

Excess Soil Engagement Group (ESEG) Meeting

May 22 2024, 9:30-12pm

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Finalized regulatory amendments - overview

- A proposal for amendments to the On-Site and Excess Soil Management Regulation (O. Reg. 406/19) and the associated Rules for Soil Management and Excess Soil Quality Standards (Soil Rules) was posted for 45 days on the Environmental Registry of Ontario (ERO), from October 17th to December 1st 2023 (ERO 019-7636)
- The ministry received 74 comments on the proposal, and considered all feedback when finalizing the amendments, including revising what was proposed in some situations
- On April 23, 2024, the ministry made amendments to O. Reg. 406/19 and the Soil Rules
- **These amendments are now in effect.**

Finalized regulatory amendments

1. Enhanced flexibility for sites owned and operated by the project leader (Class 2 soil management sites) and greater alignment at other interim sites

- Amendments to **Class 2 soil management site** requirements include:
 - Maximum storage quantity of excess soil at one time increased from 10,000m³ to 25,000m³
 - No volume limit applies for sites where the project leader is a public body
 - Project leaders, including public bodies, are allowed to lease a property to set up a Class 2 site, instead of needing to own the property; ultimate control of the site remains with the project leader
 - Soil from different project areas are allowed to be mixed in a stockpile if it won't affect reuse of the soil (e.g., a known reuse site can accept the combined soil or combined soil is of similar quality)
 - Minor amendments to other provisions for clarification without changing policy intent (e.g., consolidating site closure requirements)

Finalized regulatory amendments

1. Enhanced flexibility for sites owned and operated by the project leader (Class 2 soil management sites) and greater alignment at other interim sites - *continued*
- Amendments to **local waste transfer facilities (LWTF)** requirements include:
 - Maximum storage quantity of excess liquid and dry soil is 25,000m³; no total volume limit would apply for LWTFs owned or controlled by public bodies (similar to Class 2 sites)
 - Maximum storage quantity for liquid soil (including any liquid removed as a result of dewatering/processing) remains at 10,000m³ and still applies to LWTFs owned or controlled by public bodies
 - Maximum storage time is 2 years, with ability to request an extension of another 5 years from a Director in the ministry (aligns with requirements for Class 2 sites)

Finalized regulatory amendments

1. Enhanced flexibility for sites owned and operated by the project leader (Class 2 soil management sites) and greater alignment at other interim sites - *continued*

- Amendments to **residential development soil depot** and **landscaping soil depot** requirements include:
 - Maximum storage quantity of excess soil at one time has increased from 10,000m³ to 25,000m³
 - Definitions are clarified to better reflect the intent of the operations
 - Quantity limit of 25m³ when determining if landscaping or gardening product leaving a landscaping soil depot is designated waste is replaced by other criteria (i.e., excess soil leaves the depot as a packaged landscaping or gardening product, or is sold in bulk to another person who will not process the soil and will sell the soil as a landscaping or gardening product)
 - Additional requirements related to maximum storage time of excess soil at the depot, procedures to be developed and applied at the depot, and operational requirements related to safety and security of the depot
 - Minor amendments to other provisions for clarification without changing policy intent (e.g., consolidating site closure requirements)

Finalized regulatory amendments

2. Increased reuse opportunities for salt-impacted excess soil

- Subject to setbacks from potable wells and waterbodies and a 1.5m depth requirement for areas used for growing crops or pasturing livestock, salt-impacted soil will be deemed to comply with the Excess Soil Standards if it is placed:
 - Anywhere where a substance will be applied for the safety of vehicular or pedestrian traffic under conditions of snow or ice.
 - Anywhere on industrial or commercial properties.
 - 1.5 metres or more below the soil surface at residential, parkland, institutional, or community properties to be protective of vegetation, or if within 1.5 metres of the surface, in accordance with a landscape plan prepared by an expert (e.g., landscape architect, a QP-RA, or professional agrologist), or with a policy prepared by a public body for placement of salt-impacted soil at their properties.
 - 1.5 metres or more below the soil surface at agricultural or other use properties, or if within 1.5 metres of the surface, it is reused in an undertaking for a specified built use (e.g., fill for buildings, driveways, barns), and is not in an area used for growing crops or pasturing livestock.
- As part of the criteria for excess soil not being designated as waste, the reuse site owner or operator must provide written consent specifically to receive salt-impacted soil

