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Name of procedure:

Procedures for preparing and issuing contaminated sites legal instruments

Staff affected:

Ministry of Environment staff responsible for administering contaminated sites legal instruments

Authority:

Environmental Management Act (Section 44 and Part 4, Division 4)

Contaminated Sites Regulation (Section 16, Part 8 and Part 9)

Purpose of procedure:

To provide guidance to Ministry of Environment staff and Approved Professionals who prepare draft contaminated sites legal instruments and who act on behalf of the Director processing contaminated sites legal instrument applications.

Relationship to previous procedure:

None.

Issued by: Environmental Emergencies and Land Remediation Branch

Director's Approval:

_____ Mike Macfarlane _____

Date:

_____ December 15, 2015 _____

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1.0 Definitions

The following words, acronyms and expressions used in this document are defined in the ministry procedure “Definitions and Acronyms for Contaminated Sites.”

Act	non-high risk site
affected parcel	numerical standards
affected site	operations and maintenance plan
approval	owner
Approval in Principle	parcel
Approved Professional	performance verification
Approved Professional work	PID
Certificate of Compliance	PIN
Client Information Officer	principal risk control
contaminant	PVP
contaminated site	qualified professional
contaminated sites legal instrument	Regulation
Contaminated Soil Relocation Agreement	release
CSAP Society	remediation
CSRA	responsible person
Determination of Contaminated Site	risk controls
Director	risk managed high risk site
DRA	risk management
engineering control	risk management control
freeze	risk-based standards
high risk site	SITE
institutional control	SLRA
intrinsic control	source parcel
legal instrument	source site
monitoring plan	Type 1A, 1B, 2 or 3 site

2.0 General

This procedure provides guidance for ministry staff delegated to administer and sign contaminated sites legal instruments (legal instruments) on behalf of the Director. It is also intended for the use of ministry staff and Approved Professionals who prepare draft legal instruments.

3.0 Authority

Section 53 (1) of the Act indicates that for the purposes of issuing Approvals in Principle and Certificates of Compliance that “a Director may rely on any information the Director considers sufficient for the purpose.” In addition, in making decisions on legal instrument applications, a Director is required to observe procedural rights and fairness requirements under the principles of administrative law.

4.0 Director’s discretion

This document serves as guidance to a Director and is not binding. Each site and application for a legal instrument presents a unique set of circumstances which should be considered when a Director is reviewing an application to issue a contaminated sites legal instrument.

This procedure is to be read in harmony with the Act, its regulations and protocols, and associated policies, procedures and guidance documents. Its provisions are to be applied by a Director in accordance with the overriding purpose of protecting human health and the environment.

Notwithstanding the provisions of this procedure, a Director may issue an order requiring remediation of contamination where the Director is satisfied that, based on the available information and investigations, such an order is appropriate for environmental protection or human health reasons.

5.0 Applications for legal instruments with Approved Professional recommendations

[Protocol 6, “Eligibility of Applications for Review by Approved Professionals”](#) specifies where certain activities, reports, and other documents and recommendations must be performed by or provided to the Director by an Approved Professional.

Under that protocol, Approved Professionals are restricted to making recommendations to the Director to issue Approvals in Principle and Certificates of Compliance for non-high risk sites. However, Approved Professionals may make recommendations to the Director for both high risk and non-high risk sites for applications for Determinations of Contaminated Site and Contaminated Soil Relocation Agreements.

The protocol also addresses Approved Professional recommendations and reports in the context of:

- statements of confirmation of satisfactory performance of risk controls required as a condition of a legal instrument,
- monitoring reports,
- site risk classifications under [Protocol 12, "Site Risk Classification, Reclassification and Reporting"](#), and
- local government authorization releases under the ministry's ["Procedures for Processing Site Profiles."](#)

6.0 Procedure

A Director should be guided by the procedures in this document in determining whether or not to issue a contaminated sites legal instrument.

7.0 Screening and rejection of submissions

7.1 Initial application submission and screening

- 7.1.1 All applications for services must be received by the Client Information Officer for initial screening, entry of application information into CATs (the Contaminated Sites Application Tracking system) and distribution to staff for further processing.
- 7.1.2 Staff involved with requiring covenants must inform the Client Information Officer when they require a covenant so the Client Information Officer can arrange for a new or amended service application, to formalize the client's request for a covenant review.
- 7.1.3 Covenants required by Section staff must be prepared with the assistance of, and approved by, a Lawyer from the Ministry of Justice. More detail on the preparation, approval and administration of covenants is provided in the section document "Business Process Maps and Descriptions" dated December 11, 2008.
- 7.1.4 Part C of the Contaminated Sites Services Application form lists the types of services requiring the submission of the form. Those services and their corresponding fees are listed in Tables 2 and 3 of Schedule 3 of the Regulation. Application forms are required, for example, for the review of a covenant or monitoring report required by the ministry, or for a wide area site designation by a Director.

7.1.5 The most common contaminated sites service applications are for contaminated sites legal instruments. However, contaminated sites service applications are also required for other types of submissions, including, for example, information received by the ministry as a condition in a legal instrument such as a monitoring report. Staff should send, and remind clients to send such information to the Client Information Officer before it is processed or reviewed.

7.1.6 An initial quality assurance review must be done to determine the completeness of an application for a legal instrument, including the payment of applicable fees. The basic submission requirements are described in subsection 7.2.

7.2 Basic submission requirements

7.2.1 How legal instruments function

Under section 44 of the Act, Determinations of Contaminated Sites are issued for sites on the basis of a site investigation or a site profile. The Act authorizes a Director to determine whether a site is contaminated and if it is, to determine its boundaries. Determinations are not intended to be issued for sites which have been remediated (e.g., on the basis of a confirmation of remediation report or where a site has been cleaned up under independent remediation), unless there is a reasonable likelihood that the site had been recontaminated after remediation.

Under section 53 (1.1) of the Act, Approvals in Principle are issued to approve a remediation plan.

Certificates of Compliance are issued to confirm that a site has been remediated in accordance with the requirements in section 53 (3) of the Act.

7.2.2 Who may apply for a legal instrument?

The eligibility of persons to apply for a legal instrument varies with the type of legal instrument under the Act, for example:

- Determinations of Contaminated Site -who may apply is not specified (section 44 of the Act).
- Approvals in Principle - only a responsible person may apply (section 53(1.1) of the Act).
- Certificates of Compliance -section 49 (1) of the Regulation specifies that any person may apply.
- Contaminated Soil Relocation Agreements - section 55 (1) of the Act indicates that a person must enter into a Contaminated Soil Relocation

Agreement if that person intends to relocate contaminated soil from a contaminated site. As well as the source site and receiving site owners, the agreement must be signed by a Director.

7.2.3 Submission enclosures for applications without Approved Professional recommendations

The following must be submitted to support each application for a contaminated sites legal instrument made to a Director which is not accompanied by the recommendation of an Approved Professional that the application be approved:

- A satisfactorily completed [Contaminated Sites Services Application form](#) with payment. A checklist in the form lists the report sections, pages, and figures which must be provided, including those documents required for site risk classification.
- For applicants who are not owners of the property, written confirmation from the owner that the owner consents to obtain the contaminated sites legal instrument and commits to fulfil any conditions in the legal instrument if the need arises.
- Records of communications as required under [Administrative Guidance 11, "Expectations and Requirements for Contaminant Migration."](#)
- A Site Risk Classification Report, and if required, an Exposure Pathway Questionnaire. Any exceptions are described in [Protocol 12, "Site Risk Classification, Reclassification and Reporting"](#).
- A satisfactorily completed [Summary of Site Condition](#).
- All relevant technical reports (preliminary site investigation and detailed site investigation reports, risk assessments, remediation plan, remediation confirmation report, etc. as applicable). Refer to [Administrative Guidance 3, "Applying for Contaminated Sites Services"](#) for details.
- For those legal instrument applications which are based on an earlier approval by a Director on land, water, sediment or vapour use at a site, or other type of the Director's approval (for example, under [Protocol 4, "Determining Background Soil Quality"](#), [Protocol 6, "Eligibility of Applications for Review by Approved Professionals"](#), and [Protocol 9, "Determining Background Water Quality"](#) a written copy of the approval.
- For those legal instruments which are based on the installation of works to remediate the site, designs of those works which are stamped with the seal of a professional engineer.
- For Approvals in Principle based on risk-based remediation standards, a complete risk assessment report (both a baseline risk assessment and a risk assessment for the risk management scenario for the selected remedial approach) must be included.

