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February 17, 2021

**BULLETIN**

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### **SITE DISCLOSURE STATEMENTS – ISSUES FOR LOCAL GOVERNMENTS**

The amendments to the contaminated site identification and remediation provisions in the *Environmental Management Act* (EMA) that came into force on February 1, 2021 have some significant implications for local governments; this bulletin considers a few of them. These may be of particular interest to local governments that had opted out of dealing with site profiles under the previous legislation, and accordingly have little or no experience dealing with these matters. There is no longer an option to “opt out”, for either local governments or their subdivision approving officers. The term “local government” in this bulletin includes municipalities, regional districts and local trust committees under the *Islands Trust Act*.

#### **Assessment of Site Disclosure Statements**

The amended EMA requires local governments and approving officers to “assess” site disclosure statements provided by applicants for zoning, development permit or subdivision, before forwarding them to the Ministry of Environment and Climate Change Strategy. Section 6 of the amended Contaminated Sites Regulation (CSR) details the assessment process; the local government or approving officer must do the following within 15 days of receiving a site disclosure statement:

- determine whether the statement is satisfactorily completed in accordance with instructions that are provided by the director in the MOECCS responsible for such matters, and either
- forward the statement to the registrar of contaminated sites at [siteID@gov.bc.ca](mailto:siteID@gov.bc.ca) if the statement was satisfactorily completed and notify the applicant that this has been done, or
- notify the applicant that the statement was not satisfactorily completed.

The CSR does not address the timing of further assessments conducted after a notice of deficiency has been given to the applicant, or the consequences of failure to meet the 15-day deadline. In regard to the former, one should assume that the 15-day assessment period begins to run again when a revised statement is received. In regard to the latter, any delay would simply prevent the approving officer or local government from proceeding any further with the application in relation to which the site disclosure statement was provided, though as a matter of law the applicant is probably entitled to have a decision on the sufficiency of the statement made and communicated within the 15-day period. Limited information about the assessment

process has been provided at <https://www2.gov.bc.ca/gov/content/environment/air-land-water/site-remediation/site-identification/municipalities-and-approving-officers>. It seems that the director requires that the statement be reviewed to determine whether any of the prior industrial or commercial uses of the land specified in the CSR have been disclosed; if not, the statement is not required at all and is to be returned to the applicant or, if the local government chooses, retained in local government records. Otherwise, the director's instructions are simply that the proper form must have been used and completed legibly.

According to s. 6(3) of the CSR a local government or approving officer is not required to conduct a search of records or archives to determine whether a site disclosure statement has been satisfactorily completed. Section 61 of the EMA continues to provide immunity for local government officials in relation to any act or failure to act related to the contaminated sites regime, except in cases of dishonesty or malicious or wilful misconduct.

### **Fees for Assessing Site Disclosure Statements**

Section 40(5) of the amended EMA authorizes a local government or approving officer to require a person submitting a site disclosure statement to pay a fee for an assessment. At common law, such a fee would have to be reasonably related to the service for which it's been imposed. While the Act doesn't specify how such a fee should be imposed, it would be prudent for the fee to be established in a bylaw, and many local governments will likely include it in the bylaw enacted under s. 462 of the *Local Government Act* to establish fees for Part 14 development approvals. It would be prudent to address in such bylaws the re-assessment of site disclosure statements that were originally defective and had to be re-submitted. Local governments may wish to monitor the subdivision application pages of the Ministry of Transportation website to see whether and in what amount that Ministry's approving officers are imposing a fee for the assessment of site disclosure statements for rural subdivisions.

### **Amendment and Replacement of Zoning Bylaws**

Because the site disclosure statement requirement in s. 40 of the EMA applies to a local government when it's initiating a zoning amendment for land in which it has an ownership interest, if it knows or reasonably should know that the land has been used for an industrial or commercial use specified in the CSR, it will be necessary to consider the local government's own land holdings when updating a zoning bylaw in whole or in part, in addition to doing so for a site-specific rezoning of local government land. Section 3.1 of the CSR requires a municipality that is undertaking to zone or rezone its own land to provide a site disclosure statement directly to the registrar within 15 days of giving first reading to the bylaw; the local "assessment" process is omitted (presumably because a local government is expected to be able to complete the statement properly). The site disclosure statement requirement is, however, inapplicable in respect of the rezoning of local government land holdings if the local government "does not intend to develop any parcels of land in which it has an ownership interest" that happen to be located within the area affected by the bylaw. Thus, staff preparing zoning bylaw updates must

turn their mind to the local government's intentions regarding any of its own land holdings that are within the affected area. If the local government knows or reasonably should know that the land has previously been used for an industrial or commercial use specified in the CSR but there is no intention to develop the land, a site disclosure statement isn't required; if there is an intention to develop, a site disclosure statement must be prepared and sent to [siteID@gov.bc.ca](mailto:siteID@gov.bc.ca).

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