Insurance Issues in Environmental Law

Covering your Risk or Risking your Cover?

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ONTARIO MUTUAL INSURANCE ASSOCIATION

INSURANCE ISSUES IN ENVIRONMENTAL LAW

I don't need to tell this group that environmental issues have grown in significance and breadth exponentially over the last decade. When I switched my practice to environmental law in 1988, few people realized or appreciated the issues that we were about to face. They are many; the issues associated with them are complex; and the solutions are not always clear.

A. A REFRESHER COURSE IN BASIC SOURCES OF LIABILITY

You need to know that there are three major kinds of liability that would concern an insurer. The first type is liability that arises at **"common law"**; that is under the heads of liability that have developed in our jurisprudence over the centuries. I'll mention some of the categories in a minute. The second type is **civil** liability that arises under legislative **statute,** whether federal, provincial or municipal. I'll give some examples of this type too shortly. And the third type is **criminal or quasi-criminal** liability that arises under legislative statute - for which the Crown prosecutes the alleged offender in criminal Court or in Provincial Offences Court. I'll explain why this type of liability is of concern too.

I. COMMON LAW LIABILITY

The first type that I mentioned, Common Law liability includes many categories that you are very familiar with. They include:

Negligence - Where someone had a duty to take care so as to avoid causing harm to another, and failed to take that care, they may become liable for damages caused, under the head of negligence. Thus, if a dangerous substance is brought onto someone's property, or used in an operation, and through negligence it causes harm to anyone, then there will possibly be liability on the part of the landowner, the occupant, the person bringing the substance onto the land, other handlers of the substance, and in some circumstances, the distributor and manufacturers of the substance or of components of the substance. The exact liability issues would depend on the particular case, but you can see that the net may be cast very widely. Outcomes would depend on whether the various parties were found to have a duty to the party who was ultimately harmed, whether causation could be proven, whether the various parties had discharged their obligations to take due care, and whether the harm caused was "reasonably foreseeable".

Examples of liability in negligence include a chemical manufacturer from whose operation toxic chemicals escaped into the surrounding soil and groundwater, ultimately contaminating the municipal drinking aquifer and neighbour's lands; a government body who knew that soil was contaminated with radioactive substances in a residential neighbourhood, but did not advise anyone that it was unsafe to build in the area, and a party whose disposal of pesticide waste resulted in personal injuries to neighbouring residents.

Nuisance - Where someone unreasonably interferes with another's use and enjoyment of property, liability in nuisance may be established. Nuisance does not require proof of personal injury, and it is not a defence to say the offending operation was in place before the complainant established their own use. (Because of this, many provinces including Ontario have special legislation applicable to farm operations.) Recent legislative amendment under the Ontario Bill of Rights has expanded the circumstances in which action may be taken for nuisance, to include a private right of action even where the nuisance is broadly suffered by the public. Examples of nuisance include operation of an industrial facility that interferes with neighbours due to smell, noise, or emission of substances that make the neighbours nauseous. Other types of nuisance include allowing chemicals onto the neighbour's property, above or below ground, or interfering with the stability of the soil and geologic structures in the area, for example by changing a water table.

Trespass - This category has been used, for example, in cases of spraying someone else's property, and in cases of water pollution. It is not necessary to prove actual harm in order to sustain a claim in trespass.

Rylands v. Fletcher - or Escape of Dangerous Substances - This liability is named after the very old case which first established the proposition that someone who brings something onto their land which, if it escaped, would be dangerous, is responsible to ensure that it does not escape, and if it does escape is liable for the damages caused in consequence. An example of this is the one I argued in a recent case involving the constitutional validity of the federal Nuclear Liability Act. Although the point did not have to be determined for the case, I argued that nuclear power, as a "non-natural" use of the land, with its associated unique hazards, would fit into the 17th century description of liability on this ground, as being an escape of dangerous substances which would attract liability regardless of whether or not the operator was negligent. In other words, even if the operator took all of the care that they could possibly imagine, an escape of radioactive substances that harmed the public would result in liability under the common law. (The provisions of the Nuclear Liability Act are another story, and are the reason that no policy that you ever see or sell covers nuclear liability.) There have been thousands of cases under this category, including escape of chemicals, harm caused by animals, harm caused by escape of gas or water, and many others.

Recent British case law indicates that a requirement of "reasonable foreseeability" may be imposed on Rylands claims. However, this is not yet the law in Canada.

Riparian Water Rights - Riparian water rights protect the flow of water through or by one's land in its natural state. This principle protects water quantity and quality. These rights include use for ordinary purposes, but not for "extraordinary purposes such as off-site diversion or removal.

Deceit and Misrepresentation - Latent Defects - Where there is a hazard associated with real property, and the owner knows, should know, or suspects that the hazard is present, that owner must disclose the hazard to any potential purchaser. Otherwise, the principle of caveat emptor (buyer beware) does not apply, and the purchaser can sue the vendor for damages when the hazard becomes known. This area is of great concern to insurers, because many older policies are called on to provide coverage for something that was done a long time ago, before the risks were completely understood. So, for example, in the case of a long-gone manufacturing operation, in which some of its product or waste was stored or buried and forgotten, that operation's insurer may be called upon many years later to respond to a claim arising from the harm caused by those substances. Of course the risk underwriting did not include this type of harm, which no one would have then appreciated, and especially did not include the quantum of damages which be payable to clean up a difficult contamination problem.

