

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	
FED	<i>Canadian Environmental Protection Act</i> doesn't address liability for remediation of contaminated sites.	
AB	A [person responsible for the contaminated site,] which includes: 1) a person responsible for the substance that is, 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 left the substance at any time when the substance was in, on or under the contaminated site; 5) a successor, assignee, executors, administrators, receiver, receiver-manager or trustee of a person referred to in subsections 2 to 5 above; and 6) a person who acts as the agent of a person referred to in any of subsections 2 to 5 above. [Environmental Protection and Enhancement Act, Sec. 107(1)(c).]	A [person responsible for the contaminated site,] does not include: 1) a municipality as to a parcel of land on its air or water list unless after the date on which the municipality is entitled to possession of the parcel under Sec. 420 of the Municipal Government Act or becomes the owner of the parcel under Sec. 424 of that Act, the municipality releases on that parcel a release of substance into the environment that may cause, is causing or has caused an adverse effect or aggravates the adverse effect of the release of substance into the environment on that parcel; and 2) a person who investigates or tests a parcel for the purpose of determining the environmental condition of that parcel, unless the investigation or test releases on that parcel a release of substance into the environment that may cause, is causing or has caused an adverse effect or aggravates the adverse effect of the release of substance into the environment on that parcel. [Sec. 107(1)(c).]

<p>BC</p> <p>General:</p> <ul style="list-style-type: none"> 1) a current owner or operator of the site; 2) a previous owner or operator of the site; 3) a person who: <ul style="list-style-type: none"> a) produced a substance; and 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; 4) a person who: <ul style="list-style-type: none"> a) transported or arranged for transport of a substance; and 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; 5) a person who is in a class designated in the regulations (Contaminated Site Regs) as responsible for the protection of the environment (Environmental Management Act, Sec. 45(1)); and 6) a secured creditor if the creditor: <ul style="list-style-type: none"> a) at any time exercised control over or imposed requirements on any person regarding the manner of treatment, disposal or migration of a substance and the control of requirements, in whole or in part, caused the site to become a contaminated site; or b) became a registered owner in fee simple of the real property at the contaminated site [Sec. 45(3)]. <p>For remediation of a site contaminated by a substance to the site:</p> <ul style="list-style-type: none"> 1) a current owner or operator of the site from which the substance migrated; 2) a previous owner or operator of the site from which the substance migrated; 3) a person who: <ul style="list-style-type: none"> a) produced a substance; and 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 4) a person who: <ul style="list-style-type: none"> a) transported or arranged for transport of a substance; and 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)]. 	<ul style="list-style-type: none"> 5) 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; 6) 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; 7) a person who would become a responsible person only because of an act or omission of the party, other than: <ul style="list-style-type: none"> a) an employee; b) an agent; or c) a party with whom the person had an actual or potential contractual relationship <p>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> <ul style="list-style-type: none"> 4) an owner or operator who establishes that: <ul style="list-style-type: none"> a) at the time the person became an owner or operator of the site: <ul style="list-style-type: none"> i) the site was a contaminated site; ii) the person had no knowledge or reason to know or suspect that the site was a contaminated site; and b) the person: <ul style="list-style-type: none"> i) the person did not inquire into the previous ownership and uses of the site and undertook other investigations, consistent with the common, usual or customary practice at that time, in an effort to minimize potential liability; ii) if the person was an owner or operator of the site, the person didn't transfer any interest in the site without first disclosing any relevant information to the transferee; and iii) the owner or operator didn't, by any act or omission, cause or contribute to the contamination of the site; c) an owner or operator who: <ul style="list-style-type: none"> i) owned or occupied a site that at the time of acquisition was a contaminated site; and ii) 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; d) a person described in Sec. 45(1)(c) or (d) or (2)(c) or (d) who: <ul style="list-style-type: none"> i) 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 ii) got permission from the owner or operator to deposit the substance; ii) a person that involuntarily acquires an ownership interest in the contaminated site, other than by government repossessing or expropriation, unless the government body caused or contributed to the contamination of the site; iii) a government body that takes possession of or acquires an ownership interest in the contaminated site under an order of court under Sec. 18(1) or 14 of the Civil Forfeiture Act 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; iv) a person who provides assistance in carrying remediation work at a contaminated site, unless the assistance is carried out in a negligent fashion; v) a person who provides advice respecting remediation work at a contaminated site unless the advice is negligent; vi) a person that, or operated a contaminated site that was contaminated only by the migration of a substance from other real property owned or operated by the person; vii) an owner or operator of a contaminated site containing substances that are present only as natural occurrences not assisted by human activity, unless those substances alone caused the site to be a contaminated site; viii) 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 that the government ownership or operation; ix) a person who was a responsible person for a contaminated site for which a certificate of existence was issued for which another person subsequently proposed or undertakes to: <ul style="list-style-type: none"> a) change the use of the contaminated site; and b) provide additional remediation; and x) a person who is in a class designated in the regulations (Contaminated Site Regs) as not responsible for remediation [Sec. 46(1)].
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NB	<p>1) an owner or occupier of the site;</p> <p>2) a person who was an owner or occupier of the site at a time when the contamination occurred or at any time thereafter;</p> <p>3) a person who owns or has possession, charge or control of a contaminant of the site;</p> <p>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;</p> <p>5) a creditor of a person referred to in subsections 1-4 who, if the director believes on reasonable grounds that the creditor contaminated the site;</p> <p>6) where a person referred to in subsections 1-4 is a corporation, an individual who:</p> <p>a) was a director or officer of the corporation at the time of the release of a contaminant at the site; and</p> <p>b) by any act, omission, direction or authorization occurring after the coming into force of this section contaminated the site;</p> <p>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;</p> <p>8) a director, officer or employee of the corporation;</p> <p>a) within the scope of his or her appointment or employment, contaminated the site; or</p> <p>b) being in a position to influence, control, direct or manage another person, including the corporation or an employee of another corporation, directed, required or authorized any act or omission by which a person contaminated the site;</p> <p>9) a partner, if a member of a partnership, in the partnership:</p> <p>a) as partner or within the scope of his or her employment, contaminated the site; or</p> <p>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;</p> <p>10) a person who:</p> <p>a) contaminated the site; or</p> <p>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;</p> <p>11) a trustee, receiver or receiver manager of a person referred to in subsections 1-10; and</p> <p>12) a person[s] in a class of persons designated by regulation as being responsible for the remediation [The Contaminated Sites Remediation Act, Sec. 9(1)].</p>
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NB *Clean Environment Act* doesn't address liability for remediation of contaminated sites.

