

TAB 6



The Six-Minute Environmental Lawyer 2014

Certificates of Property Use (CPUs) and Liability for Risk Management Measures

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6

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Table of Contents

Introduction	3
A. MOECC Brownfields Program	4
B. CPUs - Statutory Authorizing Documents: EPA section 168.6	9
C. Discussion Regarding Certain CPU Terms and Conditions.....	13
D. MOECC Inspections and Enforcement of CPU Obligations	20
E. MOECC Contacts	22
Appendix A: Lawyer’s Letter Template	
Appendix B: Environmental Bill of Rights: Forms of Notices, and Sample Proposal and Decision Notice	
Appendix C: Excerpts from the Environmental Protection Act and O. Reg. 153/04	
Appendix D: Section 197 Provisions and Related Documentation	
Appendix E: Ministry of the Environment and Climate Change Regions	

Introduction

I am pleased to participate in this Law Society of Upper Canada program “The Six-Minute Environmental Lawyer 2014”. I regret that I will not be able to personally present the paper at the conference but I have confidence that Dianne Saxe will be able to bring the subject matter to life.

The views and opinions expressed in this paper are my personal views and do not reflect any official position of either the Ministry of the Attorney General, with whom I am employed (as are all legal counsel with the Government of Ontario), or the Ministry of the Environment and Climate Change (“MOECC”) with whom I have been seconded for over 10 years. In my position as the Regional Counsel for the MOECC Operations Division, Central Region (Toronto, Halton Peel, York Durham and Barrie Districts) I work with the Directors, District Managers and District Engineers and Environmental Officers assisting them regarding the drafting and finalizing of certificates of property use (“CPUs”) and on follow up actions being taken to see that the obligations that are set out in the CPUs are in fact carried out.

The paper presents an overview of CPUs and the role they play as part of the MOECC Brownfields program and records of site condition (“RSCs”). This paper is not a legal treatise but rather my desire to provide some practical information regarding aspects of the CPU regime and areas where legal counsel can be very helpful in providing advice to their clients.

I have organized this paper as follows:

- A. MOECC Brownfields Program
 - An overview and resources for further information.
- B. CPUs- Statutory Authorizing Documents: EPA section 168.6
 - An overview of the legislative framework.
- C. Discussion Regarding Certain CPU Terms and Conditions
 - Areas where concerns have been raised.
- D. MOECC Inspections and Enforcement of CPU Obligations

– EPA provisions and inspection program.

E. MOECC Contacts

– Info-Go and MOECC Regional Counsel.

I have also included for reference purposes, appendices to this paper which are listed in the table of contents. I would like to thank Natalie MacDonnell, one of our MOECC articling students, for her assistance in putting this paper together.

A. MOECC Brownfields Program

Brownfield properties are commonly thought of as urban properties that are potentially contaminated due to historical, industrial or commercial practices, which may be abandoned, vacant or underutilized. The current legislative framework to deal with such properties, along with many others, was set up in the *Brownfields Statute Law Amendment Act, 2001*. This built on two other phenomena: (1) the 1996 MOE Guideline for Use at Contaminated Sites in Ontario, which municipalities were encouraged to use in planning; and (2) the development of ‘environmental site assessments’ (ESAs) in the private sector to provide environmental information about properties that could be used in transactions. The overall scheme enacted in 2001 created prohibitions on certain changes in a property’s use unless an RSC was filed for a property and it could be said, as of a particular date, that there were no contaminants of concern there, or that the property met the applicable site condition standard for a contaminant of concern, or a standard for a contaminant specified in a risk assessment. The overall scheme is not the subject of this paper. Rather, it is focused on one aspect of risk assessments, the CPU, which can be issued where a risk assessment for a contaminant has been prepared and accepted.

The following, however are resources for further information:

1. *Environmental Protection Act*, R.S.O. 1990, c. E. 19 (“EPA”), Part XV.1 - Records of Site Condition
- the key legislation involved.
2. Ontario Regulation 153/04 – Records of Site Condition (O. Reg. 153/04)

- the detailed regulatory regime involved.
 - 3. www.ontario.ca/environment-and-energy/brownfields-redevelopment
 - the primary MOECC Brownfields information on its website that links to key documents and publications.
 - 4. Environmental Site Registry (“ESR”)
 - MOECC registry of RSCs including copies of CPUs involved.
 - see search records for RSCs at the bottom of www.ontario.ca/environment-and-energy/brownfields-redevelopment.
- Separate links are provided for RSCs filed between October 1, 2004 and June 30, 2011 and since July 1, 2011, when O. Reg. 153/04 was amended and the submission process and IT system changed.
5. EBR Environmental Registry, www.ebr.gov.on.ca
 - registry where CPUs are posted in draft and as final issued documents.

Lawyer’s Letters

My experience is that one of the most important areas where mistakes are often made in the Brownfields program is the incorrect description of the property involved and/or the owners of the property. A risk assessment, CPU and RSC can only involve property owned by owners having an interest in the entire property. It is therefore very important for lawyers to provide input as early as possible in the process. The pre-submission form (“PSF”) and the RSC documentation must include the following:

“a legal description of the property and a list of its owners and a description of the nature of their interest and any municipal address, assessment roll number and property identifier number applicable to the property, prepared by a lawyer after reviewing a current plan of survey of the property that has been prepared, signed and sealed by a surveyor and all other necessary documents”.

See Section 3(5-4) of Schedule C and Section 4 – 4.1 of Schedule A, of O. Reg. 153/04.

I have included in Appendix A of this paper, a template form of lawyer's letter that would satisfy these requirements. This information is critical and is needed initially at the risk assessment stage and finally at the RSC submission. When a CPU is issued this information is also reviewed to ensure that the CPU is properly completed with the list of all owners and the proper legal description of the property.

It is important to note that the risk assessed property, which is the subject matter of the CPU, is that part of a property that is indicated on a survey. It need not be the entire legal parcel of land owned by the owner but it must be properly identified in the survey.

Process Leading to a CPU

The following is a fairly typical process leading to a CPU:

1. A property owner determines that there is a need to file an RSC (either because it plans to change the property use in a way that is prohibited without one or because the municipality or a lender requires one).
2. If not already done recently to RSC standards, ESAs are completed. Although an RSC may be submitted on the basis of a phase one ESA in some cases, where a risk assessment is carried out both a phase one and phase two ESA will have been done. A risk assessment is done where the phase two ESA shows that for one or more contaminants of concern the applicable site condition standard (for the proposed use or because of the property's characteristics) has not been met. See O. Reg 153/04, Parts VI and VII, and Schedule D for phase one ESAs and Parts VI and VIII and Schedule E for phase two ESAs.
3. A qualified person with the qualifications set out in section 6 of O. Reg. 153/04 becomes involved to conduct or supervise the risk assessment. See O. Reg. 153/04, sections 44-46, Schedule C, and Schedule E sections 41-42 and Table 4.
 - a) The PSF is prepared and submitted to the MOECC (although for some limited scope risk assessments this is done at the same time as the submission of the risk assessment);
 - b) MOECC will typically send comments on the PSF;

- c) The qualified person hired by the owner prepares and submits the risk assessment.
The MOECC may send further comments.
- d) The Director makes a determination to accept or not accept the risk assessment.
- 4. Following acceptance of the risk assessment, particularly where there are risk management measures, a CPU may be issued, and the CPU document is prepared and finalized.
 - a) In the case of an ordinary, i.e., non- limited scope, risk assessment, where there is to be a CPU, the Director will provide notice that a CPU will be prepared with the risk assessment acceptance letter. Further information is required including contact information of the adjacent owners of the property with respect to which the risk assessment was prepared. The adjacent owners are provided notification of the Environmental Bill of Rights (“EBR”) posting (No EBR posting is required for a modified generic risk assessment CPU).
 - b) The EBR proposal for the CPU is posted and notice is given to the adjacent property owners, the chief building official and the clerk of the local municipality and any upper municipality where the property is located (see section 50 of O. Reg. 153/04).
 - c) EBR Comments are received and considered and, usually, a final draft CPU is provided to the owner and the qualified person for final comment.
 - d) The CPU is issued and the EBR decision notice is posted.
- 5. Following the issuance of a CPU, the certificate of requirement is registered:
 - a) The MOECC provides the Acknowledgement and Direction form and draft certificate of requirement to the property owner.
 - b) Legal counsel completes the Acknowledgement and Direction and submits the form to the Director for signature and return.
 - c) The certificate of requirement is registered on title.
 - d) A copy of the instrument and the property abstract are provided to the MOECC as verification of registration.
- 6. Financial assurance is provided where required.

7. Following acceptance of a risk assessment, an RSC may be submitted by the property owner.
 - a) Within 30 days of receiving a complete submission, the MOECC must file and acknowledge the filing of the RSC, return it as not having been completed in accordance with O. Reg. 153/04 or decide to conduct a review of the RSC.
 - b) Once the Director decides to file an RSC submission on the ESR an acknowledgment is sent to the owner.
8. MOECC may conduct follow up inspections.

