



Ministry of
Environment and
Climate Change Strategy

PROTOCOL 6 **FOR CONTAMINATED SITES**

Applications with Approved Professional Recommendations
and
Preapprovals

Version 11.0

Prepared pursuant to Section 64 of the
Environmental Management Act

Approved:

Director of Waste Management

Date

Effective Date:

1.0 Definitions

Terms defined in the *Environmental Management Act* (EMA) and Contaminated Sites Regulation (CSR) apply to this protocol in addition to the following:

“affected parcel” means a site or parcel at which substances are present due to the migration of those substances from one or more neighbouring areas and ultimately from a source site or parcel.

“Numerical Standards Approved Professional” means an Approved Professional who has passed an examination sponsored by the Contaminated Sites Approved Professionals Society of British Columbia (BC) for applicants to qualify as “standards assessment specialists” and whose qualifications and experience:

- (a) represent an application of the knowledge of contaminant sources, fate and transport;
- (b) were gained in an environment where the individual had primary responsibility for the technical and scientific aspects of site assessment and/or remediation;
- (c) show that appropriate regulatory requirements and guidelines for site investigations, management and remediation work were met; and
- (d) span all stages of contaminated sites investigation and remediation.

“part site” or “part of a site” means a portion of a contaminated site, defined by a metes and bounds description, legal survey or other legally defined boundary, for which the director may issue an Approval in Principle or a Certificate of Compliance as referenced in EMA section 53 (6) and the CSR section 51.

“preapproval” means a prior approval, determination, authorization or decision obtained from a Director before an Approved Professional (AP) submits an application to the ministry with a recommendation to issue a Determination, Approval in Principle or Certificate of Compliance.

“Risk-based Standards Approved Professional” means an Approved Professional who has passed an examination sponsored by the Contaminated Sites Approved Professionals Society of British Columbia for applicants to qualify as “risk assessment specialists” and whose qualifications and experience:

- (a) represent an application of the knowledge of contaminant sources, fate, exposure and effects on biota (including humans);
- (b) were gained in an environment where the individual had primary responsibility for the technical and scientific aspects of the human health and/or ecological risk assessment;
- (c) show evidence that the accomplishment required a synthesis capability that only those who fully appreciate the topics of their discipline would have; and
- (d) show that appropriate regulatory requirements and guidelines for risk assessment work and the application of risk-based standards were met.

“**source site**” means a site or parcel which has now, or had in the past, substances which migrated to one or more neighbouring sites or areas.

2.0 Introduction

Consistent with EMA and the CSR, this protocol describes activities, including the preparation of specified reports or documents, that may or must be performed by an approved professional.

Specifically, the purpose of Protocol 6 is to provide the structure and expectations in relation to:

- Classes of activities, reports and recommendations that are required to be performed, prepared or made by Approved Professionals¹; and
- Seeking preapproval from the ministry where appropriate, for applications that are to be submitted through the Contaminated Sites Approved Professional Society rather than to the ministry directly. This is done *before* making a recommendation to the director to consider issuing a Determination, Approval in Principle, or Certificate of Compliance.

EMA sections 42 and 64 provide authority to establish this protocol for Approved Professional recommendations that are provided to support the remediation of contaminated sites in BC. Section 49.1 of the CSR provides authority for a director to consider the recommendations of Approved Professionals and defines the types of applications intended by referencing sections 15, 43, 47 and 49. This protocol should be used in conjunction with the ministry’s policies, other protocols, website and guidance.

3.0 Activities, reports and recommendations performed, prepared or made by Approved Professionals

3.1 Applications for contaminated sites documentation

In this section, the phrase “the recommendation by an Approved Professional” means a recommendation by an Approved Professional that an application be considered by the director for a Certificate of Compliance, Approval in Principle, or Determination of Contaminated Site.

¹ Despite this requirement, the director has discretion to require that any application for an Approval in Principle or a Certificate of Compliance be submitted direct to the ministry, despite a non-high risk classification; or, alternatively, a director, exercising his/her discretion, may consider the recommendation of an Approved Professional for an Approval in Principle or a Certificate of Compliance for a high risk site, pursuant to CSR sections 47 (1.3) and 49 (5), respectively, if preapproval from the ministry has been obtained.

3.1.1 A director may require that any application for an Approval in Principle or a Certificate of Compliance for a non-high risk site be reviewed by the ministry. If, under this protocol, there is no requirement for an application to be accompanied by the recommendation of an Approved Professional, the application must be submitted directly to the ministry.

Table 1 identifies the types of applications and corresponding risk types that are required to be made by Approved Professionals.

