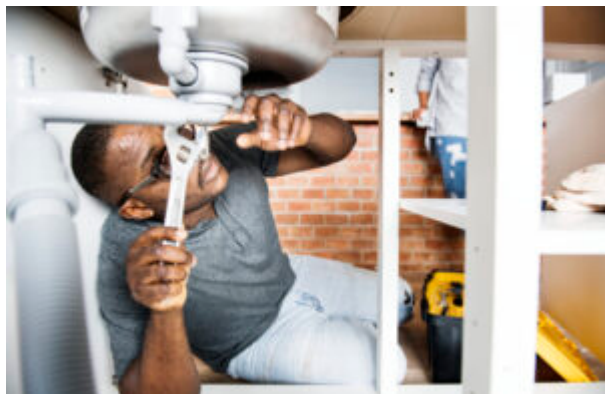


# Test Your Environmental Law I.Q.: Who's Liable for Cleanup of Oil Spill on Home Owner's Property?



## SITUATION



A home owner hires a company to decommission the house's oil furnace and convert the heating system to natural gas. The decommissioning company removes the furnace but leaves the oil tank in the basement and the oil fill pipe in place on the house's exterior. The company tightens the cap on the oil fill pipe and turns it toward the ground to indicate that the system is no longer being used. Years later, an oil company worker misreads a delivery ticket and mistakenly delivers oil to the house. The worker, believing the fill pipe was facing the ground because it was loose, turns it upright, loosens the cap with a wrench and begins pumping oil. But by this time, the oil tank is rusty and has holes. Oil spills through the holes into the basement and enters the soil and groundwater.

## QUESTION

**Who's liable for cleaning up the oil spill'**

1. The home owner, because the contamination is on his property.
2. The decommissioning company only, because it didn't take appropriate steps to prevent oil from being mistakenly delivered to the system after it had been shut down.
3. The oil company only, because it mistakenly delivered oil to the wrong house.
4. Both the decommissioning company and the oil company.

## ANSWER

**4) The decommissioning and oil companies are both liable for cleaning up the oil spill.**

## EXPLANATION

This scenario is based on an Ontario case in which 933.4 litres of furnace oil were mistakenly delivered to a couple's decommissioned heating system, rendering their home uninhabitable and causing serious environmental damage. The couple sued the oil company for negligence and won. The oil company spent over \$1 million remediating the property and then sued the decommissioning company, arguing that it was partly to blame. The trial court ruled that the decommissioning company wasn't negligent as it couldn't reasonably foresee that someone would try to deliver oil to a shutdown system. The oil company appealed.

The Ontario Court of Appeal disagreed, concluding that the decommissioning company was 20% liable for the oil spill. The appeals court ruled that the trial court had incorrectly considered whether the oil spill could have been reasonably foreseen to occur in the way that it did, that is, because of a worker's misreading of a delivery ticket. The correct test was whether, in general, harm from a mistaken oil delivery was reasonably foreseeable, said the appeals court. In this case, such harm was not only foreseeable but *actually foreseen* by the decommissioning company. In fact, the very purpose of turning the fill pipe down was to signal to delivery people that the system was decommissioned. So the real issue, said the appeals court, was whether doing so was enough to prevent mistaken deliveries. It concluded that the decommissioning company's efforts weren't an adequate safeguard against the possibility of someone trying to deliver oil through the fill pipe. For example, it could have easily and cheaply permanently plugged the pipe.

## WHY WRONG ANSWERS ARE WRONG

**1 is wrong** because the simple fact that the home owner owned the property on which the spill occurred isn't enough to hold him liable for the cleanup. After all, there's no evidence that he did anything wrong. The spill was caused by the oil company worker's delivery of oil to the wrong house coupled with the decommissioning company's failure to adequately prevent mistaken deliveries.

**2 is wrong** because the oil company is liable as well. In fact, it's *more* liable than the decommissioning company. The decommissioning company did turn the fill pipe down to indicate that the system wasn't being used. But that measure wasn't enough to prevent mistaken deliveries. So it's partly liable for the oil spill. And the oil company is liable because its worker made a mistake by delivering oil to the wrong house, causing the spill.

**3 is wrong** because both the oil company *and* decommissioning company are liable for the spill. The oil company's worker delivered oil to the wrong house and didn't recognize that the turned down fill pipe indicated that the heating system wasn't in use. So it's liable for the spill. But the decommissioning company is also liable because it didn't take adequate steps to prevent mistaken oil deliveries, such as removing the fill pipe or permanently plugging it.

## SHOW YOUR LAWYER

*Bingley v. Morrison Fuels*, [2009] O.J. No. 1576, April 21, 2009