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June 29, 2009

Marcia Wallace, Manager
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
7 Floor - 55 St. Clair Avenue West
Toronto, ON M4V 2Y7

Dear Ms. Wallace

EBR Registry Number 010-6518
Regulation Proposal Notice: Proposed Ministry of the Environment
to Implement the *Green Energy and Green Economy Act, 2009*

I am making this submission on behalf of CORE, a ratepayer group within the Township of Mulmur, County of Dufferin, with respect to the *Green Energy Act*. We thank you for the opportunity to provide these comments.

Draft Regulations must be Available:

Notwithstanding that the "Proposed Content" for the Regulation is of general assistance, given the importance of the draft Regulations themselves, they must be available for public comment. We therefore request that, once drafted, the Regulations themselves be posted for a further 45 day public comment, on the EBR. As you will see from comments following, cross-references to documents beyond these Regulations are contradictory; definitions are left unclear or unknown; standards are not spelled out and, generally, it cannot be ascertained whether the Government's intentions, as expressed, have or can be captured in the drafting of Regulations.

Part I – Definitions:

Definitions to be used for the purposes of Regulations under the various *Acts* should be included in the Regulations, rather than simply referenced in other documents. For example, under Part IV, pg. 14, "setback" is referenced as referring "to the distance in metres separating the centre of structure, referred to as a Point of Reception, in the Ministry of the Environment's *Noise Guidelines for Wind Farms (October, 2008)*". Yet, when one goes to the definition of Point of

Reception in those Guidelines (page 4), Point of Reception “means any point on the premises of a person within 30 metres of a dwelling or camping area, where sound or vibration originating from other those premises is received” (underlining added). The definition goes on to include vacant properties zoned for future use premises. Additionally, sections 6.3.1 and 6.3.2 of the Guidelines set out definitions of a Point of Reception which includes protection for a 30 metre amenity zone around dwellings, so as to recognize that persons are protected from noise impact when enjoying modest amenity space surrounding their dwelling.

Finally, the definition must ensure that the 40 decibel sound noise level at the Point of Reception is deemed an external point: as potentially drafted, the Regulations may inadvertently permit a reduction in decibel levels due to mitigation of transfer of external to internal locations, as a result of a reference to “the centre of the structure”.

Recommended Regulation:

“Point of Reception” means any point on the premises of a person within 30 metres of a dwelling or camping area, where sound or vibration originating from other than those premises is received.

For the purposes of approval of new sources, the Point of Reception may be located on any of the following existing or zoned for future-use premises: permanent or seasonal residences, hotels/motels, nursing/retirement homes, rental residences, hospitals, camp grounds, and noise sensitive buildings such as schools and places of worship.

Points of Reception include vacant lots that have been zoned by the local municipality to permit residential or similar noise sensitive uses described above. The receptor location, if unknown at the time of assessment, shall be based on a one hectare (10,000m²) building envelope within the vacant lot property that reasonably can be expected to contain the use, and that conforms with the municipal zoning by-laws in effect. The specific receptor location for assessment purposes should be assumed to be 4.5 metres above grade and at the centre of the 1 hectare building envelope.

In addition, a regulation should be drafted and made available to the public for comment with respect to protection of those farmers or others who have leased their lands to proposed Wind proponents. At the moment, no definition of

“Participating Receptor” is provided in the “Proposed Content” document and it is undisclosed as to what standard is intended to apply to them. Typically, Options to Lease are entered into which bind the signatory to entering into an eventual lease, with no recourse. The Option to Lease then permits the Wind developer to install testing facilities, and determine the extent, design and deployment of its eventual Wind facility. Some of those who have signed Options to Lease do not become “Participating Receptors”, since no portion of any access road or actual turbine ends up being located on their lands. However, others do become “Participating Receptors”. At the time of signing the Option to Lease, no owner can know that his or her land will be the host of either or both of a turbine or an access road. Given the only recently burgeoning concern and information with respect to the impact of wind turbines on health and amenity, it is impossible for those who have signed an Option to Lease, to know or understand at the time of doing so, the eventual impact on their residences and property.

This is particularly troubling in the present circumstance that the provisions of the *Planning Act* have been set aside, and leases can now be imposed upon those who have signed Options to Lease, for a period of 50 years, notwithstanding that at the time of signing such option, 20 years was the maximum permitted.

