Scope

This protocol is applicable to all property owned, leased or controlled by the University of British Columbia.

Purpose

To demonstrate that the University’s environmental obligations (refer to UBC Policy #6) are fulfilled and to minimize potential environmental liability.

Background

The Contaminated Sites Regulation (January 1, 2009), and the Environmental Management Act (October 2003), create a comprehensive framework for the assessment and remediation of contaminated sites and the liability for such sites which is absolute, retroactive, and joint and several.

The implementation of site assessment and remediation procedures is required to minimize liability exposure, and to ensure that University operations and activities are conducted in a duly diligent manner, that is compliant with regulatory requirements.

The following procedures are provided to assist administrative units in ensuring that appropriate level of due diligence is achieved, while facilitating the collection of baseline information for campus environmental assessment.

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1. Development Projects

1.1 Completion of Site Profiles

A Site Profile (SP) is required to be completed and submitted to UBC Campus and Community Planning and to the Risk Management Services (RMS) Environmental Services as part of the application process for one of the following activities:

1. Approval for subdivision of land
2. A development permit or a development variance permit that involves:
   a) Significant disturbance or excavation of soil (e.g. > 5 m$^3$)
   b) Removal of soil from property
   c) Demolition permits respecting a structure (NOTE: A demolition permit which does not involve site decommissioning, or disturbance or excavation of soil beyond what is incidental to the demolition is exempt from this requirement.)

In these cases applicants must obtain RMS Environmental Services approval before a development permit can be issued.

The SP used by UBC is identical to the SP in the Contaminated Sites Regulation, however UBC requires that sections 4 - 9 of the SP must be completed and approved by a qualified professional before a development permit is issued.

All sections of the SP must be completed; this includes identifying any Schedule 2 activity.

All projects and activities listed below require that a Stage 1 Preliminary Site Investigation (PSI) (refer to Section 58 of the Contaminated Sites Regulation (CSR)) is conducted prior to completion of the SP if:

- The project’s capital budget is in excess of $100,000
- The project involve the disturbance or excavation of soil over 5 m$^3$ that is conducted on a site that was used for industrial or commercial activity
- Schedule 2 activities and or other sections of the SP warrant further investigation;
- It cannot be confirmed that a Schedule 2 industrial or commercial activities have not occurred at the site

Depending on results of Stage 1 PSI, a Stage 2 PSI or Detailed Site Investigation (DSI) may be required.
All assessments should be conducted by a qualified environmental professional (refer to Appendix A: Definitions).

Projects involving interior renovations are excluded unless specified under the legislation.

The requirement for completion of a Stage 1 PSI may be waived by the RMS Environmental Services if it can be demonstrated that at the Site:

- No Schedule 2 activities have taken place
- There are no areas of environmental concern
- Fill materials of environmental concern, land filling, deposit or dumping of materials has not occurred
- No underground or aboveground fuel or chemical storage tanks have been used
- Hazardous materials have not been used
- No legal or regulatory actions or constraints have occurred

The following are examples of Schedule 2 activities that may apply to UBC:

- Medical, chemical, radiological and biological laboratories
- Biomedical waste disposal
- Hazardous waste storage, treatment or disposal

Copies of all assessments, site profiles, investigations and reports are to be forwarded to The RMS Manager, Environmental Services.

1.2 Sites Deemed to be contaminated

Development of a site that is deemed to be contaminated is prohibited unless:

For sites remediated with ministry involvement:

- An approval in principle has been issued by the Ministry of Environment (MOE) concerning a remediation plan for the contaminated site and all conditions specified by the Ministry are followed; or
- A certificate of compliance has been received from MOE with respect to remediation of the contaminated site; or
- An approval from MOE states that "No Further [remediation] Action" is required

For independent remediation where site remediated without Ministry involvement, a copy of the start and completion of remediation notices, supported by proper documentation prepared by Contaminated Sites
Approved Professional must be submitted with the application for the development permit.

Copies of all remediation plans, approvals, certificates of compliance or conditional certificates of compliance must be forwarded to the RMS Manager Environmental Services.

1.3 Relocation and Disposal of Contaminated Soils

Relocation of contaminated soil must comply with all CSR Part 8 requirements. The requirements listed below must be met to ensure that the University is duly diligent in its activities and operations.

