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Guide to The Contaminated Sites Remediation Act

S.M. 1996, c. 40

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1. BACKGROUND

Contaminated sites have become both a national and provincial concern. Improper use, handling, storage and disposal of materials containing chemicals have led to the release of contaminants into the environment. In many cases, this has resulted in impacts to the environment, and in some instances, unsafe exposures to human health. To prevent or minimize the risk to human health or the environment, or to restore these sites to useful purposes, requires management, which sometimes includes remediation.

The Contaminated Sites Remediation Act (The Act), and its accompanying regulation, have been enacted to provide regulatory authority to designate and manage sites that have been exposed to environmental contaminants. They also address issues of liability and remediation of these sites. Contaminated sites liability principles agreed to by the Canadian Council of Ministers of the Environment, have been incorporated into the Act. The key principles that The Act is based upon are: polluter pays; fairness; and openness, accessibility and public participation in site remediation.

This Guide will provide you with a quick overview of The Act. Key provisions of The Act are explained, as well as the roles of Manitoba Conservation and the Clean Environment

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Commission. Please keep in mind this Guide is a description of the legislation and should not be used as a substitute for reading the legislation.

Copies of The Contaminated Sites Remediation Act, and The Contaminated Sites Remediation Regulation, can be purchased from the Government of Manitoba's Statutory Publications Branch. The Act can also be accessed on the Manitoba Government Statutory Publications site at <http://web2.gov.mb.ca/laws/statutes/ccsm/c205e.php>.

2. THE ACT: KEY PROVISIONS

The principal purpose of The Contaminated Sites Remediation Act (CSRA) is to reduce the risks to human health and the environment. Secondly, The Act provides for the remediation of contaminated sites and where practicable, restoring them to a useful purpose. Thirdly, The Act sets out a process to fairly apportion costs associated with site remediation between the parties responsible for the contamination.

The Act sets out a four-step process for dealing with contaminated sites.

i) Investigation and Identification of a Site

If the Director believes that a site may be contaminated, they may order a site investigation to be done, by either the owner or the occupier of the property. Site investigations determine if contamination exists, and if so, the nature and extent of the contamination.

In order for the contamination to pose a health risk or environmental threat, the contaminants on a site must have contact with people or sensitive plants and animals in the environment. This is known as a "pathway". Examples of common pathways for contaminants are ingestion (through drinking water), inhalation (breathing vapours or dust) and dermal contact (through the skin). If no pathway exists for the contaminants to contact people, that is the contamination cannot be ingested, inhaled or touched, there is no immediate risk to human health. The same is true if the contamination has no pathway to receptors in the environment. These pathways are taken into consideration when investigating a site.

(ii) Designation/Non-Designation of a Contaminated Site

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Following investigation, if the property has been impacted by contaminants but proves not to pose a threat to human health, safety or the environment, the property will not be designated a contaminated site. However it will continue to be monitored by Manitoba Conservation.

If a threat to human health, safety or the environment may or does exist, the site will be designated by the Director as a contaminated site. Notice of a contaminated site designation is then sent to the Land Titles Office, the registered owner(s) of the site, persons with a registered interest (e.g. a mortgage) in the site, the municipality within which the site is located, and the site registry administered by Manitoba Conservation.

iii) Site Remediation

Once a site has been designated as contaminated, a remedial action plan must be submitted to the Director by the party(ies) responsible for the contamination. The Director may, depending on the circumstances, choose to seek public consultation on the plan. Based upon the results of these consultations a remediation order will be issued by the Director.

Once remediation has been satisfactorily completed, a revocation of designation as a contaminated site will be issued to the Land Titles Office, the registered owner(s), the municipality and the site registry. A Certificate of Compliance may be issued at the request of a responsible party.

iv) Apportionment of Responsibility for Remediation

The CSRA applies the 'polluter pays' principle whereby the person(s) who caused the contamination of a site is responsible for its remediation. If, in the Director's opinion, two or more persons should be held responsible for the remediation of a contaminated site, the Director will, by written order, designate them as being potentially responsible persons (PRP). Any person designated as a PRP has 14 days after being notified to request in writing a revocation of the designation based on an exemption under the Act, or to nominate additional names to the group of potentially responsible persons.

