

# **LAND REMEDIATION DISCUSSION PAPER CONSULTATION**

## **IDENTIFICATION OF POTENTIALLY CONTAMINATED SITES – SITE PROFILE PROCESS**

### **SUMMARY OF PUBLIC COMMENTS**

Prepared for:

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**Land Remediation Discussion Paper Consultation**  
**Identification of Potentially Contaminated Sites – Site Profile Process**  
**Summary of Public Comments**

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## Land Remediation Discussion Paper Consultation – Site Profile Process

### Introduction

The Ministry of Environment (the ministry) is reviewing aspects of British Columbia's site remediation legal regime. The review encompasses a number of components, including provisions addressing soil relocation and the mechanism for identifying potentially contaminated sites (the site profile process). See the [ministry's land remediation website](#) for links to the [Contaminated Sites Regulation \(CSR\) and Schedule 2 of the regulation](#) for further information.

This report is a summary of stakeholder comments received as part of the consultation process on the identification of potentially contaminated sites.

### Background to the consultation process

A [discussion paper](#) was posted for public review and comment on the ministry's land remediation website October 7, 2014 through to February 2, 2015. The discussion paper provided background information regarding what the site profile process is, why the site profile process was established and how it works, concerns with the current process, ministry objectives and priorities, and options for amending the process for identifying potentially contaminated sites. A separate response form for providing comments or suggestions to the ministry was also posted on the website.

The ministry hosted webinars on Oct. 15, 2014 and Jan. 14, 2015 to inform and update interested stakeholders on the consultation process. Face to face meetings involving ministry presentations and questions from participants were also held in Victoria, Vancouver and Kelowna in October-November 2014. In total, these events involved close to one hundred participants.

### Purpose and format of the *Summary of Public Comments* document

This document has been prepared for the Ministry of Environment by C. Rankin & Associates, contracted by the ministry to independently receive, compile and review comment on the ministry's discussion paper with options for amending the process for identifying potentially contaminated sites.

The complete set of responses received through the consultation process has been compiled and passed to the ministry for detailed review and consideration. All comments and references submitted during this process, through independent submissions and through direct consultations with stakeholders, will be reviewed and carefully considered by the ministry in making any changes to the site profile process.

The summary of responses is arranged by topic as presented in the discussion paper.

### Description of responses received

As well as comments made in information sessions, twenty (20) responses to the discussion paper were received (by e-mail or attached file), and have been recorded for this summary of stakeholder comments. Respondents included representation from the resource development and delivery sector, the land development sector, those providing professional services to private companies or government, government regulatory agencies and two public sector organizations.

## Summary of Public Comments

### 1. Ministry priorities and objectives for identification of potentially contaminated sites

#### *Response Form Question 1.1 : Do you have any comments regarding the ministry's priorities and objectives?*

Many respondents who commented on this question expressed support for “a uniform and consistent process across the province” and/or “increased transparency and predictability in how regulations are applied”. One respondent commented, for example, that “having different standards and processes throughout the Province is confusing, frustrating and costly in both time and expenditures to our membership and the businesses and homebuyers they serve”. Respondents also often expressed support for “streamlining the site profile system while ensuring that sites are adequately investigated and remediated” noting, as a respondent commented, that “protection of human health and the environment must continue to be priorities”.

Several respondents voiced concern that “hardwiring” regulatory provisions could reduce needed “flexibility in the system” to the detriment of ministry objectives, commenting, for example, that “the Director should still retain decision-making authority to require or exempt site compliance with the Certification process within a limited range of circumstances [such as] emergency response [and] waste discharge permitting”.

