

THE QUICK AND DIRTY ON ONTARIO'S PROPOSED 2024 AMENDMENTS TO THE EXCESS SOIL REGULATION

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On October 17, 2023, the Ministry of Environment, Conservation, and Parks (the “**Ministry**”) published a [Proposal Notice](#) (the “**Proposal**”) for amendments to the [On-site and Excess Soil Management](#) regulations (the “**Regulation**”) under the [Environmental Protection Act](#) (the “**EPA**”), which regulates the reuse of excess soil in Ontario. The amendments aim to clarify existing regulatory requirements, remove barriers associated with reusing low-risk soils, and generally encourage the greater reuse of excess soil in Ontario. The amendments are anticipated to come into effect on January 1, 2024.

The Regulation provides a framework for excavating, removing, and transporting excess soil between two or more sites. For more information on the Ontario 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](#) and [the latest amendments to the Regulation that came into force on January 1, 2023](#).

This Bulletin provides an overview of the proposed amendments outlined in the Proposal. While the Proposal is intended to clarify and ease the burdens of the regulatory requirements under the Regulation, it is still prudent for property owners, developers, consultants, and the construction industry to understand the upcoming changes to the Regulation. Impacted or interested parties may also participate in the public comment period for the Proposal, which is open from October 17 to December 1, 2023.

Exemptions for Class 1 Soil Management Sites

The amendments propose exempting the following Class 1 Soil Management Sites from the EPA requirement to obtain an Environmental Compliance Approval (“**ECA**”) for their waste management/storage operations:

- [Topsoil and landscaping reuse depots](#): The proposed amendments would expand the current exemption for certain retail landscaping soil depots to wholesale/larger topsoil recycling and packaging sites. To qualify for this exemption, the excess soil at these facilities must be topsoil or other excess soil that can be sold to meet a realistic market demand as a landscaping product and must satisfy the Table 2.1 standards for soil quality under the Soil Rules. The amendments also propose to increase the permitted

maximum volume that can be stored at the site from 10,000 m³ to 25,000 m³, which storage is permitted for a maximum of one year (unless an extension is obtained from the Ministry).

- **Aggregate reuse depots:** This would be a new type of facility/depot not previously contemplated by the Regulation. Aggregate reuse depots would only accept used/recycled aggregate, defined as material: (a) excavated from a project area (not a pit or quarry), (b) used as an aggregate product developed to meet a specific engineering need, and (c) that was not general fill or mixed earth. To qualify for this exemption, the excess soil would have to meet a realistic market demand as an aggregate product in an infrastructure or building project (it cannot include glass, concrete, asphalt, etc.) and must have no indications of contaminants (there are some exceptions for high-salt content). The amendments also propose a 25,000 m³ maximum volume that can be stored at the site, which storage is permitted for a maximum of one year (unless an extension is obtained from the Ministry).
- **Small liquid soil depots:** This would be another new type of facility/depot not previously contemplated by the Regulation. Small liquid soil depots would be able to accept liquid soil from various project areas, including from hydro-excavation and stormwater pond sediment, but not liquid soil that is hazardous waste or material from cleaning out sewage works. The amendments also propose a 200 m³ maximum volume of liquid soil and 2,000 m³ of dewatered solidified soil that can be stored at the site, for which storage is permitted for a maximum of 6 months. The existing storage rules that apply to liquid soil storage under the Regulation will also apply to the storage of liquid soil at these facilities. There are additional sampling requirements for dewatered soil prior to it leaving the facility.

The proposed amendments will require each of the above facilities to register on the Excess Soil Registry managed by the Resource Productivity & Recovery Authority (“**RPRA**”) before starting and when closing operations. These facilities must also have procedures in place to track the source, type and quality of soil and to prevent adverse effects from its storage and the permitted low risk processing of the soil at the facility.

