

Highlights for Local Government

During consultations on BC's legislation for contaminated sites, local governments raised several key issues. In particular, they expressed concern over:

- their liability for negligence in reviewing development applications;
- their liability for remediation simply because of owning a contaminated site, such as one acquired through tax default;
- the lack of clear provincial assurance as to whether remediation has been satisfactorily completed; and
- the poor integration of current municipal and provincial contaminated site functions (notably, those concerning the relocation of contaminated soil, and the assessment of contaminated soil problems as part of the subdivision and zoning review processes).

These concerns and many others are addressed in BC's contaminated sites legal regime under the *Environmental Management Act* and Contaminated Sites Regulation.

Use of site profiles in reviewing development applications

Site profiles are the first step in identifying contaminated sites. Property owners must provide site profiles to local governments when they apply for zoning, subdivision, demolition, and the relocation of contaminated soil.

Fact Sheet 5, "Site Profiles: Local Government Duties," describes how site profiles are to be handled and how they affect local government administration.

Local governments are authorized to charge

those who make a development application up to \$100 per site profile submitted, to offset administration costs. Fact Sheet 7, "Local Government Immunity in Administering Contaminated Sites," describes site profile immunity provisions in the legislation.

Under a provision in the Contaminated Sites Regulation, any local government can also choose to opt out of the site profile system. Fact Sheet 6, "Site Profile Administration: Local Government Opt-Out Option," describes the pros and cons of opting out.

Immunity for local governments that are land owners

A local government is exempt from liability when it acquires property involuntarily, such as when it assumes ownership of a site by default – for example, when the owner fails to pay property tax. The exemption is lost, however, if the local government subsequently contaminates the property.

Local government is also immune from liability when it owns or operates an easement, highway, or right-of-way for sewer or water on a contaminated site, unless it caused the contamination. For additional information, consult Fact Sheet 8, "Protecting Local Governments as Land Owners from Liability."

Approval of Remediation

The Act authorizes a Director of Waste Management to grant an Approval in Principle of a remediation plan that will lead to satisfactory remediation. Responsibility for

costs, site characterization, and the remediation approach to be used needs to be in place before such an approval is issued. Approvals in Principle are supported by local governments, developers, and lenders because they allow the next steps – regulatory, business, and project work onsite – to proceed while minimizing costs.

At the conclusion of the remediation process, responsible persons, local governments, lenders, and purchasers usually seek written assurances that the cleanup has been completed. The Act authorizes a Director to issue a Certificate of Compliance when a site has been remediated according to the approved remediation plan and in compliance with standards defined in the Contaminated Sites Regulation. A financial guarantee and covenant under the *Land Title Act* may also be required.

Immunity associated with certificates and approvals

Local governments are especially concerned about their potential liability when they rely on a determination, certificate, or approval issued by the ministry under the Act. The legislation grants immunity to a local government and its officials who rely on the information contained in Determinations of Contaminated Site, Approvals in Principle, and Certificates of Compliance.

Contaminated Soil Relocation Agreements

Appropriate control of soil excavated and relocated from contaminated sites is needed to protect human health and the environment. The Act provides Contaminated Soil Relocation Agreements to regulate the movement of soil from contaminated sites. These agreements take into account the soil quality and the environmental conditions at the deposit site.

Immunity is provided for local governments and their officials for bylaws, permits, licences, and approvals relating to contaminated soil removal or deposit, except where:

- the bylaws, permits, licences, and approvals conflict with the provisions of the *Environmental Management Act* or regulations;
- the contaminated site or soil belongs to the local government; or
- activities of the local government, other than regulatory activities, caused or contributed to property becoming a contaminated site.

Note: This summary is solely for the convenience of the reader. The current legislation and regulations should be consulted for complete information.

For more information, contact the Environmental Management Branch at site@gov.bc.ca