

HALIFAX, WEDNESDAY, NOVEMBER 10, 2010

STANDING COMMITTEE ON PUBLIC ACCOUNTS

9:00 A.M.

CHAIRMAN

Ms. Diana Whalen

VICE-CHAIRMAN

Mr. Leonard Preyra

MADAM CHAIRMAN: Good morning, members of the committee. We're here this morning with the Public Accounts Committee and we have witnesses with us from the Department of Environment. We'll be speaking today about the management of contaminated sites. With that, I'm going to get the meeting underway and begin with the introduction of our members - if we could begin with Mr. Epstein, please.

[The committee members and witnesses introduced themselves.]

MADAM CHAIRMAN: Thank you very much and welcome to our guests today. Again, as I mentioned, if there's any confusion around who's going to speak, I'll indicate your name so that the light comes on. We'll begin, if we could, with Mr. MacNeil with an opening statement.

MR. KIM MACNEIL: Thank you, Madam Chairman, and good morning to everyone. I'm pleased to be here today to speak to our department's work in response to the Auditor General's recommendations on the management of contaminated sites in the province. Our department just completed a comprehensive public consultation on contaminated site management. An advisory committee was formed as part of this consultation and served a vital role. Some members of that committee are expected here today and I would like to thank them for their support.

Madam Chairman, Nova Scotia Environment appreciates the work and the recommendations of the Office of the Auditor General. The management of contaminated sites is a very complex issue and one that the department takes very seriously. We value the auditing process. Every time we receive recommendations, we reflect on how these could help us improve existing processes. We want to provide the best possible program for protecting the environment and serving the interests of all Nova Scotians.

Earlier this year, the Auditor General released his audit on the management of contaminated sites and made 17 recommendations. Some of these recommendations focused on how the department collects and reviews site information while others dealt with processes and employee training. Madam Chairman, we have already implemented many changes to improve the programs that directly relate to the Auditor General's Report. A new Activities Tracking System and a Quality Assurance/Quality Control Program have both been implemented. Divisional procedures have been improved and an inspectors training module has been developed. These changes address recommendations 9 to 15 and are already improving the collection and management of information and the way the inspectors carry out their day-to-day duties.

We know we can still do better to manage contaminated sites. We also know that by having the right regulatory tools, a contaminated sites program can stimulate the economy by encouraging property owners to clean up their land and return it to productive use. We set this goal in legislation three years ago and we continue to work towards achieving it.

Nova Scotia Department of Environment has been looking at ways to improve how we manage the contaminated sites program. We requested both a review from the Law Reform Commission and appointed a Deputy Minister's Advisory Committee back in 2007. We also sought input from individual citizens across the province just this past summer. Throughout, we heard strong support for new regulations that would encourage new investment at the community level and ensure better management of contaminated sites overall. The department is currently developing a regulatory framework, which will serve these interests and address a number of the Auditor General's recommendations.

I should tell you up front that I can't speak to the specific components to be included in the framework as it has not yet received endorsement from government. However, there are a number of priority issues that we are focused on which have also been identified by stakeholders as critical in moving forward. These include: establishing a formal qualification and experience requirement for site professionals; creating clear processes for site clean-ups; allowing for the release of regulatory liability following clean-ups; and ensuring greater accountability throughout the entire site remediation process.

As you can see, we are taking steps and considering many options to improve our current program. While we acknowledge that our current program can be improved upon, we also recognize that there are areas where we are doing a very good job. In fact, we were recently recognized by the Canadian Urban Institute for our most recent consultation process on contaminated sites. This national praise speaks to the tremendous work we have undertaken and our commitment to ensure the program serves the interest of Nova Scotians.

We are confident in the changes we have implemented and the direction in which we are moving. I would like to thank the many staff members who work out in the community every day delivering this program, as well as those who work on the various aspects of program development. As mentioned, this is complex work and those who are working on the file are committed to seeing its enhancement.

Now, with the help of staff, I'd be happy to answer any of your questions.

MADAM CHAIRMAN: Thank you very much, Mr. MacNeil. With that, we'll turn the questioning over to the Liberal caucus and Mr. Colwell for the first 20 minutes.

HON. KEITH COLWELL: Thank you very much for coming today. I appreciate the work that the department does and the fine people you have working in the department too.

I just would like to get - in a very short version - how, for instance, if someone had an oil tank leak or a spill from an oil tank in their home, what process is the proper process to go through start to finish with that?

MS. DARLENE FENTON: We have a fact sheet that we also have on our Web site. If a resident had an oil spill, they would contact their insurer first and they would then retain a site professional to help with the clean-up. They would notify the department because - I think it's 100 litres of petroleum under our emergency spill regulations - if that much is spilled it's reportable to the department. You'd notify the department, contact your insurer to make sure you have the coverage, you would, through your insurer, retain the services of a site professional. They would then prepare what we call a remediation report - what do they plan to do to delineate the site to see how much has spilled, where has it gone? They would give that report to the department; they would then undertake the cleanup and then that final report would come to the department for a review.

In domestic sites, the site professional would issue a record of site condition. That would come to the department; we would recognize that and that would be on file. If in the future someone wanted to sell their property, that information would be on file at the department.

MR. COLWELL: If it's less than 100 litres, what's the process?

MS. FENTON: If it's less than 100 litres, by law it's not required to be reported, although in the fact sheet we do have four criteria: if there are odours, if there is a watercourse nearby, if there is - I am going by memory here - I think it is a watercourse, I can't remember the four off-site impacts. I think there's one more, I just can't recall. It lists those in the fact sheet. It also says, if it's less than 100 litres and it's not reportable, you still can't cause an adverse effect and it gives you these four criteria to go through. If you feel it meets one of those criteria, you call the department and then follow the process as described earlier.

MR. COLWELL: How long a process is this typically? If it's something that's pretty straightforward - I know that's a real loaded question because it can be very complex - but if it's a straightforward cleanup, how long is the process, typically the paperwork of the process, never mind the cleanup?

MS. FENTON: That does depend on the complexity of the site. If it's a small amount and you retain the site professional, the certified contractor, to go in and clean it up, I would say a couple of months by the time they do their work. Because they're physically going in and removing the soil; they would test the soil to make sure it meets the criteria, so therefore it's no longer contaminated, and then prepare the report. That depends on how long the site professional takes to get their report in to us and then a couple of months for us to review, generally, in a simple one.

MR. COLWELL: I don't imagine there are too many simple ones. The feedback that you did receive for the information you asked for from the public, was there anything in there that stood out, that the department would want to address?

MS. FENTON: I think the department recognizes that the program needed improvements and I think that we are going through a process to develop a regulatory framework for this program. I think the Auditor General recognized that and I think we do too. I think that's one of the things that we did get out of the review of the Auditor General, that it basically solidified what we already knew, that we had to make changes to the program and that we are working toward that. Peter Geddes will speak to the rest.

MR. PETER GEDDES: I guess the only thing I would add to that, in terms of the feedback that we got through the consultation process, one really important point we heard was the importance of the release of regulatory liability after somebody has cleaned up a site.

In other words, if you've gone through the process and cleaned it up, you'd like to be able to sell that site and know that no one's ever going to come back to you, there

won't be any enforcement from the department in terms of your responsibility for that site. That came out as a really key issue from industry stakeholders during the consultation process as well.

MR. COLWELL: What's the process for that now?

MR. GEDDES: There actually isn't an official process for that now, that's one of the things that we're specifically looking at in our new regulatory framework right now.

MR. COLWELL: Anything that's in place now, when you finally get the new regulations - I know it takes a lot of time to properly prepare them - would those old ones be grandfathered or would they come in under the new regulations? I know there's been some really outstanding things out there that people haven't been able to get resolved. Would that new process clear up those old ones as well?

MR. GEDDES: Well, I think we would hope that it would. I think, in reality, we don't really know the answer to that yet. We haven't determined how that's going to work in terms of old sites and grandfathering those sites. It's yet to be determined.

MR. COLWELL: Now, to get a clearance on a site, if you had an oil spill tomorrow and it was more than 100 litres, it doesn't matter, then you hire a site professional. Are these people certified to do this? As a homeowner, how would I or anyone know that person I'm going to hire is actually qualified to do that work, that when they put the report in, that the department will accept it?

MR. BRENT BAXTER: Basically, right now, we have a list of qualified site professionals under the Domestic Fuel Oil Spill Policy. You can contact us or look on our Web site and see who's able to do that work in Nova Scotia.

MR. COLWELL: Typically, they're qualified by the department, correct?

MR. BAXTER: That's correct.

MR. COLWELL: So if one of those professionals came in, went through the process and did all the reporting and all the testing they're supposed to do and submitted that to the department, do you spot check that or do you take the information they provided as correct and move forward from there? How does that process work?

