



CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
*L'Association canadienne du droit de l'environnement*



CANADIAN INSTITUTE FOR  
ENVIRONMENTAL LAW AND POLICY

L'INSTITUT CANADIEN DU  
DROIT ET DE LA POLITIQUE  
DE L'ENVIRONNEMENT

February 9, 2009

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Ministry of the Environment  
Integrated Environmental Planning Division  
Land and Water Policy Branch  
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*Via fax (416) 326-0461*

Dear Ms. Howard:

**Re: EBR Registry No 010-4642 – Proposal for Amending Ontario Regulation 153/04,  
Brownfields Records of Site Condition**

The Canadian Environmental Law Association ("CELA") is a public interest group founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities.

CELA has been involved with the issue of brownfield redevelopment for many years and previously participated in the Ministry of Environment's ("MOE") Lender Liability Working Group. We are also a member of the Ministry of Municipal Affairs and Housing's Brownfield Stakeholder Group and have actively participated in consultations relating to brownfield redevelopment.

The Canadian Institute for Environmental Law and Policy (“CIELAP”) was founded in 1970, with the mission of providing leadership in the research and development of environmental law and policy that promotes the public interest and sustainability. CIELAP has researched and reported on the connections between brownfield redevelopment and hazardous wastes in Ontario within the context of our ongoing work on hazardous wastes. We are also a member of the Ministry of Municipal Affairs and Housing’s Brownfield Stakeholder Group.

CELA and CIELAP are generally supportive of most of the proposed regulatory provisions and believe they will facilitate brownfield redevelopment in Ontario. The improvements to the Record of Site Condition (RSC) process, such as the review of all RSCs prior to filing, are especially positive and welcome. The proposed process should ensure greater transparency and improved quality of the RSCs filed on the Brownfield Registry. CELA and CIELAP support the

Although CELA and CIELAP generally support the proposed package of regulatory amendments, we wish to draw your attention to the following concerns.

### **Modified Generic Risk Assessment**

The provincial government is proposing that a modified generic risk assessment process be introduced to expedite brownfield redevelopment. A related amendment would remove the requirement that a proposed Certificate of Property Use (CPU), in relation to a modified generic risk assessment, be posted for public notice and comment on the Environmental Registry established under the *Environmental Bill of Rights*. This would also prevent these CPUs from subject to an application for leave to appeal to the Environmental Review Tribunal by a third party.

While the removal of these public rights is clearly intended to meet the objective of expediting CPUs related to a modified generic risk assessment, CELA and CIELAP are concerned about the loss of these rights. Members of the public who may be adversely affected by brownfield redevelopment need a mechanism to make their input known and assurance that they will have access to MOE if they have concerns. CELA and CIELAP recommend that the rights to notice and comment, and to make application for leave to appeal be retained. If these rights are removed, processes should be instituted to ensure that the public has ready access to Ministry staff to make their comments and concerns about brownfield redevelopments known. In addition, the government should commit the required financial resources to

make sure that adequate MOE staff resources are available to implement these processes and respond to any public concerns as they arise.

### **Site Condition Standards**

CELA and CIELAP strongly support updating the amendments that update standards for soil, ground water and sediment to reflect current science, and better protect human health and the environment. Although the proposed standards are currently within the range of the jurisdictions surveyed in MOE's comparative study of other jurisdictions, it is important that the Ministry continue to monitor advances in scientific research, and future changes to other jurisdictions' standards, and modify the regulation accordingly, to ensure Ontario standards remain up-to-date.

### **Treatment of Contaminated Soils**

As a consequence of the proposed stricter standards for soil, it is likely that an increased amount of untreated, contaminated soil will be going as waste to landfills in Ontario. In contrast to Ontario, Quebec has regulatory requirements restricting the types of contaminants and levels of contamination that may be disposed of in landfill sites, and requiring treatment of soil prior to going into landfill. Ontario should have a similar regulatory requirement, especially given the likelihood of an increase in the amount of contaminated soil going to landfill once the proposed regulations are made. While such a requirement may not be considered within the scope of the proposed amendments, CELA and CIELAP would strongly urge the government to introduce requirements for the treatment of contaminated soil destined for landfill.

### **Off-site Liability Protection**

The provincial government is proposing regulatory amendments that would establish the rules for the loss of regulatory liability protection where contaminants migrate off of an RSC property. It is our understanding that MOE is planning to look at the zoning of the adjacent site, as opposed to the actual conditions on the site, in assessing whether the off-site liability provisions apply. As a result, if a property is zoned industrial but is fairly clean, the off-site exemption could conceivably allow greater contamination to occur on the adjacent property, provided it does not exceed the standards set for industrial areas. Consequently, the proposed off-site liability provision would mean that MOE would take no regulatory action, such as issuing a Director's order, to deal with a situation in which contamination was spreading off

of a property and contaminating a more pristine adjacent property. CELA and CIELAP are concerned that the off-site liability provisions have been drafted in this manner, and urge the government to revisit and amend the draft regulatory provisions.

In conclusion, CELA and CIELAP are supportive of proposals that would promote brownfield redevelopment in Ontario. Brownfield redevelopment in the province should result in the clean up of contaminated lands as well as the revitalization and intensification of urban communities. CELA and CIELAP would, however, urge the government to consider these recommendations to further improve the brownfield redevelopment process.

Yours truly,  
**Canadian Environmental Law Association**



Ramani Nadarajah  
Counsel

**Canadian Institute of Environmental Law  
and Policy**



Maureen Carter-Whitney  
Research Director

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cc: The Hon. John Gerretsen, Minister of Environment  
The Hon. Jim Watson, Minister of Municipal Affairs and Housing  
Gord Miller, Environmental Commissioner of Ontario