

Local Government Immunity in Administrating Contaminated Sites

Local governments often have questions about the administration of site profiles and other contaminated sites functions that may be delegated to them through the *Environmental Management Act*.

This fact sheet explains the immunity provided local governments by the legislation and Contaminated Sites Regulation. Fact Sheet 8 discusses the immunity and liability issues facing local governments in their capacity as land owners, while Fact Sheet 5 describes how site profiles affect a local government's administrative workload.

Background

During consultations on contaminated sites legislation, local governments told the ministry that they wanted a legally defined, uniform process to screen potentially contaminated sites. In response to that request, local governments were given a role in administering site profiles, as well as the ability to take on several other administrative functions, including issuing Approvals in Principle and Certificates of Compliance.

While many local governments recognized that the new legislation significantly reduced their exposure to liability in approving zoning or development on contaminated sites, some jurisdictions still raised questions about their possible liability from carrying out the new administrative functions.

Independent legal review of local government administrative liability

These continuing concerns prompted the ministry to seek independent legal advice. Nine questions were submitted to a panel of legal experts and the contaminated sites legal regime was amended to reflect its advice.

Could a local government become liable for negligently administering the Act?

No. The Act provides broad immunity for local governments when they administer site profiles and other functions delegated to them under the legislation. It even protects them against negligent actions. They are not, however, protected in cases where a person was dishonest, malicious, or exhibited wilful misconduct.

Does the immunity apply to both local government officials and corporations?

Yes. The Act provides protection for local government officials and local government corporations administering site profiles. These protections apply to contaminated sites duties performed by local governments under the *Community Charter* and the *Land Title Act*.

Could local government be held liable for not checking accuracy or reporting errors if a person provided wrong information in a site profile?

No. The person submitting the site profile is responsible for providing honest and accurate answers. After ensuring that all the questions are answered, local government is required only to assess the facts when the form is submitted. This is a simple clerical task.

Would local government be held liable for failing to check its files when assessing a site profile?

No. Under the Contaminated Sites Regulation, local government has no duty to conduct a search of its records or archives relating to the submission of site profiles.

If it wishes, a local government may review its own records and forward site profiles to the ministry on the basis of that information.

Does the Act or Regulation impose a duty on local governments to disclose site profiles to the general public?

No. Local governments must only disclose a site profile to the ministry and to the person who originally provided it.

How does the *Freedom of Information and Protection of Privacy Act* relate to site profile information?

Under the *Freedom of Information and Protection of Privacy Act*, the public has certain rights to obtain information in the possession of local governments. However, these rights are qualified under the Act where the information is available for purchase.

The electronic Site Registry contains information about site profiles and other administrative items. The public has access to this system through BC OnLine (www.bconline.gov.bc.ca), for a fee. Thus, local governments are not required to disclose site profiles to the public if those profiles are already available on the Site Registry.

After local government assesses and forwards a site profile, does it have a duty, and a corresponding potential liability, to store or manage site profiles?

No. Local governments do not have to store or file old site profiles. In fact, the Regulation allows local governments to determine themselves what to do with old site profiles.

Would local government incur liability for mistakenly approving an application?

A developer might lose money or incur other damages because of local government prematurely approving an application. This could happen in situations where the local government forgets to wait to receive appropriate notification from the ministry that contamination issues have been adequately addressed. In such cases, the developer could sue the local government for negligence. However, to address this possibility, the Act provides broad protection for local government employees and local governments in their corporate capacity.

Would local government be held liable where a Director of Waste Management made a mistake?

No. The Act clearly states that a local government and its officials would not be liable for damages where they rely on an Approval in Principle for a remediation plan or a Certificate of Compliance from a Director of Waste Management. Once local government receives one of these documents, it may proceed to approve the relevant application.

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