



Association of the Chemical Profession of Ontario
Association des chimistes professionnels de l'Ontario

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**RE: Comments Related to the Proposal: Brownfields Regulation-Qualified Persons,
EBR Registry Number: 010-2364**

Dear Mr. Krsul;

The Association of the Chemical Profession of Ontario (ACPO) appreciates the opportunity to provide comments to the above noted proposal regarding the regulations affecting the Brownfields Act.

The Association of the Chemical Profession of Ontario (ACPO) opposes the proposed [amendments to Regulation 153/04](#) (hereafter referred to as the proposed regulation) under the Environmental Protection Act (EPA) governing brownfields. We believe that the proposed amendments are not in the best interest of the public or the environment.

A major part of work in the environmental field requires professionals who are experienced with chemistry and chemical principles. For this reason, professional chemists are designated Qualified Persons (QPs) and are able to take responsibility for such projects, and sign-off on reports regarding the assessment, clean-up, and development of brownfields.

The Government of Ontario is now proposing to change who may be a QP, and to disqualify professional chemists, whose competencies and Scope of Practice includes the application of chemical principles to environmental work.

Proposed Amendments to Regulation 153/04 of the EPA

We have reviewed the proposed regulation and the document titled: "[Brownfields Regulation - Qualified Persons - a Description of Regulation](#)" (EBR Registry Number: 010-2364, hereafter referred to as DOR) which provides MOE's rationale for the proposed amendments to Regulation 153/04 of the EPA, that will disqualify members of the ACPO (Chartered Chemists) and members of other professional organizations as QPs.



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General Comments

At a time when professional chemists and associations from across Canada, recognizing the need for chemists in Canada to work together to compete in a global economy, and have started (through the National Advisory Committee on the Profession of Chemistry in Canada (NACPCC) and the leadership of the [Canadian Society for Chemistry](#) (CSC)) to work together to set national standards for qualifications and experience, mobility of chemists, inter-provincial portability of membership, and the inclusion of professional courses in university chemistry programs, the proposed regulation threatens to drive a wedge between Ontario and other provinces, and will impact negatively on Canada's ability to compete globally.

While other provinces, recognizing the need for experts in chemistry when dealing with contaminated sites, have already moved toward including chemists in the list of those permitted to work on, and take responsibility for, contaminated site remedial activities, Ontario (once a leader in this area) is now taking a significant step backwards by excluding professional chemists from taking responsibility for work related to Record of Site Condition (RSC).

We do not understand why the Ontario Government is taking such a regressive step when other provinces have recognized and given professional chemists the very rights that Chartered Chemists currently have in Ontario.

The Process

Over the course of the development of the definition of a Qualified Person the MOE has considered the following as significant criteria:

1. Assessment of Competency
2. Public Accountability
3. Disciplinary Process
4. Appeals Process
5. Business Case
6. Industry Considerations

The ACPO met these criteria, and Chartered Chemists were included as QPs under Regulation 153/04 of the EPA of 2004. Chartered Chemists still meet these criteria, and expect to exceed these expectations in the future.

We encourage the Ontario Government to refer to the "[Jurisdictional Review of Contaminated Site Qualified Professional Programs](#)" prepared by the Ontario Centre for Environmental Technology Advancement ([OCETA](#)) for the Canadian Brownfields Network ([CBN](#)). It describes how other jurisdictions have successfully addressed the issue of Qualified Persons without prejudice, and puts forward recommendations for developing an effective QP program.



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The DOR does not present complete information, nor does it offer any clear rationale for redefining QPs. It appears to be written from the perspective of justifying the exclusion of professional chemists and other professionals from the list of QPs. Therefore, it is difficult to understand MOE's rationale for disqualifying Chartered Chemists as QPs.

We present below just a few of the statements made by the MOE in its DOR that exemplify the concerns that we have expressed above. The MOE states that:

1. *"At the core of the responsibilities of a qualified person is the application of geoscience and engineering principles."*

Chemical principles are a major component, and are also at the core of environmental assessment work that results in an RSC. While geoscience and engineering are disciplines that may form part of the RSC process, the true driving force behind the entire process is protecting the public from **chemical** contamination issues in the environment.

The MOE gives no evidence to support its position that only these two professions exclusively have the core competencies for executing an environmental assessment work that leads to an RSC.

2. *"... between October 1, 2004 and October 1, 2007 "... eight hundred and sixty-six (866) RSCs were acknowledged and posted on the Registry. In just over ninety-eight percent (98%) of RSCs the required certification statements were made by Professional Engineers or Professional Geoscientists."*

The statement, placed in context, gives a very different picture. RSC work is only a small portion of Environmental Assessment Work conducted in Ontario. The data presented above is for RSCs acknowledged and filed to the Registry only. It is not necessary to file every (Phase I ESA and Phase II ESA) RSC to the Registry. In fact, thousands are not filed to the Registry, and professional chemists have carried out thousands of Phase I and Phase II ESAs over the period mentioned. Therefore, this statistic only reflects the RSCs filed, and is in no way a true representation of the environmental industry in Ontario.

3. *it "... is proposing a Qualified Person definition that will enhance Records of Site Condition quality..."*

The MOE has not given any evidence to support this statement, or how this is achieved by disqualifying professional chemists as QPs.

We believe that the proposed changes to the definition of QP will not achieve enhanced quality of RSCs. Professional chemists are trained and experienced in chemical principles and accountable to the public through a strict code of ethics and standards of practice. For this reason, they have the qualifications and competencies to make the requisite certifications to support an RSC. Therefore, by excluding the only professionals within the system who have competencies in chemistry, and whose scope of practice is the application of these chemical principles in environmental situations, the MOE is in fact damaging the quality and integrity of RSCs in Ontario.



