

# Overhaul of Alberta's Remediation Certificate Regulation

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On June 1, 2018 the Government of Alberta passed the [Remediation Certificate Amendment Regulation](#) by Order in Council. This regulation updates the current *Remediation Certificate Regulation* and re-names it the *Remediation Regulation*. The changes introduced by the *Remediation Regulation* are the culmination of several years of stakeholder review and consultation led by Alberta Environment and Parks.

## **Overview of the existing *Remediation Certificate Regulation***

Currently , the *Remediation Certificate Regulation* focuses almost exclusively on the application, issuance, and effect of a remediation certificate. Remediation certificates originate with section 117 of the *Environmental Protection and Enhancement Act (EPEA)*, which provides that the Director (or an inspector) may issue a remediation certificate in respect of land where remediation has been carried out in accordance with the terms and conditions of any applicable approvals, an environmental protection order (EPO), *EPEA*, or any other instructions provided by the Director (or inspector).

Remediation certificates are voluntary. The incentive to obtain one comes mainly from the fact that they provide closure for potential regulatory liability. The effect of a remediation certificate is to provide that “no environmental protection order requiring further work, in respect of the same release of the same substance may be issued under [the] Act”.

## **Overview of the new *Remediation Regulation***

The *Remediation Regulation* introduces a number of changes to the current remediation regime. Highlights include:

- Reporting requirements for “new information”;
- Additional details on the remedial measures required by *EPEA*;
- Additional guidelines for remediation;
- Creation of a site-based remediation certificate;
- Creation of an Alberta Tier 2 compliance letter; and
- Introduction of an electronic application system.

### ***Reporting Requirements for “new information”***

The *Remediation Regulation* now requires that, where there is new information about the impact of a released substance to a person or land, there is a duty to report the information to an affected person and the Director at the time of discovery. This obligation is in addition to the requirements of *EPEA* and the *Release Reporting Regulation* and appears to impose a duty to report an impact (as opposed to just a release) that arises in connection with a prior release. The duty to report new information falls to the “person who releases or causes or permits the release of a substance” as per s. 110(1) of *EPEA*. Note the reporting obligations in *EPEA* and the *Release Reporting Regulation* do not currently require a person reporting a release to also report on the impacts of the release.

### ***Additional Details on Remedial Measures of EPEA***

As alluded to with the name change, the *Remediation Regulation* now includes additional details on remediation generally. Remediation obligations arise out of section 112(1) of *EPEA*, which provides that where a substance that may cause, is causing or has caused an adverse effect is released into the environment, the person responsible has a duty to take remedial measures. As soon as the person responsible becomes aware of, or ought to have become aware of the release, they must (a) take all reasonable measures 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; and (b) restore the environment to a condition satisfactory to the Director.

The *Remediation Regulation* now includes specific instructions and a timeline for the remedial measures imposed by s. 112(1) of *EPEA*. Going forward, when the person responsible becomes aware or ought to have become aware of the release of a substance, they must, as soon as possible: (a) submit a Phase 2 environmental site assessment to the Director; or (b) complete remediation and submit a report to the Director, along with any other requirements specified by the Director.

The regulation also imposes a two-year time limit to complete remediation, or else a remedial action plan is required. Generally speaking, the regulation still requires that remediation be completed “as soon as possible”. Still, if the site cannot be remediated to the satisfaction of the Director within a two-year period, then a remedial action plan, which specifies a period of time for completion that is acceptable to the Director, must be submitted immediately.

The regulation further states the person responsible must take remedial measures within the period

of time specified in the remedial action plan. The Director has the discretion to modify or waive these requirements. There is no suggestion that the two-year period discussed above precludes the Director from requiring remedial action sooner. Note that these provisions do not apply to releases that occurred prior to the coming into force of the *Remediation Regulation*, unless required by the Director.

The *Remediation Regulation* also now includes specific reference to the remediation standards for Alberta Tier 1 and Tier 2 Soil and Groundwater Remediation Guidelines and clarifies the circumstances in which they are applicable.

