

## Certificate of Property Use

Environmental Protection Act, R.S.O. 1990, c.E.19, s.168.6

Certificate of Property use number RA1447-15-01  
Risk Assessment number RA1447-15

**Owner:** 18 Queen Street Holdings Limited  
80 Johnson Street  
Kingston, ON K7L 1X7

**Attn:** David Trousdale, Manager, Acquisitions & Corporate Development

**Site:** 18 Queen Street and 282 Ontario Street,  
Kingston, Ontario

**with a legal description as follows:**

18 Queen Street, Kingston being LT 15 ORIGINAL SURVEY KINGSTON CITY;  
LT 52 ORIGINAL SURVEY KINGSTON CITY; PT LT 57 ORIGINAL SURVEY  
KINGSTON CITY PT 1 13R13709; KINGSTON; THE COUNTY OF  
FRONTENAC  
Being all of PIN 36044-0133 (LT)

AND

282 Ontario Street, Kingston being LT 3 & LT 10 ORIGINAL SURVEY  
BEING PT 1, 13R15191; CITY OF KINGSTON  
Being all of PIN 36044-0141 (LT)

**The conditions of this Certificate of Property Use (CPU) address the Risk Management Measures in the Risk Assessment noted above and described in detail in Part 1 below (Risk Assessment). In the event of a conflict between the CPU and the Risk Assessment, the conditions of the CPU take precedence.**

**Summary:**

***Refer to Part 1 of the CPU, Interpretation, for the meaning of all the defined capitalized terms that apply to the CPU.***

- i) CPU requirements addressed in Part 4 of the CPU, Director Requirements, are summarized as follows:
  - a. Installing/maintaining any equipment Yes
  - b. Monitoring any contaminant Yes
  - c. Refraining from constructing any building specified Yes
  - d. Refraining from using the Property for any use specified No
  - e. Other: Preparing and implementing a health and safety plan for the Property. Yes
  
- ii) Duration of Risk Management Measures identified in Part 4 of the CPU is summarized as follows:
  - a. The health and safety plan shall be required for the Property during any activities potentially in contact with groundwater for as long as the Contaminants of Concern are present on the Property.
  
  - b. All other Risk Management Measures shall continue indefinitely or until the Director alters or revokes the CPU.

**Part 1: Interpretation**

In the CPU the following terms shall have the meanings described below:

“Adverse Effect” has the same meaning as in the Act; namely,

- (a) impairment of the quality of the natural environment for any use that can be made of it;
- (b) injury or damage to property or to plant or animal life;
- (c) harm or material discomfort to any person;
- (d) an adverse effect on the health of any person;
- (e) impairment of the safety of any person;
- (f) rendering any property or plant or animal life unfit for human use;
- (g) loss of enjoyment of normal use of property; and,
- (h) interference with the normal conduct of business.

“Act” means the *Environmental Protection Act*, R.S.O. 1990, c. E. 19.

“Active SVIMS” means a soil vapour intrusion mitigation system designed and operated to collect and remove soil vapour from below a Building and convey the soil vapour through vent risers to the outside air by means of one or more electrical fan powered vents drawing air from below the Building.

“Building” means an enclosed structure occupying an area greater than ten square metres consisting of a wall or walls, roof and floor.

“Building Code” means the Ontario Regulation 332/12; ‘Building Code’ as amended January 1, 2017.

“Contaminant” has the same meaning as in the Act; namely any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them, resulting directly or indirectly from human activities that causes or may cause an Adverse Effect.

“Contaminants of Concern” has the meaning as set out in section 3.2 of the CPU.

“CPU” means this Certificate of Property Use as may be altered from time to time and bearing the document number RA1447-15-01.

"Director" means the undersigned Director or any other person appointed as a Director for the purpose of issuing a certificate of property use.

“EBR” means the *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, as amended.

“First Storey” has the same meaning as in the Building Code.

“Grade” has the same meaning as in the Building Code.

“Intrusive Activities” means any intrusive activity undertaken at the Property, such as excavating or drilling into soil or ground water, which may disturb or expose Property Specific Contaminants of Concern at the Property.

“Licenced Professional Engineer” means a person who holds a licence, limited licence or temporary licence under the Professional Engineers Act, R.S.O. 1990, c. P.28.

"Ministry" means Ontario Ministry of the Environment, Conservation and Parks.

“O. Reg. 153/04” means Ontario Regulation 153/04, “Record of Site Condition – Part XV.1 of the Act” as amended, made under the Act.

“O. Reg. 347/90 means Ontario means R.R.O. 1990, Regulation 347 General - Waste Management” as amended, made under the Act.

“Owner” means the owner(s) of the Property, beginning with the person(s) to whom the CPU is issued, described in the “Owner” section on Page 1 above, and any subsequent owner(s) of the Property.

"OWRA" means the *Ontario Water Resources Act*, R.S.O. 1990, c.O.40.

"Passive SVIMS" means a soil vapour intrusion mitigation system designed and operated to collect and remove soil vapour from below a Building and convey the soil vapour through vent risers to the outside air by means of natural forces or one or more wind turbines, or solar powered wind turbine operated vents drawing air from below the Building.

"Property" means the property that is the subject of the CPU and described in the "Site" section on page 1 above.

"Property Specific Standards" means the property specific standards established for the Contaminants of Concern set out in the Risk Assessment and in section 3.2 of the CPU and are the same standards specified in the Risk Assessment.

"Provincial Officer" means a person who is designated as a provincial officer for the purposes of the Act.