MR. BAXTER: We do audits on those reports, we do check the material that comes in and make sure it's complete, seems methodical, logical, meets our standards. Then we would record that record of site conditions in our files and determine that particular file was closed.

MR. COLWELL: When you get that information, is that a long process? Once the site professional provides all the information you need, is that a long process after that?

MR. BAXTER: It would depend on the complexity of the site if we had to go back and ask for further information or clarification, it could be extensive. If it's something fairly straightforward or a relatively small spill contained to, say, a single property, it could be just a matter of a month or two.

If it's something much more complex involving multiple sites, groundwater contamination, other peoples' homes, that sort of thing, it could take a number of years to work out some of those third party issues.

[9:15 a.m.]

MR. COLWELL: Hopefully, we never have many of those. Is there any new regulations put in place regarding - I know oil tanks now the insurance companies are getting really fussy with them which I think is a good idea. Are there any regulations or anything contemplated by the department to make that more rigid or are you just going to let the insurance companies look after that?

MR. BAXTER: We have brought that question to the attention of the public during our consultation this summer. Although we did see some interest in that, there was no really overwhelming interest in pursuing that.

We've worked with industry on this before, with the Insurance Bureau of Canada, with the Canadian Oil Heat Association and others on improving tanks, how they're manufactured, how they're installed, how they're operated. We'll probably continue working with them in the future on that. Certainly not right now, but maybe in the future, we might look at regulatory options.

Our statistics have shown there has been a decrease in the numbers of tanks that are leaking. At the same time we've seen increases in the costs usually associated with cleanups.

MR. COLWELL: Are the leaks typically getting bigger or are they smaller on average?

MR. BAXTER: There is a variation. We're seeing fewer smaller releases, I would say because we're seeing fewer smaller failures. Tanks are better, they're usually newer, they're being installed better. When we do see a release, it's more often a catastrophic failure, someone has lost their entire tank.

MR. COLWELL: So it's a whole process. I've talked to some people who have had nightmares about oil cleanups. I've always wondered when I was talking to the people if it's something they didn't do properly or if it's just a plain nightmare because of where the oil went or whatever the case may be.

MR. BAXTER: It's often a problem with the oil itself. We tend to put oil tanks next to our houses so it's usually next to the foundation. It's right in the weeping tiles of the house so usually if anything releases, it goes right underneath the foundations so it becomes quite complex right away. To get the oil out, you essentially have to dig up the foundation or lift the house. Quite often there are service corridors bringing your sewage and stuff to your property, the oil travels on those, travels to neighbouring properties. It can spread quite quickly.

That's why we encourage people to contact their oil company, contact their insurance company right away to take quick corrective actions to stop that oil from getting underground and moving off.

MR. COLWELL: And typically, if that's done, it probably would help the cleanup a lot?

MR. BAXTER: Yes, certainly.

MR. COLWELL: On-the-site professionals, what are the requirements for a site professional now, what do you have in that regard?

MR. BAXTER: Right now, for contaminated sites you would have to be a professional, either engineer or geoscientist. For the domestic oil-spill policy, we have expanded that slightly to recognize some other individuals who have extensive education and experience in domestic fuel-oil spills, but they don't necessarily have a professional association. So those would include a risks specialist, chemists, biologists, those sorts of things.

MR. COLWELL: How many roughly, in the province, are qualified to do this site professional work?

MR. BAXTER: I would have to check on that, but it's a reasonable number and there's a good spacial distribution across the province. So wherever you are in Nova Scotia, we've made sure that there's somebody you can access.

MR. COLWELL: Could you provide the committee with a list of those if you would, please?

MR. BAXTER: Certainly.

MR. COLWELL: And also that form you were talking about earlier that you have to fill in to the evaluation. I know it's on your Web site, but it would be nice to have a hard copy of that as well. There are so many issues with this and is it mandatory now - I know with the oil tanks, the insurance companies have done a pretty good job of getting the old oil tanks out of buildings and stuff and I think that's probably why some of your leaks have stopped. Is there any requirement to have a pan underneath the oil tanks so if there's a spill from the tank, it goes in the pan - or something like that?

MR. BAXTER: No, there isn't at the moment although we are working on a national standard and on the national manufacturing codes for tanks, so some of those may be addressed in the near future.

MR. COLWELL: When do you think that might take place - just a guesstimate?

MR. BAXTER: It could be as soon as next year. Certainly there's an increase now in tanks that we call secondary containment tanks, so you've got a double wall tank - and some of those are produced in Nova Scotia.

MR. COLWELL: What about the requirement of an insurance company - this is always an issue for property owners - that they're trying to get everyone to change their oil tank every 10 years - and I don't think it's a bad thing . . .

MR. BAXTER: Correct.

MR. COLWELL: . . . but if someone spends a lot of money buying say a fibreglass double containment tank, is the insurance company still making them change it after 10 years?

MR. BAXTER: We're trying to work with them on that, but right now they do have a blanket requirement for most, many companies, to replace it after 10 years, and that's strictly based on something they receive from head office. So they're looking at that and whether that makes sense, because quite a few of these double wall tanks come with 25-year warranties with their own spill insurance - some include a policy for \$1 million if the tank fails during that 25-year period.

MR. COLWELL: Those are only as good as the company that makes the tank and if they're still in business?

MR. BAXTER: That's correct.

MR. COLWELL: That's the trouble with a guarantee like that. One other thing is what kind of mechanism does the department have in place, if any, to help homeowners

get insurance for this - and is there insurance available as a general policy? Because that's always an issue that seems to come up - the red flags come up, of course nobody wants to pay, nobody wants to be responsible, so the department, do you have any input into that?

MR. BAXTER: We have spoken with the Insurance Bureau and with individual insurance companies and, while there's not a legislative requirement to do that, we certainly encourage people to read their policies because a number of companies are cutting back on their coverage and they'll only cover usually third-party damage - so they wouldn't cover your own site, but they'll cover your neighbours. Insurance is available, but you may have to look for it.

MR. COLWELL: And say if an oil company pumps oil into a tank that's faulty, that they've installed and they maintain the whole system, would it be their responsibility for that or would that be the homeowners' responsibility? How do you determine that responsibility?

MR. BAXTER: It's a difficult issue right now. Once again, I mean there's always, civil litigation is open, but we've found that most oil delivery companies have been quite responsible in responding quickly to concerns of their customers and that sort of thing. They've actually gone beyond their legal requirement to take corrective action.

MR. COLWELL: What are their legal requirements?

MR. BAXTER: Legally - typically, we would only get involved, for instance, if we issued a ministerial order, then we would issue that potentially against any responsible person. That could be anybody from the homeowner to the oil delivery company to whoever installed the tank - any of those parties. Then they would have to work out their relative degree of liability for that incident.

MR. COLWELL: Are there many of those orders issued?

MR. BAXTER: I would refer that to my colleague, Ms. Fenton.

MS. FENTON: There have been a number of orders issued in this program area - I don't have the exact number in my mind right now, but we can certainly get that for you. I have been involved in cases where we have brought the people into the room, we've discussed who is responsible, because under the Act the minister can apportion responsibility. So we've done that. Just recently we were involved in a case in Halifax where we actually brought everyone in the room and we didn't have to issue an order because they worked it out amongst themselves. It ended up being an alternate dispute resolution type of program, but we have done that in the past. I don't know the number off my head, but we can look up that information.

MR. COLWELL: If you could supply it to the committee, it would be greatly appreciated. I don't want you to name any oil company, but are there different oil companies that are better to deal with than other ones when you come to site cleanup?

MR. BAXTER: Certainly what we would call the more integrated oil companies tend to respond quicker because they have their own internal resources. If you usually have a full service contract with, say, a national oil company, you'll usually get a fast response. If you have a contract with somebody who's just cash on delivery, that sort of thing, you're unlikely to get any sort of assistance.

MR. COLWELL: If you can't resolve these problems because some of these people just can't resolve them - and again, I said earlier, I don't know if it's the people who are involved or the level of contamination or what - is there an ultimate way to resolve this? Is there some way that the department can do testing or have the qualified person do testing under your direction and finally say that this site is now satisfactory, it's safe within the guidelines? Is there a way to do that that would get somebody off the hook who owns the property and doesn't know what to do?

MR. KIM MACNEIL: I think that's where we're trying to go with the new regulatory framework. With what we're hoping to bring forward, the information required would be more specific; it would be consistent. The people who have to provide that information, the site professionals, will have to meet particular qualifications and this will all be in a regulation. This is the message that we received through the consultations and through the advisory committee - people want to know that after they go through a procedure, they will, in fact, have release from that property if that's what's required.

As Peter mentioned, the liability issue is a huge issue here, and we feel that if we can resolve that issue and free people from that liability then we're going to see development of a lot of those old garage stations that exist in almost every community across the province. The majority of those are in prime real estate zones, if you like, and we feel that with what we're working toward, these sites will be developed in a way that's logical and makes common sense and ultimately will bring them back into productive use.

