

# **A Guide for the Adoption of PS 3260: Liability for Contaminated Sites**

CPA Canada Public Sector Accounting Handbook

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January 2014**

## 1.0 INTRODUCTION

Section 3260 in the CPA Canada Public Sector Accounting Handbook establishes standards on how to account and report a liability for the remediation of contaminated sites. PS3260 specifically addresses:

- a) What activities would be included in a liability for remediation;
- b) Establishes when to recognize a liability for remediation;
- c) How to measure a liability for remediation; and
- d) Provides the relevant financial statement presentation and disclosure requirements.

### 1.1 When Does PS3260 Come Into Effect?

PS3260 applies to all public sector entities for fiscal years beginning on or after April 1, 2014. For municipalities in Manitoba the section would apply beginning on **January 1, 2015**.

### 1.2 What is Contamination?

For the purposes of this section contamination is the introduction into the air, soil, water or sediment of a chemical, organic or radioactive material or live organism that **exceeds an existing environmental standard**.

A contaminated site is a site at which substances occur in concentrations that exceed the maximum acceptable amounts under an environmental standard.



*Airborne contamination is not included unless it is introduced in the soil, water or sediment.*

A contaminated site does not include airborne contamination or contaminants in the earth's atmosphere unless such contaminants have been introduced in the soil, water or sediment.

### 1.3 Where Does Contamination Normally Occur

A liability for remediation normally occurs from:

- a) An operation of the municipality that is no longer in productive use such as an abandoned maintenance yard;
- b) An operation that is no longer in productive use for which the municipality accepts responsibility such as an abandoned gas station;
- c) Changes in environmental standards relating to a municipal operation no longer in productive use such as stored chemicals; and
- d) An unexpected event such as an accidental spill or natural disaster.

### 1.4 The Following Are Not Applicable

The PS3260 does apply to the following:

- a) The removal of asbestos;
- b) Decommissioning of lagoons;
- c) Liabilities for the closure and post closure of landfill sites; and
- d) The retirement obligation of any tangible capital assets in productive use such as buildings and leaseholds.



*Liability for contaminated sites PS3260 does not include closure and post closure costs for landfills and the retirement obligation for TCA in productive use such as buildings.*



## 2.0 RECOGNITION

A liability for remediation of a contaminated site should be recognized at the financial statement date, when:

- a) An environmental standard exists;
- b) Contamination exceeds the environmental standard;
- c) The municipality:
  - owns the land; or
  - is directly responsible; or
  - accepts responsibility.
- d) It is expected that future economic benefits will be given up (such as the payment of cash or provision of services); and
- e) The liability can be reasonably estimated.

An obligation for the remediation of a contaminated site cannot be accrued as a liability unless all criteria above are satisfied.

A general policy intention to remediate is not sufficient to establish a liability where no public health or safety concerns or contractual arrangements, legislation, regulation or by-law exist.

### 2.1 Environmental Standard

An environmental standard is generally set out in the form of a statute, regulation, by-law, order, permit, contract or agreement. As a result it is legally enforceable and binding, and compliance is mandatory. Breaches may be enforced through prosecution, fines, jail and similar penalties, order, or loss of permit. Compliance may also be enforced through administrative proceedings.

The Department of Conservation and Water Stewardship is responsible for the administration of all environmental programs covered by the:

- a) **Contaminated Sites Remediation and Consequential Amendments Act (CSRA)**;
- b) **Dangerous Goods Handling and Transportation Act** and its related regulations; and the
- c) **Storage and Handling of Petroleum Products and Allied Products Regulation (Petroleum Products Regulation)**.

All acts and regulations can be downloaded from the Statutes of Manitoba web-site at [http://web2.gov.mb.ca/laws/statutes/index\\_ccsm.php](http://web2.gov.mb.ca/laws/statutes/index_ccsm.php).

The key Act is the CSRA. The purpose of the Act is to provide for the remediation of contaminated sites in order to mitigate the risks of further damage to human health, or the environment, and where practical, to restore the site to original use. The CSRA provides:

- a) A system for identifying and registering contaminated sites in Manitoba;
- b) A system for determining appropriate remedial measures; and
- c) A fair and efficient process for apportioning responsibility for the remediation of the contaminated site.

In some cases, environmental standards may be created by internal government policy or by guidelines developed by external organizations and voluntary compliance with such environmental standards may create a liability. For example, the risk classification system developed by the Canadian Council of Ministers of the Environment (CCME) is utilized by the Province of Manitoba for the classification and prioritization of contaminated sites, and may be a useful tool for municipal governments as well. See [http://www.ccme.ca/files/Resources/csm/pn\\_1403\\_ncscs\\_guidance\\_e.pdf](http://www.ccme.ca/files/Resources/csm/pn_1403_ncscs_guidance_e.pdf) for more information about the classification system.

Further information regarding the Province of Manitoba's Contaminated/Impacted Sites Program is available on the Department of Conservation and Water Stewardship web-site at <http://www.gov.mb.ca/conservation/envprograms/contams/index.html>, including a list of potentially impacted sites in Manitoba.

## **2.2 Contamination Exceeds the Environmental Standard**

The existence of contamination that **exceeds an existing environmental standard** at the financial statement date is a necessary condition for the recognition of a liability.

To determine if a site is contaminated it may become necessary to conduct a site assessment by a professional environmental consultant. However, if the site is likely contaminated, a liability should be recognized only if the amount can be reasonably estimated.

