

The External Contract Review Process

Introduction

The ministry has retained the limited services of qualified environmental consulting companies to provide external contract review services. These services include technical and policy review of reports for Contaminated Sites Service Applications and making recommendations regarding the issuance of contaminated sites legal instruments (legal instruments) such as Certificates of Compliance. The external contract review (external review) process is used to supplement the ministry-led reviews of contaminated sites submissions under the provisions of the *Environmental Management Act* (the Act) and section 10 of the Contaminated Sites Regulation (the Regulation).

This guidance should be useful for applicants, submitting consultants and external reviewers during the review of contaminated sites submissions.

Process overview

Contaminated sites submissions received by the ministry for review follow either an Approved Professional-led process or a ministry-led process. External reviewers are environmental consulting firms that were selected to complete reviews on behalf of the ministry. All the external reviewers have been qualified based on their experience in the field of contaminated site investigation and remediation as well as the qualifications of staff within the companies. The external review process is designed to be consistent with internal ministry reviews.

Figure 1 illustrates the general process of the external review, and the role and responsibilities of the submitting consultant, the external reviewer and the ministry.

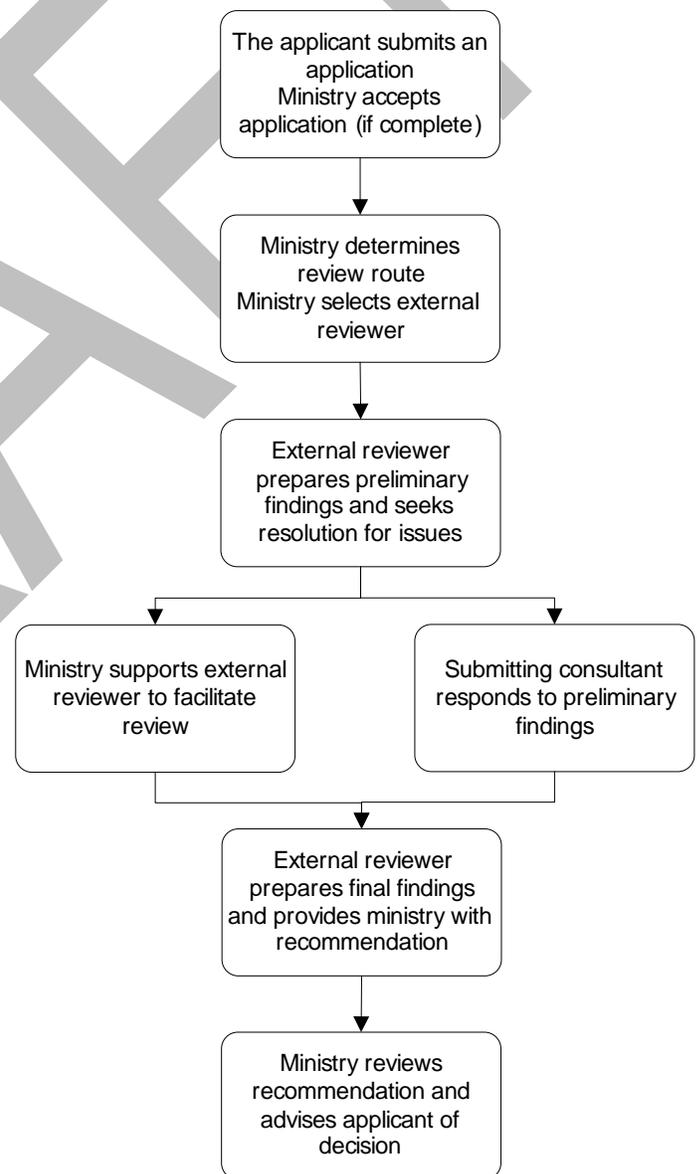


Figure 1. Overview of external review process.

Once the ministry has accepted and recorded a service application, the ministry may decide to assign the submission to an appropriate reviewer. External reviewers are generally selected on a rotational basis after ensuring there are no conflicts of interest with the submission. The external reviewer then reviews the submission (e.g. reports and Summary of Site Condition) in support of the service application. Fact Sheet 22, "External Contract Review Option: Summary of Fees and Time Schedule" provides an overview of the timelines and associated costs with the process.