MADAM CHAIRMAN: Mr. Colwell, your 20 minutes have passed and I'm going to turn the floor over to Mr. Clarke for the Progressive Conservative caucus.

HON. CECIL CLARKE: Thank you, Madam Chairman, and welcome to our guests here today. Deputy, during your introductory comments you talked about the remedial activities as being an economic development potential driver - can you elaborate a bit more on that?

MR. KIM MACNEIL: I'm sorry, I missed the first part of the question.

MR. CLARKE: During your introductory comments you had indicated that environmental remediation could be an economic development driver. I'm just wondering if you could elaborate on what you mean by that.

MR. KIM MACNEIL: Yes, I certainly could. Currently under the policies and guidelines that we operate under for contaminated sites, if I, as an owner of a contaminated site, want to sell that property, in some instances I do not give up the liability associated with that property even though I may sell it to someone else. If down the road there is off-site migration of contaminants on that property, there is potential that the department could come back and essentially designate me as a responsible person for that land even though I have sold it.

What we've heard from industry and various other folks we've consulted with is that this liability has been an impediment to redeveloping some of these contaminated sites. What we're hoping to do with the regulatory framework we're proposing is once someone completes a cleanup criteria, cleans a site to a particular standard, then barring any, I guess, poor - I'm trying to find the right word here - as long as there is nothing that's provided in the information that is incorrect, then the person would be allowed to sell that property and be released from their liability.

[9:30 a.m.]

MR. CLARKE: I just want to move on with regard to domestic because it's a large issue and one that I've seen, unfortunately, too many cases of, even in my own constituency.

There's the issue of the property that's affected and, of course, neighbouring properties, and I've seen people out of their homes for months on end and hundreds of thousands of dollars expended for what people think are reasonable things. Then what happens is - whether it was accidental or deliberate, because both those circumstances occur where there could be a spill - all of a sudden someone goes from having a problem to feeling like they are the culprit by virtue of process paralysis, and dealing with the inspectors, dealing with the insurance companies and all of these things escalate and then so do insurance premiums, if they're covered, because we know there are other areas where they're not or it's not disclosed.

So that in itself is, I guess, a consumer awareness piece if we're going to deal with it. But people do feel that all of a sudden, in trying to willingly address a problem, they find themselves almost being, as I say, they actually feel victimized by the system and the number of inspectors who folks have to deal with. When you had talked about the inspector training manual, are there specifics that are applied for both - is that inspectors for the department or is that the site professionals, or both?

MS. FENTON: The training module that we referred to earlier is just for our inspectors. It's referred to as the development accountability model and it has 24 technical modules and one of those modules is the contaminated site module. It's just for inspectors, not for site professionals.

MR. CLARKE: So what is the level of certification for site professionals? What does the department do - do you license them do you certify them so that they meet with the compliance?

MS. FENTON: I think Mr. Baxter mentioned earlier that you had to be a professional engineer and also associated with the Atlantic Geoscience Society. That's a program area, so I'll refer you to Mr. Baxter for more details.

MR. BAXTER: As Ms. Fenton mentioned, you would have to have a university degree, of course, and recognition by a professional association. We have recognized some other individuals with other advanced degrees, generally a masters or a Ph.D. in a science-related discipline and usually six years of experience in contaminated sites management.

MR. CLARKE: But you don't actually give them a licence that says - I mean, a lot of people can be professionals and work in one area, but is there not a set of criteria that they meet, a minimum level of standard or training to - I guess my question is why wouldn't it meet up and make sure that they comply with all of the standards? The Auditor General's Report was talking about the training aspects and getting to, I guess, a level playing field, because throughout the province you can have a different capacity of individuals and it's more than just academic standing or years of experience - are they trained in those modules? Is there consistency, so that the residential oil spill at Sydney Mines is being treated the same as the one in Tusket? If that is void, then it creates problems because everyone is going off of their own professional experience.

So I guess I would think that the Auditor General - not only talking about the department, but ultimately I guess this is where I'm going, where the homeowners, in this case at a residential basis, don't have the consistency because it's left to a site professional interpreting their interpretation of what the department's regulations are. So wouldn't it be appropriate that there actually be a licensing of site professionals so it is consistent across the board as to what their core competencies and reporting requirements would be?

MR. BAXTER: Yes, and right now under our Domestic Fuel Oil Spill Policy we do have a certification that is given by the department. These individuals have to apply to us - they have to list the particular sites they worked on and how long they've worked, and they have to give us copies of their diplomas and that sort of thing. We would hope to formalize that under a regulatory system where we have a more formal requirement, we

have regular auditing, we have regular training requirements and, of course, through their own professional associations there may be some disciplinary processes if they fail to live up to those criteria.

We also offer regular training through technical meetings, through technical conferences, through education seminars that are offered by the different professional organizations, and we send out our own specialized professionals to those meetings and offer training to the site professionals at no charge from our department - although the organizations may charge their own members.

MR. CLARKE: The reason I say that is that one of the other concerns that comes up from residents - and I've actually witnessed it - is the level of work that a household in one neighbourhood might have to go through versus someone else. The extremes can be quite substantive even for the same common problem that has occurred because, again, it is what is someone dictating or their assessment of what is required, and are we spending hundreds of thousands of dollars needlessly, to the point of where does money get directed to the best outcomes - because there's no shortage of remediation activities.

So if the department, in meeting the Auditor General's observations, is there, I just see a disconnect with the site professionals and a need to make sure that they are consistent. And I say that because if they are not at least adhering to all of the department modules and it is not uniform across the province, what we have are case-by-case discrepancies and, as a result of that it creates - again, it goes back to people having a counter, and I'll say what happens is the site inspector will blame the department and then the department will blame the site inspector. You know the stories of that - and shortly I'll reference one you know very well. Again, at the end of the day if we're looking at value for money and what government is doing - and this is probably a reason why I got rid of my oil tank and went to a high-efficiency electric for other reasons, because it's just that worry of having an oil tank in or outside your house is not worth the liability concern.

There are lots of people who don't have the luxury that I have had to be able to do that change, so I guess, again, are the recommendations going to be brought forward to government through the minister and Cabinet to actually get that in sync - are there any working efforts?

MR. BAXTER: We are working on that. We do recognize that there is a gap; there is certainly a problem with consistency and clarity. There is quite a bit of reliance on the judgment of individuals, so we're looking at having standards prepared and adopted, standard processes as well that would be referred to in the regulations that the site professionals would have to follow. So basically a site that was cleaned up in Halifax would be the same as one in Sydney Mines, would be the same as in Tusket. Everybody would have to follow the same process, sign the same paperwork, and submit the same forms to the department. That would help both your individuals who go through this

process, it would help speed up the process, and would probably help control the costs as well.

MR. CLARKE: I know one of the folks, as I indicated, you would be well aware of is Norm Andrews and he's been to our caucus - and I believe he's been to the Liberal caucus. I do know the minister said he would meet, but I don't think that meeting has ever occurred. It's unfortunate because, if I recall, with Norm Andrews in our caucus presentation - and I'll leave it to the Liberals to reflect the same - he was not there saying I want remuneration, I want payback. He was there saying I can't believe I went through this process, that they put me, and my wife, through this and created a lot of problems and havoc in our lives and I don't want another Nova Scotian to go through it.

It was not about money, it was about a process and wanting to be heard and wanting to make sure there was consistency. As you know, the department - I do believe if I remember right - basically it was a blame game between the site professional and the department and he was left to be his own arbitrator of which he had no authority to deal with.

This is happening to Nova Scotians all the time - and then they bring in contractors and they say this has to be done and then the concern of a homeowner is are they really fixing my problem or are other people getting business because they say we have to do this and I have no recourse even if I have a concern, and if I do have a concern and go to the department they'll say I can't deal with that because it's an issue for FOIPOP. So the citizen trying to deal with the issues for their own property has to go through the Freedom of Information and Protection of Privacy process to garner information with regard to the criteria being imposed on their house.

I guess this is where I was going about the need for site professionals to have a level of certification, because here was a Nova Scotian who has been reasonable, who has come in, is impassioned - I mean, he has volumes of material and none of it visceral - trying to be fact-based and saying why, as a Nova Scotian, someone who has lived in my area for a long time wanting to live out his days as well, would I have to go through this process?

As you know, in that case, I thought they were going to get to China by the time they finished digging in his backyard and through his basement and the like. For people like Norm Andrews, I guess, that's a reality and it altered his life and he chose to be proactive in dealing with it. In fact, it speaks to a real-life example in the province, here in the HRM, of someone who is really sort of saying the Auditor General's work is showing that I'm paying a price for something I didn't create.

