

# Excess Soil Regulation & Excess Soil Registry

Association of Municipalities of Ontario (AMO)

**December 3, 2021**

# Presentation Overview

- Provide an overview of the various elements of the Excess Soil Regulation



[Inside Hamilton, May 2019](#)

## DISCLAIMER

*This presentation is intended to be a brief summary of some of the requirements of Ontario Regulation 406/19 On-Site and Excess Soil Management (the Regulation ) made under the Environmental Protection Act and the Rules for Soil Management and Excess Soil Quality Standards - a document incorporated by reference by the Regulation . 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 may apply to any of the activities they are engaged in must refer to the Regulation . In the event of any inconsistency between the Regulation and this presentation, the Regulation will always take precedence.*

# Overview of Regulatory Requirements

- Regulation titled **O. Reg. 406/19: On-Site and Excess Soil Management** under the Environmental Protection Act (EPA), was finalized in December 2019, supported by:
  - Rules for Soil Management and Excess Soil Quality Standards
  - Beneficial Reuse Assessment Tool (BRAT)
  - Complementary provisions in O. Reg. 153/04 (Brownfields Remediation Regulation), Reg. 347 and O. Reg. 351/12 (Waste Management Regulations)

Phased Regulatory Implementation	Timing
<b>Reuse Rules and Waste Designation Clarification</b> <ul style="list-style-type: none"><li>- Including excess soil reuse standards</li></ul>	January 1, 2021
<b>Excess Soil Reuse Planning Requirements</b> <ul style="list-style-type: none"><li>- For larger or riskier generating projects (some exemptions)<ul style="list-style-type: none"><li>- Assessment of past uses, and if required sampling and characterization</li><li>- Destination assessment report</li><li>- Tracking and registration</li></ul></li><li>- Hauling record</li><li>- Larger reuse site registration</li></ul>	January 1, 2022
<b>Restriction on the deposit of clean soil at landfill sites</b>	January 1, 2025

## Context - What is Excess Soil

- Excess soil is soil that is excavated at a project area and cannot be reused on site. It includes soil from construction and maintenance activities (e.g., buildings, infrastructure stormwater sediment)
- Excess soil can either be taken to a suitable site for reuse or it can be sent for processing or disposal at a landfill or other waste disposal facility
- Reuse of excess soil on-site, or locally, is encouraged over disposal or hauling soils long distances - to reduce project costs, green house gas emissions, unnecessary use of limited landfill capacity and impacts related to noise, dust, safety and road wear

# What Does the Excess Soil Regulation do?

1. Provides **clear rules for beneficial reuse** of excess soil
2. Designates when **excess soil is a waste** and provides criteria that, if satisfied, removes this designation
3. Specifies **when waste approvals are needed** and when exemptions are provided
4. Sets out **minimum requirements** for certain generators of excess soil to ensure information (e.g., characterization) is available to facilitate **appropriate reuse** of excess soil, to **track** certain soil movements, and to provide **transparency**
5. Provides **soil standards** which help build confidence to beneficially reuse soil as a resource in a manner that is safe for the environment and human health
6. Clarifies **provincial role** and how it can be integrated with municipal by-laws or other instruments

# Commonly Used Terminology & Non-Application

- **Excess soil:** Soil, crushed rock, or soil mixed with rock or crushed rock, that moves off the project area
- **Soil:** Naturally occurring material smaller than 2 mm; can include liquid soil (slump test)
- **Project Area:** site where excess soil is excavated and moved offsite from
- **Reuse site:** site where excess soil is finally placed for a beneficial purpose and not stockpiled
- **Class 1 soil management sites:** waste disposal sites with an ECA
- **Class 2 soil management sites:** temporary storage sites, no ECA required as long as the criteria in the regulation are met
- **Registry:** online system to come into effect Jan 2022, where larger and riskier projects are required to file a notice
- **Hauling record:** refers to the record that must accompany every load of dry or liquid soil during the transportation

