Environmental Guide for Federal Real Property Managers

Our Environmental Philosophy

Our philosophy for good environmental practices is to ensure federal Real Property managers are well informed so that they avoid contamination and manage federal lands and facilities in a safe and efficient manner. The Environmental Guide for Federal Real Property Managers is intended to be a good reference for managers throughout the country in the life-cycle management of Real Property from the acquisition phase to the disposal or demolition and dismantling of the property. We encourage 'green practices' and are attempting to keep the paper copies of this guide to a minimum. The paper version of this document will likely be out of date very quickly due to the fact that new changes to policies, legislation and regulations will occur on a continuous basis and new environmental technologies and practices will continue to develop. We encourage you to check the electronic version of this document which will be kept current on our TBS Web site. We will not be re-printing this guide. The electronic version is hot - linked to legislation and other important cross references for ease of use, and we will keep these links up to date so that as amendments are made you will have the latest information available to you. We hope to be continuously improving this document and invite you to send us your comments and to keep us up-to-date on any changes we have missed by contacting the Real Property and Materiel Policy Directorate by telephone at (613) 941-7173, facsimile at (613) 957-2405 or email at rpmpd@tbs-sct.gc.ca.

Thank you!

Introduction

This guide is designed to provide a useful environmental reference for each activity in the real property management process, from planning to demolition and disposal. It covers a wide variety of topics at all stages of a property's life cycle. These include strategic management issues such as acquisition, leasing, licensing and disposal, as well as day-to-day operational and maintenance issues such as air quality, PCB management, building cleaning and waste management. The guide does not provide exhaustive detail but points to sources of further information.

Each stage of the life cycle is covered in a separate chapter, which contains three parts.

1. The 'Environmental Considerations' section gives a brief description of the significance of the subject, and the approach the federal government takes to it.

2. The 'Guidance' section describes the process and procedures in detail. It indicates how organizations may or must address each issue to effectively manage the issue in an environmentally sound manner that reflects the requirements of relevant authorities.

3. The 'References' section contains titles of related legislation, policies, regulations, codes, standards, specifications and advisory publications. Each chapter is designed to stand-alone and contain all of the pertinent reforms within it.

Some of the environmental topics discussed in this guide are subject to provincial and territorial requirements. Often, these are quite different from those of the federal government. Be aware that this document focuses on the requirements of federal government policy and legislation, and that provincial and territorial requirements are discussed only in general terms.

Federal, provincial and territorial governments are constantly revising environmental legislation and related policies and regulations, as well as standards and specifications. Users of this guide are advised to ensure that they are referring to the most recent version of these documents in their decision-making. Environment Canada officials are familiar with current requirements. Refer to Appendix A for locations and phone numbers of their regional offices.

Planning

---

1. Environmental Considerations

Planning for environmental management must encompass overall policy development and program management of an organization, as well as the planning for specific projects. Program planning deals with the way an organization plans and manages its environmental issues. Project planning concentrates on assessing the actual environmental effects of a project as early as possible, before the organization makes irrevocable decisions about its implementation.

1.(a) Program Planning

A sustainable development strategy is an environmental management system which, with regular environmental audits, is a key element of good program planning.

Sustainable Development

Sustainable development is a 'master plan' or, as the United Nations' World Commission on Environment and Development (the Brundtland Commission) defined it in 1987, "development that meets the needs of current society without compromising the ability of future generations to meet their own needs."Sustainable development can also be seen as a balance between economic and environmental criteria and objectives.

The philosophy of sustainable development is built on two basic premises: first, that environmental issues must be incorporated fully into the economic decision-making process at

the outset, and not left aside until late in the process; and second, that resources must be treated on the basis of both their present and their future value.

The promise of sustainable development is that economic development can and must be sustained by the environment. The environment and the economy must be mutually supportive to maintain their long-term viability.

The Canadian government endorses the principle of sustainable development and has taken steps to incorporate it into its management framework and its operations. Examples of steps taken include:

a. convening round tables to discuss the environment and the economy;

b. establishing the House of Commons Standing Committee on Environment and Sustainable Development;

c. establishing the requirement for federal government organizations (as defined in schedules I and II of the *Financial Administration Act*, or FAA) to develop and implement their own sustainable development strategies;

d. enacting environmental legislation (the CEAA, and revisions to the CEPA, the FAA and other legislation); and

e. coordinating environmental policy with provincial governments.

