Legal update

Modernized contaminated sites regime coming to British Columbia

June 29, 2020
Environmental law

On June 9, the Ministry of Environment and Climate Change Strategy in British Columbia made Ministerial Order No. 182 (MO 182), which amends the Contaminated Sites Regulation (CSR) to align with Bill 17, the Environmental Management Amendment Act (Bill 17). Together, these amendments alter the contaminated site identification process in BC.

Bill 17 was approved in May of 2019 after a multi-year review and consultation process that identified a number of weaknesses in the contaminated site regime. The amendments will take effect on February 1, 2021, and are intended to streamline site identifications while capturing contaminated sites that were previously left unregulated. Bill 17 makes the following notable changes to the Environmental Management Act:

- Replaces the term “site profile” with “site disclosure statement.”
- Simplifies the conditions under which a site disclosure statement is required to be submitted.
- Requires that a site disclosure statement be submitted to the registrar as opposed to the director, to streamline the collection of information.
- Adds responsibilities of the “operator of the property” in addition to existing responsibilities of the “owner of the property,” to ensure the person associated with the contaminated site is captured in the disclosure requirements.
- Requires that a person submitting a site disclosure statement also conduct a site investigation and provide an investigation report.
- Revises the requirements for sites regulated under the Oil and Gas Activities Act, to prevent overlap with the Oil and Gas Commission’s authority.

MO 182 provides complementary amendments to Bill 17. Effective February 1, 2021, the CSR, which houses exemptions to submitting site disclosure statements, will include clarified and new provisions to capture sites where proposed developments or redevelopments in land use are occurring. While the amendments are intended to bring more contaminated sites into the identification process, they also provide for new exemptions that exclude developments undergoing minor changes. Further, the CSR amendments place greater responsibility on an owner or operator of a contaminated site, as well as on municipalities in their duty to oversee the site identification process. The following are notable features of MO 182:
• Requires an owner or operator of a contaminated site to complete and submit a site disclosure statement, as opposed to any person.

• Removes municipalities’ ability to opt out of the site identification process.

• Clarifies provisions to exempt minor lot line or zoning adjustments, utility maintenance, paving, fencing, signage, and landscaping.

• Adds definitions for “decommissioning a site” and “ceasing operations at a site” and requires that a site disclosure statement be submitted within six months after operations have ceased or after the site has been decommissioned.

• Requires owners or operators to submit a site disclosure statement if they become subject to the Companies’ Creditors Arrangement Act or the Bankruptcy and Insolvency Act.

• Simplifies Schedule 1 (Site Disclosure Statement Form).

• Updates and revises Schedule 2 (Specified Industrial or Commercial Uses).

In addition to these amendments, the ministry also intends to improve waste soil relocation regulations within the contaminated site regime. For more information on the ministry’s proposed soil relocation amendments, please see this [legal update](#).

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The author wishes to thank law student Max Waterman for his help in preparing this legal update.

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