Restitution - Restitution may found a claim where it would be otherwise unjust for a person to retain the money or benefit in question. Someone (including an insurer) who cleans up a property for someone else's benefit may thus be able to make a successful claim for repayment.

Claims in Contract - Many agreements now, for example to buy a business, farm or other real property, include contractual provisions as to responsibility in the event of discovery of contamination on the property. Any claim should always be evaluated as to whether any such contractual provisions exist.

II. STATUTORY LIABILITY

The second type of liability that I mentioned is that of civil liability established by statute. One example I have already mentioned; the Nuclear Liability Act, which establishes liability to pay damages in the event of a nuclear accident; caps that liability; and prescribes mandatory insurance.

There are many specific examples which abound particularly in the transportation industry, nationally and internationally. Another example is the part of the Ontario Environmental Protection Act known as the "Spills Bill", which prescribes civil liability to clean up and compensate in the event of a spill.

In such cases, the duty, the responsible parties, the extent of the liability, any time limits and the potential claimants must be ascertained by reference to the particular statute.

Every industry and every business that has any potential for environmental damages should have a good review of their potential liability carried out, in order to ensure that they are minimizing the risks, and that they are aware of their obligations. This would be particularly prudent for insurance companies who are insuring such businesses, and your industry, along with the financial industry, is beginning to require such reviews and assessments as a condition of providing both insurance and financing. I will mention more in this regard when I discuss Environmental Management in a few minutes.

Other statutory compensation programs or liabilities to note include:

- Environmental Bill of Rights (which among other things has expanded the availability of nuisance actions)
- Farm Practices Protection Act (copy attached)
- Environmental Compensation Corporation (for spills)
- Pesticide Residue Compensation Act (federal)
- Waste Well Disposal Security Fund (for potable water replacement)
- EPA Board of Negotiation (for damage to livestock or vegetation caused by a contaminant)
- Worker's Compensation Act
- Fisheries Loans Act
- Restitution orders following conviction under statutes or Criminal Code

There are many other examples under provincial and federal statutes.

III. CRIMINAL AND QUASI-CRIMINAL LIABILITY

The third type of liability that I earlier alluded to was that of criminal or quasi-criminal liability. There are many, many such statutes, including Ontario's Environmental Protection Act, Ontario's Water Resources Protection Act, and their federal equivalents, and many other more specific pieces of legislation that may refer to a particular activity or industry.

These liabilities are of great concern, because in addition to liability on the part of a corporate actor, they may place liability on officers and directors; on present and prior "owners"; may authorize very, very large fines, and may authorize imprisonment of officers and directors.

Many of these statutes also authorize their responsible agencies to order activities to stop, installation of protective equipment, and clean up requirements. All of these things may be extremely expensive, and from both an insured's perspective and an insurer's perspective, the definitions of covered liability should be clear as to whether administrative orders, and quasi-criminal prosecutions (which involve no "intent" or "fraud") are covered. Lawyers can be pretty imaginative, and Courts, as you know, can interpret policies in ways that the original underwriter never imagined.

The issue of who is a "person responsible" and thus potentially liable to orders under legislation such as the Environmental Protection Act is itself the subject of much litigation. The Ontario definition is that "person responsible" means

- the owner
- the person in occupation
- the person having the charge, management or control of a source of contamination.

Among the legal tests to make this determination is whether the person has the "ability to influence" the outcome. On this test, the definition is very broad, and "control" can be established based on legal relationship, financial relationship, executive or supervisory relationship, or contractual relationship, and is not necessarily in accordance with the parties' expectations. Thus, investors who had never been directors, officers, or employees were held liable in one case after they began to make some of the key decisions about the property.

A partial list of statutes that may give rise to liabilities on the part of your insured's is attached to the end of this paper, as illustration of the immense number of sources of statutory liabilities. The exposure of particular insured persons would obviously not include all of these statutes, but those that do pertain should be considered. Also for illustration, a copy of the index page from the statutes indexes listing "licences and permits" should be reviewed for the very many environmental statutes that have licences and permits required.

B. DEFENCES

There are various defences that may apply to specific claims. The following is a partial list of some defences that may apply.

- **Due Diligence**

  A very important topic in the area of environmental liability and defence of a quasi-criminal prosecution is that of "due diligence". These prosecutions do not need to establish that the company or its directors and officers knew of the harm that was being caused. Rather, most of these sections only require proof of the activity, and then liability is "strict". The only defence that is available, then, is to persuade the Court that the Defendant has carried out due diligence. The requirements to establish due diligence are strict indeed, as interpreted by the Courts in recent years, and are imposed at the highest executive levels of small and large companies. It is necessary to establish that a "system" has been put into place to prevent the harm; that its effectiveness has been regularly assessed; that senior management has taken personal responsibility for assurance of environmental compliance by rigorous management.

  As a result of these requirements, many companies now establish Environmental Management Systems, where with appropriately qualified legal or consulting advice, they set up a system to ensure that these issues are properly dealt with. Since a failure to do so can, and in some cases has, resulted in personal fines and even imprisonment of senior management, the seriousness of this endeavour cannot be understated.

  One difficulty that has arisen in this regard is that of assessing the quality of the system established, and this is currently about to be met in the form of the ISO 14,000 series standard of environmental management systems, and associated auditing. However, the important point is to ensure that the review of potential liabilities and appropriate protective measures has been thorough and pertinent to the operation, and that it is well-managed to ensure its effectiveness and ongoing improvement. Some insurance companies and financial institutions are indicating that this standard will be required of their more risky policies as a prerequisite to coverage.

