



Ministry of
Environment

“Offsite” Migration Considerations

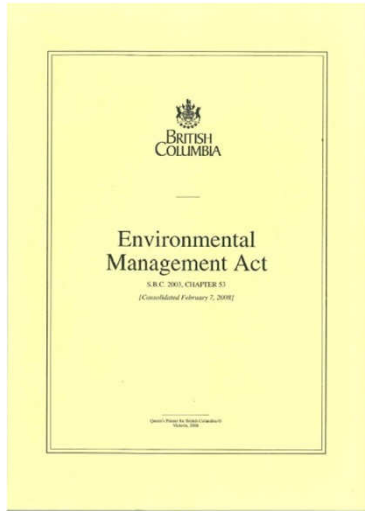
CBN Brownfields 2012 Workshop
Land Use, Regulations and Liability Transfer
Toronto - June 12, 2012

Alan W. McCammon

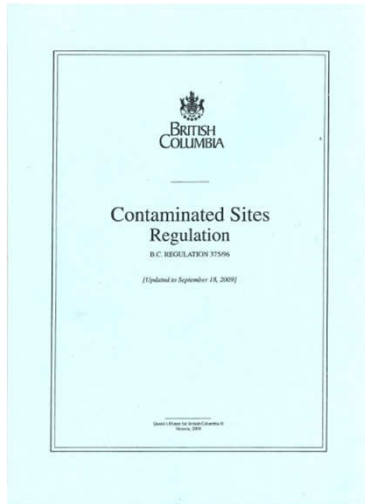
Overview of presentation

- Definitions/terminology
- Notification duties to neighbouring owners
- Liability protection for affected property owners
- Implications for applications to ministry for approvals and certificates

Statute and Regulation



Environmental Management Act
(EMA)



Contaminated Sites Regulation
(CSR)

Definitions / terminology

EMA 39 *"contaminated site" means an area of the land in which the soil or any groundwater lying beneath it, or the water or the underlying sediment, contains*

- (a) a hazardous waste, or*
- (b) another prescribed substance*

in quantities or concentrations exceeding prescribed risk based or numerical criteria or standards or conditions. (EMA s. 39)

The term **"site"** is not defined in EMA or CSR.

EMA 44 (1) *A director may determine whether a site is a contaminated site and, if the site is a contaminated site, the director may determine the boundaries of the contaminated site.*

Definitions / terminology (cont'd)

The terms **“onsite”** and **“offsite”** are not defined in EMA or CSR, nor do they make sense when a director determines the boundaries of a contaminated site.

Instead, we are promoting use of the terms...

- **“source parcel(s)”**
- **“affected parcel(s)”**

... the sum of which is the **“contaminated site”**

Notifications to neighbouring owners (cc: MOE)

- **CSR 60.1** (1) *A responsible person who carries out a **site investigation** that discloses that one or more substances has migrated or is likely to have migrated to a neighbouring site and is or is likely causing contamination of the neighbouring site must provide written notification described in subsection (2).*
- **CSR 57** (1) *A responsible person who carries out **independent remediation** of a site pursuant to section 54 (1) of the Act must, if the responsible person knows that one or more substances has migrated or is likely to have migrated to a neighbouring site and is or is likely causing contamination of the neighbouring site, provide the notification described in subsection (1.1).*

Liability protection for affected property owners

EMA 46 (1) *The following persons are not responsible for remediation of a contaminated site:*

(j) a person who owns or operates a contaminated site that was contaminated only by the migration of a substance from other real property not owned or operated by the person;

Implications for applications to ministry for approvals and certificates

- General approach
 - full delineation (single instrument for entire site or combination of instruments addressing entire site)
 - director may issue instrument for “part” of a site

- Recent approaches re: risk-based Certificates of Compliance
 - “offsite” considerations



<http://www.env.gov.bc.ca/epd/remediation>