"Qualified Person" means a person who meets the qualifications prescribed in subsection 5 (2) of O. Reg. 153/04, namely a person who:

- a. Holds a license, limited license or temporary license under the *Professional Engineer Act*, or
- b. Holds a certificate of registration under the *Professional Geoscientists Act, 2000*, and is a practicing member, temporary member, or limited member of the Association of Professional Geoscientists of Ontario.

"Risk Assessment" means the Risk Assessment number RA1447-15 accepted by the Director on December 4, 2018 and set out in the following documents:

**"Tier 3, Human Health and Ecological Risk Assessment, 18 Queen Street and 282 Ontario Street, Kingston, Ontario", by Geofirma Engineering Ltd., dated March 28, 2016**

- **Tier 3 Human Health and Ecological Risk Assessment Report 18 Queen Street and 282 Ontario Street, Kingston, Ontario, (Revision1) report prepared by Geofirma Engineering Ltd., dated April 28, 2017**
- **Revised Risk Assessment Report for 18 Queen Street and 282 Ontario Street, Kingston, Ontario, report prepared by Geofirma Engineering Ltd., dated September 28, 2017**
- **"RE: Request for additional information for 18 Queen Street, 282 Ontario Street, Kingston; RA1447-15c; IDS#1372-9TNN6N," e-mail from Ken Raven, Geofirma, received by TASDB on March 21, 2018, with the following documents attached:**

- *14-227-2\_Appendix P\_18 Queen St & 282 Ontario St\_DDAD for Coal Tar\_R0.pdf*
- *Appendix K3 Geofirma Responses to RA1447-15C Addit Info Request\_Feb2-18\_R0.pdf*
- **Tier 3 Human Health and Ecological Risk Assessment 18 Queen Street and 282 Ontario Street, Kingston, Ontario, report prepared by Geofirma Engineering Ltd., dated July 6, 2018**
- **“RE: Risk Assessment for 18 Queen Street, 282 Ontario Street, Kingston; RA1447-15c; IDS#1372-9TNN6N,” e-mail from Ken Raven, Geofirma, received by TASDB on October 12, 2018, with the following document attached:**
  - *RA Report\_18 Queen St. Kingston\_R3 Revised Table 1.1.pdf*

"Risk Management Measures" means the risk management measures specific to the Property described in the Risk Assessment and/or Part 4 of the CPU.

“Storage Garage” has the same meaning as in the Building Code.

“Sub Slab Vapour Barrier Venting Layer” means an engineered venting layer and associated Venting Components above the sub-slab materials for building construction, as designed by a Licenced Professional Engineer, which operates in an active manner providing at least 4 Pa or greater pressure relief, and the collection and venting of vapours away from a building.

“Tribunal” has the same meaning as in the Act; namely, the Environmental Review Tribunal.

Venting Components” means a network of perforated piping/plenums or venting composites embedded in granular materials of sufficient permeability or other venting products with continuous formed void space that convey vapours and direct these vapours into vent risers that terminate above the roof elevation with active venting.

## **Part 2: Legal Authority**

- 2.1 Section 19 of the Act states that a certificate of property use is binding on the executor, administrator, administrator with the will annexed, guardian of property or attorney for property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed.
- 2.2 Subsection 132(1.1) of the Act states that the Director may include in a certificate of property use a requirement that the person to whom the certificate is issued provide

- financial assurance to the Crown in right of Ontario for any one or more of,
- a. the performance of any action specified in the certificate of property use;
  - b. the provision of alternate water supplies to replace those that the Director has reasonable and probable grounds to believe are or are likely to be contaminated or otherwise interfered with by a contaminant on, in or under the property to which the certificate of property use relates; and
  - c. measures appropriate to prevent adverse effects in respect of the property to which the certificate of property use relates.
- 2.3 Section 168.6 (1) of the Act states that if a risk assessment related to the property has been accepted under clause 168.5 (1) (a), the Director may issue a certificate of property use to the owner of the property, requiring the owner to do any of the following things:
1. Take any action that is specified in the certificate and that, in the Director's opinion, is necessary to prevent, eliminate or ameliorate any adverse effect that has been identified in the risk assessment, including installing any equipment, monitoring any contaminant or recording or reporting information for that purpose.
  2. Refrain from using the property for any use specified in the certificate or from constructing any building specified in the certificate on the property.
- 2.4 Subsection 168.6(2) of the Act states that a certificate of property use shall not require an owner of property 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 that is required to meet the standards specified for the contaminant in the risk assessment.
- 2.5 Subsection 168.6(3) of the Act states that the Director may, on his or her own initiative or on application by the owner of the property in respect of which a certificate has been issued under subsection 168.6(1),
- a. alter any terms and conditions in the certificate or impose new terms and conditions;
  - or
  - b. revoke the certificate.
- 2.6 Subsection 168.6(4) of the Act states that if a certificate of property use contains a provision requiring the owner of property to refrain from using the property for a specified use or from constructing a specified building on the property,
- a. the owner of the property shall ensure that a copy of the provision is given to every occupant of the property;
  - b. the provision applies, with necessary modifications, to every occupant of the property who receives a copy of the provision; and
  - c. the owner of the property shall ensure that every occupant of the property complies with the provision.
- 2.7 Subsection 197(1) of the Act states that a person who has authority under the Act to make an order or decision affecting real property also has authority to make an order requiring any person with an interest in the property, before dealing with the property in any way, to give a copy of the order or decision affecting the property to every person who will acquire an interest in the property as a result of the dealing.