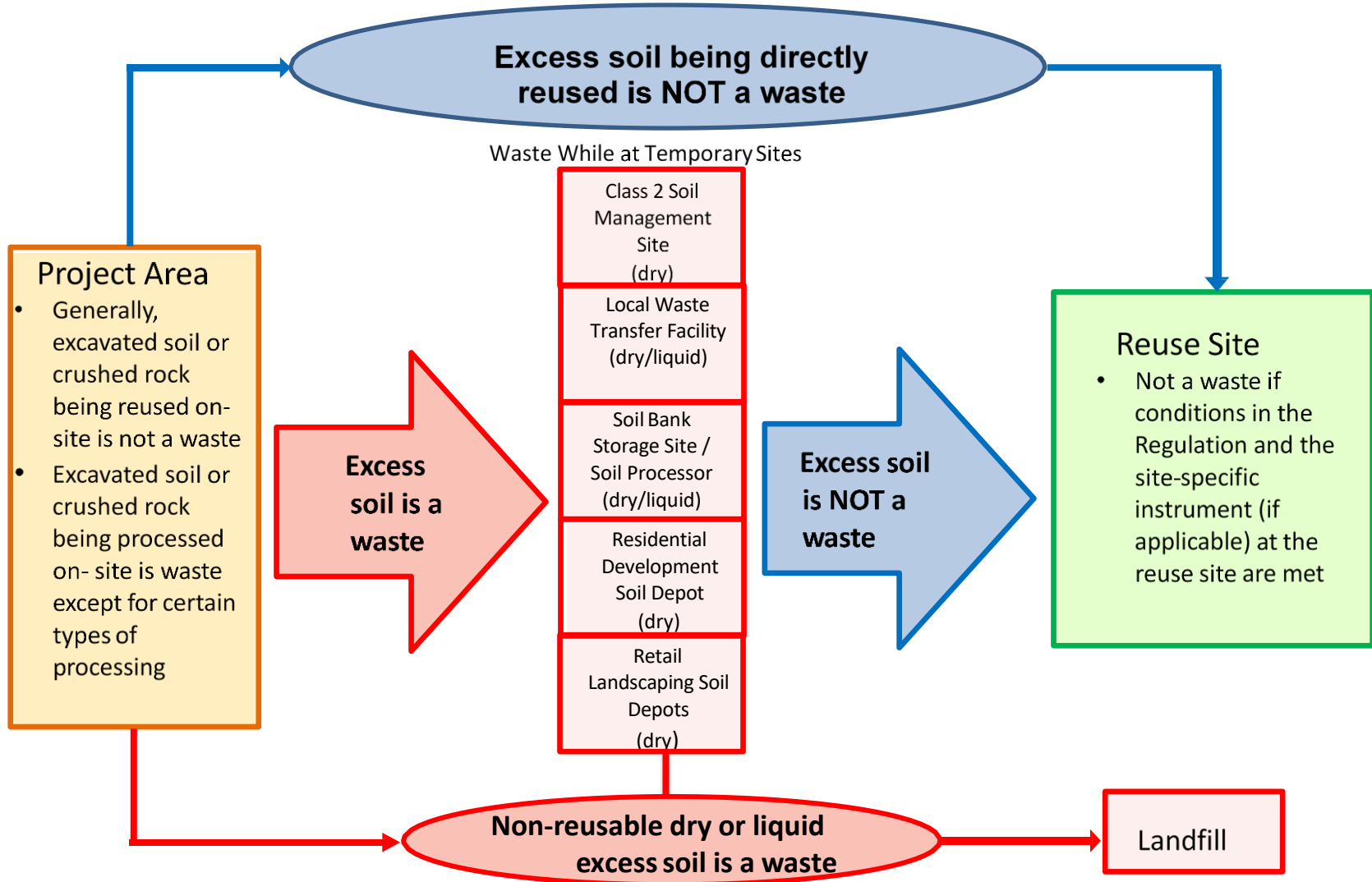
The excess soil regulation **does not apply** to the following:

- Hazardous waste – as defined under Reg. 347
- Aggregates - operation of pits/quarries that are excavating aggregate (including recycled aggregate) and top soil, within the meaning of the Aggregates Resources Act
- Peat - the production of peat from a peat extraction operation
- Surface of water body - the final placement of excess soil on the bed of a surface water body