- **Express Statutory Provisions**

- **Expiry of a Time Limitation**
- **No Proof of Causation**
- **No Foreseeability** (for example, in negligence, contract, and now, maybe in Rylands claims)
- **"Reasonableness"** (for example, in nuisance, negligence and some statutory compensation claims)
- **Due diligence** (as discussed above, for example regarding strict liability offences, and for some aspects of civil claims, to help disprove negligence, or to help prove "reasonableness")
- **No Proof of Loss**
- **"Public Utility"** (for example, for some nuisance claims)
- **Statutory Authority** (which is usually narrowly construed)
- **Consent** (for example, if the Plaintiff contractually agreed to the risk, or if the plaintiff has otherwise accepted the risk)
- **Intervening Acts** (where they eliminate liability for the original act)
- **Emergency** (for example is a defence to some statutory compensation schemes)
- **Acts of God** (may be defences to some claims in negligence, nuisance or Rylands)

Other issues to consider in defending an environmental claim as insurer include:

- Is there a **claim over** for contribution or indemnity from another party?
- Is there **contributory negligence** by another person?
- Has a nuisance been "**adopted**"?
- Are there **contractual warranties** and other contractual rights against another party?
- Has there been **professional negligence** of engineers, building inspectors, real estate appraisers, lawyers, etc. for **third party claims**?

C. SHOULD THE INSURER GET INVOLVED WHEN THERE IS A SPILL OR OTHER EMERGENCY?

Excerpts from the Environmental Protection Act are attached to your package. After reviewing them, you can consider factors that would affect your decision as to whether to "get involved" in a particular situation.

- Is this problem covered by your policy, and if so, to what extent?
- Would your involvement decrease your exposure?
- Could your involvement increase your exposure?
- **Beware** becoming a **"person in control"** under the applicable statute, and thus possibly liable to clean up orders and other statutory liabilities beyond your policy limits.
- Is your financial exposure limited?
- Are there third parties who are not yet harmed, but who may be harmed if the response is inadequate, and if so, will your intervention avoid your own exposure on the policy?

The risks and benefits of this decision can be considerable, and are fact specific. Get appropriate advice on a case by case situation before making a decision as to whether to "get involved" or not. Get as much information as you quickly can obtain in order to make

an informed decision.

D. "HIDDEN RISKS"

As an insurer writing various risks, and in an expanding market, some particular "hidden" environmental risks should be noted.

These include parties who might obtain coverage from you, who might have "indirect", but very real liability under statutes such as the Environmental Protection Act.

For example, a credit union might be considered to be a "person in control" of a property once they take steps to realize on their security. If you write a policy for a credit union, could that policy be interpreted so as to cover them in that situation?

A similar example is that of a municipality, such as a township, who takes steps against property for tax arrears. They too can then be considered to be a "person in control" and possibly subjected to clean up orders or other liabilities under the Environmental Protection Act if that property is contaminated.

Another major source of indirect liability is that of officers and directors of corporations, including farm corporations. Make sure that your policies are clear in their coverages and exclusions, in accordance with your intent.

E. WHAT IS YOUR COVERAGE?

- Is the subject of the claim defined in the policy?
- If the subject is not expressly excluded, it might be in.
- Watch your definitions. For example, some case law has decided that a natural substance such as animal waste is not a "pollutant" within the definition of an insurance policy, and thus not excluded from coverage, despite its clear inclusion in statutory definitions.
- Is there ambiguity, for example within the terms of the policy, or even due to apparently contradictory coverages chosen?

In terms of writing the risk in the first place, and in terms of deciding what coverages to offer, you, of course, and your customers have many choices. The types of risk that they may seek coverage for include:

- third party liability, as to either or both personal injury and property loss
- insured's own property
- insured's own personal injury
- "sudden & accidental" damage
- a latent or long term problem newly discovered
- resulting from the insured's own actions or business activities
- resulting from another person's actions or business activities (e.g. a neighbour)
- claims made in the policy period
- problems discovered in the policy period
- loss occurring or commencing in the policy period

- "bodily injury" versus "personal injury"
- tangible property loss or damage
- economic loss, like loss of profit
- loss of use of property
- clean up costs
- reconstruction and restoration costs
- remediation and treatment costs
- Director's and officers coverages
- protection for provincial offences fines
- products liability

The point of this list is not to say what you should or should not cover. Rather, it is to illustrate the range of coverages that could be offered for appropriate premiums, and the necessity of clear communication to your policy holders as to what is and is not covered if you offer a "pollution" endorsement.

F. LIMITATIONS OF RISK

Aside from limitations of your risk contained in your defined coverages and exceptions, there are other limitations that you can include in your policies. These limitations must be clearly defined, whether they are to apply to a policy as a whole, or to specific endorsements on the policy. Considerations include:

- Is the limitation **clear and express**?
- Are there **time** limitations that clearly apply to a particular endorsement?
- Are there **dollar** limitations that unambiguously apply either to the whole policy or to particular endorsements?
- Are there **persons excluded** from the coverage? Is it clear?
- Are there **types of conduct** (e.g. *mala fides* such as fraud) that is excluded? Of which persons? Is this clear?
- Are there certain states of **knowledge** that are excluded? Are they clearly defined? Whose knowledge?
- Are there types of **activity** that are intended to be included or excluded? For example, if business activity is to be covered, has there been an adequate definition of what the business activity is, and is it updated regularly for renewal purposes?

