## Environmental Liability and Contaminated Site Management in Saskatchewan*

Victor Chang, Saskatchewan Environment and Resource Management

In response to recommendations made by the Contaminated Sites Liability Advisory Group (CSLAG) regarding the management of contaminated sites in Saskatchewan, Saskatchewan Environment and Resource Management (SERM) has, as a first step towards meeting the CSLAG objectives, developed a strategic approach as described in a paper entitled "Environmental Liability and Contaminated Site Mangement - A Strategic Approach". The paper was prepared based on CSLAG principles and was developed within the existing legislative framework. The strategic approach explains the current situation surrounding environmental liability and contaminated site management, provides a snapshot of current policy/legislation and is to be used as a basis for any required policy or legislative changes.

The strategic approach released on October 23, 1998 was prepared to clarify SERM's policy and incorporate principles and recommendations from the "Report of the Minister's Advisory Group on Contaminated Site Liability in Saskatchewan" that was received by the Minister in May 1997. The proposed process outlined by the strategic approach should be viewed as a significant step towards a fair, efficient and practical system for dealing with complexities involved in contaminated site management.

Uncertainty regarding environmental liability has been a concern during the 1990's. During cleanup of contaminated sites, there is always the issue of "how clean is clean", "who is responsible" and "how much liability they must bear". This uncertainty has placed a barrier to redevelopment of properties, especially when property changes hands. Financial institutions are reluctant to release funds, and purchasers and local municipalities have been wary of becoming involved in potentially contaminated sites. The Canadian Council of Ministers of Environment (CCME) endorsed a set of principles in 1993 to facilitate the development of provincial models and legislation for contaminated site liability. The CCME principles included the concepts of: polluter pays; fairness; openness, accessibility and participation; beneficiary pays; and sustainable development.

CSLAG was appointed in early 1996 and consisted of members from government, non-government organizations, the Saskatchewan Association of Rural Municipalities, the Saskatchewan Urban Municipalities Association (SUMA), industry, the Canadian Bar Association, the Canadian Federation of Independent Business and the financial sector. The CSLAG report made recommendations based on the application of CCME principles

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in Saskatchewan, the identification of contaminated sites, cleanup requirements and responsibility for liability relating to site cleanup. SERM is attempting to meet the objectives of CSLAG's report by working within the existing legislative framework and enhancing and clarifying existing policies. The strategic approach lays out a framework for identifying, allocating responsibility and cleaning up contaminated sites and is intended to provide clarity on the issue of environmental liability and contaminated sites.

The CSLAG report recommended the development of a risk based cleanup guidelines with fault based apportionment for liability and orphan site funding. This strategic approach has adopted the ideas of risk based guidelines and orphan site funding but utilizes voluntary instead of fault based apportionment of liability. Policy and legislation currently in place supports risk based guideline development and voluntary apportionment of liability. Implementation of fault based apportionment of liability, as recommended by CSLAG, would require major legislative change and could result in a more complicated system than required. Similar to the approach recommended by CSLAG, a five step contaminated site management process is defined by the strategic approach for the determination of cleanup procedures, liability and responsibility. The five steps are site identification; identification and notification of potentially responsible parties; allocation of liability (voluntary or directed); remediation planning; and site clean-up and sign-off.

The strategic approach will be monitored, as part of an incremental process, to point the way to any future changes in the approach, policy or legislation. SERM is monitoring how well the model addresses concerns surrounding environmental liability and contaminated site management. Comments and reactions will be taken into account during SERM's impending comprehensive review of environmental protection legislation.

Contaminated sites without responsible parties are known as orphan sites. In support of this strategy, SERM is also attempting to address the issue of orphan sites. SERM's policy has a pollution prevention focus and actions through existing licensing processes, environmental assessment processes, legislation such as *The Hazardous Substances and Waste Dangerous Goods Regulations* and *The Mineral Industry Environmental Protection Regulations* will assist in preventing creation of additional orphan sites. SERM recognizes that existing orphan sites will continue to be identified. SERM is exploring the applicability of sector funds or alternatives for addressing the issue of orphan sites, such as in the downstream petroleum sector.

The strategy also highlights who would NOT be held responsible for cleanup, such as innocent purchasers and municipalities if they did not cause the contamination. Recent litigation (*Busse Farms Ltd v. Federal Business Development Bank)* has provided further insight in the area of potentially responsible parties. Clarification in the area of potentially responsible parties allows purchasers, financial institutions and municipalities to feel

more at ease when dealing with contaminated sites. Parties that did not cause or contribute to the contamination are not held responsible for cleanup. As a result of this strategic approach, municipalities, such as the City of Moose Jaw have begun looking at approaches to dealing with properties under their jurisdictions.

Comments received regarding the overall process have been positive. The strategy provides clarity surrounding the contaminated site management process in Saskatchewan for government officials, industry personnel, law professionals, financial officers and the general public.

Environmental Liability and Contaminated Site Management-A Strategic approach is posted at **http://www.serm.gov.sk.ca/protection/liability**

# Perspectives in Land Reclamation and Restoration

Presented by:

Canadian Land Reclamation Association/
Association Canadienne De Réhabilitation Des Sites Dégradés

Including the Canadian Land Reclamation Association's
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| | **Tuesday, September 28th** | |
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| 7:00 - 10:00 PM | Wine and Cheese, Registration | |
| | **Wednesday, September 29th** | **Page #** |
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| 8:45 – 9:05 | Saskatchewan upstream petroleum sites remediation guidelines.<br>Todd Han, Saskatchewan Energy and Mines | n/a |
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3:05 – 3:25 Rare Plant Rescue During Pipeline Construction *(Erigeron compositus* Pursh. var. *glabratus* Macoun, Fern-leaf Fleabane on the 1998 Foothills Pipe Lines Expansion Project.)
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Gary Meschishnick, Barristor and Solicitor Wallace Meschishnick Clackson Zawada ..... n/a

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Clara Qualizza, Syncrude Canada Ltd. ..... n/a

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