Additional specific comments on this topic included:

- ◆ “The role for local government should remain as administrative”
- ◆ “Ideally potentially contaminated sites can be identified as early in the process as possible”
- ◆ “In order to create a uniform and consistent process, there should not be the option to ‘opt out’ of the process”
- ◆ “[We] are concerned that some of the options presented could lead to local governments having to take a larger role in contaminated sites decisions and soil relocations”
- ◆ “The uniform process in urban areas where redevelopment is occurring may have to differ [from] rural areas where sites are being decommissioned and not redeveloped – there may also be differences between local brownfield sites (such as service stations and dry cleaners), and heavy industrial properties (e.g., mine/mineral processing, forest sector mills and mid-stream/upstream petroleum industry sites)”

#### *Response Form Question 1.2: Are there any additional objectives that you believe should inform or guide the ministry's review of British Columbia's site remediation legal regime?*

Respondents provided varied and specific comments in response to this question, including:

- ◆ “The priorities and objectives could be strengthened through highlighting the polluter pay principle... [we recommend] a priority [of protecting] ‘innocent’ parties (e.g., property owners that are adjacent to a contaminated site and may be affected by off-site contamination),

as well as [recognizing] the taxpayer’s interest where significant government resources... has to be spent administering, implementing and enforcing contaminated site legislation”

- ◆ “Measures to streamline administrative processes for all stakeholders engaged are positive”
- ◆ “The ministry [should] develop an affordable approval system for property owners/land developers in scale to the value of the property”
- ◆ “The considerable differences in the capacity of local governments across the province (e.g., the differences between large urban municipalities and small rural communities) to manage soil contamination/contaminated sites should be kept in mind when drafting revisions”
- ◆ “Consider the objective to ‘mitigate contaminated sites’ instead of waiting until the damage is done... [also] consider [including as an objective] ‘identification of potential contaminated sites to owners purchasing potentially contaminated sites’ ”
- ◆ “Objectives may need to be expanded to try and deal with brownfield sites”
- ◆ “Updated website showing the known sites”
- ◆ “Better communication regarding the forms and the process”
- ◆ “Take the opportunity to confirm that the Schedule 2 uses listed appropriately match with what is typically considered an area of potential environmental concern – one example is fill material, which is not a Schedule 2 use, but [is] often identified as an area of potential environmental concern in practice”

## 2. Concerns with the current site profile process

### **Response Form Question 2.1: Do you have any comments or concerns regarding the current site profile process?**

Several respondents who commented on this question felt that “the current site profile and release process works well in most circumstances” or that “the system is actually relatively good the way it is and does function as a trigger to address contaminated sites”. Other respondents expressed “agreement” with many or most of the issues identified by the ministry in the discussion paper, for example: “confusing, inefficient and burdensome process for all – agree... uncertainty due to variability in Local Government Bylaws – agree... patchwork system due to municipal ability to opt out – agree... too many triggers to initiate the process – agree... site profile exemptions are dated and unclear – agree... enforcement of requirements imposed in release letters is difficult and time consuming for the ministry – agree”.

Respondents differed in their comments regarding “flexibility” or “clarity” regarding the current process. One respondent, for example, suggested that “professionals familiar with the [site profile form and] process [are clear about the process and that]... ‘hardwiring’ may eliminate the [needed] flexibility in the current system”. In contrast, another respondent commented that “the process could benefit from... revising to leave nothing up to interpretation”.

Many of the respondents expressed concern with current opt-out provisions for local government and recommended that “local governments should not be given the option to ‘opt out’ of the process”. One respondent suggested that “the site profile process should continue to origin-

ate with local government triggers, but not involve local government decision-making or opt-out provisions, automatically invoking ministry referral and involvement”. Another respondent noted that “one result of permitting opted-out communities is a perception in the development community with some land owners and environmental consultants that opted-in communities are less streamlined or too rigorous or not supportive of economic investment creating friction between property-owners and local government”.

Several respondents also expressed concern that “the site profile form can be filled out with very little knowledge of environmental issues or history of the site [and/or]... doesn’t require additional historical searches or due diligence”.

