



Ministry of
Environment

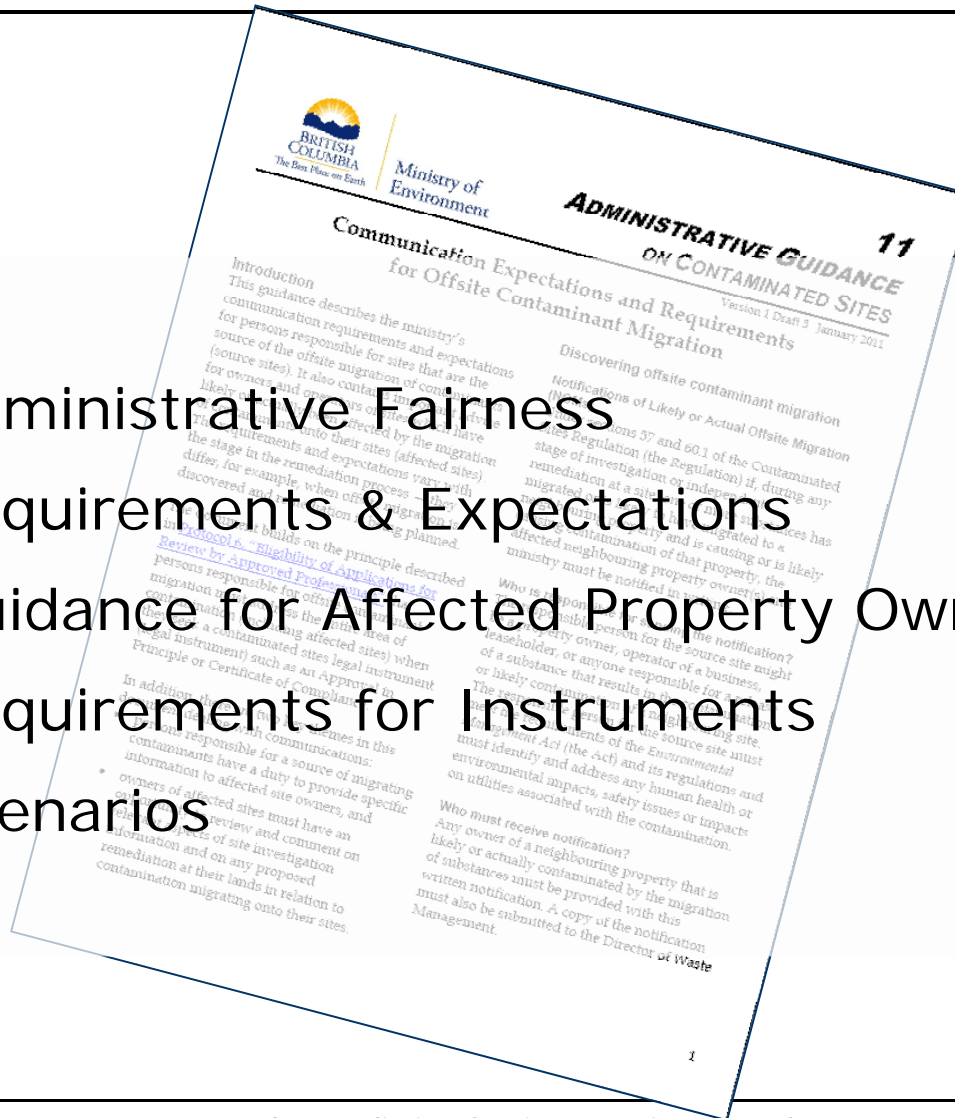
Administrative Guidance 11

Expectations and Requirements for Offsite Contaminant Migration

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Contaminated Site Approved Professionals
Professional Development Session
October 26, 2011

- Administrative Fairness
- Requirements & Expectations
- Guidance for Affected Property Owners
- Requirements for Instruments
- Scenarios



