

# LAND USE COMPATIBILITY, ODOUR GUIDELINES AND MORE: ONTARIO MINISTRY OF ENVIRONMENT, CONSERVATION AND PARKS ANNOUNCES FOUR NEW PROPOSALS FOR 2021

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UPDATE (11/01/21): On October 13, 2021, the Environmental Registry of Ontario (“ERO”) posted its decision on the proposed updates to the Province’s Land Use Compatibility Guidelines (ERO 019-2785). Following 94 days of consultation which closed on August 6, 2021, the Ministry of the Environment decided not to proceed with the [proposed amendments](#), based on feedback received. As such, the [current “D-Series”](#) Environmental Land Use Compatibility Guidelines will remain in place. Per the ERO, the Ministry is continuing to review the D-Series guidelines in light of the feedback and, should they decide to update the D-Series, will post any future potential update to the ERO for consultation. In respect of the other matters reviewed in our bulletin of June 21, 2021, there has been no decision posted yet respecting the Odour guideline ([ERO 019-2768](#)) or Compliance policy ([ERO 019-2972](#)), for which comment periods also closed on August 6, 2021. Few details remain available respecting the its plan to expand use of administrative monetary penalties.

The Ontario Ministry of Environment, Conservation and Parks (MECP) has [announced](#) that it is moving forward with proposals for four new initiatives to support the MECP’s goal of protecting and preserving Ontario’s air, land and water. [1] These initiatives include: (1) updating Ontario land use compatibility guidelines, (2) updating Ontario’s odour guideline, (3) revising Ontario’s environmental compliance policy, and (4) expanding the use of administrative monetary penalties for environmental contraventions.

The aim of these initiatives is to:

- Provide better tools and guidelines for municipalities so that they may implement land use planning decisions that reduce noise and odour from industry;
- Provide additional guidance on how industry can prevent and address odour issues;
- Update the MECP’s environmental compliance policy to prioritize high-risk incidents and better hold polluters accountable; and
- Expand administrative monetary penalties to cover additional regulated entities, such as individuals, small businesses, large corporations and public entities.

This bulletin provides an overview of each of the MECP's four proposed initiatives, which are available for public comment until July 3, 2021.

### **Land Use Compatibility Guideline**

The MECP is proposing [changes](#) to the land-use compatibility guidelines used by municipalities when making land use planning decisions.<sup>[2]</sup> The proposed guideline will help to prevent impacts from noise, dust, odour and other potential sources of adverse effects to sensitive land uses from industries that may threaten the industries' ability to operate (the "**Land Use Guideline**"). Sensitive land uses are defined as designated land uses that may be negatively affected by noise, dust, odour or contaminant discharge generated by an industrial facility, such as residential, recreational and agricultural areas as well as areas housing institutions such as schools, hospitals, daycares and churches.

The primary objective of the Land Use Guideline is to reduce land use compatibility issues resulting from new development proposals under the *Planning Act*<sup>[3]</sup> that involve sensitive land uses in proximity to major industrial facilities including by:

- Protecting employment areas designated for future industrial facilities from incompatible uses and encroachment by sensitive land uses;
- Protecting existing or planned industrial facilities from impacts from new sensitive land uses; and
- Preventing adverse effects on existing or planned sensitive land uses, such as residential, educational and healthcare facilities, from new or expanding facilities.

The Land Use Guideline will establish specific area of influence (AOI) distances and minimum separation distances (MSD) associated with major facilities where adverse effects on sensitive land uses are moderately likely to occur. Compatibility studies will be required for new or expanding major facilities, or new sensitive land use areas, proposed in an AOI or MSD to determine appropriate setbacks and mitigation measures. Municipalities are also instructed under the guideline not to allow sensitive land uses within the MSD of a major facility, except in rare circumstances.

The Land Use Guideline will apply to municipalities when an approval is required under the *Planning Act* and a decision needs to be made where either a new or expanding sensitive land use is proposed near an industrial facility or an industrial facility is proposed near an existing or planned sensitive land use area.

### **Odour Guideline**

The MECP is also proposing a [guideline](#) that will clarify requirements for potentially odorous facilities that are applying for an Environmental Compliance Approval (ECA) or preparing an odour study as a requirement of a Renewable Energy Approval (REA) (the "**Odour Guideline**").<sup>[4]</sup> The purpose of this guideline is to improve how

industrial facilities prevent and address odour issues that are of concern to local residents.

