



Subject:	Ministry of the Environment, Conservation and Park's Proposed New Land Use Compatibility Guideline
To:	Committee of the Whole – Planning & Economic Development
From:	Planning and Development Department

Report Number:	PD-31-21
Wards Affected:	All
Date to Committee:	June 14, 2021
Date to Council:	June 21, 2021

Recommendation:

That Council receive and file for information, Report PD-31-21 regarding the Ministry of the Environment, Conservation and Park's Proposed New Land Use Compatibility Guideline; and

That Council direct staff to submit this report to the Province as the Town of Lincoln's comments to the Environmental Registry of Ontario; and

That Council direct staff to forward a copy of this report to the Niagara Region.

Purpose:

The purpose of this report is to provide background information to Committee and Council regarding the Ministry of the Environment, Conservation and Park's proposal to replace several existing provincial D-Series Guidelines with a consolidated new Land Use Compatibility Guideline (the "Guideline"). The proposed Guideline would help municipalities and planning authorities plan sensitive land uses and major industrial facilities by avoiding, minimizing and mitigating potential adverse effects from odour, noise, dust and other contaminants.

This report provides a summary of the proposed changes and preliminary Staff comment to be provided to the Province for consideration. The Province is seeking feedback on the proposed amendment by July 3, 2021.

Background:

On May 4, 2021, the Ministry of the Environment, Conservation and Park released a proposed Land Use Compatibility Guideline (“the Guideline”) to replace a number of existing D-series guidelines that were introduced in the 1990s. The D-series guidelines direct municipalities in their assessment of land use compatibility while making land use planning decisions.

The proposed Guideline would replace the following existing Provincial D-series guidelines:

- D-1 Land Use and Compatibility
 - D-1-1 Land Use Compatibility: Procedure for Implementation
 - D-1-2 Land Use Compatibility: Specific Applications
 - D-1-3 Land Use Compatibility: Definitions
- D-2 Compatibility Between Sewage Treatment and Sensitive Land Use
- D-4 Land Use on or Near Landfills and Dumps
 - D-4-1 Assessing Methane Hazards from Landfill Sites
 - D-4-3 Registration or Certificates and Provisional Certificates
- D-6 Compatibility Between Industrial Facilities
 - D-6-1 Industrial Categorization Criteria
 - D-6-3 Separation Distances

The proposal does not impact the following existing Provincial D-series guidelines:

- D-3 Environmental Considerations for Gas or Oil Pipelines and Facilities
- D-5 Planning for Sewage and Water Services and its subsections

The proposed new Guideline is part of the Province’s Made-in-Ontario Environment Plan commitment to update ministry guidelines to help municipalities avoid the impacts of conflicting land uses. The Province’s stated objectives of the Guideline with respect to land use compatibility planning are to:

- Protect employment areas (including industrial employment areas) designated for future major facilities from incompatible uses and encroachment by sensitive land uses
- Protect existing or planned major facilities from potential impacts from new sensitive land uses
- Prevent adverse effects to existing or planned sensitive land uses from new and/or expanding major facilities

The Province has stated that land use planning decisions that address land use compatibility would reduce minor noise, odour and dust incidents requiring ministry

attention, allowing the ministry to focus its resources on higher-risk incidents. The proposed guideline aims to ensure certain land uses can co-exist and thrive within a community, including major industrial facilities and more sensitive residential land uses. The Province expects that in the long-term, it would help support jobs across the province by providing industrial facilities with more certainty for long-term, uninterrupted operations.

Comments on the proposed Guideline is due to the Environmental Registry by July 3, 2021. A complete copy of the proposal can be found at this link: <https://ero.ontario.ca/notice/019-2785>

Report:

Planning Act:

The proposed Guideline supports fulfillment of provincial interests under section 2 of the Planning Act that planning authorities shall “have regard to”. These include building strong healthy communities, the protection of public health and safety, and the appropriate location of growth and development.

Subsections 3(5) and 3(6) of the Planning Act require that decisions affecting a planning matter as made by planning authorities “shall be consistent with” the PPS policies and “shall conform with” or “shall not conflict with” provincial plans. The proposed Guideline supports relevant policies of the PPS as referenced below.

Provincial Policy Statement, 2020:

The Provincial Policy Statement (PPS) sets out the Province’s long-term vision for building strong, healthy communities through land use planning decisions which support the long-term prosperity, environmental health and social well-being of Ontario.

