

Contaminated Sites Legal Instruments

Often a person may want or be required to obtain a contaminated sites legal instrument (an instrument) under the [Environmental Management Act](#) (the Act). There are different types of instruments available – they apply at different stages of the remediation process and to different types of remediation. Instruments available from the ministry include:

- Determinations of Contaminated Site (whether a site is contaminated or not);
- Approvals in Principle of a site remediation plan;
- Certificates of Compliance with environmental quality standards;
- Contaminated Soil Relocation Agreements;
- Voluntary Remediation Agreements;
- Minor Contributor status rulings;
- Transfer Agreements.

This fact sheet describes each type of instrument, why and how they can be obtained and how they work.

Why obtain an instrument?

Typically a land owner would secure a contaminated sites legal instrument to:

- satisfy Provincial legal requirements;
- improve environmental quality and decrease risks to human health and the environment;
- improve the marketability of property;
- show compliance with contaminated sites requirements to a prospective purchaser;
- help obtain financing for a development;
- limit liability for remediation of a site.

Are instruments compulsory?

Instruments may be used to satisfy requirements in several provincial statutes. For example, obtaining an Approval in Principle or Certificate of Compliance can release a local government to approve an application for development or zoning. See [Fact Sheet 37, "Site Profile Freeze and Release Provisions"](#) for details.

Can I remediate my land without obtaining a contaminated sites legal instrument?

Yes. About two thirds of the contaminated sites cleaned up in B.C. are remediated using independent remediation, where no contaminated site legal instrument is issued. You can refer to [Fact Sheet 21, "Requirements for Independent Remediation."](#) for additional information.

How can I obtain an instrument?

All applications for instruments should be accompanied by a [Contaminated Sites Services Application Form](#). For more information on the contaminated sites services application process, refer to [Administrative Guidance 3, "Applying for Contaminated Sites Services"](#). Note that fees for various instruments apply. See [Fact Sheet 25, "Fees of Contaminated Sites Services"](#) for additional details.

Approved Professional vs. ministry submissions for instruments

To expedite the review of applications for low and moderate risk sites, the ministry relies on the recommendations of [Approved Professionals](#).

Submissions of investigation reports and plans in support of instrument applications must either go through an Approved Professional review or be assessed directly by the ministry. Current requirements are described [Protocol 6, “Eligibility of Applications for Review by Approved Professionals”](#).

Contaminated Sites Approved Professionals Society

The [Contaminated Sites Approved Professionals Society](#) is a self regulating professional society whose members are authorized to review site investigation reports to determine if a site is contaminated and to review remediation plans that may include monitoring. Approved Professionals undergo stringent technical evaluation and are qualified to recommend that the ministry approve instrument applications in compliance with regulatory requirements.

Application of environmental quality standards

Under the B.C. contaminated sites regime the environmental quality standards have two general applications.

Definition of contaminated site

The first application is to define when a site is contaminated. The key method is described in [section 11](#) of the Regulation. It relies on the numerical environmental quality standards (standards) which are concentrations of substances in soil, water, sediment and vapour. There are standards for a variety of uses for each environmental medium, e.g., commercial land use and drinking water. The standards are also used to define high risk sites, as described in [Fact sheet 45, “Site Risk Classification.”](#)

Remediation standards

The Regulation’s numerical standards are used as remediation standards where contamination at a site has been cleaned up by removal, for example, by treatment or excavation.

The [risk-based standards](#) are used as remediation standards if contamination is left in place and is managed by containment, control and/or monitoring.

How long will it take to get an instrument?

It depends on the type of instrument requested and the completeness of the work submitted. Applications for instruments accompanied with recommendations of Approved Professionals generally take 2 to 4 weeks. The ministry review of applications for high risk sites and/or sites with complex hydrogeologic conditions or remedial strategies, or detailed risk assessments can take up to a year and sometimes longer.

Types of instruments

Determinations of Contaminated Site

An applicant can receive a Determination of Contaminated Site (Determination) for a site investigated following the requirements of the Act. Provisions for Determinations are in [section 44 of the Act](#) and [part 5 of the Contaminated Sites Regulation](#) (the Regulation). Only the numerical standards of the Regulation are applied to determine if a site is contaminated.

