

Insights and Commentary from Dentons

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This document was authored by representatives of one of the founding firms prior to our combination launch, and it continues to be offered to provide our clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

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Ontario's New Environmental Approvals Regime

By Marina E. Sampson

It has been said that doing what you've always done gets you what you've always gotten.

On October 31, 2011, the Ontario Ministry of the Environment (the "MOE") moved forward with the modernization of its environmental approvals process. The MOE describes the new online system as "smarter" and "faster". It is intended to make environmental compliance easier for businesses, to provide public access to information on businesses that impact the environment and to assist with the enforcement of Ontario's environmental standards. The changes will have a considerable impact on Ontario's regulated businesses.

Impact on the Environment

When a business's activities impact the natural environment, the business needs an approval from the MOE. Businesses in Ontario must have MOE-issued environmental approvals if they:

- (a) release contaminants into air, land, or water; or
- (b) store, transport, or dispose of waste.

A business's environmental approval sets out legally enforceable rules of operation. These rules seek to protect the natural environment against emissions, discharges and wastes that are produced by a business's operations.

Under the modernized system, a business may either register its activity or apply for a compliance approval.

The New Regulations

New regulations under the *Environmental Protection Act*, R.S.O. 1990, CHAPTER E.19 (the “Act”) lay the groundwork for a more streamlined approach to obtaining environmental approvals. The new regulations are as follows:

1. O. Reg. 255/11: sets out the application process for the new Environmental Compliance Approvals (“ECA”s); and
2. O. Reg 245/11: sets out the three prescribed activities under the Environmental Activity and Sector Registry (“EASR”) (which are heating systems, standby power systems and automotive refinishing).

Qualifying for an Environmental Compliance Approval (ECA)

Companies engaged in complex or unique activities or who have more variable systems or operations must apply for an ECA. The ECA replaces the former system of certificates of approval (“CofA”). The ECA allows for a single electronic form for multiple activities and online tracking of approvals. With the former CofAs, businesses had to apply for multiple approvals for individual processes and pieces of equipment. For example, on a single site, separate approvals were needed for air, noise, waste and sewage activities. The introduction of ECAs means a single approval for all activities at a site.

Under the ECA system, existing CofAs and their attendant conditions will continue. If a pre-existing CofA includes an EASR-eligible activity, the approval remains valid. The activity will only need to be registered in the EASR if: (a) the conditions of the existing CofA are modified; or (b) the existing CofA expires.

Any application for an environmental approval received after October 31, 2011 must meet the minimum requirements of O. Reg. 255/11, which include completing a director-approved application form and submitting applicable financial assurance estimates.

The application form is accessible through the ONe-Source business portal on the Service Ontario website.

Qualifying to Register Activities in the Environmental Activity and Sector Registry (EASR)

Companies engaged in standardized or routine activities and with common systems and processes (to which preset rules of operation can be applied) need not apply for approval; instead, they can self-register on the EASR. Self-registration is a faster and easier online process than applying for an ECA and also allows for an online searchable database of registered activities. Currently, three (3) activities/sectors qualify for the EASR (under O. Reg. 245/11). These activities are:

- (a) heating systems (natural gas and propane);
- (b) standby power systems; and
- (c) automotive refinishing.

At this time, all other activities must proceed through the ECA process; however, the MOE is currently proposing that the following four (4) additional sectors be considered for the EASR:

- (a) waste-collection-and-transport-by-truck;
- (b) ready-mix concrete manufacturing;
- (c) concrete product manufacturing; and
- (d) lithographic, screen and digital printing.

(The MOE is encouraging comments on the proposed requirements and conditions for the above sectors; the comment period closes on February 25, 2012).

All eligible activities that have not received a CofA by October 31, 2011 will be required to register through the online EASR. Businesses that have CofAs in place by the implementation date will have five years to register their EASR-eligible

activities. (Every five years the registration must be updated; if there is any earlier change in the original submitted information, the registration should be updated earlier).

In order to register, and if the person engaging in the activity is a corporation, a person with authority to bind the company is required to certify that the information filed in the EASR is complete and accurate.

Online registration is available through the ONE-Source business portal on the Service Ontario website.

Significance

The MOE has taken a risk based approach in its processing of approvals, with companies engaged in higher risk activities proceeding through the ECA process and those engaged in lower risk activities self-registering under the EASR.

The new process does not mean less regulation and environmental standards have not diminished in any respect. Ultimately, the approval process has become more streamlined; today, a business may either register itself or apply for a single approval, depending on the types of activities in which it is engaged. All of this may be done online.

To date, the new environmental approvals regime seems to have everything going for it: The administrative burden on businesses is lessened. Public transparency is increased through a new searchable website (Access Environment). And, lastly, the MOE has indicated that the modernization of the approvals system seems to be driving compliance.

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