

UPCOMING CHANGES TO B.C.'S SOIL RELOCATION REGIME

The Ministry of Environment and Climate Change Strategy in British Columbia (the Ministry) is set to bring in new requirements for soil relocation through amendments to the *Environmental Management Act (EMA)* and the *Contaminated Sites Regulation (CSR)*. This article will briefly examine the evolving regulatory environment by setting out the Ministry's new proposed process for regulating the relocation of both contaminated and uncontaminated soils. These regulatory amendments impose additional testing requirements prior to soil relocation and clarify the obligations of landowners and developers who may have excess soil and of owners or operators of sites for the potential use or disposal of that soil.

THE EXISTING REGULATORY FRAMEWORK

The *EMA* and the supporting provisions of the *CSR* establish a process for tracking the transport and deposit of soil from contaminated sites to receiving sites in British Columbia. Under the current framework, the primary tool used to regulate contaminated soil (soil that exceeds the *CSR* land use standards of the receiving site) is the

requirement for persons relocating contaminated soil to enter into a Contaminated Soil Relocation Agreement (CSRA) with the owner or operator of a receiving site and the Ministry's Director of Waste Management. The purpose of the CSRA is to ensure that contaminated soil is moved only to suitable receiving sites.

Historically, ministerial oversight has concentrated on the relocation of contaminated soil. There is no current regulation for the relocation of uncontaminated soil or clear process to ensure that soil quality on lands with commercial or industrial uses is analyzed and documented prior to relocating it.

REGULATORY AMENDMENTS

The changes to the soil relocation requirements will apply to the relocation of soils that are greater than 30m³ and which originate from a commercial or industrial site with a Schedule 2 use as specified in the *CSR*. There is no volume exemption if the source site is a high-risk site. If your site

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meets these requirements, you will now be required to complete a soil analysis prior to relocating the soil to determine if the soils are contaminated or uncontaminated.

The changes include eliminating CSRAs and replacing them with a Soil Relocation Notification Form (SRNF). For relocating uncontaminated soil (soil that meets the land use standards at the receiving site), a person must submit a SRNF to the Ministry at least one week prior to relocating the soil. The SRNF must include the site from which soil will be relocated, the site it will be deposited at, the maximum amount of soil to be deposited and the soil quality analysis. The process is intended to ensure that the relocation of uncontaminated soil from sites with one or more current or historical prescribed commercial or industrial uses will be reported through a notification process. Municipalities, Indigenous Nations and the public will be able to access a Ministry public-facing database of soil relocation information based on data provided in soil relocation forms.

Soil relocation is proposed to be exempt from notification requirements under the following circumstances (note that the soil analysis requirements still apply):

- relocation of uncontaminated soil to a receiving site located outside of B.C.;
- relocation of less than 10m³ of uncontaminated soil from a single source site during a two year period;
- relocation of pre-load (soil applied to the surface of a site to compress subsurface

soils) from a site at which no specified industrial or commercial activity or use has taken place;

- relocation of uncontaminated soil to a receiving site that is on federal lands, other than reserves within the meaning of the *Indian Act*;
- when the soil is extracted in accordance with a *Mines Act* permit from a site that has only been used for a low-impact land use or certain quarry activities and the soil is relocated directly to the receiving site; and;
- when the soil constitutes sand or related materials used in winter roadway maintenance.

Contaminated soil will not be regulated under the new soil relocation process and is therefore not subject to the notification requirements. Instead, due to the elimination of the CSRA process, contaminated soil will now be regulated under other existing Ministry requirements contained in the *EMA* and the *CSR*, including waste discharge permits, independent remediation requirements, certificates of compliance and approvals in principle. Persons wishing to relocate contaminated soils should seek to obtain approval through one of these methods.

Existing CSRAs or those submitted to the Ministry before the new rules come into effect will not be subject to the new requirements.

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HIGH VOLUME SOIL RECEIVING SITES

The Ministry's amendments will also introduce additional requirements for High Volume Receiving Sites (HVRS), which are sites that receive more than 20,000m³ of soil. Ministry requirements propose to direct qualified professionals and approved professionals to develop soil management plans (SMPs) for HVRS and to use their professional judgment to make a determination of when protection may be needed. SMPs will need to be signed off by approved professionals and must include procedures for tracking soil and monitoring seasonal groundwater, as well as outline closure plans.

The lifetime of a HVRS is proposed to be the period during which the deposited soil has the potential to produce contamination. The lifetime of a HVRS will start on the date the site receives soil deposits and has no defined end date.

Existing sites will be exempt from these requirements if the soil is relocated prior to November 1, 2022.

ADMINISTRATIVE PENALTIES

The legislative changes will also introduce new administrative penalties (up to \$75,000) for non-compliance with the new requirements for relocation. This change supports compliance by providing the Ministry with the ability to apply administrative penalties under the amended soil relocation provisions in the *EMA* and the *CSR*.

COMMENTARY AND TAKE-AWAYS

Changes to the soil relocation legislation will come into effect on March 1, 2023. While the stated objective of the regulatory changes is to streamline, clarify and help facilitate a more comprehensive, holistic approach to the soil relocation process, the changes are significant and will impact the construction industry, property developers, owners and operators of receiving sites and others. The regulatory amendments will increase the number of sites that will be captured and the new soil testing and notification requirements will create additional costs, administrative challenges and potentially construction delays if the new requirements are not factored into time schedules. Accordingly, developers who have excess soil to offer and owners or operators of potential sites for the use or disposal of that soil should familiarize themselves with these new regulations and evaluate the land use standards for their own sites to provide for sufficient time to factor in and plan for the increased time and costs to ensure compliance.

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Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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