

**A GUIDE TO
PREPARING TERMS OF REFERENCE
FOR
ENVIRONMENTAL ASSESSMENTS**

December 15, 2000

- ✓ Those interested in information about the environmental assessment process should consult the Ministry of the Environment web site or contact the ministry to obtain process, consultation and mediation guidance.
(www.ene.gov.on.ca/envision/env_reg/ea/English/index.htm)
- ✓ Guide users should check the Ministry of the Environment web site or call the Environmental Assessment and Approvals Branch to find out if there have been any revisions to this guide or any of the documents referenced in it.
- ✓ Any suggestions for revision or clarification are welcomed and should be sent to:

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INTRODUCTION

The *Environmental Assessment Act* (EAA), as amended by the *Environmental Assessment and Consultation Improvement Act, 1996*, S.O. 1996, c. 27, and schedules E and F of the *Red Tape Act, 2000*, S.O. 2000, provides for the protection, conservation and wise management of the environment in Ontario by providing an accountable, logical, and reproducible process of decision-making. The EAA promotes environmental planning by requiring the proponent of an undertaking, as defined in the EAA, to apply to the Minister of the Environment ("Minister") for approval to proceed. An application for approval to proceed consists of a terms of reference (ToR) and an environmental assessment (EA).

Undertakings to which an existing class environmental assessment applies that are proceeding in accordance with the class EA do not require a ToR. This guideline does not apply to undertakings proceeding under an existing approval or class approval.

The first step in the application for approval to proceed with an undertaking ("application") under the EAA is the submission of a proposed ToR to the Environmental Assessment and Approvals Branch (EAAB) of the Ministry of the Environment (MOE). If approved, the ToR becomes a framework for the preparation and review of the EA. If the ToR is not approved, the proponent must submit a new ToR for the Minister's approval before an EA can be prepared.

Following approval of the ToR, the proponent completes the application by submitting an EA that has been prepared in accordance with the approved ToR. Neither an approved ToR nor an EA prepared in accordance with an approved ToR guarantees that the Minister will approve an application to proceed with the proposed undertaking.

The EAA lays out a planning process and encourages environmental protection within the context of a broadly defined environment (see Appendix 1). Undertakings approved under the EAA generally require additional approvals in order to proceed including approvals under the *Environmental Protection Act* (EPA), the *Ontario Water Resources Act* (OWRA) and other federal and provincial legislation. This guide focuses on the fulfilment of the requirements of the EAA; however, the proponent should remain aware of other necessary approvals while preparing the ToR and the EA. This may reduce or eliminate duplication of effort in obtaining multiple approvals.

This guide presents an overview of:

- the mandatory elements of ToR preparation under the EAA;
- the Ministry of the Environment's ("ministry") expectations of what the proponent will provide in the ToR; and
- the ToR preparation options available to proponents.

This document is not a "how to" guide. It outlines ministry expectations for the ToR. Proponents are expected to make the necessary judgements about how to prepare the ToR.

This guide has two (2) parts: an overview of the EAA as it applies to the ToR; and an outline of the information required for the submission and evaluation of a proposed ToR. It focuses on the development of the proposed ToR prior to submission to the ministry.

PART 1 EAA REQUIREMENTS FOR THE TOR

This part should be read in conjunction with the Environmental Assessment Act and Ontario Regulation 616/98 ("deadlines regulation") for an accurate and complete description of the requirements for Terms of Reference.

1.0 Requirement for Preparing a Terms of Reference (ToR)

Major amendments to the EAA came into effect on January 1, 1997. Additional procedural amendments relating to ToRs came into effect in December, 2000. Under the revised process, an application under the EAA goes through a two-step approval process. Subsection 5(2) of the EAA states that the application to proceed consists of the proposed ToR submitted under subsection 6(1) and the EA subsequently submitted under subsection 6.2(1). This guide pertains only to the ToR component of the application.

An approved ToR represents an agreement between the proponent and the Minister about the work that is required in the EA to determine the potential impacts of the proposed undertaking and its alternatives on the environment. Although the document is intended to be comprehensive, in some cases the results of the work undertaken may indicate that additional work is required to fully assess the proposal.

An approved ToR does not guarantee approval of the proposed undertaking.

2.0 Obligation to Consult During the Preparation of a ToR

One key aspect of Ontario's EA process is the legislated requirement (section 5.1 of the EAA) for the proponent to **"consult with such persons as may be interested"** during the preparation of both the ToR and the EA.

3.0 Submission of a ToR

Under subsection 6(1) of the EAA, the proponent **"shall give the Ministry proposed terms of reference governing the preparation of an environmental assessment for the undertaking"**. Section 6 of this guide outlines what should be included in the proposed ToR and section 8 provides information about how the proposed ToR should be submitted to the ministry.

3.1 Preparation of the EA

Subsection 6(2) of the EAA provides proponents with a choice of three (3) methods for preparing an EA:

"The proposed terms of reference must,

- (a) indicate that the environmental assessment will be prepared in accordance with the requirements set out in subsection 6.1(2);**

- (b) indicate that the environmental assessment will be prepared in accordance with such requirements as may be prescribed for the type of undertaking the proponent wishes to proceed with; or**
- (c) set out in detail the requirements for the preparation of the environmental assessment."**

The proposed ToR must clearly state the clause of the EAA [6(2)(a), (b), or (c)] under which the EA will be submitted.

If the proponent chooses to conduct the EA under 6(2)(a), the ToR must indicate that the EA will be prepared in accordance with subsection 6.1(2) of the EAA which specifically requires the EA to include a number of things including:

- the purpose;
- a description and rationale for the proposed undertaking, alternative methods for and alternatives to the proposed undertaking;
- a description of the environment to be affected, the effects and the actions needed to mitigate the effects;
- an evaluation of the advantages and disadvantages to the environment;
- a description of consultation carried out during ToR preparation and the results of that consultation; and
- a description of the consultation to be conducted during the preparation of the EA.

The proponent should be aware that the EAA defines the term environment very broadly. In the EAA, the term environment means:

- (a) "air, land or water,**
 - (b) plant and animal life, including human life,**
 - (c) the social, economic and cultural conditions that influence the life of humans or a community,**
 - (d) any building, structure, machine or other device or thing made by humans,**
 - (e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities, or**
 - (f) any part or combination of the foregoing and the interrelationships between any two or more of them,**
- in or of Ontario."**

In other circumstances, specific requirements and EA processes may be prescribed by regulation for distinct types of undertakings. In this case, proponents would prepare the EA in accordance with clause 6(2)(b) of the EAA. This would be stated in the ToR. The prescribing

regulation must be made by the Lieutenant Governor in Council before a ToR can be submitted under this clause. To date, no regulation has been made for any type of undertaking.

Subsection 6.1(3) of the EAA indicates that an approved ToR may provide that the EA consist of information other than the generic requirements set out in subsection 6.1(2). Therefore, proponents proposing to expand or limit discussion of any of the elements in subsection 6.1(2) must indicate in the ToR that they are proceeding under clause 6(2)(c) and subsection 6.1(3) of the EAA.

3.2 Consultation

One key aspect of the EA process is the legislated requirement for consultation between the proponent and interested parties during the preparation of both the ToR and the EA.

Subsection 6(3) of the EAA sets out the requirements for consultation during the preparation of the ToR. It states that **“the proposed terms of reference must be accompanied by a description of the consultations by the proponent and the results of the consultations.”**

The December 2000 amendments to section 6 of the EAA reflect the requirements, under the laws of natural justice and fairness under Common Law, for notification and inviting comments. The Minister considers the comments and the results of the consultation prior to making a decision about the ToR.

4.0 Decisions about the ToR and Related Aspects

4.1 Minister's Decision about the ToR

Subsection 6(4) of the EAA states that the Minister will only approve the ToR **“if the Minister is satisfied that an environmental assessment prepared in accordance with them will be consistent with the purpose of this Act and with the public interest.”** Subsection 6(6) states that the **“Minister shall notify the proponent whether or not the proposed terms of reference are approved and shall do so by the prescribed deadline.”** Under the laws of natural justice and fairness under Common Law, the Minister shall also provide the proponent and interested parties with reasons for the decision.

4.2 Mediation

The EAA provides the opportunity to mediate issues throughout the ToR preparation and evaluation process. Under subsection 6(5), before making a decision about the proposed ToR, **“the Minister may refer a matter with respect to them to mediation...”**

4.3 Deadlines Regulation

Although there are no deadlines imposed on the proponent for the preparation and submission of the ToR, once the proposed ToR is formally submitted to the ministry, it is subject to the deadlines regulation (Ontario Regulation 616/98) which establishes the timing of reviews and decisions. The Minister must review and make a decision about the proposed ToR within a prescribed period as stated in subsection 6(6) of the EAA. The regulation requires that the

Minister make a decision about the proposed ToR within twelve weeks of the commencement of regulated time lines. The time lines for the EA process are set out in Appendix 2.

While the Minister will make every effort to meet the deadlines prescribed in the regulation, subsection 10(4) of the EAA provides that **"a decision of the Minister is not invalid solely on the ground that the decision was not made before the applicable deadline."** Under no circumstances does the deadlines regulation override any requirements of the EAA, the *Statutory Powers Procedure Act* or the requirements for procedural fairness under the laws of natural justice.

