

TO: CITY MANAGER 1997 APRIL 15

FROM: CHIEF ENVIRONMENTAL HEALTH OFFICER
APPROVING OFFICER

SUBJECT: B.C. WASTE MANAGEMENT AMENDMENT ACT, 1993 (BILL 26)
CONTAMINATED SITES REGULATION

PURPOSE: TO INFORM COUNCIL OF THE CITY'S NEW ADMINISTRATIVE DUTIES
AND AVAILABLE OPTIONS IN THE HANDLING OF SITE PROFILES
UNDER BILL 26.

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RECOMMENDATION:

THAT the City "opt-in" to administering the site profile system as set out in the Contaminated Sites Regulation.

REPORT

1.0 INTRODUCTION

Two separate reports have been submitted in the past informing Council of Bill 26 and the proposed Contaminated Sites Regulation and its potential impacts to the City.

This report outlines the new administrative duties assigned to the City under Bill 26 in the handling of site profiles, the options available to the City, and staff analysis of the new provisions.

2.0 BACKGROUND

On 1996 December 17, the provincial cabinet passed an Order in Council concerning the management of contaminated sites in British Columbia. Effective 1997 April 1, the Order in Council:

- * brought the Waste Management Amendment Act, 1993 (Bill 26) into force;
- * brought the Contaminated Sites Regulation into force; and
- * repealed the current Contaminated Sites Fees Regulation (these fees are now included in the regulation).

The regulation provides for an evaluation within three years to determine whether changes are needed based on initial experiences with implementing the regulation, advances in science, the law and the management of contaminated sites.

3.0 NEW ADMINISTRATIVE DUTIES OF LOCAL GOVERNMENTS UNDER BILL 26

The Contaminated Sites Regulation under Bill 26 creates an initial screening tool for identifying property that might be contaminated by the use of site profiles.

Site profiles are forms that require information about the past and present uses of a site, as well as basic land descriptions that developers, owners and vendors of property, and local governments (as land owners) may have to submit. The form and associated administrative requirements for using the form are set out in the Regulation.

Administratively, local government will be affected when dealing with land owned privately or by the municipality or regional district where there is the following:

- * an application for rezoning;
- * an application to the Approving Officer for subdivision approval;
- * a development permit;
- * a development variance permit;
- * a soil removal permit;
- * a demolition permit for structures associated with decommissioning a site used for commercial or industrial purposes.

Bill 26 assigns two administrative duties to local governments in handling site profiles. These duties are the assessment as to the completeness of site profiles and forwarding of site profiles. The Act provides for the local government to charge a fee up to \$50 for administering each site profile.

4.0 OPTIONS AVAILABLE TO LOCAL GOVERNMENTS IN HANDLING SITE PROFILES

The Regulation allows local governments to either "opt-in" or "opt-out" of administering the site profile system. Under Section 4(4) of the Regulation, a local government has the choice of whether or not it wants to be involved in receiving and forwarding site profiles.

Where a local government decides not be involved, the municipality and approving officer must each file written notices with the Minister of the Environment, Lands and Parks that the municipality and approving officer does not wish to receive site profiles. In the case of a municipality or regional district, the decision to "opt-out" must be in the form of a resolution.

Where a local government decides to participate in the receiving and forwarding of site profiles, it will need to ensure that the requirements under the Regulation are followed.

5.0 ANALYSIS OF THE "OPT-IN" AND "OPT-OUT" OPTIONS

At the present time, the City has a system in place to identify potentially contaminated sites as early as possible in the preliminary plan approval, rezoning, or subdivision processes.

Staff from Legal, Planning and Building, Engineering, Parks & Recreation and Environmental Health Departments have reviewed and compared the new administrative duties under Bill 26 with the existing "screening" system, and summarized the advantages and disadvantages of the "opt-out" option below.

The main advantages of the "opt-out" option are:

- * removes any possible liability concerns in administering provincial legislation;
- * removes training and administration costs of the site profile system (a maximum of \$50 can be charged for processing a site profile);
- * may save some staff time.

The disadvantages of the "opt-out" option are more numerous and include:

- * Loss of the liability protection provisions of the Act. The Act states that local government will have no liability related to administration of the site profile process except where an employee or elected official acted in bad faith;
- * Under the Act, the municipality or approving officer has no duty to conduct a search of the records or archives maintained by the municipality if another source of information exists (i.e. the Site Registry that will be established under the legislation). This provision of the Act provides significant relief from potential liability relating to requests for information about a particular site;
- * Opting out would mean the City may have to rely on the existing screening system to ensure that 'due diligence' is followed in dealing with contaminated sites in the City. This has all the potential pitfalls and risk management traps that the City currently faces;
- * Opting out does not remove the possibility of the City of having to address the problem of a contaminated site should it be identified in the City;
- * The City may still have to process a site profile if it is voluntarily delivered to the City for processing. There is a potential exposure of liability to the City if a voluntary site profile contained information which would lead a reasonable person to believe that the site was contaminated and the City failed to process the site profile, or warn the prospective purchasers of its existence;
- * There may not be a comprehensive record in the Provincial Site Registry on potentially contaminated sites in the City.

6.0 IMPLEMENTATION OF THE SITE PROFILE SYSTEM

In reviewing the new administrative duties assigned to the City under Bill 26 and the existing screening system used by the City, the intra-departmental staff committee concluded that these new duties can be satisfied by some minor modifications to the existing system and has developed a new system to administer site profiles using existing staff resources.

The new system would be monitored and reviewed on an on-going basis and changes will be implemented as needed to ensure that the requirements under the Regulation are followed.

7.0 CONCLUSION

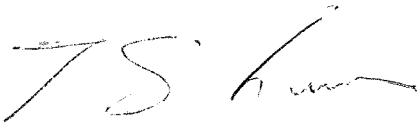
The Ministry of the Environment, Lands and Parks has taken an important positive step with the introduction of Bill 26 to deal specifically and more comprehensively with contaminated sites in B.C. In conjunction with the Contaminated Sites Regulation, it provides a comprehensive administrative, technical and legal framework for the identification of contaminated sites through the site profile system and a broader immunity to local governments.

Bill 26 Contaminated Sites Regulation assigns two administrative duties to the City in handling site profiles. These duties are the receiving and forwarding of site profiles. While the Act allows the City to choose whether or not to participate in administering the site profile system, an analysis of the Regulation and the screening system currently used by the City for contaminated sites by Legal, Planning & Building, Engineering, Parks & Recreation and Environmental Health staff concluded that there are more disadvantages to the City with the "opt-out" option and that these new administrative duties can be satisfied with minor changes to the existing system. As such, staff recommend that the City be involved in the

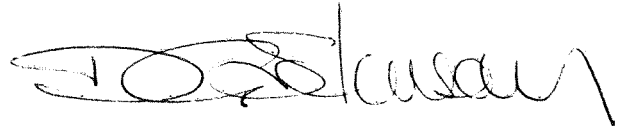
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CONCLUSION (Cont'd)

administration of the site profile system as set out in the Regulation.



Tim Shum
CHIEF ENVIRONMENTAL HEALTH OFFICER



Don Stenson
APPROVING OFFICER

DD/TS:ld

- cc: () Director Engineering
() Acting Director Parks & Recreation
() Medical Health Officer
() City Solicitor
() Chief Building Inspector