I'm not here to be negative, but I think it just highlights that if we don't have consistency, if there isn't a certification process, how does an insurance company provide you with coverage? I know, if you're working on it, here is a case where he has not been

heard and still no one will hear him out, even though he's come in, trying to be practical, and offer up what he sees as areas where he can go. At the end of the day he was told those are your issues. Why is it that someone like Norm Andrews, who is just trying to have a problem fixed, all of a sudden becomes a victim in the system? Why would the department - for a citizen who has had a problem, is willing to comply with remediating that problem, left to debate with you and a site professional the right or wrong work that is going on and he is on the hook for his own money outside of his insurance? I don't understand that. How come all of a sudden he's left outside when he's only trying to comply? Why do we leave him to debate with the department and the site professional?

MR. KIM MACNEIL: We can speak afterwards about your specific incident there, the specific case of Mr. Andrews. The department certainly recognized that there are issues with the current system that we're operating under. What we're hoping to do with this new system is establish formal qualifications and experience requirements for all site professionals, create clear standards and processes for site cleanups, and ensure greater accountability throughout the entire site remediation process. We feel that a new regulatory framework will achieve that because right now there are no specific regulations around this. As you know, there are guidelines and policies and that certainly, speaking in general terms, some of the issues that we currently see around contaminated sites are from those policies and standards.

MR. CLARKE: I do appreciate and I do know that a lot of work is being done, but for the taxpayer who is a willing partner in the process to find themselves on the outside looking in and having to debate a site professional - and I do believe he just assumed when a site professional is identified that that person is accredited and capable, and then they get in an argument over what happens, thus the reason for the level of training and stuff, I think this just shows that, with the Auditor General's Report in this, it is appropriate.

I want to quickly move on to one other area, and I think it has been positive. I know the current government has moved forward. The Nova Scotia Law Reform Commission Report on Contaminated Sites, their work that was started in the Department of Justice - there is a larger issue that goes beyond and everyone works at it. Being from Cape Breton, we have all kinds of environmental remedial activities that are currently underway in sites we're trying to deal with from former Sysco days and the Devco days, the two processes.

With regard to the report from the Law Reform Commission, it was not an easy issue; there was no quick fix or solution. There was not a piece of legislation or a regulation you could bring in because of the complexity. I'm just wondering, as a result of that report and its work - which I think was very good and was needed because we needed that third-party analysis and comprehensive look - where are we with moving to next steps? It was initiated on the basis of actually addressing the wider problem and making

sure, as you say, that contaminated sites could be useful again, from your point about economic development. Is there an update as to where things are - any timelines of next steps within the department?

[9:45 a.m.]

MR. GEDDES: In terms of the issues that were raised by the Law Reform Commission, I would say that a good portion of the recommendations that we would see as being things that we're trying to address through the current work we're doing on the new regulatory framework, they raised some significant issues. One I mentioned earlier, which was about the release of regulatory liability. That was a key one for them. That's something that we're paying close attention to and, as well, a number of the other issues that they raised are things that we're actively dealing with through the new regulatory framework. I guess the answer is that we're working on those issues right now.

MR. CLARKE: Just for my clarification, what do you anticipate as a timeline? I know it has to go with minister and Cabinet, but is there a timeline of expectation - the Spring, this winter, next year?

MR. KIM MACNEIL: The Environmental Goals and Sustainable Prosperity Act requires that there be a regulatory framework in place by the end of 2010, and we're working toward that goal.

MR. CLARKE: Madam Chairman, that concludes my questions.

MADAM CHAIRMAN: We'll turn the floor over to Mr. Epstein for the NDP caucus.

MR. HOWARD EPSTEIN: Thank you, to you and your staff, for being here this morning - a very interesting topic and good presentation, I thought.

I wondered if first we could start by looking at a couple of terms that show up both in your presentation and in the legislation and also in the Law Reform Commission's Report. The three terms I thought we might usefully start out by trying to understand are a contaminated site, a brownfield site, and an orphan site. I'm just wondering if we could be clear about what it is that we're talking about here. I'm prepared to suggest definitions, but I'd be happy to hear yours.

MR. BAXTER: Basically those terms all refer to an overlapping series of terms. A contaminated site by definition is a site with substances on it that exceed criteria specified by the minister - those would be substances of concern such as heavy metals, petroleum products, solvents, that sort of thing. A brownfield site is a site that may have contamination on the property, but it's unknown, so it's probably either undeveloped or

it's underperforming, for instance, a brownfield site could be a parking lot that's just gravelled over or it's just a vacant site. So we're looking at, those who work on brownfield sites, moving them into being upgraded to a rehabilitated site. An orphan site is one that where the owner is essentially unknown or where the costs of the remediation are so great that no one is willing to step in and take ownership or take responsibility for that site.

MR. EPSTEIN: Yes, and would it be fair to say that the term brownfield site is also fairly regularly used when there's an agreement that the land might have obvious commercial development if it were cleaned up?

MR. BAXTER: That's correct.

MR. EPSTEIN: And for an orphan site is it also fair to say I guess that even if the previous owners were known, they might perhaps have disappeared in the case of a company, or individuals, they might also, even if you knew who they were, they might be dead or gone or not have any assets or responsibility?

MR. BAXTER: Yes, they've generally moved on, the corporation is dissolved, or say for instance an orphan site, if it's in perhaps a rural location, there's no opportunity if it's in a brownfield site to redevelop that into something useful.

MR. EPSTEIN: Sure, thanks a lot. So just setting that now to one side, I wonder if we could get some estimate of the size of the problem. I have to say I'm a bit baffled by this because it would seem to me that there weren't any numbers offered this morning in terms of numbers of sites around the province. When I go back and look at the Law Reform Commission report from a year ago, they cite a number of other studies or estimates that have been done over the years. There's one estimate from I think 2000 that talked about 1,000 sites in Nova Scotia and then another estimate from 2007 that talked about something over 1,700 sites. Then a federal government report, I think from maybe 2008 or 2009, that estimated about a little over 1,500 sites in Nova Scotia.

Yet I remember a few years ago during Budget Estimates talking with some representatives of the department and asking the same question about the number of contaminated sites in Nova Scotia and at that time the officials guessed I think around 500 or 600 or less. So the numbers seem to be all over the map. I guess it's important to emphasize that the numbers that the Law Reform Commission mentioned were just estimates or extrapolations based really on kind of national occurrences, national studies, and there seemed to be just a guess that that was Nova Scotia. So I'm wondering if since a year ago when the Law Reform Commission reported, or since we heard from the Auditor General, whether the department now feels it has a better grasp of numbers in the province?

MR. JAY BRENTON: Actually to provide a little bit of clarification, you're right in the fact that we have never had an inventory of contaminated sites historically. However, over the past year one of the things we have been doing, and it has been referenced in Mr. MacNeil's opening statement, is we have developed an Activities Tracking System and implemented it actually about a year ago at this stage. Since then we've actually been able to track new files and new sites that have been added to that. Since that time we have right now, I believe, 522 sites that have been activated as contaminated sites since the implementation of ATS. Now, this would also include sites that in that time have also been cleaned up. So there are still probably some sites, roughly around 460, 450, that still remain open. These would be anything that we would have gotten any kind of a spill on. The other thing to keep in mind is that doesn't include federal sites. Those are only sites that are under provincial jurisdiction.

MR. EPSTEIN: Federal sites meaning sites that are on land owned by the federal government?

MR. BRENTON: That's right.

MR. EPSTEIN: Yes, so military bases, for example?

MR. BRENTON: Yes.

MR. EPSTEIN: Yes, okay. As long as you mention that, has the federal government published numbers for what they would regard as contaminated sites under their jurisdiction in the province?

MR. BRENTON: Actually probably around 1,500 is the estimate but I should refer that to Mr. Baxter.

MR. EPSTEIN: The 1,500 federal sites in addition to the 500 or so you just mentioned under provincial jurisdiction?

MR. BRENTON: I should clarify, the 500 sites that we're talking about are only sites that have been entered in the system over the past year. We're not capturing information in regard to historical information. This is basically moving forward since the implementation of this Activities Tracking System.

MR. EPSTEIN: So far as we know now, that's what you mean.

MR. BRENTON: That's right.

MR. EPSTEIN: Okay, back to the feds, although I don't want to spend too much time on their responsibilities.

MR. BAXTER: A few years ago the federal government undertook a huge program to identify all of their contaminated site liabilities. They required every federal department, agency, Crown corporation, anybody licensed under them - radio stations, TV stations, that sort of thing - to identify potential contamination. They also resourced this quite heavily, I think they spent \$150 million this year and they've got \$500 million in for rehabilitation of these sites.

Within Nova Scotia they have identified over 1,500 sites that have some contamination. Basically, almost any site that the federal government owns has some degree of contamination. They've gone down to as small as vehicles dripping in a driveway, that sort of thing, up to the tar ponds of the old Devco sites. It ranges from literally no money, no risk, to hundreds of millions of dollars.

