

# Does Vandalism Relieve Owner of Duty to Pay Costs of Cleaning up Spill?



## SITUATION

About 100 gallons of oil leaked from a residential furnace tank, contaminating the soil. When the government learns of the spill, it orders the owner of the property to remediate the contaminated soil, which is estimated to cost more than \$100,000. But the owner doesn't have the money to pay for the cleanup. And although it has property insurance, the policy has a pollution exclusion. Plus, the owner argues that it shouldn't have to pay because the contamination was a result of vandalism done by a former tenant with a grudge. However, an inspection of the spill site doesn't reveal any clear evidence of sabotage on the furnace tank or its lines. So the government cleans up the property and orders the owner to reimburse it for the remediation costs.

## QUESTION

Should the owner have to pay the remediation costs'

- A. No, because under the 'polluter pays' principle, the ex-tenant should pay the costs.
- B. No, because the government has no right to reimbursement of these costs.
- C. Yes, because its insurance didn't cover pollution.
- D. Yes, because it owns the property on which the spill occurred.

## ANSWER:

**D. As owner of the property on which the spill occurred, it's responsible for the related remediation costs.**

## EXPLANATION

This situation is based on a case from Prince Edward Island in which the government ordered a couple who owned property on which there was a furnace leak to remediate the oil-contaminated soil. When they refused, the government cleaned it up and ordered them to reimburse it for the remediation costs. But the couple argued that the oil spill was the result of sabotage by an ex-tenant after they tried to evict him. The court explained that environmental law gave the government the discretion to place responsibility for pollution cleanup

costs solely on the property owner's regardless of fault. So even if the couple hadn't cause the spill or their ex-tenant *had* caused it the government could still require them to pay the remediation costs. Thus, the court ruled that the Ministry properly exercised its discretion in requiring these property owners to reimburse the government.

## WHY WRONG ANSWERS ARE WRONG

**A is wrong** for a few reasons. First, there's no clear evidence that the ex-tenant was, in fact, responsible for vandalizing the furnace or its lines and causing the oil leak. Second, although the preference under the 'polluter pays' principle is to hold the people who cause pollution responsible for cleaning it up, that principle isn't rigid. And in fact, even environmental laws based on that principle let the government go after various parties for remediation costs to ensure that *someone* is held responsible. For example, these laws often allow the government to seek reimbursement for such costs from both the party responsible for the pollution and those who own or control the land on which it occurred. So even if there was proof the ex-tenant caused the oil leak, the government would still be able to go after the property owner for reimbursement. (See 'Hazardous Substances: Part 1: 'Polluter Pays' & Liability for Costs of Emergency Environmental Measures.')

**B is wrong** because the government usually *does* have the right to seek reimbursement for its costs of remediating pollution. (See, 'Hazardous Substances: Part 2: When Must Your Company Pay the Costs of Emergency Environmental Measures') The environmental laws of every jurisdiction give government officials the authority to take whatever measures deemed necessary in an 'environmental emergency' to prevent, eliminate or minimize damage to the environment and restore it to its natural condition. Officials can typically act if the responsible person doesn't act. Every jurisdiction also gives the government the right to recover the costs related to the steps it took to address the emergency, including, among other things, any remediation measures. Here, the oil spill is arguably an environmental emergency and the property owner refused to clean it up. So the government had the right to do so and then to seek reimbursement for its costs.

**C is wrong** because whether property insurance covered the remediation costs is irrelevant. Under environmental law, the property owner can be compelled to pay for remediation of pollution on its land. If the owner's insurance covers pollution, then the owner would still be responsible for the remediation costs but could seek reimbursement for such costs from its insurer. However, many insurance policies specifically exclude pollution-related claims from coverage, such as claims for reimbursement of the costs of remediating pollution. But the existence of such an exclusion doesn't have any bearing on the property owner's ultimate liability for remediation expenses under the environmental law.

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*Fisher v. Government of PEI*, [2013] PESC 27 (CanLII), Dec. 6, 2013