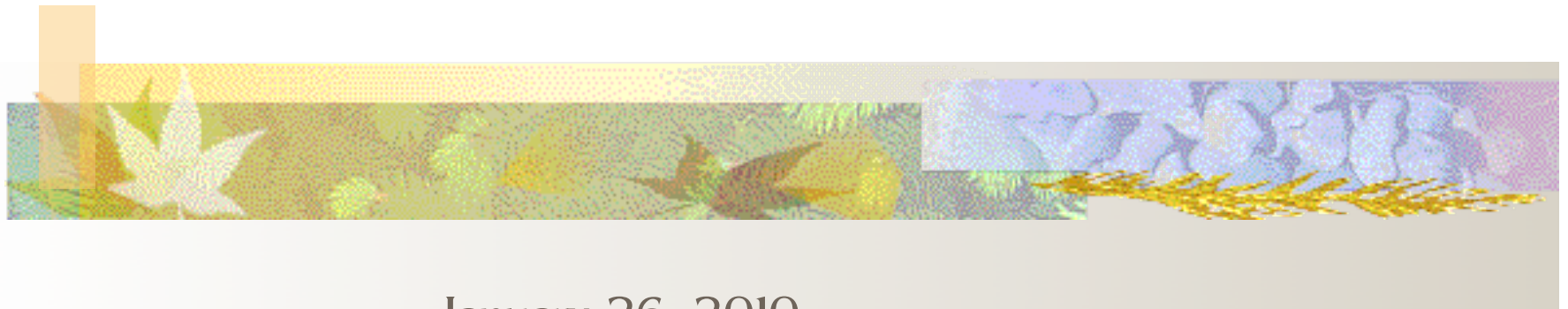


Renewable Energy Approvals



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Overview

- **Who needs one?**
- **The application**
- **Options for the opposition**



Environmental Protection Act

- New Part V.0.1
- Renewable energy approvals
- EA definition of “environment”
- Exempt from most local/ prov. controls
- No EA



Renewable energy approval

- *EPA* s. 47.5
 - After considering an application... the Director may, if in his/her opinion it is in the public interest to do so, issue or renew a renewable energy approval....



Who needs one?

- 47.3(1) A person shall not engage in a renewable energy project [without] a renewable energy approval ... if engaging in the project [would otherwise require]:
 - s. 9 EPA air approval
 - s. 27 EPA waste approval
 - s. 34 OWRA PTTW
 - s. 36 OWRA well permit
 - s. 53 OWRA sewage approval



Renewable energy project?

- EPA: “renewable energy project” has the same meaning as in the *Green Energy Act, 2009*



Green Energy Act:

- “Renewable energy project” means the construction, installation, use, operation, changing or retiring of a renewable energy generation facility
- “Renewable energy generation facility” has the same meaning as in the *Electricity Act 1998*



Electricity Act:

- “Renewable energy project” has the same meaning as in the *Green Energy Act 2009*...



Out of the maze?

- “renewable energy generation facility” means a generation facility that generates electricity from a renewable energy source and that meets such criteria as may be prescribed by regulation and includes associated or ancillary equipment, systems and technologies as may be prescribed by regulation, but does not include an associated waste disposal site, unless the site is prescribed by regulation for the purposes of this definition



Renewable energy source?

- “renewable energy source” means an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations, but only if the energy source satisfies such criteria as may be prescribed by the regulations for that energy source



What regulations?

- S. 175 EPA:
- Regulations providing for the issue, renewal, suspension and revocation of ...renewable energy approvals...



O. Reg. 359/09

- Eligible projects:
 - anaerobic digestion, Class 1 - 3
 - solar, Class 1 - 3
 - thermal treatment, Class 1 - 3
 - wind, Class 1 - 5



Example: wind classes

- Class 1: tiny (exempt)
- Class 2: small (no consultation)
- Class 3: quiet (reduced noise setbacks)
- Class 4: ≥ 50 kW
- Class 5: offshore



Not eligible:

- ≤ 500 kW, $< 90\%$ renewable
- > 500 kW, $< 95\%$ renewable



What's exempt?

