

# Soil and Groundwater Assessment Protocol



Prepared by:  
**Planning and Economic  
Development Department**  
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## 1. Introduction

The *Planning Act* recognizes that the protection of public health, safety and ecological systems (e.g. the natural environment) is matters of provincial interest. Matters of provincial interest must be integrated with municipal planning decisions. The Ontario Provincial Policy Statement (PPS) requires that contaminated sites, either in land and/or, water be assessed and remediated, as necessary, prior to any activity on a site associated with a proposed use, such that there will be no adverse effects on human health and the natural environment.

In 1996, the Province of Ontario assigned certain Provincial plan review responsibilities to the Regional Municipality of Durham (**Region<sup>1</sup>**), including the responsibility of ensuring compliance with Ontario Regulation 153/04 made under the *Environmental Protection Act*, as amended in relation to site contamination issues to adequately protect human health and the natural environment through the planning process.

In support of its mandate, the **Region** adopted its first Soil and Groundwater Assessment Protocol<sup>2</sup> (Protocol) in 1997, which is periodically updated to reflect changes to legislation, policies and **development** practices.

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<sup>1</sup> Words that are in 14-point **blue**, bold calibri font are defined terms in the Glossary of Terms in **Appendix Q**.

<sup>2</sup> The Soil and Groundwater Assessment Protocol was originally called the Site Contamination Protocol.

## 2. Purpose

The purpose of this Protocol is to ensure that:

- planning applications submitted for approval anywhere in the **Region** are screened to confirm that site contamination issues are appropriately addressed in accordance with O.Reg. 153/04, as amended;
- the protection of human health and the natural environment are kept to the highest standard through Regional and Area Municipal review of **development** approval processes under the *Planning Act*;
- an effective **development** review and approval process that balances the need for due diligence and process efficiencies;
- meaningful guidance to Regional and Area Municipal staff is provided when reviewing and commenting on planning applications, in relation to potential site contamination matters;
- industry stakeholders are made aware of the **Region's** requirements when submitting a **Site Screening Questionnaire** and/or **Environmental Site Assessment (ESA)** and related reports that support planning applications, which may be impacted by site contamination; and
- a framework for processing requests to use non-potable groundwater standards as set out by the Ministry of the Environment, Conservation and Parks (**MECP**) is provided for sites in the **Region**.

This Protocol must be read in its entirety to ensure that relevant sections are appropriately applied. This Protocol is not intended to make decisions on matters relating to excess soil management even though there could be some overlap within the *Environmental Protection Act*. In these instances, Applicants should consult local fill and site alteration by-laws of the **Area Municipality**.

### 3. Administration

This Protocol applies to any **development** application submitted under the *Planning Act* within the **Region** regardless of the municipal approval authority. The Regional Planning and Economic Development Department is responsible for reviewing site contamination matters for various planning applications. Where planning decisions are not reviewed by the **Region** but are made by the **Area Municipality**, the **Region** and Regional Council expects that such decisions will also be consistent with this Protocol.

Area Municipal Chief Building Officials are also responsible for reviewing matters pertaining to brownfield redevelopment proposals where a **Record of Site Condition (RSC)** is required subject to applicable law under the *Building Code Act, 1992*, as amended.

This Protocol is not intended to regulate fill operations relating to its importation and/or exportation. These operations are regulated by the governing **Area Municipality**. For more information on fill operations, please contact the applicable **Area Municipality**.

Regional and Area Municipal staff will administer this Protocol to ensure the protection of human health and the natural environment through the development review and planning approval processes.

Appendices A through Q form part of this Protocol.

## 4. Development Application Requirements

**Development** applications located within the **Region** made under the *Planning Act* are required to comply with this Protocol. Application types include the following:

### 4.1 Lot Creation

Where an Applicant submits an application to divide land (e.g. subdivision, condominium, land division (i.e. consent and/or part lot control), the **Region** will require compliance with the protocol and may impose conditions to ensure compliance with this Protocol. Regional clearance of conditions will only be granted once an Applicant satisfies the requirements of this Protocol.

### 4.2 Land Use Approvals

Where an Applicant submits a development application to amend an official plan and/or zoning by-law not involving the division of land, the **Region** may request that the **Area Municipality** include policies or requirements regarding the use of a Holding (H) provision on the property through a zoning by-law amendment. The (H) provision may be lifted upon the Applicant satisfying all Regional requirements, including the requirements of this Protocol. Where an **Area Municipality** circulates a concurrent Site Plan application with any of the above-noted development applications, soil and groundwater matters may be deferred at an appropriate stage of the development on a case-by-case basis.

### 4.3 Other Site-Specific Applications

All other site-specific planning applications, regardless of the authority approving the application (excluding Minor Variances), must be accompanied by either a completed “Regional **Site Screening Questionnaire**” (**SSQ**) as set out in **Appendix B** or the **Environmental Site Assessment (ESA)** work as set out in **Section 5.2** and **Appendix E**.

### 4.4 Pre-Consultation

Where a pre-consultation meeting is held, depending on the nature of the **development** proposal, the **Region** at its sole discretion may provide the Applicant with the option to submit an **SSQ** or an **ESA**. However, where an **SSQ** identifies the potential for site contamination and the need for further environmental investigation, this Protocol will require the Applicant to submit (at a minimum) a **Phase One ESA** with their planning application.

Lands required to be conveyed to a municipality and/or a government agency (including Conservation Authorities) should be identified during the pre-consultation process. Prior to such conveyance, these lands must be assessed and/or remediated in accordance with this Protocol to the benefitting agency’s satisfaction.

## 5. Documentation Requirements

The following documentation may be required to achieve compliance with this Protocol.

### 5.1 Site Screening Questionnaire (SSQ)

An **SSQ** is a screening tool that provides a series of questions to determine whether a subject property and/or lands in proximity to it (at least within 250 metres) may be or is considered potentially contaminated (see **Appendix D** for a list of **Potentially Contaminating Activities**).

**SSQs** are intended for **development** applications which do not require significant analysis or the completion of an **ESA**. **SSQs** are completed by either the Owner or an Authorized Agent for most planning applications. **Appendix B** outlines the requirements for an **SSQ**. The **Region's** determination of whether **SSQs** need to be signed by a **Qualified Person (QP)** and affixed with their seal depends on the complexity of the proposal. A copy of the **SSQ** is provided in **Appendix C**.

### 5.2 Environmental Site Assessments (ESA)

ESAs are environmental investigation reports prepared by a **QP** and are required when site contamination is suspected on, and/or in proximity to a subject property. Where **ESA** documents exceed 18 months, and in accordance with provincial requirements, a **QP** must submit updated materials or **Updated ESA Documents** (e.g. Phase One and/or Two) which validates that no significant changes to the site or its soil/groundwater/sediment conditions have occurred following the completion of the original **ESA** work.

All ESAs must include documentation indicating they have been prepared by a **QP** in accordance with all the requirements of O. Reg 153/04. Alternatively, if a **QP** cannot prepare an **ESA** report in accordance with all the requirements of O. Reg 153/04, the **ESA** must include a section in the report or a cover letter stating what are the deviations or limitations that do not make the **ESA** compliant with O. Reg 153/04 and the **QP's** opinion about whether the deviations or limitation affect the conclusions of the report. The **Region's** Protocol will not allow for the consideration of **ESAs** that are prepared in accordance with the Canadian Standards Association (e.g. CSA Z768-01, CSA Z769-00). Any such reports will be deemed unsatisfactory and deemed not to satisfy the requirements of this Protocol.

### 5.2.1 Phase One Environmental Site Assessment (ESA)

A **Phase One ESA** is required where an **SSQ** identifies the potential for site contamination or where an **SSQ** is not provided.

A **Phase One ESA** requires a **QP** to conduct background research (e.g. aerial/orthophotography, title searches, site visits, interviews, zoning reviews, database searches etc.) to determine whether **Potentially Contaminating Activities (PCAs)** previously occurred and are currently located on the subject property and/or neighbouring properties.

Depending on factors such as current site conditions, topography, surface and groundwater flow etc., a **QP** will recommend whether any identified **PCAs** should be further investigated in soil, groundwater and/or sediments to identify **Areas of Potential Environmental Concern (APECs)** on the subject property. The following three scenarios provide further direction with respect to **APECs**:

#### 1. *No APECs Identified*

If the **Phase One ESA** does not identify any **APECs** on the subject property, the **QP** must complete and submit a Regional **Reliance Letter** and **Certificate of Insurance** to ensure that the **Region** can rely on the **QP's** findings and recommendations (see **Appendices F** and **G**).

#### 2. *APECs Identified On-Site (the Phase One Property)*

If one or more **APECs** are identified on the subject property (also known as the **Phase One Property**), a **Phase Two ESA** is required.

#### 3. *APECs Identified Off-Site*

If one or more **APECs** are identified in the Phase One Study Area, but not on the **Phase One Property**, a **Phase Two ESA** is required, but may be waived provided that the **QP** can demonstrate to the **Region's** satisfaction that the **APECs** do not adversely impact the **Phase One Property**.

## 5.2.2 Phase Two Environmental Site Assessment (ESA)

A **Phase Two ESA** consists of a detailed site investigation arranged by a **QP**. Samples of soil, groundwater and/or sediment are analyzed and compared to the applicable **MECP Site Condition Standards (SCS)** – Tables 1 to 9. The test results determine whether soil, groundwater and sediment exceedances (through horizontal and vertical delineation testing) exist on a site (see **Appendix E**). The following scenarios provide direction with respect to the **Phase Two ESAs**

### 1. *No Exceedances Identified in Phase Two ESA*

Where the **Phase Two ESA** does not identify any exceedances and the proposed use on the subject lands is not going to a more sensitive land use, it must also be accompanied by a Regional **Reliance Letter** and **Certificate of Insurance** completed by the Applicant's **QP** (see **Appendices F and G**).

However, where the **Reliance Letter** and **Certificate of Insurance** are not submitted to the satisfaction of the **Region** with the application(s), the **Region** may require that a condition be imposed on the approval of an application (e.g. land division, subdivision and/or condominium) or may request that a (H) Holding Provision be included in a zoning by-law to ensure that the documents are completed to the **Region's** satisfaction prior to **development**.

### 2. *Exceedances Identified in Phase Two ESA*

If a **Phase Two ESA** identifies exceedances, the following four options are available to achieve conformity with the Protocol:

#### a. Site Remediation – Option 1

Where the proposal involves site remediation and the site is not being developed for a **Prescribed Change in Use**, the **QP** will be required to prepare an updated **Phase Two ESA** report in accordance with O.Reg. 153/04. The updated report must demonstrate that the subject property has been remediated and tested to ensure that it does not contain any exceedances, and that it has met the applicable **MECP SCS**. Where applicable, the **QP** may also retest the exceedances or remediate the site to a lesser (Non-Potable Groundwater) standard (e.g. **MECP** Tables 3, 7 or 9 SCS), in accordance with **Appendices K, L and O** of this Protocol.

b. Record of Site Condition (RSC) – Option 2

An **RSC** is mandatory under the *Environmental Protection Act*, when a **development** proposes a **Prescribed Change in Use**, regardless whether the site contains any exceedances.

Depending on the circumstance (see **Appendix H**), if a **QP** submits an **RSC** to be filed on the Environmental Site Registry, prior to Regional sign-off on a **development** application, the **QP** will only be required to provide the **Region** with the following:

- **MECP's** acknowledgement letter, noting that the **RSC** was filed on the Environmental Site Registry; and
- Any associated new or updated documents that were revised and requested by **MECP**.

Where significant soil removal is proposed in support of a complex **development** application (e.g. where below-grade parking or significant below-grade infrastructure and excavation/removals is proposed), the **Region's** requirement for an **RSC** may be deferred until prior to the issuance of a building permit for any above-ground construction work, subject to a condition that Area Municipal staff (e.g. Planning and Building), the Applicant and the Applicant's **QP** provide implementation strategy for soil removal in consultation with the **Region's** Planning Division, for inclusion within an appropriate Area Municipal **development** agreement.

Once the **Region** receives the **RSC**, Regional clearances may be granted, and Area Municipal building permits may be issued for above-groundwork.

If the **MECP's** acknowledgement letter for the **RSC** was issued more than 18 months prior to the submission date of the planning application, the **Region** will require the **QP** to prepare an updated environmental letter/report identifying the property's current condition, and provide a recommendation whether site conditions have changed and whether any further environmental site investigation is required.

c. Risk Assessment – Option 3

If the Applicant and their **QP** determines that it is not feasible to remediate some or all of the subject property, a **Risk Assessment (RA)** must be prepared by a **QP** and submitted to the **MECP** for review and acceptance.

**MECP** may also require a **Certificate of Property Use (CPU)** in accordance with the *Environmental Protection Act* and O.Reg. 153/04 to ensure risk management mitigation measures detailed in the **RA** are complied with and are registered on title. **RAs** typically include an **RSC** but may include a Risk Management Plan and a Public Communication Plan.

Should the Applicant pursue an **RA**, the **Region** and its **Area Municipalities** must receive confirmation that **MECP** has processed a [Risk Assessment Pre-Submission form](#).

All **Risk Assessment** work prepared for the subject lands must be approved by the **MECP** and provided to the **Region** prior to final Regional approval or sign-off. However, like Option 2 above (**RSC**), the **Region's** acknowledgement of receipt of an RA may be deferred until prior to the issuance of a building permit for above-ground construction work subject to the same conditions. Additional information on the **Region's RA** process is provided within **Appendix H**.

The **MECP** will issue its notice of a **CPU** to the Regional and Area Municipal Clerks. Once processed, the **MECP** will require the Owner to incorporate property-specific risk management conditions/measurements on-title for the subject property.

d. Peer Review – Option 4

Where minor exceedances have been identified on the subject property through the **Phase Two ESA**, the **Region** may undertake a **peer review** as an alternative to **site remediation** where the exceedances are not deemed to present any risk to human health or the natural environment

The **Region** has established a roster of consultants to provide **peer review** services qualified to review **ESAs** under O.Reg. 153/04.

The **Peer Review Consultant** may request supplementary supporting information to assist in their review of **ESA** reports in order to determine the appropriateness of the Applicant's **QP's** recommendations.

Provided that the proposal does not propose a **Prescribed Change in Use**, the **Region** may consider a **peer review** option to review **ESAs** and any supplementary information at the owner's expense under the following circumstances:

- If the Applicant’s **QP** determines that minor soil, groundwater and sediment exceedances on a property pose little or no risk to human health and the environment; or
- If Area Municipal staff disputes the **QP’s** findings and the recommendations of an **SSQ** or any **ESA** work.

Upon the findings of the **peer review** being satisfactory to the **Region** the **QP** will also be required to complete and submit to the **Region** a **Regional Reliance Letter** and a **Certificate of Insurance**.

For planning applications with a Regional Interest, **Area Municipalities** may circulate **ESA** materials to the **Region** for **peer review**. **Area Municipalities** also have the option to undertake their own **peer review** process using a suitably qualified environmental consulting firm, if matters surrounding human health and the natural environment are not compromised. Additional information on the **Region’s Peer Review Consultants** Roster and related procedures are provided in **Appendix J**.

