

Effective date:

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## Approvals Not to Delineate or Remediate the Entire Extent of Contamination at a Site

This document explains the intent and scope of the requirement to delineate and/or remediate the entire extent of contamination at a site. It has been written in the context of applications for contaminated sites legal instruments under [Protocol 6, “Eligibility of Applications for Review by Approved Professionals”](#) and requests for [site profile release notices](#).

### Definitions

The terms and acronyms used in this guidance are defined in the ministry’s [“Procedure 8, Definitions and Acronyms for Contaminated Sites”](#):

Act	legal instrument
affected parcel	Release
approval	Regulation
beneficial use	remediation
contaminated sites	responsible person
legal instrument	source parcel
Director	wide area
freeze	contamination

### Relationship to requirements of the contaminated sites legal regime

This guidance is not intended to replace the requirements of the *Environmental Management Act* and Contaminated Sites Regulation for investigating and delineating contamination, including those provisions in section 59 (2) (b) of the Regulation for detailed site investigations. Rather, it describes exceptions which may be provided under the legal regime and by a Director of Waste Management who may recognize for an application for a legal

instrument or a request for a site profile release notice, that full delineation or remediation may not be possible, appropriate or legally required.

#### Note

Under the *Environmental Management Act* the term “remediation” has a broad meaning. In addition to obvious activities such as the removal, treatment and containment of contaminants, it includes, for example, site investigations, sampling, risk assessment and monitoring.

### What is the entire extent of contamination?

The entire extent of contamination at a site includes contamination at a source parcel and any contamination which has migrated from that parcel to neighbouring (affected) parcels.

### When is delineation or remediation of the entire extent of contamination required?

Unless there are exceptions, if a responsible person is applying for an Approval in Principle or Certificate of Compliance accompanied by the recommendation of an Approved Professional, delineation of the entire extent of contamination is required for the site for which the legal instrument or instruments are being sought.

Remediation of the entire extent of contamination must be completed for Certificate of Compliance applications or planned and scheduled for Approval in Principle applications. Legal instrument applications may be combined (i.e., Certificates of Compliance and Approvals in Principle) where the entire extent of contamination involves multiple parcels, provided that delineation is completed and remediation is completed or planned and scheduled.

Where the applicant for an Approval in Principle or Certificate of Compliance is not a responsible person under the Act, delineation and remediation (completed or planned as applicable to the instrument sought) is required for the parcel for which the instrument is sought but is not required for contamination beyond that parcel's boundaries.

Full delineation or remediation is not required if there is an exception under the Act, the Regulation, or provided by a Director. Appendix 1 describes some scenarios where exceptions are possible, together with their associated requirements, for applications for legal instruments under Protocol 6 and for requests for site profile release notices.

**Note**

Legal instruments confirm that ministry procedures and the Regulation's standards have been or will be met at a site for which they are issued, regardless of the responsible person status of the applicant. For additional information on responsible persons, consult [Fact Sheet 16, "Remediation Liability Overview."](#)

**Legal instrument application requirements**

For applications for legal instruments (typically for non-high risk sites) submitted with an Approved Professional recommendation, approvals not to delineate and/or remediate the entire extent of contamination can be sought under sections 4.5, 4.6 and 4.7 of Protocol 6. Where the entire extent of contamination involves one or more affected parcels, the concurrent issuance of legal instruments for the source parcel and all affected parcels confirms that the entire extent of contamination has been delineated and remediated. Consequently, where an approval not to delineate or remediate the entire extent of contamination is required for one or more parcels at the site, it should be obtained before submitting applications for legal instruments or site profile release notice requests for any remaining parcels at the site.

**Applying for approvals not to delineate or remediate for legal instrument applications**

General guidance on the content of Protocol 6 approval application requirements is provided on the first page of our [Protocol 6 Approval Application form](#). Guidance for applications for legal instruments is provided in [Administrative Guidance 3, "Applying for Contaminated Sites Services"](#) and [the Contaminated Sites Services Application form](#). Protocol 6 approvals, including approval not to delineate or remediate the entire extent of contamination, must be obtained before an application is made for one or more legal instruments, and must be included in the application package for the instrument(s).

