

	Environmental Protection Division	3
---	--	----------

Name of procedure:

Ministry Procedures for the Roster of Approved Professionals

Staff affected:

Ministry of Environment staff responsible for administering the contaminated sites provisions of the *Environmental Management Act* and Contaminated Sites Regulation.

Authority:

Environmental Management Act Section 42
Contaminated Sites Regulation Sections 15, 43, 47, 49, 49.1

Purpose of procedure:

Establish operating procedures for ministry staff related to the Roster of Approved Professionals.

Relationship to previous procedure:

Replaces former version approved June 26, 2008.

Issued by: Director, Environmental Management Branch

Director's Approval:

J.E. Hofweber
Environmental Management Branch

Date: November 12, 2009

1.0 Definitions

The following words, acronyms and expressions used in the document are defined in the ministry procedure "Definitions and Acronyms for Contaminated Sites":

Act	Institute
Approved Professional	ministry
Approved Professional work	offsite migration
arm's length review	Regulation
Association	reviewable document
College	Roster of Approved Professionals
Director	Society

2.0 General

2.1 Section 42 of the *Environmental Management Act* allows the Director to establish a Roster of Approved Professionals whose members are persons qualified to:

- perform classes of activities,
- prepared classes of reports and other documents, or
- make classes of recommendations

that under the Act may be or are required to be performed or made by an Approved Professional.

2.2 The Contaminated Sites Regulation enables the Director to require applications for the following contaminated sites legal instruments to be accompanied with the recommendation of an Approved Professional:

- Determinations of Contaminated Site (Regulation section 15)
- Approvals in Principle (Regulation section 47)
- Certificates of Compliance (Regulation section 49)
- Contaminated Soil Relocation Agreements (Regulation section 43)

2.3 Table 1 shows the range of activities that constitute Approved Professional work which consists almost entirely of recommendations and advice to the Director.

2.4 Recommendations for Approvals in Principle, Certificates of Compliance and Contaminated Soil Relocation Agreements may only be made to the Director for eligible sites described in the Director's Protocol 6, "Eligibility of Applications for Review by Approved Professionals".

2.5 This document describes procedures to be used by the ministry in relation to the Roster of Approved Professionals for reviewing service applications; communications, coordination and guidance; appointments; qualifications; administration; insurance; indemnities; quality reviews and investigations.

2.6 This document serves as guidance to a Director and is not intended to be binding.

3.0 Eligibility and term for appointment to the Roster

3.1 The Director may appoint to the Roster of Approved Professionals the following persons:

- members of the Society who are in good standing; and
- persons who have special expertise in other disciplines which are not represented by professions represented by the Society.

3.2 An Approved Professional is in good standing with the Society if the Approved Professional's membership in the Society has not been suspended or rescinded and meets the insurance requirements of section 8.0.

3.3 Approved Professionals in good standing with the Society shall normally be appointed to the Roster for an unlimited term. The terms of the appointments for persons who do not belong to the Society are at the Director's discretion.

4.0 Ministry appointments to the Board of Directors

4.1 The Director appoints four persons to the Society's Board of Directors:

a) three directors with one from each of the following sectors:

- industry groups,
- local governments, and
- the general public; (a lay representative), and

b) one director, who is an employee of the ministry.

4.2 Apart from their experience and familiarity with the sectors designated in sections 4.1 (a) and (b), the qualifications of the persons appointed by the Director to the Board of Directors are at the sole discretion of the Director.

5.0 Reviews of service applications

- 5.1 Any service application involving Approved Professional work listed under items 1 through 10 in Table 1 must be forwarded by the recommending Approved Professional to the Society subject to the requirements of Protocol 6 “Eligibility of Applications for Review by Approved Professionals”.
- 5.2 The Society must assess the application package for completeness before it is sent to the ministry. If the package is not complete, the Society must ensure it is complete before forwarding the application package to the ministry.
- 5.3 For service applications by Approved Professionals where the contaminated sites legal instruments listed in section 2.2 of this procedure are requested, drafts of the contaminated sites legal instrument and a Summary of Site Condition must be submitted as part of the application. In addition, site investigation reports, risk assessment reports, remediation plans and confirmation of remediation reports as appropriate to the application must be submitted to the ministry for entry onto the Site Registry and filing in the ministry’s paper records.
- 5.4 Normally ministry staff shall only review the Summary of Site Condition and the draft contaminated sites legal instrument in determining whether a Director should sign the draft instrument forwarded by the Society.
- 5.5 The Director shall not rely on the advice or recommendation of an Approved Professional in making a decision based on any advice or recommendation of that Approved Professional of a type listed in Table 1 unless the Director has been provided written evidence that an arm’s length review has been provided by an Approved Professional where an arm’s length review is required and is specified in Table 1.
- 5.6 If there is insufficient evidence that arm’s length review has been carried out where one is required in Table 1, contaminated sites service applications and recommendations accompanying the Approved Professional work should be returned to the Society.

