

Liability for Remediation of Contaminated Sites



Many jurisdictions regulate locations that have been designated as “contaminated sites” under environmental law. Often those regulations spell out who may be held liable for remediating such sites—and sometimes who *can’t* be held liable for remediation. Here’s a chart of who can and can’t be liable for contaminated site remediation under the relevant environmental law in each jurisdiction.

| LIABILITY FOR REMEDIATION OF DESIGNATED “CONTAMINATED SITES” | | |
|--|---|---|
| | LIABLE | NOT LIABLE |
| FED | <i>Canadian Environmental Protection Act</i> doesn’t address liability for remediation of contaminated sites. | |
| AB | <p>A [person responsible for the contaminated site,] which includes:</p> <ol style="list-style-type: none"> 1) a person responsible for the substance that’s in, on or under the contaminated site; 2) any other person who the Director considers caused or contributed to the release of the substance into the environment; 3) the owner of the contaminated site; 4) any previous owner of the contaminated site who was the owner at any time when the substance was in, on or under the contaminated site; 5) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subsections 2 to 5 above; and 6) a person who acts as the principal or agent of a person referred to in any of subsections 2 to 5 above [<i>Environmental Protection and Enhancement Act</i>, Sec. 107(1)(c)]. | <p>A [person responsible for the contaminated site] does <i>not</i> include:</p> <ol style="list-style-type: none"> 1) a municipality as to a parcel of land shown on its tax arrears list unless, after the date on which the municipality is entitled to possession of the parcel under Sec. 420 of the <i>Municipal Government Act</i> or becomes the owner of the parcel under Sec. 424 of that Act, the municipality releases on that parcel a new or additional substance into the environment that may cause, is causing or has caused an adverse effect or aggravates the adverse effect of the release of a substance into the environment on that parcel; and 2) a person who investigates or tests a parcel of land to determine the environmental condition of that parcel, unless the investigation or test releases on that parcel a new or additional substance into the environment that may cause, is causing or has caused an adverse effect or aggravates the adverse effect of the release of a substance into the environment on that parcel [Sec. 107(1)(c)]. |

| | | |
|----|--|--|
| BC | <p>General:</p> <p>1) a current owner or operator of the site;</p> <p>2) a previous owner or operator of the site;</p> <p>3) a person who:</p> <p>a) produced a substance; and</p> <p>b) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the site to become a contaminated site;</p> <p>4) a person who:</p> <p>a) transported or arranged for transport of a substance; and</p> <p>b) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the site to become a contaminated site;</p> <p>5) a person who is in a class designated in the regulations (<i>Contaminated Sites Reg.</i>) as responsible for remediation [<i>Environmental Management Act</i>, Sec. 45(1)]; and</p> <p>6) a secured creditor if the creditor:</p> <p>a) at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or handling of a substance and the control or requirements, in whole or in part, caused the site to become a contaminated site; or</p> <p>b) becomes the registered owner in fee simple of the real property at the contaminated site [Sec. 45(3)].</p> <p>For remediation of a site contaminated by migration of a substance to the site:</p> <p>1) a current owner or operator of the site from which the substance migrated;</p> <p>2) a previous owner or operator of the site from which the substance migrated;</p> <p>3) a person who:</p> <p>a) produced a substance; and</p> <p>b) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the substance to migrate to the contaminated site; and</p> <p>4) a person who:</p> <p>a) transported or arranged for transport of a substance; and</p> <p>b) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole or in part, caused the substance to migrate to the contaminated site [Sec. 45(2)].</p> | <p>1) a person who would become a responsible person only because of an act of God that occurred before April 1, 1997, if the person exercised due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site;</p> <p>2) a person who would become a responsible person only because of an act of war if the person exercised due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site;</p> <p>3) a person who would become a responsible person only because of an act or omission of a third party, other than:</p> <p>a) an employee;</p> <p>b) an agent; or</p> <p>c) a party with whom the person has a contractual relationship, if the person exercised due diligence with respect to any substance that, in whole or in part, caused the site to become a contaminated site;</p> <p>4) an owner or operator who establishes that</p> <p>a) at the time the person became an owner or operator of the site:</p> <p>i) the site was a contaminated site;</p> <p>ii) the person had no knowledge or reason to know or suspect that