



# Managing Contaminated Properties

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## Outline

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- **Realities of Acquiring/owning contaminated land**
- **Neighbours' Claims - Municipal Operations**
- **Best Practices to Prevent and Manage Environmental Litigation**

# Acquiring/Owning Contaminated Land

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- **Municipalities get stuck with contaminated land**
  - Historical purchase
  - Landfills
  - Expropriation
  - Accepting parkland, reserve dedication
  - Tax sale vesting
  - Assumption of public road
  - Acquisition by land swap
  - Land contaminated by municipality (i.e., acquired as buffer; contaminated by own operations)

## Case Study #1

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- **Facts**
  - Municipality acquired land in mid-80s from oil company for \$1
  - Attractive downtown waterfront site
  - Intended for upscale mixed development
  - Developer offered to purchase and build
  - Contamination found

## Case Study #1

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- **What happened next?**
  - Developer refused to close
  - Municipality had to pay full clean-up cost
  - Municipality developed land itself for recreation centre

## Case Study #1

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- **Lessons learned?**
  - Municipality lost:
    - Cost of clean up
    - Prime development (community benefit; revenue)
    - Future tax revenue
  - Limitation period for civil claims expired

## Case Study #2

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- **Typical facts:**
  - Municipality owns contaminated “flow-through” road allowance
  - Former service station located up gradient of road allowance
    - Subsurface contamination found on property
  - Contamination flows downhill through road allowance and into groundwater on down gradient commercial and/or residential properties

## Case Study #2

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- **What happens next?**
  - Municipality requests oil company clean to up
  - Municipality requests MOE to order oil company to clean up – cuts both ways
  - Municipality sues owner and former owners of former service station property including major oil company
  - Down gradient property owners sue municipality

## Case Study #2

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- **Worst Possible outcomes**
  - Oil company delays, suggests further investigation, solutions not forthcoming
  - MOE generally does not get involved in private lawsuits – let the parties resolve who cleans up
  - Long, expensive lawsuit against oil company
  - Potential lawsuits against municipality by down gradient neighbours

# Municipal Owners of Contaminated Land

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- **Municipality may have**
  - Increased duty to warn third parties of contamination moving via municipal property
    - *Berendsen v. Ontario*
    - *MacQueen v. Ispat Sidbec Inc.* (Nova Scotia)
  - An obligation to take steps to prevent further contamination migration beyond municipal property, even if municipality not the polluter

# Neighbours' Claims - Municipal Operations

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- **Growing area for claims involving municipal operations**
  - Landfills and dumps (historic and current)
  - Public works yards
  - WPCP / STP / WTP
  - Construction near water
  - Truck / transportation terminals, fleet maintenance areas, refueling areas and storage tanks
  - Hazardous materials (arenas, swimming pools)
  - Road salt storage and application (CEPA toxic)
    - Including snow humps

# Best Practices to Prevent and Manage Environmental Litigation

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- **Know your operations**
  - Identify potential environmental risks early
  - Manage information about environmental contamination strategically
  - Investigate and assess risks promptly
  - Do not ignore environmental issues
  - Be proactive, not responsive to environmental issues
  - Retain experienced environmental team

# Best Practices to Prevent and Manage Environmental Litigation

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- **Know your neighbours**
  - Act promptly to respond to complaints and anticipate problems
  - Take control and work with stakeholders
  - Implement genuine communications plan
  - Keep neighbours and complainants informed about your mitigation strategy

## Best Practices to Prevent and Manage Environmental Litigation

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- **Know the regulator**
  - If necessary, engage regulators by taking solutions to them rather than the regulator imposing solution on you
- **Be prepared to investigate and implement clean-up or risk assessment for historic contamination**
  - As a strategy to put litigation in abeyance
  - To mitigate damages
- **Negotiate rather than litigate**

## Best Practices to Prevent and Manage Environmental Litigation

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- **Think outside the box in trying to resolve environmental litigation early**
  - Establish a public liaison committee
  - Study the problem
  - Mitigate the impact
  - Clean up
  - Offer/accept property value protection
  - Purchase/sell the property
  - Expropriate or purchase/sell buffer zone
  - Offer/accept indemnities
  - Establish small claims fund (*Hollick*)



## Contact Information

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