

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



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DISCUSSION PAPER**

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1. INTRODUCTION

The Ministry of Environment (the ministry) is reviewing aspects of British Columbia’s site remediation legal regime. The review encompasses a number of components, including: provisions addressing site management and prevention of contamination from soil relocation; and the mechanism for identifying potentially contaminated sites (the site profile process).

This discussion paper focuses on site management and prevention of contamination from soil relocation. The paper:

1. Provides background information on current soil relocation provisions
2. Outlines concerns with the current provisions
3. Sets out ministry priorities and objectives
4. Discusses considerations for amending current provisions
5. Describes the means for providing comment to the ministry

Input received in response to this paper will inform ministry actions in creating soil relocation provisions that meet ministry priorities and objectives, as well as addressing concerns with existing provisions.

For additional information see the ministry’s [Land Remediation Section website](#).

2. BACKGROUND

WHY WERE SOIL RELOCATION PROVISIONS ESTABLISHED?

Contaminated sites exist in every city, town, community and regional district in British Columbia. At present, the provincial Site Registry contains information on over 14,500 sites.

During the 1980s redevelopment of industrial lands, including lands around Vancouver’s False Creek and Victoria’s harbour, led to soils being relocated off of development sites. Public concerns were raised about potential risks and liabilities associated with accepting soil excavated from industrial sites. Local governments in the Lower Mainland and other parts of the province considered or created varying bylaws limiting or otherwise controlling the deposit of relocated soils. The resulting patchwork of requirements was confusing and contradictory and led to the Province establishing a Soil Management Task Force in 1991 to recommend short and long term strategies to address the issues. The Task Force, through consultations with local governments and other stakeholders, heard calls for a uniform and coordinated regulatory approach to determining soil quality, transport of contaminated soils, remediation of sites with quality impaired soils and siting of facilities to store or remediate poor quality soils. An important concern was identification of appropriate reuse opportunities for soil to avoid it taking up valuable space as “waste” in landfills. Task Force recommendations were addressed in legislation passed

in 1993 that established the current legal regime – the Contaminated Sites Regulation authorized under the *Environmental Management Act*.

WHAT ARE THE CURRENT SOIL RELOCATION PROVISIONS?

Provisions for contaminated sites in the *Environmental Management Act* (the Act) and Contaminated Sites Regulation (the Regulation) establish a process for tracking transport and deposit of soils from contaminated sites.¹ The primary regulatory tool for this process is a Soil Relocation Agreement – made between the owner of a source site (of soil), the owner or operator of a receiving site and the Director of Waste Management (for the Province).

The ministry has prepared a number of fact sheets and procedural guidance documents to provide information about soil relocation. These can be viewed and downloaded from the ministry's [Land Remediation – soil relocation website](#).

HOW DO SOIL RELOCATION PROVISIONS WORK?

Contaminated Soil Relocation Agreements (Soil Relocation Agreements) are enabled under Part 4 of the Act. They authorize the relocation of soils to a suitable deposit site and are required when soil moving from the source site exceeds values (“trigger values”) set out in Schedule 7 of the Regulation. Transported soil must meet the numerical or risk-based standards for the receiving site specified on the basis of soil characteristics (pH as set out in technical guidance for the Regulation) and land use of the receiving site (for example, residential, urban park, agricultural, commercial, industrial). However, there are a number of exemptions to the requirement for a Soil Relocation Agreement, including transport of less than five cubic metres of soil and deposit in landfills authorized under Part 2 of the Act to receive contaminated soils.

3. CONCERNS WITH CURRENT SOIL RELOCATION PROVISIONS

Since the 1990s the ministry has seen an increase in remediation of contaminated sites. However, the number of Soil Relocation Agreements issued by the ministry has decreased dramatically in the past decade. The decrease could be due in part to an increase in the use of landfills authorized by the ministry to receive contaminated soils. Concerns have been raised with the ministry, through both local government and the public, that considerable volumes of soils are being relocated without an agreement – due either to ignorance of the law or avoidance of regulatory obligations.

¹ See the BC Laws website (www.bclaws.ca) for full text of the *Environmental Management Act* and Contaminated Sites Regulation. Soil relocation provisions are addressed under Section 55 of the Act and Part 8 of the Regulation.

