

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

Presented by:
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Canadian Environmental Law Association
July 29, 2010
Sarnia, Ontario

As part of the Making the Links Project



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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

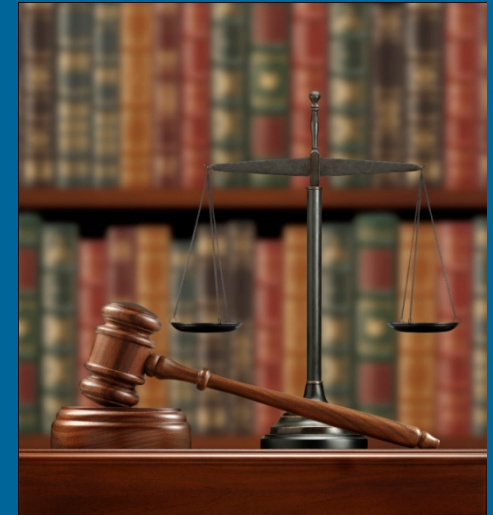
- ❑ The MOE has established two standards when assessing contaminated sites:
 - Generic standards
 - ❑ Commonly known as 'site condition standards'
 - ❑ Considers all the ways that exposure to contamination can occur, including consideration of physical conditions in the area
 - ❑ MOE states that this 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
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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/envirnet/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).
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Search of EBR Registry for Sarnia



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Add	EBR Registry Number	Ministry Reference Number	Title or Proponent	Type	Published Date
<input type="checkbox"/>	011-0585	0455-873P9T	Kedco Mfg. Ltd. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	July 19, 2010
<input type="checkbox"/>	011-0562	5975-86YNQS	LamSar Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	July 13, 2010
<input type="checkbox"/>	011-0550	1558-86YL2E	LamSar Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	July 09, 2010
<input type="checkbox"/>	011-0077	2483-85MK52	Imperial Oil Limited (OWRA s. 34) - Permit to take water	Instrument Decision	July 09, 2010
<input type="checkbox"/>	011-0426	MNR INF 32/10	2010 Prescribed Burns	Information Notice	July 07, 2010
<input type="checkbox"/>	011-0510	8608-863LEM	Imperial Oil Limited La Compagnie Petroliere Imperiale Ltee. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	July 05, 2010
<input type="checkbox"/>	010-9471	1265-83MNCL	Imperial Oil Limited (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Decision	June 25, 2010
<input type="checkbox"/>	011-0322	8159-85UJQK	Fibrex Insulations Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	June 17, 2010
<input type="checkbox"/>	010-9387	1172-83DPWD	First Solar Development (Canada), Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Decision	June 07, 2010

EBR Registry Posting for Sarnia

Instrument Proposal Notice:

Proponent: Keddco Mfg. Ltd.
645 Keddco Street
Sarnia Ontario
Canada N7T 7K6

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

EBR Registry Number: 011-0585

Ministry Reference Number:

0455-873P9T

Ministry:

Ministry of the Environment

Date Proposal loaded to the Registry:

July 19, 2010

This notice was originally posted on July 15, 2010 for a 30 day comment period. This notice is being reposted due to changes in the instrument's description. As a result, this comment period is being extended until August 18, 2010.

July 19, 2010

Keyword(s): Air

Comment Period: 34 days: submissions may be made between July 15, 2010 and August 18, 2010.

Description of Instrument:

This proposal is for a Basic Comprehensive Certificate of Approval (Air) which is a single Certificate of Approval that replaces the existing Certificate(s) of Approval (Air) and includes the addition of new or historically unapproved sources for all emissions from Keddco Manufacturing Limited, located in Sarnia, Ontario. The facility is a machine shop. This application is for all sources of emissions at the facility which include welding exhaust fan, general ventilation exhaust, exhaust hood, paint booth exhaust fan, waste oil/lubrication storage tank, and natural gas comfort heating/cooling sources. Emissions to the atmosphere include lead, acetone, toluene, propane and products of combustion such as nitrogen oxides.

The Basic Comprehensive Certificate of Approval (Air) requires that the company demonstrate compliance on an ongoing basis with Ontario Regulation 419/05, applicable Ministry Guidelines for Air and Noise and other performance requirements as specified in their conditions. It permits modifications such as process changes, de-bottlenecking or addition of new equipment subject to limits on operational flexibility that include a production limit for the facility to be specified on the Basic Comprehensive Certificate of Approval (Air). The limited operational flexibility conditions have a five year expiry date. The company will be required to make application for amendment at that time to renew these conditions. Of specific public interest, one condition that will be included on the Basic Comprehensive Certificate of Approval (Air) will require the company to make available, at all times, at the facility for inspection by interested members of the Public, a table (Emission Summary Table) that documents the facility's compliance with Ontario Regulation 419/05.

