

Six Nations Haldimand/Brantford development chaos continues

The Haldimand Tract, an area 6 miles on either side of the length of the Grand River, was granted in 1784 to the Iroquois who had fought for the British during the American Revolution. The unresolved dispute between the government and Six Nations over the nature of the grant, and subsequent sales of specific lands within the tract, has left municipalities, residents and land developers caught in the middle. Recent actions include:

- The City of Brantford passed two by-laws. One prohibits the Haudenosaunee Development Institute (HDI) from demanding development fees from private developers. The other prohibits protestors from entering several proposed development sites.
- Then Brantford filed an injunction, backed by a \$110 M damage claim, against HDI and several individuals over occupation of several proposed development sites. The court granted an interim injunction in early June. The main hearing was adjourned to allow parties to prepare.
- The OPP are investigating the fees charged by the HDI for development on disputed lands in the Haldimand Tract.
- Six Nations in mid-June withdrew from negotiations with the federal and

provincial governments over compensation for lands in Dunnville that were appropriated in 1829 and flooded as part of the Welland Canal.

One of the reasons Six Nations negotiators gave for withdrawing from negotiations was their dismay at Brantford's by-laws and injunction.

Ontario and the feds have been attempting to negotiate settlement of claims within the Haldimand Tract for two and a half years, following occupation by Six Nations of a building site in Caledonia. In the meantime, economic development in communities south of Brantford is at a standstill, leading to Brantford's decision to pass by-laws and seek an injunction.

The feds and Ontario appear unwilling to intervene on the ground, sticking to the on-again-off-again high level negotiations. Meanwhile municipalities, developers and Six Nations will have to find their own ways to deal with the pressure for economic growth and development. We hope that they can find a path of cooperation, not conflict. Stay tuned.

Successful Energy Board appeal may lower energy rates for poor

Ontario's Energy Board (OEB) can set special energy rates for low income residents, says Ontario's Divisional Court. W+SEL partner Paul Manning and Low-Income Energy Network counsel Mary Truemner successfully argued that the OEB's obligation to set "just and reasonable rates" for energy allows the Board to consider setting lower rates for low-income consumers.

The Court decision makes it clear that the OEB can consider ability to pay when setting rates. The Court found that the OEB has wide discretion in determining how rates are allocated, so long as the rates are just and reasonable.

However, the Court stated that it was not deciding "how and by which manner" the Board arrives at just and reasonable rates.

"The government has not provided any formal policy guidance to the Board. We are looking to the Board to establish a generic hearing where our clients, the utilities and other stakeholders can work with the Board to develop a fair way to accommodate those least able to afford rising energy rates" says Manning. The Court decision was not appealed.

Ontario pesticide ban will overrule municipal by-laws

The Ontario government passed the *Cosmetic Pesticides Ban Act* (CPBA) on June 18, 2008, just before breaking for the summer. The CPBA will eliminate the patchwork of municipal pesticide by-laws passed in the wake of the landmark *Spraytech v. Hudson* Supreme Court of Canada decision and prohibit the use and sale of prescribed pesticides for cosmetic (i.e., non-essential) purposes. The legislation will exempt pesticide uses for forestry, agriculture, golf courses and the promotion of public health or safety.

One controversial provision automatically overrides any municipal by-law intended to regulate the sale or use of cosmetic pesticides.

The Bill has received a lot of attention; the first EBR Notice in January generated almost 7,000 comments. The City of Toronto attacked the initiative, arguing that the ban shouldn't exempt golf courses and that potentially dangerous pesticides, such as glyphosate, currently prohibited by the City, would be permitted under the Act.

Regulations listing banned pest control products and exemptions will be published for public consultation, before the Act comes into force in spring 2009.