- Fairness
- Due process

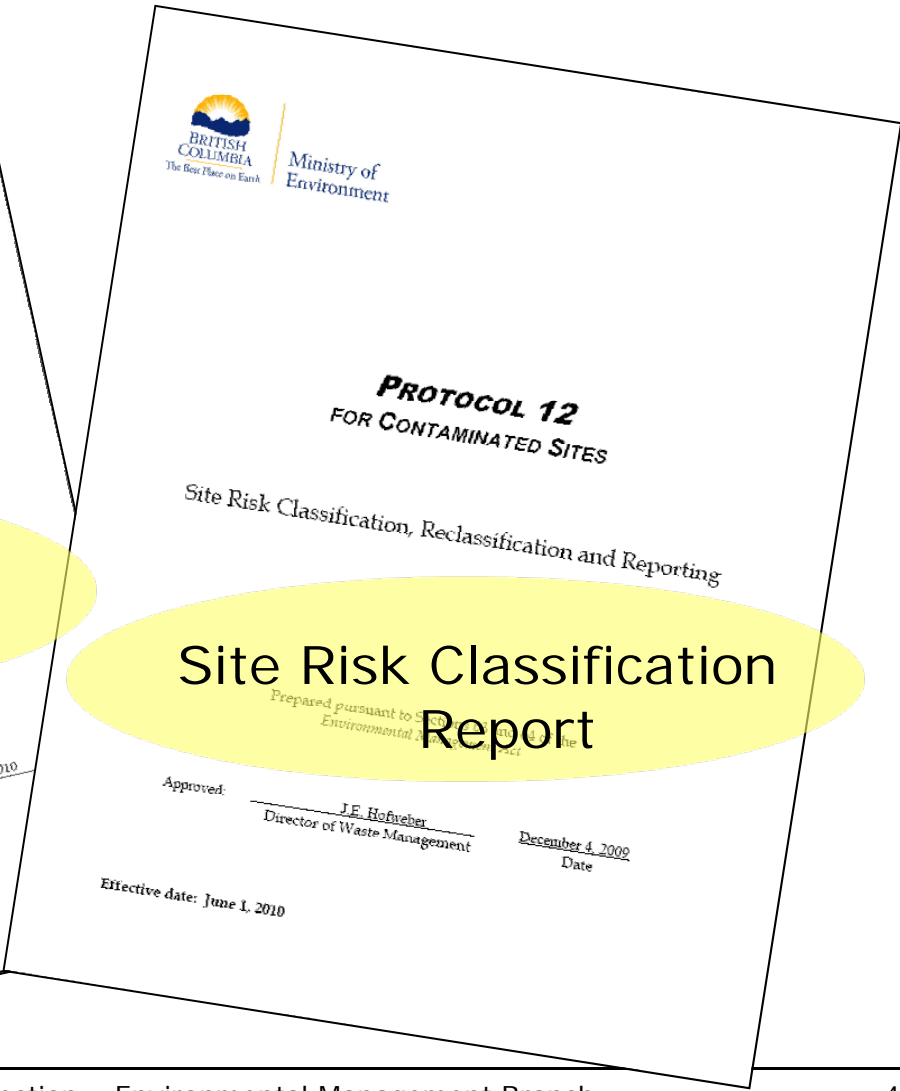
In the context of offsite migration, the Director must:

“ensure that owners of affected parcels have an opportunity to review and comment on relevant site investigation information and on any proposed remediation in relation to contamination migrating onto their land.”

“allow adequate time for affected parties to review information and consider any comments received before making any decisions.”

Requirements – Source Site Owner

CSAP Workshop
Oct 2011





Investigation Requirements

"Any application for a Determination of Contaminated Site, Approval in Principle or Certificate of Compliance must address the entire area of contamination (including affected sites)"

