

Submission
Proposal to Amend Ontario Regulation 213/91
Construction Projects to Modernize the Notice of Project
Requirements

September 2021

Council of Ontario Construction Associations

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Notice of Project Modernization
Health, Safety and Insurance Policy Branch
Ministry of Labour Training and Skills Development
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Re: Proposal to Amend Ontario Regulation 213/91 – Construction Projects to Modernize the Notice of Project Requirements

The Council of Ontario Construction Associations (COCA) is a federation of 29 construction associations representing approximately 10,000 general and trade contractors, both unionized and non-union, of all sizes, that perform work in the industrial, commercial, institutional (ICI) and heavy civil construction sectors in all regions of Ontario. COCA is mandated to work with our members and officials at Queen’s Park to ensure that the provinces laws and regulations support success in the construction industry and foster broad prosperity across the province.

We are pleased to have this opportunity to respond to the questions posed in your consultation paper on the above noted proposal.

1. Do you think the expanded list of hazard-based triggers can effectively replace the monetary threshold? Are there other factors the ministry should consider?

- In general, we agree with the transition to a hazard-based approach to the requirement to file a Notice of Project (NoP)
- We appreciate the challenge in attempting to identify a fully comprehensive list of all high hazard construction activities appropriate for the requirement to file an NoP.
- If the list, once it is finalized by the MLTSD, is fully inclusive of all possible high hazard triggers, then it should serve as an effective means to identify where all hazardous construction activities are taking place in order to appropriately deploy enforcement personnel
- It is quite likely that a number of high hazard triggers will be inadvertently missed when the list is finalized and that the list will not be as comprehensive as it should be. But we appreciate that you have to start somewhere, even if that means the list is not comprehensive.
- Going forward there will be the introduction of new tools, products and processes into the industry that may bring along with them new previously unforeseen hazards

- During the first 12 months that the new regulation is in force, there should be a well-defined process to quickly and efficiently incorporate into the regulation hazards that were inadvertently missed or overlooked and did not appear in the list of hazards contained in the original drafting. The Provincial Labour-Management Health and Safety Committee (PLMHSC), which convenes monthly, could serve as the forum and filter through which these missed or overlooked hazards could be evaluated before being advanced to the MLTSD for inclusion into an enhanced regulation. Thereafter, there should be an annual process to consider new hazards for inclusion in the regulation
- The current \$50,000 threshold does not identify with any specificity where high hazards exist and likely identifies many projects where high hazards are not present. For example, a residential kitchen or bathroom renovation with high quality finishes can easily exceed the \$50,000 threshold but present no significant hazards
- NoPs should be filed online digitally in a way that they can be automatically forwarded to the MLTSD offices responsible for the area where the construction work is taking place and can be sorted according to the types of hazards. In this way MLTSD inspectors across the province will be able to determine almost immediately where their efforts should be spent and which construction sites to visit based on their understanding of the hazards present on various sites in their assigned areas and their knowledge of the contractors at these sites
- This approach should allow the MLTSD to deploy inspectors to the sites where they are most needed and not to sites that don't warrant their attention

2. Do you agree with the list of potential new hazard-based triggers? Why or why not?

- As stated above, in general, we agree with the move to a hazard-based approach to the requirement to file an NoP
- Filing NoPs based on hazard triggers will indicate to the MLTSD inspectors where the hazards that should be inspected are present. It should lead to more efficient and effective allocation of enforcement resources.
- The list of hazard-based triggers is very good but may not be as comprehensive as it needs to be. As recommended above, there must be processes in place through which additional high hazard triggers can be incorporated into the regulation as they emerge

3. What other high hazard activities should require the ministry to be notified? Please provide examples and explain why.

Other high hazard construction activities that should be considered for addition to the list include the following:

- Work where there exists the potential for exposure to designated substances
- Work in proximity to electrical power lines, substations, apparatuses etc. where there is the possibility of electrical contact
- Masonry work where scaffolding has been erected and there is the possibility of bricks, tools, equipment etc. to be dropped onto workers that could be below
- Consideration should be given to a provision for “struck by” incidents which are a significant cause of serious worker injuries

4. Are there other suggestion for ways that the ministry could make it easier to comply with NoP requirements?

- We presume that the NoP form will have to be significantly changed if this proposal is enacted
- The new form should be made easy to complete and submit online
- The NoP form should be fully digital and sortable by the users at the ministry in order to identify the locations and the type of high hazard activities quickly and easily
- It is our understanding that MLTSD inspectors are assigned territories based on postal codes. The NoP form should be formatted and digitized in such a way that when it is filed online, it is automatically emailed to the MLTSD inspector responsible for the territory in which the associated construction work is taking place. This will allow the inspector to take appropriate and more immediate action
- NoPs should be in a form that is fully sortable including but not limited to postal code (as above), contractor name and by the types of hazards. In this way inspectors across the province will be able to determine where their efforts are best spent and which construction sites should be visited based on their understanding of the hazards present on various sites in their assigned areas and on their knowledge of the contractors working at these sites
- Failure to file a NoP is a contravention of the Occupational Health and Safety Act and is subject to a part 1 or part 3 prosecution. However, it is our understanding that the MLTSD enforcement policy in this regard is extremely weak and the consequences amount to little more than “a slap on the wrist”. Consideration should be given to strengthening MLTSD enforcement policy for failure to submit an NoP and imposing more severe penalties

- Consideration should be given to providing contractors that have proven experience and in certain defined circumstances, with the ability to submit bulk or batch NoPs. In a batch submission, the contractor would report the location, start and completion dates, dollar value, and the hazards present for each project included in the submission. This provision would be particularly helpful for electrical utilities such as Toronto Hydro and Hydro One that have numerous low dollar value but high hazard projects that under the proposal would create an onerous administrative burden.
- The list of high hazard triggers must be subject to annual reviews
- Consideration should be given to providing a mobile app for the submission of NoPs
- MLTSD inspectors must be able to precisely locate construction projects for which NoPs are filed. Therefore, the physical address of the project including the postal code, a GPS locator or other locating technology used by the MLTSD must be required information on the NoP online form so that MLTSD inspectors can precisely know the locations of construction projects
- Hazards that are not known at the beginning of a project but become known as projects proceed should be reported to the MLTSD

5. Would this proposal increase, decrease, or have no effect on the amount of time that your workplace spends on filing NoPs?

- The amount of time required to complete and submit the NoP will depend upon the amount of information requested on the newly designed form
- If the form is designed in a way that is easy to understand, complete and submit, then it should take no more or less time than under the current \$50,000 threshold

6. Other

- Consideration should be given to broadening the purpose of NoPs beyond identifying construction sites where high hazards exist to which MLTSD inspectors should be deployed, to include cooperation/collaboration with other federal and provincial government Departments/Ministries/Agencies and sharing the data and filings they may possess in order to uncover companies that are operating in the underground economy

These are our submissions respectfully submitted.

A handwritten signature in blue ink that reads "Ian Cunningham". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Sincerely,

Ian Cunningham
President