

# CPUs and RMIMs

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# Overview

- What are they?
- Getting them right
- Complying with them
- Fixing them
- Enforcement

# What are they?

- Certificate of Property Use and Risk Management/ mitigation measures: steps in a Risk Assessment used to obtain a Record of Site Condition for a contaminated site per O. Reg. 153/04

# Related terms

- Record of Site Condition
  - Reg. 153/04
- Risk Assessment
- Certificate of Prohibition (pre October 2004)

# Risk Assessment steps

- ESA One
- ESA Two
- Pre Submission Form
- RA (iterations)
- RA acceptance by MOE
- CPU / EBR (except MGRA)
- C of R
- FA(?)
- RSC

# What is a CPU?

- S. 168(1) EPA:
  - If a risk assessment ...has been accepted, the Director may issue a certificate of property use to the owner of the property, requiring the owner to:
    - 1. Take ...action ...to prevent, eliminate or ameliorate any adverse effect ... including installing any equipment, monitoring any contaminant or recording or reporting information....
    - 2. Refrain from using the property for any use...or from constructing any building...

# What is a RMM?

- Risk Management Measures
- The “actions ...to prevent, eliminate or ameliorate any adverse effect” for the particular site
- The key components of a CPU

# Examples

- Appendix B:
- Tiffin Harbour CPU:
  - Hard cap / fill cap
  - Soil management plan
  - No gardening except in raised beds
  - No ground floor residential
  - Monitoring twice a year



# Certificate of Requirement

## s.197. (1):

A person who has authority under this 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 ..., to give a copy of the order or decision ..to every person who will acquire an interest in the property ...

(2) A certificate setting out a requirement imposed under subsection (1) may be registered in the proper land registry office on the title of the real property...

# Getting them right #1

- In the Pre Submission form:
  - The property description
    - Prepared by lawyer
    - After reviewing current survey
    - Need not match lot boundaries
  - The owner(s)
    - Only “the owner” can accept a CPU
    - Must have a legal interest in the entire property
    - Beneficial owners too

# Getting them right #2

- Communicate clearly with the Director (usually District Manager)
- “The usual suspects”



# Getting them right #3

- Think ahead
  - What could be misinterpreted?
  - What could change?
  - Will the neighbours object?
- Possible appeal to ERT
  - *Cushman v Director*

# Complying with them

- Land use restrictions
  - Actual use, not zoning
  - Limit building permits
- RMM
  - Training
  - Can you prove you did it?
    - Checklists, record keeping, backups

# Complying #2

- Notice to occupants
  - With a contract with owner
- Notice to prescribed persons
  - S. 50 of O.Reg. 153/04
    - Municipal clerk
    - Chief building official
    - MOH
    - Conservation authority

# Complying #3

- When the owner changes
  - Notice to MOECC
- When the parcel changes
- Contract should clarify:
  - Who will fulfill the obligations?
  - Who has what claim on the FA?
  - Who can seek to change CPU?

# Special fun with condos

- The condo corporation v individual owners?
- FA v condo capital repair fund
- Engineer's report



# Fixing them

- S. 168.3
- Director may amend or revoke CPU
- On request or on their own initiative

# Fixing them #2

- Monitoring changes
- When the standards change
  - CPUs do not automatically change
  - Owners may want to bring up to date
  - Adverse effect?
- What about neighbours?

# Fixing FA

- FA may be increased or reduced or eliminated over time



# Enforcement

- No enforcement in early years
- Now part of routine inspections
- Disputes over interpretation



# Conclusions

- CPUs and RMMs must be drafted for clarity, with enforcement in mind
- Don't leave them to the engineers
- Sweat the small stuff
- If all else fails, call Norm etc.

# For a copy of the presentation

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