario Municipal Board”

The Municipal Class EA is not the same as the Planning Act but it does state;

“Members of the public having concerns about the potential environmental effects of a project or the planning process being followed have a responsibility to bring their concerns to the attention of the proponent early in the planning process, when the proponent has greater flexibility to accommodate changes in in the project development and the process.”

This message needs to be clearly conveyed during the consultation and the proponent needs to document how this message was conveyed.

- 2) Filing a Part II Order Request** - Section A.2.8.2.3 details the information to be included in Part II Order Requests. However, the average member of the public most likely has not read the MCEA and does not understand the process. Unlike the Planning Act, a Part II Order Request is not an appeal and the Minister does not decide to approve or cancel the project. Instead the Minister can decide:
 - a) to deny the request for a Part II Order, with or without conditions, and permit the proponent to proceed with the project
 - b) refer the matter to mediation

- c) order the Proponent to complete an individual Environmental Assessment before proceeding with the project.

Again, this information should be explained to the public during consultation for the project. Proponents commonly use forms or surveys to assist the public to provide meaningful feedback during the MCEA process. Similarly, proponents should consider encouraging the use of a form to guide the public if they wish to submit a Part II Order Request. Although the Ministry will accept a Part II Order Request in any form, proponents should encourage the use of the following form.

3) Ministry Review of PIOR – Unfortunately this portion of Section A.2.8 has been completely re-written to reflect the current practices of the MOECC.

When the MCEA was first created in the late 1980s, a PIOR (known as a Bump-up request at the time) was sent to the Minister and the Minister then had 45 days to review and determine if action was required. The Ministry's review was brief and focused on the issue raised in the request. If the Minister choose not to act and respond to the bump-up request within the allotted 45 days, the project was approved as submitted and the proponent was free to proceed.

In the 1990s, this was changed so that the Ministry staff had 45 days to review a PIOR and prepare a recommendation for the Minister. The Minister then had an additional 21 days to issue a decision for a total of 66 days.

Despite the deadline of 66 days, **the Minister averaged 304 days in 2013 and 347 days in 2014 – a completely unacceptable timeframe for a decision.** MEA has raised this issue numerous times with the Minister (see attached letters) and, in the spring of 2015, the Minister announced there would be a review of the EA Permitting system later in 2015. However, the EA review did not proceed in 2015 and there now seems to be a vague timeline of sometime in 2016 for this review.

The re-written Section A.2.8 now gives Ministry staff a target of 45 days to complete their review of the PIOR and **the deadline for the Minister to make a decision has been completely removed.** Furthermore, proponents need to be aware that the **Ministry's consideration of a PIOR does not focus on the issues raised in the request but now includes an extensive audit of the MCEA process.** In addition to addressing the issues raised in the PIOR, proponents need to be aware that the Ministry will be requiring the proponent to provide significant additional information related to archaeological, heritage, species at risk, sourcewater protection, climate change and consultation, particularly consultation with aboriginal communities. The attached forms detail the information which the Ministry requests. This information must be received prior to the Ministry beginning their 45 day review so proponents are advised to compile this information in a format that is readily available during the MCEA process.

MEA continues to lobby for improvements to the PIOR system so important infrastructure projects are not unduly delayed in the Ministry's process.

MEA Sample Form

Township of Dartford - First Concession Recharge System

MUNICIPAL CLASS ENVIRONMENTAL ASSESSMENT

PART II ORDER REQUEST FORM

If concerns arise while a project is being planned under the Municipal Class Environmental Assessment, which cannot be resolved in discussions with the proponent/municipality, a person or party may request that the Minister of the Environment and Climate Change order a change in the project status and require a higher level of assessment referred to as a Part II Order.

Person/Party submitting Part II Order Request: _____

Representative (if applicable): _____

Address: _____

Phone: _____ Email: _____

I, _____, have concerns with the following proposed project.

Project Name/Location: First Concession Recharge System

Proponent/Municipality: Township of Dartford

Name of Municipal Contact: ABC Engineering Limited

Email of Municipal Contact: jappleby@ABC.com

Members of the public or parties having concerns about the potential environmental effects of a project or the planning process being followed, have a responsibility to bring their concerns to the attention of the proponent early in the planning process, when the proponent has greater flexibility to accommodate changes in the project development and the process.

Please explain how you have participated in the environmental assessment process.

Please explain the concerns you have with the project as proposed and why you feel your concerns have not been addressed. Be sure to address the following issues for the Minister's consideration:

- environmental impacts of the project and their significance;
- the adequacy of the planning process;
- the availability of other alternatives to the project;
- the adequacy of the public consultation program and the opportunities for public participation;
- the involvement of the person or party in the planning of the project;
- the nature of the specific concerns which remain unresolved;
- details of any discussions held to resolve the specific concerns between the person or party and proponent;
- the benefits of requiring the proponent to undertake a higher level of assessment;
- any other important matters considered relevant.

Requests which are clearly made with the intent of delaying project planning and implementation, or, which do not contain a reasonable amount of information may be denied by the Minister or delegate on the basis of being unsubstantiated. Please outline below the specific concerns about the project that you have not been able to resolve through discussion with the proponent/municipality.

(attach additional pages, as may be necessary)

I have not been able to resolve my concerns, identified above, with the proposed project through discussion with the municipality and I request that the Minister of the Environment and Climate Change.