Specific comments on this topic included:

- ◆ “The current site profile process works well but is very resource intensive for sites that have several steps in the site investigation process... [however it does] allow for some parallel work to be completed such as site investigations while Development Permits are in the Local Government review queue – [changing the process to require completion of]... all environmental work before one can even start the development/permits/applications [would] cause significant delays and/or stall site work”
- ◆ “While it is unnecessary and inefficient for health authorities to be notified of every identified contaminated site and site remediation plan, the revised regulation should include provisions to give Health Officers under the *Public Health Act* the authority to request and gain access in a timely manner, as the need arises, to site profiles, remediation plans, and other related information such as soil sampling results from information and data holders at the provincial, local government levels as well as from the property owner”
- ◆ “Definitions or examples of Schedule 2 activities would be helpful”
- ◆ “The role of Contaminated Sites Approved Professional (CSAP) in the approval process is confusing to land owners using non-CSAP and ultimately could result in extra costs to the land owner – perhaps a [qualified professional] ‘QP’ like the Riparian Area Regulation could be established for smaller less risky sites”
- ◆ “Fees are high for achieving a legal instrument”
- ◆ “There is also an issue with the gap between building permit issuance and occupancy that needs to be addressed, with respect to when remediation is required – the remediation should be required at the time of building permit issuance rather than occupancy”
- ◆ “The ‘freeze’ process is not stressed enough – when the site profile is completed, local government sends it to the Province (either Registrar or Director), and continue with their application process – if ‘yes’ is marked off on the form, it is not clear that local government cannot continue with their process and the development is ‘frozen’ – the owner may apply for a ‘release’ but [municipal] staff is unclear how to assist the owner in this process”

### 3. Activities triggering site profile requirements

**Response Form Question 3.1: Local government applications – Do you have any comments regarding removing or amending triggers affecting local government applications and the site profile process?**

This topic generated substantive, specific and often differing comments from respondents.

Many respondents suggested that existing triggers should be retained however, several also provided supplementary recommendations such as “adding more exemptions if legitimate”, “including issuance of occupancy permits as an additional trigger” and “triggers should be amended and reviewed but not deleted”. One respondent summarized that “the triggers in place currently are inclusive of the major changes to a property where environmental issues should be considered and addressed prior to permitting the change to take place – modifying the triggers could leave some environmental issues undocumented or inadequately addressed during property changes, and changes to the current related process is therefore not recommended”.

Some respondents expressed a concern that “the current regime... triggers the requirement [for the site profile process] too early” and this can “result in significant [time and cost] to obtain releases”. Several respondents recommended removing demolition as a trigger as “restricting demolition of unusable ugly empty structures may result in them remaining empty on sites for decades” and “detailed investigations and remediation are not possible [and/or are less costly] until buildings are demolished”.

Respondents differed in recommendations about retaining or removing soil removal as a trigger. Respondents commented, for example, that “deletion of [this trigger would] make it more difficult to track contaminated soil movement” and “if the soil removal trigger is removed... there will be [a] disconnect between soil relocation and site profile processes... maintaining the soil removal trigger is important in ensuring soil relocations do not create new contaminated sites”. In contrast, another respondent suggested removing the soil removal trigger “as it is otherwise captured by notification of independent remediation, soil relocation and/or authorizations issued under the Waste Discharge Regulation”.

Several respondents suggested “building permit issuance” as a “key trigger for site investigation”. One respondent provided the rationale “that it is at this stage that our members are committed to redeveloping sites... in most cases, demolitions will have occurred so access to sites is much easier [and] the Building Permit is also a common step in the development process across the Province, whereas some municipalities do not have Development Permits”. In contrast one respondent, for example, commented that “moving to a system similar to Ontario where the investigation is triggered during the building permit/occupation stage sounds like leaving it too late as the process of getting a Certificate of Compliance (CoC) or determination can take 6 to 36 months”.

Additional specific comments on this topic included:

- ♦ “Local governments should be required to follow the site profile process”
- ♦ “Both or either option seem reasonable – the key is clarity in language”