# Rules for Excess Soil Reuse

- Excavated soil or crushed rock becomes excess soil upon leaving a project area.
- Generally, soil and rock staying in the project area is not a waste and can be reused.
- The rules for reuse of excess soil are found in [sections 3, 4 and 5](#) of the regulation, which then refer to other key sections of the regulation and both parts of the [Rules for Soil Management and Excess Soil Quality Standards](#).
- In order to be reused and not designated as waste, excess soil being reused at another site must meet all of these conditions:
  1. The excess soil is directly transported to a reuse site from a project area, a Class 1 soil management site or Class 2 soil management site, or local waste transfer facility
  2. The owner or operator of the reuse site has agreed in writing to deposit the excess soil at the reuse site
  3. There is a beneficial use for that excess soil and the quality and quantity of excess soil being taken to that site are consistent with the beneficial use
  4. The excess soil is dry soil and remains dry soil until it is finally placed at the reuse site, or, if it is liquid soil, a site-specific instrument authorizes the excess soil to be deposited at the reuse site
- These criteria are intended to ensure that the excess soil will be reused at the reuse site for a beneficial purpose and that the quality and quantity of the excess soil to be deposited at the reuse site for final placement are appropriate for that purpose

# Waste Designation Flowchart





# Reuse Planning to Support Reuse - January 1, 2022

## Source Site Excess Soil Reuse Planning Rules:

- Project leaders of some sites generating excess soil would be subject to certain planning requirements to help ensure soil is managed and reused properly, some activities will require QP oversight
- These requirements include:
  - Filing a notice in the online, public **registry** before removing excess soil from the project area
  - Using a qualified person to complete:
    - an **Assessment of Past Uses**,
    - if necessary, a **Sampling and Analysis Plan** and an **Excess Soil Characterization Report** to understand the quality of the soil that will be excess soil
    - an **Excess Soil Destination Assessment Report** to verify that intended reuse sites can accept the soil to be sent to them
  - Develop and apply a **tracking system** to track each load of excess soil during its transportation and deposit at a reuse site
- To support compliance and transparency, key information from the above reports and records must be included in the notice filed on the registry, such as the locations to which soil was taken

# Who is a Project Leader

- A project leader means, in respect of a project, the person or persons who are ultimately responsible for making decisions relating to the planning and implementation of the project
- They are the person or person(s) who is the proponent for a project
- Under the regulation, contractors and/or QPs would **not** become the project leader, as the responsibility for key decisions and compliance ultimately rests with the project leader
- Examples of project leaders for a project:
  - A municipality or public body responsible for an infrastructure project
  - The owner of a property or a developer of a property that may own or lease the property for the purposes of development
  - An employee of a corporation that has the responsibility and authority to bind the corporation

# Excess Soil Reuse Planning Requirements

- To help ensure reuse of excess soil from a project area is being planned and undertaken appropriately, the regulation includes requirements as of January 1, 2022, for some projects generating excess soil
- The excess soil reuse planning requirements include:
  1. Registration of a notice in the Excess Soil Registry for the project
  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 report
  4. Application of a tracking system
- To support compliance and transparency, key information from project area efforts must be included in the notice filed on the registry, such as the locations where soil is planned and then taken to for reuse, storage, processing and/or disposal
- These requirements apply in relation to a project and, generally, the regulation places the responsibility to ensure these requirements are met on the project leader. This does not prevent contractual arrangements resulting in other people completing these requirements on behalf of a project leader.
- The assessment of past uses, sampling and analysis plan, soil characterization report, and excess soil destination report must be undertaken by or under the supervision of a QP

# Excess Soil Reuse Planning Requirements

- The excess soil reuse planning requirements apply to the following types of projects which are, generally, larger in scale or more likely to generate excess soil with some contaminants:
  1. projects generating 2000m<sup>3</sup> or more of excess soil and that are in a settlement area (such as cities and towns); this trigger does not apply to projects in rural areas
  2. projects for which part of the project area has a past or present use that is a gas station, garage, used for the operation of dry-cleaning equipment, or industrial use (uses associated with an “enhanced investigation project area” as defined in the regulation)
  3. projects for which the primary purpose is to remediate contaminated lands (note that if a new property use cannot proceed without completion of soil remediation, such as soil removal, this should be considered a primary purpose)
- A number of exemptions from the planning requirements exist which are described on the next slide.