Commissioner of the Environment and Sustainable Development

Amendments made to the *Auditor General Act* (passed in December 1995) further demonstrate the federal government's commitment to sustainable development. This revised legislation establishes the position of a Commissioner of the Environment and Sustainable Development, who monitors and reports on the effectiveness of federal government organizations in incorporating sustainable development into their operations and management. The Commissioner will monitor each organization's progress against the sustainable development strategy that the new legislation required it to produce.

Sustainable development strategies, as described by the House of Commons Standing Committee on the Environment and Sustainable Development, "will provide leadership in the shift to sustainable development, in setting goals andobjectives, action plans, and benchmarks, against which to measure progress. They will be developed in consultation with the key stakeholders."

Each minister has tabled an initial sustainable development strategy in the House of Commons for his or her organizations. These sustainable development strategies must be dynamic. To deal with constantly changing economic conditions, approaches to environmental protection, government policies and legislative frameworks. Consequently, the amendments to the *Auditor General Act* require each organization to update and table its strategy in the House of Commons every three years.

The Commissioner reports on each organization's progress towards its environmental goals and objectives. The Office of the Auditor General summarizes the Commissioner's findings in its Special Green Report, which it tables annually in the House of Commons.

Environmental Management Systems

An environmental management system ensures that an organization implements its sustainable development strategy. Such a system is a central, coordinating framework through which an organization will plan, undertake and report on its environmental activities. It is to be an integral part of existing management systems. It consists of the policies, systems and procedures used to plan, control, report on and evaluate program policies and operations to ensure that the organization is protecting the environment and using resources sustainably, as specified by environmental legislation and authorities.

An environmental management system must:

a. clearly and comprehensively define the environmental responsibilities of an organization;

b. formulate an environmental policy, along with responsibilities, roles and accountabilities;

c. integrate environmental considerations into decision-making processes;

d. provide for the sound management of environmental risks and liabilities;

e. ensure that plans exist for targets and resources to comply with environmental requirements;

f. establish procedures for monitoring and updating environmental responsibilities; and

g. provide for the systematic and objective review of the environmental function.

The private sector has been actively developing and implementing environmental management systems. Such systems provide opportunities for economic benefit, because they can protect companies from liability and prosecution.

Most companies use the International Standards Organization's guideline ISO 14004, *Environmental Management Systems - General Guidelines on Principles, Systems and Supporting Techniques*, as their model. The Commissioner of the Environment and Sustainable Development will use the ISO 14004 guideline as a benchmark when assessing departments' environmental management systems.

Developing and implementing an environmental management system creates several benefits. For instance, an environmental management system will establish and clarify the roles of managers and other supporting employees; they will understand how their responsibilities are integrated into the environmental management process. Furthermore, the strict exercise of due diligence is often the only defence that organizations can use in incidents of environmental non-

compliance. An environmental management system can confirm that an organization has deliberately pursued due diligence.

Environmental Auditing

An organization should incorporate a program of environmental audits into its environmental management system to monitor environmental progress. The audits should use the policy objectives, regulatory requirements and operational guidelines of the organization as the criteria for evaluation.

Environmental audits determine the degree to which programs and specific projects meet these criteria. As well, the audits will identify activities that do not comply, or which could lead to non-compliance. The audits should not only determine whether environmental problems exist but also, if problems do exist, help establish priorities for correcting them.

Environmental audit programs for specific properties or facilities should be based on a standardized audit protocol, designed to examine the issues that relate to the activities of the organization being audited. Such an audit protocol will ensure that all of the environmental concerns of the organization are examined and assessed, while also ensuring that the audits are conducted consistently in different locations on different dates.

The audit program will provide information consistently, to allow effective comparison with previous reports. This will help the organization identify problems that are specific to one location. As well, the organization can track its progress in correcting environmental problems over a period of time, if it conducts audits regularly. The frequency of audits will depend on the policy and the management requirements of the organization. Many organizations find a three- to five-year cycle satisfactory.

A truly effective audit program will not be limited to identifying problems and describing the general conditions of a site. It will also establish a priority ranking of the concerns or problems identified, providing a basis for implementing corrective measures. The audit should help organizations incorporate all of the concerns identified by the audit into a facility's long-term operational plan and its budget. If organizations follow this approach, then the environmental audit will become an indispensable tool for meeting the organization's goals and objectives as defined in its sustainable development strategy and environmental policy.

