


Ministry of the Environment, Conservation and Parks

Brownfields Modernization Proposed Amendments to the Record of Site Condition Regulation (O. Reg. 153/04)

Canadian Brownfields Network
Cross-Country Check-up
June 12, 2019


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Brownfields Modernization

- The Ministry has been exploring approaches to help clients meet regulatory objectives and requirements since 2014.
- The Ministry obtained internal and external perspectives to focus and prioritize modernization efforts and enhance Record of Site Condition service delivery.
- We learned that updated guidance and outreach activities will clarify ministry expectations and support Qualified Persons (QPs) in providing better RSC and Risk Assessment (RA) submissions.
- Regulatory amendments were also considered as resolutions to some challenges as they would provide clarity, reduce burden, and maintain an appropriate level of environmental and human health protection.

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Regulatory Amendments - Engagement

- The proposed brownfields amendments and the proposed Excess Soil Management Regulation both require amendments to O. Reg 153/04 and have been moving together through the engagement and consultation process.
- On April 24, 2017, proposed amendments to O. Reg 153/04 were posted on the Environmental Registry for comment as a plain language document; feedback was positive with suggestions that helped shape legal wording.
- On April 16, 2018, the proposed amendments were posted again on the Environmental Registry for comment with draft legal wording; feedback again supportive with suggestions on implementation.
- On November 29, 2018, the Made-in-Ontario Environment Plan posted for comment on the Environmental Registry committed to revising the brownfields regulation.
- On May 1, 2019, the proposed amendments with updated draft legal language were posted on the Environmental Registry; comment period ends June 17, 2019.

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Proposed Record of Site Condition Amendments

Non-Standard Delineation

Challenge: Meeting delineation requirements under O. Reg. 153/04, specifically delineation to generic standards, causes practical challenges at some RA properties.

Proposed amendment would provide ministry discretion on delineation requirements when a QP provides a rationale that shows:

- all contaminants of concern are identified;
- appropriate steps have been taken to locate the maximum concentration;
- additional efforts to delineate are unlikely to contribute meaningful information about the distribution and extent of contaminants at the property; and,
- the RA property is appropriately characterized.

Substance Used for safety Under Conditions of Snow/Ice

Challenge: Activities undertaken to satisfy the requirements to file a RSC, including the undertaking of RA where salt is the only substance that exceeds the applicable site condition standard, may not lead to significant environmental or human health benefits.

A proposed amendment would deem a standard not to be exceeded when substance has been used for the purpose of traffic and pedestrian safety under conditions of snow/ice. This is an expansion of the current exemption for public roadways. Can be applied using a ESA Phase 1 or ESA Phase 2 approach.

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Proposed Record of Site Condition Amendments

Discharge of Treated Drinking Water

Challenge: Leaking municipal water mains or large scale purges of municipally treated drinking water can lead to the exceedance of applicable site condition standards of such substances as chloroform and bromoform.

A proposed amendment would deem a standard not to be exceeded at RSC properties where a QP determines that a standard is exceeded solely because of the presence of treated drinking water by-products (e.g.: chloroform would not be considered a COC at these sites). Can be applied using a ESA Phase 1 or ESA Phase 2 approach.

Naturally Elevated Concentrations

Challenge: When soil containing naturally-occurring elevated concentrations of substances are moved to a different location they become “contaminants” and must be investigated as part of the phase two environmental site assessment.

A proposed amendment would clarify the allowance for exceedances of naturally-occurring parameters in fill historically placed on a property as long as concentrations are shown to be similar to local levels. The activities related to the historically placed fill would need to have occurred prior to Environmental Site Assessment work.

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Proposed Record of Site Condition Amendments

Indoor Gathering of People for Religious Purposes

Challenge: Religious buildings tend to have uses and activities similar to schools, many house daycares, and have historically been located in residential areas; however, as a “community use” under O. Reg. 153/04, a RSC is required when converting to residential.

A potential amendment would move religious buildings to the institutional category and:

- allow religious buildings to be converted to residential without requiring a RSC;
- required a RSC to place a religious building onto a industrial, commercial or community property; and,
- provide a 1-year transition to ensure those that already planned to place a religious building into a industrial, commercial or community property to allow them to move forward under current rules (i.e. 1-year window to get building permit without a RSC).

