

TAB 9



## **The Six-Minute Environmental Lawyer 2014**

Issues for the Landowner and Development or  
As If It Wasn't Complicated Enough!

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October 22, 2014

## SIX MINUTE ENVIRONMENTAL LAWYER

### Municipal Environmental Requirements – Navigating the Interface between Planning Approvals and Environmental Conditions

October 22, 2014

#### PART 3:

#### Issues for the Landowner and Developer

Or

As if it wasn't complicated enough!

#### 1. When does the landowner or developer need to address environmental issues?

There are three key areas when a landowner or developer must bring environmental issues to the forefront.

##### *a.) Purchasing the property*

Considerations on purchasing a property include:

- Past use
- Potential soil or groundwater contamination, potential off-site contamination migrating onto property, potential migration of on-site contamination off property
- Requirements for environmental assessment of the property
- Suitability for intended use
- Potential liabilities under the EPA with respect to past and present discharges and contamination
- Potential civil liability with respect to past and present discharges and contamination
- Clean up requirements (Municipal and MOECC) – depth of clean up, methodology, timing and cost, RSC
- Groundwater and surface water clean up issues and complications
- Municipal requirements for conveyances

##### *b.) Seeking Approval for the Development of a Property or for a Change in Use*

Environmental issues and conditions need to be addressed:

- At pre-consultation stage under the Planning Act;

- In discussions with agencies including the lower and upper tier municipalities (Regions/Counties, and local municipalities), Conservation Authorities, Ministry of the Environment and Climate Change, while determining final planning approval conditions.
- Satisfying conditions of approval – particularly for approvals for variances, consents, plans of subdivision, site plans, and building permits
- May include environmental assessments, RSC, and conveyances to lower or upper tier municipalities

*c.) Construction*

- Satisfying ongoing conditions of development or building permit including treatment of soils or groundwater, enhancement of natural features, groundwater run off.
- Determining disposal of contaminants.

2. Who does the landowner or developer deal with in addressing the issues?

- Lower tier municipality – various departments depending on the organisation of the municipality
- Upper tier municipality – various departments depending on the organisation of the municipality
- Conservation Authority
- Ministry of the Environment and Climate Change
- Ministry of Energy
- Ministry of Economic Development, Employment and Infrastructure

3. What are the issues when the land owner or developer addresses Environmental Conditions?

- Confusion over government responsibility, who needs to review, who needs to sign off, what if two agencies disagree.
- Duplication of requirements
- Duplication of processes - peer reviews vs RSC, MOECC and municipality
- Issues of timing - delays and coordination
- Issues of cost – peer reviews etc.
- Issues of interpretation
  - what constitutes a “change of use” particularly in mixed use situations
  - what about other public uses (eg. roads, paved pathways, paved parks, lands for municipal works etc.)

4. What are the implications of the issues and of addressing the issues?

- Delay
- Cost
- Unintentional violations due to confusion

5. Miscellaneous Issues

- Implications of the PPS.

Section 3.2.2

***“Sites with contaminants in land or water shall be assessed and*** remediated as necessary prior to any activity on the site associated with the proposed use such that there will be no *adverse effects.*”

- Previously referred to “contaminated sites”.
- Seems to indicate that sites that have water contamination (assuming this includes groundwater contamination) must also be remediated.
- Seems to indicate a requirement to assess for adverse effects.