

Clean Up Your “Act”: Understanding Brownfield Regulation in Ontario

Presented by:

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Canadian Environmental Law Association

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Hamilton, Ontario

As part of the Making the Links Project



Introduction to Brownfields

□ What are Brownfields?

- Brownfields are vacant and unused lands which may be contaminated because of their former industrial use. These sites are found all across Ontario, in rural and urban communities.

□ Why redevelop Brownfields?

- Redevelopment is important as it reuses land and utilizes existing infrastructure, services and resources.



Recent History of Brownfields Regulation in Ontario

2004 – *Brownfields Statute Law Amendment Act* and the Ontario Regulation 153/04 (Record of Site Condition Regulation) come into force



2005 – Minister of Municipal Affairs and Housing announces Office of Brownfields Coordinator

2006 – Brownfields Stakeholder Group is created

Recent History of Brownfields Regulation in Ontario

2007 – Ontario passes the *Budget Measures and Interim Appropriation Act*, which identifies barriers to Brownfield redevelopment (incl. barriers related to liability, financing and regulatory process)

July 1, 2011 - Amendments come into effect

2009 – Amendments are made to Records of Site Condition to implement reforms which had been announced by Ontario in 2007

Understanding Brownfield Standards

- ❑ The MOE has established two standards when assessing contaminated sites:
 - Generic standards
 - ❑ Commonly known as 'site condition standards'
 - ❑ Considers all the ways that exposure to contamination can occur, including consideration of physical conditions in the area
 - ❑ MOE states that this is a "conservative approach"
 - Site specific standards
 - ❑ Commonly known as the 'risk assessment approach'
 - ❑ Incorporates information about the specific conditions of a property when assessing the risk
 - ❑ This assessment may not include all the receptors considered in the generic standard

Record of Site Condition (RSC)

- ❑ RSC must be filed whenever property use changes to a more sensitive use (as determined under Part XV.1 of the EPA and O. Reg 153/04)
- ❑ RSC provide certifications by qualified persons that a property meets the appropriate standard
 - This provides limited protection from certain ministry orders
- ❑ Risk assessment is an option for owners who want to file an RSC but the property does not meet generic site condition standards
 - In this case, a risk assessment must be accepted the MOE in order for an RSC to be submitted

Significant Changes in 2009 Amendments

- Provides clarity with respect to process
 - Minimum requirements for conducting and supervising environmental site assessments are identified
 - The RSC submission process is revised, including a requirement that the Director make a decision 30 days after a completed RSC has been submitted
 - Conflict of interest requirements are strengthened with respect to Qualified persons
- A new streamlined risk assessment has been created. This is an alternative to meeting generic standards and the traditional risk assessment.
 - This modified risk assessment can be prepared using a web-based "approved model" which can be adjusted to reflect the site conditions of a specific brownfield



Significant Changes in 2009 Amendments

- ❑ The amendments also update soil and groundwater standards to reflect improvements in science
- ❑ Additional amendments clarify some technical matters for both property owners and people working on site assessments and remediation activities
- ❑ The development industry has expressed concern that the amendments will make meeting approvals difficult.



Off Site Impacts

- ❑ In some cases, before remediation, contamination from Brownfields may migrate off site and result in environmental damage and/or impact human health
- ❑ In these cases, you may wish to:
 - Contact MOE and municipality
 - Request for Investigation - Part V of the EBR provides that two Ontario residents can request a government Ministry's investigation of an alleged violation of environmental law
 - Right to Sue – While very rarely used, the EBR creates a new cause of action, that is, contravention of law and significant harm to a public resource.
- ❑ Other tools:
 - Private Prosecution
 - Civil Litigation



Public Participation in Brownfield Redevelopment

- ❑ There are opportunities to gather information and get involved in the process
 - Environmental Bill of Rights Registry for site specific risk assessments / proposals for certificates of property use
 - www.ebr.gov.on.ca
 - Brownfields Environmental Site Registry
 - ❑ <http://www.ene.gov.on.ca/environet/BESR/index.htm>
 - Public Consultation
 - ❑ Municipal Lands (public consultation will be held) vs. Privately Owned Lands (public consultation may occur)
 - Rezoning decisions are often required for Brownfield redevelopment. If this is the case, there are opportunities to become involved at the municipal level.
 - ❑ At the public meeting/open house you can submit your comments. Submitting comments and participating at these public meetings is important to preserve your right to appeal.
 - ❑ You may want to file an appeal of a rezoning decision to Ontario Municipal Board (www.omb.on.ca).

