

Caution:

This draft regulation is provided solely to facilitate public consultation under section 16 of the Environmental Bill of Rights, 1993. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the draft regulation are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT**ONTARIO REGULATION**

to be made under the

ENVIRONMENTAL PROTECTION ACT

Amending O. Reg. 153/04

(RECORDS OF SITE CONDITION - PART XV.1 OF THE ACT)

1. (1) Subsection 1 (1) of Ontario Regulation 153/04 is amended by adding the following definitions:

“building code” means Ontario Regulation 332/12 (Building Code) made under the *Building Code Act, 1992*;

“excess soil” has the same meaning as in Ontario Regulation [*O. Reg. # to be inserted*] (On-Site and Excess Soil Management) made under the Act;

“Soil Rules” means the document entitled “Rules for On-Site and Excess Soil Management”, dated [*to be confirmed*], published by the Ministry and available on a website of the Government of Ontario;

(2) Paragraph 3 of the definition of “commercial use” in subsection 1 (3) of the Regulation is amended by striking out “Ontario Regulation 332/12 (Building Code) made under the *Building Code Act, 1992*” in the portion before subparagraph i and substituting “the building code”.

(3) The definition of “community use” in subsection 1 (3) of the Regulation is revoked and the following substituted:

“community use” means any of the following uses:

1. Subject to subsection (5), use of land on the property for a road.

2. Use of a building on the property for,
 - i. indoor recreational activities,
 - ii. travel purposes, such as a railway station or an airport passenger terminal, or like purposes, or
 - iii. an indoor gathering of people for civic or social purposes.

3. In respect of the classification of occupancies in Table 3.1.2.1. of Division B of the building code, use of a building on the property that falls within,
 - i. Group A, Division 1, assembly occupancies intended for the production and viewing of the performing arts,
 - ii. Group A, Division 3, assembly occupancies of the arena type, or
 - iii. Group A, Division 4, assembly occupancies in which occupants are gathered in the open air and that is used for a stadium.

4. Use of a classroom in a building on the property by,
 - i. a university that is authorized to operate pursuant to section 3 of the *Post-secondary Education Choice and Excellence Act, 2000*,
 - ii. a college established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*,
 - iii. any institution, other than an institution mentioned in subparagraph i or ii, with authority to grant a degree or part of a degree under the *Post-secondary Education Choice and Excellence Act, 2000*,
 - iv. a private career college as defined and approved under the *Private Career Colleges Act, 2005*;

(4) Paragraph 2 of the definition of “industrial use” in subsection 1 (3) of the Regulation is amended by striking out “Ontario Regulation 332/12 (Building Code)” in the portion before subparagraph i and substituting “the building code”.

(5) The definition of “industrial use” in subsection 1 (3) of the Regulation is amended by adding the following paragraph:

13. Use of a building where both of the following circumstances apply:

- i. The building was previously used for an industrial use, commercial use or community use.
- ii. The building is used for the cultivation, growing and harvesting of agricultural commodities, where the cultivation and growing of the agricultural commodities is achieved through hydroponics or other methods that do not rely on cultivating and growing the commodities using the soil from the property.

(6) The definition of “institutional use” in subsection 1 (3) of the Regulation is revoked and the following substituted:

“institutional use” means any of the following uses:

1. Use of land or a building on the property as a child care centre within the meaning of the *Child Care and Early Years Act, 2014*.
2. Use of land or a building on the property as a school as defined in the *Education Act*.
3. Use of land or a building on the property as a private school as defined in the *Education Act*.
4. Use of a building on the property for an indoor gathering of people for religious purposes.

(7) Clause (d) of the definition of “parkland use” in subsection 1 (3) of the Regulation is amended by striking out “Ontario Regulation 332/12 (Building Code)” and substituting “the building code”.

(8) Paragraph 2 of the definition of “residential use” in subsection 1 (3) of the Regulation is amended by striking out “Ontario Regulation 332/12 (Building Code)” in the portion before subparagraph i and substituting “the building code”.

(9) Section 1 of the Regulation is amended by adding the following subsections:

(4) For the purposes of the definition of “agricultural or other use” in subsection (3), such a use does not include the use of a building on a property if both of the following circumstances apply:

1. The building was previously used for an industrial use, commercial use or community use.
2. The building is used for the cultivation, growing and harvesting of agricultural commodities, where the cultivation and growing of the agricultural commodities is

achieved through hydroponics or other methods that do not rely on cultivating and growing the commodities using the soil from the property.

(5) For the purposes of paragraph 1 of the definition of “community use” in subsection 1 (3), community use does not include use of land for a road that is temporarily required during the construction of a new development and will no longer exist as a road when all phases of the development are complete.

2. Section 6.2 of the Regulation is revoked.

3. Subparagraph 10 i of section 14 of the Regulation is amended by striking out “Ontario Regulation 332/12 (Building Code) made under the *Building Code Act, 1992*” and substituting “the building code”.

4. (1) Section 15 of the Regulation is revoked and the following substituted:

Exemptions

15. (1) Section 168.3.1 of the Act and section 14 of this Regulation do not apply to any of the following changes in use to a building, nor do those sections apply to the construction of a building that will be used in connection with any of the following changes in use:

1. A change that meets all of the following criteria:
 - i. Before the change in use to the building, part of the building is used for residential use or institutional use and another part of the building is used for commercial use or community use.
 - ii. After the change in use to the building,
 - A. the existing building envelope is to remain unchanged and there will be no addition to the exterior portions of the building,
 - B. the property on which the building is located is not used or has not ever been used, in whole or in part, for an industrial use, as a garage, as a bulk liquid dispensing facility, including a gasoline outlet, or for the operation of dry cleaning equipment, and
 - C. the property on which the building is located was not exempt under paragraph 2 of this subsection from section 168.3.1 of the Act and section 14 of this Regulation with respect to conversion from a commercial or community use to a use specified in subparagraph 2 ii of this subsection.
2. A change that meets all of the following criteria:

- i. Before the change, the property is used for a commercial or community use.
- ii. After the change, the property will be used,
 - A. for a commercial or community use as well as for a residential use,
 - B. for a commercial or community use as well as for an institutional use, or
 - C. for a commercial or community use as well as for both a residential use and an institutional use.
- iii. The change to residential use or institutional use is restricted to floors above the ground floor.
- iv. The building has no more than six storeys before the change and will have no more than six storeys after the change.
- v. The existing building envelope is to remain unchanged and there will be no addition to the exterior portions of the building.
- vi. The property on which the building is located is not used or has not ever been used, in whole or in part, for an industrial use, as a garage, as a bulk liquid dispensing facility, including a gasoline outlet, or for the operation of dry cleaning equipment.

