**MEA Clarification**

**September 2023**

**Administration and Amending the MCEA**

Project Proponents, MECP and MEA all have important roles in the MCEA process.

**Project Proponents (commonly Municipalities)** are the proponents of individual projects and, as the MCEA is a proponent - driven process, Project Proponents are responsible for organizing an EA process that complies with the MCEA (and the EA Act) for all projects.

**MECP** has several roles, specifically, MECP is responsible for;

* **Compliance and Enforcement under the Environmental Assessment Act**
	+ As the regulator, the ministry is responsible for compliance and enforcement under the *Environmental Assessment Act*.  A proponent is prohibited from proceeding with a project to which a class EA applies, except in accordance with the applicable requirements of the class EA and the *Environmental Assessment Act*.  While class EAs are proponent-driven processes, the ministry may review a proponent’s compliance with the applicable class EA at any time, including with respect to a proponent’s classification of a project, and inform the proponent where the ministry is of the view that it has not correctly applied the class EA
	+ The text of the MCEA, the EA Act and its regulations and any relevant case law is used to determine if there is a contravention.
	+ MECP has considerable discretion while ensuring compliance and enforcing the EA Act. MECP can decide when to caution/guide a proponent and when to initiate a charge. However, proponents should expect consistent application of the rules by MECP.
* **Amending/Approving the MCEA document**
	+ Section A.1.5.2 of the MCEA describes the two categories for amendments to the MCEA;

The Minister may amend the Class EA if the Minister is satisfied that the amendments are consistent with the purpose of this Act and the public interest. Examples of the types of amendments that the Minister may make include

* + - * 1. Improving the efficiency or the effectiveness of the process described in the document;
				2. Adding new projects to the Class EA;
				3. Recategorizing existing undertakings in the Class EA; and
				4. Updating the Class EA to be consistent with new or updated guidelines, policies, regulations or legislation.

The Director may amend the Class EA to make any of the administrative changes set out in section 15.4(5) of the EAA as described below**.**

1. Correcting errors that are editorial or typographical in nature;
2. Updating references to a guideline, Act or regulation, or provisions or other portions of an Act or regulation;
3. Updating references to bodies, offices, persons, places, names, titles, locations, websites or addresses; or
4. Clarifying the existing text of the Class EA.
	* While the MCEA strives to cover all situations, if the wording in the EA Act or MCEA is unclear, case law may be helpful
	* . This would mean that the practice that has been established by former similar situations would apply.
	* Any interpretation of MCEA must take into consideration all relevant factors, including but not limited to the particular facts or situation, the text of MCEA, the Act and its regulations and any relevant case law. Any interpretation that introduces new criteria that is not consistent with the wording of the MCEA and/or case law should be implemented by the amendment process.
* **Orders Related to the EA process.**
	+ Section 16 Orders may be made by the Minister on their own initiative or in response to a request made under the Act.
	+ When making a Section 16 Order, the Minister considers the matters set out in subsection 16 (5) of the Act, including: the purpose of the Act; the factors suggesting that the proposed undertaking differs from other undertakings in the class to which the class EA applies and the significance of these factors and differences; the reasons given in any request for a Section 16 Order; such other matters as may be prescribed and any other matters the Minister considers appropriate.
	+ Prior to July 21, 2020, the Part II Order request process enabled any person to request that the Minister order that the proponent prepare an individual EA or impose conditions on a project in addition to those required by the Class EA.
	+ Since July 21, 2020, a Section 16 Order request may only be made on the grounds that the order may prevent, mitigate or remedy an adverse impact on constitutionally protected Aboriginal or treaty rights.
	+ Schedule A and A+ undertakings under MCEA are now exempt from the Act, including the Section 16 Order provisions.

**MEA** is the proponent of the MCEA and has been assigned responsibility for;

* **Monitoring the use and application of the MCEA**
	+ MEA is required to prepare and submit an Annual MCEA Monitoring Report that examines the application of the MCEA throughout the province, identifies successes/challenges and recommends amendments or process changes that would improve the process.
* **Providing training to Municipalities and their consultants**
	+ Each year, MEA delivers training for proponents. The Introduction to the MCEA Process course is offered at least once per year. This on-going training is supplemented by specialized training on specific topics when appropriate – currently MEA is delivering training that explains the recently approved 2023 MCEA
* **Representing Municipalities as Proponent of the MCEA**
	+ MEA regularly provides guidance to Municipalities, liaises with MECP and communicates with other Class EA proponents representing Municipalities.

**RECOMMENDATION**

Project Proponents need to be aware of these responsibilities and constraints. If a proponent encounters a situation where there are questions about application and interpretation of the MCEA, please contact MEA. It is important that MEA is involved in any discussions. Individual project proponents (municipalities) are entitled to make use of the MCEA. However, as proponent of the MCEA, **MEA needs to be involved with any discussions that involve application and/or new interpretations of the MCEA so that MEA can;**

**- report on the use and/or new interpretations of the MCEA,**

**- include the outcome of any discussion into training material**

**- represent the interests of all municipalities.**