

**The Regional Municipality of Halton's
Protocol for Reviewing Development
Applications with Respect to Contaminated
and Potentially Contaminated Sites**

Updated May 2011

The purpose of the *Protocol for Reviewing Development Applications with Respect to Contaminated and Potentially Contaminated Sites* (Protocol) is to outline the steps that must be completed and conditions that must be met by a proponent when submitting a development application. For applications where there is a change to a more sensitive land use (e.g. industrial/commercial to residential/institutional), the Region will follow the Ontario Regulation 153/04 (O. Reg. 153/04) process made under the *Environmental Protection Act*. This Protocol generally follows the O. Reg. 153/04 process but captures selected applications for which there is no change to a more sensitive land use as defined by O. Reg. 153/04.

The Region will adhere to this Protocol when both approving and commenting on selected development applications, and will encourage the Local Municipalities to do the same. This Protocol supersedes the current Protocol presented in Report PPW20-06 adopted by Council on May 31, 2006.

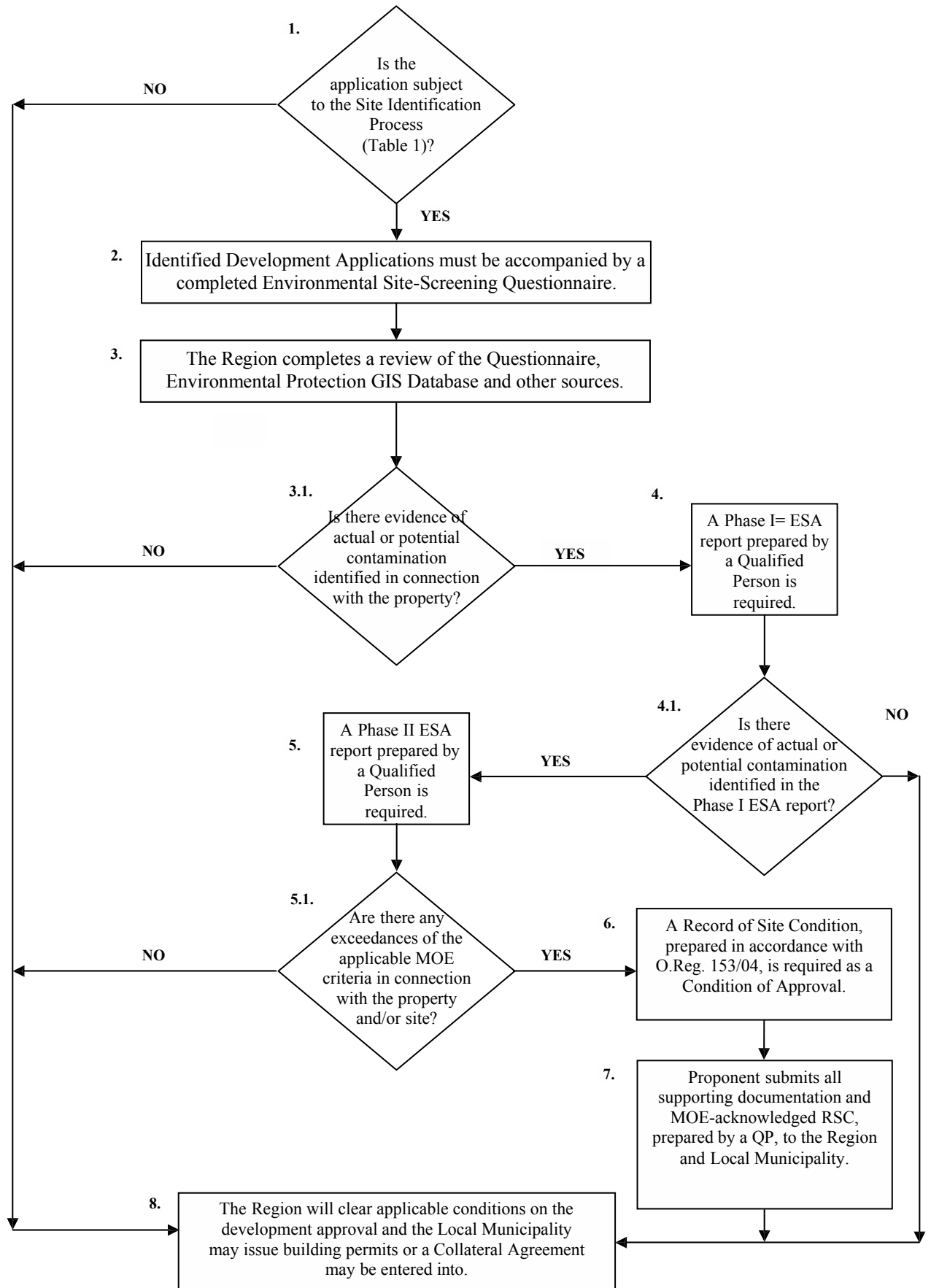
The primary objective of the Protocol is to ensure that contaminated land is restored to an environmental condition suitable for its proposed land use and that Regional water resources, human health, and ecological health are protected. Related documents that provide guidance to this Protocol include:

- Ontario Ministry of the Environment (MOE) document entitled Records of Site Condition – A Guide on Site Assessment, the Cleanup of Brownfields Sites and the Filing of Records of Site Condition (MOE, October 2004),
- Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*, and
- Ontario Regulation 153/04, Part XII, Schedules D and E

These documents and other related documents are available on the MOE's website at www.ene.gov.on.ca.

The following text should be read in concert with the flow chart presented in Figure 1.

Figure 1
Process for Determining Whether a Record of Site Condition is Required



1. **Is the application subject to the Site Identification process?** – The Site Identification Process (Table 1) outlines the various development applications for which further environmental investigations may be required. If the development application is not subject to further evaluation, then Halton Region will clear applicable conditions on the development approval and the Local Municipality may issue building permits.

Table 1 Site Identification Process

Development Application Type	Is the Development Application Subject to Further Evaluation?
<i>Official Plan Amendment (Regional or Local)</i>	Yes
<i>Zoning By-Law Amendment</i>	Yes
<i>Temporary Use By-Law</i>	Yes
<i>Minor Variance</i>	No
<i>Site Plan</i>	No [1]
<i>Plan of Condominium</i>	
1. Plan of Condominium	Yes
2. Vacant Land or Common Element	No
3. Condominium Conversion	No
<i>Consent Applications</i>	
1. Part Lot Control Exemption Application	No
2. Consent (Land Severance)	
• divide land into new lots	Yes [2]
• add land to an abutting lot (lot additions)	Yes [2]
• corrections to deeds or property descriptions	No
• establish easements or rights-of-way	[3]
• lease land or register a mortgage in excess of 21 years	No
<i>Plan of Subdivision</i>	Yes

Notes:

- [1] – If a use on the property is being changed to a more sensitive land use, then Ontario Regulation 153/04 applies.
- [2] – Must include an evaluation of both the severed and retained portions of the subject property (but not the abutting land in lot additions).
- [3] – Realty Services will determine the environmental documentation requirements for land to be conveyed to the Region for easements, land dedications and rights-of-way.

2. **Identified Development Applications must be accompanied by a completed Environmental Site-Screening Questionnaire (Questionnaire)** – A Questionnaire (Appendix A) must be completed by the property owner and used by staff to determine if there is evidence of actual or potential contamination in connection with the property and whether there is adequate information regarding the environmental condition of the property. The Region and Local Municipalities will work together to ensure that the Questionnaire is completed early in the development application process, such as during pre-consultation with the proponent.
3. **The Region completes a review of the Questionnaire, Environmental Protection GIS Database (EPGD) and other sources** – As part of the 2001/2002 Municipal Groundwater Studies program, Halton Region developed the *Hazardous Land Use and Chemical Occurrence Inventory* currently referred to as the Region's *Environmental Protection GIS*

Database (EPGD) to identify contaminated and potentially contaminated sites throughout the Region. The current and historical land uses of the property and adjacent properties will be evaluated in addition to known issues such as waste generation and spills to determine if contamination or the potential for contamination exists. Information received from local municipal staff, agencies and the public will be evaluated to determine if there are any potential sources of contamination present on the property.

