

Environmental Assessment Act

**R.R.O. 1990, REGULATION 334**

GENERAL

Consolidation Period: From July 1, 2012 to the e-Laws currency date.

Last amendment: O. Reg. 196/12.

This is the English version of a bilingual regulation.

1. In this Regulation,

“development corporation” means a corporation under the Development Corporations Act; (“société de développement”)

“exclusive right-of-way”, when used in connection with a bus service, means a roadway, including entrances and exits, constructed for use by buses and upon which the public is not permitted to drive motor vehicles but not including accesses to stations and stops or turning, storage and service facilities not otherwise associated with such a right-of-way, nor a reserved bus lane on an existing road; (“emprise exclusive”)

“fish and wildlife habitat management” means the creation, improvement and maintenance of habitat in order to increase or maintain the supply of food, cover and opportunities for reproduction for fish and wildlife populations, but does not include measures for which assessment is required under the provisions of the class environmental assessment for remedial flood and erosion control projects; (“gestion de l’habitat des animaux sauvages et des poissons”)

“generation facility” has the same meaning as in Ontario Regulation 116/01 (Electricity Projects) made under the Act; (“installation de production”)

“hardship” means a situation where a person,

(a) needs to sell property quickly for health or financial reasons or to settle an estate but is unable to do so at a fair market value, or

(b) has been refused a building permit because an undertaking, planned or proposed, has not received approval under the Act; (“difficulté”)

“operating” includes maintaining and repairing and any activities for operating, maintaining and repairing, and “operation” has a corresponding meaning; (“fonctionnement”)

“public work” has the meaning assigned by section 1 of the Ministry of Infrastructure Act, 2011; (“ouvrage public”)

“renewable energy generation facility” has the same meaning as in the Electricity Act, 1998; (“installation de production d’énergie renouvelable”)

“renewable energy project” has the same meaning as in the Green Energy Act, 2009; (“projet d’énergie renouvelable”)

“renewable energy testing facility” has the same meaning as in the Green Energy Act, 2009; (“installation d’évaluation du potentiel en énergie renouvelable”)

“renewable energy testing project” has the same meaning as in the Green Energy Act, 2009; (“projet d’évaluation du potentiel en énergie renouvelable”) R.R.O. 1990, Reg. 334, s. 1; O. Reg. 456/93, s. 1; O. Reg. 458/93, s. 1; O. Reg. 364/09, s. 1; O. Reg. 308/11, s. 1; O. Reg. 196/12, s. 1.

1.1 A proponent who gives proposed terms of reference to the Ministry under section 6 of the Act shall do so on a form supplied by the Ministry. O. Reg. 615/98, s. 1.

2. (1) An environmental assessment submitted to the Minister shall contain, in addition to the information required under subsection 6.1 (2) of the Act,

(a) a brief summary of the environmental assessment organized in accordance with the matters set out in subsection 6.1 (2) of the Act;

(b) a list of studies and reports which are under the control of the proponent and which were done in connection with the undertaking or matters related to the undertaking;

(c) a list of studies and reports done in connection with the undertaking or matters related to the undertaking of which the proponent is aware and that are not under the control of the proponent;

(d) where the environmental assessment is for an undertaking with a fixed location, at least two unbound, well marked, legible and reproducible maps that are an appropriate size to fit on a 215 millimetre by 280 millimetre page, showing the location of the undertaking and the area to be affected by it. R.R.O. 1990, Reg. 334, s. 2 (1); O. Reg. 263/07, s. 1.

(2) Of the maps referred to in clause (1) (d), one shall be a simplified base map suitable for reproduction in any notices that may be published and the other may include more detail such as a 1:10,000 scale Ontario Base Map. R.R.O. 1990, Reg. 334, s. 2 (2).

(3) The maps referred to in clause (1) (d) may show alternative proposals. R.R.O. 1990, Reg. 334, s. 2 (3).

