

TO: CITY MANAGER

DATE: 2002 06 28

FROM: DIRECTOR ENGINEERING

FILE: 10-02-01

SUBJECT: REVIEW OF B.C. CONTAMINATED SITES REGULATION

PURPOSE: To provide comments to the Minister's Advisory Panel on B.C. Contaminated Sites Regulation

RECOMMENDATION:

1. **THAT** the Advisory Panel on Contaminated Sites be requested to address the issues raised in Section 2 of this report.
2. **THAT** the Minister of Water, Land and Air Protection provide the findings of the Minister's Advisory Panel on Contaminated Sites to the UBCM for discussion at the Convention in September 2002.
3. **THAT** a copy of this report be forwarded to:
 - a) Advisory Panel on Contaminated Sites, Suite 400, 601 West Broadway, Vancouver, B.C., V5Z 4C2.
 - b) Mr. Richard Taylor, Executive Director, Union of BC Municipalities, Suite 60, 10551 Shellbridge Way, Richmond, B.C., V6X 2W9;

R E P O R T

1.0 INTRODUCTION

Council, at its regular meeting on June 24, 2002, received correspondence from UBCM which provided information on the appointment of an Advisory Panel by the Minister of Water Land and Air Protection. The Panel has been asked to carry out a review of the contaminated sites provisions in Part 4 of the *Waste Management Act* (WMA) and *Contaminates Sites Regulation* (CSR). Arising from the consideration of the correspondence, staff were requested to prepare a report on the subject matter.

2.0 COMMENTS ON CONTAMINATED SITES PROVISIONS UNDER THE WASTE MANAGEMENT ACT CONTAMINATED SITES REGULATION

The Contaminated Sites Regulation, which came into effect on April 01, 1997, has provided a defined framework to identify sites and have them remediated for the protection of the environment and human health. According to the Ministry's web site, since 1986 approximately 1,040 sites have been remediated (approximately 500 of the 1,040 sites are in lower mainland) and another 1,278 clean-ups are underway in British Columbia. The regulation has provided flexibility in the use of a numerical and/or a risk based approach in cleaning up sites. The Certificates of Compliance or Conditional Certificates of Compliance issued by the Ministry have provided a greater degree of certainty to local governments, lawyers and financial institutions regarding site clean-ups.

The regulations, however, do need to be reviewed to ensure that they address issues and concerns of the day. To this end, the City welcomes the opportunity to comment on the subject matter.

In reviewing the Terms of Reference for the Minister's Advisory Panel (see Attachment #1), it is noted that the timeline to comment on such a wide and complex matter is very limited with the comment deadline being July 19, 2002. In addition, given the significance of potential implications noted below, it is recommended that the Minister of Water, Land and Air Protection consider providing the findings of the Advisory Panel to the UBCM for discussion at their Convention in September 2002.

In considering the focus of the review, the following issues are noted rising from the Advisory Panel's Terms of Reference:

- ▶ The joint and several, absolute and retroactive liability clause should be maintained as it has assured clean up of seriously contaminated sites by responsible persons and not the taxpayers. Sites such as 8335 Meadow Avenue in Burnaby (contaminated with wood preserving chemicals) currently undergoing remediation at an estimated cost of \$32.5M may not have been realized, in part, without this provision.
- ▶ The statement "a funding mechanism for government liability associated with contaminated sites" within the Terms of Reference needs clarification with respect to the source of funding and for which specific cases it will be used.
- ▶ It is noted that in accordance with the government's service plan objective, the government is committed to the creation of an administratively effective and efficient contaminated sites regime that is performance based, less time consuming and reduces direct Provincial Government administration and oversight to only those sites

that pose a high risk to the environment and human health. This raises the following issues:

How will the Ministry define “high”, “medium” and “low” risk sites ? If the Ministry is only to focus on “high” risk sites (which are likely to be limited in number) who will oversee “medium” and “low” risk sites (estimated to be approximately 80 % of the total number of contaminated sites) and how will they be overseen by rostered professionals (private sector) ? What liability protection would be afforded to local governments in relying on "medium" and "low" risk site remediation overseen and signed off by rostered professionals ?;