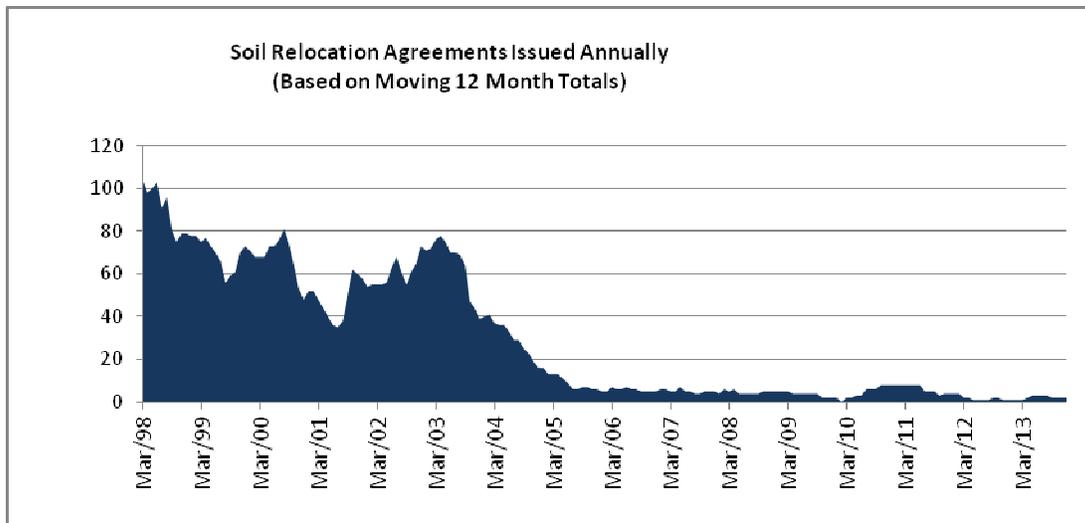


Figure 1: Number of Soil Relocation Agreements Issued Annually

A number of concerns with the current soil relocation provisions have been identified by ministry staff and stakeholders, including:

- The system is unnecessarily complicated – particularly provisions for triggering Soil Relocation Agreement requirements.
- The requirements for soil investigation and application for a Soil Relocation Agreement are expensive for clients.
- Obtaining a Soil Relocation Agreement takes too long.
- The definition of a “contaminated site” in the context of requirements for relocation of contaminated soil is awkward and may be overly conservative.
- Clarity is needed with respect to the interface between local government soil deposit and removal bylaws and provincial soil relocation requirements.
- Additional Soil Relocation Agreement exemptions are needed.
- While regulatory requirements appear to apply to First Nations lands and interests, understanding among the public and other interests is limited or uninformed – leaving potential for misunderstandings and dumping of material without appropriate safeguards.
- The substance concentrations that “trigger” a requirement for a soil relocation agreement may be overly stringent (for example, background concentrations sometimes exceeds these trigger values).
- The application of regulatory provisions with respect to sediment and vapours is unclear and were not considered when the legislation was drafted.
- The name “Contaminated Soil Relocation Agreement” is misleading. Soils not considered contaminated at a source site could be considered contaminated at a receiving site – depending on applicable land use standards for each of the sites (or *vice versa* – soil that

is deemed contaminated for residential purposes may not be considered to be contaminated for deposit at commercial or industrial properties).

4. MINISTRY PRIORITIES AND OBJECTIVES

Regulations governing the prevention of site contamination from soil relocation should ensure protection of human health and the environment while recognizing social and economic interests in redevelopment of sites and the management of any excess soil associated with redevelopment.

The ministry has identified the following priority interests and objectives for site management and prevention of site contamination from soil relocation – that will be used when considering amendments to soil relocation provisions.

Priority Interests:

- Protecting human health and the environment – ensuring source/receiving property owners are knowledgeable about relocated soil suitability.
- Reducing the spread of contamination efficiently and effectively by avoiding the creation of new contaminated sites.
- Facilitating the suitable reuse of excess soils.
- Expanding options for suitable management of soils from contaminated sites.
- Protecting groundwater resources for current and future generations.

Objectives:

- Ensure that any potentially contaminated soil being relocated is transported in a safe manner to an appropriate site.
- The regulatory system for soil relocation and remediation of contaminated sites is effective, fair, streamlined and consistent across the province.
- “Hardwire” clear requirements into the legislation, reducing statutory decision making by the Director and the need for ministry oversight.
- Require notification of soil management to appropriate local governments.
- Provide stakeholders with increased certainty, transparency and predictability of process.
- Promote increased compliance with regulatory requirements.

