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RESPONSE TO ERO 019-0987 “Amendment to the Record Of Site Condition (Brownfields) Regulation related to the Requirement to Sample Ground Water”

Staff at the Region of Waterloo (Water Services Division) have reviewed the proposed amendment in the context of our responsibilities to protect and manage groundwater and drinking water sources in the Region. We do not support the proposed amendment, as summarized in the points below.

KEY POINTS

1. The proposed amendment is not necessary to provide flexibility. The existing regulation already provides sufficient flexibility to the Qualified Person.
2. The proposed amendment increases the complexity of the regulation, and would add to Ontario’s regulatory burden.
3. The proposed amendment may be misconstrued as a means to reduce protection for Ontario’s bedrock aquifers, which are major water supply resources for the Region of Waterloo, Guelph, County of Wellington, and other areas.
4. The proposed amendment is worded in a manner that conflicts with other parts of the regulation, weakening the overall legal context of the regulation.
5. The proposed amendment may result in reduced protection of the public.
6. The proposed amendment is not necessary to reduce redevelopment costs.

EXPLANATION OF KEY POINTS

1. The proposed amendment would give the Qualified Person an option to skip the testing of groundwater when completing studies to support a record of site condition, under certain narrow conditions. In fact, the QP already has several options available under the current Act and Regulation. Therefore, the specific circumstances proposed to be added to the regulation would not add additional flexibility or reduce any implementation burden. The Act and Regulation already provide for a simpler process to obtain a record of site condition when the QP deems environmental risks to be low - such as: to complete a RSC based on a Phase One ESA; to use non-potable groundwater criteria; to use the non-standard delineation option; to use the simplified Risk Assessment process.
2. The additional wording proposed for the regulation would be a needless complication of Regulation 153, adding to an already complex regulation and potentially increasing training and administration requirements for QPs and their professional associations. adding to the regulatory burden for QPs and the public to understand and implement this legislation.
3. Bedrock aquifers are important components of groundwater and ecological systems in Ontario. Municipal bedrock aquifers and source water protection zones extend beneath municipally services areas. The proposed amendment could be interpreted as providing less protection Ontario’s important bedrock aquifers. This is especially sensitive given the Ontario water bottling permit moratorium and attention to bedrock aquifers in the Guelph and Wellington area.
4. The proposed amendment is in apparent contradiction of other parts of the Act and Regulation, resulting in uncertainty and possible liability to the QP and the public. For example, Section 33.1 of the regulation states that a goal of the investigation is “To determine if applicable site condition standards and standards specified in a risk assessment for contaminants on, in or under the phase two property were met as of the certification date”. If the QP has deemed a Phase Two investigation is necessary, then removing the requirement to sample groundwater in the given circumstances is incompatible with Section 33.1.
5. The proposed amendment may result in reduced protection of the public, if practitioners incorrectly use this provision to skip assessment of the potential for contaminated water or vapour to travel through fractured bedrock and into homes or drinking water. Fractured bedrock is known to provide a pathway for contaminated groundwater and vapours to move into homes, wells, and other receptors. For example, this is the case in some homes in Cambridge, Ontario where some residences built over fractured bedrock are currently undergoing mitigation for indoor air contamination by TCE. The proposed amendment may result in reduced protection of the public, if practitioners incorrectly use this provision to skip assessment of the potential for contaminated water or vapour to travel through fractured bedrock.
6. The proposed amendment is not necessary to reduce burdensome costs. In the cases where subsurface investigation is deemed necessary through the existing regulation, Ontario practitioners have access to the latest technology and licenced specialist contractors who have many practical and affordable options to complete groundwater testing in soil and rock.

Please contact us if you wish further information, c/o Tammy Middleton, P.Geo. Senior Hydrogeologist, Region of Waterloo (575-4400).