

#4

Frequently Asked Environmental Law Questions

LAND CONTAMINATION

Q:

I am considering buying some property to build my country dream home on. How do I ensure there is no contamination on the property and that I am not going to end up with a huge clean up bill?

A:

As a potential purchaser, it is very important that you exercise caution and take steps to protect yourself in the early stages of a contemplated transaction. The *Environmental Protection and Enhancement Act* imposes liability for contaminated land on landowners, even in instances where the owner was not the person who caused the contamination.

You can do some initial research on your own to determine whether there may be any environmental concerns related to the property. This research can include:

- making a thorough examination of the property for any signs of potential contamination;
- determining previous uses of the property;
- determining the uses of neighbouring property; and
- obtaining an historical search of the property's title.

As a purchaser, you must determine the amount of risk you are willing to bear in relation to environmental concerns and tailor your actions accordingly. The less risk you are willing to bear, the more you should seek to build protections from liability into the transaction. Alternatively, you should consider another property if you have any concerns. A key element of the transaction is the agreement for sale and purchase, which sets out your rights and

those of the vendor. You can negotiate the contents of the agreement, and thus should strongly consider consulting a lawyer experienced in environmental matters before making an offer to purchase. You can seek to limit your potential liability by including a number of conditions in your offer to purchase, such as the ability to inspect the property and conduct tests and the ability to back out of the transaction if you are not satisfied with inspection results. If the vendor accepts the offer, the conditions in it become part of the agreement for sale and purchase. An experienced lawyer will be able to advise you on conditions suitable to your concerns and the specific property.

As well, you should seek promises from the vendor related to the environmental condition of the property, the suitability of the property for the use you intend to make of it, compliance by the vendor with applicable environmental laws, and the absence of government orders affecting the property. The agreement will set out how long the promises are good for.

If you are concerned that there may be contamination on the property, ask the vendor directly. A vendor can be held liable for failure to disclose contamination of which he or she is aware, and you may be able to cancel the transaction on that basis.



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Environmental Law Centre

The Environmental Law Centre (Alberta) Society is a non-profit charitable organization operating in Alberta since 1982. The Society believes in making the law work to protect the environment and in support of this objective, provides services in environmental law education and assistance, environmental law reform, and environmental law research. The Society operates the Environmental Law Centre which is staffed by four full-time lawyers.

Funding is provided to the Society in part by the Alberta Law Foundation and through the generous support of the public. The Centre also accepts private and government research contracts for work relevant to and consistent with the Society's objectives.

For further information, pursue the following:

Environmental Law Centre Library Resources:

- TOXIC REAL ESTATE MANUAL / Coburn, Frederick; Manning, Garth. – Aurora, Ont.: Canada Law Book, c1994.
- A BUYER'S GUIDE TO CONTAMINATED LAND / Saxe, Dianne. – Toronto: Emond Montgomery, 1994
- CONTAMINATION TURNS AN ASSET INTO A LIABILITY : HOT PROPERTIES / Chamberlain, Martin J.; Perret, Denise M. – In Law Now, V.16,No.8, May 1992, pp. 15-16.
- REAL ESTATE PREACQUISITION AUDITS / German, R.B. – In Environmental Auditing: The Challenge of the 1990's. Edited by Felicity N. Edwards. Pp.157-183. Calgary: University of Calgary Press, c1992.
- IMPROVING THE SITE-SPECIFIC DATA ON THE ENVIRONMENTAL CONDITION OF LAND / Bordt, Michael; Fritzche, Jeff. – Ottawa: National Round Table on the Environment and the Economy, Task Force of the Financial Services Program, 1996.
- ENVIRONMENTAL RISK AND RESPONSIBILITY IN REAL ESTATE AND BUSINESS TRANSACTIONS: THE VENDOR'S PERSPECTIVE / Ruderman, John C. – In Proceedings of the Conference: Cleaning Up Contaminated Sites: Managing the Environmental Risk and Responsibility : Toronto, January 24, 1990.
- TOXIC REAL ESTATE, CONTAMINATED LANDS, AND INSURANCE / Castrilli, Joseph F. – In Environmental Law and Policy / Elaine Hughes, Alastair R. Lucas, William A. Tilleman, eds. – Toronto : Emond-Montgomery Limited, Chapter Eight, pp. 277-320: c1998.

Websites:

- <http://www.cim.ca/toxicre.htm> "Toxic Real Estate – An Environmental Nightmare" by Richard J. Rush, M.A.Sc., P.Eng., XCG Consultants Ltd. This article first appeared in the Fall, 1995 issue of the *Grand Valley Views*, taken from the Canadian Institute of Management (CIM) website. Explains how purchasers can protect themselves from buying contaminated land with the help of an environmental site assessment.
- <http://www.gov.ab.ca/acn/199603/3507.html> *First Contaminated Site Designated under EPEA*, Government of Alberta News Release No. 95-158. Press release and backgrounder explaining how a contaminated site is designated under EPEA and who is held responsible for clean up.
- <http://www.renelarson.com/environmentalcontrol.html> *Environmental Concerns When Purchasing Real Property* by Rene Larson Law Office, Thunder Bay, ON. Obligations and potential liabilities related to parties involved in a real estate transaction.
- <http://www.wwlia.org/ca-envir.htm> *Environmental Law In Canada: Contaminated Land* by the World Wide Legal Information Association. A brief general overview for the lay person of environmental laws that apply to contaminated land in Ontario.
- <http://www.vcn.bc.ca/wcel/wcelpub/5170.html> *Toxic Real Estate in British Columbia: Liability* by Waldemar Brault and Ann Hillyer. Published by the West Coast Environmental Law Research Foundation, 1990. This report is the second of a three part series on toxic contamination of land in British Columbia. Contains general information about liability for contaminated land in British Columbia, but is useful for all jurisdictions. The first chapter focuses on the real estate transaction.

Contacts:

- Land Titles – An historical search of the property's title can be arranged through any of the private registry offices most frequently used for vehicle registration. Searches are done using the property's legal land description. Once the names of the previous owners are determined, you can verify if any environmental enforcement actions were taken. The Environmental Enforcement Historical Search Service is operated by the Environmental Law Centre. Searches are done by company or individual name. There is a fee per search. For more information contact:

Environmental Law Centre
204, 10709 Jasper Avenue
Edmonton, AB T5J 3N3
Phone: 780-424-5099
Fax: 780-424-5133
E-mail: idjurfors@elc.ab.ca

- Record of petroleum spill incidents, well and pipeline sites:
Alberta Energy and Utilities Board
Information Services
640-5th Avenue SW
Calgary, AB T2P 3G4
Phone: 403-297-8190

Note: free public access to view records in Calgary; fee for copies.

- Inventory of registered petroleum tank locations and partial inventory of abandoned tank locations:
Petroleum Tank Management Association of Alberta
1560-10303 Jasper Avenue
Edmonton, AB T5T 3V6
Phone: 780-425-8265
Fax: 780-425-4722

Note: require a written request stating legal or municipal address of property, name of person or company information relates to. There is a fee.

- Orders issued or prosecutions under federal legislation administered by Environment Canada:
Environment Canada
Prairie and Northern Regional Office
#200, 4999-98 Avenue
Edmonton, AB T6B 2X3
ATTN: Mike Labossiere
Phone: 780-951-8888

Note: a written request is required stating the name of the person or company the information relates to.



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The information provided is current to December 31, 1998. While every effort has been made to ensure the accuracy and timeliness of the information, the answer, of necessity, is of a general nature. The Environmental Law Centre encourages individuals to seek specific advice on matters of concern and not to rely solely on the information in this publication.

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