G. EVALUATION OF RISKS

Covering environmental harm is not in itself a risky proposition. Rather, the level of risk depends on your risk assessment procedures, just as in any other area of underwriting. The importance in this area is elevated, however, because of the potential for large claims in the event that a Court determines that a policy provides coverage beyond your expectations.

Accordingly, it is important to decide what types of activity and properties that you will cover. A brief listing of some considerations would include:

- Decide what business activities to cover
- Develop a check list for your purposes (see some examples attached), but **note** that an appropriate checklist should be specifically tailored to your concerns and to your customer base.
- Assess how risky the business or activity is in terms of your proposed coverages.
- Get real property audits
- Get operations environmental audits, and/or insist on environmental management system certification such as that provided by the I.S.O.
- Get the insured's express warranty regarding his knowledge (e.g. "no environmental concerns"), in inclusive language
- Visit the site, or have a qualified professional visit the site and evaluate it, where appropriate. (Do this mainly to watch for "red flags" that would cause you to turn down the application; but for assurance of compliance you should rely on professional review.)

H. RISK MANAGEMENT

There are many things that you can do to assist in managing your outstanding risk. A few examples include:

- Have an environmental management review of your own business.
- Have spot audits of your coverages in order to obtain advice about your exposure.
- Have a checklist of concerns completed by your insured parties annually for their renewal
- NOTE CHANGES on renewal applications or annual checklists
- Get express warranties from the insured each year regarding their knowledge, broadly and inclusively worded, and get such warranties from any new insured persons who are covered by the policy
- If you required environmental audits or formal environmental management certification in order to write the policy, then ensure that they are updated annually or as appropriate, and provided to you. The frequency of update may depend on the activity in question and your level of coverage.
- Train your policy sales force especially in this area and emphasize items of particular concern (for example, not to make rash representations re: coverages to their customers).

QUALIFICATION AND EXCLUSION OF LIABILITY:

Here is the obligatory caution that this paper is meant for discussion and illustration purposes, and should not be considered to be legal advice. Any particular situation must be evaluated in light of its specific facts and the applicable law. However, I hope that this presentation has been helpful in raising some "red flags" as to issues that you may want to consider further in your businesses, and as an association.

If there are any questions that you have after today's presentation, don't hesitate to contact me for assistance.

LIST OF SOME STATUTES WITH ENVIRONMENTAL REQUIREMENTS

Provincial:

- Environmental Protection Act
- Environmental Bill of Rights
- Ontario Water Resources Act
- Dangerous Goods Transportation Act
- Gasoline Handling Act
- Aggregate Resources Act
- Conservation Authorities Act
- Ontario Heritage Act
- Drainage Act
- Tile Drainage Act and Agricultural Tile Drainage Installation Act
- Farm Practices Protection Act
- Forestry Act
- Lakes and Rivers Improvement Act
- Game and Fish Act
- Municipal Act
- Health Protection and Promotion Act
- Ontario Planning & Development act
- Planning Act
- Livestock, Poultry & Honey Bee Protection Act
- Pesticides Act
- Weed Control Act
- Dead Animals Disposal Act
- Feeds Act
- Livestock & Livestock Products Act
- Abandoned Orchards act
- Forest Tree Pest Control Act
- Plant Diseases Act
- Fish Inspection Act
- Livestock Medicines Act
- Meat Inspection Act
- Milk Act
- Occupational Health & Safety Act
- Occupiers Liability Act
- Farm Implements Act
- Mining Act
- Agricultural Rehabilitation & Development Act
- Endangered Species Act
- Negligence Act
- Topsoil Preservation Act
- Trees act
- Conservation Land Act
- Hunter Damage Compensation Act

- Forest Fires Prevention Act
- Woodlands Improvement Act
- Settlers Pulpwood Protection Act

Farm Practices Protection Act

Revised Statutes of Ontario, 1990, Chapter F.6

Definitions

1. In this Act,

"agricultural operation" means an agricultural, aquacultural, horticultural or silvicultural operation that is carried on in the expectation of gain or reward, and includes,

(a) the cultivation of land,

(b) the raising of livestock, including poultry,

(c) the raising of fur-bearing animals and game birds,

(d) the production of agricultural crops, including mushrooms, greenhouse crops and nursery stock,

(e) the production of eggs and milk,

(f) the operation of agricultural machinery and equipment, including irrigation pumps,

(g) the process necessary to prepare a farm product for distribution from the farm gate,

(h) the application of fertilizers, conditioners and pesticides, including ground and aerial spraying, and

(i) the storage, disposal or use of organic wastes for farm purposes; ("exploitation agricole")

"Board" means the Farm Practices Protection Board; ("Commission")

"land use control law" means any Act and any regulation, plan or by-law made under the authority of an Act that restricts or prescribes the use to which land or premises may be put or the nature of business or activities that may be carried on on any land or premises; ("loi de réglementation en matière d'utilisation du sol")

"Minister" means the Minister of Agriculture and Food; ("ministre")

"normal farm practice" means a practice that is conducted in a manner consistent with proper and accepted customs and standards as established and followed by similar agricultural operations under similar circumstances and includes the use of innovative technology used with advanced management practices; ("pratique agricole normale")

"person" includes an unincorporated association. ("personne") 1988, c.-62, s.-1.

