

March 4, 2011

Gregory Zimmer  
Senior Program Advisor  
Ministry of the Environment  
Environmental Programs Division Planning and Implementation Branch  
Modernization of Approvals  
135 St Clair avenue West  
Toronto, Ontario  
M4V 1P5

**Re: Proposed Environmental Activity and Sector Registry Group 1 Activities and Sectors Technical Reports**

Dear Mr. Zimmer,

The Ontario Chamber of Commerce (OCC) is a federation of 160 local chambers of commerce and boards of trade in the Province of Ontario, representing 60,000 businesses of all sizes, in all economic sectors covering every area of the province. The OCC's mandate is to advocate strong and effective policies on issues that affect its membership throughout Ontario's business community.

The Ontario Ministry of Environment (MOE) recently made amendments to the *Ontario Environmental Protection Act (EPA)* and the *Ontario Water Resources Act (OWRA)* through the *Open for Business Act (OBA)*. The purpose of these amendments is to incorporate a two-tiered risk based approach to environmental approvals (EAs). This would further the goals of the government's Open for Business initiative of streamlining and simplifying regulatory requirements across the Ontario public service.

Currently, Certificates of Approval and Provisional Certificates of Approval are issued under sections 9 and 27 of the EPA and approvals are granted under section 53 of the OWRA. The OBA introduced a new risk-based approach to environmental approvals that is intended to reduce the administrative burden on business by enacting a separate regulation process for 'lower-risk' activities specified by regulation. This category would include activities defined as lower-risk, standard or less-complex in nature. The proposed regulations would establish an online public registry for activities in this category. Remaining activities would fall into the high-risk category, and be required to obtain an Environmental Compliance Approval.

The Ontario Chamber of Commerce is appreciative of the government's efforts to reduce the extensive regulatory burden in the province. We feel that the proposed EA regulations offer real advantages over the current system. To the extent that low-risk activities are removed from an approvals regime and placed into the Environmental Activity and Sector Registry (EASR), they will no longer be subjected to time-consuming and costly appeals under the Environmental Bill of Rights (EBR). This would be a positive outcome, preventing unmeritorious delays which cannot be environmentally justified.

A key amendment from the perspective of the business community is the opportunity for a business to apply for, and for the Director to issue, a site-wide approval that covers not only all the contaminant emission sources at a site, but also any sewage works or waste activities that occur on the site. Also important is the amendment allowing activities carried out at more than one site to undergo a single approval.

Generally, the OBA's revisions to the approvals process under the EPA and the OWRA are lauded by business as reducing the bureaucratic red-tape associated with environmental approvals in Ontario. However, there are some changes which could result in setbacks for business. When declared in force, the amendments would appear to give the Director discretion to require public consultation on any application for approval for higher risk activities. Depending on how the discretion is exercised, the amendments may at least diminish and at worst negate any advantage realized by the new process for businesses in higher risk activities.

Although the purpose of the EASR is to exempt "lower-risk, standard or less-complex" air, waste or sewage works activities from their former approval requirements, the proposed regulations do not spell out the definition of "lower-risk, standard and less-complex" activities. The OBA makes no reference to this "lower-risk" terminology, and establishes no such precondition to the use of the EASR. Our members believe that, in practice, it is difficult to anticipate how 'lower-risk' and 'higher-risk' activities are defined. The OCC feels that extensive consultation with stakeholders from all affected sectors is a prerequisite to creating objective and quantifiable definitions that correspond to real world situations.

Specific sections of the OBA outline how the EASR will operate. Subsection 20.21(1) prohibits persons from engaging in any activity prescribed by regulation for the purposes of Part II.2, unless the activity has been registered in the EASR, the Director has provided a confirmation of registration, the registration is in effect, and the person is engaging in the activity in accordance with the rules prescribed by the regulations.

As long as a person registers a prescribed activity in the EASR, pays the required fee and provides the required financial assurance (if applicable) the Director is mandated to provide the person with an electronic confirmation of registration (subsection 20.22(1)). In turn, the person who engages in a registered activity must ensure that the registration is maintained and updated in accordance with the regulations and that the registration includes any information, reports, records or documents as may be required by the Director or prescribed by the regulations (subsection 20.22(2)).

If the Director is not satisfied that the information, reports, records or documents included in or filed with a registration are accurate or complete, the Director may require the person engaging in the registered activity to file complete and accurate documents (subsection 20.22(3)). What will satisfy the requirements of "completeness" and "accuracy" is not specified, and appears to be left to the discretion of the Director and/or his delegates. Hopefully the requirements of completeness and accuracy will not overwhelm the EASR and undermine the benefit of the streamlined process.

Establishing the rights and responsibilities of businesses in clear terms is important given the powers prescribed to the Director. The proposed regulations would allow the Director to suspend or remove a registration from the EASR if she thinks that the person has contravened the EPA or the OWRA, or if the confirmation of registration was provided on the basis of mistaken, false or inaccurate information (section 20.23).

If this is done, the Director may serve an Order to the person who is or was engaging in the activity (subsection 20.23(2)). The amendments have come under criticism for defeating the public's right under the Environmental Bill of Rights to receive public notice and be consulted for low-risk activities. This criticism is inaccurate given the new provisions created by the proposed regulations. Under the EASR system, all Ontario residents will have access to a searchable online database that, like the EBR Registry, will provide public notice of any registrations

for lower-risk activities. In appropriate circumstances, members of the public may be able to persuade the Director to make an order requiring, for instance, an environmental approval or public consultation for a particular activity. Moreover, higher-risk activities will still be subject to a rigorous approvals process. Finally, should anyone believe that a regulation made for the purposes of Part II.2 is inappropriate (i.e., too broad or too narrow), submissions can always be made to the government conveying that belief.

The OCC believes that the OBA could have a significant positive impact upon Ontario's environmental landscape and business community. If implemented as envisioned, it should effectively avoid cumbersome approval processes for lower-risk activities; streamline the remaining approval processes for higher risk activities, and provide greater business efficiencies. The effectiveness of the efficiencies introduced will depend upon a number of factors, the most important being which activities the government deems through regulation to be "lower-risk" and "higher-risk." As with most legislative reform, the challenge will be in ensuring the smooth and effective implementation of the new provisions.

For now, businesses ought to be satisfied that Ontario is moving in the right direction by proposing a significant reduction in government red tape.

Thank you for taking the time to review our concerns. If you have any questions or comments, you may direct your staff to Kelly Pritchard, Policy Analyst at (416)-482-5222, extension 246, or [kellypritchard@occ.on.ca](mailto:kellypritchard@occ.on.ca).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Len Crispino', with a stylized flourish at the end.

Len Crispino  
President & CEO

Cc : The Honourable John Wilkinson , Minister of Environment  
Mr. Tim Hudak, MPP, Leader of the Progressive Conservative Party of Ontario  
Mr. Toby Barrett, MPP, PC Critic, Environment  
Ms. Andrea Horwath, MPP, leader of the New Democratic Party of Ontario  
Mr. Peter Tabuns, MPP, NDP Critic, Energy and Environment  
OCC membership