

## Administrative Guidance 11, “Expectations and Requirements for Contaminant Migration”

Document Section(s)	Issue	Stakeholder Comments/Recommendations	Ministry Response
	General	<p>There is no statement with respect to application to sites where Notification of Likely or Actual Migration has already been provided.</p> <p>The document should state that this guidance does not apply to sites where Notification of Migration has already been filed.</p>	<p>This document addresses communication issues for a range of contaminated sites provisions in the <i>Environmental Management Act</i> (the Act). Once it is known that substances have migrated to a neighbouring parcel, site investigations, and perhaps remediation and certification of the remediation is required. The ministry wishes to provide guidance for all these phases of the contaminated sites regime in the context of migrating contaminants.</p>
	General	<p>Does the Ministry intend to be more involved with independent investigation/remediation where non-high risk offsite migration exists?</p>	<p>The ministry’s service plan requires that the Land Remediation Section oversee the remediation of high risk sites. Currently that is being achieved with the use of Site Risk Classification Reports which are submitted with most Notifications of Independent Remediation and Notifications of Migration. For the non-high risk migration situations, we generally advise the parties involved to settle their disputes cooperatively or to rely on the provisions of the Act which allow affected parcel owners to recover the costs of remediation in the courts.</p> <p>The Land Remediation Section is considering tracking independent remediation of non-high risk sites for compliance verification purposes and to verify public records related to independent remediation in the Site Registry.</p>
	General	<p>Affected parcel owners should be provided a copy of the draft instrument and any changes made by the province prior to final instrument being granted. The affected parcel owners need to have a chance to comment on the proposed remediation especially if it may affect their business operation or future development on the site or other parties already using site (i.e., roadways and underground utilities). As such I do not agree with only letting affected parties know of the instrument requirements etc at the final stage.</p>	<p>We agree with this comment. As part of the administrative fairness requirements described on page 1 of the guidance, in general, a Director has the responsibility to provide notice (and an opportunity to comment) to those who may be significantly affected by a decision to issue a contaminated sites legal instrument. Some additional text has been added to the administrative fairness requirements on page 1 to reflect this.</p>
	General	<p>When conducting a risk based assessment on an affected owner, future land use as defined in current local government Official Community Plans or Neighbourhood Concept plans are not considered. This could significantly</p>	<p>In deciding whether to issue a contaminated sites legal instrument requested by a source parcel owner for an affected parcel, a Director must</p>

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		<p>hinder the affected owner’s ability to develop the land as outlined by a local government’s direction especially if development processes have commenced. Often the source parcel owner cleans their site for their own benefit but the adjacent sites are left in a lesser state. The remediation should not devalue the affected party’s potential especially if zoning and land use plans have been adopted for an area.</p>	<p>consider the impacts on those associated with the affect parcel. Those impacts include the current and reasonably anticipated future uses specified in section 12 (5) of the Contaminated Sites Regulation. Such decisions are made on a case-by-case basis in light of the specific facts and typically only after the views of significantly affected parties are made known to the Director.</p> <p>The primary role of the Director is to ensure that human health and the environment are protected. This can be achieved either through adherence to the numerical or risk-based remediation standards. If an affected parcel owner wants his or her parcel remediated to the numerical instead of the risk-based standards, the affected parcel owner can seek compensation from the source parcel owner for the costs of additional remediation to the numerical standards.</p>
	General	<p>In my experience, complications associated seeking written approval from affected parcel owners and in turn, not obtaining written approval, has resulted in many applications for risk-based instruments for non-high risk sites being submitted directly to ministry for review. If the intent of ministry is to provide guidance for communication requirements and record keeping for applications to be processed via Protocol 6 and there are not ‘legitimate’ concerns by the affected parcel owner, then in the long term this should result in more risk-based applications being processed via Protocol 6 and CSAP. However, in the short term there may be a lower number of applications processed via Protocol 6 due to delays in obtaining the required information from affected parcel owners in order to satisfy ministry requirements for applications submitted via Protocol 6. In general, the communication requirements outlined in the ministry Document are considered reasonable and practical in most instances.</p>	<p>The ministry agrees with this assessment.</p>
	General	<p>In cases where the affected land owner refuses to provide access and the source parcel owner/responsible person completes characterization/ delineation at the perimeter of the affected parcel, it is unclear from the ministry Document whether the responsible person needs to obtain ministry preapproval before an application can be processed via Protocol 6 or do such applications need to be processed via ministry review process.</p>	<p>Version 8.0 of Protocol 6, Eligibility of Applications for Review by Approved Professionals” has been released at the same time as Version 1 of Administrative Guidance 11. Under the new version of Protocol 6, preapproval is required before an application comes to the ministry with the recommendation of an Approved Professional if the full extent of contamination cannot be or is not</p>