There are provisions within the EAA and the deadlines regulation that adjust the deadlines in the event of an amendment to the proposed ToR by the proponent, or if any matter is referred to mediation. The Director of EAAB may also choose to extend the approval deadlines if extraordinary circumstances exist to justify the extension.

The deadlines regulation creates certainty for proponents, streamlines the approval process and thereby reduces the costs associated with an EA review.

4.4 Basis for Minister's Decision

The proponent should be aware that the approved ToR plays a significant role in the Minister's overall decision about the application for approval to proceed with an undertaking under the EAA. If an EA document does not meet the commitments made in the approved ToR, the Minister may choose to deny the application to proceed.

Section 9 of the EAA details decision options and outlines how the Minister makes the decision about an application for approval to proceed with an undertaking. Subsection 9(2) describes those matters that the Minister must consider in coming to a decision:

1. **The purpose of the Act.**
2. **The approved terms of reference for the environmental assessment.**
3. **The environmental assessment.**
4. **The Ministry review of the environmental assessment.**
5. **The comments submitted under subsections 6.4(2) and 7.2(2).**
6. **The mediators' report, if any, given to the Minister under section 8.**
7. **Such matters as the Minister considers relevant to the application."**

PART 2 THE PREPARATION AND SUBMISSION PROCESS FOR PROPOSED TERMS OF REFERENCE

Part 2 is intended to assist proponents with the preparation and submission of a proposed ToR. This part also provides information about the following:

- Content and preparation of a ToR (section 6);
- Additional documentation to accompany the ToR (section 7);
- Submission of a proposed ToR (section 8);
- Evaluation of the proposed ToR by the ministry (section 9);
- Amendments to the proposed ToR (section 9.1);
- Minister's decision about the proposed ToR (section 10);
- Roles and responsibilities (section 11); and
- Moving on to the EA phase (section 12).

5.0 General

The ToR provides a framework for the preparation and review of the EA. During ToR preparation, the proponent can initiate discussion with potentially interested parties in order to identify concerns and stimulate conflict and issue resolution early in the planning process.

The ToR is not a draft EA. Rather, it sets out the proponent's plan for addressing the legislated requirements of the EAA. The ToR will outline the type of work that is necessary to address environmental issues that have been identified and to prepare the EA document. In general, a ToR identifies the purpose of the proposed undertaking, provides a general description of both the proposed undertaking and the environment that may be potentially affected, outlines the alternatives that will be considered in the EA, and identifies the broad issues that need to be assessed. The ToR should also include a description of the consultation that will take place during the preparation of the EA.

Other information may help the government reviewers during the approval process for the ToR. Although the EAA does not require any specific supporting information, its absence may make it impossible for the Minister to determine whether the proposed ToR would result in a satisfactory EA. Additional information may be especially important if the ToR is submitted under clause 6(2)(c) and subsection 6.1(3) of the EAA. This type of information can be referenced in the ToR and made available to the reviewers in a supporting document. Information that substantiates positions taken in the proposed ToR may be appropriately included as supporting documentation, rather than as part of the proposed ToR. Appendices are considered to be part of the ToR that is approved by the Minister, therefore, it is more appropriate to reference supplementary information and make it available in a supporting document separate from the proposed ToR.

A complete ToR submission has four components:

- A transmittal letter to the Project Officer that summarizes the proposed undertaking and that outlines the reasons that the proposed ToR should be approved;
- The proposed ToR (see section 6);
- A consultation record that outlines the public consultation carried out during ToR preparation (see section 7.1); and
- Supporting documentation as required (see section 7.2).

The specific contents of the ToR will vary as each proposed undertaking is unique; however, there are general expectations that each ToR must fulfill. These are outlined in section 6.

Once approved, the ToR sets out a framework that proponents must follow during the preparation of the EA in order to satisfy the requirements of 6.1(1) of the EAA.

5.1 Initiating the EA Process

When the proponent submits a *Project Initiation Form* (see Appendix 3) outlining a proposed undertaking, a Project Officer will be assigned to the proposed undertaking to offer advice to all parties. Proponents and other interested parties are encouraged to discuss the proposed undertaking with the Project Officer early in the ToR preparation process.

6.0 Content and Preparation of a ToR Document

The ToR should be prepared in consultation with the Project Officer, but it is the proponent's responsibility to ensure that the requirements of the EAA have been met.

The proposed ToR must present a detailed description of the work to be carried out during the preparation of the EA¹. As each proposed undertaking is unique, the study requirements and the level of detail expected will vary depending on the nature and complexity of the issues associated with the proposed undertaking.

During ToR preparation, the proponent is expected to make necessary judgements and choices with respect to questions such as:

- What alternatives could be usefully examined (section 6.3)?
- What aspects of the environment and what potential environmental effects warrant consideration in the EA (section 6.5)?

¹ If the proponent has completed any work that will be included in the EA before the ToR is submitted, this should be clearly stated in the ToR. Public consultation associated with that work should be clearly outlined.

- What methods will be used to evaluate the environmental effects (positive and negative) of the proposed undertaking and any described alternatives (section 6.6)?
- Who will be consulted during the preparation of the EA (section 6.7)? and
- How will concerns raised by interested parties be considered and/or addressed (section 6.7)?

The remainder of section 6 indicates what information should be included in the proposed ToR.

6.1 Identification of the Proponent(s)

The proposed ToR should include a brief, clear statement identifying the proponent(s).

6.2 Explanation of the Purpose of the Proposed Undertaking

In general, the supporting documentation should contain a brief explanation of the problem or opportunity that prompted the planning activity. If a previous study or event prompted the proponent to proceed with the proposed undertaking, information about this trigger may be referenced in the ToR and included in a supporting document if it would clarify the proponent's position.

6.3 Description of the Proposed Undertaking

The supporting documentation accompanying the proposed ToR should contain a brief description of the undertaking being considered, if available. In describing the proposed undertaking, particular reference should be made to those aspects of the undertaking that may be environmentally significant. The description should include a key map showing the location of the proposed undertaking within the context of the surrounding area, if relevant.

Proponents may decide to begin preparing an EA for an undertaking that has been defined to various degrees. Therefore, the description of the proposed undertaking included in the supporting documentation can be conceptual (a problem or opportunity has been identified and options to address it are being considered) or very detailed (methods of addressing the problem or opportunity have been focused through initial studies). In either case, the description of the proposed undertaking should include a clear statement identifying the problem or opportunity that would be addressed by the undertaking. The description of the proposed undertaking may evolve during the preparation of an EA, therefore the proponent should state in the ToR that the final description of the proposed undertaking will be included in the EA document.

6.4 Alternatives

The EAA makes reference to two types of alternatives: **alternatives to** a proposed undertaking, and **alternative methods** of carrying out a proposed undertaking. Alternatives to a proposed undertaking are functionally different ways of approaching and dealing with a problem or opportunity. Alternative methods are different ways of performing the same activity.

Any general references to alternatives in this document include both alternatives to a proposed undertaking and alternative methods of carrying out a proposed undertaking. For a more detailed definition of alternatives, please refer to Appendix 1.

The issue of what constitutes a reasonable range of alternatives is a difficult one; however, the decision is the proponent's, subject to approval by the Minister or the Environmental Review Tribunal (formerly the Environmental Assessment Board). Considering alternatives provides the proponent and others an opportunity to shape, modify and, in some cases, reconsider the proposed undertaking, in light of its potential environmental effects. The alternatives that warrant consideration will vary from undertaking to undertaking, as each is unique.

It is in the proponent's best interest to consult with interested parties on the range and type of alternatives that will be considered in the EA before the alternatives are selected. An initial screening of alternatives during the preparation of the ToR can assist a proponent in deciding which alternatives are reasonable and merit further examination in the EA. Documentation of the initial screening results may help interested parties to understand how alternatives were selected for further study. If included, this information should be placed in the supporting documentation.

It is generally considered to be good EA practice to include the "do nothing alternative" (i.e. nothing is done to address the problem or opportunity that has been identified) in the list of alternatives that will be considered in the EA. Proponents can then compare other alternatives with the "do nothing alternative" in order to determine the extent to which other alternatives address the problem or opportunity.

In the supporting documentation, the proponent should explain the selection of alternatives to assist the Minister in determining whether the ToR is consistent with the purpose of the EAA and the public interest. This explanation should include both the reasons that alternatives were chosen for further consideration and the reasons that other possible alternatives were eliminated from consideration.

Clause 6(2)(a) of the *Environmental Assessment Act*

Proponents proceeding under clause 6(2)(a) of the EAA are obligated to include consideration of a reasonable range of both types of alternatives in the EA document in order to satisfy clauses 6.1(2)(b)(ii) and (iii) of the EAA. A ToR prepared under 6(2)(a) should clearly state which alternatives will be considered in the EA. This clear statement allows interested parties the opportunity to review and comment on the alternatives proposed to be studied in the EA. Subsection 6.1(2) also requires proponents to provide a statement of rationale for the alternatives selected.