# Exemptions from Reuse Planning Requirements

- The regulation includes several exemptions from all or some of the planning requirements related to soil reuse planning.
- These exemptions reflect some low risk scenarios, some scenarios where responsibility for the soil is not changing, and some scenarios to help encourage reuse in similar projects:
  1. If 100 m<sup>3</sup> or less of excess soil is being removed from the project area and being directly transported to a waste disposal site, such as a landfill (this does not apply a Class 2 soil management site)
  2. The reason for removal of excess soil is to respond to an emergency, such as an existing danger to the health or safety of any person, a serious risk of injury or damage to any property or to any plant or animal life, or to respond to a spill
  3. Projects that are related to maintaining infrastructure in a “fit state of repair” other than excavation of excess soil from a stormwater management pond
  4. The excavation of topsoil which is transported directly for reuse as topsoil at a reuse site, and there is a low risk of contamination (the project area has never been an enhanced project investigation area, and the primary purpose of the project where the excess soil was removed from was not the remediation of contaminated land)
  5. The excess soil is excavated as a part of an infrastructure project and after removal from the project area, the excess soil is being reused (finally placed) as part of an undertaking related to another infrastructure project with the same project leader or a public body
  6. The excess soil is being deposited at a local waste transfer facility and the amount of excess soil to be deposited is 100 m<sup>3</sup> or less

# Additional Exemptions

## Existing Contract Exemption

- The regulation exempts soil management contracts entered into before January 1, 2022 from the reuse planning requirements (i.e., registration, assessment of past uses, sampling and analysis, tracking, etc.).
- If a contract has not been completed by January 1, 2026, it would be required to complete the excess soil reuse planning requirements in relation to excess soil movements from that date forward.
- Other regulatory rules would continue to apply, including provisions specifying excess soil reuse rules to avoid the waste designation.

## Completed Assessments Exemption

- The regulation also recognizes past use assessments, sampling and analysis plans and soil characterization reports completed for a specific project before January 1, 2022 as assessments, plans and reports under the regulation for that project.
- This ensures these studies do not have to be repeated for a project continuing based on those studies. This would not apply to a different project.
- Other aspects of reuse planning , e.g., registration, continue to apply.

# Tracking System

- A project leader from the project area must also verify where the excess soil was finally placed through the development and application of a tracking system for projects required to file a notice on the Registry - to track excess soil during its transportation and deposit.
- The tracking system will include procedures to account for each load of excess soil moved from a project area, including its general quality, quantity and verification of the final site at which it was deposited.
- The hauling record, required to be available from a hauler of excess soil, can be an integral part of the tracking system. The tracking system would also inform the hauling record by ensuring that the appropriate quality of soil for a deposit site is loaded and reflected in the hauling record.

To read more about the key requirements associated with the tracking system, see Appendix B and Section B of [Part I: Rules for Soil Management](#).

# Filing a Notice on the Registry

- For projects that must complete the excess soil reuse planning requirements, **Section 8** of the regulation requires that the project leader file a notice in the Excess Soil Registry (Registry), typically before excess soil leaves the project area.
- The Registry is an online, public registry being developed and implemented by the [Resource Productivity and Recovery Authority](#) (RPRA), must include key information:
  - A description of the project and the project area
  - The name and contact information for the project leader(s) and operator, and QP(s)
  - Quantity of soil being removed from the project area and its quality, by general category
  - The name and contact information for the person responsible for the transportation of Excess soil from the project area
  - The intended location and description of the reuse sites, landfills, dumps, Class 1 soil management sites (soil banks and soil processing sites), local waste transfer facilities and temporary sites (Class 2 soil management sites) where soil is to be deposited, including applicable excess soil quality standards and quantity of soil deposited at the site
  - Declarations by the project leader
- Once a notice is filed it must be updated:
  - To identify new planned deposit sites prior to their use
  - Within 30 days of completion of the project to reflect actual soil movements
  - Within 30 days of finding inaccurate or incomplete information in the notice