Table 1. Classes of sites for which applications must be accompanied by the recommendation of an Approved Professional

Application Type	Site Risk Classification^a
Determination of Contaminated Site	high risk non-high risk
Approval in Principle (remediation must be completed within five years)	non-high risk
Certificate of Compliance	non-high risk

^a Site Risk Classification as determined under Protocol 12 “Site Risk Classification, Reclassification and Reporting”

3.1.2 With respect to an application for a Determination of Contaminated Site, Approval in Principle or a Certificate of Compliance, any applicant who is a responsible person for contamination at a parcel is responsible for the delineation and remediation of the entire area of contamination, including contamination at the parcel and any contamination that has migrated from that parcel to neighbouring parcels. Consult the ministry when it is not possible to delineate and remediate the full extent of contamination at a site as described in Sections 4.0 and 5.0 of this protocol.

Note that an Approval in Principle is typically required for scenarios involving remediation in stages.

3.1.3. With respect to an application for a Determination of Contaminated Site, an Approved Professional must submit the Final Determination draft documents to CSAP after the Preliminary Determination comment period concludes, which is not less than 30 days long as per the CSR section 15 (3). CSAP must receive the Final Determination documents no later than 60 days after the date that the director issues the Preliminary Determination. Otherwise, the Final Determination will not be considered by the director as too much time has passed. An application for a new Preliminary Determination will be necessary.

3.1.4 A person who is not a responsible person for contamination present at an affected parcel need only to have satisfactorily delineated and (if applicable) remediated the entire area of contamination at the affected parcel and may apply for an instrument for a part of a site. In these circumstances, a preapproval for part of a site is required as described in Sections 4.0 and 5.0 of this protocol.

3.2 Other types of submissions requiring Approved Professional recommendations

3.2.1 *Site monitoring reports and statements of satisfactory performance*

Reports and statements required to be submitted to the ministry as a condition of an Approval in Principle or a Certificate of Compliance must be accompanied by the recommendation of an Approved Professional. Reports and statements may include the following:

- A site monitoring report;
- A summary of remedial activities at a site;
- An assessment of overall remediation progress;
- An interpretation of current or cumulative monitoring results; and
- An evaluation of the performance of risk controls and other remedial measures including whether the measures are meeting conditions imposed in the Approval in Principle or a Certificate of Compliance and the applicable remediation standards.

The above requirements do not apply if the reports or statements were submitted directly to the ministry or at the request of the ministry.

With respect to conditions included in Approval in Principle and Certificate of Compliance, when monitoring objectives have been achieved or changes to monitoring requirements are requested, Approved Professionals may recommend that the director considers a revised Approval in Principle or a Certificate of Compliance.

3.2.2 *Additional recommendations, reports and opinions*

Approved Professionals may provide recommendations, reports and opinions to the director in relation to the following:

- Changes over a period of time in the concentrations of substances at a parcel;
- The appearance or discovery of new substances at a parcel;
- The adequacy of investigations at a parcel;
- Site risk classification;
- Performance verification, contingency, and operations and maintenance plans;
- The ability of a remediation plan to appropriately manage contamination, when implemented at a parcel;

- The ability of a parcel to be remediated before specific administrative endpoints or events such as the issuance of an occupancy permit or completion of a building inspection;
- The design of any works and implementation of other measures required to prevent recontamination of a previously contaminated parcel;
- Summaries of remedial activities;
- Assessments of remediation progress including evaluations in comparison with actions and schedules set out in remediation plans;
- Confirmation that a parcel will meet applicable standards and criteria in the CSR and would be eligible for a certificate of compliance upon completion of remediation; and
- The extent of delineation of contamination at and migrating from a parcel.

Note, Summary of Site Condition reports must be prepared and signed by Approved Professionals as per the CSR and [Protocol 17, “Forms for Notifications of Independent Remediation and Migration, and Summary of Site Condition”](#).

3.3 Incomplete applications

EMA section 64 (4) establishes that on and after the date that a protocol is published in accordance with the minister’s regulations, a director may refuse to accept anything governed by the protocol that is not in compliance with it. Any application supported by an Approved Professional recommendation for a ministry service must be accompanied by complete supporting documentation and application material before it will be processed. Applications that are not complete may be rejected or returned to the applicant.

4.0 Seeking preapproval from the director

It is necessary to apply for preapproval under Protocol 6 when an Approved Professional intends to make a recommendation to the director for the issuance of a Determination, Approval in Principle or a Certificate of Compliance and the application will not include the entire extent of contamination. The ministry’s website provides commonly encountered scenarios that require application for a preapproval. As each contaminated site has a unique set of circumstances, there may be other scenarios that will require a preapproval from the director. Each preapproval application will be assessed based on the information provided by the applicant.