- For Contaminated Soil Relocation Agreements, where the risk-based standards will be used for the receiving site, either a detailed risk assessment or an assessment under [Protocol 13, "Screening Level Risk Assessment"](#) may be used and a complete report for the risk assessment performed must be provided.
- For applications for Certificates of Compliance for sites where risk controls will be in place after the Certificate is issued, a performance verification plan following the requirements described in [Administrative Guidance 14, "Performance Verification Plans, Contingency Plans, and Operations and Maintenance Plans."](#)
- Completed checklists for a preliminary site investigation report and detailed site investigation report (see [Technical Guidance documents 10 and 11](#)).
- A current printout of the land title record (or records) pertaining to the site for which the Determination, Approval in Principle, Certificate of Compliance, or Contaminated Soil Relocation Agreement is being sought.
- Current Land Title Office legal plan(s) for the site.
- A copy of any draft or final covenant under section 492 of the *Land Title Act* which deals with the management of contamination and the Provincial Crown is expected to, or has signed the document. A Director typically may require a covenant for a site which is a high risk, risk managed high risk, or Type 3 site.
- A letter of credit or other evidence that security required by a Director has been provided for the site, under Protocol 8, "Security for Contaminated Sites."
- A current Selection List from an area-based Site Registry search (0.5 km radius) and site Detail Report for the site.
- Electronic versions of all the information noted above must be submitted on a CD, DVD or via a FTP site (or by e-mail for reports 20 pages or less in length) in MS Word® or pdf format.
- Written statements and written commitments made in accordance with the following:

During remediation and after contamination from a source parcel at an affected parcel has been remediated, the ministry expects that measures necessary to prevent recontamination or additional contamination of the affected parcel have been, in the case of a Certificate of Compliance, or would be, in the case of an Approval in Principle, put in place, with the following:

- (i) a written statement by an Approved Professional, that the design of any works or implementation of other measures required in the

- opinion of the Approved Professional to prevent recontamination or additional contamination of the affected parcel from the source parcel would, if implemented, operated and maintained as specified by the Approved Professional, prevent recontamination or additional contamination of the affected parcel; and
- (ii) a written commitment by the current owner or operator of the source parcel, that any works or measures intended to prevent recontamination or additional contamination of the affected parcel will be implemented, operated, and maintained according to an Approved Professional's recommendations and any requirements in a Certificate of Compliance or Approval in Principle issued for the source parcel; or
 - (iii) a written commitment by the current owner or operator of the affected parcel, that any works or measures intended to prevent recontamination or additional contamination of the affected parcel will be implemented, operated, and maintained according to an Approved Professional's recommendations and any requirements in a Certificate of Compliance or Approval in Principle issued for the affected parcel.
- For applications for Certificates of Compliance based on screening level risk assessments, the following must be undertaken if the parcel is affected by the migration of contaminants from a neighbouring source parcel (flowthrough situation):
 - (i) Investigate the affected parcel fully to meet requirements for a Certificate of Compliance; and
 - (ii) Provide evidence (including field measurements, records and statements) confirming the affected parcel owner's lack of responsibility for contamination migrating from an adjacent parcel.
 - (iii) Provide evidence that contaminant concentrations are stable or decreasing on the affected parcel. (This could require monitoring in a performance verification plan if the source parcel has not been investigated or remediated).

7.2.4 Submission enclosures for applications with Approved Professional recommendations

In addition to the items in section 7.2.3, the following must be provided with applications which are required to be submitted with the recommendation of an Approved Professional that the contaminated sites legal instrument be approved:

- For those legal instrument applications which required approval under Protocol 6, a copy of the approval by a Director.
- Using the current template, a completed draft Determination of Contaminated Site, Approval in Principle, Certificate of Compliance, or Contaminated Soil Relocation Agreement, along with appropriate cover letter, in hard copy and electronic version in MS Word[®].
- Draft legal instrument Schedule A (site plan and location map), Schedule B (conditions), Schedule C (substances) and Schedule D (documents) must be included in hard copy and electronic forms (Schedule A in MS Word[®]).
- Except for draft contaminated sites legal instruments and covering letters, each document must be provided in pdf file format, if possible.
- Any deviations from the standard clauses set out in the main body and schedules of a template must be highlighted and a rationale for the proposed change(s) provided in writing. This applies both to modifications of clauses in the templates as well as new clauses.
- Submissions using older versions of templates or older conditions in the Schedules are not acceptable and if submitted with the recommendation of an Approved Professional should be returned to the CSAP Society for correction.
- If an Approved Professional references a performance assessment report or addendum in a submission, the Director must be provided copies of the report or addendum.

7.3 Review of regulatory aspects of remediation

Before a legal instrument is signed, a Director should be assured that the work underlying the legal instrument application meets the requirements of the Act and Regulation. Because other legislation, regulations, bylaws and guidelines may also need to be complied with or recognized to remediate a contaminated site, it is also important to determine, with a reasonable level of diligence, if required aspects of other relevant environmental rules and guidelines have been followed. Appendix 1 provides lists of requirements and provisions which should be considered by a Director, as well as ministry staff and Approved Professionals as they develop recommendations for legal instruments to be approved.

7.4 Screening Approved Professional applications

- 7.4.1 The document "[Ministry Procedures for the Roster of Approved Professionals](#)" indicates that the Director must not rely on the advice or recommendation of an Approved Professional unless he or she has been provided written evidence that an arm's length review has been provided where an arm's length review is

required. The situations where an arm's length review by an Approved Professional is required appear in Table 1 of that document. Section 7.3 of the Summary of Site Condition requires that Approved Professionals indicate and sign off on the types of arm's length reviews they have performed with respect to a particular service application.

- 7.4.2 If there is insufficient evidence that an arm's length review has been carried out where one is required, the service application and recommendation of the Approved Professional must be returned to the CSAP Society.
- 7.4.3 If an application is described by one of the types listed in Table 2 of Protocol 6, approval is required by the Director before it may be submitted to the ministry with the recommendation by an Approved Professional. Requests for approval must come with a completed Contaminated Sites Services Application form with the "Additional Services / Functions" box checked in the "Other Services" section in Part C of the form.
- 7.4.4 The CSAP Society's Practice Guidelines for Approved Professionals (Guidelines for Contaminated Sites Approved Professional Services on Eligible Sites) indicate that compliance with requirements under the Act, Regulation and other federal, provincial and municipal requirements should be checked. In addition to the items in Appendix 1 of this procedure, Approved Professionals should consider sections 3.2.3 (e) and (f) as well as Appendices C and D of those guidelines as they develop recommendations that their draft legal instruments be signed by a Director.

If there are instances of deviation from practice guidelines, Approved Professionals are expected to communicate the need for compliance to their clients and/or if an Approved Professional decides to recommend that the legal instrument be approved, to inform the Director of the details of the aforementioned deviation.

7.5 Applications for amendments of Approvals in Principle

- 7.5.1 A check for the following should be made for applications for amendments of Approvals in Principle:
- that the applicant is a responsible person as required under section 47 (1) of the Regulation.
 - that a contaminated sites services application is provided for renewal of an Approval in Principle or amendment of the specified time frame (e.g., 5 years for typical non high-risk sites) to complete remediation under a previous Approval in Principle.

- that a current Site Risk Classification Report and revised remediation schedule as part of the service application are included if not provided previously.
- that a new Summary of Site Condition is provided.
- an Approved Professional's written opinion about the validity of the current Approval in Principle commenting on any:
 - (a) Changes to applicable standards, protocols, and/or guidance since the AiP was issued for the site.
 - (b) New contamination at the site since the Approval in Principle was issued.
 - (c) Changes to other conditions which may alter the validity of previous site investigation reports and the remediation plan for the site.

7.5.2 An amendment letter should be issued by a director which would contain

- (a) A revised remediation schedule.
- (b) A requirement for annual reporting on any changes at the site from an Approved Professional.
- (c) A new date for the completion of remediation.

7.6 Rejection of applications

If a submission has been applied for by an ineligible applicant or is incomplete, incorrect or improperly prepared, it should be rejected. General requirements for the rejection of applications for legal instruments are provided in Procedure 10, "[Requirements for Service Application Resubmissions, Withdrawals and Amendments.](#)"

When an application for a legal instrument accompanied with the recommendation of an Approved Professional is rejected, the Director must ensure the applicant and the professional organization of the Approved Professional (in keeping with sections 15 (7), 43 (4), 47 (1.5), and 49 (8) of the Regulation) are notified.

8.0 Templates for contaminated sites legal instruments and cover letters

Decisions and requirements of a Director must be communicated to proponents using standard letters and legal instruments based on current templates approved by the Director. These templates must be maintained and updated by ministry staff. Appendix 2 lists the templates that are to be used and maintained for the purposes of this procedure document.