The Act provides that PRPs are to be given a specified length of time to agree upon the apportionment of costs for remediation of the site and submit the agreement to the Director for approval. If no voluntary agreement can be



reached, or at the request of the parties, the Director may appoint a mediator to assist in the development of an apportionment agreement. Failing this, or if requested by the parties/ the Director will direct the Clean Environment Commission to apportion the costs at an apportionment hearing.

3. APPEALS

The CSRA makes provisions for appeals to:

1. The Clean Environment Commission
2. The Minister of Conservation
3. The Court of Appeal

1. The Clean Environment Commission

A person designated as a PRP may, within 14 days of receiving notice of the designation, appeal to the Clean Environment Commission. Any other decision or order of the Director made under Part 3 of The CSRA may also be appealed to the Commission. The Commission, within 60 days after hearing an appeal, may confirm, vary or rescind the decision or order, or make any decision or order that the Director could have made. The Commission may order an appellant to pay for, or contribute to, the costs of conducting the hearing of the appeal.

2. The Minister of Conservation

A person named in a remediation order may appeal the portion dealing with the required remediation work to the Minister of Conservation. The portions of a remediation order setting forth the names of the responsible parties or their respective shares of responsibility cannot be so appealed. The Minister shall consider the appeal and all written submissions received, and either vary, confirm or rescind the order. The matter may also be referred back to the Director for reconsideration in accordance with directions given by the Minister. The Minister may also seek the advice of the Clean Environment Commission before making a decision.

3. The Court of Appeal

A decision or order of the Clean Environment Commission may be appealed to the Court of Appeal, but only on a question of law or jurisdiction, and with leave of the Court. The

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Court of Appeal, on hearing an appeal, may refer the matter back to the Commission for a rehearing or further consideration respecting the issue on appeal, or quash, vary or confirm the decision or order appealed.

4. OFFENCES AND PENALTIES

An individual who is guilty of an offence under The Act can be fined up to \$50,000 or imprisoned for a term of not more than six months, or both, for a first offence. For each subsequent offence, an individual is liable to be fined an amount of up to \$100,000 or imprisoned for a term of not more than one year, or both.

A Corporation that is guilty of a first offence can be fined up to \$500,000. For each subsequent offence, the fine can range up to \$1,000,000.

5. COST RECOVERY

If a party responsible for a site investigation or for the remediation of a contaminated site fails to comply with an order or an agreement, the Director may order the work to be done. The costs incurred become a debt due to the government by the responsible party.

6. ROLE OF MANITOBA CONSERVATION

1. Identification of Contaminated Sites

Manitoba Conservation identifies sites that are or may be contaminated, through a number of regulatory mechanisms and places them on the Manitoba Sites Database. This database categorizes the sites, using codes to identify the status of a site. These sites are monitored by Environment Officers from site evaluation through to the remediation of the site.

2. Site Registry

Manitoba Conservation maintains and provides access to a contaminated sites registry which provides information on all sites designated as a "contaminated site" under The CSRA.

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Locations of these registries can be obtained by calling Manitoba Conservation or from Manitoba Conservation's Home Page on the Internet (<http://www.gov.mb.ca>).

3. Inspections & Investigations

Environment Officers from Manitoba Conservation are empowered under The Act to conduct inspections or investigate sites that are, or are suspected to be contaminated. If required, an Environment Officer may have access to any land or building, vehicle or other place in order to make inspections and determine compliance with The Act.

4. Education and Information

Manitoba Conservation will provide, upon request, material related to contaminated sites and will periodically distribute Information Bulletins. Staff will also, as resources allow, participate in training programs on various technical, legal or procedural aspects of site contamination.