the site was a contaminated site; and</p> <p>iii) the person undertook all appropriate inquiries into the previous ownership and uses of the site and undertook other investigations, consistent with good commercial or customary practice at that time, in an effort to minimize potential liability;</p> <p>b) if the person was an owner of the site, the person didn't transfer any interest in the site without first disclosing any known contamination to the transferee, and</p> <p>c) the owner or operator didn't, by any act or omission, cause or contribute to the contamination of the site;</p> <p>5) an owner or operator who:</p> <p>a) owned or occupied a site that at the time of acquisition wasn't a contaminated site; and</p> <p>b) during the ownership or operation, didn't dispose of, handle or treat a substance in a manner that, in whole or in part, caused the site to become a contaminated site;</p> <p>6) a person described in Sec. 45(1)(c) or (d) or (2)(c) or (d) who:</p> <p>a) transported or arranged to transport the substance to the site, if the owner or operator of the site was authorized under an Act to accept the substance at the time of its deposit, and</p> <p>b) got permission from the owner or operator to deposit the substance;</p> <p>7) a government body that involuntarily acquires an ownership interest in the contaminated site, other than by government restructuring or expropriation, unless the government body caused or contributed to the contamination of the site;</p> <p>8) a government body that takes possession of or acquires an ownership interest in the contaminated site under an order of the court under Sec. 5, 8(3) or 14 of the <i>Civil Forfeiture Act</i> or a delegate under Sec. 21(2) of that Act who is exercising powers or performing functions and duties of the director, as defined in that Act, in relation to the contaminated site;</p> <p>9) a person who provides assistance respecting remediation work at a contaminated site, unless the assistance is carried out in a negligent fashion;</p> <p>10) a person who provides advice respecting remediation work at a contaminated site unless the advice is negligent;</p> <p>11) a person who owns or operates a contaminated site that was contaminated only by the migration of a substance from other real property not owned or operated by the person;</p> <p>12) an owner or operator of a contaminated site containing substances that are present only as natural occurrences not assisted by human activity and if those substances alone caused the site to be a contaminated site;</p> <p>13) a government body that possesses, owns or operates a roadway, highway or right of way for sewerage or waterworks on a contaminated site, to the extent of the possession, ownership or operation;</p> <p>14) a person who was a responsible person for a contaminated site for which a certificate of compliance was issued and for which another person subsequently proposes or undertakes to:</p> <p>a) change the use of the contaminated site; and</p> <p>b) provide additional remediation; and</p> <p>15) a person who is in a class designated in the regulations (<i>Contaminated Sites Reg.</i>) as not responsible for remediation [Sec. 46(1)].</p> |
|----|--|--|

| | | |
|------------------|--|---|
| <p>MB</p> | <p>1) an owner or occupier of the site; 2) a person who was an owner or occupier of the site at a time when the contamination occurred or at any time thereafter; 3) a person who owns or has possession, charge or control of a contaminant of the site; 4) a person who owned or had possession, charge or control of a contaminant of the site immediately before or at the time of its release; 5) a creditor of a person referred to in subsections 1-4 or 10 as to the site, if the director believes on reasonable grounds that the creditor contaminated the site; 6) where a person referred to in subsections 1-4 is a corporation, an individual who: a) was a director or officer of the corporation at the time of the release of a contaminant at the site; and b) by any act, omission, direction or authorization occurring after the coming into force of this section, contaminated the site; 7) a particular person who acted as principal of another person referred to in subsections 1-5 who, in the course of carrying out his or her responsibilities as agent for the particular person, contaminated the site; 8) a corporation, if a director, officer or employee of the corporation: a) within the scope of his or her appointment or employment, contaminated the site; or b) being in a position to influence, control, direct or manage another person, including another corporation or an employee of another corporation, directed, required or authorized any act or omission by which a person contaminated the site; 9) a partnership, if a member or employee of the partnership: a) as partner or within the scope of his or her employment, contaminated the site; or b) being in a position to influence, control, direct or manage another person, directed, required or authorized any act or omission by which a person contaminated the site; 10) a person who: a) contaminated the site; or b) being in a position to influence, control, direct or manage another person, directed, required or authorized any act or omission by which a person contaminated the site; 11) a trustee, receiver or receiver manager of a person referred to in subsections 1-10; and 12) a person who is in a class of persons designated by regulation as being responsible for the remediation [The Contaminated Sites Remediation Act, Sec. 9(1)].