9.0 General requirements for preparing legal instruments

9.1 Lists of documents

9.1.1 List all documents in the legal instrument necessary for the Director to make a decision. Include documents specified in [Administrative Guidance 3, “Applying for Contaminated Sites Services”](#) and other relevant sources such as the Contaminated Sites Services Application form. When an Approval in Principle is being followed by a Certificate of Compliance, list all relevant documents from the Approval in Principle in the Certificate of Compliance. All of the following must also be indicated in the document list:

- (a) Approvals issued by the Director under Protocol 6 and any other approvals described in Ministry guidance documents”;
- (b) Approvals of background soil concentrations by the Director under Protocol 4;
- (c) Approvals of background groundwater concentrations by the Director under Protocol 9;
- (d) Approvals of environmental media uses by the Director, e.g., drinking water use does not apply at a site;
- (e) Approvals by the Director that a parcel of land is located within an area of wide area or “area wide” contamination and that site investigations for wide area contamination at neighbouring parcels is not required;
- (f) Approvals by the Director of alternate approaches to those described in ministry contaminated sites guidance documents;
- (g) Performance verification plans under Administrative Guidance 14; and
- (h) Communications records required under Administrative Guidance 11.

9.1.2 A complete copy of each document listed in a legal instrument must be provided to the ministry in paper and pdf formats unless the ministry has received a copy of that complete report in a previous submission or service application.

9.1.3 Generally, extracts and synopses of documents are unacceptable unless the ministry already has the complete report upon which an extract or synopsis is based.

9.2 Site boundaries, plans and location maps

9.2.1 Site boundaries should be established by a Director according to the requirements of the ministry [Procedure 6, “Establishing the Boundaries of a Site”](#) and the current templates for legal instruments referred to in Appendix 2.

9.2.2 In accordance with the advice in Fact Sheet 48, "Remediation Liability and Combining Parcels with Different Owners", parcels with different owners should not be combined into one site or be assigned the same Site ID number unless that is agreed to in writing by each parcel owner.

Site plan requirements

9.2.3 All site plans and location maps must fit onto a single page. The location map must show street names clearly so that it could be used as a road map to drive to the site.

9.2.4 Site plans and location maps should, where possible, be oriented north and clearly labelled with a north arrow and scale.

9.2.5 Site plans must be free of company logos and advertising.

9.2.6 The boundaries of the site covered by the legal instrument must have a heavily bolded line around the perimeter of the site to clearly delineate the site and to distinguish it from other boundaries that might appear on the site plan. Coloured site plans should be avoided to allow bolded lines to stand out when photocopied in black and white.

9.2.7 When a site covers multiple parcels, a light dashed line and parcel numbers indicating which parcels are included must be provided in the site plan.

9.2.8 Portions of legal parcels of land, for example, in the case of migration to neighbouring parcels, must be shown by a metes and bounds description and plan, provided by a legal surveyor or in an engineering drawing indicating the metes and bounds description. The name of the survey or engineering firm, the stamp of the legal surveyor, and the date of the drawing must be provided.

9.2.9 If there are different uses of certain environmental media at a site which is the subject of a legal instrument, the boundaries of the parts (the areas to which each type of use or uses applies) must be shown for each such medium in a supplemental site plan labelled with a figure number. The labels described in section 9.3.4 must be provided in this supplementary site plan.

9.2.10 If both the numerical and risk-based standards are used as remediation standards in a legal instrument, the boundaries of the areas to which each type of standard applies must be shown in a supplemental site plan labelled with a figure number. Unique labels identifying the different areas must be provided in the supplementary site plan.

9.2.11 A supplemental plan should also be provided and labelled with a figure number where vapour attenuation factors apply to a portion of a site, to show where they apply.

Written requirements

9.2.12 A written metes and bounds description must be provided in the legal instrument in the position required in the legal instrument template.

9.2.13 Where a legal instrument refers to more than one parcel of land and PID/PIN, the legal instrument must clearly indicate which PID/PIN belongs to each parcel. Include the civic address and parcel number beside each PID, for property owned by individuals and by strata corporations.

9.3 Schedule C. Land, water, vapour and sediment uses

9.3.1 Appendix 3 shows an example of a correctly completed Schedule C and Appendix 4 outlines the steps for completing Schedule C of a legal instrument.

9.3.2 Unless multiple land uses are established under [Protocol 18, "Criteria for Establishing Multiple Land Uses at Sites"](#), legal instruments should be restricted to a single land use, which would be the primary land use at the surface of the site. Where different land use standards apply to a legal instrument, for example, urban park land use standards for riparian zones along a water body, then a metes and bounds description usually would be needed for one or more areas instead of a parcel description.

9.3.3 Legal instruments may contain multiple water, vapour and sediment uses for a site. If this occurs, in addition to the requirement in section 9.2.10 for a supplemental site plan, a list of each substance applying to each water, vapour or sediment use must be provided. Metes and bounds descriptions may be required to describe each area of multiple uses and shown on supplemental figures.

9.3.4 If there are multiple uses of any environmental medium at the site, as instructed in the legal instrument templates listed in Appendix 2 and also in section 9.2.9, a unique label for each part of the site must be provided in both the supplemental site plan and in Schedule C of the legal instrument, to indicate each area of the environmental medium with a different use.

9.3.5 VHW₆₋₁₀ and EPHW₁₀₋₁₉ in Schedule 6 of the Regulation have generic numerical water standards which apply to all sites, irrespective of the water use at the site. If one or both of these are the only substances with generic numerical water

standards at a site, then the phrase “no specified water use” should be used to describe the water use applicable at the site in the legal instrument.

- 9.3.6 Since the issuance of a Certificate of Compliance establishes as of the date indicated, that a site has been satisfactorily remediated to meet the applicable remediation standards, those seeking a Certificate for a future site use (e.g., redevelopment for high density residential development) are eligible for such a Certificate only if the future site use is sufficiently established to allow for remediation to be confirmed in accordance with applicable remediation standards.

The appropriate legal instrument for sites that have been investigated and where removal of contaminated material or imposition of risk controls is required in order for future site use scenarios to meet applicable standards is an Approval in Principle. Alternately, independent remediation may be carried out and a Certificate of Compliance obtained after remediation of the site is complete.

9.4 **Schedule C. Substance lists**

- 9.4.1 Substances listed in Schedule C of a legal instrument should be grouped by substance class when classes are provided in the applicable Schedules of the Regulation and listed alphabetically within those classes. If there are no substance classes they still should be listed alphabetically. The substances should also be listed under headings for each part of the site (see section 9.2.9), each environmental medium within each part, and each type of standard. The hierarchy of headings for listing substances in Schedule C is shown below, with the correct style for each header:

Site Part number (may be more than 1 – omit if only 1)

Environmental medium use (may be several media or several within a medium)

Type of standard (up to 5 within the use of a medium)

List of substances (the use of bullets for each substance class is recommended)

The legal instrument templates listed in Appendix 2 provide additional instructions on completing Schedule C of a legal instrument. Appendix 5 contains the exact wording of the names of the uses of environmental media to be provided in Schedule C.

- 9.4.2 For sites with multiple uses for an environmental medium, e.g., both urban park and industrial land uses apply at a site; a substance may be a contaminant only with respect to one of the uses, e.g., urban park. In this situation contaminants

must be listed in the legal instrument according to the environmental media to which they apply, following the instructions in the legal instrument template.

9.4.3 Subject to subsection 9.4.4, only those substances appearing in the Regulation and the Hazardous Waste Regulation may be listed in a legal instrument, and the exact spelling of each substance as it appears in the applicable regulation must be used. Laboratory reports may use synonyms for substances which differ from the chemical names used in the Regulation and are unacceptable for listing in a legal instrument.

9.4.4 Where an Approval in Principle or Certificate of Compliance is to be issued based on the risk-based standards, section 18 of the Regulation indicates that the remediation standards may only be applied to a site which was contaminated. This has the following implications:

- Because a site is legally contaminated only if it contains a substance exceeding one or more of the numerical standards in the Regulation, for an Approval in Principle or Certificate of Compliance to be issued the site must contain or have contained at least one contaminant for which there is a numerical standard in the Regulation.
- An Approval in Principle or Certificate of Compliance may not be issued if the site is or was not a contaminated site as defined under the Act. Note that a site could be contaminated only due to the presence of hazardous waste.
- While there is no requirement under the Act or Regulation to include in a risk assessment a substance which does not have a prescribed numerical standard or does not have a prescribed applicable use, such a substance may be listed as meeting the risk-based standards in a Certificate of Compliance as long as the site is or was a contaminated site as defined under the Act due to the presence of some other prescribed substance, but only if:
 - the nonprescribed substance or the nonprescribed use for a prescribed substance is included and evaluated in the risk assessment, and
 - the results of that risk assessment are shown to comply with the risk-based standards of the Regulation.
- For prescribed substances with a nonprescribed use in sediment, (e.g., there are no human health protection numerical standards in the Regulation for sediment), these substances should be addressed for human health in the risk assessment if the concentrations of the nonprescribed use substances exceed background concentrations and are attributed to uses at or neighbouring the site; unless:
 - for those substances which are not bioaccumulative substances; the concentrations are less than the corresponding human health

- numerical soil standards for the nonprescribed use substances in Schedules 4, 5 or 10 (only applicable to the intertidal zone); or
- for bioaccumulative substances; the concentrations are less than the corresponding SedQC values for the nonprescribed use substances in Schedule 9 (applicable to both the subtidal and intertidal zones).
- The land use applicable to the upland foreshore (i.e., above the high water mark) determines for human health in the intertidal zone, which land use soil standards under Schedules 4, 5 or 10 applies to nonprescribed and nonprescribed use substances in the intertidal sediment. If the land use applicable to the upland foreshore is unknown or cannot be conclusively determined, then in accordance with [Technical Guidance 15, "Concentration Limits for the Protection of Aquatic Receiving Environments"](#), by default the residential/parkland soil standards are considered to apply.

