



Ministry of
Environment

Possible Amendments

Environmental Management Act Contaminated Sites Regulation

Dr. John E.H. Ward

CSAP Society Professional Development Workshop
October 26, 2011

Key topics

- Main features of the B.C. contaminated sites legal regime
- Background on legal policy development
- Possible amendments to the Contaminated Sites Regulation
- Possible amendments to the *Environmental Management Act*
- New *Site Remediation Act*?

Legal regime for contaminated sites



Key legal features

- Parts 4 and 5 of *Environmental Management Act* plus entire Contaminated Sites Regulation
 - Staged identification, assessment and cleanup provisions
 - Provisions to certify site cleanups
 - Tools for access to site information
 - Flexible, scientifically-based standards
 - Extensive rules on liability
 - Guidance on independent remediation
 - Requirements for offsite migration
 - Extensive reliance on Approved Professionals
 - Cost recovery fees to offset our costs

Background on legal policy development

Drivers for change

- Internal developments
 - Commissioned report follow up
 - Site boundaries procedures
 - Procedures for affected sites consultations
 - MOU with Oil and Gas Commission
- External developments
 - National policy on remediation liability
 - B.C. appeals and court cases
 - Trends in other jurisdictions
 - Increasing number of wide area sites

Background on legal policy development


OFF-SITE MIGRATION OF CONTAMINATION IN BRITISH COLUMBIA: REVIEW AND RECOMENDATIONS

Prepared for:
Ministry of Environment, British Columbia


June 16, 2006

Prepared by:

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Background on legal policy development

Offsite migration review

Options and 31 recommendations

- For changing the notification system (11)
 - For utilities issues (6)
 - For part-site approvals (8)
 - For liability (7)
-
- Report released for public comment in late 2007
 - Comments received, compiled and analyzed
 - Now awaiting opportunity for amendments

Background on legal policy development



Institutional Controls in British Columbia:

A Review of Current Practices and
an Evaluation of Program
Amendment Options

FINAL REPORT

Submitted To:
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Ministry of Environment
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March 31, 2006

Background on legal policy development

Institutional controls review

“institutional control” means a method for controlling the potential for adverse effects on human health or the environment from contamination at a contaminated site by imposing legal or administrative requirements that limit

- (a) the use of soil, water, sediment or a resource at the site, or
- (b) access to the site.

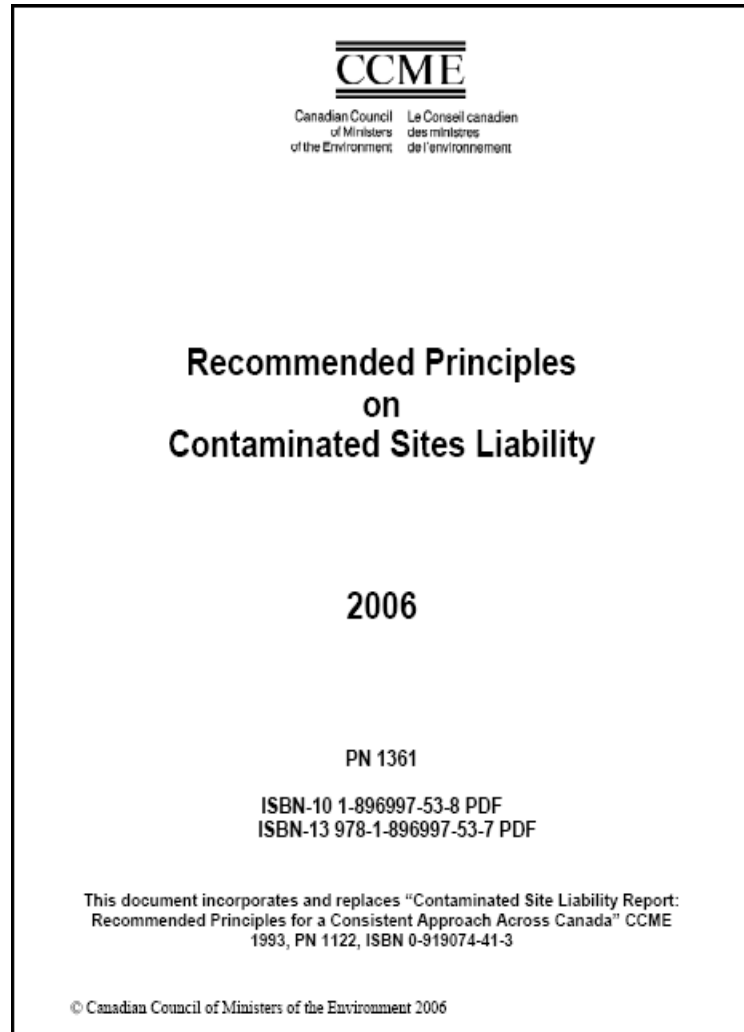
“engineering control” means a method for controlling the potential for adverse effects on human health or the environment from contamination by use of a technology that controls or contain the migration of a substance or prevents, minimizes or mitigates environmental damage from a release of a substance.