The proposed Odour Guideline clarifies the requirements for potentially odorous facilities applying for an ECA under section 20.2 of the *Environmental Protection Act*.<sup>[5]</sup> Currently, Ontario's *Local Air Quality Regulation*<sup>[6]</sup> specifies odour-based standards for various types of odours. However, odour mixtures (i.e. the total amount of combined odours from a facility) are generally not accounted for. The Odour Guideline specifically addresses the screening process, tools and technical specifications for odorous mixtures.

The Odour Guideline also clarifies requirements for facilities preparing an Odour Study required by the *Renewable Energy Approvals Regulation*<sup>[7]</sup> for certain facilities, including class 3 anaerobic digestion facilities, biogas facilities, biofuel facilities and class 3 thermal treatment facilities. Among other technical requirements, an Odour Study must set out processes or sources of odour discharge, any negative environmental effects that may result from the odour discharge, and the technical methods that are to be used to mitigate any negative effects.

The MECP is also developing additional tools to assist applicants in completing required odour work when applying for an ECA or REA, including technical bulletins on odour assessment methodology and minimum expectations, a screening form to determine what work must be completed, and example odour technology benchmarking reports.

### **Compliance Policy**

The MECP is proposing [updates](#) to Ontario's environmental compliance policy and practices with the goal of prioritizing high-risk incidents and holding polluters accountable for the impact of their actions on the environment and Ontario taxpayers (the "**Compliance Policy**").<sup>[8]</sup>

Currently, after environmental incidents (such as a spill or unauthorized discharge) are reported to the MECP, the MECP undertakes an assessment to determine the level of risk associated with the incident and responds accordingly. For minor violations, the MECP may recommend enforcement through warnings, tickets or notices of violation. For more serious violations, the MECP may issue an order, an administrative monetary penalty or investigate the incident further.

Under the Compliance Policy, the MECP will be prioritizing high-risk incidents and incidents relating to facilities requiring ministry permissions, such as landfills, waste facilities and steel manufacturing. Low-risk incidents related to noise and odour and incidents relating to facilities not regulated by a MECP permit, license, authorization or approval will be referred to agencies and municipalities, such as municipalities that have authority under the *Municipal Act, 2001*<sup>[9]</sup> to address these incidents through their own bylaws. Examples of these types of low-risk incidents include:

- intermittent noise from small-scale industrial or commercial exhaust fans;
- intermittent noise from commercial truck refrigeration units; and
- temporary and/or localized odour impacts from a retail bakery or a coffee roasting facility.

### **Administrative Monetary Penalties**

The MECP has also announced that it will be expanding the use of administrative monetary penalties for environmental contraventions and providing stronger compliance tools for government enforcement officers. At this point, the MECP has released few details of this plan but intends to provide consultations through virtual stakeholder engagement sessions in 2021 after which it will develop corresponding regulations.

[1][ps2id id='1' target=''] Environmental Registry of Ontario, [\*Strengthening our environmental compliance approach\*](#) (May 4, 2021).

[2][ps2id id='2' target=''] Environmental Registry of Ontario, [\*Land Use Compatibility Guideline\*](#) (May 4, 2021).

[3][ps2id id='3' target=''] [\*Planning Act\*](#), R.S.O. 1990, c. P.13.

[4][ps2id id='4' target=''] Environmental Registry of Ontario, [\*Guideline to address odour mixtures in Ontario\*](#) (May 4, 2021).

[5][ps2id id='5' target=''] [\*Environmental Protection Act\*](#), R.S.O. 1990, c. E.19.

[6][ps2id id='6' target=''] [\*Air Pollution - Local Air Quality\*](#), O. Reg. 419/05.

[7][ps2id id='7' target=''] [\*Renewable Energy Approvals Regulation\*](#), O. Reg. 359/09.

[8][ps2id id='8' target=''] Environmental Registry of Ontario, [\*Modernizing environmental compliance practices of the Ministry of the Environment, Conservation and Parks\*](#) (May 4, 2021).

[9][ps2id id='9' target=''] [\*Municipal Act, 2001\*](#), S.O. 2001, c. 25.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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