

THE DAILY SPECIAL



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Patches of land on this 22-hectare waterfront property in North Vancouver are heavily contaminated but it is unclear who is responsible for the cleanup. The matter is now in courts.

\$117 million worth of prime toxic land

Squamish Nation hopes to develop it but first it must be cleaned up, and that's where the problem starts

BY DAVID KARP
VANCOUVER SUN

It's prime waterfront land in North Vancouver worth well over \$100 million. But it's not teeming with overpriced condos and luxury townhomes. It's sitting empty.

The federal government has a long-term lease on the 22-hectare property with the Squamish First Nation. But the land is seriously contaminated, with complex legal battles brewing over who is responsible for the cleanup.

In 1974, the federal government signed a 71-year lease with the Squamish. It wanted to build a Pacific Environment Centre and coast guard base on the site, just to the east of the Lions Gate Bridge.

But changing government priorities meant the government cancelled those plans, leaving the land vacant. Then, in the mid-1990s, the government made a disturbing discovery: the land was toxic with heavy metals.

A messy battle

Over the last 35 years, the federal government has spent \$124 million of taxpayer's money on its lease with the Squamish First Nation. It has spent another \$31 million cleaning up the property. But despite numerous warnings and political commitments over the years, the land is still contaminated and unusable.

It took the federal auditor-general three years to point out that the land was sitting vacant. In 1984, the auditor-general flagged the problem a second time, and recommended an alternative use for the land.

In 1988, the auditor-general again brought the problem to the attention of Parliament, noting, "The Bureau of Real Property Management ... is now coordinating the efforts of the departments involved to expedite examination of the alternatives and an early resolution of the matter."

Tests in 1995 and 1996 determined that the land was toxic, rendering it impossible to develop even if the government could find a use for it. Since then, there have been many promises to clean up the land.

In 2005, then-environment minister Stéphane Dion told CTV, "We have made a lot of progress to the point where today I may say, give us three to five years and we will make the site usable."

Conservative candidate Cindy Silver made the cleanup an election issue in North Vancouver in 2005. Peter Krahn, who was in charge of the site for Environment Canada for years, made it an election issue again in 2007 when he ran for the Conservatives.

But despite the numerous political commitments to clean up the land, the site is still a mess, caught up in a tangled web of court cases and finger-pointing. The issue stems from the Vancouver Wharves site, a cargo terminal next door to the Pacific Environment Centre lands.

Most of the Vancouver Wharves site is not on the property leased by the federal government. However, when it took over the site in 1974, the government subleased a 10-acre

portion of its Pacific Environment Centre land to Vancouver Wharves.

In 1993, BC Rail purchased the Vancouver Wharves operation, acquiring the sublease with the federal government in the process. The Crown corporation used the subleased portion of the lands as a rail yard for trains that transport ore.

The federal government alleges that ore spilled during the loading and unloading of those trains, resulting in contamination of the Pacific Environment Centre land. In 2002, the federal government launched a civil court case against BC Rail and Vancouver Wharves, seeking damages for the contamination. In 2004, the federal government launched another court case, attempting to evict BC Rail from the chunk of land it was subleasing.

"Spillage of ore concentrates that ore spilled during the loading and unloading of those trains, resulting in contamination of the shallow soil all along the rail lines and in other areas," Stanley Feenstra, a hydrogeologist from Ontario, wrote in an expert report submitted to B.C. Supreme Court.

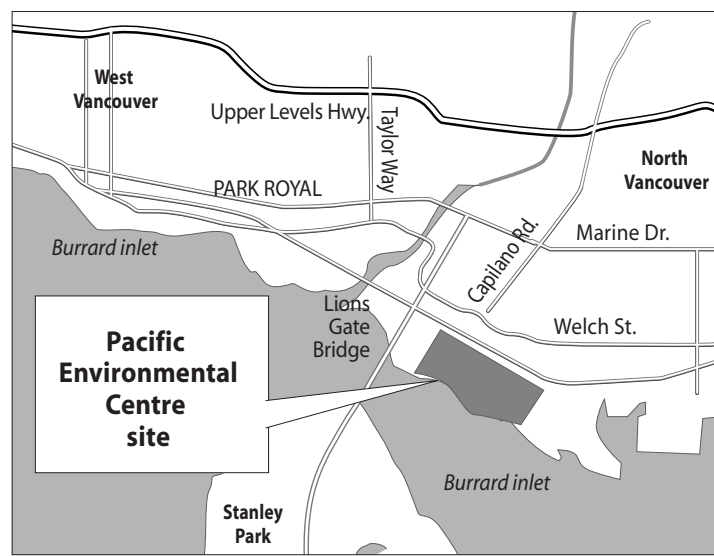
"Soil quality criteria for commercial/industrial lands ... were exceeded in every shallow soil sample ... and were exceeded by factors of 100 times to 4,200 times for many of the samples. Soil quality criteria for lead, cadmium, antimony, arsenic, cadmium, molybdenum and selenium were exceeded also in many samples."

Officials at BC Rail declined to comment on the allegations.