A couple of points that I want to emphasize on the RSC process are:

- (1) An RSC filed on ESR by the MOECC is a point in time snapshot about the state of the property.
- (2) The filing of the RSC does not mean that the MOECC has reviewed the information in it, or underlying it, or approved the use of the property for the intended use. Users of the ESR must do their own due diligence.
- (3) An RSC filing means that the owner and a qualified person certify that they have done all the detailed prescribed work required by Part XV.1 of the EPA and O. Reg. 153/04 and are providing a summary of the environmental condition of the property and that it meets standards applicable to the intended use as of the certification date.
- (4) Upon the filing of an RSC the property owner and others enjoy conditional protection from certain environmental orders (see EPA section 168.7).

Environmental Bill of Rights, 1993

CPUs are classified as a Class II instrument for the purposes of the *Environmental Bill of Rights, 1993* and are therefore (except in the case of a CPU issued for a modified generic risk assessment) subject to certain posting requirements under the EBR (See O. Reg. 681/94 section 5 clause 15 of subsection 5(2) and section 15.4 of O. Reg. 73/94).

Attached as Appendix B is a copy of the form of notices that are sent by the MOECC regarding the proposal and decision postings made under the EBR, as well as a sample of an EBR proposal and decision notice from a fairly complicated situation in Midland. The Environmental Registry contains many examples of CPUs that have been issued across the province. It must be remembered that each site is unique and therefore the provisions of the CPUs are not all alike. The issuing Directors have discretion as to what terms and conditions should be included in the CPU.

Modified Generic Risk Assessments

In 2011, the concept of a new form of limited scope risk assessment called a Modified Generic Risk Assessment (“MGRA” or Tier 2) was introduced into the legislation. MGRAs are intended to be used when circumstances permit in order to streamline requirements and processing times.

An MGRA assessment and submission is based on the use of the ‘approved model’, which is currently the model on which the applicable site condition standards, aka ‘generic’ were created. Also it is based on phase two ESA work which specifically validates the changes in the MGRA. As a result, no PSF has to be provided before the risk assessment submission. Since the risk management measures are standardized and published for use in an MGRA, a CPU, for an accepted risk assessment submitted as an MGRA which contains only such standardized risk management measures, is exempted from being posted on the EBR.

B. CPUs - Statutory Authorizing Documents: EPA section 168.6

CPUs were introduced into the EPA as part of the *Brownfields Statutory Law Amendment Act, 2001*, and came into effect as of October 1, 2004. Prior to this time, the description of risk management measures that were needed with respect to a Brownfields property, was set out in an order.

CPUs are described in the EPA in section 168.6.

CPUs are sometimes described as authorizing documents which are legally enforceable and which regulate the manner in which activities are carried out. Other authorizing documents include licenses, permits, and environmental compliance approvals. CPUs are also known as a control document similar to an order.

The following describes and comments on CPUs as set out in section 168.6. I have included in Appendix C the complete text of section 168.6.

168.6 Directors

In most cases, where there is a risk assessment that involves risk management measures, the acceptance of the risk assessment and the decision as to whether a CPU is to be issued is made by the District Manager in the MOECC office where the property is located. See Appendix E for a map and list of the MOECC Region/District Offices.

Owner of the Property

A risk assessment can only be accepted by, and a CPU issued to, the “owner of the property”. As indicated in the Lawyer’s Letter Section above, it is important that legal counsel be involved early in the process to clarify the legal description of the property, as well as a proper description of the owner(s). One CPU cannot be issued regarding a property that is comprised of different parcels of land owned by different owners. In such a situation a separate CPU will need to be issued to each property owner.

Owner is not defined under the EPA, but section 4 of O. Reg. 153/04 does provide that owner, “in relation to a record of site condition or risk assessment, includes a beneficial owner of or receiver in respect of the property for which the record of site condition is submitted for filing, is to be submitted for filling or is filed or for which the risk assessment is submitted”. See the discussion below on the CPU requirements.

168.6 (1) Actions Required under a CPU

Paragraph 1 of subsection 168.6(1) outlines the actions that can be specified in a CPU. The Director must have the opinion that the actions are “necessary to prevent, eliminate, or ameliorate any adverse effect that has been identified in the risk assessment.” Actions may include installing any equipment, monitoring any contaminant or recording or reporting information for that purpose. Adverse effect is broadly defined in section 1 of the EPA.

168.6 (1) Property Use Restrictions in a CPU

Paragraph 2 of subsection 168.6(1) indicates that a CPU may require the owner to “refrain from using the property for any use specified in the certificate”. It is important to note that uses are described as they are set out in O. Reg. 153/04 (see sections 1(3); 2 and 3). Also, these are actual uses and not uses permitted under zoning.

168.6 (1) Building Construction Restrictions in a CPU

Paragraph 2 of subsection 168.6(1) permits the Director to issue a CPU requiring the owner to refrain “from constructing any building specified in the certificate on the property”. See the discussion below on the CPU requirements.

168.6 (2) Restrictions or Limitations on CPUs

Subsection 168.6(2) states:

“a certificate of property use shall not require an owner of property to take any action that would have the effect of reducing the concentration of a contaminant on, in, or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment.”

168.6 (3) Revocation or Amendment of CPUs

Subsection 168.6(3) provides that a Director may, on his or her own initiative or on application by the owner of the property, alter any terms and conditions in the CPU, or impose new terms and conditions, or revoke, the CPU.

I have been involved in a number of such situations. For example, CPUs have been revoked when, following the issuance of a CPU, the owner of the property does a clean-up of the site to meet the generic standards which in fact removes all the risk assessment contaminants of concern so they no longer need to be managed as set out in the CPU. CPUs are often altered after a period of time when the mandated monitoring is carried out and shows that the contaminants of concern do not need further monitoring. Another situation where CPUs have been altered is where the property is subdivided. In this case, the CPU can be altered to clarify the risk management measures for which each property owner is responsible. Another example is where circumstances at the property may have changed which require alterations to the risk management measures.

168.6 (4) Notification to Occupants of the Property

Subsection 168.6(4) states that if the CPU contains a provision requiring that the owner of property refrain from using the property for a specified use or from constructing a specified building on a property,

- “(a) the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;
- (b) the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provisions; and
- (c) the owner of the property shall ensure that every occupant of the property complies with the provision.”

See the discussion below on the CPU requirements.

168.6 (5) Notice to Prescribed Persons

Subsection 168.6(5) requires the Director to give notice of a CPU, or its alteration or revocation, to “the persons prescribed by the regulations”. Section 50 of O. Reg. 153/04 sets out the

persons prescribed to receive notice. These include the chief building official, clerk at the local municipality, clerk of any upper municipality, medical officer of health and any board of conservation authority members (see Appendix C).

168.6 (6) Prohibition on Permits

Subsection 168.6(6) provides that where a CPU contains the provision requiring the owner of property to refrain from using the property for a specified use or from constructing a specified building on the property, no permits can be issued to the contrary. Section 51 of O.Reg. 153/04 sets out sections 8 and 10 of the Building Code Act, 1992, as prescribed for the purposes of this subsection (see Appendix C).

C. Discussion Regarding Certain CPU Terms and Conditions

Overview of CPU Provisions

Each risk assessment is unique and driven by site specific conditions. Each CPU is also different. The terms and conditions set out in a CPU are determined by the issuing Director using his or her discretion based on the nature of the site and the risk management measures. That said, CPUs usually contain provisions dealing with the following:

1. ***Interpretation and Definitions*** – defining terms found in the CPU as well as other key concepts found throughout the document.
2. ***Legal Authority*** – citing the legal authority for issuing the CPU.
3. ***Background*** – summarizing some of the details of the risk assessment and how they are addressed in the CPU.
4. ***Director's Requirements*** – CPU risk management measures relating to the risk assessment and the property.
5. ***CPU Restrictions*** – on property use, building construction and notice requirements.
6. ***Additional Requirements*** – dealing with site changes that may affect the risk management measures; reports retention requirements; owner change notification and financial assurance.
7. ***Section 197 Order*** – property notice and certificate of requirement registration requirements.

8. **General Requirements** – standard conditions.
9. **Hearing before the Environmental Review Tribunal**
10. **Schedules** – Information that may be in the schedules includes: (a) legal description of the property that is the subject matter of the risk assessment; (b) property specific standards for each contaminant of concern; (c) plan of survey; (d) target indoor air concentrations; (e) figures that may describe the risk management measures; and (f) form of certificate of requirement.

Specific CPU Provisions

In this paper, I would like to highlight a few of the terms and conditions that may be found in a CPU that are of particular relevance to legal counsel. I will also provide my comments on these terms and conditions.