An additional benefit of using a standardized protocol to conduct environmental audits is that the results of individual audits done at specific sites can be collected, compared and analyzed on a regional or national basis. In this way, organizations can identify systemic problems and take corrective action.

1.(b) Operation and Maintenance

Refer to the Operation and Maintenance chapter for more details on conducting environmental audits.

1.(c) Project Planning and Site Selection

Most projects that are subject to the exercise of a power, duty or function under section 5 of the *Canadian Environmental Assessment Act* (CEAA) must be assessed for their effect on the

natural environment before being allowed to proceed. This assessment must be conducted in accordance with the Act and its regulations"as early as is practicable in the planning stages of the project and before irrevocable implementation decisions are made." Whenever more than one available site is under consideration, site selection must be included as part of the environmental assessment under the CEAA so that it will be defensible on environmental grounds.

2. Guidance

The purpose of an environmental assessment under the CEAA is to identify and evaluate both the negative and the positive environmental implications of a proposed project before irrevocable decisions are made to proceed with the project.

Initially, it must be determined if the proposal is a 'project' as defined by the Act.

Under the CEAA, a project can be either

(a) a proposed undertaking in relation to a physical work, such as constructing, modifying or decommissioning (e.g. dredging that is required to place piers related to the construction of a bridge); or

(b) a proposed physical activity, not relating to a physical work, that is listed in the CEAA Inclusion List Regulations (e.g. the annual dredging of a shipping channel).

If the project corresponds to the definition in the previous paragraph, then it is not excluded from environmental assessment under the CEAA Exclusion List Regulations.

If the project is not excluded from assessment, then it must be determined whether a federal authority - including a minister, an agency of the Government of Canada or any departmental corporation set out in schedules I or II of the *Financial Administration Act* - is:

a. the proponent of the project;

b. funding the project through the proponent or is providing financial assistance to the proponent;

c. selling, leasing or otherwise disposing of federal lands or an interest in federal lands, so that the project can be carried out; or

d. issuing, or is recommending that the Governor in Council issue, another form of authorization under a statutory or regulatory provision that is listed in the CEAA Law List Regulations.

These four scenarios are commonly referred to as CEAA 'triggers.'

When a project meets one of the conditions described in the previous paragraphs (a), (b), (c) and (d), an environmental assessment of the project must be done to comply with the CEAA.

If the project corresponds to one of the projects listed in the Comprehensive Study List Regulations under the CEAA, then all federal decisions that would permit the project to proceed must be withheld until the required assessment is completed.

The obligation to ensure that an environmental assessment is conducted under the CEAA lies with the 'responsible authority.' The responsible authority is a federal authority that is involved in one of the CEAA triggers. It can ask a third party to conduct the environmental assessment and prepare the report. However, it cannot delegate any decision related to one of the CEAA triggers.

There are several situations where more than one federal authority may be the responsible authority for the same project. To ensure that CEAA requirements are met, all potential responsible authorities must discuss and together determine the manner in which to perform their duties and functions under this Act and its regulations.

The CEAA outlines various mechanisms, such as a public registry, public consultation on environmental screenings, a comprehensive study report, and public hearings before a mediator or a review panel, to ensure that there will be an opportunity for public participation in the environmental assessment process.

When projects include more than one site option, each site should be compared against consistent, identical environmental criteria and against the project requirements to determine which site is the most suitable from an environmental point of view. This will form part of the overall environmental assessment for the project.

If the results of the environmental assessment show that the potential adverse environmental effects of the project will be insignificant, and that there is no public concern, then the federal authority may exercise its power, duty or function.

However, if the effects are likely to be significant or public concerns are substantial, the federal authority can either refuse to be involved in one of the CEAA triggers or can refer the project to public review before a mediator or panel.

Based on past environmental assessment experience, most federal projects that must be assessed under the CEAA will be dealt with by means of an environmental screening. Comprehensive studies are not often required, and public reviews by a mediator or a review panel, although highly publicized, are very rare.

3. References

Legislation

***Canadian Environmental Assessment Act* (CEAA)**

Regulations
Law List
Inclusion List

Comprehensive Study List
Exclusion List
Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements
Federal Authorities Regulations

This Act, along with the first four listed regulations, was proclaimed into law on January 19, 1995, and replaces the *Environmental Assessment and Review Process Guidelines Order* of 1984.

