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|  | Environmental Protection Division | 10 |
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Name of procedure:

Requirements for Service Application Resubmissions, Withdrawals and Amendments

Staff affected:

Ministry of Environment Land Remediation Section managers and staff

Authority:

Environmental Management Act and Contaminated Sites Regulation

Purpose of procedure:

This procedure provides guidance for ministry staff on the administration of, and fees for, contaminated sites service application resubmissions, withdrawals and amendments.

Relationship to previous procedure:

None.

Issued by: Director, Environmental Management Branch

Director's Approval:

Michael W. Macfarlane
 Environmental Management Branch

Date: February 28, 2013

1.0 Definitions

The following words, acronyms and expressions used in this document are defined in the ministry procedure “Definitions and Acronyms for Contaminated Sites.”

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| Act | Determination of Contaminated Site |
| Approval in Principle | Director |
| Approved Professional | minor contributor |
| Certificate of Compliance | Regulation |
| contaminated sites legal instrument | Transfer Agreement |
| Contaminated Soil Relocation Agreement | Voluntary Remediation Agreement |
| CSAP Society | |

2.0 General

This procedure is based on the fees provisions for contaminated sites services provided in Section 9 of the Regulation. The document provides guidance to ministry staff and those delegated to act on behalf of the Director on how to administer those provisions.

2.1 Legal and regulatory provisions

- 2.1.1 Under subsection 9 (10) of the Regulation, an application or report may be returned by a Director for correction if the Director considers the application or report to be incomplete or contain errors. Upon resubmission an additional fee of 50% of the original applicable fee must be levied as required under subsection 9 (11) of the Regulation.
- 2.1.2 Subsection 9 (19) of the Regulation provides that a person may withdraw a service application and not pay the required fee referred to in subsection 9 (2) (c). In that case hourly fees apply and are payable for any action or activity done by ministry staff before the person withdrew the application.
- 2.1.3 An hourly fee pursuant to subsection 9 (15) (a) of the Regulation must be invoiced if the time required by ministry staff to review an original application and any resubmission is greater than the time credit provided under subsection 9 (9). While the time credit is equal to 1 hour for every \$200 of a fixed fee levied for a service, the hourly fee is \$165 per hour.

- 2.1.4 Under subsection 9 (20) of the Regulation, a person who requests an amendment to a contaminated sites legal instrument must pay a fee of \$165 per hour for any action or activity completed by ministry staff in relation to the amendment.
- 2.1.5 The Client Information Officer is assigned the role of receiving applications, verifying that all application requirements are met, and collecting fees in accordance with the provisions of section 9 of the Regulation.
- 2.1.6 Staff should also be aware of the requirements of section 49 (8) of the Regulation dealing with the rejection of submissions and the requirement for notifications, with written reasons, to the applicant and to the professional association to which the Approved Professional belongs. The Contaminated Sites Approved Professional Society was created since section 49 (8) was written and there are new procedures in place described in Procedure 3, "Ministry Procedures for the Roster of Approved Professionals" which should be used before the ministry resorts to the application of section 49 (8) of the Regulation.

2.2 Time and expense tracking

Ministry staff should be aware of their duties under the procedure document "Time and Expense Tracking" which describes staff requirements to track the time they spend on contaminated sites service requests and the expenses they incur when travelling in responding to those requests.

2.3 Stages of review of application packages for contaminated sites services

This document requires that reviews of applications for contaminated sites services be done in two stages. At the cursory review stage casefile workers must review the application package to determine if there are any immediately obvious errors or omissions. If errors or omissions are identified at this stage that are classified as major errors or omissions according to Table 1, the applicant should be advised immediately so that the option of withdrawal can be considered before further review is carried out.

At the detailed review stage, casefile workers scrutinize an application package in detail to determine whether all the required information has been provided to support the ministry's providing the service requested. Major errors or omissions could also be detected at this stage of review, and the applicant should be notified so withdrawal can be considered. If the application has been forwarded to the ministry by the CSAP Society, the Society should be notified about major errors and omissions.

2.4 Classification of errors and omissions

2.4.1 Different classes of errors and omissions may occur in reports and plans submitted in support of applications for contaminated sites legal instruments and other contaminated sites services.

2.4.2 There are two degrees relating to the severity of errors and omissions:

- (a) Minor errors and omissions may be trivial and do not affect significantly the level of certainty in submission conclusions – they require a low level of effort to correct or resolve.
- (b) Major errors and omissions are serious and may result in a moderate to high level of uncertainty in submission conclusions – they require a moderate to high level of effort to resolve.

2.4.3 Also, there are two types of errors and omissions:

- (a) Documentation errors and omissions occur, for example, when
 - ⇒ data or figures are omitted or are incomplete or incorrect,
 - ⇒ alternatives to ministry guidance and procedures are not explained or are not supported by appropriate arguments,
 - ⇒ there is insufficient evidence, which leads to incorrect or uncertain conclusions.
- (b) Technical errors and omissions occur, for example, when
 - ⇒ additional site investigations, modelling or risk assessments are required to address errors or omissions in site data,
 - ⇒ other technical reference information leads to incorrect or uncertain conclusions.