"It is probably one of the most costly [federal sites in B.C.] to clean up. I'm not sure if I could say it's one of the most hazardous," said Vic Enns, Environment Canada's remediation manager for the Pacific Environment Centre site.

The 2004 case was settled out of court in August 2007, with BC Rail agreeing to vacate the Pacific Environment Centre site in June of this year and pay an undisclosed sum to the federal government for rent. The parties are scheduled to return to court in February 2010 to address any remaining issues.

But the 2002 case over who should pay for the cleanup is



still unresolved.

According to BC Rail's 2007 financial statements, the parties reached an agreement in principle in February 2008. "The [agreement] will form the basis of the negotiations of a final agreement that is to be negotiated over the next 12 months," the documents said.

But 12 months have come and gone, and no settlement has been reached. Officials with Environment Canada refused to comment on the delay. BC Rail corporate secretary Shelley Westerhout Hardman would only say, "The date for concluding a final agreement was extended by mutual agreement. As for the reasons, the matter is before the courts and ... BC Rail will not be commenting further."

The legal action appears to be preventing open dialogue about the site.

"There's a court action, and everyone is going to choose their words very carefully," said Squamish First Nation Chief Gibby Jacob. "When it comes to legal activities, everyone is told, 'The less you say, the better — especially to reporters.'"

One thing is certain, however. The government has spent \$3.9 million on legal costs so far, and that number can be expected to rise as the fight continues.

Small steps forward

However, some progress with

the cleanup has been made. In 2007, with BC Rail looking to unload assets, the Vancouver Wharves site changed hands. Texas-based Kinder Morgan, a publicly traded energy transportation company, signed a 40-year lease for the site with BCR Properties Ltd., a subsidiary of BC Rail.

The agreement cost Kinder Morgan \$40 million and required it to take on "unspecified liabilities," *The Vancouver Sun* reported in 2007.

Kinder Morgan's lease covered the main Vancouver Wharves site, as well as the small subleased portion on the Pacific Environment Centre land. However, with the sublease expiring in June as a result of the 2004 court case between the federal government and BC Rail, Kinder Morgan has been building a new rail yard with modern environmental controls.

"There is a containment area that's been installed. This is a new piece of rail that is replacing the old piece of rail ... [so we can] move off the Pacific Environment Centre site," said Lexa Hobenshield, manager of external relations for Kinder Morgan.

"Technology and care for the environment have come a long way since the site was originally installed. We're using the latest environmental standards to do that work."

Kinder Morgan signed a 10-year agreement in December with multinational consulting

firm Arcadis. The company will assist Kinder Morgan in cleaning up the contamination on the main Vancouver Wharves site. However, Hobenshield stressed that Kinder Morgan would not be involved in any cleanup of the federal government land, including the subleased rail yard it inherited from BC Rail.

There has also been progress on the government's end. In 2007, Environment Canada spent \$500,000 to clean up 1.2 hectares of the 22-hectare property. However, it was an area with some of the shallowest soil contamination on the site. The cleaned-up area is fenced off from the rest of the property to ensure it doesn't become contaminated again.

"That's the first area on the property that has actually been taken completely to the final cleanup stage," Enns said. "As it becomes vegetated, it will become used like other wild spots along Burrard Inlet. Used not by people, but by critters — birds and small things can get in there. But we just want to keep people out for now."

The federal government has also remediated two other, smaller areas on the site.

Watching and waiting

The Squamish First Nation has been patiently watching the federal government's actions. When asked if he was happy with the progress the government has made, Chief Jacob chose his words carefully.

"Happy is subjective," he said. "I'll acknowledge the work that has been done to date. I think there are probably not a lot of options that were available other than what they've done. They are doing an awful lot of work," Jacob said. "They've made the site like a Swiss cheese, identifying where all the hot spots are, and taking very good steps."

The federal government has presented the first nation with a plan for cleaning up the land, but neither the federal government nor the Squamish Nation would provide details. When asked if the Squamish would help pay for the cleanup, Jacob

replied, "Absolutely not."

"All I can say is that we'll hold everybody's feet to the fire on this," Jacob said. "The issue is between Environment Canada and BC Rail right now, and as such, we're best to leave it in their hands. If we are not satisfied at the end of the day, then we'll look at all of our alternatives. Certainly, our dog isn't in this fight right now."

Enns sees a different picture. "I don't think anyone is sitting back, personally. The key parties are all very engaged at trying to bring this to a conclusion," he said.

So far, the Squamish have been patient. After all, it is a 71-year lease. But the Squamish want to develop the land when the lease ends in 2045 — or earlier, if the land gets cleaned up and Environment Canada negotiates an early end to the lease.

The first nation's Capilano Master Plan has the Pacific Environment Centre site pegged for high-density residential development such as highrise apartments.

"We're always looking at development. We're a nation of land developers," Jacob said. "Right now, we have nothing firm, but obviously we're not going to let such valuable land sit there fallow. We will want to develop that at some point."

Enns estimates it will take about five years to clean up the land, once a full-scale cleanup starts. That doesn't include years of monitoring that must take place after the cleanup is complete to ensure no spots were missed. However, no one is actually willing to put a time line on when the full-scale cleanup will start.

