Land Remediation Intentions Paper Consultation

PREVENTION OF SITE CONTAMINATION FROM SOIL RELOCATION

Summary of Public Comments

BRITISH COLUMBIA | Ministry of Environment

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Review of British Columbia's Site Remediation Legal Regime

PREVENTION OF SITE CONTAMINATION FROM SOIL RELOCATION

SUMMARY OF PUBLIC COMMENTS

Table of Contents

1 Introduction

The B.C. Ministry of Environment (the ministry) plans to update some aspects of British Columbia's contaminated sites legal regime, including provisions related to soil relocation – specifically, for the management of soil on receiving sites and for the prevention of contamination from soil relocation.

See the ministry's site remediation website for links to the Contaminated Sites Regulation (CSR) and Schedule 2 of the regulation for further information.

This report provides a summary of stakeholder comments received as part of the consultation process on site management and prevention of contamination from soil relocation. The ministry will take into account the opinions expressed in this report as they develop and finalize the update to the soil relocation provisions in B.C.

This document has been prepared for the Ministry of Environment by Margaret Shaw, Writer/Editor/Consultant, contracted by the ministry to independently receive, compile and review comment on the ministry's review of the legal regime for the prevention of site contamination from soil relocation.

1.1 Background to the consultation process

1.1.1 Discussion paper – 2014 to 2015

The Land Remediation Section of the Ministry of Environment posted a discussion paper, *Discussion Paper Series: Prevention of Site Contamination from Soil Relocation*, on the ministry's land remediation website for public review and comment from October 7, 2014, to February 2, 2015. The discussion paper presented background information, concerns with current soil relocation provisions, ministry objectives and priorities, and options for amendments to soil relocation provisions. A separate response form for providing comments or suggestions to the ministry was also posted on the website.

The ministry hosted webinars on October 15, 2014, and January 14, 2015, to inform and update interested stakeholders on the consultation process. Also, face-to-face meetings that included ministry presentations and questions from participants were held in Victoria, Vancouver and Kelowna in October and November 2014. In total, these events involved close to 100 participants.

All written responses received through the consultation process were compiled into two documents, both prepared by C. Rankin & Associates, contracted by the ministry to independently receive, compile and review comments on the ministry's discussion paper:

- *Land Remediation Discussion Paper Consultation: Prevention of Site Contamination from Soil Relocation – Compilation of Public Comments*
- *Land Remediation Discussion Paper Consultation: Prevention of Site Contamination from Soil Relocation – Summary of Public Comments*

These reports were provided to the ministry for detailed review and consideration.

1.1.2 Intentions paper – 2015 to 2016

All comments submitted though the discussion paper process were carefully reviewed by the ministry, who then drafted an intentions paper*, Review of British Columbia's Site Remediation Legal Regime: Prevention of Site Contamination from Soil Relocation*, dated June 2016. The intentions paper was posted for public review and comment on the ministry's land remediation website from July 6, 2016, to August 31, 2016. The intentions paper presented background information, concerns with current soil relocation provisions, ministry objectives and priorities, a review of other jurisdictions, proposed soil relocation provisions, compliance and enforcement, and education and training.

The ministry hosted webinars on July 19 and 28, 2016, to explain the intentions paper and answer questions. In total, these two webinars involved close to 100 participants.

1.2 Contents and format of this *Summary of Public Comments* document

This document summarizes the comments received through the 2015–2016 consultation process. It is arranged in order of the ten questions posed by the ministry followed by a summary of other comments received, on the topics of chemical characterization and soil vapours, compliance and enforcement, and education and training.

The contents of this report were drawn from individual responses received from the public (emails and letters); the individual responses have been transferred to the ministry.

1.2.1 Description of responses received

A total of 17 responses to the intentions paper were received (by e-mail and attached file), all of which are summarized in this document. Respondents included representation from the resource development and delivery sector, the land development sector, those providing professional services to private companies or government, regional and local governments and an association.

