Treaty First Nations Amendments to the Contaminated Sites Provisions of the *Environmental Management Act*

On April 1 this year, amendments were made to several contaminated sites provisions in the *Environmental Management Act* (the Act) with respect to those Treaty First Nations which have taken responsibility for registering land titles and adopting legal provisions for soil deposit and removal.

What are the amendments?

Definitions and interpretation

In section 39(1) of the Act the definition of "government body" has been expanded to include a Treaty First Nation.

Determination of Contaminated Site

Sections 44 (2) (b) (iii) and (e) (iii) have been changed to include records of land registry offices of Treaty First Nations. Now, as part of the notification requirements for Determinations of Contaminated Site, the Director of Waste Management (the Director) must give notice of preliminary and final Determinations to any person with a registered interest in a site as shown in the records of a land registry office of a Treaty First Nation.

Remediation orders

Under section 48 (13) of the Act, the persons to whom notice of a remediation order must be provided now include those persons who have a registered interest in a site as shown in the records of a land registry office of a Treaty First Nation.

Contaminated soil relocation

Sections 55 (6), (7) and (8) deal with the liability of agencies which adopt provisions for the deposit and removal of contaminated soil.

With these amendments, a Treaty First Nation is not responsible for the costs of remediating contamination if it adopts a bylaw, law, permit, licence, approval or other document which authorizes the removal or deposit of contaminated soil in the treaty lands, unless it establishes standards or procedures which conflict with provisions under the Act. This immunity does not extend to a Treaty First Nation with respect to:

- a contaminated site owned by the Treaty First Nation,
- contaminated soil that originated from property owned by the Treaty First Nation, or
- activities of the Treaty First Nation, other than regulatory activities, that caused or contributed to property becoming a contaminated site.

What are the key effects?

For Treaty First Nations that have created their own land registry systems, persons with registered interest in sites which are the subject of Determinations of Contaminated Site and remediation orders will be provided notice by the Director of Waste Management and will have an opportunity to comment.

Previously those persons would not have been provided such notices because provisions in the Act did not apply to First Nations lands.

Those Treaty First Nations who adopt bylaws and similar provisions for the deposit and removal of contaminated soil will have the same liability protections under the Act as other municipalities in B.C. The previous liability provisions for contaminated soil deposit and removal did not include or protect First Nations.

Which Treaty First Nations are affected?
To date, only the Nisga'a Treaty First Nation has created its own land registry system and will be affected by the amendments in the Act to the notice provisions for Determinations of Contaminated Site and remediation orders.

Are there other First Nations which we can expect will become involved?
It is unlikely that First Nations other than Nisga'a will adopt their own land title registry as this has proven expensive and problematic for the Nisga'a. It is possible that future treaty First Nations will adopt legal provisions for soil deposit and removal under their law-making authorities, but most will simply be subject to provincial regulations under the Act.

Why were these amendments made?
The amendments were made to reflect the treaties coming into effect with First Nations under the B.C. Treaty Process where after the effective date of a treaty, provincial laws (including the Act) apply to treaty settlement lands. Provincial laws would not apply where a First Nation under treaty has made its own laws which meet or exceed relevant provincial laws.

Unless First Nations laws apply, Provincial laws would apply both to former Indian Reserve lands registered in the provincial land title system or within a First Nation's own land title system as is the case with Nisga'a. Provincial laws are amended as required to update definitions that formerly did not include treaty settlement lands and/or Treaty First Nation governments' law-making authorities (e.g., the change to the definition of "government body" in section 39(1) of the Act).

How will other First Nations be affected?
Non-treaty First Nations will continue to be subject to the land management provisions of the *Indian Act*. Currently, Federal lands, including Indian reserves, are excluded from soil relocation provisions under provincial law. The only exceptions would be First Nations that are signatories to Environmental Management Agreements under the Federal *First Nations Land Management Act*, or a *First Nation Commercial and Industrial Development Act* agreement. Currently no B.C. First Nations have either agreement in place; however, the Squamish First Nation is in negotiation towards a *First Nation Commercial and Industrial Development Act* agreement, and five B.C. First Nations are positioned to negotiate Environmental Management Agreements under the *First Nations Land Management Act* within the next 1-2 years, with additional First Nations expressing interest.

Over the coming months we expect to develop detailed advice and guidance on this topic for our staff and stakeholders.

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

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