2.4.4 In accordance with the classification of errors and omissions indicated in this section and Table 1, fees indicated in section 2.1.1 above and as allowed for in the Regulation in subsections 9(1), 9(11) and 9(12) may not apply in the case of minor errors or omissions.

3.0 Resubmission of applications

3.1 In this document, when it is noted that resubmission is required, it means that if after the application has been returned, the applicant still wants the ministry to provide the service which was the subject of the original application, the application with corrections made must be submitted to the ministry. If the client does not want to proceed with the original application after it has been returned, then resubmission would not be required.

- 3.2 Table 1 describes the criteria to be used to evaluate an application when determining if clarification or resubmission is required.
- 3.3 The requirements in Table 1 apply to contaminated sites service requests for applications submitted to the ministry:
- (a) for ministry review,
 - (b) for review by an external contract reviewer, and
 - (c) with the recommendation of an Approved Professional that the application be approved.
- 3.4 Applications requiring resubmission received from the CSAP Society must be returned to the Society. Applications which require resubmission sent directly to the ministry by an applicant without being forwarded by the CSAP Society must be returned to the applicant.

4.0 Withdrawal of applications

- 4.1 A fee pursuant to subsections 9 (15) of the Regulation must be calculated as indicated in subsection 4.2 and levied for a withdrawn application if ministry staff perform any action or activity on the application before notice of it being withdrawn is received by the ministry. This includes hourly fees for actions described in Tables 2 and 3 of Schedule 3 of the Regulation and the travel and out of pocket expenses described in subsection 9 (15) (c) of the Regulation.
- 4.2 When a notice of withdrawal of an application has been received by the ministry, the Client Information Officer must be notified and the applicant must be refunded the difference between the fixed fees paid at the time of application and the hourly fees and any travel and out of pocket expenses incurred by staff in reviewing the submission.

5.0 Amendment applications

- 5.1 A fee of \$165 per hour pursuant to subsection 9 (20) of the Regulation must be levied for action or activity by ministry staff to complete any of the following amendment requests:
- (a) a Determination of Contaminated Site
 - (b) a Minor Contributor determination
 - (c) a Voluntary Remediation Agreement
 - (d) an Approval in Principle

- (e) a Certificate of Compliance
- (f) a Contaminated Soil Relocation Agreement
- (g) a Transfer Agreement

5.2 Fees for amendment services must be levied as follows:

- (a) for the correction of minor errors and omissions, no fee should be levied as long as ministry staff perform the service within one hour. In this case the legal instrument is not reissued, but is corrected. A resubmission fee is not required.
- (b) for the changes to conditions requiring the submission of monitoring reports under a contaminated sites legal instrument, a fee of \$165 per hour is levied, with the first hour free of charge. Also in this situation the legal instrument is not reissued, but is corrected. A resubmission fee is not required.
- (c) for other types of changes to contaminated sites legal instruments, a fee of \$165 per hour, with the first hour free of charge applies. While a resubmission fee is not required, reissuance rather than correction of the legal instrument is required.

5.3 The applicant must be invoiced upon completion of processing the amendment application.

Table 1. Contaminated sites service application and report review and resubmission requirements

| Review Results | Clarification or Minor Additional Information Required | Resubmission Required |
|---|--|---|
| Application is incomplete or contains errors | <p>Minor errors or omissions</p> <ul style="list-style-type: none"> Minor documentation errors¹ occur – minor documentation and additional information (desk top work) is required Minor technical errors occur² – minor technical work may be required at the site to provide additional data. | <p>Major errors or omissions</p> <ul style="list-style-type: none"> Major documentation errors³ occur Major technical errors occur⁴ – major additional technical details are required and may require major work at the site |
| Application Return Policy | <ul style="list-style-type: none"> 12 weeks are allowed for the applicant to respond from the time of notification when clarification or additional information is requested⁵. If there is no response within 12 weeks, the application must be rejected and resubmission of deficient items is required. | <ul style="list-style-type: none"> If there are major errors or omissions, the application must be returned immediately and resubmission is required. |
| Fees | <ul style="list-style-type: none"> Resubmission fees are not required if an adequate response is received within 12 weeks of request. Additional fees may be invoiced on completion of review if the hours worked exceed the fee credits for the application. | <ul style="list-style-type: none"> Resubmission fees are required. Payment of 50% of the original fee is required for each resubmitted item in the application package. Additional fees may be invoiced on completion of review if the hours worked exceed the fee credits for the application. |

1 Examples of minor documentation errors include but are not limited to missing, incomplete or incorrect text, calculations, tables, figures and appendices.

2 Examples of minor technical errors include but are not limited to missing minor field work or reference information.

3 Examples of major documentation errors include but are not limited to incorrect or inappropriate standards used or interpretations of investigation, risk assessment, or remediation results.

4 Examples of major technical errors include but are not limited to missing APECs and PCOCs, incomplete assessment of exposure pathways, and incorrect or inappropriate methods or models used for investigation, risk assessment or remediation.

5 The 12 week period should be tracked by the staff member requesting clarification or additional information. Microsoft Outlook is recommended as a useful tracking tool.