Protection from nuisance claims

2. (1) A person who carries on an agricultural operation and who, in respect of that agricultural operation, does not violate,

(a) any land use control law;

(b) the *Environmental Protection Act*;

(c) the *Pesticides Act*;

(d) the *Health Protection and Promotion Act*; or

(e) the *Ontario Water Resources Act*,

is not liable in nuisance to any person for any odour, noise or dust resulting from the agricultural operation as a result of a normal farm practice and shall not be prevented by injunction or other order of a court from carrying on the agricultural operation because it causes or creates an odour, a noise or dust.

Where subsection (1) does not apply

(2) Subsection (1) does not apply to an owner or operator of an agricultural operation that fails to obey an order of the Board made under clause 5-(3)-(b). 1988, c.-62, s.-2.

Farm Practices Protection Board

3. (1) The Farm Practices Protection Board is continued under the name Farm Practices Protection Board in English and Commission de protection des pratiques agricoles in French and shall consist of not less than five members appointed by the Minister. 1988, c.-62, s.-3-(1), *revised*.

Chair of Board

(2) The Minister may designate one of the members of the Board as the chair and one or more of the remaining members as vice-chair.

Duties of the chair

(3) The chair of the Board is responsible for the general supervision and direction over the conduct of the affairs of the Board and, in his or her absence or if he or she is unable to act, the vice-chair shall have all the powers of the chair.

Term

(4) The members of the Board may be appointed to hold office for a term not exceeding three years and may be reappointed, but no member shall hold office for more than six years, whether the member's appointments are for consecutive terms or not.

Remuneration

(5) The members of the Board who are not public servants of Ontario shall be paid such remuneration and expenses as the Lieutenant Governor in Council determines.

Procedures

(6) The Board may, subject to the *Statutory Powers Procedure Act*, make rules for the conduct and management of its affairs and for the practice and procedure to be observed in matters before it, and may require that a person seeking a determination of a matter by the Board shall give written notice, in such form and manner as the Board specifies, to the persons that the Board specifies.

Quorum

(7) The chair or vice-chair and two other members constitute a quorum and are sufficient for the exercise of all of the jurisdiction and powers of the Board. 1988, c.-62, s.-3-(2-7).

Duties and powers of Board

4. (1) The Board may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this Act including the power,

(a) on the request of an aggrieved person, to inquire into and resolve a dispute respecting an agricultural operation including the determination as to what constitutes a normal farm practice; and

Injunction proceedings in abeyance

6. (1) Where a farm practice is the subject of an application made under subsection 5-(1), no injunction proceedings may be commenced or continued in respect of that farm practice until the Board has made an order or dismissed the application under subsection 5-(3) or has refused to hear the application.

Exception

(2) Subsection (1) does not apply to any proceedings taken under the *Environmental Protection Act*, the *Pesticides Act* or the *Ontario Water Resources Act*. 1988, c.-62, s.-6.

Regulations

7. The Lieutenant Governor in Council may make regulations,

(a) prescribing forms and providing for their use;

(b) prescribing fees payable in respect of an application made under subsection 5-(1) and authorizing refunds;

(c) prescribing the composition of the Board. 1988, c.-62, s.-7.

Farm Products Containers Act

Revised Statutes of Ontario, 1990, Chapter F.7

Definitions

1. In this Act,

"association" means an association of producers; ("association")

"container" includes any bag, basket, bottle, box, can, carton, crate, pot or other receptacle used or suitable for use in the marketing of farm products; ("contenant")

"farm products" means such fruit, honey, maple products, vegetables, plants, flowers, mushrooms, seeds and articles of food or drink manufactured or derived in whole or in part from any of those products as are designated in the regulations; ("produits agricoles")

"licence" means a licence provided for in the regulations; ("permis")

"Minister" means the Minister of Agriculture and Food or such other member of the Executive Council to whom the administration of this Act may be assigned; ("ministre")

"producer" means a person engaged in the production of farm products and includes a person engaged in the handling, packing, processing, shipping, transporting, purchasing or selling of farm products; ("producteur")

"regulations" means regulations made under this Act. ("règlements") 1988, c.-68, s.-1.

Minister may appoint Director, inspectors

2. The Minister may appoint a Director to administer and enforce this Act and may appoint inspectors, who shall be under the supervision of the Director, to carry out the audits authorized under subsection 4-(1). 1988, c.-68, s.-2.

Regulations

(b) to make such inquiries and orders as are necessary to ensure that there is compliance with its decisions.

Information to be made available to Minister

(2) The Board shall provide the Minister with any information requested by the Minister as to the policies, procedures and operations of the Board.

Board to conduct studies

(3) The Minister may order the Board to study any matter related to farm practices and the Board shall conduct the study and report its findings and recommendations to the Minister. 1988, c.-62, s.-4.

Complaints re: farm practices

5.(1) Where a person is aggrieved by any odour, noise or dust resulting from an agricultural operation, the person may apply in writing to the Board for a determination as to whether the odour, noise or dust results from a normal farm practice.

Form of application

(2) Every application under subsection (1) shall contain a statement of the nature of the complaint, the name and address of the person making the application and the name and address of the agricultural operation and shall be in a form acceptable to the Board.

Hearing and order

(3) The Board shall hold a hearing and shall,

(a) dismiss the complaint if the Board is of the opinion that the odour, noise or dust results from a normal farm practice; or

(b) order the owner or operator of the agricultural operation to cease the practice causing the odour, noise or dust if it is not a normal farm practice or to modify the practice in the manner set out in the order to be consistent with normal farm practice.

