

# Protocol for Reviewing Development Applications with Respect to Contaminated or Potentially Contaminated Sites

## Regional Official Plan Guidelines





# Halton Region Official Plan Guidelines

The **Regional Official Plan (ROP)** is Halton's guiding document for land use planning. It contains policies that guide decisions related to, among other things, managing growth and its effects on Halton's social, economic and natural environment.

The **ROP Guidelines** are a set of documents that clarify, inform, and aid in the implementation of the Plan's policies.

The Guidelines have been prepared in accordance with Section 192 of the ROP. They provide direction and outline approaches that can be used to satisfy the relevant policies of the Plan. They do not introduce additional policy requirements, and, in the event of a conflict between the Guidelines and the Regional Official Plan, the Plan shall prevail.

The Guidelines may be updated from time to time as required through a report to Regional Council.

For more information, visit [halton.ca/ROP](https://www.halton.ca/ROP) or [halton.ca/ROPguidelines](https://www.halton.ca/ROPguidelines), or call 311.

**"This Plan calls for the preparation of certain guidelines or protocols to provide more detailed directions in the implementation of its *policies*."**

**Halton Region Official Plan – Section 192**  
*as adopted by Regional Council, December 16, 2009*



# Protocol for Reviewing Development Applications with Respect to Contaminated or Potentially Contaminated Sites

The **Protocol** ensures 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.

<b>Purpose</b>	<p>The purpose of the Protocol is to:</p> <ul style="list-style-type: none"><li>• <b>outline</b> the steps and conditions that must be met by a proponent when submitting a development application with respect to contaminated or potentially contaminated sites;</li><li>• <b>clarify</b> the steps and conditions for requiring a Record of Site Condition and considering the application of a non-potable approach for site cleanup or risk assessment; and</li><li>• <b>ensure</b> that contaminated land is restored to an environmental condition suitable for its proposed land use.</li></ul>
<b>Application &amp; Use</b>	<p>Section 147(17) of the Regional Official Plan requires the proponent of a development proposal to determine whether there is any potential contamination on the site they wish to develop, and if there is, to undertake the steps necessary to bring the site to a condition suitable for its intended use. The Protocol should be used for this purpose by a variety of users, including:</p> <ul style="list-style-type: none"><li>• <b>Regional, Local and external agency staff:</b> as a resource when reviewing development applications involving potentially contaminated sites.</li><li>• the <b>development industry:</b> for clarity on the development process for contaminated or potentially contaminated sites and other requirements.</li><li>• the <b>public:</b> to understand how contaminated sites are addressed and restored to an environmentally suitable condition through the development process.</li></ul>
<b>Supporting Documents</b>	<p>In addition to the policy direction provided by the Regional Official Plan, the most recent versions of the following documents should be considered alongside this Guideline, as appropriate:</p> <ul style="list-style-type: none"><li>• Provincial Policy Statement, 2014</li><li>• The Niagara Escarpment Plan, 2005</li><li>• The Greenbelt Plan, 2005</li><li>• Environmental Protection Act, 2010; Soil, Ground Water and Sediment Standards for Use (Part XV.1); O. Reg. 153/04, Records of Site Condition (Part XV.1)</li><li>• Ministry of the Environment "<i>Records of Site Condition – A Guide on Site Assessment, the Cleanup of Brownfield Sites and the Filing of Records of Site Condition</i>" (Oct 2004)</li><li>• Local Official Plan &amp; Zoning By-law</li></ul>
<b>Version</b>	<p><b>Version 1.0</b>   This version of the Protocol was brought before the Inter-Municipal Liaison Committee on June, 18 2014 through Report No. IMLC01-14. It replaces the version adopted by Regional Council on June 22, 2011.</p>



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# 1.0 Introduction

The purpose of the Protocol for Reviewing Development Applications with Respect to Contaminated or 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 apply the Ontario Regulation 153/04 as amended (O. Reg. 153/04) process made under the Environmental Protection Act. This Protocol generally applies 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 replaces the Protocol presented in Report LPS47-11 and adopted by Regional Council on June 22, 2011.

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 (as amended from time to time), Records of Site Condition – Part XV.1 of the *Environmental Protection Act*.