- Small solar, ≤ 10 kW (Class 1)
- Wall/roof mounted solar (Class 2)
- Wall/roof mounted wind, ≤ 3 kW (Class 1)
- Waterpower
- “Regulated mixed anaerobic digestion”
 - *Nutrient Management Act*



If exempt?

- Do not need EPA REA
- Still need building permit
- Regular EPA / OWRA approvals? (not covered by s.47.3(2) of Act)



What's grandfathered?

- Had all permits and/or power purchase agreement before September 24, 2009
- Still could need MOE approvals, e.g.
- s. 9 approval for 9 MW solar farm, EDF EN Canada Solar Arnprior, December 18, 2009



Still need?

- Building permits:
 - S. 47.3 of EPA is “applicable law”
- Public Lands/ Endangered species/ Forest resource licence/ Lakes and Rivers Improvement, etc.
- FIT
- Transmission
- Federal approvals?



Conservation Authorities Act

- CA must permit renewable energy projects in controlled areas, except if necessary to control:
 - Pollution
 - Flooding
 - Erosion
 - Dynamic beaches





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Approvals Process

- Detailed application - Table 1
- Consultation:
 - Public/ aboriginal/ municipal
- Protected areas
- Setbacks/ assessments
 - archaeology / heritage
 - environment / water



It's a lot like EA

- Without “need” or “alternatives”
- EA still governs water projects



Five steps

- Pre-submission / design/ OPA
- Consultation
- Submit application
- EBR registry notice
- MOE decision



Reports

- Project description report
- Construction plan report
- Consultation report
- Design and operations report
- Decommissioning plan report
- Proof of setbacks
- Assessment/impact reports



Process-specific rules

- Anaerobic digestion
 - odour control/ setbacks /FA
- Thermal
 - ESDM/ noise / FA
- Wind
 - noise/ setbacks
 - cumulative impacts



Special areas

- Cultural heritage
- Natural heritage: wetlands, ANSIs, provincial parks / reserves, water bodies
- Hazard lands
- Endangered species
- Provincial plan areas



Special areas

- NEP: permit
- Moraine: infiltration, water bodies, natural features
- Greenbelt: natural features
- Lake Simcoe: shorelines
- Far North: planning initiative, land claims



Siting

- Will setbacks do it?
 - 50/120/125/250/300 metres
- Setbacks versus studies
- Approvals v. nuisance
 - *Barrette v. St. Lawrence Cement*



Where do you measure?

- Noise: centre of property
- Odour: property boundary



Consultation

- Public
- Regulators
- Municipalities
- First Nations



Consultation exceptions

- Small wind (all)
- Farm bio-energy (public)



Consultation plans

- E.g.: minimum **public** consultation before filing application:
- Initial public notice
- Community consultation meeting
- Access to studies - 60 days
- Second community consultation meeting



Getting Approvals

- 6 month service guarantee
 - From when?
 - Approvals ramping up
- Technical guides
- Renewable energy policies



Moving target

- 359/09 already amended
- 367/09
 - new setbacks not applicable to existing/
previously approved / previously exempt
wind projects
- Guidance documents: not yet released



Actual approvals?

- 91 projects since 03:
 - 45 wind
 - 6 solar
 - 23 bio
 - 17 water
- 9 Notices for new projects:
 - 5 solar
 - 4 wind



First REA?

- By March 31, 2010
- Transitional projects
- 55 proponents have met w MOE/ REFO since Sept 24, 2009



More information

- Renewable Energy Facilitation Office:
www.ontario.ca/refo
- MNR: www.mnr.gov.on.ca





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Options for opponents

- Participate
- Appeal
- Sue



Participate

- Raise health issues
- Lobby MPP, municipality
- First Nations?



Appeal

- To ERT
- Grounds:
 - Serious harm to human health
 - Serious and irreversible harm to plant, animal, natural environment
 - meaning?
- Opponent has onus



Appeal - how long?

- 6 month deemed approval
- Adjournments / judicial review delays don't count



Hanna v. Ontario

- Judicial review of 35, 53-55
- Injunction against all wind approvals
- Alleges breach of SEV/ EBR/
precautionary principle
 - “*great scientific uncertainty around the health effects of industrial wind turbines*”
- Minimal chance of success



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Questions?

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