

The Quick And Dirty On MORE Amendments To Ontario's Excess Soil Regulation



When it comes to excess soil, the Ontario Ministry of Environment, Conservation and Parks (the “**Ministry**”) is no stranger to getting its hands dirty altering the [*On-site and Excess Soil Management*](#) regulations (the “**Regulation**”) and the [*Rules for Soil Management and Excess Soil Quality Standards*](#) (the “**Soil Rules**”) under the [*Environmental Protection Act*](#) (the “**EPA**”) as it has once again proposed new amendments to both. On October 18, 2024, the Ministry published a [*Proposal Notice*](#) describing its proposed amendments (the “**Proposal**”). The Ministry aims to make it “easier and more affordable” for municipalities and contractors to reuse more excess soil locally. The Proposal remains open for comment until November 21, 2024. The full text of the Proposal is available [here](#).

This bulletin provides a summary of the Ministry’s proposed amendments to the Regulation. For more information on Ontario’s excess soil regime and a description of the capitalized terms used below and defined in the Regulation, please read our Bulletins on [*Phase 1 of the Regulation, Phase 2 of the Regulation, the amendments to the Regulation that came into force on January 1, 2023*](#), and the [*last round of amendments to the Regulation that came into force on April 23, 2024 \(the “April 2024 Amendments”\)*](#).

Delayed Prohibition on Landfilling Types of Excess Soils

Section 22 of the Regulation prohibits the deposit of excess soil at landfilling or dump sites after January 1, 2025 unless it meets the criteria of one of two limited exemptions: (1) where a qualified person (“QP”) makes a specific declaration regarding the quality of the excess soil; and (2) where it will be used for daily cover, final cover, the construction of roads or berms or to support any other type of ancillary use that supports the operation of the landfilling site or dump. The Proposal seeks to push the prohibition date out two years to January 1, 2027 as well as clarify the requirements for the former exemption such that a QP would be required to produce a declaration that states:

- the excess soil contains a parameter for which there is no applicable excess soil quality standard and there are reasonable grounds to believe the final placement of the excess soil at a reuse site may cause an adverse effect;
- the excess soil contains invasive species that should not be relocated; or
- reuse of the excess soil at a reuse site for structural purposes is not possible due to its geotechnical instability and a reuse site that may use the soil for other beneficial purposes has not been located after reasonable efforts.

Removal of Requirements for Environmental Compliance Approvals for Certain Third-Party Storage and Processing

The Proposal would amend the Regulation to exempt certain Class 1 soil management sites from requiring a waste environmental compliance approval (“ECA”), being aggregate reuse depots and small liquid soil depots. The Ministry considered a similar exemption in the previous round of amendments proposed on October 17, 2023, however these exemptions did not make the final cut of the [April 2024 Amendments](#). The Proposal also provides particulars of the

allowed materials, prohibited materials, and requirements for the processing, allowed storage time and quantity, procedures and operations, sampling and notice and other requirements or restrictions for these aggregate reuse depots and small liquid soil depots.

Increased Flexibility for Reuse of Certain Excess Soil

The Proposal aims to provide greater flexibility for the reuse of excess soil that is part of engineered aggregate materials or stormwater management pond (“SWMP”) sediment that is being reused as engineered aggregate or in an infrastructure undertaking.

Where excess soil containing asphalt-road impacted aggregate or SWMP sediment contains exceedances beyond the applicable reuse site’s quality standard which are directly attributable to an asphalt road, such as asphalt and tire wear, such excess soil would be deemed to meet the reuse site’s standards if it is being reused beneficially and finally placed in an asphalt road undertaking. Similarly, SWMP sediment with exceedances attributable to an asphalt road may be reused and finally placed within the road right of way associated with the road. In both circumstances, a QP must determine that the exceedances are solely due to the presence of asphalt roads and “areas of potential environmental concern” at the project area or sampling results are consistent with expected levels of asphalt-related contamination.

Additionally, excess soil that is part of engineered aggregate and contains naturally elevated exceedances would be deemed to meet the standards if the excess soil is being beneficially reused as engineered aggregate, and: (i) a QP has completed an environmental site assessment or assessment of past uses and has determined that the exceedances are not associated with a potentially contaminating activity or area of potential environmental concern or (ii) where there is no QP, the project leader has made reasonable effort to consider any past

reports about past uses and activities and has reached the same conclusion.

Finally, with respect to infrastructure projects, the Proposal aims to facilitate greater reuse of soils that are not known to be, or are not likely to be, contaminated to be coordinated between infrastructure projects of the same type and by the same project leader, being undertaken concurrently. In such case, excess soil would be allowed to be managed and reused between sites without being subject to the reuse planning provisions in Sections 3, 4, 5 and 8 of the Regulation.

Additional Proposed Amendments and Clarifications

Additional proposed amendments to and clarifications of the Regulation include:

- Permitting in-situ sampling for SWMP sediment subject to the in-situ sampling frequencies in the Regulation and Soil Rules.
- The Ministry is seeking input on a regional mapping approach to enable greater reuse of excess soil in areas with naturally occurring exceedances. The Soil Rules deem excess soil with a naturally occurring exceedance to meet quality standards for a reuse site if a QP has demonstrated that the exceedance is also naturally occurring at the area of the reuse site. Under the proposed framework, municipalities or public bodies would develop regional maps delineating areas with naturally occurring exceedances for the purposes of providing a delineated boundary for soil movement within areas that would limit the relocation of soil with natural exceedances for or from areas outside of such boundary.
- Minor corrections and clarifications, including clarifications to ensure the intended flexibility of reuse of soil within a project area is clear by providing that reuse planning requirements would not

apply if all excess soil is to be brought back for reuse at the same project area.

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

© McMillan LLP 2024

Authors: [Talía Gordner](#), [Annik Forristal](#), [Patrick Pinho](#)

McMillan