Determinations are issued by the Director of Waste Management (the Director) only after receipt of the recommendation of an Approved Professional. If, after a review of [site investigation reports](#), an Approved Professional advises that there are no substances exceeding applicable numerical standards at a site, the Approved Professional will recommend that that the Director issue a Determination that the site is not contaminated. This is sometimes called a “negative Determination”. A “positive Determination” is made when substances exceed the applicable numerical standards.

Approvals in Principle

An Approval in Principle (AiP) can be issued by the Director when a remediation plan has been reviewed and then approved. When applying for an AiP the applicant must also include copies of any site investigation and assessment reports prepared for the site. Both numerical and risk-based standards can be used under AiPs. Please refer to [section 53 of the Act](#) and [sections 47 and 51 of the Regulation](#) for more information.

Note that permits or approvals may need to be obtained from the ministry for waste discharges. These can be for effluent, soil, sediment or air discharges associated with remediation at a site.

How long will an Approval in Principle be valid?

Remediation under an Approval in Principle based on the recommendation of an Approved Professional under Protocol 6 must be able to meet the requirements in the AiP within 5 years. An AiP is considered rescinded if the contaminated site that the Approval is issued for has been remediated and a Certificate of Compliance has been issued for the same legal site description. In some cases an Approval in Principle requires that remediation be completed within a fixed period of time.

Certificates of Compliance

A Certificate of Compliance (CoC) can be issued by the Director when a site meets either the numerical or risk-based standards following remediation. Issuance of a CoC demonstrates compliance with the remediation standards. Please refer to [section 53 of the Act](#) and [sections 49 through 52 of the Regulation](#) for more information on CoCs.

Does a Certificate of Compliance act as liability insurance?

Depending on the type of Certificate issued, it can reduce the remediation liability of persons who are responsible for contamination at a site.

A Certificate issued for a site cleaned up to the numerical standards of the Regulation means that the site has little or no remaining contamination for the particular land, water and sediment uses designated in the Certificate. This would significantly reduce the costs of any further cleanup, so would reduce the liability of all responsible persons for the site.

If the use of the site were to change after the Certificate had been issued, the site may be legally considered contaminated if the use was changed to a more sensitive use (e.g., industrial to urban park land use). In this case, the person who changed the use of the site would become responsible for the costs of remediation to the standards for the more sensitive use. If a Certificate was issued for a site which has cleaned up to risk-based standards, it still will be contaminated, and poses ongoing remediation liability for current and previous owners and operators of the site.

Does a Certificate of Compliance guarantee that there is no contamination on the site?

No. A site for which a Certificate is issued under the risk-based standards is still contaminated. For sites where Certificates are issued under the numerical standards, there are limitations to the certainty that can be provided by the consultants or the ministry working on these sites with respect to the remediation of all the contamination at a site.

First, the Certificate itself states that a site has been satisfactorily remediated to meet prescribed standards, names those standards and the land to which the standards applies, lists the dated reports on which a decision has been made, and indicates that the Director "makes no representation or warranty as to the accuracy or completeness of the information".

Second, it states that the Director can "change or substitute different requirements where circumstances warrant".

Third, the text advises that the "Certificate should not be construed as an assurance that there are no hazards present on the site".

Finally, Schedule B of the Certificate routinely has the condition indicating that if any material suspected of being contaminated is encountered during future work at the site that it will be appropriately managed.

Will the ministry issue a Certificate of Compliance for a portion of a site?

Yes, section 53 (6) of the Act allows for this. If a large site is remediated in stages and an owner wants to begin development on one part before another is remediated, he or she may apply for a Certificate for a portion of the site. Also, complex sites are often remediated for a variety of land uses or to different standards for various portions of the site, and so multiple Certificates can be issued for multiple portions.

Additional requirements for risk-based remediation

A risk-based CoC may require the owner to restrict land use or activities or to contain, control and/or monitor substances remaining onsite to ensure that risk-based standards continue to be satisfied after the CoC is issued.