Definition of Owner:

“Owner” means the owner(s) of the Property, beginning with a person(s) to whom the CPU is issued, described in the “Owner” section on page 1 above and any subsequent owner of the Property.”

As indicated above, CPUs can only be issued to owners of a property and owners include beneficial as well as registered owners. Where there are beneficial owners legal counsel should provide details including copies of the documentation involved.

Property Use

*“Refrain from using the Property for any of the following use(s):
All Property uses except for ● use as defined in O. Reg. 153/04.”*

The point I want to emphasize here is that it is not the permitted uses under zoning that are inserted here, but rather the uses as defined in O. Reg. 153/04, and of these the actual uses being carried on at the property.

Building Construction Requirements

“Refrain from constructing the following building(s): no additional building construction unless construction is in accordance with item X of the CPU.”

Examples of the building construction restrictions include having only slab on grade buildings or having buildings with vapour mitigation systems.

Notice of Restrictions

“Pursuant to the requirements of subsection 168.6(4) of the Act, the Owner shall ensure that every occupant of the property is given notice that the Ministry has issued the CPU and that it contains the provisions noted above in items X and Y unless noted in N/A. For the purpose of this requirement, an occupant means any person to whom the Owner has a contractual relationship regarding the occupancy of all or part of the Property.”

This requirement and subsection of the EPA has caused some concern for legal counsel. The last sentence was added to try and clarify the MOECC interpretation of the EPA requirement to limit the notification requirements to persons who have a longer term relationship with the property. Counsel have also advised that under the EPA, there is no requirement to give actual notice of the issuance of the CPU to occupants – the requirement is to provide notice of the property use and/or building construction requirements. I encourage legal counsel to ensure that appropriate disclosure is made in such a way that is clear and transparent depending on the situation.

See the discussion below regarding the section 197 order that requires a copy of the CPU to be given to certain parties who are not occupants.

Owner Change Notification

“While the CPU is in effect, the Owner shall forthwith report in writing, to the Director any changes of ownership of the property, except that while the property is registered under the Condominium Act, 1998, S.O. 1998. c.19 as amended, no notice need be given

of changes in the ownership of individual condominium units or any pertinent common elements on the Property.”

Although there is this requirement to keep the MOECC advised of changes of the ownership of a Property, MOECC will not issue an amendment to the CPU solely for that purpose. As in the case of environmental compliance approvals MOECC will provide acknowledgement of the receipt of the notice and make a notation in the file of the change of ownership.

Financial Assurance

“The Director has not included in the CPU a requirement that the Owner provide financial assurance to the Crown in right of Ontario.”

OR

“Within fifteen (15) days of the date of the CPU, the Owner shall provide financial assurance to the Crown in the right of Ontario in the amount of XX dollars (\$) in a form satisfactory to the Director and in accordance with Part XII of the Act to cover the costs for the performance of [for example, ground water, sump water quality and indoor air monitoring as identified in Items 4.2 (d), 4.2 (e) and 4.2 (f)] of the CPU].”

As part of the decision making process in issuing CPUs Directors will always consider whether or not financial assurance is required. Financial assurance is not required for property owned by municipalities or in situations where there is no risk management measure that requires ongoing monitoring or operation, i.e. barrier site soils, as opposed to extensive groundwater monitoring or operation of equipment.

The amount and description of the financial assurance is proposed by the qualified person as part of the risk assessment review process. The MOECC often agrees to the amount and form of the financial assurance when the risk assessment is accepted and a CPU is contemplated. The requirement for financial assurance is finalized only when the CPU is issued and is usually required to be provided 15 days thereafter.

Under section 132 of the EPA, requirements regarding the amount of the financial assurance may be changed and under section 134 of the EPA, the Director may reduce or release the financial assurance requirements by issuing an order and receiving supporting documentation as may be necessary in the circumstances. The MOECC publication “F-15: Financial Assurance Guideline” provides further information on this subject and may be accessed at the MOECC website at <https://www.ontario.ca/environment-and-energy/f-15-financial-assurance-guideline>.

Section 197 Order – Property Notice and Certificate of Requirement Registration

“Before dealing with the Property in anyway, give a copy of the CPU, including any amendments thereto, to every person who will acquire an interest in the property as a result of a dealing.

Within 15 days of receipt of the Certificate of Requirement issued under subsection 197(2) of the Act, completed as outlined in Schedule “C”, register the certificate of requirement on title to the Property, in the appropriate land registry office.

Immediately after registration of the Certificate of Requirement provide to the Director written verification that the Certificate of Requirement has been registered on title to the Property”

The issuance of a CPU is a decision affecting real property and therefore the provisions of section 197 of the EPA are applicable and should be specifically addressed. The statutory provisions in section 197 are included in Appendix D of this paper. Also included in that Appendix is a copy of the form of instructions that is often given to qualified persons regarding the registration requirement and how it should be carried out; a copy of a registered certificate of requirement and a copy of how it appears on a PIN abstract. Prior to the *Brownfields Statute*

Law Amendment Act, 2001 coming into force the certificate in section 197 was referred to as a “certificate of prohibition” not a “certificate of requirement”.

You will note that there is the option of including in this certificate of requirement, a notice of the registration made under the ESR. This was considered a benefit in situations where an RSC was going to be issued shortly after the issuance of the CPU because unlike the land registry system, the ESR is a static point in time registration. Any changes to the name of the owner, municipal address or legal description of the property is not reflected or updated in the ESR, as it is with the land registry system. In the early days, this led to some delays in registering the certificates of requirement. Nowadays there is a better follow-up procedure or if requested, the certificate of requirement can be registered without reference to an RSC filing.

It is therefore always advisable for legal counsel to do a search of the ESR at any time when a land registry notice is made. If a certificate of requirement has not been registered prior to transfer of the ownership of the Property, the registration is still a requirement of the CPU and can be made by any subsequent owner, with a notation that it applies to the original property owner as well as the current registered owner.

Hearing before the Environmental Review Tribunal (ERT)

There is no appeal procedure respecting the acceptance or non-acceptance of a risk assessment under section 168.5 of the EPA. However, I am not aware of any situation where a risk assessment has not been accepted.

The issuance of a CPU, or the terms and conditions of a CPU, may be the subject matter of a hearing at the ERT. This applies to not only the original issuance of the CPU, but also to any revocation or alteration. To my knowledge, there has only been one instance where a CPU has been the subject matter of an ERT proceeding [*Cushman v. Ontario (Director, Ministry of Environment & Energy)*, 2007 28 CELR (3d) 140 (Ont. Environmental Review Tribunal)]. This case

was an application for leave to appeal by a resident who had provided comments on the EBR posting. In this case, the Applicant challenged the issuance of a CPU on four grounds:

1. There was not adequate “testing of the air, soil and water at the site or offsite”;
2. There was “no information provided to support the conclusion that the soils across the entire site are medium fine texture”;
3. The risk assessment used “an incorrect approach to arsenic levels. The assessment should have used the arsenic value for the most sensitive human receptor”;
4. The CPU did not “contain a requirement for a Soil Management Plan”.

The ERT decided that the Applicant did not meet “the onus of establishing that there appears to be good reason to believe that no reasonable person, having regard to relevant law and government policies, could have made the decision to issue the CPU within the meaning of section 41 of the EBR”.

Standards and Adverse Effect

It is important to remember that the requirements of a CPU are set out in the document and do not change just because the regulatory requirements or standards change. These CPU requirements are established at a particular point in time. They may be changed however, if the Director alters the CPU at a later date.

It should also be remembered that the property specific standards are conservative, and exceeding these standards does not necessarily mean that there is a potential for an adverse effect. Conversely, though, depending on the particular circumstances, there could be actual or potential adverse effects. An exceedance is a situation which could trigger further abatement requirements and a possible change to the terms of the CPU. Every situation is unique and needs to be analyzed carefully before changes are made.

If the Director alters the terms of the CPU, the owner(s) involved would have the ability to provide input and if necessary, appeal the new requirements. In my experience to date, these issues have been addressed by voluntary actions taken by the owner to better understand the

situation and its impacts. If needed, a provincial officer could issue an order to require specific actions. Any such order is reviewable by the District Manager and could be the subject matter of a hearing before the ERT.

Condominiums

Condominiums present challenges regarding change of ownership notices and other obligations that must be carried out under the CPU. Given that 'ownership' of a condominium does not rest with the condominium corporation, and the obligations of a CPU rest on the owners of a property, it is therefore recommended when a condominium is being created that legal counsel, while preparing the condominium documentation include a description of the CPU and its requirements. In addition, every owner must receive a copy of the CPU, as noted above.

