



TRANSPORT ACTION ONTARIO

Advocating Environmentally, Socially & Economically Sustainable Transportation
Box 6418, Station "A" Toronto, ON, M5W

DRIC: ROAD-BASED INFRASTRUCTURE IN THE ERA OF CLIMATE CHANGE Panel Presentations, March 27, 2010

Summary* of Presentation by Albert Koehl, Staff Lawyer, Ecojustice

Fifty percent of greenhouse gas (GHG) emissions come from transportation once one adds such things as oil and gas refining, car-making and road building to tail pipe emissions. According to scientists, we would need a reduction of at least 80% of GHG emissions by 2050 to avoid massive and irreversible impacts on our climate. The road over the climate precipice is paved – and often six lanes wide.

Environmental Assessments (EAs) are difficult to challenge in courts unless specific obligations, usually procedural steps, have not been followed by government bodies.

The broad objectives of the federal Environmental Assessment Act are not being met. The Act focuses on sustainability, the precautionary principle, and of course sound decision-making. Of course decisions that lead to ever-increasing GHG emissions and thereby over the climate precipice cannot be considered part of "sound decision-making."

One problem with the federal Act is that the term "significant" is not defined. Environmental assessments are supposed to avoid "significant adverse environmental effects." When Ecojustice challenged the Kearl tar sands project in court, the project was approved on the basis that 3.7 million tonnes of GHG (carbon dioxide equivalent) emissions each year had "no *significant* adverse environmental effects." The EA is a planning tool that in its present form legitimizes bad decision-making.

The three levels of federal EAs in Canada are as follows: Panel Review; Comprehensive Study (which requires that alternatives be considered) and Screening Report (which is the lowest and most common level of a federal EA and which does not require that alternatives be considered)

The provincial EA details what a proponent must study in the course of an EA – matters that will be set out in the Terms of Reference of a proposed project. For example, the Act requires that the terms include "an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking". Changes to the EA process in 1996 under the government of Mike Harris, however, now make it possible for the government to approve Terms of Reference that do not include matters that must otherwise be considered. Specifically the amended Act allows the government to approve terms that consist of information "other than that required by the Act". A challenge of this provision on the basis that it undermined the objectives of the Act was rejected by Ontario's Court of Appeal in 2004; an appeal to the Supreme Court of Canada was denied.

Ontario's Environmental Commissioner of Ontario (ECO) Gordon Miller in his 2008 Annual Report [entitled "Getting to K("no")w"]** commented on weaknesses of the EA process. He also noted in that report that the EA process almost never denies approval for a project that is proposed. Recently he stated that Ontario is especially deficient in acting in the transportation area to reduce GHG emissions.

Ontario's Provincial Policy Statement, 2005, is a document under the Ontario Planning Act that sketches out sustainable planning such as increasing density and avoiding sprawl. However, the language in the document is weak; it often uses the term "should" rather than mandatory language. Mandatory language is preferable. Since the PPS 2005 is about to be reviewed by the Ontario government, there is an opportunity to have climate goals incorporated and thereby oblige municipal decision-makers to build more sustainable transportation infrastructure by promoting mass transit, cycling, and walking. One could then also further ensure implementation of such goals by forcing the EA process to consider compliance with other provincial planning provisions or policies, such as the PPS 2005.

Albert told Transport Action Ontario to continue doing what we do – working at getting people out of cars since we are the only environmental organization with that specific aim.

* This summary was prepared by Transport Action Ontario and Albert Koehl on June 1, 2010..

** available on line at http://www.eco.on.ca/eng/uploads/eng_pdfs/2008/ar2007.pdf

To learn about Transport Action Ontario's position on DRIC, go to <http://www.transport-action.ca/ontario/>