2 Summary of Public Comments

2.1 Question 1: General support for the notification process

Question 1: Sections 5 and 6 – Do you generally support the ministry's intention to regulate soil relocation by means of a notification process? If not, please explain why not. (Please note that for sites that accept large quantities of soil, the ministry is also considering including operational requirements in the Act and Regulation.)

Of the respondents who answered this question directly (13), the majority expressed support for the ministry's intention to regulate soil relocation by means of a notification process. However, others expressed concern over a perceived loss of oversight and control, and still others questioned the need for any ministry oversight at all.

In other comments related to Question 1, a few respondents offered opinions about weaknesses in the existing process, and a few suggested ways to improve the proposed process.

Weaknesses identified in the existing process

A few respondents stated opinions about weaknesses in the existing process.

Sample of respondent comments:

"The existing process is not popular because (1) it requires two site investigations instead of one, and (2) there is no shedding of liability."

"The problems with the current soil relocation regimens include the almost complete reliance upon 'qualified professionals' to be honest and the almost complete lack of any inspection and enforcement of regulations by the ministry."

"The entities that are actually interested in enforcing soil relocation regulations are local governments that serve the needs of their communities."

Widespread support for the overall proposed process

Some or most respondents from each sector stated that the intended simpler system (notification process) would be beneficial.

Sample of respondent comments:

"[Organization] supports the ministry's intention to regulate soil relocation by means of a notification process."

"Streamlining the process will provide more opportunity to take advantage of soil that may become available for fill. Timely and cost effective management of imported soil and removal of excess soil is critical for redevelopment of land, especially brownfield properties."

"However, we believe flexibility will still be needed with regard to the Director being able to make decisions in unusual circumstances, and the role of local governments needs to be limited and clarified."

Concern over loss of oversight and control

Several local governments had concerns about the proposed process, seeing it as a "weakening of oversight" over information and compliance. One respondent was concerned that "the public/industry will assume if they notify the ministry, it will enable them to deposit soil as they wish." Some additional local government concerns were as follows:

- Soil relocation needs more oversight and more government resources, not fewer.
- The proposed new processes shift the burden of impacts to local government without giving them a meaningful part in the decision-making process related to identification, remediation, or relocation.
- Local government should be afforded the right to appeal a decision to relocate contaminated soil.
- The proposed regulations could lead to unauthorized soil deposition within municipalities, including in the Agricultural Land Reserve.

Sample of respondent comments:

"Contaminated soil is an issue that needs more oversight, not less."

"In regards to soil relocation, the ministry's proposed process appears to continue leaving the local government out of the decision-making process."

"… the ministry's intentions papers indicate a move toward less oversight by the Province in regards to the identification, remediation, and relocation of contaminated soils."

"The proposed regulation changes do not discuss land use/zoning issues, do not recognize the need for local government permits beyond ministry permits (source and receiving sites), and do not require as significant data as what some local governments require for receiving sites."

Other related comments and recommendations

A few respondents questioned the need for ministry oversight of soil relocations. One asked why ministry oversight would be necessary if risk based soil relocation were "signed off by an Approved Professional or preferably a qualified professional."

Several respondents recommended specific ways to improve the proposed process, including a suggestion to "include the new proposed site identification form to ensure that proponents have correctly assessed the source sites for existing or historic Schedule

2 activities. This will facilitate tracking of soil/fill movement in B.C. and allow audits to be completed."

One respondent suggested blanket authorizations to allow multiple deposits of soil under the same authorization.

Reliance on Approved Professionals

Several respondents provided comments questioning the ministry's reliance on Approved Professionals to sign off on soil relocation.

One respondent wanted to know what is meant by "other" qualified professional in the following statement from the intentions paper: "Ensure the notification forms have been filled out completely by an Approved Professional or other qualified professional."

