

Please note: This is a draft of proposed *Contaminated Sites Remediation Regulations* which is intended for consultation purposes only. This document has no legal effect.

**Regulations Respecting the Remediation of Contaminated Sites
made pursuant to Section 91 of Chapter 1 of the Acts of 1994-95,
the *Environment Act***

Citation

1 These regulations may be cited as the *Contaminated Sites Remediation Regulations*.

Definitions

2 In these regulations

“any applicable Ministerial protocol” means any applicable standard, policy, guideline, procedure or protocol adopted or established by the Minister under clause 90(b) of the Act;

“applicable fee” means the fee established by the Minister in the *Environment Act and Regulations Fees Regulations*;

“Act” means the *Environment Act*;

“date of the Declaration” means the date of the Declaration of Property Condition;

“engineered or physical control” means a physical barrier, chemical barrier, control system or treatment system specifically designed to prevent or reduce exposure to contaminants;

“environmental registry” means the environmental registry established by the Minister under Section 10 of the Act; and

"site professional" means a person who meets the qualifications set out in Section 3 of these regulations.

Site Professionals

Qualifications of site professionals

3 A person is qualified to be a site professional if one of the following applies:

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- (a) the person is a Certified Environmental Professional in good standing with Environmental Careers Organization of Canada with a certification in one or both of the following areas:
 - (i) Environmental Protection, Site Assessment and Reclamation specialization; and
 - (ii) Environmental Management, Environmental Manager specialization;
- (b) the person holds a certificate of registration or a licence to practise in force under the *Geoscience Profession Act* and has at least 5 years experience in contaminated site investigation, management and remediation, which must include experience in all of the following:
 - (i) conducting a phase one environmental site assessment;
 - (ii) conducting a phase two environmental site assessment;
 - (iii) developing a remedial action plan; and
 - (iv) implementing a remedial action plan;
- (c) the person holds a certificate of registration or a licence to practise in force under the *Engineering Profession Act* and has at least 5 years experience in contaminated site investigation, management and remediation, which must include experience in all of the following:
 - (i) conducting a phase one environmental site assessment;
 - (ii) conducting a phase two environmental site assessment;
 - (iii) developing a remedial action plan; and
 - (iv) implementing a remedial action plan.

Liability insurance requirements for site professionals

- 4 (1)** A person acting as a site professional must maintain insurance coverage under an insurance policy that satisfies the requirements in subsection (2)

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- (a) at all times when the person
 - (i) undertakes or supervises any work in their capacity as a site professional; or
 - (ii) makes a statement or certification required by these regulations; and
 - (b) for a period of two years after the date the site professional ceases to act in his or her capacity as a site professional, including doing anything described in clause (a).
- (2) The insurance policy must satisfy all of the following requirements:
- (a) the insurance policy must indemnify the site professional against liability imposed by law arising out of the performance of or the failure to perform any activity described in subsection (1) for claims whenever occurring that are first made and reported to the insurer during the period of insurance coverage;
 - (b) the insurance policy must, at a minimum, specify an indemnity limit of \$2,000,000 per claim and \$2,000,000 in the aggregate during the period of the insurance; and
 - (c) the insurance policy must provide for the continuation of coverage if the insured is adjudged as bankrupt, insolvent, incompetent or dies during the period of insurance.
- (3) A site professional shall be deemed to be maintaining the insurance coverage required by this section if his or her employer maintains an insurance policy that covers the activities of the site professional in accordance with subsection (1) and the policy satisfies the requirements in subsection (2).

Retention of reports by site professionals

- 5
- (1) A site professional who relied on a report in making a statement or certification required under these regulations must retain a copy of the report for seven years after the date on which the statement or certification was made.
 - (2) Subsection (1) does not apply if the site professional takes all reasonable

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steps to ensure that a copy of the report is stored for the period referred to in subsection (1) in the offices of the firm, company or partnership where the site professional was employed at the time the report was prepared.

