

## Why Search the Site Registry?

In some cases, cleanup costs of contaminated land can far exceed the property's value, leaving a land owner or other party with a net liability instead of a net asset. Anyone who is buying, developing, or advising on property that is or was used for activities likely to be causing contamination will want to avoid this situation.

Land owners, bankers, developers, purchasers, lawyers, real estate agents, consultants, insurers, local governments, appraisers, notaries, and land surveyors should know how to access the provincial Site Registry.

### What is the Site Registry?

The Site Registry was launched under the *Waste Management Act* and Contaminated Sites Regulation in November 1997 and continues under the *Environmental Management Act* of 2004. It provides electronic access to public information on sites that have been investigated and cleaned up since the ministry began recording this activity in 1988.

The registry lists the nature of the properties in question, as well as the legal and regulatory steps that have been taken to identify, manage, and administer the sites. For more information, see Fact Sheet 20 and the *Site Registry User's Guide* on the BC OnLine web site.

### Why is site information important to have?

Back when contaminated sites legislation was first being drafted, concerned stakeholders told the province they needed quick and easy access to information about sites:

- *Land owners, developers, and businesses* wanted to minimize their site cleanup costs and to reduce their liability in land transactions.
- *Local governments* wanted to minimize their potential liability in approving developments on contaminated land.
- *Banks* wanted to avoid paying for site cleanups if a loan defaulted.
- *Lawyers, consultants, and real estate agents* wanted to advise and protect their clients appropriately by practising "due diligence."

Today, all of these stakeholders are in a good position to address these needs, because information on the environmental condition of sites in BC is readily available.

### What is "due diligence"?

Due diligence refers to the process of searches, investigations, and reviews that may be carried out by lawyers, clients, and other advisors as part of a potential business transaction. In the case of negotiations related to the sale of property, prospective purchasers and their advisors try to learn as much as possible about a property before committing funds to buy it.

### How does the Site Registry support due diligence?

The Site Registry is a valuable resource for anyone who wishes to obtain, before the sale or development of a site, due diligence information about the land. The registry provides information about:

- formal determinations as to whether a property is contaminated;
- environmental screening information from site profiles;
- site investigation reports;
- site cleanup plans; and
- Certificates of Compliance with provincial site cleanup requirements.

It also provides information that can be used to identify and assess the potential for migration of contaminants onto neighbouring sites.

### **What happens if due diligence is ignored?**

Purchasers and other parties with an interest in land that may be contaminated face potentially serious problems if they have not conducted adequate due diligence searches and appropriate follow-up. On taking ownership of a site, they could be affected by several types of liability and required to pay compensation because:

- they are responsible for cleaning up the site even if they did not contaminate it (*remediation liability*);
- contaminants that migrated from their site to a neighbouring site caused, or could cause, damages (*nuisance liability*);
- they allowed the migration of contaminants onto neighbouring land (*trespass liability*); and
- they neglected to contain contaminants on their site (*negligence liability*).

### **How have the courts responded when a party failed to demonstrate due diligence?**

The case of *Sassy Investments Ltd. et al. versus Minovitch et al.* in the BC Supreme Court involved the 1995 sale of a gas station in Enderby. The purchasers declined to take their solicitor's advice to obtain an environmental assessment of the property before completing the sale. They also did not review a report they

were provided about the environmental condition of the property in 1991.

After the sale, it was discovered that the property was significantly contaminated. An environmental emergency was declared by the Province, which then spent hundreds of thousands of dollars to clean up the site.

According to the Supreme Court, the purchasers demonstrated no concern for the environmental issues at the site, even though they were purchasing storage facilities for hazardous products. The court found that the purchasers' failure to complete the assessment was "contributory negligence" and assigned them 10% of the overall liability for the damages from leaking gasoline, because they could have "prevented their own grief."

What can be learned from this decision? Clearly, that people have a duty to inform themselves about the environmental condition of land that they are considering to purchase. Failure to address this duty can create liability – liability that can result in high costs to land owners, purchasers, and others.

The Site Registry is the best place to start a due diligence search for information on the environmental condition of land.

*Note: This summary is solely for the convenience of the reader. The current legislation and regulations should be consulted for complete information.*

*For more information, contact the Environmental Management Branch at [site@gov.bc.ca](mailto:site@gov.bc.ca)*