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Wednesday 6 April 2011

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Mercredi 6 avril 2011

**Standing Committee on
Regulations and Private Bills**

**Comité permanent des
règlements et des projets
de loi d'intérêt privé**

Draft report on regulations

Rapport préliminaire
sur les règlements

Chair: Michael Prue
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE
ON REGULATIONS
AND PRIVATE BILLS**

**COMITÉ PERMANENT DES
RÈGLEMENTS ET DES PROJETS DE LOI
D'INTÉRÊT PRIVÉ**

Wednesday 6 April 2011

Mercredi 6 avril 2011

The committee met at 0900 in room 151.

DRAFT REPORT ON REGULATIONS

The Chair (Mr. Michael Prue): The meeting is now called to order. We have three items on the agenda. The first item: We're going to listen to the Ministry of Agriculture, Food and Rural Affairs and the Ministry of the Environment. I invite Shannon DeLeskie and Melissa McDonald to come forward.

Ms. Melissa McDonald: Good morning.

The Chair (Mr. Michael Prue): Good morning. If you could identify yourselves for the purposes of Hansard. I know who you are, but just so that they know.

Ms. Melissa McDonald: I'm Melissa McDonald. I'm counsel, legal services branch, Ministry of the Environment.

Ms. Shannon DeLeskie: I'm Shannon DeLeskie. I'm the deputy director at the legal services branch of the Ministry of Agriculture, Food and Rural Affairs.

The Chair (Mr. Michael Prue): In order to facilitate this, because I don't think this should take too long, perhaps Mr. McNaught could indicate the dilemma that he has uncovered and that the committee wants to explore.

Mr. Andrew McNaught: The issue concerns a regulation made under the Nutrient Management Act. That regulation deals with the application of nutrients to farms and provides for what's called a NASM plan. That's a non-agricultural source material plan. Farms that use non-agricultural source materials may be required to have a NASM plan.

Under the regulation, if a NASM plan area satisfies certain criteria, the regulation in section 8.3—before I go on, I'm not sure if people have the memo that I wrote on this.

The Chair (Mr. Michael Prue): Yes, everybody has it.

Mr. Andrew McNaught: Okay. So I've quoted the relevant section there; it's section 8.3 of regulation 267/03. It provides that, "A NASM plan area that satisfies the following requirements is exempt from part V of the Environmental Protection Act..."

Our initial concern here was that there's no authority in the Nutrient Management Act to create an exemption from part V of the Environmental Protection Act. So we

wrote to the ministry about that, and they explained in their response that in fact the regulation under the Nutrient Management Act is simply establishing the requirements that have to be met in order for a NASM plan area to be eligible for an exemption under the Environmental Protection Act. The actual exemption from part V of the Environmental Protection Act is set out in regulation 347 under the EPA. So you have the criteria that you have to meet in order to be exempt set out in the Nutrient Management Act; you have the actual exemption created by a regulation under the Environmental Protection Act.

Our concern was that the wording of the Nutrient Management Act regulation, when it uses the phrase "is exempt from," could be understood to mean that the Nutrient Management Act regulation is creating the exemption, whereas in fact, it's only setting, establishing criteria. So we've asked the ministry to come in and explain further on the difference between the two.

The Chair (Mr. Michael Prue): And the floor is now yours.

Ms. Melissa McDonald: Thank you very much. My colleague and I put together a slide deck which we thought would assist in explaining the matter at issue. It's very brief; it's only four slides. I thought I would take you through it to see if that assists in clarifying the matter. I do think that Mr. McNaught has pretty much summed up the issue. Hopefully, this will satisfy any concerns.

What I'm going to do is I'm going to be giving you just the context of the amendments with respect to the nutrient management regulation, explaining how that intersects with the Environmental Protection Act regulation amendment and then explaining the rationale, the reason that we did it that way.

Starting on slide 1, I'm starting with the Nutrient Management Act and the general regulation under that act. Just for the context, the purpose of the Nutrient Management Act is to provide for the management of materials containing nutrients in ways that will enhance protection of the natural environment and provide a sustainable future for agricultural operations and rural development.

As you know, in 2009, the general regulation made under the act was amended by O. Reg. 338/09. What this amendment did is set out a detailed code governing the land application of NASM to agricultural operations. I

focused it on land application; it also takes in storage of NASM on agricultural operations. It was more for brevity of language on the slide.

You'll hear me use the word NASM. It's an acronym; it means non-agricultural source material. NASM is applied to land as nutrients. Most NASMs are materials that are generated off a farm. It's good to be familiar with what that term is. We know that NASM under the Nutrient Management Act is nutrients.