MR. EPSTEIN: That's very useful, it actually brings me to my next point, which is the continuum of intensity of contaminated sites. I wonder if you could give us examples from the known list of provincially supervised or managed sites, the 400 or 500 that you mentioned, that could give us some feel for the kinds of sites we're looking at?

I know most of the discussion so far today has been on domestic sites with all the talk about leaking oil tanks, but presumably there are industrial sites as well.

MR. BRENTON: Yes, actually the number I gave you, the roughly 500, that would include a significant number of domestic sites. By far and large they're probably the most common site contamination issues that we have.

That being said, there are definitely some industrial sites. A lot of them from historical practices across the province fall into that issue or that guise of a contaminated site. Right off the top I couldn't give you the estimate of the number of those sites. If you like, we can check and see if we have that information and make it available to you.

MR. EPSTEIN: That would be very useful. I wonder if the department is, at this point, aware of any sites that turned out to be contaminated but which have been developed, particularly for residential purposes? The precedent I have in mind is a subdivision in Calgary, which for many years was an Imperial Oil, I think, refinery, but certainly a site that turned out to be heavily polluted but was sold off after the refinery closed and was developed as a residential subdivision. Subsequently it was discovered that the ground was heavily polluted and I think Imperial Oil ended up buying back the houses of several hundred people.

I wonder if the department is aware of any sites in Nova Scotia that have been developed for residential purposes where problems like that have turned up?

MS. FENTON: Thank you for the question. One that comes to mind here in HRM was the former Gladstone Stores, associated with the federal government. There was a local developer who was interested in gaining access to that site. He worked very closely with the department and he actually remediated that site and has built single family houses as well as condos and I believe a few other stores along that line. That's one that comes to mind.

There's another site in Halifax that was used by the former City of Halifax as an area where they would sort of dump material. It's in the Fairmount subdivision area. That has been completely redeveloped and there are homes in the \$200,000 to \$400,000 range. Those are the two that come to mind from a residential perspective.

MR. EPSTEIN: Indeed, and I know the Gladstone site very well. It's just a block or two away from where I live. I think that's an example of where the contamination of the site was known before it was developed and the remediation was done before it was developed. What I was wondering was whether there were any examples where the land was developed before the full extent, perhaps, of the contamination was discovered?

MS. FENTON: I don't know any off the top of my head, but we can check that out.

MR. EPSTEIN: Sure, that would be a big help. Thank you very much. I'm wondering as well whether you could give us examples of some brownfield sites, by which at this point I would mean sites that are known to have some contamination but which are also known to have high potential economic uses if they could be redeveloped. Are there some in HRM? Port lands, for example? Are there things like that that are clearly within the scope or the sights of the department?

MR. BAXTER: Certainly you see a lot of the development along the Halifax waterfront. Most of those sites, if not all, have some pre-existing contamination. A great example of that is the former Nova Scotia Power plant that is being redeveloped as an office building. That power plant, as I mentioned, was also a benzine producer when we used to have gas lights here in Halifax. There is extensive contamination from that. That was all cleaned up during the rehabilitation of that site.

Most of the areas that you see downtown or you have heard about being redeveloped - whether it's the former TexPark site that may become the Twisted Sisters, the convention centre that used to be the ChronicleHerald building - all of those buildings have some contamination associated with those sites. Through redevelopment, certainly those can be transformed into very productive areas.

[10:00 a.m.]

MR. EPSTEIN: Moving from the report done by the Law Reform Commission to the Auditor General's Report from earlier this year, I'm wondering if we could hear a bit more about what the department has done to respond to some of the recommendations that were made. Can you bring us up to date in terms of what the current state of play is? We heard some of it this morning, but I'm just wondering if I could hear a little bit more.

MR. BRENTON: Actually, some of the measures that we have put in place - as Mr. MacNeil alluded to - deal with a lot of the operational types of issues that we deal with. A lot of it obviously deals with information, access to information - that's why, for instance, the Activities Tracking System that Mr. MacNeil mentioned is very crucial to our business. That's where we've come up with the numbers most recently given in regard to the number of sites over the past year. Coupled with that, we've developed a fair number of operating procedures. These would standardize the means and mechanisms by which our staff undertake specific tasks. Obviously with a new system such as this Activities Tracking System, we've also developed a lot of divisional operating procedures to ensure that the information we have and the way it's managed are consistent.

From a departmental standpoint, the other key element that Mr. MacNeil alluded to was the Development and Accountability Model. It is crucial in regard to providing what I'll call the foundation training that our inspectors need. It is also geared toward the idea of increasing levels of accountability and responsibility, so it's not just a training system. It's a means and a mechanism to actually assess - particularly when we have new inspectors coming on - their growth and their level of competency and skills in certain areas, and with that comes increased accountability. That's a system that we just rolled out. I think at the time the auditor was probably finalizing the review of our department and really started rolling out in earnest this summer and this Fall.

MR. EPSTEIN: As I read the chapter in the Auditor General's Report on this, many of the recommendations seem to have to do with record keeping and making sure that the paperwork is fully fleshed out and up to date. Is that what the Activities Tracking System is? What does the ATS mean?

MR. BRENTON: The Activities Tracking System is our means and mechanism for recording and tracking all that information. It's geared to track everything from complaints to notifications to inspections, whether they're inspections that we do as part of an auditing mechanism, or responding to complaints and things of this nature. It also tracks all of our enforcement actions. It is a system that is not solely for the use of our department, it's actually based on a platform that's used with other agencies, including Occupational Health and Safety, and I believe it's actually the platform that's based on a system that is used by Service Nova Scotia and Municipal Relations as part of their Nova Scotia Business Registry.

MR. EPSTEIN: Although many of the recommendations do deal with the paperwork and the record keeping, there was also a recommendation, or at least one of them, that had to do with staff of the department visiting sites, and I'm wondering if you could bring us up-to-date about that. It's Recommendation 3.6, The Department of Environment should conduct periodic site visits on certain sites, taking into consideration the level of risk involved, to verify key information . . ."

MR. BRENTON: Certainly. I should point out that our inspectors do conduct inspections of sites that are being remediated or cleaned up. One of the difficulties is that during the conducting of that inspection, at some point during the actual cleanup, it doesn't really give a solid indication of what the end result will be. So the issue or the problem at hand basically becomes one that, yes, we can confirm that there's activity going on on-site in regard to cleaning up a spill or a contamination, but the collection of information at that stage generally won't lead us to verify that the end result of the cleanup will meet our guidelines. It's inspecting it partway through the process before the final product has been completed, if you will.

MR. EPSTEIN: So the process is, I take it, highly reliant on the written reports that would come from the site professionals and yet at the same time the department, in addition to reviewing those reports, would occasionally also visit some of the sites, is that what happens?

MR. BRENTON: Certainly and throughout the course of that you would also have, in a lot of cases, conversations and discussions back and forth between the site professional. Certainly, and I think it was referenced earlier, the process generally entails the development of a remedial action plan, a plan of how the site professional plans to clean up the site using whatever technologies and whatever approaches they think will work best. So we've had those types of discussions and conversations throughout the process.

MR. EPSTEIN: Contaminated sites are referenced in our provincial environmental policy Statute, EGSPA, the Environmental Goals and Sustainable Prosperity Act, and I'm wondering if you could just bring out for us what it is that EGSPA expects from the department in terms of contaminated sites and where we've advanced to so far.

MR. BRENTON: I'm going to defer that to Mr. Geddes.

MR. PETER GEDDES: The EGSPA goal speaks to essentially stimulating redevelopment and so our interpretation of that is in line with this notion I mentioned earlier of release of a regulatory liability and developing tools and clear processes that will actually stimulate or encourage the development of sites, as opposed to being more

specifically focused on the regulatory compliance path, the heavy-handed path, I guess, for lack of a better term. So that would be our interpretation.

MR. EPSTEIN: Yes. I think EGSPA also mentions the development of some regulatory tools and I think you've already referred to those tools as being under development at the moment.

MADAM CHAIRMAN: Mr. Epstein, your time has elapsed right now, but on the positive side we have a lot more time for the members present because the Progressive Conservative Party aren't here for the last round. So that allows us 20 minutes, if we will, for the last round of questioning, I'm going to return to Mr. Colwell of the Liberal caucus and we'll be back to you later. Mr. Colwell.

MR. COLWELL: You talked about, just briefly with my colleague, a breakdown of the number of contaminated sites. Could you supply us with a list of that by general category of household ones or industrial ones, or whatever the case, whatever categories you put them in?

MADAM CHAIRMAN: Ms. Fenton.

MS. FENTON: Yes, we certainly will do that. The ones that are listed in ATS, we'll break down if they're domestic or if they're an industrial site, we'll break those down for you.

MR. COLWELL: Just so we can get an idea what the ratio is and how serious. The household one is the one that really worries me the most because the industrial sites, you've hopefully got lots of ability to get those cleaned up and those are different situations totally.