Search of EBR Registry for Hamilton



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Your search resulted in 95 page(s), 950 notice(s), [you may refine your search.](#)

▶ [Save Criteria](#)

Add	EBR Registry Number	Ministry Reference Number	Title or Proponent	Type	Published Date
<input type="checkbox"/>	010-5873	0519-7NVTPP	G.R.T. Genesis Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Decision	July 13, 2010
<input type="checkbox"/>	010-7661	7948-7U7QJQ	North American Tillage Tools Company (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Decision	June 28, 2010
<input type="checkbox"/>	011-0408	A210248-FA	Harkow Recycling Ltd., a bankrupt C/O BDO Dunwoody Limited, Trustee (EPA s. 136) - Order for performance of environmental measures.	Instrument Proposal	June 25, 2010
<input type="checkbox"/>	010-5407	8350-7M2RP6	1036928 Ontario Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Leave to Appeal	June 24, 2010
<input type="checkbox"/>	011-0339	0505-85UPTL	Bunge Canada Holdings I ULC (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	June 21, 2010
<input type="checkbox"/>	010-9691	7674-849QHH	Canada Bread Company, Limited/Pain Canada Compagnie, Limitée (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Decision	June 15, 2010
<input type="checkbox"/>	010-5713	4487-7NBMU4	1389811 Ontario Ltd. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Decision	June 15, 2010
<input type="checkbox"/>	011-0241	2285-85ZK3L	958160 Ontario Limited (EPA s. 27) - Approval for a waste disposal site.	Instrument Proposal	June 09, 2010

EBR Registry Posting for Hamilton



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Instrument Decision Notice:

Proponent: G.R.T. Genesis Inc.
173 Glidden Road
Unit 1
Brampton Ontario
Canada L6W 3L9

Instrument Type: Approval for discharge into the natural environment other than water (i.e. Air) - EPA s. 9

EBR Registry Number: 010-5873

Ministry Reference Number:

0519-7NVTPP

Ministry:

Ministry of the Environment

Date Proposal loaded to the Registry:

February 09, 2009

Date Decision loaded to the Registry:

July 13, 2010

Keyword(s): Air

Decision on Instrument:

A Certificate of Approval (Air) was issued for one (1) dust collector and one (1) general building exhaust associated with fibreglass mixing, coating, and trimming.

The attached Certificate document is intended for posting on the Environmental Registry in order to provide the reader with the substantive content of the issued instrument. Please note the official version may be differently formatted or otherwise contain minor variations from this version.

Comment(s) Received on the Proposal: 0

Public Consultation on the proposal for this decision was provided for 30 Days, from February 09, 2009 to March 11, 2009.

As a result of public consultation on the proposal, the Ministry received a total of 0 comments.

Leave to Appeal Provisions:

Contact:

Application Processor
Client Services Section
Ministry of the Environment
Operations Division
Environmental Assessment and Approvals Branch
2 St. Clair Avenue West
Floor 12A
Toronto Ontario
M4V 1L5
Phone: (416) 314-8001
Fax: (416) 314-8452

Location(s) Related to this Instrument:

428 Millen Road
Unit Unit 14
Hamilton L8E 3N9

RSC Registry Search for Hamilton



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Brownfields Environmental Site Registry

Location: Ministry > Brownfields > General Search

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Search by Number

Search Records of Site Condition and Transition Notices

Search Records of Site Condition and Transition Notices

Change

Search criteria: **Site Municipality** is HAMILTON CITY.

Press 'Number', 'Filing Date' or 'Municipality' to sort search results by that criterion.

