Environmental, Health and Safety Law for School Boards

PART ONE (last week)

Some general concepts of Environmental and Health and Safety laws applicable to school boards.

PART TWO (this week) : Some Specific Areas of concern

Acquiring and Disposing of Real Property
Underground Storage Tanks
Indoor Air Quality
Drinking Water
Construction work on a school property
Asbestos Regulation
Control orders

7. (1) When the report of a provincial officer contains a finding that a contaminant discharged into the natural environment is a contaminant the use of which is prohibited by the regulations or is being discharged in contravention of section 14 or the regulations, the Director may issue a control order directed to,

(a) an owner or previous owner of the source of contaminant;
(b) a person who is or was in occupation of the source of contaminant; or
(c) a person who has or had the charge, management or control of the source of contaminant.

Environmental Protection Act, R.S.O. 1990 c.E.19

(emphasis added)
Acquiring and Disposing of Real Property

Key messages from s.7 of the EPA:

- Selling a contaminated site does not absolve the seller from liability
- Tenants can be liable as much as owners
- Persons “in charge management or control” can include Directors and Board trustees
- The courts have confirmed there is no obligation for the ministry to use this power “fairly”. It does not matter whether or not the person being ordered was the actual polluter.
How does one minimize the liability attached to contaminated land?

Prior to acquisition
- Phase I and Phase II investigations

During ownership/control
- Record Keeping

Prior to disposal
- Phase I and Phase II investigations
Minimising liability for contaminated land

Due diligence should lead to accurate information about the state of the lands

Contractual protections might be possible between buyer and seller

Remediation advice will be required
Underground Storage Tanks: a persistent problem

- Used for storage of heating fuel in older properties
-Leaks can be hard to detect
- TSSA and MOECC may need to be involved
- Unused tanks cannot be abandoned in place
- Contamination will often be below building footprint
Underground storage tank due diligence

- Tank must be registered with TSSA
- Fuel contractor should also be registered with TSSA
- Regular program of maintenance and inspection
- Proper logs of fuel usage
- Phase II investigation will likely be required before acquiring or ceding ownership or control of any property with a UST
Indoor Air Quality

- Ventilation
- Contamination (indoor, outdoor, biological)
- “Sick Building Syndrome”

- No legislated standards for indoor air quality in Ontario
  - Provincial and federal IAQ guidelines
  - Engineering Standards (eg ASHRAE, CSA)
Mould

- Common in structures prone to water ingress (portables)
- Acute reactions. Not usually long term.
- But still considered a health concern by most regulators
- OHSA requires employers to “take every precaution reasonable in the circumstances for the protection of workers.”
- Detailed health and safety precautions may need to be followed for any abatement activity
Drinking Water

- Mandatory use of accredited laboratories for testing of drinking water
- Obligation to report all adverse test results
- Certification of operators of drinking water systems
- Significant penalties for violators
Most common drinking water concerns

- Biological – rural areas, private water supplies
- Lead – older, urban areas

- Regular testing program will be needed for biological concerns
- Minimum one time lead testing advisable
Construction Work on School Property

- Myriad of potential regulatory requirements
  - Training; certification; registration; PPE; site isolation; transportation; disposal etc

- Delegation of permitting and regulatory responsibility to a subject matter expert

- Common Problems:
  - Roof repair; pool maintenance and repair; ceiling tiles; drywall; work at heights
Asbestos O.Reg 278/05

- Replaced 1982 regulation – one of the first regulated designated substance under the OHSA
- Applies to construction workers, building maintenance and custodial workers
- Defines “ACM” (Asbestos Containing Material)
- Requires building owners with suspected ACMs to develop an Asbestos Management Program
- Special rules apply for demolition, alterations and repairs
Asbestos regulation

- Notification obligations
  - MOL
  - Owner
  - Contractor
  - Joint Health and Safety Committee / H&S Rep
- Training
Due Diligence - recap

Almost all obligations under Environmental and health and Safety laws allow for a due diligence defense. ie:

Perfection is not required. Reasonable efforts to avoid the harm in question if accepted as such by the courts will constitute a defence.

Due Diligence does NOT remove responsibility to comply with any compliance orders. While many of these orders can be appealed on technical grounds, the obligation to comply can often continue even during the appeal process.
Due diligence - typical components

- Broad policies from owners/trustees
- Specific policies and operating procedures developed by management
- Training of all appropriate workers
- Record keeping
- Supervision
- Follow up
- Consequences for non-compliance
“….under the law as it now stands in Canada, no matter how reasonable a mistake of law may be, it cannot … serve as a valid defence in the case of a strict liability offence…”

Supreme Court of Canada

(La Souveraine, Compagnie d'assurance générale v. Autorité des marchés financiers, 2013 SCC 63)