

CSR OMNIBUS UPDATING: Proposed Amendments to Schedule 7

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Summary of Proposed Updates for 2015/2016 Stage 10 amendment to CSR

1. Repeal existing CSR Schedule 7 Standards Triggering Contaminated Soil Relocation Agreements.
2. Revise the text of various sections of Part 8 – Contaminated Soil Relocation of the CSR to allow use of all the soil quality standards comprising the new proposed consolidated single schedule of soil standards, (Schedule ‘X’) which are applicable to the receiving site, in determining when a Contaminated Soil Relocation Agreement is required for the relocation of soil to a receiving site.

Introduction

Schedule 7 of the Contaminated Sites Regulation (CSR), BC MoE, 2014 [1] provides numerical soil standards which trigger the need to obtain a Contaminated Soil Relocation Agreement (CSRA) when relocating contaminated soil to either of two land types (i.e. agricultural and non-agricultural land) or when disposing of contaminated soil of soil as a waste in the absence of an authorization (e.g. a permit) under the *Environmental Management Act*.¹

As originally developed in 1996, the Schedule 7 standards represent:

1. for agricultural land:
 - a. for substances prescribed in CSR Schedule 4, the Schedule 4 generic soil standard for agricultural land or,
 - b. for substances prescribed in CSR Schedule 5, the most stringent of the various site specific factor, matrix soil standards for agricultural land.
2. for non-agricultural land:
 - a. for substances prescribed in CSR Schedule 4, the most stringent of the Schedule 4 generic soil standards for residential or urban park land or,
 - b. for substances prescribed in CSR Schedule 5, the most stringent of the various site specific factor, matrix soil standards for residential or urban parkland.

¹ The issue of how to best revise Contaminated Soil Relocation Agreements under the Province’s contaminated sites regulatory regime is currently the focus of a ministry 2014 Discussion paper, BC MoE, 2014 [2]. This Standards Updating Discussion Document provides only one of several possible options identified in BC MoE, 2014 [2] to potentially deal with needed revisions to the Regulation’s contaminated soil relocation provisions.

3. for waste soil disposal without authorization:
 - a. for substances prescribed in CSR Schedule 4, the Schedule 4 generic soil standard for industrial land or,
 - b. for substances prescribed in CSR Schedule 5, the most stringent of the various site specific factor, matrix soil standards for industrial land.

As a result, the Schedule 7 standards, while undeniably protective of human and ecological health at all receiving sites, are exceptionally conservative (i.e. stringent) by design. Frequently Schedule 7 soil standards are sufficiently conservative to trigger the need to obtain a CSRA even in the case of relocating soil from higher quality sites (e.g. residential/urban park sites) to lower quality sites (e.g. commercial/industrial sites). This occurs despite the fact that the soil to be relocated from the residential site to the industrial site would be judged to be acceptable if it was already located at the industrial receiving site. In addition, Schedule 7 does not account for the potential that background concentrations of substances at the receiving site may exceed the schedule's standards. This latter issue is often problematic at sites, such as mines, gravel operations and native and topsoil supply sites which are routinely involved in the relocation of soil.

This situation may have been considered prudent when the Contaminated Sites Regulation was first implemented in 1997, to ensure that the naïve relocation of “contaminated” soil did not result in the creation of new contaminated sites. However, such conservatism hardly seems justified some 18 years after the Regulation coming into effect. Further, as currently cast, Schedule 7 does not allow the full and appropriate use of all the Regulation's soil quality standards.

Legislative Review

The following sections of the *Environmental Management Act* (the *Act*) and the Contaminated Sites Regulation, pertaining to Contaminated Site Soil Relocation Agreements, were reviewed to assess if the preferred option - repeal of Schedule 7 and revision of the text of various sections of Part 8 of the CSR to allow use of the soil standards of the new proposed Schedule “X” as applicable to the receiving site, could be used in determining when a Contaminated Soil Relocation Agreement might be required to relocate soil to a receiving site.

The *Act* 55 (1) (3) states:

- 55 (1) (3) *The contaminated soil relocation agreement must provide that prescribed standards and procedures apply in respect of the relocation and deposit and that*
- (a) the quality of the soil at the receiving site is suitable for the use intended based on prescribed standards, or*
 - (b) the conditions at the receiving site are suitable for the use intended as*

documented by a risk assessment conducted in accordance with the Regulation and to the satisfaction of the director.

Note that the *Act* does specify the prescribed standards to be used for contaminated soil relocation. Rather, specification of the standards to be used for soil relocation is provided in Part 8 of the Contaminated Sites Regulation.

Further, the *Act* 63 (1) (o) states:

63 (1) (o) *The minister may make regulations in relation to contaminated site remediation as follows*
(o) prescribing standards and procedures for the purpose of section 55 (3) [contaminated soil relocation]

Therefore the minister has the authority to repeal Schedule 7 and amend the text of various sections of Part 8 of the CSR to allow use of the standards of the new proposed, Schedule “X” as applicable to the receiving site, in determining when a “Contaminated Soil Relocation Agreement” would be required to relocate soil to a receiving site.

Proposed Updates – Stage 10 Amendment

1. It is proposed that CSR Schedule 7 be repealed and that various sections of Part 8 – Contaminated Soil Relocation be amended to allow the use of the standards of the new proposed Schedule “X” as applicable to the receiving site, in determining when a Contaminated Soil Relocation Agreement is required to relocate soil to a receiving site.

Other Issues – Next Cycle Revisions

1. If in the future, it is decided based on response to the ministry’s 2014 Discussion paper, BC MoE, 2014 [2], and further review of the Province’s soil relocation regulatory regime, that Contaminated Soil Relocation Agreements are no longer needed, consideration may be given to possibly amending or repealing section 55 of the *Environmental Management Act*.

References

- [1] British Columbia. (2014). [*Contaminated Sites Regulation. B.C. Reg. 375/96*](#). A regulation under the *Environmental Management Act*.
- [2] BC Ministry of Environment. (2014). [*Prevention of Site Contamination from Soil Relocation*](#). Discussion Paper Series. British Columbia’s Site Remediation Legal Regime. B.C. Ministry of Environment. Land Remediation Section. September, 2014.

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