



**SUBMISSIONS  
OF LAKE ONTARIO WATERKEEPER TO  
MINISTRY OF THE ENVIRONMENT**

**RE: ENVIRONMENTAL ASSESSMENT ACT (EAA)  
DESIGNATION AND EXEMPTION OF INTEGRATED  
POWER SYSTEM PLAN (IPSP)**

**DOCUMENT: EBR REGISTRY #XA06E0006**

**SUBMISSION DATE: JULY 20, 2006**

Blair Rohaly, Project Manager  
Strategic Policy Branch  
135 St. Clair Ave. West, 11<sup>th</sup> Floor  
Toronto, ON M4V 1P5  
**BY FAX: (416) 314.2976**

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Lake Ontario Waterkeeper is a registered charity and environmental justice organization working to win back our rights to safely swim, drink, and fish in Lake Ontario. We submit this application pursuant to our rights provided under the *Environmental Bill of Rights*.

**Recommendation**

Lake Ontario Waterkeeper (“Waterkeeper”) strongly objects to Ontario Regulation 276/06 (“the Regulation”). We recommend that the Ministry of the Environment immediately withdraw the Regulation.

The grounds for this recommendation are as follows:

**Grounds for Recommendation**

- A. The Regulation is contrary to the purpose of the Ontario *Environmental Assessment Act* (the “Act”).
- B. The Regulation threatens the legitimacy of the Act.
- C. The Regulation does not reflect the wishes of the public.
- D. The Regulation creates alarming uncertainty around the future of nuclear power in Ontario.

## **Background**

The Integrated Power System Plan (“IPSP”) is the blueprint for Ontario’s energy future. It has been the subject of much public consultation and controversy in recent months, with government, industry, public interest organizations, and private citizens expressing impassioned and differing opinions about the contents of the plan and the process by which it should be refined and implemented.

In the midst of this controversy, the Government of Ontario passed Ontario Regulation 276/06, which exempts the IPSP from the *Environmental Assessment Act*. This Regulation instantly became the most sweeping exemption ever introduced under the Act. It is broad, applying to Ontario’s entire energy policy. It is historic, being one of the largest financial undertakings in the province’s history. And it is grave, since it compels enormous and simultaneous undertakings – each with the potential for massive environmental impacts.

### **A. The Regulation is contrary to the purpose of the Ontario *Environmental Assessment Act* (the “Act”).**

The purpose of the *Environmental Assessment Act* is, “the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment.” (Section 2)

Waterkeeper submits that the Regulation is contrary to this purpose, since it utterly fails to ensure the protection, conservation, or wise management of Ontario’s environment. Indeed, the very purpose of the Regulation is to exempt the Integrated Power System Plan from the scrutiny and benefits of an environmental assessment.

Furthermore, Waterkeeper is not at all reassured by the following statement, contained in the Environmental Registry notice: “The projects which result from the IPSP will be subject to all applicable environmental assessment processes.” The existence of the Regulation and the manner in which it was made confirm that the Lieutenant Governor in Council is prepared to exempt pet projects from the Act at will. There is no certainty whatsoever that each project resulting from the IPSP will undergo an environmental assessment. Thus, there is no certainty that these projects will satisfy the purpose of the Act.

### **B. The Regulation threatens the legitimacy of the Act.**

The Regulation undermines the Act’s role as a decision-making tool and a roadmap for due process in Ontario. The Act is supposed to create a process by which significant undertakings can be designed, refined, and implemented in a way that maximizes the protection, conservation and wise management of Ontario’s environment. It is not supposed to be a process reserved for projects that do not have the backing of the province’s elected officials. To exempt a major initiative such as the IPSP from the Act solely on the grounds that the plan is “government policy” means that: (a) projects that reflect government policy do not require proper scrutiny or

due process, and (b) the only projects that should be subject to the Act in the future are projects that are contrary to government policy. Thus, the Regulation displays a shocking disregard for the rule of law in Ontario, introducing an inappropriate and potentially devastating bias into the application of the Act.

### **C. The Regulation does not reflect the wishes of the public.**

The Government of Ontario and the Ontario Power Authority have been engaging in public consultation regarding the IPSP for quite some time. Consultation programs have included invitation-only meetings, public town halls, and Environmental Registry comment opportunities, among other things. Written submissions, transcripts of meetings, press releases, and editorials from the public have consistently reiterated strong public support for an environmental assessment of the IPSP.

At no point in the public consultation process was it ever made clear to the public that the IPSP would be exempt from the Act. Only after comments – including a legal opinion that an environmental assessment would be required – were submitted to the government in good faith did the Lieutenant Governor in Council pass a Regulation without prior notice exempting the IPSP from the Act. Furthermore, reasons for the decisions were not published. A response to the issues and concerns raised by the public was not offered. Affected stakeholders were not notified.

Similarly, only after details of the Regulation became public and only after significant public outcry was the Regulation even formally released to the public. Waterkeeper submits that the failure to notify the public was patently unfair and violates the spirit and intent of s. 16(1) of the *Environmental Bill of Rights*. This section encourages the Minister of the Environment to, “do everything in his or her power to give notice of the proposal to the public at least thirty days before the proposal is implemented.” The Environmental Registry notice suggests that the Regulation is, “administrative in nature.” Waterkeeper strongly disagrees with this description, due to the scope, financial significance, and potential environmental impacts of the IPSP.

### **D. The Regulation creates alarming uncertainty around the future of nuclear power in Ontario.**

By exempting the IPSP from the requirements of the Act, the Regulation creates alarming uncertainty regarding the regulatory approvals process for new and/or expanded nuclear facilities in Ontario. While the public expects the province to complete environmental assessments, the Government of Ontario has stated several times that it will opt-out of the provincial process in favour of the federal. Abandoning the provincial process will significantly reduce the level of environmental protection for a number of reasons:

- The federal environmental assessment is restricted to the analysis and mitigation of the impacts of nuclear-related materials only, and does not protect humans or the environment from other industrial emissions

- The federal process will not examine the very need for nuclear facilities
- The federal process is notoriously inaccessible to the public and does not provide the level of involvement citizens expect in decisions of this magnitude

### **Conclusion and Recommendation**

For the reasons articulated above, Lake Ontario Waterkeeper strongly objects to Ontario Regulation 276/06 and recommends that the Ministry of the Environment immediately withdraw the Regulation.

Submitted by:

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Mark Mattson  
Waterkeeper & President  
July 20, 2006