

TAB 11



The Six-Minute Environmental Lawyer 2014

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Environmental Compliance Approval (ECA)/Environmental Activity and Sector Registry (EASR) – What’s New?

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Part II.1 of the Environmental Protection Act.

- Amendments to the EPA and OWRA were made to modernize approvals, providing a risk based approach model for activities that currently require an approval under section 9 (air) or 27 (waste) of the EPA or section 53 (wastewater) of the OWRA
- Process for applications and Director's powers on applications (eg. types of applications, Director's grounds and powers, hearings etc.) were removed from sections 9, 30, 32 and 39 of EPA and 53, 54 and 55 of OWRA and consolidated/harmonized in new Part II.1 in EPA
- Environmental Activity and Sector Registry (EASR) provided for in new Part II.2 in EPA
- Prohibitions against engaging in certain activities without an approval and some exemptions remain in sections 9 EPA, 27 EPA and 53 OWRA
- Application for approval to engage in activities referred to in sections 9 and 27 (EPA) and 53 (OWRA) may be made to the Director under Part II.1 of EPA
- Application may be for:
 - approval of the individual activity
 - single site-wide, multi-media approval (20.2 (5) EPA)
 - multi-site or system wide, multi-media approval (20.2 (6), (7), (8) EPA)
 - approval now called environmental compliance approval
- Applications are to be completed and submitted in accordance with any regulatory requirements (20.2 (4) EPA)
- Director is not required to consider applications that do not meet the regulatory requirements (20.14 (2) EPA)
- Director may require additional information, plans, technical reports etc. be provided (20. 8 EPA)
- Director may require consultation with persons specified by the Director in a manner specified by the Director (20. 9)

Powers of Director on Application for Approval:

- Director's powers under Part II.1 may be exercised if the Director considers it necessary for the purposes of the EPA when considering activities referred to in s. 9 and 27 of the EPA or for the purposes of the OWRA when considering activities referred to in section 53 of the OWRA (20.7 EPA)
- Director may issue or refuse to issue an ECA in respect of one or more activities, impose terms or conditions, incorporate other existing approvals into a new ECA, amend, alter terms and conditions of existing ECA, revoke or suspend an ECA (20.3 (1) and 20.5 EPA)
- Terms and conditions may include "operational flexibility" (20.6 EPA)
- Director may (on own initiative) suspend, revoke or refuse to issue an ECA based on the past conduct of the holder of the approval or the applicant (20.7 (2) EPA)

Application for Review

- Regulations may be made requiring holders of approvals to make applications for review of the approvals (176 (2.3) EPA)
- Director may include a date in an approval by which the holder must make an application for review to have the approval reviewed (20.12 (1) EPA)
- Director may, on an application for an approval, require application for review of other environmental compliance approvals (related to the same site be made (20.12 (2) EPA)
- Holder of ECA may apply for a review of the ECA (20.4 (1) EPA)
- Holder of ECA must apply for a review of the ECA on or before the date set out by the Director or the regulations (20.4 (2) EPA)
- Applications are to be completed and submitted in accordance with any regulatory requirements (20.4 (3) EPA)

Appeals re Part II.1 EPA

- The appeal provisions in section 139 of the EPA have been amended to refer to environmental compliance approvals
- There is no appeal with respect to a term or condition included in an ECA as a result of an application under Part II.1 that is substantially the same as a term or condition that was already in an approval that was in effect when the Part II.1 application was made (139 (3) (b) EPA)

Part II.2 Environmental Protection Act - (EASR) Registry

- Environmental Activity and Sector Registry (EASR) - public registry to be established, maintained and operated by the Director for the purposes of:
 - allowing persons to register prescribed activities as required under Part II.2
 - providing public access to the information in the Registry
 - other prescribed purposes (20.20 EPA)
- If an activity is prescribed for the purposes of the Registry a person wishing to engage in that activity at a site must:
 - register the activity in accordance with the regulations (mobile activities must be registered but, subject to regulations, do not need to be registered in respect of specific sites)
 - Pay any applicable fees and financial assurances and receive a confirmation of registration from the Director
 - Engage in the activity in accordance with any conditions set out in the regulation governing that activity
 - The person may not engage in the activity if the registration has been suspended or removed from the Registry(20.21 EPA)
- Confirmation of registration must be retained (20.22 (2) EPA)
- Registration must be maintained up to date in accordance with regulations and include any reports, information etc. required by the Director or prescribed by regulations (20.22 (2) EPA)
- Act sets out a variety of circumstances in which the registration may be suspended or removed:
 - Person who is engaging in the activity is in contravention of the OWRA or EPA or regulations made under them
 - Confirmation was provided on basis of mistaken, false or inaccurate information
 - Person who is engaging in the activity requests that it be removed
 - Person who was engaging in the activity no longer doing so

