

NO: **R019**

COUNCIL DATE: **FEBRUARY 2, 2015**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **January 28, 2015**

FROM: **General Manager, Engineering
General Manager, Planning & Development**

FILE: **0410-20(MOE)**

SUBJECT: **Ministry of Environment Discussion Papers Site Profile Process Identification of Potentially Contaminated Sites and Prevention of Site Contamination from Soil Relocation – City of Surrey Comments**

RECOMMENDATION

The Engineering Department and the Planning & Development Department recommend that Council:

1. Receive this report as information; and
2. Authorize the City Clerk to forward a copy of this report and the related Council resolution to the Ministry of Environment as the City's input regarding the documents titled "Site Profile Process Identification of Potentially Contaminated Sites" and "Prevention of Site Contamination from Soil Relocation".

INTENT

The purpose of this report is to:

- Provide an overview of the Ministry of Environment's two discussion papers currently out for comments titled "Site Profile Process Identification of Potentially Contaminated Sites", a copy of which is attached to this report as Appendix I, and "Prevention of Site Contamination from Soil Relocation", a copy of which is attached to this report as Appendix II; and
- Identify, from the perspective of the City of Surrey, the key opportunities and concerns related to the Site Profile Process Identification of Potentially Contaminated Sites and Prevention of Site Contamination from Soil Relocation for the purpose of providing input to the Province.

BACKGROUND

Contaminated sites and the prevention of site contamination from soil relocation is currently managed by the Province through the Environmental Management Act (the "Act") and the Contaminated Sites Regulation (the "Regulation").

The Ministry of Environment is currently reviewing aspects of British Columbia's site remediation regime. There are two key components under review that may impact local governments entitled:

- Site Profile Process, Identification of Potentially Contaminated Sites; and
- Prevention of Site Contamination from Soil Relocation.

In each discussion paper, the Province is proposing changes to current processes in an effort to streamline these processes and find more efficient ways to deliver legislative requirements.

At the request of the Province, Surrey staff, along with staff from the cities of Burnaby and Vancouver, gave a joint presentation to key Province staff on some of the initial concerns with the current and proposed process changes. This presentation was held on October 22, 2014 as part of the Province's annual internal workshop.

As part of the consultation process on these papers, the Province is seeking comments from industry, other levels of government, and the public.

Site Profile Process

The Site Profile Process was adopted by the Province in 1997. It is intended to bring potentially contaminated sites to the attention of the Province at key times in the redevelopment process. When an applicant applies to the City for a subdivision, rezoning development permit, development variance permit, or demolition permit on lands that have had a "Schedule 2" Activity such as gas stations, dry cleaners, machine repairs, manufacturing, saw mills, auto wrecking, etc., the applicant is required to complete the Provincial Site Profile form. This form is collected by the City and forwarded to the Province. At this point, all processes are "frozen" and the City is not able to grant permits or final approvals until the Province provides a release for the City to do so.

The Province may provide an interim release in order for the applicant to remediate the property during the start of their new construction. Interim releases by the Province may allow for the redevelopment of the site, but they typically do not allow the City to issue an Occupancy Permit. Typically, the City only supports interim releases if they are to the foundation permit stage in an effort to ensure that site is fully remediated before construction of the building under application is complete.

Contaminated Soil Relocation

Contaminated sites are located in most communities throughout the Province, with approximately 14,500 sites listed within the provincial site registry.

Often the contamination of a site is due to various industrial and commercial processes that have occurred on the site. As land use or business change, sites are typically remediated to comply with the new use or for new owners. Historically, the relocation of contaminated soils between local governments has been quite controversial, as some communities were concerned that they were receiving the contaminated material for the betterment of other communities. In an attempt to ensure contaminated soils were being disposed of properly, the Province began their relocation regulations in 1993.

Under Provincial legislation, a soil relocation agreement is required to relocate contaminated soils from one site to another. Exemptions to the agreement can be granted when the soil volume is less than five cubic metres or the soil is being relocated to a landfill authorized under Part 2 of the Act to receive contaminated soils. Due to the expense and time commitment to obtain a soil relocation agreement, most firms conducting remediation of a site send the contaminated soils to an approved landfill, even though the soils could be accommodated within some land uses.

