

GOT DIRTY DIRT?

B.C. EXPANDS REQUIREMENTS FOR POTENTIALLY CONTAMINATED SOILS

MARCH 2024



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The Dirt on Dirty Dirt: New Regulations Around Contaminated Soils.

Most of the time, property (re)development includes at least some excavation and soil removal. The vexing problem of “Dirty dirt” — soils and related materials contaminated by past activities at properties — may require extensive remediation or excavation and re-disposal before a property can be reused.

“ ‘Dirty dirt’... CAN LIMIT SUBSEQUENT USES and may require remediation or excavation and re-disposal before a property can be reused at all ”

Many environmental and land use agencies require formal investigations at targeted sites, and management of contaminated soils. Increasingly, tailored versions of these requirements apply to materials that are not contaminated (“excess soil”), recognizing environmental and even climate impacts from moving large masses between locations.

Last year, British Columbia revamped its provincial requirements to clarify and expand longstanding regulatory provisions around soil displacement. These changes emphasize the need for thorough site assessments before redevelopment work can proceed.

How have BC’s requirements evolved?

BC’s soil management standards are set through the Contaminated Sites Regulation (CSR) issued and administered by the Ministry of Environment and Climate Change Strategy (Ministry), Land Remediation Section under the provincial Environmental Management Act (EMA). Beginning in 2017 the Ministry spent years in public consultations, culminating in revisions to CSR intended to address ambiguities in the rules and inconsistencies in administration by local agencies (meanwhile, Parliament amended EMA itself in 2020, but those statutory amendments are not yet in effect).

What are current CSR requirements?

CSR rules effective March 1, 2023, apply the following requirements.

- **Existing and prior land use triggers compliance questions**
CSR compliance must be considered for a site that has been used for any of nearly a hundred industrial or commercial uses (specified in CSR Schedule 2), which are likely to have resulted in land contamination including:
 - Chemical industries and activities (*13 categories*)
 - Electrical equipment and activities (*7 categories*)
 - Metal smelting, processing, or finishing industries and activities (*6 categories*)
 - Mining, milling or related activities at or near land surface (*6 categories*)

- Miscellaneous industries, operations, and activities (10 categories)
- Petroleum (12 categories)
- Transportation industries, operations, and activities (5 categories)
- Waste disposal and recycling operations and activities (22 categories)
- Wood, pulp and paper products and related industries and activities (7 categories)

Since regulatory coverage is not limited to a site's present use, reporting entities must consider a site's complete history to identify possible contamination.

“ regulatory coverage is **NOT LIMITED** to a site's present use ”

- **Planned land use or soil removal may trigger notification requirements**

If a site has been used for any of the purposes listed above, an identified person must submit a Site Disclosure Statement (Statement) unless exempt:

- Owner or operator decommissioning or ceasing operations on a site, involving removal or treatment of soil, buildings, or process equipment, including storage tanks.
- Applicant for local (municipal or treaty first nation) approvals such as zoning, subdivision and development or building permits (excluding demolition) where soil disturbance is likely to occur. This includes a municipality or treaty first nation proposing to (re)zone land in which it has an ownership interest.
- Owner or operator subject to insolvency proceedings.
- Person selling a property (vendor).
- Trustee, receiver, liquidator or foreclosing party.
- Person ordered by the Ministry or other government agency.

“ Planned land use or soil removal **MAY TRIGGER** notification requirements ”

Rules Around Disclosure

If there are multiple owners, they can rely on a single Statement. CSR does not require a new disclosure if the site has a remediation plan with an Approval in Principle or a post-cleanup Certificate of Compliance from the relevant agency, and the person has made “reasonable inquiries” and has no reason to believe any contamination has occurred since that approval.

The CSR includes a Site Disclosure Statement (which the Ministry posts online at <https://submit.digital.gov.bc.ca/app/form/submit?f=32a95812-f9db-4fd2-99eb-7e362b0253b1>).

These are filed by owners, operators, or designees.

The form calls for:

- General site information – owner, operator, location, person completing Statement, contact.
- Identification of each EMA-specified industrial or commercial activity at the site (past or present).
- Additional information, including:
 - summary of planned activity and land use,
 - information used to complete the Statement, including any record searches and/or field evaluation at the site,
 - any past or present governmental orders pertaining to the site's environmental condition,
- Declaration and certification.

“ A separate Soil Relocation Notification Form **MUST BE SUBMITTED** before any soil can be removed from a site that has had a specified industrial or commercial use ”

Exempt Removals

A separate Soil Relocation Notification Form must be submitted before any soil can be removed from a site that has had a specified industrial or commercial use (there is no minimum), except that CSR exempts removals of no more than 30 cubic meters of soil from a site the agency has classified as low, moderate, medium, or intermediate risk.

- **Site investigation and remediation may be required**

The Ministry (or other agency official) is to assess a Statement within 15 days. After evaluation, the agency can

reject it as incomplete, accept it, require site investigation, or may rely on site investigation(s) already performed. Site investigation may include as appropriate:

- Preliminary site investigation – Phase 1 documentation review, personnel interviews, site assessment,
- Detailed site investigation – further (Phase 2) site investigation (which may find and consider contamination that has migrated offsite).

Ordering Site Remediation

Site remediation may be ordered based on the results of investigations. CSR includes dozens of numeric soil standards for different contaminants and situations, presented in matrices and schedules; sites are remediated to meet applicable standards (and can then seek Ministry certification), or subjected to risk-based standards (including containment and controls) for remaining contamination.

Remediation may be overseen by the Ministry or other agency and subject to their final approval and certification, or the agency may allow independent remediation subject to separate notification requirements and the agency's authority to intervene. The Ministry may conduct its own cleanups and then seek reimbursement from responsible parties and may also declare an Orphan Site without a responsible party. EMA and CSR provide for public notice and participation.

“ The Ministry may **CONDUCT ITS OWN CLEANUPS** and then **SEEK REIMBURSEMENT** from responsible parties ”

- **Similar requirements apply to High Volume Sites that receive uncontaminated soil**

Additional CSR provisions apply to High Volume Sites that receive more than 20,000 cubic meters of soil from covered industrial or commercial sites, unless all such soil has been tested to confirm it does not exceed applicable

soil contamination standards. These sites must file a High Volume Soil Receiving Site form and maintain a Soil Management Plan that meets EMA requirements.

- **Site information is maintained in the Ministry's Site Registry**

The Ministry has established a Site Registry that compiles the following information about individual sites, where available and applicable:

- contaminated or not contaminated,
- stages of investigation or remediation,
- cleaned up to meet applicable remediation standards.

Online searches are available, and parties can also request agencies searches, which the Ministry seeks to complete in 2-4 weeks. Fees apply.

- **Administrative and enforcement measures apply**

EMA and CSR provide for agency fees and cost recovery. In addition, EMA provides for penalties for noncompliance.

“ Documentary and field investigations have become part of **LAND (RE)DEVELOPMENT** over the last several decades ”

How do these requirements support thorough site evaluations?

Documentary and field investigations have become part of land (re)development over the last several decades, initially as ways for land purchasers and their banks and insurance companies to assess possible environmental liabilities. Governments have moved to tie these assessments to applicable environmental regulations and have slowly expanded and regularized requirements. The EMA statute and CSR rules present British Columbia's version of this evolution, including increasing reliance on regularized and thorough reviews of land use histories and compilations of environmental data. 

Ministry's Site Remediation web portal: <https://www2.gov.bc.ca/gov/content/environment/air-land-water/site-remediation>

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