

“CROSS-COUNTRY CHECK UP” GOING FOR GOLD: CANADIAN BROWNFIELDS 2009

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Introduction

- Historic variability between applicable provincial legislation on key issues:
 - Definition of “contaminated site”
 - Who is a “person responsible”?
 - What is “clean”?
 - Sign-off for statutory liability?
 - Registry of “contaminated sites”
 - Qualified Persons
 - Incentives for Brownfield Redevelopment

Introduction (cont'd)

- Additional issues:
 - Protection from civil liability
 - Integration with other objectives such as sustainability
 - Integration with planning approvals
 - Facilitation of the speed at which approvals for “remediation” can occur

Overview

- Significant changes to applicable provincial legislation, regulations, policies and procedures have occurred or are anticipated
 - Ontario
 - New Brunswick
 - Alberta
 - Saskatchewan

Ontario

Proposal for Amending Ontario Regulation 153/04, Brownfields Records of Site Condition

- Posted on the Environmental Bill of Registry for comment. Comment Period closed February 10, 2009

Ontario (Cont'd)

- Updated Site Condition Standards
 - 25 new site condition standards
 - Generally, more stringent
 - Increased differences in standards for residential/parkland vs industrial/commercial
- Clear rules for completion of Phase I and Phase II ESAs
- Identification of when a Phase I ESA is mandatory (gas station, dry cleaner etc.)

Ontario (Cont'd)

- RSCs to undergo an Administrative Check within 30 days, a selected few for Technical Review and possible Field Review
- Liability protection off-site migration from the RSC property
 - (If the RSC property use is not a “sensitive property uses” and there is no existing or permitted “sensitive property use” within 60 metres, the off-site concentration limit for liability protection is the same as the site condition standard that would apply in submitting the RSC. “Sensitive Property Use” includes residential or institutional)

Ontario (Cont'd)

Concerns

- While the revised Standards may incorporate available science, they are established on the basis of overly conservative assumptions of risk
- The Standards are so low that the application of the Standards dramatically increases the number of contaminated properties
- No economic evaluation has been conducted to determine the number of properties impacted, the increase in remediation cost, or the time to complete remediation

Ontario (Cont'd)

Concerns (cont'd)

- Increased delay in processing of Risk Assessments, notwithstanding use of the Tier 2 Model
- Delay in completion of Phase I ESAs due to delayed responses to FOI Requests
- Requirement for a minimum of 4 quarterly groundwater sampling events following remediation
- Absence of Standards for all contaminants leads to delay

Ontario (Cont'd)

Concerns (cont'd)

- Limited utility of the Tier 2 Model
- Delay in review and approval of Tier 3 Risk Assessments
- Improper use by municipalities and others of the RSC
- Absence of proper integration into the municipal planning process
- Incomplete transition provisions
- Failure to assess implications on financing

Ontario (*Cont'd*)

Concerns (*cont'd*)

- Failure to assess integration with provincial initiatives such as the Growth Plan for the Great Golden Horseshoe
- Impact on available land supply for development

Ontario (Cont'd)

- Definition of “Contaminated Site”?
 - No change
- Who is a “Person Responsible”?
 - No change
- What is “clean”?
 - Dramatic changes
- Sign-off from Statutory Liability?
 - No change
- Registry of “Contaminated Sites”?
 - Yes
- Qualified Persons?
 - Yes
- Incentives for Brownfield Development?
 - Yes

New Brunswick

- *A Comprehensive Plan for Brownfield Redevelopment in New Brunswick (December, 2008)* targets the need for improved regulatory certainty, incentives, Atlantic harmonization and outreach
- Improved Regulatory Certainty
 - Recommends a Contaminated Sites Regulation
 - Proposes to bring certainty to the process of identifying responsible parties
 - Introduction of a Voluntary Remediation Program. Shields the volunteer from enforcement as long as plan is followed

New Brunswick (Cont'd)

- Elimination of provincial pre-approval of remediation technologies or methods
- Legislative amendments to accommodate permanent transfer of regulatory liability
- Removal of requirement for notification in the New Brunswick Land Gazette for contaminated sites where future activity would not be hindered due to residual contamination
- Legislative amendment to permanently “close” site files
- Provide incentives and tax breaks for certain Brownfield Redevelopment Activities

