Brownfields: Answers to Technical Questions

The following are frequently-asked questions on Brownfields organized by topic.

Records of site condition

What does the phrase "in, on or under the property" mean?

The phrase "in, on or under the property" is found in a number of places in the EPA and the regulation, including in the definition of a phase one environmental site assessment (ESA) in the Environmental Protection Act (EPA). This phrase is used because property may be legally separated from other property horizontally, and the environmental reality is that contaminants are not restricted to these horizontal boundaries. It is also true that they are not restricted to vertical boundaries, but Part XV.1 of the EPA contains detailed rules regarding the presence and movement of contaminants off, or away from, a record of site condition (RSC) property.

Generally the phrase "in, on or under the property" means that regardless of whether a property has a horizontal legal boundary or has otherwise been separated from other 'properties' on a horizontal basis, the ESAs must take account of things both above and below the property.

Does one need the legal description, legal deed or survey plan to file an RSC?

The RSC for the property must include the legal description of the property with a copy of the legal deed. The property must have a copy of the map of the surveyed property completed by a licensed Ontario Land Surveyor, which may include all or part of the property described in the deed.

Can I use publicly available maps to obtain the geographic coordinates of the centroid of the property?

The use of a Global Positioning System (GPS) receiver to obtain relevant geographic coordinates is mandatory.

Why do you have to "submit and file" a record of site condition?

The 2009 amendments to Ontario Regulation 153/04 (the regulation) require the submission of a RSC before it is filed on the Environmental Site Registry. Once a RSC is submitted and complete, the Ministry of the Environment (the ministry) will advise you, the owner of the property, within 30 business days whether the RSC has been:

(a) filed as is;

(b) is being returned because it has not been completed in accordance with the regulation. If the RSC was not completed in accordance with the regulation, your qualified person (QP) will be told the reason(s) why the RSC is being returned; or,

(c) whether a review of the RSC will be done.

If a review is being done by the ministry, the owner of the property will be given a preliminary estimate of the time it is expected the review will take. In addition, the phase one ESA report prepared in support of the RSC and any further ESA reports and other documents relied on by the QP in making "certifications" required when submitting a RSC will likely be requested and looked at as part of the review by the ministry.

The filing date of the RSC is significant because this is when the property owner and successors are protected, subject to certain conditions, from various orders which could be issued under the EPA or the Ontario Water Resources Act. The filing date is also important because you cannot change the use of the property, where the RSC is one that has to be filed before the change can occur, until the filing date (there are certain exceptions for some preliminary construction activities).

What if there is information that is considered to be unfavourable with regard to the property? What if I, as the property owner, know about this information but I don't have it myself? Do I have to give it to the qualified person?

If there is information "relevant to [the] RSC", then, generally, you must provide it to the QP. This includes some information that you do not possess. Information relevant to a RSC includes:

- other environmental site assessment reports;
- remediation reports;
- reports prepared in response to an order or request by the ministry; and,
- any other reports relating to the presence of a contaminant on, in or under the phase one property or to the existence of an area of potential environmental concern.

The obligation to provide the QP with relevant information applies to any information you or someone else funding the RSC possesses or controls, so that you are obliged to take steps to provide the information to the QP where someone else has it physically. When the RSC is being submitted you will have to certify you have "conducted reasonable inquiries to obtain" all such information, and that you have or have not obtained all of which you are aware and disclosed it to the QP. So you must let the QP know what you have not been able to obtain as well as provide a copy of what you have obtained.

Does the qualified person have any obligations to obtain particular information?

In addition to detailed rules concerning information to be obtained when conducting or supervising a phase one ESA, there are also some general obligations, including the obligation to obtain information that is "reasonably accessible".

There are a number of criteria for determining whether information is considered to be reasonably accessible including any information:

- that someone gives to you, or someone you supervise;
- that is publicly available, such as from a library or a government source through access to information legislation; and,
- that is relevant to the environmental condition of a phase one property and is within the possession or control of the owner, or someone else funding the phase one ESA. You may be obliged to obtain this information; however, this obligation can be met by obtaining a written statement from the owner or person funding the phase one ESA.

The written statement must:

(a) state that the information has been provided to the QP, or someone supervised by the QP;

(b) describe the information provided;

(c) provide details of any other information of which the owner, etc. is aware of; and,

(d) state that all of the information of which the owner, etc. is aware of has been included in the statement.

