

# Getting The Deal Done: Impacts of the Proposed Brownfields Changes

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**MAXXAM**

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## Outline

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- **Stimulating Brownfield Development – Provincial and Municipal Programs**
- **Barriers to Brownfields Development**
- **Impact of MOE Reform Package on Business of Brownfields**

# Barriers to Brownfields Development

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- **Funding**
- **Approvals**
- **Liability**

## MOE's Objectives

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"The proposed amendments to Ontario Regulation 153/04 would facilitate the return of brownfields into productive land uses" ... by

- updating the site condition standards to reflect current science
- introducing a streamlined modified generic risk assessment for brownfields sites
- enhance integrity of the record of site condition process

## Funding Barriers

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- **Predevelopment costs are not funded**
- **The Risk Equation and predevelopment costs**

# The Risk Equation

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**Uncertainty of development timing**

**+ Long delays**

**+ Unpredictability of costs and revenue**

**= > Higher financing costs and limited availability of conventional financing**

# The Approvals Barrier

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- **Time-consuming**
- **Complex**
- **Expensive**
- **The Approvals Goal: Record of Site Condition**

## The Goal: Record of Site Condition

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- Required by municipalities, lenders, purchasers
  - Certification by **Qualified Person** that property is suitable for proposed use:
    - Because **QP determines compliance** with the O. Reg. 153 standards
- OR
- **MOE has approved** risk assessment that certifies the property is safe

## Impact on RSC Process

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- **Standards Review**
- **Regulating Qualified Persons**
- **Risk Assessment**

## New Standards

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- **Some less restrictive**
- **Most are more restrictive, sometimes by orders of magnitude**
- **Standards set at MDL or a low multiple**
- **Linked to enhanced risk assessment**

## Regulation of QPs

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- **Removes CSA standard and substitutes detailed requirements for Phase I and II**
- **Creates level playing field for consultants**
- **Builds in large delays**
- **MOE approval**

# Phase I Proposed Changes: Records Review

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- **All appropriate inquiry (AAI) to determine current and past uses of site**
- **Requires FOI searches of municipal and provincial regulators**
- **New AAIs = longer Phase I period – minimum 6 – 8 months**

## Phase I Proposed Changes

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- **QP must prepare CSM based on records review, site reconnaissance (site visit) and interviews**
- **Phase I ESA Report**
  - Detailed requirements for reports under Schedule D
  - Bottom line: longer, larger and more complicated

## Phase II Proposed Changes

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- **Purpose: Find the contaminants at all cost**
- **Delineate and find the points of maximum concentration**
- **For each high concentration and finding at the edge of the plume return and do more wells**

## **Protracted Sampling Regime**

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- **New timing requirements for site investigation - 4 sampling rounds of all wells at 90 day intervals**
- **Required high level of certainty = diminishing returns in environmental protection**

# “Tier II” or “Generic” Risk Assessment

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- **Web based software program**
- **Input site specific parameters to models and equations MOE used to derive the new standards**
- **Limited testing of the software indicates:**
  - Only creates 2 orders of magnitude leeway
  - Software crashes

## **“Tier 3” Risk Assessment**

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- **As the generic, will require use of MOE models**
- **Will depend on risk management measures to achieve approval**
- **Will result in requirements for long term financial assurances, registration on title**

# The Liability Barrier

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- **Regulatory – for off site migration**
- **Civil Liability – for on and off site contamination**
- **Standards review – the moving target syndrome**

# Liability Protection – What’s New

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- **Filing “Enhanced” RSC provides limited protection from regulatory orders**
- **Proposed changes specify what concentration of contaminants migrating off-site would result in loss of off-site liability protection**
- **No protection from civil liability**

# Financial Uncertainty

## Securing Financing

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- **Banks and other creditors require RSC before securing financing**
- **Proposed Phase I and II ESAs**
  - More complicated to undertake and prepare
  - More inquiry and detail needed (i.e. possible FOI requests)
- **More complex equals longer time to obtain RSC**

# Changed Face of Brownfield Business

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- **Greenfields-like - buy now, plan and fix later**
- **Work with an inventory**
- **Requires investor and developer be large and sophisticated – limits field to small number of players**
- **Long range investments - 10, 20, 30 year horizons for development**

## **Opportunities for the Province – Funding and Civil Liability**

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- **Funding for predevelopment costs and costs of delays**
- **Loan guarantees to enable use of conventional financing**
- **Provide long term civil liability protection**

# MOE's Statement of Environmental Values

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- The Ministry adopts an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them.
- The Ministry considers the cumulative effects on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society.
- The Ministry considers the effects of its decisions on current and future generations, consistent with sustainable development principles.
- The Ministry of the Environment will take into account social, economic and other considerations; these will be integrated with the purposes of the EBR when decisions that might significantly affect the environment need to be made



## *Contact Information*

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