



CSAP TECHNICAL REVIEW COMMENTS

Protocol 18. Establishing multiple land uses at sites

CSAP Technical Review #56

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In response to the Ministry of Environment's request for comments on Protocol 18: Establishing multiple land uses at sites.

CSAP would like to thank Mr. Chuck Jochems, Mr. Gary Lin, Mr. Jim Laidlaw, Ms. Audrey Wagenaar and Mr. Michael Mcleay for completing this Technical Review of behalf of the CSAP Society.

Comments

1. An explanatory section should be added to provide some context on how to assign more than one land use at sites. Many other protocols are highly detailed and Protocol 18 (P18) could benefit from more detail. The protocol provides little with respect to the "why" or "how to" establish multiple land uses.
2. The idea of multiple land uses at a site is somewhat challenging and conceptually difficult, primarily because the term "site" is defined nowhere in the Regulation or the Act, despite being regularly used in the text of P18. A "parcel" is defined in Procedure 8, but a "site" is not.
3. The purpose of P18 is to establish multiple land uses at a site. Rewording "all land uses may apply" in Section 3.2 of the protocol to "different land uses may apply to different parts of a site" or "all *applicable* land uses may apply" should be considered. The use of "all land uses may apply" would seem to possibly contravene municipal zoning bylaws where specific uses are stipulated for most properties.
4. In Section 3.2 of the new draft P18, it only addresses the surface activities for determining land uses. There may be cases where underground activities, such as parkade use, should also be considered in the context of the Omnibus Amendment.
5. Clarification should possibly be provided for the protocol use in the context of CSR 17(3). It states that any soil located greater than 3 m below ground surface should be considered for industrial land use (as per Omnibus Amendment) regardless of the land use(s) at the surface.
6. P18 allows for applying different soil standards for different parts of a site. However, Procedure 6 indicates that there may be only one primary land use for a site and to obtain a combined legal instrument for a site with multiple land uses, the most stringent land use standards apply. If that is the case, P18 may not be consistent with Procedure 6. Would then P18 "over-ride" Procedure 6? Consideration should be given to reworking of Procedure 6 for consistency with P18.

Procedure 6 (Section 6) Determining the boundaries of sites with more than one land use

The Courts have interpreted the Regulation as establishing that there may be only one primary land use at a site. Where land has multiple existing or planned uses, for the purposes of issuing a contaminated sites legal instrument the site must be divided into areas of singular land use. Bearing in mind the procedures in section 8.0 above, those bordering areas of land with the same primary land use may be combined into one site, and those with different primary land uses should be considered different sites. Another approach would be to consider the land use with the most stringent environmental quality standards to apply to all areas addressed in an application for a contaminated sites legal instrument. This would simplify the application by requiring fewer contaminated sites legal instruments.

7. A change in ownership of a parcel would not affect the determination of multiple land uses at a site and therefore, removal of Sections 3.1 and 3.2 from the 2013 version of P18 seems reasonable.
8. There is some uncertainty in the application of this protocol given the potential difficulties with the assessment of property taxes.
9. In the case of higher land uses, such as residential or urban park, adjacent commercial land use, consideration for any buffer zones relating to soil vapour might need to be considered.