Then when we go to slide 2, we're talking about the Environmental Protection Act. Under the Environmental Protection Act, NASM would also be considered a waste. When we consider part V of the Environmental Protection Act, that sets out a requirement for a certificate of approval for waste disposal sites. That would include the application of waste to land. We also have regulation 347; that's the general waste management regulation under the EPA.

Prior to the 2009 amendment, so these are the amendments that you're looking at, the application of many types of NASM to agricultural land—we're talking agricultural land—were subject to (1) the requirement for a certificate of approval under part V of the EPA; (2) regulation 347, again, under the EPA; and (3) O. Reg. 267/03 under the Nutrient Management Act. Those were the frameworks under which NASM fit. That was prior to the amendments.

In 2009, regulation 347, again, under the EPA, was amended to exempt NASM applied to agricultural land from part V of the EPA—so this would include the requirement for a certificate of approval—and regulation 347 on the condition that certain land application requirements were met. These requirements were set out in the nutrient management regulation.

Let's turn to slide 3. We have the authority to make exemptions under the Environmental Protection Act. That's so that you understand what the authority was to set out that exemption. In the EPA, there's a clear authority permitting the making of a regulation that exempts things—and it's a long list; I won't go through the list—with conditions from the requirements of the EPA and its regulations.

In this case, the exemption was made for NASM that meets certain requirements from part V of the EPA and regulation 347. This particular exemption was set out in regulation 347, so we're talking about the regulation under the EPA. The specific language is set out here; it's section 5.0.2 in the regulation under the EPA. I'll read it:

"5.0.2 A waste disposal site is exempt from part V of the act and from this regulation"—that's the exemption—"if"—and these are the conditions:

"(a) it is a NASM plan area, as defined in" our nutrient management regulation; and

"(b) it satisfies the requirements of section 8.3" of the nutrient management regulation.

We have the exemption with the conditions in the regulation made under the Environmental Protection Act. Those conditions are that they meet the requirements that are set out in the nutrient management regulation. That's

in section 8.3 of that regulation, which is the subject that Mr. McNaught spoke to earlier.

0910

So if we turn to slide 4, we've got the exemption in reg 347. The conditions that must be met are the requirements set out in the nutrient management regulation. The rationale for doing it this way was so that farmers—remember, farmers are the ones who are subject to this scheme—could have all the relevant nutrient management requirements in one place, in that one nutrient management regulation. So they pick up the nutrient management regulation and they know all the requirements that they have to deal with. The exemption, as I've taken you through, under the EPA is set out in the regulation under the EPA, made in accordance with the regulation-making authority in the EPA.

That's the slide deck that I put together for you.

The Chair (Mr. Michael Prue): I have three questioners: first of all, Mr. Murdoch, then Mr. Leal and then Mr. Miller.

Mr. Bill Murdoch: On slide 3, why do we call it "A waste disposal site" is exempt?

Ms. Melissa McDonald: Because that's the definition that's provided for in the Environmental Protection Act.

Mr. Bill Murdoch: So you're saying the farmer's field is a waste disposal site?

Ms. Melissa McDonald: I'm saying that it would meet the definition of a waste disposal site in the Environmental Protection Act, if there are wastes applied to the field.

Mr. Bill Murdoch: Okay. It just seemed funny we would call it a waste disposal site, but that's basically what you're saying, then: That field is a waste disposal site?

Ms. Melissa McDonald: If there's waste being applied.

Mr. Lou Rinaldi: Like NASM.

Ms. Melissa McDonald: Well, remember, NASM is a waste under the EPA.

The Chair (Mr. Michael Prue): Mr. Leal.

Mr. Jeff Leal: Thanks very much, Mr. Chair.

Basically, as I understand it, this came about because throughout Ontario there were waste water treatment plants, there was dewatered sludge that was left over, and farmers would often buy the dewatered sludge, which eventually would be put on their fields, and there had to be a composition of the mixture of that before it was applied on the fields.

Ms. Melissa McDonald: I'm not familiar with the policy that would have prompted this particular framework.

Mr. Jeff Leal: But I think that's right; Bill, you were saying—

Mr. Bill Murdoch: Yes.

Mr. Jeff Leal: Okay. Thank you.

The Chair (Mr. Michael Prue): Mr. Miller.

Mr. Paul Miller: Now, with the certificate of approval, which is under the environmental act, farmers

were required to meet that regulation in the past. Is that not correct?

Ms. Melissa McDonald: If the particular waste that was being applied to the land was not otherwise exempt, that would be correct.

