

Excess Soil Engagement Group (ESEG) - October 2024

October 31, 2024
1:30 p.m.

Overview

- Welcome
- Overview of Proposed Regulatory Amendments
- Discussion

Proposed Amendments

- From Oct. 18 to Nov. 21 2024, the ministry is consulting on proposed amendments to certain requirements ([ERO #019-9196](#)) under the Excess Soil Regulation and the Rules for Soil Management and Excess Soil Quality Standards document
- These proposed amendments are intended to:
 - respond to concerns on the upcoming Jan. 1 2025 restriction on landfilling excess soil meeting certain quality standards
 - provide a revised proposal for aggregate reuse depots and small liquid soil depots that may be exempt from needing ministry waste approvals (previously proposed in Oct. 2023)
 - enable greater reuse and management of excess soil, including between infrastructure projects, and
 - address other common concerns around the implementation of the regulation
- Details about the proposed amendments are provided in the notice and a [detailed document](#) attached to the notice

Proposed Amendments

1) Change the coming into force date of the landfilling restriction for excess soil meeting Table 2.1 residential standards

- The in-effect date of the landfilling restriction is proposed to be changed from January 1, 2025 to January 1, 2027 (a change of two years)
- Existing exceptions to the restriction are proposed to be clarified. Instead of declaring that the placement of the excess soil would be “unsafe to finally place the excess soil at a reuse site”, a qualified person (QP) would be required to make a declaration that:
 - the excess soil contains a parameter for which there is no applicable excess soil quality standard and there is reasonable grounds to believe the final placement of the excess soil at a reuse site may cause an adverse effect;
 - the excess soil contains invasive species that should not be relocated; or
 - reuse of the excess soil at a reuse site for structural purposes is not possible due to its geotechnical instability and a reuse site that may use the soil for other beneficial purposes has not been located after reasonable efforts.

Discussion questions:

- **Do you agree with changing the in-effect date of the landfilling restriction by two years (Y/N)?**
- **Do the proposed amendments to existing exemptions from the restriction provide adequate clarification? If not, please provide a suggestion.**

Proposed Amendments

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

- The following types of Class 1 soil management sites would be exempt from the need to obtain a waste ECA, with regulatory rules to be followed instead (**note**: this is a revised proposal from what was originally proposed in October 2023, under ERO 019-7636)

a) Aggregate reuse depots:

- The depot would be allowed to accept the following, to meet a realistic market demand:
 - dry excess soil that was used as an engineered aggregate product
 - dry excess soil composed primarily of material that will be used in an aggregate product
 - other materials (e.g., bricks, asphalt, glass, etc.) that were already part of an engineered aggregate product prior to excavation, or that will be used for making such a product at the depot
- Material can be processed using low-risk methods, including crushing (may be subject to other approvals, e.g., for air or noise)
- Procedures and operational requirements such as inspections, tracking, and recordkeeping would be required
- Maximum volume of material at any one time would be limited to 25,000m³ (inclusive of all material at the site)

Proposed Amendments

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

a) Aggregate reuse depots - continued:

- Excess soil accepted at the site must be of a quality that can be readily reused in a range of aggregate operations (i.e., excess soil was not associated with any potentially contaminating activities (PCAs) or areas of potential environmental concern (APECs)), and if sampling was undertaken, soil was shown to meet community standards (with some exceptions for salt, asphalt-related contaminants, and naturally occurring exceedances)
- Could be operated on the same property as other depots (except for a small liquid soil depot) as long as they are distinct operations and the total amount of material managed across depots does not exceed 25,000m³
- Notice to the local MECP district office, as well as the municipality, would be required

Proposed Amendments

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

b) Small liquid soil depots:

- Allowed material would include liquid soil from various project areas, including stormwater management ponds
- Maximum volume of **liquid** soil at any one time limited to 100m³, while maximum volume of **soil dewatered/solidified** at the depot would be limited to 200m³ ; daily receiving limit would be limited to 100m³ of liquid soil
- 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, mixing with substances for dewatering/solidification with a QP retained)
- Before leaving the depots for reuse, excess soil would be required to be tested to minimum required frequencies and parameters (e.g., metals, PAHs, PHCs, VOCs, and others)
- Procedures and operational requirements such as tracking, inspections, site security, annual reports, operation manuals and closure plans would be required