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			<p>delineated. In this example, access to an affected parcel is not provided and delineation is attempted by testing at the perimeter of the affected parcel. Once preapproval is obtained, normal processing could continue by submission of an application for a contaminated sites legal instrument with the recommendation of an Approved Professional.</p>
	<p>General</p>	<p>The source parcel owner is expected to provide the affected parcel owner in writing by registered letter, the information in Appendix 2 item 2 in the ministry document. It is unclear under circumstances when the affected property owner fails to respond within 30 days following the second attempt at communication, whether the application for an instrument can be processed via Protocol 6 or whether such applications require ministry preapproval or whether they are to be reviewed and processed by ministry.</p>	<p>Version 8.0 of Protocol 6 deals with this issue. — the requirements for preapprovals are provided in Table 2 of that document. In the situation where the full extent of contamination cannot be delineated and remediated, preapproval before submission of an application for a contaminated sites legal instrument with the recommendation of an Approved Professional would be required.</p>
	<p>General</p>	<p>I am the delegated member for a performance assessment that is underway. One of the issues raised by the panel members is a condition in the CoC (and an assumption in the risk assessment) that potential new buildings on adjacent lands be built at grade. We don't think that such a condition can be included without the written consent of the adjacent landowners. Could you confirm ministry's policy?</p> <p>The application for the affected property is in fact risk-based. We have been providing advice for some time now (2 CSAP Society performance assessment sessions) regarding communication requirements where risk-based remediation is used for affected properties so the response will be straightforward.</p>	<p>In preparing the Certificate of Compliance we would expect that the Approved Professional would have determined by contacting the applicable approving officer or local government what zoning currently exists and/or has been applied for. The soundness of the condition that structures be built at grade could be determined in part by finding out if homes in the neighbourhood presently have basements.</p> <p>In this situation, the conditions in the instrument apply to the applicant, rather than the owner of the adjacent land owner. If a condition is not complied with, the CoC would be invalidated and there would be no consequence for those responsible for the affected parcel.</p> <p>In deciding whether to issue a contaminated sites legal instrument requested by a source parcel owner for an affected parcel, a Director must consider the impacts on those associated with the affect parcel. Those impacts include the current and reasonably anticipated future uses specified in section 12 (5) of the Contaminated Sites Regulation. Such decisions are made on a case-by-case basis in light of the specific facts and typically only after the views of significantly affected parties</p>

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			<p>are made known to the Director.</p> <p>The primary role of the Director is to ensure that human health and the environment are protected. This can be achieved either through adherence to the numerical or risk-based remediation standards. If an affected parcel owner wants his or her parcel remediated to the numerical instead of the risk-based standards, the affected parcel owner can seek compensation from the source parcel owner for the costs of additional remediation to the numerical standards.</p>
	General	Our members are concerned that the continual layering of additional guidance requirements adds complexity to site remediation in BC.	We are sympathetic to concerns about growing complexity. Many of the sections in this document stem from the requirements of “administrative law” (which includes procedural fairness provisions) which a Director is required to follow in performing his or her duties under the Act. This guidance is intended to clarify these requirements for all stakeholders.
Page 1	Who must be provided notification	<p>It is our position that Notifications of Migration are not required to be submitted to tenants and lessees. Section 60.1 of the Regulation states that notification must be provided to the “person who owns the neighbouring site”. If “owner” as it is defined in the EMA, or person “with ownership interest” as defined in the CSR was intended (thus including tenants and lessees), CSR s. 60.1 would use those defined words. The broader definition of “owner” that includes tenants and lessees is meant to apply to broaden liability for contaminated sites, and not add additional Notification of Migration requirements. For example, where there is migration under a residential apartment building, a Notification of Migration is provided to the owner on title to the property and not individual tenants. It may be difficult to identify tenants and lessees in the timeline provided, where the person who owns the land is easily identified with a title search</p> <p>This section should be revised to align with the definitions of the Act and Regulation. The terms: “owner of neighbouring site”, affected parcel owner should be replaced with “person(s) who own the affected parcel or person(s) who own the neighbouring site” throughout this guidance document to clarify that an owner in this case, do not include tenants and lessees, for instance.</p>	The commenter may wish to consider the provisions of the provincial <i>Interpretation Act</i> which indicates in section 28 (4) that “if a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings.” Thus the phrase “person who owns” would be expected have the same meaning as “owner.” The commenter is encouraged to seek legal advice about interpretation of the legislation.