Sample of respondent comments:

"I would recommend amending the legislation to include "qualified professional" as per similar protocols and guidance documentation, so as to facilitate a wider inclusion of professionals that can complete paperwork on their client's behalf."

"APs (Approved Professionals) are extremely hesitant to sign/accept risk, and as a result add unreasonable expectations to soil characterization and/or project information in general, in addition to excessive time and fees related to these services."

Soil as a resource, limiting the number of contaminated sites, brownfield development, and other specifics

A few respondents made statements about treating soil as a resource, limiting the number of contaminated sites, enabling brownfield redevelopment, and other specifics. The points made included the following:

- Soil should be considered as a resource, and treated as such.
- Soils can be re-used as fill at sites where they meet the destination site's land-use standards.
- Proper management and tracking is important for the prevention of future contaminated sites.
- Cost-effective, time-sensitive ways to manage excess soils and the import suitable fill materials are critical for the brownfield redevelopment industry.
- In addition, specific questions were asked about risk-based soil relocation, federal lands, soil vapour, and the definition of contaminated soil.

2.2 Question 2: Relocation of soil that exceeds numeric standards at the receiving site

Question 2: Sections 5 and 6 – For the relocation of soil that exceeds the numeric land use standards for the receiving site, what do you think of the ministry's proposal to potentially continue to manage the regulation of this activity under the soil relocation process?

Regarding continuing to use the soil relocation process to manage the relocation of soil that exceeds numeric land use standards for the receiving site, six respondents stated that they are in favour and three against.

In favour of managing this soil under the soil relocation process

The six respondents in favour of the proposed process made some additional points, including the following:

- The ministry needs an enforcement strategy and resources.
- Local government should be able to review applications for compliance with local regulations.

Sample of respondent comments:

"We agree that if soil exceeds numeric standards for the receiving site, that the ministry should continue to manage the activity for both source and receiving sites, with the goal of protecting human health and the environment, and limiting potential liability for all parties."

"I'm not sure I understand the question? I agree that risk based soil relocations should be accommodated within the new process, whether it's as simple as applying different site specific criteria (from the receiving site), different soil pH at the receiving site, a P13 SLRA or a full blown risk assessment."

"The [municipality] has had a history of businesses not complying with ministry requirements, and then the ministry not following up or the [municipality] having to take on ministry function without clear legislation."

Against managing this soil under the soil relocation process, and other options

Three respondents stated that soil exceeding numerical standards for the receiving site should not be managed under a soil relocation process because doing so creates a new contaminated site.

Regarding other options for handling such soil, one recommended that the ministry "establish siting, management and monitoring requirements prior to relocation." Another suggested that the ministry "consider whether authorization under the Waste

Discharge Regulation would also apply and if so which process would be more efficient and appropriate."

Sample of respondent comments:

"Soil that exceeds numerical standards should not be managed under a soil relocation process. Soil that exceeds numerical standards for a receiving site is a waste and the site that receives soil that exceeds numerical standards is a waste landfill and needs to be managed under different legislation such as those for approved landfills."

2.3 Question 3: Possible ministry approval for a risk-based approach

Question 3: Sections 5 and 6 – If a risk-based approach is adopted for such soils (see Question 2), what do you think of the possible requirement for ministry approval/authorization?

Respondents stated a range of opinions ranging from approval of this requirement to disapproval. The majority (eight) stated that they were in favour, two did not state whether for or against, and two stated that they were against the requirement. Of those in favour, all but one provided additional comments to qualify their approval.

In favour of the proposed requirement

Most of the eight respondents who stated that they were in favour of the requirement did not say why. However, one noted that **"r**isk-based analysis makes sense as it focuses on a case-by-case basis, rather than a blanket rule."

Sample of respondent comments:

"Ministry approval seems reasonable provided it is timely."

"A risk-based approach should be adopted, not one that is centred on volume. The ministry should continue to have an approval process for contaminated soil relocation that includes local government approval as well."