3. The following bodies are defined as public bodies:

1. Algonquin Forestry Authority.

2. Authorities within the meaning of the Conservation Authorities Act.

3. Colleges, universities and other bodies, except The Royal Ontario Museum and municipalities, to which the Ontario Universities Capital Aid Corporation Act would have applied if it had not been repealed.

4. Development corporations.

5. Ontario Energy Board.

6. Revoked: O. Reg 117/01, s. 1 (1).

7. Ontario Northland Transportation Commission.

8. Ontario Telephone Development Corporation.

9. Ontario Transportation Development Corporation.

10. Toronto Area Transit Operating Authority.

11. Ontario Clean Water Agency.
12. Ontario Infrastructure and Lands Corporation.
13. Ontario Transportation Capital Corporation.
- 14., 15. Revoked: O. Reg 117/01, s. 1 (2).

R.R.O. 1990, Reg. 334, s. 3; O. Reg. 807/93, s. 1; O. Reg. 173/99, s. 1; O. Reg. 247/00, s. 1; O. Reg. 117/01, s. 1; O. Reg. 263/07, s. 2; O. Reg. 308/11, s. 2.

4. (1) An undertaking, whether constructed or started before or after the coming into force of the relevant provisions of the Act, for the construction or start of which the approval of the Minister to proceed was not required is exempt with respect to its operation and retirement from the provisions of section 5 of the Act requiring the proponent not to proceed with the undertaking and from section 12.2 of the Act. R.R.O. 1990, Reg. 334, s. 4 (1); O. Reg. 263/07, s. 3 (1).

(2) A proponent of an undertaking of a type referred to in subsection (1) is exempt from subsection 5 (5) of the Act with respect to the requirement of submitting an environmental assessment to the Minister with respect to the operation or retirement of the undertaking. R.R.O. 1990, Reg. 334, s. 4 (2); O. Reg. 263/07, s. 3 (2).

5. (1) This section does not apply to an undertaking of a body listed in section 3 that may be found to be a local board as defined in the Municipal Affairs Act or to be a board, commission or other local authority exercising power in respect of municipal affairs. R.R.O. 1990, Reg. 334, s. 5 (1).

(1.1) For the purposes of clause 5 (2) (a),

“estimated cost” means the most current estimate of the cost of an undertaking prepared by an engineer, architect, official, planner or construction contractor, which estimate has been submitted to the council or other governing body of a municipality or a committee thereof and has been accepted by it as the basis upon which the undertaking is to be proceeded with, and where an undertaking is being constructed in phases includes the cost of all phases, but does not include any costs for,

- (a) the acquisition of land,
- (b) feasibility studies and design carried out for the undertaking,
- (c) the operation of the undertaking,
- (d) a building, the construction of which is regulated by the Building Code Act, 1992,
- (e) any furnishings, equipment, facilities or machinery ancillary to a building described in clause (d), whether contained in it or not,
- (f) any facilities or machinery contained in a building described in clause (d), whether ancillary to it or not. O. Reg. 456/93, s. 2 (1); O. Reg. 263/07, s. 4 (1).

(2) An undertaking by a municipality is exempt from section 5 of the Act where,

- (a) subject to subsection (3), it has an estimated cost of not more than \$3,500,000;
- (b) it is an undertaking by a board within the meaning of the Education Act;
- (c) it is a drainage works regulated under the Drainage Act;

