Environmental Law: Key Strategies for Everyday Practice

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Environmental Law: Contaminated Properties

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ENVIRONMENTAL LAW: CONTAMINATED PROPERTIES

- The mantra is *caveat emptor* (“buyer beware”)
  - Subject to contractual provisions, misrepresentations, and in limited cases latent defects
  - Duty to remediate
    - EPEA section 112 imposes regulatory obligations for party to take reasonable action to remediate environmental contamination that *may* have a “adverse effect” on the environment.
    - The extent of this obligation, if triggered, may depend on the specific circumstances of the matter.
    - There may be options available for what type of remedial action is required. For example, immediate excavation and removal of the source, in situ remedial techniques such as chemical oxidization, or monitoring and risk management.
    - Off-site migration of contaminants affecting another property will almost always lead to a finding of an adverse effect and require some form of remedial action.
  - Reporting requirements.
    - Section 110 of EPEA imposes obligations for a party to report contamination to the regulator of conditions that may cause, are causing or has caused an adverse effect. The matter ought to be reported to immediately to the regulator.
    - Section 111 specifies the manner of reporting, including a verbal report to Alberta Environment and Parks Call In Center hotline at 1-800-222-6514, followed by a written report within 7 days of the initial report. Particular reporting requirements are set out in the *Release Reporting Regulation*.
  - The mantra is “when in doubt, report”, as expressed by the Supreme Court of Canada in *Castonguay Blasting Ltd. v. Ontario (Environment)*, 2013 SCC 52.