

# CONTAMINATED SITES: How to Comply with Remedial Action Plan Requirements



Most jurisdictions regulate sites that are or have been contaminated. For example, the environmental laws may require the owners of contaminated sites to register such sites in a public database. In addition, the law may require owners to submit plans on how they'll remediate or clean up the sites and then take the steps specified in these plans. So here's a look at what steps you should take to ensure compliance with so-called 'remedial action plan' requirements for contaminated sites.

## Defining Our Terms

The environmental laws use various terms to refer to plans to remediate a contaminated site, including remedial action plans, remediation plans and plans of restoration or rehabilitation. For simplicity's sake, we'll use the term 'remedial action plan' throughout to refer to such plans.

## TAKE 6 STEPS

The contaminated site requirements are usually set out either in the jurisdiction's general environmental laws or in laws dealing specifically with contaminated sites. As always, you should consult your jurisdiction's environmental laws for any requirements for remedial action plans for contaminated sites and ensure that you comply with those requirements. However, despite differences among the jurisdictions, taking the following steps will generally help you comply with those requirements:

[learn\_more caption="Step #1: Determine if Site Is a Contaminated Site"]

Remedial action plan requirements apply to contaminated sites. So the first question you should ask is whether your property is considered a contaminated site under the law. The environmental laws usually define 'contaminated site.' In some jurisdictions, the definition is fairly vague and is simply any area

designated as a contaminated site by the appropriate government official, such as the Minister of the Environment. For example, Saskatchewan's *Environmental Management and Protection Act, 2002* says that 'if the minister is of the opinion that a substance that may cause, is causing or has caused an adverse effect is present in an area, the minister may designate that area as a contaminated site' [Sec. 11(1)].

In contrast, BC's *Environmental Management Act* defines contaminated site as 'an area of the land in which the soil or any groundwater lying beneath it, or the water or the underlying sediment, contains' either a hazardous waste or another prescribed substance 'in quantities or concentrations exceeding prescribed risk based or numerical criteria or standards or conditions' [Sec. 39(1)]. So check your jurisdiction's definition of 'contaminated site' and determine whether your property fits that definition and thus may be subject to the remedial action plan requirements.[/learn\_more]

[learn\_more caption="Step #2: Determine if Remedial Action Plan Is Required"]

If you've concluded that your property qualifies as a contaminated site, next determine whether you're required to develop a remedial action plan for it. In some cases, *all* designated contaminated sites require such plans. For example, in Newfoundland, a person responsible for a contaminated site *must* submit to the minister an environmental site assessment and a remedial action plan with respect to the contaminated site [Sec. 28(1), *Environmental Protection Act*].

In other cases, the government may order the creation of a remedial action plan for a contaminated site. For example, in Manitoba, *The Contaminated Sites Remediation Act* says that the director may, at any time before issuing a remediation order with respect to a contaminated site, order a responsible person to prepare and file with the director a plan for the remediation of the site in a form acceptable to the director and containing such information as is required by the order or regulation [Sec. 15(1)].

**Insider Says:** The requirement for creation of a remedial action plan typically applies to a 'person responsible for a contaminated site,' which may include:

- The owner or previous owner of the site;
- Every person who has or has had charge, management or control of the site; or
- Any successor, assignee, executor, administrator, receiver, receiver-manager or trustee of an above person.[/learn\_more]

[learn\_more caption="Step #3: If Not, Decide If Creating One Is Beneficial Anyway"]

In some jurisdictions, remedial action plans may not be required at all. But the environmental laws often include incentives for the voluntary creation of such plans. For example, under Alberta's *Environmental Protection and Enhancement Act*, a person responsible for a contaminated site may create a remedial action plan for the site, and get the Director's approval of the plan and an agreement on the action to be taken as to the contaminated site and the apportionment of the costs of taking such action. If this agreement is carried out in accordance with its terms, the Director may *not* issue an environmental protection order to any of the persons responsible for the contaminated site who are parties to that agreement [Sec. 128(3)].

*Bottom line:* If you voluntarily create a remedial action plan, get it approved and comply with its terms, you may avoid getting hit with an environmental order by the government. Considering that you won't have any control over the terms of such an order and those terms could be particularly onerous, it may be in your best interest to proactively develop a plan for the site's remediation rather than waiting to be compelled by the government to clean up the site on its terms.[/learn\_more]

[learn\_more caption="Step #4: Create Remedial Action Plan"]

If you're going to create a remedial action plan, required or otherwise, the process can be quite complex. For example, you'll certainly have to conduct an environmental site assessment. Environment law may specify how to prepare a remedial action plan or the government's environmental ministry may issue protocols to be followed in creating such plans. Without such guidance in your jurisdiction, you should consider other resources on remediating contaminated sites, such as the Canadian Council of Ministers of the Environment (CCME). (See the box at the end for links to some of these resources.)

