

Fact Sheet:

Bringing Soil to an RSC Property

The amendments to Ontario Regulation 153/04 (O. Reg. 153/04) contain new requirements for conducting environmental site assessments (ESA) for filing a Record of Site Condition (RSC). These requirements come into effect for RSCs submitted as of July 1, 2011. Setting out minimum ESA requirements and objectives will provide consistency and improve the quality of RSCs.

Brownfield properties often require soil. As part of the ESA requirements, there are specific rules for bringing soil to a property where an RSC will be filed, to remain at the property after the RSC has been filed.

The ministry implemented the new requirements to help improve the integrity of the RSC process. A purpose of an RSC is to determine that the contaminants present in soil, ground water and sediment meet the applicable site condition standards or standards specified in a risk assessment for the contaminant on, in or under a property.

Note: Soil is defined in O.Reg 153/04 as unconsolidated naturally occurring mineral particles and other naturally occurring material resulting from the natural breakdown of rock or organic matter by physical, chemical or biological processes that are smaller than 2 millimetres in size or that pass the US #10 sieve.

RULES FOR BRINGING SOIL TO A PROPERTY WHERE AN RSC WILL BE FILED

SAMPLING

The new rules require a qualified person to sample, analyse and document soil brought to a property where an RSC is to be filed that is intended to remain there after the RSC is filed. This is to ensure that the concentrations of any contaminants in the soil meet the applicable site condition standards or standards specified in a risk assessment for the contaminant. These same rules

are already required for soil found on in or under the RSC property.

DIFFERENT PROPERTIES AND ASSESSMENTS

There may be different requirements for soil brought to the property, depending on the characteristics of the RSC property and the type of assessment being undertaken to support the RSC filing (eg., an RSC based only on a Phase One ESA, vs. an RSC based on a Phase One and Two ESA, vs and RSC based on a Phase One and Two with an accepted Risk Assessment).

PERMITTED SOIL USES AT AN RSC PROPERTY

Soil brought to a property where an RSC will be submitted for filing can only be used for final grading or to backfill an excavation.

SOIL BROUGHT TO A PROPERTY WITH AN RSC TO BE FILED ON THE BASIS OF A PHASE ONE ESA ONLY

As there is no intrusive physical investigation of a RSC property where the RSC is being submitted on the basis of a Phase One ESA only, and since such a property is not expected to have any contaminants on, in or under it at a concentration that would interfere with any use to be made of it, there are specific rules for soil brought to such a property. The standards which must be met for concentration of contaminants are the most stringent. These rules are found in s. 55 of, and Schedule F, O. Reg. 153/04.

Paragraph 55(3)2 of Part XII of O.Reg. 153/04 specifies that soil can be brought to a property where a qualified person has determined that an RSC may be submitted without a Phase Two ESA.

Schedule F details the requirements for moving soil to the property:

- The concentration of each contaminant in the soil must be equal to or less than the concentration for the contaminant set out in Table 1 of the Soil, Ground Water and Sediment Standards.
- The samples must be analyzed for contaminants that may reasonably be expected to be present in the soil, having regard to;

- ✓ the property from which the soil was taken before being brought to the RSC property;
 - ✓ handling of the soil, including its storage and transport after excavation; and
- Any other relevant factors, including potentially contaminating activities and sampling the soil before bringing it to the property, at a frequency of:
 - ✓ one sample per 160 cubic metres for the first 5,000 cubic metres;
 - ✓ one sample per 300 cubic metres thereafter.
- The results of analyses, demonstrating that soil brought to a Phase One property meets Table 1 standards, must be submitted as part of the RSC submission.
- Soil brought to the property is to be used solely to backfill an excavation or for final grading.

SOIL BROUGHT TO A PROPERTY WITH AN RSC TO BE FILED ON THE BASIS OF A PHASE ONE AND TWO ESA

There is an intrusive investigation of the RSC property in this scenario. The rules for soil that is brought to the RSC property and is to remain there after filing the RSC are found in the rules for conducting the investigation, i.e., in Schedule E and Parts VI-VIII of O. Reg. 153/04, as well as in Part XI, s. 55.

The rules specify the property characteristics and applicable standards for contaminants, as well as setting out sampling, analysis and reporting requirements identical to those where the RSC is being filed based on a Phase One ESA only.