- 2.8 Subsection 197(2) of the Act states that a certificate setting out a requirement imposed under subsection 197(1) may be registered in the proper land registry office on the title of the real property to which the requirement relates, if the certificate is in a form approved by the Minister, is signed or authorized by a person who has authority to make orders imposing requirements under subsection 197(1) and is accompanied by a registrable description of the property.
- 2.9 Subsection 197(3) of the Act states that a requirement, imposed under subsection 197(1) that is set out in a certificate registered under subsection 197(2) is, from the time of registration, deemed to be directed to each person who subsequently acquires an interest in the real property.
- 2.10 Subsection 197(4) of the Act states that a dealing with real property by a person who is subject to a requirement imposed under subsection 197(1) or 197(3) is voidable at the instance of a person who was not given the copy of the order or decision in accordance with the requirement.

### **Part 3: Background**

- 3.1 The Risk Assessment was undertaken for the Property on behalf of the Owner to assess the human health risks and ecological risks associated with the presence or discharge of Contaminants on, in or under the Property and to identify appropriate Risk Management Measures to be implemented to ensure that the Property is suitable for the intended use: “multi-storey mixed commercial and residential use”, as defined in O. Reg. 153/04.
- 3.2 The Contaminants on, in or under the Property that are present above the Residential/Parkland/Institutional Property Use Standards within **Table 7** of the **Soil, Ground water and Sediment Standards for Use under Part XV.1 of the Act** published by the Ministry and dated April 15, 2011 for coarse textured soil or for which there are no such standards are defined as the Contaminants of Concern. The Property Specific Standards for the Contaminants of Concern are set out in Schedule “A” attached to and forming part of the CPU and the following figures:
- Plan of Survey with the Property outlined
- 3.3 I am of the opinion, for the reasons set out in the Risk Assessment that the Risk Management Measures described therein and outlined in Part 4 of the CPU are necessary to prevent, eliminate or ameliorate an Adverse Effect on the Property.

## Part 4: Director Requirements

Pursuant to the authority vested in me under section 168.6(1) of the Act, I hereby require the Owner to do or cause to be done the following:

### Risk Management Measures

4.1 Implement, and thereafter maintain or cause to be maintained, the Risk Management Measures.

4.2 Without restricting the generality of the foregoing in Item 4.1, carry out or cause to be carried out the following key elements of the Risk Management Measures:

4.2.1 Building with no first storey residential, institutional or parkland use Risk Management Measure:

Refrain from constructing any Building on the Property, unless:

- a. The intended and actual use of the Property is commercial use, community use, residential use, parkland use or institutional use, as defined in O. Reg. 153/04, or a combination thereof;
- b. The intended and actual use of the Building on its First Storey and below Grade is not residential use, parkland use or institutional use, or a combination thereof;
- c. The ventilation and air duct systems serving the First Storey of the Building and any area below this are separate systems from the ones serving all stories above the First Storey; and
- d. The Building complies with all applicable requirements of the Building Code, such as the provisions governing:
  - i. interconnection of air duct systems as set out in Division B, Sentence (2) of Article 6.2.3.9. (Interconnection of Systems) of the Building Code; and
  - ii. air leakage as set out in Division B, Section 5.4. (Air Leakage) of the Building Code.

4.2.2 Building with Storage Garage (intermittent 3.9 Litres/second of Ventilation) Risk Management Measure:

Refrain from constructing any Building on the Property unless the Building includes a Storage Garage, and:

- a. The Storage Garage is constructed at or below the Grade of the Building;
- b. The Storage Garage area covers the entire Building Area at Grade; and
- c. The Storage Garage complies with all applicable requirements of the Building Code, such as the provisions governing
  - i. design of a mechanical ventilation system as set out in Division B, Article 6.2.2.3. (Ventilation of Storage and Repair Garages) of the Building Code;
  - ii. interconnection of air duct systems as set out in Division B, Sentence (2) of Article 6.2.3.9. (Interconnection of Systems) of the Building Code; and



- i. air leakage as set out in Division B, Section 5.4. (Air Leakage) of the Building Code; and
- d. The mechanical ventilation system for the Storage Garage is designed to provide a continuous supply of outdoor air at a rate of not less than 3.9 litres per second for each square metre of floor area or be activated on an as-needed basis by carbon monoxide or nitrogen dioxide monitoring devices as required by the Building Code and as set out in Table 7.1 of the Risk Assessment.

#### 4.2.3 Active soil vapour intrusion mitigation system (SVIMS) Risk Management Measures:

Refrain from constructing any Building on the Property unless the Building is constructed as slab-on-grade and includes an Active SVIMS, and the Active SVIMS meets the following requirements:

Design, install and operate a SVIMS for the Building, designed by a Licenced Professional Engineer in consultation with a Qualified Person and installed by a person acceptable to and under the supervision of a Licenced Professional Engineer, so as to remove soil vapour from below the Building and prevent soil vapour containing the Property Specific Contaminants of Concern from entering the Building air, including the following requirements and components for the SVIMS:

- a. the Active SVIMS is to;
  - i. be designed, installed and operated with the objective of achieving during all seasons at least a 6 Pascal lower air pressure differential below the foundation floor slab, relative to the indoor air pressure within the Building, across at least 90% of the Building Area; and
  - ii. have in place, measures, as appropriate based on an assessment carried out in accordance with ASTM E1998.