Urban Agriculture (New)

Challenge: The expansion of agricultural activities in urban centers that do not use soil from the property, notably with the legalization of cannabis, is triggering a RSC requirement due to a perceived link to agriculture.

A proposed amendment would clarify that a RSC is not required to cultivate/grow crops in industrial, commercial or community buildings when soil used is not from the property.

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Proposed Record of Site Condition Amendments

Temporary Roads (Revised Language)

Challenge: The current definition of “road” in O. Reg. 153/04 does not distinguish between temporary roads and more permanent roads, causing an RSC to be required before a temporary road in a construction area can be converted to a residential use.

A proposed amendment would remove the RSC requirement for a temporary road if this road will no longer exist when all phases of the construction/development are complete.

Mixed Use – All Commercial to Residential (Revised Language)

Challenge: Undertaking the assessments and any remediation required for an RSC could be challenging if the building is not being demolished and rebuilt. The requirement for an RSC may also be a disincentive to reuse some buildings, for example in old downtown areas.

A proposed amendment would allow conversion of upper floors of low-rise, commercial-use buildings to mixed-use residential without a RSC.

- Would not apply to larger buildings or industrial or specified commercial property uses (garage, bulk liquid dispensing facility, including a gasoline outlet, or dry cleaner).
- Subsequent conversion of the ground floor from commercial to residential use would require the filing of an RSC.

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Proposed Record of Site Condition Amendments

Wellhead Protection Areas (New)

Challenge: There is confusion surrounding the requirement to obtain written consent from the municipality to use non-potable standards in a wellhead protection area.

A proposed amendment would create a specific certification statement to verify that the QP or the property owner has received written consent from the municipality to use non-potable standards in wellhead protection area.

Removal of Consideration of Wells in Municipally Services Areas (New)

Challenge: Making the determination of no wells present within the study area to use non-potable standards is difficult and likely unnecessary if area is municipally serviced for drinking water.

A proposed amendment would remove the need to consider wells when proposing to use non-potable standards when the area is municipally serviced.

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Proposed Record of Site Condition Amendments

Certificate of Status

A proposed amendment would eliminate the requirement for the QP to provide a Certificate of Status and reduce administrative burden and cost.

Horizontally Severed Properties

A proposed amendment would provide clarity on how to meet regulatory requirements and obtain a RSC for a horizontally severed property (e.g. stacked units in a condominium).

Clarifying the “18 Month” Requirement (Revised Language)

A proposed amendment would revise the language about the 18 month requirements related to the last day of work for ESA Phase 1 and ESA Phase 2.

Updates to Clarify Conceptual Site Model Requirements (New)

Proposed amendments would reduce some repetition and clarify the need to prepare figures by analytical parameter group.

Proposed Record of Site Condition Amendments

COMMENT RECEIVED	PROPOSED RESPONSE/ACTION
General support for proposed amendments with a need for clarity on ministry expectations	<ul style="list-style-type: none"> Ministry to provide outreach timed with regulatory filing (if approved) and follow up with updated guidance to clarify expectations
Removal of requirement to file a RSC may limit a municipalities ability to mitigate risk	<ul style="list-style-type: none"> Municipalities encouraged to have policies that require a RSCs outside of regulatory requirements for suspected or known contamination at a property
What are the ministry expectations to obtain flexibility on delineation requirements (i.e. Non-Standard Delineation (NSD)) for RA properties?	<ul style="list-style-type: none"> Qualified Persons are expected to delineate Risk Assessment properties to generic standards before considering NSD Early engagement with the district office is critical when delineation efforts are exhausted and challenges cannot be overcome
Why is there a four-storey limit to allow full commercial properties to convert upper floors to residential without a RSC?	<ul style="list-style-type: none"> The limit ensures that larger redevelopment projects use the opportunity to assess potential contamination and remediate if necessary May 2019 proposal raises the limit to six storeys

Implementation/Commencement

- If approved, brownfields related O. Reg 153/04 amendments could be in effect by Fall 2019.
- Outreach on amendments to be delivered through webinars and potentially through in-person sessions aligned with amendments coming into effect.
- Updated Brownfields RSC Guide that includes amendments to be published following engagement with QPs and municipalities.

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