Paragraph 55(1) of Part XII of O.Reg 153/04 specifies the conditions under which soil can be brought to an RSC property where the RSC is being submitted for filing based on a Phase One and Phase Two ESA:

- Soil that did not originate at an RSC property may be brought from another property to an RSC property if;
 - ✓ the property is being used or has been used for - in whole or in part - an industrial or a specified commercial purpose (garage, bulk liquid dispensing facility or dry cleaning equipment operation);
 - ✓ a potentially contaminating activity is or has been identified;

- ✓ the property was last used, in whole or in part, for an industrial or specified commercial use (garage, bulk liquid dispensing facility, or dry cleaning equipment operation);
 - ✓ one or more contaminants of concern is present.
- If any of the above conditions do not apply, then soil brought to the RSC property must meet Table 1 Standards.

Once these conditions are met, the applicable requirements are found in Schedule E of O..Reg 153/04 for soil brought to a Phase Two property to remain at the Phase Two property after the filing of a record of site condition

- The concentration of each contaminant in the soil must be equal to or lower than the applicable site condition standard.
- Soil must be sampled and analyzed before being brought to the property.
- The samples must be analyzed for contaminants that may reasonably be expected to be present in the soil, having regard to;
 - ✓ the property from which the soil was taken before being brought to the RSC property,
 - ✓ handling of the soil, including its storage and transport after excavation; and,
 - ✓ any other relevant factors, including potentially contaminating activity.
- Samples will be analyzed at the following rates to verify that soil brought to the property meets applicable site condition standards;
 - ✓ one per 160 cubic metres for the first 5,000 cubic metres; and
 - ✓ one per 300 cubic metres of soil in excess of 5,000 cubic metres.
- Soil brought to a Phase Two property is to be used solely to backfill an excavation or for final grading.

In addition to the requirements for bringing soil to a Phase Two property, there are also several reporting requirements. The mandatory reporting requirements are listed in Schedule E, Table 1 Mandatory Requirements for Phase Two Environmental Site Assessment Reports, 10. Appendices (c) Soil Excavated at or Brought to a Phase Two Property.

They include:

- A rationale for selecting chemical parameters analyzed by a laboratory in accordance with Section 32 of Schedule E;
- A description of the soil sampling activities conducted, including;
 - a) the number of samples analyzed
 - b) the soil sampling program, including methods used to ensure the samples represent any areas where a contaminant may be present at a concentration greater than the applicable site condition standard for the contaminant;
 - c) the address of the source property and any property where the soil was stored before it was deposited on, in or under the Phase Two property;
 - d) the former and current uses of the source property, including identification of any potentially contaminating activity;
 - e) total volume of soil brought to the Phase Two property;
 - f) the results of analyses of soil samples, including a comparison of the results to the applicable site condition standard for each contaminant analyzed;
 - g) a figure showing the locations on the Phase Two property where soil was deposited; and
 - h) tables:
 - ✓ showing all soil quality data contained in laboratory certificates of analysis of soil, samples analyzed; and
 - ✓ comparing the analytical results to the applicable site condition standard for each contaminant analyzed;and
- A description of why the soil was brought to the Phase Two property.

SOIL BROUGHT TO A PROPERTY WITH AN RSC TO BE FILED ON THE BASIS OF A PHASE ONE AND TWO ESA AND A RISK ASSESSMENT

The rules for bringing soil to an RSC property where the RSC is submitted for filing based on a Phase One and Two ESA and the risk assessment are the same as when the RSC is submitted for filing based on a Phase One and Two ESA, with the following exception:

If the risk assessment is accepted by the Director and contains a *soil management plan*, and a contaminant in the soil being brought to the RSC property has a standard specified in the risk assessment, then the concentration may be equal to or less than the standard specified in the risk assessment.

Disclaimer:

This fact sheet provides summary information about the amendments regarding Soil Brought to the RSC property. This fact sheet is provided for educational use, and are not complete or exact reproductions of the legislation. It is not intended, or to be used, as advice, legal or otherwise, about the requirements for records of site condition or the obligations of those submitting them. Such advice should be obtained from competent experts, including lawyers. Where there is a discrepancy between anything in this fact sheet and a legislative provision the legislation prevails.

Ontario legislation may be found at <http://www.e-laws.gov.on.ca/index.html>.