</p> | <p>If it is demonstrated that his or her only involvement with the site or its contamination is that: 1) the person was a director or officer of a potentially responsible person in respect of the site and exercised due diligence with respect to the site and its contaminants; 2) the person is a municipality that became an owner of the site as a result of a tax sale proceeding or under circumstances prescribed by regulation; 3) the person, as an authority within the meaning of <i>The Expropriation Act</i>, acquired by expropriation or otherwise, for a purpose prescribed by regulation, land that includes all or part of the site and that it had the right to expropriate; 4) the person is or was an owner or occupier of land that was contaminated by reason only of the migration of a contaminant from other land not owned or occupied by the person and, where the contamination of the person's land occurred before he or she became an owner or occupier of the land, the person was not aware of the contamination and couldn't reasonably have been aware of it at the time of becoming an owner or occupier; 5) the person provided advice or assistance regarding the handling of a contaminant or the remediation of the site, and exercised due diligence in providing the advice or assistance; 6) as a creditor referred to in Sec. 9(1)(e), the person did one or more of the following and, in so doing, exercised due diligence with respect to the site and its contaminants: a) advocated or required safe waste handling and disposal practices and the prevention of contamination, including requirements to perform monitoring or scientific tests or to remediate the site; b) undertook or required the undertaking of an investigation or remediation of the site in accordance with the regulations or in any other manner approved by the director; c) participated in loan workout actions, including: i) providing financial or other advice to a debtor in financial distress; or ii) restructuring or negotiating the terms of a loan or security interest; d) took steps to enforce, protect or enhance the value of a security interest; e) took steps or required the taking of steps to minimize or prevent future contamination or the migration of existing contamination; 7) the person transported a contaminant to the site, unless the person: a) didn't obtain permission from the recipient of the contaminant at the site to deposit the contaminant at the site; b) was or ought to have been aware that the recipient of the contaminant at the site was prohibited by law from receiving or handling the contaminant; c) was prohibited by law from transporting the contaminant to the site; or d) caused or contributed to a release of the contaminant at the site; or 8) the person was involved in a manner or under circumstances prescribed in the regulations [Sec. 9(2)]. 9) a trustee, receiver or receiver manager of a person described in Sec. 9(1) as to a contaminated site isn't personally liable for the remediation of the site unless the trustee, receiver or receiver manager: a) directly or indirectly through his or her employee or by exercising control over or imposing requirements on another person, contaminated the site; and b) in so doing, failed to exercise due diligence with respect to the site or its contaminants [Sec. 28(1)].</p> |
| <p>NB</p> | <p><i>Clean Environment Act</i> doesn't address contaminated sites.</p> | <p>liability for remediation of contaminated sites.</p> |

| | | |
|-----------|--|--|
| NL | A [person responsible for the contaminated site,] which includes: 1) a person responsible for a substance that is over, in on or under the contaminated site; 2) another person whom the minister considers to be responsible for causing or contributing to the release of a substance into the environment; 3) the owner, occupier or operator of the contaminated site; 4) a previous owner, occupier or operator of the contaminated site who was the owner, occupier or operator at a time when the substance was released over, in, on or under the contaminated site; 5) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subsections 1-4; or 6) a person who acts as the principal or agent of a person referred to in subsections 1-5 [Environmental Protection Act, Sec. 2(y)]. | |
| NT/ NU | Environmental Protection Act doesn't address liability for remediation of contaminated sites. | |
