

# **Brownfields Reform Proposal “Preliminary Overview on What We Heard”**



## Enhanced RSC Integrity

# RSC Submission and Filing Process

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Issue: RSC submitted to Ministry will be reviewed prior to filing.

<b>We Heard</b>	<b>We Also Heard</b>
<p>▶ Concern that regulated timeline will not be met by Ministry due to insufficient resources.</p>	<p>▶ The inclusion of the Notice Period, a brief and specific time frame, increases the credibility of a RSC and certainty in the process.</p>

# General Remarks about Phase One and Phase Two ESA Rules

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Issue: To provide clear rules for conducting and reporting ESAs.

We Heard	We Also Heard
<ul style="list-style-type: none"><li>▶ Concern expressed regarding the flexibility of QPs to use their judgement</li></ul>	<ul style="list-style-type: none"><li>▶ Rules will increase the quality and consistency of submissions and increase credibility and certainty of the process</li><li>▶ Clearer objectives and requirements for QPs will result in reduced processing time</li><li>▶ QPs support incorporating minimum requirements</li></ul>
<ul style="list-style-type: none"><li>▶ New Rules will increase the cost of ESAs</li></ul>	<ul style="list-style-type: none"><li>▶ QPs have indicated that costs of completing a phase Two ESA will not increase significantly</li><li>▶ QPs have indicated that costs of completing a Phase One are generally in line with current costs with some exceptions</li></ul>

# Phase One ESA

Issue: To provide clear rules for conducting and reporting ESAs.

<b>We Heard</b>	<b>We Also Heard</b>
<p><b>Preliminary Conceptual Site Model (PCSM)</b></p> <ul style="list-style-type: none"><li>▶ Clarification requested regarding level of detail required</li></ul>	<ul style="list-style-type: none"><li>▶ Stakeholders are supportive of the inclusion of PCSM in the Phase One ESA</li></ul>
<p><b>Potentially Contaminating Activities Table</b></p> <ul style="list-style-type: none"><li>▶ Concerned that some chemicals in table do not have standards which will lead to RA</li><li>▶ Clarification requested regarding the requirements to test for the listed potential contaminants of concern</li></ul>	<ul style="list-style-type: none"><li>▶ The inclusion of potentially contaminating activities and associated potential contaminants of concern will be a useful tool in the planning of Phase Two ESAs</li><li>▶ Stakeholders are supportive of mandatory Phase Two triggers based on potentially contaminating activities</li></ul>

# Phase One ESA

Issue: To provide clear rules for conducting and reporting ESAs.

We Heard	We Also Heard
<b>Information Requirements/Availability</b> ▶ Extent of information required may be unreasonable	▶ A number of practitioners do not currently apply diligence in their investigation and reporting practice ▶ A more prescriptive approach than the CSA standards has become necessary
▶ Time limit (one year) between Phase One and Phase Two ESA is too short	▶ Stakeholders are supportive of the use of up-to-date Phase One ESAs
▶ Concern expressed over length of time to receive critical information through the Freedom of Information process	

# Phase Two ESA

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Issue: To provide clear rules for conducting and reporting ESAs.

<b>We Heard</b>	<b>We Also Heard</b>
<p><b>Ground Water Sampling</b></p> <ul style="list-style-type: none"><li>▶ One-year monitoring for petroleum hydrocarbons (PHCs) and volatile organic compounds (VOCs) would result in delays in site development.</li></ul>	<ul style="list-style-type: none"><li>▶ Stakeholders acknowledge that some remedial techniques (ISCO) may require additional sampling.</li><li>▶ QPs agree that additional monitoring for PHCs and VOCs are reasonable if these chemicals are found in ground water.</li><li>▶ Suggested modifications include removing/reducing of monitoring if ground water contamination is not present.</li></ul>
<p><b>Delineation of Contaminants</b></p> <ul style="list-style-type: none"><li>▶ Clarification requested on whether delineation must be completed prior to remediation.</li></ul>	<ul style="list-style-type: none"><li>▶ QPs are generally supportive of requirements pertaining to delineation.</li></ul>

# Phase Two ESA

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Issue: To provide clear rules for conducting and reporting ESAs.

<b>We Heard</b>	<b>We Also Heard</b>
<p><b>Actions Taken to Reduce Contaminant Concentrations</b></p> <ul style="list-style-type: none"><li>▶ Many stakeholders requested that remediation and associated activities be placed into a separate report.</li><li>▶ The proposed reporting format may delay municipal/financial approvals.</li></ul>	<ul style="list-style-type: none"><li>▶ Practitioners are supportive of clear direction provided relating to remediation.</li></ul>



# Strengthening Standards and Streamlining the Risk Assessment Process

# Update

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- The ministry has met with several stakeholders to discuss the proposed standards and the Tier 2 risk assessment process.
- Stakeholder involvement over the past 6+ months has been extensive and has led to improvements on both the Generic standards and Tier 2 (e.g. Tier 2 Technical Working Group).
- We are in the process of considering the formal EBR comments.
- Modifications have been made to the generic standards improving their accuracy and scientific defensibility.
- Some new tools and greater flexibility have been introduced to the Tier 2 risk assessment tool.
- The ministry is confident that, once finalized, the updated standards will represent the best in science and combined with the Tier 2 risk assessment process, will promote Brownfield redevelopment while ensuring the protection of human and environmental health.