**Requesting site profile release notice approvals**

Release notices for certain applications to local governments are subject to scenarios similar to those for requirements applicable to legal instruments. See Appendix 1 for details on scenarios where approvals not to delineate or remediate the entire extent of contamination are required before site profile release notice requests are submitted. How to request a release notice from the ministry is described in [Administrative Guidance 6, "Site Profile Decisions and Requesting Releases Where Local Government Approvals are Required."](#) As with Protocol 6 approvals, an approval not to delineate or remediate the entire extent of contamination must be obtained in advance of making a request for a site profile release notice. The approval must be included with the release notice request package.

**Note**

Administrative Guidance 6 describes 5 site profile release scenarios and 3 of the scenarios require delineation and/or remediation. While Scenarios 1 and 2 allow full delineation and/or remediation to be delayed, Scenarios 3, 4 and 5 require the entire extent of contamination to be delineated at the source parcel and migrating to neighbouring parcels.

### Consultations with affected parcel owners

An applicant must provide a record of communications, as described in [Administrative Guidance 11, “Expectations and Requirements for Contaminant Migration”](#) for all applications for legal instruments and requests for release notices where contamination has migrated from a source parcel to a neighbouring parcel or parcels. As described in Appendix 1, communication records are required for some approvals described in this guidance. Note that in addition to the summary records described in Administrative Guidance 11, the Director may require the submission of complete communications records as part of the review of a Protocol 6 or site profile release approval application.

### Possible delays for deficient approval applications

Applications for Protocol 6 or site profile release approvals that are incomplete or do not address conditions described in Appendix 1 may be delayed in processing, returned to the applicant for revisions, or rejected. When communication records are required as part of the approval application, any limitations or deficiencies in satisfying the communications requirements of Administrative Guidance 11 may also result in processing delays, requests for revisions or possible rejection of the application.

### Rejecting Protocol 6 approval applications

Under section 64 (4) of the Act, a Director of Waste Management may refuse to accept or may reject anything governed by a protocol that is

not in compliance with it. This means that if an application for a legal instrument required to be submitted under Protocol 6 is not in compliance with the Protocol (including the requirement for an approval not to delineate or remediate the entire extent of contamination), the Director could reject the application. In the case of applications for legal instruments where an exception to the requirement to delineate or remediate the entire extent of contamination applies under the Act or Regulation (e.g., the applicant is not a responsible person) clear written rationale and supporting details for the exception must be provided or the application may be delayed, returned for revisions, or rejected.

### Previous approvals not to delineate and/or remediate the entire extent of contamination

The ministry’s website provides a [Director’s Approvals workbook](#) which contains summary information and additional detail in links to associated documents on recent Protocol 6 Director's approvals not to delineate or remediate the entire extent of contamination at specified sites. Legal instrument and site profile release notice applicants may wish to review these decisions for relevance to their particular sites.

*Note: This document is solely for the convenience of the reader. It does not contain and should not be construed as legal advice. The current legislation and regulations should be consulted for complete information.*

*For more information, contact the Environmental Emergencies and Land Remediation Branch at (250) 387-4441.*

### Revision history

Approved Date	Effective Date	Document Version	Notes

## **Appendix 1**

### **Scenarios and Requirements Where Delineation and/or Remediation of the Entire Extent of Contamination May Not Be Required**

#### **General comments**

There may be additional requirements for the scenarios in this Appendix or additional scenarios which are not included. For scenarios which are not included, the Director should be consulted for further advice.

This document is not intended to provide advice on whether a person in a particular circumstance is a responsible person. The Act and Regulation should be consulted for advice on that subject. References to responsible persons in the scenarios below are with respect to sites described in each scenario, not other sites.

Detailed descriptions and requirements are provided for the following seven scenarios. Table 1 provides a summary of that information.