Soil relocation under contaminated soil relocation agreement

- Before contaminated soil is relocated, a contractor must file for contaminated soil relocation agreement with MOE, by completing Schedule 8 form of the CSR. The application should include a report and recommendation that the application should be accepted, from an approved professional.
- If the soil is contaminated with any of the substances specified by Schedule 10 of the CSR, in addition to the above, an environmental assessment report needs to be completed for the deposit site demonstrating (to the Director satisfaction) that the deposit of the contaminated soil will not cause:
  - Contamination of the receiving site
  - Risk to human health and the environment
- Before soil relocation begins
  - the applicant must ensure that a copy of the notice from the director was received by UBC and by the municipality in which the receiving site is situated, and
  - wait at least 4 business days from the time of receiving the approved contaminated soil relocation agreement before moving any contaminated soil

Exemption from contaminated soil relocation agreement

Contaminated soil is exempt from contaminated soil relocation agreement if:
- The contamination level is below the regulatory limits for the specific land use
- If the soil is relocated within the original site
Procedures Relating to the Contaminated Sites Regulation

Procedure

- If the contamination is only due to background concentration within a relevant geographic area
- If the contaminated soil is within an area subject to area wide remediation
- If the contaminated soil was originated from a spill clean-up (the destination site needs to be communicated to the director within 3 days in order to avoid the need for agreement)
- If the contaminated soil was relocated to an authorized hazardous waste storage and treatment facility
- If the volume of the relocated contaminated soil is less than 5 cubic meter
- If the soil is relocated to a federal property

In all cases

- A letter must be obtained from the owner or operator of the contaminated soil receiving facility, authorizing acceptance of the soil
- All contracts must clearly state who has control over the handling, treatment or disposal of the soil
- A copy of a permit authorizing the hauler to transport the soil must be obtained
- A copy of a permit allowing storage or treatment of the soil must be obtained from the owner or operator of the receiving storage or treatment facility
- Proof of insurance, to the level appropriate to the amount and type of soil being relocated or disposed, must be obtained from both the transporter and the owner or operator of the receiving facility
- Notification of the proposed relocation of contaminated soil must be provided to RMS Environmental Services, stating the amount of soil removed the source location of the soil, the destination of the soil and the name and address of the transporter and receiving facility
- All contracts must include a stipulation that the contractor must comply with all environmental laws, standards, policies and codes of practice as prescribed in the regulations

- Soil shipment records should include the type and quantities of substances shipped the date of shipment, the destination of each shipment, packaging information (such as drum serial numbers) and other identification information. Acknowledgment of receipt is required from the recipient
Procedures Relating to the Contaminated Sites Regulation

Procedure

Date of Issue: 11.11.30

- All records related to contaminated soil relocation projects executed by UBC Properties Trust, Building Operations or any other developers must be forwarded to the RMS Manager, Environmental Services

2. Property Transactions

2.1 Sale of Property

During the sale or release of a property by UBC, a SP must be forwarded to the purchaser in accordance with the regulations unless the purchaser waives any requirement for the vendor to provide the profile.

- Prior to completion of the SP, a complete PSI must be conducted by a qualified environmental professional for any property that was considered to be used for commercial or industrial activities as defined in Schedule 2, or has areas of environmental concern as identified in Section 4-9 of the SP.

- The assessment must determine the exact nature and extent of any contamination.

- The results of the PSI may necessitate the completion of a DSI.

- If sufficient information is not available to determine if commercial or industrial activities took place, as defined in Schedule 2 of the CSR, stage 1 PSI must be conducted by a qualified professional prior to completion of the SP.

- If following completion of a Stage 1 PSI there is any evidence of potential contamination, a Stage 2 PSI must be completed by a qualified professional. This assessment must determine the exact nature and extent of any contamination. The results of the Stage 2 PSI may necessitate the completion of a DSI.

- Copies of all assessments and site profile are to be forwarded to the purchaser, under the conditions stated in Sections 2.1.1 or 2.1.2 below for archiving and record-keeping.