# Other Project Area and Project Leader Responsibilities

- Even if the planning requirements are not triggered, there are still a number of regulatory requirements and responsibilities at the project area site
- For example, regardless of the volume of excess soil being moved, or if the planning requirements are triggered or not, excess soil quality must be determined to be appropriate for the planned reuse site(s) of interest
- A reuse site owner or operator must agree in writing to accept soil from a project area. It is necessary for a project leader or QP to confirm with the reuse site owner or operator which excess soil quality standard, site-specific standard or instrument-specific standard applies to that reuse site.
  - A reuse site owner or operator has the discretion to set more stringent standards than the regulation requires and to ask for additional information to demonstrate that the excess soil meets those standards.
  - If there is a site-specific instrument, such as a municipal fill permit, that recognizes a need for fill to complete an undertaking, and it includes conditions related to the quality of excess soil that may be deposited, then the conditions in that site-specific instrument apply.

# Other Project Area and Project Leader Responsibilities

- The project area must also ensure the appropriate hauling records are provided to drivers with key details on the soil that is loaded for transport, drivers will be responsible for recording and providing key information about the deposit of soil to the reuse site owner or operator
- Each project is unique, in some soil movements e.g., salt-impacted soil, key information about the salt-impacted soil needs to be provided by the project leader to the reuse site owner or operator:
  - Notification that the soil may be impacted
  - Any sampling and characterization reports prepared
  - Any identified potential risks to surface and/or groundwater
- Project leaders for sites generating excess soil are required to keep copies of most documents they create or receive per the requirements of the regulation for seven years. This would include the written consent obtained from reuse sites to move excess soil to those locations, and any reports to fulfill excess soil reuse planning requirements (if applicable).

# Large Reuse Sites Requirements - January 1, 2022

## Greater Assurance that Large Reuse Sites are not Receiving Waste Soil (January 1, 2022):

- Reuse sites accepting at least 10,000m<sup>3</sup> of excess soil for an undertaking will be required to **register** and develop and implement procedures to track and **inspect** each load of excess soil being received
- Will not include reuse sites that are part of an undertaking related to an **infrastructure project**
- These additional requirements will help to ensure that these reuse sites are receiving soil that meets the appropriate reuse conditions and that the storage of excess soil for final placement in respect of an undertaking at the reuse site does not cause an adverse effect

# Reuse Site Notices to the Excess Soil Registry

Reuse sites can accept excess soil for **beneficial reuse** in an undertaking.

- This includes use as backfill, raising the grade of land for a planned development or an infrastructure project, or rehabilitation of an aggregate extraction site.
- Some reuse sites that are accepting large amounts of excess soil are required under the Regulation to file a notice on the Registry.
- The notice must be filed before the site begins receiving the excess soil

## Undertakings required to file a notice

- **Section 19** of the Regulation requires that, if a reuse site will be receiving at least **10,000 m<sup>3</sup>** of excess soil for final placement in an undertaking, before it can be received at the site, the owner or operator of the reuse site will be required to:
  - File a notice on the Registry
  - Establish procedures to account for every load of excess soil being deposited at the reuse site and ensure that the storage of excess soil does not cause any adverse effects. Owners or operators filing a notice are required to confirm through a declaration on the Registry that these procedures have been put in place.
  - When filing a notice on the Registry for a reuse site, it must include the information listed in Section 19 of the Regulation .

# Exemptions

## Exemptions from filing a notice

- The requirement to file a notice as a reuse site does not apply to reuse sites that are part of an undertaking related to an infrastructure project.
- **Note:** if the reuse site was operation prior to January 1, 2022 and is receiving less than 10,000 m<sup>3</sup> of excess soil after January 1, 2022, the owner or operator is not required to file a notice.
  - For example, if a site received 9,000 m<sup>3</sup> as of December 2021, and only receives an additional 2,000 m<sup>3</sup> in February 2022 to fulfill the need for the beneficial reuse, they do not need to file a notice even though the total amount at the site has been more than 10,000 m<sup>3</sup>.