(2) Section 168.3.1 of the Act and section 14 of this Regulation do not apply to a change if, before the change, the property is used for an industrial use, a commercial use or a community use and after the change, the property or a building on the property will be used for an indoor gathering of people for religious purposes.

(2) Subsection 15 (2), as remade by subsection (1), is revoked.

5. Subsection 16 (3) of the Regulation is revoked.

6. Section 19 of the Regulation is revoked.

7. Section 21.1 of the Regulation is revoked.

8. Part VI of the Regulation is amended by adding the following section:

Horizontal severance

22.1 A phase one or phase two environmental site assessment shall take into account every property at or below the ground surface that is above or below the phase one or phase two property.

9. (1) Clause 28 (1) (a) of the Regulation is revoked and the following substituted:

- (a) the date the last work on all of the records review, interviews and site reconnaissance required for the phase one environmental site assessment that is the subject of the report was done is no later than 18 months before,
 - (i) the submission of the record of site condition, in the case of a report being used in a record of site condition, and
 - (ii) the commencement of the phase two environmental site assessment, in the case of a report being used in a phase two environmental site assessment;

(2) Clause 28 (1) (b) of the Regulation is amended by adding “that has arisen since the date of the last work on all of the records review, interviews and site reconnaissance required for the phase one environmental site assessment that is the subject of the report” at the end.

10. Clause 32 (1) (b) of the Regulation is revoked and the following substituted:

- (b) if the property is used, or has ever been used, in whole or in part, for any of the following:
 - (i) An industrial use.
 - (ii) Any of the following commercial uses:
 - (A) As a garage.
 - (B) As a bulk liquid dispensing facility, including a gasoline outlet.
 - (C) For the operation of dry cleaning equipment.

11. Clause 33.5 (1) (a) of the Regulation is revoked and the following substituted:

- (a) the date the last work on all of the planning of the site investigation, conducting the site investigation and reviewing and evaluating the information gathered through the site investigation required for the phase two environmental site assessment that is the subject of the report was done is no later than 18 months before,

- (i) the submission of the record of site condition, in the case of a report being used in a record of site condition, and
- (ii) the commencement of the risk assessment, in the case of a report being used in planning, conducting or supervising a risk assessment;

12. (1) The definition of “well” in subsection 35 (1) of the Regulation is revoked.

(2) Clause 35 (3) (a) of the Regulation is amended by striking out “and have no wells installed” at the end.

(3) Subclause 35 (3) (e) (ii) of the Regulation is amended by striking out “has withdrawn the objection and given written consent to the owner” and substituting “has withdrawn the objection in writing”

13. Subsection 47 (1) of the Regulation is amended by striking out “in, on” wherever it appears in the portion before clause (a) and substituting in each case “on, in”.

14. (1) Subsection 48 (1) of the Regulation is amended by striking out “in, on” and substituting “on, in”.

(2) Subsection 48 (2) of the Regulation is amended by striking out “in, on” and substituting “on, in”.

(3) Subsection 48 (3) of the Regulation is revoked.

15. Part IX of the Regulation is amended by adding the following section:

Standards deemed to be met

49.1 If an applicable site condition standard is exceeded at a property solely because of one of the following reasons, the applicable site condition standard is deemed not to be exceeded for the purpose of Part XV.1 of the Act:

1. The qualified person has determined, based on a phase one environmental site assessment or a phase two environmental site assessment, that a substance has been applied to surfaces for the safety of vehicular or pedestrian traffic under conditions of snow or ice or both.
2. The qualified person has determined, based on a phase one environmental site assessment or a phase two environmental site assessment, that excess soil has been deposited at the RSC property for final placement and the excess soil meets the applicable soil quality standards that apply to the RSC property as determined in accordance with the Soil Rules.

3. The qualified person has determined, based on a phase one environmental site assessment or a phase two environmental site assessment, that there has been a discharge of drinking water within the meaning of the *Safe Drinking Water Act, 2002*.
4. The qualified person has determined, based on a phase two environmental site assessment, that fill containing a contaminant that exceeds the applicable site condition standard was used at the property but the concentration of the contaminant does not exceed the naturally occurring range of concentrations of that contaminant typically found within the area where the property is located.

16. Section 55 of the Regulation is revoked and the following substituted:

Excess soil, phase one environmental site assessment

55. (1) If a qualified person has determined that a record of site condition may be submitted for filing without a phase two environmental site assessment with respect to a RSC property and all of the following conditions are satisfied, excess soil may be brought to and finally placed at the RSC property:

1. The use of the RSC property must be one of the following:
 - i. Agricultural or other use.
 - ii. Commercial use.
 - iii. Community use.
 - iv. Institutional use.
 - v. Parkland use.
 - vi. Residential use.
2. The qualified person who is conducting or supervising the phase one environmental site assessment must have determined that the concentration of contaminants in the soil does not exceed the applicable soil quality standards, as determined in accordance with the Soil Rules.

(2) For the purposes of the determination under paragraph 2 of subsection (1), section 31 of Schedule E applies with necessary modifications.