6.0 Fees

- 6.1 The Society is entitled to collect and administer fees as provided under its bylaws and Rules.

6.2 The ministry shall collect and administer all other fees specified in Schedule 3 of the Regulation.

6.3 For the services described in section 2.1, fees collected by the ministry shall be assessed only for the contaminated sites legal instrument requested, the Summary of Site Condition, and application amendments and withdrawals.

7.0 Communications, coordination and guidance

7.1 The Society shall be requested by the Director to develop and maintain a current, prioritized table of topics for ministry technical and policy guidance for regular submission to the ministry.

7.2 The ministry shall vet deficiencies, as appropriate (e.g. for policy and technical issues within scope of the ministry) add corresponding best practices guidance and disseminate the information to Approved Professionals and other environmental consultants.

7.3 The ministry shall continue to post all written contaminated sites policy and interpretative guidance to the ministry Internet site.

7.4 The ministry shall appoint a contact person who shall coordinate and track requests from the Society and its members, and shall coordinate and provide responses from the ministry. Interim responses to all requests shall be provided within 30 days of receipt from the Society or its members. Some requests may require additional time to provide final responses.

8.0 Indemnities

8.1 On an ongoing basis, the Director shall work with the Risk Management Branch of the Ministry of Finance to provide and maintain indemnities for Approved Professionals and members of the Society's Board of Directors and committees.

8.2 The Approved Professional work items listed in Table 1 may from time to time be amended as jointly approved by the Society and the Province. The Director shall work with the Society to identify possible changes to the table, to facilitate changes and if needed, to notify the Society of those changes as soon as reasonably practicable when changes are made

9.0 Private insurance requirements for Approved Professionals

- 9.1 Subject to the provisions of this section, every Approved Professional who does not have an indemnity described in section 8.1 must, without cost to the Province, obtain and maintain the following insurance policies with insurers licensed to carry on insurance business in Canada and in forms and amounts acceptable to the Province:
- (a) commercial general liability insurance in an amount not less than \$2,000,000 per occurrence protecting against damage from personal injury (including death), property damage and other liability that may result from Approved Professional Work. The Province is to be added as an additional insured under this insurance and this insurance shall be endorsed to provide the Province with 30 days advance written notice of cancellation or material change. This insurance must include a cross liability clause;
 - (b) professional liability insurance in an amount not less than \$2,000,000 per loss and \$2,000,000 in aggregate per term of the policy (which may be a policy covering individuals and entities in addition to the Approved Professional), covering the Approved Professional's liability resulting from errors and omissions in relation to the performance of Approved Professional Work.
- 9.2 All the foregoing insurance must be primary and not require the sharing of any loss by the Province or any insurer of the Province.
- 9.3 Every Approved Professional referred to in section 9.1 must provide the Province with evidence of all required insurance, and from time to time as requested by the Province, in the form of a completed Province of British Columbia Certificate of Insurance. When requested by the Province the Approved Professional must provide to the Province certified copies of required insurance policies.
- 9.4 Every Approved Professional subject to section 9.1 must maintain the insurance described in section 9.1(b) during the following periods:
- (a) while the Approved Professional's membership in the Society is under suspension,
 - (b) during the first 6 consecutive months the Approved Professional is on a leave permitted by the bylaws of the Society,

- (c) during the first 6 consecutive months after the resignation of the Approved Professional from the Society or the rescission of that individual's membership in the Society, and
- (d) if the Approved Professional becomes aware during any of the periods described in subparagraphs (a) to (c) of this paragraph that a Claim against the Approved Professional has been made or is pending or threatened, such further period until the Approved Professional has reported the Claim to the insurer in accordance with the applicable policy.

10.0 Performance assessments

- 10.1 The Society shall undertake performance assessments as provided in its bylaws to ensure that Approved Professionals maintain a quality of work acceptable to the Director, such that their recommendations to the ministry are accurate, complete and valid. The Society shall be requested by the Director and is expected to provide semi-annual reports to the Director advising of the results of performance assessments it conducts.
- 10.2 The Director shall review these reports in a timely manner to determine if any additional information is needed or actions such as suspension or removal from the Roster should be considered.
- 10.3 The Director may also request the Society to carry out targeted performance assessments if the Director believes there is evidence that information in a service application forwarded by the Society is deficient.
- 10.4 The Director must provide to the Society his or her rationale for any request of a targeted performance assessment at the time the request is made.