To address these concerns, the following general provision was recently added to CPUs:

"In the event that the Owner complies with the provisions of Items X and Y of the CPU regarding the registration of the certificate of requirement on title to the Property, and then creates a condominium corporation by the registration of a declaration and description with respect to the Property pursuant to the Condominium Act, 1998, S.O. 1998, c.19, as amended, and then transfers ownership of the Property to various condominium unit owners, the ongoing obligations of the Owner under this CPU can be carried out by the condominium corporation on behalf of the Owners of the Property."

The condominium owners have obligations regarding the CPU which will be registered on title for their property. As part of the condominium documentation, however, it may be helpful, if developers explain this and suggest that the condominium corporation will ensure that the obligations are carried out. The MOECC would normally deal with the property manager of the condominium before any contact is made with the condominium owners.

D. MOECC Inspections and Enforcement of CPU Obligations

When CPUs were introduced into the EPA there were amendments made to other provisions in the EPA. For example, CPUs are included in the following sections:

section 156 – inspections by Provincial Officers.

section 168.4 (2) – the existence of the CPU must be included in the contents of a record of site condition.

section 168.7(5) – an order may be issued against a person who contravenes that term of condition of a certificate of property use notwithstanding that a record of site condition has been issued for the property.

section 186(3) – failure to comply with the terms and conditions of a CPU is an offence.

section 194(1) – every director and officer of a corporation has a duty to take all reasonable care to prevent the corporation from contraventions of a CPU.

As part of the MOECC mandate, each District Office is required to follow-up on compliance matters by carrying out inspections of properties or facilities where there may be requirements imposed by approvals or control documents. Of course inspections are also carried out as a result of complaint(s) that may be brought to the attention of the MOECC. Recently, as more CPUs are being issued, the normal MOECC inspection program includes a requirement to inspect properties that are the subject matter of CPUs, to ensure that the obligations contained in the CPU are in fact being carried out. Each year Environmental Officers will inspect some CPU properties as part of the District Abatement Program. Legal counsel should not be surprised therefore when their clients contact them to say that they have been, or are being inspected. Inspections will usually include a record search, a property ownership search, a site visit, a review of the risk management measures, and whether there have been any changes made.

I am not aware of any prosecutions that have been carried out to date for of non-compliance with CPUs; however there have been a number of situations where non-compliance matters were drawn to the attention of owners or CPUs were altered to reflect changed conditions to ensure compliance.

E. MOECC Contacts

Info-Go-- **www.infogo.gov.on.ca**

To obtain more information about the actual personnel employed in each of the Operations Division offices, you will find the Info-Go office telephone directory very informative. If you browse by the organization, Environment and Climate Change, you will find an offices directory. If you select the Deputy Minister's Office, you will see that the MOECC Legal Services Branch is listed in detail. Under the Operations Division office tab, you will see that there is a sub-tab for the Regional/District Offices where again, detailed information is available regarding the District Managers, Engineers and Environmental Officers.

Included as Appendix E is a copy of the map of Ontario showing the MOECC Regions. The details concerning the Regional/District Offices may also be accessed at:

<https://www.ontario.ca/environment-and-energy/ministry-environment-regional-and-district-offices>.

As you are aware MOECC legal counsel provide advice to the MOECC personnel and they are the ones who make the decisions. Accordingly I encourage your clients to get to know and work with the appropriate MOECC office personnel. As indicated above, each site and CPU is unique and may pose challenges. I hope this paper is of some assistance regarding your understanding of CPUs.

If you have any questions regarding the requirements for the legal description of the property, please do not hesitate to contact me or any of the other Regional Counsel:

Eastern Region:

Stella M. Couban – (613) 548-6910 - stella.couban@ontario.ca

Central Region:

Norman S. Rankin – (416) 326-5616 – norm.rankin@ontario.ca

West Central Region:

Brian Byrnell – (905) 521-7429 – brian.byrnell@ontario.ca

Southwest Region:

Peter Burns – (519) 873-5123 – peter.burns@ontario.ca

Northern Region:

Nancy Hartry – (416) 314-9147 – nancy.hartry@ontario.ca

.....

Appendix A: Lawyer's Letter Template

LAWYER'S LETTER TEMPLATE for use with Risk Assessments (CPUs) and RSCs

RE Property that is the subject matter of [Risk Assessment], [Record of Site Condition] [DESCRIBE i.e. municipal address] ("Lands")

NOTE A letter needs to be provided at the beginning of the risk assessment process and updated at the time of issuance of the CPU and again at the time of the submission of the RSC.

We are the solicitors for [CLIENT] in respect of the above-noted matter and have reviewed the following, a copy of each of which is attached hereto:

- (1) Plan of Survey prepared, signed and sealed by*, Ontario Land Surveyor[DESCRIBE] which has thereon an outline of the Lands
- (2) Transfer Instrument No. XX whereby [CLIENT] acquired the Lands
- (3) Parcel Register(s) (PIN abstract(s)) regarding the Lands.

The current legal description and property identifier number(s) (PINs) of the Lands is the following:

The owner(s) of the Lands and a description of their interest (e.g., registered owner or beneficial owner, any other relevant detail) is:

The Lands have the following municipal address:

The Lands have the following assessment roll number(s):

NOTE Please provide a brief plain language narrative tying together the above documents, i.e., the transfer, the parcel register, the PIN(s) and the plan of survey. If the relationship between the documents is not obvious to a lay person or there are inconsistencies in the information this should be included in the narrative. For example, if the Lands are not the entire property as described in the original Transfer with the same PIN number, then add additional information explaining the differences and reasons for the differences.

If you have any questions or concerns, do not hesitate to contact the undersigned.

Yours very truly,

FIRM NAME

Lawyer Name

Appendix B: Environmental Bill of Rights: Form of Notices, and Sample Proposal and Decision Notice

NOTICE

**Proposed Certificate of Property Use
[INSERT ADDRESS]
[INSERT MUNICIPALITY]
EBR Registry Number [INSERT NUMBER]**

TO: All of the Persons Noted in the Attached Schedule A

We are mailing to each of you, as the neighbours and/or possible interested stakeholders, a copy of the above notice of proposal given as required by Sections 22, 25 and 28 of the Environmental Bill of Rights, 1993.

As indicated in the material, the Ministry of the Environment has accepted a Risk Assessment prepared for the owner, Ontario Realty Corporation, as part of their development plans for the property. We understand that the owner will be filing a Record of Site Condition following the issuance of the final Certificate of Property Use (CPU).

The proposed risk management measures on the property include restrictions on building construction, maintaining a barrier to site soils, implementing a health and safety plan and a soil management plan for the property.

Please review the attached material, including the draft CPU, and provide any comments on the EBR registry website link: <http://www.ebr.gov.on.ca/>, prior to [INSERT EBR CLOSING DATE] which is the comment period deadline.

If you have any questions or require anything further, please do not hesitate to contact [INSERT CONTACT INFORMATION AND DISTRICT OFFICE]

Issued at [INSERT DATE OF ISSUANCE AND MUNICIPALITY]

[INSERT CONTACT INFORMATION FOR DISTRICT MANAGER AND DISTRICT OFFICE]



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Instrument Proposal Notice:

Proponent: Tiffin Harbour Development Corporation
Post Office Box Delivery 549
Postal Station Main
Bolton Ontario
Canada L7E 5T4

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

EBR Registry Number: 011-6490

Ministry Reference Number: 7572-86EP2C

Ministry:
Ministry of the Environment
Date Proposal loaded to the Registry:
June 11, 2012

The Environmental Registry experienced a service interruption on June 25th. The Environmental Registry is now operational.

The comment period for this Proposal Notice has been extended by 1 day to allow the public to comment.

Le service du Registre environnemental a été interrompu le 25 juin. Le Registre environnemental fonctionne à nouveau. La période de consultation de cet avis de proposition a été prolongée de 1 jour pour donner le temps au public de commenter.

Keyword(s): Brownfields

The comment period for this proposal is now over.

Description of Instrument:

A risk assessment was undertaken for the properties located at 699 and 711 Aberdeen Blvd. in Midland ("Properties") to establish the risks that the contaminants identified in the risk assessment may pose to current and future users and to identify appropriate risk management measures to be implemented to ensure that the Properties are suitable for the intended use as a "residential" property use as defined by O.Reg. 153/04 (the "Regulation"), as amended, made under the Environmental Protection Act (the "Act").

The Ministry has accepted the risk assessment prepared for the owner, Tiffin Harbour Development Corporation, as part of its development plans for the Properties.

Based on the documents provided to the Ministry as part of the risk assessment reports, the reviewers can confirm that the risk assessment has been conducted in accordance with the Act, the Regulation, and the associated guidance documents.

The Director provided the proponent with written Notice of the Director's Decision to accept the risk assessment No. 7572-86EP2C relating to the Properties in accordance with s. 168.5 of the Act on January 17, 2012.