What questions should I, as a qualified person, or ask myself if I have been retained to conduct or supervise a phase one environmental site assessment?

If you are a QP retained to conduct or supervise a phase one ESA, there are a number of questions to ask yourself. The following is a sampling of questions; it is not intended to be complete.

- **Is this ESA in support of the submission of a RSC?**
  If the answer is yes, then the requirements of the regulation and Part XV.1 of the EPA apply. If the answer is no, then the requirements do not apply.
- **Do you or your employer have a direct or indirect interest in the property being assessed?**
  You must determine the answer. If the answer is yes, you may not accept the engagement.

- **How do I begin to complete a phase one environmental site assessment?**
  You must complete a preliminary records review.
- **Is there a "phase one environmental site assessment" already prepared?**
  If there has been previous work or a previous report completed, you will need to determine a number of things. For example, does the work or report meet the requirements for a phase one ESA. This will involve reviewing Parts VI and VII of the regulation as well as Schedule D of the regulation. There are at least four things to determine:
    - Although you have not conducted or supervised the completion of the work or report, is the report and the work underlying the report something that could be used to submit a RSC?;
    - Can a RSC be submitted based on this report alone (there is no other information contained in other reports that is necessary to meet the requirements/objectives of the regulation)?;
    - If the answer to the questions above is yes, then you must complete the steps required before a QP may use the work of another QP who actually conducted or supervised the work; and,
    - If the answer to either of the above questions is no, then you must determine what further work needs to be done (what requirements or objectives must be met) before the previous work or a previous report can be used to submit a RSC.

I have an "old" phase one environmental site assessment report. What can I do with it?

If the report is 18 months or older, since the last work on the records review, the interviews and the site reconnaissance was done, you will need to do an update. The extent of the update will depend on the circumstances. For example:

- Where a phase one ESA, including the report: (a) meets the new requirements of the regulation; (b) the last work was completed just over 18 months ago; and, (c) there have been no changes at the property, the update could possibly consist of a letter outlining and documenting these facts.
- Where, on the other hand: (a) circumstances have changed; (b) more time has passed; and, (c) the last work was completed five years ago, the update would most likely be extensive (and may require additional field work). In this situation, it may be more practical to complete a new ESA.

Record of site condition submission process

If I request an interview and the interviewer refuses, is it acceptable to just note the refusal or must the qualified person get an interview regardless of situation?

It is not acceptable to just note a refusal without making all reasonable efforts to ensure an interview takes place. However it is not necessary to get an interview in all cases.

The kinds of persons to be interviewed are described in sections 5 to 7 of Schedule D of Ontario Regulation 153/04.

As noted, in some cases a QP must ensure interviews are conducted. For example:

- A current owner or occupant of the phase one property, where one can be identified;
- An individual with control or authority over the owner or occupant, where the owner or occupant is not an individual; and,
- The key site manager for each use, where the phase one property is currently being used for one or more industrial uses or as a garage; as a bulk liquid dispensing facility, including a gasoline outlet; or for the operation of dry cleaning equipment.

The QP must also make all reasonable efforts to ensure the following persons are interviewed:

- Anyone relevant to meeting the general and specific objectives of the phase one ESA as defined by the QP;
- The key site manager for each use identified that is no longer being carried on, where all or part the phase one property is being, or has been used, for one or more industrial uses or as a garage; as a bulk liquid dispensing facility, including a gasoline outlet; or for the operation of dry cleaning equipment; and,
- If an owner or occupier of the phase one property cannot be identified, an owner or occupant of a property in the phase one study area, and a provincial or municipal official, familiar with the phase one property and its history, as determined by the QP having regard to the objectives of the phase one ESA. More details are provided in Section 6 of Schedule D of Ontario Regulation 153/04.

What is an “enhanced investigation property” and when does this term apply?

An enhanced investigation property is a property that is used, or has ever been used, in whole or in part for an industrial use or any of the following commercial uses:

- A garage;
- A bulk liquid dispensing facility, including a gasoline outlet; or,
- For the operation of dry cleaning equipment.

The term enhanced investigation property applies during the completion of a phase one environmental site assessment. Additional investigations of the phase one property must be undertaken if the phase one property is an enhanced investigation property. For example, additional records review would be required. Also, where the phase one property is still being used for industrial or any of the specified commercial uses, there are additional interviewing requirements.