The Province is concerned that soils are needlessly being sent to landfills to circumvent the regulations, and the Province would like to see soils incorporated for a better use or remediated and reused.

DISCUSSION

The Ministry of Environment has advanced the science and management of contaminated lands for the protection of society substantially since bringing in legislation. They have also developed a system for professionals who have been accredited by the Society of Contaminated Sites Approved Professionals of British Columbia to take on some of the responsibilities of the Province. Many of the ideas presented in the two discussion papers revolve around improved service delivery, less reliance on Provincial staff for decisions, and additional roles for industry professionals and local governments.

Concerns with Proposed Guidelines

Although staff see the need for improved efficiencies with some of the Provincial processes, staff are concerned that some of the options presented could lead to local governments having to take a larger role in contaminated sites decisions and soil relocations. Concerns with the proposed approaches are summarized below.

Site Profile Process Identification of Potentially Contaminated Soils Discussion Paper (Appendix I)

The Province has presented three key topics in this discussion paper. Draft concepts for potential Regulation changes are presented under three topics:

- activities triggering site profile requirements;
- site profile form; and
- site profile “freeze and release” provisions.

Activities Triggering Site Profile Requirements

The City currently requires Site Profiles from applicants according to the requirements set out by the Province. In most cases, this process is seamless and catches most of the potentially contaminated properties at the beginning of their redevelopment process. If the Province postpones these requirements to later in the redevelopment process, staff are concerned that there will be less time for an applicant to deal with the contaminated site issues, including any City lands that may be affected from the migration of the contamination, and that staff will need to ensure that works authorized by City permits will not limit the ability of the applicant to remediate the property.

There are exemptions to the current triggering requirements which could be of benefit though. These exemptions include:

- removing demolition permits from the triggering process, as most sites will require development permits;
- auto shops at schools; and
- air parcels.

The Province is also considering the opportunity to remove the need for an applicant to submit a Site Profile when decommissioning a site that had a Schedule 2 activity taking place in favour of mandatory perimeter monitoring of all active Schedule 2 activity sites. This requirement would place a huge financial burden on commercial and industrial properties. Staff are of the opinion that this approach is not warranted, as industrial and commercial standards have significantly improved from historic operations and that if currently contaminated sites are cleaned and redeveloped to current standards, there should not be a repeat of the offsite migration of contaminants.

Site Profile Form

The Site Profile form has been incorporated in to the City's development questionnaire. The Site Profile form can be completed by the applicant or their agent. The Province is looking at changing the process and having only qualified professionals complete the Site Profile form. This will result in additional costs for applicants. Staff are concerned that this change may require most development sites to hire a professional to demonstrate that a site under application did not have a Schedule 2 activity occurring in the past.

Following submission of a Site Profile and the completion of any prescribed mitigation, the Province grants Certificates of Compliance (CoC) to sites when they have been cleaned to numeric standards or meet risk standards for the sites use. The Province often attaches conditions to CoC's that may include limiting how a site can be developed or used in the future. Examples of some of the conditions include limiting construction to slab on grade.

With a CoC for the site, possibly obtained from past development application, an applicant does not need to complete a Site Profile form as part of their new development application. Staff suggest that all applications be required to complete a Site Profile form regardless if a CoC is in place or not, as in many cases the City has found that applicants are seeking to develop their site outside of the conditions imposed with the original CoC.

Site Profile "Freeze and Release" Provisions

The Province is considering amendments to the process by which local government authorizations are suspended and then released following submission of the Site Profile form to the Province, as the current process has resulted in a significant staffing burden at the Province. As such, the Province is looking at either making local governments freeze applications until at applicant obtains either an Approval in Principal (AIP) or a CoC for a site. As a local government, this would result in numerous subdivision, rezoning, and development permit applications unable to go to Council for approvals until the sites were either cleaned or had a detailed remediation plan. Staff are concerned that this approach may result in inefficiencies and added costs for applicants, as they could be required to first excavate and remediate a site only to have to return to excavate the site for their proposed development.

The other option the Province suggests is for sites to be allowed to advance, but the applicant would be required to complete a preliminary site investigation followed by a detailed site investigation if contamination is found. A determination or CoC would then have to be obtained before the local government granted occupancy permits or within a certain time frame (i.e., 5 years after application). Staff are concerned that this approach could lead to some potentially contaminated sites being redeveloped without remediation being completed. Staff are also concerned that this approach would move the administrative burden that currently exists at the Province and shift it to each local government.

