

# Certificate of Property Use

Environmental Protection Act, R.S.O. 1990, c.E.19, s.168.6

Certificate of Property Use number **5873-6EJHQ(a)**  
Risk Assessment number **RA814-05**

**Client:** *The Corporation of the City of North Bay (Owner)*

**Property:** **Area 1A Commercial Development**  
Part of Lot 21, Concession D  
Parts 1, 2, 3, 4, 5, 7, 8, 9, 21, Plan 36R-11715  
  
Part of Railway Street, Plan 38  
Parts 7 and 8, Plan 36R-10780  
  
Part of Foran Street, Plan 38  
Part 9, Plan 36R-10780  
  
All in the Former Township of Widdifield  
Now City of North Bay, District of Nipissing, and

referred to in Figure 2, “Existing Site Conditions, Risk Management Plan, Former Rail Lands/North Bay Waterfront, North Bay, Ontario, The Corporation of the City of North Bay and Community Waterfront Friends (North Bay) Inc.” (dated July 7, 2005) as Area 1A and hereinafter referred to as “the Property”

## Summary:

i) Certificate of Property Use requirements addressed in Part 4 herein

Installing any equipment	Yes ( )	No (x)
Monitoring any Contaminant	Yes (x)	No ( )
Refrain from constructing any building specified	Yes ( )	No (x)
Refrain from using the Property for any use specified	Yes (x)	No ( )
Other: <i>Health and Safety and Soil Management Plans</i>	Yes (x)	No ( )

ii) Duration of Risk Management Measures

- A ground water monitoring program as outlined in the Risk Assessment will be initiated for a 5 year period. The long-term duration of the monitoring program will be dependent on the review of the data by the Ministry and The Corporation of the City of North Bay.
- If required, any soil gas vapour control system installed beneath all buildings is to function for the life of the building(s).
- The requirement to implement the soil and ground water management plan as outlined in the Risk Assessment prior to any intrusive activities occurring on the Property will remain in place indefinitely. In addition, a Property specific Health and Safety Plan must be developed for any future proposed work.
- The inspection and maintenance of a cover (barrier) over Contaminated soils is required indefinitely.

## Part 1: Interpretation

In this Certificate of Property Use,

“Adverse Effect” means one or more of,

- (a) impairment of the quality of the natural environment for any use that can be made of it,
- (b) injury or damage to Property or to plant or animal life,
- (c) harm or material discomfort to any person,
- (d) an adverse effect on the health of any person,
- (e) impairment of the safety of any person,
- (f) rendering any Property or plant or animal life unfit for human use,
- (g) loss of enjoyment of normal use of Property, and
- (h) interference with the normal conduct of business;

“Act” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended;

“Certificate of Property Use” means a Certificate of Property Use issued under section 168.6 of the Act

“Contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect;

"Director" means the undersigned Director or any other person appointed as a Director for the purpose of issuing a Certificate of Property Use;

"Ministry" means Ontario Ministry of the Environment;

"OWRA" means the *Ontario Water Resources Act*, R.S.O. 1990, c.0.40, as amended;

"Provincial Officer" means a person who is designated as a provincial officer for the purposes of the Act;

"Risk Assessment" means the Risk Assessment *RA814-05* accepted by the Director on **July 22, 2005**

"Risk Management Measures" means the Risk Management Measures described in the Risk Assessment;

“Risk Management Plan” means the Risk Management Plan and supporting documentation described in the Risk Assessment;

“Qualified Person” means a person who meets the qualifications prescribed in the regulations made under the Act.

## Part 2: Legal Authority

- 2.1 Section 168.6 (1) of the Act states that if the Director accepts a Risk Assessment relating to a Property, he or she may, when giving notice under clause 168.5 (1)(a), issue a Certificate of Property Use to the owner of the Property, requiring the owner to do any of the following things:
- 1) Take any action specified in the certificate that, in the Director’s opinion, is necessary to prevent, eliminate or ameliorate any Adverse Effect on the Property, including installing any equipment, monitoring any Contaminant or recording or reporting information for that purpose.
  - 2) Refrain from using the Property for any use specified in the certificate or from constructing any building specified in the certificate on the Property.
- 2.2 Subsection 168.6(2) of the Act states that a Certificate of Property Use shall not require an owner of Property to take any action that would have the effect of reducing the concentration of a Contaminant on, in or under the Property to a level below the level that is required to meet the standards specified for the Contaminant in the Risk Assessment.
- 2.3 Subsection 168.6(3) of the Act states that the Director may, on his or her own initiative or on application by the owner of the Property in respect of which a certificate has been issued under subsection 168.6(1),
- (a) alter any terms and conditions in the certificate or impose new terms and conditions; or
  - (b) revoke the certificate.

