

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

Presented by:
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Canadian Environmental Law Association
October 27, 2010
Cornwall, 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 or commercial use. These sites are found all across Ontario, in rural and urban communities.

□ Why redevelop Brownfields?

- reuses land; reduces risks; utilizes existing infrastructure, services and resources; prevents urban sprawl; provides benefits



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 Regulation to implement reforms which had been announced by Ontario in 2007

Understanding Brownfield Standards

- ❑ The MOE has established two approaches when assessing (and cleaning up) 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

SITE-SPECIFIC STANDARDS

- ❑ Commonly known as the 'risk assessment approach';
- ❑ Used where generic standards may be difficult to meet
- ❑ Incorporates information about the specific conditions of a property when assessing the risk

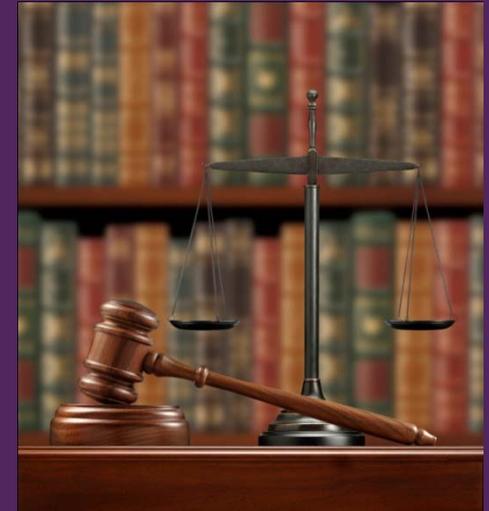
Record of Site Condition (RSC)

- ❑ 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 includes certification 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; MOE Director may issue a “certificate of property use” to limit certain land uses, require risk management measures, etc.

Significant Changes in 2009 Amendments

- Provides clarity with respect to process
 - Minimum requirements for conducting and supervising environmental site assessments (Phase I & II ESAs)
 - Revisions to RSC submission process, including a requirement that the Director make a decision 30 days after a completed RSC has been submitted
 - Upgrading conflict of interest requirements 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 (numerical limits) 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 (EPA cleanup order?), municipality, Source Protection Committee (re “conditions” that threaten drinking water source)
 - Request for Investigation - the EBR enables Ontarians to request a government Ministry's investigation of an alleged violation of environmental law
 - Right to Sue – the EBR creates a new cause of action enabling Ontarians to sue to protect public resources
- ❑ 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 an OPA/rezoning decision to Ontario Municipal Board (www.omb.on.ca).

Search of EBR Registry for Cornwall



Environmental Registry
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<input type="checkbox"/>	011-0865	8537-87ZJ55	Sensient Flavors Canada Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	August 09, 2010
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<input type="checkbox"/>	010-9268	2536-82QTJ5	Xactics (2001) International Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Decision	July 08, 2010
<input type="checkbox"/>	011-0508	9270-86RNF9	Advantech Advanced Microwave Technologies Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	July 05, 2010
<input type="checkbox"/>	011-0479	6924-85UPQR	Ray Bolger Steel Fabrication Limited (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	July 02, 2010
<input type="checkbox"/>	011-0103	1350-84QSB2	Canlyte Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Proposal	May 25, 2010
<input type="checkbox"/>	010-6999	7192-7T4NQ2	Brenntag Canada Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Decision	May 18, 2010
<input type="checkbox"/>	010-7332	8436-7TZJFV	Matrix Coatings Inc. (EPA s. 9) - Approval for discharge into the natural environment other than water (i.e. Air)	Instrument Decision	April 28, 2010

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Instrument Proposal Notice:

Proponent: BASF Canada Inc.
501 Wallrich avenue
Cornwall Ontario
Canada K6J 2B5

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

EBR Registry Number: 011-1197

Ministry Reference Number:
1043-88VK5C

Ministry:

Ministry of the Environment

Date Proposal loaded to the Registry:
September 17, 2010

Keyword(s): Air

The comment period for this proposal is now over.

Description of Instrument:

This proposal is for the renewal of Basic Comprehensive Certificate of Approval (Air) No.2592-6PXX62 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 BASF Canada Inc. located in Cornwall, Ontario. This facility processes and blends various chemicals for industrial and commercial uses.

This application is for all sources of emissions from the facility which includes process emissions, laboratory fumehoods, storage tanks, sumps, lagoons, cyclones, truck loading, furnaces, cooling towers, emergency generator, and boilers.

Contaminant emissions to the atmosphere include volatile organic compounds such as 1-hexanol, 1-octanol, and methylene diphenylene diisocyanate, particulate matter, 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

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:

501 Wallrich Avenue

Cornwall, United Counties of Stormont, Dundas and
Glengarry K6J 2B5

RSC Registry Search for Cornwall



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Search Records of Site Condition and Transition Notices

Search Records of Site Condition and Transition Notices

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

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
83512	RSC Cotton Mill Lofts Inc. 710 COTTON MILL ST, CORNWALL, ON, K6H 7L3	Jul 28, 2010 CORNWALL
70915	RSC 1078845 Ontario Inc. 805 BROOKDALE AVE, CORNWALL, ON, K6J 4P3	Jun 01, 2010 CORNWALL
72713	RSC 7178298 Canada Inc. 1232 BROOKDALE AVE, CORNWALL, ON, K6J 4P8	Apr 30, 2010 CORNWALL
61913	RSC 2113467 Ontario Inc. 800 SEVENTH ST W, CORNWALL, ON, K6J 1H6	Sep 17, 2009 CORNWALL
48311	RSC Cornwall and Area Housing Corporation 540 ADOLPHUS ST, CORNWALL, ON, K6J 3T2	Jun 25, 2009 CORNWALL
51118	RSC Michael Richard Juergensen 126 SYDNEY ST, CORNWALL, ON, K6H 3H2	Apr 09, 2009 CORNWALL
32305	RSC 962101 Ontario Inc. 1150 MONTREAL RD, CORNWALL, ON, K6H 1E2	Jul 15, 2008 CORNWALL
1856	RSC Indu Pawria	Jun 03, 2005

Example of a Record of Site Condition from Cornwall



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

Record of Site Condition Summary

Registration Number	83512
Filing Date	July 28, 2010
Certification Date	June 01, 2010
Current Property Use	Industrial
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	710 COTTON MILL ST CORNWALL, ON, K6H 7L3

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
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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 October 29, 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 (eg. 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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