### Qualified Person Summary Results of Phase Two ESA Scenarios

Development Scenario	No Exceedances	Exceedances
<b>Development</b> does not propose a <b>Prescribed Change in Property Use</b>	<b>No Options Required</b> <ul style="list-style-type: none"> <li>• No further investigation required</li> <li>• Application may proceed</li> </ul>	<b>Options 1 to 4</b> <ol style="list-style-type: none"> <li><b>Site Remediation</b></li> <li><b>RSC</b></li> <li><b>RA</b> (if remediation is not feasible)</li> <li><b>Peer Review</b> at the owner’s sole expense (only if exceedance is deemed minor)</li> </ol>
<b>Development</b> proposes a <b>Prescribed Change in Property Use</b>	<b>Option 2</b> <ul style="list-style-type: none"> <li>• <b>RSC</b> Required pursuant to O.Reg 153/04</li> </ul>	<b>Option 2</b> <ul style="list-style-type: none"> <li>• <b>RSC</b> Required pursuant to O.Reg 153/04</li> </ul>

### 5.2.3 Non-Potable Requests

If a **development** is within the **Region's** serviced urban area, a **QP** may request to use non-potable groundwater **MECP Site Condition Standards (SCS)**, where water is provided from a municipal drinking water supply. The **Region** may approve the use of groundwater standards in Tables 3, 7 and 9 of the **MECP SCS** for a site, subject to the process and criteria outlined in **Appendix L** of this Protocol on a case-by-case basis. Where a **development** proposal considers using Stratified Site Condition Standards in a Non-Potable Ground Water Condition (i.e Table 5 **SCS**), the **Region** will require that the **ESA** work be peer reviewed at the owner's expense. Additional information on non-potable requests are provided in **Appendix K**.

This Protocol and the Provincial Brownfield Regulation require **QP's** to submit non-potable requests to both the Regional and Area Municipal Clerks. This request must be filed with the applicable supporting environmental documents and fees. A non-potable request will trigger one of the following two actions by the **Region**:

1. *Regional Acceptance to use Non-Potable Site Condition Standards*

Where the Applicant meets the **Region's** non-potable request criteria (as identified under **Appendix L**), the **Region** may agree to use a non-potable standard and issue a non-objection letter. This letter should also be provided by the applicant to **MECP** along with the supporting environmental reports and materials if the **development** proposal requires an **RSC** or an **RA**.

2. *Regional Objection to the Non-Potable Site Condition Standards*

Where a proposed **development** proposal cannot meet the **Region's** criteria for a non-potable request or is within the rural area not serviced by municipal drinking water systems, the **Region** will issue a letter objecting to the request and will require the Applicant to use the potable groundwater **MECP SCS**.

### 5.3 Enhanced Investigation Properties (EIPs)

This Protocol assesses the appropriateness of evaluating **developments** impacted by **EIPs** as defined under O.Reg. 153/04. **EIP** uses consist of **industrial** uses and the following **commercial** uses:

- A **garage** (i.e. an automotive repair facility);
- A **bulk liquid dispensing facility** (including **gasoline outlets**); or
- A **dry-cleaning equipment operation**.

Following the submission of a **Phase One** and **Two ESA**, **EIP development** proposals are evaluated under two scenarios:

### **5.3.1 Scenario 1: A Major Development Proposal**

A **development** proposal may be considered a **Major Development Proposal** where site contamination exists, or where significant site alteration is required. Depending on the levels of contamination, the Applicant or their **QP** may apply to use the above-noted Options (1 to 4) as described in **Section 5.2.2.2** of this Protocol in addition to the criteria provided in **Appendix M**.

### **5.3.2 Scenario 2: A Minor Development Proposal**

**Minor Development Proposals** are proposals where the **EIP development** proposes minor or no site alteration (e.g. small accessory buildings; **development** within an existing building; Consent applications (for easements, leases, mortgages or title corrections); Minor Variances for EIP sites that do not request a **Prescribed Change in Property Use** etc.). Under these circumstances, the requirement for an **ESA** associated with an **EIP** (in whole or in part) may be waived at the **Region's** discretion on a case-by-case basis, provided that the Applicant can provide information to the satisfaction of the **Region** to demonstrate how the proposed **development** is considered minor.

### **5.3.3 Prescribed Change of Use Properties Previously Identified as an EIP**

Where a property in whole or in part that was previously used as an **EIP** and where an **RSC** was filed on the Environmental Site Registry for a sensitive property use (e.g. **residential, institutional, parkland** etc.) the site is no longer considered an EIP.

See **Appendix M** for more information on **EIP's**.

## **5.4 Multiple Consulting Firms Conducting Various ESA Work**

This Protocol does not regulate an Applicant's ability to select an environmental consulting firm. Should an Applicant select multiple consulting firms to conduct ESA work for the same site (e.g. one firm prepares a **Phase One ESA**, whereas the other firm prepares a **Phase Two ESA**), the following is required:

1. That each environmental consulting firm involved in any environmental work on the subject property complete and submit a **Reliance Letter** and **Certificate of Insurance** in accordance with this Protocol; or
2. That the Applicant's preferred environmental consulting firm prepares and submits all supporting environmental work along with the associated **Reliance Letter** and **Certificate of Insurance** in accordance with this Protocol.

### **5.5 Regional Land Acquisition**

All **development** applications that result in the transfer of land to the **Region** (e.g. **road** widenings, infrastructure improvements etc.) must ensure that the lands proposed to be conveyed to the **Region** are remediated or kept to a condition satisfactory for the **Region's** purposes. This may require the Applicant to enter into an indemnity agreement with the Region to demonstrate compliance in accordance with one of the following options on a case-by-case basis identified below:

1. That the acquired lands are remediated to the applicable **MECP SCS** through a **QP** submitting an **RSC** to be filed on the Environmental Site Registry and that a receipt of the **MECP's** acknowledgement of the filing of the **RSC** in accordance with **Section 5.2.2.2 (b)** of this Protocol; or
2. That the Owner enters into an Indemnity Agreement with the **Region** (which may be subject to Regional Council approval) provided that the subject lands are left in a satisfactory state as determined by the **Region**.

See **Appendix E** for more information on the Regional **ESA** process.

### **5.6 Miscellaneous Inquiries**

All other inquiries relating to potential site contamination that are not specifically described within this Protocol will be reviewed by Regional staff on a case-by-case basis, in keeping with the intent of this Protocol and in accordance with O.Reg. 153/04.

## Appendix A: Category of Sensitive Property Uses

### Category of Sensitive Property Uses

The *Environmental Protection Act* prohibits **Prescribed Changes in Property Use** subject to an **RSC** being filed on the Environmental Site Registry for the property, which includes the proposed property use (**Prescribed Change in Property Use**). Generally, an **RSC** is required where an Applicant proposes to change the property use to a more sensitive use. Where a property consists of **mixed-uses** between two or more different categories, the most sensitive **Site Condition Standards (SCS)** applies. Applicants should refer to the *Environmental Protection Act* and O.Reg. 153/04 for a complete list of the **Prescribed Changes in Property Use** that require an **RSC** under the Act.

In accordance with Section 3 of O.Reg. 153/04, the following categories illustrate property uses from least to most sensitive (please see **Appendix Q**, which defines each use listed below).

<b>Categories of Property Uses</b>		
<b>Least Sensitive</b>	<b>Most Sensitive</b>	
<b>Category 1</b>	<b>Category 2</b>	<b>Category 3</b>
<b>Industrial</b>	<b>Residential</b>	<b>Agricultural</b>
<b>Commercial</b>	<b>Parkland</b>	<b>Other</b>
<b>Community</b>	<b>Institutional</b>	-

## **Appendix B: Site Screening Questionnaire (SSQ) Requirements**

Prior to the submission of a **development** application, the Applicant must assess a property's surface and sub-surface conditions to determine if it is potentially contaminated. This initial assessment will be undertaken as set out below.

All site-specific planning applications regardless of the approval authority that requires Regional concurrence, must complete (at a minimum) a Site Screening Questionnaire (**SSQ**) form.

The following provides the **Region's SSQ** requirements for **development** proposals requiring a planning application(s):

### **Planning Applications that Require Owner/Agent Signature**

- Minor Official Plan Amendments that propose limited **physical development** and/or not requiring a **Record of Site Condition (RSC)** under O.Reg. 153/04, including the following;
  - Temporary sales trailers;
  - Uses within an existing **residential** building or accessory buildings (e.g. secondary dwelling units; duplexes; triplexes; rental housing conversions; and home-based businesses etc.) not proposing a **Prescribed Change in Property Use**;
  - Proposals within existing **industrial, commercial** and/or **community** buildings not proposing a prescribed change of use, which only recommends broadening the range of permitted uses on a property;
- Minor Zoning By-law Amendments that propose limited **physical development** (as noted above) and not requiring an **RSC** under O.Reg. 153/04;
- Consent/Land Division:
  - Easements (for more than 21 years);
  - Leases;
  - Mortgages;
  - Title corrections;
  - Re-establishment of lot lines that have inadvertently merged; and
  - Minor lot line adjustments (to the **Region's** discretion), affecting both the severed and retained parcels;
- Site Plan Review (where approved **SSQ/ESA** reports were completed within 18 months of a complete application being received and the **Regional Reliance Letter** and **Certificate of Insurance** have been received, where appropriate); and

- Part Lot Control Exemption (where approved **SSQ/ESA** reports were completed within 18 months of a complete application being received and the **Regional Reliance Letter** and **Certificate of Insurance** have been received, where appropriate).

### **Planning Applications that Require Both Owner/Agent and QP Signatures**

- Major Official Plan Amendments (not introducing a land use designation that will create a **Prescribed Change in Property Use** and requires **physical development**);
- Major Zoning By-law Amendments (not going to a **Prescribed Change in Property Use** and requires **physical development**);
- Draft Plans of Subdivision;
- Draft Plans of Condominium;
- Consent – both severed and retained parcels for:
  - New lot creation;
  - Major lot line adjustments (at the discretion of the **Region**); and
- Any other **development** application at the **Region’s** discretion not listed above, such as, but not limited to the following: Minister’s Zoning Orders; Environmental Compliance Approvals; Class Environmental Assessments; or comments on a **development** proposal requested by any other external agency.

If the Applicant or the **QP** answers “Yes” to any question on the **SSQ**, a **Phase One ESA** (at a minimum) will be required.

### **Environmental Site Assessment Exemptions for Consent Applications**

Where an Owner/Agent answers “Yes” on the **SSQ**, on Consent applications for the sole purpose of an easement, lease, mortgage or title correction the requirement for additional environmental work may be waived, provided that the following can be demonstrated to the satisfaction of the **Region**:

- Conformity to the current area municipal zoning by-law; and
- The **development** does not pose any **physical development**.

### **Minor Variance Applications**

If an Applicant submits a minor variance application, the **Region** encourages its **Area Municipalities** to use the **SSQ** form provided in **Appendix C**. However, **Area Municipalities** in consultation with the **Region**, may develop their own form for their minor variance applications.

Where a minor variance application proposes a **Prescribed Change in Property Use** in accordance with O.Reg. 153/04, an **RSC** is mandatory.

## Appendix C Site Screening Questionnaire Form



Regional Municipality of Durham  
Planning and Economic Development Department  
605 Rossland Road East  
Whitby, ON L1N 6A3  
Telephone: 905.668.7711  
Toll Free: 1.800.372.1102  
[www.durham.ca](http://www.durham.ca)

### Site Screening Questionnaire for Identifying Potentially Contaminated Development Sites in the Regional Municipality of Durham

This form must be completed for all planning applications unless two original copies and a digital copy of the applicable Environmental Site Assessment (ESA) work prepared in accordance with Ontario Regulation (O.Reg.) 153/04, as amended, is submitted to the approval authority in support of this development proposal. If you have any questions about this questionnaire, please contact the Regional Municipality of Durham as identified above.

Landowner Name: \_\_\_\_\_

Mailing Address (Street No. and Name): \_\_\_\_\_

Location of Subject Lands (Municipal Address): \_\_\_\_\_

Lot(s): \_\_\_\_\_ Concession(s): \_\_\_\_\_ Registered Plan #: \_\_\_\_\_

Former Township: \_\_\_\_\_ Municipality: \_\_\_\_\_

Related Planning Application(s) and File Number(s) \_\_\_\_\_

1. What is the current use of the property? Check the appropriate use(s):

Category 1:       Industrial               Commercial               Community

Category 2:       Residential               Institutional               Parkland

Category 3:       Agricultural               Other

Note: daycare facilities and a property that contains a religious building(s) are considered institutional uses. See Ontario Regulation 153/04, as amended, for definitions.

2. Does this development proposal require a change in property use that is prescribed under the *Environmental Protection Act* and O.Reg. 153/04 (e.g. a change to a more sensitive use from Category 1 to 2; 2 to 3; or 1 to 3 as identified under Question 1)?

Yes                       No

If yes to Question 2, a Record of Site Condition must be filed on the Provincial Environmental Site Registry.

3. Has the property or any adjacent lands ever been used as an Enhanced Investigation Property (e.g. industrial uses; chemical warehousing; automotive repair garage; bulk liquid dispensing facility, including a gasoline outlet and/or a dry-cleaning equipment)?

Yes                       No

4. Has fill (earth materials used to fill in holes) ever been placed on the property?

Yes                       No

5. Is the property or any adjacent lands identified as a wellhead protection zone? (Please review the Ministry of the Environment, Conservation and Parks [Source Protection Information Atlas](#) to confirm)

Yes                       No

6. Is the property within 250 metres from an active or decommissioned landfill/dump, waste transfer station or Polychlorinated Biphenyl (PCB) storage site?

Yes                       No

7. Has the property ever stored/generated/accepted hazardous materials requiring Hazardous Waste Information Network (HWIN) registration or other permits?

Yes                       No

8. Does the subject lands or lands abutting it previously or currently support one or more of the Potentially Contaminating Activities identified in Table 2 of Schedule D of O.Reg 153/04, as amended (see attachment)?

Yes                       No

If Yes was selected in any of the questions above, a Phase One ESA (and possibly a Phase Two ESA) at a minimum prepared in accordance with O.Reg. 153/04, is required. Please submit two hard copies and a digital copy of the Phase One and/or a Phase Two ESA that satisfies the requirements of O.Reg 153/04, as amended.

ESA's may be waived at the Region's discretion provided that the Applicant/Qualified Person (QP) can demonstrate that the response(s) does not pose a risk to human health and the environment to the Region's satisfaction (e.g. consent applications relating to easements, leases, mortgages, correction of title as well as location of off-site Potentially Contaminated Activities; and direction of surface and groundwater flow etc.).

The Region must be granted third party reliance on all ESA work through the completion of its Reliance Letter and Certificate of Insurance. Regional third-party reliance is not required if a Record of Site Condition is filed on the Environmental Site Registry for the proposed property use and/or the Ministry of the Environment, Conservation and Parks (MECP) issues a notice of a Certificate of Property Use where applicable.

Note: The Region may scope the Environmental Site Assessment requirements for minor development proposals on Enhanced Investigation Properties (e.g. accessory structures) or determine if additional environmental work is required.

#### **Declarations:**

This form must be completed and signed by both a Qualified Person and the property Owner(s) or Authorized Agent for all development applications made under the *Planning Act* and reviewed by the Region of Durham Planning Department.