#### SUB-SLAB FOUNDATION LAYER

- b. throughout the Building Area below the foundation floor slab, a sub-slab foundation layer, above soil containing the Property Specific Contaminants of Concern, designed by a Licenced Professional Engineer for the Building constructor in consultation with the Licenced Professional Engineer for the SVIMS; and

#### SOIL VAPOUR VENTING LAYER

- c. throughout the Building Area below the foundation floor slab and above the sub-slab foundation layer, a soil vapour venting layer designed for collection and venting of soil vapour from below the floor slab to vent risers for venting to the outdoor air, with the soil vapour venting layer consisting of:
  - i. perforated collection pipes or geocomposite strips of sufficient size or diameter, frequency and locations to promote efficient collection and venting, embedded in granular materials of sufficient air permeability and

- depth; or, other soil vapour collection and venting products used to construct a soil vapour venting layer with continuous open void space, such as an aerated sub-floor below the floor slab and around the exterior walls, which provides similar or greater air permeability and collection and venting efficiency;
- ii. for a Building with isolated soil vapour venting layer areas caused by interior grade beams or areas of thickened slabs, ventilation pipes to connect the isolated areas or a soil vapour venting layer that extends below these elements of the Building foundation; and
  - iii. clean-outs, drains or openings to ensure drainage and removal of condensate or water, including any entrained dust, that may enter collection pipes, geocomposite strips or vent risers, and, if required, to ensure drainage or dewatering of the soil vapour venting layer in Property areas with a shallow ground water table; and

#### SOIL VAPOUR BARRIER MEMBRANE

- d. throughout the Building Area, a continuous leak free soil vapour barrier membrane, such as a sheet geomembrane or spray applied membrane, below the foundation floor slab and above the soil vapour venting layer, and below and along the walls of any subsurface structures such as a sump, and which:
  - i. is of appropriate thickness and meets the appropriate gas permeability and chemical resistance specifications to be considered substantially impermeable to the soil vapour, in accordance with the appropriate ASTM standards such as D412 and D543, as applicable; and
  - ii. has a suitable protective geotextile, or other suitable protective material, such as a sand layer, immediately below or above the soil vapour barrier membrane, as considered appropriate by the Licenced Professional Engineer; and

#### VENT RISERS

- e. vent risers shall be of sufficient size or diameter, frequency and locations to promote efficient venting and that terminate above the roof of the Building, to convey soil vapour from the soil vapour venting layer to the outdoor air above the roof of the Building and that discharge at an appropriate distance from Building air intakes and openable windows, doors and other openings through which exhausted vapours could be entrained in Building air and, consistent with the separation provisions in ASTM E2121 but modified as appropriate for the characteristics of the soil vapour and Building, including:
  - i. at least one vent riser per isolated section of the soil vapour venting layer caused by interior grade beams or thickened slabs, unless analysis or testing indicates a lesser number of vent risers is required;
  - ii. vent pipe riser diameter that is greater than the collection pipe diameter, to promote efficient venting; and
  - iii. vent risers located within the Building, where appropriate, to promote temperature induced convective venting during colder weather; and

- iv. an electrical powered fan on each vent riser, and an automated monitoring system of fan operation which remotely detects and indicates system malfunctions; and

#### MONITORING DEVICES

- f. Eight (8) monitoring devices shall be installed below the foundation floor slab across the Building Area to measure the (lower) air pressure differential, relative to the indoor air pressure within the Building, being achieved by the soil vapour venting layer, with the number and locations of the monitoring devices installed being as considered appropriate by the Licenced Professional Engineer in consultation with the Qualified Person, taking into account factors such as the Building Area and the design and configuration of the Building foundation; and

#### LABELING OF EQUIPMENT

- g. equipment for the Active or Passive SVIMS shall be clearly labelled, and include information such as the installer's name, date of installation and identification of all visible piping, consistent with the labeling provisions in ASTM E1465 but modified as appropriate for the characteristics of the soil vapour and Building; and

#### UTILITY SEALING

- h. where utilities or subsurface Building penetrations are a potential conduit for soil vapour migration,
  - i. utility trench dams consisting of soil-bentonite mixture, cement-sand slurry or other appropriate material, installed as a precautionary measure to reduce the potential for soil vapour to migrate beneath the Building through relatively permeable trench backfill; and
  - ii. conduit seals constructed of closed cell polyurethane foam, or other inert gas-impermeable material shall be installed at the termination of all utility conduits and at subsurface Building penetrations, such as sumps, to reduce the potential for vapour migration along the conduit to the interior of the Building; and

#### 4.2.4 Quality Assurance/Quality Control, Inspections, Maintenance and Reporting Requirements for Active SVIMS:

##### QUALITY ASSURANCE / QUALITY CONTROL

- a. Prepare and implement a quality assurance and quality control program, prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, so as to ensure that the Active SVIMS is being, and has been, properly installed and the installation

documented, including inspections, verification testing and documenting of the installation as it is carried out, including at a minimum:

- i. procedures and timing for implementing the program, by a person acceptable to and under the supervision of a Licenced Professional Engineer;
  - ii. daily inspections of the installation of the Active SVIMS, including of the quality assurance and quality control measures and procedures undertaken by the installer;
  - iii. undertaking, at a minimum, the following quality control measures and verification testing of the soil vapour barrier membrane:
    1. daily inspection reports noting any deficiencies and corrective actions taken;
    2. smoke testing of the soil vapour barrier membrane, or equivalent alternative testing method that provides comparable results;
    3. verification of the type and thickness of the soil vapour barrier membrane through testing of representative samples of materials used, including destructive testing and repair of portions of the membranes to be conducted in a manner and at a frequency that meets or exceeds manufacturer's recommendations;
    4. verification of field seams of sheet geomembranes as being continuous and leak free, through vacuum or pressure testing, geophysical testing or other appropriate means; and
    5. verification that appropriate measures to prevent post-construction damage or degradation to the soil vapour barrier membrane have been taken, including at a minimum, appropriate preparation of the sub-slab foundation layer, placement of a protective geotextile, or other suitable protective material, below or above the soil vapour barrier membrane, if included in the design, and work practices to prevent post-construction damage;
  - iv. noting any deficiencies in the materials or installation of the SVIMS;
  - v. ensuring the prompt repair of any deficiencies, to the design specifications;
  - vi. preparing a written report of all inspections, quality control measures and verification testing undertaken, and any deficiencies and repairs, prepared by the Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer;
- and which are,
- vii. delivered to the Owner before installation of the Active SVIMS begins; and
  - viii. updated and delivered to the Owner within 30 days of making any alteration to the program; and