9.4.5 Nonaqueous phase liquids and odorous substances are two general categories of substances listed in Schedule 4 of the Regulation which are handled differently than individual substances and other classes of substances.

Normally the words "odorous substances" should not be included in a substance list. Instead, reference should be made to individual substances with generic numerical vapour standards in Schedule 11 of the Regulation. "Odorous substances" should be listed only if, in the opinion of a Director, odorous substances are present in quantities in excess of those acceptable to the Director and there are no Schedule 11 substances in vapour at the site which could be listed instead.

Similarly, the words "nonaqueous phase liquids" should not be included in a substance list if nonaqueous phase liquid components are known and listed as specific substances. "Nonaqueous phase liquids" should be listed only if the constituent nonaqueous phase liquid substances are not known and therefore cannot be listed.

9.4.6 The listing of "hazardous waste" follows similar logic – it should not be listed as "hazardous waste" if individual hazardous waste substances having numerical standards in the Regulation can be listed and are listed in the legal instrument.

9.4.7 Substances which meet the applicable numerical vapour standards after the application of attenuation factors should not be listed in Schedule C of a Certificate of Compliance. This is because those substances are not considered contaminants with the application of the attenuation factors, so would not have been remediated.

9.4.8 Substances which meet the applicable numerical vapour standards after the application of attenuation factors should be listed in Schedule C of a negative Determination of Contaminated Site.

9.5 Editorial requirements – instructions, fonts and size, cover letters

9.5.1 The instructions provided in legal instrument templates listed in Appendix 2 should be followed.

9.5.2 Legal instruments must have a consistent font type and size throughout the legal instrument, Times New Roman size 12. The text must be left justified in all legal instruments and cover letters. Simultaneous justification to both left and right margins should not be used.

9.5.3 The punctuation in cover letters and legal instruments should be carefully checked.

9.6 Checking the geographic coordinates for a site

The latitude and longitude (accurate to 0.5 second) for the centroid of the site must be provided in legal instruments and should be verified. Latitudes and longitudes representing the centre of a boundary of a site (e.g., at the street) are not acceptable.

10.0 Tracking time for Determinations of Contaminated Site

It is the responsibility of the Approved Professional recommending the application to track the time between the issuance of a Preliminary Determination and the Final Determination. The Preliminary Determination documents must be available electronically and in hard copy after 30 days and before 60 days of the issuance of the Preliminary Determination. In the very rare case where a Determination is to be issued without the recommendation of an Approved Professional, time tracking must be done by ministry staff.

11.0 Preparing conditions in Approvals in Principle, risk-based standards Certificates of Compliance and Contaminated Soil Relocation Agreements

11.1 If a Protocol 6 approval or any other type of approval for an application for a legal instrument was issued by the Director, any conditions identified in the approval may need to be included in Schedule B of the legal instrument. All the applicable approvals should be reviewed to identify any conditions which should be included in Schedule B.

11.2 Risk controls may be required by a Director and may be identified in the legal instrument. Where required in a legal instrument, the controls normally should be in place before the legal instrument is issued.

11.3 The Director must assess each situation based on its facts, to ensure that an unreasonable burden is not unwittingly passed on to innocent third parties. Unreasonable burdens could include establishing site boundaries which inadvertently result in remediation liability for source parcels being passed on to neighbouring parcel owners, and for neighbouring parcel owners to be burdened with remediation requirements instead of source parcel owners. Special care should be taken when remediation involves use restrictions on neighbouring affected lands. The Director should review communications records established under [Administrative Guidance 11, "Expectations and Requirements for Contaminant Migration"](#) as part of the assessment.

11.4 Legal instrument modifications and fees

11.4.1 Upon receipt of an acceptable request for modification, the Director may agree to changes to performance verification activities and/or reporting conditions, without amending or re-issuing an Approval in Principle, Certificate of Compliance or Contaminated Soil Relocation Agreement. Hourly ministry review fees will apply.

11.4.2 Ministry review fees apply to the submission of reports listed in Table 2 of Schedule 3 of the Regulation. The submission must be accompanied by a Contaminated Sites Services Application form. Ministry review fees also apply to any additional services and functions listed in Table 3 of Schedule 3.

11.4.3 Ministry review fees do not apply to the submission of a statement.

11.5 Schedule B for Approvals in Principle

While reporting on the progress of remediation must be a condition in all Approvals in Principle, the frequency and form of reporting may vary. Reporting may be in the form of an Approved Professional statement or a complete report. The selection of the form of reporting depends on site conditions and the remediation approach. The form of reporting in Approvals in Principle recommended by an Approved Professional would typically be an Approved Professional statement. Where ministry oversight is warranted, such as may be the case at a high risk site, reporting may be in the form of a complete report.

11.6 Schedule B for risk-based standards Certificates of Compliance - General

- 11.6.1 Sites can be classified into Types 1A, 1B, 2 and 3 based on the risk controls in place. Descriptions of these types and associated risk controls, requirements for plans, record keeping and reporting are described in [Administrative Guidance 14, "Performance Verification, Operations and Maintenance and Contingency Plans"](#).
- 11.6.2 Performance verification plans must accompany any application for a risk-based standards Certificate of Compliance for sites classified as Types 1B, 2 or 3. Consult Administrative Guidance 14 for a description of these plans and how they are administered.
- 11.6.3 The type of site (i.e., Type 1B, 2 or 3) as determined under Administrative Guidance 14 must be stated in the performance verification plan and must be provided in any legal instrument prepared for the site.
- 11.6.4 It is not necessary to specify the maintenance of a particular use of an environmental medium (e.g., "the land use must remain commercial") as a principal risk control in Schedule B of a legal instrument.
- 11.6.5 A principal risk control which acts to restrict the use of an environmental medium (e.g., "Groundwater must not be used as drinking water" or "soil must not be used to grow crops for human consumption") is considered to be an institutional control and must be included in Schedule B of a legal instrument.
- 11.6.6 In specifying the principal risk controls in clause 2 of Schedule B, only those controls which are essential to the management of risk at the site should be included.
- 11.6.7 Several clauses in the template for the Certificate of Compliance require the submission of statements signed by Approved Professionals on whether or not, for example, risk controls are being met at a site. These clauses are intended to be read flexibly, providing the Director the option of requiring no submissions or mandatory scheduled review.
- 11.6.8 If a clause is missing from, or inappropriate compared with a clause anticipated in a forthcoming template update for a Certificate of Compliance or other legal instrument, a new or modified clause may be created for the purpose of filling the gap or specifying an appropriate condition.

11.7 Contaminated Soil Relocation Agreements with risk-based soil deposit or relocation for the purpose of treating soil at the receiving site

11.7.1 Background

Authorization for relocation of contaminated soil to a receiving site for direct deposit, or for treatment followed by discharge may be done through a Contaminated Soil Relocation Agreement (CSRA).

Where CSRAs are issued and risk-based standards are applicable at the receiving site, certain conditions may need to be maintained so that the standards applicable to the deposit site continue to be met.

In cases where contaminated soil is relocated under a CSRA for treatment, certain activities must be undertaken to ensure effective treatment before discharge of the soil. The specific details would depend on the remediation approach. In general, ensuring effective treatment would require monitoring of soil quality, inspection and maintenance of works, and sampling and assessment of soil quality before discharge. Also, adequate reporting is needed to satisfy the ministry that the soil is being treated and was treated effectively.

Imposing conditions in these types of CSRAs is warranted in order to:

- comply with section 55 (2) of the Act;
- provide consistency for operators of soil treatment facilities that are authorized through permits under section 14 of the Act versus CSRAs;
- provide greater assurance to the public and local government that contaminated soil relocated to a receiving site would not be left unmanaged, unsuccessfully or partially treated or abandoned without treatment;
- provide consistency with the ministry's compliance framework used in conjunction with other types of legal instruments; and
- facilitate compliance verification activities.