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Page 2	Investigating contaminant migration - Information provided by source parcel owners to affected parcel owners	The timing for the requirement to provide the affected parcel owner with the information related to human health and ecological risks from exposure to the contamination at the affected parcel under present and anticipated future uses seems unclear. If the Ministry’s expectation is that this information be provided to the affected parcel owner at the same time a site investigation report summarizing investigation results are provided, this expectation may be unreasonable as additional investigations and/or information for the affected parcel may be required to assess human health and ecological risks. Also, the source parcel responsible person is expected to convey information on safety issues and impacts on utilities at the affected parcel. Information (such as depth to utilities, building foundation depth, etc.) may not be available and the affected parcel owner may not allow access to the affected lands or be willing to provide such information. Therefore, it may not be reasonable to expect a responsible person to convey information on health and/or safety risks in such cases at the time a site investigation report is provided to the affected property owner.	<p>As with all guidance provided by the Land Remediation Section, consultants and clients are welcome to propose and use alternate methods as long as those methods are backed up by strong written rationale provided to the ministry at the time of application for a service such as the provision of a contaminated sites legal instrument. Whatever communications do occur, the ministry expects that a complete package of communications records is available at the time an application.</p> <p>The demonstration of health and safety risks need not be complicated. In some cases a statement that a standard is exceeded or upper cap values are exceeded or projected to be exceeded on the basis of simple modelling might suffice. In other words, reasonable worst case estimates can be developed from information on the contaminant source and risk estimates provided.</p>
Page 2 – second paragraph	Full delineation of contamination,	<p>This implies that full delineation at an affected parcel is always necessary/ possible. This is not the case. Full delineation in accordance with protocols may not be warranted in the case of small spills/releases. Further, there are cases where physical limitations may make it difficult or impossible to fully delineate.</p> <p>Insert language to indicate that delineation should be carried out to the extent reasonably practical for the site specific attributes and circumstances.</p>	This has been clarified in the final version 8.0 of Protocol 6. Preapproval of an application for a contaminated sites legal instrument may be granted for cases where full delineation is not done, for a variety of valid reasons.
Page 3	Source Parcel Information not Provided	If the source parcel owner does not take initiative, those responsible for affected parcels should contact the source parcel owner to request information. This clause is also in Appendix 1 – second bullet Advice & Expectations for affected parcel owners. This direction often does not work. Many source parcel owners will not forward information even simple information such as drilling results on affected parcels. Affected parcel owners are then told by the Ministry to pay for the information from the Ministry site. The ministry needs to make the sharing of the information in a timely manner mandatory as it should not be the affected parties who pay for information that should have been provided to them.	Imposing a requirement like this involves legislative change. The suggestion has been noted for consideration during the development of possible amendments to the provincial contaminated sites legal regime.
Page 4		We suggest adding a sentence to the “Information for affected parcel owners” section which begins at bottom of page 4; i.e. if after reasonable efforts contact is not made within the initial 30 day period, the instrument application can proceed without comments from the affected parcel owner.	The ministry considers reasonable efforts to be sending a registered letter to the affected parcel owner and then after a 30 day period, if a written response is not received, we expect efforts such as

