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# Ministerial Protocol – Notification of the Release of a Contaminant

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Department of Environment and Local Government



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# 1.0 Introduction

The Notification of the Release of a Contaminant Protocol describes the requirements for notification to the Department of Environment and Local Government (DELG) per Sections 4 and 5 of the *Contaminated Sites Regulation* (the Regulation), which is under the *Clean Environment Act*. This Protocol addresses notification requirements for the following scenarios:

- a) A current or active release of a contaminant;
- b) Historical contamination;
- c) Background substances; and
- d) Federal properties.

Notification regarding the release of a contaminant is also required by two other Regulations, both of which are also under the *Clean Environment Act*. Section 43 of the *Petroleum Product Storage and Handling Regulation* requires that any person suspects or detects that a petroleum product is leaking or has leaked from a storage tank system or that water or other liquid is intruding or has intruded into a system to notify the Minister (or designate) and the person responsible for the system of such leak or intrusion. Section 11(2) of the *Water Quality Regulation* requires immediate notification to the Minister (or designate) where any contaminant is emitted, discharged, deposited, left or thrown in any place such that it may, directly or indirectly, result in water pollution or increased water pollution in any waters of the Province.

This protocol will only cover the notification requirements detailed in the *Contaminated Sites Regulation - Clean Environment Act*.

# 2.0 Person Responsible to Notify

Section 4.3 of the *Clean Environment Act* outlines the persons who are required to notify the DELG of the release of a contaminant:

- (a) *The person who is the owner of or who has possession, control, or responsibility for a contaminant found at the site;*
- (b) *The person who has released a contaminant on the site or has contributed to the release;*
- (c) *The current owner, occupier or operator of the site;*
- (d) *The person who was the owner, occupier, or operator of a site at the time when a contaminant was released;*
- (e) *Any other person who, when a contaminant was present, was the owner, occupier or operator of a site at any other time;*
- (f) *The holder of a mortgage or other charge on the affected land;*
- (g) *The successor, assignee, executor, administrator, receiver, receiver-manager or trustee of a person referred to in paragraphs (a) to (e);*
- (h) *A person acting as principal or agent of a person referred to in paragraphs (a) to (g); or*
- (i) *Any site professional.*

With respect to Site Professionals, the requirement to notify as a Site Professional is considered to be limited to situations where they are currently engaged as a Site Professional by the persons listed in (a) to (h) above, along with potential site purchasers/occupiers, in order to evaluate a site for potential

contaminants or supervise or undertake the environmental assessment of a site. There may be situations where a person, referred to in (a) to (e) above, has retained a Site Professional and both become aware of the release or presence of a contaminant. If the Site Professional is uncertain if notification to the DELG has been made, then they must notify the DELG of the release or presence of the contaminant, according to Section 3.1 or 3.2 below, as appropriate.

## 3.0 Notification of the Release of a Contaminant

### 3.1 CURRENT OR ACTIVE SPILLS

Current or active spills are when any contaminant is emitted, discharged, deposited, let, or thrown in any place such that it may, directly or indirectly, result in the contamination of the environment. Examples of a current or active spill would be a leak or overflow of a petroleum storage tank, a fuel spill from a motor vehicle accident, or an accidental spill of oil or gas while working on a vehicle.

When a spill or release has occurred, the person who has control of the contaminant shall take adequate action to minimize the spread of the contaminant and shall report the spill immediately.

As per Section 4(1) of the Regulation, a notice of the release or presence of a contaminant shall be given immediately after the person giving notice learns or has reason to believe that there has been a release, or a contaminant is present.

All spills need to be reported verbally, until personal contact is made, to the DELG Regional Office closest to the incident, during regular business hours (between 0815 and 1630 from Monday to Friday). The phone numbers for the Regional Offices are listed below:

<b>Regional Office</b>	<b>Phone Number</b>
Bathurst Region 1	506-547-2092
Miramichi Region 2	506-778-6032
Moncton Region 3	506-856-2374
Saint John Region 4	506-658-2558
Fredericton Region 5	506-444-5149
Grand Falls Region 6	506-473-7744

If the release or spill occurs after-hours or the DELG can not be reached, contact Environment and Climate Change Canada's National Environmental Emergencies Centre (NEEC), until personal contact is made, at 1-800-565-1633.

