

O. Reg. 406/19 Excess Soil Regulation – Overview of Amendments

MECP Webinars
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DISCLAIMER

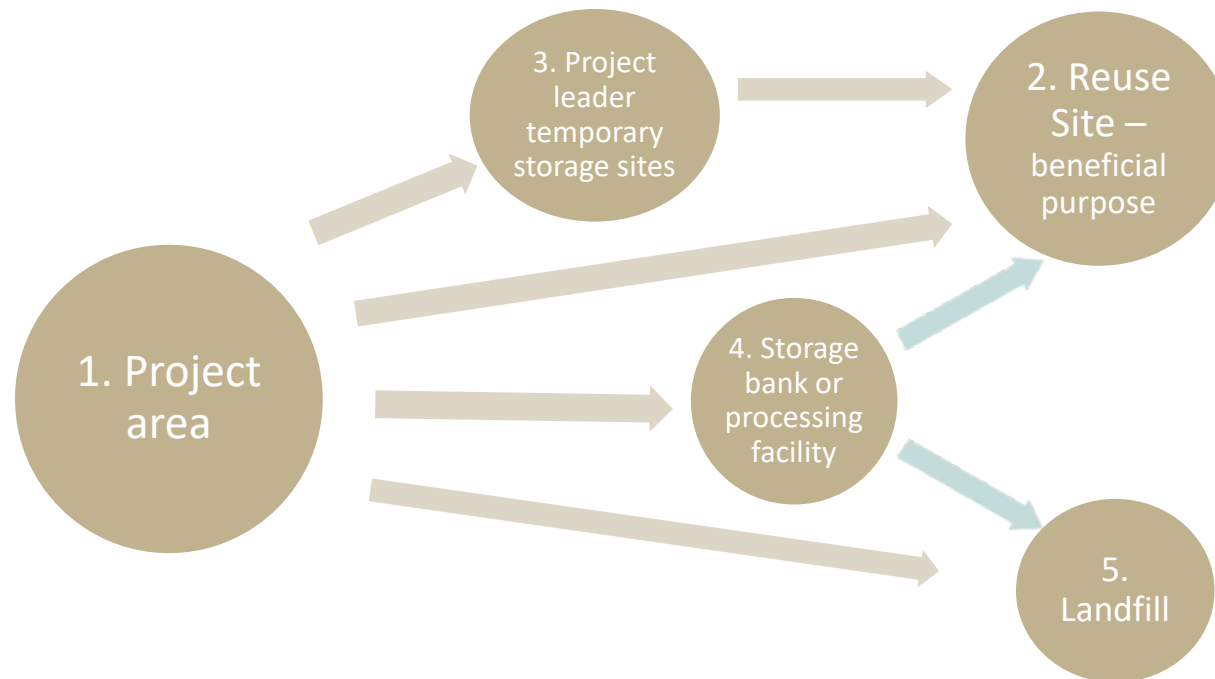
This presentation is intended to be a brief summary of the April 2024 amendments to Ontario Regulation 406/19 On-Site and Excess Soil Management (the regulation) made under the Environmental Protection Act, and the associated Rules for Soil Management and Excess Soil Quality Standards document (Soil Rules). This is for information purposes only and should not be construed as legal advice or substitute for seeking independent legal advice on any issues related to the regulation. Any person seeking to fully understand how the regulation or Soil Rules may apply to any of the activities they are engaged in must refer to the most current versions of the regulation and Soil Rules. In the event of any inconsistency between the regulation or Soil Rules and this presentation, the regulation and Soil Rules will always take precedence.

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Overview of the excess soil regulatory framework

- [O. Reg. 406/19: On-Site and Excess Soil Management](#) (the 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 recognizes reusable excess soil as a resource, and its reuse is encouraged either in the project area or for a beneficial purpose at a reuse site; if not beneficially reused, it's waste.
- The Excess Soil Regulation recognizes a number of management options to help achieve soil reuse and proper management.



Overview of the excess soil regulatory framework

- **Soil reused in the project area** is not considered “excess soil” and its reuse is not restricted (e.g., not subject to the reuse quality standards)
- **Criteria for reuse of excess soil at a reuse site :**
 1. The reuse site operator must consent in writing to the deposit of the excess soil
 2. The excess soil must be needed for a beneficial use
 3. The quality and quantity of excess soil must align with the beneficial use
 4. If the excess soil is liquid soil, its deposit must be permitted by a legal instrument

Appropriate excess soil quality is determined using **generic risk-based excess soil quality standards**, or **site-specific standards** that may be developed by a qualified person (QP) or provided through a site-specific instrument (e.g., a municipal site alteration permit)

Overview of the excess soil regulatory framework

- **Some projects** are required to complete **excess soil reuse planning requirements**, being:
 1. Registration of a **notice in the Excess Soil Registry**
 2. Completion of an **assessment of past uses** and, if necessary, a **sampling and analysis plan** and a **soil characterization report**
 3. Completion of an **excess soil destination assessment report**
 4. Application of a **tracking system**

These requirements apply to the following types of projects (exemptions may apply):

1. **Enhanced investigation project areas** (industrial, gas stations, dry cleaners)
2. Project areas that are **being remediated by removing excess soil**, including for the purposes of filing a Record of Site Condition (RSC)
3. Projects **generating 2000m³ or more** of excess soil that are **in a settlement area and that are currently used for a commercial or community property use**.