The Director is considering the issuance of two Certificates of Property Use ("CPU"), one for each property, in relation to the Properties. The CPUs incorporate the risk management measures proposed in the risk assessment and additional conditions proposed by the Director. The proposed draft CPU Nos. 1736-8QLKM8-699 and 1736-8QLKM8-711 are attached. They are almost identical except for the differences in Site description; the ground water monitoring requirements in Item 4.2.6 (a); the addition of Item 4.2.1.2 in CPU No. 1736-8QLKM8-711 and the

Contact:

Cindy Hood
District Manager
Ministry of the Environment
Operations Division
Central Regional Office
Barrie District Office
54 Cedar Pointe Drive
Barrie Ontario
L4N 5R7
Phone: (705) 739-6436
Fax: (705) 739-6440
Toll Free Phone: (800) 890-8511

Location(s) Related to this Instrument:

699 and 711 Aberdeen Blvd.

TOWN OF MIDLAND

Additional Information:

The following government offices have additional

addition of item 4.2.8.3 in CPU No. 1736-8QLKM8-699.

The proposed risk management measures on the Properties include restrictions regarding building construction on, and the use of, the property; maintaining a barrier to impacted soils; ground water monitoring requirements; implementing a soil management plan and a health and safety plan; and reporting requirements. The CPUs also require that a certificate of requirement be registered on the title of the Properties in accordance with section 197 of the Act and that before dealing with the Properties in any way, a copy of the respective CPU be given to any person who will acquire an interest in the property.

Public Consultation:

This proposal was posted for a 31 day public review and comment period starting June 11, 2012. Comments were to be received by July 12, 2012.

All comments received during the comment period are being considered as part of the decision-making process by the Ministry of the Environment.

Please Note: All comments and submissions received have become part of the public record.

Other Public Consultation Opportunities:

In order to fulfill the Ministry's obligations for enhanced public consultation on this Class II instrument proposal, actual notice of the Ministry's proposal will be supplied to local political representatives, local municipality and adjacent landowners.

information regarding this Proposal. To arrange a viewing of these documents please call the Ministry Contact or the Office listed below.

Barrie District Office
54 Cedar Pointe Drive
Barrie Ontario
L4N 5R7
Phone: (705) 739-6441
Toll Free Phone: (800) 890-8511

The documents linked below are provided for the purposes of enhancing public consultation.

All links will open in a new window

1. [Draft CPU No. 1736-8QLKM8-699](#)
2. [Draft CPU No. 1736-8QLKM8-711](#)

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NOTICE

**Final Certificate of Property Use
[INSERT ADDRESS]
[INSERT MUNICIPALITY]
EBR Registry Number [INSERT NUMBER]**

TO: All of the Persons Noted in the Attached Schedule A

We are mailing to each of you, as the neighbours and/or possible interested stakeholders, notice that the final Certificate of Property Use for [INSERT ADDRESS] in [INSERT MUNICIPALITY] has been posted on the EBR Registry. You may see a copy by going to the EBR website <http://www.ebr.gov.on.ca/>.

If you have any questions or require anything further, please do not hesitate to contact [INSERT CONTACT INFORMATION AND DISTRICT OFFICE]

Issued at [INSERT DATE OF ISSUANCE AND MUNICIPALITY]

[INSERT CONTACT INFORMATION FOR DISTRICT MANAGER AND DISTRICT OFFICE]



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Instrument Decision Notice:

Proponent: Tiffin Harbour Development Corporation
 Post Office Box Delivery 549
 Postal Station Main
 Bolton Ontario
 Canada L7E 5T4

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

EBR Registry Number: 011-6490

Ministry Reference Number: 7572-86EP2C

Ministry:
 Ministry of the Environment
Date Proposal loaded to the Registry:
 June 11, 2012
Date Decision loaded to the Registry:
 November 20, 2013

Keyword(s): Brownfields

Decision on Instrument:

The Director's decision was to issue two Certificates of Property Use (CPUs) on November 1, 2013, with changes as noted below.

The CPUs that were issues are for the developed residential property located at 699 Aberdeen Boulevard (CPU No. 1736-8QLKM8-699) and for the undeveloped property located at 711 Aberdeen Boulevard (CPU No. 1736-8QLKM8-711).

Copies of the final signed CPUs are attached under *Additional Information*, along with the original draft CPUs.

Comment(s) Received on the Proposal: 1

Public Consultation on the proposal for this decision was provided for 31 Days, from June 11, 2012 to July 12, 2012.

As a result of public consultation on the proposal, the Ministry received a total of 1 comments: 0 comments were received in writing and 1 were received online.

Additionally, a copy of all comments are available for public viewing by contacting the Contact person listed in this notice.

A selection of these comments are available:

[View All Comments](#)

Effect(s) of Consultation on this Decision:

The following outlines the key comments made on behalf of the 699 Aberdeen Condominium Corporation and sets out the ministry's responses.

How did the developer get a building permit when these CODs [sic] were not

Contact:

Cindy Hood
 District Manager
 Ministry of the Environment
 Operations Division
 Central Regional Office
 Barrie District Office
 54 Cedar Pointe Drive
 Barrie Ontario
 L4N 5R7
 Phone: (705) 739-6436
 Fax: (705) 739-6440
 Toll Free Phone: (800) 890-8511

Location(s) Related to this Instrument:

699 and 711 Aberdeen Blvd.

TOWN OF MIDLAND

Additional Information:

The following government offices have additional information regarding this Decision. To arrange a viewing of these documents please call the Ministry Contact or the Office listed below.

approved at that time?

- *No changes in the CPUs were made to address this comment. The commentor was advised that it was outside of the Director's mandate and should be more appropriately addressed by the Town of Midland as the issuing authority for the building permit.*

Barrie District Office
54 Cedar Pointe Drive
Barrie Ontario
L4N 5R7
Phone: (705) 739-6441
Toll Free Phone: (800) 890-8511

How do we protect ourselves from changing rules?

- *No changes in the CPUs were made to address this comment. The Director does have authority to alter or revoke the terms and conditions of a CPU under subsection 168.6(3) of the Environmental Protection Act on his or her own initiative or through an application by the owner(s) of the property in which the CPU has been issued. However, prior to any such actions being taken, the Director would need to have appropriate justification to support such a decision and the owner(s) would have the opportunity to appeal the decision to the Environmental Review Tribunal if there is a disagreement with the actions.*

The documents linked below are provided for the purposes of enhancing public consultation.
All links will open in a new window

1. [Draft CPU No. 1736-8QLKM8-699](#)
2. [Draft CPU No. 1736-8QLKM8-711](#)
3. [Final CPU No. 1736-8QLKM8-699](#)
4. [Final CPU No. 1736-8QLKM8-711](#)

The Condo Corporation will be responsible for future testing and maintenance?

- *The obligations under the CPUs are on the owner(s) of the properties. The Director added to the CPUs Items 5.9 (to both) and 5.10 (to 699) to reflect the contractual arrangements that may be made by or on behalf of the owners regarding the carrying out of the on-going obligations.*

The Town of Midland requested an amendment to Section 4.7 of the CPUs to require the Owner to provide a copy of any report required under the CPU to the Town upon request.

- The Director considered this comment and amended the CPUs as follows:

Section 4.7 was amended to read as follows:

4.7 Retain a copy of any reports required under the CPU, the Risk Assessment and any reports referred to in the Risk Assessment (until otherwise notified by the Director) and within ten (10) days of the Director or a Provincial Officer making a request for a report, provide a copy to the Director or Provincial Officer or to such other person(s) as the Director or Provincial Officer may request.

The Director has also included in the final CPUs some new standard provisions that the ministry is now using and altered the wording of the two CPUs to provide better clarification throughout the documents as follows:

- On the first page of the CPUs, the term "Client" has been changed to "Owner"; under the "Site" description, the legal description has been updated under the Summary Section, item 1(d) was changed from indicating "Yes" to "No" for "Refraining from using the Property for any use specified."
- Under Part 1: Interpretation – the definition "Condominium Corporation" has been removed as it is no longer being used.
- Under Part 1: Interpretation – the definition "Owner" was changed to "means the owner(s) of the Property, beginning with the person(s) to whom the CPU is issued, as described in the Owner section on page 1 above, and any subsequent owner(s) of the Property."
- Under Part 4 Item 4.2.6 (f) the following words were added: "The duration of the monitoring program shall continue for a minimum of 5 years."
- Under Part 4 Item 4.2.7 the following words were added: "iv. a copy of all records relating to the ground water monitoring program."
- Under Part 4, Item 4.3 – "Refrain from using the Property for any of the

following use(s): "was changed to "N/A."

- Under Part 4, Item 4.11, the term "Condominium Act" was changed to "*Condominium Act, 1998, S.O. 1998, c.19, as amended.*"
- Under Part 4, Item 4.13 "Condominium Corporation As Owner" was removed.
- In the CPU the reference to "sections" of the CPU was changed to "Items."
- The contact references for the Environmental Review Tribunal were updated.