Since the CEAA is law, the process outlined by the Act must be followed. The purpose of an environmental assessment under the CEAA (in most cases, an environmental screening) is to evaluate both the negative and positive environmental implications of a proposed project, before irrevocable decisions to implement it are made. While there are no penalties incorporated into the CEAA legislation, failure to conduct the required environmental assessment could allow an interested third party to obtain a court injunction against proceeding with the project.

***Canadian Environmental Protection Act* (CEPA)**

The CEPA, proclaimed into law in 1988, is designed to protect Canadians from various forms of pollution caused by toxic substances. It provides the power to regulate the entire life cycle of toxic substances.

A person or organization whose property is affected by the release of a toxic substance in contravention of the CEPA regulations is required to report the matter to an inspector. Costs related to measures required to prevent further release may be recovered against the landowner, to the extent of the owner's negligence in relation to the release.

Also, if contamination is occurring on a property then there is the potential for liability even if that property has just been acquired and the contamination occurred before the acquisition. Penalties for an infraction under the CEPA can be as severe as fines of $1,000,000 per day and/or imprisonment for five years. When a person in contravention of the Act "shows wanton or reckless disregard for the lives or safety of other persons and, thereby, causes bodily harm or death," that person may be prosecuted under the Criminal Code.

Auditor General Act

Amendments to the *Auditor General Act* have created the office of a Commissioner for the Environment and Sustainable Development within the Office of the Auditor General.

Fisheries Act

The *Fisheries Act* is concerned with the protection of fish and fish habitat, and use of fish. Any activity or physical work that may or does negatively affect any of these can result in charges being laid under the *Fisheries Act*.

The *Fisheries Act* has penalties for violations of the Act, including requirements to repair damage to the habitat, substantial fines and/or prison terms resulting in a criminal record. Convictions for multiple offences involving introducing deleterious substances into a fish habitat can be as severe as fines of $1,000,000 per day and/or three years in jail.

Migratory Birds Convention Act

The *Migratory Birds Convention Act* commits Canada to protecting the special habitats and spaces used by migratory bird species in North America. The Act prohibits the deposit of "oil or oil wastes or any other substance harmful to migratory birds, in any waters or any areas frequented by migratory birds." Mitigation measures must be incorporated into any project that may cause this result.

Policy

Treasury Board Risk Management Policy

"It is government policy to identify, and reduce or eliminate, risks to its property, interests and employees, to minimize and contain the costs and consequences in the event of harmful or damaging incidents arising from those risks, and to provide for adequate and timely compensation, restoration and recovery."

Risk management applies to all aspects of government operations, including hazardous materials and pollution. It must be part of a sound and complete project plan.

Treasury Board Guide to Monitoring Real Property Management

Organizations must fully assess the life cycle costs of each investment decision, including costs of acquisition, operation, maintenance, leasing and fit-up, renovation, divestiture and restoration; other costs related to the real property accountability framework (such as those incurred to preserve heritage buildings, to meet accessibility standards and to preserve the environment); direct and indirect costs of disposing of the property, such as realty fees, survey fees and decontamination costs; and grants in lieu of taxes.

Organizations should always be aware of the effect that their use of real property has on the environment. Government policy requires organizations to acquire, use and dispose of real property in a manner consistent with the principle of sustainable development.

Treasury Board Real Property Environment Policy

It is government policy to acquire, use and dispose of real property in a manner consistent with the principle of sustainable development. The Government of Canada has also made a commitment to implement a code of environmental stewardship, which affects some aspects of real property management.

Advisory Publications

The Responsible Authority's Guide to the Canadian Environmental Assessment Act

Canadian Environmental Assessment Agency

Sustainable Development Strategy, Department of Justice, December 1997

Acquisition and Disposal

---

1. Environmental Considerations

When acquiring or disposing of property through purchase, lease or sale, federal government departments and agencies must comply with Treasury Board policy, as well as with the sustainable development initiatives of the federal government.

On entering into such transactions, the organization must first determine the environmental condition of the subject property and establish whether it is, or can be made to be, environmentally compatible with its intended use. It must do so to avoid assuming potential environmental liabilities, in the case of acquisition, or the costs generated by such liabilities, in the case of disposal.

Before entering into a property transaction, an organization should conduct a property transfer assessment to establish whether any contamination exists.

