



Update on MOE-led Brownfield Renewal Initiatives

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Ministry Roles for Brownfields in BC



Regulation of contaminated sites investigation and clean up (“*regulator*”) and BC Brownfield Renewal Strategy partner.

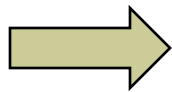


Management of provincial Crown responsibilities at contaminated sites (“*responsible person*”) and BC Brownfield Renewal Strategy lead.

B.C. Brownfield Renewal Strategy



National
Brownfield
Strategy
(NRTEE)



1. Environmental liability and risk management
2. Financial investment
3. Capacity building and education
4. Leading by example on Crown sites

MOE-led Brownfield Strategy Initiatives

1. Remediation liability transfer
2. Prevention of contaminated sites
3. *EMAct* streamlining – short term
4. *EMAct* streamlining – longer term
5. Local government workshops/hotline (co-lead w/ MAL)

Remediation Liability in BC

In 1997, principles of remediation liability were enacted based on the CCME national principles including 'polluter pays':

- **Absolute** (strict): liability may exist without fault
- **Joint and separate**: if two or more parties contributed to the release and unless a party can show that the injury or harm at the site is divisible, any one or more of the parties may be held liable for the entire cost of the clean up
- **Retroactive**: liability may exist even if contamination occurred before 1997

Responsible Persons in BC

- RPs can include current and previous **owners** or **operators** of a site, **producers** or **transporters** of contaminating substances at a site.
- Numerous **exemptions from responsibility** including:
 - innocent acquisition; did not cause
 - migration of contamination from offsite
 - involuntary acquisition (govt body)
- The *EMAct* “**casts a wide net**” in defining who is an RP, which can contribute to creating uncertainty in the brownfield redevelopment marketplace.

What we've heard previously about liability

- "Provide clarity, certainty, and closure with respect to liability..." - *Minister's Panel on Contaminated Sites (2003)*
- "The concern over liability creates a log jam... there is a high reluctance to sell property to put back into operable use" - *Canadian Petroleum Products Institute (2006)*
- "... future liabilities cause concerns and should be addressed" - *BC Brownfield Renewal Advisory Group (2007)*

Existing Liability Allocation/Capping/Transfer Mechanisms in BC's *EMAct* include...

- **Private agreement** (ref. EMA s. 48)
 - for the purposes of a remediation order, a director shall "... take into account private agreements between or amongst responsible persons respecting liability for remediation..."
- **Voluntary remediation agreement** (ref. EMA s. 51)
 - "If a responsible person enters into and performs a voluntary remediation agreement... the responsible person is discharged from further liability"
- **Minor contributor** (ref. EMA s. 50)
- EMA Part 5 **transfer agreements/indemnifications** (mineral exploration sites and mines)

Note: EMAct **Certificates of Compliance** generally do not provide liability protection (except, e.g., EMA 46(1)(m))

Liability Review Approach

- National Brownfield Association (Canada) provided with a grant to undertake research and stakeholder consultation to develop advice towards **increased flexibilities for remediation liability transfer**
- Work includes...
 - consideration of options to implement CCME 14th principle of liability
 - consideration of both legislative and non-legislative approaches
 - preparation of discussion paper and broader stakeholder consultation later in 2009

Project Strategy - Divide and Conquer

- **Cleanup cost liability**
 - cost to achieve cleanup contemplated by approved remediation plan, as necessary for certification
- **Ongoing operation and maintenance liability (O&M)**
 - cost to maintain non-permanent “works”, post-certification
- **Institutional and engineering control liability (IC/EC)**
 - cost to maintain and cost due to failure (longer term)
- **Third party (civil) cost recovery liability**
 - risk of future liability: cost recovery; offsite migration
- **Government “re-opener” (regulatory) liability**
 - risk of future liability (e.g., undiscovered releases, new threat to human health or environment)

Options for Remediation Liability Transfer

- Some of the options that have been identified and are presently being considered:
 - Having ministry instruments (e.g., CoCs) run with the land
 - Statutory liability relief upon achieving a CoC (analogous to Ontario's RSC)
 - Various combinations and extents of liability relief for vendors and purchasers of remediated brownfields
 - Creation of a third-party legal entity (e.g. a risk management/assurance organization) to which some or all components of remediation liability could be transferred for a price

Options for Remediation Liability Transfer

- Some questions that have arisen during the study to date:
 - To what extent are liabilities perceived as opposed to real? Would actions to increase knowledge about remediation liability lessen prevailing fears?
 - What are the key shortcomings of existing liability capping and transfer mechanisms? Would adjustments to these be helpful, or are new mechanisms necessary?
 - Are there circumstances and conditions under which the Province should consider taking on a calculated amount of additional risk in order to encourage more brownfield redevelopment and the environmental, economic, and societal benefits that result?
 - How do we best balance the following?
 - Upholding polluter-pay principle
 - Stakeholder desire for greater certainty and closure

Prevention of Contaminated Sites

- CCME report on national remediation liability principles concluded by recommending attention also be paid to prevention of contaminated sites.
- Work includes...
 - review of existing regulatory and other provisions requiring/encouraging prevention;
 - review of other jurisdictions' approaches;
 - development of options to enhance or add to existing provisions
 - consideration of both legislative and non-legislative approaches
- Stakeholder consultation (discussion paper)

EMAct Streamlining – Phased Approach

■ Phase 1

- A variety of ongoing initiatives designed to increase certainty for brownfield stakeholders regarding technical and administrative/process requirements. Examples include...
 - Technical protocols, procedures, guidance (screening RA; site risk classification; groundwater guidance; etc.)
 - Administrative guidance (site profile procedure; site boundaries procedure; etc.)

■ Phase 2

- A longer term look at the *Environmental Management Act* and Contaminated Sites Regulation to identify opportunities for improving overall clarity of statutory and regulatory language and further streamlining of processes.

Local Government Workshops/Hotline

- **Local Government Workshops**
 - Web-based and in-person educational, awareness, and capacity building sessions for local government audiences including their project partners.

- **Local Government Hotline**
 - Convenient, single-point access to provincial government expertise and resources regarding brownfields and brownfield redevelopment.



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