Whether 20 or 50 years, however, the host landowner, in our submission, should be protected by a regulated provision requiring the protection of adequate insurance for their lands from damages caused by turbines to them, or to others; appropriate and financially secured decommissioning provisions; and the same health protection as any other citizen of this Province. It is unconscionable to suggest that those who have leased their lands in the absence of full disclosure of impact on their properties, should now be burdened with accepting a lesser setback than the minimum provided by the Province to protect health and safety. In this regard, then, no “Participating Receptor” should be required to have a setback imposed upon it of less than 550 meters from a turbine.

Part II – Renewable Energy Approval Requirements:

Description of Project – The description of project should provide, in addition to that set out in the “Proposed Content” document, all of the information required in the Noise Guidelines, at Table 3, page 15, including manufacturers’ emission levels, make and model, height, wind shear coefficient, octave band sound power levels and manufacturers’ emissions levels. In addition, the description of proposal should include information required by the Noise Guidelines with respect to location coordinates of all wind turbine generators, transformer substations, Points of Reception and Participating Receptors.

The Description of Project should include information as to whether the manufacturers' data indicates that the wind turbine acoustic emissions are tonal, to conform to section 6.4.8 (page 13) of the Guidelines.

In addition to provision of information on land tenure, the Description of Project should include information as to location of all Participating and Non-participating points of reception within 3kms.

Construction Plan – The existing outline indicates the construction plan is to address “among other matters” certain things. What are those other matters? At a minimum, it is recommended they include information with respect to the design and other technical characteristics of the proposed turbines and transformers themselves, as well as the proposed location of those turbines, transformers and all access and distribution systems within the Study Area.

Site Plan – In addition to those matters outlined in the “Proposed Content” document the site plan should include information with respect to topographical features, including elevations and ground cover, to conform to the Noise Guidelines (page 8, paragraph g). Additionally, information called for under paragraph h) of the Guidelines, being available information regarding location and scope of other approved or proposed wind farms within 5k of any generators, should be provided.

Response Plan – The Regulation should stipulate which level of government, or agency is responsible for enforcing the response plan.

The response plan should include a plan for decommissioning, including sufficient securities posted in accordance with the provisions proposed to apply to facilities processing biomass (see page 19 of “Proposed Content” document).

We note that strict requirements for decommissioning of, for example, Biogas, Biomass and Solar Photovoltaic Facilities require the provision of a decommissioning plan that includes financial assurances: wind turbine facilities should not be permitted a lesser standard.

Given that wind turbines are significant industrial installations on leased lands, which can remain situate for up to 50 years, financial securities must be provided to ensure they are removed at the end of their useful life, or when an operating company goes bankrupt. Therefore, a Regulation is requested as follows:

Recommended Regulation:

All wind turbine projects granted a Renewable Energy Approval will, as part of that approval, provide a financial assurance estimate related to the removal and disposal of turbines from the site, and restoration of agricultural land. Financial assurance is required to ensure that sufficient funds are available for future cleanup and remediation of the site. Financial assurance must be calculated in accordance with the methodology in the Ministry of the Environment's Financial Assurance Guideline (Guideline F-15), and those securities provided to the Province [or municipality].

Application Process for Rural Areas:

It is insufficient to merely post a proposal notice on the Environmental Bill of Rights Registry. Citizens are unaware of the existence of the Registry, do not check it daily as is assumed by the proposed process, and cannot readily access the Registry in the absence of high-speed internet connection.

It is proposed, therefore, that to provide preliminary notice to the public to permit a meaningful public comment period, notice provisions akin to those of the *Planning Act* should be employed: signs should be posted on every property, under lease or Option to Lease, visible from the public right-of-way, giving all appropriate information; notice should be directly mailed to all participating and non-participating landowners within 3kms, and notice published for 3 consecutive weeks in a newspaper of general circulation in the area.

Third Party Appeal of Directors' Decision:

Again, reliance upon posting on the Environmental Registry, for projects located in rural areas does not constitute notice, for the reasons outlined above. As a result, again, provision of notice consistent with the *Planning Act* should be required, consisting of written notice to any member of the public who "participated" in the review by written or oral submissions through the process, together with the municipality, and Ministries and agencies consulted.

Additionally, a 15 day appeal period is exceedingly short, and should be extended to 30 days.

Also the proposal to set aside any input from the Environmental Review Tribunal should the decision not be rendered within 9 months of the date that a hearing is requested, is unconstitutional (it is effectively Askov, in reverse). The simple fact

that the hearing might be lengthy, delayed throughout by legal challenges, illness of tribunal members, or other unexpected challenges, or that the decision itself might be delayed by similarly acceptable and appropriate reasons, is no basis to set aside appeal rights and simply confirm the Director's decision.

