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### **BUSINESS GUIDE TO ENVIRONMENTAL LAW**

**David Estrin**

**Release No. 1, July 2024**

*Business Guide to Environmental Law* addresses business liability regarding Canadian environmental law. It is designed to aid legal counsel as well as senior executives in dealing with legal situations regarding the environment. The topically organized presentation of issues includes environmental issues in real estate transactions, directors' and officers' liabilities, transportation of dangerous goods, extended producer liability, labelling, advertising, patents and trademarks.

### **What's New in this Update:**

This release features updates to the legislation and commentary in Chapters 1 (Toxic Real Estate: Environmental Law Issues in Property Transactions), 7 (Extended Producer Responsibility, Packaging, Marketing, and Advertising), and 10 (Climate Change: Legal and Financial Risks, Duties and Strategies for CEOs, Directors, Investors and Lenders).

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## Highlights

**§ 1:61. Post-Remediation Certificates of Compliance**—See a decision by the British Columbia Court of Appeal, *Victory Motors (Abbotsford) Ltd. v. Actton Super Save Gas*, 2021 CarswellBC 871, where the Court of Appeal overturned the trial court’s allocation of the degree of responsibility for the costs of remediation by the parties that was based on the “benefit” of certificates of compliance issued by the Ministry of Environment. In *Victory Motors*, both the source property for the contamination (*Victory Motors*) and the property to which the contamination had migrated (*Jansen Industries*) received a risk-based certificate of compliance following remediation that allowed continued use of the properties for commercial purposes without having to remove the contaminated soil. Additionally, the certificate of compliance for *Victory Motors* did not require *Victory Motors* to remove the underground storage tanks. The trial judge allocated 45% of responsibility to *Victory Motors* and 35%, 15%, and 5% respectively to former gas station operators. The trial judge’s decision was appealed. The British Columbia Court of Appeal agreed with *Victory Motors*’ submission in finding that the trial judge had properly rejected the application of section 35(2)(a) of the *Contaminated Sites Regulation* but then incorrectly applied section 35(2)(f) to increase the degree of *Victory Motors*’ liability.

**§ 1:166. Generally**—In *Jansen Industries 2010 Ltd. v. Victory Motors (Abbotsford) Ltd.*, 2019 CarswellBC 2829, there was an action to determine responsibility for remediation costs under the *Environmental Management Act* by the owner of a property that had been contaminated by gasoline stations operating on the site (*Victory Motors*) and the owner of a property to which contamination on the *Victory Motors* site had migrated (*Jansen Ltd.*). *Victory Motors* also sought damages against *Super-Save*, one of the gasoline station operators for “stigma,” which the trial judge characterized as “the diminution in the market value of an asset because of some real or perceived defect in that asset caused by the defendant’s wrongful act.” The plaintiffs had alleged decrease of the value of their properties to potential purchases due to the contamination. The issue was not restoration to a pristine state: both properties had received certificates of compliance from the Ministry of Environment following remediation that allowed continued use of the properties for commercial purposes without having to remove the contaminated soil. Additionally, the Certificate of Compliance for *Victory Motors* did not require removal of the underground storage tanks. The trial judge rejected the plaintiff’s claims for stigma damages, finding that there was simply no evidence that the fair market value of the sites was being reduced as a result of the identified contamination and that there was no evidence that the sites could be utilized any more profitably if there was no contamination.

*A book that is directed to business people is appropriately dedicated to my parents, Hy Estrin and Goldy Hurtig Estrin, who were business partners for almost 50 years.*

*I hope that business people, whether in small enterprises such as my parents' or in multi-national corporations, will benefit from this book — and that the environment in turn will benefit from the attention and positive actions of all concerned business people.*