Clause 6(2)(c) of the *Environmental Assessment Act*

Subsection 6.1(3) of the EAA provides that the Minister may approve a ToR that would result in an EA containing information other than that listed in subsection 6.1(2). This enables proponents wishing to proceed under subsection 6(2)(c) to focus the EA such that only alternatives that address their specific needs and circumstances are examined.

The range and type of alternatives should be determined by the significance of environmental effects and the circumstances specific to the proposal (e.g. the proponent's situation, timing,

financing). For example, in the absence of significant negative environmental effects, a proponent may feel that it is appropriate to propose a limited consideration of alternatives. In other cases, however, a proponent may conclude that a more extensive consideration of alternatives is warranted.

Alternatively, proponents may have previously considered some alternatives during a separate planning or decision-making process. If that process provided for public consultation in a manner that is consistent with the opportunities for public comment provided in the EA process, the proponent may propose to limit the discussion of those alternatives previously considered and discarded in order to focus the EA on the examination of other alternatives. Master Plans and business plans are two examples of supporting documentation that may be submitted with a ToR to support both the range of alternatives readily available to the proponent, and the range of alternatives previously considered.

6.5 Description of Existing Environment and Potential Effects

The supporting documentation should include a preliminary description of the existing environment (at a minimum) in order to facilitate an understanding of the potential effects that should be examined in the EA. The description should include all elements of the environment that are included in the EAA definition of environment (see Appendix 1). The ToR should also include a listing and brief explanation of the studies, tests, surveys and mapping that will be done to provide a more detailed description of the environment in the EA. If the proponent intends to use existing studies to supplement the description of the environment in the EA, this intention should be clearly stated in the ToR.

The proposed ToR should identify those elements of the environment that may be reasonably expected to be affected, either directly or indirectly, by the proposed undertaking and its alternatives. The preliminary description of the environment provided in the ToR should be sufficiently detailed to allow members of the government review team (GRT) to determine whether the proposed studies will meet the information requirements of the review agency at the EA stage. In depth information may be provided in the supporting documentation, if appropriate.

The proposed ToR should provide a general description of the types of potential environmental effects that will be assessed during the preparation of the EA. These can be summarized in a table, if appropriate. The list of potential effects to be examined in the EA should be derived from a preliminary assessment of the proposed undertaking. Details of the preliminary assessment and the rationale for the choice of evaluation criteria should be included in the supporting documentation. This supporting material should be clearly referenced within the proposed ToR.

The descriptions referred to above are not expected to be complete descriptions and analysis of the existing environment and potential effects of the proposed undertaking. Those will only be required at the EA stage.

6.6 Assessment and Evaluation

The proponent should identify the methods that will be used to assess the potential environmental impacts and evaluate the results of any studies, research, surveys or tests that

will be undertaken during the preparation of the EA. The proponent should also state what will be done to study different aspects of the environment (e.g., the cultural impact of the undertaking will be assessed in part through an archeological study). Government departments and agencies should be consulted to determine whether there are any formal standards or methods that should be followed. Any standards or methods that will be followed in the EA should be clearly referenced in the ToR.

Sufficient information should be given about the impact assessment methods and evaluation criteria to ensure that they can be understood by interested parties. Further, the methods chosen must be clear, traceable and replicable so that interested parties can understand the logic used during the production of the EA document. It is not expected that the proponent will do these studies prior to submitting the proposed ToR. Rather, the ToR should outline the work that will be done while preparing the EA. If detailed descriptions of the methods selected, or the reasons for the selection of one method over another are necessary, they should be included in supporting documentation rather than in the ToR itself.

6.7 Monitoring Strategy

Every ToR must include a commitment to develop a monitoring strategy and a monitoring schedule during the preparation of the EA.

6.8 Consultation Plan for the EA

The proposed ToR should include a general consultation plan that will be followed during the preparation of the EA. This plan should outline the general consultation methods proposed, how public input will be obtained and a description of key decision-making milestones during the preparation of the EA when consultation will occur; however, it is not necessary to include a dated schedule in the consultation plan. The proponent should include a general list of parties known or likely to have an interest in the proposed undertaking in the supporting documentation and should indicate how additional interested parties will be identified.

The consultation plan should reflect the input received during the development of the ToR. In particular, the proponents should ensure that adequate consultation will be provided about issues that were identified during the ToR preparation as being of significant concern to interested parties. The issue of what constitutes adequate public consultation is a difficult one; however, the decision remains the proponent's. Ultimately, that decision will be subject to review by the Minister or the Environmental Review Tribunal as the consultation will be considered when the decision about whether to approve the undertaking is made. In choosing the most appropriate level of public consultation, the proponent should consider the complexity of the proposed undertaking, the level of public concern and controversy, and the extent of the expected environmental impacts of the proposed undertaking. While the consultation plan for each EA will be determined by the proponent, the ministry guideline entitled *Consultation in the Environmental Assessment Process* (2001) sets out the ministry's expectations with respect to consultation. This guideline is available from EAAB.

Proponents are expected to use appropriate conflict resolution techniques to resolve issues raised by members of the public, and provisions for conflict resolution should be included in the

consultation plan for the EA. Some examples of conflict resolution techniques include negotiation, arbitration and mediation. The Minister can order mediation of an issue if resolution cannot be reached independently. Therefore, proponents should refer to the ministry guideline entitled *The Use of Mediation in Ontario's Environmental Assessment Process* (2001) to gain an understanding of how and when mediation is appropriate during the EA process. If issues remain unresolved when the EA is submitted and/or mediation is complete, the Minister may refer the issue(s) to a hearing.

Additional details about the proposed consultation plan including rationale for the type and frequency of consultation, and a detailed list of interested parties identified prior to the submission of the proposed ToR could be included in supporting documentation.

6.9 Providing Flexibility in the ToR to Accommodate New Circumstances

Proponents should be aware that the EAA does not provide for the amendment of a ToR once approved. Thus, the wording of the proposed ToR must be carefully considered as new issues may arise during the preparation of the EA that would preclude the fulfilment of the commitments made in the ToR. If the ToR does not provide flexibility and significant changes occur (in the list of alternatives that will be considered for example), a new ToR must be prepared. However, if the proponent was to complete additional studies or do additional work that builds on existing studies, a new ToR would not be required.

Proponents should ensure that any flexibility that is built into the ToR is consistent with both the purpose of the EAA, and the public interest. For example, proponents may choose to state only the purpose of the studies to be undertaken in the ToR and discuss the proposed methodologies in the supporting documentation. This would allow the proponent to alter study methods in response to changing technical standards while still ensuring that the potential impacts of the undertaking are adequately assessed.

6.10 Other Approvals Required and Related Issues

Supporting documentation may include a list of other significant approvals required for the proposed undertaking to proceed or related issues that will be considered during EA preparation. These could include approvals such as: zoning bylaw amendments, building permits, Ministry of Environment ("MOE") Certificates of Approval, pipeline crossing approvals, approvals under federal legislation, business licences, charters, and operating permits. If approvals are required, proponents may wish to explore opportunities for streamlining processes and reducing duplication of efforts. All of the approvals issued by the ministry will be co-ordinated by the Project Officer (e.g., approvals under EAA, the *Environmental Protection Act*, the *Pesticides Act*, and the *Ontario Water Resources Act*).

Proponents are encouraged to identify federal approvals that are subject to the *Canadian Environmental Assessment Act* so that both provincial and federal EA requirements are met concurrently and duplication and delays are reduced.

The supporting documentation may also note government policies that need to be addressed as the EA is developed.

7.0 Additional Documentation to Accompany the ToR

7.1 Consultation Record

The EAA requires that "**such persons as may be interested**" be consulted during the preparation of the ToR; however, the EAA does not specify how consultation should occur. To demonstrate how this requirement was met, ToR documents submitted to the Ministry should be accompanied by a separate consultation record describing the consultations undertaken during ToR preparation. The consultation record should:

- Identify all parties consulted during ToR preparation;
- Outline the consultation activities undertaken;
- Clearly and accurately state the issues and concerns raised;
- Provide copies of written comments received from interested parties; and
- Demonstrate how concerns were considered in the proposed ToR.

The descriptions should be brief and could be summarized in tabular form, if appropriate. Any reports generated as part of the discussions leading up to submission of the ToR should also be included.

The purpose of the consultation record is to demonstrate that section 5.1 of the EAA has been met during the preparation of the ToR.

7.2 Supporting Documentation

Supporting documentation should accompany the ToR if appropriate, however, it should not form part of the proposed ToR as it is not approved by the Minister. Information contained in the supporting documentation should support the proponent's request that the ToR be approved by providing rationale for the choices made and details of processes or methodologies to be used. The supporting documentation could include one or more of the following if appropriate:

- A brief description of the problem or opportunity that prompted the proposed undertaking;
- Information about studies or events that triggered the proponent's involvement with the proposed undertaking;
- A brief description of the proposed undertaking;
- Background information supporting the selection of alternatives for further study;
- A preliminary description of the environment;
- Details about the preliminary assessment of the alternatives;
- An explanation of the logic used to select alternatives to be analyzed in the EA and to eliminate other alternatives from consideration;
- Technical descriptions of the impact assessment methods to be used in the EA;

- An explanation of the logic used to select the environmental effects that will be examined in the EA and to eliminate other effects from consideration;
- Detailed descriptions of the criteria to be used when evaluating alternatives;
- The rationale for the type and frequency of consultation selected;
- A preliminary list of parties to be included in future consultation efforts;
- A list of major approvals required before the undertaking may proceed; and
- A list of government policies, standards and guidelines to be considered in the development of the EA.

