

Excess Soil Management – Proposed Regulatory Amendments October 2023

Excess Soil Engagement Group (ESEG)

November 14, 2023

1:30-3:00 pm

Overview

- Welcome
- Overview of Proposed Regulatory Amendments
- Discussion questions
- Excess Soil Registry Requirements – Reminder
- Appendix A: Other clarifications and corrections

Proposed Amendments

- From Oct. 17th to Dec. 1st 2023, the ministry is consulting on [proposed amendments to certain requirements](#) (ERO #019-7636) under the Excess Soil Regulation and the Rules for Soil Management and Excess Soil Quality Standards document
- Details about the proposed amendments are provided in the notice and a [document](#) attached to the notice
- **Note:** While the ERO posting states that the amendments are proposed to come into effect on January 1, 2024, the in-effect dates will be determined after the consultation closes (including any transition provisions).

Proposed Amendments

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

The following types of Class 1 facilities would be exempted from the need to obtain a waste ECA, with rules to be followed instead (similar in concept to EASRs and how residential development soil depots are currently regulated):

a) 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 – *continued*

b) 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; material such as general fill or mixed earth, or glass/concrete/asphalt would not be accepted at these sites
- 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

Proposed Amendments

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

c) 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; material from SWM should be kept segregated and tested separately
 - Notice on the Excess Soil Registry would be required, along with procedures to ensure soil is tracked and managed properly

Proposed Amendments

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

- Amend the rules for Class 2 soil management sites to enhance their ability to be used in managing excess soil from a project leader's projects while retaining the exemption from the need for a waste ECA:
 - Increase amount of soil that can be managed at these sites from 10,000m³ to 25,000m³
 - Other flexibility: mixing/stockpiling soil from different project areas in specific circumstances; allowing Class 2 sites to be leased by a public body (not just owned)
 - Notice on the Excess Soil Registry would be required if a facility is accepting greater than 2000m³ of dry excess soil (replacing current requirement for notice to a Director)
- Aligning rules for local waste transfer facilities (LWTF) and residential development soil depots (RDSD) more closely with Class 2 sites:
 - LWTF: aligning storage volumes to 25,000m³ of dry soil; requiring a notice on the Excess Soil Registry if accepting greater than 2000m³ of dry excess soil and any amount of liquid soil; aligning storage times to be 2 years (which can be extended by 5 years on Director approval)
 - RDSD: aligning storage volumes to 25,000m³ of dry soil; allowing storage of salt-impacted soil at these sites, despite the requirement to only accept soil meeting certain quality standards at these sites

Questions and Discussion

- Do you agree with replacing some waste approvals for interim storage and processing sites/depots with standard rules?
- Do you agree that more consistency across sites, e.g. storage volumes, is appropriate?
- Is it appropriate to more consistently use the Excess Soil Registry for awareness of these interim sites?

Note: The discussion questions are intended to be a starting point, and can also be used as considerations for more detailed submissions through the ERO.

If you prefer to write in answers to the questions, please use the link in the Teams chat to the Microsoft Form page, and enter responses to the discussion questions. You can submit responses until the end of the day today.

Proposed Amendments

3) Enhanced reuse opportunities for salt-impacted soil

- Expand the rule that currently allows salt-impacted soil to be placed only at industrial/commercial property uses where non-potable standards apply, as follows:
 - 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
- The current restriction on placement of salt-impacted soil within 30m of a surface water body, and 100m from existing or planned potable wells would be retained
- To ensure that property owners are aware they are receiving salt-impacted soil, the source site would be required to provide information in writing to the reuse site to inform them that the soil they are receiving may be salt-impacted, as well as any potential risks to surface and groundwater, and plant growth
- The reuse site owner would be required to consent in writing to the receipt of salt-impacted soil

Proposed Amendments

4) Hauling record exemptions and clarifications

a) 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

b) Additional clarifications regarding the information that is provided within a hauling record:

- Source site would be required to confirm that the information provided in the hauling record is accurate, before soil is moved off site
- Source site would also be required to identify contingency measures to the hauler in the event the soil cannot be accepted at the intended receiving site
- Clarifications to provide more complete contact information, physical address where available, and multiple location descriptions
- Clarify that a copy of the completed hauling record would be provided to both the receiving site as well as the source site

Proposed Amendments

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

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 (such as an industrial site), 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

Questions and Discussion

- Will the revised rules for salt-impacted soil create more flexibility for reuse? Are there any concerns with revising the rules as proposed?
- Will the proposals related to hauling records help to clarify the responsibility of all parties and provide for more consistent information?
- Is the exemption from the reuse planning requirements for landscaping projects at enhanced investigation sites appropriate? Would the lack of required assessments or sampling from these sites be a concern for interim or reuse sites requesting that information?

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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:

- Remove the requirement for QPs to confirm that there will be no adverse effect from the use of a polymer, or to ensure that the polymer and any potential break down products will not result in an adverse effect
- Instead, clarify that QPs are responsible to undertake reasonable investigations and collect, compile and assess relevant information related to a polymer, including a manufacturers 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

Proposed Amendments

7) Clarifying sampling and analysis requirements

The following amendments would be made to clarify current requirements related to mandatory sampling and analysis plans:

- Salt-impacted soil: Clarify that soil does not need to be tested for all required minimum parameters if the only reason an area of potential environmental concern (APEC) is identified is due to salt application. Some sampling must still be completed to understand the extent of salt impacts but can be limited based on QP judgement. Salt-related APECs must be identified in an assessment of past uses (APU), if one is completed
- Record of Site Condition (RSC) sites: Clarify that Phase 2 Environmental Site Assessments (ESAs) prepared for an RSC site are a type of past report that can be used for the purposes of meeting the sampling and analysis requirements for excess soil
- Stormwater management (SWM) pond sampling: Clarify that the minimum number of samples required when excavating and segregating based on zones can be distributed equally across the zones, based on some QP judgement, and are not intended to be applied per zone
- Tunnelling projects: Add emphasis that sampling requirements associated with tunnelling projects may be achieved through in-situ or stockpiling sampling, or a hybrid approach based on the qualified person's judgement, and sampling may be undertaken at a Class 2 site or local waste transfer facility, to help address practical/logistical challenges with deep in-situ sampling

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

Proposed Amendments

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
- Clarifications to align certain provisions better with Regulation 347

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

Questions and Discussion

- Would the proposed amendments add flexibility for soil management and affect the reuse potential of soil for your projects? Do they provide cost savings?
- Do the proposed amendments address practical challenges? Please highlight any concerns regarding unintended consequences, and provide examples where possible.
- Are there any other practical clarifications that the Regulation or Rules document could benefit from? (Note: significant suggestions would need to be consulted upon before being made.)

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Reminder: Using the Excess Soil Registry

- As we consult on 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 \(RPR\) website](#)

Closing Remarks

- Please provide comments through the ERO or by email to MECP.landpolicy@ontario.ca , by December 1, 2023
- Thank you for your time and contributions today

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