



## Notice & Appeal: Ontario's Environmental Bill of Rights

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# Environmental Bill of Rights, 1993

- **Goal: to facilitate public participation in environmental decision-making by the provincial government**
- **Required government departments to publish “Statements of Environmental Values”**
  - Explaining how the environment will be integrated with social, economic and scientific considerations when decisions are made
- **Created a public registry**
  - Required public notice and public comment periods regarding significant decisions
- **Provided a mechanism for third party appeal of approvals**
- **Created the position of “Environmental Commissioner” – “independent environmental watchdog”**
  - For reports see [www.eco.on.ca](http://www.eco.on.ca)

# Environmental Bill of Rights, 1993

- **Environmental Registry requires posting of**
  - Proposed changes to environmental policy, regulations, statutes
  - Applications for permits and approvals by proponents
  - Government decisions in relation to these approvals
- **Examples of permit applications that must be posted:**
  - Applications to “take water” with a duration of one year or more
  - Applications to discharge contaminants to the air or water
  - Proposals to issue an order under environmental legislation
  - Applications for a Renewable Energy Approval
- **EBR provides a mandatory period of public comment**

# Sample Posting – Application for Approval

The screenshot displays a web browser window titled "Environmental Registry - Windows Internet Explorer provided by Gowlings". The address bar shows the URL: <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTEzNDA4&statusId=MT>. The browser's menu bar includes File, Edit, View, Favorites, Tools, and Help. The Favorites bar shows a link to "http--call2recycle.ca-call2re...". The page title is "Environmental Registry".

The main content area features a navigation menu with links: About the Registry, Search, How do I...?, MyEBR, FAQs, Links, Contact Us, and Home. Below this, there are sub-links for Advanced Search, Basic Search, and Court Action.

The primary section is titled "Instrument Proposal Notice:" and contains the following information:

- Proponent:** Brandoflex Limited  
15 Morton avenue East  
Brantford Ontario  
Canada N3R 6C3
- Instrument Type:** Approval for discharge into the natural environment other than water (i.e. Air) - EPA s. 9
- EBR Registry Number:** 011-3675
- Ministry Reference Number:** 0883-8FHJG9
- Ministry:** Ministry of the Environment
- Date Proposal loaded to the Registry:** May 26, 2011

Below the notice, a search bar indicates "Keyword(s): Air" and a comment period: "Comment Period: 30 days: submissions may be made between May 26, 2011 and June 25, 2011."

The "Description of Instrument:" section provides details: "This proposal is for a new Certificate of Approval (Air) for Brandoflex Limited, located in Brantford, Ontario. The facility undertakes polyurethane casting." It further specifies: "This application is for one (1) priming process exhaust, one (1) polyurethane manufacturing exhaust, one (1) stove preparation exhaust, and one (1) parts cleaning exhaust." Contaminant emissions listed include volatile organic compounds such as methyl ethyl ketone, methanol, and trichloroethylene, and various solvent emissions.

The "Public Consultation:" section states: "This proposal has been posted for a 30 day public review and comment period starting May 26, 2011. If you have any questions, or would like to submit your comments, please do so by June 25, 2011 to the individual listed under 'Contact'. Additionally, you may submit your comments on-line." It also notes: "All comments received prior to June 25, 2011 will be considered as part of the decision-making process by the Ministry of the Environment if they are submitted in writing or electronically using the form provided in this notice and reference EBR".

The "Contact:" section provides the following information: "All comments on this proposal must be directed to:"  
Application Processor  
Client Services Section  
Ministry of the Environment  
Operations Division  
Environmental Assessment and Approvals Branch  
2 St. Clair Avenue West  
Floor 12A  
Toronto Ontario  
M4V 1L5  
Phone: (416) 314-8001  
Fax: (416) 314-8452  
Toll Free Phone: (800) 461-6290

At the bottom of the page, a button reads "To submit a comment online, click the submit".

The Windows taskbar at the bottom shows the Start button, several open applications (Internet Explorer, Word, etc.), and the system clock displaying 10:35 AM on 6/26/2011.

# Sample Posting – Revision of Regulation

The screenshot shows a Windows Internet Explorer browser window displaying the Environmental Registry website. The address bar shows the URL: <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTEyMDMw&statusId=M1>. The website header includes the Environmental Registry logo and the Ontario Government logo. The navigation menu includes links for About the Registry, Search, How do I...?, MyEBR, Advanced Search, Basic Search, Court Action, FAQs, Links, Contact Us, and Home. The main content area displays a Regulation Proposal Notice with the following details:

**Regulation Proposal Notice:**

**Title:** Proposal for Amending Ontario Regulation 153/04, Brownfields Records of Site Condition

**EBR Registry Number:** 011-2347

**Ministry:** Ministry of the Environment

**Date Proposal loaded to the Registry:** February 25, 2011

**Keyword(s):** Brownfields

**Regulation:** 153/04

The comment period for this proposal is now over.

**Description of Regulation:**

Brownfields are underdeveloped or previously developed properties that may be contaminated. They are often, but not always, former industrial or commercial properties.

The Ontario legislative framework for brownfields was established in 2001 through the *Brownfields Statute Law Amendment Act, 2001*. Legislative and regulatory amendments were made to a number of Acts, including the *Environmental Protection Act (EPA)* to facilitate brownfields redevelopment. Under the EPA and Ontario Regulation (O. Reg.) 153/04 (Records of Site Condition, Part XV.1 of the Act) a Record of Site Condition (RSC) must be filed whenever property use changes to a more sensitive use (e.g. industrial to residential).

In In 2007, the legislature passed a set of new provisions that would address identified barriers to brownfield redevelopment. The reforms received Royal Assent on May 17, 2007 as part of the *Budget Measures and Interim Appropriation Act, 2007*.

**Contact:**

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Toronto Ontario  
M4V 1P5  
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# Environmental Registry

- Public can search by keyword, location, proponent, specific legislation
- Website allows users to register for updates
- Provides summary of the proposal, a summary of public comment and draft documents
- Public may appeal a permit that is issued to a proponent if it meets the test for “leave”
- Leave to appeal must be sought within 15 days of the decision being posted

# Environmental Bill of Rights, 1993

- **Test for Leave to Appeal:**
  - “no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision”
  - And the decision could result in “significant harm to the environment”
- **Application is made to an administrative tribunal – the Environmental Review Tribunal (ERT) – not to a court**
- **Process is intended to facilitate participation by unrepresented parties**
- **There are no time limitations imposed on hearings**
- **It is very difficult to obtain cost awards**

# Appeals of Renewable Energy Approvals

- **REAs may be appealed within 15 days of the posting of the approval on the Environmental Registry**
  - There is no “leave” required – it is a right of appeal
- **Appellant must establish that the project will cause:**
  - Serious harm to human health
  - Serious and irreversible harm to plant or animal life or to the natural environment
- **ERT may confirm, revoke or impose conditions on REA**
- **Strict time limits are imposed on hearings**
  - Decision must be issued within 6 months of notice of appeal being filed with Environmental Review Tribunal (s. 59, O. Reg. 359/09)
  - If not, Director’s decision is confirmed (EPA, s.145.2.1(6))



# Thank You

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