Initially, this process will normally involve a document search and a review, supported by interviews with key people with knowledge of the property and obtain air photo analysis. This will confirm current and past ownership and the uses of the property. Depending on the results of the document search and interviews, the organization may make site visits to carry out an environmental site assessment for the property. This assessment will determine whether there is a need to investigate the situation further using sample collection and analysis.

When the custody of a property is being transferred from one government organization to another, there is not the same requirement to carry out a full environmental site assessment. However, the disposing organization must inform the acquiring or receiving organization of any conditions known to it.

There are benefits to both parties conducting an environmental site assessment. For the disposing organization, this will establish the state of the property at the time of transfer, so that any subsequent contamination will then clearly be the responsibility of the acquiring or receiving organization. For the acquiring organization, the assessment will establish what the organization is acquiring or purchasing, including any identified environmental liabilities, which could substantially affect the value of the asset.

1.(a) Purchasing

The results of the site assessments will help ensure that the departments or agencies involved are environmentally and fiscally prudent in making their property acquisition decisions.

If the organization acquiring the property is acquiring it to allow a project to be delivered, then it must also ensure that the proposed project meets the requirements of the *Canadian Environmental Assessment Act* (CEAA), as described in the previous chapter, 'Planning.'

When an organization acquires a property, it may not need to get an environmental assessment done for the proposed operation of an existing physical work. The CEAA Exclusion List Regulations exclude such operations from assessments, provided that the operation has already been assessed and approved under either the CEAA or the previous Environmental Assessment Review Process Guidelines Order.

1.(b) Leasing

A leased property should be subject to the same property transfer assessment as that applied to a purchased property, to ensure that the lessor will inherit no environmental liabilities.

For leased properties, the environmental issues may be viewed from either the custodial or the tenant perspective. Although the actual environmental issues are similar, awareness of thedifferences between these perspectives should be maintained in reviewing the descriptions in this guide.

The leasing of real property falls under section 5(1)(c) of the CEAA.

If a federal authority is leasing out a property and the lease on that property is for the purpose of allowing a project to be carried out in whole or in part, then the project must be assessed for its environmental effects. The assessment must state, in detail, what the lessee intends to do with that property. Therefore, the lessor must ask the lessee to accurately describe all related functions and activities that will take place on the property.

If an environmental assessment indicates that significant negative effects are likely to result from the functions or activities to be carried out on the property, and that these effects cannot be mitigated, then the lease should not proceed.

It is not necessary for the lessor to conduct the assessment, but the lessor must ensure that the assessment meets the requirements of the CEAA. The decision to lease must be based on that prescribed assessment report.

Similarly, if a federal authority is the lessee of a property and proposes to carry out a project on that property, an assessment of the environmental effects of that project according to the CEAA will be required before the project can proceed. Additional details on the requirements of the CEAA can be found in the previous chapter, 'Planning.'

Aside from the requirements of the CEAA, other environmentally significant issues may be addressed in the leasing contract. These may include responsibility for operating and maintaining the building or the land, or responsibility for whatever environmental damage may result from certain activities or special circumstances, such as the operation of laboratory facilities, health care facilities and the like.

The agreement should require the lessee to properly clean up any contamination that occurs during the lessee's use of the property.

The environmental obligations for a short-term leased property are ordinarily more onerous for the owner (the lessor) than for the tenant (the lessee). In long-term leases of 25 years or more, the lessor's degree of legal responsibility for protecting the environment is less clear. In these cases, the courts may place a greater obligation on the lessee than is typically applied in short-term leases.

To ensure that lessees meet their environmental obligations, lessors may include clauses in their lease agreement that require the lessee to adhere to prescribed environmental requirements.

To ensure that they are protected from liability, lessors may require access to operational records at any time, and may conduct periodic site and facility inspections and environmental audits. Lessors should always include clauses in lease contracts to permit these activities. Consult the Department of Justice Canada regarding the wording and legal implications of these clauses.

Depending on the terms of the lease, the lessor may share environmental obligations or responsibilities with the lessee, but the lessor can never fully abrogate its responsibility to protect the environment. Similarly, as a lessee, the federal government will be responsible for adhering to the environmental obligations defined by the lessor in the leasing contract.

1.(c) Licensing

Like a lease, a licence granted on a federal property may have required the prior application of the CEAA. Although the licensor need not conduct the assessment, it must review the assessment and base its decision on that report. Additional details regarding the requirements of the CEAA can be found in the previous chapter, 'Planning.'