Requirements – Source Site Owner

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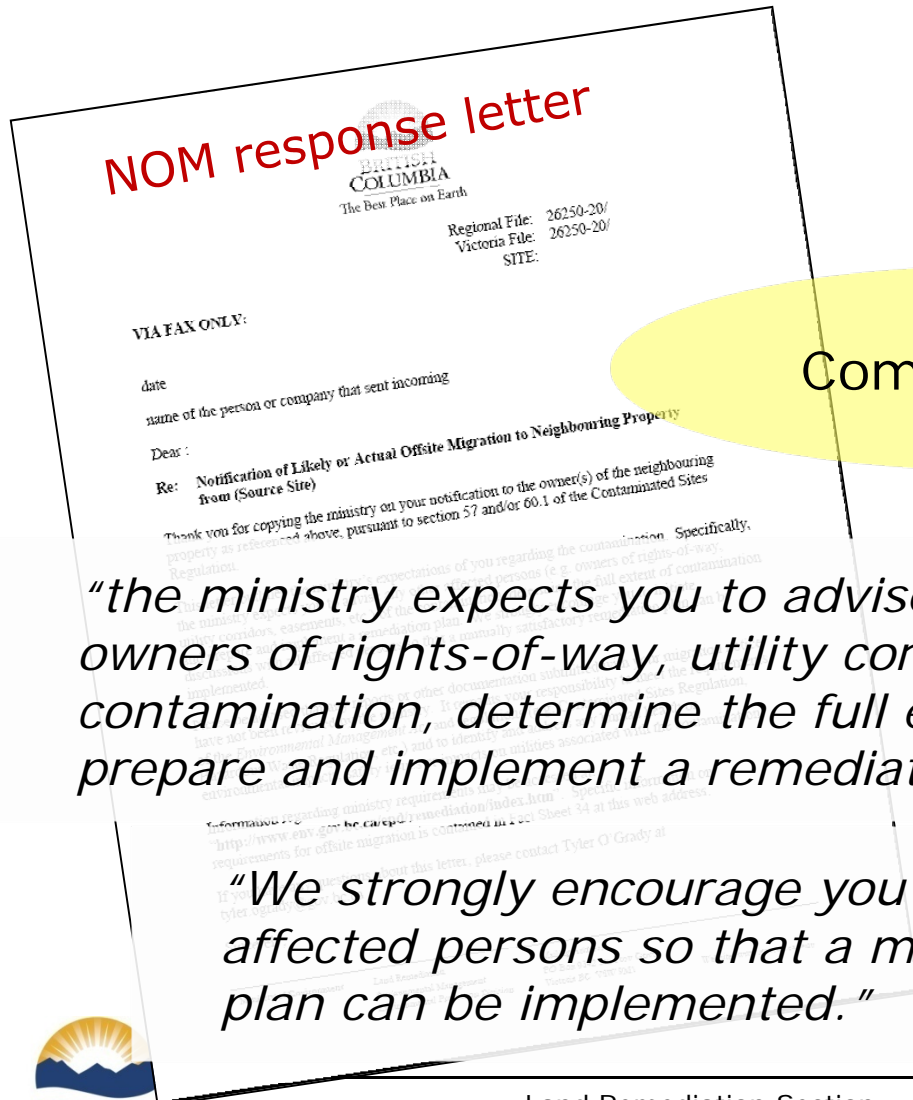
Investigation Requirements

A DSI must:

"Identify the specific areas, depths and degree of contamination on the site including areas and extent of migration if applicable..." (CSR, 59(2)(b))

Expectations – Source Site Owners

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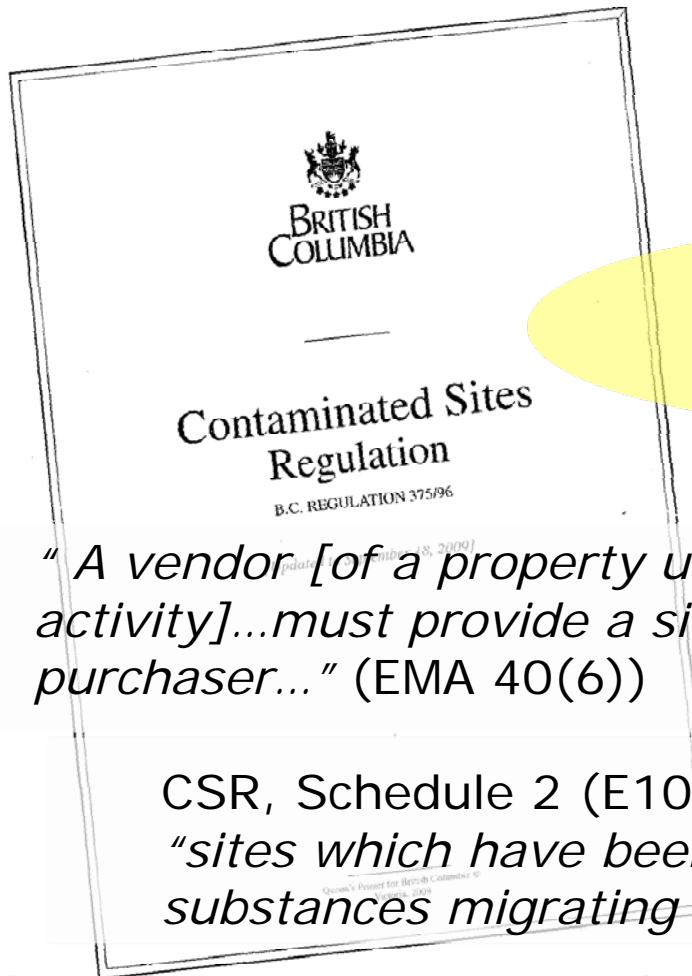
Communication