# Residential Development Soil Depots Reuse Site Notices to the Excess Soil Registry

- Residential development soil depots (depot) are temporary soil storage sites that store and manage excess soil that meets residential reuse quality standards.
- From the depot, the excess soil will be eventually redistributed for reuse at a residential property or other less sensitive property use.
- The amount of excess soil at any one time at the depot must not exceed **10,000 m<sup>3</sup>**.
- **Section 7 (4)** of the Regulation requires that a notice be filed on the Registry by the operator of the depot.
  - The notice must be filed before any excess soil is deposited at the site, or if the depot was operating prior to January 1, 2022, then the notice must be filed on January 1, 2022.

# Who is responsible for filing the notice

Type of Notice	Who is Responsible	Additional Individuals that may file a notice
<b>Project</b>	<b>Project Leader</b> <ul style="list-style-type: none"> <li>Ensures notice is filed</li> <li>completes the declarations</li> </ul>	<b>Authorized Person*</b> <ul style="list-style-type: none"> <li>May file the notice on behalf of the project leader</li> <li>Facilitates but does not sign declarations.</li> <li>This authorized person could be a QP, a site operator, or another company contracted to manage the project for the project leader.</li> </ul>
<b>Reuse Site</b>	<b>Owner or operator</b> <ul style="list-style-type: none"> <li>Ensures notice is filed</li> <li>completes the declarations</li> </ul>	<b>Authorized Person*</b> <ul style="list-style-type: none"> <li>May file the notice on behalf of the owner or operator</li> <li>Facilitates but does not sign declarations.</li> <li>This authorized person could be a QP, a site operator, or another company contracted to manage the project for the project leader.</li> </ul>
<b>Residential Development Soil Depots</b>	<b>Owner or operator</b> <ul style="list-style-type: none"> <li>Ensures notice is filed</li> <li>completes the declarations</li> </ul>	<b>Authorized Person*</b> <ul style="list-style-type: none"> <li>May file the notice on behalf of the owner or operator</li> <li>Facilitates but does not sign declarations.</li> <li>This authorized person could be a QP, a site operator, or another company contracted to manage the project for the project leader.</li> </ul>

\*Ensure that the authorization to file a notice is documented.

# Excess Soil Registry and RPRA

On March 15, 2021, the Minister of the Environment, Conservation and Parks directed the Resource Productivity & Recovery Authority (RPRA) to develop, implement and maintain a Registry for regulated persons to file their required notices as per the Excess Soil Regulation under the *Environmental Protection Act*.

- Owners, operators, project leaders or other authorized people who need access to the Registry, can find out more on RPRA's [website](#). RPRA will also post guidance on using the Registry, how to file a notice and information on learning opportunities. Through their website, you will also be able to search for a notice that has been posted.

## RPRA's Role

- Operate the Registry to enable regulated persons to comply with registration and notice filing requirements outlined in the Regulation
- Enable the Ministry access to notice filings and associated data
- Enable public access to the information contained in notice filings
- Set and collect fees in a transparent and consultative manner to recover the costs for the Registry development, deployment and ongoing support to regulated persons
- Support stakeholders with training and resources to enable effective and efficient use of the Registry



# Registry Launch and Training

- The Excess Soil Registry is due to Launch on **December 1<sup>st</sup>, 2021**
- **Webinars** will provide live demos of the Registry lead by RPRA Registry Support and PwC, the technology vendor for the Registry project:
  1. Introduction: a brief overview of the Registry, account creation, program enrolment and the program dashboard. This session will also include a demonstration of the Public Registry. **November 25, 2021**
  2. Project area: a live walkthrough of an initial project area filing, payment and submission of a final notice. **November 30, 2021**
  3. Reuse site: a live walkthrough of an initial reuse site filing, payment and submission of a final notice. **December 2, 2021**
- **Training materials** including step-by-step instruction documents, FAQs and videos for each notice type will be available on RPRA's website
- **1 on 1 support** for questions related to use of the Registry, including completion of notices. Contact RPRA Registry Support at [Registry@rp.ra.ca](mailto:Registry@rp.ra.ca) or 647-496-0530 or toll-free 1-833-600-0530

