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Comments on the Interim Report of the Advisory Panel on Contaminated Sites

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INTRODUCTION

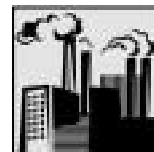
This brief contains the comments of West Coast Environmental Law in regard to the Interim Report of the Advisory Panel on Contaminated Sites, released on September 3, 2002. The panel was appointed by Joyce Murray, Minister of Water, Land and Air Protection on May 14, 2002 to review the contaminated sites provisions in Part 4 of the *Waste Management Act* and the *Contaminated Sites Regulation.*

Since 1974, West Coast Environmental Law has provided environmental law research, representation and education services to promote protection of the environment and public participation in environmental decision-making. West Coast empowers citizens and organizations to protect our environment and advocates for the innovative solutions that will build a just and sustainable world.

West Coast Environmental Law is concerned with the lack of rigorous analysis in the Report, both in terms of its critique of the current contaminated sites regime, and in its recommendations for a new regime. The lack of rigour in the panel's recommendations makes them difficult to respond to as it is often very unclear what exactly is being proposed.

Nonetheless, we are very concerned that many of the recommendations will lead to changes that will reduce the environmental effectiveness of the Contaminated Sites regime and an increased burden on taxpayers to fund clean up of sites that previously would have been cleaned up by the parties benefiting from contaminating activities.

This brief begins with a series of general comments, followed by comments specific to the sections of the interim report.



GENERAL COMMENTS

THE SHIFTING OF COSTS ONTO THE TAXPAYERS AND THE ENVIRONMENT

The fundamental starting point of any liability scheme for contaminated sites is what parties are potentially responsible, excluded from responsibility, and whether liability will be joint, several and retroactive. The panel fails to make clear recommendations on any of these points. Indeed, it often gives contradictory statements as to who should be responsible, e.g. it is not clear whether the panel is recommending only including those who had control over the activity causing contamination in the net of responsible persons, or is the panel recommending a broader net that catches those who have benefited from the activity. Without being clear on fundamental issues such as this, it is very difficult to envision with any precision what the panel is actually proposing.

It does appear that the Panel is proposing that large classes of potentially responsible persons in the existing regime be significantly narrowed. The Panel also appears to be recommending changes to the principles of joint and retroactive liability. Together these changes will result in industries that have substantially benefited from the production and sale of contaminants being exempt from clean up responsibility. More sites are likely to be orphaned, and either taxpayers will pay the price of clean up or the environment will suffer. There is no discussion of the competing public policy arguments in favour of the current potential liability net, nor any analysis of the resulting, potentially significant, taxpayer liability that will accompany this new direction, other than the brief discussion that it will require new taxes and fees.

PRIVATIZATION OF DECISION MAKING FOR PUBLIC AND ENVIRONMENTAL HEALTH PROTECTION

We are very concerned that the Interim Report is recommending a shifting of responsibility for decisions from publicly accountable civil servants to licensed environmental professionals who have no public accountability, beyond the possibility of audits (but only "initially") and liability (but the Panel recommends limiting this liability). The problem is that many of the functions that the panel recommends for privatization involve considerable judgement as to what risks are significant, but professionals are likely to have a conflict of interest in how they exercise that judgement. Professional judgement is not amenable to auditing, and liability of professionals is unlikely to be an effective check because (a) the government is proposing to limit liability (b) causation of harm to health will be difficult to prove in most cases (i.e. it is difficult for a cancer victim to prove that they suffer as a result of professional's judgement that migration of toxic substances to groundwater was not a significant risk), and (c) the environment cannot sue.

PANEL ACCEPTANCE OF "CONCERNS" WITHOUT SUPPORTING ANALYSIS:

The Interim Report suggests that the Panel accepts certain stakeholders' concerns about the current contaminated sites regime at face value, without analysis of the competing interests underlying the concerns and without having scrutinized the factual basis of the stated concerns. This lack of analysis undermines the credibility of the Panel's recommendations, because they appear to be based more on hearsay opinion about the current system rather than on objective analysis. Even if the Panel happens to share the opinions of a certain industrial sector, it should provide more objective analysis of specific problems in order to justify such sweeping changes to the contaminated sites regime. Similarly, the Panel often appears to recommend "changes" that appear to have already been incorporated into the current legislation. It appears that the Panel has not fully considered what exists within the current regime.