(3) The qualified person shall ensure that a document that meets the requirements of Sub-Heading (i) (Excess Soil Brought to RSC Property) in Heading (c) (Soil Excavated at the Phase Two Property or Excess Soil Brought to the Phase Two Property) in Report Section 10

(Appendices) of Table 1 of Schedule E is prepared with respect to the sampling and analysis of excess soil brought to the RSC property.

Excess soil, phase two environmental site assessment

55.1 Excess soil may be brought to an RSC property and may be finally placed at the RSC property if a qualified person ensures, in the course of the phase two environmental site assessment with respect to the RSC property, that the following conditions are satisfied:

1. The RSC property must be the same as or within the phase two property.
2. The requirements of Schedule E must be met with respect to excess soil brought to the phase two property.
3. The quality of the soil finally placed at the RSC property must be such that the concentration of contaminants in the soil does not exceed the applicable soil quality standards, as determined in accordance with the Soil Rules.

17. (1) Subsection 4 (1) of Schedule A to the Regulation is amended by adding the following paragraph:

- 4.2 Whether there are one or more properties at or below the ground surface that are above or below the RSC property and the property identification numbers, if any, of those properties.

(2) Subsection 5 (2) of Schedule A to the Regulation is revoked.

(3) Paragraph 2 of subsection 6 (1) of Schedule A to the Regulation is revoked and the following substituted:

2. I have conducted reasonable inquiries to obtain all information relevant to this RSC, including information from the other current owners of the RSC property named in this part of the RSC and I have obtained all information relevant to this RSC of which I am aware.

(4) Paragraphs 8 and 9 of section 11 of Schedule A to the Regulation are revoked and the following substituted:

8. The date of the last work done on the records review, interviews and site reconnaissance components of the phase one environmental site assessment.
9. The document prepared pursuant to subsection 55 (3) of the regulation, if section 55 of the regulation applies to the RSC.

(5) Paragraph 4.1 of section 12 of Schedule A to the Regulation is revoked and the following substituted:

- 4.1 I do not hold and have not held and my employer, if any, does not hold and has not held a direct or indirect interest in the RSC property or any property which includes the RSC property and was the subject of a phase one or two environmental site assessment or risk assessment upon which this record of site condition is based.

(6) Paragraph 2 of section 15 of Schedule A to the Regulation is revoked and the following substituted:

2. The date of the last work done on the planning of the site investigation, conducting the site investigation and reviewing and evaluating the information gathered through the site investigation components of the phase two environmental site assessment.

(7) Clause 18 (e) of Schedule A to the Regulation is revoked and the following substituted:

- (e) if a risk assessment has been accepted by the Director in relation to the RSC property under section 168.5 of the Act, the identification number of the risk assessment and, if a non-standard delineation was conducted in accordance with section 7.1 of Schedule E as part of the phase two environmental site assessment, an indication that such a non-standard delineation was conducted.

(8) Subsection 19 (2) of Schedule A to the Regulation is amended by striking out paragraphs 1, 2 and 3 and substituting the following:

1. The RSC property and all other properties located, in whole or in part, within 250 metres of the boundary of the property are supplied by a municipal drinking water system, as defined in the *Safe Drinking Water Act, 2002*.
2. One of the following certifications, as the case may be:
 - i. The RSC property is located in an area designated in a municipal official plan as a well-head protection area or other area designated in a municipal official plan for the protection of ground water and I have or the owner of the property or a person authorized by the owner of the property has received a written consent from the municipality for the use of non-potable ground water site condition standards.
 - ii. The RSC property is not located in an area mentioned in subparagraph i and I have or the owner of the property or a person authorized by the owner of the property has, within the six months immediately before the submission of this record of site condition, given written notice of intention to apply non-potable

ground water site condition standards to the clerk of the local municipality in which the property is located and the clerk of any upper-tier municipality in which the property is located.

3. If a notice described in subparagraph 2 ii was given, one of the following certifications, as the case may be:
 - i. The owner of the property has informed me that no notice of objection was received within 30 days after receiving the notice described in subparagraph 2 ii, nor have I received such a notice.
 - ii. I or the owner of the property received a notice of objection but it was subsequently withdrawn.

(9) Subsection 30 (1) of Schedule A to the Regulation is revoked and the following substituted:

(1) The qualified person shall identify the estimated quantity of any excess soil being deposited at the RSC property.

18. Schedule B to the Regulation is revoked.

19. (1) Clause 3 (8) (a) of Schedule C to the Regulation is revoked and the following substituted:

- (a) a narrative description and assessment of,
 - (i) areas where potentially contaminating activity has occurred,
 - (ii) areas of potential environmental concern, and
 - (iii) any subsurface structures and utilities on, in or under the RA property that may affect contaminant distribution and transport;

(2) Clause 3 (8) (a.1) of Schedule C to the Regulation is amended by adding “narrative” before “description” in the portion before subclause (i).

(3) Clause 3 (8) (a.1) (v) of Schedule C to the Regulation is revoked and the following substituted:

- (v) any respect in which section 35, 41 or 43.1 of the regulation applies to the property,

(4) Clause 3 (8) (a.3) of Schedule C to the Regulation is amended by adding “narrative” before “description” in the portion before subclause (i).

(5) Subclause 3 (8) (a.3) (ii) of Schedule C to the Regulation is amended by adding “by parameter group as defined in the Analytical Protocol” at the end.

(6) Subsection 3 (8) (a.4) of Schedule C to the Regulation is amended by striking out “the applicable site condition standard” in the portion before subclause (i) and substituting “the applicable site condition standard, for each parameter group as defined in the Analytical Protocol”.