More appropriate would be a time period of, for example, 6 months, from the date that a hearing is requested until the commencement of the hearing before the Environmental Review Tribunal, together with appropriate resources to the Environmental Review Tribunal to allow it to provide expeditious and fair hearings and timely decisions.

Part III – Explanation of General Requirements:

I. Public Notice and Community Consultation

1. Given that Points of Reception up to 3kms could be affected, the area to which public notice is provided should be no less than a 3kms radius of the proposed renewal energy generation facility at a preliminary stage of project planning. Again, the form of notice should follow those provided under the *Planning Act*, including signage on properties under lease or Option to Lease; notice in a local newspaper of general circulation, and written notice to all residents within 3kms.
2. The "Proposed Content" document is unclear as to how much in advance of any Renewal Energy Approval Application this meeting must be held, nor as to the nature of information anticipated to be provided. Again, consistent with the "Pre-consultation" provisions and practice under the *Planning Act*, it can be anticipated that draft reports, preliminary layouts, and technical information with respect to proposed equipment will be available to the proponent and therefore should be shared with the public and other interested parties, even at this stage.
3. Once "ready to submit the application for Ministry of the Environment review", the proponent is required to hold at least one additional community consultation meeting, and to have required studies available for public review 30 days prior to the date of that meeting or meetings. This documentation should include a report containing the base information required by sections 6.5 and 6.5.1 of the Noise Guidelines, notwithstanding that an entire noise study has not been done: this information is required to permit a general understanding of factors included in establishing setbacks in accordance with the Noise Setbacks required by the new Regulation.
4. It is proposed to exempt from the requirement of community consultation meetings certain types of projects (top of page 6 of "Proposed Content" document), yet notice is required. If notice is to be required, at least one

community consultation meeting should also be required, given potential impact of even these identified projects.

II. Municipal Consultation

5. Decommissioning and the appropriate funding thereof should be part of the municipal consultation, unless it is the Province which intends to require and hold securities for decommissioning: draft Regulations are required to be reviewed to clarify this matter.
6. Moreover, local municipalities may have particular issues not included in the list (for example, identification of archeological management areas and heritage districts is not identified on this list, but are otherwise relevant). As a result, the list should not be exhaustive, and should explicitly permit local municipalities to add information and comments that are germane to their particular locale, for the information of the Ministry.
7. Page 6 of the "Proposed Content" document indicates the Ministry of the Environment will provided a template for applications. Meaningful public comment requires that that template be available now, and that the Regulation be drafted to ensure it is required to be adhered to, and the information set out therein made part of any approval.

III. Cultural Heritage

1. The provision that, even when impacting individual buildings designated under Part IV of the *Ontario Heritage Act* or, districts designated under Part V, no heritage assessment is required, entirely contradicts and obviates the *Ontario Heritage Act*. Additionally, it offends the provisions of the Provincial Policy Statement and is an inherent contradiction with the terms and intent of the *Ontario Heritage Act*.
2. Additionally, requiring archaeological assessments only on properties which have already been identified as of archaeological concern is nonsensical. Unless archaeological assessments are done on previously undeveloped land, there is no certainty that existing archaeological resources can be identified. This provision would appear to be contrary to the spirit and language of the relevant legislation.

IV. Natural Heritage

1. Presumably, in addition to being satisfied that the Ministry of Natural Resources “reviewed the approach” used by a proponent, the Ministry of the Environment would want to also know that the Ministry of Natural Resources approved the approach.

2. In addition to providing a setback from Provincial Parks and Conservation Reserves, Lake Trout Lakes and other environmental features, it is recommended that, consistent with the existing policies of the Niagara Escarpment Commission, the request of the Association of Municipalities of Ontario, The Coalition on the Niagara Escarpment, affected municipalities and others, the policy of the Niagara Escarpment Commission to not permit turbines within 1km. of its boundaries should be preserved. In addition, to secure its policy of requiring visual impact studies of installations which could affect the visual and esthetic values intended to be protected by the Niagara Escarpment legislation, a visual impact study is required for those within 2.5kms. Therefore, the natural heritage chart should be amended by the addition of the following:

Niagara Escarpment	1km from the Niagara Escarpment boundary	The proponent would be required to undertake a visual impact study for any wind power facility within 2.5kms of the boundary of the Niagara Escarpment, demonstrating the ability to mitigate any negative impacts
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V. Records Review and Site Investigation

Reliance on records review with an obligation to merely “confirm the presence, location and boundary of the feature” does not protect previously unidentified features which can be discovered on site, although not yet disclosed in a records review.