FAILURE TO EVALUATE SCIENTIFIC JUSTIFICATION FOR EXISTING STANDARDS

The Panel seems to have concluded in a sweeping manner that the standards do not have scientific support. The Panel completely overlooks the fact that the standards are based on substantial professional analysis, expert opinion, and comparable approaches in other jurisdictions. The recommendation that standards "should be only one factor" in determining whether a site is contaminated will introduce uncertainty and subjectivity into the regime that will yield discrepant results and new inefficiencies. A central theme of the Report is that sites should be classified by level of risk, and that only high risk sites should be remediated and the focus of government involvement. The Interim Report does not articulate clear guidance on how Licensed Environmental Professionals or government officials or the minister are to evaluate whether a site is potentially high risk. Based on the description included in Figure 1 of the Interim Report, it appears that this determination involves a high level of discretion and subjectivity. The result is that Panel recommendations could make the environmental effectiveness of the regime far less certain and could substantial uncertainty that will increase costs and become an impediment to remediation.

LACK OF CAREFUL SCRUTINY OF EXISTING REGIME

The Panel clearly wishes to recommend an entirely new regime, but does not indicate why careful amendments to the existing regime will not suffice to address legitimate, substantiated concerns. We believe that there is a very high price to be paid to suddenly adjust to an entirely new regime. It is not clear why minor adjustments have not been chosen.

UNWARRANTED ELIMINATION OF COST RECOVERY ACTION AND RESORT TO A POTENTIALLY LESS EFFICIENT DISPUTE RESOLUTION SYSTEMS

The Panel recommends removing the cost recovery action. The action is the primary means by which current owners recover costs from polluters. The Interim Report fails to examine the fundamental importance of this remedy in the overall scheme. No explanation is given for dropping it. We are concerned that commercial arbitration and

continued availability of common law remedies may lead to multiple proceedings. We are also concerned that commercial arbitration may prove as expensive or more expensive than court litigation.

DEROGATORY REMARKS

Throughout the Report comments are made that cast aspersions on agency regulators in a derogatory manner, without justification or example. They are variously referred to as lacking in common sense, professional judgment, cooperativeness, responsiveness and timeliness. These allegations seem designed to support the need for a massive overhaul of the current contaminated sites regime, yet are not supported with evidence in the Report. We doubt these views are a widely held or a fair portrayal. The Panel should recognize that in many instances the civil servants who are the subject of these criticisms have no opportunity to defend themselves against these broad and sweeping allegations.

DETAILED COMMENTS

The comments below are organized by the Panel's Report headings.

1. INTRODUCTION

The Panel states that the "review was triggered by stakeholder concerns" and then goes on to itemize a number of concerns. Even the Panel's terms of reference appear to direct the Panel to accept the concerns as givens. The Interim Report fails to carefully evaluate the merits or significance of the concerns. That is, the Panel does not appear to recognize that there is and always has been intense lobbying for various economic interests with contradictory recommendations and complaints, and that the concerns raised in the terms of reference only reflect the views of some stakeholders.

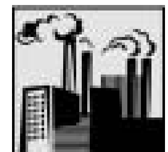
3. KEY CHANGES

Under recommendation (ii), the Panel calls for remediation only where there is a "significant actual or potential risk of heath, safety or the environment". This is nothing new – the existing legislation has numerous provisions that attempt to deal with the difficult question of implementing the precautionary principle. The panel completely ignores the potential for risk-based standards under the current system. The Report also ignores the fact that science provides less than perfect guidance for determining significant risk. In fact, for some substances, it is not even a question of risk, but that potential effects are uncertain. The Panel gives the wrong impression that science provides the right answer on risk and has reached certain answers, and that the Ministry has somehow ignored these scientific answers.

Recommendation (iii) calls for a simplification of the regulatory process, including use of "common sense and professional judgement". Yet the Report does not provide instances of where common sense was departed from.

Recommendation (iv) calls for changes "from one driven by fear of liability" to one that protects health, safety and the environment. There is no doubt that liability is a concern in this legislation and it will continue to be a concern after any number of changes are enacted. The reality is that remediation is a very expensive matter and it is a liability that must be incurred by many persons and it is often difficult to prescribe in advance how that liability should apply.

The Report sets up a straw man by suggesting that the current regime is designed to create fear of liability. Quite the converse is true: in many ways, the existing contaminated sites



legislation attempts to remove the widespread uncertainty which existed in the previous legislation, which relied entirely on discretionary use of regulatory decisions, without regard to specifying allocation of liability and what constitutes "contamination".