Proposed Amendments

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

b) Small liquid soil depots - continued:

- All liquid soil, as well as sewage resulting from the drying of soil, must be stored in leakproof containers on an impermeable surface to contain and prevent material from escaping into the natural environment
- Wastewater and liquid process residues must be discharged to a sanitary sewer or hauled to/discharged of at an approved wastewater treatment facility; if any sewage is drained into a ditch, drain, or waterbody, the depot would not qualify for an exemption from a waste ECA
- Notice to the local MECP district office, as well as the municipality, would be required

Discussion questions:

- **Do you agree with replacing waste approvals for aggregate reuse depots with regulatory rules (Y/N)?**
- **Do the revisions to the October 2023 proposal help to clarify the intent and proposed rules for the aggregate reuse depots?**
- **Do you agree with replacing waste approvals for small liquid soil depots with regulatory rules (Y/N)?**
- **Do the revisions to the October 2023 proposal help to clarify the intent and proposed rules for the small liquid soil depots?**

Proposed Amendments

3) Enhanced reuse opportunities for aggregate and stormwater management pond (SWMP) sediment

- Allow flexibility for reuse of excess soil that is part of engineered aggregate, as well as SWMP sediment, where it is either being reused as engineered aggregate or in an infrastructure-related undertaking. Flexibility will be in respect of the excess soil quality standards for asphalt road-related contaminants and naturally occurring exceedances:
- a) **Asphalt road-impacted aggregate or SWMP sediment**
 - Where exceedances of specific parameters (i.e., F3 and F4 petroleum hydrocarbons and polycyclic aromatic hydrocarbons) can be attributed specifically to an asphalt road, excess soil is deemed to meet the standards for those listed parameters if:
 - Excess soil is beneficially reused as engineered aggregate and finally placed in an asphalt road, or if SWMP sediment is being reused within a road right-of-way associated with an asphalt road
 - A QP determines that the exceedances are solely due to the presence of the asphalt road (either by exclusion of other potentially contaminating activities (PCAs) or areas of potential environmental concern (APECs), or sampling results being consistent with those expected for asphalt-related contamination)
 - Additional rules for final placement may be contemplated to ensure there is no adverse impact, including possible setbacks from water bodies

Proposed Amendments

3) Enhanced reuse opportunities for aggregate and stormwater management pond (SWMP) sediment – *continued*

b) Naturally occurring exceedances in aggregate

- Where exceedances of specific parameters are naturally occurring at a reuse site, excess soil is deemed to meet the standards for those listed parameters if:
 - Excess soil is beneficially reused as engineered aggregate, either directly from a project area or following storage at a Class 1/Class 2 site, or a local waste transfer facility
 - A QP completes a phase one environmental site assessment or assessment of past uses, and determines that the parameters is not associated with a PCA/APEC at the project area; in cases where a QP was not involved, the project leader has made reasonable efforts to take into consideration any past reports on past uses/activities respecting the project area, and reached the same conclusion
 - Where the excess soil has been sampled by a QP, or the excess soil is being transported from a Class 1 site, the concentrations of that parameter are consistent with those found naturally in new aggregate being sourced and regularly used locally in the area, as determined using publicly available evidence and documented by a QP
- This is in contrast to the currently allowed deeming provision in the Soil Rules for naturally elevated background concentrations, where the reuse site is required to be sampled by a qualified person to take advantage of the provision

Discussion questions:

- **Do you agree with providing flexibility for reuse of aggregate and SWMP sediment that has asphalt-related exceedances (Y/N)?**
- **Do you agree with the rules proposed associated with reuse of asphalt-impacted aggregate and SWMP sediment?**
- **Do you agree with providing flexibility for reuse of aggregate that has natural exceedances (Y/N)?**
- **Do you agree with the rules proposed associated with aggregate with natural exceedances?**

Proposed Amendments

4) Allow greater reuse of soil to be coordinated between similar infrastructure projects

