Amendments to the Renewable Energy Approval (REA) regulation *"at a glance"*

On January 1, 2011, amendments to O.Reg.359/09 (Renewable Energy Approvals) came into force. The amendments cover a number of sections of the regulation including definitions, identification of odour and noise receptors, public notification and consultation, and reporting requirements.

This bulletin is designed to be a quick reference document that provides an overview of the key changes to the regulation and the REA process. It is strongly recommended that readers consult the regulation for full details of precise regulatory requirements. It can be accessed at: http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_090359_e.htm

Prior to January 1, 2011	After January 1, 2011
Public Notification	
Public notice At least 30 days before the first public meeting notice had to be given of the project proposal as well as the location and time of both the mandatory public meetings.	At least 30 days before the first public meeting notice has to be given of the project proposal as well as the location and time of the first public meeting. AND At least 60 days before the final public meeting notice has to be given of the location and time of the final public meeting. *See Sec.15 for details.*

Prior to January 1, 2011	After January 1, 2011
<u>Landowner notice</u> Notices had to be given to every assessed owner of land within 120 metres of the project location, among others[1].	Notices have to be given to every assessed owner of land: a) within 550m of the project location for Class 3, 4 and 5 wind facilities; OR, b) within 120m for all other types of facilities. AND Notices have to be given to every assessed owner of land abutting the project location if they were not captured by the distances above. *See Sec.15 for details.*
<u>Notice of application</u> Once a proponent submitted a complete application, nothing further was required.	Proponents must, within 10 days of a notice of the proposed project being posted on the Environmental Registry[2]: a) post on their website all the documents that were submitted as part of their application; AND, b) publish a newspaper notice that includes name, website,

[1] See Sec.15(6)5 for the complete list of persons and groups to whom notices must be given.
[2] Once an REA application is accepted by the MOE, a notice will be posted to the Environmental Registry to allow members of the public to submit comments that will be considered by the Director in making a decision on the application.

Prior to January 1, 2011	After January 1, 2011
	project description and map, and a statement that an application has been submitted to the MOE. *See Sec.15.1 and 15.2 for details.*
Consultation	
<u>Public consultation</u> Before the first mandatory public meeting was held proponents had to post a draft Project Description Report on their website.	The draft Project Description Report (PDR) has to be made available *at least 30 days before* the first mandatory meeting. In addition to posting the draft PDR on their website, proponents also have to: a) make a copy available in each municipality where the project is located; b) make a copy available in the Aboriginal communities on the list given by the MOE; and, c) give a copy to each Aboriginal community on the list and any other that may have an interest in the project. *See Sec.16 for details.*

Prior to January 1, 2011	After January 1, 2011
<u>Aboriginal consultation</u> Before draft reports are made available to the public 60 days prior to the final public meeting, proponents must give certain documents to Aboriginal communities in a form approved by the Director.	The Aboriginal consultation requirements have not changed but the distribution of documents no longer has to be "in a form approved by the Director". *See Sec.17 for details.*
<u>Municipal consultation</u> At least 90 days before the final mandatory public meeting, proponents had to give a consultation form to each municipality in which the project was located.	The consultation form and a draft PDR must now be given to each municipality at least 30 days before the *first* mandatory public meeting. AND All other draft reports must be given to each municipality at least 90 days before the final public meeting (the consultation report and letters from MNR/MTC are excluded). *See Sec.18 for details.*

Prior to January 1, 2011	After January 1, 2011
<u>Class 1 and 2 thermal treatment and anaerobic digestion facilities</u> Public consultation meetings are not required for these types of facilities but reports must still be prepared and submitted to municipalities, Aboriginal communities and the Niagara Escarpment Commission (NEC). The regulation was not clear on when this should happen.	For these facilities where no public meetings are required, draft reports must be given to each municipality in which a project is located, Aboriginal communities on the list obtained from the MOE, and the NEC at least 30 days before an application is submitted to the MOE. *See Sec.17, 18 and 32.*
Protected Properties, Archaeological and Heritage Resources	
<u>Protected properties</u> Proponents must determine whether their project is on a protected property listed in column 1 of the Table in Sec.19. If it is, they must include in their application written authorization from the body in column 2 corresponding to that protected property.	In addition to the previous requirements, proponents now also have to include in their application a summary of how they determined that their project is *not* on a protected property listed in column 1 of the table in Sec.19. *See Sec.19 for details.*

