



MEMO

TO: City of Victoria – Mr. Marc Cittone
FROM: Tom Frkovich
SUBJECT: ENV Site Identification Process for Municipal Approvals
DATE: January 28, 2022

The BC Ministry of Environment and Climate Change Strategy (ENV) provides a process to identify properties that have the potential to be contaminated and, if required, specify the landowner to complete environmental assessment prior to a landowner seeking approval (e.g., subdivision, zoning, development permit, building permit) from the municipality or approving officer.

As of February 1, 2021, ENV introduced revisions to the Environmental Management Act (EMA) and Contaminated Sites Regulation (CSR) which included the process for identification of contaminated sites and the Site Disclosure Statement (SDS). The SDS is an ENV form available in CSR Schedule 1 and also available on ENV's website. Seeking approval from the municipality or approving officer is one of several reasons to complete an SDS form. However, for the purpose of this memorandum the requirement for completion of the SDS form and the process to identify a contaminated site is only discussed in the context of a property obtaining approval from the municipality or approving officer.

Attached to this memorandum is a flow chart presenting the site identification process, SDS requirements and required steps for a potentially contaminated site to obtain an approval from the municipality or approving officer. The steps that are presented in the flow chart are further discussed below according to the reference letter posted adjacent to the flow chart step.

SITE IDENTIFICATION PROCESS FOR MUNICIPAL APPROVALS

Steps A through D – Determining if a Site Disclosure Statement is Required

Completion and submission of a SDS to the municipality or approving officer is triggered when a person seeks a municipal approval for a property (e.g., subdivision, zoning, development permit, building permit (excluding demolition)) where soil disturbance is likely to occur, and the property has a history of specified industrial or commercial uses (refer to step A).

Where SDS completion and submission to the municipality is triggered, two questions need to be answered:

1. Is there a CSR Schedule 2 activity on site (refer to step B)?
 - CSR Schedule 2 provides a list of specified industrial and commercial uses that may contaminate a site. If these specified industrial and commercial uses have or had occurred at the site, then the second question needs to be answered.
 - If no CSR Schedule 2 activities occurred at the site, the site identification process ends, and no restrictions from a contaminated sites perspective are imposed on application approvals (refer to step F). The SDS is not legally required to be submitted to the ENV appointed registrar.
2. Do any exemptions apply (refer to step C)?
 - CSR, Section 4 provides exemptions from providing the SDS. The applicant is responsible to demonstrate to the applicable authority that an exemption applies. A municipality or approving officer may request additional information to confirm that an exemption applies. If an exemption applies, the municipal application may be approved with no restrictions (refer to step F), and the SDS is not legally required to be submitted to the ENV appointed registrar.

A municipality may request a person applying for municipal approval to provide the information required by the SDS even if the SDS is not required under EMA. The information in this case is not forwarded to ENV.

Note, City of Victoria's Development Permit Information document (October 2021) includes requirements for submitting the SDS form. The City requires completion of this form for non-residential properties (refer to page 1A of the Development Permit Application document).

If an activity listed in CSR Schedule 2 has or had occurred at the site and exemptions do not apply, the municipality or approving officer forwards the SDS to the ministry (registrar) which triggers site investigation requirements in EMA and the CSR. Municipal applications cannot be approved until further steps under the site identification process have been completed which are discussed in the following section (refer to step D). The site investigation requirements are discussed further in a subsequent section of this document.

SDS assessment, forwarding and notification duties of the municipality or approving officer must be completed within 15 days of receiving an SDS.

Step E – Legal Instrument or Release Notice

Where site investigation requirements in EMA and the CSR have been triggered, the site investigation associated with the relevant CSR Schedule 2 activity(ies) must be completed to a level such that the following certification documents may be obtained from ENV:

- Determination
- Certificate of Compliance
- Approval in Principle
- Release Notice

A Determination is a legal instrument that is typically obtained for a site and site investigation did not identify contamination at the site.

A Certificate of Compliance is a legal instrument that is obtained for a site where site investigation identified contamination (i.e., contaminants of concern at concentrations greater than applicable CSR standards) and the contamination was remediated to meet numerical or risk-based remediation standards.

An Approval in Principle is a legal instrument that is obtained for a site where site investigation identified contamination and a remediation plan to address the contamination has been proposed and approved by ENV.

A release notice is not a legal instrument. ENV provides three scenarios where a release notice may be approved:

- Scenario 1: No site investigation required. ENV may consider a release notice under this scenario where municipal approval is needed to prepare a site for redevelopment, minor site upgrades or where completion of site investigation is not needed before approval of a municipal application.
- Scenario 2: Applies where an owner or operator intends to complete upgrades to a site where existing CSR Schedule 2 use will continue, and remediation is only completed within the proposed construction area.
- Scenario 3: Applies where site use will change following redevelopment, or where upgrades occur at a site where the current user is not changing and is not listed in CSR Schedule 2, but there is a history of Schedule 2 uses at the site.

Under Scenario 2 and 3, a remediation plan is provided to the ministry that supports independent remediation of the site along with the recommendation of an Approved Professional.