- ◆ “In most cases [the existing] process is seamless and catches most of the potentially contaminated properties at the beginning of their redevelopment process – if the Province postpones these requirements to later in the redevelopment process, staff are concerned that there will be less time for an applicant to deal with the contaminated site issues, including any City lands that may be affected from the migration of the contamination, and that staff will need to ensure that works authorized by City permits will not limit the ability of the applicant to remediate the property”
- ◆ “We propose that an effective amendment could be that a trigger of the Site Profile requirement occurs only when two conditions are met: first, there is a proposed change to land use thus presenting a new opportunity to remediate, and second, there is a potential need due to a change in exposure to human and/or ecological receptors resulting from the change in use – with these two conditions met, remediation would be required when practical in terms of use, and when environmentally sound, in terms of ensuring remediation addresses risks – this is said recognizing that the High Risk Protocol would continue to be applicable to sites that pose an ongoing potential harm to the environment”
- ◆ “The ministry should keep the following triggers for site profile submission, at a minimum: zoning; subdivision; development permit; building permit – contaminated site issues need to be identified before a site is rezoned or subdivided to ensure the proposed use is appropriate for the site conditions”
- ◆ “Triggers for site profile requirement should be linked to contemplated land use, as well as soil movement – planned conversion of industrial land to residential development for example should remain a trigger”
- ◆ “Please do not remove the triggers such as rezoning which changes the use on a property, and subdivision, as there are a number of areas where an Official Community Plan and Zoning Bylaws do not exist... in areas with no building inspection, focus on the ‘end point’ rather than having triggers concerns us because remediation may not happen”
- ◆ “More exemptions should be added to the legislation, such as: [1] land use not changing to a more stringent use (i.e., to Residential, Urban Park or Agricultural Use); or [2] potential for off-site migration adequately investigated and shown to be not present; or future trigger(s) anticipated within a year”
- ◆ “The option to require perimeter monitoring at all operating sites with Schedule 2 activities should be carefully considered – the size, scale, history, and operating practice are some factors that contribute to the risk of contamination... there are many sites with Schedule 2 activities that do not exhibit risk to the environment – perimeter monitoring would... create an unnecessary burden to industry and all operators of Schedule 2 activities”
- ◆ “There... needs to be a decision step where information can be presented to put the Schedule 2 activity into context, for example, does a dry cleaner that opened five years ago and uses only biologically ‘clean’ chemicals and contained machinery require a site investigation?”
- ◆ “Site profile trigger process and its format should consider the situations when amendments to instruments are sought (i.e., CoC and Determination) – this will help in connecting to the past activities and thus avoid repeat of related steps”
- ◆ “Caution is urged such that any changes to site profile requirement for decommissioned industrial/commercial land use will not create ‘orphan’ sites that will be problematic when future site remediation is required”

**Response Form Question 3.2: Recognizing the variability in local government permit processes, do you have any suggestions for the ministry to help ensure a consistent process for identifying contaminated sites throughout the province?**

This question generated a number of responses regarding opted in and opted out communities. Some respondents commented that “all local governments should participate in the soil profile review system”. One respondent suggested incentives such as “expedited approvals for opted-in communities” while another recommended “remov[ing] opt-out provisions [entirely]”. Another respondent commented that “there is a perception that opted-out communities are more streamlined and more supportive of economic development creating potential friction between property owners, professionals and local government”. One respondent further “urge[d] the ministry to... [continue to recognize] local governments [that] desire to opt out of the site profile process [as] some... do not have the resources or desire to become involved” noting also that “the Community Charter states that ‘the Provincial government must not assign responsibilities to municipalities unless there is provision of resources required to fulfill the responsibilities’ ”.

Suggestions for improving consistency in local government involvement included:

- ◆ “A base list of common definitions to support consistent interpretation and application of the site profile process by stakeholders”
- ◆ “Educating local government staff on what the province requires and providing local governments with funding to cover the cost of administering... the program”
- ◆ “Ensuring local governments are compensated for prioritizing participation in the site profile [process]”
- ◆ “Simplify Schedule 2 and allow both opted-in and opted-out communities to use this as a consistent screening tool”
- ◆ “Methods of addressing... inconsistency [such as the use of the ministry process or the municipalities’ own process for soil deposit/soil removal and the site profile requirement] should be discussed in consultation with the Union of British Columbia Municipalities”
- ◆ “Change the legislation... require a notice on the certificate of title... [and] possibly requiring a Section 219 covenant on the property”
- ◆ “Find a way to link everything to occupancy via the *Land Title Act* and get around any of the permitting issues”
- ◆ “Establishing a consistent process is not possible, but establishing a consistent outcome (e.g., site profile submission) is – if local governments know what they need to ‘deliver’ they can work within their systems, processes, structures etc. to meet that requirement”
- ◆ “Hardwiring specific triggers into legislation would drive consistency – [we] suggest that these triggers be limited to full site decommissioning and full site development where a Schedule 2 activity has occurred”

