

Chair  
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Laboratories

**Izzie Abrams**  
Waste Connections

**Brad Bergeron**  
RWDI

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Gowling WLG

**Michele Grenier**  
Ontario Water Works  
Association

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KPMG

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Aslan Technologies

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**Travis Tan**  
Jacobs

**Grant Walsom**  
XCG Consulting Ltd.

**Derek Webb**  
BIOREM Technologies

**Agnes Wiertzynski**  
Accuworx

**ONEIA**  
192 Spadina Avenue  
Suite 306  
Toronto, ON M5T 2C2

Executive Director  
**Alex Gill**

Operations Manager  
**Janelle Yanishewski**

Tel: (416) 531-7884  
info@oneia.ca  
[www.oneia.ca](http://www.oneia.ca)

January 13, 2020

Ministry of the Environment, Conservation and Parks (MECP)  
Environmental Policy Branch  
40 St Clair Avenue West, Floor 10  
Toronto, Ontario M4V 1M2  
Attn: Sanjay Coelho *Sent via email: sanjay.coelho@ontario.ca*

**RE: ERO# 019-0987 – Amendment to the Record of Site Condition (Brownfields) Regulation related to the Requirement to Sample Ground Water**

Dear Mr. Coelho,

We are writing on behalf of the member firms of the Ontario Environment Industry Association (ONEIA) to provide our response to the proposed regulatory amendment posted as ERO# 019-0987.

As you know, Ontario is home to Canada's largest group of environment and cleantech companies which employ more than 65,000 people across a range of sectors including private waste/resource recovery services, water and wastewater, brownfields remediation and redevelopment, and environmental consulting. These companies contribute more than \$8 billion to the provincial economy, with approximately \$1 billion of this amount coming from export earnings. ONEIA members are committed to working with various levels of government to enact smart regulations that protect the environment and drive the next generation of businesses.

ONEIA would like to thank the Ministry for the opportunity to review and provide comments on the proposed amendments to Ontario Regulation 153/04. Our Brownfields Committee, despite the very short time period provided over the holiday season, was able to solicit comments from our interested members. We are happy to provide this high-level feedback in the following table (Table One).

**Table One. ONEIA Comments on ERO# 019-0987**

No.	Proposed Amendment	Comment
1	The proposed amendment is indicated to provide flexibility for a Qualified Person (QP) to exercise judgement regarding the need for ground water testing in certain situations for sites requiring a Phase Two Environmental Site Assessment (ESA) to support Record of Site Condition (RSC) filing and all soil down to bedrock has been removed from the site. The proposed amendment outlines a series of conditions that would have to be met in order to avoid ground water sampling, including that the area is serviced by a municipal drinking water system, the property is not within 30 m of a waterbody, the property is not an enhanced investigation property, and a risk assessment (RA) is not being prepared for the property.	The fact that an RA is not being prepared to support RSC filing signifies that the RSC will be filed based on the property meeting generic standards as confirmed through a Phase Two ESA, but without analytical evidence that ground water conditions actually meet generic standards. It seems inappropriate that, with the site having triggered the need for a Phase Two ESA in support of RSC filing, that some minimal amount of groundwater sampling would not be required – potentially before or after the soil removal. Requiring that the area be serviced by municipal drinking water systems and the property must not be within 30 m of a waterbody indicates the MECP's own uncertainty that the generic standards would actually be met in these cases. It is noted that drinking water and surface water are not the only exposure pathways that can be associated with ground water that does not meet generic standards (e.g., vapour intrusion). RSCs filed by a Phase Two ESA based on meeting generic standards should have to demonstrate conclusively that generic standards have, in fact, been met.