(7) Subsection 3 (8) of Schedule C to the Regulation is amended by adding the following clauses:

- (d) if a non-standard delineation was conducted in accordance with section 7.1 of Schedule E as part of preparing the phase two environmental site assessment report, a narrative description of how the non-standard delineation satisfies the requirements in that section;
- (e) if the exemption set out in paragraph 1 or 2 of section 49.1 of the regulation is being relied upon, a statement as to the reliance upon the exemption and a narrative description of the rationale for relying upon the exemption, which may be based on information gathered during the site investigation;
- (f) if the exemption set out in paragraph 3 of section 49.1 of the regulation is being relied upon,
 - (i) a statement as to the reliance upon the exemption,
 - (ii) a narrative description of the rationale for relying upon the exemption, which may be based on information gathered during the site investigation, and
 - (iii) one or more cross-sections and one or more figures in plan view of the RA property that demonstrate, through identification of sample locations, sample depths and contaminant concentrations, the distribution of the contaminant in question laterally and vertically and the range of concentrations of that contaminant on, in or under the RA property.

(8) Report Section 3 (Property Information, Site Plan and Geological Interpretation), Heading (b) (Site Plan and Hydrogeological Interpretation of RA Property) of Table 1 of Schedule C to the Regulation is revoked and the following substituted:

3. Property Information, Site Plan and Geological Interpretation	(b) Site Plan and Hydrogeological Interpretation of RA Property	not applicable	1. Provide the site plans, cross-sections and a hydrogeological interpretation of the RA property that satisfies the requirements of clauses 3 (8) (a), (b) and (c) and that was relied upon in the preparation of the risk assessment and all documentation used to support this interpretation.
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			2. If a non-standard delineation was conducted in accordance with section 7.1 of Schedule E as part of preparing the phase two environmental site assessment report, a narrative description of how the non-standard delineation satisfies the requirements in that section.
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(9) Report Section 6 (Conclusions and Recommendations), Sub-Heading (i) (Recommended Standards) of Table 1 of Schedule C to the Regulation is revoked and the following substituted:

6. Conclusions and Recommendations	not applicable	(i) Recommended Standards	<p>1. A standard must be specific in the risk assessment for each contaminant of concern. The specified standard shall be, at a minimum, the more stringent of the human health standard and the ecological standard being proposed for the RA property.</p> <p>2. In the case of an estimation of natural local background concentration risk assessment, the specified standard shall be the local background concentration soil standard proposed under subsection 8 (1) of this Schedule.</p> <p>3. State critical assumptions on which the standards specified in the risk assessment rely, having regard to the discussion of uncertainty under Heading (d) (Risk Characterization) in Report Section 4 (Human Health Risk Assessment (HHRA)) and under Heading (e) (Risk Characterization) in Report Section 5 (Ecological Risk Assessment (ERA)).</p> <p>4. If the phase two environmental site assessment that was relied upon in the preparation of the risk assessment has been prepared using a non-standard delineation conducted in accordance with section 7.1 of Schedule E,</p> <ul style="list-style-type: none"> i. state that the phase two environmental site assessment was prepared using a non-standard delineation, ii. state the contaminants of concern and media to which non-standard delineation was applied, and iii. provide a discussion of the implications that the application of the non-standard delineation to the stated contaminants of concern and media may have on the conclusions reached in the risk assessment report.
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20. (1) Subparagraph 7 iii of subsection 3 (2) of Schedule D to the Regulation is amended by adding “risk management plans” after “”permits to take water”.

(2) Subsection 3 (2) of Schedule D to the Regulation is amended by adding the following paragraphs:

- 13.1 Make all reasonable inquiries to determine if the phase one property and all other properties within the phase one study area are supplied by a municipal drinking water system as defined in the *Safe Drinking Water Act, 2002*.
- 13.2 Make all reasonable inquiries to determine if the phase one property is located within an area designated in the official plan of the municipality in which the phase one property is located as a well-head protection area or another area designated in the official plan as an area for the protection of ground water.

(3) Paragraph 14 of subsection 3 (2) of Schedule D to the Regulation is amended by striking out “one of the uses described in clause 32 (1) (b)” in the portion before subparagraph i and substituting “a use specified in clause 32 (1) (b)”.

(4) Paragraph 2 of section 4 of Schedule D to the Regulation is amended by striking out “in, on” and substituting “on, in”.

(5) (1) Paragraph 2 of subsection 6 (1) of Schedule D to the Regulation is amended by striking out “as an industrial property or a commercial property described in clause 32 (1) (b)” and substituting “for a use specified in clause 32 (1) (b)”.

(6) Paragraph 2 of subsection 6 (2) of Schedule D to the Regulation is amended by striking out “referred to in clause 32 (1) (b)” and substituting “specified in clause 32 (1) (b)”.

(7) Subparagraph 3 iv of section 12 of Schedule D to the Regulation is amended by striking out “one of the uses described in clause 32 (1) (b)” and substituting “a use specified in clause 32 (1) (b)”.

(8) Subsection 13 (3) of Schedule D to the Regulation is amended by striking out “one of the uses described in clause 32 (1) (b)” in the portion before clause (a) and substituting “a use specified in clause 32 (1) (b)”.

(9) Subsection 13 (4) of Schedule D to the Regulation is amended by striking out “in a manner described in clause 32 (1) (b)” in the portion before clause (a) and substituting “for a use specified in clause 32 (1) (b)”.

(10) Clause 13 (4) (a) of Schedule D to the Regulation is amended by striking out “set out in clause 32 (1) (b)” and substituting “specified in clause 32 (1) (b)”.

