



Brownfields in Alberta: A Changing Legal Landscape

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“It is important to recognize that dealing with former industrial sites is a significant environmental issue. The importance of this issue is why the Government of Alberta recently amended the *Remediation Regulation, A.R. 154/2018*, to establish a process to ensure the remediation of former industrial sites.”

– Shannon Phillips, M.O. 18/2019, March 12, 2019

Outline

- The *Remediation Regulation*
 - Guidance documents
 - Remediation Certificates
- The Cherokee and Domtar Appeals
 - Key findings
 - Implications
- What does this mean?
- Questions

The *Remediation Regulation*

- Came into force January 1, 2019
- Two main parts:
 - Deadlines for completing remediation and submitting reports
 - Obtaining remediation certificates

The *Remediation Regulation*, cont'd

- Grounded in general duties to remediate
 - EPEA s. 112
 - “may cause an adverse effect”
 - *Remediation Regulation* said to add clarity

The *Remediation Regulation*, cont'd

- Remediation “as soon as possible”
- More AEP oversight if remediation cannot be completed within 2 years
- Submission of a Phase II and Remedial Action Plan (“RAP”) with timeline for cleanup
- Previously reported sites grandfathered under old regulation... maybe...

The *Remediation Regulation*, cont'd

- Tier 2 guideline adjustment
- New guidance documents incorporated into the *Remediation Regulation*
 - Risk Assessment
 - Exposure Control/Risk Management

The *Remediation Regulation*, cont'd

- Remediation Certificates
 - “site-based” remediation certificate
 - “limited” remediation certificate
- Tier 2 Compliance Letter

The Cherokee and Domtar Appeals

- *Cherokee Canada Inc. et al. v. Director, Regional Compliance, Red Deer-North Saskatchewan Region* (2019 AEAB 1)
- Alberta Environmental Appeals Board
- <http://www.eab.gov.ab.ca/dec/16-055-etc.-Cherokee-R.pdf>

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The Cherokee and Domtar Appeals, cont'd

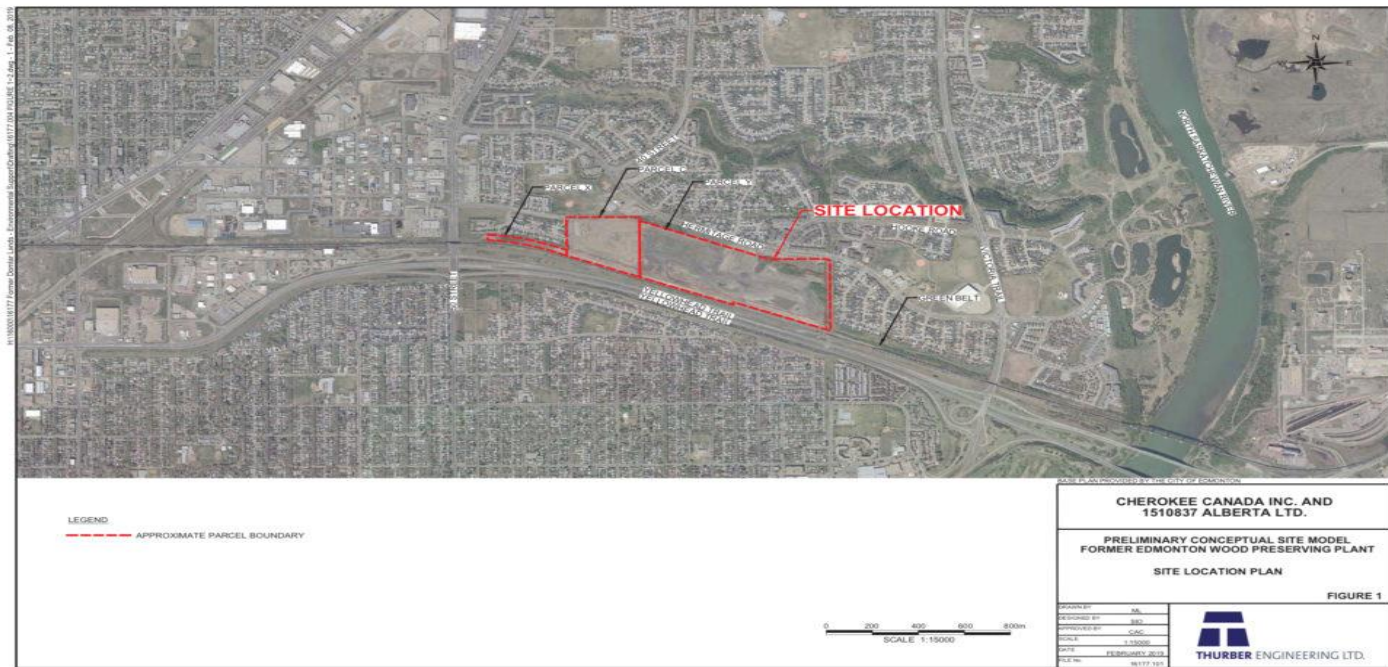
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The Cherokee and Domtar Appeals, cont'd

(<http://homesteaderresponds.ca/background/>)



The Cherokee and Domtar Appeals, cont'd

- Issues

- Safety and sound science
- Definition of “waste”
- Interpretation of Tier 1 and 2 Guidelines
- Acute toxicity threshold
- Risk management for brownfields

The Cherokee and Domtar Appeals, cont'd

- Definition of “waste”
 - Requires an *intention to dispose* of the substance
 - Moving contaminated soil on site, not a waste
 - Significance of brownfield context and set back requirements

The Cherokee and Domtar Appeals, cont'd

- Interpretation of Tier 1 and 2 Guidelines
 - Not criteria for industrial site in the middle of a brownfield development
 - Board's findings apply to current *Regulation*

The Cherokee and Domtar Appeals, cont'd

- Acute toxicity threshold
 - Director's Provisional Guidance Documents
 - Would preclude risk management at certain COC concentrations
 - Director's process and science not accepted by Board or Minister

The Cherokee and Domtar Appeals, cont'd

- Risk management for brownfields
 - Essential to brownfield redevelopment
 - Minister's Order provides for risk assessment and risk management

What does this mean?

- Context of a brownfield in policy and regulatory decision-making
- Endorsement of risk assessment and risk management
- Threshold for remediation under current *Regulation* still of potential adverse effect (EPEA s. 112)
- Will have to see how *Regulation* will be applied

Questions?