

November 10, 2020

Greenpeace Canada Comments on Proposed Project List for comprehensive environmental assessments under the Environmental Assessment Act (EAA)

Greenpeace Canada sent a letter dated October 29, 2020 to Minister Yurek and adopts those comments. Greenpeace Canada additionally supports and adopts the submissions on the Proposed Project List submitted by the Canadian Environmental Law Association (CELA) and Ontarians for Just Accountable Mining Strategy (OJAMS) and Mining Watch Canada.

As an initial matter acknowledged and discussed in detail in our October 29 letter, there is a lack of regulatory language in the posting. The posting lacks definitions and clarity about what is being proposed, and is arguably offside the Environmental Bill of Rights (EBR) requirement to include a brief description of the proposal. It is certainly not in the spirit of the EBR to fail to include regulatory language.

Below is a summary of our concerns with the Project List which are also expressed in greater details in the letters/submissions listed above.

Project List fails to capture projects based on environmental impact metrics

The Project List is inappropriate and fails to capture projects based on any metric of environmental harm or principles of sustainability. The Project list should not be an arbitrary or politicized list of projects but instead, whether a project gets a comprehensive assessment should be based on a series of factors to determine the Project's environmental impacts (e.g. the magnitude, duration, frequency and geographic extent of potential impacts).

If the purpose of the comprehensive EA and the Project List is to assess projects based on its greatest potential to significantly impact the environment,¹ determining projects with significant environmental impacts should be based upon evidence based scientific or technical review. The government has failed to articulate the rationale for the inclusion or exclusion of projects currently on the list based on any scientific reasoning nor is there a prescribed criteria or threshold recognizing the environmental impacts of a project. It appears the projects on the list are historically projects that were listed as requiring comprehensive EAs which begs the question of how the new changes are even considered a modernization if they simply replicate former EA regulation. New projects should be considered for inclusion taking into consideration significant environmental impacts with revised criteria that include factors such cumulative short term and long term environmental impacts, location, design and operation (ex. Air quality, water quality, wildlife habitat, species at risk etc.).

Recommendations:

In addition to a list of Projects, which should be determined by rigorous evidence based factors to determine environmental impact, other projects should trigger the comprehensive EA process based on a well developed comprehensive set of criteria identifying the potential for significant environmental harm.

¹ MECP, Modernizing the Environmental Assessment Program: Proposed Comprehensive Environmental Assessment Project List (Stakeholder Engagement Sessions: October 2020), page 4.

Lack of Climate Considerations

There is absolutely no consideration of how the projects on the list would either assist with or impede Ontario's Climate plan or goals of reducing our emissions to 30 per cent below 2005 levels by 2030. Any sensible modern day environmental assessment process should have some consideration for the climate impacts of industrial projects. For example, at the federal level, the government has adopted a Strategic Assessment for Climate Change which will help assess whether a project will help or hinder Canada meet its climate commitments.

Recommendations: The Ministry adopts a climate impact assessment component within a comprehensive EA.

Private projects should be considered for comprehensive EAs

The environment knows no distinction between a public project or a private sector project. Any Project list or EA process should prescribe environmental assessments to private sector projects again based on a threshold or trigger for a comprehensive EA based on a set of science based criteria.

Below is an excerpt from the Auditor General of Ontario explaining the fallacy of the distinction of private and public sector projects when it comes to environmental assessment:

Certain types of projects undertaken by both the private and the public sector have the potential to harm the environment, wildlife, and human populations if carried out without regard to their impact. They can result, for example, in contamination of the soil, pollution of the air and water, destruction of habitats and damage to places of economic and cultural significance. The effects can be extensive, and may last for many years[.]

The Environmental Assessment Act applies to all public-sector but only a small portion of private sector projects. The Ministry informed us that when the Act was passed 40 years ago, it was intended to focus on large-scale infrastructure projects undertaken by the public sector. Since then, the private sector has taken on more projects that have significant impact on the environment. Despite these changes, the Ministry has only expanded the scope of the Act to private-sector electricity, waste-management, and large municipal infrastructure projects. As a result, many private sector projects with the potential to harm the environment go ahead without adequate consideration of their impacts, or even without determining whether the project should proceed in the first place. Such environmental harm may not be identified until many years or decades later after damage has occurred, and the effects may be long-lasting and irreversible[.]

[While] occasionally, private-sector project owners will voluntarily conduct an environmental assessment[.], Ontario is the only Canadian jurisdiction in which environmental assessments are generally not required for private-sector projects. These projects—such as mining operations or chemical manufacturing facilities—proceed without an up-front evaluation of the environmental impacts of the project. Such impacts can be extensive and can affect Ontarians for many years[.] The environmental assessment laws in all other jurisdictions in Canada

require environmental assessments for certain types of projects, regardless of whether the project owner is in the public or private sector.²

Recommendation: The Ministry should review and update the requirements in the Project List and amend the EAA to ensure that projects with the potential for significant negative impact are assessed, regardless of whether the project is initiated by the public or private sector.