Refusal to hear application

(4) The Board may refuse to hear an application or, after a hearing has commenced, refuse to continue the hearing or to make a decision if in its opinion,

(a) the subject-matter of the application is trivial;

(b) the application is frivolous or vexatious or is not made in good faith; or

(c) the applicant has not a sufficient personal interest in the subject-matter of the application.

Appeal

(5) Any party to a hearing under subsection (3) may appeal an order of the Board on any question of fact or law or both to the Divisional Court within thirty days of the making of the order.

Professional assistance

(6) The Board may appoint one or more persons having technical or special knowledge of any matter to assist the Board in any capacity in respect of any matter before it. 1988, c.-62, s.-5.

SAMPLE EVALUATION OF RISKS CHECKLIST
INSURER

A) Coverages (your form): (include persons potentially covered and property potentially covered, both as to insured persons and third parties)

B) Description of all present activity:

C) Past uses and owners, and years of same:

D) Description of equipment in use on site, and all environmental protection equipment in use:

E) Listing of all certificates of approval and permits:

F) Listing of all property and environmental audits already done, or in progress and production of these with the application. (For example, they may have been done by banks, prior owners, or in preparation for purchase decisions).

G) Review of neighbouring uses - present and past.

H) Disclosure of all claims, administrative orders, present and past, now known or anticipated.

I) Disclosure of all spills (past and present)

J) Description of all waste management practices (past and present)

K) Review of abandoned waste sites list if available, and comparison to property

L) List of all applicable legislation to the activity in question, e.g. Environmental Protection Act, Ontario Water Resources Act, Gasoline Handling Act, etc.

Note: this is not a complete list and is not intended for actual use. Rather it is an illustration of some of the items that could be included in a practical check list for risk reduction purposes.

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PRELIMINARY ENVIRONMENTAL RISK REVIEW

1. Identification of Parties and Property

Proposed Borrower: ______________________________

Present Owner of Property: ______________________________

Property Address: ______________________________

Legal Description of Property (if available): ______________

____

Description of Buildings on Property: ______________

____

2. What is the proposed use of the Property?

____

____

3. What were the past uses of the Property?

Industrial: ______________________________

Commercial: ______________________________

Residential: ______________________________

Undeveloped: ______________________________

Other: ______________________________

4. Are there any obvious physical signs of contamination on or around the Property?

   Stained soil or concrete: ______________________

   Vegetation damage: ______________________

   Foul or unusual odours: ______________________

   Oily sheens or discolourations of surface water: __________

   ____

   Other: ______________________

5. (a) Could activities on nearby properties contaminate the Property?

   ____

   ____

   (b) May activities on nearby properties have contaminated the Property?

   ____

   ____

6. (a) Are there now or have there ever been any chemicals or fuels handled on or around the Property?

   ____

   (b) How were such chemicals or fuels handled?

   ____

7. Are there now, or have there ever been, any underground storage tanks on the Property or adjacent properties?

   ____

   ____

8. Are there any materials present in buildings on the Property which may contain asbestos?

   Fireproofing materials sprayed on ceiling or wall: __________

   ____

Pipe wrap: ______________________________

Friable ceiling tiles: ______________________________

Acoustical plaster: ______________________________

9. Are there electrical transformers or capacitors on the Property which may contain PCBs?

____

____

10. (a) Is the source of drinking water for the Property a well or municipal supply?

____

(b) Is the source of drinking water for nearby properties wells or municipal supply?

____

11. Is the Property serviced by a municipal sewer system or a private sewage or septic system?

____

____

12. (a) What waste is generated on the Property at present?

Solid ______________________________

Liquid ______________________________

Gaseous ______________________________

Hazardous ______________________________

Other ______________________________

(b) How is waste generated at the Property disposed of?

Solid ______________________________

Liquid ______________________________

Gaseous ______________________________

Hazardous ______________________________

Other ______________________________

13. (a) What waste is to be generated (the "anticipated waste") on the Property?

Solid ______________________________

Liquid ______________________________

Gaseous ______________________________

Hazardous ______________________________

Other ______________________________

(b) How is the anticipated waste to be disposed of?

Solid ______________________________

Liquid ______________________________

Gaseous ______________________________

Hazardous ______________________________

Other ______________________________

14. Is the Property, or are the adjacent properties, on a federal, provincial or municipal list of hazardous waste sites?

____

____

15. Is the Property the subject of environmental or other litigation or any regulatory enforcement action?

____

____

16. What are the environmental permits, certificates of approval, control orders or other orders or directions applicable to the business now conducted on the Property?

____

____

17. Is there any environmental reporting done at present in respect of the Property?

____

____

18. What environmental audits, assessments, inspections, samplings, and studies have been made in respect of the Property?

19. Are there any adverse press reports or complaints on file concerning the Property or properties in the vicinity?

20. Is the Property near or on any flood plain, wetland, or otherwise sensitive ecological area?

21. Are there any easements on the Property or in the vicinity (such as roads, pipelines or utilities) over which hazardous substances may be transported?