A QP sign-off may be waived by the Region for the following Land Division Committee application types: leases; mortgages; title corrections; re-establishment of lot lines (where title inadvertently merged); minor lot line adjustments (at the discretion of the Region); as well as minor variances; minor zoning by-law amendments (e.g. where there is no physical development, the addition of a new non-sensitive land use), and/or part lot control applications where site contamination was recently addressed by a related planning application. For a full list of QP exemptions, please see Appendix B of the Regional Municipality of Durham's Soil and Groundwater Assessment Protocol.

Where a QP sign-off is required on this form, the completion of a Regional Reliance Letter and Certificate of Insurance may be waived.

To the best of my knowledge, the information provided in this questionnaire is true, and I do not have any reason to believe that the subject property contains contaminants at a level that would interfere with the proposed property use. I am a Qualified Person in accordance with Ontario Regulation 153/04 and carry the required liability insurance in accordance with Appendix F of the Regional Municipality of Durham's Soil and Groundwater Assessment Protocol.

**Qualified Person:**

Name (Please Print) \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Date: \_\_\_\_\_

**Professional Seal:**

**Property Owner, or Authorized Officer:**

Name (Please Print) \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Company (if Applicable): \_\_\_\_\_

Title of Authorized Officer: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Date: \_\_\_\_\_

Regional File Number: \_\_\_\_\_

Area Municipal File Number: \_\_\_\_\_

## Appendix D: List of Potentially Contaminating Activities

**Table 2 – Ontario Regulation 153/04**

**Records of Site Condition – Part XV.1 of the *Environmental Protection Act***

**Ministry of the Environment, Conservation and Parks**

<b>Item</b>	<b>Potentially Contaminated Activity (PCAs)</b>
1.	Acid and Alkali Manufacturing, Processing and Bulk Storage
2.	Adhesives and Resins Manufacturing, Processing and Bulk Storage
3.	Airstrips and Hangars Operation
4.	Antifreeze and De-icing Manufacturing and Bulk Storage
5.	Asphalt and Bitumen Manufacturing
6.	Battery Manufacturing, Recycling and Bulk Storage
7.	Boat Manufacturing
8.	Chemical Manufacturing, Processing and Bulk Storage
9.	Coal Gasification
10.	Commercial Autobody Shops
11.	Commercial Trucking and Container Terminals
12.	Concrete, Cement and Lime Manufacturing
13.	Cosmetics Manufacturing, Processing and Bulk Storage
14.	Crude Oil Refining, Processing and Bulk Storage
15.	Discharge of Brine related to oil and gas production
16.	Drum and Barrel and Tank Reconditioning and Recycling
17.	Dye Manufacturing, Processing and Bulk Storage
18.	Electricity Generation, Transformation and Power Stations
19.	Electronic and Computer Equipment Manufacturing
20.	Explosives and Ammunition Manufacturing, Production and Bulk Storage
21.	Explosives and Firing Range

<b>Item</b>	<b>Potentially Contaminated Activity (PCAs)</b>
22.	Fertilizer Manufacturing, Processing and Bulk Storage
23.	Fire Retardant Manufacturing, Processing and Bulk Storage
24.	Fire Training
25.	Flocculants Manufacturing, Processing and Bulk Storage
26.	Foam and Expanded Foam Manufacturing and Processing
27.	Garages and Maintenance and Repair of Railcars, Marine Vehicles and Aviation Vehicles
28.	Gasoline and Associated Products Storage in Fixed Tanks
29.	Glass Manufacturing
30.	Importation of Fill Material of Unknown Quality
31.	Ink Manufacturing, Processing and Bulk Storage
32.	Iron and Steel Manufacturing and Processing
33.	Metal Treatment, Coating, Plating and Finishing
34.	Metal Fabrication
35.	Mining, Smelting and Refining; Ore Processing; Tailings Storage
36.	Oil Production
37.	Operation of Dry-Cleaning Equipment (where chemicals are used)
38.	Ordnance Use
39.	Paints Manufacturing, Processing and Bulk Storage
40.	Pesticides (including Herbicides, Fungicides and Anti-Fouling Agents) Manufacturing, Processing, Bulk Storage and Large-Scale Applications
41.	Petroleum-derived Gas Refining, Manufacturing, Processing and Bulk Storage
42.	Pharmaceutical Manufacturing and Processing
43.	Plastics (including Fibreglass) Manufacturing and Processing
44.	Port Activities, including Operation and Maintenance of Wharves and Docks
45.	Pulp, Paper and Paperboard Manufacturing and Processing
46.	Rail Yards, Tracks and Spurs

<b>Item</b>	<b>Potentially Contaminated Activity (PCAs)</b>
47.	Rubber Manufacturing and Processing
48.	Salt Manufacturing, Processing and Bulk Storage
49.	Salvage Yard, including automobile wrecking
50.	Soap and Detergent Manufacturing, Processing and Bulk Storage
51.	Solvent Manufacturing, Processing and Bulk Storage
52.	Storage, Maintenance, Fueling and Repair of Equipment, Vehicles, and Material used to Maintain Transportation Systems.
53.	Tannery
54.	Textile Manufacturing and Processing
55.	Transformer Manufacturing, Processing and Use
56.	Treatment of Sewage equal to or greater than 10,000 litres per day
57.	Vehicles and Associated Parts Manufacturing
58.	Waste Disposal and Waste Management, including thermal treatment, landfilling and transfer of waste, other than use of biosoils as soil conditioners
59.	Wood Treating and Preservative Facility and Bulk Storage of Treated and Preserved Wood Products

Note: the above-noted PCAs may change from time-to-time. Please refer to the Provincial Brownfields Regulation O.Reg.153/04 for the official list of PCAs.

## **Appendix E: Detailed Environmental Site Assessment Processes**

### **Phase One Environmental Site Assessment (ESA) Report**

A **Phase One Environmental Site Assessment (Phase One ESA)** involves the study of a property by a **Qualified Person (QP)**, a person defined by Ontario Regulation (O.Reg.) 153/04, to determine the likelihood that one or more soil, groundwater and/or sediment contaminants are present in or on a subject property. A **Phase One ESA** typically consists of records review, interviews and site visits/reconnaissance.

If a **QP** concludes that there are no **Potentially Contaminating Activities (PCA)** on or within 250 metres of the subject property, the **QP** will be required to complete and submit a Regional **Reliance Letter** and **Certificate of Insurance** (see **Appendices F** and **G**). Once received, no further site investigation will be required.

If a **QP** concludes that one or more **PCAs** on or within 250 metres of the subject property contributes to an **Area of Potential Environmental Concern (APEC)** as described under the Terminology section of this Protocol in **Appendix Q**, a **Phase Two ESA** and the associated criteria identified under Section 5.2.2 of this Protocol will be required.

### **Phase Two Environmental Site Assessment (ESA) Report**

A **Phase Two ESA** involves the study of a property by a **QP** to determine the location and concentration of one or more contaminants in the soil and/or groundwater of a subject property. This is typically done through soil and/or groundwater testing in areas where **APECs** are identified on a subject property. Soil and/or groundwater samples are analyzed to determine whether the concentration of one or more contaminants exceed the applicable **MECP Site Condition Standards**.

Where a **Prescribed Change in Property Use** is proposed for a site, an **RSC** is mandatory pursuant to the *Environmental Protection Act* and O.Reg. 153/04. Under these circumstances, a **Phase Two ESA** may also be submitted to the **Region** in support of any planning application.

Where a **Prescribed Change in Property Use** is not proposed on a site, the **Region** will require a **Phase Two ESA** where the **Phase One ESA** identifies one or more **APECs** on a subject property. Examples of various **APECs** include:

- A potential for site contamination that may be present because of current or historical uses and activities on the site;
- Importation of soil/fill moved to the subject property from an off-site location associated with a development proposal made under the *Planning Act*;
- An **Enhanced Investigation Property (EIP)**; and
- A **Potentially Contaminating Activity (PCA)** as set out in Table 2 of Schedule D of O.Reg. 153/04, as amended (**Appendix C**), is located on or within 250 metres of a subject property.

### **Phase Two ESA Exemptions**

Where a **QP** concludes that the **Phase One ESA** for a subject property does not identify the potential for site contamination and a **Prescribed Change in Property Use** is not proposed, a **Phase Two ESA** requirement will be waived and the planning application may proceed toward approval, subject to all other requirements of the approval authority being met.

In addition, where a planning application does not propose a **Prescribed Change in Property Use** and where **physical development** is not proposed, a **Phase Two ESA** requirement may also be waived for a subject property based on its current site conditions e.g. topography; the direction of surface and/or groundwater flow; and the completion of previous environmental work at the Region's sole discretion.

A **Phase Two ESA** will also not be required where an RSC was previously filed on the Environmental Site Registry on or after July 1, 2011 and an updated report/letter confirms that the environmental conditions on the subject property have not changed since the filing of the RSC on the Environmental Site Registry.

RSCs filed on the Environmental Site Registry before July 1, 2011 are no longer accepted by the **Region** for the purposes of this Protocol. The July 1, 2011 date represents the date the **MECP** made significant changes to their **Site Condition Standards (SCS)**. Under these circumstances, **Updated ESA Documents** must be submitted to confirm that the site meets the current **MECP SCS** unless the **Updated ESA Documents** concludes that a **Phase Two ESA** is not required.

## Reliance Letters and Certificate of Insurance Forms

**Phase One** and **Phase Two ESA's** (including all supporting/updated documentation) must be accompanied by a **QP** signature and seal on the Regional **Reliance Letter** (see **Appendix D**) granting third-party reliance on the report(s), and a completed Regional **Certificate of Insurance** (see **Appendix G**). If the **QP** is unable to grant the **Region** third-party reliance on the **QP's ESA** work, the **Region** may require the Applicant to file an **RSC**. **QPs** are also required to carry liability insurance with a minimum indemnity limit of \$2 million per claim and \$4 million in aggregate.

The **Region** encourages **QPs** to complete these forms through the submission of a planning application(s). However, these forms may be submitted prior to final approval provided that conditional approval can be granted through the application process.

**QPs** are not required to submit **Reliance Letter** or **Certificate of Insurance** forms to the **Region** when the **QP** confirms they are submitting the same **ESA** reports to **MECP**, or its successor as part of an **RSC** or **RA** approval process.

## Environmental Site Assessment (ESA) Reporting Requirements

All **ESA** documents must:

- Be prepared by a **Qualified Person (QP)** in accordance with the *Environmental Protection Act* (EPA) and O.Reg. 153/04;
- Satisfy the regulatory requirements of O.Reg. 153/04, as amended; and
- Be based on current work (e.g. the date of the report must be completed within 18 months).

If an **ESA** document exceeds 18 months, the **Region** will require the **QP** to submit updated materials or **Updated ESA Documents** (Phase One/Two) which validates that no significant changes to the site or its soil/groundwater/sediment conditions have occurred following the completion of the original **ESA** work. However, the **Phase One ESA** will remain valid, provided that the **Phase Two ESA** work commences within 18 months.

If an Applicant resolves their **ESA** requirements during the initial stages of the development proposal, but the report exceeds 18 months, their **QP** must provide a statement demonstrating that the site conditions have not changed since the most recent **ESA** report. Under these circumstances, this statement will be required prior to the Regional sign-off on **ESA** work associated with the development proposal.

The **Region** will not accept and consider site assessments that are prepared in accordance with the Canadian Standards Association (CSA) requirements (e.g. CSA Z768-01, CSA Z769-00).

## **Appendix F: Regional Municipality of Durham Reliance Letter**



Reliance Letter  
Regional Municipality of Durham  
Planning and Economic Development Department  
605 Rossland Road East  
Whitby, ON L1N 6A3  
Telephone: 905.668.7711  
Toll Free: 1.800.372.1102  
[www.durham.ca](http://www.durham.ca)

### **Reliance Letter (to be presented on each company's unique letterhead)**

At the request of Property Owner or Developer's Name and for other good and valuable consideration, [ABC Engineering Ltd.] represents and warrants to the Regional Municipality of Durham ("Region") that the reports and work are completed in accordance with Ontario Regulation 153/04 (O.Reg.153/04), unless stated otherwise in the documents, for the purposes of filing a Record of Site Condition in accordance with O.Reg. 153/04 and was completed by or under the supervision of a Qualified Person within the meaning of the *Environmental Protection Act* and O.Reg. 153/04, as amended from time to time.

[ABC Engineering Ltd.] agrees that the Region may rely upon the reports listed herein referenced by the Region as [File # xxx], including the representations, assumptions, findings, and recommendations contained in the reports:

- Phase One Environmental Site Assessment, date, report type, author (QP), company (mandatory)
- Phase Two Environmental Site Assessment, date, report type, author (QP), company (if applicable)
- Other Environmental Site Assessment Documentation, PSF, RA (if applicable)

[ABC Engineering Ltd.] further agrees that that in the case of any inconsistency between this Reliance Letter and any limitations set out in the aforementioned reports, this letter shall take priority.

[ABC Engineering Ltd.] understands and agrees that it is appropriate to extend reliance to the Region in relation to the reports listed herein so as to assist the Region in its assessment of the environmental suitability of the site and/or request to use non-potable groundwater standards.

[ABC Engineering Ltd.] further agrees that it will promptly notify the Region upon receipt of notice by the Ministry of the Environment, Conservation and Parks that the Ministry intends to audit any report listed herein and if so, to provide the Region with written confirmation of the results of the audit (Only applicable if filing the report as part of RSC or RA).

[ABC Engineering Ltd.] represents and warrants that it complies with all applicable insurance provisions contained within O.Reg. 153/04, as amended.

[ABC Engineering Ltd.] shall provide the Region with proof of insurance and maintain a minimum Professional Liability insurance coverage of \$2,000,000 per claim and \$4,000,000 aggregate.

[ABC Engineering Ltd.] agrees that its liability to the Region shall not be limited to an amount less than the Region’s minimum insurance requirements set out immediately above.

[ABC Engineering Ltd.] shall indemnify and save harmless the Region and its elected officials, officers, employees and agents from and against all claims actions, causes of action, losses, expenses, fines, costs, interest or damages of every nature and kind whatsoever, arising out of or allegedly attributable to the negligent acts, errors, omissions, misfeasance, nonfeasance, fraud or willful misconduct of the Consultant/Company, its directors, officers, employees, agents, contractors and subcontractors, or any of them, in connection with or in any way related to the delivery or performance of the work and reports provided to the Region that is subject to this Reliance Letter. This indemnity shall be in addition to and not in lieu of any insurance to be provided by the Consultant/Company in accordance with this reliance letter.

**Signed and Sealed by Qualified Person:**

\_\_\_\_\_ Date: \_\_\_\_\_

**Signed by person authorized to bind Consulting Firm:**

\_\_\_\_\_ Date: \_\_\_\_\_

**Signed by Property Owner or Authorized Officer:** \_\_\_\_\_

Name (please print): \_\_\_\_\_

Name of Company (if applicable): \_\_\_\_\_

Title of Authorized Officer: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax/Email: \_\_\_\_\_

Date: \_\_\_\_\_

Note: Edits to this document are only permitted in areas within the square brackets e.g.  
[ABC Engineering Ltd.

