
January 25, 2021

BULLETIN

**CHANGES TO CONTAMINATED SITES LEGISLATION
COME INTO EFFECT ON FEBRUARY 1, 2021**

The British Columbia Ministry of Environment and Climate Change Strategy (the “Ministry”) has made changes to the site identification process in the *Environmental Management Act* (“EMA”) and *Contaminated Sites Regulation* (“CSR”). The amendments come into effect on February 1, 2021, and intend to minimize administrative processes, improve clarity and ensure equal application of regulatory requirements across the province of British Columbia. The process for identifying contaminated sites will continue to operate, but it has undergone many improvements.

Current regulatory regime

Contaminated sites in BC are currently identified through site profiles that provide information about the past and present use of a site. The current *EMA* sets out triggers for submission of a site profile to the Ministry. Each site profile is reviewed to determine if further investigation of the site is required. The *CSR* sets out exemptions to the requirement to submit a site profile form, including local governments’ ability to opt out of the site profile.

Issues with current regime

Since the site profile process has been in effect, the following issues have been identified:

- The multi-step process is inefficient, confusing, and cumbersome for all parties involved in the process.
- Local governments’ ability to “opt out” results in an inconsistent system across the province.
- The triggers for initiating the process are too broad (for example, minor zoning changes, lot line adjustments). A “release” procedure may delay the process.
- Director’s responsibility to determine whether site investigation is required unduly delays the process.
- Completing the site profile form by any “person” may result in an inaccurate or unreliable declaration.
- Some exemptions to the process are unclear or outdated, leading to inconsistencies in the process.
- Options for enforcement of requirements are limited.

Key Changes made to *EMA*

- Replacing the definition of “site profile” with the definition of “site disclosure statement” and introducing a new definition of “specified industrial or commercial use”.
- Simplifying the conditions under which a site disclosure statement is required to be submitted for specified industrial or commercial uses.
- Specifying that a site disclosure statement form completed for the purpose of municipal permits, for developments where soil will be disturbed, must be submitted to the municipal approving authority and then forwarded by them to the registrar.
- Specifying that a site disclosure statement is to be submitted to the registrar instead of the director.
- Specifying that every person who is required to provide a site disclosure statement must automatically complete a site investigation and submit an investigation report.
- Including responsibilities of the “operator” of the property in addition to those of the “owner”.

Key Changes to *CSR*

- Specifying a person who is required to provide a site disclosure statement: the owner or operator of the site or their designated agent.
- Removing the “opt out” exemption. Municipalities will have to engage in the site identification process.
- Clarifying additional exemption, such as:
 - for zoning, where the land is being used for a specified industrial or commercial use; and
 - for development or building permits, where it is for the purpose of minor adjustment such as demolition, installing or replacing underground utilities, installing or replacing fencing or signage, paving, and landscaping.
- Revising the definition of “decommissioning a site and adding a new definition for “ceasing operations”.
- Requiring that the owner or operator of the site submits a site disclosure statement within six months of decommissioning a site or ceasing operations.

Impact on Local Governments

The amendments significantly affect local governments. Effective February 1, 2021, local governments will no longer be able to opt out of the site profile system. Those local governments who had previously opted out will need to implement a site profile process. Those local

governments who have a site profile system will need to implement new or amend existing procedures.

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