
GUIDE TO THE CONTAMINATED SITES REMEDIATION ACT (CSRA)

1.0 Background

The *Contaminated Sites Remediation Act* (CSRA) was originally proclaimed in May 1997 and minor amendments were enacted in 2000 and 2006. A substantial amendment to the CSRA was enacted in June 2012 and proclaimed April 2014. This guideline provides a quick overview of the CSRA and incorporates the new amendments. Key provisions of the CSRA are explained, as well as the roles of Manitoba Sustainable Development (the Department) and the Clean Environment Commission (CEC).

This guideline is a description of the legislation and should not be used as a substitute for reading the legislation. Copies of the CSRA and *The Contaminated Sites Remediation Regulation* (CSRR) can be accessed on the Manitoba Government Statutory Publications site at:

<http://web2.gov.mb.ca/laws/statutes/ccsm/c205e.php>

2.0 The CSRA: Key Provisions

The principal purpose of the CSRA is to provide for the remediation of *contaminated sites* and *impacted sites* and establish:

- a. a system for identifying and registering *contaminated sites* and *impacted 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 *contaminated sites* and *impacted sites*.

The CSRA provides a four-step approach for managing *contaminated sites* and *impacted sites*:

2.1 Investigation and Identification of a Site

Under the CSRA, the owner or occupier of a site must notify the Director of Environmental Approvals or the Director of Environmental Compliance and Enforcement (the Director) in writing if he/she becomes aware of information that the site has been

contaminated or impacted at a level that exceeds a standard adopted by regulation. As well, the owner or occupier of a site must provide the Director with all the reports and documentation respecting contamination at the site. The standards that are used to evaluate the significance of the impacts are listed in the *Contaminated Sites Remediation Regulation* (M.R. 105/97).

There are many sites where an environmental site assessment (ESA) was completed in the past that have contamination which may or may not exceed current standards. The Department will consider the amount of time that has passed since the ESA was conducted and the types of activities that occur at or surrounding the site to determine if the information on potential contamination remains reliable. This will be reviewed by the Department on a site by site basis.

In the case where no previous ESA has been completed, and if the Director believes that a site may be contaminated, the Director may order a site investigation to be completed by either the owner or the occupier of the property.

When submitting an ESA report for a site, owners and environmental professionals should be aware that the Department expects that the responsible party will meet acceptable standards for reporting, as detailed below. If an ESA report does not meet these requirements, the responsible party will be directed to provide additional information and, if necessary, conduct further investigations. The Department expects that ESA reports include the following:

- Adherence to industry standards for ESAs such as those published by the American Society for Testing and Materials (ASTM) and the Canadian Standards Association (CSA). These industry standards are further discussed in the Department's guideline *Environmental Site Assessments in Manitoba*.
- A clear statement of the risks to human health and the environment posed by the contaminants present on a property, including an analysis of the potential contaminant pathways and potential receptors.
- Unambiguous recommendations for the site. These can include, but are not limited to, recommendations for further investigation and/or remediation.

Whenever possible, reports should be submitted electronically.

2.2 Designation of a Site

The CSRA enables the Director to designate a site as:

- a *contaminated site*, if the site is contaminated at a level that poses a threat to human health or safety or to the environment;

- an *impacted site*, if the site is contaminated at a level that does not currently pose such a threat, but that may pose such a threat in the future; or
- if the results of a site evaluation indicate that the concentrations of contaminants at a site do not pose a threat to either human health or the environment, then the site will not be designated.

If the site is designated as a *contaminated site*, notice of a site designation is 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 and the municipality within which the site is located. The site will also be included in the Department's site registry. For sites with *contaminated site* designation, notice to the owner will consist of a notification letter, a designation order and a remediation order.

When a site is designated as an *impacted site* notice is given only to the landowner and the site is included in the Department's site registry. For sites designated as *impacted*, notice to the owner will consist of a notification letter.

2.2.1 Site Remediation

Once a site has been designated as either a *contaminated site* or an *impacted site*, the responsible party must submit a Remediation Plan. When a site is designated as a *contaminated site*, a remediation order is issued and the Remediation Plan must be submitted within thirty (30) days, or by another deadline specified by the Director.