- In addition copies of all assessments and site profiles must be forwarded to the RMS Manager, Environmental Services.
2.1.1 Sale of Property Deemed to be Contaminated

If the site is deemed to be contaminated, the sale is prohibited unless:

- An approval in principle has been issued by MOE concerning a remediation plan for the contaminated site and all conditions specified by the Ministry were followed and remediation was completed prior to closing. or;
- A certificate of compliance, or a conditional certificate of compliance, has been received from MOE with respect to remediation of the contaminated site. or;
- For cases of independent remediation a copy of the start and completion of remediation notices, supported by proper documentation prepared by Contaminated Sites Approved Professional are available, or

The contract between the vendor and the purchaser specifically includes:

- An “as is, where is” clause (refer to Appendix B)
- The nature and extent of the contamination which the purchaser accepts responsibility for remediation
- Security for remediation and a copy of the certificate of compliance from the Ministry when the site has been remediated by the purchaser
- A statement that the vendor (UBC) is not liable for any errors or inaccuracies in any environmental assessment or similar type of report supplied to the purchaser

All environmental records are to be forwarded to RMS Manager, Environmental Services.

2.1.2 Sale of Uncontaminated or Remediated Property

If the site is deemed not to be contaminated or has been remediated by the vendor (UBC) prior to sale, the contract between the vendor (UBC) and the purchaser must specifically include:

- An “as is, where is” clause; and

- A statement that the vendor (UBC) is not liable for any errors or inaccuracies in any environmental assessment or similar type of report supplied to the purchaser.
All environmental records are to be forwarded to RMS Manager, Environmental Services.

2.2 Purchase or Acquisition of Property

Prior to the purchase or acquisition of any property or lands the purchaser (UBC) must receive a Stage 1 PSI completed by a qualified professional.

If following completion of the Stage 1 PSI of the investigation there is any evidence of potential contamination, a Stage 2 PSI investigation must be completed by qualified professional should UBC still wish to purchase the property.

This assessment must determine the exact nature and extent of any contamination.

The results of the Stage 2 PSI may necessitate the completion of a DSI.

All assessments must include a similar investigation of surrounding properties including a determination of the nature and potential for migration of contamination to the property under consideration for purchase or acquisition by the University.

For property or lands that are deemed to be pristine, a Stage 1 PSI is not required. This determination will be made by the UBC Development Office in conjunction with the RMS Environmental Services.

For property or land where the previous and future site use is urban park or residential land use, a SP only may be required at the discretion of the UBC Development Office in conjunction with the RMS Environmental Services.

UBC requires that all sections of the Site Profile must be completed.

If the site is deemed contaminated and UBC still wishes to purchase the property the purchase agreement must require that:

- Remediation is completed and a certificate of compliance is issued prior to closing
- The type and level of remediation required is clearly established (for example, specific to residential land use)
- The remediation meets both groundwater and soil standards
- The time frame for cleanup is stipulated

Copies of all environmental records are to be forwarded to RMS Manager, Environmental Services.
3. Lease Negotiations

3.1 UBC as the Landlord

A SP must be provided to the tenant relating to commercial or industrial activities as defined in Schedule 2 of the CSR unless the tenant waives the requirement for the landlord to provide a site profile for the premises under the Environmental Management Act or any pursuant regulations.

For any site, a Stage 1 PSI must be conducted by a qualified environmental professional.

If following completion of Stage 1 of the investigation there is any evidence of potential contamination, a Stage 2 investigation must be completed by a qualified environmental professional. This assessment must determine the exact nature and extent of any contamination. The results of the Stage 2 PSI may necessitate the completion of a DSI.

The initial environmental assessment of a site will be termed the “baseline” assessment for that site.

Copies of all environmental assessments must be forwarded to RMS Manager, Environmental Services.

3.1.1 Lease Termination

At the termination of a lease the University must obtain an applicable environmental assessment (as described above). The assessment is to be compared to the baseline, or previous assessments and any differences pertaining to site contamination are to be reported to UBC RMS Environmental Services and remediated by tenants.

Copies of all environmental assessments are to be forwarded to RMS Environmental Services.

3.1.2 New or Re-Negotiated Leases

Applicable environmental assessments must be conducted prior to all lease negotiations or re-negotiations.