Finalized regulatory amendments

3. Hauling record exemptions and clarifications

- Transportation of very small quantities of dry excess soil (i.e., 5m³ or less associated with the entire project or undertaking), and soil moving as a packaged landscaping or gardening product, are exempt from needing a physical or electronic hauling record (information must be provided verbally if requested)
- Additional amendments include clarifying the responsibility of the source site in ensuring a record is created before soil leaves the site and that the information within it is accurate, contingency measures to be provided to the hauler, noting in the record if the soil is salt-impacted, and providing copies of the record to each party involved in the soil movement

4. Exempt landscaping projects at low-risk portions of enhanced investigation project areas from reuse planning requirements

- Specified landscaping projects excavating 100m³ or less of excess soil from an enhanced investigation project area are exempt from the reuse planning requirements, as long as it can be demonstrated that the area of excavation is not likely to be impacted by contamination (through an assessment of past uses or similar report prepared by a qualified person)

Finalized regulatory amendments

5. Clarify responsibility of qualified person (QP) when processing liquid soil

- Provisions have been clarified to better detail the steps a QP must take when overseeing the use of polymers for processing liquid soil
- Instead of providing a guarantee that there will be no adverse effect from the use of these substances, the qualified person must undertake specified steps to obtain information, indicate whether there is any basis to conclude that storage or final placement of dewatered or solidified excess soil at a reuse site would result in an adverse effect based on the information reviewed, and in certain circumstances develop instructions on the storage and placement of soil including to prevent adverse effects
- If the QP determines that storage or final placement of dewatered or solidified soil may result in adverse effects and that those adverse effects cannot be prevented by developing and following instructions on storage and final placement, the soil must be disposed of at an authorized waste disposal site

Finalized regulatory amendments

6. Clarifying sampling and analysis requirements

- Amendments have been made to clarify sampling requirements in specific situations:
 - **Salt-impacted soil** - If an area of potential environmental concern is identified solely because of salt application, sampling for all mandatory parameters or meeting the minimum sampling frequencies is not required
 - **Tunneling projects** - A modified in-situ sampling approach can be used to combine both in-situ samples and representative samples of excavated material, to meet in-situ sampling frequencies
 - **Stormwater ponds** - When sampling sediment from a stormwater management pond, requirements for sampling (e.g., minimum frequencies) are based on the total sediment excavated from the pond, not each zone, to avoid over-sampling

Finalized regulatory amendments

7. Storage of sediment/soil within 30m of a water body

- For project areas where soil or sediment was excavated near a waterbody, storage of that soil or sediment is allowed within 30m of that water body in certain circumstances
- Steps are required to be taken to prevent any adverse effect on the waterbody as a result of the storage (e.g., having a maximum storage time period, requirements to follow a sediment erosion plan, etc.)

8. Other clarifications and corrections

- Various clarifications and corrections are also made to the Regulation, including the following:
 - Soil used for a beneficial purpose at landfills, or in accordance with processes as described under Reg. 347 is not designated waste
 - When determining the appropriate property use for the purposes of the excess soil quality standards or reuse planning requirements, the use is the actual current or most recent use of a site, not the use for which it is zoned
 - Changes or additions to definitions (e.g., “landscaping soil depot”, “topsoil”, “salt-impacted excess soil”)