8.0 Submission of a Proposed ToR

Before a proposed ToR is formally submitted, it may be appropriate for the proponent to circulate the draft ToR to the government review team (GRT) to ensure that potential issues have been identified and resolved. The GRT is composed of representatives of government agencies and ministries (including technical reviewers from MOE) who may be interested in the proposed undertaking. Circulation of the draft ToR should be discussed with the Project Officer.

Circulation of a draft ToR is generally recommended as amending the proposed ToR after submission is not easy. During circulation of a draft ToR, proponents can ensure that there are no outstanding issues that will need to be resolved during the review of the ToR. In general, extensive public consultation and circulation of a draft during the preparation of the ToR is an effective method of ensuring that no new issues will be uncovered during the ToR review.

When the proposed ToR is formally submitted to EAAB, under subsection 6(3.1) of the EAA, the proponent is responsible for publishing notification of submission of the proposed ToR (see sample in Appendix 4). The Minister will not make a decision about the proposed ToR until proper public notice has been given and any resulting submissions considered.

8.1 Preparation for Submission

Two weeks prior to submission, the proponent should submit a completed *Terms of Reference Summary Form* (see Appendix 3) to allow a ToR summary to be posted on the ministry web site. The summary appears on the EA Activities portion of the Environmental Bill of Rights (EBR) web site which is located at www.ene.gov.on.ca/envision/env_reg/ea/English/index.htm. The web site posting provides the public with an additional opportunity to comment on the proposed ToR. The posting on the EA Activities portion of the EBR web site is intended to inform the public and has no appeal provisions associated with it.

The proponent must publish a notice in a place appropriate to the community, to inform the public that a ToR has been submitted for the proposed undertaking. The notice will advise the public of where the submission can be reviewed and will invite comments to the Minister about the submission during the 30-day review period (see Appendix 4). The proponent should consult with the Project Officer before publishing any notices to determine what additional notices of submission of the ToR the Director will require under subsection 6(3.1) of the EAA.

8.2 Submission of the ToR

Once public notices have been prepared, the proponent formally submits the ToR package to the ministry. In both the transmittal letter for the submission package and in the ToR, the proponent should note under which clause of the EAA the ToR is being submitted [6(2)(a), (b) or (c)]. If the proposal is to proceed under clause 6(2)(c) and subsection 6.1(3), the transmittal letter should briefly explain why the proposed framework for the EA is appropriate. This information will assist the Minister in making a decision about the proposed ToR.

The ministry's regulated time lines commence on the last business day of the week that the ToR is received. The proponent should also ensure that all of the following items have been completed before time lines begin:

- The proposed ToR is received by members of the GRT and places of public record;
- The ToR summary is posted on the ministry web site; and
- The public has been notified of the ToR submission.

The notice of submission should explain where the proposed ToR is available for viewing during the 30-day public and agency comment period and provide information about how comments may be submitted during the comment period. The ministry will provide guidance about the placement of the notice(s) and sample wording to assist the proponent in the preparation and publication of the notice (see Appendix 4). As with all requirements for giving notice, if some aspect of the proposed undertaking is referred to a hearing, it may become crucial that the proponent can prove that timely and appropriate notice was given to parties likely to be affected.

The proponent should co-ordinate the publication of the notice of submission of the ToR with the delivery of the proposed ToR to the ministry, places of public record and members of the GRT. The Project Officer will provide addresses for the GRT.

9.0 Evaluation of the ToR by the Ministry of the Environment

Once the proponent has submitted the proposed ToR, the document is reviewed by government agencies and the public. Following that review, EAAB submits an analysis to the Minister. When evaluating the proposed ToR, the list of factors that the Project Officer will consider (at a minimum) include the following:

- Did the proponent meet the legislative requirements of the EAA?
- Did the proponent meet the expectations set out in MOE guidelines?
- Does the proposed ToR identify how the EA will be prepared?
- Is there a record of the consultation undertaken during ToR preparation?
- Did the proponent identify the concerns raised during the consultation associated with ToR preparation and attempt to record and consider these concerns in the proposed ToR and the supporting documentation?

- Is the range of alternatives that will be considered in the EA appropriate given the potential environmental effects and public concerns identified?
- Has appropriate rationale been provided for the selection of alternatives?
- Is the proposed ToR written in plain language that is clear and concise?
- Does the proposed ToR and supporting documentation provide sufficient information to allow the Minister to make an informed decision?
- Would an EA prepared in accordance with the proposed ToR be consistent with the intent of the EAA and the public interest?
- Does the ToR provide flexibility in responding to public and agency concerns during the preparation of the EA?

9.1 Amending a ToR

Proponents should be aware that it is not easy for the proponent to amend the proposed ToR after submission. As a result, all proponents are encouraged to carefully consider the draft ToR prior to submission to determine whether there are any outstanding issues that will need to be resolved during the review of the ToR. In general, comprehensive public consultation during the preparation of the ToR is an effective method of ensuring that no new issues will be uncovered during the ToR review.

After the ToR is submitted, it is evaluated by the ministry, the GRT, and the public. If there are substantive issues related to the methods to be used to evaluate the proposed undertaking that have not been adequately addressed in the proposed ToR, the proponent will be informed that amendments to the proposed ToR may be appropriate. If the proponent decides to make revisions, detailed discussion with the Project Officer will assist in determining how to proceed with any change to the proposal.

A proponent may decide:

- not to make changes;
- to take a time out in the review process to make changes that reflect comments received (the deadlines regulation allows for an 8-week time out in the review process that can be used to amend the proposed ToR); or
- to withdraw the proposed ToR altogether in order to replace it with a new one or to end the consideration of the proposed undertaking.

If the proponent chooses to amend or withdraw the ToR, the Project Officer must be notified in writing. Written notice must be received before the Minister makes a final decision about the ToR. Each situation has unique elements, so proponents should work closely with the ministry in determining how to proceed.

The significance of the proposed changes, and the stage of the ministry's assessment of the proposed ToR at the time that the change is submitted have a substantial impact on the amount of time that will be added to the deadline for the Minister's decision. An overview of the

relationship between submission of a request to amend the proposed ToR and deadlines is set out in Appendix 5.

If changes are necessary or the ToR is withdrawn and the proponent wishes to proceed with an undertaking, a new or amended ToR must be submitted. Whether the consultation done for the previously proposed ToR will be useful in meeting all or part of the need for public consultation on the second ToR will have to be determined by the proponent subject to the approval of the Minister.

No further amendments can be made once the Minister has made a decision about the ToR.

10.0 Minister's Decision about the ToR

10.1 Minister's Decision

The final decision about the proposed ToR lies with the Minister, who considers the submission made by the proponent, the recommendations of the GRT and comments received from interested parties during the public comment period. The Minister can decide to approve or reject the ToR, or refer the proposed ToR to mediation prior to making a final decision. The Minister may amend a proposed ToR before approving it. The EAA does not authorize the Minister to impose conditions of approval on a ToR.

In general, the proposed ToR will only be approved if the Minister is satisfied that an EA prepared in accordance with the ToR will be consistent with the purpose of the EAA and the public interest.

10.2 Mediation

Mediation may be used to assist in the resolution of issues that arise with respect to the proposed ToR. There are two types of mediation: self-directed mediation (conducted without an order from the Minister) and referred mediation (conducted in response to the Minister's directive). Both types of mediation are explained in the ministry guideline entitled *The Use of Mediation in Ontario's Environmental Assessment Process* (2001).

10.3 Minister's Option to Amend the Proposed ToR

If it is determined that it is necessary to amend the proposed ToR before approving it, the Ministry may give the proponent or other interested parties an opportunity to comment on the proposed amendments. The decision to provide an opportunity for comment will be based on the nature of the amendment proposed.

10.4 Notification of the Minister's Decision

After the Minister has made a decision, proponents will be notified directly and provided with written reasons for the decision. Every person who submitted comments to EAAB during the review period and provided a current mailing address will also receive a copy of the Minister's decision and the reasons for that decision. When a large number of submissions is received, the Project Officer may determine that some form of community notification is more appropriate

than individual notification. The Minister's decision will be placed on the internet at the following address:

http://www.ene.gov.on.ca/envision/env_reg/ea/English/index.htm

11.0 Roles and Responsibilities

11.1 The Proponent's Roles and Responsibilities

Proponents initiate projects subject to the EAA and have the principal responsibility for preparing the ToR. Proponents must make judgements and choices with respect to the content of the proposed ToR. For example, proponents are responsible for:

- Initiating meaningful consultation with interested parties to identify information needs and concerns early in the ToR preparation process;
- Identifying government reviewers with an interest in their proposed undertaking;
- Preparing a ToR in consultation with the ministry, other government agencies, municipalities, the public, First Nations, Federal departments and agencies and other interested parties;
- Using appropriate EA and technical professionals during the ToR preparation process;
- Ensuring that appropriate supporting documentation is prepared and included with the submission of the proposed ToR;
- Determining the amount of flexibility or certainty appropriate for the ToR;
- Ensuring that the proposed ToR meets all requirements set out in the EAA;
- Preparing a consultation record that documents the consultation initiated during the preparation of the ToR;
- Preparing a consultation plan that outlines the consultation to take place during the preparation of the EA;
- Consulting with the ministry prior to submission of the proposed ToR to discuss submission requirements;
- Delivering copies of the proposed ToR package to GRT members and places of public record; and
- Publishing notice that the ToR was submitted, specifying how and where documents are available and how comments can be submitted for the Minister's consideration.

