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Protecting Local Governments as Land Owners from Liability

The *Environmental Management Act* and the Contaminated Sites Regulation provide clear rules for determining local government liability. The Act recognizes that there are some circumstances where a local government should not be held liable for site cleanup.

Could a local government be held liable for cleaning up a site which it now owns?

Yes. Like any land owner, a local government could be held liable for remediation as an owner of a contaminated site. This is subject to exemptions and other limitations on liability for remediation, as discussed below.

Could a local government be held liable for cleaning up a site it previously owned?

Yes. Local governments as former land owners could be held liable for site remediation, again, subject to exemptions and other liability limits.

Could a local government be held liable for a site it acquired through tax default?

Local governments are now protected when they become owners of a contaminated site involuntarily – for example, as a result of a property tax default.

Could a local government be held liable for remediation of its rights of ways, highways, or easements within contaminated sites?

No. A local government that owns or operates an easement, highway, or right-of-way for sewer or water on a contaminated site will not

be held liable for remediation unless it caused the contamination.

Could a local government be held liable for cleaning up a site contaminated by tenants?

An exemption applies to those owners who had no reasonable basis for knowing that their tenants or lessees caused a site to become a contaminated site.

Could a local government be held liable for cleaning up a site it innocently purchased?

The Act exempts a person (including a local government) who made appropriate inquiries at the time of acquisition, consistent with the expected standards of the day – provided that the person did not further contribute to the contamination. Years ago, investigations about possible contamination were not expected. Today, purchasers of industrial and commercial property normally use well-established methods to determine if a site is contaminated.

Is there any funding available to assist local governments with cleaning up innocently acquired sites?

The Act recognizes that the parties responsible for contaminating sites cannot always be found. Also, they are not always financially able to carry out remediation within the time specified by a Director of Waste Management. Under these circumstances, orphan site status may be designated. Depending on the risks posed by the site, it may qualify for government funding.

Does the Act protect a local government which contributed only a minor portion of the contamination at a site?

Yes. A Director may grant minor contributor status to a person or local government who shows:

- they only contributed a minor portion of the contamination;
- either no remediation would be required, or the cost of the remediation attributable to the minor contributor would only be a small portion of the total contamination; and
- the allocation of liability would be unduly harsh.

Minor contributor status serves as a shield against private cost recovery lawsuits and limits liability under the Act .

Could a local government that is not a minor contributor limit its liability in other ways?

Yes, through a Voluntary Remediation Agreement. A local government responsible for cleaning up a site can obtain benefits, including:

- limiting the amount of remediation costs attributable to it; and
- scheduling when the remediation may occur, thus making a remediation order unnecessary.

Could a local government be held liable in allowing the movement of contaminated soil?

Under the Act, the movement of contaminated soil is tracked. Liability protection is also provided for local governments who pass bylaws or issue approvals for contaminated soil relocation, as long as their standards do not conflict with those found in the contaminated sites legislation.

If a local government is responsible for remediation, will the site have to be cleaned up immediately?

If a contaminated site needs to be remediated, the timing will depend on the severity of the actual and potential impacts. If, based on serious human health or environmental problems, a Director issues a remediation order, cleanup must follow the schedule described in the order. Some contaminated sites may not need to be cleaned up for years, or ever.

Conclusions

There are a number of advantages for local governments as land owners under the contaminated sites provisions. These include:

- protection in acquiring contaminated land by default or innocent acquisition;
- limits to liability; and
- exemptions to avoid the unfair allocation of responsibility.

Note: This summary is solely for the convenience of the reader. The current legislation and regulations should be consulted for complete information.

For more information, contact the Environmental Management Branch at site@gov.bc.ca