Can you please explain the 18-month stale date on phase one and two environmental site assessment reports?

Records of site condition submitted for filing as of July 1, 2011 must meet the new requirements. If the date of the last work on all of the components of either the phase one or phase two ESA, other than review and evaluation, and the report, was done more than 18 months ago, then you, as the QP, will need to do an update and may need to do a new ESA depending on how much time has elapsed. This update might be brief if the ESA meets most of the new requirements. Or the update may require additional ESA work and reporting, if there is a new area of potential environmental concern or if the ESA report does not meet the requirements of the regulation.

What constitutes an "update" for environmental site assessment work?

An update does not necessarily mean starting over. The extent of the update depends on the ESA work and report that has already been completed.

In the case of a phase one ESA, for example, if the date of the last work of the records review, interview and site reconnaissance is more than 18 months ago but there is no new or materially changed area of potential environmental concern, the phase one ESA meets all the requirements, the phase one ESA report is a single document and is the most recent document that meets the requirements, then the QP will be able to prepare a very brief update report. In this situation, the QP would only be required to prepare a short document such as a letter report that details the above facts.

If the phase one ESA does not meet several of the requirements or the phase one ESA report does not meet many of the reporting requirements, more would have to be done. The QP would have to ensure whatever was still needed to achieve the general and specific objectives, and the requirements, of a phase one ESA was done. In this situation, it is anticipated that a new phase one ESA report would likely be written, using information from the previous phase one ESA and new information from new ESA work.

When does the amended Analytical Protocol come into effect?

The 2004 Analytical Protocol applies until June 30, 2011. As of July 1, 2011, the amended Analytical Protocol is in effect. If a qualified person wishes to use an alternate method either before or after July 1, 2011, the laboratory requires the written permission of the Director, as specified in subsection 47(4) of Ontario Regulation 153/04.

Are qualified persons required to report all parameters tested by the laboratory?

Yes, paragraph 168.4(2)6 of the Environmental Protection Act requires that the RSC contain the maximum known concentration for each contaminant for which sampling and analysis has been performed as of the certification date. In addition, clause 47(1)(e) of Ontario Regulation 153/04 requires that the QP ensure that the laboratory is not instructed to exclude, from an analytical report or certificate of analysis, any of the parameters which were analyzed. Therefore the laboratory must report, and the QP must include, the analytical results for all contaminants analyzed in the RSC.

Standards

What are site condition standards?

The Soil, Ground Water and Sediment Standards for use under Part XV.1 of the Environmental Protection Act ("Soil, Ground Water and Sediment Standards") are published by the Ministry of the Environment and referred to in Ontario Regulation 153/04, Records of Site Condition.

These site condition standards (SCS) consider the various ways humans, animals and plants can be exposed to contamination, and also take into account the broad range of physical conditions that occur across the province, (e.g. from the shallow soils of the Canadian Shield to the deep topsoils of south-western Ontario). Generic standards are developed using a risk assessment model with the goal of providing for any 'receptor' that could come into contact with a contaminant the intended protection, regardless of how the contact may occur and whether it does in any specific case. This conservative approach ensures that these standards can be applied generically for the purpose of filing a record of site condition.

Under the current Ontario Regulation 153/04, there are nine (9) SCS tables (2011 standards).

How are site condition standards related to the filing of record of site condition?

To file a RSC, a QP, as defined under Part II (6) of Ontario Regulation 153/04, first must determine whether or not the property meets the applicable SCS. Ontario Regulation153/04 specifies SCS, which are primarily specific to property use, ground water potability and type of soil conditions.

What if the property does not meet the site condition standards?

If a property does not meet the applicable site condition standards (SCS), then, the property owner may remediate the property to meet the applicable SCS, and/or, undertake a risk assessment (RA) to establish Property Specific Standards for that individual property for filing a record of site condition.

Risk assessments

What is a risk assessment?