#### AS CONSTRUCTED PLANS

- b. Prepare as constructed plans of the SVIMS , prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, showing the location of the Building and the location and specifications of the installed SVIMS, including cross-sectional drawings specifying the design and the vertical and lateral extent of the SVIMS relative to the Building and the ground surface, and which is:

- i. delivered to the Owner before use of all or any part of the Building begins, or within 90 days following completion of installation of the Active SVIMS, whichever is earlier; and
- ii. updated and delivered to the Owner within 30 days following making any alteration to the Active SVIMS, or other relevant feature shown on the plans; and

## INSPECTION AND MAINTENANCE

- c. Prepare and implement a written inspection and maintenance program, prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, to ensure the continued integrity and effectiveness of the SVIMS, including, at a minimum:
  - i. procedures and timing for implementing the program, by a person meeting the qualifications as set out in the program;
  - ii. maintenance and calibration of operational, monitoring and other equipment, as appropriate;
  - iii. inspections of the SVIMS including:
    - 1. semi-annual inspections, in spring and fall, of the visible areas of the foundation floor slab or subsurface walls in contact with soil, to identify any cracks, breaches or other deficiencies that may allow soil vapour to enter the Building;
    - 2. semi-annual inspections, in spring and fall, the visible components of the SVIMS, to identify any cracks, breaches or other deficiencies that may hinder the collection or venting of soil vapour from below the Building;
    - 3. additional inspections, on a more frequent basis as appropriate, of the electrical powered fans to confirm they turn freely, to confirm the automated monitoring system of fan operation is operational and to confirm operational parameters such as amperage levels are within appropriate ranges; and
    - 4. additional inspections during winter, as appropriate, to identify any significant accumulation of snow or ice requiring removal;
  - iv. noting any deficiencies with the floor slab and SVIMS identified during any inspection, or at any other time;
  - v. repairing promptly any deficiencies, including under the supervision of a Licenced Professional Engineer for a deficiency referred to in part iii. (b);
  - vi. factors and considerations for determining if additional inspections or monitoring should be undertaken;
  - vii. a contingency plan to be implemented in the event the deficiencies cannot be repaired promptly, including prompt notification of the Ministry if such deficiencies, along with operational monitoring results and any additional lines of evidence suggest that soil vapour intrusion into the Building may occur, as determined by a Licenced Professional Engineer; and
  - viii. preparing a written report of all inspections, deficiencies, repairs and maintenance, and of implementation of the contingency plan if necessary, prepared by a Licenced Professional Engineer and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer; and which are,

- ix. delivered to the Owner before use of all or any part of the Building begins, or within ninety (90) days following completion of installation of the SVIMS, whichever is earlier; and
- x. updated and delivered to the Owner within thirty (30) days following making any alteration to the program; and

#### OPERATIONAL MONITORING

- d. Prepare and implement a written program for monitoring of the operation of the installed SVIMS, prepared by a Licenced Professional Engineer in consultation with a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, to ensure the continued integrity and effectiveness of the SVIMS, including, at a minimum:
  - i. procedures and timing for implementing the program, by a person meeting the qualifications as set out in the program;
  - ii. locations and description of the devices and equipment used, or tested, for each monitoring event;
  - iii. procedures for undertaking the testing, measurement and evaluation during a monitoring event, including calibration of operational, monitoring and other equipment, as appropriate;
  - iv. undertaking operational monitoring, including recording of the monitoring results, in accordance with the following:
    - 1. at least once before occupancy and quarterly after occupancy has commenced for a period of two years, measuring of the (lower) air pressure differential below the foundation floor slab across the Building Area, relative to the indoor air pressure within the Building, being achieved by the soil vapour venting layer, using all eight of the monitoring devices referred to in part vi. Of section a. above. Sub-floor slab vapour depressurization is to be measured using a hand-held, high resolution digital manometer with a sensitivity of 0.25 Pa; and
    - 2. at least once before occupancy and quarterly after occupancy has commenced for a period of two years, sampling of air quality in each of the two vent risers for volatile COCs (acenaphthylene, naphthalene, BTEX and VOCs) while blower fans are operating. Air quality samples are to be collected in stainless steel canisters over 8 hour sampling periods.
  - v. for each year, undertaking an assessment and preparing a written monitoring report, by a Licenced Professional Engineer in consultation with a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, on the operational monitoring undertaken and its results and findings with respect to the integrity and effectiveness of the installed SVIMS, including taking into account previous monitoring undertaken, and with recommendations and any follow-up actions to be taken, such as:
    - 1. the need to repeat or undertake additional or follow-up operational monitoring and assessment, or additional inspections;
    - 2. changes to the frequency or nature of the monitoring;
    - 3. the need to make repairs or changes to the design or operation of the SVIMS; and

