

Environment, Conservation, and Parks

Excess Soil Management (O. Reg. 406/19) – Proposed Regulatory Amendments

**National Capital Heavy Construction Association
(NCHCA)**
January 18, 2024
2:00-3:00 pm

Ontario 


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Introduction and Overview

- Regulation titled [O. Reg. 406/19: On-Site and Excess Soil Management](#) (Excess Soil Regulation) under the *Environmental Protection Act* (EPA), was finalized in December 2019, supported by:
 - [Rules for Soil Management and Excess Soil Quality Standards](#) (Soil Rules)
 - [Beneficial Reuse Assessment Tool](#) (BRAT)
- The regulation is largely all in effect, except for a landfilling restriction provision that comes into effect on January 1st 2025

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Proposed Amendments

- From Oct. 17th to Dec. 1st 2023, the ministry consulted on [proposed amendments to certain requirements](#) (ERO #019-7636) to the Excess Soil Regulation and the Rules for Soil Management and Excess Soil Quality Standards document
- Proposed amendments included the following:
 - removing need for Environmental Compliance Approvals (ECAs) for third-party storage and processing of readily usable low-risk soils (e.g., aggregate and topsoil), and for small liquid soil processing sites
 - enhancing usability of project leader owned/operated storage sites (i.e., Class 2 soil management sites) by increasing acceptable volume at these sites
 - increasing opportunities for reuse of salt-impacted soil in low-risk circumstances
 - exempting low-risk movements of soil from needing a physical or electronic hauling record
 - Other amendments to clarify provisions and assist with greater understanding of the regulatory requirements

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Proposed Amendments

1) Exempt specified excess soil management operations from a waste environmental compliance approval (ECA), subject to rules

- Currently, soil storage or processing sites that accept excess soil from various project areas are considered “Class 1 soil management sites” under the Excess Soil Regulation, and typically require a waste ECA to operate (aside from some existing exempt sites, such as residential development depots and retail landscaping depots)
- To encourage greater reuse of excess soil and removing burdens for smaller operations, certain Class 1 sites are proposed to be exempted from the need to obtain a waste ECA, with rules to be followed instead. These are similar in concept to permit-by-rule sites with registrations on the Environmental Activity and Sector Registry (EASRs) and how residential development soil depots are currently regulated.
- The three proposed sites are:
 - Topsoil and landscaping reuse depots
 - Aggregate reuse depots
 - Small liquid soil depots

Proposed Amendments

1) Exempt specified excess soil management operations from a waste environmental compliance approval (ECA), subject to rules

Topsoil and landscaping reuse depots:

- the rules for the current retail landscaping soil depots (RLSD) are proposed to be amended, to enable larger scale topsoil recycling and packaging sites to be included
- Rules for these facilities would include:
 - Maximum volume of soil at any one time limited to 25,000m³
 - Storage of soil would be for a maximum of one year, or as approved by the Director
 - Existing rules for RLSD will remain, including soil storage and low-risk processing rules, only accepting soil meeting Table 2.1 residential/parkland/institutional uses or cleaner, and no deposit of liquid soil
 - Notice on the Excess Soil Registry would be required, along with procedures to ensure soil is tracked and managed properly

Proposed Amendments

1) Exempt specified excess soil management operations from a waste environmental compliance approval (ECA), subject to rules

Aggregate reuse depots:

- a new type of facility/depot, which can accept used/recycled aggregate (such as Granular A or B) to be managed for meeting a realistic market demand as an aggregate product
- Rules for these facilities would include:
 - Maximum volume of soil at any one time limited to 25,000m³
 - Storage of soil would be for a maximum of one year, or as approved by the Director
 - Material can be processed using low-risk methods (mixing, size-based sorting)
 - Notice on the Excess Soil Registry would be required, along with procedures to ensure soil is tracked and managed properly

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Proposed Amendments

1) Exempt specified excess soil management operations from a waste environmental compliance approval (ECA), subject to rules

Small liquid soil depots:

- a new type of facility/depot, for managing small quantities of liquid soil from various project areas, including hydro-excavation and stormwater management (SWM) pond sediment
- Rules for these facilities would include:
 - Maximum volume of **liquid** soil at any one time limited to 200m³, while maximum volume of **soil dewatered/solidified** at the depot would be limited to 2000m³
 - Storage of soil would be for a maximum of 6 months
 - Material can be processed using low-risk methods (mixing, size-based sorting, passive dewatering)
 - Soil storage rules would apply to these sites, including those for liquid soil such as required storage on an impermeable surface and in a leak-proof container
 - Material brought to these sites would be required to be tested before leaving the depots
 - Notice on the Excess Soil Registry would be required, along with procedures to ensure soil is tracked and managed properly