Laboratory and Specimen Collection Centre Licensing Act, R.S.O. 1990, c. L.1
Lightning Rods Act, R.S.O. 1990, c. L.14
Liquor Licence Act, R.S.O. 1990, c. L.19
Livestock and Livestock Products Act, R.S.O. 1990, c. L.20
Livestock Community Sales Act, R.S.O. 1990, c. L.22
Livestock Medicines Act, R.S.O. 1990, c. L.23
Marriage Act, R.S.O. 1990, c. M.3
Meat Inspection Act (Ontario), R.S.O. 1990, c. M.5
Migratory Birds Convention Act, 1994, S.C. 1994, c. 22, s. 12
Milk Act, R.S.O. 1990, c. M.12
Mining Act, R.S.O. 1990, c. M.14
Motor Vehicle Transport Act, 1987, R.S.C. 1985, c. 29 (3rd Supp.)
Motorized Snow Vehicles Act, R.S.O. 1990, c. M.44
Municipal Act, R.S.O. 1990, c. M.45
Municipality of Metropolitan Toronto Act, R.S.O. 1990, c. M.62, ss. 90.1-90.5, Part XIII
National Energy Board Act, R.S.C. 1985, c. N-7
National Parks Act, R.S.C. 1985, c. N-14
National Transportation Act, 1987, R.S.C. 1985, c. 28 (3rd Supp.)
Niagara Escarpment Planning and Development Act, R.S.O. 1990, c. N.1
Niagara Parks Act, R.S.O. 1990, c. N.3
Northwest Territories Waters Act, S.C. 1992, c. 39
Nursing Homes Act, R.S.O. 1990, c. N.7
Off-Road Vehicles Act, R.S.O. 1990, c. O.4
Oleomargarine Act, R.S.O. 1990, c. O.5
Ontario Heritage Act, R.S.O. 1990, c. O.18
Ontario Water Resources Act, R.S.O. 1990, c. O.40
Parks Assistance Act, R.S.O. 1990, c. P.2
Patent Act, R.S.C. 1985, c. P-4
Pawnbrokers Act, R.S.O. 1990, c. P.6
Pesticides Act, R.S.O. 1990, c. P.11
Petroleum Resources Act, R.S.O. 1990, c. P.12
Planning Act, R.S.O. 1990, c. P.13, s. 70.2
Plant Breeders Rights Act, S.C. 1990, c. 20
Plant Diseases Act, R.S.O. 1990, c. P.14
Private Hospitals Act, R.S.O. 1990, c. P.24
Private Investigators and Security Guards Act, R.S.O. 1990, c. P.25
Professional Engineers Act, R.S.O. 1990, c. P.28
Provincial Parks Act, R.S.O. 1990, c. P.34
Public Accountancy Act, R.S.O. 1990, c. P.37
Public Halls Act, R.S.O. 1990, c. P.39
Public Lands Act, R.S.O. 1990, c. P.43

Public Parks Act, R.S.O. 1990, c. P.46
Public Transportation and Highway Improvement Act, R.S.O. 1990, c. P.50
Public Vehicles Act, R.S.O. 1990, c. P.54
Racing Commission Act, R.S.O. 1990, c. R.2
Radiocommunication Act, R.S.C. 1985, c. R-2
Railway Safety Act, R.S.C. 1985, c. 32 (4th Supp.)
Regional Municipality of Haldimand-Norfolk Act, R.S.O. 1990, c. R.10
Regional Municipalities Act, R.S.O. 1990, c. R.8
Regional Municipality of Durham Act, R.S.O. 1990, c. R.9
Regional Municipality of Halton Act, R.S.O. 1990, c. R.11
Regional Municipality of Hamilton-Wentworth Act, R.S.O. 1990, c. R.12
Regional Municipality of Niagara Act, R.S.O. 1990, c. R.13
Regional Municipality of Ottawa-Carleton Act, R.S.O. 1990, c. R.14
Regional Municipality of Peel Act, R.S.O. 1990, c. R.15
Regional Municipality of Sudbury Act, R.S.O. 1990, c. R.16
Regional Municipality of Waterloo Act, R.S.O. 1990, c. R.17
Regional Municipality of York Act, R.S.O. 1990, c. R.18
Retail Sales Tax Act, R.S.O. 1990, c. R.31
Riding Horse Establishments Act, R.S.O. 1990, c. R.32
Sheep and Wool Marketing Act, R.S.O. 1990, c. S.9
Special Economic Measures Act, S.C. 1991, c. 17
St. Clair Parkway Commission Act, R.S.O. 1990, c. S.23
St. Lawrence Parks Commission Act, R.S.O. 1990, c. S.24, s. 19(1)
Surveyors Act, R.S.O. 1990, c. S.29
Telecommunications Act, S.C. 1993, c. 38, s. 17
Territorial Lands Act, R.S.C. 1985, c. T-7, *ss. 17, 18*
Theatres Act, R.S.O. 1990, c. T.6
Tobacco Tax Act, R.S.O. 1990, c. T.10
Toronto Area Transit Operating Authority Act, R.S.O. 1990, c. T.13
Tourism Act, R.S.O. 1990, c. T.16
Transportation of Dangerous Goods, 1992 Act, S.C. 1992, c. 34
Truck Transportation Act, R.S.O. 1990, c. T.22
Veterinarians Act, R.S.O. 1990, c. V.3
Vital Statistics Act, R.S.O. 1990, c. V.4
Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act, S.C. 1992, c. 52
Wild Rice Harvesting Act, R.S.O. 1990, c. W.7
Wilderness Areas Act, R.S.O. 1990, c. W.8
Yukon Placer Mining Act, R.S.C. 1985, c. Y-3
Yukon Waters Act, S.C. 1992, c. 40