# Appendix G

## Regional Municipality of Durham Certificate of Insurance



**The Regional Municipality of Durham**  
**Finance – Insurance and Risk Management**

**Certificate of Insurance**

**Proof of liability insurance will be accepted on this form only.**

**This form must be completed and signed by your agent, broker or insurer.**

**All insurers shown must be licensed to operate in Canada**

**This is to certify that the Named Insured hereon is insured as described below**

Named Insured:

Address of the Named Insured

\_\_\_\_\_

Location and operations of the Named Insured for which Certificate is issued: All operations performed for the Region of Durham

<b>Insuring company</b>	<b>Policy numbers</b>	<b>Limit of coverage</b>	<b>Effective date</b>	<b>Expiry date</b>
	Commercial General Liability	Per Claim / Annual Aggregate  Deductible, if any	D/M/Y	D/M/Y
	Excess Liability (if applicable)	Per Claim / Annual Aggregate	D/M/Y	D/M/Y

Provisions of Amendments or Endorsements of Listed Policy(ies)

**Professional Liability – Claims Made Basis –  Yes  No**

Insuring company	Policy numbers	Limit of coverage	Effective date	Expiry date
	Professional Liability	Per Claim / Annual Aggregate  Deductible, if any	D/M/Y	D/M/Y
	Excess Professional Liability (if applicable)	Per Claim / Annual Aggregate	D/M/Y	D/M/Y

Is the limit inclusive of indemnity and claims expenses -  Yes  No

If the policy is on a claims made basis have there been any claims notices given for this policy term –  Yes  No

Commercial General Liability is issued on an ‘occurrence’ basis form and is extended to include Personal Injury Liability, Contractual Liability, Non-Owned Automobile Liability, Owner’s and Contractor’s Protective Coverage, Products/Completed Operations, Contingent Employer’s Liability, Cross Liability Clause and Severability of Interest Clause.

With respect to Commercial General Liability Insurance, The Regional Municipality of Durham is added as an Additional Insured but only with respect to its liability arising out of the operations of the Named Insured.

The policy(ies) identified above shall apply as primary insurance and not excess to any other insurance available to The Regional Municipality of Durham.

If cancelled or changed so as to reduce the coverage as outlined on this certificate, during the period of coverage as stated herein, thirty (30) days, prior written notice by registered mail will be given by the Insurer(s) to: The Regional Municipality of Durham, Attention: Insurance and Risk Management, Finance Department, 605 Rossland Road East, Whitby, ON, L1N 6A3

I certify that the insurance is in effect as stated in this certificate and that I have authorization to issue this certificate for and on behalf of the insurer(s).

Date  
\_\_\_\_\_

Name, Address, Fax and Telephone Number of Certifying Party  
\_\_\_\_\_

\_\_\_\_\_  
Print Name of above Authorized Representative or Official

Signature of Authorized Representative or Official  
\_\_\_\_\_

## **Appendix H: Detailed Record of Site Condition Process**

### **Records of Site Condition (RSC)**

Under Part XV.1 of the *Environmental Protection Act* (EPA), **RSCs** are submitted by a **QP** to the Ministry of the Environment, Conservation and Parks (**MECP**). The RSC provides a “snapshot” in time summary of the environmental condition for the subject property.

**RSCs** are filed on the **MECP’s** Environmental Site Registry. Documents submitted in support of an **RSC** filing may include ESA reports, remediation reports, **Risk Assessment** reports, reports prepared in response to a **MECP** order or a **MECP** request and any other reports relating to the presence of a contaminant on, in or under the property.

In cases where an **RSC** is required by the *Environmental Protection Act*, or this Protocol, a copy of the **RSC** and supporting documentation, including the **MECP’s** acknowledgement letter, updated reports and any audit and review correspondence including orders or **Certificates of Property Use (CPU)** issued by **MECP** must be submitted to the **Region** and the **Area Municipality** before Regional final clearance of conditions or approval can be provided. To determine whether the **MECP** has previously accepted/filed an **RSC**, please see the following links:

- For **RSC’s** filed [between October 1, 2004 and June 30, 2011](#); and
- For **RSC’s** filed [since July 1, 2011](#).

Notwithstanding the foregoing, in some cases the requirements associated with the filing of an **RSC** and/or an **RA** that is accepted by **MECP** as well as the municipality’s receipt of the **RSC/RA** for a subject property may vary and may be secured through the following:

- through official plan policy which may defer adoption of an official plan amendment until such a time the **Region** receives the **RSC/RA** documents or directs the submission of the required documentation through a subsequent planning approval such as a zoning by-law amendment (rezoning), a subdivision or site plan application;
- As a condition imposed through a rezoning application which precludes the removal/lifting of a Holding (H) Zone provision;
- As a condition of approval to be fulfilled prior to final approval of a related application (e.g. subdivision, condominium, consent);

- On a case-by-case basis in consultation with the **Area Municipality**, the Applicant and their **QP** coordinate a strategy to the **Region's** satisfaction through an appropriate subsequent planning application process prior to any building permit approvals for aboveground construction; and
- As a requirement of applicable law under the *Building Code Act, 1992*, as amended prior to the issuance of a building permit (where there are no approvals required under the *Planning Act*, excluding Minor Variances).

Where an **RSC** may not be achievable, or there may be other measures that could be applied to address specific environmental issues, the Applicant's **QP** must contact the York-Durham District **MECP** office to discuss available options.

### **Detailed Site Assessment**

Based on the findings of a **Phase Two ESA**, the following **development** scenarios are intended to assist the Applicant and their **QP** to determine whether an **RSC** is required in accordance with this Protocol. See **Appendix I** for a chart which details each scenario. Where a **Prescribed Change in Property Use** is introduced into a **development** proposal it must meet the respected Table Site Condition Standards for residential/parkland/institutional (RPI) land uses.

### **Scenario A – Development does not Propose a Prescribed Change in Property Use and No Exceedances**

For **developments** not proposing a **Prescribed Change in Property Use**, an **RSC** is not required where the **Site Screening Questionnaire (SSQ)** and/or a **Phase One ESA** does not reveal any exceedances contributing to an **APEC** or where a **Phase Two ESA** reveals that the sub-surface conditions are within the applicable **MECP Site Condition Standards (SCS)**. Under these circumstances, the Applicant will not be required to conduct further environmental investigations, if they provide the following:

- A Regional **SSQ** form is completed in accordance with **Appendix C**; or
- A professional statement in an **Environmental Site Assessment (ESA)** confirming no further investigations and that the site is suitable for proposed property use and supported with the following Regional documents:
  - **Reliance Letter** (completed in accordance with **Appendix F**); and
  - **Certificate of Insurance** (completed in accordance with **Appendix G**)
  - Non-Potable Groundwater Request - if Tables 3, 7 and 9 SCS for RPI use are considered, refer to **Appendices K & L**)

## **Scenario B – Development does not Propose a Prescribed Change in Property Use, and Exceedances are Discovered**

An **RSC** may be optional if the **QP's** findings reveal sub-surface conditions which exceed the **MECP SCS** but does not propose a **Prescribed Change in Property Use**. In accordance with Section 5.2.2.2 of this Protocol, the Applicant has the following options:

- Update the **Phase Two ESA** (post **site remediation**);
- An **RSC**;
- A **Risk Assessment (RA)**;
- Arrange to have the **Region peer review** the **QP's** reports; or
- Non-Potable Groundwater Request - if Tables 3, 7 and 9 SCS for RPI use are considered, refer to **Appendices K & L**)

Whichever option the Applicant and their **QP** selects, the **Region** will require the submission of the associated supporting materials prior to the Municipality issuing its final approval(s) for the proposed **development**.

## **Scenario C – Development Proposes a Prescribed Change in Property Use**

In accordance with the O.Reg. 153/04, an **RSC** is mandatory if the **development** proposes a **Prescribed Change in Property Use**, despite whether exceedances are discovered on the subject lands. This scenario will require the Applicant to provide the **Region** (and the **Area Municipality** if requested) a copy of the **RSC** filed on the Environmental Site Registry, the written acknowledgement provided by the **MECP**, along with any additional supporting materials before the planning application can be approved.

## **Scenario D – Minor Variances which Propose a Prescribed Change in Property Use**

As noted in **Appendix B**, where a **Prescribed Change in Property Use** is introduced through a Minor Variance application, an **RSC** is also mandatory.

## **Detailed Site Assessment for Mixed-Use Properties**

This Protocol was developed in accordance with O.Reg 153/04. The following scenarios provide updated regulatory changes for **mixed-use development** proposals that may require an **RSC** (for the complete list of regulatory changes, please refer to O.Reg. 153/04).

## Scenario E – Conversion of an Existing Low-Rise Commercial/Community Building to Accommodate Mixed-Uses

An **RSC** is not required to convert an existing low-rise **commercial** and/or **community** building into a **mixed-use development** which also includes **residential/institutional** use(s) provided that the following criteria is met:

- A Regional **SSQ** Form is completed in accordance with **Appendix C**; or
- A professional statement in an **Environmental Site Assessment (ESA)** report confirming no further investigations and that the site is suitable for proposed property use and supported with the following:
  - Regional **Reliance Letter** (completed in accordance with **Appendix F**); and
  - **Certificate of Insurance** (completed in accordance with **Appendix G**). or
- Non-Potable Groundwater Request - if Tables 3, 7 and 9 SCS for RPI use are considered, refer to **Appendices K & L**).

In any of the scenarios above, the **QP** must also demonstrate the following:

- That the building has no more than six storeys before the change and will be no more than six storeys after the change;
- That **residential** and/or **institutional** uses are restricted to floors above the ground floor;
- That the existing building envelope must remain unchanged and no proposed horizontal and/or vertical addition(s) to the exterior portions of the building; and
- That the subject property containing the existing building is not used or has not been historically used in whole or in part as an **Enhanced Investigation Property (EIP)** (e.g. **industrial**, a **garage**, a **bulk liquid dispensing facility**, and/or a **dry-cleaning equipment establishment**).

## Scenario F – Conversion of Existing Mixed-Use Buildings to Support Only Residential or Institutional Land Uses

An **RSC** is not required for **development** proposals on a subject property intending to convert an existing **mixed-use** building(s) supporting **community** or non-EIP **commercial** use(s) and **residential** or **institutional** uses to only include **residential** or **institutional** land uses provided that the following criteria is met:

- A Regional **SSQ** Form is completed in accordance with **Appendix C**; or
- A professional statement in an **Environmental Site Assessment (ESA)** report confirming no further investigations as well as that the site is suitable for proposed property use and supported with the following:
  - Regional **Reliance Letter** (completed in accordance with **Appendix F**); and
  - **Certificate of Insurance** (completed in accordance with **Appendix G**). or
- Non-Potable Groundwater Request - if Tables 3, 7 and 9 SCS for RPI use are being used, refer to **Appendices K & L**)

In any of the scenarios above, the **QP** must also demonstrate the following:

- That a part of the building was used for either **residential** or **institutional** uses and the other part of the building was used for either **commercial** or **community** uses before the proposed change in use to the building;
- That the existing building envelope remain unchanged and there would not be any horizontal and/or vertical addition(s) to the exterior portions of the building after the change in use to the building;
- That the subject property containing the existing building is not used or has not ever been used in whole or in part as an **EIP**; and
- If a fully **commercial/community** building was not previously converted into a **mixed-use** building.

### **Scenario G – Conversion of Existing Buildings Used for the Indoor Gathering of People for Religious Purposes**

In accordance with O.Reg. 153/04, religious buildings are categorized as **institutional** uses.

An **RSC** is not required to convert a religious building (used for the indoor gathering of people for religious purposes) to a **residential** use or a daycare establishment in the same building.

In accordance with O.Reg 153/04, an **RSC** is mandatory if a property used for **industrial/commercial/community** purposes is legally converted to a religious building.

## Scenario H – Conversion of an Existing Sensitive Land Use into a Mixed-Use Development

An **RSC** is not required to convert an existing sensitive land use (i.e. **residential, parkland, institutional, agricultural** and/or **other uses**) into a mixed-use development that introduces a less sensitive land use (i.e. **industrial, commercial** and/or **community**) provided that the following criteria is met:

- A Regional **SSQ** form is completed in accordance with **Appendix C**; or
- A professional statement in an **Environmental Site Assessment (ESA)** confirming no further investigations and that the site is suitable for proposed property use and supported with the following Regional documents:
  - **Reliance Letter** (completed in accordance with **Appendix F**); and
  - **Certificate of Insurance** (completed in accordance with **Appendix G**).
  - If a **Phase Two ESA** is submitted, it must meet the respected Table SCS for Residential/Parkland/Institutional (RPI) use; or
- Non-Potable Groundwater Request - if Tables 3, 7 and 9 SCS for RPI use are being used, refer to **Appendices K & L**)

## Scenario I – Mixed-Use - All Other Change of Uses

An **RSC** is mandatory for all other **mixed-use development** proposals that are not described in Scenarios E to G above.

## Approaches to Remediating Sites and Filing an RSC

Various approaches to remediating contaminated sites in Ontario are provided below:

1. A site can be remediated to meet the Typical Background Conditions which are set out in Table 1 of the **MECP Site Condition Standards (SCS)**;
2. A site can be remediated to meet Generic Site Condition Standards for the proposed use(s) which are set out in Tables 2 through 9 of the **MECP SCS**; and
3. A site can be remediated or meet the **Property Specific Standards** developed through a **Risk Assessment** prepared by a **QPRA**.

All approaches are based on **MECP SCS** for soil, groundwater and sediment as part of O.Reg. 153/04. Tables 1 to 9 in the **MECP SCS** set out prescribed contaminants and the maximum concentration for various property uses. Each approach is described below.

### **Approach 1 – Remediating to Table 1 Standards**

Table 1 soil standards are typical full depth background conditions derived from the Ontario Typical Range values for specific property uses and reflect typical province wide background concentrations in soils that are not contaminated. These standards are prescribed in certain circumstances as described by O.Reg. 153/04 (e.g. environmentally sensitive sites). The groundwater standards in Table 1 are the most pristine and were derived to provide the highest level of protection to human health and ecosystems.

### **Approach 2 – Remediating to Table 2 through 9 Standards**

Tables 2 through 9 of the **MECP SCS** are generic conditions where the Province has utilized a set of assumptions to develop standards that can be applied to all sites throughout the Province for different property uses. Each Table is applied to specific circumstances (e.g. proximity to bedrock and bodies of surface water).

Tables 2, 4, 6 and 8 of the **MECP SCS** are typically used in rural areas, where properties are serviced by private wells (potable groundwater). Tables 3, 5, 7 and 9 of the **MECP SCS** may be applied in municipally serviced urban areas, provided that the **QP** can demonstrate that surrounding property uses (e.g. within 250 metres of the subject property) will not adversely impact existing serviced private wells as discussed in detail under **Section 5.2.3** and **Appendix K** of this Protocol.

Based on the existing **MECP SCS** applicable to the **Region's** geography, this Protocol will recognize the use of all Full Depth Tables. Where the Applicant proposes to use the stratified soil and/or groundwater **MECP SCS** (either Tables 4 or 5 of the **MECP SCS**) in support of a planning application, the Applicant may be required to engage in the **Region's peer review** process.