2	<p>The proposed amendment indicates that it would only apply if the Phase One ESA indicates the property has no areas of potential environmental concern (APECs) resulting from offsite potentially contaminating activities (PCAs), soil sampling at the property indicates concentrations of volatile organic compounds (VOCs) in soil meet the applicable generic standards, and the QP has concluded that contaminants have not migrated from the soil (prior to excavation) into ground water at concentrations in exceedance of the applicable generic standards.</p>	<p>It's unclear what types of sites would actually align to these conditions and thus realistically benefit from the proposed amendment. For the purpose of transparency, the MECP should specify what types of properties they are expecting to benefit from these changes and indicate the actual burden reduction the industry can expect from the amendment (i.e., for RSCs filed since 2011, what types and how many properties would have been able to take advantage of these changes, and thus what burden reduction could we expect going forward if the amendment is in place)?</p>
3	<p>The proposed amendment indicates that it would only apply if the Phase One ESA indicates the property has no APECs resulting from offsite PCAs, and the property is not an enhanced investigation property.</p>	<p>As noted in Comment 2, it's unclear what types of sites would not have offsite PCAs, nor be an enhanced investigation property, and yet still require a Phase Two ESA to support RSC filing and thus be potential candidates for the proposed amendment. For the purpose of transparency, the MECP should provide clarity on the types of properties they are expecting to benefit from these changes.</p>
4	<p>The proposed amendment indicates that soil sampling at the property must indicate concentrations of VOCs in soil meet the applicable generic standards.</p>	<p>VOCs are not the only potentially volatile compounds that may be present at a property – especially given the MECP's current definition of volatility as included in Appendix I (Section I.4, page 30) of the document entitled Rationale Document for Development of Excess Soil Quality Standards, dated November 19, 2019. Why is the MECP not making this condition specific to all potentially volatile parameters, based on their own definition of volatility?</p>
5	<p>The proposed amendment indicates that the QP is to document evidence and provide a written rationale based on the Phase One ESA and Phase Two ESA (including soil sampling and analyses) supporting their professional opinion that contaminants have not migrated from the soil (prior to excavation) into ground water at concentrations in exceedance of the applicable generic standards. It further notes that the QP would have to consider factors that may influence whether a contaminant may have migrated to ground water (e.g., soil type, volume of contaminated soil, soil pH, etc.).</p>	<p>a. As with Comments 2 and 3 above, it's unclear what specific site conditions would support accessing the proposed amendment. It would seem only sites with limited non-mobile impacts existing under very specific conditions may be candidates for the amendment, meaning the ability of the amendment to actually "reduce barriers to redevelopment of brownfields" is likely extremely constrained. What is the business case for putting this amendment in place? The MECP should provide statistical information on the volume of properties expected to be able to take advantage of these changes.</p> <p>b. RSCs filed via a Phase Two ESA do not undergo a 3rd party peer review process and thus do not experience the level of scrutiny received by properties undergoing RSC filing via an RA. QPs individually have different risk tolerances and different perspectives on the volume and type of evidence required to support a professional opinion. Given the range of evidence and rationale that may be evolved to support a QP applying this amendment, how will the MECP guard against the potential for inappropriate interpretation/filing that can reasonably be expected with these proposed changes? It is unclear if the MECP has sufficient resources or adequate processes to provide the level of review and oversight that may be required to provide public assurance that this amendment would not be abused. Information on how the MECP will</p>

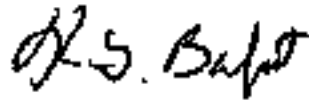
		monitor and scrutinize the implementation of this amendment is needed.
6	The proposed amendment is focused on reducing requirements that are currently in place, based on the PCAs, APECs, and contaminants of concern (COCs) currently included in O. Reg. 153/04.	With all the recent focus on amending O. Reg. 153/04, it is unclear why the MECP continues to exclude consideration of emerging contaminants like per- and polyfluoroalkyl substances (PFAS) - especially since they are known to migrate long distances in groundwater with significant potential to impact both potable groundwater and surface water resources. As PFAS have been a growing part of the environmental industry conversation for two decades, and the MECP is actively involved in a number of PFAS sites in Ontario already, there is a distinct and unexplained lack of public policy, guidance, and regulation specific to these parameters in Ontario.

We welcome the opportunity to discuss our ideas further. Please contact Alex Gill, our Executive Director, at [agill@oneia.ca](mailto:agill@oneia.ca) or at (416) 531-7884, should you have any questions.

Sincerely,



Alex Gill  
Executive Director



Krista Barfoot  
Chair, Brownfields Committee