# Streamlined Modified Generic Risk Assessment (Tier 2)

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- ▶ A Technical Working Group, including representatives of AMO, industry, consultants, developers and the Ministry was formed and has met a number of times to help refine the Tier 2 tool and find ways of increasing its usefulness.
- ▶ The Ministry is proposing to increase Tier 2 relief by:
  - Remove well head protection zone precluding condition
  - Increase relief offered by Modified Ecological Protection
  - Allowing specified risk management measures to be used at a Tier 2 level
    - ◆ High density urban scenarios may be represented through certain individual or combined risk management measures.
- ▶ It is the Ministry's intention to have the Tier 2 tool available in some form prior to standards coming in to force.

# The Tier 2 Working Group

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- ▶ Risk Management Measures being explored with the Working Group
  - Underground Parking Garage (Use of the Building Code)
  - Non-residential First Floor (Use of the Building Code)
  - Hard cap (cement/asphalt)
  - Land Use Control – No building structure
  - Alternatives to the CPU for the following:
    - ◆ Modified Ecological Protection (no CPU required)
    - ◆ Soil Cap
  - All measures could be opted into individually or in combination
  
- ▶ Site assessment requirements (Phase 2 ESA: Table 5) to support changing Tier 2 parameters

# Summary of EBR Comments

We heard	We also heard
<ul style="list-style-type: none"> <li>▶ Many standards are too stringent.</li> <li>▶ This will negatively affect the development of brownfields and increase the use of dig and dump methods.</li> </ul>	<ul style="list-style-type: none"> <li>▶ The derivation of the posted generic soil and groundwater site condition standards reflects current science.</li> <li>▶ Ontario's updated standards are consistent with those of other jurisdictions that have recently upgraded their standards.</li> </ul>
<ul style="list-style-type: none"> <li>▶ Although most standards are now above reporting limits, some standards are still set at reporting limits and, as such, may not be achievable.</li> </ul>	
<ul style="list-style-type: none"> <li>▶ MOE should conduct a full detailed economic impact or cost benefit analysis.</li> </ul>	<ul style="list-style-type: none"> <li>▶ A full quantitative economic analysis will not be possible until the details of Tier 2 are available.</li> <li>▶ Requests that the finalization of the generic (Tier 1) standards be finalized as soon as possible.</li> </ul>
<ul style="list-style-type: none"> <li>▶ A number of detailed technical comments relating to TRVs, model parameters, assumptions etc.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Appreciation that the ministry is already moving to incorporate early comments to resolve technical issues</li> </ul>

# Summary of EBR Comments

We heard	We also heard
<p>▶ There have been many changes to the models and Tier 2 is not sufficiently complete, as a result there should be an additional posting with a comment period.</p>	<p>▶ Proponents are anxious for the generic standards and the Tier 2 model to be finalized, so that they can be used in property development decisions as soon as possible.</p>
<p>▶ A workable “Tier 2” process is needed to provide some relief from the more stringent standards.</p>	<p>▶ The ministry received widespread support for the principle and intent of the streamlined Tier 2 process.</p> <p>▶ Recognition that MOE is committed to developing a workable Tier 2 process and is currently working with stakeholders to improve on the flexibility of Tier 2.</p>
<p>▶ A risk level of 1 /1,000,000 is too conservative.</p>	<p>▶ The use of 1/1,000,000 risk per component is appropriate.</p>

# Update: Modified Generic Results

Full Depth Potable, Residential - FOC = 0.01 in soil and 0.002 in aquifer +100m to surface water + underground parking garage and asphalt cap

Contaminant	Tier 2 Standard	Generic Table 2 Standard
Benzene	<b>(0.56) 1.2</b>	(0.056) 0.06
Benzo(a)pyrene	3.6	0.3
Lead	<b>1000</b>	120
PHC F1	<b>(220) 400</b>	(65) 55
PHC F2	<b>(210) 420</b>	(150) 98
PHC F3	<b>(650) 1300</b>	(650) 300
PHC F4	<b>(5000) 10000</b>	(5000) 2800
PCBs	<b>4.1</b>	0.28
Tetrachloroethylene	(2.5) 2.1	(2.5) 1.9
Vinyl Chloride	<b>(0.25) 0.033</b>	(0.099) 0.0021
Xylene	<b>(66) 62</b>	(30) 3.1
Zinc	<b>47000</b>	340



# Off-site Liability Protection

# What We Heard on Off-site Liability Protection

Issue: Clarification of the requirements which apply to maintaining liability protection.