External review process – Key steps and roles

The key steps and approximate timelines of the external review process are shown in Figure 2. As indicated in Steps 1 and 2, the applicant should ensure that the consultant team has the appropriate expertise to plan and carry out remediation of the site and to complete a submission that will meet the regulatory requirements. The application package submitted to the ministry must be complete and include all the required information and fees. The ministry receives the service application which is entered in our case file tracking system. The submission may be assigned to an external reviewer if at the time the ministry has insufficient capacity to process the application.

The external reviewers' will review the submission to support the ministry in making a decision regarding issuance of legal instruments (e.g., Approval in Principle, Certificate of Compliance). During the initial review stage, the external reviewer conducts the review and if necessary seeks clarification and resolution of any minor and major issues from the submitting consultant (Step 3). Next, the external reviewer prepares a written preliminary summary of issues (i.e., issues not resolved during the initial review stage) and sends them to the submitting consultant for response. The review phase is expected to be interactive, between the external reviewer and the submitting consultant, with an

emphasis on obtaining additional information and resolving minor issues (Step 4).

The submitting consultant then responds in writing to the external reviewer's request for information providing clarification and/or new information. The expectation of the ministry is the external reviewer will work with the submitting consultant to resolve differences in technical judgement or interpretation of ministry policy and guidance (Step 5). If professional differences of opinion cannot be resolved or the parties require guidance regarding specific policy issues, the external reviewer must notify the ministry and request clarification. The ministry will then work with the external reviewer to facilitate the resolution of differences of opinions and uncertainty of interpretation with respect to major policy and/or technical issues (Step 6).

For submissions including both numerical standards assessment and risk assessment, the external reviewer for the numerical standards assessment review must discuss potential implications of the site investigation results on human health and ecological risk assessment with the risk assessment reviewer (Step 7). The numerical standards assessment review should be completed prior to initiating the risk assessment review. The risk assessment reviewer then reviews the risk assessment documents in accordance with Steps 3 through 6. In some cases, the numerical standards assessment and risk assessment reviewers may need to work concurrently on the review of a submission if it includes a remediation plan.

Once a review is complete and the external reviewer is satisfied that all outstanding areas of uncertainty have been addressed (i.e. steps 1-7), the external reviewer is required to develop an external review report and make a final recommendation to the ministry regarding the acceptance or rejection of the legal instrument request (Step 8).

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| Step 1 | <ul style="list-style-type: none"> • Applicant selects a team with appropriate qualifications and site is remediated. • Submission is prepared and application is sent to the ministry. |
| Step 2 2 weeks | <ul style="list-style-type: none"> • Ministry receives the application. • Ministry decides to use the external contract review method. • Ministry selects an external reviewer. |
| Step 3 4 – 6 weeks | <ul style="list-style-type: none"> • External reviewer conducts the review following Steps 3 through 6. • External reviewer reviews the submission and resolves issues during the initial review stage. • Site visit and/or meetings may be conducted. |
| Step 4 2 – 4 weeks | <ul style="list-style-type: none"> • External reviewer prepares summary of issues that could not be resolved during initial review. • Issue summary sent to submitting consultant. • External reviewer notifies ministry that clarification of issues was requested. |
| Step 5 maximum 3 months | <ul style="list-style-type: none"> • Submitting consultant responds in writing with clarification and/or new information. • External reviewer notifies ministry that submitting consultant provided a response. |
| Step 6 as required | <ul style="list-style-type: none"> • External reviewer notifies ministry regarding issues requiring resolution. • Ministry provides support on policy and technical issues. |
| Step 7 30 days | <ul style="list-style-type: none"> • Numerical and risk-based standards Approved Professionals discuss implications for human health and/or ecological risk assessments. • Risk-based standards Approved Professional reviews following Steps 3 - 6. |
| Step 8 2 weeks | <ul style="list-style-type: none"> • External reviewer finalizes review findings. • External reviewer resolves and finalizes all issues before making recommendations and completing the external review report. |
| Step 9 | <ul style="list-style-type: none"> • Ministry receives external review report, recommendations and draft legal instrument (if recommended). • Ministry provides formal response to applicant (i.e., issues instrument or notifies applicant of deficiencies). |

Figure 2. Key steps and timelines.