Contamination migrating to another Property

Notification of migration or likely migration of a contaminant

- 6** **(1)** A person responsible for a contaminated site who receives results of an environmental site assessment indicating that one or more contaminants has migrated or is likely to have migrated to another property and is causing or is likely to cause contamination on that property exceeding the generic numerical remediation level for residential/parkland land use as set out in any applicable Ministerial protocol must notify the person or persons who own the affected property and the Minister within 15 days of receiving the environmental site assessment.
- (2)** A notification required under subsection (1) must be provided in the form prescribed by the Minister and must contain all of the following:
- (a)** the name and address of the person or persons who own the property from which the contaminant has migrated,
 - (b)** the name, address and telephone number of the person responsible for the contaminated site who is providing the notification; and
 - (c)** a general description of the nature of the migration or likely migration of each substance.
- (3)** A notification required under subsection (1) must be signed by all of the following:
- (a)** the person or persons who own the property from which the contaminant has migrated;
 - (b)** the person responsible for the contaminated site who is providing the notification; and
 - (c)** a site professional who certifies that the information referred to in clause (2)(c) is accurate.

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Remediation of a contaminated site

Independent remediation

- 7 (1) In this Section, “independent remediation of a contaminated site” means remediation of a contaminated site in the absence of an order under Part XIII of the Act respecting the remediation.
- (2) A person responsible for a contaminated site who carries out independent remediation of a contaminated site must ensure that
- (a) the remediation is conducted in accordance with any applicable Ministerial protocol; and
 - (b) the remediation is conducted by or under the supervision of a site professional.
- (3) A person responsible for a contaminated site who carries out independent remediation of a contaminated site must
- (a) notify the Minister in writing prior to commencing any remedial measures, other than remedial measures required to address an emergency situation; and
 - (b) notify the Minister in writing within 90 days of completing remediation.
- (4) Clause 3(b) does not apply if a Declaration of Property Condition is submitted for filing under Section 9 within 90 days of completing remediation.
- (5) A notification under clause (3)(a) must be made in the form prescribed by the Minister and must include all of the following:
- (a) the legal description of the contaminated site to be remediated, including the parcel identifier number and civic address of the parcel or parcels of land to be remediated;
 - (b) the name and address of the person or persons who own the parcel or parcels of land to be remediated;

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- (c) the name, address and telephone number of the person responsible for the contaminated site who is providing the notification; and
 - (d) a general description of the nature of the contaminated site and the remediation being planned.
- (6) A notification required under clause (3)(a) must be signed by all of the following:
- (a) the person or persons who own the parcel or parcels of land to be remediated;
 - (b) the person responsible for the contaminated site who is providing the notification; and
 - (c) a site professional who certifies that the information referred to in clause (5)(d) is accurate.
- (7) A notification under clause (3)(b) must be made in the form prescribed by the Minister and must include all of the following:
- (a) the legal description of the contaminated site remediated, including the parcel identifier number and civic address of the parcel or parcels of land remediated;
 - (b) the name and address of the person or persons who own the parcel or parcels of land remediated;
 - (c) the name, address and telephone number of the person responsible for the contaminated site who is providing the notification;
 - (d) the type of contamination remediated and a description of the remediation carried out;
 - (e) the applicable numerical remediation levels or risk based site specific remediation levels, and the land use to which these remediation levels apply, as determined by a site professional using any applicable ministerial protocol;
 - (f) a statement that remediation has been completed to the applicable

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levels indicated under the requirement in clause (b);

- (g) any restrictions on activities at the site, including but not limited to
 - (i) restrictions on where buildings may be located on the site;
 - (ii) restrictions on soil excavation on the site;
 - (iii) restrictions on the use of any water resource at the site; and
- (h) any engineered or physical control implemented at the site.

(8) A notification required under clause (3)(b) must be signed by all of the following:

- (a) the person or persons who own the parcel or parcels of land remediated;
- (b) the person responsible for the contaminated site who is providing the notification; and
- (c) a site professional who certifies that the information referred to in subsection (7) is accurate.