Under federal legislation, the owner of a property (the licensor) is ultimately responsible for any environmental obligations associated with a licence on a property for any activity. Depending on the terms of the licence, the licensor may share these environmental obligations or responsibilities with the licensee, but the licensor can never fully abrogate its responsibility to protect the environment.

To meet these obligations, licensors should include clauses in their licence agreements that require the licensee to adhere to environmental requirements, including the prescribed cleaning up and disposal of contaminants.

To ensure that they are protected from liability, licensors may require access to operational records at any time, and may conduct periodic site and facility inspections. Licensors should always include clauses in licence contracts to permit these activities. Consult the Department of Justice Canada regarding the wording and legal implications of these clauses.

1.(d) Disposal

When an organization has decided to dispose of a piece of real property, it must carry out the process in an environmentally responsible manner. As well, it must identify and address all potential legal liabilities, and any resultant costs.

The basic approach for ensuring, under reasonable circumstances, that there are no unknown environmental liabilities associated with a property is to conduct a property transfer assessment, also known as an environmental site assessment, or a site audit.

One of the principal objectives of a property transfer assessment is to identify contaminants and their sources, so that responsibility for mitigating them can be assigned to the appropriate party or parties. A prescribed clean up and disposal will then be carried out, if required.

2. Guidance

General – For All Transfer Transactions

An environmental site assessment must be conducted before the acquisition or the disposal is completed so that parties can avoid assuming an environmental liability when purchasing, leasing or disposing of a property that may carry an environmental risk.

The vendor or lessor usually conducts this site assessment at its cost, but the purchaser or lessee may need to conduct it for its own protection if the vendor or lessor is unwilling or unable to conduct it.

The National Classification System for Contaminated Sites, produced by the Canadian Council of Ministers of the Environment, is a valuable tool for classifying sites according to their potential for adverse impacts on the natural environment and on human health.

The site assessment and remediation process, which is also part of a property transfer assessment, is conducted in six phases:

* site information assessment;
* reconnaissance testing program;
* detailed testing program;
* preparation of decommissioning and clean-up plans;
* implementation of decommissioning and clean-up plans; and
* confirmatory sampling and completion report.

Phase I determines the historical uses of, and activities on, the site to ascertain the potential for contamination or environmental hazard. The historical uses of, and activities on, the surrounding properties should also be identified and assessed, since contaminants can migrate from the source of contamination onto adjacent lands.

The methods used in Phase I of the site assessment process include interviewing people familiar with the property and its history. Investigators will examine any available records, such as those retained by the present and previous property owners or those on file at municipal building departments, community tax assessment offices, local libraries and air photo analysis.

If an environmental hazard is known, or if contamination has occurred and has been reported, records should be on file with provincial or federal environmental departments or agencies.

If the document review or other historical research indicates a problem, inspectors will conduct a walk-through of the property to search for and assess any physical evidence of contamination or any other environmental hazard.

If they find evidence of a possible environmental problem, then a reconnaissance testing (Phase II) and detailed testing programs (Phase III) must be carried out to determine the character and the extent of the problem.

Contaminants may include such items as:

* leaking underground or above-ground fuel oil, or other storage tank systems;
* materials or products that may contain asbestos;
* light ballasts;
* fluorescent lamps;
* electrical equipment containing PCBs;
* various toxic substances; and
* heavy metals such as lead, cadmium and mercury.

The degree of contamination will be based on such parameters as the types of contaminants and their concentrations, and on the intended land use, and will be determined by the perceived risk to the natural environment and to human health.

All federal, provincial and territorial regulations, guidelines and standards are based on the relationship between the level of contamination, which varies according to the substances in evidence, and the proposed or existing use of the land, such as for industrial, commercial, residential, or public or park land. Land used for industrial purposes is considered able to tolerate the highest level of contamination, while residential and parkland can tolerate the lowest level.

If a contaminant is identified, experienced government or private sector organizations can conduct specific assessments.

The staff of the nearest regional office of Environment Canada may be able to assist in identifying appropriate resources. Refer to Appendix A for a list of these offices.

There are situations in which natural processes will work to remediate the contamination, if given sufficient time. Determining whether contamination of a site can be naturally attenuated requires input from professional environmental specialists and should not be taken lightly. An improper decision could increase future clean up and disposal costs. Property or facility managers should get detailed guidance if they plan to 'mothball' a contaminated site.

