

Fuel for the Fire

Green-washing is no laughing matter



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When you think of small town gas stations, the hit Canadian comedy *Corner Gas* may come to mind. It's set in a place where not much happens and the townspeople like it that way. But once in a while, all hell breaks loose.

Mike Johnston can relate. He too operated a small town pumping station in small town Ontario. However, Mr. Johnston's situation is no laughing matter. He's living a nightmare as he tries to clean up his gasoline-contaminated station so that he can safely sell the property and retire.

His decade-long David and Goliath battle with a big Canadian gasoline company (which shall remain anonymous for now) would make the most stalwart gladiator weary. Surprising, since this company has been one of those credited with greening industry practices. Even ethical investors have deemed its stock a desirable investment. But the Johnstons are questioning whether it's all a bunch of green-washing.

The Johnstons had the best laid plans, as the saying goes. They visited the town just about every weekend for five years before they finally made the move from Toronto. In search of a simpler life for themselves and their two sons, they bought a new home, and in 1990, a gas station (previously owned by a former gasoline company).

“We wanted to go with a big name brand, not any old cut-rate station,” says Mr. Johnston. He operated his new gas station with the help of his sons and their friends between 1990 and 1994.

During that time, the gas company owned the gas and the handling equipment on the property, including the fuel pumps and the underground fuel storage tanks. The lease between the company and the Johnstons was set to expire in June 1994. Before renewing, they were asked to purchase their underground fuel storage tanks and related equipment. Because of his concerns about the environmental risks associated with the tanks, Mr. Johnston did not want to make the purchase.

After the lease ended, the company retained an environmental consulting firm to remove the underground storage tanks, as well as 725 tonnes of contaminated soil and some water runoff by a nearby creek. The consultant also performed an environmental investigation that showed that soil under the building of the property was still contaminated. A second investigation raised a few red flags.

In October 2001 the gas company agreed in writing to test, investigate, and remediate the Johnston property with reasonable diligence and within a reasonable time.

However, according to the Johnston's lawyer, Dianne Saxe of the Saxe Law Office, the company sent a consultant who tested only one spot on the site. The consultant allegedly refused to check the areas most likely to be contaminated — the old tanks and pump island.

Mr. Johnston suspected that something was amiss, so he dug into his own pocket to pay for an independent investigation. The new boreholes, dug by Cardinal Environmental Consulting Services, showed the site had extensive gasoline and diesel contamination under the building — including pure product floating on the groundwater.

Stewart McLellan, president of CECS and an environmental engineer technologist, says the gas company could not be diligent without checking the tank and pump island areas, the obvious places for contamination. His investigation revealed that the site did not meet the necessary requirements under the ministry's Guideline for Use at Contaminated Sites in Ontario.

As of October 1, 2004, those standards were replaced by the Soil, Ground Water and Sediment Standards under the *Environmental Protection Act*. So, on June 6, 2005, CECS re-sampled the site. The results show that the property is even more contaminated with gasoline than was shown by the previous investigation. Mr. McLellan says remediation is required urgently in order to prevent contamination from spreading.

Copies of the CECS report were sent to both the gas company and the Ontario Ministry of Environment. The ministry confirmed that the property does not comply with their guidelines.

The gas company has not yet cleaned up the site. “This is a great injustice,” says Ms. Saxe. If this company cannot or will not handle small claims fairly and efficiently, she adds, what does that say about its ability to manage large ones?

The company spokesperson says that because the matter is currently before the courts it would be inappropriate to discuss it at this time. The spokesperson added that the company “continues to pursue the goals of environmental protection and pollution prevention” and their “systematic approach to environmental management is designed to ensure compliance with all applicable laws.”

That's cold comfort for Mike Johnston as he continues to run a business he hasn't had the necessary assistance to run at a time when he intended to be retired. Here's betting that not even the award-winning writers of *Corner Gas* could get a laugh out of this scenario.

If the Johnstons and their independent investigations are correct, what's the hold up? Both parties last met in court on September 28 for a motion to order the company to reassess based upon its undertaking in the settlement to diligently clean the land, but the judge decided to reserve a decision for now. Let's hope that the company demonstrates that it takes environmental responsibility for projects large and small. **HMM**

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