Recommendation (v) suggests that the liability scheme should be "fair", which suggests that the current regime is not fair. Again, the analysis is lacking – not a single instance is given where, for example, an innocent person was required to pay for remediation.

4.1 WHAT IS A "CONTAMINATED SITE"?

In the first paragraph, the Panel states that currently a site can be a contaminated site where natural background levels exceed the standards. This is simply wrong. The legislation expressly states that this is not true.

The Panel goes on to recommend that section 11 of the Contaminated Sites Regulation be repealed in favour of a more qualitative definition of "contaminated site". The proposed new definition requires proof that substance is causing a "significant and verifiable" adverse effect.

The Report fails to explain why the current standards do not accomplish the goal of establishing what is a significant adverse effect. There are diverse and qualified views on which particular numerical standard should be used. As for the suggestion that there must be a "verifiable" adverse effect, this runs counter to the very point made by the Panel that there should be more certainty. The Report now suggests that there should be more discretion in the hands of regulators, which will lead to uncertainty and inconsistency, compared to current standards that are objectively verifiable.

The Panel fails to point out that the standards used in British Columbia are derived from the CCME criteria (the same criteria advocated by the Panel), and in fact have been rendered less restrictive with various 'made-in-BC' modifications.

4.2 WHAT IS THE RECOMMENDED SYSTEM?

The Report states that "stakeholders" are concerned that the current process is "plagued with lengthy delays that impede economic activity even on sites that have no verifiable actual or imminent risk". This statement is not substantiated in the Report.

The Panel goes on to prescribe a new system in Figures one and two. These figures themselves present a very cumbersome process, and constitute only the most basic steps. Many other steps would be required to present a logical sequence of the components that they suggest in their process.

The Report relies heavily on the concept of "licensed environmental professionals" ("LEPs"). We are very concerned with the proposal for a number of reasons:

- Conflict of Interest. LEPs would presumably often be paid for by the persons responsible for remediation costs, creating an obvious conflict of interest;

- Discretion as to what is in the public good is placed in private hands. LEPs appear to carry out functions involving significant judgement of what constitutes a significant or verifiable risk. This type of judgement is not amenable to auditing.

- Loss of accountability. LEPs are not accountable to the public even though carrying out a public function.

- Lack of checks and balances. The Panel suggests that LEPs only be audited "initially". It appears that liability for poor judgement is not a realistic check because the panel proposes limiting liability. Moreover, the environment cannot sue for professional negligence, and individuals who suffer as a result of exposure to carcinogens are unlikely to be able to prove causation.

The Report relies on the experience of Massachusetts. However, it is our understanding that the Massachusetts legislation indicates that licensed environmental professionals have a much narrower role in that state than is suggested by the Panel. There are numerous checks and balances built into that system, and the LEP role is based on quantifiable and verifiable standards that the Panel says are inappropriate.

We are very concerned with the recommendation that licensed environmental professionals – who are not members of any government agency and are not otherwise accountable – will be able to issue "no further action letter" for limited or no risk sites. This is very poor policy, given that it is very difficult at many sites to determine that a site does not pose risk. Essentially, the Panel is recommending that a private individual give immunity to another private individual on behalf of the government – and that the private consultant be provided liability protection in doing so.

We are also very concerned about the recommendation that licensed environmental professionals could issue a letter record of no apparent risk even though the substances exceed the standards. The standards themselves are indicative of risk – they were not developed in a void, and were the subject of extensive professional analysis. Again, such a discretionary approach will create uncertainty.

As for the "limited risk site", the Report suggests that the licensed environmental professional would submit a record of site condition stating that the site poses no apparent risk for the intended land use. Something like this is already available in the legislation (but not discussed). Currently, a property owner's consultant can make a recommendation that the ministry officials can rely on. The Panel's system goes further: as proposed, the consultant would make this determination and that determination would be posted on the site registry or other land title registry and, significantly, the LEP would have limited liability for identifying a site as limited risk.

4.3 HOW SHOULD STANDARDS BE DEVELOPED AND USED?

The Report suggests that standards "should be only one factor in determining whether a site is "contaminated site" and if remediation is required," and recommends a discretionary approach. However, it does not explain whether there should be limits on this additional discretion and what problems this might create, particularly in that the discretion introduces uncertainty into the process.

