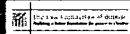


Clean Up Your "Act": Understanding Brownfield Regulation in Ontario

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Canadian Environmental Law Association
December 6, 2010
Kenora, 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

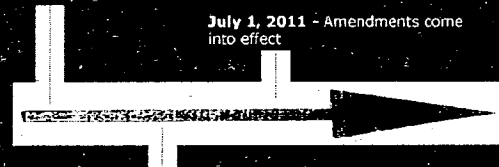


2005 - Minister of Municipal Affairs and Housing announces Office of Brownfields Coordinator

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

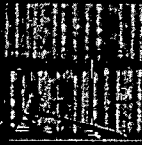
Significant Changes in 2009 Amendments

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/environment/DESR/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 Kenora

EBR Registry	Property Address	Property Owner	EBR Registry Number	EBR Registry Date	EBR Registry Status	EBR Registry Description	EBR Registry Location	EBR Registry Contact	EBR Registry Notes
1	1000 Main St	Kenora City Council	1000-0001	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
2	1000 Main St	Kenora City Council	1000-0002	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
3	1000 Main St	Kenora City Council	1000-0003	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
4	1000 Main St	Kenora City Council	1000-0004	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
5	1000 Main St	Kenora City Council	1000-0005	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
6	1000 Main St	Kenora City Council	1000-0006	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
7	1000 Main St	Kenora City Council	1000-0007	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
8	1000 Main St	Kenora City Council	1000-0008	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
9	1000 Main St	Kenora City Council	1000-0009	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
10	1000 Main St	Kenora City Council	1000-0010	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment

EBR Search for Certificate of Property Use Posting

EBR Registry	Property Address	Property Owner	EBR Registry Number	EBR Registry Date	EBR Registry Status	EBR Registry Description	EBR Registry Location	EBR Registry Contact	EBR Registry Notes
1	1000 Main St	Kenora City Council	1000-0001	2009-01-01	Active	Environmental Site Assessment	Kenora, ON	Kenora City Council	Environmental Site Assessment
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Detail of a Sample Certificate of Property Use Posting

Province of Ontario
Ministry of the Environment
Environmental Protection Act
Section 15(1)
Certificate of Property Use Posting

1. Name of the Property Owner: [Name]
2. Address of the Property: [Address]
3. Date of Posting: [Date]
4. Name of the Posting Officer: [Name]
5. Signature of the Posting Officer: [Signature]
6. Name of the Property: [Name]
7. Address of the Property: [Address]
8. Date of Posting: [Date]
9. Name of the Posting Officer: [Name]
10. Signature of the Posting Officer: [Signature]

Example of a Record of Site Condition

Record of Site Condition
1. Name of the Property: [Name]
2. Address of the Property: [Address]
3. Date of Posting: [Date]
4. Name of the Posting Officer: [Name]
5. Signature of the Posting Officer: [Signature]
6. Name of the Property: [Name]
7. Address of the Property: [Address]
8. Date of Posting: [Date]
9. Name of the Posting Officer: [Name]
10. Signature of the Posting Officer: [Signature]

OMB Citizens Guide

OMB Citizens Guide
1. Name of the Property: [Name]
2. Address of the Property: [Address]
3. Date of Posting: [Date]
4. Name of the Posting Officer: [Name]
5. Signature of the Posting Officer: [Signature]
6. Name of the Property: [Name]
7. Address of the Property: [Address]
8. Date of Posting: [Date]
9. Name of the Posting Officer: [Name]
10. Signature of the Posting Officer: [Signature]

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."

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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