If an environmental hazard presents a real threat to human health and welfare, or to the preservation of wildlife and the natural environment, immediate action must be taken to correct the situation.

Acquisition

If the site assessment process determines that an environmental hazard exists on the property and that a remediation program may be necessary, then the purchaser or lessee must determine what action should be taken, if it still wishes to acquire the property. If appropriate, it may consult designated staff of Environment Canada.

Since the next three phases (IV, V and VI) of the site assessment process can be very time consuming and expensive, the purchaser or lessee will have to carefully consider whether the need for the subject property warrants this additional time and cost.

The purchaser or lessee may wish to proceed with the acquisition if the contaminated land is to continue to have a similar land use, and if existing contamination has not migrated, is predicted not to migrate and is not a threat to human health or to the natural environment.

It would be prudent, however, to keep and file a record, signed by the vendor or lessor, of the environmental situation on site at the time of acquisition. In these cases, it is always advisable to consult with legal services staff to determine the potential for future liability and ways to reduce or avoid liability.

The acquisition of contaminated land can be a risky venture, especially if remediation is not to be carried out. Contaminants may migrate over time, and remediating contaminated groundwater can be very costly. Also, if the site is not remediated, it could be difficult to sell later.

The federal lessee should make sure that it will not be held liable for existing problems or defects and that it will be responsible only for damages or impacts caused by its own occupation of the site.

When negotiating a lease or licence contract, parties must specifically address potential environmental issues and expressly state the responsibility for their management.

Environmental issues that parties may address, depending on their relevance, include:

* the transportation, handling and storage of toxic and hazardous substances;
* the management of hazardous waste;
* the management and storage of PCBs;
* the management, phase-out and storage of CFCs and HCFCs;
* the management - including reduction, reuse and recycling - of solid waste;
* site contamination;
* water conservation; and
* uncontrolled releases of pollutants into the air, water or land.

Where the lessee or licensee is responsible for property management and, particularly, for an operation on the property that clearly has environmental risks - such as a fuelling station, repair shop or bulk handling facility - then the lessor or licensor should retain the right to inspect the operation, to review the maintenance records, and/or to conduct periodic site and facility inspections at any time. The conditions and circumstances under which these rights are to be exercised should be clearly stipulated in the contract.

The contract should outline procedures for handling any concerns that come to light after a review or inspection. The contract should explicitly state the responsibilities of the respective parties or detail a process for establishing environmental responsibility.

Disposal

Before disposing of a property, the federal authority should make reasonable inquiries regarding the purpose for which the property is being purchased from the Crown. Refer to the Guidance section in the previous chapter, 'Planning,' for a more detailed discussion of the application of the CEAA process.

When a federal authority disposes of a property, an environmental assessment under the CEAA will be required if all of the following situations apply:

* the disposal is for the purpose of enabling a project to be carried out, in whole or in part;

* the details of the project are known, or can reasonably be discovered, at the time of disposal; and

* the project is not excluded from assessment for emergency reasons (unlikely) or pursuant to the CEAA Exclusion List Regulations.

Transfers of administration and control, authorized by the Governor in Council pursuant to sections 16(1)(e) and 16(1)(g) of the *Federal Real Property and Federal Immovables Act*, are not subject to the CEAA. However, Treasury Board real property policy limits use of section 16(1) to special circumstances.

When disposing of a property, the environmental condition of the property should be investigated. An environmental site assessment should be conducted to determine whether there are any conditions that may constitute an environmental hazard. Such conditions may include old lead paint finishes, the presence of asbestos, and soil contaminated with petroleum products, PCBs and other toxic materials.

Refer to Appendix A for a list of offices of Environment Canada. Staff there will be able to identify organizations able to provide such assessment services.

If the environmental site assessment shows that there is an environmental hazard that requires remediation, then the organization should discuss the relative merits of correcting the situation before the property is transferred versus negotiating with the potential purchaser to determine who should conduct the remediation.

Should the purchaser agree to carry out the remediation work, the vendor should consider the potential cost of the required remediation work. The vendor could then deduct this cost from theselling price of the property, or pay separate compensation to the purchaser. In either case, the vendor should always consult legal services staff.

The risks attached to a potentially contaminated property should also be taken into account when establishing a fair market price for that property. Sometimes, the cost of remediating a property will result in a zero or a negative market value. When this is the case, vendors may also consider providing compensation to the acquiring party to cover the remediation costs.