In the case of a lease re-negotiation, this assessment is to be compared to the baseline, or prior assessment, and any differences pertaining to site contamination are to be reported to RMS Environmental Services and remediated by tenants.
On leasing a property, in order to minimize environmental liabilities and to ensure that the University is duly diligent, the following conditions are to be established in the lease agreement:

- That the tenant, except as disclosed to the landlord in writing, is not and has never been subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other order or proceeding under any environmental laws;

- That the tenant shall not use, and does not plan or intend to use, the premises, to dispose of, handle or treat a substance in a manner that, in whole or in part, would cause the property to become a contaminated site under environmental laws;

- That the tenant acknowledges and agrees that the landlord has made no representations or warranties with respect to the environmental condition of the premises and is leasing the premises to the tenant under the lease on an “as is, where is” basis with respect to their environmental condition. Prior to taking possession of the premises under the lease, the tenant has performed such investigations of the premises as it considered appropriate and is satisfied as to their environmental condition;

- That the tenant will promptly notify the landlord in writing of any release of a contaminant or any other occurrence or condition at the premises or any adjacent property that could contaminate the premises or subject the tenant, the landlord, or the premises to any fines, penalties, orders, notices of violation or non-compliance, investigations or proceedings under environmental laws;

- That the tenant shall notify the appropriate regulatory authorities of any release of any contaminants at or from the premises in accordance with environmental laws;

- That the tenant shall promptly and strictly comply, and cause any person for whom it is in law responsible to comply, with all environmental laws, standards, policies and codes of practice of government, regarding the use and occupancy of the premises;

- That without relieving the tenant of any of its obligations under the lease, the tenant shall, at such reasonable times as the landlord requires, permit the landlord to enter and inspect the premises and the operations conducted at the premises, to conduct tests and environmental investigations, to remove samples from the premises, to examine and make copies of any documents or records relating to the premises, to interview the tenant’s employees and to take such steps as
the landlord deems necessary for the safety and preservation of the premises;

- That the tenant shall promptly provide to the landlord a copy of any environmental site investigation, assessment, audit or report relating to the premises conducted by or for the tenant.

- That the tenant shall, at its own cost at the landlord’s request from time to time, obtain from an independent environmental consultant approved by the landlord an environmental site investigation of the premises or an environmental audit of the operations at the premises, the scope of which shall be satisfactory to the landlord and shall include any additional investigations that the environmental consultant may recommend;

- That the tenant shall maintain all environmental site investigations, assessments, audits and reports relating to the premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the tenant’s professional advisers and lenders on a need to know basis or with the prior written consent of the landlord, which consent may be unreasonably withheld;

- That the tenant be required to file annually with the landlord a certificate of a senior officer of the tenant certifying that the tenant is in compliance with all environmental laws and that no adverse environmental occurrences have taken place at the premises, other than as disclosed in writing to the landlord;

- That on expiry or earlier termination of the lease or at any time if requested by the landlord or required by any governmental authority pursuant to environmental laws, the tenant shall, promptly at its own cost and in accordance with environmental laws, remove from the premises any and all contaminants, and remediate any contamination of the premises or any adjacent property resulting from the contaminants, in either case brought onto, used at or released from the premises by the tenant or any person for whom it is in law responsible.

- The tenant shall provide to the landlord full information with respect to any remedial work performed pursuant to this section and shall comply with the landlord’s reasonable requirements with respect to such work. The tenant shall agree that if the landlord reasonably determines that the landlord, its property, its reputation or the premises is placed in any jeopardy by the requirement for any such remedial work, the landlord may, but shall be under no obligation to, undertake itself such work or
any part thereof at the cost of the tenant. All such contaminants shall remain the property of the tenant, notwithstanding any rule of law or other provision of the lease to the contrary and notwithstanding the degree of affixation to the premises;

In addition, a proposed tenant should be carefully reviewed in terms of the nature of their business and their environmental track record prior to entering into an offer to lease. Copies of all environmental assessments are to be forwarded to RMS Environmental Services.

3.2 UBC as the Tenant

Prior to the lease of any property the tenant (UBC) must receive a Stage 1 PSI completed by a qualified environmental professional.

If following completion of a Stage 1 of the investigation there is any evidence of potential contamination, a Stage 2 investigation must be completed by a qualified environmental professional should UBC still wish to lease the property.

This assessment must determine the exact nature and extent of any contamination. The results of a Stage 2 PSI may necessitate the completion of a DSI.

If the site is deemed contaminated and UBC still wishes to lease the property the lease agreement must require that remediation is completed and a certificate of compliance is issued prior to final agreement of the lease.