Mr. Paul Miller: So with the way things are going with chemicals and that—and farmers are using different compounds and different combinations of fertilizers, which would go into local streams, would go into catchment basins and would also go into water in the areas surrounding the farms, which would indirectly or directly impact—would go to a water treatment plant, which could go into the drinking water and things like that. The Environmental Protection Act, it's my understanding, especially in landfills and things like that, is there to protect the effluent that comes off those landfills and comes off the farms, that goes to the water waste treatment plants. So, to me, this is a bit of an end run around that regulation under the Environmental Protection Act, section 5, and what you've got now is unbridled usage of the land, depending on what chemicals, and when there's a combination of chemicals, they can cause major problems because of the reaction of the things in the chemicals that interact with each other, that then go into the streams from the farm, depending on the usage or what's being grown there. So what you've done here is exactly exempt the farms from further regulations, further red tape. Is that my understanding?

Ms. Melissa McDonald: What I would do is point you, first of all, to the purpose of the Nutrient Management Act, which is on slide 1. It states that it is “to provide for the management of materials containing nutrients in ways that will enhance protection of the natural environment and provide a sustainable future for agricultural operations and rural development.”

My second point would be that both the Ministry of the Environment and the Ministry of Agriculture, Food and Rural Affairs worked on this package together.

Mr. Paul Miller: I don't know if that answers my question, but section 8—I don't really have the details of section 8 here, which describes the conditions that have to be met by the farmer under the NASM plan. Does it intersect or overrule anything in the environmental act in section 5?

Ms. Melissa McDonald: I'm not sure I understand your question.

Mr. Paul Miller: Okay.

Mr. Bill Murdoch: See, you've got to get that 267. You've got to get approval there.

Mr. Paul Miller: All right. You don't understand that? Do you want me to repeat it?

Ms. Melissa McDonald: Sure, if you could repeat the question, please.

Mr. Paul Miller: Okay. Section 8, which I don't have the details for, is now going to be under NASM, the non-agricultural source material plan. Would that be exempt from the Environmental Protection Act with this amendment?

Ms. Melissa McDonald: They have to meet those requirements that are set out in section 8.

Mr. Paul Miller: What are the requirements?

Interjection.

Mr. Paul Miller: Section 8, right?

Ms. Melissa McDonald: Section 8.3 states that a NASM plan area that satisfies the following requirements is exempt from part V of the EPA and reg 347 made under that act. It says:

“1. The NASM that is applied to the land or stored on it does not have,

“i. metal concentrations exceeding CM2,

“ii. pathogen levels exceeding CP2, or

“iii. an odour detection threshold exceeding OC3.

“2. The NASM plan and the management of NASM on the NASM plan area comply with this regulation.”

This is the regulation as I copied it off E-laws.

Mr. Paul Miller: I guess my concern is that by creating this exemption in section 5 of the environmental act, any future new chemicals or future land use chemicals under the NASM plan may not be regulated as well as they are now under section 5. I'm concerned that it doesn't cover any future new chemical. I didn't see anything in the regulations to cover future chemical uses or future compounds that will be created, I'm sure, in the next few years.

Is this exempting NASM from the Environmental Protection Act in direction with future chemicals that may be used in the agricultural industry?

Ms. Melissa McDonald: The regulation that you were looking at doesn't go into what's happening in the future.

Mr. Paul Miller: Exactly.

Ms. Melissa McDonald: It's beyond the scope of what this regulation addresses.

Mr. Paul Miller: Okay. I have a problem with that. Thank you.

The Chair (Mr. Michael Prue): Further questions? Seeing none, discussion?

Mr. David Caplan: Can I move that we receive or adopt the report that came from—

The Chair (Mr. Michael Prue): We have already done that, as far as I know. We did that—

Mr. David Caplan: Not for this act, I don't believe.

The Chair (Mr. Michael Prue): Yes, I'm given to understand from the clerk that recommendation 1 was carried on December 8, 2010, on a vote of 5 to 1.

Mr. David Caplan: Great.

The Chair (Mr. Michael Prue): But it kept cropping up, and the last time was a request that they be brought forward. It has been adopted.

Is there anything else the members want to do? No? Okay.

Mr. David Caplan: I'll move that we receive the report of the two counsels and thank them for their attendance, and that this matter be closed.

The Chair (Mr. Michael Prue): We have a motion to thank the two counsels for their report. All those in favour? Opposed? That's carried. Thank you very much.

Ms. Melissa McDonald: Thank you.

The Chair (Mr. Michael Prue): The only thing that is left, then, on this entire report—I have two questions.

Shall the draft report be adopted, subject to the approval of the Chair, or, if you wish, subject to the approval of the members of the subcommittee of the committee? Agreed, to the Chair? That's agreed.