Once the applicable certification document has been obtained from ENV and submitted to the municipality or approving officer, restrictions on municipal application approvals can be lifted (refer to Step F). The municipality should confirm that:

- The certification document has not been rescinded by sending an enquiry to siteID@gov.bc.ca;
- The certification document is relevant to any existing or proposed use based on the details of an application. Where the application proposes multiple land uses, contact the ministry at siteID@gov.bc.ca for further advice.

- The applicant has made reasonable inquiries and has no reason to believe any further contamination occurred at the site after the document was issued.

With the exception of Scenario 1 of the Release Notice, all certification documents and supporting investigation and, if applicable, remediation documents require review, approval and recommendation to the ministry to issue the certification document by an Approved Professional.

The attached flowchart and the above discussion provide a broad overview of the site identification process for municipal approvals. Further details about the site identification process associated with municipal approvals are provided in the following ENV resources:

- EMA, Section 40
- CSR, Part 2
- ENV Site Remediation webpage under Site Identification, Municipalities and approving officers.

SITE INVESTIGATION REQUIREMENTS

As previously discussed, if an activity listed in CSR Schedule 2 has or had occurred at the site and exemptions do not apply, the municipality or approving officer forwards the SDS to the ministry (registrar) which triggers site investigation requirements in EMA and the CSR. Municipal applications cannot be approved until further steps under the site identification process have been completed.

Site investigations that are described in the CSR include preliminary site investigation, and if the preliminary site investigation find the land is contaminated, a detailed site investigation is required.

The preliminary site investigation is completed in two stages. The first stage, Stage 1 Preliminary Site Investigation (PSI), generally consists of the following:

- Review of site historical use and records that may relate to potential contamination at the site and neighbouring sites;
- Site reconnaissance visit with visual inspection for indicators or presence of contamination; and
- Interviews with current or former owners or other persons with information about activities which may have caused contamination.

The Stage 1 PSI does not include sampling of environmental media or investigation of subsurface conditions.

If a Stage 1 PSI identifies areas of potential environmental concern (APECs) and associated potential contaminants of concern (PCOCs), a Stage 2 Preliminary Site Investigation is undertaken.

The Stage 2 PSI investigates relevant environmental media by sampling and analysis of PCOCs at APECs. Sample analyses are evaluated against applicable CSR standards for the environmental media primarily according to the land and water use that is applicable to the site. For evaluation of sites under CSR, the land use that applies to a site is defined by CSR Section 12. Further details of Stage 1 and 2 PSI requirements are provided in CSR Section 58.

Where a Stage 2 PSI confirms the presence of PCOCs in environmental media at concentrations greater than applicable regulatory standards (i.e., contamination), a Detailed Site Investigation (DSI) is completed to determine the extent of the contamination. Further details of DSI requirements is provided in CSR Section 59.

Stage 1 and 2 PSI, and, if required, DSI, and the reporting thereof are part of the necessary steps to obtain the certifications included in Step E of the attached flowchart.

GENERAL REMEDIATION AND SITE DEVELOPMENT STRATEGIES

Where site investigation has concluded a site to be contaminated, the proposed future use and development of the site should be reviewed to determine suitable options for remediation. Relative to a Certificate of Compliance (CoC) legal instrument that can be obtained upon remediation of a site, two CoC options are available: 1) remediation to meet applicable numerical standards as per the CSR, or 2) remediation to risk-based standards to acceptable risk levels from exposure to substances.

Completing remediation to applicable numerical standards for a site enables the site to be eligible to obtain a CoC that meets numerical standards. If a numerical standards-based CoC has been obtained for a site according to its future use, there are generally no environmental conditions that need to be considered since there is no contamination remaining at the site that exceeds the applicable numerical standards.

A site remediated to risk-based standards is eligible to obtain a CoC that meets risk-based standards. In this case and where feasible, contamination greater than applicable numerical standards is acceptable to remain at the site where specified site conditions exist such that exposure to substances is at acceptable risk levels. Since a risk-based CoC is dependent on the specified site conditions to be maintained, this may limit the future development options at a site. Hence, if a site is remediated to meet risk-based standards, the specified site conditions should be coordinated with the future development strategy.

Part of determining the applicable land use standards at a site for soil and vapour depends on the land use at the surface of a site. As an example, if a site has residential land use at the surface of a site, the residential land use standards apply to the site. In a second example, if a site has commercial land use at the surface of a site and residential land use limited to the floor overlying the



commercial land use, the commercial land use standards apply to the site. The second example provides a scenario where a contaminated site would require remediation to meet less stringent commercial land use standards while allowing residential land use to occur above the commercial land use that occurs at the surface of the site. By meeting less stringent standards, remediation of the site may be reduced.

CLOSURE

We trust that this memo meets your current needs, should you have any questions or require any further information, please do not hesitate to contact the undersigned.

Sincerely,

WSP Canada Inc.

A handwritten signature in black ink, appearing to read 'Tom Frkovich'.

Tom Frkovich
Technical Director, Environment

Attachment: Site Identification Process Flowchart

Site Identification Process for Municipal Approvals