NL	<p>A [person responsible for the contaminated site,] which includes:</p> <ol style="list-style-type: none"> 1) a person responsible for a substance that is over, in, 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, or under the contaminated site; 5) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subsection 1-4; or 6) a person who acts as the principal or agent of a person referred to in subsection 1-5 <p>[Environmental Protection Act, Sec. 2(yl)].</p>
NU	<p><i>Environmental Protection Act</i> doesn't address liability for remediation of contaminated sites.</p>
NS	<p>1) a person responsible for a contaminated site,] which includes:</p> <ol style="list-style-type: none"> a) a person responsible for a substance that is over, in, 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) a 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, or under the contaminated site; e) a successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in subsections 4-6; f) a person who acts as the principal or agent of a person referred to in subsection 1-5 [Environmental Act, Sec. 2(ali)]; and g) a site professional [Contaminated Sites Regulations] (which take effect July 6, 2013), Sec. 165(3). <p>2) A secured creditor if it:</p> <ol style="list-style-type: none"> a) at any time exercised care, management or control, in whole or in part, of the site, or made 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, that 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)].
ON	<p><i>Environmental Protection Act</i> doesn't address liability for remediation of contaminated sites.</p>
PE	<p><i>Environmental Protection Act</i> doesn't address liability for remediation of contaminated sites.</p>
QC	<p><i>Environment Quality Act</i> doesn't address liability for remediation of contaminated sites.</p>
SK	<p>A [person directly responsible for a discharge,] which includes:</p> <p>1) written notice that the minister has designated an area as a contaminated site [Environmental Management and Protection Act, 2002, Sec. 14]; and</p> <p>2) the minister's opinion that the person is responsible for the discharge,] which includes:</p> <ol style="list-style-type: none"> 1) an owner, or previous owner, of the substance; 2) a person in possession; 3) a person: <ol style="list-style-type: none"> 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 acts or omissions caused or contributed to the discharge; 3) an owner, occupier or previous owner or participant of land on which the substance is discharged; 4) if a person mentioned in subsections 1-4 is a corporation: <ol style="list-style-type: none"> a) any director, officer, manager or employee of the corporation that's the result of a merger, continuance, acquisition or other fundamental change involving the corporation; b) any entity or 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, receiver-manager or trustee of a person mentioned in subsections 1-5 [Sec. 2(w)]. <p>The Surface Rights Acquisition and Compensation Act with respect to the activities for which the surface rights were acquired [Sec. 2(w)].</p>

VT	A responsible party, ¹⁰ [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].
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