PPS policies 1.2.6.1 and 1.2.6.2 directs land use planning authorities to avoid or minimize and mitigate land use compatibility concerns between major facilities (e.g. industrial uses) and surrounding sensitive land uses (e.g. residences) related to noise, odour and other contaminants.

Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020:

A Place to Grow (Growth Plan) plans for growth and development in the Greater Golden Horseshoe.

Policies 2.2.5.6 and 2.2.5.7 provide direction to municipalities to designate employment areas and protect them for employment use over the long-term by doing such things as prohibiting residential uses, prohibiting or limiting other sensitive land uses, and providing an appropriate interface between employment areas and adjacent non-employment areas to maintain land use compatibility.

Policy 2.2.5.8 stipulates that the development of sensitive land uses, major retail uses or major office uses will, in accordance with provincial guidelines, avoid, or where avoidance is not possible, minimize and mitigate adverse impacts on industrial, manufacturing or other uses that are particularly vulnerable to encroachment.

The PPS and Growth Plan require that land use compatibility decisions be made in accordance with any relevant guidance by the Ministry. While the proposed Guideline is not legislation or regulation, it serves as a guiding document for planning authorities. It supports the implementation of policies within the PPS and the Growth Plan by providing guidance on how to ensure decisions and local policies are consistent with the PPS.

Official Plan:

The Town's Official Plan includes Section 4.12 on Land Use Compatibility which states:

"It is recognized that some uses may be sensitive to the odour, noise, vibration or other emissions associated with highways, and various type of industries. It is a policy of this Plan that incompatible land uses be separated or otherwise buffered from each other. Where a proposed development is located adjacent to a potentially incompatible land use, an assessment of the compatibility of the proposal may be required by The Town undertaken in accordance with current guidelines and criteria established by the Ministry of Environment and Climate Change.

Such a study shall be prepared to the satisfaction of the Town and the appropriate agencies and shall include recommendations on how the impacts can be mitigated. The approval of development proposals shall be based upon the achievement of adequate distances and the recommendations of the required studies."

The proposed Guideline provides detailed information and clarification on how the Town can implement the updated compatibility measures through local planning frameworks and the planning application process.

Planning and Development Staff:

The proposed Land Use Compatibility Guideline would be applied when approval under the Planning Act is required for any planning application (e.g. Official Plan Amendment, Zoning By-law Amendment, Site Plan Approval) involving one of the following circumstances:

- A new or expanding sensitive land use (eg. residential) is proposed near an existing or planned major industrial facility (eg. manufacturing use); or
- A new or expanding major industrial facility is proposed near an existing or planning sensitive land use.

Each major industrial facility is classified with an Area of Influence (AOI) and Minimum Separation Distance (MSD) distance (see Figure 1 below). A list of applicable major facilities is provided in Appendix A. In accordance with the Guideline, if proposed uses are located within a major facility’s AOI or MSD, then a land use compatibility study is required by the proponent of the planning application.