These documents and other related documents are available on the MOE's website at [http://www.ene.gov.on.ca/environment/en/subject/brownfields/STDPROD\\_075724.html](http://www.ene.gov.on.ca/environment/en/subject/brownfields/STDPROD_075724.html).

## 2.0 Determination of Requirement for a Record of Site Condition

### 2.1 Process Flow Chart and Key Questions

The following text should be read in concert with the flow chart presented in **Figure 1** on page 3.

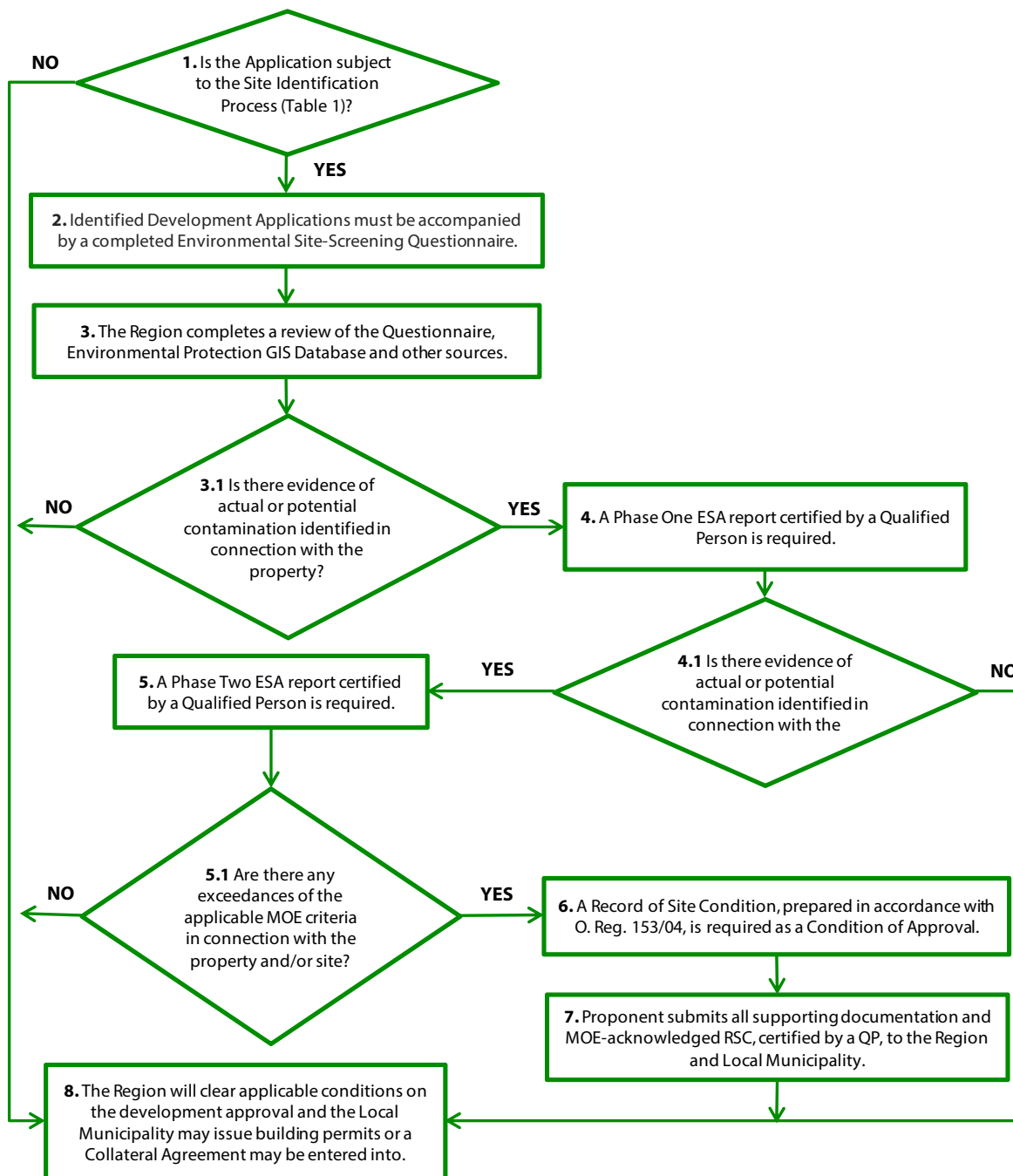
#### 1. Is the application subject to the Site Identification process?

