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April 2, 2021

Ministry of the Environment, Conservation and Parks  
Technical Assessment and Standards Development Branch  
40 St. Clair Avenue West, 7<sup>th</sup> Floor  
Toronto, Ontario  
M4V 1M2

Attn: Mr. Paul Welsh

**Reference: Environmental Registry of Ontario Posting No. 019-2551 (Proposed updates to “Records of Site Condition: A Guide on Site Assessment, the Cleanup of Brownfield Sites and the Filing of Records of Site Condition”)**

Dear Mr. Welsh,

The Canadian Brownfields Network (CBN) appreciates the opportunity to participate in the Ministry of the Environment, Conservation and Parks invitation to comment with respect to the proposed updates to the guidance document “Records of Site Condition: A Guide on Site Assessment, the Cleanup of Brownfield Sites and the Filing of Records of Site Condition” (colloquially, the RSC Guide). CBN’s Technical Advisory Committee (TAC) has solicited and compiled comments from interested members for the purpose of making this submission on behalf of CBN. CBN has a diverse membership of site owners, developers, consultants, and industry association representatives who are active in the area of brownfield development within Ontario and across Canada.

CBN is committed to supporting the redevelopment and reuse of brownfield properties through advocacy for regulations and policies that are founded on sound science and appropriate risk, are harmonized across jurisdictions, and provide clarity and certainty with respect to brownfield redevelopment.

The proposed updating of the Ministry’s RSC Guide is a positive development to provide further guidance to Qualified Persons per Section 5 of Ontario Regulation 153/04 and other practitioners involved in the assessment and cleanup of Brownfield properties.

CBN strongly supports the updating of the RSC Guide, but suggests the Ministry consider further changes that would improve the clarity on the responsibilities and improve the understanding of accepted professional practices within risk assessment per O. Reg. 153/04. The specific issues and suggestions for improvement are provided as an attachment in numerical format.

We would be pleased to discuss these comments further with the Ministry. In closing, we thank you for the opportunity to provide comments and input on the Guidance.

Kindest Regards,

A handwritten signature in black ink, appearing to read 'Peter Sutton', with a stylized, sweeping flourish at the end.

Peter Sutton  
Co-Chair, Technical Advisory Committee  
Canadian Brownfields Network

A handwritten signature in black ink, appearing to read 'Chris De Sousa', with a cursive style and a small flourish at the end.

Chris De Sousa  
President  
Canadian Brownfields Network



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### **Comments on draft RSC Guide (ERO No. 019-2551)**

1. Last paragraph of Page 6. Suggest clarifying that applicable standards must be met for “potentially contaminated media, which includes one or more of soil, groundwater or sediment.”
2. Page 14 - MECP has added a “Completeness Check” as a formal step in the review process. Although this step adds value to the overall review, it should be completed within the regulated 30 day timeframe, which should start when the RSC is submitted by the QP. The undefined “completeness check” timeline makes it challenging for QPs and landowners to tracking project timing.
3. Page 16 references the 2011 “Guide for Completing Phase One Environmental Site Assessment Under O. Reg. 153/04”. This guidance document generally lacks detail, and has not been updated to include some of the MECP interpretations that have developed since 2011. Providing additional clarity to QPs through updated guidance would improve the quality of submissions and reduce MECP workload. Examples include MECP’s interpretation of how to document PCAs that are not expressly listed in O. Reg. 153/04, or MECP’s interpretation of how the use of road salt should be identified as a PCA (prior to the recent regulatory amendments).
4. Page 17 references the 2011 “Guide for Completing Phase Two Environmental Site Assessment Under O. Reg. 153/04”. This guidance document generally lacks detail, and has not been updated to include some of the MECP interpretations that have developed since 2011. Providing additional clarity to QPs through updated guidance would improve the quality of submissions and reduce MECP workload. Specific examples include MECP’s interpretation of appropriate borehole or monitoring well spacing, requirements for cross section preparation, etc.
5. Section 4.2.2 specifies delineation requirements. It is appreciated that the MECP included a step-out distance of 40 to 50 metres. However, MECP reviewers typically request 20 to 25 metres. It would assist the quality of submissions if these distances were more clearly documented.