4. if necessary, implementation of the contingency plan in the event needed repairs or changes to the SVIMS cannot be made promptly, including notification of the Ministry if the operational monitoring results and any additional lines of evidence suggest that soil vapour intrusion into the Building may occur, as determined by a Licenced Professional Engineer;

and which are,

- vi. delivered to the Owner before use of all or any part of the Building begins, or within ninety (90) days following completion of installation of the SVIMS, whichever is earlier; and
- vii. updated and delivered to the Owner within thirty (30) days of following making any alteration to the program; and

#### INTRUSIVE ACTIVITIES CAUTION

- e. Prepare and implement written procedures, prepared by a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, for written and oral communication to all persons who may be involved in Intrusive Activities at the Property that may disturb an installed SVIMS, so as to ensure the persons are made aware of the presence and significance of the SVIMS and the Property Specific Contaminants of Concern at the Property and the precautions to be taken to ensure the continued integrity of the SVIMS when undertaking the Intrusive Activities, and if damaged, to ensure the SVIMS is repaired promptly to the original design specifications, or if it cannot be repaired promptly, to ensure the contingency measures are implemented, and records kept, as specified in the inspection and maintenance program; and which are,
  - i. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
  - ii. updated and delivered to the Owner within thirty (30) days following making any alteration to the procedures.

#### 4.2.5 Health and Safety Plan:

In addition to any requirements under the Occupational Health and Safety Act, R.S.O. 1990, c. O.1, prepare and implement a written health and safety plan for the Property, prepared by a Competent Person in consultation with a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, that includes information concerning the potential hazards and safe work measures and procedures with respect to the Property Specific Contaminants of Concern at the Property and the communication of this information to all persons who may be involved in Intrusive Activities at the Property, including, at a minimum:

- a. the procedures and timing for implementing the plan, including the supervision of persons implementing the plan;

- b. all relevant information concerning the presence of, human exposure to, and risk posed by, the Property Specific Contaminants of Concern through dermal contact, soil or ground water ingestion and inhalation of soil particles or vapour;
- c. all relevant information, measures and procedures concerning protection of the persons from exposure to the Property Specific Contaminants of Concern and the precautions to be taken when undertaking Intrusive Activities, including the supervision of workers, occupational hygiene requirements, use of personal protective equipment, provision of air flow augmentation in excavations or other areas or situations of minimal air ventilation, and other protective measures and procedures as appropriate;
- d. all relevant information concerning the presence and significance of the risk management measures and requirements which are being, or have been, implemented at the Property,
- e. the procedures and timing for implementing emergency response and contingency measures and procedures, including contact information, in the event of a health and safety incident; and
- f. the recording, in writing, of the implementation of the plan and any health and safety incidents that occur, to be retained by the Owner and be available for inspection upon request by a Provincial Officer; and which is,
- g. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
- h. updated and delivered to the Owner within thirty (30) days following making any alteration to the plan.

#### 4.2.6 Groundwater Management Plan:

Prepare and implement a written groundwater management plan for the Property, prepared by a Qualified Person and to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, for managing groundwater from dewatering during Intrusive Activities at the Property, so as to prevent exposure to or uncontrolled movement or discharge of the Property Specific Contaminants of Concern in groundwater at the Property, including, at a minimum:

- a. procedures and timing for implementing the plan, including the supervision of persons implementing the plan;
- b. measures to manage storm water and any ground water from dewatering at the Property to prevent the movement of entrained soil within and away from the Property, including, in addition to any applicable measures specified pursuant to other applicable law or other instruments, measures such as silt fences, filter socks for catch-basins and utility covers, and provision for discharge to a sanitary sewer or to other approved treatment if needed; and
- c. recording, in writing, the storm water and any ground water management measures undertaken, in addition to any applicable record keeping requirements specified in O. Reg. 153/04 or pursuant to other applicable law or other instruments, to be retained by the Owner, and be available for inspection upon request by a Provincial Officer, including:
  - i. dates and duration of the Intrusive Activities being undertaken;
  - ii. weather and site conditions during the Intrusive Activities;



- iii. the location and depth of excavation activities, and dewatering activities, if any;
- iv. dust control and soil tracking control measures;
- v. characterization results for any ground water from dewatering;
- vi. management activities for any ground water from dewatering;
- vii. names and contact information for the Qualified Persons and on-site contractors involved in the Intrusive Activities;
- viii. names and contact information for any haulers and receiving sites for soil and any ground water removed from the Property, and for haulers and source sites of any soil brought to the Property; and
- ix. any complaints received relating to the Intrusive Activities, including the soil, storm water and any ground water management activities; and which is,
  - x. delivered to the Owner before any Intrusive Activities are undertaken at the Property; and
  - xi. updated and delivered to the Owner within thirty (30) days following making any alteration to the plan.
- d. The groundwater management plan is to provide details of post-construction collection and treatment of shallow groundwater as per Appendix H of the RA. As-built drawings of the groundwater collection and treatment system will be:
  - i. signed by a Licensed Professional Engineer;
  - ii. delivered to the Owner by the earlier of the date(s) use of Building begins or (b) which is ninety (90) days after completion of the Building; and
  - iii. retained by the Owner.

#### 4.2.7 ANNUAL REPORTS

The Owner shall prepare by March 31 each year, an annual report documenting activities relating to the Risk Management Measures undertaken during the previous calendar year. A copy of this report shall be maintained on file by the Owner and shall be made available upon request by a Provincial Officer. The report shall include, but not be limited to, the following minimum information requirements as applicable:

- a. a copy of all records relating to the inspection and maintenance program for the barrier to site soils and SVIMS;
- b. a copy of all records related to pressure monitoring of the SVIMS;
- c. a copy of all records relating to the groundwater management plan;
- d. a copy of all records relating to the health and safety plan;
- e. a copy of any signed as constructed plans for the SVIMS for any building; and
- f. a copy of signed site plans including any alternations; and
- g. Confirmation that the building with storage garage covers the entire building footprint and is ventilated in accordance to item 4.2.2.

