

## UNDERGROUND OIL STORAGE TANKS ON RESIDENTIAL PROPERTY IN BC:

### WHAT THE HOMEOWNER NEEDS TO KNOW

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Residential heating oil storage tanks have been used in Canada for over 65 years. Although many have now been decommissioned and the home converted to natural gas, the implications of owning a property that has a historical underground oil storage tank (a.k.a. “UST”) are potentially significant, especially if the underground oil storage tank has leaked. As this article will briefly discuss, the resulting costs to investigate and remediate the contamination can be very high and the liability exposure quite broad.

#### WHO IS RESPONSIBLE?

Contaminated sites – including residential properties contaminated from leaking underground oil storage tanks – are governed by the British Columbia *Environmental Management Act* (“EMA”). Under the EMA, and specifically relevant to residential contamination, all current and previous “owners” and “operators” of the contaminated site are responsible for remediation of the contaminated site. The scope of responsibility also extends to neighbouring properties impacted by the contaminants. Therefore, if you purchase a property with an underground oil storage tank that has caused contamination (even if you did not own the property when the contamination was caused), you may be responsible for the costs associated with investigating and remediating the property and any impacted neighbouring properties as well.

Of course, the costs to investigate and remediate a property will vary significantly from one situation to the next. However, many property owners are surprised to learn that it

is not uncommon for the costs to reach as high as several hundred thousand dollars, especially in cases where there has been migration of contaminants and possible impacts under the foundation of the homes.

## **CAN I GET REIMBURSED FOR THE ASSOCIATED COSTS?**

The EMA creates a statutory cause of action known as a “cost recovery claim” whereby a person who has incurred costs of remediation related to a contaminated site can recover such reasonably incurred costs from responsible person(s). Generally speaking, the costs recoverable under this cause of action include all costs to investigate and remediate the contaminants from the impacted properties. The key caveat is that the costs must be “reasonable”. The courts heavily rely on the opinion and recommendations of the environmental consultant when determining what costs are “reasonable”. Therefore, it is critical that a person undertaking such work retain a qualified environmental consultant to make any subsequent cost recovery claim against other potential “responsible person(s)” more likely to succeed.

## **HOW CAN I GET EXEMPTED FROM RESPONSIBILITY?**

The scope of “responsible person” status, as indicated above, is quite broad under the EMA. However, the EMA also creates a number of exemptions. For example, there is an exemption that applies to an “innocent” purchaser of a property impacted by contaminants. To fall within the exemption, the person must establish that he or she had no reason to suspect the property was contaminated at the time of purchase and undertook all appropriate inquiries into the previous ownership and use of the property. This exemption is critical to potential purchasers of property where there is or is suspected to be a historical underground oil storage tank. Indeed, there are certain preventative steps that a potential purchaser can take to make it more likely that they fall within the exemption by, for instance, requiring a completed Property Disclosure Statement and requiring documentation if the tank was said to be decommissioned by a

previous owner. Simply because a tank was decommissioned, does not mean that it has not caused or may cause contamination and, therefore, obtaining confirmatory documentation is important.

In the end, there is the potential for significant inconvenience, costs and complications arising from historical underground oil storage tanks, either to the owner of the property or the owner of an impacted neighbouring property. As such, it is important that a person who owns a property with an underground oil storage tank or a person who is purchasing a property that may still have an underground oil storage tank (whether it is said to be decommissioned or not) fully understand the risk and issues that may arise.

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