"There are some important stakeholders, like the Squamish, who have to have input into [the cleanup]," Enns said. "And until we complete those discussions, we won't be able to give a definite time frame."

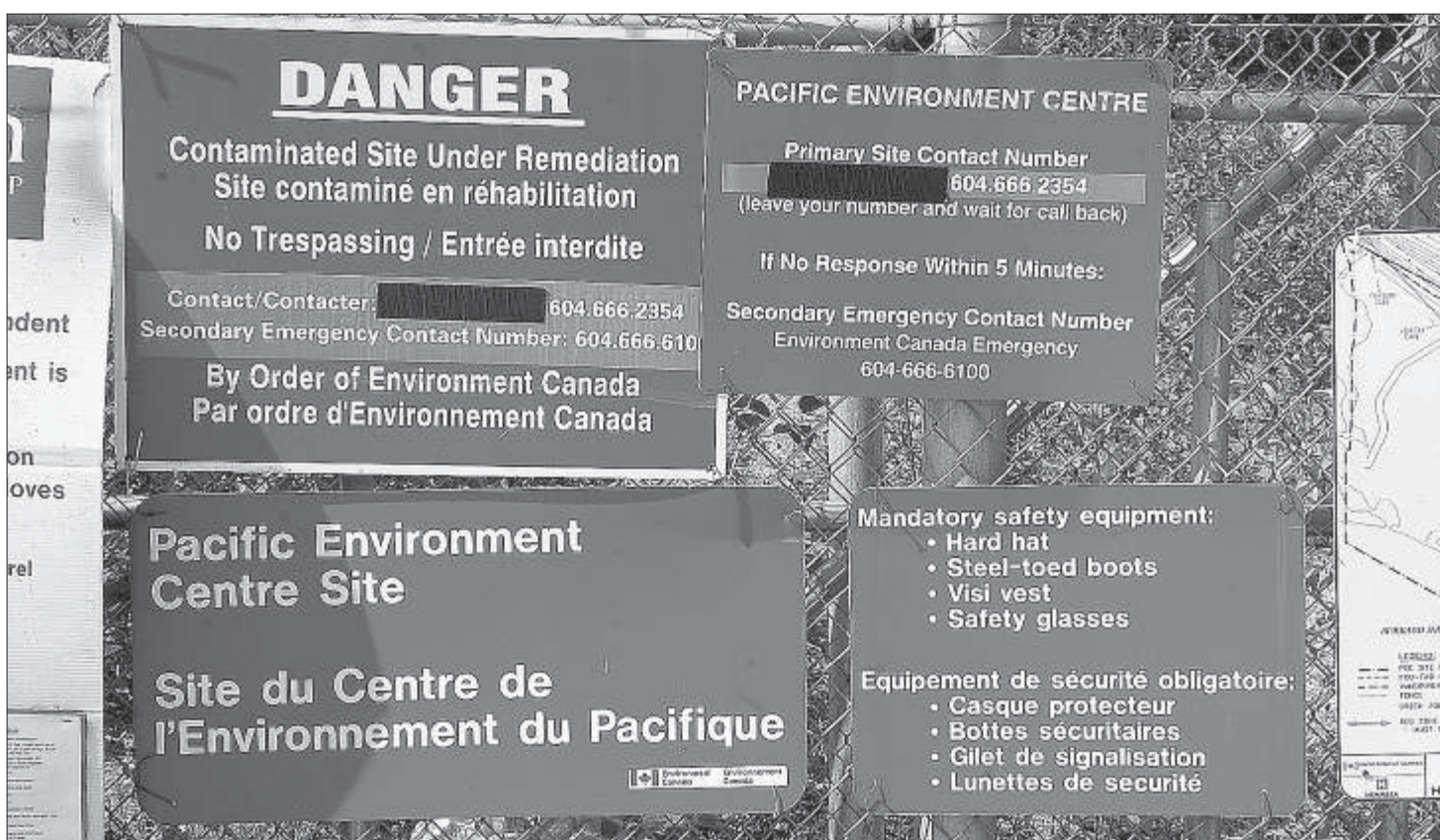
Enns chuckled when asked if the cleanup will ever get done. "Definitely," he said. "It will get done."

In the meantime, the Squamish will continue to receive hefty lease payments on the land. The payments are renegotiated every five years based on the land's market value, and the two sides are in discussions over the rent for the next five years. The last appraisal of the land's value was conducted in 2004, pegging it at \$117.6 million.

The lease payments are a significant source of revenue for the Squamish. The money goes into the Squamish Nation's general revenues, and also helps fund a \$1,000 payment made each year to every member of the first nation.

Until the land is cleaned up, the federal government will continue to hand over cheques to the Squamish without receiving anything except the use of an empty, toxic chunk of land in return. But down the road, if the land isn't cleaned up, the government will have a fight on its hands with the Squamish.

"We've fought many battles ... so we've been out there protecting our land and trying to get it cleaned up," Jacob said. "We don't sit back and wait for others to tell us what to do. We get out and be very proactive on it."



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Steps have been taken by Environment Canada to decontaminate the area.