Regional Municipality of Haldimand-Norfolk Act, R.S.O. 1990, c. R.10
Regional Municipality of Halton Act, R.S.O. 1990, c. R.11
Regional Municipality of Hamilton-Wentworth Act, R.S.O. 1990, c. R.12
Regional Municipality of Peel Act, R.S.O. 1990, c. R.15
Regional Municipality of Sudbury Act, R.S.O. 1990, c. R.16
Regional Municipality of Waterloo Act, R.S.O. 1990, c. R.17

LICENCE PLATES

see NUMBER PLATES

LICENCES AND PERMITS

see also REGISTRATION
Aeronautics Act, R.S.C. 1985, c. A-2
Aggregate Resources Act, R.S.O. 1990, c. A.8
Agricultural Tile Drainage Installation Act, R.S.O. 1990, c. A.14
Ambulance Act, R.S.O. 1990, c. A.19
Amusement Devices Act, R.S.O. 1990, c. A.20
Animals for Research Act, R.S.O. 1990, c. A.22
Architects Act, R.S.O. 1990, c. A.26
Artificial Insemination of Livestock Act, R.S.O. 1990, c. A.29
Athletics Control Act, R.S.O. 1990, c. A.34
Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3
Beef Cattle Marketing Act, R.S.O. 1990, c. B.5
Bees Act, R.S.O. 1990, c. B.6
Boards of Trade Act, R.S.C. 1985, c. B-6
Bread Sales Act, R.S.O. 1990, c. B.11
Broadcasting Act, S.C. 1991, c. 11
Building Code Act, 1992, S.O. 1992, c. 23
Business Regulation Reform Act, 1994, S.O. 1994, c. 32, s. 12
Canada Agricultural Products Act, R.S.C. 1985, c. 20 (4th Supp.)
Canada Grain Act, R.S.C. 1985, c. G-10
Canada Oil and Gas Operations Act, R.S.C. 1985, c. O-7
Canada Petroleum Resources Act, R.S.C. 1985, c. 36 (2nd Supp.)
Canada Shipping Act, R.S.C. 1985, c. S-9
Canadian Environmental Assessment Act, S.C. 1992, c. 37
Canadian Environmental Protection Act, R.S.C. 1985, c. 16 (4th Supp.)
Cemeteries Act (Revised), R.S.O. 1990, c. C.4
Child and Family Services Act, R.S.O. 1990, c. C.11
Coastal Fisheries Protection Act, R.S.C. 1985, c. C-33
Coasting Trade Act, S.C. 1992, c. 31
Commuter Services Act, R.S.O. 1990, c. C.23
Conservation Authorities Act, R.S.O. 1990, c. C.27

Contraventions Act, S.C. 1992, c. 47
Copyright Act, R.S.C. 1985, c. C-42
Criminal Code, R.S.C. 1985, c. C-46
Crown Forest Sustainability Act, 1994, S.O. 1994, c. 25, Parts III, VI, s. 66
Customs Act, R.S.C. 1985, c. 1 (2nd Supp.)
Day Nurseries Act, R.S.O. 1990, c. D.2
Dead Animal Disposal Act, R.S.O. 1990, c. D.3
Edible Oil Products Act, R.S.O. 1990, c. E.1
Elevating Devices Act, R.S.O. 1990, c. E.8
Employment Agencies Act, R.S.O. 1990, c. E.13
Employment Standards Act, R.S.O. 1990, c. E.14
Energy Act, R.S.O. 1990, c. E.16
Environmental Assessment Act, R.S.O. 1990, c. E.18
Environmental Bill of Rights Act, 1993, S.O. 1993, c.28
Environmental Protection Act, R.S.O. 1990, c. E.19
Excise Act, R.S.C. 1985, c. E-14
Excise Tax Act, R.S.C. 1985, c. E-15
Extra-Provincial Corporations Act, R.S.O. 1990, c. E.27
Farm Products Containers Act, R.S.O. 1990, c. F.7
Farm Products Grades and Sales Act, R.S.O. 1990, c. F.8
Farm Products Marketing Act, R.S.O. 1990, c. F.9
Federal Real Property Act, S.C. 1991, c. 50
Ferries Act, R.S.O. 1990, c. F.11
Financial Administration Act, R.S.C. 1985, c. F-11
Fish Inspection Act, R.S.O. 1990, c. F.18
Fisheries Act, R.S.C. 1985, c. F-14
Forest Fires Prevention Act, R.S.O. 1990, c. F.24
Freshwater Fish Marketing Act (Ontario), R.S.O. 1990, c. F.33
Fuel Tax Act, R.S.O. 1990, c. F.35
Funeral Directors and Establishments Act, R.S.O. 1990, c. F.36
Fur Farms Act, R.S.O. 1990, c. F.37
Game and Fish Act, R.S.O. 1990, c. G.1
Gasoline Handling Act, R.S.O. 1990, c. G.4
Grain Corn Marketing Act, R.S.O. 1990, c. G.9
Grain Elevator Storage Act, R.S.O. 1990, c. G.10
Health of Animals Act, S.C. 1990, c. 21
Highway Traffic Act, R.S.O. 1990, c. H.8
Homes for Special Care Act, R.S.O. 1990, c. H.12
Immigration Act, R.S.C. 1985, c. I-2
Independent Health Facilities Act, R.S.O. 1990, c. I.3
Industrial Standards Act, R.S.O. 1990, c. I.6
Insurance Act, R.S.O. 1990, c. I.8