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Proposed Amendments

1) Exempt specified excess soil management operations from a waste environmental compliance approval (ECA) subject to rules – *continued*

- Amendments to a residential development soil depot are also proposed for greater alignment, to:
 - increase storage volumes to 25,000m³ of dry soil
 - allow storage of salt-impacted soil, despite the requirement to only accept soil meeting certain quality standards at these sites
- Other approvals (such as s. 53 approvals under Ontario Water Resources Act) may still apply to any of these depots depending on the specific operation
- **Key feedback received on proposal:**
 - Suggestions for proposed depot rules to ensure they are practical and do not prohibit beneficial reuse (e.g., types and quality of soil and other materials allowed at an aggregate depot, and aligning with MTO specifications MNRF policies related to recycled aggregate; more detailed procedures on management of material at a small liquid soil depot)
 - Municipal requirements such as zoning may also affect establishment of these sites; proactively planning for such sites may facilitate greater and local reuse of soil

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Proposed Amendments

2) Enable greater soil management at Class 2 soil management sites and create greater alignment at local waste transfer facilities and depots

- Class 2 soil management sites are operated by the project leader for management of soil from their own projects. They are currently allowed to manage up to 10,000m³ of dry soil, with additional rules for soil management and storage, including provide a written notice to the Ministry before establishing such a site
- The proposal aims to enhance the ability of these sites to manage soil from a project leader's projects and align some requirements with other sites by:
 - increasing the maximum amount of soil to 25,000m³
 - allowing a public body to lease a site as opposed to needing to own it
 - Requiring a notice to be filed on the Excess Soil Registry for sites managing 2000m³ or greater (this would replace the written notice to the ministry required for all Class 2 sites, which would no longer apply to any sites, regardless of amount of soil managed)

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Excess Soil Proposed Amendments – 2024



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Proposed Amendments

2) Enable greater soil management at Class 2 soil management sites and create greater alignment at local waste transfer facilities and depots – *continued*

- Local waste transfer facilities (LWTF) are defined under Regulation 347 (General Waste Management) and may be used for the management of soil from “field operations” (e.g., highway maintenance, construction/demolition, etc.). These sites may be owned/operated by the project leader or by the person undertaking field operations on behalf of the project leader, and in certain cases can also accept liquid soil for limited processing such as dewatering
- To align the requirements for LWTF with Class 2 soil management sites, which are similar in purpose, the following amendments are proposed
 - aligning storage volumes of dry soil to 25,000m³
 - requiring a notice on the Excess Soil Registry if accepting greater than 2000m³ of dry excess soil and any amount of liquid soil
 - aligning soil storage times to be 2 years (which can be extended by 5 years on Director approval)
- **Key feedback received on proposal:**
 - Requests for additional flexibility for soil from infrastructure projects currently being managed at sites like LWTFs

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Proposed Amendments

3) Enhanced reuse opportunities for salt-impacted soil

- Currently, salt-impacted soil is allowed to be reused in specific instances, even if standards for salt-related contaminants (e.g., electrical conductivity and sodium adsorption ratio) are exceeded. This includes areas where the soil may be impacted by salt application; industrial or commercial property uses where non-potable standards apply; or if soil is finally placed at least 1.5m below the surface
- To allow for greater reuse of salt-impacted soil in more areas, while ensuring that any adverse impacts to vegetation and surface or groundwater are minimized, the following amendments are proposed:
 - Salt-impacted soil would be permitted for undertakings on properties that have a community, institutional, parkland or residential use based on a landscape or site plan prepared and certified by an expert (e.g., a licensed landscape architect) identifying areas and depths at which salt-impacted soil can be used without affecting vegetation
 - Salt-impacted soil can be reused at agricultural properties provided it is not in areas used for growing crops or pasturing, or in natural areas. This could enable use in specific undertakings such as building of barns, driveways, or other buildings or structures

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Proposed Amendments

3) Enhanced reuse opportunities for salt-impacted soil - *continued*

- Requirements to maintain setback distances from waterbodies and wells will remain
- Requirements to provide adequate information to a reuse site will be clarified, including that any information should be provided in a written format
- **Key feedback received on proposal:**
 - Clarifications on setback distances from water bodies and wells for the reuse of salt-impacted soil in specific situations (e.g., for roadways)
 - Suggestions for the required experts who can prepare a landscape or site plan for reuse of soil in various properties where vegetation will be grown

