Can a Municipality Be Forced to Pay for a Private Party’s Pollution?



SITUATION

Several hundred litres of furnace oil leak from the basement of a privately owned building onto property that the municipality owns. If the oil leaves the municipality’s property, it could impact a nearby lake. The Ministry of the Environment (MOE) orders the building’s owners to remediate all of the contamination, including the municipality’s property. They start the remediation but soon run out of money and can’t finish the work. So the MOE orders the municipality to clean up the contamination on its property and take steps to prevent the pollution from migrating from the property and into the lake.

QUESTION

Can the MOE order the municipality to finish the remediation work’

A. No, because such an order violates principles of fairness.
B. No, because the municipality wasn’t responsible for the spill that caused the contamination.
C. Yes, because property owners can be held responsible for cleaning up contamination on their property.

D. Yes, because municipalities can be subject to remediation orders just like individuals and companies.

ANSWER:

C. The MOE *can* order the municipality to remediate the pollution on property that it owns.

EXPLANATION

This scenario is based on an actual case from Ontario in which a municipality challenged an MOE remediation order, arguing that it undermined the ‘polluter pays’ principle, which holds that parties responsible for polluting the environment should be responsible for paying to clean up that pollution.

The court ruled that the municipality had to comply with the order. It noted that the primary purpose of the environmental law was to protect the environment. The MOE initially went after the party responsible for the spill (the ‘polluter’). But the private property owners couldn’t afford to complete the remediation work. And if left alone, the damage to the environment would only get worse and could impact the nearby lake. So the MOE properly exercised its discretion in requiring the ‘innocent’ municipality to remediate its own property and thus protect the environment, concluded the court.

WHY WRONG ANSWERS ARE WRONG

A is wrong because, under the law, some unfairness to ‘innocent’ property owners is justifiable to protect the environment and prevent the unfairness that could result to others from contaminated land, water, etc. When issuing remediation orders, the MOE can consider fairness factors, such as whether the person to whom an order is directed had exercised due diligence to avoid the discharge and whether the causes of the pollution were within his control. But ultimately, the goal is to safeguard the environment. Here, if

the MOE didn't order the municipality to remediate the pollution, then the property would remain contaminated and the pollution could possibly spread from it to a lake, which is an undesirable result.

B is wrong because most environmental laws let the government issue remediation orders to various parties, including both the party responsible for the pollution and the owners of property impacted by that pollution. Canadian environmental laws do generally follow the 'polluter pays' principle. So the preference is to order the party responsible for a spill to clean it up. But when that's not possible, such as in this case, *someone* must remediate the pollution. After all, it's in the public's best interest to have the pollution cleaned up, regardless of who does it. Thus, despite the fact that the municipality wasn't responsible for the spill, it's proper for the MOE to order it to finish the remediation work on its property.

D is a correct statement but begs the question. The issue here isn't whether a municipality can *ever* be subject to a remediation order'it's whether it can be subject to such an order under these particular circumstances, i.e., when it wasn't responsible for the spill that caused the pollution.

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Corporation of the City of Kawarta Lakes. v. Director, Ministry of the Environment, [2012] ONSC 2708 (CanLII), May 28, 2012