**Response Form Question 3.3: Site decommissioning – Do you have any comments regarding removing or amending requirements for a site profile upon decommissioning of a site?**

Most respondents who commented on this question supported inclusion of or “hard wiring” a requirement for submission of site investigation and site classification reports following decommissioning. One respondent commented, for example, that “the site decommissioning trigger is important because it documents the environmental issues and makes sure they are understood and plans for addressing them have been put in place early on in planned changes to a site”. Additional related comments included: “hardwire requirements for full site decommissioning where Schedule 2 use activities have occurred such that investigation reports are required within a specified period (i.e., one year following complete site decommissioning)”; “require a notice on the certificate of title and remove the notice once the site is compliant with the decommissioning requirements”; and “for... lower-risk, commercial and industrial operations, the ‘hardwire’ requirements option is supported”.

Several respondents expressed concern that requirements associated with decommissioning of a site could be overly onerous if applied to all Schedule 2 activities. Related comments included: “duplication of effort should be avoided where possible”; and “when a site is decommissioned, it is not clear why the owner is required to submit reports to the ministry... are there ways to verify the concerns the ministry has with respect to third parties for offsite impacts, without completing a full investigation?”.

A number of respondents recommended that “site perimeter monitoring... should not be hard-wired”, commenting, for example, that “[site perimeter monitoring] may be less effective at identifying and managing potential offsite migration than through investigation, in addition to being overly prescriptive”. Another respondent commented that “requiring site perimeter monitoring should only be for sites where contamination is known to exist and has a high risk to migrate off-site – risk assessment must be conducted prior to demanding perimeter monitoring”.

Additional specific comments on this topic included:

- ◆ “[We] recommend the option of repealing the site profile requirement at time of decommissioning and implementing a new on-going monitoring requirement to be proactive about identifying and remediating contaminated sites – however, this requirement should be limited to the highest risk Schedule 2 activities (it would be overly onerous for many of the site uses listed in the schedule)”
- ◆ “Consider how the CSAP process may impact a site where the independent remediation is being conducted by a non-CSAP professional”
- ◆ “Consider ways to facilitate service station redevelopment – tie the requirement for service station decommissioning to a Provincial requirement not a local government requirement”
- ◆ “The exemption from the duty to provide a site profile... should be revised or clarified... to avoid misinterpretation by municipalities regarding when a site profile must be forwarded to the [ministry]... municipalities may forward site profiles... for partial site decommissioning which may result in [the ministry] requiring investigation unnecessarily”
- ◆ “There is a need to better describe what specific activities fall within the definition of ‘site decommissioning’ and the process could be minimized if there is no soil removal occurring”

## 4. Site profile form

### **Response Form Question 4.1: Do you have any suggestions for improving the accuracy and the completeness of the site profile form?**

This question generated considerable comment from respondents. Many respondents expressed support for “simplifying” or “clarifying” the form. Suggestions included “including a [basic] list of searches to determine historical land use: historical title search, site registry search, previous environmental or spill reports, aerial photographs”; “we agree that removing unnecessary and confusing questions [such as the questions in sections VI to IX on the form] is a positive step”; “[we] agree with the proposal to require that basic property searches be undertaken”; “establish on-line reporting”; “keeping the burden [on municipal staff or others using the form] while obtaining useful information should be a priority”; “removing ‘yes/no’ questions is a must... coupled with ‘to the best of your knowledge’ [statement in the current form] provides a lot of wiggle room”; and “removing the checklist would simplify the form and reduce uncertainty”.

Differing comments were received with respect to whether the ministry should require that a QP or CSAP complete the form. On the one hand, some respondents felt that: “it is not necessary for a professional to complete the form provided the applicant/owner is provided with clear guidance on what is required for a historical record check”; and “it is not clear why a [QP] is required to complete the site profile form – some basic searches to check for historical site use is better than having an approved professional complete the work and potentially elevate the screening to a Phase 1 or Stage 1 investigation”. Several respondents commented that a property owner may have the best knowledge of historic use of the site and, with explicit guidance regarding the “basic searches” that are required, can complete a form without resort to a QP. Another respondent commented that “having a requirement for a consultant retained and a Stage 1 Preliminary Site Investigation (PSI) completed for every commercial property before a Site Profile is submitted may affect the schedule for planning and development”.

