

THE CONTAMINATED SITES REMEDIATION ACT  
LOI CONCERNANT L'ASSAINISSEMENT DES LIEUX CONTAMINÉS

**ORDER/ORDRE**

Order No./N° de l'ordre : CEC2018-01

Issue Date/Date de l'ordre: September 18, 2018

In accordance with The Contaminated Sites Remediation Act (C.C.S.M. c.205)/  
Conformément à la Loi concernant l'assainissement des lieux contaminés (C.P.L.M. c. 205)

THIS ORDER IS ISSUED TO:/CET ORDRE EST DONNÉ À:

Hans Wieland



and


Walden Selent



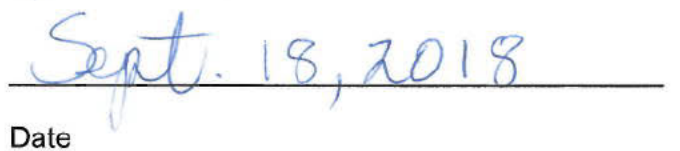
Pursuant to Section 26 of The Contaminated Sites Remediation Act, the commission orders that Hans Wieland and Waldin Selent are responsible for costs of remediation of 14 Shilo Rd. in Shilo, Manitoba and apportions responsibility for remediation of the site as follows:

1. Hans Wieland is responsible for 36% of the costs of remediation.
2. Waldin Selent is responsible for 4% of the costs of remediation.
3. Responsibility for 60% of the costs of remediation are unassigned to any party.

The costs of completing a required Remediation Plan shall be included in the costs of remediation.



CHAIR



Date

cc: Director  
Darrell Vansteeland  
Usam Akram



IN THE MATTER OF  
The Contaminated Sites Remediation Act  
and  
IN THE MATTER OF  
14 Shilo Rd., Shilo, Manitoba

**Hearing Panel**

Aurelie Mogan, John Neufeld and Serge Scrafield (Chair)

**Preamble**

On April 6, 2016, pursuant to section 23(2) of *The Contaminated Sites Remediation Act* (“the Act”), the Clean Environment Commission (“the commission”) received a reference from the director (“the director”) in Manitoba Conservation and Water Stewardship (now known as Manitoba Sustainable Development and hereinafter referred to as “the department”) to apportion responsibility for costs of remediation of an impacted site among the potentially responsible parties.

The impacted site is commonly known as 14 Shilo Rd., Shilo, Manitoba (“the site”).

In order to meet timelines imposed by the Act, a hearing was scheduled for May 30, 2016 but was adjourned until further information could be received from the department.

On May 17, 2017, an updated file was received but still left some information gaps. Requests for further clarification were made to the department and responses were received in due course.

Ultimately, the hearing panel felt that the matter could be determined through documentary records and written submissions and therefore a public hearing was not necessary. Written submissions were requested from the parties and received in a timely fashion, with the exception of Hans Wieland who has never responded to any correspondence, either from the department or the commission.

**Summary**

The site was designated as an impacted site under section 7.1(1) of the Act due to the type and level of contamination found on the property. The potentially responsible persons as named by the director under section 10(1) of the Act were Hans Wieland (“Wieland”), Waldin Selent (“Selent”) and Darrell Vansteeland (“Vansteeland”).

Pursuant to section 26 of the Act, the commission determines that Wieland and Selent should be responsible for a portion of the costs of remediation of the site as follows:

1. Wieland is responsible for 36% of the costs of remediation.
2. Selent is responsible for 4% of the costs of remediation.
3. The balance of responsibility (60%) is unassigned.

**Background**

A 2015 investigation of the site found the presence of both soil and groundwater contamination. A number of steps ensued, culminating with the director’s referring the matter to the commission pursuant to section 23(2) of the Act.