### **Approach 3 - The Risk Assessment Process**

The **Risk Assessment (RA)** approach is used when the Applicant determines that it is not feasible to remediate some or all the subject property to meet the generic standards set out in the **MECP SCS**. If pursued, the Applicant's **QP** will be required to prepare and submit all documents in support of a **Risk Assessment**. Similar to **RSC's**, these reports may consist of, but are not limited to the following: **ESAs**; remediation; **Risk Assessment**; any other reports prepared in response to an **MECP** order or an **MECP** request and any other reports relating to the presence of a contaminant on, in or under the property.

## Appendix I: Detailed Site Assessment Chart for Records of Site Condition

Scenarios	RSC Mandatory	Materials Required to Satisfy the Region's Soil and Groundwater Assessment Protocol
Proposed <b>development</b> site <b>does not contain</b> site contamination and <b>does not propose</b> a <b>Prescribed Change in Property Use</b> (typically a more sensitive property use)	No	<ul style="list-style-type: none"> <li>• A Regional <b>Site Screening Questionnaire (SSQ)</b> (completed in accordance with <b>Appendix C</b>); or</li> <li>• A professional statement in an <b>Environmental Site Assessment (ESA)</b> confirming no further investigations are required and that the site is suitable for proposed property use and supported with the following:               <ul style="list-style-type: none"> <li>○ Regional <b>Reliance Letter</b>; and</li> <li>○ Certificate of Insurance; or</li> </ul> </li> <li>• Non-Potable Groundwater Request - if Tables 3, 7 and 9 Site Condition Standards (SCS) are being used, refer to <b>Appendices K &amp; L</b>)</li> </ul>
Proposed <b>development</b> site <b>does not contain</b> site contamination but <b>proposes</b> a <b>Prescribed Change in Property Use</b>	Yes	<ul style="list-style-type: none"> <li>• Proof that an RSC (post July 1, 2011) was filed on the Environmental Site Registry. If the filing of the <b>RSC</b> exceeds 18 months, <b>Updated ESA Documents</b> from a <b>Qualified Person (QP)</b> will also be required</li> </ul>
Proposed <b>development</b> site <b>contains</b> site contamination but <b>does not propose</b> a <b>Prescribed Change in Property Use</b>	No	<ul style="list-style-type: none"> <li>• <b>Phase One and Two ESA</b> reports, which documents the <b>site remediation</b> methods undertaken on the subject property; or</li> <li>• Proof that an <b>RSC</b> (post July 1, 2011) was filed on the Environmental Site Registry. If the filing of the <b>RSC</b> exceeds 18 months, <b>Updated ESA Documents</b> from a <b>QP</b> may be required; or</li> </ul>

Scenarios	RSC Mandatory	Materials Required to Satisfy the Region’s Soil and Groundwater Assessment Protocol
		<ul style="list-style-type: none"> <li>• Receipt of a <b>Certificate of Property Use</b> through a <b>Risk Assessment</b> where site contamination is intended to meet <b>Property Specific Standards</b>;</li> <li>• The completion of a successful <b>peer review</b> paid entirely by the Applicant; or</li> <li>• Non-Potable Groundwater Request - if Tables 3, 7 and 9 SCS are being used, refer to <b>Appendices K &amp; L</b>)</li> </ul>
Proposed <b>development</b> site <b>contains</b> site contamination and <b>proposes</b> a <b>Prescribed Change in Property Use</b>	Yes	<ul style="list-style-type: none"> <li>• Proof that a <b>Record of Site Condition</b> (post July 1, 2011) was filed on the Environmental Site Registry. If the filing of the <b>RSC</b> exceeds 18 months, <b>Updated ESA Documents</b> from a <b>QP</b> will also be required.</li> </ul>
Existing <b>mixed-use Commercial / Community – Residential / Institutional Development</b> site <b>proposes</b> a more sensitive land use	No	<ul style="list-style-type: none"> <li>• A Regional <b>SSQ</b> (completed in accordance with <b>Appendix C</b>); or</li> <li>• A professional statement in an <b>ESA</b> report confirming no further investigations are required and that the site is suitable for proposed property use supported with the following: <ul style="list-style-type: none"> <li>○ Regional <b>Reliance Letter</b>; Certificate of Insurance; and</li> <li>○ If a <b>Phase Two ESA</b> is submitted, it must meet the respected Table SCS for Residential/Parkland/Institutional (RPI) use</li> </ul> </li> <li>• Non-Potable Groundwater Request - if Tables 3, 7 and 9 SCS for RPI use are being used, refer to <b>Appendices K &amp; L</b>)</li> <li>• In any one of the above-noted scenarios, the <b>QP</b> must also demonstrate the following:</li> </ul>

Scenarios	RSC Mandatory	Materials Required to Satisfy the Region’s Soil and Groundwater Assessment Protocol
		<ul style="list-style-type: none"> <li>○ That the existing building envelope will remain unchanged and no addition(s) are proposed to the exterior portions of the building</li> <li>○ That the change to a <b>residential</b> and/or <b>institutional</b> use is restricted to floors above the ground floor;</li> <li>○ That the building has no more than six storeys before the change and will be no more than six storeys after the change; and</li> <li>○ That the subject property containing the existing building is not used or has not been ever used in whole or in part as an <b>EIP</b></li> </ul>
<p>Existing <b>mixed-use Commercial / Community – Residential / Institutional Development</b> site <b>proposes only Residential/Institutional</b> (sensitive) uses throughout the existing building</p>	No	<ul style="list-style-type: none"> <li>● A Regional <b>SSQ</b> (completed in accordance with <b>Appendix C</b>); or</li> <li>● A professional statement in an <b>ESA</b> report confirming no further investigations and that the site is suitable for proposed property use supported with the following: <ul style="list-style-type: none"> <li>○ Regional <b>Reliance Letter</b>; and</li> <li>○ Certificate of Insurance;</li> <li>○ If a <b>Phase Two ESA</b> is submitted, it must meet the respected Table SCS for RPI use</li> </ul> </li> <li>● Non-Potable Groundwater Request - if Tables 3, 7 and 9 SCS for RPI use are being used, refer to <b>Appendices K &amp; L</b>)</li> <li>● In either scenario above, the <b>QP</b> must also demonstrate all of the following <ul style="list-style-type: none"> <li>○ That a part of the building was used for either <b>residential</b> or <b>institutional</b> uses and the other part of the building was used for either <b>commercial</b> or <b>community</b> uses</li> </ul> </li> </ul>

Scenarios	RSC Mandatory	Materials Required to Satisfy the Region’s Soil and Groundwater Assessment Protocol
		<p>before the proposed change in use to the building;</p> <ul style="list-style-type: none"> <li>○ That the existing building envelope will remain unchanged and no addition(s) are proposed to the exterior portions of the building;</li> <li>○ That the subject property containing the existing building is not used or has not been ever used in whole or in part as an <b>EIP</b>; and</li> <li>○ That the existing <b>mixed-use</b> was not exempt from filing an <b>RSC</b> when the property was converted to <b>mixed-uses</b>.</li> </ul>
<p>A <b>development</b> site that proposes to convert an existing <b>Industrial</b> / <b>Commercial</b> / <b>Community</b> use building to a building and/or the property used for the indoor gathering of people for religious purposes (<b>Institutional</b> use)</p>	<p>Yes</p>	<ul style="list-style-type: none"> <li>• Proof that an RSC (post July 1, 2011) was filed on the Environmental Site Registry. If the filing of the <b>RSC</b> exceeds 18 months, <b>Updated ESA Documents</b> from a <b>Qualified Person (QP)</b> will also be required</li> </ul>
<p>A <b>development</b> site that proposes to convert an existing sensitive land use into a mixed-use <b>Residential</b> / <b>Institutional</b> – <b>Commercial</b> / <b>Community</b> development</p>	<p>No</p>	<ul style="list-style-type: none"> <li>• A Regional <b>SSQ</b> (completed in accordance with <b>Appendix C</b>); and/or</li> <li>• A professional statement in an <b>ESA</b> confirming no further investigations and that the site is suitable for proposed property use supported with the following: <ul style="list-style-type: none"> <li>○ Regional <b>Reliance Letter</b>;</li> <li>○ Certificate of Insurance; and</li> </ul> </li> </ul>

Scenarios	RSC Mandatory	Materials Required to Satisfy the Region's Soil and Groundwater Assessment Protocol
		<ul style="list-style-type: none"> <li>○ If a <b>Phase Two ESA</b> is submitted, it must meet the respected Table SCS for RPI use</li> <li>● Non-Potable Groundwater Request - if Tables 3, 7 and 9 SCS for RPI use are being used, refer to <b>Appendices K &amp; L</b>)</li> </ul>
All other <b>mixed-use</b> scenarios not described above	Yes	<ul style="list-style-type: none"> <li>● Proof that an <b>RSC</b> (post July 1, 2011) was filed on the Environmental Site Registry. If the filing of the <b>RSC</b> exceeds 18 months, <b>Updated ESA Documents</b> from a <b>QP</b> may be required</li> </ul>

## **Appendix J:**

### **Peer Review Process for Brownfield sites with Minor Exceedances**

If the **QP** determines that exceedances on a subject site pose little or no risk to human health and the environment, the Applicant may submit a written request along with the associated fees and documents to the Regional Planning and Economic Development Department requesting the **Region** to conduct a **peer review** in support of the **development** proposal. The **Region** will review the request to confirm whether it is eligible for a **peer review**. Any application that proposes a **Prescribed Change in Property Use** (typically a more sensitive land use) is not eligible for **peer review** and will require a letter of acknowledgement from the Ministry of the Environment, Conservation and Parks (**MECP**) confirming that a **Record of Site Condition (RSC)** was filed on the Environmental Site Registry.

Should the **peer review** process be deemed appropriate, the **Region** will select the next **Peer Review Consultant** from a Council-approved roster and ask the Consultant to provide the following:

- Cost estimates to review any **ESA** reports and any associated materials requested by the **Region** in support of the **development** proposal (per submission);
- Any potential conflicts of interest;
- Project Team list and their job title(s) assigned to the **peer review**;
- Anticipated time schedule required to complete the **peer review**; and
- Anticipated completion date of the **peer review**.

Regional **Peer Review Consultants** should consider the following questions as guidelines in support of their technical review response of the **ESA** work and any associated materials for the **development** proposal:

- Were the **ESA** reports submitted prepared in accordance (or consistent) with Provincial legislation (i.e. O.Reg. 153/04) and Regional requirements? If a **QP** considers their report “consistent with” Provincial and Regional requirements, has the **QP** identified how their investigation and reporting requirements deviate from O.Reg. 153/04 and this Protocol?
- Are any additional supporting documents/materials required?

- What, if any, are the potential or expected impacts on human health and the environment within the study area?
- Are further environmental investigations required? (e.g. have **APECs** been properly identified and investigated and has suitable work been completed in accordance with O.Reg. 153/04?)
- Are adverse off-site impacts (including potable wells) expected based on the on-site and study area investigations?
- Do you agree that environmental conditions at the site are appropriate for the proposed property use(s) (e.g. **residential/parkland** or **industrial/commercial**)?
- Is the Applicant's environmental work completed by their environmental consultant team comprehensive and does it satisfactorily demonstrate the soil, groundwater and sediment conditions of the subject property?
- Does the study area outlined in the **ESA** reports sufficiently cover any potential off-site migration?
- Do the environmental reports submitted accurately represent the environmental conditions on and off site?
- Do you agree with the Applicant's **QP's** analysis, assessment results, conclusions and recommendations?
- Does the Applicant's environmental consultant team meet regulatory **QP** credential requirements?

### **Pre-Consultation Meeting with Regional Peer Review Consultant**

Prior to the **Peer Review Consultant's** review of submitted **ESA** materials, the Applicant and their QP may request a pre-consultation meeting with Regional staff and its **Peer Review Consultant** (at the Applicant's sole expense). This meeting will discuss the requirements and expectations of the **ESA** reports and any related materials submitted to help streamline the review process.

### **Amending the Terms of Reference where Necessary**

Upon receipt of the **Peer Review Consultant's** cost estimate, Regional staff will provide a letter to the Applicant for their acceptance of the cost estimate and the required fees (in accordance with the applicable Regional Planning Fee By-law), made payable to the **Region**.

If the Applicant signs and accepts the cost estimate and provides the associated fees, Regional staff will prepare a letter to its **Peer Review Consultant**, confirming the Applicant's concurrence to initiate the **peer review** process.

The **Peer Review Consultant** is required to complete and submit a copy of the draft **peer review** report to staff for review within 30 days from the date the assignment is awarded. Regional staff will review the draft report to ensure there are no concerns with its content prior to the Consultant finalizing the report.

If the **Peer Review Consultant** concludes that the **QP's** supporting documents satisfactorily demonstrates that the site conditions on the subject property represents minor exceedances (determined through a risk based assessment and/or best practices as described in O.Reg. 153/04 and/or O.Reg. 407/19) to the **MECP Site Condition Standards (SCS)** and that the contaminants pose little to no risk to human health and the environment, the **Peer Review Consultant** must include an opinion statement noting the same.

If the **Peer Review Consultant** concludes that the **QP's** supporting documents cannot conclude or cannot satisfactorily demonstrate that the site conditions represent minor exceedances to the **MECP SCS**, the Applicant's **QP** would have to prepare one or both of the following:

- Conduct further analysis and resubmit additional supporting information and fees as requested by the **Peer Review Consultant** and the **Region**; or
- File an **RSC** on the Environmental Site Registry and or have a **Risk Assessment (RA)** accepted by **MECP**.

If the Applicant and their **QP** disagrees with the **Peer Review Consultant's** conclusions, a meeting with the consultants (at the Applicant's expense) may be required to determine an acceptable and expeditious course of action.

## **Appendix K: Non-Potable Groundwater Requests**

Section 35 of O.Reg. 153/04 identifies two standards for groundwater conditions: Potable and Non-Potable. “Potable Standards” apply to areas where the drinking water source is from private wells, whereas “Non-Potable Groundwater Standards” typically apply to areas where the predominant drinking water source is from a municipal water supply.

Requests to utilize the less stringent Non-Potable Groundwater Ministry of the Environment, Conservation and Parks’ **(MECP’s) Site Condition Standards (SCS)** are made by the Applicant’s **QP** and are submitted for properties in urban areas where municipal services are available and where reliance on private wells for drinking water and/or gardening is low. Since vulnerable groundwater areas exist within many of the serviced areas of the **Region**, requests to use Non-Potable Groundwater **MECP SCS** in municipally serviced areas are evaluated on a case-by-case basis.

The **Region** may approve the use of Tables 3, 7 and 9 ground water **MECP SCS** for a property prior to completion and filing of a **Record of Site Condition (RSC)** provided certain conditions are met. **Development** proposals which considers using Table 5 **SCS**, must be peer reviewed at the owner’s expense. The procedure the **Region** will use to assess requests to use the non-potable groundwater standard is set out in **Appendix L**.

### **Other Resources**

The York Durham District **MECP** office in the Town of Ajax can assist Applicants, **QP’s** and other stakeholders to identify properties with site contamination potential. The Ajax office can be contacted as follows:

Ministry of the Environment, Conservation and Parks

230 Westney Road South, Fifth Floor

Ajax, Ontario L1S 7J5

General Inquiries: 905.427.5600

Toll Free: 1.800.376.4547

Fax: 905.427.5602

The Ministry of Municipal Affairs and Housing (MMAH) “[Brownfields Ontario](#)” website also provides additional resources and can answer questions surrounding brownfields and site contamination.

