



Ministry of Water, Land and
Air Protection

2004/12/01

UPDATE ON CONTAMINATED SITES

Improvements to Contaminated Sites Legislation in Effect

INTRODUCTION

A number of key changes have recently been made to the legislation and regulations for BC's contaminated sites regime. Highlights include:

- a new definition of "contaminated site," to clarify the acceptability of risk based site cleanups and the relevance of hazardous wastes
- strengthening provisions for approved professionals, especially to enable the Government to require use of their services
- consolidation of decision making to the director level, to ensure greater consistency
- elimination of conditional certificates of compliance, to encourage the use of the risk based approach to site remediation
- new environmental quality standards for sediments, soil and drinking water
- elimination of the ability of the ministry to re-open certificates of compliance when environmental standards change, to increase certainty for land owners and operators
- simplification of the tables of fees
- delegation to the minister, instead of the Lieutenant Governor in Council, to set and modify numerical environmental quality standards in the Contaminated Sites Regulation (the Regulation).

BACKGROUND

On May 14, 2002 the Minister of Water, Land and Air Protection appointed the Minister's Advisory Panel on Contaminated Sites to carry out a review of the contaminated sites provisions in Part 4 of the *Waste Management Act* and the Regulation. The Panel was asked to review a number of key components of the contaminated sites regime and consulted with citizens and stakeholders to determine their needs and expectations. The Panel's final report was released on May 13, 2003 and it is available on our [Minister's Advisory Panel](#) Internet page.

The recommendations of the Panel are being used to develop a new policy framework for the regulation of contaminated sites in BC. They informed legislative changes for the Spring 2003 Legislative session, and on May 13, 2003, the Government introduced Bill 57 containing key legislative changes to the contaminated sites regime. The proposed new rules were introduced as part of the Government's new [Environmental Management Act \(EMA\)](#). They came into effect on July 8, 2004, together with a few provisions from Bill 13 (the *Environmental Management Amendment Act, 2004*) and with Stage 4 amendments to the Regulation. The *Waste Management Act*, including its contaminated sites provisions, was repealed on that date.

KEY CHANGES

The amendments will immediately improve British Columbia's contaminated sites process. Government staff will now focus on regulating and advising on the province's highest risk contaminated sites. Increased opportunities will be available, and in some cases required, for private sector environmental consultants to advise on the clean up of lower risk sites. The following describes these changes in detail.

Definition of “Contaminated Site”

The definition of “contaminated site” has been changed to clarify that the phrase “in quantities or concentrations exceeding risk-based or numerical criteria, standards or conditions” applies both to hazardous waste and other prescribed substances. The previous definition implied that a site was a contaminated site if it contained hazardous waste in any quantity or concentration.

For additional clarity a reference to both “risk based and numerical” criteria and standards has been added to reinforce the ability to prescribe both types of standards in the definition of “contaminated site”. This addresses the Advisory Panel’s emphasis on reinforcing the acceptability of risk-based remediation standards where necessary and appropriate.

Approved Professionals

Formerly known as “professional experts” under the Regulation, the provisions enabling the establishment of a roster of approved professionals have been moved to section 42 of *EMA*.

The section allows a director to establish a list of qualified professions or disciplines who may perform work at contaminated sites in the province. It was added to strengthen the current authority for approved professionals and to enable transition to a Licensed Environmental

Professional’s (LEP) body as recommended by the Panel

Under this section, a director may establish the roster of qualified persons, and make changes to the roster based on performance and examination or based on changes to requirements set by the Minister. If an approved professional has performed activities in a manner that a director has reasonable grounds to believe does not satisfy requirements established under *EMA*, the director may suspend the approved professional from the roster on terms and conditions.

One key change is that a director may require that certain classes of activities, reports or recommendations be performed, prepared or made by an approved professional. For example, under amendments to the Regulation, a director may require that an application for a service for a low to moderate risk site be accompanied by a report and recommendation of an approved professional. Also, the amendments include the powers for a director to establish a protocol which specifies the reports or documents which must be prepared by an approved professional.

Conditional Certificates Repealed

Under the previous contaminated sites provisions, certificates of compliance were issued for cleanups which met the numerical environmental quality standards (concentrations of substances in soil or water), and conditional certificates of compliance were issued for cleanups which met the risk based standards of the Regulation. Under the new rules, certificates of compliance will be used to certify cleanups for both types of standards. The policy to move to a single certificate was directed at reinforcing the acceptability of risk based remediation, as recommended by the Panel.

Section 53 of *EMA* has been changed by eliminating “conditional certificates of compliance,” and existing conditional certificates of compliance are converted to certificates of compliance under section 140 (5) of *EMA*. Regulatory powers to impose conditions, where necessary for environmental protection, remain as part of the certificate of compliance process.