In summary, the relevant steps were as follows:

1. April 22, 2015, the director advised Vansteeland that:
  - i. The site had been designated as impacted under section 7.1(1) of the Act.
  - ii. Vansteeland was required to submit a remediation plan.
  - iii. Vansteeland could make application for determination of responsibility under section 7.3(1) of the Act.
2. April 28, 2015, legal counsel representing 5265739 Manitoba Ltd. (a company owned by Vansteeland) applied for a determination of responsibility and requested that the director:
  - i. name the previous owner of the property, Selent, as an additional person responsible for remediation
  - ii. apportion responsibility for remediation on an 80/20 basis between Selent and 5265739 Manitoba Ltd.
3. May 14, 2015, legal counsel for Selent advised the department that Selent had removed the older petroleum storage tanks from the site immediately after taking ownership in 1986 and that it appeared that the contamination was caused by the registered owner immediately prior to Selent, namely C & A Services Ltd. (a company owned by Wieland).
4. August 18, 2015, the director designated Wieland, Selent and Vansteeland as persons potentially responsible for remediation of the site under section 10(1) of the Act and invited them to propose a remediation plan, or to comment on any remediation plan proposed by another potentially responsible person.
5. March 29, 2016, legal counsel representing 5265739 Manitoba Ltd., pursuant to section 23(1) of the Act, requested that the director refer the matter to the commission for apportionment, noting that Wieland was not cooperating with the other parties in their efforts to resolve matters.
6. April 6, 2016, pursuant to section 23(2) of the Act, the director referred the matter to the commission regarding apportionment of responsibility for the costs of remediating the site among the potentially responsible persons.

### **Relevant Facts**

1. The site was used for retail fuel sales from 1959 to 1976 under various ownerships. The department advised that all such owners of the site prior to March 15, 1976 are deceased.
2. C & A Services Ltd. acquired the site March 15, 1976 and sold it June 9, 1986. The petroleum products storage tanks and associated pumps remained on the site throughout this period. The evidence revealed that, during this period, Wieland operated a leasing business on the site and utilized the tanks and pumps with that business.
3. According to department records:
  - i. use of the tanks was discontinued as of Jan 1, 1984
  - ii. the department issued an abandoned tank order on September 26, 1986
  - iii. all existing tanks had been removed as of June 1, 1987
4. Selent purchased the site June 9, 1986.
5. Two new underground fibreglass reinforced plastic tanks were installed for Selent in March, 1995 and were registered with the department. On June 5, 1995, the fuel storage system was pressure tested by a licensed technician and met criteria established by government standards. July 17, 1995, the department acknowledged the receipt of the test results and found that all necessary documentation had been

received, that all inspections had been completed and that the installation was considered to be complete and in compliance with M.R. 97/88R (The Storage and Handling of Gasoline and Associated Products Regulation).

6. May 26, 2006, a licensed engineer produced a limited phase II environmental assessment of the site. This assessment had been authorized by Selent. The results indicated that none of the tested soil samples exceeded government recommended guidelines for benzene, toluene, ethylbenzene, xylene (BTEX) or petroleum hydrocarbon contamination in soil. Nor was any contamination beyond government recommended guidelines found in an onsite drinking water well. The test holes associated with this assessment were drilled to a maximum depth of 6.1 meters.
7. 5265739 Manitoba Ltd. purchased the site from Selent June 23, 2006 and continued to operate the petroleum storage facility, including the current tanks.
8. The current fuel storage system was tested again on July 27, 2011 and March 11, 2015 and in both cases passed the mandated standards.
9. April 14, 2015, legal counsel for 5265739 Manitoba Ltd. provided the department with a copy of a phase II environmental assessment of the site. This report, authored by an environmental scientist and reviewed by a professional engineer and qualified professional in environmental site assessment, indicated concentrations of contaminants in the soil and groundwater exceeding government guidelines. In this study, boreholes were drilled to a maximum depth of 13.7 meters. Exceedance of the petroleum hydrocarbon guideline was found in soil in one borehole at a depth of 11.4 meters. Exceedances of guidelines for Xylenes and petroleum hydrocarbons were found in the ground water which was encountered at depths between 10.58 and 10.85 meters below ground surface. The 2015 assessment also contained an opinion that, "during the 2006 environmental site assessment, boreholes were not advanced to a depth sufficient to obtain groundwater samples in order to assess groundwater quality".
10. Akram Retail Inc. purchased the property from 5265739 Manitoba Ltd. on April 28<sup>th</sup>, 2015. June 13, 2016 the director ordered Akram Retail Inc. to conduct an environmental site assessment.

