

Highlights for Realtors, Property Vendors, and Purchasers

Early versions of the *Waste Management Act* had no vendor reporting or disclosure requirements to allow private parties to determine the possible extent of contamination at a given site. And, while many common-law cases of the past managed to avoid the “buyer beware” rule where a property was contaminated, these cases did not follow uniform approaches or clear rules for what vendors must disclose.

The *Environmental Management Act* and the Contaminated Sites Regulation now enhance the certainty sought by parties in real estate transactions. For specific types of current or past land use, vendors must provide a *site profile* to prospective purchasers.

What is a “site profile”?

A site profile is a form for identifying potentially contaminated sites. It is a summary created from readily available information about a site – including its past and present uses and basic land descriptions – and should not require the assistance of a consultant to complete.

Developers must provide site profiles in specified instances, most notably when applying for zoning, subdivision, demolition, and relocation of soil.

When is a site profile required?

Specific industrial or commercial land uses trigger site profiles. Those uses, as listed in the Regulation, are ones that tend to leave

contamination (for example, service stations). The list is sometimes attached to the site profile form for those individuals needing to complete and submit a site profile.

Who must property vendors submit a site profile to?

Property vendors must provide site profiles to prospective purchasers, unless the prospective purchasers waive this right in writing. Under most circumstances, a vendor is not required to provide a site profile to a Director of Waste Management.

Site profile exemptions

Under the Contaminated Sites Regulation, vendors are exempt from providing site profiles for several situations, such as where:

- an accurate site profile already exists in the Site Registry (see Fact Sheet 20);
- the site has already been determined to be a contaminated site;
- a property is currently used mainly for residential purposes; and
- at the time of the contract for purchase and sale, the property had never been zoned for any other use than primarily residential.

When must site profiles be provided?

A vendor of property must provide a site profile to a prospective purchaser at least 30 days before the transfer of property actually occurs.

If the time between the date of the agreement for transfer and the actual transfer is less than 30

days, the vendor must provide the site profile before the date of the property transfer.

The Site Registry

The Site Registry was created to provide the public with easy access to reported information about sites, including their basic characteristics, legal events that have occurred, and milestones in the remediation process. The registry is, in part, a “record of decisions” about sites that have been evaluated, whether or not they are clean or contaminated. Anyone may access the registry by computer through BC OnLine.

Liability for remediation

A common concern in real estate transactions is the difficulty in predicting whether a property might attract environmental liability.

Contaminated sites legislation provides parties involved in real estate transactions with objective standards and opportunities to limit their liability. For example:

- Standards have been set for determining if a site is a contaminated site and if remediation is satisfactory.
- Parties may obtain a formal determination from a Director as to whether a site is legally a “contaminated site.”

- Exemptions exist for certain parties, notably those whose involvement with a site is deemed to be an “innocent acquisition.”
- Parties who are liable for remediation may obtain “minor contributor” status or enter into a Voluntary Remediation Agreement, both of which can limit liability.
- In allocating liability shares, a Director must consider private contracts respecting liability, to the “extent feasible without jeopardizing remediation.”
- Approval of remediation can be obtained in the form of Approvals in Principle and Certificates of Compliance.

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