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, Halton Region may 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?
<b>Official Plan Amendment (Regional or Local)</b>	Yes
<b>Zoning By-Law Amendment</b>	Yes
<b>Temporary Use By-Law</b>	Yes
<b>Minor Variance</b>	No
<b>Niagara Escarpment Plan Development Permit (NEPDA)</b>	Yes
<b>Niagara Escarpment Plan Amendment (NEPDA)</b>	Yes
<b>Development Permit (Planning Act)</b>	Yes
<b>Site Plan</b>	No [1]
<b>Plan of Condominium</b> <ol style="list-style-type: none"> <li>1. Plan of Condominium</li> <li>2. Vacant Land or Common Element</li> <li>3. Condominium Conversion</li> </ol>	Yes No No
<b>Consent Applications</b> <ol style="list-style-type: none"> <li>1. Part Lot Control Exemption Application</li> <li>2. Consent (Land Severance)               <ul style="list-style-type: none"> <li>• divide land into new lots</li> <li>• add land to an abutting lot (lot additions)</li> <li>• corrections to deeds or property descriptions</li> <li>• establish easements or rights-of-way</li> <li>• lease land or register a mortgage in excess of 21 years</li> </ul> </li> </ol>	No  Yes [2] Yes [3] No [4] No
<b>Plan of Subdivision</b>	Yes
[1] – If a use on the property is being changed to a more sensitive land use, then O. Reg. 153/04 applies. [2] – Includes only an evaluation of the severed portion(s) of the subject property where there is no change in use of the retained portion to a more sensitive use. [3] – Does not include the abutting land in lot additions. [4] – Realty Services will determine the environmental documentation requirements for land to be conveyed to the Region for easements, land dedications and rights-of-way.	

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



## **2. Identified Development Applications must be accompanied by a completed Environmental Site-Screening Questionnaire (Questionnaire)**

A Questionnaire (see Appendix) must be completed by the property owner and/or an authorized agent for the owner that will be used by Halton Region 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**

Halton Region's Environmental Protection GIS Database (EPGD) assists in the identification of contaminated or 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 (including the Ministry of the Environment) 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, the Region may clear applicable conditions on the development application and the local municipality may issue building permits. Otherwise, a Phase One ESA is required.

## **4. A Phase One 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 Halton Region, the owner is required to submit to Halton Region, at a minimum, a Phase One Environmental Site Assessment (ESA) (as per Part XII, Schedule D of O. Reg. 153/04, as amended from time to time) that is certified by a Qualified Person (QP) as defined in O. Reg. 153/04. The Phase One site assessment report must be based on current work as per Section 28 of O. Reg. 153/04. 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 One and subsequent reports shall include an evaluation of the severed portion(s) 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 One ESA report?**

The Region requires that the QP indicates in the Phase One ESA report either that the environmental condition of the site is suitable for its proposed land use or a Phase Two ESA is warranted to address actual or potential contamination on the property. If the QP indicates that a Phase Two ESA is warranted, then a Phase Two ESA is required for the property. If the QP indicates that the environmental condition of the property is suitable for its proposed land use and no further investigation is required, then the Region may clear applicable conditions on the development application and the local municipality may issue building permits.

## **5. A Phase Two ESA report prepared by a QP is required**

If the QP indicates that a Phase Two ESA is warranted based on the Phase One ESA, then a Phase Two 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 Two ESA (as per Part XII, Schedule E of O. Reg. 153/04, as amended from time to time) that is certified by a QP as defined in O. Reg. 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 indicate in the Phase Two 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 all applicable reports which will be circulated to Planning Services and the Medical Officer of Health for comment regarding water resources and public health issues. If the QP indicates that the environmental condition of the property is suitable for its proposed land use and no further investigation is required, the Region may clear applicable conditions on the development application and the local municipality may issue building permits.

If the QP indicates that the soil and/or groundwater samples contain contaminants at concentrations that exceed the applicable standards referenced in O. Reg. 153/04, site remediation and/or a Risk Assessment will be required. All Risk Assessments must be submitted to, and will be reviewed by, Planning Services and the Medical Officer of Health. Where the property owner does not require approval prior to site remediation, the proponent will demonstrate through the Record of Site Condition (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 when 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 One and Two Environmental Site Assessment and Remediation Reports, etc. to Halton Region. 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 Record of Site Condition, certified 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 One/Two 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 Planning Services section for inclusion in Halton's Environmental Protection GIS Database. The MOE-acknowledged Record of Site Condition signed by the QP 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 may clear applicable conditions on the development application and the local municipality may issue building permits**

The Region may clear any applicable conditions for the development application once all related environmental documents have been submitted and are to the satisfaction of Halton Region.