Proposed Amendments

4) Hauling record exemptions and clarifications

- Currently, a physical or electronic hauling record is required for all movements of excess soil, regardless of quantity
- To relieve administrative burden in instances where the risk from the soil movement is minimal, amendments are proposed to remove the requirement for a physical or electronic hauling record for the following circumstances (verbal provision of information will still be required):
 - Dry excess soil is being directly transported from a project area where the total amount of excavated soil is 5m³ or less, or
 - The excess soil being transported is a landscaping product packaged for retail sale
- Additional clarifications regarding the information that is provided within a hauling record, including the following: ensure that an appropriate individual is able to confirm information within the hauling record before it leaves the source site; copies of the records are provided to the source site as well as the receiving site; contingency measures are provided to the hauler if soil is not able to be deposited to the intended receiving site

Proposed Amendments

5) Exempt landscaping projects at enhanced investigation project areas from the reuse planning requirements

- Currently, any excavation at a site that may be in whole or part an enhanced investigation project area (such as an industrial site) is required to complete the reuse planning requirements (i.e., filing a notice on the Registry, retaining a QP to complete assessments, sampling and destination assessment reports; establishing a tracking system)
- An exemption is proposed from the reuse planning requirements for landscaping projects excavating soil at a low-risk part of an enhanced investigation project area as follows:
 - The exemption would apply to a project that is excavating 100m³ or less of excess soil from an area within an enhanced investigation project area that is not known to have any potentially contaminating activities and there is no known or apparent reason to suspect that the soil is impacted by contaminants
 - Landscaping projects are limited to providing landscape care and maintenance services, installing trees, shrubs, plants, lawns or gardens, and the construction of walkways, retaining walls, decks, fences and ponds

Proposed Amendments

6) Clarify the responsibility of a qualified person (QP) when dewatering or solidifying liquid soil

- Clarify the requirements for the conclusion that a QP must come to when using substances to solidify liquid excess soil, to avoid it being interpreted as a guarantee
- Instead, clarify that QPs are responsible to undertake reasonable investigations and collect, compile and assess relevant information related to a polymer, including a manufacturer's product information, and verify that such information does not identify concerns that an adverse effect may result from the use of these polymers, or their breakdown products, for this purpose in soil.

7) Clarifying sampling and analysis requirements

- Amendments are proposed to clarify current requirements related to mandatory sampling and analysis plans, in relation to salt-impacted soil; use of past reports; sampling for stormwater management ponds; and sampling for tunneling projects

Proposed Amendments

8) Greater flexibility for storage of soil adjacent to waterbodies

- Amend the soil storage rules to allow soil storage within 30m of a water body for projects excavating in or near that area to enable practical soil management, while taking steps to prevent impacts on the water body. This storage would be permitted if:
 - the soil was excavated from the water body near the shoreline, including a stormwater pond, the shoreline riparian area or from the land area adjacent to the water body; other soil could not be brought to that area for storage
 - potential adverse impacts to the water body are mitigated, including potential for silt to run-off into the waterbody

9) Other clarifications and corrections

- Other proposed amendments to the regulation and Soil Rules document seek to provide clarifications to assist with greater understanding of the regulatory requirements, including:
 - Clarifying the waste designation when excess soil is beneficially used at a landfill
 - Clarifying exemptions from the reuse planning requirements for emergency situations

For the full list of the proposed clarifications and corrections, refer to Appendix A or the [detailed document](#) in the ERO notice

Reminder: Using the Excess Soil Registry

- As we consider additional sites that may require notices on the [Excess Soil Registry](#), we would like to remind associations and organizations of the current requirements to file a notice in the Registry and encourage you to remind your members that may be required to file a notice for their projects and sites as well
- The Excess Soil Regulation includes requirements to file a notice in the Registry for
 - many projects generating excess soil from **project areas** used for industrial, commercial and community property uses, including many record of site condition sites
 - larger **reuse sites**
 - owners/operators of all **residential development soil depots**
- These notices provide information about the soil being moved to or from these sites and are an important step to ensure transparency and compliance with the regulation
- For further information on regulatory requirements, visit Ontario's [Handling Excess Soil webpage](#)
- To learn more about how to file a notice and to access training materials on the Registry, visit the [Resource Productivity and Recovery Authority \(RPPRA\) website](#)