(11) Report Section 4 (Records Review), Heading (c) (Physical Setting Sources), Sub-Heading (iv) (Water Bodies and Areas of Natural Significance) of Table 1 of Schedule D to the Regulation is revoked and the following substituted:

4. Records Review	(c) Physical Setting Sources	(iv) Water Bodies, Areas of Natural Significance & Ground Water Information	Provide a description of findings for each of the following, in relation to the phase one study area: i. Any water bodies, ii. Any areas of natural significance, iii. Any well-head protection areas or other designation identified by the municipality in its official plan for the protection of ground water, and iv. Observations related to whether the property and all other properties located, in whole or in part, within 250 metres of the boundaries of the property are supplied by a municipal drinking water system, as defined in the <i>Safe Drinking Water Act, 2002</i> .
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(12) Report Section 6 (Site Reconnaissance), Heading (a) (General Requirements) of Table 1 of Schedule D to the Regulation is revoked and the following substituted:

6. Site Reconnaissance	(a) General Requirements	not applicable	1. Provide notes of the following for each investigation, i. date and time of the investigation, ii. weather conditions, iii. the length of time of the investigation,
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			<p>iv. whether the facility was operating at the time of the investigation, where the phase one property is an enhanced investigation property that is currently being used for a use specified in clause 32 (1) (b) of the regulation, and</p> <p>v. the name and qualifications of the person conducting the investigation.</p> <p>2. Provide the following information and analysis based on paragraph 4 of section 12 of this Schedule,</p> <p>i. photographs of the exterior and interior portions of the phase one property documenting any areas of potential environmental concern and illustrating any relevant structures and areas of disturbed soils, including fill areas, and</p> <p>ii. a written description and explanation of the photographs, including an orientation by compass of the photograph and a description of the photograph with respect to other photographs, records and figures.</p>
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(13) Report Section 7 (Review and Evaluation of Information), Sub-Heading (iv) (Phase One Conceptual Site Model) of Table 1 of Schedule D to the Regulation is revoked and the following substituted:

7. Review and Evaluation of Information	not applicable	(iv) Phase One Conceptual Site Model	<p>1. If the exemption set out in paragraph 1 or 2 of section 49.1 of the regulation is being relied upon, document the rationale for relying upon the exemption, which may be based on information gathered during one or more of the records review, interviews and site reconnaissance.</p> <p>2. If there is an intention to rely upon the exemption set out in paragraph 3 of section 49.1 of the regulation, set out the intention to rely upon the exemption and provide a brief explanation as to why the exemption may apply, which may be based on information gathered during one or more of the records review, interviews and site reconnaissance.</p>
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21. (1) Schedule E to the Regulation is amended by adding the following section:

Non-standard delineation

7.1 If the Director has accepted a risk assessment relating to the phase two property, a qualified person may, instead of complying with clause 7 (4) (c) of this Schedule, conduct a non-standard delineation in accordance with the following rules:

1. The delineation must be conducted in accordance with all requirements of section 7 of this Schedule, other than clause 7 (4) (c).
2. All contaminants of concern on, in or under the phase two property must be identified.
3. For each contaminant of concern found on, in or under the phase two property, the investigation must demonstrate that appropriate steps have been taken to locate the maximum concentration.
4. The qualified person must be satisfied that additional efforts to delineate the contaminants of concern are unlikely to contribute any further significant or meaningful information regarding the interpretation of the distribution and extent of contaminants on, in or under the phase two property.

(2) The heading immediately before section 30 and sections 30 to 34 of Schedule E to the Regulation and the heading immediately preceding are revoked and the following substituted:

EXCESS SOIL BROUGHT TO THE PHASE TWO PROPERTY

Specific objective

30. The specific objective of the requirements concerning excess soil brought to the phase two property for final placement is to ensure that the concentration of contaminants in the soil does not exceed the applicable soil quality standards, as determined in accordance with the Soil Rules.

Requirements for excess soil

31. (1) The qualified person shall ensure that before any excess soil is brought to a phase two property for final placement, the concentration of any contaminants in the excess soil is known by complying with the following sampling and analysis requirements:

1. Samples of the excess soil shall be collected,
 - i. by the qualified person, or
 - ii. under the supervision of the qualified person, by an individual qualified to take the samples.
2. The qualified person shall prepare a plan respecting:
 - i. The collection of representative samples at locations and frequencies that will be adequate to allow for,
 - A. the concentrations of any contaminants in the soil to be known, and
 - B. whether any contaminants are present in the soil as a result of any potentially contaminating activity or other environmental condition that occurred while the excess soil was at the source property, while the excess soil was being stored at any property and while the excess soil was being handled, stored or transported at any time before its final placement on, in or under the phase two property.
 - ii. The selection of samples for analysis so as to obtain representative results that locate any areas in the soil being sampled where any contaminant may be present at a concentration greater than the applicable soil quality standard, as determined in accordance with the Soil Rules.
3. The samples shall be collected in accordance with the plan mentioned in paragraph 2.

4. The samples shall be handled and analysed in accordance with section 47 of the regulation and shall be analysed for contaminants that may reasonably be expected to be present in the excess soil, having regard to the following:
 - i. The source property.
 - ii. The handling of the excess soil, including its storage and transport, following its original excavation.
 - iii. Any other relevant factors, including potentially contaminating activity.
5. At least one sample shall be analyzed for each 160 cubic metres of soil for the first 5,000 cubic metres to be assessed at each source property from which soil is being brought to the phase two property, following which at least one sample for each additional 300 cubic metres of soil which is to remain on, in or under the phase two property shall be analyzed.

(2) Despite paragraphs 1 to 5 of subsection (1), the requirements set out in those paragraphs may be satisfied by carrying out a sampling and analysis plan that is part of a sampling and analysis plan prepared under Ontario Regulation [*O. Reg. # to be inserted*] (On-Site and Excess Soil Management) made under the Act in respect of the excess soil that is to be brought to the phase two property.

SOIL EXCAVATED AT THE PHASE TWO PROPERTY

Specific objective

32. The specific objective of the requirements concerning soil excavated at the phase two property for possible reuse there is to determine reliably,

- (a) whether the applicable site condition standards or any standard specified in a risk assessment with respect to the property, for all contaminants in the soil have been met; and
- (b) whether, when the soil is reused at the phase two property, the property meets the applicable site condition standards or any standard specified in a risk assessment.

