

Contaminated Sites Regulations

made under clause 25(1)(g) and Section 91 of the
Environment Act
S.N.S. 1994-95, c. 1

O.I.C. 2012-60 (March 6, 2012, effective July 6, 2013), N.S. Reg. 64/2012

Citation

1 These regulations may be cited as the Contaminated Sites Regulations.

Definitions

2 (1) In these regulations,

“Act” means the Environment Act;

“date of the declaration”, in relation to a declaration of property condition, means the date the declaration of property condition is made by the site professional;

“declaration of property condition” or “declaration” means a declaration made by the conducting or supervising site professional in accordance with Section 16 after a full property remediation and filed with the Minister under Section 15;

“engineered or physical control” means a physical barrier, chemical barrier, control system or treatment system that is specifically designed to prevent or reduce exposure to contaminants;

“free product” means

- (i) a visible, liquid chemical product, or
- (ii) a substance defined as a free product in a Ministerial protocol;

“full property remediation” means remediation of an entire contaminated parcel of land in accordance with Section 15;

“limited remediation” means remediation to deal with a specific contaminant or contaminants or remediation of a limited area impacted by a contaminant or contaminants in accordance with Section 13, and includes remediation resulting from a spill, and sometimes may include evaluation or remediation of an entire parcel of land;

“Ministerial protocol” means an applicable standard, policy, guideline, procedure or protocol adopted or established by the Minister under Section 90 of the Act;

“phase 1 environmental site assessment” means a phase 1 environmental site assessment as described in a Ministerial protocol;

“phase 2 environmental site assessment” means a phase 2 environmental site assessment as described in a Ministerial protocol;

“record of site condition” means a report prepared in accordance with Section 14 after a limited property remediation and filed with the Minister under Section 13;

“site professional” means a person who has the qualifications prescribed in Section 5.

(2) In the Act and these regulations, “contaminated site” includes a site where free product is present in soil or groundwater.

Ministerial protocols incorporated by reference

3 All Ministerial protocols are incorporated by reference into these regulations.

Electronic Reporting

Minister may establish electronic reporting system

4 (1) In this Section, “reporting system” means a system of reporting by electronic means established by the Minister in a Ministerial protocol for the purpose of receiving notices, reports, records, declarations, statements and certifications and other documents in accordance with these regulations.

(2) The Minister may establish a reporting system and may permit persons required to file a written document with the Minister to deliver the document in an electronic format by means of the reporting system.

(3) A person delivering a document to the Minister by means of the reporting system must file the document in the electronic form and manner set out in a Ministerial protocol.

Site Professionals

Qualifications for site professionals

5 (1) The following are prescribed as the qualifications for a site professional:

(a) a valid and subsisting certificate of registration or licence to practice under the Geoscience Profession Act or the Engineering Profession Act; and

(b) at least 5 years’ experience in contaminated site investigation, management and remediation, to be confirmed at the request of the Department and in the manner required by the Department, which must include experience in all of the following:

(i) conducting a phase 1 environmental site assessment,

(ii) conducting a phase 2 environmental site assessment,

(iii) developing a remedial action plan,

(iv) implementing a remedial action plan.

(2) A person must not hold themselves out as a site professional unless they have the qualifications prescribed in subsection (1).

Liability insurance requirements for site professionals

6 (1) A person acting as a site professional must have and maintain insurance coverage under an insurance policy that satisfies the requirements in subsection (2) whenever the person

(a) holds themselves out as a site professional;

(b) undertakes or supervises any work while acting as a site professional; or

(c) makes a statement, declaration or certification referred to in these regulations while acting as a site professional.

(2) An insurance policy for a site professional must do all of the following:

(a) indemnify the site professional against liability imposed by law arising out of the performance of or the failure to perform any activity described in subsection (1) with respect to claims that are first made and reported to the insurer during the period of insurance coverage, whenever the performance or failure to perform occurred;

(b) specify an indemnity limit of at least \$2 000 000 per claim and at least \$2 000 000 in the aggregate during the period of the insurance;

(c) provide for coverage to continue if the insured becomes bankrupt or insolvent, is declared incompetent or dies during the period of insurance;

(d) provide coverage for a period of 2 years after the date the person ceases to act as a site professional, including doing anything described in subsection (1).

(3) A site professional is deemed to be maintaining the insurance coverage required by this Section if the site professional's employer maintains an insurance policy that satisfies the requirements of subsection (2).

Notice of Contaminated Site

Site professional included as person responsible for notifying

7 For the purposes of Sections 8 to 10, a "person responsible for a contaminated site" includes a site professional.

Duty to notify when free product present

8 (1) A person responsible for a contaminated site where free product is present in soil or groundwater must, immediately when the person knows or ought to know that the free product is present, verbally notify all of the following:

(a) the Minister, through the Department's emergency telephone number;

(b) the owner of the site, if the person reporting is not the owner;

(c) any other person who the person reporting knows or ought to know may be directly affected by a contaminant or the identification of the site as a contaminated site, including the owner or occupant of any parcel of land to which contaminants have migrated or are likely to migrate from the contaminated site.