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Initiative	Description
<p>Canada proposes VOC emission limit regulations for industrial and consumer products, under CEPA 1999. Status: Three proposed regulations published for public comment in the <i>Canada Gazette Part I</i> on April 26, 2008</p>	<p>Ottawa is moving to ban the import, manufacture and sale of products containing unacceptably high levels of smog-forming volatile organic compounds. Three proposed regulations set concentration limits for VOCs in</p> <ol style="list-style-type: none"> 49 categories of architectural coatings (paints, stains, varnishes, etc.) 14 categories of automotive refinishing products (coatings and surface cleaners) 98 categories of consumer products (personal care items, cleaners, air fresheners, lubricants, adhesives, paint removers and strippers, sealants, caulking, etc.)
<p>Canada Draft Risk Assessments on “Batch 2” chemicals under the federal Chemicals Management Plan (CMP). Status: Notices published in <i>Canada Gazette Part I</i> on May 17, 24, 2008. Reports available from www.chemicalsubstanceschimiques.gc.ca</p>	<p>Ottawa is forging ahead with plans to place more compounds on <i>CEPA</i>'s Schedule I for future regulation. Of the 16 chemicals in Batch 2 of its CMP, five (3 silicone products, a fuel and lubricant additive, and the colorant Acid Blue 80) have been deemed “CEPA-toxic.” Four are slated for virtual elimination, six have been deemed “toxic to human health” but current exposures are considered “very low.” The remaining five compounds are deemed “not toxic”.</p>
<p>Ontario proposed regulation to accelerate EA process for public transit projects. Status: EBR notice posted for 45-day public review March 28, 2008. EBR# 010-2760</p>	<p>Through its MoveOntario 2020 plan, the province plans to invest \$17.5 billion over 12 years toward 52 public transit projects in the GTHA. The proposed regulation would exempt all public transit projects from the full requirements of the <i>Environmental Assessment Act</i>, provided specific conditions are met. A new transit EA process would complete a review of potential environmental effects, incorporate public consultation and wind up the decision-making process within 6 months. The regulation would apply to all proponents of public transit projects in Ontario (GO Transit, municipalities and Ministry of Transportation).</p>
<p>Ontario amendment re CO₂ emissions from coal-fired generating stations. Status: EBR notice posted for 30-day consultation May 16, 2008. EBR# 010-3530</p>	<p>Shutting down coal-fired power plants would cut Ontario's greenhouse gas emissions by 15%. The proposal would amend O. Reg. 496/07 to require coal-fired plants in Atitkakan, Lambton, Nanticoke and Thunder Bay to file quarterly reports on CO₂ emissions, and emit collectively no more than 11.5 megatonnes of CO₂ per year as of Jan. 1, 2011. Coal burning is to cease by Dec. 31, 2014.</p>
<p>Ontario proposes design guidelines for drinking water systems and sewage works. Status: EBR notice EBR# 010-0547</p>	<p>Multiple guidelines, first drafted in 1984, are being consolidated and reissued. The proposed revisions update engineering design recommendations, clarify the process by which new technologies may be established for full scale application, and include new and updated information that reflects current Ontario law, practice and policy.</p>
<p>Ontario Proposes landfill gas collection and control regulation. Status: EBR notice EBR# 010-3086</p>	<p>To reduce GHG emissions, Ontario is proposing to amend Reg. 347 and O. Reg. 232/98 (EPA) to require landfill gas collection and use, or flaring for all operating and proposed new or expanding landfills with total waste disposal capacity greater than 1.5 million m³. Municipalities fear that regulatory requirement means reductions will not be eligible for tradable carbon credits.</p>
<p>Ontario guidelines to identify, assess and manage contaminated sediments. Status: EBR notice EBR# 010-1475</p>	<p>This guideline incorporates a revised approach for assessing contaminated sediment and replaces existing MOE sediment guidelines and evaluation techniques.</p>
<p>Ontario proposes waste electrical and electronic equipment (WEEE) diversion program. Status: Policy proposal and draft regulation posted for 30-day public review April 9, 2008 EBR# 010-3125</p>	<p>Waste Diversion Ontario has proposed an industry-funded and operated program (managed by Ontario Electronic Stewardship (OES)), to divert WEEE through 3Rs approaches. Phase 1 targets desktop and portable computers, monitors, printers and televisions from residential and IC&I sources. OES will contract a network of collection sites and transportation between sites and processors, with incentives for stewards that offer take-back and other diversion services.</p>
<p>Ontario regulation imposes PTTW and user fees for industrial and commercial consumptive water takings. Status: EBR Notices EBR# 010-3137 and 010-3135</p>	<p>Under O. Reg. 450/07, MOE has imposed minimal fees (\$3.71 per million litres) for Phase 1 industrial and commercial water takers that incorporate water into their products (i.e., water bottlers, fruit and vegetable canners, beverage makers, etc.). In addition, grandfathered Phase 1 water takers are now required to apply for a Permit To Take Water (PTTW) by June 30, 2008.</p>
<p>CCME Canadian soil quality guidelines for potential carcinogens and other PAHs. Status: Available www.ccme.ca/whatsnew/</p>	<p>This scientific supporting document provides background for soil quality guidelines for PAHs in agricultural, residential/parkland, commercial, and industrial land use scenarios.</p>
<p>CCME National Classification System for Contaminated Sites. Status: Available on-line at www.ccme.ca</p>	<p>First released in 1992, the guidance document (PN 1403) has been revised to reflect increased knowledge about risk assessment techniques for screening and setting remediation priorities for contaminated sites.</p>

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