For more information and to register for the webinars above, visit: <https://rp.ra.ca/excess-soil-Registry/>

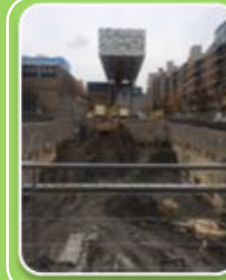
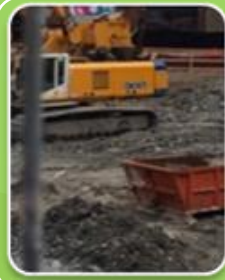
If you have not been receiving updates from RPRA, you can email [excesssoilRegistry@rp.ra.ca](mailto:excesssoilRegistry@rp.ra.ca) to be added to the mailing list.

# Landfill Restrictions - January 1, 2025

## Limited Restriction on Landfilling of Excess Soil to Avoid Unnecessary Use of Landfill Capacity

- Restriction on landfilling of soil that meets acceptable standards and can be reused (i.e. if the soil meets Table 2.1 for residential, parkland or institutional use)
- Will not affect use for daily or final cover or other beneficial uses for landfill operational needs

# Best Practices



# Best Practices

## Early Planning and Onsite/Local Reuse

- **Maximize the onsite reuse of excess soils or crushed rock** at the project area through use of innovative design (e.g., berms, new paths or roads) to reduce the regulatory rules while achieving a number of economic and environmental benefits e.g., reduced hauling and reuse/disposal needs
- Reusing excavated soil or crushed rock within the project area also limits the need to import excess soil from other project areas
- If onsite reuse is limited, **seek local reuse opportunities** through liaison with your soil community and by checking out the new online registry once launched, reuses **between local infrastructure projects** are also promoted within the regulation
- **Early planning at the design stage of the project** (e.g., integrate soil reuse into project design, sub-division or site planning, or site alteration permits) to maximize reuse potential
  - Large scale planning initiatives, like district or secondary plans, should be able to plan for a **balance of cut and fill and soil reuse** across the planning area
- Under the oversight of a QP, develop an **excess soil management plan** for your project to lay out the key roles, responsibilities and details for delivery of your project, see BMP on excess soil management plans (slide 35)

# Best Practices - Continued

## Contracts

- Establish **clear and concise contractual arrangements** for any tasks that will be delivered by other parties

## Project Area

- Clearly **define your project area**, ensure your project area includes the areas used for storage, processing, loading and potential reuse onsite

## Soil Sampling and Tracking

- Sampling requirements are in place for larger and riskier project areas; however, all sites are recommended to **consider hiring a QP to undertake sampling of your soil**, particularly if the soil is going to a reuse site; assessing past and current uses may be sufficient in lower risk sites
- Maximize efficiencies of tracking systems in all aspects of soil management, significant cost to be harnessed through **utilization of live real time platforms** which can be used to meet hauling record and tracking system requirements of the regulation, to monitor and make improvements in operational efficiencies and provides immediate notification of activities and any issues that may arise

# Best Practices - Continued

## Interacting with Reuse Site Operators and Soil Haulers

- For the regulation to be efficiently implemented, information sharing between some parties is necessary. Some examples include:
  - With reuse sites, sharing excess soil assessment information to help confirm that they are willing to accept excess soil from a particular project, written confirmation from reuse sites confirming that they agree to take excess soil from that project area, and coordination of tracking procedures to confirm receipt of excess soil
  - Information provided to haulers transporting excess soil by the project leaders, that confirms where the excess soil is to be deposited, contact information and contingency sites if that deposit site is not available

# Best Practices - Continued

## Excess Soil Management Plan

- The project leader of a project generating excess soil should consider retaining a QP to develop an excess soil management plan to integrate all regulatory requirements, and to ensure soil is properly managed and tracked.
- These items should be included in the excess soil management plan:
  - All reports completed related to the excess soil management activities: assessment of past uses report (or phase one ESA), sampling and analysis plan, excess soil characterization
  - A site plan that identifies all areas to be excavated, with the estimated volume and soil type and quality of each area, as well as areas for reuse, storage and processing
  - Procedures for on-site excavated soil or crushed rock management, including any intended on-site processing and segregation of excavated soil or crushed rock of various qualities
  - The estimated volume of excess soil to be taken off-site from the project area
  - A list of potential receiving sites for various soil qualities, including an excess soil destination assessment report, if completed
  - Procedures for tracking of excess soil to reuse sites or other destinations
  - Record keeping procedures
  - Identification of relevant site-specific instruments or regulatory requirements that may apply to the project area and soil-related activities, such as the intent to file a record of site condition
  - Requirements and procedures respecting cultural heritage and natural heritage assessments and associated soil management considerations