- 3.1 Is there evidence of actual or potential contamination identified in connection with the property?** - If there is no evidence of actual or potential contamination then the Region will clear applicable conditions on the development application and the Local Municipality may issue building permits. Otherwise, a Phase I ESA is required.
- 4. A Phase I ESA report prepared by a Qualified Person (QP) is required** – Prior to any approval, or any servicing or grading of the site and to the satisfaction of The Region, the owner is required to submit to Halton Region, at a minimum, a Phase I Environmental Site Assessment (ESA) (as per Part XII, Schedule D of Ontario Regulation 153/04, as amended from time to time) that is certified by a QP as defined in Ontario Regulation 153/04, within 365 days of site visit. The author of the environmental reports submitted to the Region must extend third party reliance to the Region of Halton. In the case of Consent applications, the Phase I and subsequent reports must include evaluation of both the severed and retained portions of the subject property (but not including abutting lands in lot additions).
- 4.1 Is there evidence of actual or potential contamination identified in the Phase I ESA report?** - The Region requires that the QP indicates in the Phase I ESA report either that the environmental condition of the site is suitable for its proposed land use or a Phase II ESA is warranted to address actual or potential contamination on the property. If the QP indicates that a Phase II ESA is warranted, then a Phase II ESA is required for the property. If the Qualified Person indicates that the environmental condition of the property is suitable for its proposed land use and no further investigation is required, then the Region will clear applicable conditions on the development application and the Local Municipality may issue building permits.
- 5. A Phase II ESA report prepared by a QP is required** – If the QP indicates that a Phase II ESA is warranted based on the Phase I ESA, then a Phase II ESA must be completed. Prior to any approval, or any servicing or grading of the site and to the satisfaction of Halton Region, the owner is required to submit to the Region of Halton a Phase II ESA (as per Part XII, Schedule E of Ontario Regulation 153/04, as amended from time to time) that is certified by a QP as defined in Ontario Regulation 153/04. The author of the environmental reports submitted to the Region must extend third party reliance to the Region.
- 5.1 Do any criteria exceed the applicable MOE standards?** - The Region requires that the QP indicates in the Phase II ESA report either that the environmental condition of the site is suitable for its proposed land use or if any criteria exceed the applicable Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act* (MOE Standards). If the concentrations measured in connection with the property exceed any of the applicable MOE standards then the owner is required to submit to the Region an MOE-acknowledged Record of Site Condition and all applicable reports must be circulated to the Water Resources Specialist and the Medical Officer of Health for comment regarding

water resources and public health issues. If the Qualified Person indicates that the environmental condition of the property is suitable for its proposed land use and no further investigation is required, then the Region will clear applicable conditions on the development application, and the Local Municipality may issue building permits.

If the soil and/or groundwater samples contain contaminants at concentrations that exceed the standards referenced in the O. Reg. 153/04, site remediation will be required. Where the property owner does not require approval prior to site remediation, the proponent will demonstrate through the RSC that the site has been remediated to appropriate standards. In the case of a plan of subdivision, this would involve a specific condition to be satisfied prior to registration. In the case of a rezoning where no plan of subdivision is involved, the Region will consider the use of a Holding provision to be lifted only once the site has been properly remediated and the Region has received the MOE-acknowledged RSC.

6. **A Record of Site Condition prepared in accordance with O. Reg. 153/04, is required as a Condition of Approval** – The owner is required to submit to the Region an MOE-acknowledged Record of Site Condition as certified by a QP and as defined by O. Reg. 153/04 indicating that the environmental condition of the site is suitable for its proposed land use. An example of the condition that relates to the Record of Site Condition is shown below:

That prior to draft or any approval or by-law, or any servicing or grading of the site and to the satisfaction of Halton Region, the owner is required to submit to Halton Region, an MOE-acknowledged Record of Site Condition that is certified by a Qualified Person as defined in Ontario Regulation 153/04 and indicates that the environmental condition of the site is suitable for its proposed land use. The owner is also required to submit all supporting environmental documentation such as Phase I and II Environmental Site Assessment and Remediation Reports etc. to Halton Region for review. The author of the environmental reports and Record of Site Condition submitted to the Region must extend third party reliance to the Region of Halton.