## **Appendix L: Non-Potable Groundwater Request Standards and Procedures**

The Ontario Ministry of the Environment, Conservation and Parks (**MECP**) allows municipalities to develop their own procedures surrounding Non-Potable Groundwater Requests. This Protocol assesses the appropriateness of Non-Potable Requests using Tables 3, 7 or 9 of **MECP Site Condition Standards (SCS)** within the **Region**.

The process ensures that appropriate **Environmental Site Assessment (ESA)** documentation is submitted with a request and that any **brownfield sites** and potentially contaminated sites are appropriately identified and remediated if necessary. This process also ensures that there are no adverse impacts to public or private drinking water systems (as defined under the *Safe Drinking Water Act, 2002*) within the **Phase One Study Area** in urban areas. In accordance with O.Reg. 153/04, the **Region** must respond to Non-Potable Requests within 30 days of receipt.

### **Circulation of Written Notification/Requests**

If a **Qualified Person (QP)** seeks permission to use the Non-Potable Groundwater **MECP SCS** for a property, in accordance with Provincial requirements, they must submit a written notice/request to the Clerk of both the **Region** and the **Area Municipality**.

The Regional Legislative Services Division will circulate the request and supporting materials to the Regional Planning Division for review and comment.

### **Coordinated Regional Response**

There are two scenarios for a **QP** to file a Non-Potable Request. These scenarios consist of Requests requiring or not requiring a **Record of Site Condition (RSC)** and/or **Risk Assessment (RA)**.

The **Region** will not process incomplete Non-Potable Groundwater Requests. For a Non-Potable Groundwater Request to be considered complete, the following materials must be included at a minimum:

- A covering letter indicating the request, address, Applicant's name, whether the Applicant plans to submit an **RSC** for filing on the Environmental Site Registry and/or submit a **Risk Assessment** for **MECP** acceptance, and groundwater standard proposed;

- The existing **Environmental Site Assessment** Report(s);
- The required processing fee, in accordance with the applicable Regional Planning Division's Fee By-law; and
- Any associated supporting documents under the heading "Procedures for Non-Potable Requests Not Requiring an RSC or an RA" (if required by the **Region**).

If the supporting materials noted above have not been prepared to the **Region's** satisfaction, Regional staff will issue an objection letter to the Applicant's **QP** and the applicable Area Municipal Clerk in response to the use of the Non-Potable Groundwater Standards request. Once the supporting materials are updated and submitted, the **Region** will reevaluate the Non-Potable Groundwater Request.

If the Applicant's **QP** provides the **Region** with satisfactory supporting materials, Regional staff will issue a follow-up letter to the Applicant's **QP**, and the applicable **Area Municipality** either objecting or not-objecting to the Non-Potable Groundwater Standard request.

### **Procedures and requirements for Non-Potable Requests Requiring an RSC or an RA**

Non-Potable Groundwater Requests requiring an **RSC** and/or an **RA** submission to **MECP** must include the following:

- A covering letter indicating the request, address, Applicant's name and groundwater standard proposed;
- The **Environmental Site Assessment** Report(s) prepared by the **QP**;
- The required processing fee, in accordance with the applicable Regional Planning Division's Fee By-law; and (if applicable); and
- Any associated supporting documents.

Following Regional review of the above-noted materials, a letter either objecting to or not objecting to the Applicant's **QP's** request for the use of the non-potable standard will be issued to the Applicant's **QP** and the applicable **Area Municipality**.

If the **Region** issues a non-objection letter (in accordance with the Evaluation Criteria below) granting conditional approval to consider the use of Non-Potable Groundwater Standards, the Applicant's **QP** must submit the Regional letter to **MECP**. The Applicant's **QP** must provide the **Region** with **MECP's RSC** Acknowledgment Letter and/or a copy of the **RA** Submission within 12 months of the Request being granted Conditional Approval.

If the Regional receipt of **MECP's** clearance letter exceeds 12 months, in accordance with O.Reg. 153/04, its Conditional Approval will lapse and the **QP** will be required to update their Non-Potable Groundwater Request with the **Region**.

### **Procedures for Non-Potable Requests Not Requiring an RSC or an RA**

Non-Potable Groundwater Requests for development applications not requiring an **RSC** and/or an **RA** submission to **MECP** must include the following:

- All **ESA** reports, processing fees and any associated supporting documents noted above;
- A completed Regional **Reliance Letter** and **Certificate of Insurance** from the **QP** for the **Region** to rely on all of the supporting documents;
- A well record survey provided by **MECP's** Well Record Mapping;
- A description of the methodology used to demonstrate that residences, businesses and **other uses** in the above noted areas do not rely on groundwater-based water sources [e.g. no private wells on or within 250 metres (m) of the subject property used for drinking water purposes, this could be more than 250 m depending on nearby **Potentially Contaminated Activity (PCA)** property uses, soil conditions, topography, direction of groundwater flow, etc.]. **MECP** water well records may also be used to assess potential groundwater usage within the **Phase One Study Area**;
- A description of previous and proposed uses of the subject property;
- A description of the type and nature of any contamination and representation of any proposed/required **site remediation**;
- The use and servicing details of **residential** dwellings, businesses and other properties within 250 metres (m) of the subject property;
- Confirmation that the subject property will not create adverse impacts on Wellhead Protection Areas;
- Confirmation that the subject property is not located within an **Area of High Aquifer Vulnerability** on the Oak Ridges Moraine;
- A professional opinion statement by **QP** confirming that the site will be developed in accordance with the applicable **MECP SCS** or applicable Site-Specific **RA** Standard Levels;

- Confirmation that present or future surface water or groundwater sources of drinking water will not be adversely affected including water for **agricultural** and aquaculture uses; and
- Any other information deemed reasonably necessary by the **Region** or the applicable **Area Municipality**.

Following the **Region's** review of the above-noted materials, a letter either objecting to or not objecting to the Applicant's **QP's** Non-Potable Groundwater Request will be issued to the Applicant's **QP** and the applicable **Area Municipality**.

A letter objecting to the Non-Potable Request may be issued for a **development** proposal under the following circumstances:

- If it proposes a threat that will impact potable water supply;
- If it is located within a Wellhead Protection Area; and/or
- If it is located in an **Area of High Aquifer Vulnerability** within the Oak Ridges Moraine.

If the **Region** issues a non-objection letter in response to the Non-Potable Groundwater request (in accordance with the Evaluation Criteria below), the **development** proposal may proceed (if there are no other outstanding matters of Regional Interest) eliminating any concerns surrounding potential groundwater exceedances.

To protect the Regional groundwater resources, any proposed cleanup/**site remediation** of **brownfield sites** and potentially contaminated sites in the rural area must use the "potable groundwater" **MECP SCS**. This includes **Areas of High Aquifer Vulnerability**, which extend beyond wellhead protection areas. Please note that Non-Potable Groundwater Requests will not be considered within the Regional rural and unserved areas.

### **Evaluation Criteria**

Requests to utilize the non-potable groundwater standard will be considered when the supporting documentation confirms:

- That the site and all properties within 250 m of the subject property are supplied by a municipal drinking water system or that there are no wells within 250 m of the subject property used for drinking water purposes. The Applicant's **QP** may recommend a study area of more than 250 m, if a nearby **PCA** has the potential to impact the subject property based on its property use history and/or soil conditions, topography, direction of groundwater flow, etc. The Applicant's **QP** may utilize other methods to confirm that

there are no potable wells affected by on site contamination. For example, a registered notice could be sent to all property owners within the study area to advise residents of the proposed use and the request to use non-potable groundwater **MECP SCS** to remediate the property;

- It is reasonable and appropriate to use the less stringent Table 3, 7 or 9 **MECP SCS** for the site;
- The on-site conditions will not detrimentally impact: Wellhead Protection Areas; **Areas of High Aquifer Vulnerability**; areas of natural significance and water bodies; and
- That the present and future surface water and groundwater sources of drinking water will not be adversely affected, including water for **agricultural** and aquaculture uses.

## **Appendix M: Procedure to Assess Enhanced Investigation Properties**

### **Assessing Enhanced Investigation Properties (EIPs)**

This Protocol will assess the appropriateness of evaluating **development** proposals concerning EIPs as defined under O.Reg. 153/04, as amended, within the **Region**. **EIP** uses consist of **industrial** uses and the following **commercial** uses: a **garage** (i.e. an automotive repair facility), a **bulk liquid dispensing facility** (including **gasoline outlets**), or the operation of **dry-cleaning equipment**.

This process intends to streamline **development EIP** proposals that are considered either major or minor in nature. Depending on the proposed level of **development**, this procedure is intended to prevent adverse impacts to human health, and the environment within the **Phase One Study Area**.

**ESA** documentation submitted with the request must demonstrate that any **brownfield sites** and potentially contaminated sites are appropriately identified and remediated. This process ensures that there are no negative impacts to public or private drinking water supplies within the **Phase One Study Area**.

A flow chart which outlines the **Region's EIP** process is provided in **Appendix P**.

### **Major Development Proposal Containing Site Contamination on an Enhanced Investigation Property**

If a **major development** proposal intends to temporarily or partially remediate a site due to the nature of the permitted use (e.g. **gasoline outlets**, automobile wreckers yards, or a **bulk liquid dispensing facilities**) or where significant **physical development** is proposed, the Applicant has the option of completing the following:

- Submitting an **RSC** or a **Risk Assessment** through **MECP**; or
- Engaging in the **Region's peer review** process.

In addition to the mandatory **Phase One** and **Two ESA** reports, where an Applicant opts for a **peer review** process, the **Region** may request that the Applicant submit a Contaminant Management Plan (CMP), which outlines the following to address risk management:

- A list of the existing and/or proposed bulk fuels/chemicals stored, manufactured or processed on the subject property and within any buildings/structures;
- A procedure on how any potential risk of release of fuels/chemicals to abutting lands will be mitigated and managed; and
- A procedure demonstrating the proposed safety measures to be implemented on the subject property and abutting lands impacted by existing and/or proposed fuels/chemicals.

In addition to the CMP requirements noted above, the following additional records listed in Section 3(2)(14) of Schedule D, of O.Reg. 153/04 be also provided in support of a

**peer review:**

- Regulatory permits and records related to **Areas of Potential Environmental Concern (APECs)**;
- Material Safety Data Sheets (MSDS);
- Underground utility drawings;
- Inventory of chemicals, chemical usage and chemical storage areas;
- Inventory of above ground storage tanks and underground storage tanks;
- Environmental monitoring data, including data created in response to an order or request of the Ministry;
- Waste management records, including current and historical waste storage locations and waste generator and waste receiver information maintained pursuant to Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*, or its predecessors;
- Process, production and maintenance documents related to **APECs**;
- Records of spills and records of discharges of contaminants of which notice is required to be given to the **MECP** under the *Environmental Protection Act* and records of such spills and discharges required to be kept pursuant to Ontario Regulation 675/98 (Classification and Exemption of Spills and Reporting of Discharges) made under the *Environmental Protection Act*;
- Emergency response and contingency plans, including spill prevention and contingency plans prepared pursuant to section 91.1 of the *Environmental Protection Act*, and Ontario Regulation 224/07 (Spill Prevention and Contingency Plans) made under the *Environmental Protection Act*;
- Environmental audit reports; and
- A site plan of the facility showing all buildings, storage areas, areas of production and manufacturing.

For proposals relating to the bulk liquid dispensing facilities, the **Region** may also request the coordination of/documentation from the Technical Safety Standards Authority (**TSSA**).

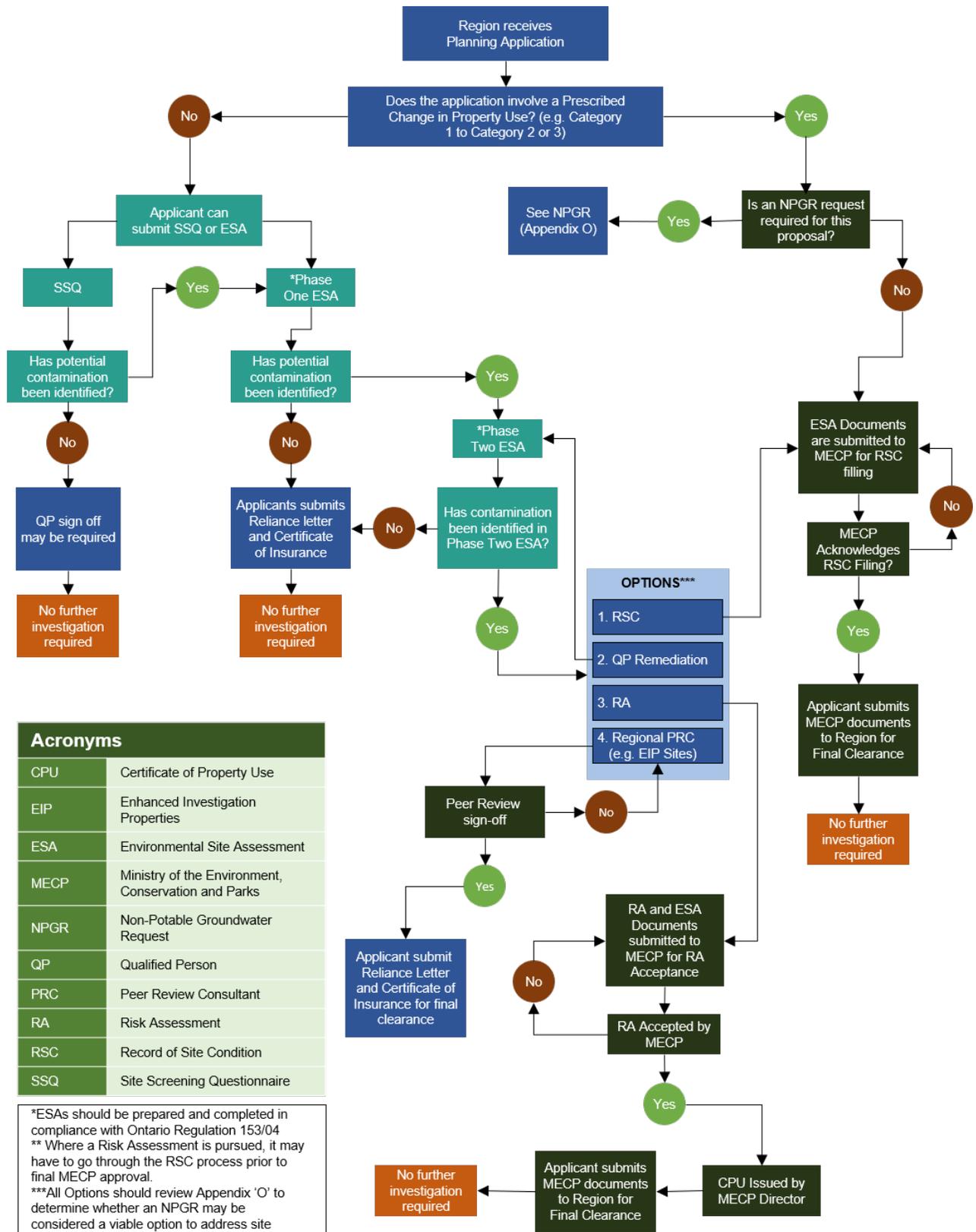
### **Minor Development Proposal within an EIP**

At the **Region's** discretion, an **SSQ** (at a minimum) may suffice where a **minor development** on an **EIP** site (e.g. small accessory structures, **development** within an existing building, etc.) is proposed. However, at the **Region's** sole discretion, depending on the **SSQ's** findings, an Applicant may be required to prepare ESA reports and file the applicable documents/materials identified above under **major developments**.

