



Alberta Provides Guidance on Use of Exposure Control to Manage Risks at Contaminated Sites

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July 26, 2016

Alberta Environment and Parks has published a new guidance document entitled Alberta Exposure Control Guide¹ (the “Guide”). The Guide outlines the requirements for risk management using the exposure control method in Alberta’s Contaminated Sites Policy Framework² (the “Framework”). The Guide formalizes the previous draft Alberta Exposure Control Guidelines (2014).

Legislative Background

Where a substance that may cause or has caused an adverse effect is released into the environment, Alberta’s *Environmental Enhancement and Protection Act* (the “Act”) requires the person responsible for the substance to:

- ♦ repair, remedy and confine the effects of the substance, and
- ♦ remediate, manage, remove or otherwise dispose of the substance in such a manner as to prevent an adverse effect or further adverse effect.³

The proponent of a contaminated site must manage the risk by:

- ♦ remediating to the generic standards listed in the Alberta Tier 1 Guidelines⁴
- ♦ remediating to modified site-specific standards as prescribed under the Alberta Tier 2 Guidelines,⁵ or
- ♦ implement a risk management plan with exposure control methods, in accordance with the Guide, as described below.⁶

¹ Alberta Environment and Parks (AEP), 2016. *Alberta Exposure Control Guide* [Guide], published on May 3, 2016.

² Alberta Environment and Sustainable Resource Development (ESRD), 2014. *Contaminated Sites Policy Framework*. Land and Forestry Policy Branch, Policy Division [Framework].

³ RSA 2000, c E-12, s. 112(1).

⁴ Alberta Environment and Parks (AEP), 2016. *Alberta Tier 1 Soil and Groundwater Remediation Guidelines*. Land Policy Branch, Policy and Planning Division.

⁵ Alberta Environment and Parks (AEP), 2016. *Alberta Tier 2 Soil and Groundwater Remediation Guidelines*. Land Policy Branch, Policy and Planning Division.

⁶ Framework, *supra* note 2, p. 4.

What is Exposure Control?

The exposure control risk management option does not involve remediation to an acceptable land use.

Exposure control allows a proponent to manage a contaminated site through administrative controls and physical exposure barriers. Sites managed through exposure control are not eligible for regulatory closure due to the on-going need to manage the risk at the site.⁷

The Guide lists the following as examples of administrative exposure controls:

- ◆ security programs to restrict access to a contaminated site
- ◆ worker health and safety programs
- ◆ development restrictions registered on land title, and
- ◆ programs to prevent activities that place humans or the environment at risk.⁸

The Guide lists the following as examples of physical barrier exposure controls:

- ◆ soil cover, constructed barriers or liners to prevent direct exposure to contamination
- ◆ hydraulic controls to limit or alter groundwater flow
- ◆ sub-floor vapour control systems or barriers, and
- ◆ water treatment or air filtration.⁹

When is Exposure Control Permitted?

Alberta Environment and Parks prefers that proponents conduct full remediation of a impacts to Alberta Tier 1 or Tier 2 Guidelines rather than manage risks using exposure control.¹⁰

A risk management plan including exposure control is required where remediation cannot (or will not) be completed.¹¹ For example, where land use restrictions limit the availability of remediation techniques, exposure control may be used.¹²

Exposure control can also be used where remediation to Alberta Tier 1 or Tier 2 Guidelines will take time and will involve natural attenuation or biodegradation of the released contaminant. In these cases, exposure control is required to monitor the site and manage the interim risks during remediation.¹³

⁷ *Ibid*, p. 11.

⁸ Guide, *supra* note 1, p. 8.

⁹ *Ibid*, p. 9.

¹⁰ *Ibid*, p. 7.

¹¹ *Ibid*.

¹² *Ibid*.

¹³ *Ibid*, p. 8.

The Guide states that the following types of contaminated sites are not eligible for risk management through exposure control:

- ♦ contaminated sites that have an uncontrolled source of contamination or where contamination is not delineated¹⁴
- ♦ contaminated sites for which there is an Order under the Act that requires specific prescribed outcomes,¹⁵ and
- ♦ residential-only or agricultural-only land uses, unless formally authorized by the Director of Alberta Environment and Parks.

If a proponent wants to implement risk management methods on an affected downstream third party property, the government will not approve exposure control methods unless the third party property owner consents.¹⁶ If the third party property owner objects, management through exposure control is not possible and remediation to Alberta Tier 1 or Tier 2 Guidelines is required.¹⁷

Upcoming Legislative Guidance

The Government of Alberta is currently drafting a new guidance document entitled the Risk Management Plan Guide and Checklist. We anticipate that this guide will provide additional context on the development of risk management plans for contaminated sites in Alberta.

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The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.

¹⁴ *Ibid*, p. 10.

¹⁵ *Ibid*.

¹⁶ *Ibid*, p. 12.

¹⁷ *Ibid*.