

GUIDELINE D-1
(formerly 07-03)

Land Use Compatibility

Legislative Authority:

Environmental Protection Act, RSO 1990, Section 14
Environmental Assessment Act, RSO 1990, Section
5(3)
The Planning Act, RSO 1990 Sections 2 (a) (b) (c)
(f) (g) (h), 17(9), 22(3), 41(4) and 51(3)
The Condominium Act, RSO 1990, Section 50(3)
The Niagara Escarpment Planning & Development Act,
RSO 1990, Section 9

Responsible Director:

Director, Environmental Planning Branch

Last Revision Date:

July 1995

Table of Contents

1.0 INTRODUCTION

- 1.1 Legislative Authority
- 1.2 Objective
- 1.3 Procedures

2.0 APPLICATION

- 2.1 Dual Nature Of Guideline
- 2.2 Planning Activities
 - 2.2.1 Policies, Guidelines & Programs
 - 2.2.2 General Land Use Plans
 - 2.2.3 Site-Specific Plans
- 2.3 Non-Applicable Situations
 - 2.3.1 Existing Incompatible Land Uses
 - 2.3.2 Compliance with Existing Zoning & Official Plan Designation
 - 2.3.3 Emergency Situations
 - 2.3.4 Federal Jurisdiction
- 2.4 Adverse Effects

3.0 GUIDELINE

- 3.1 Preferred Approach
- 3.2 Purpose Of Separation Distance
- 3.3 Use Of Land Within Separation Distance
- 3.4 Irreconcilable Incompatibilities

SYNOPSIS

This guideline identifies the direct interest of the Ministry in recommending separation distances and other control measures for land use planning proposals to prevent or minimize adverse effects from the encroachment of incompatible land uses where a facility either exists or is proposed. This guideline sets the context for all existing and new guidelines relating to land use compatibility.

The guideline is intended to apply only when a change in land use is proposed, however, compatibility concerns should be recognized and addressed at the earliest possible stage of the land use planning process for which each particular agency has jurisdiction. The intent is to achieve protection from off-site adverse effects, supplementing legislated controls.

The guideline encourages informed decision-making for Ministry staff, land use planning and approval authorities, and consultants. All land use planning and resource management agencies within the Province shall have regard for the implications of their actions respecting the creation of new, or the aggravation of existing, land use compatibility problems. The Ministry shall not be held liable for municipal planning decisions that disregard Ministry policies and guidelines. When there is a contravention of Ministry legislation, Ministry staff shall enforce compliance.

Nothing in this guideline is intended to alter or modify the definition of 'adverse effect' in the *Environmental Protection Act*.

1.0 INTRODUCTION

1.1 Legislative Authority

The primary legislative basis for this Guideline is Section 14(1) of the *Environmental Protection Act*, RSO, 1990. This Section states: "Despite any other provision of this Act or the regulations, no person shall discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment that causes or is likely to cause an adverse effect".

1.2 Objective

The objective of this guideline is to minimize or prevent, through the use of buffers, the exposure of any person, property, plant or animal life to adverse effects associated with the

operation of specified facilities (see definition for "facility" in Procedure D-1-3, "Land Use Compatibility: Definitions").

1.3 Procedures

Procedure D-1-1, "Land Use Compatibility: Procedure for Implementation" identifies areas of responsibility for Ministry staff or the Delegated Authority, Municipalities and Other Planning Authorities and Proponents, and discusses various implementation approaches and tools. Procedure D-1-2, "Land Use Compatibility: Specific Applications" list Ministry and other agencies' documents which are specific applications of this guideline. Procedure D-1-3, "Land Use Compatibility: Definitions" provides definitions of terms.

2.0 APPLICATION

2.1 Dual Nature of Guideline

The guideline is applicable when:

- (a) a new sensitive land use is proposed within the influence area or potential influence area of an existing facility; and/or
- (b) a new facility is proposed where an existing sensitive land use would be within the facility's influence area or potential influence area.

2.2 Planning Activities

This guideline applies when a change in land use places or is likely to place sensitive land use within the influence area or potential influence area of a facility, for the various situations listed below:

2.2.1 Policies, Guidelines and Programs

This guidelines applies for the formulation and review of land use policies, guidelines or programs.

2.2.2 General Land Use Plans

This guideline applies for the review of municipal and other levels of government general plans and proposals (e.g. municipal official plans and official plan amendments, municipal secondary plans, provincial resource management plans and other land use planning related matters).

2.2.3 Site-Specific Plans

This guideline applies for the review of site-specific development plans (e.g. plans of subdivision, plans of condominium, severances) including redevelopment and/or infill proposals.

2.3 Non-Applicable Situations

2.3.1 Existing Incompatible Land Uses

This guideline does not apply to situations where incompatible land uses already exist, and there is no new land use proposal for which approval is being sought.