"the ministry expects you to advise other affected persons (e.g. owners of rights-of-way, utility corridors, easements, etc.) of the contamination, determine the full extent of contamination and prepare and implement a remediation plan."

"We strongly encourage you to initiate discussions with all affected persons so that a mutually satisfactory remediation plan can be implemented."

Requirements – Affected Property Owner

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Site Profiles

"A vendor [of a property used for a prescribed purpose or activity]...must provide a site profile to a prospective purchaser..." (EMA 40(6))

CSR, Schedule 2 (E10)

"sites which have been or likely have been contaminated by substances migrating from other properties"



Site Registry

"a director must provide the registrar with information respecting...a notification of substance migration or likely migration;" (CSR, Section 8, Site Registry)

Guidance for Affected Property Owners

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- Consider retaining a qualified environmental consultant and lawyer
- Request information from the source site owner relevant to their site:
 - All technical reports
 - Notifications (NIR, SRCR)
 - Source site owner's remediation intentions
- Review information on the ministry's web site
- Note posting of their site on the Site Registry
- Note their rights, obligations and liability exposure
 - Site profiles (EMA, 40(6))
 - Liability exemption for owner's of sites contaminated only by contaminant migration (EMA, 46(1)(j))

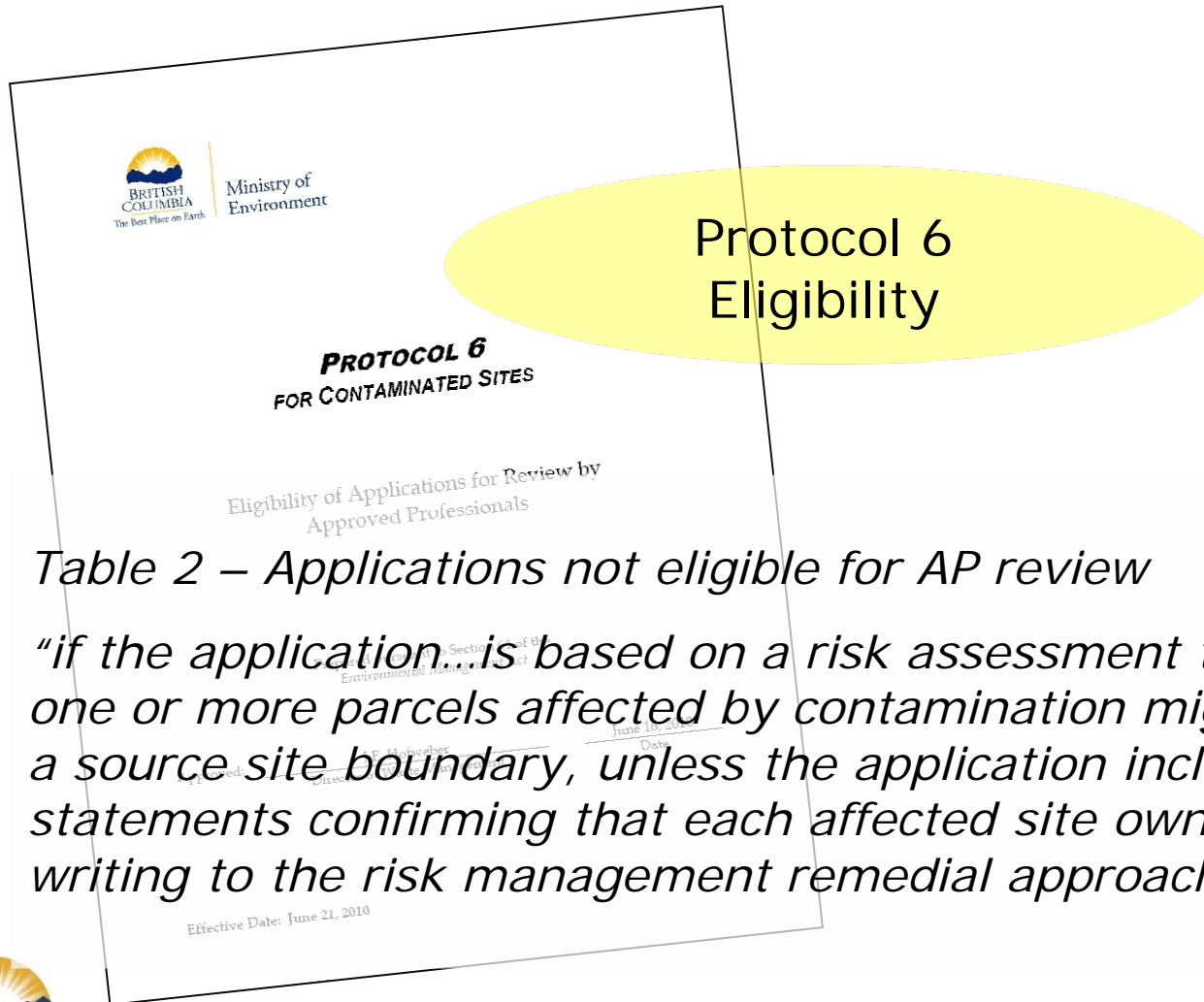
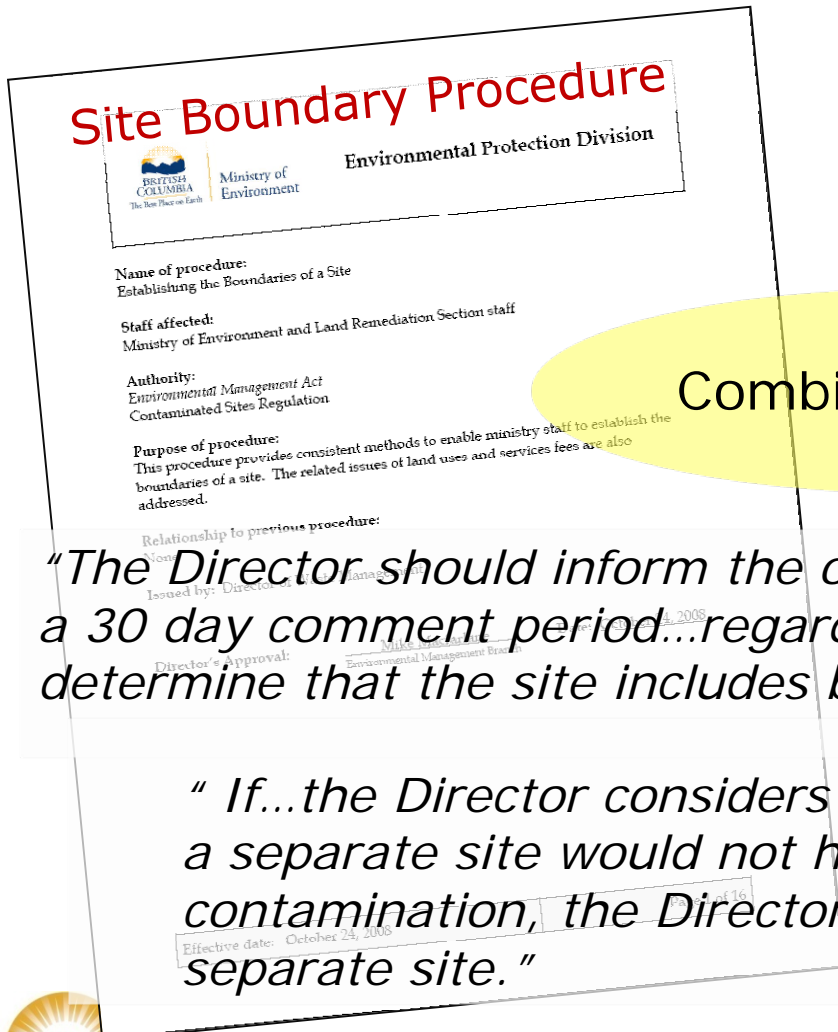