7. **Proponent submits all supporting documentation and MOE-acknowledged RSC, prepared by a QP, to the Region and Local Municipality** - The Region expects that the proponent will follow the processes outlined in O. Reg. 153/04 in the preparation of supporting documentation and the Record of Site Condition. Supporting documentation includes, but is not limited to, Phase I/II ESA, remediation summary, risk assessment, and site characterization reports. The Local Municipalities and the Region will circulate a summary of environmental reports and Records of Site Condition to the Region's Water Resources Specialist for inclusion in Halton's *Environmental Protection GIS Database*. The MOE-acknowledged Record of Site Condition signed by the Qualified Person must be submitted to the Region prior to any approvals being granted. The submitted information must be to the satisfaction of Halton Region.
8. **The Region will clear applicable conditions on the development application and the Local Municipality may issue building permits** – The Region will clear any applicable conditions for the development application once all related environmental documents have been submitted and are to the satisfaction of Halton Region.

Collateral Agreements

In cases where the property owner requires approval in order to proceed with site remediation and there is no change to a more sensitive land use, the property owner may enter into a collateral agreement with the Region and/or Local Municipality as a condition of approval that ensures the property owner will demonstrate through the RSC that the site will be remediated to appropriate standards. The extent of development that can occur prior to completion of the remediation will be considered on a case-by-case basis. The terms of the collateral agreement must be satisfactory to Halton Region's Director of Legal Services.

Other

If there is some uncertainty about the quality of the Phase I/II ESA or site remediation process or results, the Region has the right to request a peer review of the document(s) by a consultant selected by the Region, at the expense of the proponent. The Region also has the right to request a peer review of the document(s) if a Regional interest is at stake, i.e. if the site is adjacent to Regional or Municipal lands, if the site is located within one of the Region's Wellhead Protection Areas or hydrogeologically sensitive areas, or if there is a public health issue.

The Region has the right, during the site assessment and/or remediation process, and where the planning process provides opportunity, to conduct a formal public consultation, or request that the proponent completes public consultation.