### **Properties Previously used as Enhanced Investigation Properties**

Properties in whole or in part that were previously used as an **EIP** and have since filed an RSC on the **MECP's** Environmental Site Registry for a sensitive property use (e.g. **residential, institutional, parkland** etc.) are no longer considered an **EIP**.

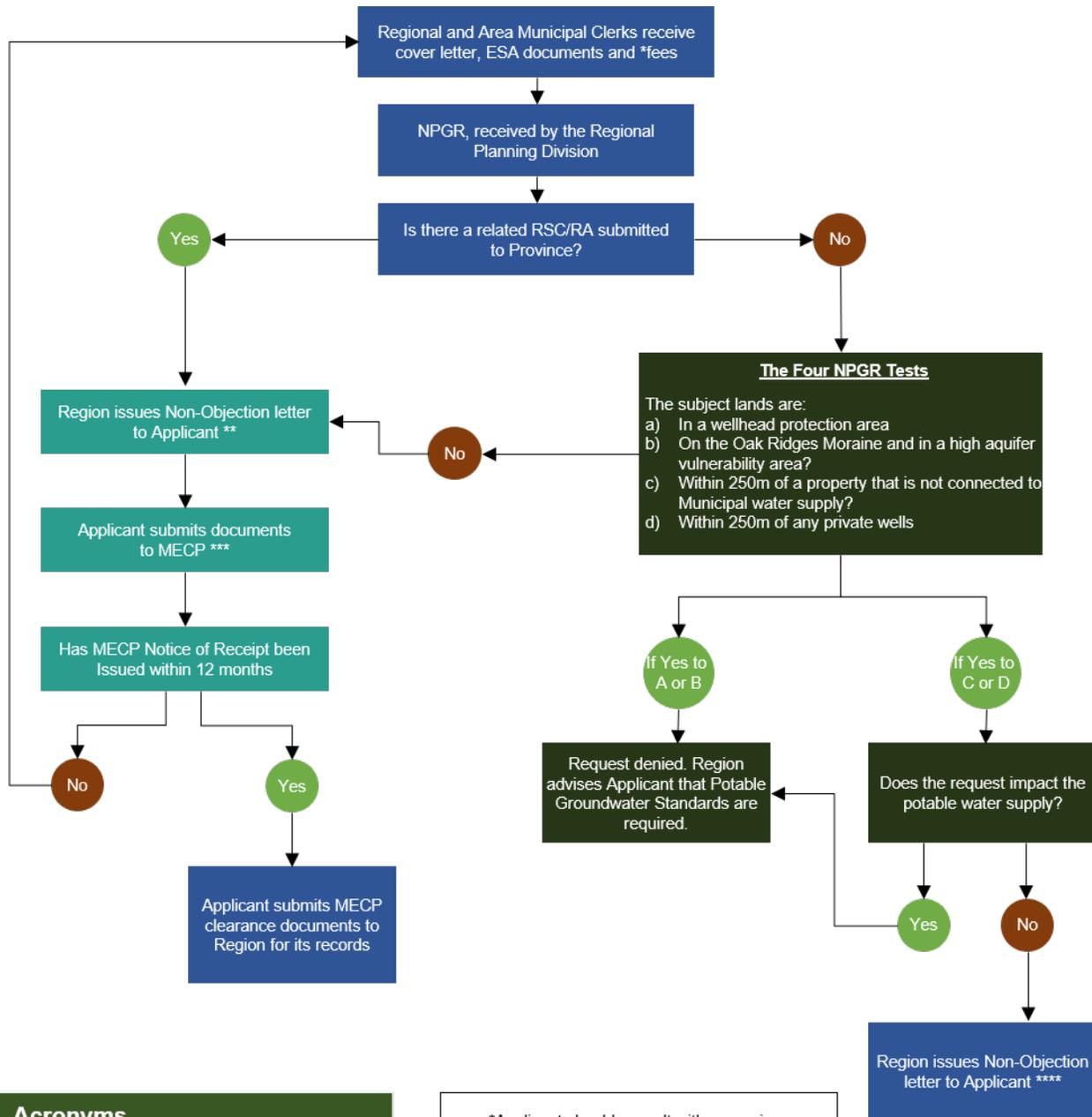
# Appendix N: Soil and Groundwater Assessment Protocol Flowchart



Acronyms	
CPU	Certificate of Property Use
EIP	Enhanced Investigation Properties
ESA	Environmental Site Assessment
MECP	Ministry of the Environment, Conservation and Parks
NPGR	Non-Potable Groundwater Request
QP	Qualified Person
PRC	Peer Review Consultant
RA	Risk Assessment
RSC	Record of Site Condition
SSQ	Site Screening Questionnaire

\*ESAs should be prepared and completed in compliance with Ontario Regulation 153/04  
 \*\* Where a Risk Assessment is pursued, it may have to go through the RSC process prior to final MECP approval.  
 \*\*\*All Options should review Appendix 'O' to determine whether an NPGR may be considered a viable option to address site contamination

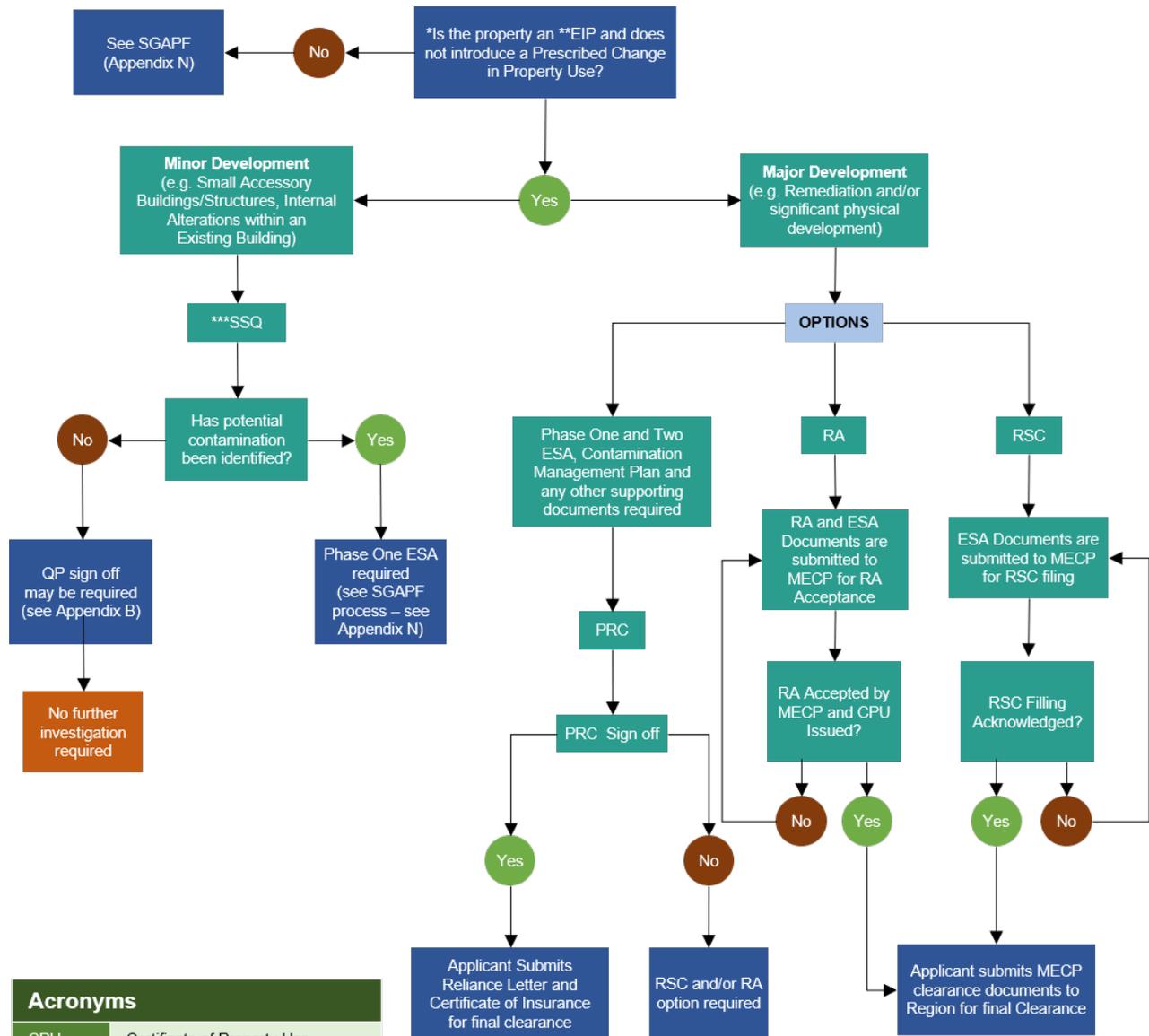
# Appendix O: Non-Potable Groundwater Request Flowchart for Urban Serviced Areas



Acronyms	
ESA	Environmental Site Assessment
MECP	Ministry of the Environment, Conservation and Parks
RA	Risk Assessment
RSC	Record of Site Condition
NPGR	Non-Potable Groundwater Request

- \*Applicant should consult with governing Area Municipality to determine fee requirements (if any).
- \*\* When an RSC/RA is not required, and the answer is “No” to the Four Non-Potable Requests Test, the Region will issue a final non-objection letter.
- \*\*\* Prepared in accordance with Region of Durham’s NPGR flow chart for Urban Serviced Areas.
- \*\*\*\* If Table 5 is requested by Qualified Person then Peer Review is required.

# Appendix P: Enhanced Investigation Properties Flowchart



Acronyms	
CPU	Certificate of Property Use
EIP	Enhanced Investigation Properties
ESA	Environmental Site Assessment
MECP	Ministry of the Environment, Conservation and Parks
NPGR	Non-Potable Groundwater Request
PRC	Peer Review Consultant
RA	Risk Assessment
RSC	Record of Site Condition
SGAPF	Soil Groundwater Assessment Protocol flowchart
SSQ	Site Screen Questionnaire

- \*An EIP is a property that consists of at least one of the following:
  - A Bulk Liquid Dispensing Facility;
  - A Dry Cleaning Facility;
  - A Garage; and/or
  - Industrial Uses.
- \*\* A property in whole or in part that was previously considered an EIP and had filed an RSC on the Environmental Site Registry for a sensitive property use is no longer considered an EIP.
- \*\*\* ESA reports may be required depending on the SSQs findings.

## **Appendix Q: Glossary of Terms**

Applicable terminology referenced by O.Reg. 153/04 and the Protocol are provided below. The following definitions found under O.Reg. 153/04 are provided for convenience purposes only and may be subject to change from time-to-time. Please refer to O.Reg.153/04: Records of Site Condition – Part XV.1 of the *Environmental Protection Act*, where applicable to confirm the official terminology.

### **Adverse Effect**

Means in accordance with the *Environmental Protection Act* one or more of the following:

1. Impairment of the quality of the natural environment for any use that can be made of it;
2. Injury or damage to property or to plant or animal life;
3. Harm or material discomfort to any person;
4. An adverse effect on the health of any person;
5. Impairment of the safety of any person;
6. Rendering any property or plant or animal life for human use,
7. Loss of enjoyment of normal use or property; and
8. Interference with the normal conduct of business

### **Agricultural or Other Use**

Means any of the following in accordance with Part I of O.Reg. 153/04:

1. The use of land, or a building on the property for an agricultural purpose, including, but not limited to, animal husbandry, aquaculture, beekeeping, dairying, field crops, forestry, fruit farming, horticulture, market gardening, poultry raising and the operation of glass- or plastic covered greenhouses; or
2. Any other use of land or a building on the property, other than a commercial use, community use, industrial use, institutional use, parkland use or residential use.

### **Area Municipalities**

Means any or all of the following municipalities within the Regional Municipality of Durham: the Town of Ajax; the Township of Brock; the Municipality of Clarington; the City of Oshawa; the City of Pickering; the Township of Scugog; the Township of Uxbridge; and the Town of Whitby.

### **Area of High Aquifer Vulnerability**

Means lands (in accordance with the Durham Region Official Plan) whose uppermost aquifer is most vulnerable to contamination as a result of surface activities or sources, due to the thickness and permeability of the rock and soil above the aquifer. Vulnerability is expressed as an intrinsic susceptibility index calculated using methods established by the Ministry of the Environment Conservation and Parks. Lands with an index value of less than 30 are considered to be of high vulnerability.

On the Oak Ridges Moraine, means an Area of High Aquifer Vulnerability as prescribed in the Oak Ridges Moraine Conservation Plan.

### **Areas of Potential Environmental Concern (APEC)**

Means the area on, in or under a Phase One Property where one or more contaminants are potentially present, as determined through the phase one Environmental Site Assessment, including through,

1. Identification of past or present uses on, in or under the Phase One Property; and
2. Identification of Potentially Contaminating Activity.

### **Brownfield sites**

Means undeveloped or previously developed properties that may be contaminated. They are usually, but not exclusively, former industrial or commercial properties that may be derelict, underutilized, or vacant.

### **Bulk Liquid Dispensing Facility**

Means premises at which solvents; gasoline or associated products are stored in one or more storage tanks and dispensed for sale.

### **Certificate of Insurance**

Means a Regional form completed and signed by the QP's Insurer that meets the Region's minimum Professional Liability insurance coverage to the satisfaction of the Region.

### **Certificate of Property Use (CPU)**

Means a legal document is issued by MECP to enforce Risk Management Measures (RMM) for a contaminated site. The CPU is registered on the title of the property for notification purposes so future property owners, municipal officials, and occupants of a property will be aware of any property use restrictions, building restrictions or equipment installation required to ensure that contaminants remaining on a site meet the site-specific Risk Assessment standard levels. The CPU requires Owners to:

1. Prevent or eliminate any problems with contamination on the property;
2. Monitor contamination; and/or
3. Follow specified land use or building restrictions set out in the Risk Assessment.

## **Contaminant**

Means in accordance with the *Environmental Protection Act* any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect.

## **Contaminants of Concern (COC)**

Means any of the following:

1. One or more contaminants found on, in or under a property at a concentration that exceeds the applicable Site Condition Standards for the property, or
2. One or more contaminants found on, in or under a property for which no applicable site condition standard is prescribed under Part IX (Site Condition Standards and Risk Assessment) and which are associated with Potentially Contaminating Activity.

## **Commercial Use**

Means any of the following uses of land or a building on the property for an enterprise or activity involving the exchange of goods or services, including the following uses:

1. Use as a hotel, motel, hostel or similar accommodation.
2. Use as an office building.
3. In respect of the classification of occupancies in Table 3.1.2.1 of Division B of Ontario Regulation 332/12 (Building Code) made under the Building Code Act, 1992, use that falls within,
  - a) Group D, business and personal services occupancies; or
  - b) Group E, mercantile occupancies.