Table 2 – Applications not eligible for AP review

“if the application is based on a risk assessment that includes one or more parcels affected by contamination migrating beyond a source site boundary, unless the application includes written statements confirming that each affected site owner agrees in writing to the risk management remedial approach.”



Communication - Purpose -

“The ministry must determine in their review of applications for offsite properties that:

- the assumptions of the risk assessment are appropriate
- present and reasonable future land and water uses have been considered, and
- any land use restrictions or ongoing risk-management actions required on offsite lands are achievable and appropriate.”

from Ministry correspondence with instrument applicants

Communication - Requirements -

“This requires communication and information sharing between the source site owner and affected property owners. The ministry seeks to verify that responsible parties have:

- shared all relevant site information with affected property owners,
- communicated around the risk assessment assumptions and risk management implications, and
- tried to obtain input and agreement from the affected property owners.”

from Ministry correspondence with instrument applicants

- An applicant for an instrument for an affected property must provide to the affected property owner:
 - All site investigation, site risk classification, and remediation results for the affected property.
 - A basic description of the proposed or actual remedial approach (e.g., risk management) for the affected property.
 - A description of the regulatory closure process intended for the affected property including information on:
 - whether a numerical or risk-based instrument will be sought,
 - the long term risk management restrictions and obligations for the source site owner and affected property owner under the proposed instrument(s), and
 - whether the applicant is seeking a combined or separate instruments for the source site and affected property.

(Appendix 2)

- The applicant expected to provide to the affected property owner by registered letter, information in Appendix 2, with opportunity provided for written comment.
- If no response received within 30 days, the applicant should attempt to contact the affected property owner by phone, email or face to face.
- Following contact, the applicant to request written comment on the registered letter.
- Application may be submitted after 30 days following the second request for comment.

- The applicant must provide the ministry with a record of communications for all instruments for affected properties. The communication record must:
 - confirm that the above information was provided to each affected property owner or operator,
 - summarize responses from each affected property owner including how concerns raised were addressed (or, if not explain why), and
 - identify whether each affected property owner agrees with the issuance of any instrument(s) that combine(s) one or more affected properties with the source site.

Scenario 1 – Combined Instrument

An affected property owner does not agree with combining the affected property with the source site under a single instrument.

→ Director would not issue a combined instrument

Scenario 2 – Refused Access, Investigations Complete

An affected property owner has refused access for investigations but investigations and risk assessment could be completed. No comments received.

- ➔ Director would consider whether or not to issue the instrument based on validity of technical arguments.
- ➔ Director might send the draft instrument to the affected property owner for 30 day comment period.
 - If no comments, instrument would be issued,
 - If comments oppose instrument, Director would consider the comments and decide whether or not to issue the instrument based on validity of comments.

Scenario 3 – Refused Access, Investigation Incomplete

An affected property owner has refused access for investigations on his or her property and there is not enough information to complete a risk assessment or remediation plan.

- ➔ Director would not issue instrument for the affected property.
- ➔ Director may issue instrument for the source site.
- ➔ Director might send notice to the affected property owner for 30 day comment period.
 - If no comments, instrument would be issued,
 - If comments, Director would consider the comments and decide whether or not to issue the instrument based on validity of comments.

Scenario 4 – No Agreement, Investigation Complete

An affected property owner opposes the remediation approach, but there is enough information obtained to complete a risk assessment and remediation plan for the affected property.

- ➔ Director would consider whether or not to issue the instrument based on validity of arguments presented.
- ➔ Director might send the draft instrument to the affected property owner for 30 day comment period.
 - If no comments, instrument would be issued,
 - If comments oppose instrument, Director would consider the comments and decide whether or not to issue the instrument based on validity of comments