4.3 Refrain from using the Property for any of the following use(s): N/A

4.4 Refrain from constructing the following building(s): No building construction unless construction is in accordance with Item 4.2.1 of the CPU.

- 4.5 The Owner shall ensure that every occupant of the Property is given notice that the Ministry has issued this CPU and that it contains the provisions noted above in Items 4.3 and 4.4, unless noted N/A. For the purposes of this requirement, an occupant means any person with whom the Owner has a contractual relationship regarding the occupancy of all or part of the Property.

### Site Changes

- 4.6 In the event of a change in the physical site conditions or receptor characteristics at the Property that may affect the Risk Management Measures and/or any underlying basis for the Risk Management Measures, forthwith notify the Director of such changes and the steps taken, to implement, maintain and operate any further Risk Management Measures as are necessary to prevent, eliminate or ameliorate any Adverse Effect that will result from the presence on, in or under the Property or the discharge of any Contaminant of Concern into the natural environment from the Property. An amendment to the CPU will be issued to address the changes set out in the notice received and any further changes that the Director considers necessary in the circumstances.

### Reports

- 4.7 Retain a copy of any reports required under the CPU, the Risk Assessment and any reports referred to in the Risk Assessment (until otherwise notified by the Director) and within ten (10) days of the Director or a Provincial Officer making a request for a report, provide a copy to the Director or Provincial Officer.

### Property Requirement

- 4.8 For the reasons set out in the CPU and pursuant to the authority vested in me under subsection 197(1) of the Act, I hereby order you and any other person with an interest in the Property, before dealing with the Property in any way, to give a copy of the CPU, including any amendments thereto, to every person who will acquire an interest in the Property as a result of the dealing.

### Certificate of Requirement

- 4.9 Within fifteen (15) days from the date of receipt of a certificate of requirement issued under subsection 197(2) of the Act and as set out in Schedule 'B', register the certificate of requirement on title to the Property, in the appropriate land registry office.
- 4.10 Within five (5) days after registering the certificate of requirement provide to the Director a copy of the registered certificate and of the parcel register(s) for the Property confirming that registration has been completed.

## Owner Change

- 4.11 While the CPU is in effect, the Owner shall forthwith report in writing, to the Director any changes of ownership of the Property, except that while the Property is registered under the Condominium Act, 1998, S.O.1998 c.19, as amended, no notice shall be given of changes in the ownership of individual condominium units or any appurtenant common elements on the Property.

## Part 5: General

- 5.1 The requirements of the CPU are severable. If any requirement of the CPU or the application of any requirement to any circumstance is held invalid, the application of such requirement to other circumstances and the remainder of the CPU shall not be affected thereby.
- 5.2 An application under sub section 168.6(3) of the Act to,  
a. alter any terms and conditions in the CPU or impose new terms and conditions; or  
b. revoke the CPU;  
shall be made in writing to the Director, with reasons for the request.
- 5.3 The Director may alter the CPU under subsections 132(2) or (3) of the Act to change a requirement as to financial assurance, including that the financial assurance may be increased or reduced or released in stages. The total financial assurance required may be reduced from time to time or released by an order issued by the Director under section 134 of the Act upon request and submission of such supporting documentation as required by the Director.
- 5.4 Subsection 186(3) of the Act provides that non-compliance with the requirements of the CPU constitutes an offence.
- 5.5 The requirements of the CPU are minimum requirements only and do not relieve the Owner from,  
a. complying with any other applicable order, statute, regulation, municipal, provincial or federal law; or  
b. obtaining any approvals or consents not specified in the CPU.
- 5.6 Notwithstanding the issuance of the CPU, further requirements may be imposed in accordance with legislation as circumstances require. The Director shall also alter the CPU where the approval or acceptance of the Director is required in respect of a matter under the CPU and the Director either does not grant the approval or acceptance or does not grant it in a manner agreed to by the Owner.
- 5.7 In the event that, any person is, in the opinion of the Director, rendered unable to comply with any requirements in the CPU because of,

- a. natural phenomena of an inevitable or irresistible nature, or insurrections,
- b. strikes, lockouts or other labour disturbances,
- c. inability to obtain materials or equipment for reasons beyond your control, or
- d. any other cause whether similar to or different from the foregoing beyond your control, the requirements shall be adjusted in a manner defined by the Director. To obtain such an adjustment, the Director must be notified immediately of any of the above occurrences, providing details that demonstrate that no practical alternatives are feasible in order to meet the requirements in question.

5.8 Failure to comply with a requirement of the CPU by the date specified does not absolve the Owner from compliance with the requirement. The obligation to complete the requirement shall continue each day thereafter.