- 2.4 Subsection 168.6(4) of the Act states that if a Certificate of Property Use contains a provision requiring the owner of Property to refrain from using the Property for a specified use or from constructing a specified building on the Property,
- (a) the owner of the Property shall ensure that a copy of the provision is given to every occupant of the Property;
  - (b) the provision applies, with necessary modifications, to every occupant of the Property who receives a copy of the provision; and
  - (c) the owner of the Property shall ensure that every occupant of the Property complies with the provision.
- 2.5 Section 19 of the Act states that a Certificate of Property Use is binding on the executor, administrator, administrator with the will annexed, guardian of Property or attorney for Property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed.
- 2.6 Subsection 197(1) of the Act states that a person who has authority under the Act to make an order or decision affecting real Property also has authority to make an order requiring any person with an interest in the Property, before dealing with the Property in any way, to give a copy of the order or decision affecting the Property to every person who will acquire an interest in the Property as a result of the dealing.
- 2.7 Subsection 197(2) of the Act states that a certificate setting out a requirement imposed under subsection 197(1) may be registered in the proper land registry office on the title of the real Property to which the requirement relates, if the certificate is in a form approved by the Minister, is signed or authorized by a person who has authority to make orders imposing requirements under subsection 197(1) and is accompanied by a registrable description of the Property.
- 2.8 Subsection 197(3) of the Act states that a requirement, imposed under subsection 197(1) that is set out in a certificate registered under subsection 197(2) is from the time of registration, deemed to be directed to each person who subsequently acquires an interest in the real Property.
- 2.9 Subsection 197(4) of the Act states that a dealing with real Property by a person who is subject to a requirement imposed under subsection 197(1) or 197(3) is voidable at the instance of a person who was not given the copy of the order or decision in accordance with the requirement.
- 2.10 Subsection 132(1.1) of the Act states that the Director may include in a Certificate of Property Use a requirement that the person to whom the certificate is issued provide financial assurance to the Crown in right of Ontario for any one or more of,
- (a) the performance of any action specified in the Certificate of Property Use;
  - (b) the provision of alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by a Contaminant on, in or under the Property to which the Certificate of Property Use relates; and
  - (c) measures appropriate to prevent Adverse Effects in respect of the Property to which the Certificate of Property Use relates.

### Part 3: Background

- 3.1 The Risk Assessment was undertaken for the Property to establish the risks that the Contaminants identified in the Risk Assessment may pose to future users and to identify appropriate Risk Management Measures to be implemented to ensure that the Property is suitable for the intended **commercial use as defined in O.Reg. 153/04**.
- 3.2 The Contaminants that are present above Table 3 “Full Depth Generic Site Condition Standards in a Non-Potable Ground Water Condition” of the *Soil, Ground Water and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act (the Ministry, March, 2004)* are:

#### Contaminants of Concern – Soil

##### Polyaromatic Hydrocarbons

Benzo(a) pyrene

Dibenzo(a,h) anthracene

Methylnaphthalene,2,(1\*)-

#### Contaminants of Concern - Groundwater

##### VOCs (Shallow Groundwater)

Bromomethane

1,1-Dichloroethene

cis-1,2-Dichloroethene

**Contaminants of Concern – Soil**

Naphthalene

**Metals**

Antimony  
Arsenic  
Beryllium  
Cadmium  
Chromium  
Cobalt  
Copper  
Lead  
Mercury  
Molybdenum  
Nickel  
Selenium  
Silver  
Vanadium  
Zinc

**PHC Fractions & BTEX**

CCME F1  
CCME F2  
CCME F3  
CCME F4  
  
m&p-Xylenes  
Xylenes, Total

**Contaminants of Concern - Groundwater**

1,3-Dichloropropene  
Vinyl Chloride

**VOCs (Deep Groundwater)**

Bromomethane  
Chloromethane  
1,1-Dichloroethene  
cis-1,2-Dichloroethene  
1,2-Dichloropropane  
cis-1,3-Dichloropropene  
trans-1,3-Dichloropropene  
Ethylene Dibromide  
1,1,1,2-Tetrachloroethane  
Tetrachloroethene  
Trichloroethene  
Vinyl Chloride

**Metals (Shallow and Deep Groundwater)**

Aluminum  
  
Cadmium  
Cobalt  
Copper  
Manganese  
Mercury  
Nickel  
Silver

**PHC Fractions (Shallow and Deep Groundwater)**

CCME F1  
  
CCME F2

- 3.3 I am of the opinion, for the reasons set out in the Risk Assessment that the Risk Management Measures described therein and outlined in Part 4 herein are necessary to prevent, eliminate or ameliorate an Adverse Effect on the Property.
- 3.4 The Risk Assessment indicates that the ingestion or dermal contact with contaminated soil by industrial/commercial workers, daycare children and workers, and construction/utility workers must be prevented. As such, it is necessary to restrict the use(s) of the Property as specified in Part 4 herein.