Prevention of Site Contamination from Soil Relocation Discussion Paper (Appendix II)

The Province has presented two key topics in the discussion paper. Draft concepts for potential regulation changes are presented under each topic. For this paper the topics include:

- reviewing the role of the soil relocation process in prevention of site contamination; and
- clarifying definitions and scope of soil relocation provisions.

Reviewing the Role of the Soil Relocation Process in Prevention of Site Contamination

The Province proposes a variety of new triggers for when notification may or may not be required for the depositing of potentially contaminated soils on a site. The issue with all the options is who is responsible to monitor the soil leaving and being deposited on a site. At the present time, local governments do not monitor soil quality but only administer the deposition should they have a By-law in place. By changing the current notification process, local governments may be required to add soil testing into the requirements for soil permits to ensure contaminated soils are going to sites with appropriate land use designations.

The Province is also looking at contaminated soil transportation notification. One of the proposals is for notifications to be sent to the receiving local governments and not to themselves, resulting in local governments becoming the trackers of contaminated soils. Staff are concerned that this change will lead to confusion and the shifting of an administrative burden from the Province to each local government. The Province has also proposed eliminating the need for soil notifications.

In an effort to avoid the historical challenges that came about prior to the implementation of the Regulation, staff are of the opinion that the current soil relocation process remain in place.

Clarifying Definitions and Scope of Soil Relocation Provisions

The items listed in this section of the discussion paper are related to common housekeeping items and very straight forward. Staff have no concerns with items presented.

Summary of Key Concerns Related to the Discussion Papers

Given the challenges discussed above, it is recommended that the Province propose changes to existing contaminated sites legislation that:

- Retain the existing triggers for Site Profile submissions, but allow some exemptions.
- If “freeze and release” conditions are to be removed, the new trigger should be the building permit stage. Building permits will also need to be added as a trigger.

- Simplify and not complicate the development process with items such as perimeter protection on Schedule 2 sites.
- Does not add additional responsibilities to local governments to administer, such as tracking contaminated soils or closely monitoring site remediation associated with development.
- Provides clear direction for developers, site owners, and local governments.
- Ensures the Province is able to monitor and enforce the legislation.

Next Steps

Staff will continue to participate in discussions with the Province and the Contaminated Sites Approved Professional organization on proposed Contaminated Sites Legislation/Regulation changes.

SUSTAINABILITY CONSIDERATIONS

The City's review of the Provincial site remediation regime discussion papers supports the Economic and Environmental Pillars of the City's Sustainability Charter in relation to the following Charter action items:

- EC1: Corporate Economic Strategy;
- EC7: Sustainable Building and Development Practices;
- EN9: Sustainable Land Use Planning and Development Practices; and
- EN16: Land, Water and Air Quality Management.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Authorize the City Clerk to forward a copy of this report and the related Council resolution to the Ministry of Environment as the City's input regarding the documents titled "Site Profile Process Identification of Potentially Contaminated Sites" and "Prevention of Site Contamination from Soil Relocation".

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Appendix I - Site Profile Process Identification of Potentially Contaminated Sites, Discussion Paper Series Review of British Columbia's Site Remediation Legal Regime

Appendix II - Prevention of Site Contamination from Soil Relocation, Discussion Paper Series Review of British Columbia's Site Remediation Legal Regime

SITE PROFILE PROCESS
**IDENTIFICATION OF POTENTIALLY
CONTAMINATED SITES**



DISCUSSION PAPER SERIES
Review of British Columbia's Site Remediation Legal Regime

IDENTIFICATION OF POTENTIALLY CONTAMINATED SITES:
SITE PROFILE PROCESS – 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 soil relocation and the mechanism for identifying potentially contaminated sites (the site profile process).

This discussion paper focuses on the identification of potentially contaminated sites. The paper:

- Provides background information on the current site profile process.
- Outlines concerns with the current process.
- Sets out ministry priorities and objectives.
- Discusses options for amending the process for identifying potentially contaminated sites.
- Describes the means for providing comment to the ministry and consultation questions.

Input received in response to this paper will inform ministry actions in creating a process for identifying potentially contaminated sites that meets ministry priorities and objectives, as well as addressing concerns with the existing process.