Security may be required.

11.7.2 Contaminated Soil Relocation Agreements with risk-based soil deposit

The risk controls for soil relocated to a deposit site (such as those in sections 46 (2) (a) and (b) of the Regulation for monitoring and inspection and maintenance of works) must be specified in a CSRA if risk-based standards are used as a basis for evaluating deposit site conditions. The type of risk control applicable to the deposit site, as described in Administrative Guidance 14, will determine the conditions which must be included in the CSRA. The conditions (see Template

Attachment A in Appendix 2) should be included in the CSRA as an attachment to the form (Regulation Schedule 8). The template does not apply where relocation of soil would create a Type 3 site as the Director would not normally be expected to approve such a CSRA.

11.7.3 Contaminated Soil Relocation Agreements with relocation for treatment at a receiving site

Conditions which must be included in a CSRA authorizing soil relocation for treatment at a receiving site are set out in Template Attachment B in Appendix 2. In all cases, monitoring, record keeping and reporting conditions should be specified in the attachment as well as a limit on the time duration that contaminated soil may remain at the facility.

11.8 The first clause in Schedule B in the templates for Determinations of Contaminated Site and Certificates of Compliance specifies the environmental media for which changes must be reported the Director after the legal instrument has been issued. Land and water uses generally should be selected in every legal instrument, but vapour and sediment uses should be selected only when they clearly apply.

11.9 If a Director proposes to make changes to a legal instrument or legal instrument conditions submitted by an Approved Professional, the Director must consider the effects the changes would have, and if the changes would have a significant impact, provide an opportunity for the potentially affected parties to comment before the legal instrument is signed.

12.0 Applications by source parcel owners for legal instruments for source and affected parcels

Approved Professionals should prepare, and the Director should issue, legal instruments for source and affected parcels in consideration of [Procedure 6, "Establishing the Boundaries of a Site."](#)

12.1 Information provided to affected parcel owners

In considering whether to issue legal instruments for a source parcel and affected parcel(s) or approvals for that purpose, the Approved Professional and Director should consider whether the source parcel owner has followed the requirements for providing information to affected parcel owners described in [Administrative Guidance 11, "Expectations and Requirements for Contaminant Migration"](#).

12.2 Consultations, communications and communications records for communications between source and affected parcel owners

12.2.1 In considering whether to issue a legal instrument for an affected parcel or an approval for that purpose, the Director should also consider whether the source parcel owner or other responsible person has provided to the Director a record of communications with each affected parcel owner which:

- (a) confirms that the information and communication attempts described in subsection 12.1 were provided with respect to each affected parcel owner, with the format, dates and times that information was provided;
- (b) if the information was not provided, indicates why it was not;
- (c) summarizes responses from each affected parcel owner including how concerns raised were addressed, or not. If concerns were not addressed the reasons should be provided; and
- (d) identifies, for example, whether or not each affected parcel owner agrees with the issuance of each, as applicable, of:
 - a legal instrument that combines the owner's affected parcel with the source parcel;
 - a separate legal instrument for the affected parcel;
 - a separate legal instrument for the source parcel.

12.2.2 Section 52 of the Act "Public consultation and review" provides authority for a Director to order a responsible person to provide for public consultation on proposed remediation or a public review of remediation activities. Under that section the Director may decide to order different consultation activities from those outlined in ministry guidance such as [Administrative Guidance 11, "Expectations and Requirements for Contaminant Migration"](#). In determining how and when to apply these order powers, a Director should review communications records provided in support of an application for a legal instrument.

12.2.3 Administrative Guidance 11 requires that a record of communications be provided with an application for a legal instrument, confirming the information provided to the affected parcel owners (and operators) and summarizing for the ministry the responses from each affected parcel owner. This guidance is not intended to fetter the discretion of the Director to require detailed records of communications between the parties, as the Director considers warranted.

12.2.4 Neither ministry staff nor Approved Professionals have a formal role in carrying out expected communications work under Administrative Guidance 11. That work, if needed, should be done by the source parcel owner or operator or a qualified professional working on their behalf.

In some cases an Approved Professional may be performing such communications work, but only in his or her capacity as a qualified professional hired by the source parcel owner. Such work would not be considered Approved Professional work under the “Ministry Procedures for the Roster of Approved Professionals.”

12.3 Director’s general response when information and communication requirements are not met

When one or more of the information and communication provisions referred to in subsection 12.1 or 12.2 is not met, the Director should respond to the applicant for the legal instrument describing the deficiencies and indicating that the legal instrument or approval application would be reconsidered when information addressing the deficiencies has been provided to the Director. General requirements for the rejection of applications for legal instruments are provided in Procedure 10, “[Requirements for Service Application Resubmissions, Withdrawals and Amendments](#)”.

When an Approved Professional has been unable to obtain a response to contacts by registered mail, telephone and/or e-mail as is required under Administrative Guidance 11, it would be acceptable for the Approved Professional to forward the entire application package for the legal instrument (including complete communications records and documentation of communication failures) to the ministry for review. The director should then decide whether to pursue further communications with nonresponsive persons.

12.4 Director’s response when communication requirements are met

12.4.1 Where the application is for an approval or legal instrument covering the source parcel and more than one affected parcels, the Director should consider comments from all affected parcel owners together.

12.4.2 When a source parcel applicant has met the information and communications requirements referred to in subsections 12.1 and 12.2, the draft legal instrument should be prepared. The examples in Appendix 6 cover a range of scenarios and should be reviewed before a draft legal instrument is finalized.

12.4.3 Factors that the Director should consider in deciding how to draft the legal instrument include:

- the degree of compliance with the requirements for the legal instrument in the Act (e.g., section 53 of the Act for Approvals in Principle and Certificates of Compliance);

- the degree of consistency with inherent objectives and principles of the contaminated sites legal regime if the legal instrument were issued;
- the adequacy, relevance and reasonableness of the information in the application package;
- the relevance and validity of any comments received;
- the extent of any burden (including use restrictions, remediation liability, and remediation obligations) that would be placed on affected parcel owners and operators if the legal instrument were issued; and
- the extent of any relief provided to the person responsible for the source parcel if the legal instrument were issued to that person.

12.4.4 Where the source parcel applicant has met the information and communications requirements in subsections 12.1 and 12.2 and the affected parcel owner has not responded, the Director should write the nonresponsive affected parcel owner explaining the Director's pending decision on issuing the legal instrument with the following:

- an explanation that a decision will be made on issuing the legal instrument;
- a copy of the draft legal instrument;
- an explanation why a decision is being made;
- an explanation how the decision might affect the affected parcel owner;
- an explanation of the information that will be considered as well as any specific criteria to be used in making the decision;
- a description of the current regulatory requirements and other considerations to be used as a basis for the decision;
- notice that the Director is providing a 30-day period to comment on the draft legal instrument and on the information the Director will be using as a basis for making his or her decision.

13.0 Director's consultations with affected persons and applicants

13.1 Persons who would be affected by a decision of a Director to issue a legal instrument must be provided an opportunity to comment before the legal instrument is issued. If consultations were not required under section 52 of the Act, other consultations may still be necessary and appropriate because of administrative fairness requirements.

13.2 Persons consulted should be provided notice of the Director's intent to issue the legal instrument plus a copy of the draft legal instrument in the form the Director

is prepared to sign. Earlier drafts should not be provided to applicants or potentially affected persons.

- 13.3 The level of duty for the Director to consult with potentially affected parties increases with the level of severity of the potential impact and harm on a person who would be affected by a decision of a Director.
- 13.4 A Director may rely on external sources (such as Approved Professionals) and take into account notice provided to affected parties by persons other than the Director, but he or she ultimately is responsible for ensuring that any decisions on issuing a legal instrument will meet administrative fairness standards.
- 13.5 While the definition of “owner” in section 39 of the Act may provide a useful reference for assessing risk of impact and harm, it is unlikely to be definitive. In each case, the Director should identify those persons who could be harmed or impacted by the issuance of the legal instrument. For example, the owner of a smoke easement is unlikely to be harmed by a decision, but a secured creditor who is not an owner or a responsible person may be entitled to consultation under administrative fairness requirements.

14.0 Reviewing draft legal instruments

When a Director is provided a draft legal instrument for review and approval, there are a number of issues that should be considered before making a final decision whether or not to sign the legal instrument. Many of these issues are associated with the principles of administrative fairness referred to in section 3.0 of this document.

Appendix 7 contains a checklist which may be used to assist the Director in making decisions on the issuance of legal instruments. Appendix 8 describes how the checklist may be used and how the information elicited by the checklist may assist with the decision making process.