## Scenario 1

### Denial of Access to Affected Parcel

#### Description

A source parcel responsible person is denied access to an affected parcel with the result that the affected parcel as well as the entire extent of contamination (including that at the source parcel and that which has migrated from the source parcel) has not been completely delineated and remediated.

#### Applicable area

The approval application would be for the affected parcel or parcels for which access has been denied. However, where a Protocol 6 or site profile release notice approval is required for one parcel at a site, these approvals should be obtained concurrently for all source and affected parcels that make up the entire extent of contamination at the site.

#### Responsible person status of applicant

The applicant is a responsible person for contamination at the affected parcel.

#### Requirements

##### For a Protocol 6 approval

A Protocol 6 approval may or may not be required. See Administrative Guidance 11 for communication requirements with affected parcel owners. In most circumstances where the communication requirements of Administrative Guidance 11 have been satisfied, an approval for scenarios of denied access is not required. However, there may be circumstances where an approval would be preferable and may be requested ( e.g., unacceptable risks may be posed to affected parcel owners under current or reasonably anticipated future land uses).

##### For a site profile release notice approval

A site profile release approval is required for site profile release Scenarios 3, 4 or 5.

#### Additional requirements

Approval applications of this type require submission of:

- a) a summary 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 the Act and Regulation and ministry approved methods in protocols and guidance;

- b) evidence of delineation of contamination beyond the boundaries of the affected parcel at which access is denied (e.g., on an adjacent neighbouring roadway beyond affected parcels);
- c) a qualitative statement on the human health and environmental risks associated with the incomplete investigation or remediation at the affected parcel to which access is denied; and
- d) the record of communications with the affected parcel owner denying access (see Administrative Guidance 11 requirements).

## Scenario 2

### No Feasible or No Safe Method to Investigate or Remediate

#### Description

No technically feasible or safe method is available to investigate or remediate the entire extent of contamination in accordance with ministry protocols and guidance. Alternate methods to ministry approved methods would need to be used to satisfy site investigation or remediation requirements.

#### Applicable area

The approval application would be for any parcel or part of a parcel, including source and affected parcels, where alternative investigation or remediation methods would be used.

#### Responsible person status of applicant

The applicant may or may not be responsible for contamination at the parcel.

#### Requirements

##### For a Protocol 6 approval

A Protocol 6 approval is required, whether or not the applicant is or is not a responsible person. Where the applicant for the approval is a responsible person, the approval is required for all source and affected parcels at the site.

##### For a site profile release notice approval

A site profile release approval is required for site profile release Scenarios 3, 4 or 5, whether or not the applicant is or is not a responsible person. Where the applicant for the approval is a responsible person, the approval is required for all source and affected parcels at the site.

#### Additional requirements

Approval applications of this type require submission of:

- a) a summary of all relevant information indicating why delineation and remediation of the entire extent of contamination is not technically feasible or safe;
- b) a description of and scientific rationale for the alternate methods to be used, the reasons for their selection, and a statement on the ability of the alternate methods (versus ministry approved methods) to meet the site investigation or remediation requirements of the Act and Regulation; and

- c) a qualitative statement on the human health and environmental risks and their significance associated with the use of the alternate methods versus ministry approved methods.

## Scenario 3

### Merging Contaminant Plumes

#### Description

Contaminant plumes from different source parcels have merged. The neighbouring source parcels owners are not cooperating in the investigation and remediation of the comingled contamination. Comingled contaminants may be present at neighbouring source parcels, at non-source parcels affected by contaminant migration, or both.

#### Applicable area

The approval application would be for any parcel where comingled contamination is present and where relief from the requirement for delineation and remediation would be sought. The approval is required for all source and affected parcels at the site.

#### Responsible person status of applicant

The applicant is a responsible person for part of the contamination.

#### Requirements

##### For a Protocol 6 approval

A Protocol 6 approval is required.

##### For a site profile release notice approval

A site profile release approval is required for site profile release Scenarios 3, 4 or 5.