A new provision has been added to clarify that a director may withhold or rescind a certificate of compliance (or an approval in principle) if the terms and conditions imposed by the director in these instruments are not adhered to after they have been issued, or if any fees due under Part 4 of the regulation are outstanding.

Certificate Liability Protection Strengthened

Under the provisions of the *Waste Management Act*, the government had the right to take further regulatory action on sites that had previously been remediated to standards existing at the time of remediation, but were later in contravention of the *Act* due to changes in standards.

An amendment was made to address stakeholder concerns with ongoing and future liability at remediated sites due to changes in the standards of the regulation. The Advisory Panel identified that the lack of certainty and finality provided in the *Waste Management Act* was one of the most significant reasons why some sites are under used and undeveloped. The changes accommodate stakeholder desires for finality without jeopardizing other necessary and legitimate reasons, listed in section 60 of *EMA*, to re-open certificates of compliance.

Minister’s Regulations

Under the old contaminated sites regime, the final approval of regulations was made by the Lieutenant Governor in Council, as recommended by Cabinet. This can be a lengthy process, and in the past it has been difficult to

make needed changes quickly. In response, Section 63 was provided in *EMA* which gives the Minister the authority to make regulations for contaminated sites.

This will create greater flexibility to make rapid changes to the Regulation, necessitated by advancements in scientific knowledge and best management practices.

Areas transferred to the Minister include powers to issue requirements and procedures for:

- site profiles
- site investigation reports
- voluntary remediation agreements
- approvals in principle and certificates of compliance
- substances and criteria, standards and conditions for defining contaminated sites
- contaminated soil relocation

Environmental Quality Standards

A number of amendments were made to the environmental quality standards of the Regulation. Key changes include:

- sediment criteria in new Schedule 9,
- new generic soil and water standards in Schedule 10,
- incorporation of existing director’s standards for MTBE into Schedule 6,
- “director’s interim standards” which are in effect for up to one year and which replace the director’s standards of the Regulation,
- expanded definition of “numerical,” and “site-specific numerical” standards,
- confirmation that a site is determined to be contaminated by reference to numerical standards and not risk based standards, and
- standardization of nomenclature and presentation in all schedules.

Sediment Criteria

In March 2004, the new director’s “criteria for managing contaminated sediment” were approved. They have now been adopted in

Schedule 9 of the Regulation for typical and sensitive sediment use. Sections 11, 12 and 17 of the Regulation contain provisions describing how they are used to define a contaminated site and in establishing remediation criteria.

New Generic and Matrix Numerical Standards

In January 2004 the director approved a large number of remediation targets for substances in soil and drinking water referred to as “nonscheduled toxic substances”. These have now been adopted in Schedule 10 of the Regulation.

A new matrix for inorganic mercury has been added to Schedule 5, and Schedule 6 has been changed by renaming a parameter for petroleum hydrocarbons and by clarifying footnotes related to the application of aquatic life standards for freshwater and marine species.

Standards Definitions

The definition of “numerical standards” has been expanded to include 7 types of standards, criteria and conditions. “Site-specific numerical standard” has been amended to include sediments, enabling a protocol to be developed for deriving site-specific sediment criteria.

Numerical Standards Define Contaminated Site

The Advisory Panel recommended that the definition of “contaminated site” in section 11 of the Regulation be replaced with a definition that incorporates an assessment of risk based on exposure pathways and receptors at a particular site, and uses the numerical standards as “screening values”. The approach that the Ministry has taken in these amendments is to confirm the use of numerical standards in new section 15 (1) of the Regulation in defining a contaminated site, and to develop standards and criteria that over time will all be truly risk based, especially in relation to the standards of Schedule 4.

Consistent Ministry Decision Making

During the course of the *Waste Management Act* review, significant concerns were expressed about inconsistency in decision making among statutory decision makers. As a result, in all sections that allow for decisions to be made by a manager, statutory decision-making power has been transferred to a director. A director is allowed to delegate his or her powers to managers subject to terms and conditions, and this will provide consistency and accountability.

Fees

The tables of fees in Schedule 3 of the Regulation have been re-organized to help simplify the text in the body of the Regulation. In addition, the fee for a Site ID Site Registry search has been lowered to \$10 from \$25 in response to a number of comments from site Registry users. The fee for the ministry portion of an external contract review has been raised from 30% to 50%, to align it with the fee the ministry receives for applications processed by an approved professional. Note that all the external contract reviewers are also approved professionals.

Other Changes to the Regime

These are the key areas in which the policies and procedures for contaminated sites were changed on July 8, 2004. There are many other amendments that were made, mostly of an editorial nature to clarify wording or to strengthen the authority for specific provisions.

For more information, contact the Contaminated Sites Program, at (250) 387-4441. December 2004