5. OPTIONS FOR AMENDMENTS TO SOIL RELOCATION PROVISIONS

5.1 REVIEWING THE ROLE OF THE SOIL RELOCATION PROCESS IN PREVENTION OF SITE CONTAMINATION

The ministry is committed to addressing concerns that have been identified with respect to the prevention of site contamination from soil relocation. Topic areas and preliminary options for revising the current role and use of the soil relocation process as a primary tool in regulating relocation of potentially contaminated soils are discussed below. The ministry would welcome additional comments and alternative suggestions for improving the current process.

Human health and environment protection are primary interests of the ministry – and should be met using regulatory guidance and enforcement that is consistent across the province and easy to implement with minimum ministry oversight.

It is not necessary for the ministry to be notified of all soil movement. Oversight and monitoring however, to ensure that relocation of potentially contaminated soils is undertaken in accordance with environmental objectives and regulations, is appropriate. Ministry notification need not be burdensome or excessively costly. Legal provisions could be streamlined, with appropriate and consistent provincial standards, to establish a fair and effective framework for regulation of soil relocation in British Columbia.

TRIGGERING MINISTRY/PUBLIC AWARENESS OF SOIL RELOCATION – OPTIONS FOR WHEN TO NOTIFY

Considerations may include:

- Soil containing substances not already found on receiving site.
- Soil with concentrations greater than the applicable land use standards of the receiving site.
- Substance concentrations greater than those listed in a revised Schedule 7 (Schedule 7 would need to be updated to more accurately reflect land use standards).
- No notification of ministry (with alternative means for effective monitoring and oversight).

MINISTRY NOTIFICATION PROCESS – OPTIONS FOR HOW TO NOTIFY

Considerations may include:

- Notification process similar to the existing notification of commencement of independent remediation – using a standard form requiring information about source site, transporter and receiving site (see link under the Land Remediation Section key topic of the ministry's [Independent Remediation](#) webpage).

- Soil leaving a source site must be documented in the Site Risk Classification report, where one is already required, and must include the receiving property location.
- Notification provided concurrent with application for a legal instrument (for example, Approval in Principle, Certificate of Compliance or Determination of a Contaminated Site – see links under the ministry’s Land Remediation Section [Guidance on Contaminated Sites](#) webpage).
- Notification provided directly to local governments – and not to the province.
- Public posting of Notification of Soil Relocation on ministry web page.
- No notification required for soil relocation.

REQUIREMENTS FOR MANAGEMENT OF SOIL RELOCATION

Requirements for management of soil relocation to prevent site contamination are appropriate for some situations. Regulatory tools for soil management should include provisions for ministry or Approved Professional oversight (for example, plans, reporting) to ensure protection of human health and the environment – without resorting to overly complex or burdensome requirements.

Considerations may include:

- Potential requirement to prepare a source site soil management plan.
- Potential requirement to prepare a soil transportation plan.
- Potential requirement to prepare a receiving site soil management plan (that provides confirmation of origin of soils).
- Provisions to impose Director’s requirements – similar to section 54 (3) (d) of the Act – for independent remediation (for example, requirements for a cover over relocated soil or restricted location of soil deposit).
- Information regarding source and receiving site locations and contacts and chemical quality of soil to accompany each load of soil shipped to deposit site.
- Requirement for the ability (including costs and temporary storage space) to facilitate testing of soil at a deposit site pending test results to confirm soil suitability for long term deposit.

NOTIFICATION TO LOCAL GOVERNMENTS

Considerations may include:

- Prior notice provided to both generating and receiving site local governments – based on remediation plans for the generating site.
- Notification similar to the current process (notification before soil relocation) with opportunity for local government comment.
- Notification required only if outside of local government soil management areas – this option may require local governments to identify and include “accepted soil management areas” in community plans.
- All notifications sent directly to local government – and not to the province.
- Notification sent to local governments if applicable bylaws require notification of removal and/or deposit.
- No notification sent to the province or local governments.

