Information:

At the January 20, 2009 Economic Development and Planning Committee Meeting, an Information Report (PED09033) was put forth regarding proposed amendments to Ontario Regulation 153/04, Brownfields Records of Site Condition, Part XV.1 of the Act, under the Environmental Protection Act. This Report also included comments on the proposed amendments from the Association of Municipalities of Ontario. The proposed amendments were made available on October 6, 2008 by the Ministry of the Environment (MOE) for consultation and comment until February 3, 2009. The MOE, after considering the consultations and comments received, filed the amending regulation to (O. Reg. 511/09) to O. Reg. 153/04 on December 29, 2009.

The amendments recently filed implement the balance of legislative reforms introduced by the Government of Ontario in 2007 to facilitate brownfield redevelopment.

A small number of limited revisions (mostly administrative) came into being when the amending regulation was filed. However, most of the significant amendments made to O. Reg. 153/04 will not come into being until July 1, 2011 with the exception of the transition provisions which will come into force July 1, 2010.
The amendments filed include¹:

- Strengthened soil and groundwater site condition standards (that reflect current science) including updated and new standards for a number of contaminants
- The introduction of specific requirements for Phase I and Phase II Environmental Site Assessments (including new Schedules covering the application, site investigations, review and evaluation of the information and preparation of the assessment report)
- New definitions and clarification on a “qualified person”
- The introduction of modified generic risk assessment, an alternative risk assessment process based on an approved MOE model to modify generic site condition standards on specific properties for the purpose of filing a Record of Site Condition (RSC)
- New mandatory requirements for risk assessment reports
- Revisions to Schedule A, which deal with the contents and submission of the Record of Site Condition

The MOE has indicated that existing RSC’s will be grandfathered and will not be impacted by the new regulation. However, the new regulations and standards will need to be met when the outstanding amendments come into being. For projects that will be in the process but not at the stage of filing an RSC by July 1, 2011, there are special transition rules which will allow an extension to file an RSC that meets the current standards.

The effects of the new regulations and standards on the brownfield industry will not be known for years to come. Through consultation with the brownfield community, including environmental consultants, lawyers, insurance brokers, and developers - both inside and outside of the City - it is anticipated that there may be an increase in costs and an increase in the risk assessment approach to filing an RSC.

The City’s Planning and Economic Development Department will continue to monitor the changes to the regulations and standards and become further educated on O. Reg. 153/04.

Further detail on the amendments to O. Reg. 153/04, as well as information on the new soil and groundwater standards and model for the new modified generic risk assessment, is available on the Environmental Registry; EBR Registry Number 010-4642.

BM:dt