

Contaminated lands



Things to know

- Each province of Canada has its own regulations, rules and standards that must be followed for contaminated sites.
- Provinces permit either a risk-based or a standards-based approach to remediating contaminated lands.
- In Ontario, the Ministry of the Environment, Conservation and Parks has a brownfield regime mandating that those who develop or change the use of land to a more sensitive use (e.g., commercial to residential) must first meet certain standards and obtain a Record of Site Condition (RSC).
- Municipalities may have their own rules – separate and apart from applicable provincial requirements – that must be considered.
- Regulators have broad “clean-up” order powers that can potentially reach current and former owners, occupiers/tenants and other persons responsible for the contaminant, the contaminated land or the business that caused the contamination.
- Third parties or the government typically have a statutory right of compensation in various regulatory regimes across Canada for losses or damages suffered as a result of contaminated land, including contamination that has migrated off-site. These claims for compensation are dealt with by the courts in a civil action.
- Once you own a business that has contaminated land, or purchase a contaminated site, as a general rule, you inherit the liability associated with that business/site. That liability can be indefinite.
- If you discover your land is contaminated, you may be able to start a claim against the responsible party(s). Understand there will be an applicable limitation period – a set period of time after you have discovered a possible claim within which you must start a claim. Limitation periods can vary province to province.

USEFUL RESOURCES

- [Brownfields redevelopment in Ontario](#)
- [Ontario Regulation 153/04](#)
- [Rules for Soil Management and Excess Soil Quality Standards](#)
- [On-Site and Excess Soil Regulation](#)
- [Alberta land management/development](#)
- [British Columbia – Contaminated sites](#)
- Canadian Brownfields Network – [The State of Brownfields in Canada](#) (Nov 2018)
- [Handling excess soil](#)
- [Excess Soil Pause in Implementation](#)
- [Excess Soil Registry](#)

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- [Ontario courts continue to clarify statutory rights of compensation](#)
- [Ontario courts' guidance on discoverability](#)
- [Ontario's new excess soils legislation: legal obligations and risk management](#) (webinar)

Things to do

- Do your due diligence before purchasing or leasing potentially contaminated sites. Engage environmental consultants and legal counsel early to ensure full understanding of the potential for contamination on, in or under any property or business you are considering purchasing or leasing.
- If purchasing a contaminated site, work with your environmental consultants and legal counsel to build in appropriate representations, warranties and indemnities for contamination, or factor the contamination costs and contingencies into your purchase price. Consider whether insurance may be available to cover certain environmental risks.
- Understand you may have self-reporting obligations at law, once you discover contamination, depending on where the contamination resides and in which province the site is located.

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