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			in-person visits, e-mail and telephone contact to be attempted so the affected parcel owner could be requested to respond to the registered letter.
Page 4	Communications between source and affected parcels owners	The owner of the source parcel is required to request comments and concerns related to results obtained, the work done and proposed work at the source and affected parcels. The requirement to request the affected land owner for comments and concerns on these items could also unnecessarily complicate and lengthen the communication process. The ministry may wish to consider limiting the time period to 30 days for the affected land owner to provide comments and raise 'legitimate' concerns.	<p>We are sympathetic to concerns about growing complexity. Many of the sections in this document stem from the requirements of “administrative law” (which includes procedural fairness provisions) which a Director is required to follow in performing his or her duties under the Act. This guidance is intended to clarify these requirements for all stakeholders.</p> <p>The ministry considers reasonable efforts to be sending a registered letter to the affected parcel owner and then after a 30 day period, if a written response is not received, we expect efforts such as in-person visits, e-mail and telephone contact to be attempted so the affected parcel owner could be requested to respond to the registered letter.</p>
Page 4	Communications between source parcel and affected parcel owners; General review of remediation plan	<p>A Notification of Independent Remediation for a source parcel may not necessarily be related to contamination that is migrating offsite. Remediation of an area of the source parcel that is not related to the type of contaminants that have migrated offsite would not be relevant to the affected parcel.</p> <p>Suggest removing the general advice to provide Notification of Independent Remediation for a source parcel to affected parcel, or clarify that it's not expected in cases where the contaminant being remediated is not the contaminant that has migrated offsite. i.e., unrelated to the original offsite migration.</p>	The section of the document under the heading “General review of remediation plan” has been clarified in response to the suggestion.
Page 4	Definition of contaminated site	<p>The language <i>...numerical &amp; risk based approached for remediation are acceptable .... however, if site is cleaned to risk based standards it is still considered contaminated</i>” should be clarified. Although this phrase is consistent language with the CSR, the language in guidance will cause uncertainty to those required to interpret and implement this guidance.</p> <p>We recommend the following language would better define the intent...<i>“however, if a site is cleaned to risk based standards and a Certificate of Compliance is obtained, the site is no longer considered a contaminated site as the term is defined in s.39(1) of the Environmental Management Act of BC.”</i></p>	<p>We do not agree with the recommendation. A site remediated to meet the risk-based standards would not meet the numerical standards, and therefore would be considered a contaminated site.</p> <p>Section 15 (1) of the Contaminated Sites Regulation prescribes the numerical standards as the standards which must be used to determine if a site is a contaminated site. The risk-based standards are not prescribed for determining whether a site is a contaminated site in this subsection or anywhere</p>

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			else in the Regulation.
Page 4	Documents to provide to affected parcel owners	<p>The practicality that “ ... <i>source parcel responsible parties should provide affected third party owners with all documents for source and impacted properties</i>”, is not reasonable.</p> <p>We recommend that only information that is relevant to the impacted parcel be provided to third party owners.</p>	<p>We agree with the comment and are not aware of any statement in the draft guidance which imposes a requirement for the provision of all documents. Appendix 2 describes the documentation in question.</p> <p>The affected parcel owner would be interested in learning about remedial approaches which would prevent recontamination or additional contamination at the affected parcel.</p>
Page 4	Draft copy of contaminated sites legal instrument	The requirement to provide a draft instrument to the affected property owner may also complicate the process if the information in the draft instrument and the final instrument differ. The requirements for information which appears in the instruments changes over time and the draft instrument may not represent the information that will appear in the final instrument.	This is correct. In fact, the final version of the instrument may reflect comments received from the affected parcel owner and other affected parties, who would, on viewing the final instrument, would have an opportunity to see how his or her comments were received.
Page 4	General	The document is a good start for dealing with this sensitive topic, but please keep in mind that "natural justice" and fairness may have been missed in some sections of this document, some tweaking is required. For example section "Both numerical and risk-based approaches to remediation acceptable" Under the Regulation either the numerical or the risk-based remediation standards may be used to determine when cleanup is complete - the choice is up to the responsible person. Agreement with affected parcel owners on the type of standards used is not required. ....", this section strips the basic right of an impacted parcel owner of his choices in any future development of his land, also it could financially destroy him and the land end up as a brown field. We recommend removing the statement that prevent the affected parcel owners from having a choice, and the remediation options should be based on an agreement between the source and the affected parcel owners.	<p>In deciding whether to issue a contaminated sites legal instrument requested by a source parcel owner for an affected parcel, a Director must consider the impacts on those associated with the affect parcel. Those impacts include the current and reasonably anticipated future uses specified in section 12 (5) of the Contaminated Sites Regulation. Such decisions are made on a case-by-case basis in light of the specific facts and typically only after the views of significantly affected parties are made known to the Director.</p> <p>The primary role of the Director is to ensure that human health and the environment are protected. This can be achieved either through adherence to the numerical or risk-based remediation standards. If an affected parcel owner wants his or her parcel remediated to the numerical instead of the risk-based standards, the affected parcel owner can seek compensation from the source parcel owner for the costs of additional remediation to the numerical standards.</p>