### **Position of the Parties**

1. Vansteeland, as conceded by his counsel, "owned and controlled" 5265739 Manitoba Ltd. ("526"), the registered owner of the site from 2006 to 2015. It is argued that 526 (and by implication, Vansteeland) should not be held responsible for the contamination of the site as leak tests in 2011 and 2015 did not reveal any leaks. It is therefore almost certain that the contamination preceded the installation of the current tanks in 1995. In its submission to the commission, 526 resiled from its position that it would be willing to accept a share of the costs.
2. Selent's position, as stated in his submission, is that neither he nor 5265739 Manitoba Ltd. caused the contamination at the site. Selent suggested that 90% of the liability be ascribed on the basis of the "polluter pays" principle and the remaining 10% apportionment be allocated to him and 5265739 Manitoba Ltd. as a token amount having regard to some acknowledgement that they had benefitted from using the land.

Selent also contends that the previous owner, Wieland, continued operating the fuel delivery system to service his vehicle leasing business as well as retail sales of fuel.

3. Wieland has not communicated with the department. Wieland has also refused to accept any communication from the commission.
4. The director, in the department's submission to the commission, suggests that 90% of the costs of remediation be assigned to the person who owned 14 Shilo Road, Shilo, prior to 1986 (Hans Wieland) and that the remaining 10% be split between Vansteeland and Selent. The director also recommends that the cost of completing the required Environmental Site Assessment and Remediation Plan should be included in the total cost.

### Responsibility of Wieland

1. The evidence reveals that:

- i. The main building on the site, from a photo taken some time during the period that the registered owner of the site was C & A Services Ltd. (1976-1986), carried signage reading "Hans Wieland Leasing and Rentals".
- ii. Pumps for dispensing petroleum fuel are visible in the foreground of the same photo.
- iii. The undisputed position of the department is that the petroleum storage facility was operated by Hans Wieland in his personal capacity. Department records show the former petroleum storage facility registered under Hans Wieland Leasing. As previously indicated Wieland did not provide comment on any information provided by the parties.
- iv. The former petroleum storage tanks remained on the site for all of the period that the site's registered owner was C & A Services Ltd (1976-1986).
- v. A record from the Manitoba Companies Office shows that the address for C & A Services Ltd in 1988, at the time of the last renewal of its registration with the Office, was the address of Hans Guenther Wieland in Neepawa, Manitoba.

2. Given the foregoing, the panel finds, on a balance of probabilities, that:

- i. Wieland operated a business on the site, with a petroleum storage facility including associated tanks and pumps.
- ii. Wieland should therefore be held responsible for remediation of the site under section 9(1)(j):

*"9(1) Subject to subsections (2) and (3), the following persons may be held responsible for the remediation of a contaminated site:*

*...*

*(j) a person who*

*(i) contaminated the site, or*

*(ii) being in a position to influence, control, direct or manage another person, directed, required or authorized any act or omission by which a person contaminated the site;"*

3. The panel is also of the view that Wieland could be held responsible for remediation of the site under 9(1) (b) and (d):

*“9(1) Subject to subsections (2) and (3), the following persons may be held responsible for the remediation of a contaminated site:*

*...*

*(b) a person who was an owner or occupier of the site at a time when the contamination occurred or at any time thereafter;*

*...*

*(d) a person who owned or had possession, charge or control of a contaminant of the site immediately before or at the time of its release;”*

