

June 27, 2005

BROWNFIELDS LEGISLATION AND REGULATION UPDATE

NOTICE OF MANDATORY FILING REQUIREMENT FOR RECORDS OF SITE CONDITION AND PUBLIC NOTIFICATION REQUIREMENTS FOR CERTIFICATES OF PROPERTY USE

You have previously expressed an interest in legislation and regulations related to brownfields. As you may be aware, the provincial government has set a proclamation date of October 1, 2005, for sections of the *Brownfields Statute Law Amendment Act, 2001* requiring mandatory filing of records of site condition (RSCs) for specified changes in property use. A proposed regulatory amendment has also been placed on the EBR Registry for comment that would classify certificates of property use as an instrument under the *Environmental Bill of Rights* (EBR).

Mandatory Filing Requirements

Two sections of the *Brownfields Statute Law Amendment Act, 2001* relating to the mandatory filing of RSCs are being proclaimed. Sections 168.3.1 and 168.6 of the *Environmental Protection Act* and related sections (Parts 4 and 10) of Ontario Regulation 153/04, Records of Site Condition will come into effect October 1, 2005. These provisions will:

- Require the filing of an RSC to the brownfields Environmental Site Registry before a property use can change from an industrial, commercial, or community use to a residential, institutional, parkland, or agricultural use;
- Restrict construction of a building before filing an RSC, if the building will be used in connection with a specified change of property use; and
- Prohibit the issuance of a building permit if it is in relation to a use of the property or construction of a building that is restricted by a Certificate of Property Use.

Amendments are also anticipated to the Building Code Regulation (O. Reg. 403/97) to make these provisions applicable law under the Building Code.

Proposal to Classify Certificates of Property Use under EBR

A proposal is posted on the EBR registry to amend Ontario Regulation 681/94, Classification of Proposals for Instruments, to classify certificates of property use as a class II instrument under the EBR. This classification would require a minimum level of public notification, including a posting on the EBR, of certificate of property use proposals and provide third party leave to appeal a decision on a certificate of property use. This proposal to amend O. Reg. 681/94 has been placed on the EBR Environmental Registry for comment.

The link to the EBR proposal posting is:

<http://www.ene.gov.on.ca/envregistry/025712ER.HTM>

Minor Amendments to Records of Site Condition regulation

Minor amendments have been made to Ontario Regulation 153/04, Records of Site Condition, under the *Environmental Protection Act*, to address minor drafting errors and to clarify some existing provisions. These amendments were made by O. Reg. 366/05. This regulation has been filed and can be viewed at e-laws (<http://www.e-laws.gov.on.ca>) by clicking on the Regulations link under Source Law, then 2005, and then looking under the *Environmental Protection Act*.

Guidance Information

“Records of Site Condition: A Guide on Site Assessment, the Cleanup of Brownfield Sites and the Filing of Records of Site Condition” is currently available on the MOE web-site (<http://www.ene.gov.on.ca>). The guide provides an overview of the RSC process, including the mandatory filing requirements. It can be accessed by clicking on the Brownfields link and then the Record of Site Condition link.

The Ministry of the Environment (MOE) is also currently developing an internet-based training program to explain the requirements associated with the mandatory filing provisions of the Brownfields legislation and regulation. Once completed, the training program will also be available on the MOE record of site condition web-site.

MOE Contact Information

As mentioned above, material is available to assist with understanding the new regulatory and legislative provisions. For additional information, the following MOE contacts are provided:

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Sincerely,

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