Prior to January 1, 2011	After January 1, 2011
Archaeological resources Proponents of Class 2 wind, Class 1 and 2 anaerobic digestion and thermal treatment facilities had to contact the Ministry of Culture and each municipality in which the project is located to determine whether their project was on or near an archaeological resource as described in Sec.21.	In addition to the previous requirements, proponents of these facility types now also have to include in their application a summary of how they determined that their project will not have an impact on an archaeological site or resource described in Sec.21. *See Sec.21 for details.*
Natural Heritage	
Bird and bat monitoring plan The regulation did not require that a bird and bat monitoring plan to be prepared and reviewed by the MNR before an application is submitted.	Proponents of Class 3, 4 and 5 wind facilities must prepare a bird and bat environmental effects monitoring plan. The plan(s) must be developed in accordance with MNR guidelines[3], and must be submitted to the MNR for evaluation and to obtain comments as part of the MNR's confirmation letter that forms part of the REA application. *See Sec.23.1 and 28 for details.*

[3] Refer to the Ministry of Natural Resources website to access: "Birds and Bird Habitat: Guidelines for Wind Power Projects" and "Bats and Bat Habitat: Guidelines for Wind Power Projects".

Prior to January 1, 2011	After January 1, 2011
Site investigation As part of the natural heritage assessment, proponents were required to conduct a physical investigation of the air, land and water within 120m of their project location to identify natural features, and prepare a report regarding the site investigation.	Proponents must still conduct a site investigation as part of the natural heritage assessment, but in the case where it is not reasonable to conduct a *physical* investigation by visiting the site, a proponent may conduct an *alternative* investigation of the site. The required contents of the report have been revised to reflect the possibility of an alternative site investigation being conducted. *See Sec.26 for details.*
Water	
Site investigation As part of the water assessment, proponents were required to conduct a physical investigation of the land and water within 120m of their project location to identify water bodies, and prepare a report regarding the site investigation.	Proponents must still conduct a site investigation as part of the water assessment, but in the case where it is not reasonable to conduct a *physical* investigation by visiting the site, a proponent may conduct an *alternative* investigation of the site. The required contents of the report have been revised to reflect the possibility of an alternative site investigation being conducted. *See Sec.31 for details.*

Prior to January 1, 2011	After January 1, 2011
Noise and Odour Receptors	
<u>Definition</u> The definition of noise and odour receptors included: "A building or structure used for overnight accommodation".	This definition was replaced with: "A building or structure that contains one or more *dwellings*". Dwelling was defined as: "one or more habitable rooms used or capable of being used as a permanent or seasonal residence by one of more persons and usually containing cooking, eating, living, sleep and sanitary facilities". *See Sec.1 for details.*
<u>Vacant lots</u> When identifying the location of a future noise receptor on a vacant lot, the centre of the lot had to be used.	The identification of a future noise receptor on a vacant lot is now the location where a building would reasonably be expected to be located, having regard to the existing zoning by-law and typical building pattern in the area. Vacant lots that are not accessible by vehicle or watercraft are now explicitly excluded from this definition. *See Sec.1 for details.*

Prior to January 1, 2011	After January 1, 2011
<u>Crystallisation of odour receptors</u> For the purposes of measuring setbacks from odour receptors, proponents of had to consider all odour receptors that existed up until the point of construction of the project.	Proponents now have to consider all odour receptors up until they submit their application. Any odour receptors established after an application is submitted do not have to be considered for the purposes of setback prohibitions. *See Sec.47 and 48 for details.*
<u>Crystallisation of noise receptors</u> For the purposes of measuring setbacks from noise receptors, proponents of Class 3, 4 and 5 wind projects had to consider all noise receptors that existed up until the point of construction of the project.	Wind project proponents now have to consider all noise receptors up until the earliest of the following: a) issued a Notice of Completion in accordance with O.Reg.116/06; b) published a draft site plan in accordance with the requirements in Sec.54.1 of the REA regulation; c) submitted an REA application; or, d) publicly disclosed the locations of proposed wind turbines (only applies to disclosures made prior to Jan.1, 2011). *See Sec.54 and 54.1 for details.*