Risk assessment scientifically examines the risk posed to humans, plants, wildlife and the natural environment from exposure to a contaminant. The purpose of a Risk Assessment is to develop property specific standards that will protect the uses that are being proposed to take place on the property. The Risk Assessment includes:

- Assessing potential risks based on the proposed property use.
- Setting a property-specific standard for each contaminant found on the site that is appropriate for the proposed land use. The ministry must approve the property-specific standards.
- Identifying required risk management measures (engineered or land use controls), if any are required, that must be incorporated into the proposed redevelopment such as a barrier that blocks exposure to a contaminant

The level of risk afforded by property-specific standards (PSS) derived through a RA is the same as the target level of risk for any of the SCS published in the document Soil, Groundwater and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act. It is important to remember that the SCS are also derived through a risk assessment model and also include other considerations such as typical background ranges from across Ontario and laboratory method detection limits.

RA is an option for property owners who want to file a record of site condition (RSC) when their property does not meet the SCS applicable to their site

A RSC can be submitted if the property meets alternative standards that have been specified in a RA accepted by the ministry.

What kind of alternate risk assessments are there and when do they apply?

Under the current Ontario Regulation 153/04, there are four (4) types of alternative RA procedures:

1. **Limited Scope Risk Assessment (LSRA)**
   A Modified Generic Risk Assessment or a RA based on a Community Assessment Report (CAR)
2. **Estimation of Natural Local Background concentrations risk assessment**
   Where background levels are not achievable due to naturally elevated concentrations
3. **New Science Risk Assessment**
   A RA that uses a computer model that is not available to the public is available to RA practitioners for a fee but has not been used by the ministry; or one that develop a standard for a contaminant where there is no applicable site standard
4. **Wider Area of Abatement Risk Assessment**
   A RA where the ministry has identified the RA property to be within a wider area of abatement

To see when the various types of RAs above apply, please refer to Part II of Schedule C and "Procedures for the Use of Risk Assessment under Part XV.1 of the Environmental Protection Act" Ministry of the Environment publication 5404e. Download this at ontario.ca/brownfields.

Have the types of risk assessments changed as a result of the 2009 regulatory amendments to Ontario Regulation 153/04?

As a result of the amendments to Ontario Regulation 153/04 by Ontario Regulation 511/09, the types of risk assessment remain the same, with the following exception:

- RAs based on a community assessment report or the modified generic risk assessment model are classified as a limited scope risk assessment, which means that the review time is reduced to 8 weeks from 16 weeks.

For specific details of these RAs, please refer to Schedule C, Part II, Section 7 of the regulation.

Who is qualified to complete a risk assessment?

Risk assessments must be prepared and supervised by a qualified person who has several years of experience in the field of risk assessment. These qualified persons must meet the specific educational and experience. They are also known as qualified persons for risk assessment (QPRA).

Is there guidance available for conducting risk assessments under Ontario Regulation 153/04?

Yes. The ministry has published a document titled, "Procedures for the Use of Risk Assessment under Part XV.1 of the Environmental Protection Act". Download this at ontario.ca/brownfields.

For the most part, these documents are technical in nature and intended for qualified persons.

What is the review timeline for risk assessments?

Under Ontario Regulation 153/04 (the regulation), ministry review times for RA submissions are regulated. In general, RA submission review timeline will be 16 weeks unless:

1. You are submitting a limited scope RA or an estimation of natural local background RA, for which the review timeline will be 8 weeks;
2. You are submitting a new science RA and/or a wider area of abatement RA, for which the review timeline will be 22 weeks.

Please also note that the Director's decision to accept or not to accept the RA must be made within the prescribed regulated timeline. The regulation provides that the review timeline can be suspended if the ministry review finds that the RA is deficient or non-compliant with the regulation. In this situation more information may be required to continue with the review of the risk assessment.

What is a modified generic risk assessment (or Tier 2)?

A modified generic risk assessment (MGRA) is a new type of risk assessment that uses the "Approved Model" as part of their RA and is submitted to the ministry using a template provided by the ministry.

What is the purpose of the modified generic risk assessment (or Tier 2)?

The purpose of the MGRA is to allow for the development of site specific standards using the ministry's approved model, which, when site conditions allow, removes the inherent conservatism of the generic standards based on site specific conditions, while retaining protection of public health and the environment. The model can be adjusted to match site specific conditions to be supported by site specific data or by opting into one of the risk management measures published in the approved model. The ministry's review timeline for an MGRA is eight (8) weeks.

Approved model

What is the approved model?

The approved model was developed by the Standards Development Branch, Ministry of the Environment, based on the model used to develop the generic site condition standard.