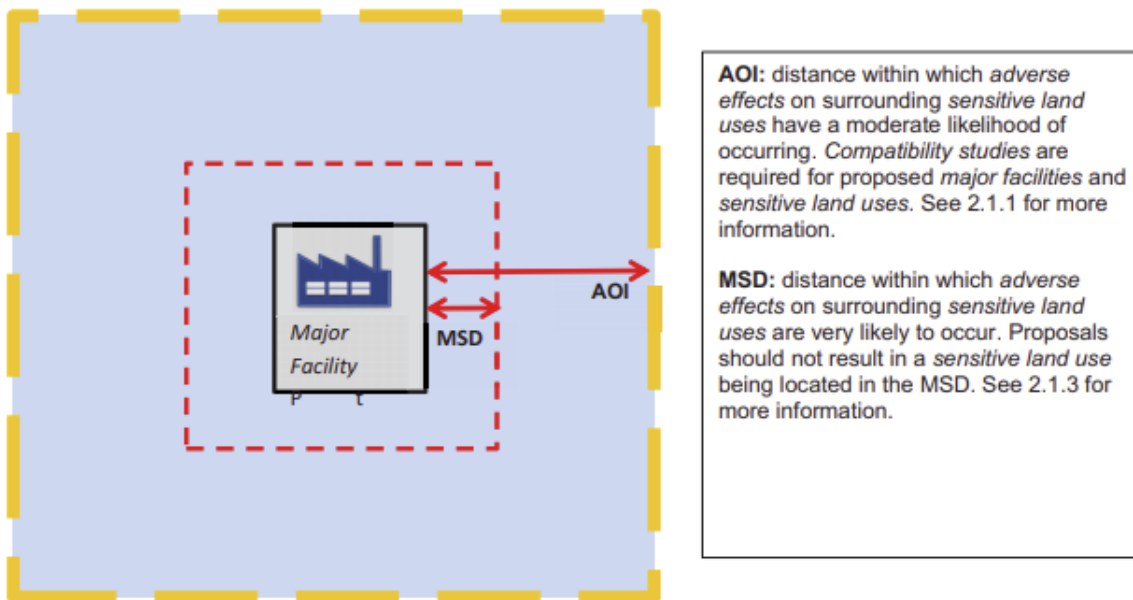


Figure 1. Area of influence and minimum separation distance (Source: Draft Land Use Compatibility Guideline, Ontario Ministry of the Environment, Conservation and Parks, March 2021)

The following are key elements of the proposed Guideline:

1. Classification of Facilities and Minimum Separation Distance (MSD)/Area of Impact (AOI)

The proposal expands the number of major industrial facility classification categories from three to five, allowing for more detailed identification of potential adverse impacts and a greater specification of necessary separation distances.

The proposed Guideline also includes a table listing specific types of facilities (e.g. asphalt manufacturing, meat and meat product processes) and identifying each type's Class, Area of Influence (AOI), and Minimum Separation Distance (MSD) (see Appendix A for the proposed table). The separation distances listed were formulated on adverse effects related primarily to noise, dust and odour. If a facility is not listed in the table of specific types, the Guideline includes detailed instructions on how to classify the facility.

The current guideline is vague and contains discrepancies which make it difficult to classify certain facilities. Staff are supportive of the additional clarity this proposal provides for planning authorities in identifying a proposed facility's class. The additional categories of classification is also supported, as it allows for separation distances to be refined accordingly.

Cannabis:

The proposed Guideline includes a classification for indoor cannabis production facilities that are located in settlement areas zoned for industrial uses. Cannabis production refers to the cultivation process (i.e. growing plants, harvesting, drying and storing). The existing guidelines exempt new indoor cannabis production facilities from land use compatibility guidelines if they are in compliance with existing Official Plan and Zoning By-law.

The proposed Guideline proposes an AOI of 2,000 metres and MSD of 500 metres for indoor cannabis production facilities. These proposed distances are higher than the existing guidelines, which for the highest industrial facility class, utilizes an AOI of 1,000 metres and MSD of 300 metres.

Staff are supportive of the proposed changes to the indoor cannabis production classification and proposed increase to the AOI and MSD distances. The updated Guideline requires that new indoor cannabis production facilities that are proposed in settlement areas, in an Industrial Zone, and in proximity to sensitive land uses be required to conduct compatibility studies, a demonstration of need assessment, and appropriate mitigation measures as needed. The Guideline does not apply to Agricultural Zone lands.

New indoor cannabis production facilities that are subject to the updated Guideline are also required to meet the Town's Official Plan and Zoning By-law siting requirements for cannabis growing and production. The Town's Zoning By-law requires cannabis production facilities to be setback a minimum of 300 metres to Residential, Institutional, and Open Space Zones.

2. Compatibility Studies

Compatibility studies are conducted to assess potential adverse effects from major facilities on nearby sensitive land uses. The Guideline includes specific direction on what should be included in a compatibility study. This can be summarized as:

- Detailed description of the study area, including mapping showing the proposed sensitive land use or proposed major facility;
- Classification of all major facilities in the study area;
- Determination of the potential for adverse affects from the major facilities on the sensitive land uses or the potential for operational impact from the sensitive land use on the major facilities (i.e. ability to expand); and
- Mitigation measures, if potential adverse affects or operational impacts are identified.

If the compatibility study determines that there are no potential adverse effects or impacts, no further action is required and the proposed development (either major facility or sensitive land use) may proceed through the normal planning process. If the study confirms that adverse effects or impacts are likely or possible, mitigation measures must be identified and implemented through the planning process and maintained over time.

3. Demonstration of Need

The proposed Guideline aims to prohibit sensitive land uses within the MSD of a major facility except in rare cases. If potential adverse effects or impacts of a new sensitive land uses have been identified, or if the proposed development is located within the MSD of a major facility, then a demonstration of need assessment is required. This assessment is required under the PPS (2020) and is used to determine whether there is sufficient need and planning rationale to justify locating a sensitive land use where it may be affected by a nearby major facility.