### **2.2 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 Record of Site Condition that the site has been 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.

### **2.3 Other**

If there is some uncertainty about the quality of the Phase One/Two ESA or site remediation process or results, the Region may, as of right, request a peer review of the document(s) by a consultant selected by the Region and at the expense of the proponent 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 Highly Vulnerable Aquifers, or if there is a potential public health issue.

The Region may, during the site assessment and/or remediation process and where the planning process provides opportunity, require the proponent to conduct a formal public consultation.

### **2.4 Groundwater Site Condition Standards**

Halton Region requires that all proponents compare their analytical results to the applicable MOE standards or other appropriate standards to determine whether or not site remediation or a site specific Risk Assessment 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 Highly Vulnerable Aquifers, as identified in the Region's Aquifer Management Plan (AMP) and relevant Source Water Protection Assessment Reports 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 paramount 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, at a minimum, restore groundwater to potable levels (Table 2 – MOE Standards). For clarification, proponents may contact Halton Region's Planning Services.

## 3.0 Process Flow Chart and Key Questions for the Application of a Non-Potable Approach to Site Clean-up or Risk Assessment

The text below should be read in concert with the information contained in the Figure 2 flow chart on page 10.

### 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 of the proponent's request for the application of the non-potable (Table 3 – MOE Standards) groundwater use criteria to the site. 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 (WHPA) or environmentally sensitive area (ESA)?

Wellhead Protection Areas are protected areas where 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 WHPAs (WHPA A and B), 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 Highly Vulnerable Aquifer, within 250m of private wells, in the rural area or outside the serviced Oakville, Burlington, and Milton urban areas?

If the site is not in a WHPA or ESA but within a Highly Vulnerable Aquifer as delineated in the Assessment Reports under Source Protection Plans or the site boundary is within 250m metres of a private well (as identified in O. Reg. 153/04) or the property is in the rural area or outside of 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. Highly Vulnerable Aquifers are defined as subsurface, geologic formations that are sources of drinking water which could, relatively easily, be impacted by the release of pollutants on the ground surface. These aquifers are typically shallow. Where aquifers are layered one on top of the other with confining sediment or rock units between, it is only the upper aquifer near ground surface that is mapped and used.

