

Making Environmental Approvals EAS(ie)R?

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On September 26, 2016, the Ontario Ministry of the Environment and Climate Change (MOECC) posted a draft regulation that seeks to streamline the approvals process for comment on the Environmental Registry.¹ The regulation would minimize the approvals process for air and noise emissions from low risk facilities and processes. Low risk facilities and processes would be eligible for registration on the Environmental Activity and Sector Registry (EASR) instead of a requirement for an Environmental Compliance Approval (ECA). A further set of low risk facilities and processes would be exempt from approval requirements.

The Ministry has also posted a proposed update to the Primary Noise Screening Process and the Secondary Noise Screening Process, as well as a discussion paper on proposed odour requirements.²

The Ministry is proposing approval exemptions for the activities/sources set out below, provided certain criteria are met:

- ◆ Public and private schools
- ◆ Heating, ventilation and air conditioning systems
- ◆ Standby power systems
- ◆ Small wood burning equipment.

These activities/sources would not require an ECA or registration on EASR.

Facilities and processes that will still require an ECA are identified by NAICS code, and include metal ore mining, sewage treatment facilities, sawmills, petroleum refineries and chemical manufacturing. All other facilities and processes not exempted or on the list of ECA applicable NAICS codes will be required to register on EASR.

¹ <https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTMwMTA4&statusId=MTk3MTU5&language=en>

² <https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTMwMDYy&statusId=MTk3MDQ1&language=en>
<https://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTMwMDI3&statusId=MTk2OTcx&language=en>

The draft regulation includes operating requirements for EASR eligible activities. The operating requirements include

- ♦ An Emission Summary and Dispersion Modelling (ESDM) report prepared by a licensed engineer and demonstrating that the contaminant concentrations are within MOECC requirements. The ESDM must be reviewed every 10 years by a licensed engineer to ensure it is still accurate.
- ♦ A Best Management Practices Plan (BMPP) prepared by a licensed engineer for fugitive dust sources. The BMPP must be reviewed every 10 years by a licensed engineer to ensure it is still accurate.
- ♦ A noise assessment prepared by a licensed engineer concluding that noise emissions meet the MOECC requirements. For existing facilities, where noise emissions do not meet the requirements, a noise abatement action plan must be prepared. The noise assessment must be completed every 10 years by a licensed engineer.
- ♦ An odour screening, and if required, a best management practices odour plan prepared by a licensed engineer. The best management practices odour plan must be reviewed every 10 years by a licensed engineer.
- ♦ Reporting complaints to the MOECC Spills Action Centre forthwith.

Any changes or modifications to the facility will require updates to all of the above reports by a licensed engineer.

The requirement to report complaints “forthwith” is a departure from normal Ministry timelines under ECAs for reporting complaints. Practically speaking, this leaves little to no opportunity for a facility to investigate the complaint or to obtain more information about the complaint prior to speaking with the Ministry. It is not clear why the Ministry is seeking to include immediate reporting of complaints.

While the move to an EASR based system may be more streamlined for some facilities, it may increase the regulatory burden for facilities that previously operated under ECAs with Limited Operational Flexibility. In addition, the requirement for a licensed engineer to prepare all reports will add significant costs to environmental permits and approvals.

In addition, the inclusion of odour under the EASR program should be of concern to facilities. Odour is difficult to accurately and reliably measure and what is considered acceptable or offensive will often differ widely between individuals.

Facilities and activities currently operating under an existing ECA that are eligible for EASR must register under EASR by January 31, 2027.

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