The proponent is responsible for considering public concerns throughout the decision-making process. Proponents should advise interested parties of how concerns were addressed, or reasons that concerns were not addressed. Proponents should consult Appendices 6 and 7 to review the steps in the EA process, and to review the proponent's responsibilities during the circulation of a draft ToR.

11.2 Interested Parties' Roles and Responsibilities

Interested parties are encouraged to participate in the EA process. Specifically, interested parties are responsible for:

- Maintaining an awareness of events and proposed undertakings occurring within the community;
- Expressing opinions about the risks and merits of a proposed undertaking as early in the planning process as possible;
- Suggesting modifications to the proposed undertaking that would address any concerns; and
- Participating in the public review process provided by the proponent and the ministry.

11.3 Government Review Team's Roles and Responsibilities

Members of the GRT may be involved from the outset of the preparation of the proposed ToR. They should assist proponents in identifying issues and other areas of concern within their jurisdiction. They should also use their knowledge of local issues and people to help identify groups that the proponent should consult.

The proposed ToR is evaluated by the GRT to determine whether the proponent has adequately considered the legislation, regulations, policies and program areas within their respective mandates. Members of the GRT are responsible for:

- Providing advice and direction within their mandated areas of responsibility that the proponent should consider as part of the decision-making process;
- Providing a consistent position throughout the course of a decision-making process, or providing relevant reasons if their positions change;
- Providing the proponent with timely input that facilitates good decision-making;
- Participating in the government review of the proposed ToR after the ToR is submitted to the ministry;
- Identifying and confirming environmental effects related to their mandate; and
- Providing comments to the Project Officer within the legislated time lines for reviews.

11.4 EAAB's Roles and Responsibilities

EAAB's principal responsibility is to provide advice and guidance about the requirements of the EAA in order to allow proponents and the Minister to make informed decisions. Once a ToR is formally submitted, EAAB coordinates the government review of the submission and advises the Minister about whether the proposed ToR fulfills the requirements of the EAA. In addition to administering the EAA, the specific roles of EAAB are to:

- Provide information to proponents and interested parties about the requirements of the EAA;
- Promote responsible EA decision-making by encouraging proponents to use available guidance documents developed by EAAB, and to provide advice about the process to be followed;
- Facilitating co-ordination with other review processes such as the federal EA process in order to minimize unnecessary duplication and inconsistency;
- Evaluate the draft ToR and the ToR that is formally submitted by the proponent to ensure that all EA legislative requirements and procedures established by the ministry were followed;
- Co-ordinate comments from the public and GRT members during the ToR review period;
- Maintain the public file about the proposed ToR;
- Collect, analyse and advise the Minister about comments submitted during the public comment period;
- Encourage and facilitate the resolution of outstanding issues among the parties when necessary; and
- Present an analysis of the ToR to enable the Minister to make an informed decision about whether to approve or reject a proposed ToR.

12.0 Moving on to the EA Stage

The proponent is not advised to begin preparation of the EA until the ToR is formally approved by the Minister. As set out in subsection 6.1(1) of the EAA, an EA must be prepared in accordance with an approved ToR.

An approved ToR may become dated over time. Although an approved ToR does not have an expiry date, the proponent should be aware that an EA prepared in accordance with an outdated ToR may not provide the Minister with sufficient information to grant approval to proceed with an undertaking. If there is a significant delay between the approval of the ToR and the commencement of any study commitment made in the ToR, the proponent should verify that government standards or procedures referenced in the approved ToR have not changed. The proponent will be expected to conduct all studies and other work in accordance with the most current government standards or procedures available at the commencement of the study.

Should a proponent prepare an EA that does not meet the requirements of the approved ToR, the Director of EAAB can determine that the EA is deficient relative to the approved ToR. The Director may give the proponent a statement of deficiency that the proponent may attempt to remedy.

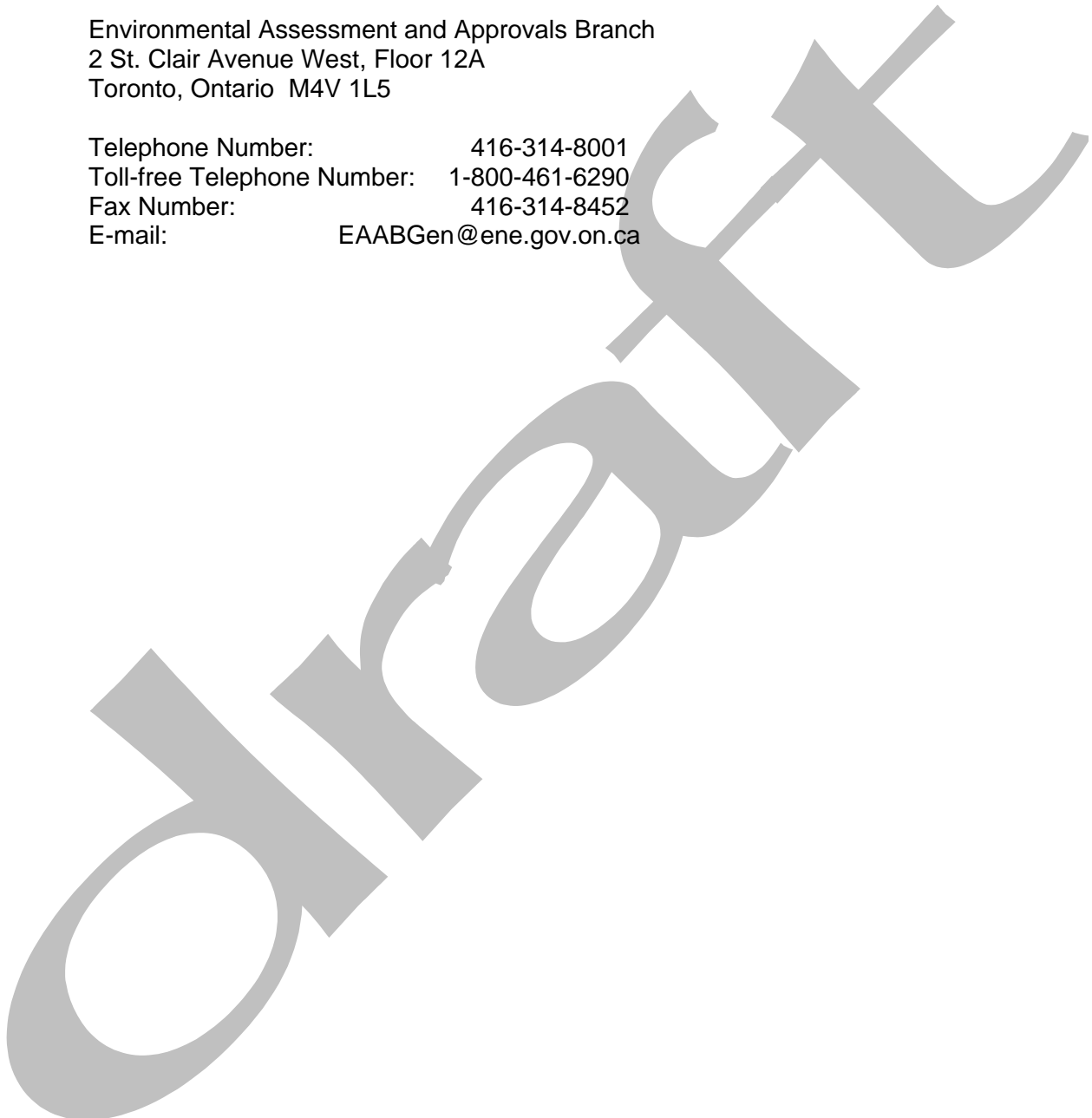
This guideline was designed to provide proponents and other interested parties with an understanding of the ToR and its place within the EA process, and some general guidance

about the ToR preparation process. Specific questions about the ToR for a particular undertaking should be referred to the Project Officer assigned to that proposed undertaking.