"There are some situations where the ministry will still need to have the oversight authority required to approve or authorize submissions. Or as described, soil which does not meet the numeric land use standards for the receiving site. This risk-based approach will allow the ministry to manage its exposure and increase compliance within regulatory requirements where needed, again, under a professional reliance regime."

Concerns and questions

Almost all of the 13 respondents who answered this question stated at least one concern or made a qualifying remark, including the following:

- The ministry would need to have the capacity to do this extra work in a timely fashion or consider administering it through the Contaminated Sites Approved Professionals Society (CSAP).
- Clarification is needed regarding what would be considered "risk-based," when Director's approval would be required, and the details of the risk assessment process and authorization process.
- Owners of receiving sites need to understand the risks associated with accepting contaminated soil. Additional guidance may be needed.
- Instead of requiring a risk assessment for each batch of soil that arrives at a site, it would make sense to manage the receiving site more like a landfill.
- Requiring ministry approval/authorization may be counterproductive; why is it required?
- Risk-based approaches will create more contaminated sites.

Sample of respondent comments:

"Often risk-based site owners of industrial or commercial lands do not realize that such items as development of an onsite caretaker's suite, below ground parking facility including loading bays or a site daycare could be impacted by a risk-based CoC [Certificate of Compliance]. Clear guidance of what the potential risk is for the receiving site is required."

"Reliance on risk-based standards for agricultural lands is specifically sensitive."

"The end result may be to lock up future land use decisions, effectively taking land use decisions out of the hands of local governments. Further consultation is required with the ALC and local governments."

2.4 Question 4: Triggers for notifying the ministry and public

Question 4: ***Section 5.4 – What comments do you have regarding the triggers for notification? (Schedule 2 activity and soil over a to-be-determined specified volume.) Do you have any concerns about these triggers?***

Respondents' comments regarding the triggers for notification varied widely.

- Two advocated for the status quo (existing Schedule 7 triggers).
- Three stated that they agree with the proposed triggers (Schedule 2 activity and soil over a specified volume).
- One recommended requiring a soil permit if either a trigger volume or contamination is present.

In addition, respondents made comments that included the following:

- Volume is an inadequate trigger because small amounts of soil can contain unacceptable concentrations of hazardous materials. Risk-based criteria should be used instead.
- If a site owner wants to relocate more than some specified volume of soil, they should be required to assess the site in accordance with the new site identification process.
- Many municipalities have bylaws about moving soil within the community, and adding provincial soil relocation requirements may add complexity. Also, different municipalities have different processes, so achieving a uniform process will be difficult.
- Screening of the source site must be linked to records for the receiving site.
- Reliance on Schedule 2 may lead to under- or over-capture of contaminated sites. Respondents stated several reasons that this might occur and also proposed amendments to Schedule 2.

Sample of respondent comments:

"Soils described by Column 4 of Schedule 7 should require a permit for relocation, as is currently the case."

"Notification based on Schedule 2 use alone would result in notifications for relocation of 'clean' soil. It is therefore recommended that the trigger be [a combination of Schedule 2, contaminant concentrations, and volume]."

"We are supportive of using a Schedule 2 activity on the source site as a trigger…. This will be a much easier process than using the trigger values in Schedules 7, 10 and 11."

"I believe it would be beneficial to provide notification for all soil movements above a specified volume which would include a site identification form to demonstrate that an assessment of Schedule 2 activities was carried out properly."

"Streamlining means removing layers of administrative requirements and variability of process in different regions. There is no mention of potential of differences of process that may occur when comparing process in different municipalities."

"The trigger for determination of soil quality should align with the triggers in the Contaminated Sites Regulation (the Site Profile process including Schedule 2, or whatever replaces it)."