Allow the project to proceed with the following conditions:

(attach additional pages, as may be necessary)

Direct that there be mediation between the Township of Dartford and myself;

Require a higher level of environmental assessment before the project is allowed to proceed;

Signature

Date

Forward this form, along with any supporting documentation to:

Minister of the
Environment
77 Wellesley Street
West
11th Floor, Ferguson
Block
Toronto, ON M7A
2T5

- and -

Ministry of the
Environment
Environmental
Approval Branch
135 St. Clair Avenue
West
Floor 1
Toronto, ON M4V
1P5

- and -

Township of Dartford
123 Dartford Dr
Centertown
On M4B 1A1
jappleby@ABC.com

Form must be received by the Minister by _____.
(insert day 30 days after notice)

Freedom of Information and Protection of Privacy Act

Under the *Freedom of Information and Protection of Privacy Act* and the *Environmental Assessment Act*, unless otherwise stated in the submission, personal information such as name, address, telephone number and property location in a submission become part of the public record and will be released, if requested, to any person. Requests should also be sent to the proponent. If not already provided requests will be shared with the proponent for a response. The proponent's response to the issues raised will also be considered as part of the decision on a Part II Order request.

Quote from the MCEA

A.3.2 Municipal Council

It is important to keep Council aware of the study status. The manner in which this is done will vary considerably from municipality to municipality and can range from members of Council participating actively in the study, to being kept informed by staff reports during the course of the study, to receiving a report at the conclusion of the study. Project managers should confirm with Council as to their desired level of involvement. For example, members of Council would likely wish to be informed of any contacts with the general public.

Related section in Companion Guide

Over the years MEA has noted that a number of municipal project managers of MCEA projects complain that individual members of their Council get involved in an MCEA project at the wrong time or inappropriately (for example supporting a minority group's agenda rather than supporting the position of the majority) and causing delays and/or increased cost. This can certainly happen in the municipal setting. Individual members of the Council represent their constituents but staff work for the community as represented by the entire Council. Input from individual members of Council should certainly be part of the EA process but input from individuals should not be allowed to overrule input from the majority.

To keep the project focused on finding the best solution for the community, project managers should;

- Early in the EA process, seek widespread acceptance that the stated problem is legitimate and a solution needed.
- Involve Council as much as feasible throughout the Class EA process so the entire Council (that is ultimately the proponent) will be supportive of the final conclusion and preferred solution. The organization of each municipality is unique. Ideally, Council, as a group, is involved in the EA process so that the municipality's MCEA project manager, who is representing the proponent, has a clear understanding of Council's position. However, particularly in larger municipalities, this may not be practical. In this case, establishing a steering committee, including interested members of Council, could be considered.
- Remind stakeholders regularly that the stated problem needs to be addressed. This may encourage productive discussion on finding a solution rather than negative input focused on ensuring that a specific solution does not proceed.
- In complex projects, one solution is to involve council at the initial stages, such as approving the Problem/Opportunity statement, but then allowing the planning process to proceed within the confines of the Statement, with Council only providing final approval.

Quote from the MCEA

A.3.5 PUBLIC CONSULTATION

A.3.5.1 Development of a Public Consultation Plan

Develop a public consultation plan early in the study.

At the outset of the study, a proponent shall develop a public consultation plan to address the following while taking into consideration the minimum mandatory requirements and objectives of effective consultation:

- potential stakeholders and special requirements.
- level of consultation.
- appropriate means of contact.
- general timing of contact.

A consultation plan is not necessarily a formal document. Rather, it is a proposed approach or methodology which is determined early in the study and which may be documented, for example, in a study design, minutes, memo to file or a report.

This section provides some basic information and mandatory notice requirements while supplementary information and sample notices are provided in Appendices 5 and 6 respectively.

Related section in Companion Guide

It is strongly recommended that the Consultation Plan be prepared as a formal document. Be sure the methods for contacting the public are consistent with the Notice Requirements particularly if your municipality has developed its own unique minimum notice requirements. (see A.3.5.3) Just as important, a Consultation Record should be maintained and included in the project file or ESR as an appendix. The Consultation Record should be detailed, including copies of all consultation, proof of delivery of documents, follow-up contact and an explanation of how concerns were addressed. **This is one of the first items that MOECC will request from a proponent that is facing a Part II Order Request and therefore it should be readily available.** Also, a formal document will ensure that consultation is organized and complete. Sample Consultation Plans and Consultation Records are provided in the following section.

Also, do not forget that Section A.1.5.1 of the Class EA requires that proponents submit to the EAAB 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. In order to better track the submission of these Notices, ministry staff have created an e-mail address (MEA.Notices.EAAB@ontario.ca) with the intention of having all Notices sent to this location. Proponents should also send electronic copies of Notices to their local Regional EA Coordinators

Attach Sample Consultation Plan

And Sample Consultation Record

Quote from the MCEA

A.3.5.2 Methods of Public Contact

There are a number of ways in which the public may be involved in the project. It is the proponent's responsibility to determine the most suitable and effective means of involving the public. It is recognized that methods vary from community to community and with the nature of the project and potential environmental effects.

The proponent must decide which method of contact will best provide the public with sufficient information to provide input and reasonably address issues and concerns. What is suitable for a large controversial project in a populous urban location would be inappropriate in a small rural community undertaking a small straight forward project.

A combination of methods will likely be appropriate.

Appendix 5 outlines a number of methods for contacting and consulting with the public. A consultation plan will likely include one or more or a combination of these methods.

Related section in Companion Guide

Be sure the methods for contacting the public are consistent with the Notice Requirements particularly if your municipality has developed its own unique minimum notice requirements. (A.3.5.3 of the MCEA). It is then important to document the method, timing and content of all contact with the public in a formal consultation plan (A.3.5.1 of the MCEA).