Copies of all environmental assessments are to be forwarded to RMS Environmental Services.
4. Independent Remediation of UBC’s Contaminated Site (CSR 57; Environmental Management Act section 54)

When hazardous materials spill or release results in UBC site contamination, a site assessment and remediation will be coordinated by UBC’s infrastructure project services, or the building operation construction office, in conjunction with UBC RMS Environmental Services.

A qualified environmental professional should be contracted for the initial investigation, after which a Contaminated Sites Approved Professional needs to be contracted to develop a remediation plan and to conduct an area soil and/or water remediation.

A written notice must be forwarded to the director within 3 days after the commencement of any remediation activity involving handling, management or treatment of contamination. The notification should include:

- the legal description, including parcel identifier numbers and latitudinal and longitudinal references, and civic address of the parcel or parcels of land at the site to be remediated
- the name and address of the land owner at the site to be remediated
- the name, address and telephone number of the person to contact regarding the remediation activities to be undertaken at the site
- a general description of the nature of the contaminated site and the remediation being conducted
- the director must also be notified in writing within 90 days of completing of remediation (Use the Independent Remediation Notification form)

Copies of all documents including: soil and water sampling and monitoring results, Ministry notifications, remediation plan, and activity reports must be submitted to the RMS Environmental Services.
Appendix A – Definitions

Contaminated Sites Approved Professional- experienced professional biologists, geoscientists, agrologists and engineers have been appointed by the Director of Waste Management to the Roster of Approved Professionals. Since November 1, 2004 the ministry has required that applications for a number of services for low and moderate risk sites be made by an approved professional.

“Contaminants” - means any radioactive materials, asbestos containing materials, urea formaldehyde, underground or aboveground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance where the storage, manufacture, disposal, treatment, generation, use, transport, remediation or release into the environment of which is now or hereafter prohibited, controlled or regulated under environmental laws.

CRS Contaminated Site Regulations under the BC Environmental Management act

DSI-at the completion of Stage 2 PSI instigation, if conditions require further investigation, expanded Stage 2 or Detailed Site Investigations is conducted

“Environment” - includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, groundwater and surface water).

“Environmental Laws” - means any and all statutes, laws, regulations, orders, bylaws, standards, codes, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the premises now or hereafter in force with respect in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity.
Qualified Environmental Professional- qualified professional, registered in British Columbia with the appropriate professional organization, an environmental professional with the necessary training and experience to be recognized as an expert in the specific field of practice.

“Release” - includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

Site Investigation- is the key means of gathering information to determine if a site is contaminated Site investigations can be done in one or two stages.

Stage 1 PSI - A preliminary site investigation involves searching existing records for information about a site, interviewing people who are or have been involved with the site, and determining the general location and degree of any contamination.

Stage 2 PSI- If more information is needed, then a detailed site investigation is undertaken. In this case, investigators conduct more detailed work to determine the location, extent, and impact of contamination. The information gathered is usually sufficient to develop a remediation plan, or a human health or environmental risk assessment
Appendix B – Sample “as is, where is” Clause (UBC as a vendor)

The purchaser acknowledges and agrees that it is acquiring the property on an “as is, where is” basis without any representations or warranties from the vendor (UBC) regarding the environmental condition of the property, except as expressly set forth in section ____ hereof.

The purchaser acknowledges and agrees that it is responsible to satisfy itself, and is relying on its own investigations to verify, that there are no contaminants in, on or migrating to or from the property and the environmental condition of the property is otherwise satisfactory. The vendor (UBC) has provided copies of the environmental reports to the purchaser as a courtesy only and the vendor shall have no liability for any errors or inaccuracies in the reports.

The purchaser hereby assumes, effective on closing and at its own cost, full and complete responsibility for the environmental condition of the property, including remediation work, if any, in respect thereof. The purchaser hereby releases, and shall indemnify and save harmless, the vendor and its shareholders, officers, directors, employees and agents from any actions, liabilities, demands, claims, remediation cost recovery claims, losses, damages, orders, fines, penalties, costs and expenses (including without limitation, all legal fees and disbursements) whenever occurring or caused which the purchaser or any other person has, may have or will have arising from or in any way related to the environmental condition of the property.

The provisions of this section shall not merge on, but shall survive, the closing date.

END OF DOCUMENT

Initiator: Noga Levit, Manager Environmental Services, November 2011

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