Other respondents, in contrast, recommended that: “a QP [should] complete the form – we see forms [not prepared by a CSAP or QP] with all kinds of errors”; “site profiles should be completed by a QP that has an obligation to the public interest and their profession where an accountability framework exists”; and “in fact, it has become good practice to complete a stage 1 PSI for both financiers and operators before completing a site profile form”. One respondent suggested that limiting site profile requirements to “Schedule 2 land uses only [associated with a requirement that a suitably qualified professional complete the form]... would specifically exclude the majority of residential lands [and address concerns about cost while focusing on lands with higher risk of potential contamination]”.

Differing comments were received regarding whether site profile forms should be updated as new information becomes available. Some respondents expressed concern that this “may create an undue burden... if not adequately limited” and suggested instead, for example, that “this requirement be left as a screening tool for certain triggers” or that “clear limitations [be specified] on the type of new information that would be required... and timeline in which such new information must be added”. Other respondents, in contrast, commented that “the site registry should have the most recent site profile, and there should be legal requirements to update the

site profile when new information is identified, and submit an amended site profile to the site registry for posting within a set timeline of the identification of such new information”.

Additional specific comments on this topic included:

- ◆ “Fees are high for achieving a legal instrument”
- ◆ “If the ministry requires a professional to complete the form, establish a QP system with on-line reporting directly to the ministry”
- ◆ “With a CoC for the site, possibly obtained from past development application, an applicant does not need to complete a Site Profile form as part of their new development application – [we] suggest that all applications be required to complete a Site Profile form regardless if a CoC is in place or not, as in many cases [we have] found that applicants are seeking to develop their site outside of the conditions imposed with the original CoC”
- ◆ “The form does not ask if the site is known to be contaminated or not, and this should information should be required in the form – [we recommend] adding... fields for the site identification number if there is one for the site and the dates of previous site profiles if known”
- ◆ “If the questions are to remain, it is recommended that they become more specific to Schedule 2 land use – for instance, Question VIII B – asbestos, some municipalities require completion of the site profile as part of a demolition application for a residential dwelling as they are interpreting this question to mean the presence of any asbestos product... this is likely a misinterpretation by the municipality based on the generic nature of the question”
- ◆ “Requiring the person completing the form to undertake a site registry search is a good idea, but it would require the province keep their records up-to-date and available to the public”

## 5. Site profile “freeze and release” provisions

*Response Form Question 5.1: Option A. Streamline existing release provisions. Do you have any comments about this option? Do you believe that it would meet the ministry’s priorities and objectives?*

This option was “not supported” or “not recommended” by almost all respondents who commented on this question. Reasons cited by respondents included: “not flexible enough and would still require significant ministry staff effort to administer”; “[municipal] staff are concerned that this approach may result in inefficiencies and added costs for applicants [as] numerous subdivision, rezoning and development permit applications [would be] unable to go to Council for approvals until the sites were either cleaned or had a detailed remediation plan”; “[this option] is too rigid and could significantly delay or prevent some activities from moving forward”; “requiring an Approval in Principle or CoC to release applications is not practical or necessary in all cases, especially if same owner is upgrading the same property”; “[we] do not believe that this inclusion would streamline the process”; and “current provisions allow for some municipal approvals concurrent with site remediation – changes may lead to delays in redevelopment approvals”.

A limited number of respondents expressed support for this option. Comments from these respondents included: “the freeze should remain until there is certainty with respect to the end

point/outcome”; “this option would catch proposed property changes early, so that environmental issues can be brought forward quickly and addressed before the changes occur”; “streamlining would add options (legal instruments or other approvals) and would make requests for release very easy of local government staff”; and “option A would improve the process, but [our municipality is] more supportive of option B”.

