

Contaminated Sites (Re)Development: Legal Requirements that Industry and Consultants Need to Know

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This presentation provides general information and is not intended to provide legal advice.
Audience members should seek legal advice for specific situations.

**RemTech 2025
Banff, Alberta
October 16, 2025**

Overview

- **Brownfields Basics**
- **Environmental Due Diligence**
- **Redevelopment Plans**
- **Regulatory Regimes – Ontario, Manitoba, Saskatchewan, Alberta, British Columbia**
 - Trigger for Reporting
 - Applicable Standards
 - Technical Assessments
 - Remedial Approaches
 - Protections from Future Regulatory Action

What are Brownfields?

- **A brownfield property is**
 - vacant, derelict or underutilized
 - previously used for commercial or industrial purpose; past activities may have left contamination
 - service stations
 - dry-cleaning establishments
 - manufacturing operations
 - waste disposal facilities
 - oil and gas processing and storage facilities
 - may pose health, environment or safety risk
 - costly to manage

Brownfields Basics

- **Brownfield contamination can include**
 - groundwater and surface water contamination – contaminants enter the surface water and groundwater systems
 - soil contamination – contaminants enter and remain in the soil
 - soil vapour – contaminants in the soil enter overlying buildings as vapour, causing air quality problems
- **A potential brownfield property is assessed based on the location, intended future land use, type and level of contamination, potential remediation requirements, and project planning and construction**
- **Findings of due diligence assessments can impact project viability, plans, timelines and costs**

Environmental Due Diligence

- **Key to understand risk and challenges that may arise and delay or prevent the development project from going forward**
- **Environmental due diligence to understand and, where possible, mitigate the environmental, regulatory and financial risks and liabilities early in the process**
 - assess federal, provincial/territorial and municipal requirements
 - consider Indigenous rights and consultation requirements
 - confirm actual or potential contamination, species at risk, items of archaeological significance
 - consider approvals/permits/environmental concerns (air, water, waste, noise, dust, vibrations, excess soil) for redevelopment and construction activities

The Redevelopment Plan

- **Often brownfield developments take longer than greenfield development because of the additional environmental issues and regulatory requirements**
 - **Studies** – performing ESAs to determine the extent of contamination, set out objectives, develop a remediation plan
 - **Rehabilitation/Remediation** – where contamination is confirmed, the subject site must be remediated and the appropriate confirmation of compliance from the applicable federal, provincial/territorial and municipal authorities
 - **Redevelopment** – considerations given during the redevelopment to mitigate environmental issues, monitoring and ongoing post-remediation work, project construction ongoing



Contaminated Sites Key Concepts

- Promote Redevelopment of Brownfield/ Contaminated Sites
- Protect Human Health, Environment, Ecology
- Contaminant/Contamination Assessment
- Standards/Guidelines Applicable
- Qualified/Responsible Person/Professional
- Remediation/Reclamation
- Risk Assessment/Risk Management Measures
- Regulatory Approval/ Liability Allocation
- Contaminated Sites Database or Registry

Understanding Regulatory Requirements for Brownfield Redevelopment

Ontario

- *Environmental Protection Act*, Part XV.1 – Records of Site Condition
- Ontario Regulation 153/04: Records of Site Condition - Part XV.1 of the Act
- Ontario Regulation 407/19: Amending O. Reg. 153/04
- Soil, Groundwater and Sediment Standards for Use under Part XV.1 of the Act

Manitoba

- *The Contaminated Sites Remediation Act*
- The Contaminated Sites Remediation Regulation, Man Reg 105/97
- Guidance documents

Understanding Regulatory Requirements for Brownfield Redevelopment

Saskatchewan

- *Environmental Management and Protection Act, 2010*
- Saskatchewan Environmental Code and guidance documents

Alberta

- *Environmental Protection and Enhancement Act, Part V – Release of Substances*
- Tier 1 and Tier 2 Guidelines for Soil and Groundwater Remediation

British Columbia

- *Environmental Management Act, Part IV – Contaminated Site Remediation*
- Contaminated Sites Regulation, BC Reg 375/96
- Technical Guidances

Trigger for Reporting

- **Ontario:** Change in use of site → Records of Site Condition (RSC)
- **Manitoba:** Discovery of contamination above standard
- **Saskatchewan:** Discovery of contamination that may cause an adverse effect
- **Alberta:** Duty to report observed substance release and historic contamination with adverse effect
- **British Columbia:** use of land for specified industrial or commercial use → Site Disclosure Statement
 - Zoning of land, development permits, prescribed activity
 - Disclosure to prospective purchasers