The proposed Guideline identifies what a demonstration of need assessment should include:

- Determine whether the location of the proposed use is supported by Provincial and local planning policy (e.g. growth/housing targets or being located in a Major Transit Station Area), furthers municipal goals of employment, housing, etc., and is supported by community amenities and infrastructure (e.g. transportation, servicing);
- Identify any other suitable locations for the proposed use in the municipality outside the major facility's AOI and show why they were not chosen; and
- Explain why other potential, non-sensitive uses would be inappropriate or incompatible.

If the demonstration of need cannot show that there is an identified need for the proposed sensitive land use in the location and that there are no reasonable alternative locations for the proposed use, and/or if expected adverse affects cannot be eliminated through mitigation measures, the planning authority must reject the planning application and the development should not go ahead.

4. Municipal Implementation

The proposed new Guideline provides a section that outlines how municipalities can implement the new land use compatibility measures through planning policy and the application review process.

Some examples of implementation measures that municipalities may consider include:

- | | |
|---------------------------|--|
| Official Plans: | <ul style="list-style-type: none"> • Include clear definitions of sensitive land uses, major facilities, and adverse effects and other key terms (e.g. AOIs and MSDs), which are consistent with the proposed Guideline and Provincial policies |
| Zoning By-law Amendments: | <ul style="list-style-type: none"> • Zoning by-law amendment applications that introduce a potentially incompatible use must require a compatibility study as part of the complete application. |
| Site Plan Control: | <ul style="list-style-type: none"> • Provides conditions of approval to consider such as required mitigation measures (e.g. noise attenuation walls, enhanced fencing for amenity areas, berms, enhanced landscaping and triple-glazed windows). These can include conditions to protect adjoining lands. |
| Planning Applications: | <ul style="list-style-type: none"> • Include compatibility studies (and demonstrations of need, where required) as part of complete application requirements when development is proposed within an AOI/MSD. |

This section provides useful implementation recommendations in a municipal context. Once the Guideline is finalized, staff will reassess the Town’s planning processes and land use planning recommendations in the context of these implementation measures.

5. Mitigation Measures

Municipalities are required through the PPS (2020) to separate incompatible land uses wherever possible. The proposed Guideline provides an extensive list of mitigation

measures that may be used to address compatibility issues where proposed sensitive land uses cannot be located outside the AOI or MSD, and potential adverse effects or operational impacts are identified.

Possible mitigation measures include:

- At-source mitigation (e.g. air filtration for facility exhausts)
- Operational mitigation (e.g. limiting noisy operations to daytime hours)
- At-receptor mitigation (e.g. at-property acoustic barrier)
- Buffering (e.g. non-sensitive land use compatible with both the major facility and sensitive land use)
- Phasing (i.e. approving development sequentially as a major facility slowly reduces operations or changes to operations with lower or fewer adverse effects)

The Guideline also provides information on methods that can be used to require mitigation and ensure compliance.

Financial, Legal, Staff Considerations:

Financial: N/A

Staffing: N/A

Legal: N/A

Public Engagement Matters:

Members of the public may review and provide comments on the proposal through the posting on the Environmental Registry of Ontario (ERO) website (<https://ero.ontario.ca/>).

Conclusion:

This report provides a summary of the Province's proposal to update its D-series guidelines. The proposed Land Use Compatibility Guideline aims to avoid conflict between incompatible land uses, and if avoidance is impossible, to assess and mitigate any effects or impacts from the incompatible uses. The proposal provides additional information, clarification, implementation approaches and tools which would assist the Town in preventing impacts such as noise, dust, odour and other adverse effects from industries to sensitive land uses. Staff support the proposal to update the Province's Land Use Compatibility Guidelines. Staff will continue to work with the Province and provide feedback throughout the Land Use Compatibility Guideline update process.

Respectfully submitted,

Melissa Shih
Manager of Special Projects

Appendices:

Appendix A – Proposed Major Facility Classifications, Area of Influence and Minimum Separation Distance.

Notification:

Staff will provide this report to the Province as part of the Town of Lincoln's comments, as well as share the report with the Region. Staff will also advise Council once any changes are finalized by the Province.

Report Approval:

Report has been reviewed and approved by the Director of Planning and Development. Final approval by the Chief Administrative Officer.

Table 1 – Area of influence and minimum separation distance for select major facilities.