**Part 4: Director Requirements**

Pursuant to the authority vested in me under section 168.6(1) of the Act, I hereby require **The Corporation of the City of North Bay** to do the following:

**Risk Management Measures**

- 4.1 Implement, and thereafter maintain or cause to be maintained, the Risk Management Measures in the Risk Assessment.
- 4.2 Without restricting the generality of the foregoing in item 4.1, carry out or cause to be carried out the following key elements of the Risk Management Measures:
  - a) Petroleum hydrocarbon free product and soil contamination above the property specific standards (PSS) as described in the Risk Assessment shall be removed from the Property during future construction activities. A design and

construction document for the remediation of the identified free product areas including detailed specifications and environmental controls shall be prepared by a Qualified Person.

- b) Placement of a cover consisting of clean fill covered by topsoil, asphalt, or concrete over the portions of the Property not covered by a building foot print is required. The planting of consumable produce in the garden plots is not permitted. The cover shall be subject to a regular inspection and maintenance program, as outlined in the Risk Management Plan to ensure its long-term integrity.
- c) Prior to the construction of any buildings on the Property, additional investigative activities shall be conducted within the building footprint to confirm concentrations of volatile Contaminants of concern and the need for a foundation vapour control system. In the event that an active foundation ventilation system is required, an air monitoring program to confirm the effectiveness of the ventilation system shall be developed by a Qualified Person and submitted to the Ministry for review prior to its implementation. Review and approval of all proposed buildings shall be performed by a Qualified Person.
- d) A ground water monitoring program has been prepared for the Property as described in the Risk Management Plan. The monitoring program shall be conducted for an initial five year period. Data shall be forwarded to the Director and The Corporation of the City of North Bay for review and the determination of the need for the extension or modification of the monitoring program. The implementation of the monitoring program shall be supervised by a Qualified Person.
- e) A contingency plan is described to respond to elevated groundwater, surface water and/or sediment Contaminant concentrations. The exceedence of PSS or background conditions as described in the Risk Assessment will trigger additional monitoring and investigation. The type of contamination and results of the subsequent investigation will determine the appropriate remedial action. The contingency plan shall be implemented by a Qualified Person.
- f) A soil and ground water management program has been prepared for the Property as described in the Risk Management Plan. The program ensures that future intrusive activities during construction or maintenance activities on the Property are managed including the handling of contaminated soil and ground water and air quality monitoring. The implementation of the soil and ground water management program shall be supervised by a Qualified Person.
- g) An interim 100 mm thick granular cover consisting of clean material shall be placed across the Property. This interim cover shall be included in the cover inspection and maintenance program until such time as the Property is developed for commercial use.
- h) Foundation drainage is to be directed to the waste water treatment plant. Monitoring of the groundwater collected in the area of the foundation drainage system shall be conducted as part of the surface and groundwater monitoring program.
- i) A property specific health and safety plan shall be developed and implemented for the Property by a qualified industrial hygienist and shall be applicable to all re-development activities. The plan shall be maintained on the Property for the duration of all development activities. In addition, a copy shall be maintained with The Corporation of the City of North Bay Engineering Department. Prior to the initiation of any project (as defined in the *Occupational Health and Safety Act*, as amended) on the Property, the local Ministry of Labour office shall be notified. All intrusive on-site activities (excluding planting or work within the property cover) shall be supervised or monitored by a Qualified Person.

4.3 Refrain from using the Property for any use other than the following use(s) **Commercial**:

4.4 Refrain from using the Property for the following uses:

- The planting of consumable produce in garden plots is not permitted.

4.5 Within *one year* of the commencement of occupancy of the residential building, submit to the Director a report prepared by a Qualified Person, confirming the implementation of the Risk Management Measures referred to in item 4.1 above.

