

	Environmental Protection Division	4
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Name of procedure:

Procedure Regarding Exercise of Powers to Require Additional Remediation

Staff affected:

Ministry of Water, Land and Air Protection Pollution Prevention managers and Contaminated Sites Program staff

Authority:

Waste Management Act and Contaminated Sites Regulation

Purpose of procedure:

This procedure sets out criteria which a manager shall consider in deciding whether it is appropriate to require further remediation subsequent to entering into a Voluntary Remediation Agreement or following issuance of a Certificate of Compliance or a Conditional Certificate of Compliance.

Relationship to previous procedure:

None.

Issued by: Director, Environmental Management Branch

Director's Approval: _____ **Date:** _____
Environmental Management Branch

1.0 Definitions:

None.

2.0 General:

2.1 A fundamental premise of the *Waste Management Act* is that responsible persons are jointly and severally, absolutely and retroactively liable for remediation of contamination. Even if a responsible person has entered into a Voluntary Remediation Agreement with a manager, or has remediated a site and is issued a Certificate of Compliance or Conditional Certificate of Compliance, the responsible person is not released from future remediation requirements. Pursuant to section 28.7 of the *Waste Management Act*, a manager may require further remediation, notwithstanding the Voluntary Remediation Agreement or issuance of a certificate if:

- (a) additional information relevant to establishing liability for remediation becomes available (including information that indicates that a responsible person is not a minor contributor);
- (b) standards are revised so that the conditions at the site contravene the new standards;
- (c) the condition or use of the site changes;
- (d) the site poses a threat to human health or the environment;
- (e) a responsible person fails to exercise due care with respect to any contamination at the site; or
- (f) a responsible person contributes to contamination at the site such that applicable standards are exceeded as a result of the contribution.

2.2 Sections 47 and 49 of the Contaminated Sites Regulation and Protocol 6 (established pursuant to section 53 of the Contaminated Sites Regulation) define when a manager may rely on the statements of professionals, such that a manager is deemed to have satisfied the requirements of section 27.6 of the Waste Management Act.

Provided that the conditions of sections 47 and 49 of the Contaminated Sites Regulation are met to the satisfaction of the manager, the manager may issue a Certificate of Compliance on the recommendation of a professional expert.

3.0 Procedure:

3.1 In exercising authority under subsections 28.7(b) and (c) of the *Waste Management Act*, the manager shall comply with the following:

(a) *where standards under the regulation have been revised so that conditions at the site exceed or otherwise contravene the new standards*

The manager should be satisfied on reasonable grounds that the presence at that site of a substance at concentrations equal to or exceeding the new standard is likely to present a threat or danger to human health or the environment.

(b) *where activities occur on a site that may change its condition or use*

The manager should be satisfied on reasonable grounds that the presence of a substance at the site presents a greater threat or danger to human health or the environment than it did prior to the change in condition or use.

3.2 Before exercising any powers or functions pursuant to subsections 28.7(b) or (c) of the *Waste Management Act*, the manager must provide responsible persons with an opportunity to make submissions as to whether the presence of a substance presents a threat or danger to human health or the environment.

3.3 Site-specific conditions shall be considered in determining the degree of risk to human health or the environment.

3.4 If the presence of a substance is determined to present a threat or danger to human health or the environment, the manager may require further remediation or other steps as authorized by section 28.7 of the *Waste Management Act*, notwithstanding the prior entry into a Voluntary Remediation Agreement or the prior issuance of a Certificate of Compliance or Conditional Certificate of compliance.

3.5 If a professional expert is removed from the roster of professional experts, any certificates previously issued on the advice of the expert are subject to review and re-assessment at the discretion of the director or a regional manager. Such re-assessment may result in a requirement for further remediation at a site certified on the advice of the professional expert.

3.6 If a certificate has been issued on the advice of a rostered professional expert, the submission on which issuance has been based may subsequently be audited. If an audit reveals errors or deficiencies additional remediation at the site that is the subject of the audit may be required by the director or a regional manager.

Revision history

Approved Date	Effective Date	Document Version	Notes
September 4, 2001	August 30, 2001	1.0	