

# Update on Alberta Environment Contaminated Sites Initiatives

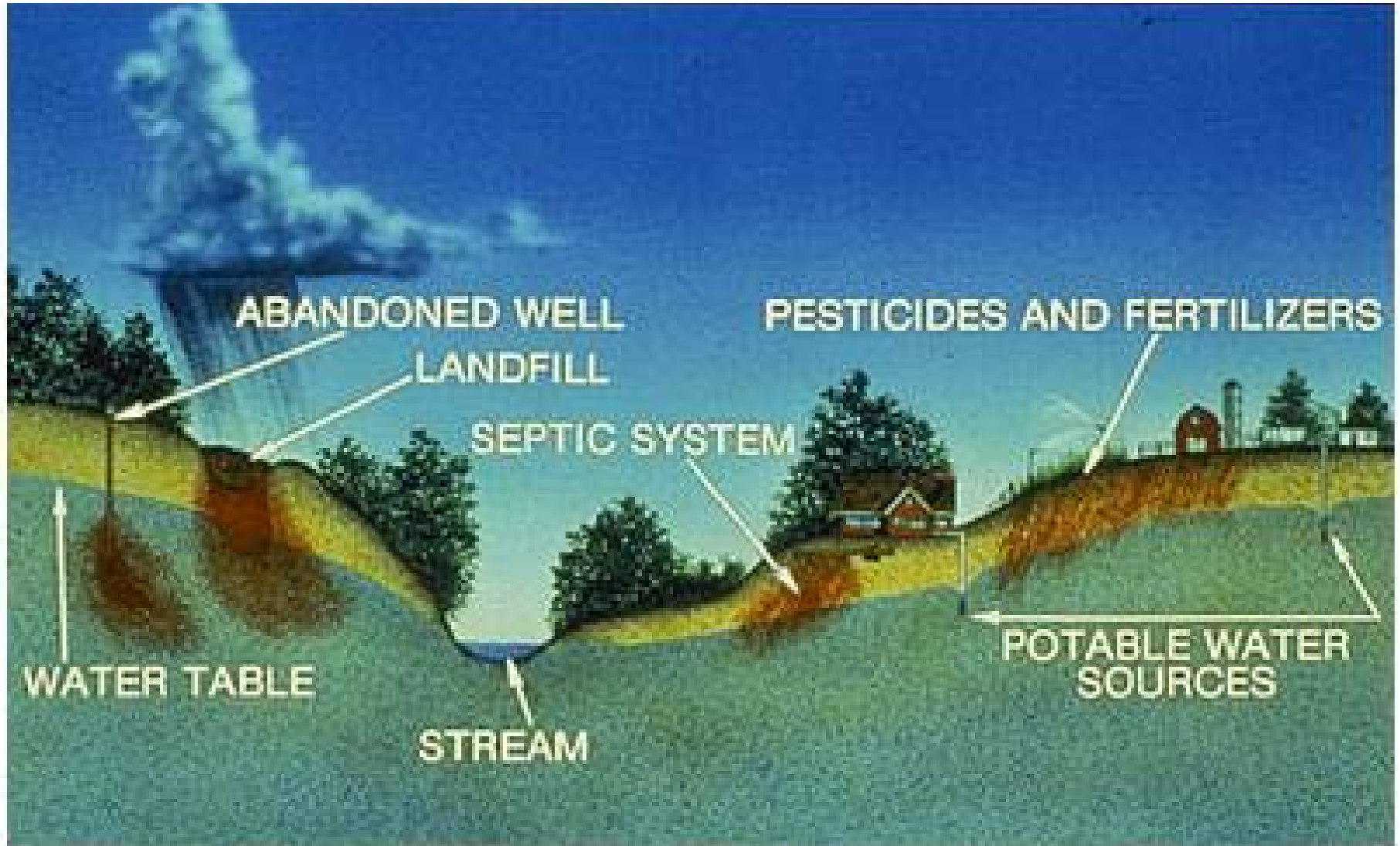
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# CONTAMINATION SOURCES





# What is a contaminated site?

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- Common definition - contamination above set standards or contamination causing risk
  
- “A site at which substances occur at concentrations
  1. Above background levels and pose an immediate or long-term risk to human health or the environment, or
  2. Exceeding levels specified in relevant policies or regulations”
    - Treasury Board Federal Contaminated Sites Policy