#### Site Changes

4.6 In the event of a change in the physical site conditions or receptor characteristics at the Property that may affect the Risk Management Measures and any underlying basis for the Risk Management Measures, forthwith notify the Director of such changes and the steps taken, or to be taken, to implement, maintain and operate any further risk management measures as are necessary to prevent, eliminate or ameliorate any Adverse Effect that will result from the presence of the

Contaminants in the natural environment. An amended Certificate of Property Use will be issued to address the changes set out in the notice received and any further changes that the Director considers necessary in the circumstances.

#### Reports

- 4.7 Retain a copy of any reports required under this Certificate of Property Use the Risk Assessment and any reports referred to in the Risk Assessment (until otherwise notified by the Director) and within five (5) days of the Director or a Provincial Officer making a request for a report, provide a copy to the Director or Provincial Officer.

#### Property Requirement

- 4.8 For the reasons set out in this Certificate of Property Use and pursuant to the authority vested in me under subsection 197(1) of the Act, I hereby order you and any other person with an interest in the Property, before dealing with the Property in any way, to give a copy of this Certificate of Property Use, including any amendments thereto, to every person who will acquire an interest in the Property as a result of the dealing.

#### Certificate of Requirement

- 4.9 Within fifteen (15) days from the date of receipt of a certificate of requirement, issued under subsection 197(2) of the Act, register the certificate of requirement on title to the Property in the appropriate Land Registry Office.
- 4.10 Immediately after registration of the certificate of requirement, provide a duplicate copy of the registered document, with registration particulars, to the Director.

#### Owner / Occupant Change

- 4.11 While this Certificate of Property Use is in effect, forthwith report in writing, to the Director any changes of ownership, or management of the Property.

### **Part 5: General**

- 5.1 The requirements of this Certificate of Property Use are severable. If any requirement of this Certificate of Property Use or the application of any requirement to any circumstance is held invalid, the application of such requirement to other circumstances and the remainder of the Certificate of Property Use shall not be affected thereby.
- 5.2 Subsection 186(3) of the Act provides that non-compliance with the requirements of this Certificate of Property Use constitutes an offence.
- 5.3 An application under section 168.6(3) of the Act to,  
a) alter any terms and conditions in this Certificate of Property Use or impose new terms and conditions; or  
b) revoke this Certificate of Property Use,  
shall be made in writing to the Director, with reasons for the request.
- 5.4 The requirements of this Certificate of Property Use are minimum requirements only and do not relieve you from:  
a) complying with any other applicable order, statute, regulation, municipal, provincial or federal law; or  
b) obtaining any approvals or consents not specified in this Certificate of Property Use.
- 5.5 Notwithstanding the issuance of this Certificate of Property Use, further requirements may be imposed in accordance with legislation as circumstances require.
- 5.6 In the event that, any person is, in the opinion of the Director, rendered unable to comply with any requirements in this Certificate of Property Use because of,  
a) natural phenomena of an inevitable or irresistible nature, or insurrections,  
b) strikes, lockouts or other labour disturbances,  
c) inability to obtain materials or equipment for reasons beyond your control, or  
d) any other cause whether similar to or different from the foregoing beyond your control,

the requirements shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the Director must be notified immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the requirements in question.

- 5.7 Failure to comply with a requirement of this Certificate of Property Use by the date specified does not absolve you from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.

**Part 6: Hearing before the Environmental Review Tribunal**

- 6.1 Under section 139 of the Act you may require a hearing before the Environmental Review Tribunal, if, within fifteen days after service upon you of this Certificate of Property Use, you serve written notice upon the Environmental Review Tribunal and the Director.
- 6.2 Section 142 of the Act provides that the notice requiring the hearing must include a statement of the portions of the Certificate of Property Use for which the hearing is required and the grounds on which you intend to rely at the hearing. Except by leave of the Environmental Review Tribunal, you are not entitled to appeal a portion of the Certificate of Property Use or to rely on grounds of appeal that are not stated in the notice requiring the hearing.
- 6.3 Written notice requiring a hearing must be served personally or by mail on the following:

The Secretary	and	Director
Environmental Review Tribunal		Ministry of the Environment
2300 Yonge Street, Suite 1201		(See address below)
P.O. Box 2382		
Toronto ON M4P 1E4		

Where service is made by mail, the service shall be deemed to be made on the fifth day after the day of mailing and the time for requiring a hearing is not extended by choosing service by mail.

Unless stayed by application to the Environment Review Tribunal under Section 143 of the Act, this Certificate of Property Use is effective from the date of issue.

Issued this 22 day of July, 2005.

Original signed by Denis Durocher

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**Denis Durocher**  
**Director, Environmental Protection Act s. 168.5 and s. 168.6**

*Ministry of the Environment  
Timmins District Office  
Ontario Government Complex  
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