On receiving the final report, recommendations and draft legal instrument (if recommended) from the external reviewer, the ministry will confirm that the applicable policies have been addressed and regulatory requirements have been met. If required, the ministry will work with the external reviewer to obtain clarification before making a final decision. The ministry maintains the discretion to accept or modify the recommendations prior to making a final decision (Step 9).

Communications

When submissions require additional information or clarification, the external reviewer is expected to identify the areas of uncertainty and contact the submitting consultant. This can be done formally through written correspondence or informally, through phone calls and e-mail. The external reviewer is expected to be available to discuss submission issues with the submitting consultant. The review process is intended to be interactive with the external reviewer initiating contact with the submitting consultant to seek clarification and additional information as necessary.

Conflicts may arise when the external reviewer and the submitting consultant fail to reach agreement regarding what is considered a deficiency and how to address deficiencies. The ministry will provide support to the external reviewer to facilitate the resolution of professional differences of opinions, or interpretation of policy and technical issues. It is expected that the external reviewer will make every reasonable attempt to resolve such issues, and only involve the ministry when these attempts have failed. Communications should flow through the external reviewer to the ministry and submitting consultant. The ministry will not communicate directly with the submitting consultant when a review has been assigned to an external reviewer. Figure 3 illustrates the communication flow.

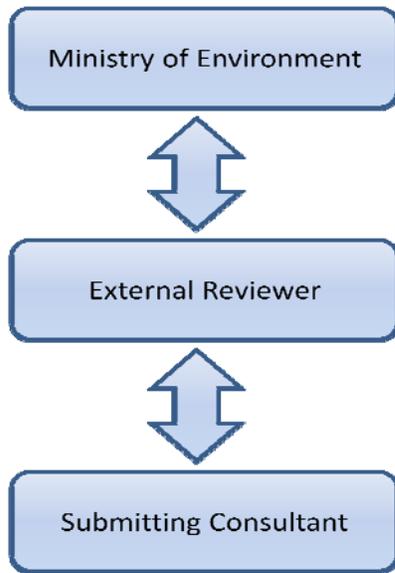


Figure 3. Communication flow

Determining acceptance or rejection of a submission

It is preferable for submission deficiencies to be addressed through clarification during the external review process. However, more serious deficiencies may require additional field work and reporting. The subsequent review would be addressed by the resubmission process. The following criteria should be used to determine the type of response required (see full details in Procedure 10, “Requirements for Service Application Resubmissions, Withdrawals and Amendments.”)

Clarification

Errors or omissions that are unlikely to affect the conclusions can be addressed during the external review process. Examples include:

- Documentation that does not affect outcome or conclusions (e.g. rainfall data, typos (not data errors), inconsistencies).
- Documentation that requires only “desk top” work to resolve and is unlikely to affect the outcome.
- Technical errors or omissions that require minor field work to add data or to confirm conclusions.

Resubmission

Errors or omissions that make conclusions uncertain and cannot be resolved without major additional work and resubmission include:

- Missed areas of environmental concern (AECs), potential contaminants of concern (PCOCs) or incomplete assessment of exposure/transport pathways.
- Incorrect environmental quality standards applied.
- Incorrect or inappropriate methods, models, or interpretation used for investigation, risk assessment, or remediation.
- Reports with glaring technical problems, prepared for different purpose or out of date.
- Non-compliance with the Act, the Regulation, guidance, policies and other applicable regulations (except non-compliance that does not affect validity for obtaining the requested legal instrument).

