CONTAMINATED SITES: How to Comply with the Requirements for Remediation Professionals



If your company is buying or selling a piece of property or currently owns property that qualifies as a contaminated site under the environmental law, you may choose or be required to have it remediated. But you may not be able to do the work yourself or hire anyone calling himself a remediation specialist. In some jurisdictions, you must have this work done by a qualified remediation professional who meets specified requirements. And even if the law doesn't require the use of a qualified remediation professional, using one is still a good idea. After all, these people are experts in this area and thus more likely to remediate the property correctly. We'll tell you what the environmental laws say about the use of remediation professionals and how to ensure you hire a qualified professional to clean up your contaminated site.

Defining Our Terms

This article focuses on the requirements for remediation professionals as they apply to designated "contaminated sites." It doesn't cover any requirements for professionals remediating sites that don't qualify as contaminated sites under the environmental law.

WHAT THE LAW SAYS

Most jurisdictions regulate sites that are or have been contaminated by pollutants under their general environmental protection laws, laws dealing specifically with contaminated sites or regulations devoted to contaminated sites. Such requirements often address the types of actions that must be performed by remediation or site professionals and generally spell out the requirements such professionals must meet to be considered qualified.

The jurisdictions take three general approaches:

Spell out requirements for remediation professionals. Six jurisdictions—AB, BC, NS, ON, QC and YT—include in their environmental laws specific requirements that remediation professionals must meet to qualify to perform certain actions as to contaminated sites, such as conduct a site assessment, develop a remediation plan or certify that remediation work has been done in accordance with the plan and the law. Alberta fleshes out the minimal requirement in its environmental law in several government-issued guides. (Note that Nova Scotia's requirements for remediation professionals are new and don't take effect until July 6, 2013.)

Recommend requirements for qualified professionals. The environmental laws of three jurisdictions—NL, NT and NU—don't include requirements for remediation professionals. However, in government-issued guides to managing contaminated sites, they recommend the use of professionals who meet certain requirements.

Don't address requirements for professionals. Five jurisdictions—Fed, MB, NB, PE and SK—don't include requirements for remediation professionals as to contaminated sites in their environmental laws. (Note that in Saskatchewan, the draft *Saskatchewan Environmental Code* does include requirements for a "qualified person" who's required to

perform certain actions for contaminated sites. However, this Code hasn't been finalized or taken effect yet.) But even though these jurisdictions don't currently require you to use a qualified remediation professional, it's in your best interest to do so anyway to ensure that the work is done properly and thus reduce the risk you'll face liability down the road.

HOW TO COMPLY

To ensure that you hire a qualified and appropriate professional to remediate your contaminated site, consider the following factors:

Presence on an Approved List

The jurisdictions that spell out requirements for remediation professionals in their environmental laws take one of two approaches. In BC and QC, the government environmental agencies have a list or roster of individuals who they've deemed qualified to do work related to contaminated sites. So choosing a qualified remediation professional in these provinces is easy—just pick one from the list or roster.

Professional Qualifications

BC and QC do the heavy lifting for companies by pre-qualifying remediation professionals for inclusion on a government-approved list. But in the remaining jurisdictions, *you'll* have to ensure that anyone you hire has the specified professional qualifications. There are several kinds of qualifications that may be required:

Membership in a professional organization. A qualified professional must generally be a member in good standing of an appropriate professional organization. For example, in Newfoundland, a "site professional" should be a member in good standing of the Professional Engineers and Geoscientists of Newfoundland and Labrador. And in Alberta, a qualified

professional must be a member in good standing of one of the following professional regulatory organizations:

- Alberta Institute of Agrologists;
- Alberta Society of Professional Biologists;
- Association of Professional Engineers, Geologists, Geophysicists of Alberta;
- Association of the Chemical Profession of Alberta;
- College of Alberta Professional Foresters; or
- College of Alberta Professional Forest Technologists

Licence or registration. A qualified remediation professional may need to be licensed or registered. For example, in Nova Scotia as of July 2013, a "site professional" will have to have a valid and subsisting certificate of registration or licence to practice under the *Geoscience Profession Act* or *Engineering Profession Act*. And in Ontario, in order for a person to be qualified to perform certain kinds of site assessments and complete certifications, he must have a licence, limited licence or temporary licence under the *Professional Engineers Act* or a certificate of registration under the *Professional Geoscientists Act, 2000*.

Education. In some cases, a qualified professional must have a certain kind of college degree. For example, in Ontario, to perform a risk assessment of a contaminated site, a qualified person must have at least a bachelor's degree in science, engineering or applied technology from a post-secondary institution.

Experience. Almost every jurisdiction that spells out qualifications for remediation professionals requires them to have sufficient experience in remediating properties, conducting site assessments, etc. The amount of experience varies:

- No set minimum amount of experience: NT, NU and YT;
- At least five years: AB and NS; and

- Five to eight years (depending on education): ON.

Adequate Insurance

In addition to having certain professional qualifications, remediation professionals must typically carry appropriate and adequate insurance either individually or through their employers. The law generally requires them to have professional errors and omissions liability insurance. It may also specify the amount of coverage they must carry. For example, in Newfoundland, site professionals should carry coverage of at least $1 million. It's critical that you ensure a remediation professional has such insurance not only to comply with the law but also to protect your company from liability should the professional make a mistake while remediating your contaminated site.

6 Questions to Consider When Hiring a Remediation Professional

- Is he on a government list or roster of qualified professionals'
- Is he a member in good standing of an appropriate professional organization'
- Does he have any required licences or registrations'
- Does he have the required education/college degree'
- Does he have sufficient experience in this type of work'
- Does he or his employer carry adequate and appropriate insurance'

BOTTOM LINE

As EHS coordinator, your company will likely expect you to participate in the process of remediating contaminating sites and ensuring that such work complies with the law. Thus, the duty to ensure that the company uses only remediation professionals who are qualified under the law may fall on you. This article gives you a good overview of the qualifications you should look for in a remediation professional.