Amendments to the British Columbia contaminated sites regime

February 12, 2021

On Feb. 1, 2021, the Province of British Columbia brought new obligations for identifying and addressing contaminated sites through amendments to the *Environmental Management Act* (EMA) and the associated *Contaminated Sites Regulation* (the Regulation) into force.

What you need to know

- The legislation establishes the process for identifying potentially contaminated sites and ensuring that such sites are investigated and remediated as needed after they have been decommissioned, where operations have ceased, or before re-use or redevelopment.
- B.C. has stated that the amendments to the EMA and Regulation are needed to address weaknesses and gaps in this process.
- The amendments also impose a number of additional burdens and costs on the owners and operators of commercial and industrial properties in B.C.

Site disclosure process

As of Feb. 1, 2021, owners and operators of lands that have been used for a specified commercial or industrial use (as set out in the revised Schedule 2 of the Regulation) are subject to additional reporting requirements under the EMA. Notably, contamination migrating, or likely to migrate, from an industrial or commercial site is a specified industrial or commercial use for the purposes of the legislation.

A number of activities trigger the requirement that the owner or operator submit a Site Disclosure Statement (which replaces the previous Site Profile), including:

- Decommissioning a site or ceasing operations;
- Applying for development or building permits;
- Applying for subdivision or rezoning approvals; and
- Applying for creditor or bankruptcy protection.

In addition, a vendor of real property must submit a Site Disclosure Statement to a prospective purchaser of the property.

Significantly, municipalities can no longer opt out of the Site Disclosure process. This means that owners or operators of lands in municipalities that had previously opted out of the former Site Profile process will now be subject to the requirements of the EMA and the Regulation.

Investigations and remediation

Where a Site Disclosure Statement is required, a Preliminary Site Investigation is now mandatory and automatic in almost all circumstances, with the exception of a vendor of real property who provides a Site Disclosure Statement to a prospective purchaser. If contamination is identified at the site, a Detailed Site Investigation is also required. Previously, the need for any site investigation was at the discretion of the Director.

Exemptions

There are exemptions from the requirements to submit a Site Disclosure Statement and to conduct investigations, including where:

- Another process applies under the EMA and the Director has issued some type of determination (*e.g.*, Certificate of Compliance, Approval in Principle, or determination that the site is not contaminated). This exemption only applies in circumstances where, after making reasonable inquiries, there is no reason to believe that there has been further contamination at the site since that determination was made.
- A prospective purchaser of real property waives the entitlement to be provided with a Site Disclosure Statement by the vendor.
- A person is applying to a municipality for approval of zoning, but the land is already being used for a specified industrial or commercial use that would continue to be authorized on the land if the zoning were approved.
- A person is applying to a municipality for a development or building permit only for certain purposes (*i.e.*, demolition, installing or replacing underground utilities, installing or replacing fencing or signage, paving, or landscaping).
- More than one owner or operator is required to submit Site Disclosure Statement when ceasing operations on land. In this situation, only one person must provide the Site Disclosure Statement.

Oil and gas sites

There is also a specific carve-out for oil and gas sites in the new legislation, which recognizes that the B.C. Oil and Gas Commission is responsible for the management of oil and gas activities, including the remediation of those sites.

Consequential amendments to the *Oil and Gas Activities Act* have removed the requirement that the provisions of the EMA must be met prior to the issuance of a Certificate of Restoration. Instead, an oil and gas permit holder is subject to *Oil and Gas Activities Act* and *Dormancy and Shutdown Regulation*.

Final thoughts

According to the Province, the recent amendments to the EMA and Regulation were needed to address weaknesses and gaps in the Site Profile process and to ensure that contaminated sites are identified, investigated and remediated following decommissioning or ceasing of operations, or before re-use or redevelopment. However, these changes also impose a number of additional burdens on owners and operators of commercial and industrial properties in B.C. (or those subject to migration of contaminants from those sites).

Those subject to these requirements are also reminded that the EMA has a stringent cost recovery scheme that can be used to seek recovery of costs associated with remediation from "responsible persons." Those required to conduct additional investigations and remediation may seek to recover those costs from former owners and operators (among others) through cost recovery actions under the EMA.

If you have any questions or would like to discuss these changes, or their effect on your business, please contact the authors or any other member of our Environmental Law Group.

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