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Competencies

The ACPO states categorically that a large, probably the largest, part of work in assessment and remediation of contaminated sites as required by RSCs is chemistry, and based on chemical principles. This, in addition to various experience factors, demands that chemists be recognized as QP's.

Accountability for RSC Work

We believe that the proposed amendments to Regulation 153/04 may contravene the PEO and APGO Acts. The changes allow and, at times, may force these professionals to take responsibility for work outside of their competencies and scope of practice, i.e., for work that involves chemistry and/or chemical principles, an area that is within the scope of practice of professional chemists.

Two aspects of RSCs are site assessment and site remediation. Both are based on chemistry, the interpretation of chemical data, and the application of chemical principles. The DOR defines a qualified person as “... *the team leader and the person accountable for the quality of work undertaken by the assessment and remediation team...*”. Thus, the proposed regulatory changes raise serious questions about accountability and who takes responsibility for the quality of the RSC work.

It is unclear in the proposed definition of QP who takes accountability for chemical data, without which environmental site assessment would not be possible. When a QP contracts a laboratory to carry out RSC work that relies upon chemical principles, the QP is required to take responsibility for all chemical results, including their quality, integrity and representativeness. As such, the proposed definition of QP will require someone who is qualified in this area to take responsibility for the results, and to use these results to make critical decisions regarding the suitability and safety of a site for future uses.

Accountability to the Public in Law

The MOE states that the PEO and APGO “... *have publicly accessible and publicly regulated accountability mechanisms (set out in the [Professional Engineers Act](#) and the [Professional Geoscientists Act, 2000](#))*”, and it appears to us that this is one of the main reasons for MOE's proposed changes to the regulation. Our clear and strong position remains that professional chemists are not only competent to carry out this work, but absolutely accountable to the public by law.

Under provisions outlined in the “[Statutory Powers Procedure Act](#)”, the ACPO may, at its convenience, hold hearings and/or any disciplinary proceedings to investigate a breach of discipline or violation of its Code of Ethics by any of its members. The ACPO may also issue



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subpoenas with respect to any documents that, or witnesses who, may be relevant in these matters.

At the only stakeholder meeting between MOE and ACPO, we submitted detailed information on our disciplinary and accountability processes, and how the ACPO can hold its members accountable to the public at large.

Negative Impact on the Employment of Chemists in Ontario Now and in the Future

We question whether a complete assessment of the implications of the proposed regulation on the economy and employment outlook for chemists, and other professionals in Ontario, has been carried out. We have concerns that most members of Parliament, including key cabinet ministers, may be unaware of the current and future implications of this proposed amendment to Regulation 153/04, particularly in light of the [“Ontario Progress Report 2007”](#) that focuses on [“Jobs and Prosperity”](#) for Ontarians as one of its key elements.

If this regulation is passed it will lead to loss of employment, loss of careers that have spanned a lifetime, individuals will lose or have to sell companies, or will have to employ engineers and/or geoscientists who may very well be less experienced, knowledgeable, and qualified than they are to sign-off on their own work.

The real damage that will be done to practicing professional chemists is that banks, law-firms, realtors, and private companies will inevitably want a QP doing their assessment even when they do not intend to apply for an RSC. This means that only those who are QPs will be employed in this area and there will be loss of employment for chemists and other professionals in this sector.

The damaging effects examined above are the immediate effects. There are very serious long-term consequences of this proposed regulation.

Ontario has one of the best post-secondary systems in Canada and arguably in the world. The Ontario Government, universities and colleges have together invested heavily in training students in chemistry and environmental sciences. We are training students who, when they graduate, will have no long term prospects for advancement to senior management and supervisory positions in environmental laboratories or firms conducting environmental site assessment and remediation.

As a result of the proposed change, hundreds of students who are studying in the area of Environmental Chemistry and Science will not be able to work, and sign-off, on RSCs, and never in their careers, regardless of expertise and experience gained over a lifetime of work, will they be able to have their own private companies.

Professional chemists with entrepreneurial spirit, which is so fundamental to brownfield redevelopment and the economic fabric of Ontario, will be encouraged, if not forced, to migrate to other provinces, e.g., Alberta, where they are recognized as QPs, can find work in their fields, and have good prospects of advancement in their profession. Ontario will be training chemists



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and environmental professionals, only to have other provinces reap the benefits of our tax dollars and our investment in our young people.

The ACPO states that the Government of Ontario must not proceed with the proposed change to the regulation until it has examined its full implications with respect to employment now, and in the future.

Granting of Limited Licences

The MOE states that it will be possible to obtain limited licences. However, the ACPO remains very concerned that the process for granting these limited licences has not been worked out with the PEO or APGO.

We are concerned that the MOE may not have:

1. Discussed this option thoroughly with any organization;
2. Considered the logistics of implementing this option;
3. Evaluated the qualifications and other requirements for obtaining these licences;
4. Developed realistic time-lines for obtaining licences, limited or otherwise.

It is our understanding from other professional associations who have tried to obtain limited licences that this option, commonly, is not workable, and can be prejudicial and discriminatory to already highly competent professionals.

In summary, the ACPO opposes the proposed amendments to Regulation 153/04 under the Environmental Protection Act (EPA) governing brownfields. We believe that the proposed amendments are not in the best interest of the public or the environment. The ACPO is adamant that Chartered Chemists and many of the already recognized professionals should remain as QPs now and in all future legislation, where the fundamental activities and core responsibilities are based on chemistry and the application of chemical principles.

Please feel free to contact us for further information.

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