For more information about terms of reference or Ontario's EA process, please contact:

Environmental Assessment and Approvals Branch
2 St. Clair Avenue West, Floor 12A
Toronto, Ontario M4V 1L5

Telephone Number: 416-314-8001
Toll-free Telephone Number: 1-800-461-6290
Fax Number: 416-314-8452
E-mail: EAABGen@ene.gov.on.ca



APPENDIX 1: TERMS AND ABBREVIATIONS

Alternative Methods: Alternative methods of carrying out the proposed undertaking are different ways of doing the same activity. Alternative methods could include consideration of one or more of the following: alternative technologies, alternative methods of applying specific technologies, alternative sites for a proposed undertaking, alternative design methods, alternative methods of operating any facilities associated with a proposed undertaking (e.g., facility capacity, service area, rate of use, fee structure), alternative preventative and monitoring techniques, and alternative end uses for a site or facility where appropriate.

Alternatives: Both alternative methods and alternatives to a proposed undertaking.

Alternative To: Alternatives to the proposed undertaking are functionally different ways of approaching and dealing with a problem or opportunity (e.g., functionally different methods of addressing a waste disposal problem may include source reduction, recycling, composting, energy from waste facilities, incineration, and disposal at a landfill site).

Amendment: A change to a proposed ToR which can be initiated by the proponent before the Minister's decision is given under subsection 6(4), or which can be initiated by the Minister before a decision is made.

Application: An application for approval to proceed with an undertaking under the EAA.

Approved ToR: A ToR that has been approved by the Minister of the Environment.

Consultation: The activities carried out by a proponent to provide a two-way communication process to involve interested parties in the planning, implementation and monitoring of a proposed undertaking. Consultation is intended to:

1. identify most significant concerns;
2. uncover most relevant guidelines, policies and standards;
3. facilitate the development of a list of all required approvals, licences or permits;
4. provide advice to the proponent about the preparation of the ToR and EA document;
5. ensure that information held by review agencies is shared; and
6. encourage the submission of requests for further information and analysis early in the EA process.

Consultation Record: A document submitted with the proposed ToR that identifies all parties consulted during ToR preparation; outlines the preliminary consultation activities undertaken; clearly and accurately summarizes the issues and concerns raised; provides copies of written comments received from interested parties; and demonstrates how concerns raised were addressed in the proposed ToR. The consultation record is NOT approved by the Minister.

Do Nothing Alternative: An alternative that is typically included in the EA document that examines the implications of doing nothing to address the problem or opportunity that has been identified.

Draft ToR: The proposed ToR before formal submission to the Ministry. The proponent may opt to circulate the draft to the GRT so that issues or concerns can be resolved between the proponent and the reviewers before formal submission.

EA: Environmental Assessment.

EAA: Environmental Assessment Act.

EAAB: Environmental Assessment and Approvals Branch.

EBR: Environmental Bill of Rights.

Environment:

- (i) air, land or water;
- (ii) plant and animal life, including man;
- (iii) the social, economic and cultural conditions that influence the life of man or a community;
- (iv) any building, structure, machine or other device or thing made by man;
- (v) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of man, or;
- (vi) any part or combination of the foregoing and the interrelationships between any two or more of them.

Environmental Assessment: When used in relation to a proposed undertaking, means an environmental assessment submitted pursuant to subsection 6.2(1).

Environmental Assessment and Approvals Branch (EAAB): The Branch that administers the EAA. The Branch is part of the Operations Division of the Ministry of the Environment.

Environmental Effects: The effects that a proposed undertaking has, or could potentially have, on the environment, either positive or negative, direct or indirect.

Government Review Team (GRT): The staff from MOE and various other ministries and agencies (including MOE technical reviewers) who contribute to the review of the proposed ToR by providing comments from their mandated areas of responsibility.

GRT: Government Review Team.

Interested parties: Individuals or organizations with an interest in a particular undertaking. Interested parties are not required to demonstrate that they may be affected by a particular undertaking. Often called stakeholders.

Master Plans: Master Plans are long range plans, integrating infrastructure requirements for present and future land use with environmental planning principles. These plans examine the whole infrastructure system in order to outline a framework for planning for subsequent projects and/or developments.

Minister: Minister of the Environment.

Ministry: Ministry of the Environment.

MOE: Ministry of the Environment.

MOE Technical Reviewers: Ministry staff, other than the Project Officer, who contribute to the review of the proposed ToR. Comments from MOE reviewers form the MOE position

with respect to those matters related to the administration of statutes other than the EAA for which MOE is responsible.

Project Officer: The assigned staff member from EAAB Project Co-ordination Section who co-ordinates the administration of the EA process for a specific undertaking.

Proponent: The person or organization proposing or managing a proposed undertaking.

Proposed ToR: A ToR that has not yet received the approval of the Minister.

Supporting Documentation: Documentation that is submitted to the ministry in addition to the proposed ToR which is intended to clarify issues discussed in the proposed ToR. Information contained in the supporting documentation should support the proponent's request that the ToR be approved by providing rationale for the choices made and details of processes or methodologies to be used. The supporting documentation is NOT approved by the Minister.

Terms of Reference (ToR): The formal document submitted for the Minister's approval early in the EA process which sets out the work plan to be followed during the production of the EA document. Once approved, the ToR forms the framework against which the EA document is compared.

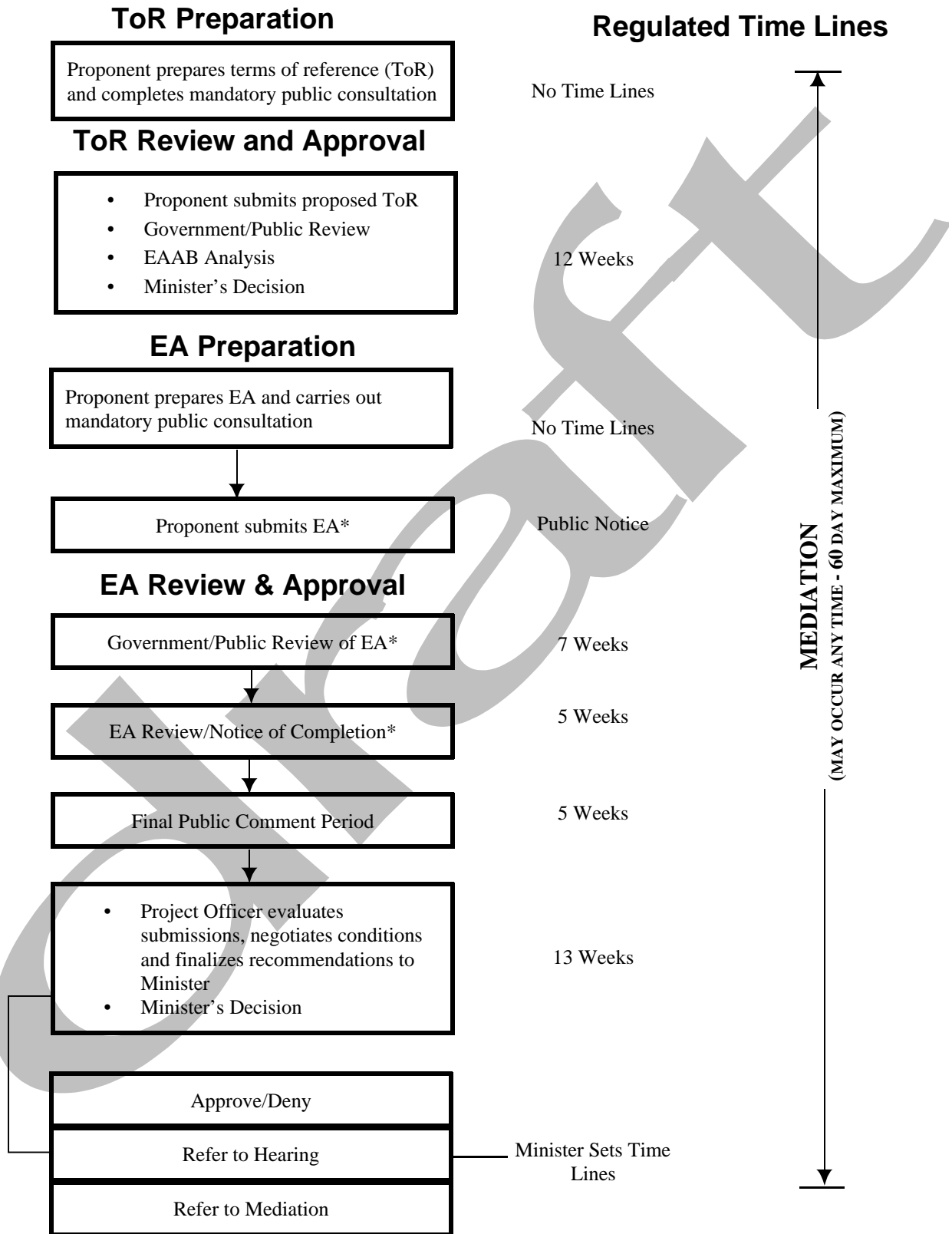
ToR: Terms of Reference.

Undertaking: An enterprise, activity or a proposal, plan or program with respect to an enterprise or activity that a proponent initiates or proposes to initiate.

**APPENDIX 2: TIME LINES IN THE ENVIRONMENTAL ASSESSMENT
PROCESS**

Draft

APPENDIX 2 Time Lines in the Environmental Assessment Process



* Director may issue Deficiency Statement

APPENDIX 3:TERMS OF REFERENCE FORMS

General Information and Instructions

General:

The information provided on this form is voluntary and precedes the completion of the Terms of Reference Summary Form for the Environmental Assessment Activities site of the Environmental Bill of Rights web site. The Project Initiation Form is a customer-service tool that expedites the assignment of a Project Officer to your proposal.