4.4 HOW CAN WE ENSURE THAT REMEDIATION IS MANAGED MORE RESPONSIBLY?

The Report recommends that risk management should be a central part of Ministry policy for addressing contaminated sites, but does not address the current provisions in which the Ministry can exercise a right to apply either the numerical or the risk-based standards only in very limited circumstances. The general principle of the legislation is that persons who are conducting the remediation (and not the Ministry) have the right to choose between the two sets of standards (numerical and risk).

The Panel does not seem to recognize that risk-based approaches may create uncertainty for landowners and others. It is our understanding that current provisions for involving medical health officers in setting clean up standards have simply not been used because of the uncertainties inherent in this approach.

The Panel goes on to say that the federal Contaminated Sites Management Policy should be used. However, it is our understanding that this policy is primarily concerned with managing federal properties in circumstances where the federal government is not concerned with assigning or apportioning liability. It stands to reason that the federal government (or any other property owner) will prefer the risk management standard if there is no need to be concerned with stigma after the cleanup and resale.

4.5 WHO WILL BE RESPONSIBLE FOR REMEDIATING CONTAMINATED SITES?

The Report provides a simplistic overview of the Act’s liability scheme in stating that:

> Due to the far-reaching definition of responsible person in the current legislation, every current and former owner, business operator, tenant, producer or transporter involved with the site and all officers, directors and agents of each of those parties is a potentially responsible person.

These statements are inaccurate or at least questionable from many perspectives. First, it is far from true all these parties are potentially responsible persons. Many of these parties (e.g. “transporters” and “producers” per se) are not even in the initial “responsible person” net (i.e., even before the application of the “subject to” clause which defines the net of responsible persons). Second, even if certain persons are potential candidates as “responsible persons”, such status is subject to some 25 exceptions. The Panel did not discuss the narrowing effect of these exemptions.

The report continues:

Past and present officers, directors, shareholders and employees of companies, as well as lenders, other fiduciaries, transporters and producers, should not be considered responsible persons unless they directly participated in causing the contamination.

With regard to directors, officers, shareholders and employees it is not clear what the Panel is proposing to change. However, the reference to transporters and producers appears to significantly narrow the net of responsible persons and eliminate the responsibility of those who benefited from contamination but did not directly participate in it. Saying that transporters and producers will be responsible only if they directly

participated in causing the contamination also conflicts with the “beneficiary pay principle”. We believe that the current restrictions on when transporters and producers are responsible, ensures fairness consistent with the “beneficiary pay” principle.

Responsibility should be limited for those who can demonstrate due diligence.

The reference to limiting liability to those who cannot demonstrate due diligence is completely contradictory to the “polluter pay” and “beneficiary pay” principles. The concept of due diligence was developed in the context of criminal liability to ensure that criminal punishment was not applied to those who were not morally culpable. This is very distinct from a contaminated sites regime which has none of the moral stigma applicable to criminal proceedings, instead being focussed on determining who should be civilly liable to pay for clean up of contamination.

The recommendation regarding due diligence is also appears to be extremely impractical. Who makes this determination. It is a determination that involves very high levels of judgement after hearing all applicable evidence. It is a judgement appropriate for judges, not civil servants (who are unlikely to have the skills to distinguish between true due diligence and due diligence in form only), and certainly not consultants (who have neither the skills, nor the impartiality). If the Panel is expecting arbitrators to make this determination, the system is likely to become bogged down in arbitration involving multiple parties all of whom will be arguing that they are not responsible parties because they were duly diligent.

The report continues:

Responsibility should be connected primarily to a person’s control over and causal link to the activity or substance causing contamination, rather than to considerations of who has the “deepest pockets” or is the most convenient victim….

This is a gross mischaracterization of the current regime. We are very concerned that the reference to “deepest pockets” is an indication that the panel is recommending a move away from joint liability. Reference to a causal link may be a primary factor in making determinations of the proportion of liability borne by each party, but should not be a factor in determining whether someone is a responsible party. Requiring a causal link to the contamination is also inconsistent with the “beneficiary pay” approach.

The report continues:

Graduated levels of responsibility should be tied to key dates when legislation or industry practices changed.

This would be a reasonable recommendation if it were only tied to apportionment of responsibility within a system of joint, several and retroactive liability. However, the Panel ties it to who should be a responsible party. Exempting a party from liability because they were following standard practices at the time conflicts with the “beneficiary pay principle”. We are very concerned that the panel is planning on removing the principle of retroactive liability.