Upon receipt of the printed report, shall the Chair present the committee's report to the House and move the adoption of its recommendations? Agreed.

COMMITTEE BUSINESS

The Chair (Mr. Michael Prue): All right. That takes us now to item number 2. You have all received a copy—and thank you very much, Andrew, for your work there. You've all received a copy of a letter from Mr. Marchese, Trinity–Spadina, asking that his bill, which had been referred to this committee, be allowed to proceed to public consultation. Everybody has a copy of that letter? Okay, any discussion?

Also, a letter was sent around—it's about 15 pages long—from Mr. Ernie Dellostritto, also asking that this bill be allowed to proceed, to hear deputations.

0920

Mr. Paul Miller: May I have a recorded vote on that?

The Chair (Mr. Michael Prue): First of all, I don't have a motion. Are you moving that we—

Mr. Paul Miller: I move a motion that we accept and move this ahead.

The Chair (Mr. Michael Prue): All right. We have a motion from Mr. Miller that Mr. Marchese's request be granted and that we proceed to hearing deputations. Any further discussion on that?

Mr. Pat Hoy: He's asked for a recorded vote?

The Chair (Mr. Michael Prue): He has asked for a recorded vote, so is there any further discussion on the motion that we proceed with this? Seeing none, on a recorded vote all those in favour?

Interjection.

The Chair (Mr. Michael Prue): He's missed the vote. We're going to do it again; he's missed his vote.

Ayes

Paul Miller, Murdoch.

Nays

Caplan, Hoy, Leal, Martiniuk, Rinaldi, Ruprecht.

The Chair (Mr. Michael Prue): That is defeated. The clerk will inform Mr. Marchese.

Finally, the last item is: A couple of meetings ago, it was the request of this committee that, as Chair, I write to MPAC, and specifically to the president and chief administrative officer, Carl Isenburg. He has very quickly written back to us. Everybody has a copy of that letter.

So it's in the committee's hands what you wish to do with the letter. Do you wish to receive it? Do you wish to take action on it? What do you wish to do?

Mr. David Caplan: If I may, Mr. Isenburg recommends a potential course of action as far as legislative amendment. I remember the conversation that we've had previously around religious orders coming forward on an individual basis. I think it might be appropriate for us to perhaps recommend the kind of legislative amendment to the government, to the appropriate ministry, as per the advice of Mr. Isenburg. I'd be interested in hearing some of the conversation, because I know that this is a matter that members of all sides have raised and would like to see some consistency applied to the various religious orders, the various communities who have historically enjoyed these particular rights.

The Chair (Mr. Michael Prue): I'm not sure whether I gleaned a motion out of that.

Mr. David Caplan: My motion would be that this committee recommends—the appropriate ministry would be the Ministry of Finance, I gather—that they consider an amendment to section 3 of the Assessment Act.

The Chair (Mr. Michael Prue): So we have a motion that we forward the request to the Minister of Finance concerning section 3, as per the letter of Mr. Isenburg.

Mr. David Caplan: So moved.

The Chair (Mr. Michael Prue): Discussion? Mr. Martiniuk.

Mr. Gerry Martiniuk: I agree with the resolution put forth by Mr. Caplan. I would say “strongly recommend,” because I think this committee has made its intentions clear that we don't like to see applicants spend a great deal of money when it could be an administrative rather than a quasi-judicial function. If we can save money for many of these religious groups, I'm certainly in favour of that, and I would therefore support Mr. Caplan's motion.

The Chair (Mr. Michael Prue): Is there an amendment to change the wording to “strongly recommend”?

Mr. David Caplan: I would accept it as a friendly amendment.

The Chair (Mr. Michael Prue): Okay, that's a friendly amendment. So it reads “strongly recommend.” Mr. Ruprecht.

Mr. Tony Ruprecht: While I certainly agree with the recommendation, I'm just wondering: Do we have a figure at all how much this would cost the province? I guess the real question would be what was the cost involved last year and the year before so we have some idea at all.

The Chair (Mr. Michael Prue): It's property tax. It would cost the municipality when we grant an exemption.

Mr. Tony Ruprecht: That's what this means, actually. Everybody comes before us anyway, and I agree with Mr. Martiniuk when he says we want to save people from the cost of coming here and wasting their time and our time. Essentially, that's what this means. But in addition to that, it may be a good idea to find out what the total cost is so we're not totally in the dark and so that

the Minister of Finance or the ministry officials can have an idea of a quick passage or a slow passage.

Mr. Lou Rinaldi: It just doesn't impact finance. It impacts municipalities.

The Chair (Mr. Michael Prue): Mr. Miller.

