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Environmental Law Practice Group News

Environmental Solutions for Business

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British Columbia *Contaminated Sites Regulation* - Second Stage Amendments

Recently, the second stage amendments to the *Contaminated Sites Regulation* were passed (B.C. Reg. 17/2002). The amendments follow the completion of a required three year review of the 1997 Contaminated Sites Regulation to determine if changes were needed based on advances in science, law and the management of contaminated sites.

The amendments include changes that streamline the system, further delegate work to the private sector, reflect current cleanup standards based on the latest information about contaminants and their effects on the environment and human health, harmonize soil and water quality standards, enhance environmental and health protection, introduce more equitable fees, and protect neighbours from migrating contaminants.

Notification of Independent Remediation and of the Migration of Substances Contaminating Neighbouring Sites

Section 57 of the *Contaminated Sites Regulation* was repealed and a new section was added. The section 57 requirement for notification of a ministry manager on commencement of independent remediation of a site has been streamlined by deleting the requirement for verbal notification. The written requirement is unchanged.

Section 57, and the newly added section 60.1, contain a new requirement that a person must notify the manager and the owner of a neighbouring site if substances are migrating or likely migrating onto a neighbour's site and causing, or likely causing contamination.

What does this mean?

Any responsible person who carries out independent remediation of a site pursuant to section 28(1) of the *Waste Management Act* must provide written notification to the neighbouring site and a copy to the manager if they know that one or more substances have migrated or are likely to have migrated to a neighbouring site and are or are likely causing contamination, within 15 days of discovery. This applies to any independent remediations ongoing as of February 4, 2002, or commenced after February 4, 2002.

According to the *Waste Management Act*, “remediation” includes, but is not limited to, “preliminary site investigations, detailed site investigations, analysis and interpretation, including tests, sampling, surveys, data evaluation, risk assessment and environmental impact assessment”. Therefore, responsible persons should be aware that independent remediations may be deemed to be ongoing if any of the above are occurring, and this may trigger the notice requirements.

Any responsible person who carries out a site investigation that discloses that one or more substances has migrated or is likely to have migrated to a neighbouring site and are or are likely causing contamination of the neighbouring site must provide written notification to the neighbouring site and a copy to the manager within 15 days of discovery. This applies to any site investigations completed after February 4, 2002.

Wide Area Sites Risk-Based Standards

Section 18.1 was added to Part 6 of the *Contaminated Sites Regulation*. This section deals with remediation standards for wide area sites. It allows, on request, that the cleanup of a wide area site be certified by the director of waste management, with reference to advice from a medical officer provided that the medical health officer’s advice is endorsed by the Provincial Health Officer, adequate rationale is provided to support and justify the request, a public community-based consultation process acceptable to the medical health officer is conducted, and an environmental impact report is provided to the ministry.

To date, there have been no wide area site declarations.

What does this mean?

Section 18.1 allows the ministry to certify a site as meeting the risk-based standards in the regulation by introducing biological measures of substances as legal reference standards with appropriate justification.

Improvements to the Site Profile Provisions

The site profile provisions have been amended to include the deferral of the requirement for local government to submit a site profile in subsection 4(6), an exemption from the requirement to submit a site profile in subsection 4(9), inclusion of a new question about existing contamination from the migration of substances from other properties in the site profile form in Schedule 1, the addition of dry cleaning facilities, sawmills, and sites affected by the migration of contaminants from other sites, to the list of commercial and industrial activities and purposes in Schedule 2, and an increase in the fee for a site profile submission to local government from \$50 to \$100.

What does this mean?

Site profile submissions are deferred until just prior to development or redevelopment of a site, which is more efficient and cost effective.

The amendments also serve to clarify how to complete a site profile. They further ensure that a site profile would be triggered if a site was contaminated by the migration of substances from a neighbouring site. In addition, they ensure that site profiles are submitted for sawmill and dry cleaning sites, as well as for sites subject to migration of substances from neighbouring properties.

New Professional Expert Functions

Sections 15 and 43 of the *Contaminated Site Regulation* have been amended to enable ministry officials to rely on the advice of persons on the roster of professional experts for two new functions. Pursuant to section 15, ministry staff may rely on the advice of persons on the roster of professional experts in adjudicating applications for determining if sites are contaminated. Further, pursuant to section 43, ministry officials may rely on the advice of persons on the roster of professional experts in a Contaminated Soil Relocation Agreement.

What does this mean?

These new amendments mean that there is a simpler and potentially more timely approval process for low to moderate risk sites. These amendments also permit ministry officials to rely on the advice of specified private sector professionals in adjudicating applications for approvals and certificates. This also results in much lower fees for reviews of reports and plans, where staff rely on the advice of rostered professionals.

Changes to Standard Schedules

Schedules 4-7 of the *Contaminated Sites Regulation* have been changed to reflect updates in the generic numerical soil standards and water standards. The matrix numerical soil standards for arsenic, benzene, cadmium, chromium, ethylbenzene, toluene and zinc have been updated. In addition, matrix numerical soil standards have been added for ethylene glycol, DDT and mercury. Further, the standards triggering Contaminated Site Relocation Agreements have been changed to reflect the above amendments.

What does this mean?

The amended schedules reflect current science, and ensure that the *Contaminated Sites Regulation* is up to date. To ensure that they are current, annual amendments of the standards in the Regulation are planned.

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