

BC's Public Interest Bonding Strategy Expands The Reach Of "Polluter Pays"



The Public Interest Bonding Strategy ("**Strategy**") was created to ensure owners of large industrial projects pay for environmental clean-up if projects are not fully decommissioned or are abandoned. The Strategy is being developed in two phases: Phase 1 addresses foreseen clean-up costs of new and existing facilities permitted under BC's *Environmental Management Act* ("**EMA**") and Phase 2 will address unforeseen clean-up costs of facilities permitted under the EMA, and foreseen costs of facilities authorized under other legislation. The Ministry of Environment and Climate Change Strategy ("**Ministry**") launched consultations on the Strategy in 2022.

Amendments to the EMA ("**EMA Amendments**") implementing the first stage of Phase 1 were introduced in November 2023 but have not yet entered into force. The Province has begun engagement on the next stage of Phase 1, which will inform the regulations needed to bring the EMA Amendments into force. The engagement was launched in April 2024 and will remain open until June 9, 2024.

This bulletin provides background to the Strategy and the EMA Amendments, describes how parties may be affected, and provides a brief introduction to the latest round of engagement.

Background to the Strategy

The Province's rationale for the Strategy is to make sure the "polluter pays" for environmental clean-up and reclamation by ensuring industrial projects provide adequate financial assurance. The EMA Amendments are the result of two years of engagement and provide the authority and framework for BC to implement financial assurance mechanisms for foreseen clean-up and reclamation costs of current and future projects permitted under the EMA. The EMA Amendments were informed by the [interim reclamation security policy](#) on financial assurance under the *Mines Act* which was released in April 2022.

The Strategy Will Apply to a Broad Range of Facilities and Entities

The EMA Amendments provide BC with the ability to apply the Strategy to existing and new projects that are or will be used for "prescribed industrial or commercial purpose[s] or activit[ies]"; the EMA Amendments refer to these as "specified facilities". These prescribed activities will likely include chemical, metal processing, smelting and refining, pulp and paper, and municipal sewage management activities. The EMA Amendments also refer to "abandoned facilities", which are specified facilities that have been determined by a director to be abandoned facilities.

The EMA Amendments broadly define who may be held responsible for providing financial assurance. Anyone in possession, occupation or control of the facility, who is responsible for any operation at the facility or who has legal or equitable (ie: beneficial) interest in the facility will be a "responsible person" for the purposes of the Strategy. When dealing with an abandoned facility, a person may be responsible as an "accountable person" for clean-up costs if they were a legal or beneficial owner of the facility or were responsible for operations at the facility immediately before

operations ceased.

EMA Amendments

When the EMA Amendments come into force they will provide the Province with the ability to:

- Require a responsible person to provide extensive information relating to a specified facility, as well as to the assets, property and financial circumstances of the person.
- Order a responsible person to prepare a decommissioning and closure plan and to submit that plan to the Ministry for approval, and to implement an approved plan within a specified period.
- Order a responsible person to provide security (ie. financial assurance) to the Province in any amount required by the Province to ensure decommissioning and closure is completed.
- In the event a site is determined to be an “abandoned facility”, undertake decommissioning and closure and seek cost recovery from any “accountable person”.

What Does This Mean?

The EMA Amendments introduce the potential for increased costs and financial risk associated with industrial project and property transactions. For example, prospective purchasers of industrial facilities may want to see more recent or comprehensive decommissioning reports and estimates than was previously considered necessary. This applies to purchasers of a beneficial interest in particular as the EMA Amendments make it clear beneficial owners may be liable for decommissioning costs, and may be required to post financial assurance with the Province.

The EMA Amendments may also require purchasers to reconsider

the timing of transactions to minimize their risk of being held responsible for decommissioning and closure. This consideration may be most relevant to prospective purchasers of facilities that are either near the end of their industrial life or that have already ceased operations. Under the EMA Amendments, the Province will have the ability to order a responsible person to either prepare and submit a decommissioning and closure plan or to undertake decommission or closure in relation to a facility the Province determines has ceased operations; current engagement materials indicate the Province may consider a facility closed if it has not operated for 12 months. This may make purchasers less inclined to speculatively purchase facilities with the intention of holding property for an extended period pending redevelopment.

2024 Engagement to Inform Implementation of the EMA Amendments

The Ministry released the [Decommissioning and Closure of Industrial Projects Intentions Paper](#) on April 9, 2024. The Intentions Paper summarizes policy concepts under the Strategy and seeks input from interested parties. This engagement process will inform the regulations to implement the EMA Amendments and the Strategy. BC will accept feedback on the Intentions Paper until June 9, 2024.

Parties can provide feedback through an [online survey](#) or via written feedback to PIBS@gov.bc.ca. BC First Nations and Indigenous organizations can also register for virtual sessions taking place in May 2024.

Future Steps

Once the EMA Amendments and associated regulations come into force, BC has indicated the next phase of the Strategy will be to review and consider financial assurance mechanisms in relation to unforeseen costs under the EMA, as well as

foreseen and unforeseen costs under a broader range of statutes such as the *Forest Act* and the *Land Act*.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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