Select Major Facility	Description of Major Facility	AOI & Class	Minimum Separation Distance
Aggregate Operations	Aggregate extraction, Resource extraction, Other mineral quarries	1,000m Class 3*	500m*
Asphalt Manufacturing	Asphalt mixture and block manufacturing, Asphalt shingle and coating manufacturing	1,000m Class 3	300m
Cannabis production and processing facilities	Indoor cannabis production facilities that are located in a <i>settlement area</i> on lands that are zoned for industrial uses; and all cannabis processing facilities	2,000m Class 5	500m
Cement Manufacturing	Cement manufacturing and distribution	2,000m Class 5	500m
Chemical Product Manufacturing	Inorganic chemical manufacturing, Household cleaning and miscellaneous product manufacturing	2,000m Class 5	500m
Composting Facilities	Composting facilities	1,500m Class 4	500m
Concrete (Ready-mix)	Ready-mix and concrete product manufacturing facilities	250m Class 1	100m
Industrial Anaerobic Digesters	Anaerobic digesters that are not agricultural uses	1000 m Class 3	500m
Food Manufacturing	General industrial manufacturing of food products	500m Class 1	200m
Industrial Food Mills (non-agricultural)	Wet corn or flour mill	750m Class 2	300m
Landfills and Dumps (see Section 7.2 of Appendix E)	Operating and non-operating sites	case-by-case Class 5	500m

Select Major Facility	Description of Major Facility	AOI & Class	Minimum Separation Distance
Meat and Meat Product Processes	Slaughterhouses and rendering facilities, Meat by-product processing, Production of foods using fats or oils, Cooking oil production	1,500m Class 4	500m
Metal and Glass Parts Manufacturing	Manufacturing steel parts, Foundries, Metal stamping, Manufacturing glass or fiber glass auto parts	600m Class 2	300m
Oil Refinery	Refinery for oil and oil products	2,000m Class 5	500m
Painting/Coating	Application of paint, solvent, lacquer or other coating/ Includes paint spray booths, electroplating, tanneries	400m Class 1	100m
Paper Manufacturing	Paper, newsprint and paperboard mills	1,000m Class 3	400m
Plastics Manufacturing	Manufacturing plastic or rubber products	500m Class 1	100m
Recycling Facilities – General	The sorting, processing, storage and transfer of recycled material (except auto parts)	900m Class 3	200m
Recycling Facilities – End-of-Life Vehicles	The sorting, processing, storage and transfer of motor vehicles	2,000m Class 5	300m
Scrap Yards	Scrap metal recyclers, auto recyclers, auto wreckers	1,500m Class 4	300m
Steel Mills	Iron and steel manufacturing	2,000m Class 5	500m
Waste Transfer Stations	The sorting, processing and transfer of waste	400m Class 1	100m
Sewage Lagoons	Sewage treatment lagoons	500m Class 1	200m

Select Major Facility	Description of Major Facility	AOI & Class	Minimum Separation Distance
Municipal and private communal wastewater facilities (small)	Facilities with a rated capacity less than 25,000 cubic metres per day	300m Class 1	100m
Municipal and private communal wastewater facilities (large)	Facilities with a rated capacity more than 25,000 cubic metres per day	1,250m Class 4	500m

* AOI and MSD only applies to new or expanding *sensitive land use* proposals near *major facility* aggregate operations.

2.3 How to Classify a Major Facility with No Facility-Specific AOI and MSD

This section provides an overview of how to determine the AOI and MSD based on a class of facilities, where the specific *major facility* type is not listed in **Table 1**.

1. Identify the type of the major facility

Table 2 of this Guideline provides a description and examples of *major facility* classes to serve as a guide for determining an AOI and MSD. There are 5 classes of *major facilities*.

The first step in the process of classifying is to identify the type of *major facility* and seek information to better understand its operation and potential *adverse effects*. If a *major facility* is being proposed, the facility type should be known. If a *sensitive land use* is being proposed or planned, particularly relative to a planned *employment area*, the planning authority should be consulted to advise on specific types of uses permitted under local zoning-by-laws and future development plans. Where *major facility* development plans are unknown or where the planning authority is determining an AOI for an area which contains multiple *major facilities*, the AOI for the largest scale *major facility* that could be permitted by the existing planning framework should be assumed (“worst case” scenario), unless, in collaboration with the planning authority, it is determined that certain uses are impractical in a specific area.