## **Community Use**

Means any of the following uses:

1. Land on the property for a road.
2. A building on the property for,
  - a) Indoor recreational activities,
  - b) Travel purposes, such as use for a railway station or an airport passenger terminal, or like purposes,
  - c) An indoor gathering of people for civic, or social purposes.
3. In respect of the classification of occupancies in Table 3.1.2.1 of Division B of Ontario Regulation 332/12 (Building Code) made under the *Building Code Act*, 1992, use of a building on the property that falls within,

- a) Group A, Division 1, assembly occupancies intended for the production and viewing of the performing arts,
  - b) Group A, Division 3, assembly occupancies of the area type, or
  - c) Group A, Division 4, assembly occupancies in which occupants are gathered in the open air and that is used for a stadium.
4. Use of a classroom in a building on the property by,
- a) A university that is authorized to operate pursuant to section 3 of the *Post-Secondary Education Choice and Excellence Act, 2000*;
  - b) A college established under the Ontario Colleges of Applied Arts and Technology Act, 2002;
  - c) Any institution other than an institution mentioned in subparagraph i. or ii. above with authority to grant a degree or part of a degree under the *Post-Secondary Education Choice and Excellence Act, 2000*; or
  - d) A private career college as defined and approved under the *Private Career Colleges Act, 2005*.

### **Development**

Means the creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the *Planning Act*, but does not include:

- 1. Activities that create or maintain infrastructure authorized under an environmental assessment process;
- 2. Works subject to the *Drainage Act*; or
- 3. For the purposes of policy 2.1.4(a) underground or surface mining of minerals or advanced exploration on mining lands in significant areas of mineral potential in Eco Region 5E, where advanced exploration has the same meaning as under the Mining Act. Instead those matters shall be subject to policy 2.1.5(a).

### **Dry Cleaning Equipment**

Means dry cleaning equipment as defined in Ontario Regulation 323/94 made under the *Environmental Protection Act*.

### **Enhanced Investigation Property (EIP)**

Means a property that is being used or has been used, in whole or in part, for an industrial use or for any of the following commercial uses, which may be amended from time to time by the Ministry of the Environment, Conservation and Parks:

- 1. As a garage;
- 2. As a bulk liquid dispensing facility, including a gasoline outlet; or
- 3. For the operation of dry-cleaning equipment.

If the property is currently used for an agricultural or other use, or a community use, an institutional use, a parkland use or a residential use it is not an EIP if an RSC has been filed in the Registry since it was last used for an industrial or one of the specified commercial uses.

### **Environmental Site Assessment (ESA)**

Means in accordance with Part II of O. Reg 153/04, an investigation in relation to land to determine the environmental condition of property, and includes a Phase One Environmental Site Assessment and a Phase Two Environmental Site Assessment

### **Garage**

Means a place or premises where motor vehicles are received for maintenance or repairs for compensation.

### **Gasoline Outlet**

Means any premises to which the public is invited, at which gasoline or an associated product is sold and is put into fuel tanks or motor vehicles or floating motorized watercraft, or into portable containers.

### **Industrial Use**

Means any of the following uses of land or of a building on the property for:

1. An enterprise or activity involving assembling, fabricating, manufacturing, processing, producing, storing, warehousing or distributing goods or raw materials;
2. In respect of the classification of occupancies in Table 3.1.2.1 of Division B of Ontario Regulation 332/12 (Building Code), use that falls within:
  - a) Group F, Division 1, high hazard industrial occupancies,
  - b) Group F, Division 2, medium hazard industrial occupancies, or
  - c) Group F, Division 3, low hazard industrial occupancies;
3. Research or development in association with an enterprise or activity described in paragraph 1;
4. The transportation of goods or people by railway or by airplane, but not including use for a gathering of people for travel purposes, such as use as a railway station or an airport passenger terminal;
5. A waste disposal site as defined in Section 25 of the *Environmental Protection Act*, except a site for organic soil conditioning as defined in regulation 347 of the Revised Regulations of Ontario, 1990 made under the Act;

6. In connection with sewage works described in subsection 53 (6.1) of the *Ontario Water Resources Act*;
7. Production of oil or gas, or mining or quarrying;
8. In connection with a water treatment facility;
9. In connection with a sewage treatment facility;
10. Use for the generation or transformation of electricity;
11. Use for the storage, maintenance, fueling or repair of equipment, vehicles or material used to maintain transportation systems;
12. Use as a salvage yard, including and automotive wrecking yard or premises;
13. Use of a building where both of the following circumstances apply:
  - a) The building was previously used for an industrial use, commercial use or community use.
  - b) The building is used for the cultivation, growing and harvesting of agricultural commodities, where the cultivation and growing of the agricultural commodities is achieved through hydroponics or other methods that do not rely on cultivating and growing the commodities using the soil from the property;

### **Institutional Use**

Means any of the following uses of land or a building on the property for:

1. A day-care centre. within the meaning of the *Child Care and Early Years Act*, 2014;
2. A school as defined in the *Education Act*;
3. A private school as defined in the *Education Act*; or
4. A building on the property for an indoor gathering of people for religious purposes.

### **MECP**

Means the Government of Ontario Ministry of the Environment, Conservation and Parks or its successors.

### **MECP Site Condition Standards (SCS)**

Refers to the "Soil, Groundwater and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*" published by the Ministry and dated April 15, 2011. It is anticipated that the Ministry's criteria for the standards may be amended from time to time.

### **Mixed-Use Property, most sensitive use**

Means if a property is used for more than one type of property use, the Site Condition Standards that are applicable to the property are the standards that are applicable to the most sensitive type of property use. O. Reg. 153/04, s. 3 (1).

The following rules apply in determining which type of property use is the most sensitive type of property use:

1. An agricultural or other use is the most sensitive of any type of property use; and
2. A residential use, parkland use, or institutional use is more sensitive than an industrial use, commercial use or community use. O. Reg. 153/04, s. 3 (2).

### **O.Reg. 153/04**

Means Ontario Regulation 153/04, as amended "Records of Site Condition – Part XV.1 of the *Environmental Protection Act* made under the Act.

### **Parkland Use**

Means any of the following uses of land or of a building on the property for:

1. Outdoor recreational activities, including use for a playground or a playing field;
2. A day camp, an overnight camp or an overnight camping facility;
3. An outdoor gathering of people for civic or social purposes; or
4. In respect of the classification of occupancies in Table 3.1.2.1. of Division B of Ontario Regulation 332/12 (Building Code), use that falls within Group A, Division 4, assembly occupancies in which occupants are gathered in the open air other than use for a stadium.

### **Peer Review**

Means a process the Regional Municipality of Durham may use to ensure the sufficiency and accuracy of environmental documents and opinions submitted through ESA reports to support a planning application.

### **Peer Review Consultant**

Refers to an environmental consultant (Qualified Person Risk Assessment) hired by the Regional Municipality of Durham to provide technical advice on contaminated development sites.

### **Phase One Environmental Site Assessment (Phase One ESA)**

Means an assessment of property conducted in accordance with the regulations by or under the supervision of a qualified person to determine the likelihood that one or more contaminants have affected any land or water on, in or under the property. In accordance with Part VII of O. Reg. 153/04, a Phase One ESA shall include the following components:

1. A records review;
2. Interviews;
3. Site reconnaissance;
4. An evaluation of information from records review, interviews and site reconnaissance;
5. A Phase One ESA report; and
6. The submission of the Phase One ESA report to the owner of the Phase One Property.

### **Phase One Property**

Means the property that is the subject of a Phase One Environmental Site Assessment.

### **Phase One Study Area**

Means the area that includes a Phase One Property, any other property that is located, wholly or partly, within 250 metres from the nearest point on a boundary of the Phase One Property and any property that the Qualified Person determines should be included as part of the Phase One Study Area under clause 3 (1) (a) of Schedule D of O.Reg 153/04, as amended.

### **Phase Two Environmental Site Assessment (Phase Two ESA)**

Means an assessment of property conducted in accordance with the regulations by or under the supervision of a qualified person to determine the location and concentration of one or more contaminants in the land or water on, in or under the property. In accordance with Part VIII of O. Reg. 153/04, a Phase Two ESA shall include the following components:

1. The planning of a site investigation;
2. A site investigation;
3. A review and evaluation of the information gathered through the site investigation;
4. A Phase Two Environmental Site Assessment report; and
5. The submission of the Phase Two Environmental Site Assessment report to the owner of the Phase Two Property.

## **Phase Two Property**

Means the property that is the subject of a Phase Two Environmental Site Assessment.

## **Physical Development**

For the purpose of this Protocol means the creation of a new lot a change in land use, or the construction of buildings and structures requiring approval under the *Planning Act*.

## **Potentially Contaminating Activity (PCA)**

Means a use or activity set out in Column A of Table 2 of Schedule D of O.Reg. 153/04 that is occurring or has occurred in a Phase One Study Area.

## **Prescribed Change in Property Use**

Refers to a proposed change in property use that is prohibited by the *Environmental Protection Act* and O.Reg. 153/04 unless a Record of Site Condition is filed on the Environmental Site Registry. The change in property uses that are prohibited are generally changes to more sensitive uses either between different Categories (Category 1 – Industrial, Commercial or Community to Category 2 – Residential, Parkland, Institutional, and/or Category 3 – Agricultural/Other Use) and/or within the same Category (e.g. an Industrial land use to a Commercial Day Care Establishment). The higher the Category number the more sensitive the land use.

## **Property Specific Standards**

Refers to the development of Risk Assessment based site specific standards that are developed for a property when MECP Site Condition Standards are unobtainable physically or financially. The site-specific standards are approved by MECP at levels that protect the uses, such as residential, that are proposed for the property; see Risk Assessment (RA).

## **Qualified Person – Other than Risk Assessment (QP)**

Means an individual who may conduct or supervise an ESA in accordance with the *Environmental Protection Act* (EPA) and O. Reg. 153/04, as amended. A Qualified Person also meets the qualifications prescribed in subsection 5(2) of O.Reg. 153/04, namely a person who:

1. Holds a license, limited license or temporary license under the *Professional Engineers Act*, or
2. Holds a certificate of registration under the *Professional Geoscientists Act*, 2000, and is a practicing member, temporary member, or limited member of the Association of Professional Geoscientists of Ontario

Section 5 of O.Reg. 153/04 outlines additional qualifications for a QP conducting a Phase One and/or Phase Two ESA.

### **Qualified Person – Risk Assessment (QPRA)**

Means an individual who may conduct or supervise a Risk Assessment. Section 6 of O.Reg. 153/04 outlines the qualifications for a QP conducting a Risk Assessment (RA).

### **Region**

Means the Regional Municipality of Durham or its successor.

### **Reliance Letter**

Means the Regional Municipality of Durham's Regional letter, which must be copied onto the QP's Environmental Consulting Firm's letterhead and signed by the QP and a person who can bind the Consulting Firm, which allows the Region to rely upon the findings of the ESA report and any associated documents. The Regional Reliance Letter template form is provided in Appendix F of this Protocol.

### **Record of Site Condition (RSC)**

Means a Record of Site Condition under Part XV.1 of the *Environmental Protection Act*. This document provides a summary of the environmental conditions of a property as certified by a QP at a certain point in time. It also provides the landowner with limited protection from environmental cleanup orders when filed in the Brownfields Environmental Site Registry (BESR).

### **Residential Use**

Means any of the following uses of land or of a building on the property for:

1. A home or mobile home, or as a residence not otherwise described in this definition, but not including use as a hotel, motel, hostel or similar accommodation;
2. In respect of the classification of occupancies in Table 3.1.2.1. of Division B of Ontario Regulation 332/12 (Building Code), use that falls within:
  - a) Group B, Division 1, detention occupancies;
  - b) Group B, Division 2, care and treatment occupancies; or
  - c) Group B, Division 3, care occupancies;
3. A health care facility as defined in Ontario Regulation 170/03 made under the *Safe Drinking Water Act, 2002*;
4. A place of custody or detention for the purposes of the *Youth Criminal Justice Act* (Canada) or a correctional institution established or continued under section 14 of the *Ministry of Correctional Services Act*, whether the institution is operated or maintained by the Crown or any other person;

5. A penitentiary as defined in the *Corrections and Conditional Release Act* (Canada) or as a prison as defined in the *Prisons and Reformatories Act* (Canada); or
6. A residence associated with any of the following:
  - a) A university that is authorized to operate pursuant to section 3 of the *Postsecondary Education Choice and Excellence Act*, 2000;
  - b) A college established under the *Ontario Colleges of Applied Arts and Technology Act*, 2002;
  - c) A private career college as defined and approved under the *Private Career Colleges Act*. O. Reg. 153/04, s.1 (3); O. Reg. 511/09, s.1 (7,10,11,13); O. Reg. 179/11, s. 1 (2,3); and/or
  - d) A private career college as defined and approved under the *Private Career Colleges Act*. O. Reg. 153/04, s. 1 (3); O. Reg. 511/09, s. 1 (7, 10, 11, 13); O. Reg. 179/11, s. 1 (2, 3); O. Reg. 333/13, s. 1; O. Reg. 407/19, s. 1 (3-9).

### **Risk Assessment (RA)**

Means a decommissioning approach which is conducted by a specialized Risk Assessment QP (RA) to assess the risks posed to humans, plants, wildlife and the natural environment by exposure to on site contaminants. The QP (RA) may recommend engineered measures to manage, control the movement of, or reduce the concentrations of contaminants over time. The QP (RA) may also recommend site specific environmental standards for the site including various monitoring and maintenance requirements implemented through a risk management plan.

### **Road**

Means the part of a common or public highway, street, avenue, parkway, square, place, bridge, viaduct or trestle that is improved, designed or ordinarily used for regular traffic and includes the shoulder.

### **Site Remediation**

Means to clean up a phase two property to an appropriate MECP Site Condition Standards to the satisfaction of either the Ministry of the Environment, Conservation and Parks and/or the Regional Municipality of Durham by completing the following:

1. Identify and assess cleanup options;
2. Provide a detailed design and implement the chosen cleanup option;
3. Provide confirmatory sampling and verify the completed cleanup; and
4. Provide a site remediation report following the cleanup.

The site remediation report may form the basis for filing a Record of Site Condition in the Ministry of the Environment, Conservation and Parks' Environmental Site Registry.

**Site Screening Questionnaire (SSQ)**

Refers to a form that must be completed by a Qualified Person and/or the Owner/Applicant for all planning applications (with certain exceptions) and/or non-potable groundwater standard requests submitted to the Region for comment and/or approval. The SSQ is an effective tool to help identify potentially contaminated sites.

**TSSA**

Means the Technical Safety Standards Authority or its successors.

**Updated ESA Documents**

Means updated ESA work that is typically provided in a report or letter format, prepared by a QP when the last ESA report completed for a Phase One Property was conducted more than 18 months prior to the submission of the planning application. Completion of the updated ESA work must ensure that the investigated site conditions have not substantially changed since the most recent ESA report and will not pose any adverse impacts on human health and the environment to the satisfaction of the Regional Municipality of Durham.



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