

MEMORANDUM: O.Reg 406/19-On-Site and Excess Soils Management

December 4, 2019, the Ontario Ministry of the Environment, Conservation and Parks (MECP) passed a new regulation related to the management of excess soil from new and existing sites. The goal of the new regulation is to reduce soil management costs and promote brownfields redevelopment, while protecting human health and the environment.

In June 2020, MECP delayed the implementation of these regulations in order to give developers and municipalities more time to gradually apply the new rules while prioritizing their COVID-19 response. The first phase has now taken effect as of January 1, 2021. McIntosh Perry has a team of Qualified Persons (QP) under the Regulation and would be pleased to discuss this regulation and your Site questions.

For more information on the specific rules surrounding this new legislation, continue reading below.

1.1 Regulation Timelines

1.1.1 Regulatory Provisions

Brownfields:

Time: On RSC filing

- Limited additional sampling to delineate contaminants for Risk Assessment sites
- Flexibility for elevated parameters in specific circumstances e.g. natural background, salt impacted soil, etc.
 - There are limitations on where salt impacted soils can be reused; receiver must be notified of salt impacted soils
- Removing the requirement for an RSC for specific low risk developments

Reuse Rules and Waste Clarification:

Time: July 1, 2020 (deferred to Jan 2021)

- Clear reuse rules, excess soil reuse standards and site-specific standards, e.g. Beneficial Reuse Assessment Tool (BRAT)
- Clear waste designation
- Reduced waste approvals for low risk soil management activities
- Some locations that accept soil (i.e. soil banks, temporary holding sites) are also requiring that in-situ soils (excavation) must have a Phase I or Phase II Site Assessment or soil characterization completed prior to accepting soil

UPDATE- Reuse Rules and Waste Clarification:

Time: January 1, 2021

- Soil quality and characterization at a Source Site will be assessed according to the requirements from O.Reg 153/04, Brown Field Conditions, as amended, the new O.Reg 406/19, as well as the MECP document entitled “Rules for Soil Management and Excess Soils Quality Standards.
- The Rules for Soil Management and Excess Soils Quality Standards are to be reviewed and applied to help classify soils as a re-use or waste stream. The Beneficial Reuse Assessment Tool (BRAT) was developed by the MECP to help the QP define site specific standards to determine the quality of the soils at a source site and if they meet the criteria of the receiving site.
- O.Reg 406/19, allows a QP_{ESA} to assess a Site based on Generic Site Conditions Standards or a Due Diligence risk based approach, based on previous historical land use data, jurisdictional requirements, ESA, Sampling and Characterization Analysis Plans, Delineation Plans, BRAT, Guidance Document, etc.
- When a Source Site cannot reuse excavated soils at their own Site or a Site from the same Owner (up to 10,000m³-Class 2 Sites), a written and signed letter of approval must be obtained from the receiving site PRIOR to any hauling of soils offsite.
- Hauling companies moving soils not deemed as WASTE (soils that can be reused at an acceptable receiving Site), do NOT need an ECA.
 - However; haulers moving excess soils from a source site to a reuse (receiving site) must be able to provide information in a tracking system that identifies:
 - a.) Location of Source Site and Owner
 - b.) Quality of soils they are hauling
 - c.) Location of Receiving Site

Excess Soil Planning Requirements:

Time: January 1, 2022 – January 1, 2025

- For larger or riskier generating project (some exemptions)
- Assessment of past uses, and if required sampling and characterization, destination assessment report
- Tracking, registration, hauling record
- Larger reuse site registration
- Restrict the deposit of clean soil at landfill sites, unless the soil is needed for cover or purposes beneficial to the functioning of the landfill

At the end of December 2020, MECP finalized amendments to Reg. 406/19 (On-Site and Excess Soil Management) under the Environmental Registry ERO # 019-2462 “Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse”. These amendments were made in response to delays to infrastructure and development projects due to COVID-19, and to support flexible reuse of excess soil. An important helpful change for MTO and infrastructure projects is the extension of the grandfathering for by one additional year to 2022 (bullets1&2). Projects.

Changes to Reg 406/19 - Onsite and Excess Soil Management include:**Grandfathering is extended until Jan 1, 2022;**

- Projects that have entered into a signed contract by Jan 1, 2022 are considered 'grandfathered'.
- Grandfathered projects are not subject to certain provisions, such as filing to the registry, completing a sampling and analysis plan and soil characterization report, and excess soil designation report.

Grandfathering provisions clarified:

- Geotechnical/studies with soil quality assessments completed by Jan 1, 2022 do not need to be repeated.
- Reuse Rules for salt impacted soil made more flexible:
 - Restriction for placing salt impacted soil within 2 metres of the water table has been removed.
- Regulation applies to reuse of crushed rock:
 - Rock that is mechanically broken down can be managed as excess soil when being reused.
- Regulation applies to Pits and Quarries:
 - Where soil or crushed rock is deposited for final placement at an aggregate pit or quarry, including for rehabilitation purposes.
- Excess Soil Registry will be delivered by the Resource Productivity and Recovery Authority (RPRA)
 - Filing of notices for excess soil will be completed using the online registry to be operated by the RPRA.
- ECA for reuse of stormwater pond sediment (for alternative soil management requirements from those in the Regulation).
- Excess soil can be stored within 10 m of the property boundary if in a public road right of way.
- Excess Soil Standards for leachate screening values for arsenic and molybdenum revised to reflect background groundwater concentrations.

Overall, these new rules will result in a reduction in construction costs making it easier and safer to reuse excess soils produced during construction. This will enhance Ontario's housing supply while providing greater certainty of environmental protection through more flexible, risk-based rules and soil reuse standards. In the past some excess soils were unnecessarily considered as waste but the new regulatory framework will reduce "waste stigma" by clarifying when excess soil would not be considered waste.

Developers will see reduced regulatory burden as waste-related approvals are replaced with regulatory rules for low-risk soil management activities, such as soil hauling, low-risk processing, and temporary storage.

Examples of Clients That Generate Excess Soil

- Developers/General Contractors
 - Generate excess soil during construction
 - Also sometimes accept excess soil
- Ontario Ministry of Transportation
 - Road cuts
 - Foundation excavations
 - Culvert excavations

A new online registry for larger and riskier movements will provide greater transparency and accountability for clients managing excess soil, such as generators, haulers and receivers, which will assist in addressing concerns about illegal relocation of soil. Bigger reuse sites will also be required to register. Finally, the issue of loss of landfill capacity will be partially solved by redirecting the deposit of soils away from landfills and towards beneficial reuses.

If you have any questions regarding excess construction soils or related issues at your site(s) feel free contact us:

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