

# **Modernizing the Environmental Assessment Act and Other Changes**

## **Update for MEA Members – August 2020**

The Municipal Class Environmental Assessment (MCEA) process was first developed by the Municipal Engineers Association (MEA) in the 1980s. The current version of the MCEA Manual was originally written and released in 2000 and amended in 2007, 2011 and 2015. While past amendments addressed specific issues that developed since 2000, the majority of the MCEA Manual content is 20 years old.

The purpose of this Article is to update MEA members on the following:

1. Status of the ongoing MCEA Amendment Process
2. The *COVID-19 Economic Recovery Act*, which includes important amendments to the Environmental Assessment Act (EA Act)

### **1) Status of the MCEA Amendment Process**

The MEA has been interested in modernizing/streamlining the MCEA process for quite some time and in September of 2019, we submitted proposed major amendments to the Ministry of Environment, Conservation and Parks (MECP). Once approved, the proposed amendments will significantly improve the MCEA process for proponents.

The current amendments are intended to change process, not outcomes. The MEA believes that with the approval of the amendments, timelines and costs for carrying out EA approvals will be reduced. If the proposed amendments were in place five years ago, municipalities would have constructed the same projects sooner and with less cost.

The key principles MEA followed to amend the MCEA process included:

1. Providing Clearer Project Descriptions in Appendix 1 of the Manual
2. Classifying Project Schedules Based on Environmental Risk
3. Recognizing the Value of Other Approvals
4. Eliminating Duplication with the Planning Act
5. Recognizing the Role of Local Government/Councils

Following the key principles above, every project identified in Appendix 1 of the MCEA was reviewed and, where appropriate, re-classified. Some of the Schedule A projects were shifted to Schedule A+ to ensure community consultation. Other projects were shifted from Schedule B or C to Schedule A+. The amendment table posted for comment by the MECP identifies the projects that are shifted and explains the justification for each.

### **The MECP commenting period ends on August 22, 2020. Please get your comments in.**

The MEA will review all comments received and prepare responses to address all concerns/suggestions raised. These comments/suggestions will be considered by both MEA and MECP and may result in additional revisions to the proposed amendments. As such, the timing for approval of the amendments depends on the amount and nature of the comments received. The MECP staff will prepare a recommendation for a Minister's decision on the amendments. The Minister will consider the purpose of the Act, the Class EA holder's rationale for the changes and comments received when deciding on the proposed amendments.

A new version of the MCEA Manual will be available after the amendments are approved. The new version will also include the MEA's Companion Guide Notes (CGNs). CGNs are considered as articles of advice from the MEA and are intended to assist with the application and to add clarity to the MCEA process.

The latest version of the CGNs will be restructured and references will be incorporated directly into the MCEA Manual as amended in 2020. Although references to CGNs are incorporated within the MCEA Manual itself, these references will be shown separately in *blue font*, so it is distinct and not considered part of the Minister's approved MCEA; CGNs can be updated as deemed appropriate by the MEA without the need for a formal amendment to the MCEA Manual.

The MEA is currently preparing a series of training webinars to explain the details of the amendments to the MCEA. They are planned for an Autumn 2020 delivery; however, they will be subject to the Minister first approving the amendments. The MEA will be announcing dates through its website, social media and e-blasts.

We are planning four (4) separate webinars related to the proposed amendments:

1. 2020 Amendments to MCEA Appendix 1 – Roads:  
Webinar will review each project description in the chart from Appendix 1, discuss changes and explain associated CGNs
2. 2020 Amendments to MCEA Appendix 1 – Water/Wastewater  
Webinar will review each project description in the chart from Appendix 1, discuss changes and explain associated CGNs
3. 2020 Amendments to MCEA – Transit  
Webinar will explain the relationship between O Reg 231/08 and Section D of the MCEA and review each project description in the chart from Appendix 1, discuss changes and explain associated CGNs
4. 2020 Amendments to MCEA Section A  
Webinar will review significant changes to Section A including new glossary terms, classifying projects, proponentcy, climate change, project complexity, new PIOR process, addendums, master plans, consultation and notices.