The approved model allows the qualified person (QPRA) to modify any one or all of the 11 modifiable parameters, such as soil type, fraction of organic carbon, distance to closest surface water body, minimum depth below grade to the highest water table, aquifer horizontal hydraulic conductivity and gradient and choosing whether to opt into one of the risk management measures offered for use in a risk assessment to generate PSS. It should be noted that there are specific phase two environmental site assessment requirements that must be followed when using the MGRA approved model. Please refer to Table 4 of Schedule E, Ontario Regulation 153/04 for additional details.

A copy of the approved model can be downloaded from ontario.ca/brownfields.

For which types of sites is the modified generic risk assessment approved model expected to be most useful?

The MRGA approval model is expected to be most useful for the following sites:

- When low to moderate levels of contamination and no free product present on-site; and,
- MGRA risk management measures (RMMs) are the only RMMs that may be proposed at a site.

Details of these RMMs can be found in the RMM – description tab of the approved model.

What situations would prohibit the use of the modified generic risk assessment approved model?

The following situations will prohibit the use of the MGRA approved model:

- If Section 41 applies, meaning:
    - Surface soil pH <5 or >9; and/or
    - Subsurface soil pH <5 or > 11; and/or
    - The property is within, or includes, or is adjacent to, or includes land within 30 m of an Area of Natural Significance.

In addition to the above, if any of the following applies, the MGRA approved model should not be used, these include:

- The human health receptor characteristics are not adequately represented by those included in the modified generic model.
- Exposure to contaminants to receptors at the site is expected to be greater than that described in Rationale for the Development of Soil and Ground Water Standards for Use under Part XV.1 of the Environmental Protection Act, Ontario Ministry of the Environment, 2009 (the Rationale).
- The proponent is choosing to use Toxicity Reference Values that are different from those described in the Rationale.
- The ecological receptor characteristics for generic valued ecosystem components (VECs) are not adequately represented by those included in the modified generic model.
- The hazard assessment for the ecological receptor is different from those documented in Modified Ecological Protection option of the MGRA or the generic exposure model documented in the Rationale.
- If the risk assessment is deemed a wider area abatement risk assessment by the local Ministry of the Environment district office.

When using the modified generic risk assessment approved model, how do you model parameters (contaminants of concern) that are not on the list in the model?

The modified generic risk assessment model can only be used to develop PSS for those substances listed in the Soil, Ground Water and Sediment Standards. For a contaminant of concern (COC) that is not included in this document, a full risk assessment (Tier 3) would have to be performed in order to generate a property specific standard for that COC.

Can you develop property specific standards for more than 10 contaminants of concern using the approved model?

In the approved model, you can choose any of the COCs that are available from the drop-down list. However the approved model currently only allows the user to select up to 10 COCs at a time, thus, if you want to develop PSS for more than 10 COCs, you will need to run the model a few times.

The ministry is currently working on a process so that the QPRA will be able to develop PSS for more than 10 COCs at one time.

If the water table at my site is higher than 1.5 m below ground level, can I use the approved model?

Provided that the approved model is suitable for use at the risk assessment property, if water table is 1.5 m below ground level or higher, the model can still be used to generate property specific standards. However, the soil vapour screening component of the model will not be available.

Can I use the "Ground Floor Non-Residential" risk management measure at an industrial site where all of my neighbours are also industrial sites?

Provided that the MGRA is suitable for use at the risk assessment property, yes. This risk management measure uses the Industrial/Commercial/Community GW2 (ground water to indoor air) component values. GW2 usually defaults to residential values to protect residential neighbours. In most cases, this assumption would not be considered as a risk management measure (and would not be included in a Certificate of Property Use) at an industrial/commercial site. This is because on an Industrial/Commercial/Community site, all ground floors are, by definition, non-residential. However the possibility of off-site exceedence of the applicable site condition standard must still be considered in the MGRA.

Can I use the approved model when ground water is in bedrock?

Provided that the approved model is suitable for use at the RA property, if your site is a "shallow soil" site (< 2m to bedrock), then yes, you can. Tables 6 and 7 of the Standards are for shallow soils. However, all of the MGRA variables that relate to the aquifer properties (e.g., Foc, hydraulic conductivity, gradient) are inappropriate for bedrock aquifers since they assume a porous media aquifer. For Tier 2 to be used with shallow soils (bedrock aquifers), the travel distance in the aquifer from the centre of the contaminated zone to surface water must stay fixed at the generic value of 36.5 m or else the S-GW3 value becomes invalid and non-conservative. In other situations, the approved model would not be appropriate because your site's conceptual site model would not match that of the generics or MGRA, as groundwater flow in porous media is assumed in those models.