New Brunswick (Cont'd)

- Bill 82, *an Act to Amend the Clean Environment Act*, Royal Assent June 19, 2009
 - Regulations to prescribe a “responsible party”
 - A person may apply for approval of a voluntary remediation project. Approval may include terms and conditions
 - Provides for a “Responsibility Agreement” to allocate responsibility
 - “Responsibility Agreement” in effect when a remediation process completion certificate is issued. Provides statutory immunity from issuance of an Order

New Brunswick (Cont'd)

- Imposes duty to report a release or possible release of a contaminant of concern and knowledge of contamination (owner, tenant or person who “manages or has charge or control of the effected site” as well as the consultant).
- Provides for remediation process completion certificate for site closure
- To come into force once regulations have been drafted and approved.

Alberta

What is “Clean”?

- Two new guidelines released, August, 2008
- Alberta Tier 1 Soil and Groundwater Remediation Guidelines
- Alberta Tier 2 Soil and Groundwater Remediation Guidelines
- The new Guidelines update the 2007 documents by including minor changes to the tables in the Alberta Guidelines to be consistent with the updates from the CCME

Alberta (*cont'd*)

- Frequently Asked Questions on the Alberta Tier 1 and 2 Soil and Groundwater Remediation Guidelines (February, 2008)
 - Provides guidance on whether the remediation values contained in the Alberta Soil and Water Quality Guidelines for Hydrocarbons at Upstream Oil and Gas Facilities or the Tier 1 or Tier 2 Guidelines apply (Reclamation Certificates based on December 1, 2007 lab analytical data sheets can be issued where the results comply with the 2001 Guidelines).

Alberta (cont'd)

- Soil Monitoring Directive
 - Establishes regulatory requirements where a person is required to conduct soil monitoring or soil management programs in accordance with an Approval issued under the *Environmental Protection and Enhancement Act* (effective September, 2009)

Alberta (cont'd)

- Remediation Certificate Regulation
 - Voluntary process for regulatory liability closure for a remediated area
 - Requires compliance with Alberta Tier I and Tier 2 Guidelines
 - Regulation specifies matters to be included in application for certificate
 - “Re-openers” for exceedences of Guidelines and changes in the condition of the remediated area
 - No additional remediation required (provided Guidelines are not amended)

Alberta (Cont'd)

1. Definition of Contaminated Sites
 - No change
2. Who is the Person Responsible?
 - No change
3. What is “Clean”
 - New guidelines

Alberta (Cont'd)

4. Sign-off from Statutory Liability
 - Yes. Significant change
5. Registry of Contaminated Sites
 - Yes
6. Qualified Persons
 - No change
7. Incentives
 - Yes. No change

Saskatchewan

- Risk-Based Corrective Actions for Petroleum Hydrocarbon Impacted Sites, March, 2009 (made in accordance with The Hazardous Substances and Waste Dangerous Goods Regulations)
 - To govern remediation and decommissioning of gas station properties in Saskatchewan
 - Define requirements and methods to be employed
 - Responsibility for person causing contamination
 - Notice of commencement of removal of equipment and specified time to completion
 - Prescriptive requirements for reporting
 - Revisions to the Tier I Risk Management Option

Saskatchewan (Cont'd)

1. Definition of Contaminated Sites
 - No change
2. Who is the Person Responsible?
 - No change
3. What is “Clean”
 - Guideline
4. Sign-off from Statutory Liability
 - No change

Saskatchewan (Cont'd)

6. Qualified Persons
 - No change
7. Incentives
 - No change

Conclusion

1. Definition of Contaminated Sites
 - no changes to the degree of variation to the present between the provinces
2. Who is the Person Responsible?
 - generally speaking they are similar but exemptions present only in some provinces
3. What is “Clean”
 - significant difference in applicable Standards
 - increased use of “Tier II Risk Assessment”

Conclusion (*Cont'd*)

4. Sign-off from Statutory Liability

- in some provinces

Registry of Contaminated Sites

- becoming much more common

6. Qualified Persons

- typically similarly designated professionals

7. Incentives

- significant variability between provinces

Thank You

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