Additionally, follow this protocol to obtain preapproval:

- If *de novo* derivation of one or more toxicity reference values (TRVs) is selected in a risk assessment to support an Approved Professional recommended instrument. Note, see

ministry approved TRVs in [Protocol 28, “2016 Standards Derivation Methods”](#) and information about other acceptable TRV sources in [Protocol 1, “Detailed Risk Assessment”](#).

- To establish a background concentration for one or more substances in sediment, vapour or surface water.
- If the application refers to a parcel currently subject to a preliminary or detailed site investigation order, remediation order, pollution prevention order, or pollution abatement order under EMA.
- For a part of a contaminated site.

4.1 Applications

4.1.1 Forms

The [Protocol 6 Preapproval Application](#) form must be used to apply for a preapproval under Protocol 6. A [Contaminated Sites Service Application](#) form (CSSAF) must accompany the preapproval Protocol 6 application. Check the “Additional services/functions” box in section C of the CSSAF form. Follow the [Apply for Services](#) ministry webpage.

4.1.2 Site identification release

A preapproval must be obtained prior to requesting a notice described in the CSR section 6.2. The director’s decision letter describing the preapproval must be included with the release notice request package.

4.2 Information requirements/documentation

Decisions on Protocol 6 preapproval applications are based on partial site investigation and remediation information. The submitted information/documentation requirements are more finely focused. To ensure your application is acceptable and to expedite review, it is possible to not submit a full preliminary site investigation report, detailed site investigation report, or remediation plan. Preapproval applications require submission of:

- A stand-alone document of all relevant information indicating that all reasonable efforts have been made to delineate and remediate the entire extent of contamination in accordance with the provisions of EMA and the CSR and ministry approved methods, including ministry policy, guidance and webpages.²
- All relevant figures, tables and data;
- Clear presentation of a full and detailed rationale for seeking preapproval;
- When required, records of communication with affected parcel owners; and
- When required, information about the human health and environmental risks associated with the incomplete investigation or remediation.

² Section 53 (6) of EMA provides that a director may issue an Approval in Principle or a Certificate of Compliance for a part of a contaminated site; and the CSR section 51 applies.

5.0 Director's decisions required to support Approved Professional recommendations

In addition to Section 4.0 of this protocol, other authorizations, approvals, preapprovals or director's decisions may be applicable to a contaminated site and necessary to obtain. Prior to making an application for a Determination, Approval in Principle or a Certificate of Compliance under Protocol 6, consider whether the following protocols and situations may be applicable and obtain necessary ministry decisions as needed:

- The determination of site-specific numerical soil standards (SSSs) is subject to the requirements of [Protocol 2, "Site-Specific Numerical Soil Standards"](#). See Protocol 2 for circumstances where a director's decision pursuant to Protocol 2 is required.
- The determination of local background substance concentrations in soil is subject to the requirements of [Protocol 4, "Establishing Background Concentrations in Soil"](#). See Protocol 4 for circumstances where a director's decision pursuant to Protocol 4 is required.
- The determination of local background substance concentrations in groundwater is subject to the requirements of [Protocol 9, "Establishing Local Background Concentrations in Groundwater"](#). See Protocol 9 for circumstances where a director's decision pursuant to Protocol 9 is required.
- The determination of water use is subject to the requirements of [Protocol 21, "Water Use Determination"](#). See Protocol 21 for circumstances where a director's decision pursuant to Protocol 21 is required.

6.0 Approved professional qualifications

Only specifically qualified Approved Professionals may make a recommendation to a director that an application for a Determination, Approval in Principle or a Certificate of Compliance be considered as follows:

- A Numerical Standards Approved Professional is qualified to make a recommendation for a Determination of Contaminated Site, Approval in Principle and Certificate of Compliance based on the numerical standards and, where applicable, on a screening level risk assessment.
- A Risk-based Standards Approved Professional is qualified to make a recommendation for an Approval in Principle and a Certificate of Compliance based on screening level and detailed risk assessments.

Revision history

Approved Date	Effective Date	Document Version	Notes
December 7, 2015	February 1, 2016	9.0	
November 1, 2017	November 1, 2017	10.0	Updated as part of the Stage 10 Amendment
DRAFT 2020		11.0 DRAFT	<ul style="list-style-type: none">• Split Protocol 6 into two identifiable parts to clearly define the purpose of the protocol:<ul style="list-style-type: none">○ Reports prepared and applications supported by Approved Professionals; and○ The requirements and process for seeking preapproval before applying with a recommendation to issue a determination, approval in principle or certificate of compliance.

DRAFT