EXCESS SOIL FACT SHEET

On December 4, 2019, the Ontario Ministry of Environment, Conservation and Parks (MECP) announced the long-awaited On-site and Excess Soil Management Regulation (O. Reg. 406/19) and Rules Document (adopted by reference). The first part of O. Reg. 406/19 will take effect on July 1, 2020 (Reuse Rules and Waste Clarification) with the second part on January 1, 2022 (Planning Requirements and Hauling Records). A ban on Landfill disposal of excess soil that meets Table 2.1 Standards for Residential/Parkland/Institutional property uses will take effect as of January 1, 2025.

The focus of the Regulation is to clarifying when excess soil can be reused, identifying activities that can proceed without an Environmental Compliance Approval (ECA) under certain conditions, and when excess soil planning is required, along with tracking and registration for larger and riskier sites. Here are some key facts:

IS EXCESS SOIL A "WASTE"?

Excess soil will be classified as a "waste" … *unless all apply*:

- Directly transported to a Reuse site, a Class 1 soil management site, a Class 2 soil management site or a local waste transfer facility;
- If the owner or operator of the Reuse site is the project leader for the excess soil Project Area, and consented in writing;
- Soil is dry and remains dry until placement. If not dry soil, the receiving facility has an instrument authorizing deposit/processing of non-dry soil;
- Or if the reuse site is governed by an instrument for soil activities.

The Regulation allows for appropriate enforcement actions for activities completed outside the Excess Soil Management process.

Non-dry soils are "liquid soils" characterized by a standard "slump" test. Liquid soils are generally classified as "waste" but do not require an ECA for hauling/transport.

TRIGGERS

As identified in the Regulation, projects generating 2,000 m^3 or more in an urban settlement area, must file a notice on a future Excess Soil Registry (after January 1, 2022). Further, where an Assessment of Past Uses or an Enhanced-Investigation Property identifies the potential for contaminants of concern, the Excess Soil Management planning activities and characterization must be completed, regardless of the volume being generated.

For reuse projects accepting 350 m^3 or less, the existing O. Reg. 153/04 Standards (Tables 1 to 9) apply. For reuse sites accepting great than 350 m^3, the Excess Soil Reuse Standards apply (Tables 2.1 to 9.1).

PROJECT AREA CONSIDERATIONS AND PLANNING

For certain larger and higher-risk sites, Excess Soil planning actions are required, prior to excavation. These include:

- Assessment of Past Uses (similar to a Phase I ESA);
- Sampling and Analyses Plan (when sampling required);
- Soil Characterization Report (similar to a Phase II ESA); and
- Excess Soil Destination Report.

These documents are to be prepared by, or under the supervision of, a Qualified Person, with a declaration statement and signature.

Based on the volume of the soil *in-situ* or in piles, there is a set number of samples to be collected and analyzed (see the Rules Document). Further, the findings from the Assessment of Past Uses and related Contaminants of Concern, will dictate the suite of analytical testing that is required. Where deemed necessary, the absolute minimum analyses is pH, ICP metals and petroleum hydrocarbons (BTEX and F1-F4). It is also noted that leachate analyses by either SPLP or TCLP is required on 10 percent of the total soil samples. Tracking of the Excess Soil movements must be completed once removed from the project area.

LOW-RISK PROCESSING ACTIVITIES

There are a series of low-risk soil processing activities that can be performed in the project area, or at public body-owned or operated local waste transfer facility without an Environmental Compliance Approval (ECA). These are:

- screening/sorting/turning,
- passive aerating,
- mixing (not to dilute contaminants),
- dewatering/solidifying, and
- removing debris.

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SITES WHERE EXCESS SOIL CAN BE RECEIVED

Class 1 Soil Management Sites: Soil Bank Storage Sites or Soil Processing Sites, usually owned/operated by someone other than the project leader. Soil is managed temporarily until relocated to a final destination. Must be operated under an ECA.

Class 2 Soil Management Sites: Temporary Sites other than Class 1, are owned and/or operated by the Project Leader or Public Body. Sites do not require an ECA, as only low-risk processing activities are permitted. Cannot exceed 10,000 m^3.

Reuse Sites: Must be for a beneficial purpose such as backfill, final development grading, or site rehabilitation. Final placement must be within 2 years of receipt and quantity cannot exceed what is needed for the beneficial purpose. Quality cannot exceed the generic Standards or risk-based derived Standards (BRAT or full RA). No ECA or Instrument required.

Sites with Instruments: Other sites where excess soil management is permitted may include: Municipal Act approved, Aggregate Resources Act approved, Planning Act approved, CPU sites, or other instruments with soil management specified.

Landfills: A ban on disposal will come into effect by January 1, 2025, for soil that meets Table 2.1 Res/Park/Inst quality. However, excess soil for beneficial uses and operational needs can still be utilized (i.e., daily cover, berms, and roads).

Reuse sites for more than 10,000 m^3 requires registration on a future Registry. Piles cannot be greater than 2,500 m^3 and no storage within 10 metres of a property boundary, 30 metres of a surface water body, or 100 metres of a potable water supply well or future potable water supply area.

SALT IMPACTED SOIL

Salt (SAR/EC) impacted soils can be placed at reuse sites under the following rules;

- Placed where it is reasonable to expect the soil will be affected in a similar manner from salt applications for vehicle and pedestrian safety, due to snow and ice.
- At industrial/commercial properties where non-potable groundwater standards are applicable (Table 3 sites).
- Placed a minimum of 1.5 metres below the final surface of the soil.

The Reuse site owner is to be made aware of the salt impacts and is to be provided with the analytical results, all to ensure that the quality of groundwater can be protected.

Salt impacted soil cannot be finally placed:

- Within 30 metres of a waterbody,
- Within 100 metres of a potable water well or area intended for potable well,
- Within 2 metres above a water table, and
- On property to be used for growing crops or livestock pasturing unless placed >1.5 metres below surface.

UP-COMING MECP IMPLEMENTATION ACTIVITIES

MECP intends to engage with industry partners to develop **Best Practices Documents** over the next year on:

- Updating Municipal By-law Tool for Excess Soils;
- Aggregate Quarries and Pits;
- Hauling Records and Form;
- Qualified Persons Responsibilities; and
- Temporary Storage and Processing Sites.

MECP is also planning a series of Industry or Scenario-Specific **Fact Sheets** intended for released by July 1, 2020. **Outreach Sessions** will continue to be delivered at conferences and workshops in Ontario to assist in the education and understanding of the new Excess Soils Management Regulation and Rules.

USEFUL LINKS

Reg. 406/19: https://www.ontario.ca/laws/regulation/r19406
Decision Notice: https://ero.ontario.ca/notice/013-5000
Supporting Docs: https://www.ontario.ca/page/handling-excess-soil

XCG Consulting Limited is your trusted partner for Excess Soil Management projects. To learn more about XCG's expertise in excess soil management and how we can help you with your project, don't hesitate to contact:
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