Instructions:

1. Questions regarding the completion and submission of this form should be directed to Client Services at the Environmental Assessment and Approvals Branch (416-314-8001 or 1-800-461-6290).
2. Based on your initial understanding of the proposed undertaking, please list the "Key Agencies" that may have a mandated interest in the project. In addition, please consider which ministries and agencies will likely be involved in the development and review of the terms of reference. Note: a Government Review Team master list is available from the Environmental Assessment and Approvals Branch for your review and consideration. To obtain a copy please call 416-314-8001 or 1-800-461-6290.
3. Please send the completed form to:

Ministry of the Environment,
 Director, Environmental Assessment and Approvals Branch
 2 St. Clair Avenue West, Floor 12A, Toronto, ON M4V 1L5

Proponent Information

Name of Organization:			
Contact Name:	Tel:	Fax:	E-mail:
Proponent Type: <input type="checkbox"/> Crown Corporation <input type="checkbox"/> Federal Government <input type="checkbox"/> Municipal Government <input type="checkbox"/> Provincial Government <input type="checkbox"/> Joint Proponents <input type="checkbox"/> Other (<i>describe</i>):			Complete Mailing Address:

Project Information

Project Type: (<i>highway, transit, hydro, waste disposal, water and wastewater, other</i>)
Project Location: (<i>lot, concession, address, alignment, study area, etc. Please include a map showing the location of the project within the context of existing political and geographical features. The map should fit onto one letter-sized page.</i>)
Project Background: (<i>Add one additional page if required to provide a complete summary.</i>)
Anticipated Terms of Reference Submission Date:
Key Agencies:
Other Interested Parties:

General Information and Instructions

General:

Information requested on this form is collected under the authority of Ontario Regulation 615/98 made under the *Environmental Assessment Act*. The project information provided on this form will be posted for a minimum 30-day consultation period, on the Environmental Assessment Activities portion of the Environmental Bill of Rights (EBR) web site.

The *Terms of Reference Summary Form* must be posted on the web site in both English and French. The Ministry requires 5 - 10 business days for translation services. Thus, the completed summary form should be submitted to the Project Officer assigned to the undertaking two weeks prior to the posting date. The proponent is responsible for ensuring that copies of the terms of reference (ToR) are delivered to the appropriate government reviewers and identified stakeholders on or before the posting date. The proponent must contact the Project Officer to determine an appropriate posting date. The posting of the ToR summary information also represents the commencement of the regulated time line for the review and approval of the proposed ToR.

Instructions:

1. Please refer to A Guide to Preparing Terms of Reference for Environmental Assessments for an explanation of the information to be summarized.
2. The information provided on this form must be thorough and accurate. Questions regarding the completion and submission of this form should be directed to the Project Officer assigned to your undertaking. Incomplete forms cannot be processed.
3. Please ensure that you have included the proposed **Distribution List**, the **Study Area Map** and a copy of the proposed **Terms of Reference** with this form.
4. Please send the completed form to:

Ministry of the Environment,
Director, Environmental Assessment and Approvals Branch
2 St. Clair Avenue West, Floor 12A, Toronto, ON M4V 1L5
5. Information provided on this form is not considered confidential and all or part of it may be posted on the Environmental Assessment Activities portion of the Environmental Bill of Rights web site.

Proponent Information

Name of Organization		
Proponent Type: <input type="checkbox"/> Crown Corporation <input type="checkbox"/> Federal Government <input type="checkbox"/> Municipal Government <input type="checkbox"/> Provincial Government <input type="checkbox"/> Joint Proponents <input type="checkbox"/> Other (<i>describe</i>):	Complete Mailing Address	

Project Information

Project Type (<i>highway, transit, hydro, waste disposal, water and wastewater, other</i>)
Project Location (<i>lot, concession, address, alignment, study area, etc.</i>)

Summary (*Summarize the proposed terms of reference using the headings below. Further use of subheadings may be appropriate. The summary should not exceed 4 pages.*)

Background
Description of the Proposed Undertaking
Description of the Expected and Potential Environmental Effects (<i>Social, Cultural, Economic and Biophysical</i>)
Alternatives to be considered in the EA (<i>List and describe.</i>)
Environmental Assessment Work Plan (<i>Proposed activities to be completed during the preparation of the EA</i>)
Environmental Assessment Consultation Plan (<i>Describe briefly.</i>)

Summary*(continued...)*

Other Approvals *(Consideration should be given to approvals required under other legislation)*

Consultation *(Describe the consultation that was undertaken to develop these terms of reference.)*

Translation of Summary Form *(translation of the complete ToR document is not required)*

Proponent requests that MOE provide translation of Summary Form

Proponent has attached translation of Summary Form

Statement of Proponent

I, the undersigned hereby declare that, to the best of my knowledge, the information contained herein and the information submitted in support of this form is complete and accurate in every way.

Name *(please print)*

Title

Signature

Date *(yyyy/mm/dd)*

0020(10/00)(Reverse)

APPENDIX 4: SAMPLE NOTICE OF SUBMISSION

DRAFT

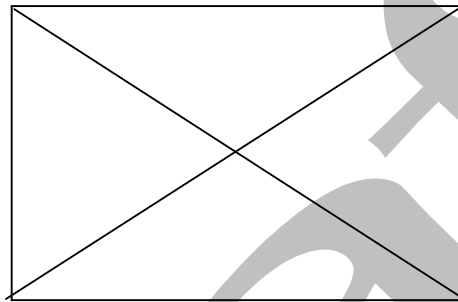
APPENDIX 4

Sample Notice of Submission Terms of Reference

Name of Proposed Undertaking

As part of the **<undertaking>** planning process, Terms of Reference (ToR) were recently submitted to the Ontario Ministry of the Environment (MOE) for formal review as required under the provincial *Environmental Assessment Act*. If approved, the ToR will serve as a benchmark for the preparation and review of the environmental assessment (EA) document for this undertaking.

The **<undertaking under consideration>** is intended to address the **<identified problem or opportunity>**. If approved, the proposed undertaking and its alternatives will be located in the location(s) identified on the map below.



You may inspect the ToR during normal business hours at the following locations:

1. Ministry of the Environment
Environmental Assessment & Approvals Branch
2 St. Clair Avenue West
Toronto, ON M4V 1L5
(416) 314-8001
2. **<Appropriate MOE district and/or regional offices>**
3. **<Proponent's offices>**
4. **<Other locations as appropriate to meet the needs of the interested public (e.g., municipal offices, public libraries)>**

Your written comments regarding the ToR must be received prior to **<the last day in the public comment period>**. All comments should be submitted to:

<Name of Project Officer>, Project Officer
Environmental Assessment & Approvals Branch
Ministry of the Environment
2 St. Clair Avenue West
Toronto, ON M4V 1L5
(416) 314-**<####>**

A copy of all comments will be forwarded to the proponent.

Under the *Freedom of Information and Protection of Privacy Act* and the *Environmental Assessment Act*, unless otherwise stated in the submission, any personal information such as name, address, telephone number and property location included in a submission will become part of the public record files for this matter and can be released, if requested, to any person.

APPENDIX 5: ToR AMENDMENTS AFTER FORMAL SUBMISSION

Draft

APPENDIX 5

TOR AMENDMENTS AFTER FORMAL SUBMISSION

Any ToR submission should be thoroughly reviewed by the proponent prior to formal submission to ensure that appropriate consultation has been conducted, and that all issues have been addressed. If the proponent should become aware of an issue that was not adequately addressed in the original submission and chooses to make amendments to the proposed ToR after the formal submission date, the regulated time lines will be affected. The extent to which time lines will be altered depends on both the extent of the amendments and the review stage during which the amendments are made. The information below provides a general overview of the effect that amendments will have on the regulated time lines.

Proponents who intend to extensively amend the submitted ToR should withdraw the ToR before the Minister's decision. Resubmitted ToRs are treated in the same way as new ToRs.

Amendments During the Review Period (The First Five Weeks after Submission)

During the 5-week review period immediately following submission, the proposed ToR is reviewed and evaluated by the public, members of the government review team, and the Project Officer.

EAAB does not recommend that proponents suspend the ToR review period in order to make amendments. It is in the proponent's best interest to ensure that all comments are received before any changes are made so that the amendment period can be used to address all issues and concerns. However, should the proponent choose to make an amendment during this period, the following procedure applies.

If the proponent notifies the ministry during the review period that the proposed ToR will be amended, the proponent must advise all reviewing parties (including those informed by the published notice) to suspend the review until the new material is submitted. This suspension in the review process is referred to as a "time-out period". The proponent is responsible for repeating the notification and consultation process and providing detailed explanations of all changes made in the new submission once changes have been made and resubmitted. Detailed information about the notification procedures must be provided to the Project Officer with the submission of the amended ToR. This information will contribute to the ministry's determination of whether the second submission is an amended ToR or a new ToR.