Once notified, an DELG Inspector will direct any initial actions that must be taken and may visit the site, depending on the magnitude and severity of the incident. For most spill incidents, the person responsible for the contaminant will be directed to engage a Site Professional to manage the incident. The Inspector will screen the incident to determine which pathway must be followed to address the release. The release may be managed as an undesignated release, a Limited Impact Release (LIR), or under the Contaminated Sites Management (CSM) process. See Protocol 100 – Contaminated Sites

Program and Protocol 300 – Limited Impact Release for more information. Protocols 100 and 300 can be found at [Contaminated sites program \(gnb.ca\)](https://www.gnb.ca/contaminated-sites-program).

## 3.2 HISTORICAL CONTAMINATION

Historical contamination, as defined by the Regulation, means contamination that was released more than 30 days previously and is discovered during a site excavation or an environmental site assessment. In these cases, it is often unknown when or how the contaminant was released, and the presence of a contaminant is confirmed through laboratory sampling results.

When historical contamination (i.e., not a current or active spill) is discovered the person giving notice must submit a Notification of Historical Contamination (NHC) Form (CSM-FRM-100), within 30 days of becoming aware of the presence of a contaminant (i.e., receiving sample results). CSM-FRM-100 can be found at [Contaminated sites program \(gnb.ca\)](https://www.gnb.ca/contaminated-sites-program) and must be submitted to the DELG by email at [remediation@gnb.ca](mailto:remediation@gnb.ca). Any concentration of a contaminant above the laboratory detection limit must be reported to the DELG. Sample results, along with a site plan, showing the sampling locations, must be provided along with CSM-FRM-100.

If there is uncertainty whether the contamination is historical or not, notification of the release or presence of the contaminant should be made to the regional office per Section 3.1 above. If a person has reason to believe that there is historical contamination present at a site, but do not have sample results to confirm, they can report to the DELG that contamination is suspected. The person responsible for the site (e.g. property owner, site operator) would be directed to take measures to confirm if the contamination is present.

In general, all historical contamination will be dealt with through the contaminated sites management process (i.e., CSM file). The site may be designated and a CSM file opened if it is confirmed that the concentration of a contaminant exceeds the Atlantic Risk Based Corrective Action (RBCA) Tier I Environmental Quality Standards (EQS) screening criteria for human health or ecological receptors, for the appropriate site and neighbouring land use. The DELG may request additional information from the Site Professional in order to determine if a CSM file should be opened. Further information on designating a contaminated site and the CSM process may be found in Protocol 100 – Contaminated Sites Program.

## 4.0 Background Concentrations

Background concentrations can be divided in two categories. Natural background concentration is where the concentration of a substance occurs naturally in the environment, mostly due to the geological composition of the area. Anthropogenic background concentration is where the concentration of a substance, over localized or widespread areas, is the result of historical events, practices, or activities, such as fires or atmospheric emissions.

When a site is being assessed for potential contamination, if a substance (e.g., a metal) is identified at a concentration that exceeds the applicable Atlantic RBCA Tier I EQS but is considered to be background concentrations, notification of historical contamination to the DELG is still required. Along with CSM-FRM-100, the Site Professional should submit a site-specific rationale with multiple lines of evidence (e.g., sampling from outside the area of concern, surficial and bedrock geological mapping, existing datasets, appropriate statistical analysis) that supports the position that the concentration of

the substance is a background concentration. The DELG will evaluate the information and if the rationale is accepted then no CSM file will be opened for the site.

Although there may be no regulatory requirements to address substances at elevated background concentrations, these substances may present a risk to human health or the environment when present at a concentration above the applicable Tier I EQS criteria. A property owner concerned about background concentrations on their property may contact a Site Professional to request advice on possible voluntary mitigation measures to manage the potential exposure to the substance.

## **5.0 Federal Properties**

The DELG considers property ownership to be the defining factor when determining legislative authority on the property with respect to contaminated sites. Therefore, even if a property is a federally regulated property, if the property is not owned by the federal government, then it will be subject to the Regulation and the Ministerial Protocols, and notification of the release or presence of a contaminant must follow this Protocol.

In situations where there is the release or presence of a contaminant on a federally owned property, the Responsible Party (or a Site Professional on their behalf) must notify the DELG if contamination above the laboratory detection limit is confirmed at or beyond the property line between the federal property and any non-federally owned property. This would indicate that there is a potential third-party impacted property. In these cases, the DELG will determine if a CSM file needs to be opened for the contaminated site in order to ensure any impacts to a third-party property are managed in accordance with the Regulation and the Protocols.