

*Effective February 2021: New Rules May Apply for Local Government Approvals for Zoning, Subdivision, and Development or Building Permits*

## **Amendments to the *Environmental Management Act* and *Contaminated Sites Regulation***

Changes to the *Environmental Management Act* (Bill 17) and Stage 13 *Contaminated Sites Regulation* (CSR) amendments came into force on Monday, February 1, 2021.

The Ministry of Environment and Climate Change Strategy (the “Ministry”) considered comments from stakeholders during a consultation process and revised certain protocols as a result.<sup>1</sup> The changes intend to simplify the site identification process and improve Ministry efforts relating to compliance verification and enforcement, including ensuring that land sites are remediated before being redeveloped, and also to provide information to the public via the site registry. The Ministry’s website includes fact sheets, administrative guidance and procedure documents for further detail.

### **Site Identification<sup>2</sup>**

In terms of site identification, only properties with a history of specified industrial and commercial uses are considered. Specifically, Schedule 2 of the CSR<sup>3</sup> outlines the uses that are a cause for concern for potential contamination, organized by purpose or activity, as follows:

- Chemical industries and activities
- Electrical equipment and activities
- Metal smelting, processing or finishing industries and activities
- Mining, milling or related industries and activities
- Miscellaneous industries, operations or activities
- Petroleum and natural gas drilling, production, processing, retailing, distribution and storage other than the storage of residential heating fuel in tanks
- Transportation industries, operations and related activities
- Waste disposal and recycling operations and activities

- Wood, pulp and paper products and related industries and activities

### **Site Disclosure**

For a property with a historical Schedule 2 use, a site disclosure statement (current version of form available on Ministry website) must be completed when:

- decommissioning or ceasing operations
- applying for local government approvals such as zoning, subdivision, and development or building permits where soil disturbance is likely to occur
- an owner is subject to insolvency proceedings
- selling a property
- ordered by a director

Section 4 of the CSR provides exemptions from the requirement to submit a site disclosure statement. However, the Ministry does not approve the exemption, if any. The applicant must illustrate to the relevant authority that an exemption applies.

In the event a site disclosure statement is not required under *Environmental Management Act*, a local government may still request an applicant to supply the information required in a site disclosure statement, as part of their approval process.

If there is lack of clarity in terms of whether there has been a Schedule 2 use on the property, the Ministry recommends the following searches, likely by way of a qualified professional:

- searching the site registry
- contacting previous owners and the local municipality for records
- site visits to visually inspect the buildings, property, equipment, land, surface water, and vegetation for indicators or presence of contamination

- reviewing historical aerial photos and land title records

The site owner or operator must sign the completed site disclosure statement, and by so doing, is declaring responsibility for the information provided in the form. The individual completing the form is to do so to the best of their knowledge. The Ministry will reject incomplete forms and as such, this will cause delay in the overall approval processes.

A completed site disclosure form should be submitted as follows:

- for a subdivision application, to the approving officer
- for a zoning, development or building permit, to the local government
- for decommissioning or ceasing operations, insolvency proceedings, or an order, to the registrar
- for the sale of property, to the prospective purchaser

After submitting the site disclosure statement, this subsequently causes the need, usually, for completion of site investigations as per the requirements under the *Environmental Management Act* and the CSR. Section 6 of the CSR and Protocol 12 contain additional information on site investigation and reporting requirements.

If a site investigation is required, applications cannot be approved by a local government for zoning, development or building permits, or by an approving officer in the case of a subdivision. The application can move forward only when the applicant delivers to the approving authority the following: a copy of a determination that the site is not contaminated, an approval in principle of a remediation plan, a certificate of compliance or a voluntary remediation agreement, or a release notice from the Ministry (release notice for scenarios where local government approval is required however there is no change in land use, or to allow owner / developer greater leeway in completing remediation during redevelopment).<sup>4</sup>

In summary, the changes have significant impact to owners wishing to redevelop lands historically used for certain industrial / commercial purposes.

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**Navneet Ghoman**

<sup>1</sup> <https://www2.gov.bc.ca/gov/content/environment/air-land-water/site-remediation/site-remediation-news>

<sup>2</sup> <https://www2.gov.bc.ca/gov/content/environment/air-land-water/site-remediation/site-identification>

<sup>3</sup> [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/375\\_96\\_04](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/375_96_04)

<sup>4</sup> Section 34.1 of the *Islands Trust Act*, Section 85.1 of the *Land Title Act*, Section 557 of the *Local Government Act*, and Section 571B of the *Vancouver Charter*



**Navneet Ghoman**  
**604.358.7014**  
**navneet@civiclegal.ca**

Navneet is an associate lawyer of the firm. Prior to joining Civic Legal LLP, Navneet practiced in the Okanagan Valley with a primary focus on real estate law. In addition to her formal education, Navneet has extensive practical experience in business and real estate, as her family owned and operated hotels in the Northeast United States for several decades. Navneet's entrepreneurial upbringing, unique background and viewpoint – having been a consumer of legal services as an owner / developer, allows her to fully understand the client's position and perspective.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

710 - 900 West Hastings Street, Vancouver, BC, V6C 1E5  
604.639.3639 | [www.civiclegal.ca](http://www.civiclegal.ca) |  CivicLegal