15.0 Preparing reasons for decision

When a legal instrument application involved consultations with potentially affected parties with significantly diverging views, or when the Director has made a decision which differs significantly from that recommended by the submitting Approved Professional, the Director should prepare a document summarizing the reasons for his or her decision to issue or not to issue the legal

instrument. The following section headings are suggested for this “reasons for decision” document:

- Background
- List of issues
- Decisions
- Discussion and analysis of issues and reasons for the decisions

To provide an opportunity for comment, this document should be provided to the Approved Professional and potentially affected parties for comment before a final decision is made. A minimum of 30 days should be allocated to this consultation process. This final consultation step may not be necessary if the Approved Professional and affected parties have already been consulted on the issues.

16.0 Signing legal instruments

Legal instruments should not be signed until all the preconditions have been met. These include security (such as letters of credit), covenants under section 492 of the *Land Title Act* which have been required by a Director, and the payment of fees under the Regulation.

In addition, a risk-based standards Certificate of Compliance for an affected parcel where the responsible person for the source parcel is the applicant should not be signed if the risk assessment for the affected parcel is not valid or if the Director considers that the required risk controls for the affected parcel are unlikely to be met.

Section 53 (5) of the Act allows a Director to withhold or rescind an Approval in Principle or Certificate of Compliance if conditions imposed in the approval or certificate are not complied with or if any fees under Part 4 or the Regulation are outstanding. Also, section 49 (2) (c) of the Regulation requires that the applicant for a Certificate of Compliance provide information on compliance with all conditions set in an Approval in Principle issued for the site.

17.0 Cover letters and sending signed legal instruments

17.1 Current ministry templates for cover letters must be used.

17.2 All cover letters must be completed in full with names and addresses of all parties receiving copies of the correspondence.

- 17.3 Cover letters must be addressed to and sent to the applicant for a legal instrument.
- 17.4 The parties to receive copies are suggested in the templates for the legal instrument cover letters. A copy must be provided to the recommending Approved Professional and if there is no recommending Approved Professional, to the consultant preparing the submission. If the site is located within the ministry's South Coast region (formerly the Lower Mainland region) that ministry office should be copied on the correspondence.
- 17.5 Where the applicant is not a responsible person for the site, copies of the cover letter and legal instrument must be sent both to the owners and current operators of the site and associated affected parcels.
- 17.6 For Determinations of Contaminated Site, copies of Preliminary and Final Determinations should be sent to:
- (a) the person who submitted a site profile (only if a site profile was used as the basis for making the Determination), preliminary site investigation or detailed site investigation for the site,
 - (b) any of a municipality, an approving officer or the commission that received, assessed and forwarded to the director a site profile for the site to which the preliminary or final determination pertains,
 - (c) any person with a registered interest in the site as shown in the records of the land title office or a land registry office of a treaty first nation at the time of the determination,
 - (d) any person known to the Director who may be a responsible person under section 45, and
 - (e) any person who has commented on a Preliminary Determination for the site.
- 17.7 When a copy of a Determination of Contaminated Site is to be sent to a party who appears as a charge number on the land title, the full name and mailing address as well as the charge number must be provided and included on the Determination cover letter.
- 18.0 Addressing contamination discovered after a Contaminated Sites Legal Instrument was issued**
- 18.1 Subsections 18.2 and 18.3 apply only if there were no activities at a site which caused or may have caused contamination following the issuance of a Certificate of Compliance.

- 18.2 Subject to subsection 18.1, if additional contaminating substances listed in a numerical standards based Certificate of Compliance were discovered after the Certificate was issued and were subsequently remediated to meet the numerical standards by independent remediation, the Certificate need not be amended. A note should be placed in the paper file for the site explaining the situation together with the Notifications of Independent Remediation. A case management notation should also be placed on the Site Registry explaining the situation.
- 18.3 Subject to subsection 18.1, if contaminating substances were discovered which were not listed in a Certificate of Compliance when the Certificate was issued, and the additional substances were subsequently remediated to meet the numerical or risk-based standards, the applicant for the Certificate should be requested to ask for an amendment to the Certificate so the list of substances can be supplemented by a Director. If the original applicant is no longer available to apply for the amendment, or if the site has been sold, then a new Certificate of Compliance should be sought by a new applicant to address the newly discovered contaminants.
- 18.4 The person carrying out any additional remediation of contamination discovered after a Certificate is issued should be reminded by staff of the duty to submit Notifications of Independent Remediation for the remediation of the additional substances as well as Notifications of Migration if they are triggered.
- 18.5 The administrative processes described in section 18.0 are generally applicable to the discovery of new contamination for any legal instrument including a Determination of Contaminated Site.

Revision history

Approved Date	Effective Date	Document Version	Notes
February 28, 2013	April 1, 2013	1.0	
January 14, 2014	February 1, 2014	2.0	
	February 1, 2016	3.0	

Appendix 1

Regulatory Considerations

- 1) What are the outstanding obligations in association with the parcel under the contaminated sites provisions of EMA?
 - Site profile submission requirements met (including freeze and release provisions)?
 - Site investigation order (or requirements imposed) requirements met?
 - Remediation order requirements met?
 - What other orders (PAO, PPO) have been issued by Regional Operations Branch or the Land remediation Section?
 - Contaminated soil relocation agreement requirements met?
 - Approvals required under protocols
 - ⇒ Protocol 2 – site-specific standards approval requirements met?
 - ⇒ Protocol 3 – blending of non-hazardous waste approval requirements met?
 - ⇒ Protocol 4 – background soil values approval requirements met?
 - ⇒ Protocol 6 – section 4.7 approvals obtained?
 - ⇒ Protocol 7 – groundwater travel time approval requirements met?
 - ⇒ Protocol 9 – background groundwater values approval requirements met?
 - Other non-Protocol approvals (for examples, see section 9.1.1) requirements met?
 - Land, water, sediment, vapour use rulings for the site by a Director reflected or requirements met (e.g., Administrative Guidance 11, 14 and 15)?
 - Notice submissions
 - ⇒ Notification of Likely or Actual Migration requirements met?
 - ⇒ Notification of Independent Remediation requirements met?
 - ⇒ Site Risk Classification Report requirements met?
 - ⇒ Summary of Site Condition requirements met?
 - Have public consultation and review requirements been met?
 - Follow up to requirements imposed when independent remediation is being done, under section 54 (3) (d) in place?
 - Conditions imposed in a contaminated sites legal instrument issued previously or to be issued
 - ⇒ Covenant requirements met?
 - ⇒ Security requirements met?
 - ⇒ Monitoring requirements met?

- ⇒ Reporting requirements met?
 - ⇒ Record keeping requirements met?
 - Fees required under EMA paid up?
- 2) What has gone on and is going on legally at the parcel in question and at neighbouring parcels? Have the Site Registry, AMS/WASTE, SWIS and Land Titles system been reviewed?
- 3) What is the compliance and enforcement history for the parcel and neighbouring parcels? Has COORs been reviewed?

Appendix 2

Templates for Preparing and Issuing Contaminated Sites Legal instruments

Templates must be developed and maintained for the following cover letters and legal instruments:

Cover letter templates

- Preliminary Determination cover letter template
- Final Determination cover letter template
- Approval in Principle cover letter template
- Certificate of Compliance cover letter template
- Contaminated Soil Relocation Agreement cover letter template

Legal instrument templates

- Preliminary Determination template
- Final Determination template
- Wide Area Site Designation template
- Approval in Principle template
- Certificate of Compliance template
- Contaminated Soil Relocation Agreement template
 - ⇒ Schedule 8 of the Regulation, and
 - ⇒ Attachment A (for relocation for direct deposit based on risk-based standards at the receiving site), or
 - ⇒ Attachment B (for relocation for treatment at a receiving site)]

Appendix 3

Example of Correctly Completed Schedule C

Schedule C Substances and Uses

Part A of the site

Substances remediated in soil for commercial land soil use:

To meet numerical remediation standards:

- Arsenic, and
- HEPHs

Substances remediated in water for drinking water use:

To meet risk-based remediation standards:

- Benzene and ethylbenzene

Substances remediated in water for freshwater aquatic life water use:

To meet risk-based remediation standards:

- VPHw and LEPHw

Part B of the site

Substances remediated in soil for industrial land soil use:

To meet numerical remediation standards:

- Arsenic

Appendix 4

Steps for Completing Schedule C of a Legal Instrument

Step 1. Review the instructions and procedures

- See italicized information at the beginning of Schedule C
- See sections 9.3 and 9.4 of Procedure 12, "Procedures for Preparing and Issuing Contaminated Sites Legal Instruments"

Step 2. Assemble information

- The number of site parts and their labels – Schedule A
- The uses of environmental media at each site part
- The types of environmental quality standards involved
- The substances applicable to each part, use and type of standard

Step 3. Delete unnecessary template sections

- If there is only one part, delete all text for site parts
- Delete all headers for environmental media uses which don't apply
- Delete all headers for environmental quality standards which don't apply
- Delete all remaining template sections which won't be used
- Delete the italicized instructions

Step 4. Include additional sections as needed

- If there are more than 3 parts to the site, add new sections for the additional parts
- If there is more than one use for an environmental medium, add new subsections for the additional media uses, as applicable

Step 5. Insert detailed information

- Insert site part information (number) where applicable
 - ⇒ Refer to the site plan, legal descriptions, PIDs, metes and bounds descriptions in Schedule A, and unique labels
- Provide applicable uses for environmental media
 - ⇒ Refer to the Contaminated Sites Regulation for correct terminology and spelling
- List substances under the applicable types of standards
 - ⇒ Refer to section 9.4 of Procedure 12 for further instructions

Step 6. Double check your work

Appendix 5

Names of Uses of Environmental Media¹

The wording of the following uses of environmental media should be used when preparing Schedule C of a contaminated sites legal instrument.