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Number	Filing Owner	Filing Date
	RSC Property Address	Municipality
57510	RSC 1649626 Ontario Inc 801 and 803 King Street West and 80, 86 and 90 Carling Street Hamilton ON, L8N 1H5	Jun 16, 2010 HAMILTON CITY
78113	RSC Empire Communities (Stoney Creek) Ltd. 4 and 22 Green Mountain Road West, Hamilton, ON, L8J 2V5	Jun 10, 2010 HAMILTON CITY
77112	RSC Stinson School Inc. 200 STINSON ST, HAMILTON, ON, L8N 4J5	May 17, 2010 HAMILTON CITY
71915	RSC The Trustees of St. Mark's United Church of Canada, Dundas No Municipal Address Available	May 10, 2010 HAMILTON CITY
55913	RSC Hamilton Habitat for Humanity No Municipal address available	Apr 23, 2010 HAMILTON CITY
74715	RSC Manhattan West Corporation 235 MAIN ST W, HAMILTON, ON, L8P 1J5	Apr 16, 2010 HAMILTON

Example of a Record of Site Condition from Hamilton



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Brownfields Environmental Site Registry

Location: Ministry > Brownfields > Search Results > RSC #57510

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Record of Site Condition For Part XV.1 of the *Environmental Protection Act*

Record of Site Condition Summary

Registration Number	57510
Filing Date	June 16, 2010
Certification Date	November 20, 2008
Current Property Use	Commercial
Intended Property Use	Residential
Certificate of Property Use Number	No CPU
Applicable Standards	Full Depth Site Conditions Standard, with Nonpotable Ground Water, Medium/Fine Textured Soil, for Residential/Parkland/Institutional property use
Property Municipal Address	801 and 803 King Street West and 80, 86 and 90 Carling Street Hamilton ON L8N 1H5

Notice to Readers Concerning Due Diligence

This record of site condition has been filed on the Environment Site Registry to which the public has access and which contains a notice advising users of the Registry who have dealings with any property to consider conducting their own due diligence with respect to the environmental condition of the property, in addition to reviewing information in the Registry.

Contents of this Record of Site Condition

This record of site condition consists of this document which is available to be printed directly from the Environmental Site Registry as well as all documentation indicated in this document to have been submitted in paper format to the Ministry of the Environment.

Definitions

OMB Citizens Guide

6. Ontario Municipal Board

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- ▶ Related Legislation
- ▶ Provincial Policy Statement
- ▶ Ontario Municipal Board
- ▶ Ontario Municipal Board / Planning Reform
- ▶ Greenbelt Protection
- ▶ Brownfields Ontario

6. Ontario Municipal Board [Email this page](#)

[Citizens' Guide 6 - Ontario Municipal Board](#) PDF, (389K)

What is the Ontario Municipal Board?

The Ontario Municipal Board is an independent administrative tribunal responsible for hearing appeals and deciding on a variety of contentious municipal matters.

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Provincial Policy (PPS 2005)

- ❑ 1.1.3.3 (among other sections of the PPS)
“Planning authorities shall identify and promote opportunities for *intensification* and *redevelopment* where this can be accommodated taking into account existing building stock or areas, including *brownfield sites*, and the availability of suitable existing or planned *infrastructure* and *public service facilities* required to accommodate projected needs.”
- ❑ PPS currently under review by the province. Interested individuals/groups can submit comments by August 31, 2010 (Comments can be emailed to ppsreview@ontario.ca).

If Concerned...

- What can you do if you are concerned about a risk assessment, remediation, or RSC?
 - Contact MOE Enforcement Branch to make a report
 - If a clerical error with the RSC, contact Environmental Assessment and Approvals Branch of MOE which has responsibility for the electronic site registry.
 - If technical concerns about how the risk assessment process or the remediation is proceeding, notify the District or Regional office and/or Approvals branch of MOE.
 - If a violation is suspected, for example, that the RSC contains information which is false and/or is intended to mislead MOE, contact the Investigations and Enforcement Branch (IEB) office in the district or regional office of MOE or alternatively the main IEB office in Toronto which could direct the person to the correct local office.

Community Improvement Plan (CIP)

- ❑ CIPs deal with the rehabilitation, development or redevelopment of a targeted area. CIPs do not deal solely with Brownfields but can be used for this purpose.
- ❑ CIPs allow municipalities to offer financial incentives to private property owners to encourage rehabilitation activities.
- ❑ Each municipality must tailor the CIP for the local context



Thank you.
Questions welcome.

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