

January 10, 2025

Ministry of the Environment, Conservation and Parks - Environmental Policy Branch
40 St Clair Avenue West, Floor 10
Toronto, ON
M4V1M2

Attn: Sanjay Coelho

Submitted Online

RE: Proposed amendments to O. Reg. 153/04, "Amendments to Reduce Records of Site Condition That Are Not Supporting Brownfield Redevelopment"
Environmental Registry of Ontario Number 019-9310

Dear Mr. Coelho,

The Canadian Brownfields Network (CBN) appreciates the opportunity to participate in the Ministry of the Environment, Conservation and Parks (MECP) invitation to comment with respect to the above referenced posting on the *Environmental Registry of Ontario*. The CBN's Technical Advisory Committee (TAC) has solicited and compiled comments from interested members for the purpose of making this submission on behalf of CBN. CBN has a diverse membership of site owners, developers, consultants, and industry association representatives who are active in brownfield development within Ontario and across Canada.

CBN is committed to supporting the redevelopment and reuse of brownfield properties through advocacy for regulations and policies that are founded on sound science and appropriate risk, are harmonized across jurisdictions, and provide clarity and certainty with respect to brownfield redevelopment.

Prohibiting the filing of RSCs in specified circumstances

CBN is broadly supportive of the proposal's stated objectives to reduce regulatory burdens associated with the development of properties. Nonetheless, we note that while the filing of a Record of Site Condition (RSC) is only a regulatory requirement in certain conditions, the filing of RSCs in other scenarios is often relied upon to provide reasonable assurance to stakeholders regarding the environmental condition of a property. As such, the RSC filing process has become an integral part of the property management, real estate development, real estate transaction, financial, and legal sectors of Ontario's economy, even in situations where the filing is not a regulatory requirement. Indeed, it is not uncommon for RSC filings to be identified as contractual obligations in purchase and sale agreements, lease agreements, and other real estate dealings.

Given the above, we are pleased to note that the Province intends to continue to permit any owner to embark upon a voluntary RSC filing. However, we advocate that any regulatory amendments include a

provision to exempt from forthcoming prohibitions any pre-existing agreement requiring the filing of a RSC that is not a regulatory requirement to mitigate unnecessary disruptions to agreements that have already been entered into between parties.

It is CBN's position that considerable consultation and consideration must be undertaken by the Province before imposing any limitations or restrictions on the filing of RSCs in circumstances when the filing is not a regulatory requirement.

With respect to the specific proposal to prohibit a party from obligating another party to file a RSC when the filing is not a regulatory requirement, we note that the proposed prohibition would only apply to situations where intrusive investigation of the environmental quality of soil, groundwater, and/or sediment at a site is not considered to be warranted. (i.e., where a Qualified Person has completed a reasonable review to identify potentially contaminating activities at or proximate to the site and has concluded that no areas of potential environmental concern are applicable to the site); the posting does not propose prohibiting any person from requiring another party to file a RSC for a site where intrusive investigation is considered warranted.

Because the proposed prohibition would apply to a relatively limited number of RSC filings, and only to situations where there is general agreement that stakeholders are unlikely to have, in the absence of a RSC filing, significant concerns regarding the environmental condition of a property that would be subject to the proposed prohibition, our constituent members generally agree that the proposed amendment is unlikely to have any significant negative consequences for the general public, property owners, property managers, real estate developers, municipalities, or other stakeholders. On this basis, **CBN is pleased to provide our support for this specific proposed regulatory amendment.**

Notwithstanding this comment, we note that considerable differences of opinion exist with respect to the breadth of the proposed prohibitions: some of our membership are of the opinion that the proposed prohibition should be extended to include properties at which intrusive investigation is warranted (with a caveat that prohibitions should not extend to any property at which Risk Assessment has been relied upon to address identified contaminants), while others are opposed to any further expansion of the proposed prohibition. We note that this is a natural outcome of the broad use of RSC filing even when a filing is not a regulatory requirement within the property management, real estate development, real estate transaction, financial, and legal sectors. Accordingly, It is CBN's position that **any expansion on the prohibition of a party from obligating another party to file a RSC when the filing is not a regulatory requirement beyond that proposed within Environmental Registry of Ontario posting 019-9310 should only be undertaken following additional consultation with relevant stakeholders and opportunity for public comment.**

Expanded exemption from RSC filing requirements for changes to existing Commercial or Community Use Buildings

CBN has long advocated for broadening the existing exemptions to RSC filing requirements for changes to commercial or community use buildings to include residential and/or institutional property use.

We are pleased to note that the posting proposes to remove certain unnecessary restrictions on changes to the building envelope and the exterior of the building, particularly the current restriction that buildings have no more than a six-storey height. We are also pleased to see it will continue to be necessary to file a RSC if the proposed changes involve residential or institutional use on or below the ground floor, or if the property on which the building is located is used for or was ever being used for industrial use, a garage, a bulk liquid dispensing facility, or for the operation of dry-cleaning equipment.

In our opinion, the proposed amendments strike an appropriate balance between facilitating and encouraging the establishment of residential and institutional space in existing commercial and community use buildings and ensuring that higher-risk alterations in use and higher-risk properties are subjected to appropriate assessments of possible environmental contaminant impairment. Accordingly, **CBN is pleased to provide our support for this proposed regulatory amendment.**

We thank you for the opportunity to provide comment and input on the proposed amendments to O. Reg. 153/04.

Kindest Regards,

Jason Hudson
Co-Chair, Technical Advisory Committee
Canadian Brownfields Network

Peter Sutton
Co-Chair, Technical Advisory Committee
Canadian Brownfields Network

Krista Barfoot
President
Canadian Brownfields Network