VI: Assessment

A regulation should be promulgated and made available for public comment setting out the “procedures and guidance established by the Ministry of Natural Resources” which are to guide preparation of an Environmental Impact Study.

In summary, Sections 5 and 6 of the "Proposed Content" document does not contain any general requirement to determine, on site, what is affected, its significance, and to demonstrate how impact is to be avoided or mitigated. As drafted, the "Proposed Content" document could, as an example, provide no archaeological protection for a previously unrecorded midden of First Nations, a previously unrecorded endangered species or the like. This does not meet the promise that the *Green Energy Act* would protect environment.

VII. Provincial Policy Plans

The "Proposed Content" Document indicates the regulation "will incorporate aspects" of the listed Provincial Policy Plan Areas – Regulations should be drafted to make it clear that, in those areas of Provincial Policy Plans, those plans are paramount so as to ensure the protection that those Plans afford the natural environment.

Niagara Escarpment – The "Proposed Content" document does not provide information to the public on what type of proposed development would be exempt under the regulations of the "*Niagara Escarpment Planning and Development Act*". Presumably, for the public to understand the impact of the *Green Energy Act* and its regulations on the Escarpment, this should be provided in one place. Moreover, as part of the review by the Niagara Escarpment Commission of a Development Permit it is necessary to stipulate that both in processing and on appeal of a Development Permit to the Environmental Review Tribunal under the *Niagara Escarpment Planning and Development Act*, the provisions of that *Act* shall prevail over the *Green Energy Act*. It is only in this fashion that the values of the Niagara Escarpment Commission and the constating legislation can be protected.

Part IV – Explanation of Technology – Specific Requirements:

A. Land – Based Wind Turbine Facilities

Noise Setbacks – The setbacks should be subject to the appropriate definition of Point Reception referenced on page 2 of this submission.

In addition, in order to ascertain the relevant setback requirements set out in the matrix, it is necessary to have available the information set out above under Description of Project (page 3 of this submission).

At page 14 of the "Proposed Content" document, it is suggested that the noise emission level of a wind turbine must be the "guaranteed values of the Sound

Power Level corresponding to 95% rated power output.” Why was 95% chosen, rather than 100%? No explanation has been provided in any of the material available to the public, and this is a puzzling standard.

Further, should a facility meet the requirements for a noise study, or should a proponent undertake the option of completing a site-specific noise study, will the regulations require the proponent to undertake the same consultation process and make this noise study available for public comment and the like?

Transformer Substation Noise Setbacks - At the moment, noise from transformers is treated as cumulative to that of wind turbines:

Any regulation for setbacks should ensure that these two noise sources are considered on a cumulative basis.

Setbacks from Roads, Railways and Property Lines – The regulation should be drafted so as to include reference to not only roads, but also road allowances and rights-of-way. Again, this is one small example of why it is necessary to have the regulations available for public comment.

Decommissioning Plan – Please see the recommended regulation set out at page 5 of this submission.

Conditions of Approval – Please provide regulations setting out the process by which proponents would be required to monitor and address perceptible infrasound or low frequency noise, and who would be responsible for enforcing such monitoring and action.

Additionally, please advise as to what will be considered “appropriate circumstances” to trigger shutdown conditions for land-based facilities.

Shadow – Flicker Studies - A glaring omission from the Standards is that for any shadow / flicker studies, or other standard required to protect human health and avoid impact.

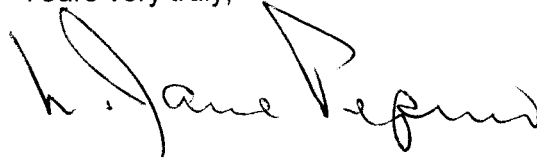
Recommended Regulation:

All wind turbine projects must establish that they meet a standard of no greater than 30 minutes per day and 30 hours per year, calculated on worst case conditions, of shadow – flicker impact.

Marcia Wallace, Manager
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
June 29, 2009
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We look forward to advice that the proposed Regulations themselves will be available for public comment, and remain available to meet with you to discuss these concerns and suggestions further.

Yours very truly,

A handwritten signature in black ink, appearing to read "N. Jane Pepino". The signature is fluid and cursive, with a large, stylized initial "N" and a long, sweeping underline.

N. Jane Pepino, C.M., Q.C., LL.D.
Chair, CORE

NJP/sh

c.c. Sylvia Jones, MPP, Dufferin / Caledon
Ron Mills, Planner, Township of Mulmur
CORE Executive

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