The following are specific changes that were made to each individual CPU:

CPU No. 1736-8QLKM8-699

- The "Owner" as listed on the first page of the CPU has been changed from "Tiffin Harbour Development Corporation, Post Office Box 549, Caledon, Ontario, L7E 5T4" to "*The Owners of the properties listed in Schedule "A" attached hereto C/o Simcoe Standard Condominium Corporation No. 348 Management Office, 699 Aberdeen Blvd., Midland, Ontario, L4R 5P2*" in order to reflect the current ownership of the Property at the time the CPU was issued.
- Under Part 3, Item 3.1 the following wording was added to the end of the paragraph in order to better identify the existing development:
"*... 12-storey building and underground parking garage.*"
- Under Part 5, Items 5.9 and 5.10 were added as follows:
5.9 The original owner of the Property, Tiffin Harbour Development Corporation, has created a condominium corporation by the registration of a declaration and description with respect to the Property pursuant to the Condominium Act, 1998, S.O. 1998, c.19, as amended, and then transferred ownership of the Property to various condominium unit owners (the Owners under this CPU). The properties described in Schedule A hereto are the current registered properties that describe the Property at the time of issuance of the CPU. It is acknowledged that ongoing obligations of the Owners under this CPU may be carried out and satisfied by the condominium corporation by and on behalf of the Owners of the Property.
5.10 It is acknowledged that the balance of the property that was subject to the Risk Assessment, municipally known as 711 Aberdeen Blvd, Midland, Ontario, is also the subject matter of a certificate of property use (CPU No. 1736-8QLKM8-711) and it is acknowledged that the owner under that CPU may be carrying out the obligations under this CPU on behalf of the Owners.
- Schedule A "List of properties describing the Property at the time of issuance of the CPU, 699 Aberdeen Blvd., Midland" was added as part of the CPU.

CPU No. 1736-8QLKM8-711

- Under Part 5, Item 5.9 was added as follows:
5.9 In the event that the Owner complies with the provisions of Items 4.9 and 4.10 of the CPU regarding the registration of the certificate of requirement on title to the Property, and then creates a condominium corporation by the registration of a declaration and description with respect to the Property pursuant to the Condominium Act, 1998, S.O. 1998, c.19, as amended, and then transfers ownership of the Property to various condominium unit owners, the ongoing obligations of the Owner under this CPU may be carried out and satisfied by the condominium corporation by and on behalf of the new Owners of the Property.

Proponents:

For CPU No. 1736-8QLKM8-699:

Simcoe Standard Condominium Corporation No. 348
Management Office
699 Aberdeen Blvd.
Midland, Ontario
L4R 5P2

For CPU No. 1736-8QLKM8-711:

Tiffin Harbour Development Corporation
P.O. Box 549, Postal Station Main
Bolton, ON
L7E 5T4

A public meeting for the owners of the individual units of 699 Aberdeen Blvd. was held on Saturday September 7, 2013 which included representatives of the Ministry of the Environment, the developer, the developer's consultant, and legal representation for the existing condo board.

Leave to Appeal Provisions:

Any resident of Ontario may seek leave to appeal this decision, by serving written Notice, within 15 days of November 20, 2013 upon the following:

Environmental Commissioner of Ontario:

Environmental Commissioner of Ontario
1075 Bay Street
Suite 605
Toronto Ontario
M5S 2B1
Phone: (416) 325-3377
Toll Free Phone: (800) 701-6454

Issuing Authority:

Cindy Hood
District Manager
Barrie District Office
54 Cedar Pointe Drive
Barrie Ontario
L4N 5R7
Phone: (705) 739-6436
Fax: (705) 739-6440
Toll Free Phone: (800) 890-8511

Proponent:

Tiffin Harbour Development Corporation
Post Office Box Delivery 549
Postal Station Main
Bolton Ontario
Canada L7E 5T4

Appellate Body:

Secretary
Environmental Review Tribunal
655 Bay Street
Floor 15
Toronto

M5G 1E5
Phone: (416) 212-6349
Fax: (416) 314-4506

The Notice must be signed and dated and include all of the following information:

1. The EBR Registry Number, the Ministry Reference Number, the Proponent's name and address to whom the instrument was issued and the location of Activity. (All available from this Registry posting)
2. A copy of any comments that were submitted on the original proposal, if comments were not submitted, an explanation of your interest in seeking leave to appeal the decision is required.
3. A description of the grounds for the application for leave to appeal including information that demonstrates that:
 - (a) there is a good reason to believe that no reasonable person, having regard to the relevant law and any government policies developed to guide decisions of that kind, could have made the decision; and
 - (b) the decision in respect of which an appeal is sought could result in significant harm to the environment.
4. The portion of the instrument or each term or condition in the instrument in respect of which the leave to appeal is applied for.
5. The grounds on which you intend to reply at the hearing, in the event that the leave to appeal is granted, in relation to each portion that you are seeking leave to appeal.

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**Appendix C: Excerpts from the *Environmental Protection Act* and
O. Reg. 153/04**

Environmental Protection Act

R.S.O. 1990, CHAPTER E.19

PART XV.1 RECORDS OF SITE CONDITION

Certificate of property use

168.6 (1) If a risk assessment relating to a property has been accepted under clause 168.5 (1) (a), the Director may issue a certificate of property use to the owner of the property, requiring the owner to do any of the following things:

1. Take any action that is specified in the certificate and that, in the Director's opinion, is necessary to prevent, eliminate or ameliorate any adverse effect that has been identified in the risk assessment, including installing any equipment, monitoring any contaminant or recording or reporting information for that purpose.
2. Refrain from using the property for any use specified in the certificate or from constructing any building specified in the certificate on the property. 2001, c. 17, s. 2 (36); 2006, c. 19, Sched. K, s. 2 (5, 6); 2007, c. 7, Sched. 13, s. 7.

Restriction

(2) A certificate of property use shall not require an owner of property to take any action that would have the effect of reducing the concentration of a contaminant on, in or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment. 2001, c. 17, s. 2 (36).

Revocation or amendment

(3) The Director may, on his or her own initiative or on application by the owner of the property in respect of which a certificate has been issued under subsection (1),

- (a) alter any terms and conditions in the certificate or impose new terms and conditions; or
- (b) revoke the certificate. 2001, c. 17, s. 2 (36).

Occupants

(4) If a certificate of property use contains a provision requiring the owner of property to refrain from using the property for a specified use or from constructing a specified building on the property,

- (a) the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;

- (b) the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and
- (c) the owner of the property shall ensure that every occupant of the property complies with the provision. 2001, c. 17, s. 2 (36).

Notice to prescribed persons

(5) If a certificate of property use is issued, altered or revoked under this section, the Director shall give notice of the certificate, alteration or revocation to the persons prescribed by the regulations. 2001, c. 17, s. 2 (38).

Prohibition on construction or use

(6) Despite any other Act, if a certificate of property use contains a provision requiring the owner of property to refrain from using the property for a specified use or from constructing a specified building on the property, no permit, licence, approval or other instrument shall be issued to any person, under any provision prescribed by the regulations, that would authorize the person to use the property for the specified use, to construct the specified building or to construct a building that will be used for the specified use. 2001, c. 17, s. 2 (38).

ONTARIO REGULATION 153/04

RECORDS OF SITE CONDITION — PART XV.1 OF THE ACT

PART X CERTIFICATES OF PROPERTY USE

Certificate of property use, notice

50. For the purposes of subsection 168.6 (5) of the Act, the following persons are prescribed to receive notice in relation to a certificate of property use:

1. A chief building official as defined in the *Building Code Act, 1992* of the municipality in which the property is located.
2. The clerk of the local municipality in which the property is located.
3. The clerk of any upper-tier municipality in which the property is located.
4. If the property is located in an area in which a board of health, planning board or conservation authority has jurisdiction under section 3.1 of the *Building Code Act, 1992*, in each of the following:
 - i. The inspector appointed under that section who has the same powers and duties in relation to sewage systems as does the chief building official in respect of buildings.
 - ii. The medical officer of health of the board of health, or the secretary-treasurer of the planning board or conservation authority. O. Reg. 153/04, s. 50.

Certificate of property use, prohibition on construction or use

51. Sections 8 and 10 of the *Building Code Act, 1992* are prescribed for the purposes of subsection 168.6 (6) of the Act. O. Reg. 153/04, s. 51.

Appendix D: Section 197 Provisions and Related Documentation

Environmental Protection Act

R.S.O. 1990, CHAPTER E.19

PART XVII MISCELLANEOUS

Disclosure of orders and decisions

197. (1) A person who has authority under this Act to make an order or decision affecting real property also has authority to make an order requiring any person with an interest in the property, before dealing with the property in any way, to give a copy of the order or decision affecting the property to every person who will acquire an interest in the property as a result of the dealing. 2001, c. 17, s. 2 (50).