(3) Section 36 of Schedule E to the Regulation is amended by adding the following paragraph:

6. If the stockpile volume is greater than 5000 m³, the minimum number of samples that must be collected and analysed as described in paragraph 5 is the amount determined in accordance with the following formula:

$$N = 32 + (V - 5000) \div 300$$

Where,

N = the minimum number of samples, and

V = the stockpile volume in cubic metres.

(4) Subparagraph 8 ii of section 40 of Schedule E to the Regulation is amended by striking out “in, on” and substituting “on, in”.

(5) Subsections 43 (3) to (9) of Schedule E to the Regulation are revoked.

(6) Subsection 47 (10) of Schedule E to the Regulation is amended by striking out the portion before paragraph 1 and paragraph 1 and substituting the following:

(10) The following requirements associated with Heading (c) (Soil Excavated at the Phase Two Property or Excess Soil Brought to the Phase Two Property) in Report Section 10 (Appendices) of Table 1 of this Schedule do not apply, unless the conditions in each paragraph are met:

1. Sub-Heading (i) (Excess Soil brought to RSC property) does not apply unless excess soil has been brought to the phase two property to remain there after the phase two environmental site assessment.

(7) Report Section 3 (Background Information), Sub-Heading (i) (Physical Setting) of Table 1 of Schedule E to the Regulation is revoked and the following substituted:

3. Background Information	not applicable	(i) Physical Setting	Provide a description of the general physical setting of the phase two property within the phase one study area, including, i. water bodies, ii. areas of natural significance, iii. the topography and surface water drainage features on the phase two property, iv. any well-head protection areas or other designation identified by the municipality in its official plan for the protection of ground water, and v. municipal drinking water systems, as defined in the <i>Safe Drinking Water Act, 2002</i> servicing the property and all other properties located, in whole or in part, within 250 metres of the boundaries of the property
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(8) Report Section 6 (Review and Evaluation), Sub-Heading (x) (Phase Two Conceptual Site Model) of Table 1 of Schedule E to the Regulation is revoked and the following substituted:

6. Review and Evaluation	not applicable	(x) Phase Two Conceptual Site Model	1. Provide a narrative description and assessment of, i. areas where potentially contaminating activity has occurred, ii. areas of potential environmental concern, and iii. any subsurface structures and utilities on, in or under the phase two property that may affect contaminant distribution and transport.
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			<p>2. Provide a narrative description of and, as appropriate, figures illustrating, the physical setting of the phase two property and any areas under it including,</p> <ul style="list-style-type: none"> i. stratigraphy from ground surface to the deepest aquifer or aquitard investigated, ii. hydrogeological characteristics, including aquifers, aquitards and, in each hydrostratigraphic unit where one or more contaminants are present at concentrations above the applicable site condition standards, lateral and vertical hydraulic gradients, iii. approximate depth to bedrock, iv. approximate depth to water table, v. any respect in which section 35, 41 or 43.1 of the regulation applies to the property, vi. areas where soil has been brought from another property and placed on, in or under the phase two property, and vii. approximate locations, if known, of any proposed buildings and other structures. <p>3. Provide, where a contaminant is present on, in or under the phase two property at a concentration greater than the applicable site condition standard, identification of,</p> <ul style="list-style-type: none"> i. each area where a contaminant is present on, in or under the phase two property at a concentration greater than the applicable site condition standard, ii. the contaminants associated with each of the areas referred to in subparagraph i, iii. each medium in which a contaminant associated with an area referred to in subparagraph i is present, iv. a description and assessment of what is known about each of the areas referred to in subparagraph i, v. for each parameter group as defined in the Analytical Protocol for which a contaminant has been analysed, the distribution, in each of the areas referred to in subparagraph i, of each contaminant present in the area at a concentration greater than the applicable site condition standard, for each medium in which the contaminant is present, together with figures showing the distribution, vi. anything known about the reason for the discharge into the natural environment of the contaminants present on, in or under the phase two property at a concentration greater than the applicable site condition standard, vii. anything known about migration away from any area of potential environmental concern of the contaminants present on, in or under the phase two property at a concentration greater than the applicable site condition standard, including the identification of any preferential pathways, viii. climatic or meteorological conditions that may have influenced distribution and migration of the contaminants, such as temporal fluctuations in ground water levels, and ix. if applicable, information concerning soil vapour intrusion of the contaminants into buildings including, <ul style="list-style-type: none"> A. relevant construction features of a building, such as a basement or crawl space, B. building heating, ventilating and air conditioning design and operation, and C. subsurface utilities. <p>4. Provide, where contaminants on, in or under the phase two property are present at concentrations greater than the applicable site condition standard, two or more cross-sections showing, by parameter group as defined in the Analytical Protocol for which a contaminant has been analysed,</p> <ul style="list-style-type: none"> i. the lateral and vertical distribution of each contaminant in each area where the contaminant is present at a concentration greater than the applicable site condition standard in soil, ground water and sediment, ii. approximate depth to water table in each area referred to in subparagraph i, iii. stratigraphy from ground surface to the deepest aquifer or aquitard investigated, and
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			<p>iv. any subsurface structures and utilities that may affect contaminant distribution and transport in each area referred to in subparagraph i.</p> <p>5. Provide, for each area where a contaminant is present on, in or under the property at a concentration greater than the applicable site condition standard for the contaminant, a diagram identifying, with narrative explanatory notes,</p> <ol style="list-style-type: none"> i. the release mechanisms, ii. contaminant transport pathway, iii. the human and ecological receptors located on, in or under the phase two property, iv. receptor exposure points, and v. routes of exposure. <p>6. If a non-standard delineation was conducted in accordance with section 7.1 of this Schedule as part of preparing the phase two environmental site assessment report, provide a narrative description of how the non-standard delineation satisfies the requirements in that section.</p> <p>7. If the exemption set out in paragraph 1 or 2 of section 49.1 of the regulation is being relied upon, provide a statement as to the reliance upon the exemption and a narrative description of the rationale for relying upon the exemption, which may be based on information gathered during the site investigation.</p> <p>8. If the exemption set out in paragraph 3 of section 49.1 of the regulation is being relied upon, provide,</p> <ol style="list-style-type: none"> i. a statement as to the reliance upon the exemption, ii. a narrative description of the rationale for relying upon the exemption, which may be based on information gathered during the site investigation, and iii. one or more cross-sections and one or more figures in plan view of the phase two property that demonstrate, through identification of sample locations, sample depths and contaminant concentrations, the distribution of the contaminant in question laterally and vertically and the range of concentrations of that contaminant on, in or under the phase two property.
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(9) Report Section 9 (Figures and Tables), Heading (b) (Figures), Sub-Headings (vii) (Delineation) and (viii) (Contaminants of Concern in Areas of Potential Environmental Concern) of Table 1 of Schedule E to the Regulation are revoked and the following substituted:

9. Figures and Tables	(b) Figures	(vii) Delineation	<p>For each parameter group defined in the Analytical Protocol for which a contaminant has been analysed, provide figures showing the phase two property in a plan view and illustrating the delineation of the lateral and vertical extent of contaminants of concern in soil, ground water or sediment for each area where contaminants are present at concentrations greater than the applicable site condition standard including,</p> <ol style="list-style-type: none"> i. sampling locations, ii. sample identification number, iii. sampling points, iv. sampling depths, v. sampling depth intervals, vi. concentrations of contaminants as analyzed in an accredited laboratory, and vii. the applicable site condition standard or standard specified in a risk assessment for each contaminant analyzed.
9. Figures and Tables	(b) Figures	(viii) Contaminants of Concern in Areas of Potential Environmental Concern	<p>For each parameter group defined in the Analytical Protocol for which a contaminant has been analysed, provide cross-sections that are oriented parallel and perpendicular to the direction of ground water flow at the phase two property illustrating,</p> <ol style="list-style-type: none"> i. the delineation of the lateral and vertical extent of contaminants of concern in soil, ground water or sediment for each area of potential environmental concern and showing sample locations, sample

			<p>identification numbers, sampling points, sampling depths and sampling depth intervals,</p> <p>ii. concentration of contaminants analyzed in an accredited laboratory,</p> <p>iii. in highlighting, all concentrations of contaminants in excess of the applicable site condition standard or standard specified in a risk assessment, and</p> <p>iv. the stratigraphy from ground surface to the deepest aquifer or aquitard investigated.</p>
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(10) Report Section 10 (Appendices), Heading (b) (Remediation), Sub-Heading (iv) (Confirmation Sampling and Analysis) of Table 1 of Schedule E to the Regulation is revoked and the following substituted:

<p>10. Appendices</p>	<p>(b) Remediation</p>	<p>(iv) Confirmation Sampling and Analysis</p>	<ol style="list-style-type: none"> 1. Provide a description of all confirmation sampling activities conducted during and after remedial actions for the purpose of demonstrating that the phase two property meets the applicable site condition standards and any standards specified in a risk assessment. 2. Provide a description and rationale for all confirmation sampling locations, depths and contaminants analyzed. 3. Provide a description of the lateral and vertical dimensions of the excavations and the number and types of confirmation samples taken at each excavation, where part or all of the land on, in or under a phase two property has been excavated. 4. Provide one or more figures of the phase two property, identifying the locations and dimensions of any excavations on, in or under the phase two property. 5. Provide one or more cross-sections that show the vertical dimensions of any excavations on, in or under the phase two property. 6. Provide one or more figures of the phase two property, identifying the locations of any ground water removal or treatment activities, including the locations of any injection wells and extraction wells. 7. Provide one or more figures of the phase two property, identifying the locations of any sediment removal or treatment activities. 8. Provide a description of the results of quarterly sampling events, including water level measurements and ground water sampling and analysis, where <i>in situ</i> treatment has been undertaken on, in or under the phase two property. 9. Provide a description of the results of quarterly sampling events, including water level measurements and ground water sampling and analysis, where excavation has been undertaken on, in or under the phase two property. 10. Provide tables showing all soil, ground water and sediment quality data contained in laboratory certificates of analysis or analytical reports for confirmation samples, including, <ol style="list-style-type: none"> i. comparison of the data to applicable site condition standards or standards specified in a risk assessment as the case may be for each contaminant analyzed, ii. the borehole, test hole, test pit or monitoring well identification number, iii. the sample identification number, iv. soil or sediment sample depth, v. ground water sampling depth interval, vi. date of sample collection, vii. date of sample analysis, and viii. laboratory certificate of analysis or analytical report reference number. 11. For each parameter group defined in the Analytical Protocol for which a contaminant has been analysed, provide one or more figures that show the results of analyses for all confirmation samples of soil, ground water and sediment, including the delineation of the lateral and vertical extent of contaminants in soil, ground water or sediment
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			<p>following actions taken to reduce the concentration of contaminants, and illustrating,</p> <ul style="list-style-type: none"> i. sampling locations, ii. sample identification number, iii. sampling points, iv. sampling depths, v. sampling depth intervals, vi. concentrations of contaminants as analyzed in an accredited laboratory, and vii. the applicable site condition standard or standard specified in a risk assessment for each contaminant analysed. <p>12. For each parameter group defined in the Analytical Protocol for which a contaminant has been analysed, provide cross-sections that are oriented parallel and perpendicular to the direction of ground water flow that show the results of analyses for all confirmation samples of soil, ground water and sediment, including the delineation of the lateral and vertical extent of contaminants in soil, ground water or sediment following actions taken to reduce the concentration of contaminants, and illustrating,</p> <ul style="list-style-type: none"> i. sampling locations, ii. sample identification number, iii. sampling points, iv. sampling depths, v. sampling depth intervals, vi. concentrations of contaminants as analyzed in an accredited laboratory, vii. the applicable site condition standard or standard specified in a risk assessment for each contaminant analyzed, viii. approximate depth to water table, and ix. the stratigraphy from ground surface to the deepest aquifer or aquitard where actions were taken to reduce the concentration of contaminants. <p>13. Provide a table showing construction details and elevations for all monitoring wells used in demonstrating that contaminant concentrations in ground water are below the applicable site condition standards following actions taken to reduce concentration of contaminants.</p> <p>14. Provide a table showing all water level measurements for all monitoring events used in demonstrating that contaminant concentrations in ground water are below the applicable site condition standards following actions taken to reduce concentration of contaminants, including depth to water reported as elevations to the nearest centimetre relative to a geodetic or permanent and recoverable benchmark and reference elevations.</p>
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(11) Report Section 10 (Appendices), Heading (c) (Soil Excavated at or Brought to the Phase Two Property), Sub-Headings (i) (Soil Brought to the Phase Two Property), (ii) (Segregation of Soil) and (iii) (Stockpiles) of Table 1 of Schedule E to the Regulation are revoked and the following substituted:

10. Appendices	(c) Soil Excavated at the Phase Two Property or Excess Soil Brought to the Phase Two Property	(i) Excess Soil Brought to RSC property	<p>1. Provide a rationale for the selection of chemical parameters analyzed by a laboratory in accordance with section 31 of this Schedule.</p> <p>2. Provide a description of the soil sampling activities conducted, including,</p> <ul style="list-style-type: none"> i. the number of samples analyzed, ii. the soil sampling program, including methods used to ensure that the samples are representative of any areas where a contaminant may be present at a concentration greater than the applicable soil quality standard, as determined in accordance with the Soil Rules, iii. the address of the source property and any property where the soil was stored prior to being deposited on, in or under the phase two property, iv. the former and current uses of the source property, including identification of any potentially contaminating activity,
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			<p>v. total volume of soil brought to the phase two property,</p> <p>vi. the results of analyses of soil samples, including a comparison of the results to the applicable soil quality standards set out in the Soil Rules,</p> <p>vii. a figure showing the locations on the phase two property where soil was deposited, and</p> <p>viii. tables,</p> <p>A. showing all soil quality data contained in laboratory certificates of analysis of soil, samples analyzed, and</p> <p>B. comparing the analytical results to the applicable soil quality standards set out in the Soil Rules.</p> <p>3. Provide a description of the purposes for which the soil was brought to the phase two property.</p>
10. Appendices	(c) Soil Excavated at the Phase Two Property or Excess Soil Brought to the Phase Two Property	(ii) Segregation of Soil	<p>Provide,</p> <p>i. a rationale for the choice of contaminants to be analyzed,</p> <p>ii. a description of the methods used to ensure uniform and representative sample collection,</p> <p>iii. the number of soil samples collected and the volume of each stockpile, and</p> <p>iv. a comparison of the results of analysis to the applicable site condition standards and standards specified in a risk assessment for all contaminants analyzed.</p>
10. Appendices	(c) Soil Excavated at the Phase Two Property or Excess Soil Brought to the Phase Two Property	(iii) Stockpiles	<p>Provide,</p> <p>i. a rationale for the choice,</p> <p>ii. a description of the stockpile sampling program, including methods used to ensure uniform and representative sample collection, the number of soil samples collected and the volume of each stockpile,</p> <p>iii. in respect of soil excavated at the phase two property, a table showing all soil quality data contained in certificates of analysis or analytical reports for stockpiled soil samples analyzed and a comparison of the analytical results to the applicable site condition standards and standards specified in a risk assessment, and</p> <p>iv. in respect of excess soil brought to the phase two property, a comparison of the analytical results to applicable soil quality standards set out in the Soil Rules.</p>

(12) Table 2 of Schedule E to the Regulation is revoked and the following substituted:

**TABLE 2
MINIMUM STOCKPILE SAMPLING FREQUENCY**

Item	Column 1 Stockpile Volume (m ³)	Column 2 Minimum Number of Samples
1.	≤ 130	3
2.	> 130 to 220	4
3.	> 220 to 320	5
4.	> 320 to 430	6
5.	> 430 to 550	7
6.	> 550 to 670	8
7.	> 670 to 800	9
8.	> 800 to 950	10
9.	> 950 to 1100	11
10.	> 1100 to 1250	12
11.	> 1250 to 1400	13
12.	> 1400 to 1550	14
13.	> 1550 to 1700	15
14.	> 1700 to 1850	16
15.	> 1850 to 2050	17
16.	> 2050 to 2200	18
17.	> 2200 to 2350	19
18.	> 2350 to 2500	20
19.	> 2500 to 2700	21

20.	> 2700 to 2900	22
21.	> 2900 to 3100	23
22.	> 3100 to 3300	24
23.	> 3300 to 3500	25
24.	> 3501 to 3700	26
25.	> 3700 to 3900	27
26.	> 3900 to 4100	28
27.	> 4100 to 4300	29
28.	> 4300 to 4500	30
29.	> 4500 to 4700	31
30.	> 4700 to 5000	32
31.	> 5000	The amount determined by applying the formula set out in paragraph 6 of section 36 of this Schedule.

22. Schedule F to the Regulation is revoked.

Proposed commencement for consultation purposes

23. (1) Subject to subsections (2) and (3), this Regulation comes into force on the day this Regulation is filed.

(2) Subsection 4 (2) comes into force on the day that is one year after the day this Regulation is filed.

(3) Any provision of this Regulation that refers to “excess soil” or relates to the proposed “On-Site and Excess Soil Management Regulation” comes into force on January 1, 2020.