

Ministry Approval of Local Government Soil Deposit Bylaws

A local government bylaw that prohibits the deposit of contaminated soil has no legal effect without the agreement of the Minister.

We strongly recommend that any local government drafting a soil deposit bylaw find out what the legal requirements are before proceeding. Contact:

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- protection of the natural environment;
- wildlife; and
- standards that are or could be dealt with by provincial building regulations.

The Minister has been designated as the minister responsible for dealing with bylaws that prohibit soil deposit. This means that a bylaw that prohibits the deposit of soil or other material, and that makes reference to the quality of the soil or material or to contamination, cannot be adopted unless approved by the Minister or by regulation or agreement with the local government. To date, no regulations or agreements address soil deposit, soil quality, and contamination.

The onus is on local governments to determine if they need such approvals and to ensure that they receive them.

Why is provincial approval required for a local bylaw?

The *Community Charter* was enacted on January 1, 2004. Among its many provisions, the Charter gives local governments broad powers to regulate activities within their communities, subject to compliance with provincial laws.

Section 9 of the *Community Charter* introduces this concept of “concurrent regulatory authority.” The legislation recognizes that in five areas (or “spheres”; see the diagram) both local governments and the Province have a shared interest in regulating activities.

Concurrent regulatory authority applies to local government bylaws that apply to:

- the prohibition of soil removal, or prohibition of the deposit of soil or other material, and make reference to the quality of the soil or material or to contamination;
- public health;



MOE – Ministry of Environment
MCS – Ministry of Community Services
MEMPR – Ministry of Energy and Mines and Petroleum Resources

Why should the Minister be involved?

The Minister is responsible for the *Environmental Management Act* and it contains a number of provisions dealing with the relocation of contaminated soil. These include the requirement for Contaminated Soil Relocation Agreements, and for scientifically based standards to define when soil deposit may occur. The Minister's involvement helps ensure that the movement and deposit of contaminated soil is regulated uniformly and consistently across BC.

What can happen if no ministry approval of a bylaw has been obtained?

Only if a local government's bylaw authorizing the deposit of contaminated soil is consistent with provincial requirements will responsibility for remediation of contamination be waived (under section 55 (6) of the *Environmental Management Act*).

If a local bylaw is *not* consistent with the provincial requirements, this liability protection is voided (under section 55 (7)).

In short: Any local government adopting a soil deposit bylaw that conflicts with standards or procedures in the *Environmental Management Act* risks becoming responsible for paying to clean up any resulting contamination.

Note: This summary is solely for the convenience of the reader. The current legislation and regulations should be consulted for complete information.

For more information or further advice, contact the Environmental Management Branch at site@gov.bc.ca