- Where soil is managed between project areas and reuse sites that are both infrastructure of the same type (e.g., road-to-road) and where the project leader is the same, that soil may be managed and reused without being subject to sections 3 to 5 of the regulation (including needing to meet the excess soil reuse standards).
- This will be permitted if all the following conditions are met:
 - The coordinated project areas and reuse sites are predetermined and identified as part of the same project planning process, and soil management activities are being undertaken concurrently as one coordinated effort across all of the project areas and reuse sites
 - The excess soil is being reused for a beneficial purpose
 - There is no visual or olfactory signs of contamination in respect of the soil being moved between the coordinated project areas and reuse sites
- Transportation requirements would continue to apply (e.g., hauling records), as well as any other requirements for on-site management at a project area (e.g., storage, processing)
- If soil is not being reused across the coordinated project areas and must be reused or disposed of elsewhere, it will be considered excess soil and subject to sections 3 to 5 of the regulation

Proposed Amendments

5) Reduce planning requirements for excess soil moved between infrastructure projects

- If a project leader for infrastructure project area is required to file a notice in the Excess Soil Registry under section 8 of the regulation, and is moving excess soil to another infrastructure-related undertaking, the project area would be exempt from all the reuse planning requirements (i.e., assessment of past uses, sampling and analysis, destination assessment report, tracking system) except filing a notice in the Excess Soil Registry, which would still be required.
- This differs from the current exemption in Schedule 2 from all reuse planning requirements for infrastructure project areas, since for this proposal, the reuse site with the infrastructure undertaking does not need to be owned by the same project leader or by a public body.

Discussion questions:

- **Do you agree with the proposed flexibility to move soil between infrastructure project areas and reuse sites of the same infrastructure type, and not needing to meet the criteria to lose waste designation (sections 3 to 5 of the regulation) (Y/N)?**
- **Do you agree with the additional exemption from reuse planning requirements other than registration when soil is moving between infrastructure projects and reuse sites with different owners (Y/N)?**

Proposed Amendments

6) Allow in-situ sampling for stormwater management pond (SWMP) sediment

- Where sampling and analysis is required, it is proposed that SWMP sediment could be collected in-situ and then tested, following the in-situ sampling frequencies in the regulation, subject to the following:
 - Minimum parameters to be analyzed would remain the same as provided in the Soil Rules for SWMP sampling requirements
 - Additional rules associated with the sampling and analysis plan would be included to ensure sampling remains representative, including the following:
 - Sampling must be planned (distribution, numbers and depth) to ensure representative results from throughout the pond and each zone
 - Post-dredging confirmatory sampling would be required to ensure results are still representative; frequency and parameters may be determined by the QP

Discussion questions:

- **Do you agree with the proposed change to allow in-situ sampling of SWMP sediment (Y/N)?**
- **Do you agree with additional rules to ensure if sampling is representative (Y/N)? If not, please state why and/or provide suggestions.**

Proposed Amendments

7) Other clarifications and corrections

- With regard to soil reused within the project area, the following clarifications are proposed to ensure the intended flexibility is clear:
 - Soil transported from a project area that is stored off-site temporarily, and then brought back to the project area for reuse, is treated as though it did not leave the project area once it returns (i.e., sections 3 to 5 of the regulation would not apply); other requirements would continue to apply (e.g., for off-site storage of excess soil)
 - Soil that is being relocated within a project area that is planned to be contiguous upon completion, may be relocated to another part of the project (even if it is not contiguous with the excavation area at the time of relocation).
 - In both cases above, transportation requirements would continue to apply

Discussion questions:

- **Do you agree with the proposed changes to provide greater flexibility to reuse soil within a project area, without being considered “excess soil” (Y/N)? If no, please add why.**

Proposed Amendments

7) Other clarifications and corrections – continued

- Excess soil that is temporarily used in an undertaking to facilitate development but does not remain at the reuse site permanently for final placement (e.g., a temporary road or driveway) would be treated the same as excess soil temporarily stored at a reuse site, and would not be required to meet the excess soil quality standards under sections 3 to 5 of the regulation. The following requirements would apply:
 - The area for temporary undertaking must be owned or operated by the same project leader as the project from which the excess soil originated
 - The excess soil must be removed from the temporary undertaking area no later than the date of completion of the undertaking
 - There is no visual or olfactory evidence of contamination in the excess soil