#### Additional requirements

Approval applications of this type require submission of:

- a) a summary 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 the Act and Regulation and ministry approved methods in protocols and guidance;
- b) all relevant technical information and scientific arguments supporting the assertion that specific comingled contaminants are not the responsibility of the applicant, but that of a person responsible for the neighbouring source parcel; and
- c) the record of communications with the responsible person for the neighbouring source parcel indicating non-cooperation on the delineation and remediation of contamination migrating from their parcel, including comingled contamination (see Administrative Guidance 11 requirements).

## Scenario 4

### Flow Through Contaminant Plumes

#### Description

This scenario occurs where contaminants have migrated from an upgradient source parcel to an adjacent parcel and further downgradient to one or more additional affected parcels. This could include comingled contamination from two source parcels. Affected parcels through which contamination migrates onto further downgradient parcels are referred to as “flow through” parcels.

#### Applicable area

The approval application would only be for an affected parcel.

#### Responsible person status of applicant

The applicant is the current or previous owner of, or operator at, an affected parcel and is not responsible for contamination originating at neighbouring parcels.

#### Requirements

##### For a Protocol 6 approval

A Protocol 6 approval is not required. However, information indicated in the additional requirements section below for establishing non-responsibility for the flow through contamination must be provided in the application package for the legal instrument for the affected parcel.

Delineation and remediation of contamination is required for the affected flow through parcel but is not required for contamination beyond the affected flow through parcel boundaries.

##### For a site profile release notice approval

A site profile release approval is required for site profile release Scenarios 3, 4 or 5.

#### Additional requirements

Site profile release approval applications of this type require submission of:

- a) all relevant information for the site and surrounding extent demonstrating that contamination argued to be “flow through” is originating from a neighbouring source parcel;
- b) where flow through contamination has comingled with contamination originating at the affected flow through parcel, information demonstrating an absence of secondary affects due to comingling ( e.g., enhanced solubility or

generation of toxic breakdown products such as trichloroethylene, dichloroethylene and vinyl chloride where perchloroethylene comingles with petroleum hydrocarbons); and

- c) where source parcels of migrating contamination are identified, records of communication with the responsible person for the neighbouring source parcel (identifying the presence of migrating contamination) should be provided.

## Scenario 5

### **Wide Area Contamination or Soil and Groundwater Contamination in Widespread Fill from Multiple Undetermined Historical Sources (with no identified responsible person)**

#### **Description**

##### Scenario 5A

Soil and groundwater have been contaminated by the placement of contaminated fill from multiple widespread and undetermined historical sources ( e.g., turn of the 19<sup>th</sup> century) with no identified responsible person(s). Scenario

##### Scenario 5B

Soil, vapours, groundwater and/or sediments have wide area contamination – they have been contaminated by specific substances from known sources and identified responsible person(s). The contamination covers an extensive geographic area comprising many individual properties, many or all of which would be contaminated with one or more of the specified contaminants.

#### **Applicable area**

The approval application would be for a parcel located within an area of contamination of the types described in either Scenarios 5A or 5B.

#### **Responsible person status of applicant**

The applicant is the current or previous owner of, or operator at, an affected parcel and is not responsible for contamination originating at neighbouring parcels.

#### **Requirements**

This scenario is specific to the types of contamination described above. The requirements below have no bearing on requirements related to other contamination at the parcel at which the widespread historical contaminated fill or wide area contamination is present.

#### **For a Protocol 6 approval**

A Protocol 6 approval is not required. However, information indicated in the additional requirements section below must be provided in the application package for the legal instrument for the subject parcel.

Delineation and remediation of contaminated fill and wide area contamination at the parcel for which the instrument is sought is required, but is not required for contaminated fill or wide area contamination located beyond that parcel's boundaries.

**For a site profile release notice approval**

A site profile release approval is required for site profile release Scenarios 3, 4 or 5. The approval is required for all source and affected parcels at the site, including the situation where the source parcel is part of the site.