Filing of notifications in environmental registry

8 Upon receiving a notification under Section 7, the Minister must file the notification in the environmental registry.

Declaration of Property Condition

Requirements for submitting Declaration of Property Condition

9 A Declaration of Property Condition may be submitted to the Minister for filing in the environmental registry if all of the following requirements are met:

- (a) a phase one environmental site assessment report has been completed in accordance with any applicable Ministerial protocol and filed with the Minister;
- (b) a phase two environmental site assessment report has been completed in accordance with any applicable Ministerial protocol and filed with the

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Minister;

- (c) a remedial action plan report has been completed in accordance with any applicable Ministerial protocol and filed with the Minister;
- (d) a confirmation of remediation report has been prepared in accordance with any applicable Ministerial protocol and filed with the Minister, and the report indicates that property meets the remedial objectives set out in the remedial action plan, including the applicable numerical remediation levels or risk based site specific remediation levels, as determined by a site professional using any applicable ministerial protocol; and
- (e) the applicable fee has been paid.

Contents of Declaration of Property Condition

- 10 (1)** A Declaration of Property Condition must be in the form prescribed by the Minister and must include all of the following:
- (a) the legal description of the property, including the parcel identifier number and civic address of the parcel of land to which the Declaration of Property Condition applies;
 - (b) the name and address of the person or persons who own the parcel of land to which the Declaration of Property Condition applies;
 - (c) the name, address and telephone number of the person submitting the Declaration of Property Condition for filing;
 - (d) the date of the Declaration;
 - (e) the type of contamination remediated and a description of the remediation carried out at the property;
 - (f) the applicable numerical remediation levels or risk based site specific remediation levels, and the land use to which these remediation levels apply, as determined by a site professional using any applicable ministerial protocol;
 - (g) a statement that, as of the date of the Declaration, remediation has been completed to the applicable remediation levels indicated

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- under the requirement in clause (e);
 - (h) any restrictions on activities at the site, including but not limited to
 - (i) restrictions on where buildings may be located on the site;
 - (ii) restrictions on soil excavation on the site;
 - (iii) restrictions on the use of any water resource at the site;
 - (i) any engineered or physical control implemented at the property;
 - (j) for each contaminant for which sampling and analysis has been performed, the maximum known concentration of the contaminant on, in or under the property as of the date of the Declaration; and
 - (k) for each report required to be completed and filed under Section 9, a dated certification by a site professional that the report was prepared in accordance with the applicable Ministerial protocol.
- (2) A Declaration of Property Condition must be signed by all of the following:
- (a) the person or person who own the parcel of land to which the Declaration of Property Condition applies;
 - (b) the person submitting the Declaration of Property Condition for filing; and
 - (c) a site professional who certifies that the information contained in the Declaration is accurate.

Filing of Declaration of Property Condition in the environmental registry

- 11 (1) If a Declaration of Property Condition is submitted for filing in the environmental registry, the Minister must file the Declaration of Property Condition in the environmental registry if
- (a) the Minister determines that the remediation has been completed in accordance with the regulations and any applicable Ministerial

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protocol, and

- (b) the Minister determines that the Declaration of Property Condition is complete and has been prepared in accordance with Section 10.
- (2) Upon filing the Declaration in the environmental registry, the Minister must notify the person who submitted the Declaration of Property Condition that it has been filed.
- (3) A Declaration of Property Condition that is filed in the Registry under this Section is deemed to have been filed in the Registry on the date of the Declaration.

Consequence of filing Declaration of Property Condition

- 12** (1) If a Declaration of Property Condition is filed in the environmental registry in accordance with Section 11 with respect to a property, no order under Part XIII may be issued to any of the following persons in respect of a contaminant that was released into the environment before the date of the Declaration and was on, in or under the property as of the date of the Declaration:
- (a) the person who submitted the Declaration of Property Condition for filing or a subsequent owner of the property;
 - (b) a person who is in occupation of the property or who was in occupation of the property at any time after the Declaration of Property Condition was file;
 - (c) a person who has care, management or control of the property or who had care, management or control of the property at any time after the Declaration of Property Condition was filed; and
 - (d) a person who, before the date of the Declaration,
 - (i) owned the property;
 - (ii) was in occupation of the property; or
 - (iii) had care, management or control of the property.