We Heard	We Also heard
<p>▶ We heard that the liability protection will not provide a stimulus:</p> <ul style="list-style-type: none"> <li>● The applicable standards do not include standards specified in a risk assessment, thus excluding many properties</li> <li>● 3<sup>rd</sup> parties may require the off-site protection</li> <li>● Concern about future zoning decisions limiting (sterilizing) the use of land within the vicinity of an RSC property to industrial/commercial uses.</li> <li>● Concern about interpretation of “existing land use”.</li> </ul> <p>▶ Flexibility desired in definition of “vicinity”.</p>	<p>▶ Support for the intent that protection from ministerial orders is only for non-polluting owners.</p> <ul style="list-style-type: none"> <li>● The building industry continues to see value in the proposal subject to further dialogue.</li> </ul> <p>▶ Others have indicated concern that the community would not be adequately protected if a land use in the vicinity changed to “sensitive”.</p>



# Complementary Technical Amendments

# What We Heard on Movement of Soil

Issue: Provision for reuse of soil which meets site condition standards.

<b>We Heard</b>	<b>We Also Heard</b>
<ul style="list-style-type: none"><li>▶ Stakeholders have expressed support for the proposal regarding soil brought to a remediated property for grading and landscaping.</li><li>▶ Suggestions to improve sampling protocol.</li></ul>	<ul style="list-style-type: none"><li>▶ The ability to reuse soil that does not meet the new standards has emerged as a significant concern.</li><li>▶ Complementary amendments should be made to O. Reg. 347 to divert soil from landfill:<ul style="list-style-type: none"><li>● Clarification on the relationship between the current proposal and existing inert fill policy</li><li>● Guidelines for managing inert fill based on land use and potable groundwater status of the receiving sites</li><li>● Public interest groups recommend mandatory treatment of soil destined for landfill</li></ul></li></ul>

# What We Heard on QP Conflict of Interest

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Issue: QP cannot be responsible for a RSC if the QP or Employer has a direct or indirect interest in the RSC property.

<b>We Heard</b>	<b>We Also Heard</b>
▶ Some said the conflict of interest provision for QPs preserves the objective integrity of the RSC.	▶ We have heard that the proposed "indirect interest" conflict is too broad.

# What We Heard on Property Use Definitions

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Issue: Property Use Definitions

We Heard	We Also Heard
<p>▶ Industrial property use exemptions requested for:</p> <ul style="list-style-type: none"><li>● Well sites used for the primary production of hydrocarbons provided they are decommissioned according to the OGSRA, and the site is verified to meet local background conditions.</li><li>● Pits and quarries undertaken pursuant to the Aggregate Resources Act.</li></ul>	<p>▶ Not to proceed with property use classification change (from community to parkland) for indoor recreational facilities of the arena type.</p>

# What We Heard on Early Community Engagement

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Issue: Early community engagement on sites that are being remediated.

We heard	We also heard
<ul style="list-style-type: none"><li>▶ Request for notification of First Nations regarding the assessment of remediation in neighbouring and adjacent properties.</li><li>▶ Request for notification of Public Health Units early in the process if there has been any public access to a Brownfield site that will be undergoing redevelopment.</li><li>▶ Request for notification of Municipalities if a risk assessment is proposed.</li></ul>	



# Implementation and Transition

# What We Heard on Implementation

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Issue: 12 month period before implementation of all regulatory proposals.

<b>We Heard</b>	<b>We Also Heard</b>
<ul style="list-style-type: none"><li>▶ Some submissions stated that the implementation of the proposed amendments should be extended beyond 12 months (many suggested 18 months).</li><li>▶ Many respondents requested re-posting after further roundtable consultation and detailed economic analysis prior to finalizing the regulation.</li></ul>	<ul style="list-style-type: none"><li>▶ Some submissions supported the 12 month implementation period or requested even a shorter period.</li><li>▶ Many respondents wanted the Tier 2 model to be available on-line as soon as possible.</li></ul>

# What We Heard on Transition

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Issue: How to deal with projects that are underway under the current RSC or Planning regime before implementation.

<b>We Heard</b>	<b>We Also Heard</b>
<p>▶ Request for a period of adjustment to consider projects that underway. Including allowing for exemptions in certain situations.</p>	<p>▶ The Ministry should not grandfather any requirements and should bring the regulation into force within 12 months.</p>



# Outreach and Communications

# What We Heard on Outreach and Communications

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- ▶ We heard that there is a need for more communication and outreach material such as a Fact Sheet on the “Validity of old RSCs” after the new amendments have been implemented.