To the Editor:

This is an article from a series of monthly columns by Environmental Law Specialist Dianne Saxe, one of the top 25 environmental lawyers in the world. These articles are available for publishing at no charge, provided Dr. Saxe is cited as the author. She can be contacted at (416) 962 5882 or admin@envirolaw.com. For more information, visit http://envirolaw.com.

Renewable energy approvals and the Green Energy Act

The *Green Energy Act* has begun to kickstart a new era for renewable energy in Ontario.

Entrepreneurs and community groups have been building renewable energy projects in Ontario since 2003, when the Ontario Power Authority (OPA) began paying premium prices for renewable electricity. Since 2003, the Ministry of the Environment (MOE) has approved construction of approximately 91 renewable energy projects, including 45 wind, six solar, 23 bioenergy, and 17 water projects - about 15 a year. On top of the traditional large-scale hydro-electric plants, Ontario now has approximately 1275 MW of renewable electricity generation.[i] Approvals for two major new solar farms were issued in December. Many other projects, however, were stalled.

Now that the *Green Energy Act* (GEA) is in force, the pace is picking up. One key promise of the GEA was to fast-track and simplify renewable energy project approvals. The GEA therefore established a new system of more-or-less one-window approvals for renewable energy projects, called "renewable energy approvals" (REA), to be issued by the MOE Renewable energy projects which hold REAs will be exempt from all municipal controls, such as official plans, zoning bylaws, site control bylaws, etc.

The GEA also set up a new system of premium prices for generators of renewable energy. The new system is called a "Feed in Tariff" (FIT), and is designed to ensure that generators make a profit for 20 years. As a result, the OPA received more than 1000 applications last fall from applicants wanting to generate 8000 MW of renewable power. The majority of projects were wind (79%), with 16% solar and 5% other (e.g., biogas, biomass, water). Applicants will learn soon which projects have been accepted, depending on when they applied and how much capacity is available on their local electrical grid. The first round of FIT contracts should produce 2500 MW of electricity, along with over $5 billion in investments in the design, construction and installation of the projects. [ii] In addition, Samsung has contracted to build 500 MW a year for five years.

As soon as the contracts are awarded, the MOE is expecting 500 to 800 renewable energy approval applications. In preparation, an approvals team has been assembled. Amid extensive internal consultations and 150 pre-submission meetings, the necessary forms are being released; technical guidance documents will be published soon. The MOE hopes to issue the first REA by March 31, to a project that was already well underway

when the GEA came into force. Many other REAs should roll out over the next year or two.

REAs for major projects, like large wind, solar or biogas, will involve an elaborate process of consultation with the public, with municipalities, with other regulators, and with First Nations. At a minimum, the public will have two public meetings and an opportunity to review all necessary studies in draft, all before the application can be filed with the MOE. The MOE has promised to decide all applications within 6 months, one way or the other.

This rapid change in rules is bitterly resented by some. About 40 municipalities have already passed resolutions opposing large wind projects on their territory, even though (or perhaps because) they know these resolutions have no legal effect. Some lawyers argue that municipalities still have power to block unpopular wind turbines. They point to broad municipal powers to regulate a "nuisance", to the greater deference municipalities now receive from the courts, and to the absence of anything in the GEA about the law of nuisance. This notable omission was contrary to the advice of the Ontario Bar Association, and could create problems for renewable energy proponents. But the province could block all such municipal efforts with regulations under s. 5 of the GEA, comparable to the regulation now used to protect certain clotheslines from private and municipal controls.

Meanwhile, the Ministry of the Environment continues to roll out new rules and proposals for other details of our renewable energy future, such as:

- The numerous approvals issues associated with transmission;
- The fees to be paid for renewable energy approval applications; and
- Much more detail on the requirements for offshore wind.

Very small wind and rooftop solar projects will not need REAs, and can be built almost anywhere; all they need is a building permit. Nearly1200 of these "microFIT" projects have been proposed, mostly by homeowners, farmers, churches and small businesses. In total, these projects would generate around 8.6 megawatts (MW) of electricity – enough for 1000 homes.[iii] 700 of these projects have already received contract offers from the OPA, and should be built soon.[iv]

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[i] Ontario Power Authority. Ontario's feed-in tariff program backgrounder. December 16 2009. http://fit.powerauthority.on.ca/Page.asp?PageID=924&ContentID=10616

[ii] Ontario Power Authority. Ontario's feed-in tariff program backgrounder. December 16 2009. http://fit.powerauthority.on.ca/Page.asp?PageID=924&ContentID=10616

[iii] Ontario Power Authority. Ontario's feed-in tariff program backgrounder. December 16 2009. http://fit.powerauthority.on.ca/Page.asp?PageID=924&ContentID=10616

[iv] Ontario Power Authority. Ontarians get the green light for 700 rooftop solar projects. December 16 2009.

http://www.powerauthority.on.ca/Page.asp?PageID=122&ContentID=7135&SiteNodeID=564&BL_ExpandID=