(2) In addition to the verbal notice required by subsection (1), a person responsible for a contaminated site must give written notice in accordance with Section 10 to each recipient listed in subsection (1), no later than 5 business days after the date the person first knows or ought to know that free product is present in the soil or groundwater.

(3) Despite the time limit in subsection (2) for written notice, an inspector or administrator may specify a different time limit for the written notice to the recipients.

Duty to notify of soil, sediment, surface water or ground water contamination

9 A person responsible for a contaminated site where a contaminant or contaminants exceed a Ministerial protocol must, no later than 90 days after the date the person first knows or ought to know that the contaminant or contaminants exceed the Ministerial protocol, give written notice in accordance with Section 10 to all of the following:

(a) the Minister;

(b) the owner of the site, if the person reporting is not the owner;

(c) any other person who the person reporting knows or ought to know may be directly affected by a contaminant or the identification of the site as a contaminated site, including the owner or occupant of any parcel of land to which contaminants have migrated or are likely to migrate from the contaminated site.

Form of written notice

10 (1) Written notice given under Section 8 or 9 must be in a form approved by the Minister and must include all of the following information:

- (a) the name, address and telephone number of the owner of the contaminated site;
- (b) the name, address and telephone number of the person who is providing the notice;
- (c) the location of the contaminated site, including the parcel identification number and civic address;
- (d) if migration of a contaminant or contaminants has occurred or is likely to occur, a general description of the nature of the migration or likely migration of each substance;
- (e) the name, address and telephone number of the owner of any parcel of land to which contaminants have migrated or are likely to migrate from the contaminated site, and the location, including the parcel identification number and civic address, of that parcel of land;
- (f) a general description of measures to be taken to address the contamination.

(2) A written notice must be signed by

- (a) each owner of the contaminated site; and
- (b) the person who is providing the notice.

Duties Respecting Contaminated Sites

Duty to take remedial measures

11 A person responsible for a contaminated site must, at the person's own cost, and as soon as the person knows or ought to know that a site is a contaminated site, do all of the following:

- (a) take all reasonable measures to
 - (i) prevent, reduce and remedy the adverse effects of the contaminant or contaminants,
 - (ii) remove or otherwise dispose of the contaminant or contaminants in a manner that minimizes adverse effects,
 - (iii) remediate the contaminated site in accordance with these regulations;
- (b) take any measures required by an inspector or an administrator.

Remediation must be limited remediation or full property remediation

12 A person responsible for a contaminated site must carry out limited remediation or full property remediation.

Limited Remediation

Duties of person carrying out limited remediation

13 (1) A person who carries out limited remediation of a contaminated site must ensure all of the following:

(a) that an environmental site assessment is completed in accordance with a Ministerial protocol and filed with the Minister no later than 180 days after the day on which the Minister is first notified of the contaminated site in accordance with Section 8 or 9, or within another time period specified in writing by an inspector or administrator;

(b) that a remedial action plan report is completed in accordance with a Ministerial protocol and filed with the Minister;

(c) that a confirmation report is completed in accordance with a Ministerial protocol and filed with the Minister, and the report indicates that the site meets the objectives set out in the remedial action plan, including the applicable numerical remediation levels, risk-based site-specific remediation levels or ongoing site management measures;

(d) that after the actions required by clauses (a), (b), and (c) are completed, a record of site condition is completed and filed with the Minister for each parcel of land where remediation was conducted;

(e) that all work in accordance with this Section is conducted by or under the supervision of a site professional.

(2) A limited remediation, including the filing of a record of site condition, must be completed no later than 2 years after the day on which the Minister is first notified of the contaminated site in accordance with Section 8 or 9, or within another time period specified in writing by an inspector or administrator.

(3) A declaration of property condition must not be submitted by a person who carries out a limited remediation.

Form and contents of record of site condition

14 (1) A record of site condition must be prepared by the conducting or supervising site professional in writing and in a form approved by the Minister, and must include all of the following information:

(a) the location of the parcel of land on which the remediated site is located, including the parcel identifier number and civic address;

(b) the name and address of the owner of the parcel of land on which the remediated site is located;

(c) the name, address and telephone number of the site professional who is providing the record;

(d) the type of contamination remediated and a description of the remediation carried out, including a description of the location of the remediated site;

(e) the applicable numerical remediation levels or risk-based site-specific remediation levels or ongoing site management measures, and the land use to which those remediation levels or measures apply, as determined by the site professional using a Ministerial protocol;

(f) a statement that remediation has been completed to the levels indicated under clause (e);

(g) any restrictions on activities at the remediated site resulting from ongoing site management measures, including all of the following:

(i) restrictions on where a building or structure may be located on the remediated site,