Summary of Current EASRs

<p><u>Heating Systems*</u></p>	<p>Heating systems used in a building or structure to provide comfort for occupants or suitable temperatures for materials, plants or animals or to heat water for domestic purposes.</p> <p>Only applies to heating systems that meet definition above (i.e. non-process heating). Heating systems must have one or more combustion units and only use natural gas or propane as fuel. The thermal input rating of any unit must be 10.5 million kJ/hr or less. The thermal input rating of the entire system must be greater than 1.58 million kJ/hr (systems smaller than this are currently exempt from needing an ECA).</p>
<p><u>Standby Power Systems*</u></p>	<p>Systems used to supply electrical power during a power outage or involuntary power reductions.</p> <p>Each generation unit that is part of the system must have a rated capacity that is 700 kW or less. The system must only use natural gas, propane, diesel or biodiesel as fuel.</p>
<p><u>Automotive Refinishing Facilities*</u></p>	<p>Autobody shops that are involved in the repair, refinishing or customization of automobiles.</p> <p>The facility must meet specific setback limits from its property boundary as well as the property boundary of noise receptors (e.g. house, church, hotel) depending on the amount of coatings it uses and the number of paint spray booths it has. There are also limits on the maximum number of booths a facility can contain (3 booths if the facility is on its own site, 1 booth if the facility is co-located with other businesses like in an industrial strip mall). Automotive manufactures, mobile refinishing operations, facilities that are primarily engaging in the repair of glass, electrical or mechanical systems, or sites that use 'wash water filtration' to control emissions are all ineligible for the EASR.</p>
<p><u>Waste Management Systems*</u></p>	<p>Waste transportation systems for collection, handling and transportation of non-hazardous waste.</p> <p>Waste must be transported along a highway/road (i.e. waste transport by rail, barge or plane not eligible). Transport of hazardous waste, asbestos waste, biomedical waste and radioactive waste not eligible. No processing of waste is allowed, however garbage compaction in a truck is permitted. Only the waste transportation system is eligible, landfills and transfer stations are not eligible for this EASR.</p>

<u>Printing Facilities*</u>	<p>Commercial printing facilities that engage in specific types of printing processes as defined in the eligibility requirements.</p> <p>Only printing facilities that engage in lithographic, screen or digital printing are eligible to register. Facilities engaging in other types of printing are not eligible. A facility must meet specific setback requirements to the facility property lines depending on how much printing materials are used (e.g. inks). They must also meet specific setback requirements to noise receptor property boundaries depending on how many exhaust stacks they have as well as other specified noise generating equipment. In addition, a printing facility is not eligible if they are located in a building with other businesses in it or if they are located beside a business with which they share raw materials and/or services (e.g. a printer that prints on t-shirts gets the shirts from the manufacturer next door). Printing facilities such as photo-copy shops, 1-hour photo labs and film labs are not eligible to register.</p>
<u>Solar Facilities*</u>	<p>Small ground-mounted solar power facilities with a name plate capacity of 500 kW or less.</p> <p>Facilities can only be located on land that is used for a farm operation activity or on land zoned industrial, commercial or institutional (ICI). Facilities located on farms are restricted to 3 ha; facilities on ICI land are restricted to 4 ha. Solar panels must be ground-mounted and must be 15 m from property lines. The name plate capacity of the facility has to be greater than 10 but less than or equal to 500 kW. The maximum power output of each transformer at the facility must be less than or equal to 750 kVA. Transformers and inverters must meet specified setbacks to noise receptors depending on their sound power levels. Alternatively, the registrant can have an engineer confirm that the facility will not produce sound such that the sound pressure level at the property boundary of the noise receptor does not exceed 40 dBA. Facilities must be more than 250 m away from archeological sites and 30 m away from water bodies.</p>

*"Registering a facility or system" is intended to refer to the registration of activities associated with that facility or system such as the use, operation, construction or alteration of equipment.

Candidates under assessment for registration on the Environmental Activity and Sector Registry (EASR):

- Agri-business operations (e.g. grain dryers, crop input, feed mills)
- Auto recycling facilities (e.g. end-of-life vehicles)
- General manufacturing

- Land development activities (e.g. permits for short-term water takings associated with construction)
- Small power systems and Distribution stations for electricity