# EPEA provisions relevant to contaminated site restoration

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## ■ Part 5 – Div.1 Substance release

- Adverse effect
- Responsible persons = narrow scope
- Less formal process
- Joint & several liability

## ■ Part 5 – Div. 2 Designation

- Significant adverse effect
- Responsible persons = broad scope
- More formalized process
- Public participation
- Apportioned liability

# Evolving Issues & Concerns

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- Stakeholder concerns over ongoing liability
  - Long-term liability and closure
  - Retrospective (historic) liability
  - Responsible parties in land sales transactions
  - Municipal planning decisions
- National Roundtable on Environment and Economy
  - Incentives for brownfield development

# Contaminated Sites Stakeholder Advisory Group (CSSAC)

## Purpose and Mandate

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- Review Alberta's contaminated sites legislation and policy
- Prepare recommendations for Minister of Environment on any upgrades
- Representation from Government, Industry, Commerce and NGOs

# CSSAC

## Process

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- First round of meetings between October, 2003 and March, 2004
- Information sources considered:
  - Environmental Law Centre report
  - National Roundtable on Environment and Economy report – “*Cleaning Up the Past, Building the Future*”
  - CCME (1993) principles
  - Other analyses prepared by working groups
- Interim report completed in Spring 2004

# Environmental Law Centre Project

## Objectives

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- Review regulatory approaches to contaminated land management (analysis & critique)
  - Mainly Canada; limited US & Europe
  
- Focus on specific issues
  - Liability allocation & termination
  - Retrospective application of legislation & liability
  - Triggers for use of legislation & regulatory tools
  - Effects of changing remediation objectives (re: liability & remediation)

# ELC Report Findings

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- Common elements
  - Polluter pays principle
  - Retrospective application of liability
  
- Legislative trends
  - Limited government resources
  - Greater access to information
  - Explicit provision for risk management
  - Clearly stated exemptions from liability
  - Third party review and certification
  
- No clear trends/not addressed
  - Joint & several liability vs. proportional
  - Effects of changing remediation standards

# CSSAC Recommendations

## Single Regulatory Process

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- Amend EPEA to provide one management process for contaminated sites
- Better define “adverse effect” and “significant adverse effect”
- Legislative provisions to support risk management
- Clarify reporting requirements

# CSSAC Recommendations

## Allocation of Liability

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- Amend EPEA to better define process for liability allocation
  - Considerations:
    - May be seen as conflicting with “Polluter Pays” principle
    - Allocating liability complex and very resource intensive
    - May create a “bottleneck” in remediated contaminated sites
  
- Clarify “persons responsible”

# CSSAC Recommendations

## Regulatory Liability

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- Termination of regulatory liability upon cleanup
  - Considerations:
    - Resources required to review applications
    - May trigger request for certificates at previously closed sites
    - Environmental site information system required to support due diligence
- Regulatory basis for voluntary remediation agreements that limit liability

# CSSAC Recommendations

## Assurance Mechanism

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- Assurance mechanism required to enable liability termination and liability allocation
  - Considerations:
    - Fund? Insurance?
    - Assurance administration resources
    - May discourage pollution prevention
  
- Review whether historical contamination should:
  - Be covered by retrospective provisions?
  - Be covered by an alternative funding mechanism?

# CSSAC Recommendations

## Role and Liability of Local Authorities

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- Include exemptions for local authorities where such would help ensure contaminated sites are addressed

# Second (Final) CSSAC Report

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- Government approved direction of interim report
- Requested CSSAC continue to meet to develop program options
- CSSAC reconvened October 2004
  - Three working groups dealt with specifics
- Final report submitted to Minister June 2005
- Recommendations currently under consideration by Government

# Next Steps

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- Obtain Government approval/feedback
- Update/improve policy and complete required regulatory amendments where required
- Ongoing work to refine program options

# Other related contaminated site initiatives

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- Groundwater remediation objectives
  - Elements of risk-based closure
  - Draft posting for comments in early 2006
- Environmental Site Assessment Registry
  - Supporting environmental stewardship and risk management
  - System design to be developed this year
- CCME scientific review of the Canada Wide Standard for Petroleum Hydrocarbons in Soil

# Conclusion

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Alberta Environment is committed to improving contaminated sites legislation and policy through stakeholder consultation