6. Section 4.2.2 also “suggests” the use of colour coding to identify where samples are below or above the Standard. Given that the MECP reviewers typically ask for this colour coding through review comments (as a hard requirement), it would be beneficial to clearly identify the requirement. It would also be beneficial for MECP to clearly identify their requirements regarding parameter groups being shown on the same figures. In many cases, the QP is trying to communicate these requirements to a client who doesn’t understand the need to generate many additional figures. If MECP clearly documents the requirement, communication to clients can be supported by documentation, and there will be less instances of “submitting to see what MECP will accept”.
7. Section 4.2.3.2 introduces the concept of an “update” Phase One ESA and Phase Two ESA. These concepts contradict the wording of O. Reg. 153/04 and should be evaluated further. The Regulation specifies report titles, and “update” is not part of either one. Additionally, the Regulation specifies the timing of the Phase One ESA, Phase Two ESA, and RA. Although the timing specified in the Guidance document aligns with current MECP interpretation, they do not match the Regulation, which introduces confusion for the regulated community.
8. Section 5.2 introduces QP requirements. MECP should consider introducing minimum experience requirements of QP (ESA). The current format of O. Reg. 153/04 has been in place for 10 years, and the vast majority of QPs working in the environmental field have several years of experience in completed ESAs under O. Reg. 153/04. MECP is currently relying on the PEO and PGO alone to regulate who is qualified to file RSCs. The quality of submissions would improve if minimum requirements were specified by MECP.
9. Section 6.6 identifies scenarios where shallow soil standards (Table 6 or 7 should be used). It would be beneficial for MECP to clarify when they expect Table 6 or 7 to be used for shallow groundwater situations. The use of Table 6 and 7 for situations where volatile parameters are present in shallow groundwater is inconsistent within the QP community. Clarity would improve the quality of submissions.
10. Section 6.7 discusses properties within 30 metres of a water body. To improve the quality of submissions, MECP should provide clarity on the definition of the edge of a water body, or top of bank. There is inconsistency in how this is interpreted.
11. Section 6.10 describes a requirement to identify “APECs associated with the application of salt”. For clarity, O. Reg. 153/04 only includes “Salt Manufacturing, Processing and Bulk Storage” as an APEC, not the application of salt. However, MECP comments on RSCs have suggested that MECP considers the application of salt to be an APEC. To improve the quality of submissions, MECP should clearly identify in the guidance document where there are interpretations of the Regulation that are not clear or are commonly misunderstood. As an alternative, the PCA definition could be clarified to align with MECP’s interpretation.

12. For clarity, Section 6.10 should be modified to clearly state that if a Phase One ESA is completed, and the only APEC identified is the application of road salt, and the QP has confirmed that the exemption in Section 49.1 applies, then a RSC can be filed based on the Phase One ESA alone.
13. Section 6.12 should be modified to clarify if MECP expects the multiple lines of evidence and the associated data to be included in the Phase Two CSM, and subject to MECP review.
14. MECP should consider including updated guidance to QPs on common problem areas with Phase One and Two CSM documents. This additional clarity would improve the quality of submissions and minimize MECP review effort
15. Section 7.4.1 includes a description of the MGRA process. MECP should consider expanding the scenarios where the MGRA could be used, including additional RMMs for common scenarios.
16. Section 7 includes the key components of a RA, along with relevant review timelines. However, MECP often does not provide comments on the CSM at the same time as the PSF or RA documents. MECP may want to consider including this in the Guidance document, to provide greater clarity to the QP community (and their clients).
17. Section 8 includes requirements for remediation, including a discussion on free product that cannot be remediated. MECP should consider including language to clarify that MECP's expectation is that free product should be removed to the extent practical, and that Risk Assessments and RSCs that include free product represent an additional level of complexity.
18. The discussion on free product should also identify that product could be lighter or denser than water.
19. Section 9 connects the RSC requirements to Excess Soil management requirements under O. Reg. 406/19. For clarity, MECP should clearly identify when the different soil quality requirements would apply. As an example, if a RA is being completed to support RSC filing, and soil is imported during the RA review period, would the proposed RSC standards apply, or would the Excess Soil standards apply. For clarity in Section 9.2, MECP could confirm "when" a property becomes a RSC Property.
20. Section 10 includes specific guidance related to the RSC filing process. To support QPs, MECP should include their review checklist in this document, to improve the quality of submissions and minimize MECP review effort.

21. For clarity, MECP could also include current version of documents MECP expects to see, including:

- a. Table of Current and Past Uses
- b. APEC Table
- c. Lawyer's Letter
- d. Certifications on Survey

22. Section 12.3.1 includes requirements for when a RSC must be in place. MECP should consider providing clarity on expectations, to support municipalities. The amount of construction that can occur after excavation/shoring but before RSC acknowledgement should be clearly identified.