

# Beware of UXO - They're Out There!

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We recently acted for the owner/operator of a scrap yard, who decided to shut down its business after more than 50 years in operation and sell their property to a developer. As would be expected, the purchase agreement required the vendor to remove the scrap metal stored on the site prior to closing. On the day before closing, while the crane operator was picking up the remaining scrap at the far corner of the property and dumping it in a truck to be hauled away, he came upon what appeared to be a large cache of shells and other munitions. He immediately (and wisely) stopped the crane and notified the owner.

Our client called CFB Borden to report the finding, who immediately sent an inspector down to investigate. Our client's second call was to us: "Do you have any experience with this and how is it going to affect the closing?" The answer to the first question, of course, was "no, no one does." Interestingly, as we delved into the issue, we discovered that the existence of munitions is not all that uncommon at scrap yards, particularly ones that have been in business for a long time, as well as at properties that were once used for military purposes or near such properties. In fact, they are common enough to have a name - Unexploded Explosive Ordnance - or UXO, as well as a program through the Department of National Defence (the UXO and Legacy Sites Program), to keep records of where UXO may potentially exist, inspect sites, conduct risk assessments and remove it if necessary.

Given the presence of the UXO, the closing date was extended until the DND was able to remove it, conduct a post-removal inspection and provide a letter confirming that all UXO was removed from the site - a process that took 4 weeks. Fortunately, the costs of the removal were fully covered by the DND.

How did the UXO get on the property? While there are no written records, it is suspected that the prior operator bought it from the DND, likely many decades earlier. The DND would sell munitions scrap to scrap yards. Although DND policy was that everything to be sold was to be screened to ensure the ordnance was decommissioned, the screening process was not perfect, resulting in some live UXO being sold. Unfortunately, the outcome has been a number of

injuries and deaths across Canada over the years. Needless to say, the DND no longer sells munitions scrap to scrap yards.

As it turns out, despite the delay in closing, the crane operator and our client did the right thing by leaving the UXO in place and reporting it, rather than simply hauling it away with the rest of the scrap metal. A few weeks after the sale closed, our client received a call from the DND commending them on their approach. The UXO from the site was re-screened and some of it was confirmed to be live. Removing it with the crane could well have proven disastrous.