

ENVIRONMENTAL LAW UPDATE

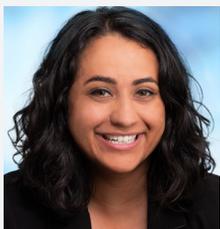


Richard Bereti

Author

Harper Grey LLP
604.895.2816

rbereti@harpergrey.com



Nicola Virk

Author

Harper Grey LLP
604.895.2310

nvirk@harpergrey.com

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Moving Dirt In BC – New Rules

The Government of British Columbia is in the process of revamping laws around soil relocation with the objective of reducing the complexity of the existing rules, facilitating compliance, and limiting the amount of soil that ends up in landfills.

To achieve these objectives, amendments have been proposed to the Environmental Management Act (“EMA”), the Contaminated Sites Regulation (“CSR”), and the Waste Discharge Regulation (“WDR”). The amendments to the EMA received Royal Assent in March 2020 and will come into force when the other regulatory amendments are finalized and adopted. Stakeholder feedback on the proposed amendments to the CSR and WDR are currently under review and final consideration is targeted for this year.

THE INCOMING CHANGES

EMA

Under the current regime, persons seeking to relocate contaminated soil to another property (other than a landfill) generally need to obtain a Contaminated Soil Relocation Agreement, which must be entered with the owner or operator of a receiving site and the Director of Waste Management. The use of CSRAs as the primary means of regulating the relocation of contaminated soil will be eliminated in the changes to the EMA.

The other significant amendment to the EMA will establish a new framework for soil analysis and update the notification process for relocating soil from sites where a specified industrial or commercial activity has taken place.

CSR

There is no current regulation for the relocation of “uncontaminated soil”, which is simply soil that meets the CSR’s contamination limits for the receiving site.

The proposed changes to the CSR will establish a new process for uncontaminated soil relocation. When specified commercial or industrial uses have occurred on a site and more than 10m³ of soil is being relocated, the person removing the soil will be required to analyze its quality.

If the soil quality does meet the standards of the receiving site, then the person relocating the soil must submit an online notification form. This notification form must be circulated to nearby municipal governments and Indigenous Nations at least two weeks prior to the relocation and be posted to the site registry maintained by the Ministry. Where soil quality does not meet the standards of the receiving site, other CSR requirements for contaminated soil will apply.

Aside from basic soil analysis and notification requirements, the amendments to the CSR would alter requirements for conducting soil vapour assessments, impose additional requirements for high

volume sites of contaminated soil, and create administrative penalties for non-compliance.

WDR

Currently, the WDR only addresses the movement of waste soil to a new location. When soil is deemed “waste”, it must be disposed of at a waste disposal facility unless special approval has been obtained. The proposed changes to the WDR will impose additional requirements for the onsite management of waste soil.

CONCLUSION

If you deal with soil relocation, take the time to familiarize yourself with the incoming changes. Non-compliance with the new amendments can result in administrative penalties of up to \$75,000 – something no property developer wants to deal with.

We hope you found this update useful.

If you would like more details about the issues covered, to provide general comments, or to suggest topics or cases of interest please email the author(s).

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