**Additional requirements**

Scenario 5A

Parcel owners wishing to attribute contamination of fill to widespread undetermined historical source must submit strong supporting evidence that:

- a) the parcel is located in an extent where soil is known to have been contaminated by the placement of fill from multiple widespread and undetermined historical sources (submit evidence such as historical photos and maps, landfilling and land use records, and investigation results for fill at the site and in the surrounding extent including visual and olfactory evidence);
- b) there is no identified responsible person for the contamination; and
- c) the owner or operator did not, by any act or omission, cause or contribute to or exacerbate the widespread historical contamination.

Scenario 5B

Parcel owners wishing to establish that some or all of the contamination their site is wide area contamination must submit strong supporting evidence that:

- a) the parcel is located within the boundaries of a wide area site designated by a Director, or
- b) the parcel is located in an area known to be subject to wide area contamination.

To support establishing item b) submit evidence:

- such as historical photos and maps, land use records, and investigation results at the site and for the surrounding area, including visual and olfactory evidence;
- that there is one or more identified responsible person for the wide area contamination; and
- that the owner of or operator at the subject parcel did not, by any act or omission, cause or contribute to or exacerbate the wide area contamination.

## Scenario 6

### Beneficial Use Contamination

#### Description

Contaminants at the site appear in environmental media as a result of beneficial uses associated with operating structures, infrastructure and activities, for example:

- zinc localized around galvanized materials (used to prevent rusting);
- copper localized around copper pipe or bare copper wire (used for water supply or for cathodic protection to prevent corrosion);
- boron, chromium, copper, arsenic, chlorophenols, or polycyclic aromatic hydrocarbons localized around wood treated or protected with wood preservatives;
- road salting.

A Protocol 6 or site profile release notice approval, if it were provided by a Director, would

- indicate that the risks associated with contamination near to and derived from beneficial use materials are acceptable and that remediation is not required for the entire extent of contamination associated with the beneficial use, and
- apply only to those contaminants at a site which can be attributed to beneficial uses.

The parcel would be eligible for a risk-based standards Approval in Principle or Certificate of Compliance but not a numerical standards-based Approval in Principle or Certificate of Compliance or Determination of Contaminated Site.

#### Applicable area

The approval application would be for any parcel at which contamination from a beneficial use is present.

#### Responsible person status of applicant

The applicant is a may or may not be a responsible person for the beneficial use contamination at the parcel.

#### Requirements

##### For a Protocol 6 approval

A Protocol 6 approval is required.

**For a site profile release notice approval**

A site profile release approval is required for site profile release Scenarios 3, 4 or 5.

**Additional requirements**

Approval applications of this type require the following criteria to be met:

- the beneficial use must currently apply, whether or not it is associated with an active or closed operation or activity;
- the contamination associated with the beneficial use must not extend significantly beyond from the location of the use. The extent may differ depending on the beneficial use ( e.g., creosote treated pilings versus road salt application);
- the beneficial use materials were not produced or stored at the site;
- the application for the beneficial use contamination exemption is in the context of Protocol 13, “Screening Level Risk Assessment” or a detailed risk assessment for the site;
- beneficial use contamination has been investigated and delineated at the parcel for which a legal instrument or site profile release notice is sought;
- beneficial use contamination cannot be attributed to other sources, including naturally occurring sources;
- where the applicant is a responsible person for the beneficial use materials, best management practices must be demonstrated to have been used; and
- a performance verification plan may be required for any subsequent application for a legal instrument or site profile release notice.

## Scenario 7

### Delineation Complete – Remediation Progressing in Stages

#### Description

The entire extent of contamination has been delineated but remediation is progressing in stages<sup>1</sup>. Although the circumstances of this scenario differ from site to site, it commonly occurs where a legal instrument or site profile release notice is sought by a responsible person for one or more affected parcels in the absence of a legal instrument or site profile release notice application for the source parcel and possibly other affected parcels.

#### Applicable area

The application would be for part of the entire extent of contamination at the site.

#### Responsible person status of applicant

The applicant is typically a responsible person but there may be situations where the applicant is not a responsible person.

#### Requirements

##### For a Protocol 6 approval

A site profile release approval is required for site profile release Scenarios 3, 4 or 5.