Substances evaluated, substances to be remediated, or substances remediated in soil for:

agricultural land soil use
commercial land soil use
industrial land soil use
urban park land soil use
residential land soil use
wildlands land soil use

Substances evaluated, substances to be remediated, or substances remediated in vapour for:

agricultural land vapour use
commercial land vapour use
industrial land vapour use
urban park land vapour use
residential land vapour use
wildlands land vapour use

Substances evaluated, substances to be remediated, or substances remediated in water for:

freshwater aquatic life water use
marine aquatic life water use
irrigation water use
livestock water use
drinking water use
no specified water uses²

Substances evaluated, substances to be remediated, or substances remediated in sediment for:

freshwater typical sediment use
marine and estuarine typical sediment use
freshwater sensitive sediment use
marine and estuarine sensitive sediment use

1. Combinations of uses of environmental media must not be developed, e.g., do not use a combined use like "irrigation and livestock water use".
2. This may apply if there are standards exceedances of VHW6-10 and EPHW10-19. If one or more specified water use applies (i.e., one or more of aquatic, irrigation, livestock and drinking water uses specified in the Contaminated Sites Regulation), list VHW6-10 and EPHW10-19 under the applicable specified uses. If no specified water uses apply and there are VHW6-10 and EPHW10-19 standards exceedances, list these substances under the heading "no specified water uses".

Appendix 6

Examples to Consider While Preparing Draft Legal Instruments

1) Sufficient information to develop risk assessment or remediation plans; affected parcel owners did not object to issuance of legal instruments

Scenario 1

Risk assessment and/or remediation plans have been completed for an affected parcel based on information obtained at the affected parcel, the source parcel or perimeter of the affected parcel. The affected parcel owner did not object to the issuance of the legal instruments applied for by the source parcel owner for the source and affected parcels. The affected parcel owner either:

- failed to respond within 30 days following the second attempt at communication by the source parcel owner,
- indicated that he or she had no comments, or
- concurred with the draft legal instruments for the affected and source parcels.

Under these circumstances the Director issued the legal instruments requested for the affected and source parcels, after ensuring that other applicable requirements were met.

2) Sufficient information to develop risk assessment or remediation plans; affected parcel owners objected to issuance of legal instruments

Scenario 2

A risk assessment and/or remediation plan was completed for an affected parcel based on information obtained at the affected parcel, the source parcel or perimeter of the affected parcel. The affected parcel owner opposed risk-based remediation proposed by the source parcel owner for the affected parcel because of a preference for remediation to the numerical standards.

The Director noted that under section 16 of the Regulation, the numerical and risk-based standards are equally acceptable as remediation standards and that there would be no significant burden for liability or remediation placed on the affected parcel owner if the legal instrument were issued. The Director issued the legal instrument based on the risk-based standards, despite the preference of the affected parcel owner for remediation to the numerical standards, after other applicable requirements were met.

Scenario 3

The drinking water use numerical standards applied at the affected parcel described in Scenario 2 because the affected parcel owner had used and intended to continue to use the groundwater for drinking water. In response, the source parcel owner installed and operated water treatment works at the affected parcel. Under this approach the groundwater was risk managed at the well and met the numeric water standards at the affected parcel owner's drinking water tap. The Director took the application of the numerical standards into account by issuing the legal instrument for the affected parcel based on the numerical standards for drinking water use and the risk-based standards for the remaining uses at the affected parcel.

Scenario 4

This scenario involves a request by an affected parcel owner for remediation to numerical standards for a water use that differed from the use proposed by the source parcel owner (which had been approved by the Director under section 12 (5) of the Regulation). In this case the source parcel applicant met the information and communications requirements in subsections 12.1 and 12.2 of this document but the affected parcel owner did not agree with the draft legal instrument because of the disagreement about the water use. After evaluating the rationale for the disagreement and considering the Act, its regulations and protocols, associated policies, procedures and guidance documents, the Director issued the legal instrument based on the application by the source parcel owner and other relevant considerations including those related to the water use of the parcel originally approved by the Director.

Scenario 5

An affected parcel owner wanted a source parcel owner to provide a Certificate of Compliance for the remediation of contaminants at the affected parcel which did not originate from a source parcel, in addition to those which came from the source parcel.

The Director issued the legal instrument only for those substances at the affected parcel that originated from the source parcel. Under section 46 (1) (j) of the Act, an affected parcel owner is not responsible for the remediation of contamination that was caused only by the migration of substances from a source parcel owned by a different person. This, however, does not apply to contamination which did not migrate to the affected parcel from other parcels. In this Scenario, the Director's decision reflected responsibility for contamination to that which was attributable to the source parcel owner.

3) Insufficient information to develop risk assessment or remediation plan

Scenario 6

There was not enough information obtained at an affected parcel, source parcel or perimeter of the affected parcel to complete a risk assessment and/or remediation plan for the affected parcel.

Since there was insufficient information to support the application for a legal instrument for the affected parcel, the application for a legal instrument for the affected parcel was rejected by the Director.

Scenario 7

The source parcel owner applied for a legal instrument for the source parcel. As the neighbouring parcel owner refused access to his parcel for investigations, it was not known whether contamination had migrated from the source parcel to the neighbouring parcel or if it had, if the migrating contaminants had been remediated.

The Director issued the legal instrument for the source parcel because access could not be gained to the neighbouring parcel, despite the failure to address the extent of contamination or remediation at the neighbouring parcel.

Appendix 7

Director's Contaminated Sites Legal Instrument Decision Checklist

DIRECTOR'S CONTAMINATED SITES LEGAL INSTRUMENT DECISION CHECKLIST

Site ID:

Common name:

Application number:

1.0 Site basics

Decision

- Preliminary Determination Final Determination Approval in Principle Certificate of Compliance Wide Area Site designation
- Has the site already been remediated? Yes No Comments:

1.1 Ownership status

- Is the applicant a responsible person? Yes No For the source parcel? Yes No N/A Is the application for a part site? Yes No
- Does the site include affected parcels? Yes No Does the site include parcels with different owners? Yes No N/A
- Are there or will there be other parcels using the same Site ID number? Yes No
- Are parcels with different owners to be combined into one site? Yes No N/A Have all parcel owners agreed to that? Yes No N/A
- Comments:

1.2 Contamination status

- Is the site contaminated? Yes No Unlikely Is the site high risk? Yes No Unlikely Neighbouring parcels delineated? Yes No
- Comments:

1.3 Remediation status

- Site to be or has been remediated? Yes No Numerical standards used? Yes No
- Risk-based standards used? Yes No What Type? 1 2 3 Is the site a risk-managed high risk site? Yes No N/A
- Comments:

1.4 Regulatory requirements

- Have NOMs been provided to all affected parcels? Yes No N/A
- Regulatory considerations list reviewed? Yes No Any outstanding obligations under Part 4 of EMA? Yes No Likely Unlikely
- Comments:

1.5 Obligations imposed for human health and environmental protection

- What ongoing obligations are imposed?
- On whom are the obligations imposed?

1.6 Land ownership records

Do records for ownership of the site exist? Yes No Have they been provided? Yes No N/A Reviewed? Yes No N/A
Comments:

1.7 Consultation records

Are or were consultations required? Yes No If yes, do the records reviewed indicate that the consultations were adequate? Yes No N/A
If consultations were required and the consultations were not adequate, complete the following:
Was the information provided adequate? Yes No Were communications efforts made by the responsible person adequate? Yes No
Were concerns raised by the affected parties legitimate in the context of the principles of the contaminated sites legal regime? Yes No N/A
Were the responses by the responsible person to the affected parties adequate? Yes No N/A
Comments:

1.8 Site Registry records

Does the site appear on the Site Registry? Yes No Has the Site Registry record been reviewed? Yes No N/A
Comments (include any changes needed to the Registry):

2.0 Potentially affected parties

Could any potentially affected parties be significantly affected by the decision? Yes No Unlikely
For those to whom "yes" applies, complete the following (if more room is needed, attach a separate page to provide additional information):

Who	Why	Previous consultations/notices	How should they be consulted?