An issue that does not appear to be addressed in the Report is the responsibility of future owners, developers, occupants, and successors who have purchased a property that is still a contaminated site with full knowledge of such contamination. While these parties are arguably not polluters, compared with the previous owners, the fact remains that they purchased the property with full knowledge and they should be required to absorb some of the responsibility (subject to proper apportionment between the current owners and the past owners/polluters). We are not aware of any North American jurisdiction that provides carte blanche protection to future owners who purchase the property with full knowledge of the contamination. The expectation is that such owners will be able to negotiate the respective liabilities of vendors and purchasers, as has historically been done. The Report appears to be departing from this conventional approach and providing immunity to these future owners in recommending, in section 4.8, that "a prospective purchaser exemption should also be established to encourage brownfield redevelopment."

We are extremely concerned that the Panel appears to be suggesting changes that would significantly narrow the range of potentially responsible people and appears to be suggesting changes to the basic principles of joint, several and retroactive liability. The likely result of such changes is that either sites will not be remediated because they are orphaned, or taxpayers will pay for more remediation.

The recommendations would limit the role of regulators in issuing orders:

> When issuing an order, the regulatory agency necessarily must name one or more responsible persons. However, ultimate determinations of who are responsible persons and their proportionate shares of responsibility should not be made by a manger or any other person within the regulatory agency. These questions are often extremely complex and have wide-ranging implications. They should be made within the context of a fair legal process. We recommend that they be determined as part of the dispute resolution process discussed below.

The Report does not explain why a manager is not capable of making determinations, in the context of an order, of allocation. It is true that these questions are "often extremely complex and have wide ranging implications", but there is no reason why regulators could not do this – regulators in virtually every other context are required to deal with complex issues. The Report asserts but does not explain why the current system of having the regulator issue a remediation order is not "fair legal process." Nor does it suggest how a fairer process might be reached by going through binding alternative dispute resolution. Surely there is a strong argument suggesting that the regulator must have the ability to issue orders to affect timely remediation, without having to go through the dispute resolution process.

4.6 HOW WILL LIABILITY BE DETERMINED AND APPORTIONED?

We agree with the recommendation to apportion liability early in the remediation process. We are also open to the suggestion that greater guidance on how to allocate responsibility could be beneficial. Several of the principles that the panel has suggested using as filters for who is a responsible party (e.g. due diligence, direct causal link), while highly problematic for determining who is a responsible party, are appropriate as factors for determining actual liability. At the same time we expect that defining these principles in law may be difficult, and the end result may be that numerous questions of law have to

be brought to the courts from arbitration proceedings, or that there are numerous appeals of arbitral decisions.

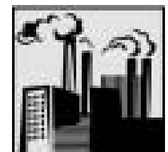
That said, we do not believe that the current principles are inequitable. The Report fails to explain why the allocation principles now found in the legislation do not lead to "equitable" results. No examples of injustice are provided. Although the Manitoba model is recommended, a comparison of Manitoba and BC legislation suggests that Manitoba use many of the same allocation principles. In fact, it is arguable that the numerous exceptions of British Columbia provide further and greater certainty than is found in Manitoba. The Manitoba legislation relies on a much more discretionary system of attempting to apportion liability amongst various parties and this allocation process depends on willing and cooperative parties (being based on ADR). Without such cooperative parties (necessary for ADR), the Manitoba system defaults to a much more rigorous system in which parties do not have the benefit of the numerous exemptions and allocation principles available in the BC legislation. The essential difference is that BC places its allocation principles up front and allows parties to sort out their respective liabilities, whereas in Manitoba the parties must first go through a mediation process where the results are by no means clear and, having failed that, the parties are left with a rigorous joint and several liability system without the benefit of allocation principles.

4.7 HOW WILL DISPUTES BE RESOLVED?

We are concerned that the recommendations in this section will lead to undue confusion and delay in the remediation of contaminated sites. The elimination of the cost recovery action has not been justified, other than by the simple statement that avoidance of litigation is generally desirable.