2. Consider the scale and characteristics the operations

Identify the *adverse effects* commonly associated with the type of existing or proposed *major facility* (see **Table 3**) and its operations, including:

- impacts related to the timing of operations (e.g. day-time, shift or 24-hour operations);
- fugitive emissions and vehicular emissions related to the operation;

- traffic related to the operation;
- noise, vibration and *fugitive dust* from indoor and outdoor operations (e.g. wood cutting, outdoor welding, moving stored materials);
- *adverse effects* that may result from ancillary operations (e.g. delivery of raw materials via rail cars or marine facilities, facility lighting);
- odours from indoor and outdoor operations (e.g. organic waste handling, outdoor storage for composting facilities, wastewater treatment lagoons);
- any history of complaints in the area about adverse effects.

Where available, use approval information in the existing ECA or EASR for the *major facility* (e.g. existing ECAs and EASRs) as a source of information, as they may include conditions on the timing of operations, setbacks or systems for mitigating impacts for facilities in the area. ECAs and EASR information can be accessed at the Ministry’s [Access Environment](#) site and may be useful.

Note, the level of *adverse effects* anticipated should only be assessed from day-to-day operations, not from emergency situations or spills.

3. Select the appropriate class

Based on available information and professional expertise, a facility class and associated AOI and MSD is then selected for a *major facility*.

The planning authority will need to be satisfied that the classification is appropriate. *Proponents* are encouraged to consult with the planning authority before proceeding further to verify that the information they are gathering will be satisfactory to them.

Table 2 – Area of influence and minimum separation distance for classes of major facilities.

Class	Description of Major Facility	AOI	Examples of Major Facility (see Table 1 for more examples)	Minimum Separation Distance
Class 1	Operations with known smaller <i>adverse effects</i> .	500m	Food Manufacturing Sewage Lagoons Various EASR activities	200m
Class 2	Operations with moderate <i>adverse effects</i> . May include some outdoor operations.	750m	Manufacturing Metal and Glass Parts	300m

Class	Description of Major Facility	AOI	Examples of Major Facility (see Table 1 for more examples)	Minimum Separation Distance
Class 3	Operations with moderate to significant <i>adverse effects</i> that may be difficult to mitigate. May include larger outdoor operations.	1,000m	Aggregate Operations (in relation to <i>sensitive land use</i> proposals)	500m
Class 4	Operations with significant <i>adverse effects</i> that may be difficult to mitigate. May include larger outdoor operations.	1,500m	Meat and meat product processes (slaughterhouses and rendering facilities)	500m
Class 5	Operations with the most significant <i>adverse effects</i> , that may be difficult to mitigate. May include larger outdoor operations.	2,000m	Chemical product manufacturing	500m

Most criteria should fall into one given category in order to classify a facility into that class. *Planning authorities* may wish to use **Table 3** to create their own set of criteria that is specific to their circumstances.

Table 3 – Characteristics for classifying major facilities.

	CLASS 1 → CLASS 2 → CLASS 3 → CLASS 4 → CLASS 5		
IMPACTS			
Noise	Sound is not audible off property	Sound occasionally audible off property	Sound frequently audible off property
Vibration	No ground borne vibration on plant property	Possible ground-borne vibration, but cannot be perceived off property	Ground-borne vibration can frequently be perceived off property
Dust (Point Source)	Infrequent and not intense	Frequent and occasionally intense	Persistent and/or intense

	CLASS 1 → CLASS 2 → CLASS 3 → CLASS 4 → CLASS 5		
Dust (Fugitive Emissions)	Low probability of fugitive emissions	Moderate probability of fugitive emissions	High probability of fugitive emissions
Odour	Infrequent and not offensive	Frequent and occasionally offensive	Persistent and/or usually offensive
SCALE OF OPERATION			
Scale of Production	Small scale plant	Medium level of production allowed	Large production levels
Outside Storage	Minimal storage	Outside storage permitted	Outside storage of raw and finished products
Process	Self-contained plant or building	Outdoor storage of low to moderate amounts of wastes or materials	Outdoor storage of large amounts of wastes or materials
Process Outputs	Produces/stores a packaged product	Periodic outputs of minor annoyance	Frequent outputs of major annoyances
Hours of Operation	Daytime operations only	Shift operations permitted at times	Daily or 24 hour shift operations permitted
On-site Movement	Infrequent movement of products and/or heavy trucks	Frequent movement of products and/or heavy trucks with the majority of movements during daytime hours	Continuous movement of products by heavy trucks and rail cars including at night

2.4 How to Measure Separation Distances, AOIs and MSDs

A *separation distance*, AOI or MSD is typically measured as the actual distance between the property line of a *sensitive land use* and the property line of a *major facility*.

To determine whether the proposal would result in an existing or planned *sensitive land use* within the AOI or MSD for a particular facility, the *proponent* should do the following: