



# The “New” Contaminated Sites Regulation – Changes in Force February 1, 2021

Environmental Managers Association of BC  
January 13, 2021

# Legislation – Coming into force Feb 1, 2021

Stage 13 Amendments to the *Environmental Management Act* and the *Contaminated Sites Regulation* via:

- Bill 17 - *Environmental Management Amendment Act, 2019* – May, 2019
- Ministerial Order 182 and OIC 368 – June, 2020

Consequential Amendments to:

- *Land Title Act*
- *Local Government Act*
- *Islands Trust Act*
- *Vancouver Charter*
- *Oil and Gas Activities Act*

# Overview

- Site Profile is replaced by Site Disclosure Statement
- When is it required?
  - Specified Industrial or Commercial Activity
  - Situation
  - Timing
  - Submitted to Whom
- Exemptions
- Investigations required as a result of an SDS
- Oil and Gas Commission as regulator for Oil and Gas Lands
- New Numerical Standard Schedules
- Pending updates to Guidance Documents

# Site Disclosure Statements replace Site Profiles

- Site Disclosure Statement replaces Site Profile (CSR Schedule 1)
- Repeals Summary of Site Condition Report Form (Old CSR Schedule 1.1.)

SCHEDULE 1  
SITE PROFILE

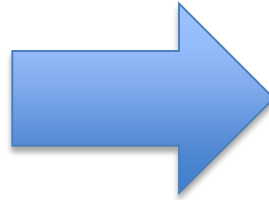
**I. CONTACT IDENTIFICATION**

**A. Name of Site Owner**  
Last Name  First Name  Middle Initial(s)   
(and/or, if applicable)  
Company   
Owner's Civic Address   
City  Province/State   
Country  Postal/Zip Code

**B. Person Completing Site Profile (Leave blank if same as above)**  
Last Name  First Name  Middle Initial(s)   
(and/or, if applicable)  
Company

**C. Person to Contact Regarding the Site Profile:**  
Last Name  First Name  Middle Initial(s)   
(and/or, if applicable)  
Company   
Mailing Address   
City  Province/State   
Country  Postal/Zip Code   
Telephone (999-999-9999)  Fax (999) 999-9999

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SCHEDULE 1  
SITE DISCLOSURE STATEMENT

**I. CONTACT INFORMATION**

**A. Site Owner (s) or operator (s), as applicable (add extra pages, if necessary)**  
Last Name  First Name(s)   
Company (if applicable)   
Owner/Operator Address   
City  Province/State   
Country  Postal/Zip Code   
Telephone (999-999-9999)  Email

**B. Person Completing Site Disclosure Statement (Leave blank if same as above)**  
 Agent authorized to complete form on behalf of the owner or operator  
Last Name  First Name   
Company (if applicable)

**C. Person to Contact Regarding the Site Disclosure Statement:**  
Last Name  First Name(s)   
Company (if applicable)   
Mailing Address   
City  Province/State   
Country  Postal/Zip Code   
Telephone (999-999-9999)  Email

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# What is a Site Disclosure Statement?

- Similar information regarding site identification
- “Yes or No” questions no longer required for categories of items previously included on the Site Profile (Site Profile ss. IV to IX)
- New information to provide:
  - Summary of planned activity and proposed use
  - List of information and record searches for completion of the form
    - (Ministry will provide guidance on where to find information on historical use)
  - List any past or present government orders, permits, approvals, certificates, or notifications pertaining to the environmental condition of a site.
- Declaration that information is complete and accurate
- SDS must be signed by Owner/Operator

# When is an SDS Required: Specified Industrial or Commercial Uses

- Specified industrial or commercial use “means a use of land for a prescribed industrial or commercial purpose or activity”
- Relates to actual use of property, not zoning
- Prescribed in CSR Schedule 2
  - Chemical industries and activities
  - Electrical equipment and activities
  - Metal smelting, processing or finishing industries and activities
  - Mining, milling or related industries and activities at or near land surface
  - Miscellaneous industries, operations or activities
  - Petroleum (including blends and biodiesels) and natural gas drilling, production, processing, retailing, distribution and commercial storage
  - Transportation industries, operations and related activities
  - Waste disposal and recycling operations and activities
  - Wood, pulp and paper products and related industries and activities

# When is an SDS Required: Specified Industrial or Commercial Uses continued

- Changes include, *inter alia*:
  - “Wholesale” replaced by “shipping or handling” throughout Schedule 2 (e.g. adhesive, chemical, or battery manufacturing, mining, etc.)
  - New threshold for electrical equipment containing PCBs: only applies to electrical equipment that contains PCBs greater than or equal to 50 ppm
  - Dry cleaning facilities: excludes locations where clothing deposited but no dry cleaning process occurs
  - Migrating contamination: only captures contamination of land by substances migrating from an industrial or commercial site
  - Added: Single or cumulative spills to the environment greater than the reportable quantities of substances listed in the Spill Reporting Regulation
  - Automotive, truck, bus, subway or other motor vehicle maintenance, repair, salvage or wrecking
  - Removed saw mills

# When is an SDS Required - EMA s. 40

- Municipal/Land Title Applications:
  - Subdivision
  - Zoning
  - Development or building permit for any activity that will likely disturb soil on the land
- Decommissioning or ceasing operations at a site
- *Companies Creditors Arrangement Act* and *Bankruptcy and Insolvency Act*
- Vendor of real property
- Trustees, receivers, liquidators, foreclosure proceedings where person takes possession or control of real property for the benefit of one or more creditors
- By order of the Director



# When is an SDS Required: Decommissioning a Site or Ceasing Operations (CSR ss. 2.1 and 2.2)

2.1 An owner or operator **decommissions** a site if the owner or operator does any of the following in a manner designed to stop all specified industrial or commercial uses of the site:

- a) Removes or treats soil
- b) Removes, destroys or treats buildings or process equipment, including storage tanks.

2.2 An owner or operator **ceases operations** on land if:

- a) The owner or operator ceases using the land for a specified industrial or commercial use; and
- b) The land is not used for any specified industrial or commercial uses for 12 months after the date on which the specified industrial or commercial use referred to in paragraph (a) ceases.

# Site Disclosure Statement Timing (CSR ss. 3 to 3.4)

Trigger	Timing
Municipal/Land Title Application: <ul style="list-style-type: none"> <li>• Subdivision</li> <li>• Zoning</li> <li>• development or building permits for any activity that will likely disturb soil on the land</li> </ul>	At the time of application
Municipality undertaking zoning	15 days after first reading of zoning bylaw
Decommissioning or Ceasing Operations	Within 6 months
<i>Companies' Creditors Arrangement Act or Bankruptcy and Insolvency Act</i>	90 days after: <ul style="list-style-type: none"> <li>(i) filing for protection under or otherwise becoming subject to CCAA</li> <li>(ii) filing a proposal/notice of intention to make a proposal, under Part III of BIA</li> </ul>
Vendor of Real Property	30 days before transfer or, if time between written agreement and the actual transfer is < 30 days, before the written agreement is entered into
Trustee, receiver, liquidator, or foreclosure proceedings where person takes possession or control of lands	10 days after taking possession or control of the property

# Site Disclosure Statement: Submitted to Whom?

- Municipal and Land Title Applications:
  - Submit Site Disclosure Statement to Municipality or Approving Officer, who will assess the SDS and forward the SDS to the Registrar
- Decommissioning, Ceasing Operations, Trustees, Receivers, Liquidators
  - Submit SDS to Site Registry Registrar
- Vendors of Real Property
  - Provide SDS to purchaser, no requirement to submit SDS to Registrar
- Oil and Gas Commission no longer responsible for assessing site disclosure statements
  - *Oil and Gas Activity Act* permit holders must submit to the Oil and Gas Commission a copy of an SDS in relation to decommissioning or ceasing operations

# Site Disclosure Statement Exemptions (CSR ss. 4 to 4.7)

The CSR provides exemptions for the requirement to provide an SDS:

- Existing EMA Process (Certificate of Compliance, Agreement in Principle, Environmental Management Area, Director's Determination etc.)
- Site Profile submitted and processed before February 1, 2021 (all "no" answers in Parts IV – IX of Site Profile)
- Some subdivision applications (e.g., minor lot adjustments, statutory rights of way)
- Zoning applications where the same specified industrial or commercial use continues after rezoning
- Development or Building Permits for certain activities
  - Demolition
  - Installing or replacing fencing, signage, or underground utilities,
  - Paving
  - Landscaping

# Site Disclosure Statement Exemptions Continued (CSR ss. 4 to 4.7)

The CSR provides exemptions for the requirement to provide an SDS:

- If there are multiple Owners and Operators required to provide a site disclosure statement when decommissioning or ceasing operations on land, one SDS is sufficient for all of them
- As before, vendors of real property where:
  - Vendor does not have an “ownership interest” (as defined in the CSR) in the real property;
  - Prospective purchaser provides written waiver of its entitlement to SDS; or
  - At the time of the sale, the real property is used primarily for residential purposes or has never been zoned for any use other than primarily for residential purposes