2.5 Question 5: Trigger volume for notification

Question 5: ***Section 5.4 – Triggers for notifying the ministry and public. We have proposed that one trigger for notifying the ministry about soil relocation from a Schedule 2 activity site will be a volume of soil greater than a specified amount (yet to be determined). What do you think should be the trigger volume?***

Respondents recommended trigger volumes that ranged from 0 to 1,000 m^3, as shown in the following table. One respondent posed several questions about the details of how trigger volumes would be applied.

Trigger volumes suggested by respondents

Suggested trigger volume (m^3)	Details or rationale*
n/a	"Risk based criteria should be used, not volume."
Very small	"Due to the potential nature of the materials."
0	From high risk source sites. "The movement of any contaminated soils should be tracked."
5	From non-high risk source sites. "I am in favour of maintaining the existing 5 m^3 soil volume trigger, as this is a small tandem load or 2 large pickup loads." "The ministry should be notified of all soil relocation that is more than 5 m^3 from any location and if it comes from an industrial site then any business involved in soil relocation should notify the ministry."
5–8	"…which is as much as most residential properties would require for landscaping purposes and I believe is consistent with maximum volumes specified by municipal by-law."
10	Not stated.
10–15	"Assuming that the site is not classified high risk, trigger volume could be 10 - 15 m^3. Five is far too restrictive."
14 or more	"Truck and pup."
50	"[This] would allow completion of small or operation/maintenance projects without the delay of the notification period."
1,000	"In general, the public will be not better served by assigning a very small quantity for notification (say 5 m^3) where development will be more streamlined if notification is required for a large quantity of say 1,000 m^3."

*Note: Where more than one detail or rationale is presented for the same volume, each detail/rationale is from a different respondent.

Sample of respondent comments:

"The movement of any contaminated soils should be tracked. Dumping of small loads of suspect soil and materials (as small as a single yard) is a persistent concern for local government. The cost of identifying, characterizing, and managing small dump sites is significant, and falls almost exclusively on local government."

"The quantity of soil relocated should align with the requirements of the municipality specified in their bylaw(s). […] The point of setting a minimum quantity is to minimize the potential of unassigned liability or making the regulator responsible for remediation of orphan sites."

"The volume trigger should be very small due to the potential nature of the materials. Most illegal dumping of soil occurs on ALR lands in [municipality]. Often it is done slowly through one truck parking on a site over time. The higher the volume trigger, the more illegal dumping may occur, as no reporting is required."

"There should be a fee for each tonne of soil relocated. […] The monies collected through these fees should be distributed to the local government in whose jurisdiction the soils are being relocated. The local governments can then use these monies to inspect soils being relocated and enforce their by-laws."

2.6 Question 6: No low-volume exemption for soil from high risk sites

Question 6: ***Section 5.4 – What suggestions do you have regarding the exception to the requirement for notification process? (No minimum volume for soil relocated from high risk sites.)***

In favour of not allowing a minimum volume for soil from high risk sites

Most (seven) respondents to this question stated that they supported **not** allowing a low-volume exemption for soil relocated from high risk sites.

Sample of respondent comments:

"I agree with the exceptions listed in this document."

"I support the zero volume minimum for high risk sites, and personally do not agree with relocating soil from a high risk site unless it was moved to a permitted remediation facility and/or a receiving site biocell or similar."

"[Respondent] agrees that volume should not be the trigger."

Additional comments regarding exemptions

Several respondents, including some of those who supported no low-volume exemption for high risk sites (see above), made additional comments or asked for clarifying

information, for example, regarding the volume trigger and which sites will be considered high risk sites in the proposed process.

Sample of respondent comments:

"The exceptions appear reasonable; however, perhaps the receiving site needs to be identified as well. If you have an industrial site on an unconfined aquifer that is the receiving site, is this good for accepting even a little bit of soil depending on composition?"

"Sites considered high risk should be treated as all other sites with the appropriate management of soil that is not contaminated and appropriate disposal of soil that is contaminated."

"In principle, we would like to avoid unnecessary cost and administrative burden wherever possible, and see that all sectors are fairly treated."