5.2 CLARIFYING DEFINITIONS AND SCOPE OF SOIL RELOCATION PROVISIONS

The ministry is considering alternatives to:

- Clarify the definition of a “contaminated site” in the context of requirements for relocation of contaminated soil.
- Support common understanding and consistent application of regulatory provisions relevant to First Nations lands.
- Improve regulatory provisions addressing sediment and vapours.
- Clarify the scope and application of exemptions – for example, exempting quarry rock from regulatory requirements.

6. PROVIDING COMMENT

Comments on prevention of site contamination through soil relocation and updating soil relocation provisions can be provided to the Ministry of Environment by e-mail attachment or mail at the address listed below. Written submissions received by **February 2, 2015** will be considered by the ministry in reviewing options for amending the soil relocation process.

Prior to submitting a response, interested parties are invited to participate in an information webinar scheduled to take place on Wednesday, January 14, 2015. If you are interested in receiving information about or participating in the webinar please contact Cindy Bertram at the email or address below for further details.

The ministry has prepared consultation questions included in this discussion paper. Those interested are invited to submit comments on the issues and options to the ministry using the prepared consultation questions or by separate submission if desired.

All submissions will be treated with confidentiality by ministry staff and contractors when preparing consultation reports. Please note however that comments you provide and information that identifies you as the source of those comments may be publicly available if a Freedom of Information request is made under the *Freedom of Information and Protection of Privacy Act*.

If you have any questions or comments regarding this discussion paper, as well as comments on the ministry's schedule for the consultation process, contact Cindy Bertram of C. Rankin & Associates who has been contracted to manage consultation comments, at:

Email: cindybertram@shaw.ca

Mail: PO Box 28159 Westshore RPO
Victoria B.C. V9B 6K8

Comments to the ministry should be made on or before February 2, 2015.

Thank you for your time and comments!

CONSULTATION QUESTIONS

The following topic areas and questions are based on the prevention of site contamination from soil relocation discussion paper.

1. Ministry priorities and objectives for updating soil relocation provisions

- 1.1 Do you have any comments regarding the ministry's priority interests and objectives for site management and prevention of contamination from soil relocation?
- 1.2 Are there any additional objectives or considerations that should inform or guide the ministry's review of British Columbia's site remediation legal regime?
- 1.3 Do you have any comments or suggestions regarding the ability of local governments to enforce management plans in relation to the prevention of site contamination from soil relocation?

2. Concerns with current soil management and soil relocation provisions

- 2.1 Do you have any comments or concerns regarding current regulations and practices addressing prevention of site contamination from soil relocation?

3. Suggestions for revised soil relocation provisions

- 3.1 Do you have any suggestions for a revised process that would address prevention of site contamination from soil relocation?

4. Revising the role of soil relocation provisions

- 4.1
 - a. Do you have any general comments about the role and use of soil relocation agreements in regulating the relocation of potentially contaminated soils?
 - b. Would you recommend that they be amended or deleted? If so, why?
- 4.2 Do you have any comments or suggestions about *when* and/or *why* the ministry should be notified of soil relocation (that is, "triggers" for ministry notification)?

- 4.3 Do you have any suggestions for *how* the ministry could or should be notified of soil relocation (for example, in a site risk classification report, with application for a Certificate of Compliance)?
- 4.4 Do you have any comments or suggestions regarding appropriate requirements for management of soil relocation (for example, source and/or receiving site soil management plans, transportation plan)?
- 4.5 Do you have any comments or suggestions regarding when, why and/or how local governments should be notified of soil relocation from or to a potentially contaminated site?
- 4.6 Do you have any comments or suggestions about including provisions to manage contaminated soil generated within local government or regional district boundaries in Official Community Plans, Waste Management Plans and/or Landfill Operational Certificates?

5. Clarifying definitions and scope of soil relocation provisions

- 5.1 Do you have any comments regarding definitions (for example, definition of a contaminated site) that could or should be clarified in the context of requirements for relocation of contaminated soil?
- 5.2 Do you have any suggestions for developing common understanding and supporting consistent application of regulatory provisions relevant to First Nations Lands?
- 5.3 Do you have any comments regarding scope and application of regulatory provisions in relation to soil relocation (for example, rock, sediment, vapours)?

6. Additional comments?

- 6.1 Do you have any additional comments or suggestions regarding the ministry's review of British Columbia's site remediation legal regime and/or the prevention of site contamination from soil relocation?