If your site is not a "shallow soil" site, you could choose to use the approved model in a Tier 3 RA submission. The qualified person would need to provide a complete technical explanation as to why using the model, including all assumptions made, is scientifically appropriate. This would require a detailed understanding of how the model works for ground water flow and how it affects resultant soil standards.

If I have a site that is shallow soil property and is within 30 m of a water body, and some contaminants of concerns exceed the current Table 1 background standards, what are my options if I want to file a record of site condition?

If you wish to file a RSC for the property, you have the following two (2) options:

Option 1: Complete a full risk assessment for the site to generate PSS for filing RSC.

Option 2: Provided the earlier question regarding whether the approved model is suitable for use at the risk assessment property does not apply, you could choose to use the MGRA approved model to generate property specific standards for filing a RSC as the approved model have captured these conditions (shallow soil and within 30 m to a water body) in the model. For

additional details regarding the Interim MGRA submission process, refer to this technical update (Technical Update: Use of "Approved Model" in preparing and submitting a "Modified Generic Risk Assessment" under Part XV.1 of the Environmental Protection Act and the Record of Site Condition Regulation (O.Reg. 153/04) (May 2011)) . Download this at ontario.ca/brownfields.

Wider area of abatement

When is a property designated as a wider area of abatement?

Ontario Regulation 153/04 identifies a number of Alternative Risk Assessment approaches. The wider area of abatement is an alternative risk assessment approach. Section 10 of Schedule C of the Regulation states:

10. (1) A risk assessment is a wider area of abatement risk assessment if the ministry has identified the RA property to be within a wider area of abatement in its comments on the pre-submission form or in a notice issued under subsection 46(2) of the regulation.

(2) If the ministry has identified the property to be within a wider area of abatement, the wider area of abatement risk assessment must include:

> (a) Consultation with the applicable Ministry of the Environment district or regional office regarding the implications so the risk assessment report recommendations; and
> (b) Development and implementation of a public communication plan.

Reasons for considering a property to be in a wider area of abatement may include:

- Existing Control Documents (example certificate of prohibitions, ministry compliance orders in relation to subsurface contamination, current or past environmental compliance approvals);
- Contamination which extends beyond the property boundary affecting other properties or receptors;
- Contamination from an off-site source which comes onto the property (can also be addressed by a flow through RA);
- Co-mingled plumes on or off the property;
- Proposed risk management measures which may impact beyond the property boundary;
- Any kind of action required by a party other than the record of site condition property owner (including acceptance of a standard for adjacent property)l and/or
- Community concern.

Can the modified generic risk assessment approved Model be used in a wider area of abatement risk assessment?

If appropriate the model can be used in any kind of RA with the exception mentioned above. This could include a wider area of abatement RA. However if a risk assessment is submitted as a MGRA and it is later determined that it should be a wider area of abatement RA, the RA will no longer be a MGRA, and the regulated review timeline would be 22 weeks and not 8 weeks.

How can I find out if my MGRA property is part of a wider area of abatement?

It is recommended that you contact your local Ministry of the Environment district office before submitting your MGRA. Also, if you determine that there is a likelihood of off-site exceedance of applicable site condition standards due to contaminants at your site, it is recommended that in your MGRA you report on actions taken to reduce this likelihood, and results of consultation undertaken with affected property owners.

What if I submit an MGRA and THEN find out that my site is part of a wider area of abatement?

If an MGRA has been submitted with respect to a property which has been or is later identified as being within a wider area of abatement by the ministry, then the RA will no longer be a MGRA, but the RA will still be reviewed by the ministry and will be considered as a full RA with a 22 week review timeline. Additional information and work may be requested during the review.

Pre-submission form

What is the purpose of the pre-submission form?

The pre-submission form (PSF) was developed in response to stakeholder requests for a feedback mechanism early in the RA process. The PSF allows for early feedback from the ministry on the proposed RA approach. By providing an overview of the problem formulation and conceptual site models, ministry reviewers are able to provide advice to proponents on the requirements of Ontario Regulation 153/04.

Why do I have to submit a pre-submission form along with my modified generic risk assessment?