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- (2) Subsection (1) does not apply if the Declaration of Property Condition contains false or misleading information or false or misleading certifications.
- (3) Subsection (1) does not apply if, after the date of the Declaration, any of the contaminant moved from the land or water in, on or under the property to which the Declaration of Property Condition relates to another property.
- (4) Despite subsection (3) if, after the date of the Declaration, any of the contaminant moved from the land or water in, on or under the property to which the Declaration of Property Condition relates to another property as a result of an activity being carried out and that activity is set out in the Declaration of Property Condition as an activity that is restricted at the property, subsection (1) does not apply but only in relation to a person who carries out the activity or permits the activity to be carried out and who owns, occupies or has care, management or control of the property at the time the activity is carried out.
- (5) If the actual use of the property is different and in a more sensitive land use category than that used by the site professional to determine the applicable the applicable numerical remediation levels or risk based site specific remediation levels specified in the Declaration of Property Condition, subsection (1) does not apply to a person who causes or permits the change in use and who owns, occupies or has care, management or control of the property at the time of the change.
- (6) Subsection (1) does not apply if the Declaration of Property Condition indicates that any engineered or physical control has been permanently implemented at the property.
- (7) Subsection (1) does not apply if
 - (a) mobile non-aqueous phase liquid or explosive vapour is found at any time to be present at the property as a result of a contaminant remaining at the property; and
 - (b) the presence of the mobile non-aqueous phase liquid or explosive vapour may pose either a fire hazard or explosion danger.



Consultation Guide
to the Proposed Contaminated Sites
Remediation Regulations

January 2011

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I INTRODUCTION

Proposed Contaminated Sites Remediation Regulations have been developed to address one of government's commitments under the *Environmental Goals and Sustainable Prosperity Act* (2007). These proposed regulations are intended to help stimulate the redevelopment of contaminated land within the province. They have incorporated key concepts from several existing Nova Scotia Environment (NSE) policy/guidance documents, as well as considering national and regional recommendations.

The proposed regulations provide direction for the owners of polluted, or contaminated, land to use in cleaning up their sites. The process involves employing site professionals to ensure human health and environmental protection measures are met and to provide a record of such regulatory cleanup. Under one specific regulatory option, by following a defined process site owners may become entitled to assurances that, for the work completed, government will not impose future regulatory or compliance requirements.

The proposed regulations are being released to a broad group of stakeholders for comment. All comments are due on February 7, 2011.

It is anticipated that the regulations would be approved by Cabinet with a delayed implementation date no earlier than January 1, 2012. This is to allow owners and businesses the opportunity to plan for the regulatory changes.

II CONTEXT

Current situation

Nova Scotia Environment currently governs the management of contaminated sites in Nova Scotia using a combination of legislation (*Environment Act*), policies and guidelines. The use of the Domestic Fuel Oil Spill Policy (DFOSP, 2005) and the Guidelines for Management of Contaminated Sites in Nova Scotia (1996) will be phased out once the new proposed regulations become effective. Many of the guiding principles of these documents have been incorporated into the proposed regulations.

Summary of the proposed regulations

The proposed Contaminated Sites Remediation Regulations provide new, up-to-date rules for cleaning up contaminated sites in a manner that meets the NSE requirements and expectations, with a minimal level of government involvement.

The proposed regulations themselves do not require the cleanup of contamination in Nova Scotia, however they do cover the process of remediation. The legislative requirements for reporting and cleanup of contamination are contained within the *Environment Act*.

The proposed regulations provide several options that are all designed to meet adequate levels of human health and environmental protection. These options are designed to be of benefit to the business community, industry and property owners. In addition, one option is specifically focused on encouraging the redevelopment of “brownfields”, or idle, non-productive contaminated land.