#### 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.



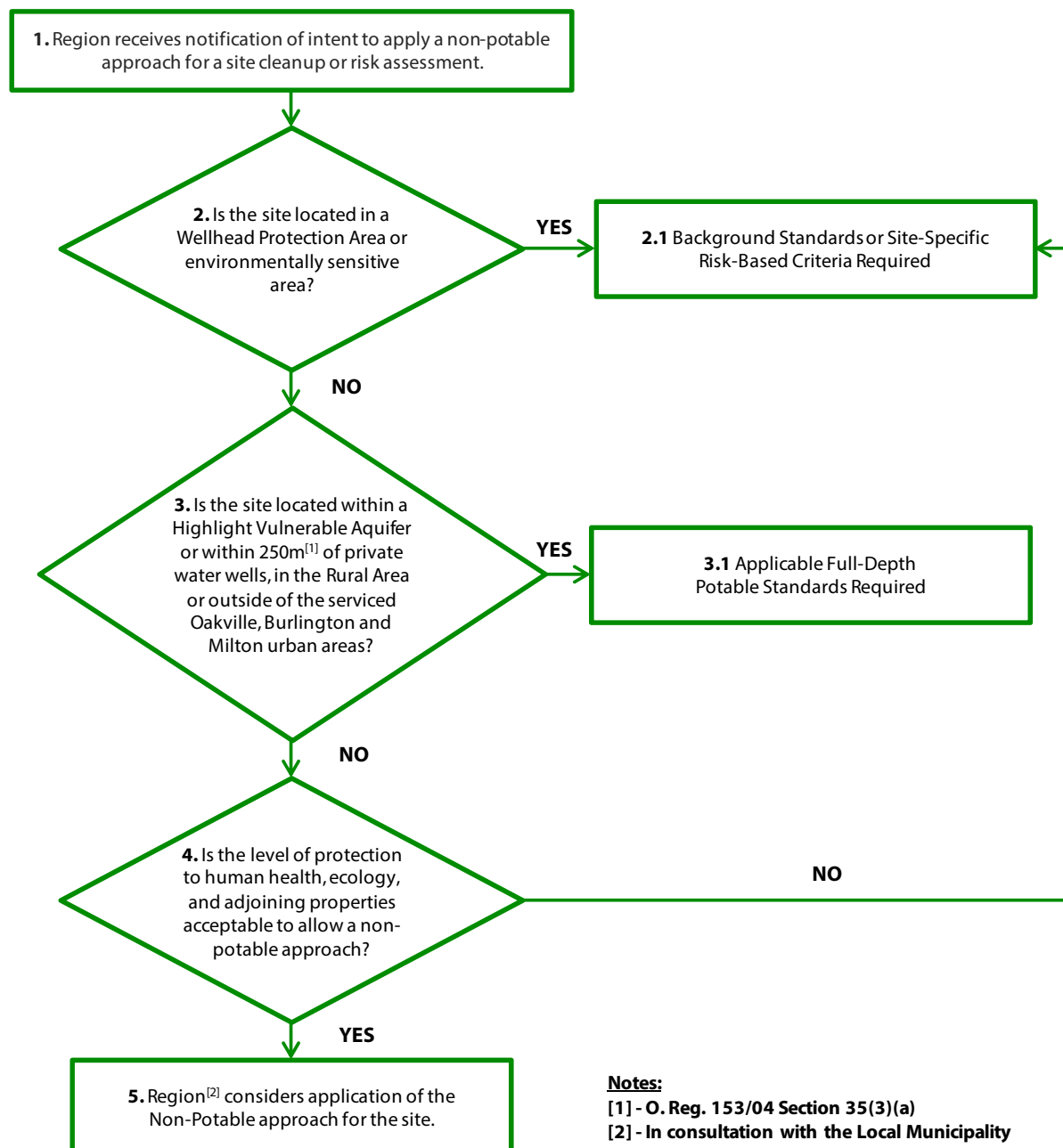
#### **4. Is the level of protection to human health, the environment and off-site properties acceptable to allow a non-potable approach?**

If the use of non-potable criteria poses a threat to human health, the 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 proponent to utilize the 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 WHPA, ESA, Highly Vulnerable Aquifer, within 250m of a private well or the property is in the Rural Area or outside of the serviced Urban Areas of Burlington, Milton or Oakville, following the completion of all necessary evaluation of the property 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.

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



## **Appendix: Environmental Site Screening Questionnaire**

Please refer to the following page for the Environmental Site Screening Questionnaire.





Halton Region  
 Planning Services  
 Tel: 905-825-6000 Fax: 905-825-8822  
 Toll Free: 1-866-4HALTON (1-866-442-5866)  
[www.halton.ca](http://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?   | yes | no | uncertain |
| 3. Has imported fill (earth or material) ever been placed on the subject property? <sup>1</sup>   | 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 (not including water or sanitary) 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?                    | yes | no | uncertain |
| 7. Have any of the buildings on the subject property been heated by fuel oil? <sup>2</sup>  | yes | no | uncertain |
| 8. Is the land use changing to a more sensitive land use (e.g. industrial/commercial to residential/institutional)?   | yes | no | uncertain |

Note: Daycare uses are defined in O. Reg. 153/04 as institutional.

Notes	1. If a current soils report is available for the fill on the property and the criteria meet the applicable standards and are suitable for the proposed land use, this will be taken into account when deciding whether a Phase One report is required.	2. If a current TSSA report/analysis is available for the site and the site meets the applicable standards, this will be taken into account when deciding whether a Phase One report is required.
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## General Information

Have any environmental documents (e.g. Phase One and Two Environmental Site Assessments, Records of Site Condition, etc.) ever been prepared for the subject 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 or an authorized agent for the 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

\_\_\_\_\_  
Registered Owner or Authorized Agent (signature)  
(signature)

Regional File #: \_\_\_\_\_

Local Municipal File #: \_\_\_\_\_



