

ENVIRONMENTAL LAW UPDATE



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Transition Provisions for the Stage 10 (Omnibus) Update

One of the concerns with the approval of the Stage 10 (Omnibus) amendments to the CSR was how the Ministry was going to address the transition period between the old standards and the new standards with respect to applications for legal instruments (e.g., certificates of compliance and approvals in principle). This concern is particularly important for developers and other property owners who may be in the process of completing or contemplating a remediation of a contaminated site.

The Ministry has now outlined how they intend to address this issue in Administrative Bulletin 3 for Contaminated Sites – “Application Submission: Contaminated Sites Regulation Omnibus Amendment Transition 2016 – 2017” (the “Bulletin”). The Bulletin prescribes the administrative process for legal instrument applications that are submitted during what the Ministry is referring to as the “regulatory transition period”, which will end on November 1, 2017, when the Stage 10 Amendments come into force.

In short, the Bulletin sets out that a submission for a legal instrument (submitted to the Ministry of Environment or a Contaminated Sites Approved Professional) received on or after November 1, 2017 will be processed under the new Stage 10 (omnibus) amended CSR standards. On the other hand, anything

anything received prior to that date will be processed under the old CSR standards.

Importantly, the Ministry will consider a submission as “received” when:

1. a Contaminated Sites Service Application form for the submission has been submitted;
2. all fees related to the submission are paid in full;
3. a Contaminated Sites Service Application Number and/or Site ID is assigned for the submission or a CSAP Reference Number is assigned for the submission;
4. the submission has been date stamped by either the ministry or CSAP, as appropriate, indicating the date of receipt by the respective reviewing body (i.e., the Ministry or CSAP); and
5. the application is not rejected by the Ministry or CSAP based on any immediate apparent deficiencies.

The key takeaway is that if an applicant wishes to have the current CSR standards apply to its submission for a legal instrument, it must ensure that the submission is made well in advance of the November 1, 2017 date so as to allow it to have been considered “received” by the Ministry. Some of the steps required for an application to have been considered “received” are outside of the control of the applicant, so it is important that this is not left to chance. Discussing this timing with an appropriate qualified environmental consultant is critical.

Additionally, there is no grandfather-type provision for a rejected application, which means that if a submission is made pursuant to the above but is subsequently "rejected" by the Ministry after November 1, 2017, a new application must be made based on the new CSR standards. In order to avoid this scenario, it is important that applications for legal instruments are made well in advance of the November 1, 2017 deadline so that the application can be considered "received" by the Ministry. Failing to ensure that this is done could have significant financial consequences for the applicant, delay remediation and site closure.

We hope you found this update useful.

If you would like more details about the issues covered, to provide general comments, or to suggest topics or cases of interest please email the author(s).

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