

February 23, 2007

Mr. Tim Krsul  
Senior Policy Analyst  
Ministry of the Environment Integrated Environmental Planning Division  
Land and Water Policy Branch  
Floor 6, 135 St. Clair Avenue West  
Toronto, Ontario M4V 1P5

Dear Mr. Krsul:

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

I am currently employed as a Senior Environmental Scientist with Gartner Lee Limited, a multidisciplinary company that employs numerous Professional Engineers, Professional Geoscientists, Chartered Chemists, and Certified Engineering Technologists who supervise environmental site assessments. I have over 10 years of professional experience managing Phase I and II environmental site assessments (ESA) and brownfield remediation cleanup projects in British Columbia and Ontario. I am currently registered as a Chartered Chemist with the Association of the Chemical Profession of Ontario (ACPO). I am also registered with the Ministry of the Environment (MOE) as a qualified person to supervise ESA under Reg. 153/04. I believe that the proposed amendment to remove Chartered Chemists, Certified Engineering Technologists and other professionals from the list of qualified persons is not appropriate or justified. The MOE should continue to maintain the status quo because justification was not provided for removing these professionals from the list of qualified persons.

Based on discussions with the ACPO, the MOE has not approached the ACPO with incidents of professional misconduct or negligence that would cause the MOE to consider removal of Chartered Chemists from the list of qualified persons. The intention of the statistic that 98 % of record of site condition (RSC) were filed by professional engineers or professional geoscientists between October 2004 and October 2007 is unclear. Use of this statement to justify removal of Chartered Chemists, Certified Engineering Technologists and other professionals from the current list of qualified persons is unwarranted. This statistic does not reflect the fact that it is not necessary to file a RSC for every Phase I and II ESA or that cleanup efforts on large industrial sites may be carried out in stages over time frames that range up to 30 years. The statistic does not represent the environmental industry because many of these ESA are supervised by Chartered Chemists.

The proposal indicates that the application of geoscience and engineering principles are at the core of the responsibilities of a qualified person. Chemistry is also at the core of the responsibility of a qualified person. In a letter from the ACPO to the MOE dated January 15, 2008, the ACPO established that Phase I and II environmental site assessments require knowledge, training and experience in chemistry. Data analysis, interpretation, and reporting also has a chemistry component and this involves ensuring that the laboratory data meets the method performance criteria defined in the March 2004 *Protocol for Analytical Methods Used in the Assessment of Properties under Part XV.1 of the Environmental Protection Act*, MOE. Remediation decisions are influenced by the properties of the chemical contaminants and some remediation technologies such as insitu chemical oxidation, insitu chemical reduction and enhanced bioremediation are chemical in nature. Hence chemistry is essential in all stages of the Phase I and II Environmental Site Assessment process and underlies remediation decisions. Chartered Chemists are competent and qualified to perform the supervision of ESA.

Members of the respective professional chemistry associations of Alberta and the United Kingdom are currently recognized as qualified persons as indicated in the *Jurisdictional Review of Contaminated Site Qualified Professional Programs* Prepared by Ontario Centre for Environmental Technology Advancement (OCETA) on behalf of the Canadian Brownfields Network dated December 2007. Chemists are also practicing as qualified persons in many other jurisdictions such as Quebec, California, Connecticut, Massachusetts, North Carolina, Ohio, West Virginia and Australia (subject to requirements for relevant experience and in some jurisdictions a qualification exam). The competitiveness of the Ontario environmental industry may be impaired because chemists in Ontario may seek employment in other jurisdictions. Ontario companies will likely be unwilling to hire experienced and qualified persons from other provincial or international jurisdictions because they do not fit Ontario's definition of a qualified person and these individuals may also seek employment in other jurisdictions. Overall, this may result in a shortage of professional chemists in Ontario.

The MOE currently recognizes that Chartered Chemists, Certified Engineering Technologists, and other professionals are competent and qualified to supervise environmental site assessments to the satisfaction of the MOE. The proposed change is discriminatory and it diminishes the value of the work experience, on-the-job training, and university and/or college course work of Chartered Chemists, Certified Engineering Technologists and other professionals on the approved list of qualified persons. Due to the restrictions on the qualified person designation, it is likely that financial institutions, lawyers and private companies will require a qualified person to conduct ESA work even when they do not intend to file an RSC. This will likely result in loss of employment for highly experienced and qualified chemists and other professionals in the environmental field in Ontario because they will be restricted from performing work for which the MOE has already recognized that they are qualified. Due to a skills shortage, the environmental industry in Ontario has difficulty acquiring experienced professionals and the proposed changes will further reduce the hiring pool. The restrictive qualified person definition will likely result in hiring policies that discriminate against scientists that have graduated with university degrees in

environmental science or environmental chemistry. Hundreds of students will have limited prospects for career advancement or starting their own private companies in this field in Ontario and they may seek employment in other jurisdictions. Due to the limited number of engineers and geologists in Ontario, the proposed change will likely overload the remaining qualified persons. The overloading of the remaining qualified persons will likely mean delays in site cleanup and a decrease in the overall number of brownfield cleanups. This would be a disservice to industrial clients and it will likely result in increased risk to the Ontario public. This approach is not consistent with the Ontario Ministry of Municipal Affairs and Housing approach to encourage brownfield redevelopment. Removal of Chartered Chemists, Certified Engineering Technologists and other professionals from the approved list of qualified persons will likely increase cleanup costs for industry because the remaining qualified persons (i.e. engineers and geoscientists) will likely bill industry at higher rates due to reduced competition.

Neither the current nor the proposed qualified person approach ensures that a person signing a RSC has the necessary experience performing environmental site assessments and remediation work. It only ensures that they have a professional designation. If the MOE is interested in ensuring that qualified personnel conduct the work, they should consider implementing a system whereby professionals (i.e. engineers, geoscientists, chemists, certified engineering technologists and individuals with other relevant designations) with relevant experience are required to pass a qualification exam. British Columbia, Quebec, Connecticut, Massachusetts, North Carolina, West Virginia, the United Kingdom and Australia are examples of jurisdictions with qualification exams.

Chartered Chemists and Certified Engineering Technologists are accountable to the public because they are bound to a strict Code of Ethics and are subject to a disciplinary process to prescribe conduct and discipline members who do not adhere to the standards of practice and Code of Ethics. These organizations are not currently licensed under provincial legislation. However, the MOE has made these designations mandatory credentials to file a RSC (i.e. they are no longer voluntary because qualified persons are unable to file a RSC without these credentials). If the MOE's proposed changes are related to concerns about licensure or liability insurance coverage for individuals filing RSC, the MOE should extend the stakeholder consultation period so that ACPO, OACETT, and other stakeholder organizations can work with the MOE to obtain licensure or increase their current liability coverage to the level required by the MOE to maintain their status as qualified persons.

As Chartered Chemists, Certified Engineering Technologists and other professionals on the current list of qualified persons are accountable to the public and competent to supervise ESA, the MOE should continue to recognize these professionals as qualified persons. If the MOE has other concerns about continuing to recognize these individuals as qualified persons, the MOE should suspend the proposed amendments to Regulation 153/04 and extend the time period to consult with the public and all professional organizations whose members are currently designated qualified persons so these organizations can work with the MOE to meet their requirements for maintaining status as qualified persons.

Please do not hesitate to call me should you have any questions or require additional information.

Yours very truly,

A handwritten signature in black ink, appearing to read "Trevor Janzen". The signature is fluid and cursive, with a long horizontal stroke at the end.

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