Review timelines

The review timelines for external reviews (as specified in Fact Sheet 22) must be met unless issues are identified that require clarification or there is additional information to be provided by the submitting consultants. In those cases, the time allocated for response by the submitting consultant to requests for clarification or additional work is not counted against the time allotted for the external review. After requesting clarification or additional information, the external reviewer may recommend rejection of the submission if a response is not provided within 3 months.

External reviewers must notify the ministry when they request additional information, and again when they have received the requested information, to allow the ministry to revise the external review due date. Unless otherwise approved by the ministry, external reviewers must complete their reviews within the specified timeframe.

Documentation

The documentation required to be submitted by the external reviewer includes the Summary of Site Condition, completed legal instrument (in hard copy and on CD in MS Word format) and external review report (in hard copy and on CD in MS Word format).

Summary of Site Condition

The Summary of Site Condition (SoSC) is completed by the applicant or submitting consultant. It is reviewed with the submission and includes information used in support of the external review.

Contaminated Sites Legal Instrument

Using the templates and instructions provided by the ministry, external reviewers are expected to draft legal instruments (including conditions). All submission reports, documentation supplied by the submitting consultant during the review (including addendums and clarification letters) and external review reports must be referenced in the legal instrument.

External review report

External reviewers must carefully document their results, conclusions and recommendations. The external review report must provide a summary of the review process including a discussion of the identified issues, how the issues were resolved, and definitive conclusions for the adequacy of each stage of work, complete with supporting rationale. The external review reports must not include any unaddressed technical or policy issues. The reviewers must finalize all issues prior to completing and submitting the external review report to the ministry.

External reviewers must clearly recommend whether the issuance of the requested legal instrument is appropriate. If a legal instrument is not recommended, the deficiencies must be

identified. The report must clearly identify the deficiencies, their significance, and discuss potential issues and consequences. The reports completed for external reviews of resubmissions must clearly identify all of the deficiencies that were addressed in previous reviews and those that are still outstanding. The reviewer must ensure that all deficiencies have been addressed and discuss areas of outstanding concerns or uncertainty prior to making a final recommendation.

Where a risk assessment is involved, the numerical standards assessment reviewer and risk assessment reviewer are expected to ensure consistency between their reviews. The external review results can either be reported in one combined document or two separate documents. If two separate external review reports are submitted, the numerical standards assessment reviewer and risk assessment reviewer must collaborate to provide a letter that includes a final recommendation regarding issuance.

The external review report should clearly identify the key issues, summarize the pertinent information and include explicit statements regarding whether the major components were addressed adequately. Major components include but are not limited to the following examples:

- Adequacy of data quality, presentation and interpretation.
- Use of appropriate numerical standards.
- Identification and assessment of areas of potential environmental concern (APECs) and PCOCs.
- Characterization of all applicable media.
- Assessment of AECs and delineation of PCOCs for all media.
- Hydrogeological characterization and interpretation.

- Plume stability and whether groundwater monitoring and sampling is adequate to prove stability.
- Assessment of preferential pathways.
- Confidence that the site investigation adequately characterizes worst-case conditions.
- Confidence that remediation will result/has resulted in acceptable site conditions within specified timeframes.
- Adequacy of confirmatory sampling.
- Adequacy of QA/QC.
- Development of appropriate problem formulation and conceptual model of contaminants, exposure pathways and receptors for human health and ecological risk assessments.
- Use of appropriate assumptions and methods for exposure assessments; and use of appropriate toxicity data for risk characterization.

Ideally, the combined information in the external review report and the SoSC should be sufficient for the ministry to rely on. The ministry will request a revised external review report if it does not include a discussion of all pertinent information. Revised external review reports or clarification requested from the external reviewer by the ministry will be addressed under the original contract payment and at no extra cost to the ministry.

Note that while site owners and operators may request external reviews under section 10 of the Regulation, the ministry may assign a document or plan to an external reviewer without the request of a site owner or operator. The use of that process can help the ministry deal with service application backlogs, is at the ministry's expense, and so is subject to the availability of government funds. From time to time our stakeholders may be informed of the availability of this ministry initiated external review process.

For more information, contact the Environmental Management Branch at site@gov.bc.ca.