Also, I touched on this briefly before. The regulations around the installation of new or replacement oil tanks, either in industrial sites or in residential sites, has the department looked at - in conjunction with the oil companies because they're the suppliers and with the insurance companies and the government, sort of as a group working together -coming up with a standard for new installations? When I say, new, I mean also any replacement ones that would have to be in place. It seems to now be driven by the insurance companies, which is not a bad thing but if there were regulations so if I know that I'm going to put an oil tank in, it has to have this and this and I know that there are regulations around who can install them now and the kind of piping you can use and guards and all that kind of stuff but I mean the total thing, is there any move towards that?

MS. FENTON: I think I'll defer that to Mr. Baxter. I believe he mentioned earlier that they have had conversations with the Canadian Oil Heat Association.

MR. BAXTER: As Ms. Fenton notes, we met for a number of years with the Insurance Bureau of Canada, the Canadian Oil Heat Association, tank manufacturers, some oil delivery companies, as well as homeowners who were involved with domestic spills. We have come up with installation environmental management guides for domestic tanks. We also developed some brochures. I mentioned, this is on our Web site, it's a Homeowners Guide to Heating Oil Tank Systems. We distributed 125,000 of those through the insurance companies and oil heat distributors in Nova Scotia. They're quite interested in working with us and we may go back and do another update to this program.

Right now we're looking at the size of the issue. There are probably 200,000 domestic tanks in Nova Scotia. We don't believe that because of the size and the complexity of this issue that regulation would be the answer to this. We think education, particularly coming at it from all directions, would be the way to get homeowners and commercial users of domestic-type tanks to upgrade their systems and to properly manage the systems.

Essentially the oil companies have used the 10-year limit as kind of a default but it's not really based on science so we've been trying to work with them on that and get some flexibility in their systems.

MR. COLWELL: It just seems to me that regulations would make more sense because then everyone knows what the rules are. When I say regulations, I mean regulations with consultation that go with them. This has to be sensible but it has to be also that the chance of a spill that causes damage is really minimized. It's to the point now when after you see a few cleanups are done, it's not worth having oil in your home, it really isn't worth it. Once the general population understands that, I think the oil companies are going to be in major trouble supplying oil to customers, which is very convenient. When it works well, it's probably the ideal thing to use but if you get a spill and you're looking at the horrendous problem of getting it cleaned up, then you think about this and say, just don't do it.

Personally, I have electric heat and wood and someday I'm going to have to go to oil. I just shudder at the thought of using oil. Not because oil isn't good and doesn't give you good heat and all that and is efficient, it's just the possibility of having a leak or something stupid happening when they deliver oil or whatever the case may be that you have oil in your home and then you have a major problem. Knowing what I know and having seen what I do every day. I know you can't comment on that because you can't say that.

I think those regulations put in place - because now the insurance companies come in and say in 10 years you have to replace it. That means if you have a stainless steel tank, that tank will probably last 100 years if it's built properly. A fibreglass tank will probably last 100 years if it's looked after properly so that's not the issue. But there are such things

as drip trays underneath them so you can see that there's oil dripping and you have a reservoir to catch it. Simple things that could be done. There are already great things that you've done with the guards over the outlet to the tanks and the coil underneath the tank and the covering on the copper tubes - I remember when they used to be buried in the cement. I wonder how many of those leaked and no one ever knew - all those sorts of things. Is there any direction the department is thinking about doing that? It's a fine line between making it sensible and safe.

MR. KIM MACNEIL: A couple of points to bring up there. I think it could be regulated, but any regulation that would be done would have to include a large amount of education, which is what we feel we're doing now. We also find that the liabilities that we talked about earlier, that are associated with leaks from improper line installation or improper tank installation, are so great - the oil companies can be so heavily impacted by a leak - that we find that the quality of work the oil companies are doing and the installations that are taking place are much better than they had been in the past.

Certainly with the way our financial situation is right now in the province and the cost of enacting regulations, at this point in time we feel that working with industry and educating the public is our best strategy.

[10:15 a.m.]

MR. COLWELL: Is there any possibility in another avenue then? There are some more stringent ways of installing tanks now and I think it's a really good idea. But if you get an installer who's supposed to be licensed who's doing this and he's not doing it properly, is there any recourse the department has to fine that person or take their licence - is there anything they can do?

MR. BAXTER: The installation of home oil tanks is regulated to some degree by the public safety division of the Department of Labour and Workforce Development. They would look after the training and possibly the discipline of people who didn't install these properly, but most of those address new systems that are installed under the National Building Code. They have limited access to this system now, but at the same time they're working with us on education and outreach, particularly to these installers but also to homeowners, to make sure that they ask for a better system.

We're also working on the national guidelines to try to eliminate the ability to use cheaper tanks, to use single lines, to eliminate some of the gaps we see in the systems.

MR. COLWELL: That's positive. It would be nice if, when the statistics come out in five or 10 years - zero leaks from houses. Wouldn't that be nice? I don't think you'll ever get there, but hopefully it's a really low number as you move forward. As you've already said, you're making progress.

If you have a residential oil spill, is it treated differently than a contaminated site or is everything treated exactly the same? If you have a contaminated industrial site that could be quite substantial, is it handled the same as a residential one?

MR. BAXTER: No, actually, it's handled differently. Generally when a residential spill happens, it's noted right away. Somebody loses heat in their house or they notice an odour - they respond quite quickly. It's actually covered by an existing regulation called the Emergency Spill Regulations. People have a process to go to right away and we have a special guideline policy for the domestic oil spills that seeks to focus what we call a contaminated site investigation.

Right now if you're looking at a full contaminated site investigation you would have to look at the entire site - the site history, what other potential contaminants could be present on the site. For fuel oil spills we allow for a record of site conditions to be developed simply for the fuel oil because that's all we're worried about at that time. It streamlines the process. We've opened it up to some of these other people. We've also opened it up to certified clean-up contractors.

For instance, if you have a spill and it can be cleaned up right away without getting underground, without getting under foundations, you don't have to go through a long and involved process.

MR. COLWELL: When you go through that, basically, if you can get the stuff cleaned up, gone and have no odour, no indication that it has actually gone down in a crack in the floor or anything, it's a pretty straightforward cleanup, that's what I understand that you said.

MR. BAXTER: That's correct.

MR. COLWELL: It makes a lot of sense actually. If you're going to change the process, what do you feel, with the process that you're going to change to make it totally different, based on what the Auditor General had done and you've talked about already and the total process with contaminated sites?

MR. KIM MACNEIL: Could you expand on that question a little more?

MR. COLWELL: Just basically, you're making some changes that you've indicated are already underway. What change in that overall process do you think will be the defining feature of it? I know that the department has been trying to make improvements with this and it's a complex issue. When you come out with your new regulations, will it be accountability? Will it be quality control? What is really going to make the biggest difference?

MR. KIM MACNEIL: I think there is one big thing, there are going to be standards brought to the cleanup criteria that people are going to know and that everyone will have to adhere to. There are a couple of other things as well. I think that, based on the Auditor General's past recommendations and some of the ones currently in here, the Activities Tracking System and the assurance quality control programs that we have operating within the department will bring a marked improvement to the way we deal with contaminated sites, as well as some of the other areas that we deal with, which are quite familiar.

To industry - I think the potential release from liability is a huge issue and that's something that we've heard time and time again from them. As we've all mentioned before, with this release of liability, we expect an economic benefit where we will have development of some of these properties that, to this point in time, haven't been able to be developed because of those liability issues.

MR. COLWELL: When you talk about the quality assurance in this, is there a process in place now, or do you intend to put a process in place, after a site is cleaned up to contact the individuals who were involved and get feedback and see how the process worked?

MS. FENTON: We currently have a Quality Assurance/Quality Control Program that was instituted in 2007. The purpose of that is for us to go back and look at a program area, and similar to what the Auditor General is looking at, to ensure that we have followed our processes, so we pull files, we ask questions. After we do that audit, we look at areas where we need to improve. We put a corrective action plan in place and we go back to review those files again.

The process is more internal than it is external. I think your question was, would we go back and ask somebody how was the process for them, did they understand the process? This quality assurance program we're referring to is internal and it's to help us improve and make process improvements, internally, to how we manage our programs.

MR. COLWELL: I ran a very sophisticated quality assurance program in my manufacturing process and the key element of that was the customer. In your case it would be a customer, someone who had gone through the process, and you really need that feedback from the people and more of, how did the process work? What were the difficulties with it? Did you have trouble getting hold of somebody? Did you have a problem getting test results, or whatever the question should be?

Your quality assurance, when you run that, is there someone designated for that who doesn't do anything but check on the quality assurance?