Next Steps and Closing Remarks

- While the ERO notice stated a proposed implementation date of January 2024, the ministry continues to work through comments received during consultation
- Consideration will be given to transition provisions and phased implementation for certain requirements, where needed
- For further information on the regulation, please visit the ministry's [Handling Excess Soil webpage](#), or contact MECP's Land Use Policy Team at mecp.landpolicy@ontario.ca

Appendix A – Other clarifications and corrections

- **Regulation:**
 - Include “operator” in provisions of the Excess Soil Regulation and Soil Rules, as needed, to clarify that operational requirements directed at project leaders could be carried out by either the project leader or the operator of the project area
 - Clarify under section 3 of the regulation that if excess soil is being finally deposited at a landfill property, outside of the fill area, for a beneficial purpose (such as building berms) consistent with the waste ECA and site plan, it is not designated a waste
 - Clarify section 3 by listing other types of sites that may directly transport soil to a reuse site (e.g., clarify that Class 1 sites includes a residential development soil depot) without being designated waste
 - Clarify in section 3 that if the excess soil is wholly used in a manufacturing process to make products (e.g., bricks), it is not a waste and the site does not need a waste ECA to operate, this may be achieved through a reference to a similar provision already in Regulation 347
 - Clarify the requirement for liquid soil transportation in section 17(3), that valves should be locked if they are part of the vehicle, to clarify that trucks with valves are not always required for liquid soil transportation

Appendix A – Other clarifications and corrections

- **Regulation – continued**
 - Clarify in section 21, for Class 2 soil management sites, that written consent is not required from the reuse site if the owner of the reuse site is the same as the project leader where soil is excavated from (similar to subsection 3(2))
 - Clarify clauses 1-3 of Schedule 2 paragraph 3 by replacing these with a new clause indicating that this exemption applies to excavating soil to address an emergency situation, which is the intention of these three clauses
 - Clarify Schedule 2 paragraph 4 by aligning the wording with the language in subsection 8(1.1) when referring to the purpose of the project as remediation of the project area
 - Other minor corrections or clarifications, including any consequential amendment
- **Soil Rules:**
 - Add “and crushed rock” where it is missing to ensure provisions apply to both soil and crushed rock as intended (e.g., in the soil characterization sections)
 - With respect to leachate analysis, clarify that if petroleum hydrocarbons and metal parameters are only being sampled because of the mandatory sampling and analysis plan requirements (i.e., they were not also associated with a potentially contaminating activity), they do not need leachate analysis as well

Appendix A – Other clarifications and corrections

- **Soil Rules - continued:**
 - Clarify that, for the purposes of selecting the applicable standards that apply to a reuse site, a reference to a change in the use of a property does not include a reference to a change in the zoning of the property under a municipal by-law
 - Add superscript “a” after the Table 1 standard for Cadmium, and update the corresponding leachate table for this parameter, for agricultural and other land use, as the background value is not based on measured background
 - Other minor corrections or clarifications, including any consequential amendments

Appendix B – Additional Resources

For additional information, including a variety of guidance and tools developed by external partners:

- Ontario Government Excess Soil Page: ontario.ca/page/handling-excess-soil
- Excess Soil Fact Sheets: <https://www.ontario.ca/document/excess-soil-fact-sheets>
- Ontario Provincial Standard Specification (OPSS) 180 - General Specification for the Management of Excess Materials: [MTO Technical Publications](#)
- RPRA's Excess Soil Registry: rpra.ca/excess-soil-registry
- Ontario Environment Industry Association (ONEIA) - Best Practices and Templates:
 - Hauling Best Practices and Template: <https://www.oneia.ca/excess-soils/hauling-best-practices>
 - Temporary Sites Best Practices: <https://www.oneia.ca/Temporary-Sites-Best-Practices>
 - Qualified Persons Best Practices: <https://www.oneia.ca/qp-best-practices>
- Qualified Persons Community of Ontario (QPCO): <https://qpco.ca/>
- Ontario Society of Professional Engineers (OSPE) - Best Practices for Aggregate Pit and Quarry Rehabilitation: <https://ospe.on.ca/excess-soil-reports/>
- OSSGA document on Excess Soil Best Management Practices for Pits/Quarries: https://www.ossga.com/rehabilitation_and_excess_soil/
- Canadian Urban Institutes (CUI) - Excess Soil By-Law Language Tool: <https://canurb.org/initiatives/excess-soil-by-law-tool/>
- RSC Guide (*currently in draft*): <https://ero.ontario.ca/notice/019-2551>