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Page 4	Requirements and expectations for instrument applications	<p>This section only applies when source parcel owners apply to obtain an instrument for the affected parcel but suggests it’s prescriptive on a much broader basis, and where it may not be required or appropriate. To highlight the distinction, the title of the section should be clarified by adding “on affected parcels” at the end</p> <p>Change title to: “Requirements and expectations for instrument application on affected parcels</p>	<p>This is an excellent suggestion which has been adopted. In addition, additional text has been provided to cover the situation where an affected parcel owner is applying for an instrument.</p>
Page 5 Bullet 3	Requirements and expectations for instrument applications, Communication Records,	<p>Please include the source/reference for the list of requirements in the communications record.</p> <p>The type of “concerns” should be limited to concerns relevant to the remediation. Concerns that are not of an environmental or human health technical nature, for instance concerns of a legal or financial nature, are not applicable or relevant.</p> <p>Concerns brought to the attention of the Director should be only those of an environmental or human health technical nature</p>	<p>This guidance, including Appendix 2, was drafted by ministry staff and there is no reference list for the requirements in that appendix.</p> <p>Guided by the principles of procedural (or administrative) fairness, a Director has a duty to take into account those concerns and comments which would be relevant to a decision being made.</p> <p>In general, procedural fairness requires that a statutory decision maker allow those affected by his or her decision to participate meaningfully in the decision making process. The various types of procedural fairness requirements (e.g., providing notice of a decision, providing adequate reasons for a decision, providing an opportunity to comment on a decision) allow the person affected by the decision to participate in the decision making process.</p> <p>The content of procedural fairness varies in accordance with the extent to which a party is impacted by a decision. The greater the impact of the decision on a person, the greater the duty of procedural fairness. For example, a decision that affects a person’s health or safety would require a greater degree of procedural fairness than a decision that merely causes inconvenience. In reviewing the potential impact on a party, in general, a Director must consider all information relevant to the decision being made.</p>
Page 5 Bullet 3	Clarity on concerns regarding	<p>In the third bullet on page 5 specify that the concerns are about technical issues or about the risk assessment.</p>	<p>Guided by the principles of procedural (or administrative) fairness, a Director has a duty to</p>