(ii) restrictions on soil excavation on the remediated site,

- (iii) restrictions on the use of any water resource at the remediated site;
 - (h) a description of any engineered or physical control implemented at the remediated site.
 - (i) for each contaminant for which sampling and analysis has been performed, the maximum known concentration of the contaminant on, in or under the remediated site as of the date of the record;
 - (j) for each report referred to in Section 13, a dated statement by the site professional that the report was prepared in accordance with a Ministerial protocol.
- (2) A record of site condition must be signed by all of the following:
- (a) each owner of the parcel of land on which the remediated site is located to which the record of site condition applies;
 - (b) the person responsible for the contaminated site;
 - (c) the site professional, who also must certify that the information required by subsection (1) is accurate.

Full Property Remediation

Duties of person carrying out full property remediation

15 (1) A person who carries out full property remediation must ensure all of the following:

- (a) that a phase 1 environmental site assessment is completed in accordance with a Ministerial protocol and filed with the Minister;
- (b) that a phase 2 environmental site assessment is completed in accordance with a Ministerial protocol and filed with the Minister no later than 180 days after the day on which the Minister is first notified of the contaminated site in accordance with Section 8 or 9, or within another time period specified in writing by an inspector or administrator;
- (c) that a remedial action plan report is completed in accordance with a Ministerial protocol and filed with the Minister;
- (d) that a confirmation report is prepared in accordance with a Ministerial protocol and filed with the Minister, and the report indicates that the objectives of the remedial action plan have been met, including the applicable numerical remediation levels or risk-based site-specific remediation levels;
- (e) that after the actions required by clauses (a), (b), (c), and (d) are completed, a declaration of property condition for the remediated parcel of land is completed and filed with the Minister;
- (f) that all work in accordance with this Section is conducted by, or under the supervision of, a site professional.

(2) A full property remediation, including the filing of a declaration of property condition, must be completed no later than 2 years after the day on which the Minister is first notified of the contaminated site in accordance with Section 8 or 9, or within another time period specified in writing by an inspector or administrator.

Form and contents of declaration of property condition

16 (1) A declaration of property condition must be prepared by the conducting or supervising site professional in a form approved by the Minister and must include all of the following information:

- (a) the location of the parcel of land, including the parcel identifier number and civic address;
- (b) the name and address of the owner of the parcel of land to which the declaration applies;
- (c) the name, address and telephone number of the site professional submitting the declaration for filing;
- (d) the date of the declaration;
- (e) the type of contamination remediated and a description of the remediation carried out on the parcel of land;
- (f) the applicable numerical remediation levels or risk-based site-specific remediation levels, and the land use to which those remediation levels apply, as determined by the site professional using a Ministerial protocol;
- (g) a statement that, as of the date of the declaration, remediation has been completed to the remediation levels indicated under clause (f);
- (h) for each contaminant for which sampling and analysis has been performed, the maximum known concentration of the contaminant on, in or under the parcel of land as of the date of the declaration;
- (i) for each report referred to in Section 15, a dated statement by the site professional that the report was prepared in accordance with a Ministerial protocol.

(2) A declaration of property condition must be signed by all of the following:

- (a) each owner of the remediated parcel of land to which the declaration applies;
- (b) the person responsible for the contaminated site;
- (c) the site professional, who also must certify that the information required by subsection (1) is accurate.

Consequence of filing declaration of property condition

17 (1) Except as provided in subsections (2) to (6), once a declaration of property condition is filed with the Minister, no enforcement action, including a Ministerial order under Part XIII of the Act, may be issued to any of the following persons in respect of a contaminant that was released into the environment before the date of the declaration and was on, in or under the parcel of land to which the declaration applies as of the date of the declaration:

- (a) a person responsible for a contaminated site on the parcel of land;
- (b) an owner of the parcel of land.

(2) Subsection (1) does not affect the powers and authorities granted by Part XII of the Act.

(3) Subsection (1) does not apply if a declaration of property condition contains false or misleading information or false or misleading certifications or statements.

(4) Subsection (1) does not apply if, after the date of a declaration of property condition, a contaminant or contaminants requiring notice under Section 8 or 9 migrates from the land or water on, in or under the parcel of land to which the declaration applies to another parcel of land.

(5) Subsection (1) does not apply if 1 or more of the contaminants specified in a declaration of property condition

(a) are present on, in, or under the parcel of land to which the declaration of property condition applies, and

(b) exceed a Ministerial protocol that was applicable at the time the declaration of property condition was filed with the Minister.

(6) Subsection (1) does not apply to a person who changes or permits a change

(a) in the condition of the remediated parcel of land to which a declaration of property condition applies so that the contaminant present within the parcel of land may cause, is causing or has caused an adverse effect; or

(b) in the use of the parcel of land to which a declaration of property condition applies so that the contaminant present within the parcel of land may cause, is causing or has caused an adverse effect.