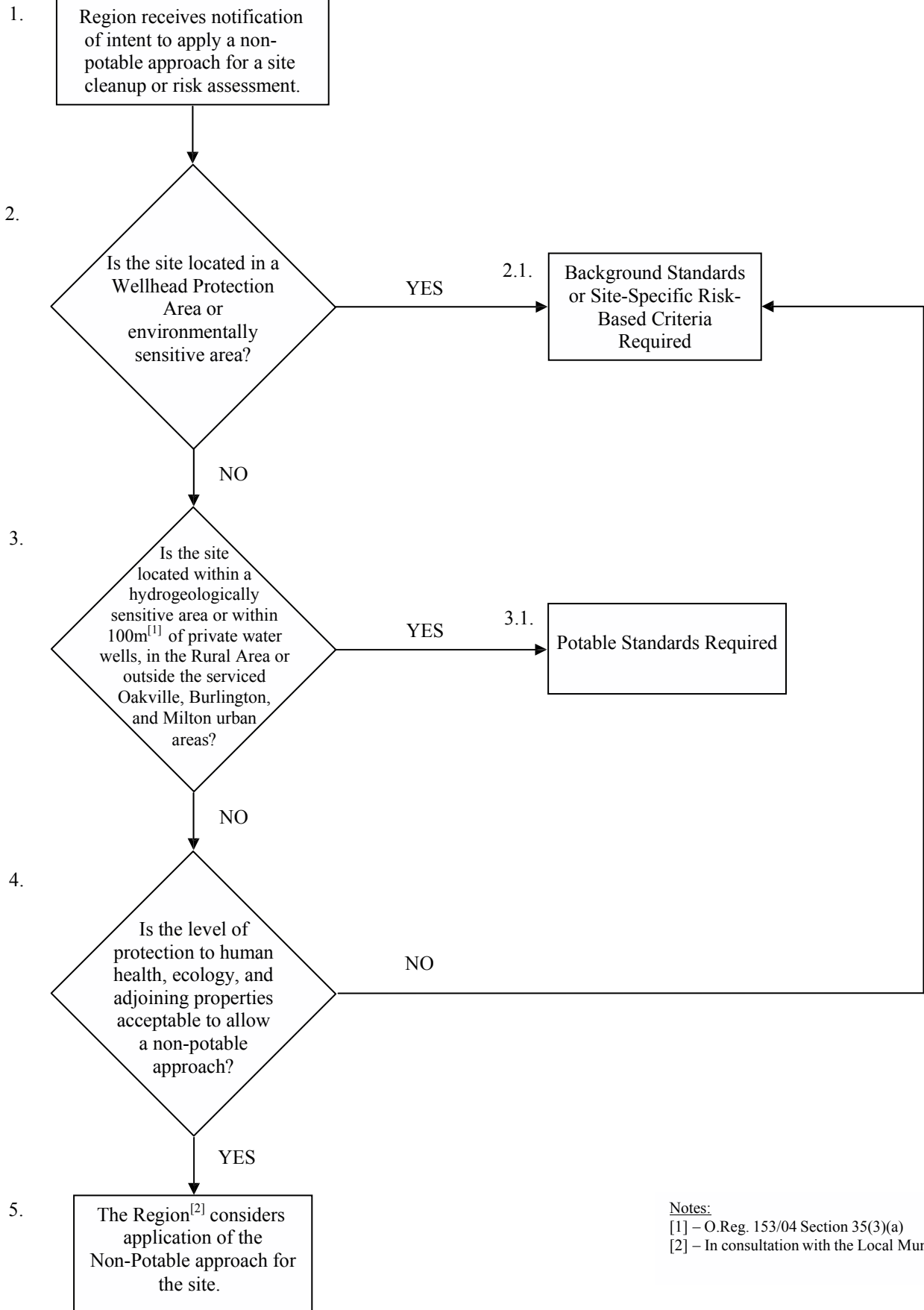
Groundwater Site Condition Standards

Halton Region requires that all proponents compare their analytical results to the MOE standards or other appropriate standards to determine whether or not site remediation is required. The type of criteria chosen should be carefully considered by the proponent. This will depend on a variety of factors such as the most sensitive intended future land use of the property, whether or not the site is required to meet the potable groundwater criteria, or whether or not the site is environmentally sensitive.

Proponents must have regard for the Region's wellhead protection areas and hydrogeologically sensitive areas, as identified in the Region's Aquifer Management Plan (AMP) and as updated from time to time. Due to the highly vulnerable nature of these areas and the Region's reliance on groundwater-based drinking water systems, maintaining water quality is of great importance to the Region and its residents.

In areas where Halton's residents rely on groundwater as a source of drinking water, all proponents must restore groundwater to at least potable levels (Table 2 – MOE Standards). For clarification, proponents may contact Halton Region's Water Resources Specialist. The following text should be read in concert with the flow chart presented on Figure 2.