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	communications records		<p>take into account those concerns and comments which would be relevant to a decision being made.</p> <p>In general, procedural fairness requires that a statutory decision maker allow those affected by his or her decision to participate meaningfully in the decision making process. The various types of procedural fairness requirements (e.g., providing notice of a decision, providing adequate reasons for a decision, providing an opportunity to comment on a decision) allow the person affected by the decision to participate in the decision making process.</p> <p>The content of procedural fairness varies in accordance with the extent to which a party is impacted by a decision. The greater the impact of the decision on a person, the greater the duty of procedural fairness. For example, a decision that affects a person’s health or safety would require a greater degree of procedural fairness than a decision that merely causes inconvenience. In reviewing the potential impact on a party, in general, a Director must consider all information relevant to the decision being made.</p>
Page 5	Communications records	<p>Does the Ministry expect to see <b>all</b> the information required for the registered letter (Appendix II) to be included all at once? We believe this is not necessary. Our experience is that this is costly and produces a significantly sized package.</p> <p>In our experience, the information requirements noted above are provided to the affected parties over several correspondences and meetings.</p>	<p>The record of communications is to be provided to the ministry at the time of application for a contaminated sites legal instrument. The ministry is comfortable with correspondence and other communications occurring within a short period or over a longer time period, in accordance with the specific circumstances.</p>
Page 5	Director’s decisions	<p>The “Director’s Decisions” section appears to give very broad discretion to the Director. There should be some restrictions, guidelines or justification required for the determination of what “persons could be affected”.</p>	<p>A Director does have broad discretion and is guided by legal requirements in the <i>Environmental Management Act</i> and by principles and requirements of “administrative law” which is the body of law that addresses the procedural actions and operations of governments and governmental agencies.</p> <p>The content of procedural fairness varies in</p>

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			<p>accordance with the extent to which a party might be impacted by a decision. The greater the impact of the decision would be on a person, the greater the duty of procedural fairness. For example, a decision that would affect a person's health or safety would require a greater degree of procedural fairness than a decision that merely causes inconvenience.</p>
<p>Page 5 top of second column</p>	<p>Requirements and expectations for instrument applications, Communication Records</p>	<p>Note that it is section 52(1) of the Act that deals with “Public consultation and review” and not section 56</p> <p>Amend accordingly</p>	<p>This has been corrected.</p>
<p>Page 6</p>	<p>Expectations for preventing recontamination</p>	<p>This expectation is not reasonable for the installation of spill containment measures specifically but rather to prevent recontamination from the original source parcel in general if it has not been removed.</p> <p>Qualified professional can also provide recommendations and should be recognized</p>	<p>We concur that the provisions in this section are provided to prevent recontamination occurring from the original source parcel where contaminants remain at the source parcel.</p> <p>At this point, the ministry is only prepared to accept the recommendations of Approved Professionals (designated by the Director) who are highly qualified and experienced in contaminated sites remediation.</p>
<p>Appendix 1 Column 1</p>	<p>Distinguishing requirements from expectations</p>	<p>In the first column, the bullet points are not individually identified as a requirement or expectation. This can mislead readers into believing an expectation is a requirement and vice versa.</p> <p>Specify which bullets are requirements, expectations and advice, and reference appropriate legislation, regulation or protocol for requirements.</p>	<p>In general, our documents labelled “Administrative Guidance” or “Technical Guidance” do not create new legally enforceable provisions. The simply are guidance. In some cases they may refer to legal requirements which are imposed, for example, in legislation or regulations such as the requirement for Notifications of Migration to be provided to affected parcel owners. In Appendix 1, each item that is a requirement is described as a requirement. Any other item is an expectation or advice.</p>
<p>Appendix 1 Column 1</p>	<p>Distinguishing requirements from expectations</p>	<p>The title of the first column is misleading as the column includes general advice as well as expectation and requirements.</p> <p>The title should be changed to Key requirements, expectations and advice for source parcel.</p>	<p>The ministry considers all the items in the list either to be requirements or expectations.</p> <p>The ministry's goal is for full disclosure of the information relevant to potential and actual contamination at affected parcels from source</p>