Public Consultation:

This proposal has been posted for a 34 day public review and comment period starting July 15, 2010. If you have any questions, or would like to submit your comments, please do so by August 18, 2010 to the individual listed under "Contact". Additionally, you may submit your

Contact:

All comments on this proposal must be directed to:

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

To submit a comment online, click the submit button below:

[Submit Comment](#)

EBR Search for Certificate of Property Use Posting

Instrument Decision Notice:

Proponent: City of Toronto
100 Queen Street West
Toronto Ontario
Canada M5H 2N2

Instrument Type: Certificate of Property Use - EPA s. 168.6

EBR Registry Number: 011-0097

Ministry Reference Number:
1688-82QQ6X

Ministry:

Ministry of the Environment

Date Proposal loaded to the Registry:
May 25, 2010

Date Decision loaded to the Registry:
July 09, 2010

Keyword(s): Brownfields

Decision on Instrument:

Certificate of Property Use (CPU) No. 1688-82QCPU was issued to City of Toronto as part of their development plans for the site.

This Certificate of Property Use (CPU) requires the instrument holder to ensure that the following key measures are undertaken:

1. Restrictions on building construction and property use.
2. Maintaining equipment on site.
3. Maintaining a barrier for site soils.
4. Air monitoring of all buildings.
5. Preparing and implementing a health and safety and a soil management plan for the Property.
6. The Owner must document all information regarding the Risk Management Measures undertaken in the previous calendar year in an annual report.
7. A certificate is to be registered on the Property title in accordance with section 197 of the Environment Protection Act and that before dealing with the property in any way, a copy of the CPU be given to any person who will acquire an interest in the property.

A copy of the final Certificate of Property Use is attached to this notice.

Comment(s) Received on the Proposal: 0

Public Consultation on the proposal for this decision was provided for 30 Days, from May 25, 2010 to June 24, 2010.

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

Effect(s) of Consultation on this Decision:

No comments were received. The Director did make changes, after consultation with the proponent, to provide for clarification to the following sections of the CPU: 5.1

Contact:

Rod Adams
District Manager
Ministry of the Environment
Operations Division
Central Regional Office
Toronto District
5775 Yonge Street
Floor 9
Toronto Ontario
M2M 4J1
Phone: (416) 326-5536
Fax: (416) 325-6346

Location(s) Related to this Instrument:

East Bayfront – Parks and Promenade
125, 175, and 255 Queens Quay East, Toronto

CITY OF TORONTO

Additional Information:

The following government offices have additional information regarding this Decision.
To arrange a viewing of these documents
contact the Ministry Secretary at the Office

RSC Registry Search for Sarnia



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Brownfields Environmental Site Registry

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Search Records of Site Condition and Transition Notices

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Search criteria: **Site Municipality** is **SARNIA**.

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
45702	RSC 392 Front Limited 392 FRONT ST N, SARNIA, ON, N7T 5S9	Apr 02, 2009 SARNIA
45117	RSC Imperial Oil Limited 325 INDIAN RD S, SARNIA, ON, N7T 3W6	Aug 12, 2008 SARNIA
22508	RSC Sarnia Land Management Inc. 275-295 Front Street, Sarnia, Ontario	Jul 06, 2007 SARNIA
3705	TRN Pfizer Canada Inc. 402-404 North Front Street, Sarnia, Ontario	Dec 01, 2006 SARNIA

ver. 1.3.0 May 1, 2008



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Example of a Record of Site Condition from Sarnia

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

Record of Site Condition Summary

Registration Number	45702
Filing Date	April 02, 2009
Certification Date	September 25, 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, Coarse Textured Soil, for Residential/Parkland/Institutional property use
Property Municipal Address	392 FRONT ST N SARNIA, ON, N7T 5S9

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

The following definitions are taken from the *Environmental Protection Act* or Regulation 153/04 under that Act and are included for ease of reference. The Act and Regulation should be referenced for other applicable definitions.

In this Record of Site Condition,

"Act" means the *Environmental Protection Act*, as amended;

"Cleanup Guideline 1996" means the Ministry publication entitled "Guideline for Use at Contaminated Sites in Ontario" originally dated June 1996 and later revised;

"Intended property use", in relation to a record of site condition, means the type of property use in respect of which the record of site condition is filed;

"phase one environmental site assessment" has the same meaning as defined in the Act at s. 168.1;

OMB Citizens Guide

6. Ontario Municipal Board -

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- Greenbelt Protection
- Brownfields Ontario

Land Use Planning

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.

Thank you.
Questions welcome.

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