- (d) it is a waste disposal site that,
  - (i) is a transfer station for domestic waste that uses portable containers,
  - (ii) is an organic soil conditioning site certified under the Environmental Protection Act,
  - (iii) is a transfer station for processed organic waste located at the sewage treatment works where it is generated or at the organic soil conditioning site where it is disposed of, or
  - (iv) Revoked: O. Reg. 106/07, s. 1 (1).
  - (e) it is a road or a water crossing that is required to provide access to a renewable energy generation facility or renewable energy testing facility;
  - (f) it is an undertaking that consists of the provision of municipal non-profit housing facilities that may include ancillary commercial and other uses within the housing project;
  - (g) Revoked: O. Reg. 117/01, s. 2 (1).
  - (h) subject to subsection (3), it is a work provided for in a subdivision agreement between a municipality and a subdivider;
  - (i) it is a work other than a work of a type described in the Municipal Class Environmental Assessment that is provided for in a subdivision agreement between a municipality and a subdivider for the management of storm water that originates only from the subdivision or other adjacent land of the subdivider; or
  - (j) it is a transfer of land initiated by the owner of the land,
  - (i) in a hardship situation, or
  - (ii) as part of an arrangement whereby the municipality is to provide a fence in return for a transfer of land. R.R.O. 1990, Reg. 334, s. 5 (2); O. Reg. 117/01, s. 2 (1); O. Reg. 106/07, s. 1 (1); O. Reg. 263/07, s. 4 (2, 3); O. Reg. 364/09, s. 2.
- (2.1) The exemption provided by clause (2) (a) does not apply to a transit project within the meaning of Ontario Regulation 231/08 (Transit Projects and Metrolinx Undertakings) made under the Act. O. Reg. 232/08, s. 1 (1); O. Reg. 196/12, s. 2.
- (3) The exemptions provided by clauses (2) (a) and (h) do not apply in respect of,
- (a) an undertaking of a type described in the Municipal Class Environmental Assessment;
  - (b) a new bus service on an exclusive right-of-way or a new rail transit system; or
  - (c) a new station, terminal or marshalling yard for a rail transit system.
  - (d) Revoked: O. Reg. 106/07, s. 1 (2).
  - (e) Revoked: O. Reg. 117/01, s. 2 (2).
  - (f) Revoked: O. Reg. 232/08, s. 1 (2).

R.R.O. 1990, Reg. 334, s. 5 (3); O.Reg. 456/93, s. 2 (2); O. Reg. 117/01, s. 2 (2); O. Reg. 106/07, s. 1 (2); O. Reg. 263/07, s. 4 (4); O. Reg. 232/08, s. 1 (2).

(4) Revoked: O. Reg. 263/07, s. 4 (5).

(5) Revoked: O. Reg. 263/07, s. 4 (6).

(6) The obtaining of an option to acquire land or an interest in land by a municipality or the entering into an agreement to purchase land or an interest in land by a municipality, where the acquisition or purchase is conditional on compliance with the Act, is an undertaking that is exempt from section 5 of the Act. R.R.O. 1990, Reg. 334, s. 5 (6); O. Reg. 263/07, s. 4 (7).

6. (1) All undertakings and classes of undertakings by or on behalf of Her Majesty in right of Ontario and carried out by,

(a) the Minister of Agriculture, Food and Rural Affairs;

(b) the Attorney General;

(c) the Minister of Community and Social Services;

(d) the Minister of Community Safety and Correctional Services;

(e) the Minister of Education;

(f) the Minister of Health and Long-Term Care;

(g) Revoked: O. Reg. 196/12, s. 3.

(h) the Minister of Finance;

(i) the Minister of Labour;

(j) the Minister of Municipal Affairs and Housing;

(k) the Minister of Consumer Services; and

(l) the Minister of Training, Colleges and Universities,

are exempt from section 5 of the Act. O. Reg. 263/07, s. 5 (1); O. Reg. 364/09, s. 3; O. Reg. 196/12, s. 3.

(2) All undertakings and classes of undertakings by or on behalf of Her Majesty in right of Ontario and carried out by an agent of Her Majesty in right of Ontario who is not,

(a) a Minister of the Crown;

(b) acting on behalf of a Minister of the Crown; or

(c) defined as a public body,

are exempt from section 5 of the Act. R.R.O. 1990, Reg. 334, s. 6 (2); O. Reg. 263/07, s. 5 (2).

7. Despite section 6, an undertaking carried out by the Minister of Infrastructure on behalf of or at the request of,

(a) a Minister of the Crown named in section 6;

(b) an agent of the Crown exempted by section 6,

that would be subject to the Act but for section 6 is not exempt from the Act. R.R.O. 1990, Reg. 334, s. 7; O. Reg. 390/01, s. 3; O. Reg. 263/07, s. 6; O. Reg. 364/09, s. 4; O. Reg. 308/11, s. 3.