##### For a site profile release notice approval

A site profile release approval is required.

#### Additional requirements

Approval applications of this scenario require:

- a) a statement on the remediation status of the entire extent of contamination and written rationale for seeking a legal instrument or site profile release notice for the subject parcel in the absence of an application or applications for the entire site;
- b) if a risk-based remediation approach is used, information demonstrating that
  - any dissolved plume is stable,

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<sup>1</sup> Section 53 (6) of the Act indicates that a Director has discretion to issue an Approval in Principle or Certificate of Compliance for part of a contaminated site. If a part site is authorized under an Approval in Principle or Certificate of Compliance, a Director may require a covenant under section 219 of the Land Title Act or security under section 51 of the Regulation for those parts of the site not remediated.

- no change in plume concentrations would reasonably be expected in the future, and
  - there are no unacceptable risks; and
- c) where controls are required to prevent recontamination of the affected parcel or where risk-based remediation has been used, confirmation of the effectiveness of risk controls and a performance verification plan.

**Table 1. Summary of requirements for scenarios where delineation and / or remediation of the entire extent of contamination may not be required**

	Scenario	Applicable Area	Applicant Status as a Responsible Person	Instrument Application Protocol 6 Approval		Site Profile Release Notice Approval <sup>2</sup>	
				Applicant is a Responsible Person <sup>1</sup>	Applicant is Not a Responsible Person <sup>1</sup>	Applicant is a Responsible Person <sup>1</sup>	Applicant is Not a Responsible Person <sup>1</sup>
1	Denial of access to an affected parcel so delineation or remediation is incomplete.	Application is for an affected parcel.	Applicant is a responsible person for the affected parcel.	Not required if Administrative Guidance 11 communication requirements are satisfied.	Not applicable	Required	Not applicable
2	No technically feasible or safe method available to investigate or remediate in accordance with ministry guidance and protocols.	Application is for any parcel including source and affected parcels.	Applicant may or may not be responsible for contamination at the parcel.	Required	Required	Required	Required
3	Merging contaminant plumes from different source parcels where neighbouring source parcels owners are not cooperating in investigating and remediating comingled contamination.	Application is for any parcel where comingled contamination is present.	Applicant is a responsible person for part of the comingled contamination.	Required	Not applicable	Required	Not applicable
4	Flow through contaminant plumes.	Application is for an affected parcel.	Applicant is the owner of, or operator at an affected parcel who is not responsible for the contamination at the parcel or from neighbouring parcels.	Not applicable	Not required. Information required at the time of legal instrument application.	Not applicable	Required
5	Contaminated caused by the placement of contaminated fill from multiple widespread and undetermined historical sources with no identified responsible person or is wide area contamination.	Application is for a parcel within a larger area of contamination.	Applicant is the owner of, or operator at an affected parcel who is not responsible for the contamination at the parcel or from neighbouring parcels.	Not required. Information required at the time of legal instrument application.	Not applicable	Required	Not applicable

	Scenario	Applicable Area	Applicant Status as a Responsible Person	Instrument Application Protocol 6 Approval		Site Profile Release Notice Approval <sup>2</sup>	
				Applicant is a Responsible Person <sup>1</sup>	Applicant is Not a Responsible Person <sup>1</sup>	Applicant is a Responsible Person <sup>1</sup>	Applicant is Not a Responsible Person <sup>1</sup>
6	Contaminants appear in environmental media as a result of beneficial uses.	Application is for any type of parcel at which beneficial use contamination is present.	Applicant may or may not be responsible for the beneficial use contamination.	Required	Required	Required	Required
7	The entire extent of contamination has been delineated but remediation is progressing in stages.	The application would be for part of the entire extent delineated.	The applicant may or not be a responsible person.	Required	Required	Required	Required

<sup>1</sup> Refer to the column "Applicant Status as a Responsible Person" for specific information.

<sup>2</sup> An application for a site profile release notice is not required for site profile release Scenarios 1 and 2 under [Administrative Guidance 6](#).