"The paper is not wholly clear on whether the existing list of SRA exemptions, including disposal at a registered landfill, will remain."

"Maintain existing exemptions for relocation to facilities listed in EMA Section 55(5), relocation to regional district per CSR 41(2), [and] relocation per CSR 41(3)."

2.7 Question 7: Advance notice of soil transfer

Question 7: ***Section 5.5 – Do you think two weeks is the right amount of advance notice to local governments, First Nations, the public, and other stakeholders for soil transfer? Should the time be longer? Shorter? Why?***

Of the respondents who addressed this question, four stated that two weeks was reasonable/adequate, five stated that it was too long, and two stated that it was too short.

In addition, one respondent stated that the ministry's intent is not clear and requested more information about the details of the proposed process. One stated that ideally, local governments would be part of the decision-making process and not just "notified" of soil relocation; failing this, they should have time to appeal proposed soil relocation.

Two weeks is reasonable/adequate

Sample of respondent comments:

"Two weeks seems reasonable on our end. It is recommended that qualified professionals be authorized to certify the form."

"I believe one to two weeks would be reasonable. The advance notice is not intended to accommodate consultation; therefore I do not see a reason for a longer period."

"Do these stakeholders have the right to halt the relocation?

Two weeks is too long

Respondents who stated that two weeks is too long made the following observations, among others:

- If it is just a notice and not an approval, the benefit of a long lead time is unclear.
- Two weeks is not practical because many projects do not have two weeks of lead time available. Also, factors such as weather can affect plans.
- One respondent stated that requiring AP approval may drive up cost. Another stated that AP review is necessary to ensure compliance.
- Related statements about the details of notification.

Sample of respondent comments:

"Most landfills and permitted treatment facilities have a review and acceptance process. It is 24-72 hours depending on the situation. The MOE process is notification only. There is no approval process, so the timeline should be less than 72 hours."

"If a developer can obtain a municipal permit, they should not be delayed because of a lengthy notice period. This will slow down the remediation and construction process – adding unnecessary costs to projects. We would rather work with the ministry, CSAP, haulers and municipalities on a system to better manage problem actors than punish those who are following the rules."

Two weeks is too short

Two respondents stated that two weeks is too short. One explained in some detail the requirements under their municipality's soil deposition bylaw, making the point that for large projects, a public process is required that would take much longer than two weeks.

Sample of respondent comments:

"The 2 week notice is not sufficient dialogue time with a community for significant sites or sites not yet approved for development (those in application)."

"There should be at least a four-week notice period between notification and/or permit issuance and the relocation of the soil in question."

Additional comments regarding the notification process

Six respondents provided additional comments regarding the notification process. The topics or statements/questions included the following:

- Why does an AP need to certify the notification of soil relocation? Why does the ministry need to approve the relocation?
- Professionals should confirm soil characterization. Also, it would be beneficial for an AP to declare that soil had been moved as intended.

- A possible alternative to Technical Guidance #1, which may be too onerous.
- Suggestions regarding the details of notification, the contents of the notification form, licence plate numbers, and auditing.
- Website: Uploading information to a public website need not be a priority. Also, it is not realistic to expect local governments to closely follow a website. A question about what "available to the public" means.
- Clarifying the relationship between local governments' soil deposit and removal bylaws and provincial soil relocation requirements.
- Relationship among soil notifications, Stage 1 PSIs, and the Site Registry.

Sample of respondent comments:

"We continue to suggest that the ministry review the legislative approach the Ministry of Housing took with the *Building Act* to limit municipal authority in their area of their jurisdiction (building policy). This would ensure that B.C. does not end up with a 'patchwork' of regulations."

"I think the process of notifying the ministry is sound. However, similar to a NIR [Notice of Independent Remediation] or NOM [Notice of Likely or Actual Migration], I do not see why an AP should be required to certify the notification. In my opinion this will be counterproductive and not alleviate current industry frustration (and therefore avoidance) with respect to cost and time required to relocate soils in accordance with regulatory requirements. This is (in my humble opinion) one of the biggest failings of the current system that does not work at the pace of industry."

