

Property Management

A REGIONAL REPORT FOCUSING ON THE GTA, HAMILTON & NIAGARA

REPORT

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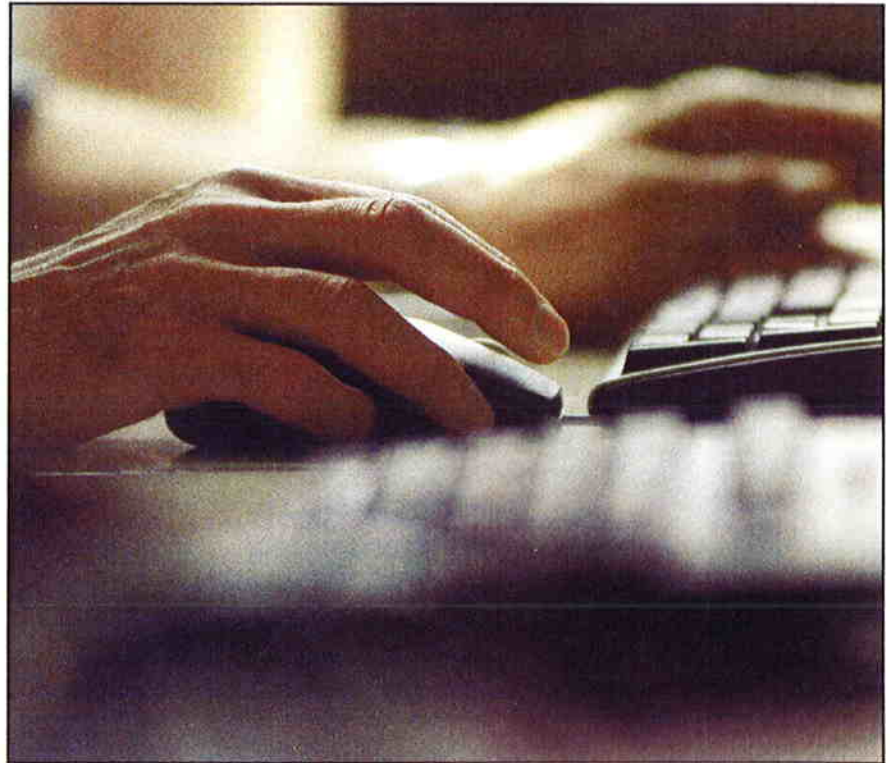
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Cost-Effective Window Repairs



Demand Response Proposal for Union Station



Low-Risk Approvals Now Obtained On-line Past Conduct Weighed in Environmental Considerations

By John Willms

With the passage of Bill 68, the *Open for Business Act*, 2010, the Ontario Ministry of the Environment (MOE) now has the legislative authority to begin streamlining its backlogged and unwieldy environmental approvals process.

The omnibus Bill, which received Royal Assent on October 25, 2010, includes more than 100 revisions to 50 pieces of provincial legislation administered by 10 different ministries. Prominent among these is a new two-tiered, risk-based approach to environmental approvals, as well as an on-line applications process.

Once the required regulations are in place and the on-line registry system is up and running, the proponents of any of the

designated low-risk activities will simply have to electronically self-register their intention to undertake that activity, pay the required fee, and provide the necessary financial assurance, if any is required. Once the Director acknowledges the registration, applicants will be able to proceed with the activity in accordance with any prescribed rules or conditions.

The MOE estimates that a streamlined approvals process could save businesses as much as 25% of their project application costs. It also permits the Ministry to focus its resources on those proposed projects that are expected to have a more significant environmental impact and on those businesses or facilities with poor compliance records.

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NEW REGULATORY REGISTRY

As of November 1, 2009, all regulatory proposals that may affect business have been posted for public notice on the province's Regulatory Registry at <http://www.ontariocanada.com/registry> and Ontario businesses then have a minimum of 45 days to review and provide comments on these proposals. The Regulatory Registry, which carries proposals that aren't necessarily on the Environmental Registry, has been operating for the past year as part of the Open for Business initiative.

Regulations affecting business now come into effect twice a year, on January 1st and July 1st. The Ontario government maintains that the two routine effective dates per year will enable businesses to better track and plan for regulatory requirements. While increasing regulatory certainty, the new "kick-in" dates will likely delay any new environmental approvals regulations to mid-2011 or January 1, 2012.

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With the passage of Bill 68, the Ministry can now begin to roll out a series of regulations detailing the new approvals process. This rollout will likely take two years to complete.