# Site Disclosure Statement – Municipality and Approving Officer Requirements

- Municipalities can no longer opt out of the SDS regime
- Within 15 days, Municipality or Approving Officer must:
  - Assess whether the SDS is complete
  - If complete, forward the SDS to the Registrar
  - Notify the Applicant
- Municipality or Approving officer not required to:
  - Conduct their own searches of records or archives
  - Keep a record of the SDS once it has fulfilled its obligations
  - Disclose whether they have a particular SDS or the contents of a particular SDS
- SDS information will be stored in the Site Registry

# Site Disclosure Statement – Municipality and Approving Officer Requirements

- Consequential amendments to *Land Title Act, Local Government Act, Islands Trusts Act, and Vancouver Charter*
- Municipalities and approving officers cannot approve applications until Director has issued one of:
  - Certificate of Compliance
  - Approval in Principle
  - Determination
  - Release
    - No mandatory response time from Ministry to provide release
- Municipalities and approving officers can approve zoning and subdivision if there are building and/or development applications pending

# Investigations (CSR s. 6)

SDS submission automatically triggers investigation requirements

Trigger	Level	Timing
Municipal/Land Title Application: <ul style="list-style-type: none"><li>• Subdivision</li><li>• Zoning</li><li>• Development/building permits for activity that will likely disturb soil</li></ul>	Preliminary Site Investigation (PSI) and possibly Detailed Site Investigation (DSI)	Before applying for release from Director
Decommissioning or Ceasing Operations	PSI and possibly DSI	One year from SDS submission
<i>Companies' Creditors Arrangement Act or Bankruptcy and Insolvency Act</i>	All environmental reports from the past 5 years	30 days from SDS submission
Trustee, receiver, liquidator, or foreclosure proceedings where person takes possession or control	PSI and possibly DSI	One year from SDS submission



# Transitional Provisions

“Old EMA” rules for Site Profiles continue to apply to:

- Existing subdivision or municipal application where a site profile was submitted and assessed prior to Feb 1, 2021
- Site profile in real estate sale provided before February 1, 2021
- Site Profile with all “No” answers in ss. IV-IX
- Applications in currently “opt out” municipalities made before February 1, 2021

# Oil and Gas

- Oil and Gas Commission no longer responsible for assessing or forwarding site disclosure statements (*EMA* s. 40(3) and (4))
- Site investigation requirements of *EMA* do not apply to oil and gas operating areas - *CSR* s. 6.3(2)(b)
- Commission has its own regulations for remediation of oil and gas lands
- Removes requirement to meet *EMA* criteria before Commission can issue Certificate of Restoration – *OGAA* ss. 41 and 43

# New Numerical Standards

- Revised Numerical Soil Standard Matrix 21 (methanol) and Matrix 25 (nonylphenol and nonylphenol ethoxylates)
- Revised Schedules:
  - 3.2: Generic Numerical Water Standards
  - 3.3: Generic Numerical Vapour Standards
  - 3.4: Generic Numerical Sediment Standards

# Administrative Guidance

The Ministry has indicated it will revise the following guidance and procedure documents:

- Administrative Guidance 1: Completing and Submitting Site Profiles
- Administrative Guidance 2: Site Profile Processing Requirements for Municipalities and Approving Officer
- Administrative Guidance 4: The Site Information Request Process
- Administrative Guidance 6: Site Profile Decisions and Requesting Releases Where Local Government Approvals are Required
- Administrative Guidance 11: Expectations and Requirements for Contaminant Migration
- Administrative Guidance 13: Guidance on Schedule 2 Purposes and Activities
- Administrative Guidance 14: Performance Verification Plans, Contingency Plans, and Operations and Maintenance Plans
- DRAFT Administrative Guidance 15: Approvals Not to Delineate or Remediate the Entire Extent of Contamination at a Site
- Administrative Guidance 16: Approved Professional Role in the Administration of Site Profile Releases
- Technical Guidance 16: Soil Sampling Guide for Local Background Reference Sites
- Procedure 12: Procedures for preparing and issuing contaminated sites legal instruments

# Protocols

## Ministry of Environment has proposed changes to 10 Protocols

- Protocol 1: Detailed Risk Assessment
- Protocol 4: Establishing Local Background Concentrations in Soil
- Protocol 6: Applications with Approved Professional Recommendations and Preapprovals
- Protocol 9: Establishing Local Background Concentrations in Groundwater
- Protocol 11: Upper Cap Concentrations for Substances Listed in the Contaminated Sites Regulation
- Protocol 12: Site Risk Classification, Reclassification and Reporting
- Protocol 13: Screening Level Risk Assessment
- Protocol 16: Determining the Presence and Mobility of Non-Aqueous Phase Liquids and Odorous Substances
- Protocol 17: Site Remediation Forms
- Protocol 28: 2016 Standard Derivation Methods



## THANK YOU FOR LISTENING



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