3.0 Results of consultations

Party Consulted	Results	Comments

4.0 Decision and rationale

Is only relevant information being used in making the decision? Yes No
Is the decision being made in a manner consistent with previous decisions on similar matters, relying on existing policies, guidelines, procedures and rules?
 Yes No
If discretion is to be exercised, can any inconsistency with previous decisions on similar matters be justified and explained? Yes No N/A
Issue instrument? Yes No *Reasons for the decision*

Name: _____ Signature: _____ Date: _____

Appendix 8

Commentary on Director's Contaminated Sites Legal Instrument Decision Checklist

The following discusses various relevant questions and issues, using the same headings and numbering as those used in the checklist shown in Appendix 6.

Decision

The type of legal instrument being sought should be checked in the applicable box.

Has the site already been remediated?

If the answer is yes, and the application is for a Determination of Contaminated Site, the circumstances should be carefully reviewed. Usually a site which has been remediated must be issued a Certificate of Compliance. However in some cases, a Determination would be appropriate if part of a site had been remediated and a Determination was being sought for a different part of the site which had not been remediated.

Ownership status

- 1.1 a) *Is the applicant a responsible person? For the source parcel?*
If there is a source parcel and the applicant is responsible for the source parcel, then the Director should consider whether the full extent of contamination has been delineated at and neighbouring the source parcel. If the applicant is not a responsible person (allowed for Determinations of Contaminated Site and Certificates of Compliance), then full delineation of contamination might not be required.
- b) *Is the application for a part site?*
Under section 53 (6) of the Act, part sites are allowed only for Approvals in Principle and Certificates of Compliance.
- c) *Does the site include affected parcels?*
The response to this question is a key to deciding whether the Director should consider consultations with affected parcel owners.
- d) *Does the site include parcels with different owners? Are parcels with different owners to be combined into one site? Have all parcel owners agreed to that?*
These questions elicit information relevant to remediation liability described in [Fact Sheet 48, "Remediation Liability and Combining Parcels"](#)

with Different Owners.” Unless all parties agree, normally the Director would not issue an instrument combining parcels with different owners into one site.

- e) *Are there or will there be other parcels using the same Site ID number?*
In addition to the issue covered by d) above, applications may be received for legal instruments which cover lands which are not adjoining, e.g., the site is proposed to be composed of two individual parcels owned by a person which are separated by a roadway with a different owner. Decisions to combine separate parcels with the same owner should be made only after considering Procedure “Establishing the Boundaries of a Site.”

Contamination status

- 1.2 a) *Is the site contaminated?*
A yes response should be used for a positive Determination of Contaminated Site, an Approval in Principle and a risk-based standards Certificate of Compliance.
- b) *Is the site high risk?*
If the site is a high risk site, that should increase the need for consultations with potentially affected persons by direct consultations with individuals or at a public meeting. Also, the response provides an opportunity to check whether or not the submission comes with the recommendation of an Approved Professional – applications for legal instruments for high risk sites normally do not.
- c) *Neighbouring parcels delineated?*
If the answer is “no”, the Director should consider whether full delineation should be completed. See discussion under 1.1 a).

Remediation status

- 1.3 a) *Site to be or has been remediated? Numerical standards used? Risk-based standards used?*
Answers to these questions allow a check on which Director Delegate should be reviewing the draft legal instrument, when different Director Delegates review different types of legal instruments.
- b) *What Type?*
If a Type number is checked, except for Type 1A sites, a performance verification plan is required in the application package and Schedule B of the Certificate of Compliance must have principal risk controls from that plan listed.

- c) *Is the site a risk-managed high risk site?*
Risk-managed high risk sites are most likely to require the Director to consult with potentially affected persons or to require public consultations. Under the principles of administrative fairness, the greater the potential effect on a person, the greater is the duty for the Director to consult with the person.

Regulatory requirements

- 1.4 a) *Have NOMs been provided to all affect parcels?*
If Notifications of Likely or Actual Migration were required to be provided and they were not, this would provide additional impetus for the Director to consult with affect parcel owners and operators. Also the Director might want to inform Section compliance staff about possible noncompliance with these notification requirements to discuss possible next steps.
- b) *Regulatory considerations list reviewed?*
A review of the considerations list in Appendix 1 provides information about general compliance with the contaminated sites provisions of the Act and the completeness of the application package. The Summary of Site Condition will provide information when many list elements are being considered. Areas where there is possible noncompliance should typically be discussed with Section compliance staff. There are two specific legal obligations which normally should be met before an Approval in Principle or Certificate of Compliance is issued as described in the next subsection.
- c) *Any outstanding obligations (e.g., fees) under Part 4 of EMA?*
Section 53 (5) of the Act allows a Director to withhold or rescind an Approval in Principle or Certificate of Compliance if conditions imposed in the Approval or Certificate are not complied with or if any fees under Part 4 or the Regulation are outstanding. Section 49 (2) (c) of the Regulation indicates that the applicant for a Certificate of Compliance must provide information on compliance with all conditions set in an Approval in Principle issued for the site.

Obligations imposed for human health and environmental protection

- 1.5 a) *What ongoing obligations are imposed? On whom are the obligations imposed?*
If no ongoing obligations (e.g., reporting, monitoring, operation of treatment works, etc.) are to be imposed on affected parcel owners and operators, this would reduce the need for consultations with affected parties. Risk-based standards type legal instruments are most likely to require consultations with affected parties.

Land ownership records

- 1.6 a) *Do records for ownership of the site exist? Have they been provided? Reviewed?*
If the site has a land title, the current title should always be reviewed as a starting point in the identification of potentially affected parties. Note that the land title may not always contain a complete list of potentially affected parties. For example, the owners of utilities in adjacent roadways or neighbouring parcel owners would not normally be listed on the land title for a specific parcel.

Consultation records

- 1.7 a) *Are or were consultations required? If yes, do the records reviewed indicate that the consultations were adequate?*
If any required consultations (e.g., under [Administrative Guidance 11, “Expectations and Requirements for Contaminant Migration”](#) or as required by a Director) were adequate, further consultations may not be required.
- b) *Was the information provided adequate? Were communications efforts made by the responsible person adequate? Were the responses by the responsible person to the affected parties adequate?*
Additional consultations might be required by the responsible person (or if he or she does not cooperate, by the Director) if the information or communications efforts were not adequate.
- c) *Were concerns raised by the affected parties legitimate in the context of the principles of the contaminated sites legal regime?*
Depending on the type of responses provided by the affected parties, the Director may decide not to issue the legal instrument, issue it, or amend it before it is issued. See section 12.4.3 of this document for a list of factors which should be considered and Appendix 5 for examples of decisions corresponding to specific scenarios.

Site Registry records

- 1.8 a) *Does the site appear on the Site Registry? Has the Site Registry record been reviewed?*
The current SITE report 10 should always be printed, reviewed, and filed with the draft legal instrument package. The Director Delegate should look for missing and incorrect items in the SITE record, e.g., missing notations, items of noncompliance (e.g., with conditions in an Approval in Principle), incorrect ministry region assignments, and other errors. These should be reported in the comments section of the checklist in section 1.8

of the checklist and a request be made of the Site Registrar or Client Information Officer to make the corrections.

Potentially affected parties

- 2.0 *Could any potentially affected parties be significantly affected by the decision?*
The list of potentially affected parties is to be completed if the decision maker considers that any of the potentially affected parties would be significantly affected by a decision. If there is insufficient room on the form, provide the information in an attachment. Consultations should be carried out with those parties by the Director, if the appropriate consultations have not already been conducted and documented before the application for the legal instrument was submitted to the ministry. In addition to the consultations routinely done for Determinations of Contaminated Site, this situation most likely would occur for Certificates of Compliance for remediation under the risk-based standards.

Results of consultations

- 3.0 This list is to be completed after consultations have occurred to summarize the results. If there is insufficient room on the form, provide the information in an attachment.

Decision and rationale

- 4.0 The final section of the checklist helps the decision maker confirm that key administrative fairness principles have been followed. A decision should only be
- based on relevant information,
 - consistent with previous decisions on similar matters following existing policies, guidelines, procedures and rules, and
 - if discretion is exercised, accompanied with an explanation of the inconsistencies explained with adequate rationale.

In situations where the Director must reconcile or decide between competing views, reasons for the Director's decision should be documented in writing.