OMNIBUS LEGISLATION

When first introduced in May 2010, the Ontario government maintained that Bill 68 would transform "the government-to-business relationship" by streamlining government services and cutting red tape. In addition to the environment-related provisions, the Bill will speed the resolution of employment standards claims; harmonize transportation and standards for transportation of dangerous goods (TDG) with other provinces; modernize the *Construction Lien Act*; and remove unnecessary citizenship requirements for individuals who apply for a professional engineer's licence.

Amendments likely of greatest interest to professionals and practitioners in the environmental community include not only the modernized approvals process, which fits well under "Open for Business," but also the augmentation of some enforcement mechanisms. These are:

- Revisions to the *Environmental Protection Act* (EPA) (section 157.0.1) and *Ontario Water Resources Act* (OWRA) (section 15.0.1) authorizing a Provincial Officer, for the purposes of determining compliance of a "person" with the Act or the regulations, to require persons under investigation or those employed or providing services to the "person" to respond to "reasonable enquiries".

This may be a significant augmentation of Provincial Officer powers. There is no direction on what is considered "reasonable". Inspectors and investigators may now make enquiries by telephone and insist that employees and consultants respond. Expect some interesting developments and challenges as Provincial Officers test this section.

- Provisions for administrative penalties to be

levied by Directors and Provincial Officers against businesses that fail to comply with the requirements of registration. At the urging of Canadian Manufacturers and Exporters (CME), MOE amended the draft bill to provide that while a Director will be permitted to levy such penalties, Provincial Officer powers will require an enabling regulation. If a corporation is the target of an administrative penalty, then the order may not be issued to "an employee, officer, director or agent of the corporation."

- Other changes to sections of the EPA cover the awarding of costs and financial assurances.

STREAMLINED PROCESS

However, the bulk of the changes to the EPA deal with the new streamlined approvals process.

Part II.1 of the EPA deals with environmental compliance approvals. Sections 9 and 27 of the EPA and section 53 of the OWRA are amended to require persons engaging in activities mentioned in those provisions to obtain an environmental compliance approval instead of a Certificate of Approval. The Bill replaces the requirement to obtain an approval under section 53 of the OWRA with the requirement for an environmental compliance approval under the EPA.

Part II.2 establishes the Environmental Activity and Sector Registry. Persons are prohibited from engaging in a prescribed activity unless it has been registered in the Registry in accordance with the regulations, the Director has provided a confirmation of registration, the registration is in effect and the activity is engaged in according to rules prescribed by the regulations.

In a discussion paper on the modernization of the Certificate of Approval process, posted to the Environmental Registry on March 2, 2010, the MOE indicated that it could use an applicant's past history of non-compliance to weed out the bad apples. Bill 68 adds a Past Conduct clause to the EPA.

That would allow the Director to suspend, revoke or refuse to issue an environmental

compliance approval if: "the past conduct of the holder of the approval or the applicant, or, if the holder or applicant is a corporation, of its officers and directors, affords reasonable grounds to believe that the person will not engage in the activity in accordance with this Act, the OWRA or the regulations made under either of those Acts."

A Director can also suspend or remove a registration from the Registry if the person who is engaging in the activity is in contravention of the EPA, OWRA or their regulations, or if the confirmation of registration was provided on the basis of "mistaken, false or inaccurate information."

Amendments to the *Conservation Authorities Act* streamline approval processes for placing fill in sensitive areas and on shorelines. They are intended to ensure greater consistency in permit decisions. In line with this, on October 29, 2010, the Ministry of Natural Resources posted draft amendments to O. Reg. 97/04 that will allow Conservation Authorities' executive committees or employees to make positive permit decisions and to extend the maximum period of a permit from 24 to 60 months.

ACCEPTED & REJECTED CHANGES

A number of minor administrative changes were made to the Bill following hearings conducted earlier this summer by the Standing Committee on Finance and Economic Affairs. For example, the Minister of the Environment will have to publish, by electronic means or otherwise, information about environmental compliance approvals and other instruments under the EPA or OWRA as specified in regulation.

The committee refused to entertain any amendment to sections of the EPA or other Acts that were not already in the version introduced for First Reading. This refusal eliminated a proposal to consider "cumulative adverse effects" when issuing regulations, guidelines, orders, approvals or other instruments.

Several other proposed changes were voted down, including an amendment that would have deemed the registration of lower risk activities as "instruments" under the Environmental Bill of Rights. That would have required that such activities be posted for public notice and a 30-day comment period on the registry, as well as providing a public right of appeal. The government members argued that the registration process for lower risk and well understood activities in the as-yet-to-be-developed regulations will provide the requisite public transparency. **PMB**

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