Registration of requirement

(2) A certificate setting out a requirement imposed under subsection (1) may be registered in the proper land registry office on the title of the real property to which the requirement relates, if the certificate is in a form approved by the Minister, is signed or authorized by a person who has authority to make orders imposing requirements under subsection (1) and is accompanied by a registrable description of the property. 2001, c. 17, s. 2 (50).

Same

(3) A requirement imposed under subsection (1) that is set out in a certificate registered under subsection (2) is, from the time of registration, deemed to be directed to each person who subsequently acquires an interest in the real property. 2001, c. 17, s. 2 (50).

Dealings voidable

(4) A dealing with real property by a person who is subject to a requirement imposed under subsection (1) or (3) is voidable at the instance of a person who was not given the copy of the order or decision in accordance with the requirement. 2001, c. 17, s. 2 (50).

Registration of withdrawal of requirement

(5) A certificate of withdrawal of a requirement imposed under subsection (1) or (3) may be registered in the proper land registry office on the title of the real property to which the requirement relates, if the certificate is in a form approved by the Minister, is signed or authorized by a person who has authority to make orders imposing requirements under subsection (1) and is accompanied by a registrable description of the property. 2001, c. 17, s. 2 (50).

Same

(6) On the registration under the *Registry Act* of a certificate of withdrawal of a requirement in accordance with subsection (5), the land registrar may delete the entries in the abstract index of the certificate setting out the requirement and the certificate of withdrawal of the requirement. 2001, c. 17, s. 2 (50).

Same

(7) Registration of a certificate of withdrawal of a requirement in accordance with subsection (5) has the effect of revoking the requirement. 2001, c. 17, s. 2 (50).

Transition

(8) This section, as it read immediately before the day subsection 2 (50) of the *Brownfields Statute Law Amendment Act, 2001* came into force, continues to apply in respect of prohibitions issued under this section before that day. 2001, c. 17, s. 2 (50).

Once the CPU has been issued and the RSC has been filed you would be in a position to register the Certificate of Requirement on title. The following outlines the process to be followed. If you have any questions about this process please call Norm Rankin, MOECC Central Region counsel at (416) 326-5616.

Schedule "C" of the attached draft CPU No. 2757-9ABRD6 includes the Certificate of Requirement (CofR) to be issued under subsection 197(2) of the EPA. Please review it to confirm that the property description, CPU details and RSC registration details are correct.

Once the CPU has been issued and the RSC has been filed as required by item 7.2, you would need to make the arrangements to have the CofR registered on title. This would typically be done electronically. The normal procedure is for the law firm to prepare the attached form of Acknowledgement and Direction (A&D) and send it to Norm Rankin to review, approve and have signed and we will return to you a scanned copy.

Page 1 of the A&D will be signed by the person at the MOECC who is authorizing/requiring the registration – in this case:

Tina Dufresne, District Manager, Ministry of the Environment and Climate Change, Halton Peel District Office, 4145 North Service Road, Burlington, Suite 300, Burlington, ON L7L 6A3.

Attached as page 2 of the A&D will be a copy of a "certificate in preparation" document prepared by the law firm.

Please note that the "Party From" Name to be inserted in the "certificate in preparation" should be listed as the following "HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT AND CLIMATE CHANGE, Acting as a company". (The use of company in this form is to distinguish the party from an individual who can be identified as Last Name, First Name).

The Address for Service information should set out the name and title of the authorizing MOECC person and address as set out above.

The following two statements should be added:

"This document is not authorized under Power of Attorney by this party."

"This document is being authorized by a representative of the Crown."

The completed CofR will be page 3 of the A&D document.

Upon receipt of the signed A&D and to satisfy the requirements of Item 4.10 of the CPU will you please have your law firm forward to us for our files a copy of the registered document together with a copy of the PIN Abstract confirming the registration.

Please do not hesitate to contact Norm Rankin or myself if you have any questions.

ACKNOWLEDGEMENT AND DIRECTION

TO: _____

RE: MINISTRY OF THE ENVIRONMENT AND CLIMATE CHANGE –
CERTIFICATE OF REQUIREMENT ISSUED TO GE BETZDEARBORN
CANADA COMPANY regarding Certificate of Property Use 2757-9ABRD6
concerning 3451 Erindale Station Road, Mississauga and legally described as all of
PINs 13366-0012 (LT) and 13366-0013 (LT).

This will confirm that:

- The undersigned has reviewed the information set out in this Acknowledgement and Direction and in the documents described below (the “Documents”), and that this information is accurate.
- You, your agent or employee, are authorized and directed to sign, deliver, and/or register electronically, the Documents in the form attached.
- The effect of the Documents has been fully explained to the undersigned.
- The undersigned is in fact the party named in the Documents and has not misrepresented the identity of the undersigned to you.
- In the event of any investigation by the Director of Land Registration (the “Director”) regarding suspected fraudulent or unlawful activity or registration in connection with the Documents attached to this Acknowledgement and Direction, the undersigned hereby irrevocably consents to you releasing to the Director a true copy of this Acknowledgement and Direction upon request by the Director.
- The execution of this Acknowledgement and Direction may be communicated by way of electronic or facsimile transmission, and receipt of such transmission by the addressees herein shall be deemed to be good, sufficient and fully effectual as if an original executed copy of this Acknowledgement and Direction had been delivered.

DESCRIPTION OF ELECTRONIC DOCUMENTS

The Documents described in the Acknowledgement and Direction are the documents selected below which are attached hereto as “Certificate in Preparation” and are:

____ A Transfer of the land described above.

____ A Charge of the land described above.

 x Other documents set out in the Schedule attached – Certificate of Requirement, subsection 197(2) Environmental Protection Act

DATED at _____, Ontario this _____ day of _____.

HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
MINISTER OF THE ENVIRONMENT AND
CLIMATE CHANGE

Per: _____

Tina Dufresne, District Manager
Halton Peel District Office
Ministry of the Environment and Climate Change

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 1

Properties

PIN 13366 - 0012 LT
Description PT LT 23 CON 1 NDS TORONTO PTS 4 & 6, 43R8635 EXCEPT PT 1, 43R12950 ;
MISSISSAUGA
Address MISSISSAUGA

PIN 13366 - 0013 LT
Description PT LT 23 CON 1 NDS TORONTO PT 1 & 2, 43R13817, EXCEPT PTS 4 & 6, 43R15011 &
PTS 1 & 2, 43R21338; S/T R0764745; T/W R0764744 ; S/T R0866777 MISSISSAUGA
Address 3451 ERINDALE STATION RD
MISSISSAUGA

Party From(s)

Name HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF THE
ENVIRONMENT AND CLIMATE CHANGE

Address for Service Tina Dufresne, District Manager,
Ministry of the Environment and Climate Change,
Halton Peel District Office,
4145 North Service Road,
Burlington, Suite 300,
Burlington, ON L7L 6A3

This document is not authorized under Power of Attorney by this party.

This document is being authorized by a representative of the Crown.

Statements

Schedule: See Schedules

Signed By

Richard Scott Barrett 1498 Lewisham Dr. acting for Signed 2014 08 18
Mississauga
L5J 3R4
Party From(s)

Tel 9058231487
Fax 9058232529

I have the authority to sign and register the document on behalf of the Party From(s).

Submitted By

RICHARD BARRETT, BARRISTER & SOLICITOR 1498 Lewisham Dr. 2014 08 20
Mississauga
L5J 3R4

Tel 9058231487
Fax 9058232529

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

CERTIFICATE OF REQUIREMENT

s.197(2)

Environmental Protection Act

This is to certify that pursuant to Certificate of Property Use Number 2757-9ABRD6 issued under subsections 168.6(1) and 197(1) of the *Environmental Protection Act* by Tina Dufresne, Director of the Ministry of the Environment, dated May 2, 2014, being a Certificate of Property Use and order under subsection 197(1) of the *Environmental Protection Act* relating to the property municipally known as 3451 Erindale Station Road, Mississauga, Ontario (the "property") being all of Property Identifier Numbers (PINs) 13366-0012 (LT) and 13366-0013 (LT) with respect to the Risk Assessment and certain Risk Management Measures and other preventative measure requirements on the property (including restrictions on property use, restrictions on building construction, barrier to site soils, inspection and maintenance program, barriers to prevent migration through sub-surface utilities, decommissioning of sump in existing building, soil and ground water management plan, health and safety plan and reporting requirements) and referred to in the Record of Site Condition filed on the Environmental Site Registry as number 214067 on July 23, 2014

GE BETZDEARBORN CANADA COMPANY

and any other persons having an interest in the property, are required before dealing with the property in any way, to give a copy of the Certificate of Property Use, including any amendments thereto, to every person who will acquire an interest in the property as a result of dealing.