### ***Additional Guidelines for Remediation***

Additional guidelines are now imported and codified in the regulation. Along with the Alberta Tier 1 and 2 Soil and Groundwater Remediation Guidelines, the regulations now include: the Environmental Site Assessment Standard (published by the Department on February 2, 2016), the Exposure Control Guide (published by the Department on May 3, 2016) and the Risk Management Plan Guide (published by the Department on October 31, 2017).

### ***Creation of a Site-based Remediation Certificate***

The *Remediation Regulation* introduces a new “site-based remediation certificate”. The site-based certificate shows that a “site”, defined as land used in connection with an activity referred to in the Schedule of Activities to *EPEA* (e.g. manufacture or processing of petroleum products, natural gas, pulp and paper products, etc.) and on which a substance is stored, treated, sold or used as part of a commercial or industrial activity, has been remediated.

Meanwhile, the original area-based remediation certificate is renamed a “limited remediation certificate” and continues to show that the “remediated area”, defined as land that is the subject of an application, has been remediated.

The introduction of a site-based remediation certificate appears aimed at increasing certainty for the owners of brownfield-type sites. Unlike the existing area-based remediation certificates, which are only issued with respect to the portion of a site or property that is remediated, a site-based certificate closes off regulatory liability for the whole site. This permits owners and developers to ascertain and quantify their liability with respect to an entire piece of property, which in turn, supports brownfield redevelopment.

An application for a site-based remediation certificate requires more supporting documentation

than a limited remediation certificate, as one must show that the reported area has been remediated and that the area outside the remediated area does not require remediation. The documentation required includes a legal land description or survey, a current Phase 1 environmental assessment, a detailed Phase 2 environmental assessment, and a detailed remediation report.

In terms of closing off regulatory liability, both the site-based and limited remediation certificate provide protection against an EPO with respect to the substance and remediated zone that is the subject of the certificate. There are, however, select exceptions.

With respect to a limited remediation certificate, the *Remediation Regulation* still permits the issuance of an EPO at any time where one or more of the substances that are the subject of the limited remediation certificate are present in the remediated zone AND exceed the remediation objectives that were applicable at the time the certificate was issued.

With respect to a site-based remediation certificate, the *Remediation Regulation* still permits the issuance of an EPO if one or more substances that are the subject of the site-based remediation certificate are present anywhere in or under the site, or any area off the site, or any area on or off the site that was not assessed in the original Phase 2 environmental site assessment AND that exceed the remediation objectives that were applicable at the time the certificate was issued.

### ***Creation of Alberta Tier 2 Compliance Letter***

The *Remediation Regulation* also introduces the Alberta Tier 2 compliance letter, another instrument which helps to provide project closure certainty. The letter is issued by the Director and confirms that the area of land or the site meets the Alberta Tier 2 Soil and Groundwater Remediation Guidelines and does not need to be remediated. Its apparent purpose is to provide some documentation with respect to areas of potential environmental concern, in circumstances where the site is not eligible for a remediation certificate. In essence it acts as notice that further remediation of a site is not required. In order to obtain an Alberta Tier 2 compliance letter the applicant must submit Phase 1 & 2 environmental site assessments, delineation of the area of land or the site, and a risk assessment in accordance with the Alberta Tier 2 Soil and Groundwater Remediation Guidelines.

Note the legal significance of an Alberta Tier 2 compliance letter is not clear. Unlike a remediation certificate, it is not a product of *EPEA* and there is no mention of its legal effect in the Act.

### ***Introduction of Electronic System***

The *Remediation Regulation* now permits the Director to establish an electronic system for submitting and processing applications for remediation certificates.

### ***Transition Provisions***

The *Remediation Regulation* is scheduled to come into force on January 1, 2019.

The current regime will remain in place until then, and applications submitted up to January 1, 2019 will likely be processed under the current regulation.

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