Greater Reuse Opportunities for Salt-impacted Soil

The Proposal aims to increase the reuse opportunities for salt-impacted soil in areas where such soil is anticipated to have minimal impact. The amendments would permit the reuse of salt-impacted soil in community, institutional, parkland, or residential use properties based on a landscape or site plan prepared and certified by an expert identifying areas and depths at which salt-impacted soil can be used without affecting existing or future vegetation. The amendments would also allow salt-impacted soil at agricultural properties in areas used for growing crops or pasturing in certain circumstances. There will be additional disclosure obligations from the source site to the reuse site where salt-impacted soil is provided.

Changes for Class 2 Soil Management Sites and Other Regulated Facilities

The Proposal seeks to enhance the ability of Class 2 Soil Management Sites to manage excess soil while retaining their ECA exemption. The amendments will also allow a public body to own or operate a Class 2 site which is currently not permitted under the Regulation. The amendments propose increasing the permitted maximum volume of excess soil stored at Class 2 sites from 10,000 m³ to 25,000 m³ and only imposes a notice requirement on RPRA's Excess Soil Registry if the facility is accepting more than 2,000 m³ of dry excess soil. The amendments also propose to adjust some limited aspects of soil sampling and storage requirements for these facilities.

In order to better align other regulated facilities with Class 2 sites, the amendments propose:

- Local Waste Transfer Facilities are only required to file a notice on RPRA's Excess Soil Registry if accepting greater than 2,000 m³ of dry excess soil or any amount of liquid soil and allowing storage of a maximum of 25,000 m³ of dry soil for up to 2 years (which may be extended with Ministry approval).
- Residential Development Soil Depots may store dry soil up to a maximum of 25,000 m³ and may accept certain salt-impacted soil in designated circumstances.

Hauling Record Clarifications & Exemptions

The Proposal clarifies what information needs to be provided within hauling records under section 18 of the Regulation and outright removes the hauling record requirement: (a) if dry excess soil is being directly transported from the project area where the total amount of soil excavated was 5 m³ or less; or (b) where the excess soil being transported is a landscaping product packaged for retail sale. The hauler would still be required to have sufficient information to provide verbal information about the soil being transported in these two circumstances.

Exemptions for Designated Landscaping Projects

The Proposal adds an exemption under Schedule 2 of the Regulation for landscape projects excavating soil at a low-risk part of an Enhanced Investigation Project Area. The exemption applies to projects excavating 100 m³ or less of excess soil from an area within an Enhanced Investigation Project Area that is not known to have any potentially contaminating activities and there is no known or apparent reason to suspect the impact of contaminants in the soil. These landscaping projects would be limited to landscape care and maintenance services, including installing trees, shrubs, lawns, gardens, walkways, retaining walls, decks, fences and ponds.

Additional Amendments

In addition to minor corrections and clarification type amendments and the changes to the Regulation required to implement the proposed amendments described above, the following are some additional amendments described in the Proposal to be aware of:

- Clarifications for Qualified Person (“QP”) liquid soil responsibilities: The proposed amendments clarify that a QP is not required to confirm there will be no adverse effect from the use of a polymer to solidify liquid excess soil and instead must undertake reasonable investigations to identify any such concerns.
- Clarifications for sampling & analysis requirements: The Proposal clarifies requirements relating to certain mandatory sampling and analysis plans for salt-impacted soil, Record of Site Condition sites, stormwater management pond sampling, and tunnelling projects.
- Increased flexibility for soil storage near waterbodies: For soil storage or excavating projects, the Proposal would allow soil storage within 30 m of a water body where: (a) the soil was excavated from near the shoreline, close to the waterbody, riparian area, or land adjacent to the water body; and (b) the potential adverse impacts to the water body are mitigated.
- Soil finally deposited at landfills: The proposed amendments would not designate excess soil finally deposited at a landfill property as waste if it is for a beneficial purpose consistent with the landfill's waste ECA.
- Excess soil used in manufacturing: The Proposal provides that excess soil wholly used in manufacturing to make products would not be considered waste and the manufacturing facility would not need a waste ECA to operate.

For additional information on how these proposed amendments to the Regulation may impact your projects, business or operations, please reach out to Talia Gordner and Annik Forristal.

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A Cautionary Note

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.

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