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			parcels. We recommend that a list of available documents be provided to potentially affected parties with an offer to provide the documents which the affected parties consider relevant.
Appendix 1 Column 1 Bullet 1	Meaning of the term “address”	<p>“Address” is very broad term. What does this mean? Delineation and/or remediation?</p> <p>Clarify what is meant by “address”. Is “investigate to be best extent practicable” accurate?</p>	Yes, it means delineate and remediate and that has been clarified in the text. It has also been clarified in Protocol 6.
Appendix 1 Column 1 Bullet 3	Communications between source parcel and affected parcel owners; General review of remediation plan	<p>A Notification of Independent Remediation for a source parcel may not necessarily be related to contamination that is migrating offsite. Remediation of an area of the source parcel that is not related to the type of contaminants that have migrated offsite would not be relevant to the affected parcel.</p> <p>Suggest removing the general advice to provide Notification of Independent Remediation for a source parcel to affected parcel, or clarify that it’s not expected in cases where the contaminant being remediated is not the contaminant that has migrated offsite. i.e., unrelated to the original offsite migration.</p>	The section of the document under the heading “General review of remediation plan” has been clarified in response to the suggestion.
Appendix 1 Column 1 Bullet 7	Relevance of source parcel remedial strategy to affected parcel	<p>Remedial strategy for source parcel is not relevant to affected parcel.</p> <p>Recommend changing to clarify that affected parcel owner would only be consulted for remediation on the affected parcel.</p>	We disagree. The affected parcel owner would be interested in learning about remedial approaches which would prevent recontamination or additional contamination at the affected parcel. Thus the remedial strategy at the source parcel would be relevant to the affected parcel.
Appendix 1 Column 2	Advice vs. expectations	<p>The bullets appear to all be advice.</p> <p>Change title of Column 2 to “Advice for Persons who own Affected Parcels</p>	We consider a number of the items as expectations.
Appendix 1 Column 2 Bullet 4	Should affected parcel owners carry out their own site investigations?	<p>Suggesting that affected parcel owners should retain consultant to carry out an independent due diligence investigation under any circumstance is not practical and places unnecessarily onerous expectations and costs on parcel owners.</p> <p>Ministry should advise that persons who own affected parcels consider hiring a QP to perform an independent review of the investigation work done by another QP rather than conduct their own investigation at great costs.</p>	“Investigation” in this context was not intended to mean “site investigation” as defined in the <i>Environmental Management Act</i> . The wording has been changed to refer to an independent review of investigation and remediation work at the affected parcel

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Appendix 1 Column 2 Bullet 5	Role of affected parcel owners in preventing recontamination	Was this intended for affected parcel owners? (I.e., implement, operate ...measures intended to prevent recontamination). This seems to be the responsibility of the responsible person at the source parcel.	Yes is intended for affected parcel owners — in the event that the source parcel owner has not implemented works at the source parcel to prevent recontamination of the affected parcel. This has been clarified.
Appendix 1 Column 2 Bullet 5	Use of qualified professionals	Qualified professional is appropriate too. Change Approved Professional to Qualified Professional	At this point, the ministry is only prepared to accept the recommendations of Approved Professionals who are highly qualified and experience in contaminated sites remediation.
Appendix 1 Column 2 Bullet 5	Advice & Expectations for affected parcel owners – Implement, operate and maintain any works or measures intended to prevent recontamination of the affected parcel ...	This could be a significant requirement to some owners depending on what was constructed. If the plan calls for some wells – the affected parcel owner surely is not the person installing the wells or operating them. If a vacuum system is proposed, again, the affected parcel would not install or operate or even maintain. This statement in its current form potentially puts a large commitment on an affected parcel especially if they do not agree with the remediation proposed. Is it really the intention to have the affected party responsible for the implementation and operation or just the maintenance of the works installed by the source parcel?	This is intended for affected parcel owners — in the event that the source parcel owner has not implemented works at the source parcel to prevent recontamination of the affected parcel. This has been clarified.
Appendix 1	Source Parcel Information not Provided	If the source parcel owner does not take initiative, those responsible for affected parcels should contact the source parcel owner to request information. This clause is also in Appendix 1 – second bullet Advice & Expectations for affected parcel owners. This direction often does not work. Many source parcel owners will not forward information even simple information such as drilling results on affected parcels. Affected parcel owners are then told by the Ministry to pay for the information from the Ministry site. The ministry needs to make the sharing of the information in a timely manner mandatory as it should not be the affected parties who pay for information that should have been provided to them.	Imposing a requirement like this involves legislative change. The suggestion has been noted for consideration during the development of possible amendments to the provincial contaminated sites legal regime.
Appendix 2		Appendix 2 information should only be relevant where an instrument is requested.  Clarify that Appendix 2 requirements only apply when instruments are sought for the affected parcel	We agree. The first paragraph in Appendix 2 indicates that the requirements only apply “when the source parcel owner is applying for a Determination of Contaminated Site, Approval in Principle or Certificate of Compliance for the source parcel <i>and for one or more affected parcels</i> .”
Appendix 2		The first sentence states that the following are requirements that apply for a listed document for “the source and for one or more affected parcel owners”. This implies Appendix 2 applies to listed document for source and affected	We agree. The first paragraph in Appendix 2 already indicates that the requirements only apply “when the source parcel owner is applying for a