Additional specific comments on this topic included:

- ◆ “Perhaps a web-based application could be developed for requesting a release”
- ◆ “Possibly not have the applications frozen until the province says they are, upon reviewing the form, rather than having to apply for a release – most applicants would be concerned if honestly filling out the site profile with Schedule 2 activities automatically caused a delay (frozen) and extra costs to their development”
- ◆ “Recommendation – the freeze/release provision should be tied to the Occupancy Permit – or the final municipal inspection before occupancy... [this] is late enough in the process that it allows developers to remediate sites during the construction process (e.g., as a garage is being built) – this adds efficiency to the development process but ensures that remediation has occurred before the public is allowed to occupy the building”
- ◆ “Consider imposing... financial security requirements with set timelines and/or specific release conditions”
- ◆ “It is important to consider the many cases where the risk-based remediation approach is built into the development (e.g., soil is being capped by a building footprint or soil is being excavated for the parking lot) – in these cases, development needs to be able to proceed in order for the remediation itself to proceed... oversight should be either the Ministry of Environment or an Approved Professional, and not the municipality to ensure consistency across the province”

**Response Form Question 5.2: Option B. Focus on the end point. Do you have any comments about this option? Do you believe that it would meet the ministry’s priorities and objectives?**

While more respondents noted support for this option over option A as described in the discussion paper, many also expressed concern or caution about the implications of “focusing on the end point”. One respondent, for example, commented that “this has the potential to streamline the process [however]... the endpoint must be chosen carefully to prevent contamination determination after building construction has begun”. Another respondent commented that “releasing all permits with the exception of Occupancy would restrict the [city’s] ability to enter into legal Remediation Agreements... we would lose protection for the offsite contamination – remediation provisions and municipal liability for offsite contamination would need to be strengthened”. Another respondent cautioned that: “focusing on the end point is similar to ‘results-based outcomes’... given the complexity of land remediation and costs involved (including real estate) results-based is risky – where government is involved, the risk is ultimately put on the taxpayer”.

Additional comments on this topic included:

- ◆ “This option is not ideal because in many areas of the province, occupancy permits, building permits, and/or development permits are not required – there is nothing on title flagging future owners”
- ◆ “Hardwiring investigation into legislation and discontinuing freezing applications are the favored approach – this would add certainty and flexibility for site investigation and remediation”
- ◆ “We do not support the proposed ‘end point’ option as proposed – this is akin to doing away with onsite building inspection during the construction period and basing occupancy permit issuance solely on the applicant’s documentation of the construction process”
- ◆ “Will help make the process more clear and consistent, which [our municipality] sees as an improvement – this would require careful consideration of when the requirements are triggered [we would] recommend legal instruments be required at Subdivision stage, or Building Permit stage if no Subdivision – some flexibility would be required to allow negotiating solutions for exceptional circumstances”
- ◆ “Staff are concerned that this approach could lead to some potentially contaminated sites being redeveloped without remediation being completed... [and] would move the administrative burden that currently exists at the Province and shift it to each local government”
- ◆ “While an end-focused process is preferred, fewer situations should ultimately require a CoC or Determination – exemptions should be provided for the situations currently covered by the [Administrative Guidance document 6] AG6 Scenarios, requiring instruments primarily for high risk sites, where the land use is changing to involve more stringent standards, or if off-site migration is apparent”
- ◆ “This option would require integration into the municipal processes for inspection/permits for new buildings with then the final release coming at the occupancy stage... there is concern that leaving everything to the occupancy trigger would miss problems that should have been identified and addressed during the permitting for development, zoning, subdivision or the completion of soil removal”
- ◆ “A new requirement to obtain a Determination or Certificate in every instance.... would increase costs [for our organization] with no significant incremental benefit for a site that is not to be sold”
- ◆ “A new requirement to remediate the entire area of contamination... will be of little benefit in many circumstances, especially if the site is being upgraded for the same use – for an upgrade scenario, the existing requirements in AG6 Scenario 4 are reasonable”
- ◆ “Hardwiring timelines for decommissioning site investigation will provide for adequate investigations, but with seasonal data requirements and minor delineation gaps, [detailed site investigation] DSI could take significant time to complete and will delay timelines for redevelopment”

