

October 2008

Ontario's Brownfield Reforms

1. Enhanced Record of Site Condition Integrity

Ontario is proposing reforms to the Brownfields Regulation, O. Reg.153/04 *Records of Site Condition*, made under the *Environmental Protection Act*. The proposed regulation is posted on the Environmental Registry at www.ontario.ca/environmentalregistry. The posting number is 010-4642.

A series of fact sheets provide an overview of the proposed regulatory changes:

1. Enhanced Record of Site Condition Integrity
2. Off-Site Liability Protection
3. Streamlined Risk Assessment
4. Strengthened Standards
5. Complementary Amendments to Ontario Regulation 153/04

Enhanced Record of Site Condition Integrity

Records of Site Condition (RSCs) are used to certify that a property meets an appropriate standard for the intended land use, and provide limited regulatory liability closure for property owners.

Currently, a qualified person (QP) supervises or conducts environmental site assessments (ESAs) without detailed guidance regarding ministry expectations. The QP files certifications that reflect his or her findings in a RSC placed on a public registry, the Brownfields Environmental Site Registry (Registry). The ministry checks the content of the RSCs and the quality of the ESA after the QP files the RSC. Uncertainty regarding the quality of the assessment and the integrity of the RSC arise when the ministry identifies defects after filing.

The purpose of the proposed changes described below is to provide clear objectives and requirements for QPs and greater confidence in RSCs. The proposed regulatory changes include:

Protecting our environment.



- Minimum requirements specified for conducting Phase One and Phase Two ESAs
- Changes to the RSC registry process
- New conflict of interest restrictions for QPs

Environmental Site Assessment (ESA) Requirements

(p.9 (Parts VI, VII, VIII); p.46 Schedule D; and p.73 Schedule E of amending regulation)

QPs and the building industry asked for clear requirements for conducting ESAs. Objective criteria help to ensure that RSCs meet ministry expectations and reduce processing time. Clarifying the minimum ESA requirements levels the playing field for property owners and QPs.

Proposed Phase One ESA Requirements:

- Minimum requirements include records review, interviews, site reconnaissance, review and evaluation of information and reporting.
- The proposal specifies that determining whether a Phase Two ESA is required is based on the current requirements and on potentially contaminating activities identified when the site's history is researched.
- A list of potentially contaminating activities is proposed (p. 67 Schedule D, Table 2 of amending regulation).

Proposed Phase Two ESA Requirements:

- Minimum requirements include: planning and conducting the site investigation, interpretation and evaluation of information and reporting.
- Additional optional assessments are specified for off-site liability protection and modified generic risk assessment (see relevant information sheets).
- The outcome of the Phase Two ESA is a determination of whether the property meets the applicable site condition standards.

Record of Site Condition (RSC) Submission Process

(p.7 (S.8) of amending regulation)

Ontario is proposing process revisions that will provide municipalities, businesses and practitioners with a more predictable outcome for RSC submissions and higher quality RSCs filed in the Registry.

These amendments would allow the ministry to perform administrative checks of all RSCs prior to filing on the Registry within a regulated Notice Period.

- The ministry will advise the property owner within the Notice Period if the submitted RSC does not meet requirements. The property owner may submit additional supporting documents.
- The ministry will inform the property owner within the Notice Period if a technical review will be undertaken.

The proposed timeframe for the Notice Period is 30 business days. In order to facilitate the redevelopment planning process, ongoing communication with owners or their agents will occur if a more detailed review is required.

Qualified Person and Conflict of Interest

(p.5 (S.4) of amending regulation)

To reduce the potential for conflicts of interest, the proposed amendments could prevent the QP or his or her employer holding a direct or indirect interest in property that is the subject of a RSC, risk assessment, or ESA from:

- Conducting or supervising the Phase One or Phase Two ESA for that property or completing the certifications in a RSC; or
- Preparing or supervising a risk assessment for that property.

Additional information is available on the Brownfields Ontario website:

www.ontario.ca/brownfields.