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

2. BACKGROUND

WHAT IS THE SITE PROFILE PROCESS?

The site profile process involves a series of legal provisions intended to bring potentially contaminated sites to the attention of the ministry at a time when a parcel of land is conducive to investigation and remediation, such as before reuse or redevelopment of the parcel. This process has been in effect since 1997.

A "site profile" is a form that includes readily available information about past and present uses of a site, as well as a basic description of the land. The assistance of an environmental consultant is generally not required to complete a site profile form. Public access to this basic information is provided through the provincial Site Registry.

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

WHY WAS THE SITE PROFILE PROCESS ESTABLISHED?

On April 1, 1997, following significant public consultation on B.C.'s proposed contaminated sites legislation, the site profile requirements set out in the *Environmental Management Act* (the Act) and the Contaminated Sites Regulation (the Regulation) came into force. The site profile provisions evolved largely as a result of concerns raised by local governments across the province. These concerns included:

- Potential liability for local governments due to deficiencies in the review of applications for development of sites that might be contaminated.
- Insufficient provincial assurances that sites have been satisfactorily remediated.
- Gaps in the integration of provincial and local government processes relating to contaminated sites screening and assessment.

In short, local governments wanted a legally defined and uniform process to screen for potential contamination and to ensure that remediation occurs before a change in land use.

HOW DOES THE SITE PROFILE PROCESS WORK?

Under the Act and Regulation, the ministry and local governments have separate but integrated duties to ensure that: (1) site profiles are submitted and satisfactorily completed; and (2) local government authorizations – including zoning, subdivision, soil removal, demolition, development and development variance permits – are not approved until the requirement for site investigation is met.

The Act's provisions apply to sites used for commercial and industrial purposes and activities as listed in [Schedule 2 of the Regulation](#). They set out the actions which may trigger a requirement for the submission of a site profile to the ministry – either directly (for site decommissioning or foreclosure proceedings), or via the relevant local government (for applications for subdivision, development, development variance, zoning, demolition, and soil removal). The Regulation sets out several exemptions to the site profile submission requirements, and allows individual local governments to opt out of the site profile administration process.

3. CONCERNS WITH THE CURRENT PROCESS

Over the time that the site profile process has been in place, a number of weaknesses and gaps have become apparent:

- The multi-step process is confusing and inefficient, with significant administrative burden for all involved (ministry, local government, and applicant).
- Variability in local government bylaws and permitting processes result in uncertainties and inconsistencies in the system.

- Local governments are able to “opt out” of the site profile process, resulting in a patchwork system across the province – screening of potentially contaminated sites is taking place in some local government districts but not in others.
- Too many triggers initiate the process, often bringing sites to ministry attention at an inappropriate time (for example, minor zoning changes, lot line adjustments, demolition of buildings). This concern led to the development of the “release” process described in the [Land Remediation Section Administrative Guidance document 6](#) (“Site Profile Decisions and Requesting Releases Where Local Government Approvals are Required”).
- Schedule 1 (the site profile form) can be completed by anyone to the best of their knowledge. Applicants are not required to complete historical searches to determine site use, therefore, declarations on the form may not always be accurate.
- Existing site profile exemptions are not always clear and some exemptions are outdated. This creates inconsistency in the implementation of site profile requirements.
- The consequences of submitting a site profile to the ministry are not clear. An applicant must wait for a response from the Director before planning next steps, which can lead to delays in the development process.
- The enforcement of requirements imposed in release letters is difficult and time consuming for ministry.

4. MINISTRY PRIORITIES AND OBJECTIVES

It is important for B.C. to have an effective screening mechanism that identifies potentially contaminated sites before land that has been used for industrial or commercial activities is reused or redeveloped. The ministry has identified the following priorities and objectives for use when considering amendments to the process for identification of potentially contaminated sites.

Priorities:

- Create a process for identifying potentially contaminated sites that is uniform and consistent across the province.
- “Hardwire” clear and transparent requirements into the legislation, eliminating statutory decision making by the Director and the need for oversight by ministry staff.
- Provide stakeholders with increased certainty and predictability of process.

Objectives:

- Streamline the site profile system by identifying potentially contaminated sites at an appropriate time in the redevelopment process.
- Ensure that potentially contaminated sites are adequately investigated and, if necessary, remediated before reuse or redevelopment.