## **Findings**

1. The 2015 Environmental Site Assessment found no evidence of contamination of soil near the bottom of the current underground tanks which were installed in 1995. No evidence was presented suggesting migration of contaminants from these tanks to the depths where contaminants were found (exceeding 10 meters below the ground surface). This, taken together with the positive pressure test results at three different times between 1995 and 2015, suggests that the fuel storage system was operating within accepted standards during this period. The commission concludes that the contamination at depths exceeding 10 meters was the result of activities prior to 1995 when the current tanks were installed.
2. The department issued an abandoned tank order September 26, 1986. Selent asserts that he removed the older tanks in 1986 upon acquiring the site or shortly thereafter and that the tanks were well beyond their lifespan. In a December 8, 2015 submission to the department, Selent describes the tanks as rusted. The department record confirms that all tanks had been removed as of June 1, 1987. In the absence of any other firm date having been provided, the commission will use June 1, 1987 as the date as of which it is conclusive that the older tanks had been removed.
3. In removing the older tanks, Selent presented no evidence that the surrounding soils were tested for contaminants or that the removal of the tanks was done in a way to minimize spillage of any remaining petroleum products into the soil. No evidence was submitted by the department that officials had approved the manner of removal of the tanks or inspected the site following their removal. The commission concludes that there was no further contamination of the soil after the older tanks were removed but that there could have been some petroleum products spilled into the soil during tank removal.
4. Based on (1), (2) and (3) above, the commission concludes that the contamination of the site occurred prior to June 1, 1987. Given the lack of records related to the handling of petroleum products prior to June 1, 1987, the commission holds that contamination occurred throughout the period during which a petroleum storage facility was on the site with the older tanks being part of the operation. This period began, according to department records, in 1959 and ended on June 1, 1987 when the department confirmed that the tanks had been removed.
5. With no evidence to the contrary from Wieland or others, when taken with the matters set out in the previous paragraph, the commission holds that owners and operators of the petroleum storage facility prior to June 1, 1987 are collectively responsible for the contamination.
6. With no inventory or inspection records or other evidence to assist in determining if the rate of contamination was affected by the age of the tanks in question or by other operational factors, the commission assigns responsibility to each owner, occupier

or operator (including Wieland for the reasons given) in proportion to the number of years that they owned the site and operated a business on the site.

7. Based on information received from the department, Wieland was personally responsible for the older petroleum storage facility for 10 years (1976 to 1986). The owners prior to March 15, 1976 collectively owned and were responsible for the older petroleum storage facility for 17 years (1959 - 1976).
8. The commission holds that Selent should be held responsible for a share of the contamination due to:
  - i. the older tanks remaining in the ground for up to a year after his ownership
  - ii. the lack of evidence that spillage was avoided during the removal of the tanks
  - iii. the absence of testing of the surrounding soil as part of the removal

The commission determines Selent's share of the responsibility to be equivalent to one year of operation until the department confirmed on June 1, 1987 that the tanks had been removed.

9. Therefore, of the 28 years of the older petroleum storage facility being on the site prior to June 1, 1987, Selent was responsible for the facility for one year or 4% of that period, Wieland was responsible for 10 years or 36% of that period and owners prior to 1976 were responsible for 17 years or 60% of that period. The owners prior to 1976 were not named as potentially responsible parties.

### **Decision**

The panel determines that:

1. Hans Wieland is responsible for 36% of the costs of remediation.
2. Waldin Selent is responsible for 4% of the costs of remediation.
3. The balance of responsibility (60%) is unassigned.

The costs of completing the required Remediation Plan shall be included in the costs of remediation.

DATED this day September 18, 2018  
MANITOBA CLEAN ENVIRONMENT COMMISSION



Serge Scrafield, Chair  
On behalf of the Hearing Panel

### **Comment**

The commission notes that the 2015 environmental site assessment drew the inference that the groundwater flow at the site was towards the north-east. Google maps indicates the presence of residential properties to the north-east across the road. The commission is not aware of the source of drinking water for these properties but would suggest that this issue be investigated as part of the next site assessment to ensure that there is no risk to public health from potential migration of contaminants.