The following paragraphs describe key principles of importance contained within the proposed regulations:

Independent Remediation

The proposed regulations provide a minimum site cleanup process allowable for any site. The process, called **Independent Remediation**, typically requires little government involvement. It is intended to be a cost-effective, scientifically-based process reliant upon the expertise of a group of environmental site professionals, as governed by defined external professional associations. This process will be of use and benefit to property owners, and others, with polluted sites requiring cleanup, but to whom the major factors are cost and providing adequate levels of human health and environmental protection.

Declaration of Property Condition

The proposed regulations have incorporated an additional process that allows for a **Declaration of Property Condition** to be made by an owner, following the completion of the environmental cleanup. This process requires additional measures and review work beyond that typically used under Independent Remediation. However, the final declaration, which is certified by an environmental site professional, provides owners certain immunities in relation to their future environmental regulatory liability for the property. In Nova Scotia, lack of this type of protection has been considered a key barrier to redevelopment of numerous contaminated lands.

Site Professionals

There are currently two systems of recognition for environmental **Site Professionals** used in NSE policy/guidelines. These systems have some overlap and are being slightly revised and combined into one within the proposed regulations. The qualifications and liability insurance requirements for Site Professionals are specified in the proposed regulations. Eligibility and governance of Site Professionals will be administered by the appropriate external professional associations.

Notifications with Respect to Migration and the Remediation of Contamination

As noted earlier, the proposed regulations themselves do not require notification of contamination, or the cleanup of contamination. Any such requirements are provided in the *Environment Act*. The proposed regulations do contain certain requirements regarding notification under the following circumstances:

- a) when contamination has migrated, or is likely migrating, to another property at levels exceeding generic residential numerical standards.
- b) when a person responsible for a contaminated site intends to conduct non-emergency remedial measures to clean up contamination

The proposed regulations provide more specific details about these requirements.

In the future

It is important to note that the proposed Contaminated Sites Remediation Regulations are a component of broader policy development in this area. NSE has received a number of recommendations on contaminated sites management from several internal and external bodies. We are in the process of evaluating and acting on a number of these recommendations. Some are reflected in the proposed regulations here and others will be implemented over time with additional policy tools or measures.

Ministerial Protocols

The proposed regulations rely on Ministerial protocols which will be established by the Minister. One such Ministerial protocol will be a set of compiled numerical Environmental Quality Standards (EQS) for Nova Scotia, applicable to contaminated sites. A Rationale Document presenting EQS recommendations is being released concurrently for discussion.

Other Regulatory Tools

The proposed regulations are one of several steps currently being considered to improve contaminated sites management in Nova Scotia. Further regulations and policies may be developed to address compliance issues, transfer of liability, orphan sites and other issues which have been identified during the preliminary investigations of this sector.

Nova Scotia Environment is pleased to provide the proposed Contaminated Sites Remediation Regulations for comment to stakeholders. We hope this work helps demonstrate our commitment to continual improvements to support, promote and uphold environmental quality within the province.

III COMMENT SUBMISSIONS

We request that all comments be submitted to us by February 7, 2011.

All submissions received will be evaluated as we finalize the proposed regulations. Please note that while we welcome all your comments and suggestions, we would like to clarify that the purpose of this consultation is to seek feedback on the content of the proposed regulations themselves.

Any information provided to us about the proposed regulations will be considered to be a public document and may be published on the government website. Any personal information provided is subject to the provisions of the Nova Scotia Freedom of Information and Protection of Privacy Act (FOIPOP). Your personal information will only be disclosed in keeping with the privacy provisions of the Act. Should you wish any of the information provided to be held in confidence, please clearly indicate this in your submission.

You may send your comments on the proposed regulations to us via e-mail as follows:

Subject header: Comments on the Proposed Contaminated Sites
 Remediation Regulations

Email: tremblsg@gov.ns.ca

OR

You may send written comments to us via postal mail at:

Comments on the Proposed Contaminated Sites Remediation Regulations
c/o Pollution Prevention Branch
Nova Scotia Environment
PO Box 442
Halifax, NS B3J 2P8
Fax: (902) 424-0503