



## Decoupling the Hazardous Waste Regulation and the Contaminated Sites Regulation

[Amendments to the Hazardous Waste Regulation \(HWR\)](#) and the [Contaminated Sites Regulation \(CSR\)](#) under the *Environmental Management Act* (EMA) came into effect on July 19, 2016. The amendments serve to “decouple” certain provisions of the CSR and the HWR for on site managed environmental media, and by so doing, relieve the site and any remediation facilities associated with it from the application of the HWR. Where contaminated media meeting the criteria of hazardous waste are transported and managed or disposed of off the contaminated site, the HWR continues to apply.

The EMA and the CSR collectively provide a comprehensive regulatory framework for the remediation of contaminated sites of all types. This framework includes regulatory checks and balances through the review and approval of remediation plans, and on-going monitoring of remediation activities to ensure the environmentally sound management of on-site contamination.

### Changes to the definition of hazardous waste

The definition of hazardous waste in the HWR has been amended to exclude on site media, defined as “contaminated soil, sediment, surface water or ground water that would be hazardous waste only because it meets the criteria described in paragraphs (a) to (i) of the definition of hazardous waste, but which

remains at a contaminated site where [it] originated”. This enables the management of all contaminated media (regardless of the level of contamination) on the contaminated site that it originated on, under the CSR.

The definition of contaminated site in the EMA has also been amended to remove reference to the presence of hazardous waste.

With these changes, materials that do not meet the definition of on site media, such as containerized hazardous waste or hazardous waste deposits (hazardous waste that has been dumped), mine tailings and waste rock and soil-like materials that qualify as hazardous waste will continue to be regulated as they currently are under the HWR regardless of where they are located (on a contaminated site or not). For example, in a scenario in which drums of PCB oil are buried or blocks of asbestos are found underground during a contaminated site investigation, these wastes continue to be hazardous waste and the HWR applies to their management, both while on the contaminated site as well as when they are taken off site.

### No need to demonstrate contamination occurred before April 1, 1988 to get relief

With these amendments, the HWR no longer defines in situ management facilities or requires the registration and labelling of these facilities on historical hazardous waste contaminated sites as hazardous waste

facilities. This registration had resulted in an entire site being stigmatised with a hazardous waste label even after remediation or risk management has been undertaken. This practice made re-development of the site difficult and was contrary to the principles of remediation under the contaminated sites regime. As a result of these changes, there will no longer be a hazardous waste notation on legal instruments issued under the CSR.

With these amendments, Sections 2(11) and 2(12) of the HWR, which provided relief from some of the requirements of the HWR for historic sites that could demonstrate their hazardous waste level contamination occurred before April 1, 1988, have been repealed.

These amendments reduce regulatory burden and overlap and provide a single, streamlined process under the CSR to manage all on site contaminated media, regardless of the concentration of contamination or when the contamination occurred.

#### **Provisions to allow the temporary storage of ex situ contaminated media on site**

To facilitate effective management of on site media (as defined in the HWR) that has been removed from its original location for purposes such as consolidation in preparation for treatment or transport, storage provisions are also provided for the following purposes:

- transport from the contaminated site within 60 days (or other period approved by the director),
- remediation activities that involve handling, management or treatment under the CSR, or
- another approved purpose.

Temporary storage of on site media must be undertaken following best management practices. The development of guidance for soil management plans on contaminated sites is expected in coming months. Until this material is developed, [Protocol 15 “Soil treatment facility design and operation for bioremediation of hydrocarbon contaminated soil”](#), specifically Section 7.0 which outlines the basic design components for soil treatment facilities, provides useful guidance for the temporary storage of contaminated soil.

As the HWR does not provide temporary storage provisions, any hazardous waste that is intended for transport off site must be stored in the interim according to the requirements of the HWR. Accordingly, for a scenario involving the discovery of buried hazardous waste (e.g.: drums of PCB liquid or blocks of asbestos) on a site during a site investigation, any excavated hazardous waste must be stored in accordance with the HWR.

#### **Removing requirements to capture hazardous waste level contamination in site investigations**

As a result of the removal of on site media from the definition of hazardous waste, there is no longer a requirement in Sections 58 and 59 of the CSR to include an evaluation of contamination relative to the standards of the HWR in the preliminary and detailed site investigations. Descriptions of any contaminant concentrations must be made in relation to criteria, standards and conditions prescribed in the CSR.

#### **Application of HWR to spills reporting and management of hazardous products or wastes**

Spills of hazardous products and hazardous wastes continue to require reporting under the Spills Reporting Regulation and clean up

under the EMA. Deliberate spills of hazardous waste would be in contravention of Section 36 of the HWR and Sections 6 and 7 of the EMA.

*Note: This document is solely for the convenience of the reader. It does not contain and should not be construed as legal advice. The current legislation and regulations should be consulted for complete information.*

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