



Proposed Changes to the
Contaminated Sites Regulations

Discussion Paper

Introduction

Nova Scotia Environment requires that contaminated sites be remediated in accordance with the *Contaminated Sites Regulations*, ensuring that cleanups are done consistently across the province.

Part of this process involves the submission of forms signed by the Site Professional¹ and some signed by the owner(s) of each parcel of land contaminated. Securing the required signatures on these forms can be difficult and sometimes impossible. This delays the regulatory process and possibly the remediation of contaminated sites.

Ensuring that current owners and any future purchasers are aware of some contamination and obligations to maintain the conditions of remediation is of concern to the department.

The department is proposing two changes to the *Contaminated Sites Regulations*. One change is to enable, for certain contaminated sites, the recording of environmental notices in the Land Registry². The other is about who signs forms related to contaminated sites. The proposed changes are summarized below along with a rationale for them.

Our objectives with these changes are to:

- help ensure certain potential property purchasers have easy access to certain information about contamination
- create efficiencies in the regulated contaminated sites process by minimizing administrative burden

1 Site professional means a person who has the qualifications prescribed in the *Contaminated Sites Regulations*. The regulations and protocols require site assessments, remedial action plans, and other work associated with contaminated sites to be completed by site professionals. Site professionals are typically employed by environmental consulting firms.

2 The Land Registry is Nova Scotia's system to record and manage land ownership and interest records.

Summary of Proposed Changes to the *Contaminated Sites Regulations*

Recording of Environmental Notices

The person responsible for the contaminated site is required to report it and clean it up. However, cleanup hasn't always happened in a timely fashion. This means an environmental and human health hazard has not been addressed.

Sometimes there are management conditions on remediation that must be maintained by current and future site owners. For example, the contamination has been cleaned up as much as possible and the remainder is capped with concrete, which must be maintained.

In such cases, current owners and potential buyers of these sites should know about the contamination and any obligations to maintain conditions of remediation.

We are proposing recording Environmental Notices in the Land Registry as a way of notifying potential purchasers about contamination on a site and their obligations related to it, in the event that they purchase the property.

Currently, anyone interested in purchasing a parcel of land can obtain information about it through Nova Scotia's Environmental Registry³ but they are not required to do so before purchasing. However, a title search at the Land Registry is a routine part of any property transaction.

Therefore, filing information in the Land Registry makes the status of contamination and any obligations for managing it clear and transparent. It also makes government's expectations of site owners more transparent.

We propose recording Environmental Notices in the Land Registry in the following situations:

1. When owners of some contaminated sites have not fulfilled regulatory requirements. Recording would be considered for any unresolved contaminated sites reported to the department both before and after the enactment of the *Contaminated Sites Regulations* (in 2013).

2. When Records of Site Condition for conditional closure are submitted to the department. The Record of Site Condition documents the type of contaminants and remediation completed at a site. It contains ongoing management conditions required to address contaminant exposure pathways.

Section 91(di) of the *Environment Act* provides the authority to make regulations respecting the recording of notices on property titles.

91(1) The Governor in Council may make regulations

(di) respecting the filing and transfer of records of site condition and certificates of property use, and with respect to the filing of environmental notices on property title respecting records of site condition and certificates of property use

Recording Environmental Notices in the Land Registry will help ensure that information regarding unresolved contamination or management conditions stays connected to the property information in the Land Registry through future transactions. The amendments to the regulations will provide that an Environmental Notice can only be removed with the written acknowledgement of the Minister of Environment.

This proposed amendment does not change a site owner's responsibilities regarding contamination. It is an effort to make some information that exists currently, either through application to the *Freedom of Information and Protection of Privacy Act* or the department's Environmental Registry, more easily accessible by the public.

³ The Environmental Registry is a set of records, defined in the *Nova Scotia Environment Act*, S.10, that are considered to be in the public domain and made routinely available to the public upon request.

Signature Requirement

Currently, there are three forms which require the signature of the site owner: the Notification Form, Record of Site Condition, and Declaration of Property Condition. These forms must be signed by all owners of the contaminated site so that they are all aware of the contamination (Notification Form), what has been done to address it (Record of Site Condition and Declaration of Property Condition), and any management conditions that must be maintained (some Records of Site Condition).

Securing all these signatures can be difficult, and sometimes impossible. When this happens with Notification Forms, the regulatory process is delayed and the remediation of the site may be delayed. When this happens, with Records of Site Condition or Declaration of Property Condition, the file remains open which adds to the department's administrative burden. Closing files when remediation has been completed is important for site owners, especially if property transactions are anticipated.

This department proposes to require fewer signatures so unintended regulatory burden is reduced.

1. Sections 8 and 9 of the *Contaminated Sites Regulations* require notification of contamination to the department and any person directly affected by contamination at a site. The Notification Form documents the location, land use, and ownership status of the affected site. Section 10(2) of the regulations requires:

10(2) A written notice must be signed by

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

We propose changing 10(2) to stipulate that only the person providing the written notice must sign it. This person must confirm in writing that they have provided a copy of it to the owner of the site and any other person directly affected by the contamination.

2. Once remediation is completed, the site professional must prepare and sign the Record of Site Condition or Declaration of Property Condition to document the type of contaminants and remediation completed. Signing this form does not imply that the site owner agrees with or is satisfied with the work completed, rather it is intended to document awareness. The signing requirements are outlined in the sections below:

14(2) A record of site condition must be signed by all of the following:

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

16(2) A declaration of property condition must be signed by all of the following:

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

We propose changing section 14(2) to specify that the Record of Site Condition must be signed by:

- at least one owner of each parcel of land contaminated when conditional closure under the Ministerial Protocol is being requested; and
- the site professional who must also certify that the information required by subsection 14(1) is accurate, and confirm that a copy has been provided to at least one owner of each contaminated parcel of land.

A site owner's signature will still be required on Records of Site Condition when conditional closure is being requested.

We propose changing 16(2) to stipulate that the site professional who prepared the Declaration of Property Condition must sign this form to:

- certify that the information required by subsection 16(1) is accurate; and
- confirm that they have provided a copy to at least one owner of each parcel of land contaminated.

Summary Questions

1. What are the environmental and economic benefits of the department being able to file Environmental Notices in the Land Registry for unresolved contaminated sites? Are there any disadvantages?
2. What are the environmental and economic benefits of the department being able to file Environmental Notices in the Land Registry for conditional closure of contaminated sites? Are there any disadvantages?
3. What do you think is a lawyer's role if an environmental notice is found during a land registry search?
4. From your perspective, what are the benefits of the proposed changes to signature requirements? Are there any disadvantages?
5. Do you have any other comments?

Share Your Feedback

Thank you for taking the time to provide feedback on Nova Scotia Environment's proposed changes to the *Contaminated Sites Regulations*.

Please send your feedback to:

Email:

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with "contaminated sites" in the subject line

Mail:

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All feedback submitted to Nova Scotia Environment will be considered public and, therefore may be shared through freedom of information requests under the *Nova Scotia Freedom of Information and Protection of Privacy Act*.