

## Requirements for Responding to Contaminant Migration

Environmental investigations and independent remediation are undertaken for a variety of reasons. They may, for instance, be voluntarily initiated as part of due diligence practices or be required by ministry processes.

If, during any stage of investigation or independent remediation, it is determined that one or more substances have migrated or there is reason to believe substances have migrated to a neighbouring parcel and is causing (or is likely causing) contamination of that parcel, the affected neighbouring parcel owner(s) and ministry must be notified within 15 days by the responsible person when he or she knows of the situation. These notices are called Notifications of Likely or Actual Migration (NOMs).

### **Who is the responsible person in a case of contaminant migration?**

The responsible person can be a parcel owner, business operator, leaseholder, or anyone responsible for a release of a substance that results in contamination. If a responsible person, while undertaking a site investigation or independent remediation determines that contaminant migration is occurring or is likely occurring, then that person must provide NOMs in keeping with sections 57 and 60.1 of the Contaminated Sites Regulation (the Regulation).

### **Who must be provided written notification?**

Any owner of a neighbouring parcel that is likely or actually affected by the migration of substances must be provided the written notification. The *Environmental Management Act* (the Act) defines an owner as a person who is in

possession, has the right of control or occupies or controls the use of real property. According to this definition an owner could include lessees, tenants and owners of neighbouring roadways, easements and utility corridors. It could also include the Provincial Crown if Provincial Crown land is likely or actually affected. A copy of the notification must also be submitted to the Director of Waste Management.

#### **Note**

In the case of utilities, the responsible person should also advise likely or actually affected parcel owners of contamination that could cause an adverse impact on infrastructure (for example, on underground wiring).

### **What information must be included?**

Please use the [NOM form](#) available on our website and follow the instructions provided. The requirement to use this form is established in [Protocol 17, "Forms for Notification of Independent Remediation and Migration."](#)

### **Are there exceptions?**

Once all appropriate parties are notified there is no requirement to submit further NOMs each time new testing occurs. However, if a new parcel is later found to be affected (or likely affected) then a NOM would be triggered in association with that new parcel's owner.

### **What if new substances are discovered?**

If new substances that were not previously reported are determined to be likely or actually migrating to a neighbouring parcel, then an update to the NOMs sent previously to include those new substances would be required.

### **What are the expectations of the ministry?**

Our primary goal is to ensure the protection of human health and the environment, and safety. In a situation where the migration of substances has been determined, the ministry and the Regulation require all responsible persons to determine the full extent of contamination and to prepare and implement a remediation plan. We expect that all affected persons would exchange information and hold discussions so that a mutually satisfactory remediation plan can be developed and implemented.

### **What other requirements are associated with the migration of substances?**

In most cases it is acceptable for a responsible person to conduct a site cleanup under the independent remediation process. About two thirds of the sites cleaned up in B.C. are remediated using this approach. See [Fact Sheet 21, "Requirements for Independent Remediation"](#) and [Administrative Guidance 9, "Independent Remediation of Contaminated Sites"](#) for detailed information.

The degree of intervention by the ministry for parcels where migration has occurred often depends on whether or not the parcel has been classified as high risk. Although the ministry generally relies on responsible persons to carry out remediation appropriately, for parcels classified as high risk, the ministry is commonly directly involved and, if necessary, the Director of Waste Management may issue a Remediation Order in accordance with section 48 of the *Environmental Management Act* (the Act).

### **Site risk classification**

Submission of a NOM triggers additional notification and reporting requirements under [Protocol 12, "Site Risk Classification, Reclassification and Reporting."](#) This protocol provides procedures for classifying sites based on their risks to the environment and human health. Refer to the [site risk classification key topic](#) on our website for more information.

### **What can neighbouring parties do once contaminant migration is determined?**

To ensure that remediation of contaminants is carried out promptly, neighbouring parties are encouraged to contact the responsible person to discuss a remediation strategy and to request site investigation reports and remediation plans and schedules. A site information request may also be sent to the ministry to obtain any information contained on the Site Registry and in our paper records. Note that the ministry does not become involved in settling disputes between private parties.

### **Who must pay for cleanup?**

The "polluter pays" principle is a key part of the Act, which empowers whoever incurred a cost in cleaning up a site (including a responsible person) to seek compensation from one or more other responsible persons in court. Under the Regulation, a responsible person (or persons) named as a defendant in a previous court action may also seek compensation from other responsible persons. See [Fact Sheet 16, "Remediation Liability Overview"](#) for details.

#### **Note**

The Act provides an exemption from remediation liability by exempting as a responsible person a "person who owns or operates a contaminated site that was contaminated only by the migration of a substance from other real property not owned or operated by the person."

### **Site profiles and contaminant migration**

Those who may be required to submit a site profile should note that one of the industrial and commercial purposes and activities in Schedule 2 of the Regulation includes "sites which have been or likely have been contaminated by migrating substances." Even if a NOM has not been submitted or is not required, if a trigger such as a development permit application exists for a site profile submission and the site meets that Schedule 2 criterion, a site profile would have to be provided as required under the Act. See our [site profiles key topic](#) for further information.

## **What if it is later determined that migration has not occurred?**

In some cases where there has been a notification of likely or actual migration, further investigation reveals that it has not occurred. We recommend that the owners of the neighbouring parcels who originally received the notification be notified in writing by the owner of the source parcel of the result that migration has not occurred. A copy should also be submitted to the Director so that the Site Registry can be updated to reflect this information.

*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](mailto:site@gov.bc.ca) or visit the [contaminant migration key topic](#) on our website.*