Prior to January 1, 2011	After January 1, 2011
Noise matrix For the purpose of identifying other wind turbines in accordance with the wind matrix in Sec.55 of the regulation, proponents had to consider the following turbines with sound power level equal to or greater than 102 dBA within a 3 km radius of a noise receptor: a) are constructed; b) obtained an REA or Certificate of Approval (C of A); or, c) have an application for an REA or C of A posted on the Environmental Registry.	Proponents must now also consider turbines with sound power level equal to or greater than 102 dBA within a 3 km radius of a noise receptor that have been identified in any of the following: a) an application for an REA; b) a draft site plan that is published in accordance with a new section 54.1 if it is still valid and has not expired; or, c) a notice of completion published in accordance with O.Reg.116/01. *See Sec.55 for details.*
Other Key Changes	
Class 2 wind facilities Only a Project Description Report was required to be submitted as part of an application.	Proponents of Class 2 wind facilities must now also prepare a Class 2 Wind Facility Specifications Report. This report is distinct from the Specifications Report that must be prepared for Class 3, 4 and 5 wind facilities. *See Table 1, item 13 for details.*

Prior to January 1, 2011	After January 1, 2011
<u>Solar facility nameplate capacity</u> Ground mounted solar facilities with a nameplate capacity greater than 10kW required an REA.	The nameplate capacity threshold for requiring an REA is now 12kW. This refers to the rating of the modules (panels), not the inverter output. Roof mounted facilities of any capacity continue to be exempted from REA requirements. *See Sec.4 for details.*
<u>Application eligibility</u> Proponents had to strictly comply with every requirement in Part IV of the regulation in a very prescriptive manner in order to be eligible for the issuance of an REA.	Proponents may now be eligible for the issuance of an REA if the Director determines that meeting one or more requirements in Part IV of the regulation either: a) will not compromise an adequate understanding of the negative environmental effects of the project; or, b) will improve public consultation. *See Sec.12 for details.*
<u>Reporting requirements</u> Table 1 of the regulation lists a number of reports and specifies for which project(s) each report is required to be submitted as part of an application.	A number of changes have been made to the contents of various reports, as well as to which project(s) certain reports apply. *See Table 1 for details.*

Transition Provisions

Proponents that issued a notice required under Sec.15 the regulation (i.e., project or meeting notice) prior to Jan.1, 2011 are subject to the transition provisions outlined in Part VIII of the regulation.

Proponents of transition projects must follow the amended requirements in Part I, II, III, V, VI and VII of the regulation – that is, how those parts read on Jan.1, 2011. The requirements in Part IV of the regulation (i.e., the pre-submission process requirements) must be followed as they read *prior* to Jan.1, 2011. There are exceptions, however:

Part IV

- Proponents may elect to follow any of the new requirements in Part IV of the regulation. If a proponent makes such an election they must notify the Director of the election as part of their application. Proponents do not have to notify the Director prior to submitting their application.
- There is one limitation to this election. If a proponent elects to follow the new Sec.23.1 (bird and bat monitoring plan), they *must* also follow the amended Sec.28 (confirmation from MNR). A proponent cannot elect one without electing the other.

Definition of "woodland"

- Despite being in Part I of the regulation, the old (pre-Jan.1, 2011) definition of "woodland" continues to apply for transition projects. Proponents may, however, elect to use the amended definition of "woodland" if they notify the Director of such an election as part of their application.

Treatment of vacant lots

- The treatment of vacant lots is described in Part I of the regulation so the amended treatment will apply to transition projects. Proponents may, however, elect to use the old (pre-Jan.1, 2011) treatment of vacant lots if they notify the Director of such an election as part of their application.

See Part VIII of the regulation for details of the transition provisions.

Proponents that did *not* issue a notice required under Sec.15 of the regulation prior to Jan.1, 2011 must follow all of the requirements in the amended regulation. That is, they must meet the requirements in the regulation as it read on Jan.1, 2011.