However, where feasible, the Ministry encourages the implementation of mitigation measures by the appropriate authority, at the earliest opportunity, to minimize existing compatibility problems.

NOTE: When there is a compatibility problem where both land uses already exist, matters may be subject to Ministry abatement activities if there is non-compliance with a Ministry issued Certificate of Approval (C of A) for the facility, or there is no C of A in place.

2.3.2 Compliance with Existing Zoning and Official Plan Designation

This guideline does not normally affect a change in land use, an expansion, or new development, for either a facility or a sensitive land use which is in compliance with existing zoning, and the official plan designation, except for plans of subdivision and condominium and/or severances. In these exceptional situations, Ministry staff may require studies (see Guideline D-6, "Compatibility Between Industrial Facilities and Sensitive Land Uses, Sections 4.6, "Studies" and 4.7, "Mitigation"), and the identification of any necessary mitigative measures to prevent or minimize any potential 'adverse effects'.

There may be additional exceptional circumstances brought to staff's attention if a Certificate of Approval or other planning approval is required, where the Ministry would object if a sensitive land use would be subjected to adverse effects which could not be mitigated (e.g., land use change from single family residential to high rise, which would affect the point of impingement for air emissions, or when a

change of industry is proposed with a completely different influence area).

If a proposed use is permitted in the official plan, but rezoning is required, or if both redesignation and rezoning are required, then this guideline shall apply.

NOTE: Although the guideline does not specifically address such matters, it is not intended to preclude the implementation of mitigation measures to minimize existing compatibility problems.

2.3.3 Emergency Situations

This guideline does not deal with emergency situations, such as process upsets, the breakdown or malfunction of technical controls and/or spills. These are dealt with through other practices and legislation.

2.3.4 Federal Jurisdiction

This guideline does not normally apply to lands owned or purchased by undertakings under federal jurisdiction. However, federal bodies may choose to comply with provincial laws and policies, or may be required to do so by federal law or by their own regulatory bodies.

A court may rule that there is no reason for federal facilities not to comply with local requirements, as long as these additional controls do not attempt to prohibit the undertaking.

As well, this guideline may apply to private undertakings on federal lands on a case-by-case basis.

2.4 Adverse Effects

Depending upon the particular facility, adverse effects may be related to, but **not limited to**, one or more of the following:

- (a) **noise** and vibration;
- (b) **visual impact** (only for landfills under O. Regulation 347);
- (c) odours and other **air emissions**;
- (d) litter, **dust and other particulates**; and
- (e) **other contaminants**.

3.0 GUIDELINE

3.1 Preferred Approach

Incompatible land uses are to be protected from each other, in land use plans, proposals, policies and programs to achieve the Ministry's environmental objectives. Various buffers on either of the incompatible land uses or on intervening lands, as discussed in Section 4 of Procedure D-1-1, "Land Use Compatibility: Implementation", may be used to prevent or minimize 'adverse effects'. Distance is often the only effective buffer, however, and therefore adequate separation distance, based on a facility's influence area, is the preferred method of mitigating 'adverse effects'.

3.2 Purpose of Separation Distance

The separation distance should be sufficient to permit the functioning of the two incompatible land uses without an 'adverse effect' occurring. Separation of incompatible land uses should not result in freezing or denying usage of the intervening land. The distance shall be based on a facility's potential influence area or actual influence area if it is known. When development is proposed beyond a facility's potential influence area or actual influence area, the Ministry shall not normally object to development on the basis of land use compatibility. Exceptional situations may be identified in documents for specific facilities which are listed in Procedure D-1-2, "Land Use Compatibility: Specific Applications".

3.3 Use of Land Within Separation Distance

When the separation distance is the method of buffering, and the buffer area extends beyond a facility or sensitive land use site boundary, this Ministry encourages intervening land uses or activities that are compatible with both the facility and the sensitive land use(s).

Compatible land uses can vary on a case-by-case basis, and are identified for different facilities in documents listed in Procedure D-1-2, "Land Use Compatibility: Specific Applications".

Within the separation distance, municipal controls to increase zoning by-law setbacks for facilities or restrictions on location and use of outdoor storage could assist in achieving distance separation.

3.4 Irreconcilable Incompatibilities

When impacts from discharges and other compatibility problems cannot be reasonably mitigated or prevented to the level of a trivial impact (defined in Procedure D-1-3, "Land use Compatibility: Definitions") new development, whether it be a facility or a sensitive land use, shall not be permitted. More

details for specific facilities may be identified in other Ministry guidelines listed in Procedure D-1-2, "Land Use Compatibility: Specific Applications".

There may be situations and various means (see Procedure D-1-1, "Land Use Compatibility: Implementation", Section 7, "Methods") where development or redevelopment can be delayed or phased until such time that an 'adverse effect' would no longer exist (e.g. the facility ceases to operate or the problem is rectified by new technology).