## 6. Suggestions for a revised site identification process

**Response Form Question 6.1: If you do not support the options presented, do you have any alternative suggestions for a revised process that would meet the ministry's priorities and objectives in identifying potentially contaminated sites?**

Respondents who commented on this question often pointed to their response to previous questions. Additional suggestions included:

- ◆ “An emphasis on adequate investigation/remediation, not hard-wired complete DSIs or remediation. The development permit should drive the process”
- ◆ “Before a certain end point (occupancy, for example) – possible options would be to add to the Building Code the need for a negative Determination, CoC or release before final building inspection, or create a new environmental occupancy permit under the Act”
- ◆ “Provide more options for the redevelopment process to obtain buy-in from property owners and developers”
- ◆ “Do not add burden onto local government staff [and] ensure that the ministry will support opted-out communities in their remediation endeavours”
- ◆ “CSR Schedule 2 should be reviewed to ensure targeted industries are current. A guidance document on applying and interpreting the Schedule is also recommended”

## 7. Additional comments

**Response Form Question 7.1: Do you have any additional comments or suggestions regarding the ministry's review of British Columbia's site remediation legal regime and/or the identification of potentially contaminated sites?**

Additional comments or suggestions provided by respondents included:

- ◆ “In summary, we recognize the need to update the current contaminated site regulation, and we encourage the reviewers not to lose sight of the fact that the original impetus for the regulation was the protection of human health and the environment”
- ◆ “Re-establish brownfield renewal program funding”
- ◆ “Consider soliciting feedback directly from property owners who have participated in this system”
- ◆ “There are opportunities to streamline the contaminated site administrative process in general which primarily relates to staff resources – with the exception of high risk sites the ministry's role is primarily administrative as it relies on recommendations from CSAPs – within this model there is an opportunity to reduce administrative times for processing CoCs and other ministry approvals which should be further investigated”
- ◆ “Some of the new requirements around ‘future scenarios’ by the ministry are hampering the ability of developers to obtain instruments prior to occupancy”

- ◆ “The current concept of a ‘negative’ Determination is unwieldy and confusing to non-practitioners – if Schedule 2 activities have occurred at a site, a site should be considered potentially contaminated in the absence of a Determination or a CoC – the definition of a Determination should be changed to confirm that, following adequate investigation, a site meets numerical standards”
- ◆ “If the Site Profile process does not freeze the local permitting process but is endpoint-focused (as in option B), then the Approval in Principle mechanism can likely be eliminated, simplifying the process overall”
- ◆ “All local governments, regional districts etc. in B.C. should be required to follow the site profile process”
- ◆ “Has there been any discussion with the Oil and Gas Commission (OGC) on revising the Site Profile and potential impacts for upstream sites?” [Ministry response: this discussion paper does not specifically address this topic... we have not had formal discussions with the OGC about site profile requirements at this time but will be engaging them directly in the future.]
- ◆ “We believe that in many cases remediation can and does occur during the redevelopment process. It does not always have to occur prior to it... remediation should occur prior to an occupancy endpoint (either when an Occupancy Permit is issued or by the Final Inspection conducted by the appropriate municipal department) – remediation during redevelopment is a significant cost savings for the end users of redeveloped sites”
- ◆ “[The] cost of CoCs and determination fees is too high for properties in the B.C. interior – perhaps re-establishing the provincial brownfield program may help”
- ◆ “Subsection “D” (waste products from natural gas and oil drilling activities, such as drilling fluids and muds) of section VI (Waste Disposal) of the Site Profile... triggers one of the major Area of Potential Environmental Concern (APEC) from oil and gas drilling activity (a schedule 2 activity)... the onsite schedule 2 activity will not [be] triggered when drilling waste storage and disposal happened on a remote location (remote sump)... [to address this gap] you may consider the following options: (1) Subsection “D” ... of section VI (Waste Disposal) of the Site Profile may be moved to section IV (Areas of Potential Concern) as an APEC; or (2) Drilling Waste Storage and Disposal in a sump/remote sump may be considered itself a “Schedule 2 Activity” on the CSR Schedule 2”