For all RAs submitted under Ontario Regulation 153/04 (including MGRAs), the submission of a PSF is a requirement of the regulation. In the case of a MGRA, the submission of a PSF takes place at the same time as the submission of the RA.

Certificate of property use

What is a certificate of property use?

A certificate of property use (CPU) is a control document that is issued by the ministry to a property owner in relation to an accepted RA that is required to implement RMMs. RMMs are implemented on a site to ensure there is no adverse effect associated with the contaminants present on site. The Director who issues the document may also alter the CPU or revoke it.

What may a certificate of property use require?

A CPU **may** require the owner to:

- Take any action specified in the CPU necessary in the Director's opinion to prevent, eliminate or ameliorate (lessen) any adverse effect identified in the risk assessment. This can include installing equipment, monitoring any contaminant or recording or reporting information for this purpose
- Refrain from using the property for any use specified in the CPU
- Refrain from constructing any building specified in the CPU
- Register a Certificate of Requirement (CofR) on title of the property at the municipal land titles office.

A CPU **may not** require the owner to:

- Take any action that would have the effect of reducing the concentration of a contaminant on, in or under the property to a level below the level required to meet the standards specified for the contaminant in the risk assessment.

What other actions may be taken relating to the issuance of a certificate of property use?

The Director may include in the CPU a requirement that the owner provide financial assurance for the performance of any action specified in the CPU or measures appropriate to prevent adverse effects in respect of the property, i.e., the property, to which the CPU relates.

Who receives a copy or is given notice of the issuance, alteration or revocation of a certificate of property use?

- A chief building official (as defined in the Building Code Act, 1992) of the municipality in which the property is located;
- The clerk(s) of the local municipality and any upper tier municipality in which the property is located

- Where a board of health planning board or a conservation authority has authority under s. 3.1 of the Building Code Act, 1992,
    - The inspector who has the same powers and duties as a chief building official
    - The medical officer of health or the secretary/treasurer of the planning board or conservation authority.

What is included in a Certificate of Requirement?

A CofR is a document prepared by the ministry and includes a description of the CPU, the Record of Site Condition registration number in the Environmental Site Registry, and the requirement to give a copy of the CPU, before dealing with the property, to every person who will acquire an interest in the property.

How is a Certificate of Requirement registered on title?

Many documents are now registered on title electronically. The ministry cannot perform such registrations but can authorize the legal counsel of any proponent to do so. Legal counsel of the proponent will provide to the ministry Director who issued the CPU an "Acknowledgment and Direction" form for the Director to sign. Attached to the form is the electronic registration information including a proper legal description (prepared by counsel) and the CofR one page document (prepared by the ministry) as a schedule. Once the document has been registered, confirmation of the registration is sent back to the ministry by the proponent or its legal counsel. In some cases the local land registry office may not have an electronic submission process for registration on title. In these instances you should contact your local Ministry of the Environment district office to determine the appropriate procedure for title registration of the CofR.

Why is knowing about a certificate of property use important for municipal officials, including building officials?

Some requirements found in a CPU might limit or prohibit the property from certain uses. To issue a Building Permit that permits a prohibited building type or use would be an offence under the EPA. It would also become a violation under Section 8(2)(a) of the Building Code Act, 1992, to issue a Building permit without ensuring all applicable law has been met.

Certain changes in property use which would otherwise be prohibited under the EPA, are allowed if a RSC has been filed to the Environmental Site Registry for the property. Building officials involved in any change in use will want to be aware of whether a RSC is required and, if it is, whether the required RSC has been filed.

As well, whenever there is a RA and a CPU – which may be the case even where there is no RSC – specific rules can apply to building officials as follows. Where a CPU has a provision requiring an owner not use the RA property for a specified use or construct a specified building, no permit, licence, or approval may be issued under certain provisions authorizing the use of the property for the prohibited use or the construction of a prohibited building. This binds building officials and includes the issuance of building permits. To issue a building permit which contravened this requirement would be an offence under the EPA.

Can a certificate of property use be viewed on the Brownfield Environmental Site Registry?

Yes, the certificate of property use can be viewed as an attachment to the record of site condition on the Environmental Site Registry.

Will there be a CPU associated with a MGRA?

Where someone submits a MGRA, and is using one of the RMMs permitted for use in a MGRA, a CPU will be issued based on the RMMs that were selected in the submission.