Legal update

British Columbia intends to improve waste soil relocation regulations

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Environmental

The Ministry of Environment and Climate Change Strategy in British Columbia intends to bring forward legislation to better regulate excess soil relocation, including waste soils, and reduce deposit of soils in landfills.

The Ministry of Environment and Climate Change Strategy has for years been aware that certain participants in the soil and waste transport and relocation industry have not been complying with the current regulations, which are reliant on source site and recipient site owners entering into a Contaminated Soil Relocation Agreement (CSRA) with the ministry.

In January 2019 the ministry issued a final policy recommendation with a series of proposed substantive amendments to the soil relocation regulations and legislation. The following are notable features of the new regulations:

- Distinguish between soils and waste soils, and regulate the relocation of waste soils. Waste soil is to refer to soil that possesses a substance concentration greater than the lowest applicable industrial land use standard
- Remove the requirement for a CSRA (a positive development as execution of these agreements was time consuming)
- Introduce notification and certification requirements:
  - require that the applicant deliver advance notification to local governments as well as “indigenous groups” in the area of both source and receiving sites. (To date, the ministry has not given any indication how an applicant will be able to identify the applicable indigenous groups, which is not always obvious in areas of overlapping claims and interests)
  - require that the applicant complete chemical characterization and vapour assessments for certain waste soils and obtain certification by approved professionals. Certifications will be subject to random audits. (The introduction of approved professionals and audit verification should be a positive development and enable applicants to better control the soil relocation process and associated project scheduling. This process will be similar to that undertaken for independent remediation of contaminated sites)
- Amend the Environmental Management Act to provide for administrative monetary penalties if soil relocation requirements are not met
• Potentially add new requirements for landfills and high-volume receiving sites.

The ministry intends to seek government approval for these amendments in 2019. We will provide a further update once it is confirmed whether the province approves the recommendations and tables specific legislative and regulatory amendments for approval.

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The author wishes to thank articling student Niles Bond for his help in preparing this legal update.

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