The recommendation that "**all** disputes relating to contaminated sites should be resolved through alternate dispute resolution" places undue faith in the ability of alternative dispute resolution to solve complex liability issues. While we generally support the use of ADR, the Report does not address its limitations in the complicated contaminated sites context, such as the common circumstance in which parties refuse to cooperate in ADR. The fact that uncooperative parties can stall and not participate in resolving disputes is the very reason that the cost recovery action is necessary. There is in most cases very little incentive for potentially liable parties to come forward and participate in a solution. The Panel does not explain how a seemingly voluntary alternate dispute resolution mechanism would work to resolve these disputes. The cooperative parties would undoubtedly see such remediation or arbitration process as meaningless and a waste of time and money.

If the panel is recommending that parties be able to force binding arbitration against the wishes of other parties, it is not clear that this process is any less expensive, fairer or more efficient than cost recovery actions, or the current remediation order process. It is not at all clear why resort to the BC Commercial Arbitration Centre would be a more efficient or affordable means of determining liability compared to dedicated contaminated sites experts under the existing structure. The proposed system could involve greater legal costs and delays than the current system: given uncertainty inherent in any new law dealing with liability there are likely to be numerous appeals from the arbitrator and references to the court from the arbitrator.



We also note that the panel appears to be recommending that arbitration panels act in a manner completely analogous to a court. We note that this raises constitutional issues related to section 96 of the Constitution Act, 1867.

By stating "The new process is not intended to interfere with the availability of common law causes of action" the Report introduces considerable confusion as to what is actually being recommended. This appears to contradict the previous recommendation that all disputes should be handled by alternate dispute resolution. The cost recovery action was designed to allow a more effective redistribution of remediation costs to polluters in civil actions. The cost recovery action overcomes the inherent limitations of the various tort civil actions available to parties who wish to remediate and then, subject to appropriate allocation criteria, apportion the remediation cost.

4.8 WHAT MECHANISMS PROVIDE CLOSURE WITH RESPECT TO LIABILITY?

While there are some valid considerations behind the Report's discussion of the desirability for liability closure in some circumstances, it fails to comprehensively evaluate or discuss important exceptions to this. Limiting closure to instances of "deceit, misrepresentation, emergencies related to the presence of an unrecognized imminent risk" may not be adequate, depending on what the Panel has in mind. For example, without further discussion it is not certain if it would leave the taxpayer or the environment on the hook in situations such as the Fraser River pollution subsequent to clean up at the Kopper site in Burnaby, or other areas where contamination that was believed to be adequately cleaned up resurfaced a few years later. This depends on what the Panel means by "emergency" and "imminent."

4.9 WHAT SHOULD THE ROLE OF THE REGULATORY AGENCY BE?

While the Report appropriately recognizes that "the regulatory agency should be adequately resourced with professional staff," we do not see any justification for why a new "self-funded organization" is required or desirable. Neither does the Report provide any support for the adverse inference about the professionalism and competence of agency staff in saying that a "new identity is needed to provide the catalyst for a renewed culture" in which staff "act in a reasoned, responsive and proportionate manner." If the Panel wishes to suggest that current staff are unreasonable, unresponsive and otherwise unprofessional it should have the courage to provide examples of problems.

4.11 WHAT FUNDING MECHANISMS CAN SUSTAIN GOVERNMENT'S ROLE IN CONTAMINATED SITES?

We generally agree with the Panel findings that there is a need for some funding, in particular that "Most jurisdictions in North America have funds that are sustained by levies on products that contribute to contamination." Any new "green" taxes or product levies must clearly link funding sources to generators, contributors and beneficiaries of the contamination and tie the use of funds generated to the active remediation of contaminated sites.

5.1 GREATER ACCEPTANCE OF RISK MANAGEMENT

In advocating greater acceptance of risk management, the Report does not analyze the availability of risk-based remediation in the current regime. It does not matter what kind of approval document is assigned to the site, as the marketplace will surely recognize the significant difference between the numerical standards and the risk-based standards. It is our understanding that most sites are being cleaned up by the numerical remediation standards, and not by the risk-based standards, largely because of the need for clean property. If so, it is not at all clear that the market place will prefer risk-based standards. These comments apply to the following section 5.2 as well.

5.10FEDERAL LIAISON

The Report does not provide any substantive analysis or examples supporting the comment concerning the federal DFO and Environment Canada agencies that "the relationship is poorly delineated and the role of each party is neither unique nor are the boundaries or responsibility and accountability clear."

The recommendation that the federal role be restricted to an "as requested or as necessary" basis flies in the face of the clearly justified constitutional responsibility that the Department of Fisheries and Oceans has in administering the *Fisheries Act* and Environment Canada in administering the *Canadian Environmental Protection Act.*

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