With all these changes to the MCEA process, the MEA expects many questions. Notice of upcoming training opportunities and recordings of selected past webinars are available at [www.municipalclassea.ca](http://www.municipalclassea.ca). Also, MEA responses to typical questions about the MCEA process are available at [www.MunicipalEngineers.on.ca/Resources/Ask-An-Expert](http://www.MunicipalEngineers.on.ca/Resources/Ask-An-Expert).

With everyone's cooperation, the changes implemented through the amendment to the MCEA will improve the process for all.

## **2) The COVID-19 Economic Recovery Act**

On July 21, 2020, the Province passed the *COVID-19 Economic Recovery Act*, which included important amendments to the Environmental Assessment Act (EA Act). There have been a number of articles published about these amendments to the EA Act – many groups support the changes to eliminate duplication and modernize the EA process while some groups feel the

changes will reduce environmental oversight and oppose the changes. What will the amendments to the EA Act really mean for your municipality?

### Two Important Changes to the EA Act

The amendments to the EA Act make two important changes that will affect municipalities. Specifically, the Act changes the Part II Order Request (PIIOR) process and sets up the authority for the Ministry of Environment Conservation and Parks (MECP) to create new regulations that would replace all Class EAs, including the Municipal Class Environmental Assessment (MCEA) process.

### New Appeal Process

The Act changes the Part II Order appeal process (PIIOR) for MCEA projects. The former PIIOR process added significant delays (often more than 12 months) to the MCEA process. The Auditor General had previously identified this problem and the MEA, Ontario Good Roads Association (OGRA) and Residential Civil Construction Association of Ontario (RCCAO), along with the support of other groups, sought out a way to change to the process.

With the new appeal process implemented by the amendments to the EA Act, proponents will continue to issue a Notice of Completion and still place the EA documentation/Environmental Study Report (ESR) on the public record for 30-days. However, instead of concerns being filed with the Ministry, concerns will be addressed to the proponent. The PIIOR process will only apply if the objection deals with aboriginal or treaty rights.

For all other concerns, the PIIOR process has been replaced with an additional 30-day window for the Ministry to decide if the Minister should take any action. Regional coordinators from the Ministry of Environment, Conservation and Parks (MECP) will continue their role of monitoring MCEA projects. During the additional 30 days the Minister will decide if the project will be elevated (PIIOR granted) or if it will be approved with conditions. If the Minister advises the proponent that the project will be approved but with conditions, the Minister has more time to draft these conditions. If there is no response from the Minister within the additional 30-days the proponent may proceed with the project. This is similar to the process included in O Reg 231/08, Transit Project Assessment Process (TPAP).

Generally, for projects with serious concerns raised by the public that would have resulted in a PIIOR, the new process is an improvement as there are legislative deadlines for decisions. However, the additional 30-day review period applies to all projects, even those projects where no concerns were raised during the first 30-day review period. This will introduce a new/additional opportunity for MECP review and delay non-controversial projects by 30-days.

### New Regulation to Replace MCEA

The Act sets up the authority for MECP *“to allow the adoption of new, simplified environmental assessment regulations that establish consistent requirements (consultation, documentation, scope of assessment, etc.) for all types of projects in order to replace the divergent and inconsistent class environmental assessment system. Existing class environmental assessments will remain in place until new regulations are developed.”*

Previously, in 2008, the government created O Reg 231/08 (TPAP) that essentially replaced section D of the MCEA. Assuming this transit regulation is used as a model for the new regulation(s) that will replace the MCEA, the MEA notes the following:

- *O Reg 231/08* is 18 pages long including schedules. To compare, the current MCEA manual is over 120 pages. While some of the text in the MCEA can be simplified, there will be a significant need for guidance material and training as the EA practitioners' transition to using the new regulation. MEA is organizing to create and deliver guidance material and training for proponents.
- Section A of the MCEA manual sets out the steps that must be followed to obtain EA approval for municipal projects. In a similar way, *O Reg 231/08* sets out the following steps in Section 6 (1);
  - I. *Prepare and distribute a notice of commencement of the transit project assessment process under Section 7.*
  - II. *Conduct consultations under Section 8.*
  - III. *Prepare an environmental project report under Section 9.*
  - IV. *Prepare and distribute a notice of completion of the environmental project report under Section 11.*
  - V. *Submit statements of completion of the transit project assessment process to*
  - VI. *the Director of the Environmental Assessment Branch and the appropriate regional director of the Ministry*

It is noteworthy that identifying the problem, preparing an inventory of the environment, and evaluating alternatives are not included in the above list steps in the EA process. This would be significant departure from the established MCEA process. MEA will actively engage with MECP and participate in the preparation of the new regulation to ensure that the process that is set out in the regulation works for municipalities.

- Completing the MCEA Schedule C process often takes 12 – 24 months or more. Section 6 (2) of *O Reg 231/08* states that the notice of completion must be within 120-days of the Notice of Commencement which is significantly less time than for the current MCEA process. Given the 120-day timeline, any studies, inventory of the environment and consideration of alternatives must all occur prior to the notice of commencement.

This is a significant departure from the MCEA process where the public is to be consulted early in the process and participates in the selection of the final solution. This is similar to the Planning Act process where an application will not be accepted until it is deemed complete – studies/inventory, the conceptual design and proposed mitigating measures are all completed. The Planning Act consultation only occurs after this complete package is submitted. If the new MCEA regulation follows the process in *O Reg 231/08* and the time to complete the EA work is capped at say 120-days, proponents will still need to plan for time to assemble the information that will be required before issuing the notice of commencement.

- The new appeal process for MCEA projects basically follows the process in Section 12 of *O Reg 231/08* (see comments above).
- Previously, the EA Act captured all municipal projects and then allowed for exemptions. All municipal projects required an individual EA process unless the project was identified on a list. The projects that are exempt are listed in Schedules A and A+ in the MCEA Manual. The projects that are eligible for approval with the streamlined MCEA process are listed in Schedules B and C in the MCEA Manual.

The new regulation that will replace the MCEA will use the opposite approach – only the projects identified on a list will be subject to the EA Act. Following this approach, Schedule 1 of *O. Reg 231/08* lists the 10 types of projects that are subject to the process described in the regulation. All other transit projects are exempt from the requirements of the EA Act. Using this same format, Schedule 1 to a new MCEA regulation would list all projects identified as Schedule B or C in Appendix 1 of the MCEA. Should the new MCEA regulation include two lists with two processes – one for Schedule B projects and a more rigorous process for Schedule C projects?

Amending the project descriptions will be more onerous as it requires cabinet approval to amend a regulation whereas the Minister can amend a Class EA.

The MCEA currently lists the exempted projects (Schedule A and A+). The new regulation will not list the exempted projects – anything not included in the Schedule 1 list is exempt. The current division between Schedule A and A+ is used to guide proponents with the level of consultation and this will be lost. Should MEA publish guidance/best practices for exempted projects?

Also, the MEA understands that MECP intends for the new regulations to apply to the private sector. Projects that are subject to the EA Act should be selected based on their impact on the environment not on whether the proponent is a municipality or a private company. For example, “constructing a new road” will likely be included in the list of projects which will require approval under the regulation. This could mean that an industry that wants to build a “road/driveway” on their property to connect two buildings would be subjected to the new regulation’s process. Or a municipality constructing a “road/driveway” in a park or at a waste site would be subjected to the new regulation’s process. We will need to think very carefully about the project descriptions that are identified and subject to the EA Act.

#### Transition from MCEA to New Regulation

The full replacement of all of the Class EAs will likely take some time. The MECP will be working to develop these commencing likely in the Autumn of 2020. MECP will be seeking input from with Indigenous communities, municipalities, industry, environmental organizations, and others on these regulations.

The MEA intends to consult with municipalities and actively participate in the preparation of the new regulation to ensure that the process that is set out in the regulation works for municipalities. MEA will also be providing training programs related to using the new regulation.

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