The Fallacy of Reducing Duplication

One of the considerations cited by the government for revising the EA process is to “[eliminate] duplication with other legislation.”³ However this shouldn’t be a free pass for the government to fail to legislate for EA thereby leaving gaps in regulation. The government should create a comprehensive and robust EA process that can withstand changes to federal EA or IA legislation, and instead should look to create legislation that harmonizes with the federal process such as provinces like Quebec and British Columbia. Harmonizing legislation can help reduce duplicative efforts while ensuring that aspects of projects do not go unassessed. Furthermore, as CELA notes, the Ontario’s consultation materials have not identified any actual instances of unnecessary overlap or duplication between the EAA and other statutory regimes. The EA as is risks Projects that fall outside of the scope of a Project List or a Streamline EA and may never get assessed despite potentially causing environmental impacts.

Lack of Statutory Amendments to update EA requirements for proponents

There is no indication from the Proposal details on how the assessment process and criteria itself will be modernized and updated. We will not go into detail in these submissions on how the EA process itself requires modernization. However, many stakeholders have written on this subject and have engaged in government stakeholder consultation on this issue to modernize and update the EA process itself.⁴ Furthermore, there are no updates on public participation or moving to a more accessible electronic system to encourage public engagement on a project throughout its lifecycle. For projects that have a significant environmental impact, it is important that the public can be engaged and informed.

Mining and Aggregates

Greenpeace Canada adopts and supports the position of OJAMS and MiningWatch Canada on the necessity of comprehensive EAs for mining and mineral industry related projects.

Ontario is the only jurisdiction in Canada that does not do EA on mining developments. It has been relying on piecemeal reviews from the federal government. The new federal Impact Assessment Act does not provide for environmental assessment of smelters or refineries, and will only assess metal and diamond mines over a certain size.

Although some Ontario mining permits require streamlined EAs as part of the permitting process, the Auditor-General of Ontario said in 2016 that this process allows too much

² Auditor-General of Ontario, 2016 report, Chapter 3, section 3.06
https://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1_306en16.pdf

³ <https://ero.ontario.ca/notice/019-2377>

⁴ <https://cela.ca/wp-content/uploads/2019/07/EABriefing.pdf>; The Big Hole: Environmental Assessment and Mining in Ontario

proponent control of the process; cumulative impacts are not assessed; the public is inadequately informed; there is no independent review and social, cultural and economic factors are not addressed⁵.

Recommendations:

- All new mines, mills, and metal extraction facilities(smelters and refineries) must be on the reviewable projects list and receive a full environmental assessment
- Expansions of over 25% of ore production capacity or of land area must be reviewed
- Re-opening of closed mines, mills, and metal extraction facilities should be treated as new mines and reviewed.
- A feasibility study should be required as part of the environmental assessment for any new mine, or re-opening of a former mine.
- Cooperative environmental assessment with the federal government with a view to one project- one assessment with an aim of the most stringent requirements
- Recognition of treaty rights to enable affected Indigenous jurisdictions to exercise Free Prior Informed Consent on their traditional territories.

Application of EAA with deregulation

There has been a systematic deregulation of environmental and climate regulation in Ontario over the past two years under the guise of reform, modernization, cutting red tape or more insidiously, pandemic related relief. Reforming the EA in such a clumsy unsophisticated manner further leaves Ontario's environment vulnerable.

The gutting of the *Endangered Species Act*⁶ at a time when a million species are at risk of extinction globally⁷, the dismantling of protections for Ontario's forests⁸ (a vital buffer against climate change), the failure to conserve Ontario's vast natural environment in line with Canada's national targets under the Convention on Biological Diversity,⁹ the repeal of the *Toxic Reductions Act*, which required companies to track and report on the toxic chemicals they create or use in their industries; the loosening of aggregate pit and quarries regulations¹⁰ are just a few examples of deregulation that will cause proponents and government to ignore or miss critically important environmental impacts when conducting EAs. Without robust provincial environmental legislation that would allow proponents to identify issues related to EAs such as species at risk, Areas of Natural and Scientific Interest (ANSI), toxic substances, or groundwater issues, EAs will lack attention to truly significant environmental matters.

⁵Auditor-General of Ontario, 2016 report, Chapter 3, section 3.06.

https://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1_306en16.pdf

⁶<https://www.greenpeace.org/canada/en/story/7924/doug-fords-threat-to-endangered-species-and-our-own-survival/>;

⁷<https://www.nationalobserver.com/2019/05/08/news/one-million-species-risk-extinction-doug-ford-sending-bulldozers>

⁸<https://www.nationalobserver.com/2020/06/30/news/ontario-extends-logging-industry-exemption-endangered-species-law>

⁹ 10.7% protected versus 17% target (see:

<https://www.ontario.ca/page/ontarios-parks-and-protected-areas> and

<https://www.cbd.int/countries/targets/?country=ca>)

¹⁰<https://environmentaldefence.ca/2019/11/12/ontario-government-bows-aggregate-industry-moves-block-municipal-efforts-protect-groundwater/>