If a site is designated as an *impacted site*, the responsible party has ninety (90) days to submit a Remediation Plan unless he/she has received written permission from the Director for an alternate deadline.

Owners and environmental professionals may include their proposed Remediation Plans as a section in the ESA report or may submit the Remediation Plan under a separate cover. A more extensive description of Remediation Plans is discussed in the Department's guideline *Submission of Remediation Plans for Impacted and Contaminated Sites*.

Remediation of either a *contaminated site* or an *impacted site* may not proceed unless the Director has issued written authorization approving the remediation as outlined in the Remediation Plan.

Once remediation of a *contaminated site* has been satisfactorily completed, a revocation of designation as a *contaminated site* may be issued. Notice of revocation of a *contaminated site* designation is sent to the Land Titles Office, the registered owner(s), and the municipality. As well, notice of the revocation will be filed in the Department's site registry. A *Certificate of Compliance* may be issued by the Director at the request of a responsible party.

A revocation of designation as an *impacted site* is issued to the owner and notice of the revocation will be filed in the Department's site registry. A *Certificate of Compliance* may be issued by the Director at the request of a responsible party.

2.2.2 Responsibility for Remediation

For sites designated as *contaminated sites*, 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 opinion of the Director, 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 a potentially responsible person (PRP). Any person designated as a PRP has fourteen (14) days after being notified to request in writing a revocation of the designation based on an exemption under the CSRA, or to nominate additional names to the group of PRPs.

The CSRA 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 CEC to apportion the costs at an apportionment hearing.

For sites designated as *impacted sites*, the CSRA requires that the owner or occupier of the property be informed of the designation and that the owner may make application for determination of who is responsible for the remediation. The application for determination of responsibility must be made no later than ninety (90) days after the site was designated as impacted. If no application for determination of responsibility is made by the owner, then the assumption is that the owner is the responsible party.

3.0 Appeals

The CSRA makes provisions for appeals to:

- a. the CEC,
- b. the Minister of Sustainable Development, and
- c. the Court of Appeal.

3.1 The Clean Environment Commission

A person directly affected by a decision or order of the Director made under Part 3 of the CSRA may, within fourteen (14) days of receiving notice of the designation, appeal to the CEC. The CEC, within sixty (60) days after hearing an appeal will provide a copy of its decision or order in which it may confirm, vary, or rescind the decision or order, or make any decision or order that the Director could have made. The CEC may order an appellant to pay for, or contribute to, the costs of conducting the hearing of the appeal.

3.2 The Minister of Sustainable Development

A person named in a remediation order may, within fourteen (14) days of receiving notice of the designation, appeal the portion dealing with the required remediation work to the Minister of Sustainable Development. The portions of a remediation order detailing the names of the responsible parties or their respective shares of responsibility cannot be appealed. The Minister of Sustainable Development 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 of Sustainable Development. The Minister of Sustainable Development may also seek the advice of the CEC before making a decision.

Appeals to the determination of responsibility for an *impacted site* are made to the Minister of Sustainable Development and the decision is final.

3.3 The Court of Appeal

A decision or order of the CEC may be appealed to the Court of Appeal, but only on a question of law or jurisdiction, and with leave obtained from a judge of the Court of Appeal. The Court of Appeal, on hearing an appeal, may refer the matter back to the CEC for a rehearing or further consideration respecting the issue on appeal, or quash, vary, or confirm the decision or order appealed.

4.0 Offences and Penalties

An individual who is guilty of an offence under the CSRA can be fined up to \$50,000 or imprisoned for a term of not more than six (6) 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 (1) year, or both.

A corporation that is guilty of a first offence can be fined up to \$500,000. For each subsequent offence, a corporation can be fined an amount of not more than \$1,000,000.

5.0 Cost Recovery

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

6.0 Inspections and Investigations

Environment Officers from the Department are empowered under the CSRA to conduct inspections or investigate sites that are, or are suspected to be, either contaminated or impacted. If required, an Environment Officer may have access to any land, building,

vehicle, or other place in order to make inspections and determine compliance with the CSRA.

7.0 Education and Information

The Department 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.

8.0 For More Information

For more information, please contact:

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