If the submission is considered to be an amended ToR, the time-out period must be limited to 8 weeks. Therefore, the Minister will proceed to consider the proposed ToR as originally submitted if the proposed amendment is not received within 8 weeks of the suspension of review.

Once the amended ToR is resubmitted, the Minister will repeat the public comment period. As a result, the Minister will make a decision 12 weeks after the amended ToR is submitted.

Amendment after the Review Period

By the fifth week after submission, the government review team has submitted their comments to the Project Officer and those comments have been shared with the proponent. If the proponent chooses to revise the proposed ToR in response to the comments received, the proponent must inform the Project Officer in writing. Only minor amendments to small portions of the proposed ToR are appropriate after the end of the review period.

If the proponent wishes to make significant changes to the proposed ToR, it is most appropriate to withdraw the ToR and make a new submission once changes have been completed.

Proponents who are unsure as to the most appropriate course of action should consult the Project Officer.

The proponent is responsible for notifying all members of the government review team that changes have been made, however, only reviewers and members of the public with a specific interest in the section being amended should be asked to review the proposed changes. As the public consultation period is complete, public notification and consultation about minor amendments may not be required provided that the changes do not change the intent of the original submission. The Project Officer should be consulted prior to re-submission to determine whether the amendments should be circulated for public comment.

The proponent is responsible for providing detailed explanations of all changes made in the new submission when changes are made and resubmitted. Detailed information about any consultation conducted with respect to the amendments must be provided to the Project Officer with the submission of the amended ToR. This information will contribute to the ministry's determination of whether the second submission is an amended ToR or a new ToR.

Once amendments have been submitted, the deadline for the Minister's decision will be rescheduled. In general, a time out may not last longer than 8 weeks. As a result, the Minister will resume consideration of the proposed ToR as originally submitted if amendments are not received within 8 weeks of the time out.

If the proposed ToR is resubmitted within the 8-week time-out period, and the Project Officer determines that the changes were not substantial, then the Minister will make a decision about the proposed ToR within 7 weeks of the re-submission date.

If a submission is determined to be substantially different from the initial ToR submission, the Minister will treat the submission as a new ToR and may take the full 12-week review period to make a decision.

AMENDMENTS BY THE MINISTER

The Minister may determine that it is necessary to amend the ToR before it can be approved. If this occurs, the Minister may simply make the change(s), or the proponent and other interested parties may be given the opportunity to comment on the proposed amendment(s). The Minister's decision about whether to offer an opportunity for comment will depend on the nature of the proposed amendment(s).

The Minister will make every effort to meet the deadlines prescribed in the regulation, subsection 10(4) provides that "a decision of the Minister is not invalid solely on the ground that the decision was not made before the applicable deadline." Therefore, the Minister's decision is still valid if unforeseen circumstances delay the Minister's decision beyond the time allotted in the deadlines regulation.

APPENDIX 6: STEPS IN THE TERMS OF REFERENCE PROCESS



General Information and Steps

General:

The preparation, review, and approval of the Terms of Reference (ToR) are required before the approval process for an environmental assessment document can begin under the *Environmental Assessment Act* (EAA). The following list of steps in the ToR preparation process is intended as a guide for proponents. In depth instructions and clarification can be obtained from the most recent edition of the *Guide to Preparing Terms of Reference for Environmental Assessments* and from the Project Officer assigned to an undertaking.

Steps:

1. The proponent determines whether an undertaking exists as defined in the EAA.
2. The proponent contacts the Ministry of the Environment (MOE) to get information about EAA requirements.
Telephone: 416-314-8001
Toll-free: 1-800-461-6290
Fax: 416-314-8452
3. The proponent determines whether the EAA applies.
 - a. If not, proponent proceeds with other approvals as necessary.
 - b. If the EAA applies, the proponent continues with step four.
4. The proponent fills out and submits a *Terms of Reference Project Initiation Form*.
5. The proponent receives a letter acknowledging the undertaking, a copy of the *Guide to Preparing Terms of Reference for Environmental Assessments* (2001), if necessary, and the name of the Project Officer assigned to the proposed undertaking.
6. The proponent plans a project initiation meeting to discuss the proposed undertaking, EA procedures and EAAB expectations with the Project Officer (optional).
7. The proponent prepares the ToR.

Terms of Reference Preparation

8. The proponent identifies the most appropriate membership for the government review team for the undertaking in consultation with the Project Officer.
9. The proponent conducts public consultation while preparing the ToR. The guideline entitled *Consultation in the Environmental Assessment Process* (2001) is consulted.
10. The proponent prepares a draft ToR (not a legislated requirement). If the proponent chooses to circulate, the proponent will follow the instructions for the circulation and review of a draft ToR contained in the Appendix 7 of the *Guide to Preparing Terms of Reference for Environmental Assessments* (2001).
11. The proponent prepares the final draft of the ToR.

Two weeks prior to submission

12. The proponent informs the Environmental Assessment and Approvals Branch (EAAB) of the intended submission date.
13. The proponent confirms the membership of the government review team.



14. The proponent submits a *Terms of Reference Summary Form* to EAAB.
15. The proponent submits a translation of the *Terms of Reference Summary Form* to EAAB (optional).

Submission Date

16. The proponent submits the proposed ToR to EAAB.
17. The proponent gives public notice of submission of the proposed ToR.
18. The proponent provides copies of the proposed ToR to all members of the government review team.
19. The proponent delivers copies of the proposed ToR to places of public record identified in the public *Notice of Submission*.

After ToR Submission

20. The proponent receives a letter acknowledging the submission of the proposed ToR.
21. The proponent receives government review team comments from the Project Officer.
22. The proponent responds to government review team comments within one week of receipt.
23. The proponent receives public comments from the Project Officer.
24. The proponent provides responses to public comments to the Project Officer.
25. The proponent considers whether the proposed ToR needs to be changed in response to comments received.
 - a. If the proponent chooses not to modify the proposed ToR, the proponent notifies the Project Officer in writing.
 - b. If the proponent chooses to modify the proposed ToR, the proponent notifies the Project Officer in writing and the Minister's decision is put on hold.
 - i. The proponent may be required to re-circulate the amended ToR to members of the government review team and the public for comment prior to re-submission.
 - ii. The time line for the Minister's decision about the proposed ToR is extended.
 - c. If the proponent chooses to withdraw the proposed ToR in order to replace it with a new one or to end the consideration of the proposed undertaking, the proponent informs the Project Officer in writing.
26. The proponent is notified of the Minister's final decision.

**APPENDIX 7: DRAFT TERMS OF REFERENCE CIRCULATION AND
REVIEW INSTRUCTIONS FOR PROPONENTS**

Draft



General Information and Instructions

General:

Government review of a draft Terms of Reference (ToR) is not required under the *Environmental Assessment Act* (EAA). If the proponent chooses to circulate a draft ToR to government reviewers for comment, the responsibility for organizing and co-ordinating the draft review lies solely with the proponent. As government reviewers are not obligated to review a draft, proponents should approach each prospective reviewer to discuss the conditions under which a review will be conducted. Proponents should be aware that government reviewers will not generally review more than one draft ToR for a given undertaking.

This instruction sheet conveys the basic expectations of proponents who choose to circulate a draft ToR for review.

Instructions:

1. Proponents should decide whether the draft ToR will be circulated to the entire government review team (GRT) selected for the proposed undertaking, or whether circulation of the draft will be limited to a smaller number of reviewers. In making this decision, proponents should consider the results of previous consultation efforts with each GRT member, and the potential of the proposed undertaking to have an impact on the mandate of the agency that each GRT member represents.
2. The proponent should contact all potential reviewers (other than MOE technical reviewers) to determine whether they are willing to review a draft, and to determine how much time will be required for the draft review. The Project Officer will co-ordinate discussions with all potential MOE reviewers. The length of the draft review period must be settled with reviewers. In general, a review period of no less than 5 weeks is recommended. The Project Officer will act as the contact person for the MOE technical reviewers, therefore any materials intended for these reviewers should be sent to the Project Officer assigned to the proposed undertaking.
3. Once the appropriate draft review period has been determined, all material to be reviewed should be sent to the government reviewers two weeks prior to the beginning of the draft review period. The draft ToR should be accompanied by a letter that:
 - a. Confirms the date by which review comments are expected; and
 - b. Supplies instructions for submitting comments (reviewers should be asked to send comments directly to the proponent with an additional copy sent to the Project Officer to update the project file).

Proponents should be available to answer questions and respond to comments from GRT members during the entire draft review period.

4. Comments from reviewers form part of the public consultation record for the proposed undertaking. The public consultation record that is submitted with the ToR should clearly indicate the type of comments received from government reviewers, and the steps that were taken to address any comments or concerns. It is appropriate to prepare a table outlining both comments received and responses to them to be submitted with the formal ToR submission. In addition, copies of all correspondence with the GRT and the public should be included in the consultation record submitted with the formal ToR submission. The consultation record does not form part of the ToR.
5. Comments from MOE technical reviewers will be forwarded to the proponent at the end of the draft review period.
6. Once all comments have been received, proponents should revise the draft ToR as appropriate and prepare for formal ToR submission.