In some circumstances, such as where high risk contamination is managed onsite or sophisticated control systems are required, the Director may also require that financial security and/or a restrictive covenant be in place before issuing the instrument. [Protocol 8, "Security for Contaminated Sites"](#) has additional information.

In some cases, covenants under section 219 of the *Land Title Act* may be required by the

Director for high risk sites. Conditions in the covenant may, for example, include those for:

- site inspection and maintenance,
- preventing changes in use of a site, and
- monitoring the movement or impacts of contamination.

Risk-based Certificate monitoring

When a contaminated site is being managed under the risk-based approach, a plan should be prepared and implemented for containing, controlling and monitoring any substances that remain onsite. If required, works may need to be installed to implement the plan.

Before issuing a risk-based CoC, the Director may require site monitoring and reporting to the ministry based on the type and concentration of contaminants left in place, vegetation, wildlife and human presence onsite, proximity of contaminants to receptors and other factors.

Monitoring and reporting requirements may be amended by the Director if certain parameters are determined to reflect a lower risk than first anticipated. The Director can also withhold or rescind a CoC if conditions imposed in the CoC are not complied with. Please refer to [section 53 of the Act](#) for more information on monitoring requirements of risk-based CoCs.

Contaminated Soil Relocation Agreements

A Contaminated Soil Relocation Agreement (CSRA) (see [section 55 of the Act](#) and [part 8 of the Regulation](#)) is an agreement between the owner of a source site, the owner or operator of a receiving site, and the Director of Waste Management, authorizing the relocation of soil from a contaminated site to a suitable deposit site. To determine whether a deposit site is suitable – that is, it would have no unacceptable impacts on human health or the environment – the Director must take into account the quality of the soil being moved, the existing and future uses of the receiving site, and the applicable environmental quality standards. Like AiPs and CoCs, CSRAs can be based on the numerical or risk-based standards.

The Director provides notice of the approved CSRA to the municipality for both the source and receiving sites. Please note that before soil relocation begins, the applicant must ensure either:

- a) that both municipalities have received notice from the Director, or
- b) wait at least four business days after receiving the approved CSRA before moving any soil.

These timelines should be taken into account before soil is relocated.

Note that penalties for contravening CSRA requirements are provided in section 120 (17) (i) of the Act. A complete list of supporting information and links can be found under the [Contaminated Soil Relocation Agreement](#) key topics section on our website.

Voluntary Remediation Agreements

Despite several useful features, Voluntary Remediation Agreements (VRAs) have been used rarely since they were introduced in 1997 as part of the original contaminated sites legal regime. Through a VRA a person responsible for cleaning up a site can obtain benefits, including:

- limiting the amount of remediation costs attributable to that person; and
- scheduling when the remediation may occur, thus making a Remediation Order by the Director unnecessary.

A VRA may consist of several items including:

- provisions for financial or other contributions by the responsible person,
- certification by the responsible person of his or her full and accurate disclosure of all relevant site information,
- security, subject to the conditions the Director specifies, and

- a schedule of remediation acceptable to the Director.

Details are provided in [section 51 of the Act](#) and [section 39 of the Regulation](#).

Minor Contributor status rulings

A Director may grant Minor Contributor status with respect to a site to a person who shows:

- he or she only contributed to a minor portion of the contamination;
- either no remediation would be required, or the cost of the remediation attributable to the minor contributor would only be a small portion of the total contamination; and
- the allocation of liability to the person would be unduly harsh.

Minor contributor status serves as a shield against private cost recovery lawsuits and limits remediation liability under the Act. Details are provided in [section 50 of the Act](#) and [section 38 of the Regulation](#).

Provisions for minor contributors have been used only once since they came into effect. Site owners and operators usually settle disputes about remediation liability by private agreement or through the courts.

Transfer Agreements

Provisions for Transfer Agreements are contained in part 5 of the Act dealing with the remediation of mineral exploration sites and mines. A Transfer Agreement is a written agreement between the Chief Inspector of Mines and the Director regarding the transfer of a permit under the *Mines Act*. They will enable the [remediation liability](#) of a previous owner or operator of an advanced exploration or currently producing or past producing mine site to be extinguished. The implementation of Transfer Agreements awaits the development of administrative procedures.

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.