Under subsection 197(3) of the *Environmental Protection Act*, the requirement applies to each person who, subsequent to the registration of this certificate, acquires an interest in the real property.


Ontario ServiceOntario

 LAND
 REGISTRY
 OFFICE #43

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

13366-0013 (LT)

 PAGE 1 OF 2
 PREPARED FOR Barrett01
 ON 2014/08/20 AT 12:54:23

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PT LT 23 CON 1 NDS TORONTO PT 1 & 2, 43R13817, EXCEPT PTS 4 & 6, 43R15011 & PTS 1 & 2, 43R21338, S/T R0764745; T/W R0764744 ; S/T R0866777 MISSISSAUGA

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE

LT CONVERSION QUALIFIED

RECENTLY:

RE-ENTRY FROM 13366-0125

PIN CREATION DATE:

1998/12/21

OWNERS' NAMES

GE BETZDEARBORN CANADA COMPANY

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1997/01/21 ON THIS PIN						
WAS REPLACED WITH THE "PIN CREATION DATE" OF 1998/12/21						
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 1998/12/22 **						
TT171966	1964/09/30	TRANSFER	\$1		DEARBORN CHEMICAL COMPANY LIMITED	C
43R12756	1985/09/04	PLAN REFERENCE				C
R0764746	1986/08/15	NOTICE		DEARBORN CHEMICAL COMPANY LIMITED CANADIAN PACIFIC LIMITED	THE CORPORATION OF THE CITY OF MISSISSAUGA	C
43R13817	1986/09/10	PLAN REFERENCE				C
43R15801	1988/06/22	PLAN REFERENCE				C
R0866777	1988/10/07	TRANSFER EASEMENT			THE REGIONAL MUNICIPALITY OF PEEL	C
PR47945	2001/02/22	APL CH NAME OWNER		DEARBORN CHEMICAL COMPANY LIMITED	BETZDEARBORN CANADA INC.	C

 NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
 NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.



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LAND
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

13366-0012 (LT)

PAGE 1 OF 1
PREPARED FOR Bairett01
ON 2014/08/20 AT 12:52:19

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION: PT LT 23 CON 1 NDS TORONTO PTS 4 & 6, 43R8635 EXCEPT PT 1, 43R12950 ; MISSISSAUGA

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:
RB-ENTRY FROM 13366-0124

PIN CREATION DATE:
1998/12/21

OWNERS' NAMES
GE BETZDEARBORN CANADA COMPANY

CAPACITY SHARE
BENO

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
EFFECTIVE 2000/07/29 THE NOTATION OF THE "BLOCK IMPLEMENTATION DATE" OF 1997/01/21 ON THIS PIN						
WAS REPLACED WITH THE "PIN CREATION DATE" OF 1998/12/21						
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT, ON FIRST REGISTRATION UNDER THE LAND TITLES ACT, TO:						
** SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *						
** AND ESCHEATS OR FORFEITURE TO THE CROWN.						
** THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF						
** IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY						
** CONVENTION.						
** ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.						
**DATE OF CONVERSION TO LAND TITLES: 1998/12/22 **						
43R8635	1980/12/22	PLAN REFERENCE				C
RO1123239	1996/09/03	TRANSFER	\$201,900		BETZDEARBORN CANADA INC.	C
PR2563411	2014/07/11	APL CH NAME OWNER		BETZDEARBORN CANADA INC.	GE BETZDEARBORN CANADA COMPANY	C
PR2585134	2014/08/20	CERTIFICATE		HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT AND CLIMATE CHANGE		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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 REGISTRY
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PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

13366-0013 (LT)

 PAGE 2 OF 2
 PREPARED FOR Barrett01
 ON 2014/08/20 AT 12:54:23

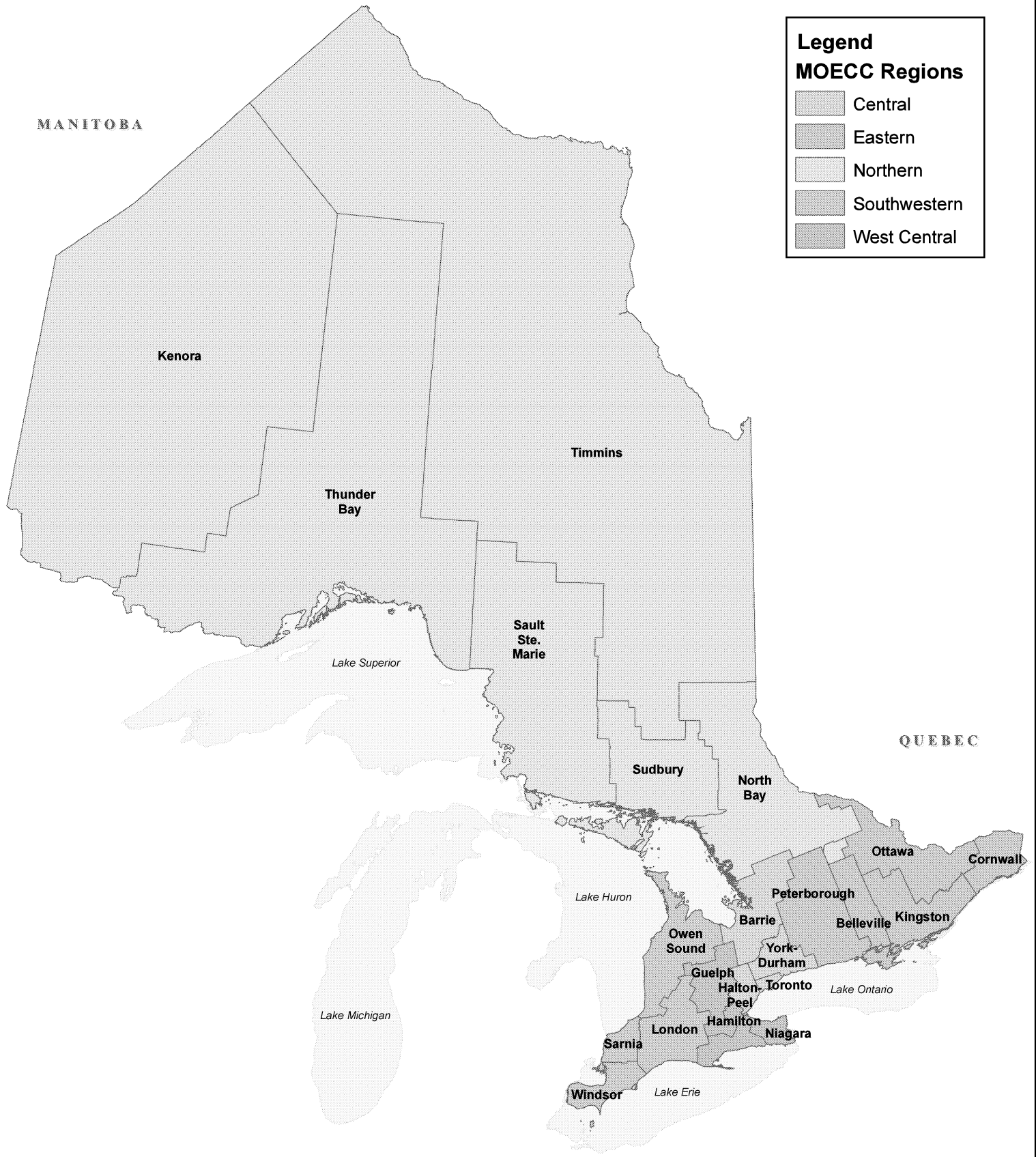
* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
PR2563411	2014/07/11	APL CH NAME OWNER		BETZDEARBORN CANADA INC.	GE BETZDEARBORN CANADA COMPANY	C
PR2585134	2014/08/20	CERTIFICATE		HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE MINISTER OF THE ENVIRONMENT AND CLIMATE CHANGE		

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
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Appendix E: Ministry of the Environment and Climate Change Regions

MINISTRY OF THE ENVIRONMENT AND CLIMATE CHANGE



Projection:
Universal Transverse Mercator
Zone 17
False Easting: 500000m
False Northing: 0m
Central Meridian: -81
Scale Factor: 0.9996
Latitude of Origin: 0
1983 North American Datum



THE MAPS, LOGOS, SEALS AND PUBLICATIONS OF THE GOVERNMENT OF ONTARIO ARE NOT TO BE USED FOR ANY OTHER PURPOSE OR APPLICATION WITHOUT THE WRITTEN PERMISSION OF THE GOVERNMENT OF ONTARIO. THE GOVERNMENT OF ONTARIO IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE TO ANY PERSON OR PROPERTY ARISING FROM THE USE OF THE MAPS, LOGOS, SEALS AND PUBLICATIONS OF THE GOVERNMENT OF ONTARIO.



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