MS. FENTON: We do have one person in our Amherst office that it's a part of their job - that's not what they do solely - and then we have a dedicated team that we get together to review the files so that we ensure consistency. I think your point about understanding what the client is feeling is an important one, and once we develop our new regulatory framework, it's probably something - I think there are going to be changes there that are going to help the citizens of Nova Scotia understand this program a little better. So it's an area we will probably look at then. Right now it's just an internal process, but your question is well taken.

MR. COLWELL: Yes, and the other thing is, who does the quality assurance person report to?

MS. FENTON: They report to me.

MR. COLWELL: Most of the quality assurance systems that work well, they report to a supervisor, but ultimately in the system that we had in place, we had to have - I owned a company, they reported directly to me even though they had a supervisor. So if they had a deficiency in the quality assurance - in this case it would be directly to the minister - that they felt was an issue, that report should go right to the minister and then the minister would deal with it however, still having the system you have in place now. But that's a real quality assurance system, how it works. That way the person can't be influenced by anybody. I know you wouldn't do that - I know you well enough for that - but there would be a tendency sometimes for somebody somewhere to try to influence the quality assurance person, and that can't happen if it's going to work well. What kind of process do you have with that now?

MS. FENTON: Well, as I said earlier, right now we review two programs a year through our quality assurance program. The report is prepared by this dedicated group. The report comes to myself and my executive team, which is just the regional directors. The dedicated group provides feedback and a corrective action program. We then send that out to the regional directors so that the corrective action takes place. Then we review it again, but my boss is right here next to me, so I guess I do tell him.

MR. COLWELL: I'm sure you do. I'm pleased to hear that you run the quality assurance program. I can tell you from implementing one, it's very painful, extremely painful, but when it's in place and working properly, you get unbelievable information out of it and it really will smooth everything out. I think the process you're taking and the review process you're going through is very, very positive. It took me two years from the day I started to actually know the thing was working properly, and that's working at it every day. It was part of the whole integrated manufacturing process and there was no choice - I had no choice, I had to do that for my customers - but it really does pay big, big dividends. At first people are reluctant about it, and then as you go through the process they endorse it because it really protects them and also makes their job easier. So it's a

very positive thing. I want to commend the department for moving toward a quality assurance program.

MS. FENTON: Thank you.

MADAM CHAIRMAN: You only have about 20 seconds.

MR. COLWELL: Well, with that - I have several more questions here, but I would like to thank you for your answers. One thing: those pamphlets you've got on how to install a tank, could I get some of those, or maybe all of us, for our constituency offices, something we can give to people? I think it would be very useful information.

MS. FENTON: Yes.

MADAM CHAIRMAN: That would be helpful for MLAs. With that, I'll turn for the next 20 minutes to begin with Ms. Kent. I think you may be sharing your time.

MS. BECKY KENT: Thank you, Madam Chairman, and thank you very much for coming in today. It's interesting - as I sit here, I really only have one question. It has put my mind back to when I actually was on municipal council here in HRM, because I think that within a constituency many of the resident-type complaints are often driven through a municipal land use type of whistle-blower situation. I experienced that, anyway. I know as an MLA, although we have contact and I have had dialogue with your office, I have found that a lot more of my resident issues I faced more on the council and that's what brought me to - I'm going to just preface a question around your engagement with municipalities and Nova Scotians.

We've talked a lot today about oil tanks at a consumer's home and that sort of thing but what I dealt with was often landfill. Where someone might own a large parcel of land and want to fill in some space and they would bring in God knows what, quite frankly. The residents in the area would see loads and loads of trucks of things coming to infill. On the surface, some of it might look like concrete or whatever. There has been glass, there have been loads of things that could be very safe but sometimes things get buried within.

I recall, on a community level, when I was on council and actually since being the MLA, the first call is often around and dealt with on a ground level with the municipalities, dangerous and unsightly, through that whole process. Then it becomes land use and then there's an environmental issue and a collaboration, frankly, between two levels of government. I recall on a number of occasions that the higher level of decision makers within the municipality would say to me, there needs to be changes at the Department of Environment to help us do our job and help them do theirs on these kinds of issues.

To be honest, I can't recall the specifics of it but it makes me ask, what was the uptake on municipal consultation and involvement and, potentially in the future, what will it be with the municipalities? Again, a lot of the complaints will come through them and then eventually trickle to the Department of Environment and as a resident they're not necessarily sure where to go and it will quite often start there. I'm just wondering, within the municipality here and across Nova Scotia, what was the uptake and did you have good dialogue and do you see some changes happening there?

[10:30 a.m.]

MR. BAXTER: The municipalities do provide comments during the public consultation phase of this. Halifax, HRM, was also represented on the deputy minister's advisory committee so they've been working with us for a number of years now on this process. Of course we want to keep UNSM engaged in this as we move forward because there are other issues, as you mentioned, urban infill. We want to develop sites that are already serviced. It helps municipalities control the costs of their infrastructure.

These brownfield sites, we want to make sure that these are redeveloped, these opportunity sites. We also want to help municipalities who have to take over some of these potentially contaminated properties through tax sales or non-payment of taxes to make sure that their liabilities are contained and that they are not unduly impacted.

You had mentioned before about movement of fill. We're also looking at some restrictions or guidelines on that as part of the more comprehensive framework surrounding contaminated sites because we see that as an issue. Now as Ms. Fenton mentioned earlier when she talked about Fairmount, that entire site was what we would call a greenfield site. It was a new site, but all the impact was from old infill that had been dumped there over the years. As costs for disposal of some of these materials, particularly the contaminated materials, start to increase there is going to be an incentive to get rid of some of these materials improperly. We want to make sure that when something is dug up from a contaminated site that it goes to a properly managed disposal or treatment facility.

MS. KENT: Thank you very much, I'll pass my time to my colleague, the member for Pictou East.

MR. CLARRIE MACKINNON: Madam Chairman, it's great to have the Department of Environment so well represented here this morning. There were several very serious tragic accidents in Pictou County this year and one of them involved a tanker truck that had used oil in it and there was an ensuing fire, a spill. That, in fact, could have been a contaminated site for a long time but I think quick action was taken there. Could you elaborate, what actually happened there from an environmental perspective?

MR. BRENTON: Yes, actually that particular file, basically with the situation that happened, in essence, whenever you have an initial release or spill of that nature, it is treated as an environmental emergency. As I believe Mr. Baxter alluded to earlier, we do actually have regulations in place to deal with what I'll call the actual emergency issue - in other words, put in mechanisms to contain the spill, make sure it didn't migrate to other receptors. In this particular case they were very quick to act, putting in booms in an adjacent river and watercourse. Determining what downstream receptors, and I believe there was a fish farm involved, could be impacted and even just some communications with some of the local residents along the area.

As it was, the company was able to move in quickly and take responsibility and undertake actions to what I'll call containing cleanup. Within the first three to four weeks they probably captured roughly 90 per cent of everything that had been spilled there. That being said, there's still residual contamination that has to be dealt with and this is more the long-term process. This is where the site professionals now will come back to us and provide us with a remedial action plan. There will be ongoing testing and monitoring to make sure that there are no, what I'll call residual impacts, that could impact either the river or adjacent soil. That will probably be taking place, it will probably be, you know, I'm going to guesstimate probably at least a year, or maybe more, before we get a final report to come back to us to indicate that all of the residual impacts have been addressed.

MR. MACKINNON: This was a situation where it did get into our waterways and, in particular, the Barneys River. I was on-site a number of times and I was really impressed with the department's response and also with the local contractor, Buck MacLean, and his crews and his equipment. I think a very diligent job was done there by the people on-site. Getting those booms in as quickly as possible to do the containment, and all the skimming, the crew standing in the water, including the owner of the company himself being in the water for hours with the skimmers and so on - very impressive job done there.

I'm wondering is there ever any interaction by the department with the insurance companies in a situation like that because a lot of the actual cleanup would have been insurance company, I assume? Are there direct interactions with the insurance companies?

MR. BRENTON: Certainly if we utilize the example that you referred to, there would have been quite a bit of interaction. Keeping in mind as a regulator - and that's what we are, we're a regulator to ensure that the responsible parties take all actions necessary to clean up the environment - our focus would primarily be on the company involved dealing directly with the insurance companies, their contractors, their site professionals, but also the other stakeholders that would be involved. The regulatory stakeholders, including our provincial counterparts with the Department of Fisheries and Aquaculture, federal counterparts with Environment Canada and Department of Fisheries

and Oceans. So it's from that basis we look at it in regard to engaging a broader team, if you will, keeping in mind that we still have the role as a regulator to ensure that the responsible parties take the necessary actions to clean up.

MR. MACKINNON: While we were talking about insurance companies, we talked about the installation of new oil tanks and so on. The situation is that the insurance companies have gotten very aggressive in replacement of tanks and I wonder if there's any interaction involved with them on those kinds of issues. I own two homes, two properties, one in Louisbourg and one in Pictou County, and the insurance company that I deal with, the tanks were basically in pretty good shape I thought but I had to replace both tanks and send photographs off after the tanks were replaced. So I'm happy that the insurance companies are becoming more aggressive but I'm sure the environmental aspects are there to encourage them as well.

