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Traceability of Contaminated Soils: Remember to Update Your Tender Packages

The 2021 *Regulation respecting the traceability of excavated contaminated soils*,¹ or Traceability Regulation, sets requirements for contaminated soils that have been excavated and transported away from their site of origin. These requirements can be met by using Traces Québec, a traceability platform managed by Attestra. While using the system was initially optional, it has been mandatory since January 1, 2023.

Different parties may be responsible for traceability under the Traceability Regulation. For example, when work is being done on linear infrastructure (such as a road), the project owner is responsible. If the contamination is caused by an accidental discharge, the party that caused the discharge is responsible. In all other cases, the soil owner is responsible. This means that the responsibility often falls to municipalities during infrastructure projects, where they are either the project owners or the soil owners.

The traceability system is mandatory whenever contaminated soils are transported away from the site of origin, regardless of quantity, although some requirements are less strict when fewer than 200 tonnes of soil are involved. Among other things, owners will need to create soil batches and tracking slips, identify the receiving site, and potentially submit an attestation, all in Traces Québec. The obligations are numerous and complex, so municipalities should study them carefully.

In addition, it is imperative to take into account Traces Québec's user fees,² as well as the government charges under the *Regulation respecting charges to promote the treatment and reclamation of excavated contaminated soils*.³ That regulation covers soils whose contamination exceeds the regulatory limit values in Schedule I of the *Land Protection and Rehabilitation Regulation*⁴ (Protection Regulation) and sets fees based on the chosen treatment method (\$11.33/tonne for disposal or management outside Québec, \$5/tonne for treatment in a treatment centre, and \$0/tonne for recovery below the limit values in Schedule II of the Protection Regulation).⁵ These fees are to be paid by the soil owner, the project owner, or the party responsible for the accidental discharge, as applicable.

It is crucial for municipalities to comply with the Traceability Regulation; otherwise they risk monetary administrative penalties of \$2,500 to \$10,000 and even fines of \$7,500 to \$6,000,000.

As such, it is important to adjust your tender packages to account for the regulatory requirements.

If there are known contaminated soils on the project site, the tender package will need to either state that the municipality will be authorizing the contractor to fulfill the traceability obligations on its behalf (permitted by the Traceability Regulation in some cases)⁶ OR that the municipality remains responsible for its obligations, but that the contractor will need to cooperate. Ultimately, there are different approaches, but you must choose one and keep it in mind.

If the soil quantities are reasonably foreseeable, the tender package could also state that the contractor will be responsible for the traceability fees and the governmental charges, and that this must be reflected in the tender. Another option would be for the municipality to reimburse the actual costs without surcharges. In this case, the fees would not be reflected in the tender.

Finally, the tender package could state that if the municipality faces administrative or criminal proceedings due to the contractor or subcontractor's actions, the contractor must defend the municipality and will be held liable for any resulting fines or monetary administrative penalties and legal fees.

If the municipality does not believe there to be contaminated soils or their presence is uncertain, the tender package should still include a requirement to immediately report any known or suspected contaminated soils to the municipality.

¹ CQLR, c. Q-2, r. 47.01.

² \$2.29 per tonne in 2025.

³ CQLR, c. Q-2, r. 43.1.

⁴ CQLR, c. Q-2, r. 37.

⁵ Some of these charges are indexed, but not all.

⁶ If there are fewer than 200 tonnes of excavated contaminated soils, registration in Traces Québec is optional but the municipality must designate someone to fulfill the traceability obligations on its behalf.