

**Land
development
is complicated
and full of hard
lessons...**

...especially when it comes to environmental issues.

The process is long, complex and can be unpredictable. Any environmental issues on your site can put a roadblock in your development path that could mean years of navigating lengthy review processes and frequently changing regulations.

**Good thing we have
a long history of
making the complicated
painless for developers.**

**Read on for our [Top 10
Developer Lessons.](#)**

LESSON 1:

No Certificate of Compliance = No Occupancy Permit.

The tower was built on formerly contaminated lands. The condo owners were ready to move in. The main floor restaurant was ready to open its doors. We got a last-minute call: the developer had no Certificate of Compliance. The City had just informed them that no 'CoC' meant no Occupancy Permit.

We stepped in immediately, determined the most direct route to a CoC, and were able to have the permit in place in short order. Learn the details [here](#).

**Involve consultants from
beginning to end, to
avoid surprises.**

LESSON 2:

Don't leave money on the 'water' table.

While the process is far from simple, there is money to be made in the purchase of polluted land. Contaminated sites are often offered at a discount, after all. That spells opportunity! But unseen, unexpected costs can eat into your profits.

Groundwater, for example, may be the site's real problem, and it may have moved off-site and down the block (or two).

When you are faced with the decision about whether or not to snatch up a well-priced development site, it's worth consulting an environmental lawyer. We can help you seize the right opportunities, at the right price, with the right protections built into the deal. And information will be key. For example, there is a Groundwater Management Bulletin that was published by the City of Vancouver that provides rezoning and development permit applicants with information on the process and submission requirements related to groundwater management at development sites.

The right advisor can help you see real opportunities.

LESSON 3:

The corporate veil is thin - protect yourself.

Just because your company has environmental insurance, doesn't necessarily mean that "you" do.

Are you a director or officer of a company that buys or develops land? Well, you are not the company, and the law is different for you. If the company attracts liability, you can be on the hook separately, personally, and for different reasons. Know the laws that apply directly to you and your conduct, particularly if the company buys contaminated land to develop. Environmental laws are written to hold the people who run companies accountable, not just their companies.

**Make sure you are protected -
insurance doesn't necessarily
protect directors.**

LESSON 4:

Express your inner **Sherlock** - Research your property's history.

Every site has a past - and not all are good.

One of the tricks to good due diligence is to get an early handle on the historic uses of the site. There are many past uses that can present hidden liability. For example, was there a dry cleaner on-site or even in the neighbourhood? Was a nearby historic gas station remediated to “numeric standards”? What does a neighbouring property's Certificate of Compliance really say and really mean? There are many questions like these that may need to be answered, and often go unasked.

Every site has a past - get to know yours with the help of an advisor who has been there.

LESSON 5:

It's possible for you to recover your remediation costs.

Did you know you can buy polluted land and pursue the polluter for your clean-up costs? It's true. That is the way BC law works. If you clean up polluted land, you have the right to pursue not only the polluter or polluters, but potentially others as well, for the costs you reasonably incur to clean it up. This is called a 'cost recovery action,' and under BC law this statutory action has teeth.

The principle in BC is simple. Polluters should be paying for the clean-up of contaminated lands, and those who go through the time and expense of remediation should have a statutory pathway to pursue those polluters in the most effective and streamlined way possible. The legislature in BC has done this through the *Environmental Management Act's* 'cost recovery action' provision.

**Pay it forward to the community
- bill it back to the polluter.**

LESSON 6:

The Dream Team - Getting your lawyer and construction team to **work together.**

When your lawyer and your construction team work together, things work out better for everyone. No one knows everything - but when legal experts and construction experts work together, your project will encounter fewer bumps in the road.

Consider this example: Parking is a must in most developments. How many and how deep? The more communication on parking early on, the more likely the remediation will account for potential vapour or groundwater issues impacting underground parking.