Background on legal policy development

Institutional controls review

- Recommendations and options in 7 areas
 - Sole reliance on covenants
 - Sole reliance on contaminated sites legal instruments
 - External inspection and certification
 - Improve tracking
 - Tighten site profile system where instruments have conditions
 - Publish additional protocols and guidance

Background on legal policy development



Background on legal policy development

Remediation Liability Review

- 14th remediation liability principle adopted by Canadian Council of Ministers of the Environment (CCME) in 2006
 - In response to 2003 NRTEE report recommendation to “provide for termination of regulatory liability”
 - Found to be a key barrier to redevelopment
- Deals with liability transfer between sellers and buyers of land
 - Idea is to extinguish the liability of sellers

Background on legal policy development

Remediation Liability Review

- Currently under EMA owners who sell their land retain liability for remediation
- Implementation would require “assurances” for any needed future remediation, e.g. financial security
- Options for implementation of principle in legislation to be guided by commissioned Opper & Varco report

Background on legal policy development

**ENVIRONMENTAL LIABILITY TRANSFER
IN BRITISH COLUMBIA**

**EVALUATION AND RECOMMENDATIONS FOR
OPTIONS TO IMPLEMENT THE 14TH PRINCIPLE**

FINAL REPORT

MARCH 31, 2008

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Possible amendments to the Regulation

Ministerial Order amendments possible

- Environmental quality standards
 - Update Schedule 4
 - New industrial land use human health standards in Schedule 5
 - Changes to iron and manganese drinking water standards pending results of working groups
 - New toxicity equivalency factors (TEFs) for coplanar (dioxin-like) PCBs
 - Use WHO instead of NATO TEFs for polychlorinated dioxins and furans
 - Many editorial corrections

Possible amendments to the Regulation

Ministerial Order amendments possible

- Site profiles
 - Address loopholes in existing exemptions
 - Allow metes and bounds description of land
 - Editorial corrections
- Soil Relocation Agreements
 - Fine tune exemptions, including relocation to Federal land
 - Include wildlands land use
- Summaries of Site Condition
 - Under review

Possible amendments to the Regulation

Order-in-Council amendments possible

- Wide area sites
 - Allow legal instruments for wide area sites to be issued without formal designation of site as wide area site

Possible amendments to legislation

Parts 4 and 5 of EMA

- Proposed amendments to contaminated sites provisions accommodate
 - Key new policy initiatives
 - Housekeeping needs
- Timing of amendments is uncertain

Possible amendments to legislation

Parts 4 and 5 of EMA

Key new policy initiative

- Implement Speech from the Throne commitments supported by the B.C. Brownfields Renewal Strategy
- Adopt new 14th CCME liability principle for contaminated sites

Owners of a contaminated site would have the capacity to transfer remediation liability to purchasers

Possible amendments to legislation

Parts 4 and 5 of EMA

Housekeeping proposals

- Simplify site profile provisions
 - Delete two triggers (demolition, soil removal)
 - Automatic requirements for site investigation
- Consolidate in the Contaminated Sites Regulation
 - Persons not responsible for remediating contamination
 - Items which must be noted on Site Registry
 - Part 5 – Remediation of mineral exploration sites and mines

Possible amendments to legislation

Parts 4 and 5 of EMA

Housekeeping proposals

- Address lack of clear protection for affected site owners if substances flow through their parcels and contaminate downgradient parcels
- Delete minor contributor provisions
- Replace allocation panel provisions with binding arbitration
- Introduce feasibility studies
- Introduce supplemental environmental projects (offsets)

Possible amendments to legislation

Parts 4 and 5 of EMA

Housekeeping proposals

- New section for contaminated sites instruments (e.g., Certificates of Compliance)
- Create offence not to comply with a condition in an instrument
- Conditions in instruments “run with the land”

Possible amendments to legislation

Parts 4 and 5 of EMA

Housekeeping proposals

- Exempt contaminated sites from onsite hazardous waste provisions
- Address site profile “freeze and release” loophole for persons obtaining a release with an Approval in Principle (where a site profile is required) and then not proceeding

Possible new statute – *Site Remediation Act*

What could be improved?

- Fundamental principles not always provided
- Stigma associated with label “contaminated site”
- Little focus on social outcomes, e.g. brownfields
- Cabinet and Minister involved in many scientific and technical details
- Confusing, overlapping provisions for discharge authorizations and hazardous waste
- Cumbersome provisions , e.g., site profiles and soil relocation

Possible new statute – *Site Remediation Act*

How might new legislation look?

- A thinner Act, a thicker Regulation
- Similar provisions located in one place
- Fundamental principles clearly spelled out
- Fewer decision points and transactions
- Offsite migration issues clearly addressed
- Measures to prevent contamination with new pollution prevention provisions
- Streamlined legislative model
 - Site screening provisions simplified
 - Soil relocation provisions simplified

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Contaminated Sites e-Link Mailing List

The CS e-Link system notifies subscribers about ministry contaminated sites information, on-line documents, news and announcements. Also, it is a rapid message system to inform subscribers of developments in contaminated sites management in the province, and about other contaminated sites resources and references available on the Internet.

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- » Site Risk Classification
- » Approved Professionals
- » Independent Remediation
- » Site Profiles
- » Real Estate
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- » Offsite Migration
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Land Remediation

Welcome



Two of our Senior Contaminated Sites Officers sample effluent for a trout bioassay.

The Land Remediation Section administers the provisions for the investigation and remediation of contaminated sites in British Columbia under the *Environmental Management Act* and Contaminated Sites Regulation.

Our section focuses on the remediation of brownfields, orphan sites and complex, high risk contaminated sites, and facilitates the remediation of low and medium risk sites. We also manage the Site Registry, provide operational and procedural contaminated sites guidance, and administer the site screening process using site profiles.

Through collaboration with communities, public organizations, other agencies and private parties, we strive to support development opportunities, protect human health and the environment, and keep our province healthy and beautiful.

Our Mailing Lists

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Key Topics

- » Information on Sites
- » Residential Heating Oil Storage Tanks
- » Our Services
- » Site Risk Classification
- » Approved Professionals
- » Independent Remediation
- » Site Profiles
- » Real Estate
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Thank you!

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<http://www.env.gov.bc.ca/epd/remediation/>