5. OPTIONS FOR AMENDING THE PROCESS FOR IDENTIFYING POTENTIALLY CONTAMINATED SITES

This section provides information on possible changes to three aspects of the process for identifying potentially contaminated sites: (1) activities triggering site profile requirements; (2) the site profile form; and (3) the local government process for site profiles. On consideration of consultation comments, other aspects of the legal regime may also be amended. These include the purposes and activities listed in Schedule 2 of the Regulation, and exemptions from the process. The options presented below were developed in keeping with the ministry's priorities and objectives and address concerns with the current process.

In all cases, the ministry is considering "hardwiring" site investigation requirements into the legislation. For example, once the site profile process is triggered, if a site has an associated Schedule 2 activity, the applicant would be required to complete a preliminary site investigation, and a detailed site investigation if contamination is identified, possibly followed by site remediation.

5.1 ACTIVITIES TRIGGERING SITE PROFILE REQUIREMENTS

In light of the ministry's objective to identify potentially contaminated sites at an appropriate time in the redevelopment process, the following options for amendments to the activities that trigger the site profile requirements of the legal regime are under consideration.

A. LOCAL GOVERNMENT APPLICATIONS (DEMOLITION, ZONING, SUBDIVISION, SOIL REMOVAL, DEVELOPMENT, DEVELOPMENT VARIANCE)

- Remove some or all of the following triggers – soil removal, demolition, subdivision, and zoning. These particular triggers are normally considered "interim" steps to site redevelopment. Currently these triggers can be "released", delaying site investigations to the development permit stage.
- Leave triggers as is – but amend the exemptions so that the triggers only apply in certain instances (for example redevelopment to a new use).

B. SITE DECOMMISSIONING

- Clarify the definition of site decommissioning.
- "Hardwire" requirements to submit to the Director: (1) site investigation reports; and (2) a Site Risk Classification Report – within a specified timeframe following decommissioning (if there will be no immediate site redevelopment). The ministry is currently accomplishing this through requirements imposed by the Director in site profile

response letters for decommissioning sites (reports must be submitted within one year of the date on the letter).

- Repeal the requirement to submit a site profile upon decommissioning – and, as an alternative to this requirement, introduce provisions outside of the site profile process that would require perimeter monitoring at all operating sites with Schedule 2 activities (this would identify contamination before neighbouring parcels are affected by migrating substances). A provision requiring financial security before startup of a Schedule 2 activity could also be introduced. The financial security could be used on decommissioning if the site had not been sufficiently investigated or remediated. This option would require other amendments to the Act, Regulation and Codes of Practice.

5.2 SITE PROFILE FORM

The ministry is considering the following changes to improve the accuracy and completeness of information provided on the site profile form:

- For all properties used for commercial or industrial purposes, require completion of the site profile form by a qualified professional.
- Before completing a site profile form, require basic searches to determine historical site use (for example, contact local government for business license information and other records, review street directories, interview current and former owners, undertake a Site Registry search, review previous reports for site).
- Require site profile records to be updated if new information becomes available.
- Remove the question sections (VI through IX) from the form. Requirements for site investigation would be based on the presence of a Schedule 2 activity. This would remove uncertainty when it is unknown if the question should be marked “yes” or “no”.

5.3 SITE PROFILE “FREEZE AND RELEASE” PROVISIONS

The ministry is considering amendments to the process by which local government authorizations are suspended and then released following a site profile submission.

OPTION A. STREAMLINE EXISTING RELEASE PROVISIONS

Revise the release provisions in the *Oil and Gas Activities Act*, *Local Government Act*, *Land Title Act*, *Vancouver Charter* and *Islands Trust Act* so only legal instruments, such as an Approval in Principle or Certificate of Compliance, would release “frozen” applications. This would likely require amendment to certain site profile triggers and exemptions – to ensure that sites are being identified at the appropriate stage of redevelopment.

OPTION B. FOCUS ON THE END POINT

A site profile would be submitted to ministry when triggered by a local government application but the application would no longer be “frozen”. Site investigation requirements would be “hardwired” into the legislation. For example, if a site has an associated Schedule 2 activity, and upon redevelopment or change of use – the owner would be required to complete a preliminary site investigation, followed by a detailed site investigation if contamination is identified. Remediation of the entire area of contamination might also be required.