## Administrative Guidance 11, “Expectations and Requirements for Contaminant Migration”

Document Section(s)	Issue	Stakeholder Comments/Recommendations	Ministry Response
		<p>Parcels. Appendix 2 information should only be relevant where an instrument is requested for the affected parcels. The communication requirements appear too onerous for situation where the instrument is only sought for the source parcel.</p> <p>Revise such that these requirements only apply when obtaining instrument for affected parcel, and considering above comments.</p>	<p>Determination of Contaminated Site, Approval in Principle or Certificate of Compliance for the source parcel <i>and for one or more affected parcels</i>.</p>
Appendix 2	Communications requirements	<p>The ministry’s requirement to provide information for the source parcel (such as Site Risk Classification Report and Exposure Pathway Questionnaire, a list of reports and plans, type of standards used) seems potentially onerous. What exactly is intended by ‘available reports and plans’ for the source parcel? In some cases there may be reports and plans for the source parcel that date back many years, many of which may be out of date and irrelevant to the affected parcel. The requirement to provide a list of all such reports could unnecessarily complicate the communication process for obtaining agreement. If the intent is to provide a summary of the work completed that is necessary for the affected parcel owner to understand the issues, this could be addressed by just summarizing the information.</p>	<p>The ministry’s goal is for full disclosure of the information relevant to potential and actual contamination at affected parcels from source parcels. We expect a list of available documents to be provided to potentially affected parties with an offer to provide the documents which the affected parties consider relevant.</p>
Appendix 2	Draft copy of contaminated sites legal instrument	<p>Affected parcel owners should be provided a copy of the draft instrument and any changes made by the province prior to final instrument being granted. The affected parcel owners need to have a chance to comment on the proposed remediation especially if it may affect their business operation or future development on the site or other parties already using site (i.e., roadways and underground utilities). As such I do not agree with only letting affected parties know of the instrument requirements etc at the final stage.</p>	<p>Item 2 k) in Appendix 2 requires the owner of the source parcel to provide a copy of the draft instrument for the affected parcel to the affected parcel owner.</p>
Appendix 2	Draft copy of contaminated sites legal instrument	<p>Affected parcel owners should be provided a copy of the draft instrument and any changes made by the province prior to final instrument being granted. The affected parcel owners need to have a chance to comment on the proposed remediation especially if it may affect their business operation or future development on the site or other parties already using site (i.e., roadways and underground utilities). As such I do not agree with only letting affected parties know of the instrument requirements etc at the final stage.</p>	<p>Item 2 k) in Appendix 2 requires the owner of the source parcel to provide a copy of the draft instrument for the affected parcel to the affected parcel owner.</p>
Appendix 2, section 2 (a)		<p>It is perhaps not unreasonable to request the affected parcel owner’s comments and concerns, but it must be clear that these comments and concerns will be taken under consideration only. Further, that the Ministry will consider only those comments or concerns with sound technical merit or other reasonable rationale.</p>	<p>The commenter has described some of the basic duties that a Director has in adjudicating an application for a contaminated sites legal instrument.</p>

### Administrative Guidance 11, “Expectations and Requirements for Contaminant Migration”

<b>Document Section(s)</b>	<b>Issue</b>	<b>Stakeholder Comments/Recommendations</b>	<b>Ministry Response</b>
Appendix 2, section 2 (a)		Furthermore, any such communications with an affected parcel owner should be in reference to that parcel only, NOT the source parcel or any other affected parcel, unless it is critical to the communications on the specified parcel.	This is basically the approach that a Director would be expected to take in reviewing an application for a contaminated sites legal instrument for an affected parcel, except that the Director may want to review relevant information pertaining to neighbouring parcels including the source parcel.