

**The ministry proposes to amend the “decommission a site” definition and associated provisions under the Contaminated Sites Regulation (CSR) of the *Environmental Management Act* (EMA).**

## Introduction

An intentions paper regarding the proposed changes to the provincial process for identifying contaminated sites was posted for public comment in summer 2016. One of the proposals in the paper was to amend the provisions relating to decommissioning a site to ensure sites are investigated in a timely manner once an activity designated in Schedule 2 of the CSR ceases to operate.

The CSR defines “decommission a site” as the removal, destruction or treatment of soil, process equipment or buildings, including the removal of storage tanks, in a manner designed to stop or reduce a significant portion of the operations at a site or to significantly change the use of the site.

Decommissioning a site is currently an action that triggers the identification of contaminated sites provisions in EMA and the CSR. Under the current legal regime, a site owner must submit a site profile to the Director prior to decommissioning a site. The Director can then require site investigation, which will place a “freeze” on certain future local government approvals relating to redevelopment of that site. However, for sites that do not move forward to redevelopment, there is no provision to ensure site investigation occurs in a timely manner. To address this issue under the present regulatory regime, the Director normally imposes a one year timeframe to complete site investigation and submit a site risk classification report for all decommissioned sites that are not being redeveloped.

The definition of “decommission a site” addresses “mothballing” (where an activity is shut down but the facilities are maintained such that reuse or reactivation is possible in the future) by limiting its applicability to when specific works are removed or soil is disturbed. The concept of mothballing is an important consideration in British Columbia because this frequently occurs in the upstream oil and gas sector and various other industries. However, this approach can lead to situations where sites are abandoned and all facilities left in place in an attempt to avoid the site decommissioning trigger and subsequent requirements for completing site investigation (for example, a gas station shuts down and old tanks are left in place).

The current provisions relating to decommissioning a site only apply to privately owned lands, not provincial Crown land. The absence of effective decommissioning provisions that apply to all lands in the province can inadvertently lead to the creation of brownfields or orphaned sites.

## Key Points

The Identification of Contaminated Sites intentions paper proposed the following changes to the “decommission a site” provisions:

- ➔ Redefine the term “decommission a site” to provide clarification and ensure that all sites being decommissioned are captured by the process;
- ➔ Require submission of site investigation reports and a Site Risk Classification Report to the Director within one year of site decommissioning;
- ➔ For sites regulated under the *Oil and Gas Activities Act*, submit site investigation reports and a Site Classification Form to the Oil and Gas Commission (Commission) within one year of site decommissioning; and
- ➔ Include a provision to allow for an extension of the one-year deadline for report submission at the discretion of the Director or Commission.

## Revised Proposal

Following careful review of comments from stakeholders and practices in other jurisdictions, the actions proposed in the 2016 intentions paper are revised as follows:

- adopt the concept of “permanently cease an activity” from Quebec legislation to replace the definition of “decommission a site” and associated provisions under EMA and the CSR.

Wherein permanently ceasing an industrial or commercial activity designated in Schedule 2 of the CSR will be described in the relevant statutory provisions as a trigger for initiating site investigation requirements. This provision would apply to both privately owned and provincial Crown lands.

Timeframes would be implemented to define when an activity is considered permanently ceased, or stopped, as well as when site identification forms should be submitted and site investigation reports and site risk classification reports would be required. For example:

- Permanently ceasing an activity means that the activity has not operated in at least 12 months;
- An owner or operator must submit a site identification form within 6 months of permanently ceasing an activity; and,
- Site investigation reports and a site risk classification report must be submitted within 1 year of submitting a site identification form.

For sites regulated under the *Oil and Gas Activities Act*, site investigation reports and site classification reports would be submitted to the Commission within the timeframes noted above.

These timeframes address the issue of temporary shutdowns of Schedule 2 activities and allow up to 18 months following shutdown before reporting requirements are initiated.

The proposal to include a provision to allow for an extension of the one-year deadline for report submission at the discretion of the Director or Commission has been carried forward.

The revised proposal ensures that all sites in the province are subject to requirements for site investigation when a Schedule 2 activity permanently ceases operation regardless of whether facilities are removed or soil is disturbed.

## Objectives

Objectives of the decommissioning provisions are to:

- Ensure sites are not an unacceptable risk to human health or the environment;
- Ensure that site investigation and site risk classification takes place in a timely manner;
- Minimize the creation of brownfields and orphan sites