

## Remediation Liability and Combining Parcels with Different Owners

Section 44(1) of the *Environmental Management Act* (the Act) authorizes a Director of Waste Management (a Director) to establish the boundaries of a contaminated site.

The way site boundaries are determined can affect potential liability for remediation under the Act. For example, if a contaminated sites legal instrument (instrument) such as a Certificate of Compliance is issued for a site composed of two parcels held by different owners, unintended remediation liability for each owner may result.

This fact sheet explains:

- how the Act's remediation liability regime applies to sites composed of parcels owned or operated by different persons, and
- how the ministry's policies help avoid unintended remediation liability when site boundaries are established.

### What is remediation liability?

The Act lays out various principles of liability, or responsibility, for the cost of cleaning up contaminated sites in BC. Those who are responsible for causing contamination are classified as "responsible persons" and are considered to have liability for remediation. There are a number of exemptions including the situation where a person's parcel was contaminated only by the migration of a substance from another person's parcel. Consult [Fact Sheet 16, "Remediation Liability Overview"](#)

for a summary of the key features and principles of the Act's remediation liability regime.

### In general, how does remediation liability apply when a site is composed of more than one parcel with different owners?

Unless there is an applicable exemption, all owners would be responsible persons since they would be current owners of the site. Also, they would be "jointly and separately" liable for the costs of remediation of the site if further remediation were required. As a result, any of the responsible persons might be held liable for the entire extent of contamination remaining at the site. In addition to the remediation liability each person faces for his or her own parcel, each person could become responsible for remediating the others' parcels.

### How are site boundaries established?

An application for an instrument includes legal descriptions and a plan for the parcel or parcels applicable to the instrument, indicating the proposed site boundaries. Those would be formally established, legally defining the boundaries of the site, when a Director issues the instrument. A Director may also establish site boundaries when issuing, for example, a remediation order.

#### Note

Except for a Determination of Contaminated Site that a site is not contaminated, the decision of a Director to issue an instrument for a site confirms that the Director considered the property contaminated when remediation began.

## **Ministry response to applications to combine parcels with different owners**

There are several situations where owners of parcels within sites can be inadvertently captured in the remediation liability net. These are particularly important when one or more parcels are contaminated, for example, when an Approval in Principle is involved or a Certificate of Compliance is to be issued under the risk-based or numerical remediation standards.

To avoid creating unintended remediation liability, the ministry's policy is to proceed with caution in issuing instruments and orders which combine parcels with different owners into a single site. Our preferred approach is to issue separate instruments for each parcel or group of parcels with separate owners.

### **Options to establish site boundaries where parcels have different owners**

The simplest case is where there are two adjacent parcels with different owners, contaminants have migrated from one parcel (the source parcel) to the other parcel (the affected parcel), and the two parcels have no contaminants other than those which originated at the source parcel.

There are two basic options for obtaining ministry approval to establish site boundaries when an instrument is requested, typically by the source parcel owner. Note that this type of approval is not one of the types requiring preapproval under Protocol 6, "Eligibility of Applications for Review by Approved Professionals."

#### ***Option 1. One instrument, one site***

This approach combines both parcels into one site. Approval must be obtained in advance, unless at the time of application for the instrument, the information specified below is provided to the ministry. Several steps must be followed by the source parcel owner, assuming that he or she is the applicant:

- 1) Provide the affected parcel owner with references to ministry information on the liability implications of combining parcels with different owners into sites (such as this fact sheet and [Fact Sheet 16](#)).
- 2) Make a written request for agreement between the source parcel and affected parcel owner with the proposal to combine parcels with different ownership.
- 3) Request a response in writing from the affected parcel owner within 30 days of delivery of the letter which requests written agreement described above.
- 4) If approval is being sought in advance of the application for the instrument itself, submit to the ministry's Client Information Officer for approval the proposal to combine parcels with different ownership into one site. A [Contaminated Sites Services Application form](#) must be completed and submitted together with written confirmation from the owners of both parcels that they are aware of the remediation liability implications and accept combination of the two parcels into one site. Otherwise, include the written liability acknowledgement and written confirmation from the owners of both parcels with the application package at the time of application for the instrument.

#### ***Option 2. Two instruments, two sites***

The result from using this option would be two sites, with two instruments being issued. Approval in advance of an application for the instrument is not required and applications for each instrument would typically proceed as applications with a recommendation of an Approved Professional (for non-high risk sites) and directly to the ministry (for high risk sites).

*Note: This document is solely for the convenience of the reader. It does not contain and should not be construed as legal advice. 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).