- ▶ Regarding the consideration of a funding mechanism, other than general revenue, to sustain the Provincial Government’s role in contaminated sites administration effective 2004-2005, what implication(s) would this have in relation to the management of “medium” and “low” risk sites ? Would there be sufficient funding to allow provincial staff to ensure that standards are being met at sites undergoing clean-up?;
- ▶ The Terms of Reference note that the review should focus on whether or not standards are fair, consistent and harmonious with other jurisdictions. What may be more important is that the standards be scientifically based and updated as required. In addition, while the standards may be harmonious with other jurisdictions they should also give consideration to the specific environmental conditions that exist in British Columbia.

In addition to the points arising from the Terms of Reference, the Panel should also:

- ▶ Review the fees charged by the Ministry and base them on realistic levels of effort to review the submission rather than simply looking at the size of the site and complexity as it relates to contamination;
- ▶ Review the allocation panel process outlined in the regulation to ensure that disputes can be resolved quickly and fairly;
- ▶ Develop administrative guidelines for provincially issued Independent Remediation Authorizations which include but are not limited to: timelines for completion of the work and mechanisms for requiring remedial works to be completed in a timely manner if used to seek rezoning or subdivision development approval from local government;
- ▶ Develop conflict of interest guidelines for external rostered professional overseeing review and approval of contaminated sites clean-up on behalf of the Ministry;

- ▶ Expand the immunity protection for local government outlined under Section 28.6(1) of the WMA if "medium" and "low" risk sites are to be signed off by external rostered professionals;
- ▶ Provide legislative provisions requiring that potentially responsible persons delineate off-site contamination within a specified time period following discovery, thereby providing the means to resolve responsibility and reduce the period of exposure to the local government;
- ▶ Given the potential downloading of street ownership from the Crown to the local governments, amend the Waste Management Act to exempt the local government from liability as the new landowner for contamination under the street, except for demonstrable cases where the local government is the party responsible for causing the contamination within the street.;
- ▶ Amend the recent neighbour notification requirement to include parties having a right-of-way through the "source" site.

3.0 CONCLUSION

The recently announced review of the Contaminated Sites Regulation is welcomed as an opportunity to assess what has worked and what needs to be addressed in management of contaminated sites in British Columbia. This report has raised issues which require further consideration by the Minister's Advisory Panel. Given the significance of potential implications to local governments, it is recommended that the Minister of Water, Land and Air Protection provide the findings of the Advisory Panel to the UBCM for discussion at their Convention in September 2002.



W.C. Sinclair, P. Eng.
DIRECTOR ENGINEERING

DD:su
Attachment

cc: Director Planning and Building
City Solicitor

**Terms of Reference
Minister's Advisory Panel
To Review
British Columbia's Waste Management Act (Part 4)
and the Contaminated Sites Regulation (BC Reg. 375/96)**

Purpose:

The purpose of the Minister's Advisory Panel on Contaminated Sites is, under the direction of the Minister, to:

- 1) Conduct a review of the existing contaminated sites regime to consider but not be limited to:
 - Joint and several, absolute and retroactive liability; including a funding mechanism for government liability associated with contaminated sites
 - Government's service plan objective to limit direct government administration and oversight to high risk sites and the implications on private sector professional accountability, liability and insurability
 - Funding mechanisms, other than general revenue, to sustain Government's role in contaminated sites administration effective 2004-5.
 - Best practices in other jurisdictions
 - Mechanisms that will ensure standards are being met
 - Process for setting standards and whether those standards are fair, consistent and harmonious with other jurisdictions
- 2) Report on consultation findings; and
- 3) Provide recommendations on how the regime can be improved to address the concerns listed below and align with future government direction.

Panel recommendations will be used in their entirety, or in part, to:

- 1) Develop a new policy framework for the regulation of contaminated sites in British Columbia; and
- 2) To inform subsequent legislative changes required for the Spring 2003 sitting of the legislature.

