

Renewable Energy Approvals



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Overview

- The Legal Framework
- The court challenge
- Kent Breeze and the ERT



Environmental Protection Act

- New Part V.0.1, September 24, 2009
- Renewable energy approvals
- EA definition of “environment”



Who decides?

- EPA s. 47.5
 - ... the Director may, if in his/her opinion it is in the public interest to do so, issue or renew a renewable energy approval....
- Exempt from most local/ prov. controls
- No EA



Why?

- Climate change
- Urgent need for renewable energy
- Approvals nightmare major obstacle to investors and to innovation
- Huge economic/ environmental / health price of conventional/nuclear power / oil
- Key to future prosperity



What projects?

- “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”...



O. Reg. 359/09

■ Eligible projects:

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

■ 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*



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?





Approvals Process

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



Five steps

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



The bigger the project

- The more the studies



Process-specific rules

- Anaerobic digestion
 - odour control/ setbacks /FA
- Thermal
 - ESDM/ noise / FA
- Wind
 - 40 dB noise/ 550 m setbacks
 - cumulative impacts



Appeals

- Anyone can appeal an REA to Environmental Review Tribunal
- First major wind project appeal just decided: Kent Breeze



Grounds of Appeal

- Must prove:
 - Serious harm to human health, or
 - Serious and irreversible harm to plant, animal, natural environment





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Hanna v. Ontario

- Argued that regulation illegal, because setbacks too small to prevent harm to human health
- Requested injunction against all major wind approvals
- Alleged breach of SEV/ EBR/ precautionary principle
 - *“great scientific uncertainty around the health effects of industrial wind turbines*



Court decision?

- Regulatory setbacks are legal
- Noise/ setback issue was considered when regulation was adopted
- Legal process was followed
- Wind REA permits can be issued



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The Kent Breeze case

- Suncor: 8 large turbines
- 20 MW
- Township of Camden
- 25 expert witnesses
- Will turbines cause serious harm to human health?



Decision

- Kent Breeze REA was upheld
- Wind farm can be built
- Reasonable decisions/ process followed
- No proof of serious harm
- Uncertainties about indirect effects warrant future research



Issues raised

- Noise (audible, low frequency, infrasound)
 - Sleep interruption for sensitive individuals
- Shadow flicker
- Accidents
- Planning process (SEV, precautionary principle)



Direct impact on health?

- Strong evidence: no
 - MOH/ WHO etc.
- Accidents can happen, but are rare
- Sound too quiet to cause physical damage, hearing loss



Indirect impact?

- Some people find turbines annoying
 - disruptive to sleep/ stressful?
- Stress/ annoyance / sleep disturbance can affect health
- 75%: Personal factors, not level of noise
- Fear/ dislike / resentment makes anything more annoying



Connection?

- Many claims, limited evidence
- Scientific debate
- “There may be an association between... noise from wind turbines and certain indirect health effects, but the evidence is not sufficient to establish a causal connection at the distances and/or noise levels of the Project.”



Fear/ annoyance

- Nocebo effect?
- Information / research
- Community power



Community power

- Volunteer president of Windshare
 - ExPlace turbine
- TREC
 - Solar share
- Any community can do it
- Why not be part of the solution?



Helping community power

- Huge in Germany
- Nova Scotia COMFIT
- Ontario confused
- Lakewind
- Please ask about it





Questions?

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