Even if the environmental laws don't specify how to prepare a remedial action plan, they may specify what that plan must cover and include. For example, Nova Scotia has a Remedial Action Plan Protocol, which requires a remedial action plan to include:

- Names and contact information of all key personnel;
- A summary of all data collected on contaminants identified during the environmental site assessments;
- Description of contaminants of concern and the affected media, such soil, groundwater, sediment or surface water;
- The selected remediation pathway, that is, limited remediation or full property remediation;
- Identification of the remediation criteria in accordance with protocol PR0-500, *Remediation Levels Protocol*, which will form the basis for confirming completion of remediation;
- Detailed description of the remediation to be conducted, including consideration of physical/chemical limitations, construction requirements and environmental implications;
- Description of any control measures and contingency plans to mitigate potential adverse effects to adjacent and on site receptors;
- Documentation and derivation of any site specific target levels calculated in a risk assessment in accordance with protocol PR0-500, including use of Atlantic RBCA methodology for petroleum hydrocarbons;
- Where soil vapour and indoor air sampling are conducted, confirmation that the latest version of the Atlantic RBCA 'Guidance for Soil Vapour and Indoor Air Monitoring Assessments,' as referenced in protocol PR0-500 has been followed;
- Any intended subsurface injections, including microbial solutions, oxygen release chemicals, chemical oxidizing solutions, etc.;
- Remedial verification and long-term monitoring plans (if required) to measure the progress of restoring the environment to the goals identified;
- In cases of conditional closure, a Risk Management Plan describing long-term exposure management measures;
- Any impacted soil, sediment, groundwater or surface water not treated on-site under the plan must be sent to an approved treatment or disposal site;

and

- Any backfill material that's used must be of acceptable quality and must meet remediation criteria for the site.

**Insider Says:** In many cases, multiple parties are considered 'persons responsible for a contaminated site.' For example, both the current and prior owners of the property in question may be responsible persons. In such cases, in addition to the remedial action plan, you may need or want to develop an agreement with the government and/or any other responsible parties as to the remedial action to be taken as to the site and how the related costs will be apportioned. [/learn\_more]

[learn\_more caption="Step #5: Get Plan Approved"]

In most jurisdictions, you must get your remedial action plan and often any related agreement as to the plan with other responsible parties approved by the appropriate environmental ministry. Your submission must be in the form specified by environmental law and contain all required information. After reviewing your application for approval, the government will generally either:

- Approve the remedial action plan and any agreement;
- Reject the plan and any agreement; or
- Require changes be made to the remedial action plan and/or the agreement to get approval. [/learn\_more]

[learn\_more caption="Step #6: Implement the Plan"]

Once your remedial action plan has been approved, you *must* implement it and take the remediation actions specified in the plan, such as removing contaminated soil or the sources of contamination. And if your plan includes any deadlines, you must meet those deadlines. For example, under Yukon's *Environment Act*, work authorized by the Minister must be performed in accordance with the 'plan of restoration' and the timetable provided, unless otherwise authorized by the Minister [Sec. 114(9)].

Failure to comply with the terms of your plan or the related agreement is a violation of environmental law. For instance, Nova Scotia's environmental law specifically says that a person responsible for the contaminated site who violates a term of an agreement related to the remedial action plan for that site is guilty of an offence [Sec. 89(5)]. [/learn\_more]

### **BOTTOM LINE**

If your company is a party responsible for a contaminated site, it may be required to develop a remedial action plan for cleaning up the site. And if not, it's still likely that at some point, you'll be compelled to create such a plan or agree to a plan created by another responsible party for the site. In either case, you should be aware of the remedial action plan requirements and ensure that you take appropriate steps to comply with them.

### **[box]Resources for Developing Remedial Action Plans**

Here are some resources that may help you develop a remedial action plan for a contaminated site:

- CCME's Contaminated Sites resource page
- **Fed:** Federal Contaminated Sites Portal
- **AB:** Guide to Remediation Certificates for Contaminated Sites
- **BC:** Contaminated Site Guidance and Resources page
- **MB:** Submission of Remediation Plans for Impacted and Contaminated Sites
- **NL:** Guidance Document for the Management of Impacted Sites
- **NS:** Remedial Action Plan Protocol.[/box]