"Would the owner of the source soil be free of liability for it once it is relocated?

2.8 Question 8: Sites that receive large quantities of soil

Question 8: ***Section 5.6 – What is your opinion of the intended requirements for receiving sites that accept large quantities of soil (over a to-be-specified quantity)? What alternative requirements would you suggest for such sites?***

Of the respondents who replied to this question, four (all from different sectors) stated that they agreed with the intended requirements, with some conditions. Four from various sectors stated that they disagreed. Five stated neither agreement nor disagreement but provided related comments.

Agree with the intended requirements

Those who agreed with the intended requirements also provided comments on certain aspects of the intended requirements. The comments were related to the following:

- The possibility of having Approved Professionals develop site-specific soil standards.

- The cost-benefit analysis of treating soil on site versus relocating it.
- How the ability to stockpile at the receiving site could benefit linear projects (e.g., water mains in roadways) where space is limited.
- Concerns regarding the intended requirement to require groundwater monitoring at the receiving site.

Sample of respondent comments:

"The requirements seem reasonable for sites managing 1000's of tonnes of soil."

"[Respondent] is not opposed to [the additional requirements for large receiver sites], especially if they are being used as a pseudo waste facilities for soils."

"If soil to be relocated is properly characterized in accordance with the ministry's requirements and meets the numerical standards for the receiving site, it should not be classified as 'contaminated soil' relative to the receiving site and therefore poses no risk to the receiving site."

Disagree with the requirements

Of the four respondents who disagreed with the intended requirement, two thought that such sites should be subject to even more stringent controls than the intended requirements, whereas two questioned the need for even the intended requirements. One respondent asked numerous clarifying questions about the details of the intended requirements. One stated that "risk-based criteria should be used, not volume."

Sample of respondent comments:

"These sites should be managed as landfills under the *Waste Management Act* and receive CoAs for their operation. They should have operations and closure plans or environmental management plans and vision for future reuse of the property."

"What is the rationale for these additional requirements? For soils demonstrated to meet applicable land use standards at the receiving site, and are therefore not considered to be "contaminated," what authority is there under the EMA [*Environmental Management Act*] or CSR [Contaminated Sites Regulation] to have to enforce these requirements?"

"There should be no need for the ministry to require AP involvement…."

Additional comments about sites that receive large quantities of soil

Additional comments related to the following topics:

- Existing soil deposit bylaws, the need for new sites to follow existing bylaws, how to reconcile existing bylaws with the intended provincial requirements, and requirements for agricultural lands.
- The possibility that some landfills can accept contaminated soils.

- How these large sites differ from hazardous waste sites.
- Invasive plants, the risks they post to transportation routes and receiving sites, and ways to mitigate the risks.

2.9 Question 9: Possible exemptions for some types of soil-like material

Question 9: ***Section 5.6 – What suggestions do you have regarding possible exemptions to the requirements? (Soil or soil-like material from some industries may be exempted, e.g., quarries and landscape supply companies.)***

Agree with exemptions

Four respondents each expressed support for exempting one or more of the following materials:

- Gravel, sand or stone from a pit or quarry
- Preload material (dredgeate)
- Crushed rock, aggregate, and road base
- Landscaping material or fill used to increase site elevations
- Virgin soil from housing developments

One respondent stated that consultation would be required regarding the management of pre-load and river dredgeate (as pre-load or fill), and another proposed developing a set of best practices.

Sample of respondent comments:

"Exempting quarries seems reasonable."

"If the soils from these properties are only contaminated due to background conditions then I support the exemption."

"Many local governments do substantial amounts of soil relocation for public areas maintenance (facilities, parks, boulevards, road maintenance, utility works including emergency works). As this is a constant process, and commonly not linked to specific sites, a process would be required for local governments to be exempted from many of the notification requirements."

