

RECORD OF SITE CONDITIONS
CONSEQUENCES OF FILING

Regulation 153/04, as amended, sets the standards of site conditions which must be met by various classes (for example, residential, commercial, industrial, institutional) of property uses.

The following sums up the consequences of having filed a record of site conditions:

If a qualified person certifies in a record of site conditions that a property meets one of three (full depth background, generic, and stratified) site condition standards, or a risk assessment is done and accepted by the Director, and that record is filed in the Environmental Site Registry under section 168.4 of the Environmental Protection Act then:

- the owner of the property or a subsequent owner;
- a person who is in occupation of the property at or after the filing;
- a person who has charge, management for control of the property at or after the filing;
- in certain circumstances, a previous owner, occupant or person in charge;

is protected against the issuing of orders by the Director or provincial officers under various sections of the Environmental Protection Act. Such orders include control and stop orders (which can be issued against current and previous owners, occupant, persons in charge of the source of contaminant), remedial or orders (which can be issued against any person who causes or permits the discharge of a contaminant that is or is likely to injure or endanger the environment), preventative orders (which can be issued against any person who owns or has owned or has or has had management of an undertaking or property).

The exemption from the above described orders did not apply if:

- after the date of the site record certification any of the contaminant move from the property to another property; or,
- the actual use of the property is different from the use specified in the record of site conditions (unless the record of site conditions did not involve a risk assessment and the standards applicable to the actual use are less stringent than those that were applicable to the use specified in the record of site conditions).

Provisions in the Environmental Protection Act which deal with the exposure of secured creditors to orders of the Director and provincial officers provide that if a record of site condition has been filed then, should the creditor become the owner by foreclosure, no order can be issued against such person unless there is the presence of a contaminant that is "a danger to the health and safety of any person".