7.1 An undertaking by or on behalf of the Ontario Infrastructure and Lands Corporation, other than an undertaking in respect of a public work, is exempt from the Act. O. Reg. 308/11, s. 4.

8. (1) In this section,

“authority” means an authority within the meaning of the Conservation Authorities Act;

“conservation services” means works carried out under an agreement with a private landowner for the purpose of,

- (a) creation of shelter belts and wind breaks,
- (b) erosion control,
- (c) soil conservation,
- (d) water conservation, or
- (e) water quality improvement,

where the estimated cost of the works including all related projects does not exceed \$50,000;

“cost” means the estimated total cost of the implementation of an undertaking at the time of its approval under section 24 of the Conservation Authorities Act by the Minister of Natural Resources exclusive of any costs for the acquisition of land or for any feasibility studies and design carried out for the undertaking or the operation of the undertaking;

“floodproofing” means taking measures to protect a structure or its contents from flood damage where the measures are carried out, in, on or immediately adjacent to, the structure being protected, but does not include constructing dykes, channels, retaining walls and water reservoirs or impoundments or other structures, only part of which forms part of, or is immediately adjacent to, the structure being protected. R.R.O. 1990, Reg. 334, s. 8 (1); O. Reg. 458/93, s. 2.

(2) An undertaking by an authority is exempt from section 5 of the Act if the undertaking is solely for the purpose of,

- (a) reforestation and woodlot management;
- (b) restocking of indigenous wildlife;
- (c) provision of conservation area workshops, administration buildings, outdoor education and interpretive centres;
- (d) conservation services;
- (e) municipal tree replacement;
- (f) agricultural land management of authority-owned lands;
- (g) flood-proofing;
- (h) fish and wildlife habitat management;

(i) development of conservation areas and campgrounds having a cost of not over \$1,000,000; or

(j) relocation or improvement of historical buildings,

or for the combination of any purposes set out in clauses (a) to (j). R.R.O. 1990, Reg. 334, s. 8 (2); O. Reg. 263/07, s. 7 (1).

(3) The acquisition of land or interests in land by an authority is exempt from section 5 of the Act. R.R.O. 1990, Reg. 334, s.8 (3); O. Reg. 263/07, s. 7 (2).

9. The undertaking of making a loan, giving a grant, giving a guarantee of debts or issuing or granting a licence, permit, approval, permission or consent is exempt from section 5 of the Act. R.R.O. 1990, Reg. 334, s. 9; O. Reg. 263/07, s. 8.

10. Despite any provisions of this Regulation exempting any undertaking from the provisions of the Act, where proposed terms of reference governing the preparation of an environmental assessment for an undertaking are submitted, all provisions of the Act apply in respect of that undertaking. R.R.O. 1990, Reg. 334, s. 10; O. Reg. 263/07, s. 9.

11. (1) In this section,

“research” includes measuring, monitoring and testing;

“research undertaking” means an undertaking that is carried out for the purpose of or that consists of research. R.R.O. 1990, Reg. 334, s. 11 (1).

(2) Research undertakings are exempt from section 5 of the Act. R.R.O. 1990, Reg. 334, s. 11 (2); O. Reg. 263/07, s. 10.

11.1 (1) In this section,

“municipal waste pilot project site” has the same meaning as in section 5.0.1 of Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the Environmental Protection Act. O. Reg. 103/07, s. 1.

(2) An undertaking in respect of the processing or disposing of municipal waste on a municipal waste pilot project site is exempt from Part II of the Environmental Assessment Act if section 5.0.1 of Regulation 347 of the Revised Regulations of Ontario, 1990 applies to an application for an environmental compliance approval under section 20.2 of the Environmental Protection Act in respect of the use, operation, establishment, alteration, extension or enlargement of the site. O. Reg. 249/11, s. 1.