MR. BAXTER: Certainly, we are working with insurance companies on that. It's quite a patchwork, as you've seen and you can imagine, because there are no requirements for uniformity. Because of that many have adopted this 10-year default for replacement and because of that, quite often, as you've mentioned, some of the newer tanks are coming out of service prematurely so there are environmental costs to that.

Prince Edward Island put in a regulation that called for mandatory replacement after 10 years of age. They found that they had an increase in releases because every time that you replace a tank, replace lines, there's an opportunity for releases to occur, so they found that they didn't get the result that they wanted. We're trying to work with insurance companies coming up - now that they have some more information on the tanks that they removed - whether they can advance that date, whether they can be a little flexible for newer or more improved systems and whether they'd like to work with us on expanding the educational requirements.

MR. MACKINNON: I want to talk for a moment about orphan sites. I know there are quite a number of them in the province. I don't want to just talk about my own area, but using an example in my area has a province-wide implication as well. The East River gains much of its strength in my constituency. It's a beautiful East River Valley. It gains much of its strength before going on to the Strait. Along the banks of the East River, further down after you leave the rural areas, there are a number of sites that could cause some concerns. I'll just mention, perhaps, Tibbetts Paints, which was a company that existed years ago, no longer exists, I would think that is probably an orphan site.

I understand that there is no direct money by the department to clean up those sites and we're trying desperately to get back to balance and so on. I'm wondering if at any point in the past or in the future there could be talks with the federal and municipal governments in relationship to addressing some of these situations that may exist out there.

MR. BAXTER: There are quite a few sites, based on historic activity, within our province. Some of those sites have passed on to municipalities; some have passed on to our provincial departments through the Escheats Act, where if a company surrenders its business certificate and there is no one there to claim its assets, they revert back to the Crown; some of the sites have never really been foreclosed on and they're truly orphan sites, they're sitting unknown, uninhabited.

Where we are aware that there may be issues with these sites, we have taken some opportunities to investigate and for particular sites - as you mentioned Tibbetts Paints - we've actually gone and done some cleanup and some stabilization of that site.

We are working with our federal colleagues and also with municipal colleagues on re-use of some of these sites. Whether they're redeveloped for parkland, local riding trails, those sorts of things, there are resources available through the Federation of Canadian Municipalities. The federal government has given them \$150 million to help municipal governments redevelop contaminated sites for their use. Problems with accessing some of that are kind of inherent in some of our other legislation. We're trying to remove some of those roadblocks to get these sites back into active and productive use.

MR. MACKINNON: I have several other questions but I do believe in sharing so I will pass along to the member for Halifax Citadel-Sable Island.

MR. LEONARD PREYRA: I just have a comment and a question. In responding to a question earlier from Mr. Colwell, we were talking about what some of the elements of the framework are and what difference would it make, and I think what I heard you saying was - and these are from my notes - there are five different elements that are worth looking at and one is the release from regulatory liability, where someone buying a property can be assured that site has been remediated or rehabilitated; the question about activities tracking, that we will know more about how many sites they are, what types they are, the type of contamination, what stages of cleanup they're at; questions relating to quality control - there would be established standards and processes there; questions relating to the training of people who are going to be doing the inspection; and also more accountability for the remediation itself. Those are the points I took.

I think it's great. It sounds as though there has been a response to the Auditor General's Report and to public questions about environmental monitoring and assessment and compliance and pollution prevention. I'm happy to see that.

I have a couple of constituents' questions relating to some of that. One of them relates to the release from regulatory liability. As you know, we have a long-standing question in my constituency where a property was polluted. The landowner took all the necessary steps and cleaned up that pollution and subsequently sold the land. I'm sure

that would fit within the new release from regulatory liability requirements, but the neighbour had their land polluted by that same spill. So the person selling the land was cleared - they sold their land - but the question then arose as to who was now responsible for the pollution that spilled over into the adjacent property. Is it the old owner? Is it the new owner? It has been tied up for three years now and I'm wondering to what extent the release from regulatory liability would address those third-party issues?

MR. BAXTER: It's certainly part of our existing system, but more importantly, it's part of the new and expanded regulatory development system. We are looking at third-party remediation issues that have to be addressed before any site is closed. Essentially you would have to either clean up those sites or get the consent of third parties that they were comfortable with the state of their properties, and they would also be issued certificates with some sort of release of liability before the site of origin was closed.

[10:45 a.m.]

MR. PREYRA: In terms of tracking, then, both the new owners and the adjacent property owner would know. There would be full transparency and disclosure required if the property changes hands or before the liability is released.

MR. BAXTER: Yes, that's true. We're also looking at some way of ensuring that these reports or a notation that there was some activity on the site are available to people who are purchasing properties so they can become aware that these were properly resolved.

MR. PREYRA: Would that become part of the new land registry system as well, with the electronic database? Would it be easily searchable?

MR. BAXTER: It's possible. We're exploring that option at this time.

MR. PREYRA: That's great to know, because I think it does cause a lot of angst both in new property owners and also in neighbours when people walk away from their obligations.

I had a general question. I was talking with one of the people here who is with the insurance industry, and he was saying that they're reviewing their exposure in light of recent climatic conditions. The insurance companies are reviewing their exposure to risk. I'm wondering if we're doing something similar. I'm thinking particularly of some of the sewage problems that we've had in the city. Is there some kind of assessment about our infrastructure and the capacity of the infrastructure to deal with some of these issues?

MR. KIM MACNEIL: Certainly from a departmental perspective, any approvals that we would issue as far as infrastructure goes, we would take into account the climate

changes that we see happening around us on a regular basis. I certainly think that government in general is considering changes in climate and the risks associated with the current infrastructure.

Within our department we have a climate change directorate that is working in our own shop as well as with other government departments, on looking at how climate change is going to affect, not just infrastructure but coastlines and our own residences that are located or exposed to the effects of climate change.

As well, this is an area that the Atlantic Provinces are co-operating on and there is an Atlantic Regional Adaptation Collaborative, it's called, that has all of the Atlantic Provinces working together to look at areas of large risk due to changing climate.

MADAM CHAIRMAN: That does take up all of our time for the questioning today. I'm certainly going to turn it over to you if you have any closing comments but I did want to draw your attention as well to the list of requests that we've had for information. Our Committee Clerk, Darlene Henry, will have written those down, I'm sure, and we'll share those with you because I know that it's difficult to keep track of them as you're answering questions.

MR. KIM MACNEIL: Thank you very much and we certainly will get back to you on any of the items that were promised here today. I would like to thank the staff that are here with me today and as well, I'd like to mention a couple who were working on the contaminated sites files with us, Gordon Check and Genevieve Harvey. We've got a dedicated team here and we're certainly determined to incorporate the Auditor General's recommendations into our work. We feel that the regulatory framework we're proposing will result in a system that's effective and one of the best in Canada. At the same time, we certainly understand the need for continuous improvement in the work that we're doing. Thank you again and thank you, Madam Chairman, for allowing us to present today.

MADAM CHAIRMAN: I know that all the committee will be anxiously awaiting those new regulations and what you called the framework, which I guess we'll expect by the end of this year, from what I heard. Certainly all of us have experienced residential spills in our ridings and it is a nightmare and I'm glad to hear there were quite a few questions today and an awareness, on your part, about the difference between residential and commercial owners and how they might respond to that. I appreciate that and we'll be looking specifically to see how that is addressed.

We have only the matter of committee business today and that was a recommendation, a motion from our Subcommittee on Agenda and Procedures. Perhaps you'd like to make the motion here, Mr. Preyra.

MR. PREYRA: I'm sorry, I've forgotten.

MADAM CHAIRMAN: No, it's written down actually on our agenda for today under Committee Business, just to make the motion to the full committee. Oh, it's only on my notes. I'll read it into the record. I'm sorry, I didn't realize it wasn't on everybody's.

The motions says: The Subcommittee on Agenda and Procedures recommends that the Standing Committee on Public Accounts adopt the three chapters in the upcoming November 2010 Report of the Auditor General for our upcoming meeting.

Would that be moved by Mr. Preyra?

MR. PREYRA: Yes, I will and that is subject to the availability of the departments and the order will be subject to that as well.

MADAM CHAIRMAN: Would all those in favour of the motion please say Aye. Contrary minded, Nay.

The motion is carried.

We'll get them organized and next week we have an in camera meeting with the Auditor General to receive that information. I just draw your attention to the fact that we start at 8:30 a.m. so that you have half an hour to review the report before we actually hear from the Auditor General. With that, motion to adjourn, please.

MR. MACKINNON: So moved.

MADAM CHAIRMAN: We are adjourned.

[The committee adjourned at 10:51 a.m.]