Overview of the excess soil regulatory framework

- **Reuse sites** accepting greater than 10,000m³ of excess soil, unless part of an undertaking related to an infrastructure project, must file a notice on the Excess Soil Registry and implement procedures related to incoming soil to ensure soil received is appropriate
- **Interim storage sites** (being Class 2 Soil Management Sites and Local Waste Transfer Facilities) and **third-party storage and processing sites** (being Residential Development Soil Depots and Landscaping Soil Depots) are exempt from environmental compliance approvals if they meet specified criteria. Rules apply to their operation (e.g., maximum storage quantities)
- **Hauling records** are required when hauling excess soil to help confirm where soil originated and where it is being taken to
- **Storage rules** apply to sites to prevent adverse impacts
- **As of January 1, 2025, there is a restriction on the deposit of clean soil at landfill sites;** some exceptions apply

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.**

Regulatory amendments

1. Soil Management at Temporary Storage Sites and Depots – *Class 2 soil management sites*

- Previous requirements:
 - Soil storage amounts were limited to 10,000m³; property had to be owned by a project leader or public body; some inflexibility in combining soil from different project areas
- Key amendments:
 - 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)

Regulatory amendments

1. Soil Management at Temporary Storage Sites and Depots – *Local waste transfer facilities (LWTF)*

- Previous requirements:
 - Inconsistent operational rules compared to other interim sites
- Key amendments:
 - 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)

Regulatory amendments

1. Soil Management at Temporary Storage Sites and Depots – *Residential development soil depot and landscaping soil depot*

- Previous requirements:
 - Soil storage amounts were limited to 10,000m³; inconsistent operational rules; soil above 25m³ would be designated waste on leaving a retail landscaping soil depot
- Key amendments:
 - Maximum storage quantity of excess soil at one time has increased from 10,000m³ to 25,000m³
 - Definition of landscaping soil depot is clarified to better reflect the intent of the operations (i.e., not necessarily retail)
 - 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 include maximum storage time of 1 year for excess soil at a landscaping soil depot, procedures to be developed and applied at the depot for each load of soil, and operational requirements related to safety and security of the depot (e.g., signage, controlled access, spill clean-up, etc.)
 - Minor amendments to other provisions for clarification without changing policy intent (e.g., consolidating site closure requirements)

Regulatory amendments

2. Increased reuse opportunities for salt-impacted excess soil

- Previous requirements:
 - Salt-impacted soil could be reused where soil would be impacted again by salt, in other locations below 1.5m, and limited other locations with restrictions (e.g., industrial/commercial use properties with non-potable standards only)
- Key amendments:
 - 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 (i.e., 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.

Regulatory amendments

2. Increased reuse opportunities for salt-impacted excess soil

- Key amendments (*continued*):
 - Salt-impacted excess soil can be placed:
 - 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

Regulatory amendments

3. Hauling record exemptions and clarifications

- Previous requirements:
 - Hauling records were required for all movements of excess soil, regardless of quantity being moved; responsibility of source site in providing information for the hauling record was unclear
- Key amendments:
 - 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

Regulatory amendments

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

- Previous requirements:
 - Any project at an enhanced investigation project area (e.g., industrial site) was triggered to complete the planning requirements (i.e., filing a notice, completing assessments and sampling, and tracking), regardless of the size or type of project
- Key amendments:
 - Specified landscaping projects (e.g., installing light poles, trees, shrubs, or constructing fences, ponds, etc.) that excavate 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)

Regulatory amendments

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

- Previous requirements:
 - QPs required to confirm there would be no adverse effect from the reuse of soil mixed with polymers; concerns flagged that making such a guarantee was not possible
- Key amendments:
 - 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

Regulatory amendments

6. Clarifying sampling and analysis requirements

- Previous requirements:
 - Mandatory sampling requirements under the Soil Rules (for those projects subject to the reuse planning requirements) could be onerous or result in oversampling for specific circumstances
- Key amendments:
 - **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; rules are provided to ensure samples are representative (e.g., keeping excavated samples from different sections of the tunnel separate)
 - **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

Regulatory amendments

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

- Previous requirements:
 - Excavated soil or sediment not allowed to be stored within 30m of a waterbody, which can be impractical if the project itself is in that area
- Key amendments:
 - 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:
 - no visual/olfactory signs that the soil is affected by contamination
 - maximum storage time period of 1 week unless it is to be reused within the project area or requires more time for dewatering before transportation or reuse
 - prepare and follow a sediment and erosion control plan to prevent any impairment to the water body

Regulatory amendments

8. Other clarifications and corrections

- Previous requirements:
 - Some provisions in both the Excess Soil Regulation and Soil Rules were considered unclear and caused confusion
- Key amendments:
 - Various clarifications and corrections made to the Regulation, including:
 - 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”)
 - Minor changes to Schedule 2 exemptions to clarify intent of certain exemptions or align language with other parts of the regulation (e.g., topsoil reuse exemptions)

Regulatory amendments

8. Other clarifications and corrections - *continued*

- The Soil Rules document was also modified to reflect the aforementioned amendments, including making clarifications and corrections where needed
- Additional changes to Part I of the Soil Rules include:
 - Amending general soil storage rules to clarify segregation requirements for sampled/unsampled soil, and soil of different qualities, including salt-impacted soil
 - Clarifying sampling and analysis requirements when using polymers to dewater/solidify liquid soil
 - 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 to take out provisions that are now within the Excess Soil Regulation (e.g., storage quantities) and some further clarifications (e.g., allowing storage of salt-impacted excess soil at residential development soil depots that otherwise meets the applicable standards allowed to be managed at these sites)

Regulatory amendments

8. Other clarifications and corrections - *continued*

- 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

Regulatory amendments

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 (RPPRA) 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 landfill 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?

Please use the “Q&A” feature (click tab at the top of the screen) to enter your questions



Q&A

Further questions or comments?

- Email us at: mecp.landpolicy@ontario.ca

Thank you for attending today's session!

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>