12. (1) In this section,

“PCB” means any monochlorinated or polychlorinated biphenyl or any mixture of them or mixture that contains one or more of them. R.R.O. 1990, Reg. 334, s. 12 (1).

(2) The locating of a mobile PCB destruction facility on lands of the Crown, a municipality or public body and the using of a mobile PCB destruction facility to destroy PCB wastes of the Crown, a municipality or public body are exempt from section 5 of the Act whether or not the establishment of the facility required an approval under the Act. R.R.O. 1990, Reg. 334, s. 12 (2); O. Reg. 263/07, s. 11.

13. Despite the repeal of Regulation 293 of the Revised Regulations of Ontario, 1980, any part of an undertaking for which an Environmental Assessment has not been submitted and that was exempt under clause 5(5) (a) or 9 (2) (a) of that regulation on the 12th day of April, 1987, remains exempt. R.R.O. 1990, Reg. 334, s. 13.

14. Sections 4, 5, 6, 8 and 13 do not apply to an undertaking that is designated as an undertaking to which the Act applies by Ontario Regulation 116/01 (Electricity Projects). O. Reg. 117/01, s. 3.

15. (1) An undertaking by or on behalf of Her Majesty in right of Ontario, a municipality or municipalities or a public body or public bodies in respect of the planning, designing, establishing, constructing, operating, changing, expanding or retiring of a renewable energy generation facility or renewable energy testing facility is exempt from the Act. O. Reg. 364/09, s. 5.

(2) Subsection (1) does not apply to an undertaking in respect of a renewable energy generation facility that uses water power as its primary power source. O. Reg. 364/09, s. 5.

15.0.1 An undertaking by or on behalf of Her Majesty in right of Ontario that is being carried out only for the purposes of implementing a renewable energy project or renewable energy testing project is exempt from the Act. O. Reg. 364/09, s. 6.

15.0.2 (1) An undertaking by the Minister of Natural Resources that is being carried out in respect of a road or a water crossing that provides access to a renewable energy generation facility or a renewable energy testing facility is exempt from the Act. O. Reg. 196/12, s. 4.

(2) Subsection (1) does not apply to an undertaking that is being carried out in respect of a road or a water crossing that is any of the following:

1. The King's Highway, a secondary highway or an industrial road designated under the Public Transportation and Highway Improvement Act.

2. A road under the jurisdiction of a statute labour board or a local roads board. O. Reg. 196/12, s. 4.

(3) Subsection (1) does not apply to an undertaking if the renewable energy generation facility uses water power as its primary power source. O. Reg. 196/12, s. 4.

(4) Subsection (1) does not apply to an undertaking if, before the day Ontario Regulation 196/12 made under the Act comes into force, the Ministry of Natural Resources has issued a public notice in respect of the undertaking under the Class Environmental Assessment for MNR Resource Stewardship and Facility Development Projects, approved pursuant to Order in Council 2211/2002 on December 11, 2002, as amended from time to time. O. Reg. 196/12, s. 4.

15.1 For the purpose of subsection 15.2 (2) of the Act,

(a) municipalities are authorized to proceed with undertakings in accordance with the Municipal Class Environmental Assessment; and

(b) if an undertaking of a private sector developer is designated as an undertaking to which the Act applies under subsection 2 (1) of Ontario Regulation 345/93 (Designation and Exemption — Private Sector Developers) made under the Act, the private sector developer is authorized to proceed with the undertaking in accordance with the Municipal Class Environmental Assessment. O. Reg. 263/07, s. 12.

15.2 Subsections 12.2 (2) and (6) of the Act do not apply to the Minister of Municipal Affairs and Housing with respect to any order that he or she may make under section 47 of the Planning Act. O. Reg. 536/07, s. 1.

16. Copies of the class environmental assessments and approvals of class environmental assessments referred to in this Regulation may be found in the public records maintained under section 30 of the Act. O. Reg. 390/01, s. 4.