Applicable Standards

- **Ontario:** Soil, Ground Water and Sediments Standards for Use Under Part XV.1 of the Environmental Protection Act
- **Manitoba:** (i) Primary Standard: CCME, (ii) Secondary Standard: Ontario Soil, Ground Water and Sediments Standards, (iii) Tertiary Standard: Alberta Tier 1 Soil and Ground Water Remediation Guidelines
- **Saskatchewan:** Discharge and Discovery Reporting Chapter; Saskatchewan Environmental Quality Guidelines (SEQG)
- **Alberta:** Tier 1 and Tier 2 Guidelines for Soil and Groundwater Remediation
- **British Columbia:** Schedules 3.1, 3.2, 3.3, 3.4 of the Contaminated Sites Regulation

Technical Assessments

Ontario

- O Reg 153/04 provides Ontario-specific requirements and rules for RSC Phase 1 ESA and Phase 2 ESA.

Manitoba

- No stand-alone standards for conducting ESAs.
- National and industry standards for reference:
 - CSA Z768-01, Phase I Environmental Site Assessment (2001); CSA Z769-00, Phase II Environmental Site Assessment (2000).
 - ASTM E1527-21, Standard Practice for Environmental Site Assessments; Phase I Environmental Site Assessment Process (2021); ASTM E1903-19, Standard Practice for Environmental Site Assessments; Phase II Environmental Site Assessment Process (2019).

Technical Assessments

Saskatchewan

- Visual Site Assessment Standard Checklist
- If required, CSA Standard for Phase II is followed

Alberta

- Environmental Site Assessment Standard (2024) – minimum requirements
- Used in conjunction with CSA Phase 1 ESA and Phase 2 ESA

British Columbia

- Preliminary Site Investigations (First and Second Stage) - Areas of Potential Environmental Concern (APEC) and Potential Contaminants of Concern (PCOC)
- Detailed Site Investigations

Remedial Approaches - Intended Future Use

Ontario

- Remediation to generic site condition standards for all contaminants
- Remediation to modified generic site condition standards (MGRA)
- Risk assess to site specific standards with or without remediation (Tier 3 Risk Assessment)

Manitoba

- Sites designated as contaminated site or impacted site require remediation

Saskatchewan

- Selection of appropriate Tiered endpoint
 - Tier 1 (generic - most conservative)
 - Tier 2 (exposure pathway modification/elimination)
 - Tier 3 (Risk Assessment or site specific criteria)

Remedial Approaches - Intended Future Use

Alberta

- Three Risk-management options:
 - Tier 1 – Soil and Groundwater Remediation Guidelines (generic remediation guidelines)
 - Tier 2 – Soil and Groundwater Remediation Guidelines (site-specific remediation guidelines based on the modification of the Tier 1 guidelines)
 - Exposure Control - risk

British Columbia

- Remediation to numerical standards or local background concentration
- Remediation to risk-based standards

Protections from Future Regulatory Action

Ontario

- RSC – not an approval, rather an “acknowledgement”
- Protections from certain Ministry orders, Ministry can always re-open
- No protection from civil lawsuits from neighbours

Manitoba

- Post-remediation revocation of designation as a contaminated site or impacted site
- Apply for Certificate of compliance for contaminated site or impacted site

Saskatchewan

- Notice of Site Condition – discloses the final environmental condition of the site that has undergone corrective action
- Transfer of responsibility for environmentally impacted site

Protections from Future Regulatory Action

Alberta

- Limited Remediation Certificates: remediation occurring on a substance release in a single area of potential environmental concern (APEC).
- Site-based Remediation Certificates: remediation occurring on all areas of potential environmental concern requiring remediation for the entirety of a site. May include multiple substance releases.
- No environmental protection order can be issued

British Columbia

- Voluntary Remediation Agreement: person discharged from future liability, although protection not absolute
- Independent Remediation Agreement: can apply for certificate of compliance
- Certificate of Compliance: not responsible for future remediation

Considerations for Brownfields Work

- Consult with team of professionals (legal, environmental, planning, financial)
- Environmental risks – ask lots of questions!
- Conduct robust due diligence
- Understand the regulatory regime within which the brownfield redevelopment will occur and the requirements
- Complete necessary/appropriate environmental studies
- Undertake required remediation/reclamation
- Obtain available protections from regulatory action
- Initiate redevelopment and construction

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