Mr. Paul Miller: I think Mr. Ruprecht is trying to give additional ammunition to the ministry to relieve them of the tax burden. How much is that going to affect the municipality at hand? It's simply an exemption for religious groups from the tax burden as well as from coming here to make changes to the requirements. I have no problem supporting that. But if I'm not mistaken, you want to show that it's going to save the applicants money and time and effort in coming here for something they shouldn't have to do. Is that what you're trying to say?

Mr. Tony Ruprecht: Yes.

Mr. Paul Miller: Okay. I don't have a problem with that. If you want to make an amendment to that, that's fine.

The Chair (Mr. Michael Prue): I haven't heard an amendment yet. Mr. Leal.

Mr. Jeff Leal: I digress from Mr. Ruprecht because essentially what we've seen is, when these applications come forward to this committee, there's usually a supporting letter from the municipality that the municipality passed a resolution that the exemption be made.

Mr. Isenburg has done us a great deal of service here. Prior to 1970, when municipalities had responsibility for assessment in Ontario, if you check back—I know I can just reflect on Peterborough—routinely, the municipality would pass such exemptions when they had the authority, the total responsibility, for assessment in the province of Ontario. So I think the precedent here is well established, and I think we should just move ahead with this.

The Chair (Mr. Michael Prue): Mr. Miller.

Mr. Paul Miller: I think there's one problem that this committee is overlooking: if the usage of the building for religious purposes changes. I've had churches that have folded in my area, that become daycare centres and things like that. You have to be careful that transferring the exemption—it can't be grandfathered. Some of these churches close down, and they even turn them into residences. We have to be very careful of how we're wording this. If it's going to be worded for the use that it's meant for—religion—that's fine, but some of these religious organizations, with all due respect, will switch and try to get income from parts of their building or other parts of the land that maybe should be required to pay taxes to the municipality. So be careful of how you word it. That's my warning.

The Chair (Mr. Michael Prue): Well, we have the motion. Back to Mr. Leal.

Mr. Jeff Leal: Quickly, Mr. Chair, I have great respect for what Mr. Miller just said. But what has come before us has been a series of applications by religious orders where there's been a significant decline in the number of participants. They had an exemption in the past, and they move into smaller quarters because of the decline in the number of nuns that are actually in these

religious orders. They can't afford to sustain their previous convents, which are rather large buildings. They had that tax exemption status for decades upon decades. They build a new convent, much smaller, and basically what they're asking is to have the status on their new convent that they enjoyed for decades in their old facility. That's been the history in the province of Ontario.

The Chair (Mr. Michael Prue): That's pretty much it in a nutshell. Mr. Miller.

Mr. Paul Miller: With all due respect, yes, I agree with the fact that they are building new, smaller facilities because they have a declining enrolment in their society or their religious group, or the membership of the congregations is smaller, as you know. But I'm saying that if they're moving in the same land or facility, that's fine, and they should continue with that exemption. But the former building, that may have been sold off—it may be 50 acres, depending on the religious organization, and it may turn into other usages. So I'm saying be careful, because you have to have a reassessment because the municipalities may be squawking and not happy that this land is now turned into a theme park or something.

You can't just paint it with one brush. I don't know if you're looking far enough ahead. I have seen many churches close in my area and turn into businesses, accounting offices—you name it. Small churches have turned into residences. You can't continue that exemption. You have to do a reassessment. CPAC would have to be informed of any changes. If we rubber-stamp this, and they go ahead and do it, the municipalities should be contacted to know that they've moved into a smaller thing. They still get the exemption, but what are we doing with the other 50 acres?

Do you see what I'm saying? We're not even looking at it.

Mr. David Caplan: That's not what's before us. All we're recommending to the Minister of Finance and the Ministry of Finance is that they take a look at section 3 of the Assessment Act, based upon a number of cases which have come forward to this committee, for some consistency; and that under the advice of the chair of MPAC, they do the appropriate investigation and take the appropriate action. That's all we're recommending here.

Mr. Paul Miller: That's the first time I've heard of MPAC involved, but okay.

Mr. David Caplan: The letter's from Mr. Isenburg, the chair of MPAC. That's all we're doing.

The Chair (Mr. Michael Prue): All right. The Ministry of Finance already has this, or at least the Minister of Finance—

Mr. David Caplan: But it will be a strong recommendation from this committee.

The Chair (Mr. Michael Prue): But this is the recommendation. Any other discussion on whether we go with this recommendation? Seeing none, all those in favour? Opposed? That carried unanimously.

Are there any other items that anyone has for today? Seeing none, meeting adjourned.

The committee adjourned at 0931.

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