Figure 2
Background, Potable and Non-Potable Cleanup Standards Flow Chart



1. **Region receives notification of intent to apply a non-potable approach for a site cleanup or risk assessment** - When a proponent plans not to restore groundwater to potable levels or assumes that groundwater beneath the site is not used as a raw water source for a drinking water system, then the proponent is required by O. Reg. 153/04 to provide the Region with written notification for the application of the non-potable (Table 3 – MOE Standards) groundwater use criteria. The Region may respond with a “Notice of Objection” within 30 days if the Region disagrees with the proponent’s proposed use of non-potable groundwater use criteria or risk assessment assumption.
2. **Is the site located in a wellhead protection area (WPA) or environmentally sensitive area (ESA)?** - Wellhead protection areas are protected areas where the municipal wells collect groundwater. Environmentally sensitive areas are defined in O. Reg. 153/04. The Region will require the use of Background standards (Table 1 – MOE Standards) or site-specific risk-based criteria in WPAs (10-year capture zones), and ESAs (as identified in O. Reg. 153/04). If the property is not within any of the above areas, then further evaluation, including proximity to water wells and geographic location is required.
 - 2.1 **Background Standards or Site-Specific Risk-Based Criteria Required** - The Region will require the use of Background standards (Table 1 – MOE Standards) or site-specific risk- based criteria for the property.
3. **Is the site located within a hydrogeologically sensitive area, within 100m of private wells, in the rural area or outside the serviced Oakville, Burlington, and Milton urban areas?** – If the site is not in a WPA or ESA but within a hydrogeologically sensitive area (as identified in Halton Region’s Aquifer Management Plan) or the site boundary is within 100m metres of a private well (as identified in O. Reg. 153/04) or the property is in the rural area or outside the serviced urban areas of Burlington, Milton, or Oakville then the use of potable standards (Table 2 – MOE Standards) are required. Otherwise, further evaluation is required. Hydrogeologically sensitive areas occur where the uppermost aquifer and water table are close to the ground surface such that contaminants introduced by surficial activities (i.e. spills or leaks) may rapidly cause degradation of the water quality within the aquifer.
 - 3.1 **Potable Standards Required** – Halton Region will require the use of Potable standards (Table 2 – MOE Standards) or site-specific risk-based criteria for the property.
4. **Is the level of protection to human health, ecology, and off-site properties acceptable to allow non-potable approach?** – If the use of non-potable criteria poses a threat to human health, environment, or off-site properties as determined by the Region then the use of non-potable standards will not be permitted and will require the use of Background standards (Table 1 – MOE Standards) or site-specific risk-based criteria. Otherwise, the Region will consider the use of Non-Potable standards (Table 3 – MOE Standards).
5. **Region considers application of Non-Potable Approach for the Site** – If the site is not within a WPA, ESA, hydrogeologically sensitive area, within 100m of a private well or the property is in the Rural Area or outside the serviced Urban Areas of Burlington, Milton, or Oakville and once all necessary evaluation of the property has been completed to the satisfaction of the Region, a notice will be issued to the applicant by Halton Region stating that non-potable standards (Table 3 – MOE Standards) may be applied.

Appendix A



Halton Region
Planning & Transportation Services
Tel: 905-825-6000 Fax: 905-825-8822
Toll Free: 1-866-4HALTON (1-866-442-5866)
www.halton.ca

Environmental Site-Screening Questionnaire

Legal/Municipal Address: _____

Applicant: _____

- | | | | | |
|----|--|-----|----|-----------|
| 1. | Was the subject property ever used for industrial purposes? | yes | no | uncertain |
| 2. | Was the subject property ever used for commercial purposes that may have caused contamination (e.g. gasoline station, dry cleaners, etc.) | yes | no | uncertain |
| 3. | Has fill (earth or material) ever been placed on the property? | yes | no | uncertain |
| 4. | Is there any reason to believe that the subject property is potentially contaminated based on historic use of the property or any lot located within 100m of the property? | yes | no | uncertain |
| 5. | Are there or were there ever any above-ground or underground storage tanks or waste disposal activities on the property? | yes | no | uncertain |
| 6. | For existing or previous buildings or structures on the property, do they contain building materials that may be potentially hazardous to human health (e.g. asbestos, lead-based paints, etc.)? | yes | no | uncertain |
| 7. | For agricultural properties, were pesticides or herbicides ever applied to the property? | yes | no | uncertain |
| 8. | Have any of the buildings on the property been heated by fuel oil? | yes | no | uncertain |
| 9. | Is the land use changing to a more sensitive land use (e.g. industrial/commercial to residential/institutional)?
Note: Daycare uses are defined in O. Reg. 153/04 as institutional. | yes | no | uncertain |

General Information:

- | | | | |
|----|---|-----|----|
| 1. | Have any environmental documents (e.g. Phase I and II Environmental Site Assessments, Records of Site Condition, etc.) ever been prepared for the property? If yes, please submit these documents in digital and hardcopy format with your application together with a letter of reliance granting third party reliance on the documents to the Region of Halton. | yes | no |
|----|---|-----|----|

Certification

I, _____ am the registered owner of the land that is the subject of this document and to the best of my knowledge, the information provided in this questionnaire is true.

Sworn (or declared) and stamped before me _____
Commissioner of Oaths (Print Name)

in the _____, this _____ day of _____ 20____
City/Town/Municipality Day Month Year

Commissioner of Oaths (signature)

Registered Owner (signature)

Regional File #: _____ Local Municipal File #: _____