

Enhanced Local Government Immunity for Administration of Contaminated Sites

October 21, 1997

Recent amendments were made to the *Waste Management Act* (the *Act*) to enhance liability protection for local governments who administer certain contaminated sites provisions. The amendments were part of the *Local Government Statutes Amendment Act (No. 2), 1997*, which was passed in July, 1997.

Background

In the early 1990s local governments told the provincial government they wanted a legal process to screen potentially contaminated sites. As a result, a local government role in administering site profiles was included in new contaminated sites legislation. During consultations on draft contaminated sites regulations, some local governments were concerned about their potential liability in administering site profiles and other legislated functions. Nine specific questions about the ability of the legislation to provide adequate local government immunity were identified.

Independent Legal Advice

These questions were reviewed by a panel of municipal and environmental law experts who were members of the Canadian Bar Association. The final panel report was submitted to the ministry in May 1995. It provided a number of recommendations, including a proposed expansion of the wording of the immunity provisions for local governments administering contaminated sites functions under the *Act*.

Key Changes

Administration of Delegated Functions

In addition to site profile administration, local governments may, by agreement, take on several other administrative functions. These include issuing Approvals in Principle, and Certificates of Compliance. The amendments clarify that local governments have liability protection if they rely on any of these items in carrying out their work, irrespective of who prepared them. They also provide immunity for local governments relying on determinations of contamination made by the ministry officials.

Corporate Immunity

New immunity is extended to local governments in their capacity as corporations.

Voluntary Contaminated Sites Functions

Liability coverage is expanded to local governments' discretionary and voluntary contaminated sites functions.

Immunity Under Other Statutes

When the *Act* was amended, amendments to a number of other statutes were also made in connection with the administration of site profiles. They include the *Land Title Act*, *Municipal Act*, *Vancouver Charter*, and *Islands Trust Act*. Immunity has now been extended to local government site profile administration under these statutes.

Specific Amendments

The following are the key changes:

Section 28.6 (1)

Definition of a "protected person" — someone who is given immunity for contaminated sites administrative functions under the *Act*. For local governments, these include:

- a municipality [corporate capacity]
- a current or former approving officer
- a current or former "municipal public officer" under the *Municipal Act* or "civic public officer" under the *Vancouver Charter*.

Section 28.6 (2)

Expanded immunity to cover a number of activities under a series of statutes: the *Waste Management Act*, *Land Title Act*, *Municipal Act*, the *Vancouver Charter*, and *Islands Trust Act*. These now include:

- acts (actions)
- advice, including pre-application advice
- recommendations
- purported exercise or performance of powers, duties or functions
- failure to carry out or provide the above.

Section 28.6 (3)

The circumstance where a protected person does not retain immunity are described in this section. These include the situations where a protected person:

- is responsible for cleaning up contamination as defined in the Act, or
- was dishonest, malicious or exhibited willful misconduct.

Section 28.6 (4)

This section addresses immunity of local governments who rely on a Preliminary or Final Determination of contamination, an Approval in Principle, or either of the two types of Certificates of Compliance. Compared with the previous version of the legislation, it expands coverage to include determinations, and clarifies that this reliance must be honest, and without malice or will misconduct.

Section 28.6 (5)

The final section addresses the case where a local government is formally delegated the ability to issue an Approval in Principle, Certificate of Compliance, or Conditional Certificate of Compliance under the *Act*. Like subsection 4, it clarifies that if a local government is to retain immunity, these items must have been prepared honestly, and without malice or will misconduct.

What are the Implications?

In simple terms, local governments now have broadened liability protection. This will have a direct effect in several areas:

Site Profile Administration

The [Contaminated Sites Regulation](#) provides an opportunity for local governments to opt out of the site profile administration system. Some local governments have opted out because of concerns about their liability in administering the system. The enhanced immunity provided in these amendments should eliminate these concerns.

Other Delegated Functions

With enhanced liability protection for delegated functions, local governments may now wish to consider taking on responsibility for administering additional items such as site investigations, Approval in Principles, and Certificates of Compliance.

Note: This summary is solely for the convenience of the reader. The original legislation and regulations should be consulted for complete information.