| NS | 1) a [person responsible for a contaminated site,] which includes: a) a person responsible for a substance that is over, in, on or under the contaminated site; b) any other person whom the Minister considers to be responsible for causing or contributing to the release of a substance into the environment; c) the owner or occupier of, or an operator on, the contaminated site; d) any previous owner, occupier or operator of the contaminated site who was the owner, occupier or operator at any time when the substance was released over, in, on or under the contaminated site; e) a successor, assignee, executor, administrator, receiver, receiver manager or trustee of a person referred to in subsections a-d; f) a person who acts as the principal or agent of a person referred to in subsections a-e [Environment Act, Sec. 2(a)]; and g) a site professional [Contaminated Sites Regulations (which take effect July 6, 2013), Sec. 7]. 2) A secured creditor if it: a) at any time exercised care, management or control, in whole or in part, of the site or imposed requirements on any person regarding the manner of treatment, disposal or handling of a substance and the care, management or control or requirements, in whole or in part, caused the site to become a contaminated site; or b) becomes the registered owner of the real property at the contaminated site unless an agreement is entered into pursuant to Sec. 89 [Act, Sec. 165(3)]. | 1) a secured creditor where it acts primarily to protect its security interest, including, without restricting the generality of the foregoing, where the secured creditor: a) participates only in purely financial matters related to the site; b) has the capacity or ability to influence any operation at the contaminated site in a way that would have the effect of causing or increasing contamination, but doesn't exercise that capacity or ability in such a way as to cause or increase contamination; c) imposes requirements on any person if the requirements don't have a reasonable probability of causing or increasing contamination at the site; or d) appoints a person to inspect or investigate a contaminated site to determine future steps or actions that the secured creditor might take [Act, Sec. 165(3)]. |
| ON | Environmental Protection Act doesn't address liability for remediation of contaminated sites. | |
| PE | Environmental Protection Act doesn't address liability for remediation of contaminated sites. | |
| QC | Environment Quality Act doesn't address liability for remediation of contaminated sites. | |
| SK | A [person directly responsible for a discharge,] which means a person given written notice that the minister has designated an area as a contaminated site [Environmental Management and Protection Act, 2002, Sec. 14] and whom the minister is of the opinion is a [person responsible for the discharge,] which includes: 1) an owner, or previous owner, of the substance; 2) every person: a) who has or had possession, charge, management or control of the substance, including the manufacture, treatment, sale, handling, use, storage, disposal, discharge, transportation, display or method of application of the substance; and b) whose actions or omissions caused or contributed to the discharge; 3) an owner, occupant or previous owner or occupant of land on which the substance is discharged; 4) if a person mentioned in subsections 1-4 is a corporation: a) any other corporation that is the result of a merger, continuance, acquisition or other fundamental change involving the corporation; or b) any other corporation that has or had the right of control of the land or substance; 5) a person who acts as the principal or agent of a person mentioned in subsections 1-4; and 6) a successor, assignee, executor, administrator, trustee, receiver or receiver-manager of a person mentioned in subsections 1-5 [Sec. 2(w)]. | 1) a municipality with respect to land shown on its tax arrears list prepared pursuant to The Tax Enforcement Act, unless after the date on which the municipality is entitled to take possession of the land or becomes the owner of the land, the municipality aggravates an existing adverse effect or discharges a new or additional substance into the environment that: a) may cause, is causing or has caused an adverse effect; or b) aggravates the adverse effect of the previous discharge of the substance on that land; 2) a secured creditor of a person mentioned in subsections 1-5 on the left, unless the secured creditor participated in the day-to-day management or control of the land or through an act or omission caused the discharge or aggravated an existing adverse effect; 3) a person providing advice or assistance regarding the handling of the substance or the work of remedying land who exercised due diligence in providing advice or assistance unless any test, investigation or work conducted by that person caused an adverse effect or aggravated an existing adverse effect; 4) a person who is or was an owner or occupier of land contaminated before the person became the owner or occupier and who couldn't reasonably have been expected to know about or discover the existence of the substance at the time the person became the owner or occupier; or 5) an owner of land for which surface rights have been acquired pursuant to The Surface Rights Acquisition and Compensation Act with respect to the activities for which the surface rights were acquired [Sec. 2(w)]. |
| YT | A [responsible party,] [Environment Act, Sec. 115] which is defined as the person who had possession, charge or control of the contaminant at the time of its release into the natural environment [Sec. 111]. | |