Finalized regulatory amendments

8. Other clarifications and corrections - *continued*

- The Soil Rules document was also modified to reflect these amendments, including making clarifications and corrections where needed
- Additional changes to Part I of the Soil Rules include:
 - Amending general soil storage rules for various sites
 - Clarifying actions required when using polymers to dewater/solidify liquid soil, including sampling and analysis
 - Clarifying when rock can be crushed, to allow analysis in accordance with the Protocol for Analytical Methods Used in the Assessment of Properties under Part XV.1 of the Environmental Protection Act, and requirements on the QP to communicate with the laboratory regarding procedures to be used
 - Updating rules related to depots
- Changes to Part II of the Soil Rules include:
 - Clarifying that standards are deemed to be met in the various reuse situations outlined in Part I (e.g., soil mixed with compost, salt-impacted soil, etc.). This clarification does not affect the Part I rules.
 - Correction to the Table 1 agricultural or other use standard for Cadmium, to add a superscript “a”, and updating the corresponding leachate screening table for this parameter

Decision on additional depots

- The original proposal included exemptions for additional types of soil management sites (aggregate reuse depots and small liquid soil depots) from requiring a waste approval from the ministry.
- We also proposed utilizing the Excess Soil Registry (Registry) to file notices for the proposed depots, landscaping soil depots, and other existing sites that currently require a written director's notice (Class 2 soil management sites and local waste transfer facilities).
- Based on the comments received, **a decision on these proposed amendments has been delayed**, to be made at a later date after further consideration.
- The ministry continues to consider the proposals based on feedback received and will continue to work with stakeholders and the Resource Productivity and Recovery Authority (RPRA) regarding the Registry.

Landfilling restriction – January 1, 2025

- As of January 1, 2025, excess soil meeting **Table 2.1 residential, parkland, institutional standards** will no longer be allowed to be deposited at a landfilling for disposal
- Soil of that quality can still be taken to a landfill:
 - for beneficial uses (e.g., daily or final cover, berms, and other operational needs at the landfill)
 - if a qualified person determines that it would be unsafe to deposit this soil for final placement at a reuse site (e.g., if the soil is impacted by emerging contaminants, or is geotechnically unsuitable for reuse) and provides a declaration to the landfill site owner or operator
- Recent amendments (e.g., to expand reuse of salt-impacted soil) are intended to assist with reducing the amount of reusable soil that goes to landfill

Questions?

Focused Discussion

Compliance and Enforcement

- Through its pro-active risk-based inspection program, the ministry assesses compliance with the excess soil regulation and standards at project areas, receiving sites and for transportation vehicles, that are selected based on compliance history as well as environmental and health-based risks.
- The ministry also conducts responsive inspections and site visits as part of its follow up to reports of incidents of pollution, notifications of spills, and complaints from the public.
- Where non-compliance is found during a planned or responsive inspection ministry staff employ a variety of tools to ensure that the responsible party is taking appropriate measures to bring their operations into compliance.
- Reports can be made to the ministry's local district office if non-compliance is known and/or suspected with the Excess Soil Regulation: [Ministry of the Environment, Conservation and Parks district locator | ontario.ca](#)
- Prosecutions and violations under the *Environmental Protection Act* (including illegal dumping of waste excess soil) are posted publicly on Ontario.ca: [Environment, Conservation and Parks | Ontario Newsroom](#)

Focused Discussion

- Please use the Slido link in the chat to provide input for these questions, or visit sli.do and enter the code “ESEG2024”
 - You can also “upvote” a response from someone else

1) Additional Depots

- What should a revised proposal address to ensure the proposed small liquid soil depots are practical, result in greater reuse of excess soil, and provide assurance of appropriate practices?
- What should a revised proposal address to ensure the proposed aggregate reuse depots are practical, result in greater reuse of excess soil, and provide assurance of appropriate practices?

2) Landfilling Restriction

- How prepared do you think the industry is for the upcoming landfilling restriction?
- What type of additional guidance/outreach might help when implementing this restriction?

3) Other Opportunities

- What regulatory or other opportunities (e.g., guidance) can enable greater reuse of excess soil?

Questions/Comments?

Email us at: mecp.landpolicy@ontario.ca

**Thank you for your time and
participation!**

Appendix A: Resources

- Ontario Government Excess Soil Page: [ontario.ca/page/handling-excess-soil](https://www.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 Person Community of Ontario (QPCO): [QPCO – Qualified Persons Community of Ontario](#)
- 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>