11.0 Investigation of complaints

- 11.1 Investigations may be required in response to complaints from the ministry or the public related to the work of an Approved Professional.
- 11.2 The Director may refer a complaint to the Society and it is expected to carry out an investigation in accordance with the Society's bylaws. The Society is required to provide a summary of its findings and written recommendations to the Director upon completion of its investigation.

12.0 Ministry audits

- 12.1 The Director reserves the right to carry out operational audits of the Society.
- 12.2 The Director shall request the Society to provide a copy of each certificate of insurance for professional liability insurance provided to it by Approved Professionals, as well as a current list maintained by the Society of the status of professional liability insurance held by Approved Professionals.

13.0 Constitution and Bylaws of the Society

The Province is required to approve, after consultation with the Society, any proposed changes to the constitution and bylaws of the Society. The Director shall make all reasonable efforts to expedite such approvals.

Revision history

Approved Date	Effective Date	Document Version	Notes
November 12, 2009	November 12, 2009	5.0	

Table 1. Approved Professional Work and requirements for arm’s length review

No	Type of Approved Professional Work	Arm’s Length Review with No Offsite Contaminant Migration	Arm’s Length Review with Offsite Contaminant Migration
1	Making a recommendation to a director in support of an application for a Determination of Contaminated Site.	Not required	
2	Making a recommendation to a director in support of an application for an Approval in Principle based on remediation to numerical standards or a screening level risk assessment	Not required	Required
3	Making a recommendation to a director in support of an application for an Approval in Principle based on a risk assessment (other than a screening level risk assessment) and remediation to risk-based standards	Required	
4	Making a recommendation to a director in support of an application for a Certificate of Compliance based on remediation to numerical standards or a screening level risk assessment	Not required	Required
5	Making a recommendation to a director in support of an application for a Certificate of Compliance based on a risk assessment (other than a screening level risk assessment) and remediation to risk-based standards	Required	
6	Making a recommendation to a director in support of an application for a Contaminated Soil Relocation Agreement using only numerical standards	Not required	
7	Making a recommendation to a director in support of an application for a Contaminated Soil Relocation Agreement based on a screening level risk assessment for the parcel at which the soil is to be deposited	Not required	
8	Making a recommendation to a director in support of an application for a Contaminated Soil Relocation Agreement based on a risk assessment (other than a screening level risk assessment) for the parcel at which the soil is to be deposited	Required	
9	Making a recommendation to a director in support of any other application based on risk assessment or risk management (other than a screening level risk assessment) not otherwise described in any other row in this Exhibit, as required under a protocol signed by a director.	Required	

No	Type of Approved Professional Work	Arm's Length Review with No Offsite Contaminant Migration	Arm's Length Review with Offsite Contaminant Migration
10	Making a recommendation to a director in support of any other application based on a screening level risk assessment not otherwise described in any other row in this Exhibit, as required under a protocol signed by a director.	Not required	
11	Submitting a Summary of Site Condition to a director under Part 2.1 of the Contaminated Sites Regulation or as otherwise required by the director except if the Summary of Site Condition includes a recommendation described in any other row in this Exhibit for which an arm's length review is required	Not required	
12	Providing advice to a director regarding changes over a period of time in the concentrations of substances at a parcel	Not required	
13	Providing advice to a director regarding the presence of new substances at a parcel after a date specified or established by a director such as the date of issuance of a Certificate of Compliance	Not required	
14	Providing advice and making recommendations to a director regarding the adequacy and completeness of site investigations and site investigation reports under the requirements of the Act, Regulation, Protocols and guidance issued by the Ministry of Environment for site investigations	Not required	
15	Providing advice and making recommendations to a director regarding monitoring proposed for a parcel, including interpretations of current and cumulative results, summaries of remedial activities undertaken, assessments of remediation progress, summaries of inspection and maintenance of treatment and risk management works, evaluations of treatment system and risk management works performance and supporting documentation such as laboratory reports, figures, tables, and record of monitoring, inspection and maintenance of works	Not required	
16	Submitting monitoring reports to a director	Not required	
17	Providing advice to a director about the classification of a parcel, site or part of a site as high risk	Not required	

No	Type of Approved Professional Work	Arm's Length Review with No Offsite Contaminant Migration	Arm's Length Review with Offsite Contaminant Migration
18	Providing advice to a director regarding the ability of a remediation plan if implemented, to result in the appropriate management of contamination to applicable environmental quality standards under the <i>Environmental Management Act</i> and/or to be completed within a specific time frame	Not required	
19	Making a recommendation to a director in support of an application for the determination of the background level of a substance	Not required	