Discussion questions:

- **Do you agree with added flexibility for use of excess soil temporarily to facilitate undertaking, without needing to meet the excess soil standards (Y/N)?**
- **Should there be additional rules to ensure excess soil does not cause an adverse effect during this temporary use?**

Proposed Amendments

7) Other clarifications and corrections – continued

- The rules for sampling when substances (such as conditioning agents) have been added to soil to facilitate excavation (e.g., for tunneling) or transportation would be clarified to ensure that these substances are included in sampling and analysis plans/reports, and that safety information related to these substances is documented
- The frequency at which samples must be analyzed for parameters that are included in the minimum parameter sampling list but are not contaminants of potential concern (COPCs) associated with a PCA or APEC, would be able to be reduced at the discretion of the qualified person. These parameters must still be analyzed and the revised analysis frequency would be required to be statistically significant and rationalized in the sampling and analysis plan. A minimum frequency as a percentage of the otherwise required frequency may be included in the final rules. The frequencies of excess soil sampling and analysis of contaminants of potential concern would remain unchanged

Discussion questions:

- **Do you agree with the proposed change to sample for any additives to soil when they are used to facilitate excavation (Y/N)?**
- **Do you agree with the proposed flexibility to the minimum sampling frequency for parameters that are known to not be COPCs (Y/N)?**
- **Please add any additional comments for either question.**

Proposed Amendments

7) Other clarifications and corrections – continued

- The definition of public body would be expanded to also include corporations established by municipalities under s. 203 of the *Municipal Act*, 2001
- The regulation would be amended as needed to allow the establishment of more than one type of depot by the same owner or operator at the same property or adjoining properties, with the exception of small liquid soil depots (i.e., another type of depot cannot be set up at the same or adjoining properties where a small liquid soil depot is set up)
- Other minor corrections, clarifications, or consequential amendments may also be considered to the Excess Soil Regulation, Reg 347 - General – Waste Management Regulation, and O. Reg. 153/04 – Records of Site Condition Regulation

Discussion questions:

- **Are there are any other clarifications to the regulation or Soil Rules document that may be helpful for better understanding requirements?**

Proposed Amendments

8) Regional mapping of naturally occurring local background concentrations

- The ministry currently allows a site-by-site assessment of local background concentrations, as a way to meet the quality standards if there are naturally occurring exceedances in excess soil. We are seeking initial input on a mapped approach for this deeming provision, to provide greater flexibility for reuse and avoid site-by-site assessments.
- The approach would:
 - Enable municipalities/other public bodies to develop regional maps to delineate an area with naturally occurring exceedances of a specified parameter, and the concentration that represents the local background condition for that parameter
 - Mapping may also set out an area to which the local background condition would apply, which may vary to a limited and reasonable extent from the actual area of the exceedances, to provide a practical boundary for relocation and reuse of soil
 - A study to support the mapping would be expected to meet certain criteria (e.g., document multiple lines of evidence, not include anthropogenic sources of contaminants, have statistically reliable results, etc.)
 - Maps would need to be reviewed and accepted in writing by an MECP director
- **Note:** This proposal is not expected to be finalized at the same time as other proposed amendments, as it may require further discussion prior to implementation

Discussion questions:

- Does the concept of municipalities or other public bodies to develop regional maps of local background concentrations seem appropriate (Y/N)?
- Are there are any other comments or suggestions you have about this proposal?
- *Please provide additional comments on these discussion questions after the meeting as well, through the Microsoft Forms link in the chat. The form will remain open **till end of day Friday, Nov. 1** - <https://forms.office.com/r/Wb4SkkdSyb>

Questions and Discussion

Closing Remarks

- Please provide comments through the ERO or by email to MECP.landpolicy@ontario.ca , by **November 21, 2024**
- Thank you for your time and questions today