



# AMO's Response to Strengthening the Province's Environmental Compliance Approach (ERO postings 019-3268, 019-2785, 019-2768, and 019-2972)

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Submission to the Ministry of the Environment, Conservation and Parks

July 2, 2021

## **Proposed Land Use Compatibility (D-Series) Guideline**

AMO appreciates the Ministry's efforts to create a simplified, comprehensive, and consolidated Land Use Compatibility Guideline. This will provide a more streamlined approach and direction for planning authorities and proponents to identify and address land use compatibility requirements. Specifically, it will assist municipalities in planning for sensitive land uses and major facilities.

The additional direction provided on considering cumulative impact and transitional land uses, additional guidance on the requirements for compatibility studies, and expansion of facility classifications from three to five, are also welcomed changes.

At the same time, some municipalities are concerned that the increases to area of influence (AOI) and minimum separation distance (MSD) standards will impact how they approach projects for major facilities and plan for infill and intensification. This is especially true for area-specific planning for major transit station areas and other strategic growth areas where mixed-use development is contemplated as transportation and corridors are now added into the definition of major facilities.

In some cases, these rules will mean municipalities will face challenges meeting their goal to protect employment areas while balancing the need for additional housing to meet provincial intensification and density targets such as those required by the *Growth Plan*.

Municipalities are also concerned that the Guideline has changed from a Guideline to a direction that municipalities must follow. That is, that official plans shall identify AOIs and MSDs within the policy framework and identify the requirement for a Demonstration of Need Study, where required. Additionally, the proposal that official plans should identify or designate areas with existing or planned major facilities and identify the associated AOIs and MSDs for these facilities on a land use schedule, may not be reasonable given that the land use schedule would likely become stale-dated quite quickly as facilities change, expand, and move locations.

Other municipalities have flagged more specific issues. First, that the Guideline proposes a new Ontario approach to federal or federally-regulated facilities which is not consistent with the *Provincial Policy Statement, 2020*. That is, new sensitive land uses must be planned to ensure compatibility with existing or approved major federal facilities, but new major federal facilities need not be planned to ensure compatibility with existing or approved sensitive uses.

Second, that the Guideline seems to create two sets of rules for cannabis production – one for if the facility is located in an industrial zoned area in a settlement boundary, and a second set if the facility is located outside the settlement boundary in prime agricultural and rural areas. This does not result in a consistent approach regardless of where a cannabis production facility is located. If this is the case, AMO is concerned that cannabis production may be pushed to the areas outside of settlement areas to agricultural and rural areas as it may be less onerous to locate there.

Finally, the proposed Guideline is also likely to have unique implications to certain communities, which should also be taken into consideration. For example, the revised D-4 Guideline (Land Use on or Near Landfills and Dumps) has the potential to impact development rights and associated development costs for approximately 3,600 properties that surround the waste sites in just one upper-tier municipality. It could also invalidate the findings of previously undertaken assessments (which were undertaken at significant cost) and negate the utility of future study.

**Given the varied implications these changes will have on municipal governments, AMO recommends that the Ministry provide additional guidance and lend considerable support to municipalities that would:**

- Help municipalities determine what minimization and mitigation approaches may be most appropriate in their local contexts;
- Include more direction as to how the requirement for municipalities to do similar tracking of environmental compliance approvals (ECAs) through the classification of facilities on schedule in official plans, as it may otherwise duplicate work;
- Clarify whether the siting of all new major facilities near sensitive land uses are subject to this Guideline including federally-regulated facilities; and
- Include clear companion guidelines from other ministries such as the Ministry of Northern Development, Mines, Natural Resources and Forestry, and the Ministry of Agriculture and Rural Affairs, with regards to appropriate practices for mining and cannabis production in the prime agricultural and rural areas to address the impacts of cannabis production in these areas.

**As you know, a “one size fits all” approach cannot work in Ontario and that is no different in the context of planning. While the engagement series put on by the Ministry in June was appreciated, AMO recommends that further consideration be given to what training and education could be offered to explain these changes in more detail.**

### **Proposed Odour Guideline**

AMO is generally supportive of the proposed Odour Guideline as it will help industrial facilities, development proponents and other members of the regulated community anticipate, prevent, and address odour issues to better protect the environment and hold polluters accountable.

We appreciate the increased guidance on how to assess potential odour impacts from major facilities at sensitive land uses as part of a compatibility study required in the land use planning process. The steps outlined to determine when an odour compatibility study is required and the tools that can be used for the assessment is also appreciated.

In our view, the key to this Guideline's success will be whether it strikes the right balance between ensuring the critical infrastructure necessary for a circular economy is built (e.g. organic waste processing, landfill, sewage treatment, etc.), while protecting neighbouring residents and surrounding communities against negative odour impacts from these facilities.

Encouraging municipalities to update their odour by-laws will help control smaller cannabis growers and personal and medical cannabis growers by providing better enforcement of community standards and needs. However, it is noted that the Ministry has not included cannabis facilities in the Odour Guidelines.

**Therefore, AMO recommends that the Ministry integrate cannabis into the Odour Guideline as odour is often the main concern from area residents and the local business community around Cannabis site plan applications.**

## **Proposed Compliance Policy**

AMO supports the update to Ontario's environmental compliance policy and practices and the Ministry's commitment to ensure the protection of our environment and support healthier, prosperous communities. Municipal governments also appreciate providing updated tools and resources to environmental officers to prioritize high-risk incidents.

However, the proposal to move the enforcement of the approximately 7,000 lower-risk noise and odour incidents annually to municipal governments, will have significant resourcing impacts for the sector.

Further exploration is needed to address whether and how municipal governments will be provided means to recover these costs and properly resource and train staff to deal with these kinds of complaints. The administrative and financial burden that enforcement of these proposed changes may pose cannot be understated. Small municipalities have limited staff resources and often do not have full-time by-law enforcement personnel. In fact, many share a by-law officer.

Many municipalities use complaint-based systems to identify odour/nuisance violations, and therefore may be overwhelmed by high volumes of complaints. Additional information is required to better understand the Ministry's proposed timelines for the transition, and how the transition is expected to take place.

**Therefore, AMO requests further clarity in areas of municipal and provincial enforcement responsibility, and for provincial resources to assist small and rural municipalities in building application and enforcement capacity.**

## **Proposal to Expand Administrative Monetary Penalties**

While municipal governments have been supportive of the wider use of administrative monetary penalties (AMPs), how AMPs will apply to municipal government operations under this proposal needs further exploration.

Though out of scope in this consultation, an AMPs regulation for the *Resource Recovery and Circular Economy Act* is needed to help ensure that producers are held accountable to the targets set.

Municipal governments are interested in participating in this consultation when it begins in earnest.

Thank you again for the opportunity to comment on the Ministry's proposed initiatives. We look forward to working with your Ministry to ensure the approach to environmental compliance works for all Ontarians.