Disagree with exemptions

Seven respondents expressed disagreement with the proposed exemptions:

- Five objected to exempting quarry rock or other natural fill material because these materials sometimes contain metals or other chemicals above the applicable land-use standards and because of concerns related to invasive plants.

- One raised a concern about landscaping soil from multiple sources.
- One municipality described problems they have encountered with exemptions for wood chips, crushed rock and asphalt.
- One proposed modifying the requirements for soil contaminated with road salt or naturally occurring salt, biosolids and peat.

Sample of respondent comments:

"Quarries and other sources of natural fill material can often have chemicals that exceed numerical land use standards. […] So, on what basis would quarries, landscape companies and other industries be exempt? We believe all sectors should be treated fairly and equitably in the soil relocation process."

"I am aware of one company in the Lower Mainland that receives soil from multiple sources (none of which are screened for previous Schedule 2 activities or contamination) which is blended and resold to the public or landscape companies."

"The [municipality] has found that exceptions have not been very successful."

2.10 Question 10: Notification to local governments and First Nations

Question 10: ***Section 6.2 – In your opinion, are the notification provisions for local government and First Nations acceptable? What comments or concerns do you have about these provisions?***

Four respondents stated that the notification provisions are acceptable and five stated that they are not.

Notification provisions are acceptable, with conditions

Four respondents stated that the notification provisions are acceptable:

- One requested clarification regarding possible overlap with Notice of Independent Remediation.
- One asked for clarification of First Nations notification.
- One stated that notified parties might inappropriately block soil movement.

Sample of respondent comments:

"I believe they are appropriate."

"Notification to local governments and First Nations seems reasonable on one standard form. Clarification is required regarding what happens at the end of the notification period."

"With regards to First Nations notification, would this be solely for soil that is to be relocated from/to reserve lands or would it also include any properties located within traditional territories?"

Notification provisions are not acceptable

Of the five respondents who stated that the notification provisions are not acceptable, one was a local government who wrote at length to propose an alternative approach – i.e., posting a notice at the receiving site – and who also requested clarification regarding enforcement and liability.

Respondents' other stated concerns included the following:

- The notification process should align with local bylaws.
- Local governments should have a role in decision making. Failing this, they should be notified as soon as possible to allow for review of zoning and other compliance.
- Because First Nations are under federal jurisdiction, it is not clear how the intended provisions will apply to them.

Sample of respondent comments:

"A posting at the receiving site (not unlike a building permit) can be issued for all significant soil movements, where a member of the public can see a permit number and the address of the source property (be it contaminated or not)."

"As it is stated that this will be *notification* process and not a *consultation* process, it is unclear how enforcement actions will be coordinated between the ministry and local government, and what occurs in the event of a dispute between levels of government in regards to the appropriateness of the deposit, especially as it may impact future land use decisions."

2.11 Chemical characterization and soil vapour testing

Four respondents commented on chemical characterization and soil vapour testing, stating the following opinions:

- The possible requirement for a vapour assessment at the receiving site (if a structure is to be built) deserves more consideration because the implications could be significant.
- The ministry may wish to provide guidance on typical PCOCs (potential contaminants of concern) that should be considered/included under the mandatory soil characterization process.
- Three respondents asked for more information regarding leachate testing.

2.12 Compliance and enforcement

Six respondents commented regarding compliance and enforcement. The comments included the following points:

- Questions about resources for compliance monitoring (ministry, consultants, local governments).
- A respondent expressed support for audits but cautioned against them delaying remediation or development.
- "'Auditing' applications is inadequate. 'Reviewing each application for compliance with regulations' should be the standard."
- Suggestions regarding the notification form: content, handling and searchability.
- Local governments should have authority to control soil deposition and impose penalties.

2.13 Education and training

One respondent stated that they agreed with the need for education and training and offered to work with the ministry in this regard by including relevant education and training in their professional development program.