

BULLETIN 12 *Revised*

RECOMMENDED PROVISIONS FOR TOXIC AND HAZARDOUS SUBSTANCES WHEN USING CCDC 4 – 1982 UNIT PRICE CONTRACT

February 2002

The presence or potential presence of toxic or hazardous substances on a construction site can result in injury or harm to persons on the site or in the surrounding area. The Owner has a responsibility to take all necessary steps to render such substances harmless if found to be present.

Existing federal and provincial legislation and regulations address the environmental concerns associated with handling, transportation and disposal of waste materials including toxic or hazardous substances.

CCDC contract forms issued after 1994 (e.g. CCDC 2 – 1994 Stipulated Price Contract, CCDC 3 – 1998 Cost Plus Contract, CCDC 18 – 2001 Civil Works Contract) outline the contractual protocols to be followed when toxic or hazardous substances are encountered and therefore require no modification. However, CCDC 4 - 1982 does not specifically address this subject. As such, the Committee recommends that the following provisions be incorporated into all CCDC 4 – 1982 contract forms by Supplementary Condition.

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ADD the following General Condition entitled TOXIC AND HAZARDOUS SUBSTANCES as a Supplementary General Condition:

1. Toxic or Hazardous Substances
 - 1.1 Prior to the Contractor commencing the Work, the Owner shall, subject to the labour regulations at the Place of the Work
 - (a) take all reasonable steps to determine whether any toxic or hazardous substances are present at the Place of the Work, and
 - (b) provide the Consultant and the Contractor with a written list of any such substances that are known to exist and their locations.
 - 1.2 The Owner shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substance exceeds the time-weighted levels prescribed by labour regulations at the Place of the Work and that no property is injured or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the Place of the Work prior to the Contractor commencing the Work.

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- 1.3 Unless the Contract expressly provides otherwise, the Owner shall be responsible for taking all necessary steps, in accordance with legal requirements, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the Place of the Work prior to the Contractor commencing the Work.
- 1.4 If the Contractor
- (a) encounters toxic or hazardous substances at the Place of the Work, or
 - (b) has reasonable grounds to believe that toxic or hazardous substances are present at the Place of the Work,
- which were not disclosed by the Owner, as required under paragraph 1.1, or which were disclosed but have not been dealt with as required under paragraph 1.3, the Contractor shall
- (c) take all reasonable steps, including stopping the Work, to ensure that no person's exposure to any toxic or hazardous substance exceeds the time-weighted levels prescribed by labour regulations at the Place of the Work and that no property is injured or destroyed as a result of exposure to or the presence of the substances, and
 - (d) immediately report the circumstances to the Consultant and the Owner in writing.
- 1.5 If the Contractor is delayed in performing the Work or incurs additional costs as a result of taking steps required under paragraph 1.4(c), the Contract Time shall be extended for such reasonable time as the Consultant may recommend in consultation with the Contractor and the Contractor shall be reimbursed for reasonable costs incurred as a result of the delay and as a result of taking those steps.
- 1.6 Notwithstanding GC 3.6, GC 3.7 or GC 7.1, the Consultant may select and rely upon the advice of an independent expert in a dispute under paragraph 1.5 and, in that event, the expert shall be deemed to have been jointly retained by the Owner and the Contractor and shall be jointly paid by them.
- 1.7 The Owner shall indemnify and hold harmless the Contractor, the Consultant, their agents and employees, from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of or resulting from exposure to, or the presence of, toxic or hazardous substances in excess of the time-weighted levels prescribed by labour regulations at the Place of the Work which were at the Place of the Work prior to the Contractor commencing the Work.

This obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity set out in GC 19 - INDEMNIFICATION or which otherwise exist respecting a person or party described in this paragraph.

- 1.8 Notwithstanding GC 1 - DOCUMENTS, paragraph 1.6, in the event of conflict between the provisions of this Supplementary General Condition and ARTICLE A-5 RIGHTS AND REMEDIES, paragraph (a), or GC 22 - DAMAGES AND MUTUAL RESPONSIBILITY, the provisions of this Supplementary General Condition shall govern.

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