5.9 In the event that the Owner complies with the provisions of Items 4.9 and 4.10 of the CPU regarding the registration of the certificate of requirement on title to the Property, and then creates a condominium corporation by the registration of a declaration and description with respect to the Property pursuant to the Condominium Act, 1998, S.O. 1998, c.19, as amended, and then transfers ownership of the Property to various condominium unit owners, the ongoing obligations of the Owner under this CPU can be carried out by the condominium corporation on behalf of the new Owners of the Property

## Part 6: Hearing before the Environmental Review Tribunal

- 6.1 Pursuant to section 139 of the Act, you may require a hearing before the Environmental Review Tribunal (the “Tribunal”), if within fifteen (15) days after service on you of a copy of the CPU, you serve written notice upon the Director and the Tribunal.
- 6.2 Pursuant to section 142 of the Act, the notice requiring the hearing must include a statement of the portions of the CPU and the grounds on which you intend to rely at the hearing. Except by leave of the Tribunal, you are not entitled to appeal a portion of the CPU, or to rely on a ground, that is not stated in the notice requiring the hearing.
- 6.3 Service of a notice requiring a hearing must be carried out in a manner set out in section 182 of the Act and Ontario Regulation 227/07: *Service of Documents*, made under the Act as they may be amended from time to time. The address, email address and fax numbers of the Director and the Tribunal are:

The Secretary  
Environmental Review Tribunal  
655 Bay Street, Suite 1500  
Toronto, ON, M5G 1E5  
Fax: 1-877-849-2066  
Email: [ERTTribunalSecretary@ontario.ca](mailto:ERTTribunalSecretary@ontario.ca)

and

Trevor Dagilis  
Ministry of the Environment, Conservation and Parks  
Kingston District Office  
1259 Gardiners Road, Unit 3  
Kingston, ON K7P 3J6  
Fax: 613-548-6920  
Email: [trevor.dagilis@ontario.ca](mailto:trevor.dagilis@ontario.ca)

- 6.4 Unless stayed by application to the Tribunal under section 143 of the Act, the CPU is effective from the date of issue.
- 6.5 If you commence an appeal before the Tribunal, under section 47 of the Environmental Bill of Rights, 1993 (the “EBR”), you must give notice to the public in the EBR registry. The notice must include a brief description of the CPU (sufficient to identify it) and a brief description of the grounds of appeal.

The notice must be delivered to the Environmental Commissioner of Ontario who will place it on the EBR registry. The notice must be delivered to the Environmental Commissioner at 605-1075 Bay Street, Toronto, Ontario M5S 281 by the earlier of:

- 6.5.1 two (2) days after the day on which the appeal before the Tribunal was commenced; and
  - 6.5.2 fifteen (15) days after service on you of a copy of the CPU.
- 6.6 Pursuant to subsection 47(7) of the EBR, the Tribunal may permit any person to participate in the appeal, as a party or otherwise, in order to provide fair and adequate representation of the private and public interests, including governmental interests, involved in the appeal.
- 6.7 For your information, under section 38 of the EBR, any person resident in Ontario with an interest in the CPU may seek leave to appeal the CPU. Under section 40 of the EBR, the application for leave to appeal must be made to the Tribunal by the earlier of:
- 6.7.1 fifteen (15) days after the day on which notice of the issuance of the CPU is given in the EBR registry; and
  - 6.7.2 if you appeal, fifteen (15) days after the day on which your notice of appeal is given in the EBR registry.

Issued at Kingston this 20<sup>th</sup> day of March, 2019.



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Trevor Dagilis  
Director, section 168.6 of the Act

**Schedule 'A'**

**Property Specific Standards for each Contaminant of Concern**

<b>Media</b>	<b>Contaminants of Concern (COC)</b>	<b>Units</b>	<b>Property Specific Standards</b>
GW	Chloride	µg/L	7,320,000
GW	Sodium	µg/L	3,120,000
GW	Acenaphthene	µg/L	300
GW	Acenaphthylene	µg/L	456
GW	Anthracene	µg/L	62
GW	Benzo[a]anthracene	µg/L	22.8
GW	Benzo[a]pyrene	µg/L	19.2
GW	Benzo[b]fluoranthene	µg/L	15.6
GW	Benzo[k]fluoranthene	µg/L	6.6
GW	Benzo[g,h,i]perylene	µg/L	8.4
GW	Chrysene	µg/L	26.4
GW	Dibenzo[a,h]anthracene	µg/L	1.2
GW	Indeno[1,2,3-cd]pyrene	µg/L	42
GW	Fluoranthene	µg/L	99
GW	Fluorene	µg/L	115
GW	Naphthalene	µg/L	8,160
GW	Phenanthrene	µg/L	132
GW	Pyrene	µg/L	63

<b>Media</b>	<b>Contaminants of Concern (COC)</b>	<b>Units</b>	<b>Property Specific Standards</b>
GW	Benzene	µg/L	13,200
GW	Ethylbenzene	µg/L	1,800
GW	Toluene	µg/L	6,960
GW	Xylenes, Total	µg/L	2,640



**Schedule 'B'**

**CERTIFICATE OF REQUIREMENT**

**s.197(2)**

***Environmental Protection Act***

This is to certify that pursuant to section 4.9 of Certificate of Property Use number RA1447-15-01 issued by Trevor Dagitlis, Director of the Ministry of the Environment, Conservation and Parks, under sections 168.6 and 197 of the Environmental Protection Act, on March 20, 2019, being a Certificate of Property Use and order under subsection 197(1) of the Environmental Protection Act relating to the property municipally known as 18 Queen Street, Kingston and described in Property Identifier Number (PIN) 36044-0133 (LT) and the property municipally known as 282 Ontario Street, Kingston and described in PIN 36044-0141 (LT) together described as the "property" with respect to a Risk Assessment and certain Risk Management Measures and other preventive measure requirements on the property:

18 Queen Street Holdings Limited

and any other persons having an interest in the property, are required before dealing with the property in any way, to give a copy of the Certificate of Property Use, including any amendments thereto, to every person who will acquire an interest in the property.

Under subsection 197(3) of the Environmental Protection Act, the requirement applies to each person who, subsequent to the registration of this certificate, acquires an interest in the real property.

# Plan of Survey