## **2.3 Municipality Owns the Land**

If the municipality owns the land, and all other recognition criteria have been satisfied, a liability for remediation should be recorded. If the municipality is not responsible for the contamination, and a recovery from the responsible party is likely, the recovery receivable should be recorded against the liability.

## 2.4 Municipality is Directly Responsible

In some cases, the municipality is directly responsible for remediation because of its own past activities, or the activities on municipal owned land or on land that the municipality has since acquired and a responsible party cannot be identified.

A legal obligation establishes a clear duty or responsibility to another party that justifies recognition of a liability. A legal obligation can result from the following:

- agreements or contracts;
- another government's own legislation (Federal & Provincial); and/or
- municipality's own by-laws.

The CSRA is based on the principal of "polluter pays". Where possible, the party responsible for the contamination bears the cost of site remediation.

The CSRA specifically excludes municipalities from responsibility for the remediation of sites they acquired through tax sales:

*9(2) A person is not responsible under this Act for the remediation of a contaminated site if it is demonstrated that his or her involvement with the site or its contamination is that...*

*(b) the person is a municipality that became the owner of the site as a result of a tax sale proceeding or under circumstances prescribed by regulation.*

The municipality may however be responsible for site assessment costs.



*Municipalities are not responsible for the remediation of contaminated sites acquired under tax sale proceedings. The municipality may however be responsible for site assessment costs.*

*A municipality may voluntarily assume responsibility for remediation of a contaminated site through its own actions and promises.*

## 2.5 Municipality Accepts Responsibility

A municipality may voluntarily assume responsibility for remediation of contaminated sites through its own actions or promises. However, only those assumed obligations for remediation that meet the definition of a liability at the financial statement date can be recognized.

Most liabilities for remediation arise from legal obligations which can be enforced by a court of law. It is possible, in the absence of a legally enforceable agreement that the municipality, through its own actions or promises, may have created a valid expectation among others that it will remediate a contaminate site (e.g. promissory estoppels). The municipality may have little or no discretion but to take action and a liability may need to be recorded. A legal opinion may be required in these cases.

## 2.6 Uncertain Responsibilities and Contingencies

There may be a situation where an environmental standard exists and contamination exceeds the standard. The municipality is not directly responsible and does not accept responsibility but there is uncertainty whether the municipality may be responsible. In such a case the municipality may have a contingent liability.

A contingent liability requires an assessment of the probability that the outcome of a future event will confirm the responsibility of the municipality.

If it is likely that the future event will confirm the municipality's responsibility a liability should be recorded if the amount can be reasonably estimated. If the amount cannot be reasonably estimated then the existence and nature of the liability should be disclosed in the notes to the financial statements.

If the outcome of the future event cannot be determined, the existence and nature of the contingent liability should be disclosed in the notes to the financial statements.

If it is unlikely that the municipality will be responsible then no disclosure is required.



*If it is likely that a future event will confirm the municipality's responsibility for a contaminated site, the liability should be accrued. If the amount of the liability cannot be reasonably estimated then the existence of the liability should be disclosed in the notes to the financial statements.*

*If the outcome of the future event cannot be determined then the existence of the possible liability should be disclosed in the notes to the financial statements.*

*If it is unlikely that the municipality will be responsible then no disclosure is required.*

## 3.0 MEASUREMENT

### 3.1 Eligible Costs

The estimate of a liability should include costs directly attributable to remediation activities. Cost would include post remediation, maintenance and monitoring that are an integral part of the remediation strategy for a contaminated site.

The estimate would include the cost of assets acquired as part of the remediation activities to the extent those assets have no alternative use.

### 3.2 Estimating the Liability

A liability for remediation should be estimated based on information available at the financial statement date.

It may often be necessary to estimate the amount of a liability in situations when a detailed site investigation has not been completed, but evidence suggests that contamination exists that exceeds an environmental standard. Consideration would be given to available site investment information and experience gained at other sites. In some cases an estimate of a liability may only be based on an individual site investigation that takes in characteristics unique to the site.

When the estimate is based on a site assessment, a municipality need not complete a subsequent site assessment in each reporting period because of the costs. In the years between site assessments an estimate of the liability can be based on an extrapolation of previously completed site assessments.



*A liability for remediation should be estimated based on information at the financial statement date and should include costs directly attributable to the remediation of the site.*

*It is recommended that future cash flows be discounted to their present value.*



### 3.3 Measurement Techniques

The measurement technique adopted by a municipality should result in **the best estimate of the amount to remediate the contaminated site**. The best amount can be described as the amount a municipality would reasonably pay to settle the liability at the financial statement date.

The carrying amount for a liability for remediation should be reviewed at each financial reporting date. Any revisions to the amount previously recognized should be accounted for as a period cost.

Whenever the cash flows required to settle the liability are expected to occur over extended future periods, a present value technique is often the best available technique to estimate the liability.

The liability for the remediation of a contaminated site should be reduced by the expected net recoveries. Expected refers to what can reasonably be anticipated on the basis of available evidence or logic, but is neither certain nor proved.

## 4.0 DISCLOSURE

A financial statement should disclose information about:

- a) The nature and source of the liability;
- b) The basis for the estimate of the liability;
- c) When a net present value technique is used, the estimated total undiscounted expenditures and discount rate;
- d) The reasons for not recognizing a liability; and
- e) The estimated recoveries.

# APPENDIX A DECISION TREE – LIABILITY FOR CONTAMINATED SITES