A negative Determination of Contaminated Site or Certificate of Compliance would have to be obtained:

- Before a certain end point (occupancy, for example – add to the Building Code the need for a negative Determination or Certificate of Compliance before final building inspection, or create a new environmental occupancy permit under the Act); or
- Within a specified timeframe (for example, 5 years).

6. PROVIDING COMMENT

Comments on identification of potentially contaminated sites and the site profile process 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 process.

Before submitting a response, interested parties are invited to participation in an information webinar scheduled to be held 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 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 identification of potentially contaminated sites: site profile process discussion paper.

1. Ministry priorities and objectives for identification of potentially contaminated sites

- 1.1 Do you have any comments regarding the ministry's priorities and objectives?

- 1.2 Are there any additional objectives that you believe should inform or guide the ministry's review of British Columbia's site remediation legal regime?

2. Concerns with the current site profile process

- 2.1 Do you have any comments or concerns regarding the current site profile process?

3. Activities triggering site profile requirements

- 3.1 Local government applications – Do you have any comments regarding removing or amending triggers affecting local government applications and the site profile process?

- 3.2 Recognizing the variability in local government permit processes, do you have any suggestions for the ministry to help ensure a consistent process for identifying contaminated sites throughout the province?

- 3.3 Site decommissioning – Do you have any comments regarding removing or amending requirements for a site profile upon decommissioning of a site?

4. Site profile form

- 4.1 Do you have any suggestions for improving the accuracy and completeness of the site profile form?

5. Site profile “freeze and release” provisions

5.1 *Option A. Streamline existing release provisions.*

Do you have any comments about this option? Do you believe that it would meet the ministry’s priorities and objectives?

5.2 *Option B. Focus on the end point.*

Do you have any comments about this option? Do you believe that it would meet the ministry’s priorities and objectives?

6. Suggestions for a revised site identification process

6.1 If you do not support the options presented, do you have any alternative suggestions for a revised process that would meet the ministry’s priorities and objectives in identifying potentially contaminated sites?

7. Additional comments?

7.1 Do you have any additional comments or suggestions regarding the ministry’s review of British Columbia’s site remediation legal regime and/or the identification of potentially contaminated sites?

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



PREVENTION OF SITE CONTAMINATION FROM SOIL RELOCATION 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.

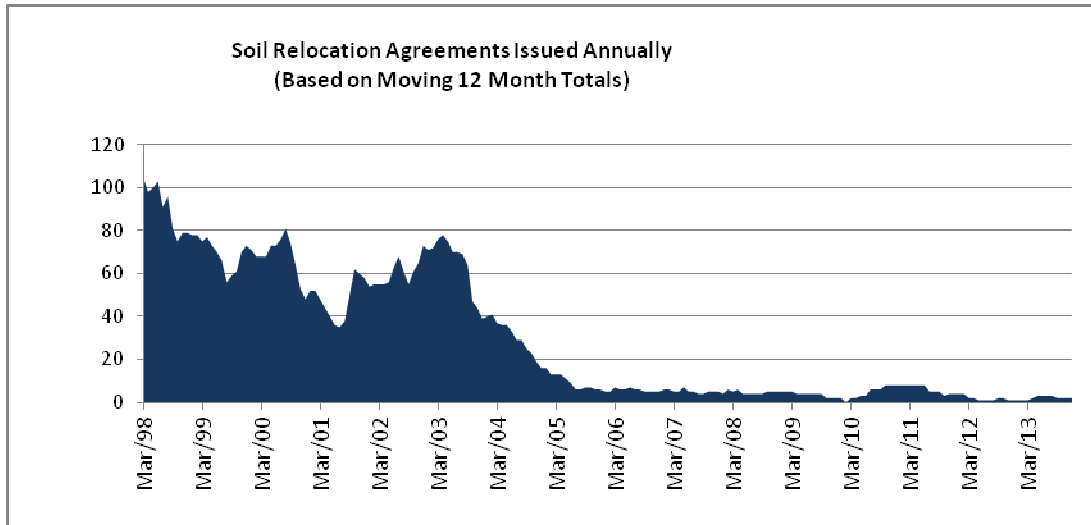


Figure 1: Number of Soil Relocation Agreements Issued Annually

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?