**No one knows everything
- have your **experts** talk
to each other.**

LESSON 7:

Not all Certificates of Compliance are created equal.

Certificates of Compliance. Everyone wants one, but not everyone 'gets' them. They have the same name, but they are not all the same.

More importantly, do you know the difference? Unless you really understand the conditions and limitations of a Certificate of Compliance, you can't know what you are getting (or what a seller or neighbour say they have).

The type of Certificate of Compliance you obtain and when you obtain it requires careful consideration. For example, your wish to sell the site for full value requires that you consider what buyers will want to do with the land in the future and not just what you are doing with the land now. You may be able to obtain a numeric CoC by cleaning up a hot spot now at a higher cost, and in doing so sell at a higher price in future and also avoid potential future liability should someone remediate that hotspot down the road.

Make sure you get the instruments you need when you need them.

LESSON 8:

Build a **successful** business relationship with regulators.

Cooperating with regulators is key but making sure you are being treated fairly is why you hire a lawyer. Mutual respect means fair treatment, and it must go both ways.

While the regulatory framework surrounding contaminated site development is complex, that doesn't mean it should produce toxic professional relationships.

Respect and understanding are necessary when dealing with the regulators who handle your permits and applications. Developing healthy working relationships with planning staff and other municipal, regional, and provincial authorities will help your development stay on track and achieve solutions that both satisfy legal requirements and minimize delays to development projects. They understand reasonable push-back, however, and standing up for yourself or respectfully pointing out where they have overlooked something is always okay.

Cooperating with regulators is key but making sure you are being **treated fairly is why you hire a lawyer.**

LESSON 9:

Get the dirt.

Property developers in BC move dirt – some clean and some not so much. Soil relocation rules are changing in BC. The old ‘soil relocation agreements’ will go away, and the movement of contaminated soil (and now clean soil too!) will be governed by new soil testing and notification requirements, along with penalties for failing to properly test and notify. Managing soil even within the boundaries of a site will also be addressed in these incoming changes. Prior site use will impact how the new obligations will apply, and processes will be stipulated to assist in navigating the new rules.

Suspect soils coming onto and leaving development sites have been a historic liability problem for developers. It is hoped that in the long run the new relocation rules add much needed certainty.

If you deal with soil relocation, take the time to familiarize yourself with the incoming changes. Learn more about soil relocation [here](#). Non-compliance with the new amendments can result in administrative penalties of up to \$75,000 – something no property developer wants to deal with.

There can be significant financial consequences if you don't stay up to date on changes to rules and regulations.

LESSON 10:

Finally, some help with legal fees.

Let's face it, contaminated sites remediation requires courage. Cleanup can be expensive, and the regulations are not bedtime reading. Developers want to avoid missteps, minimize exposure to claims by others, and maximize potential recovery of their costs of remediation against polluters. They will therefore often lean on lawyers with environmental expertise to guide them through remediation.

If you pay for such advice in BC, you may well be able to claim all or part of those legal fees against polluters or 'responsible persons', according to the recent case out of the Court of Appeal in [*Victory Motors \(Abbotsford\) Ltd. v. Acton Super-Save Gas Stations Ltd., 2021 BCCA 129*](#). Click [here](#) to read the full Environmental Law Case Summary. The rationale is pretty straightforward. Consultants of all kinds traditionally clean up dirty sites, and their costs are clearly recoverable under BC's *Environmental Management Act*, so why should legal consultants playing a similar role be any different?

This means getting legal advice early in your remediation project, so any potentially recoverable legal costs are properly separated and accounted for - and then claimed (on time!) - if appropriate.

**Contaminated site remediation
can be expensive.**

BONUS LESSON:

Hire Experience.

We don't promise simple - there is nothing simple about contaminated site development. But we can help you get through the tangled process and get through it efficiently.

We have the expertise and the experience to know what is required and what needs to be done to save you time and money in the long run.

We are here to help and are only a phone call away.



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