# Frequently Asked Questions and Answers



# Frequently Asked Questions and Answers

## 1. What is out of scope of the Regulation?

There are certain circumstances and materials for which the regulation does not apply, and for which other regulatory regimes may apply, including:

- Reuse of rock unless mixed with excavated soil
- Excavated soil or crushed rock that meets the definition of hazardous waste
- Asbestos waste
- The operation of a pit or quarry from which aggregate as defined in the *Aggregate Resources Act* is excavated (including the use of material from these operations and use or production of recycled aggregate at these sites), except the deposit and final placement of excess soil at a pit or quarry for reuse at the pit or quarry, including for the purpose of rehabilitation
- The excavation of topsoil based on a permit under the *Aggregate Resources Act*
- Peat production from a peat excavation operation
- The final placement of excess soil on the bed of surface water body

# Frequently Asked Questions and Answers

## 2. What constitutes maintenance in a fit state of repair for an infrastructure project?

- Maintaining infrastructure in a fit state of repair is an exemption from the excess soil planning requirements under Schedule 2 to the regulation; this exemption does not, however, apply to excess soil excavated from a stormwater management pond for the purpose of maintaining the facility
- In general, maintaining in a fit state of repair would include cleaning out infrastructure, repairing infrastructure or replacing existing infrastructure with similar infrastructure; it would not result in increased capacity or a different alignment
- In scope examples may include culvert replacement, roadbed repair or pipe replacement, including temporary infrastructure that is part of the maintenance process, such as a by-pass pipe or a minor road diversion or replacing a pipe by laying a new parallel pipe to allow the old one to stay in service until the new one is finished
- Out of scope examples include new construction such as building a road, or a transit right of way, digging a tunnel for a new subway or digging a new sewage/watermain, tunnel, re-aligning (vertically or horizontally), twinning, or adding capacity or widening of a pipe or road

# Frequently Asked Questions and Answers

## 3. Can sampling take place offsite from the project area?

- In general, the regulation requires sampling to take place at the project area, before excess soil is moved offsite
- However, it is recognized that sometimes it is not practical or feasible to sample at the project area, as such the regulation provides flexibility for sampling to occur “promptly” upon arrival at a temporary site (either a class 2 soil management site or a local waste transfer facility are permitted)
- The requirements on who must conduct this sampling is the same regardless of where the sampling takes place, this must be undertaken by or under the supervisions of a QP

# Frequently Asked Questions and Answers

## 4. What is considered a beneficial purpose for reuse of excess soil?

- In order to avoid the waste designation when excess soil is being reused, there must be a beneficial purpose for the excess soil at the reuse site
- Generally, a beneficial purpose for the reuse of excess soil is use of excess soil in an undertaking that requires additional soil in order to complete that undertaking
- The regulation gives a list of potential beneficial purposes, including backfill or raising the grade for a planned development, but it is not an exhaustive list and other beneficial purposes can be identified
- Often a site-specific instrument would relate to the beneficial purpose, giving permission for soil management for a specified undertaking or including plans that would require excess soil for the project at the reuse site to be achieved
- Simple disposal or stockpiling of excess soil is not a beneficial reuse

# Frequently Asked Questions and Answers

## 5. What requirements apply to smaller source sites?

- The criteria specified in section 3 of the regulation for reuse of excess soil that is not designated a waste, applies to all excess soil from a project, regardless of the amount of excess soil leaving a project area.
- The excess soil reuse quality standards apply to that excess soil, and if there is any concern that the excess soil may contain contaminants, then some sampling and analysis may be required.
- Excess soil reuse planning requirements (such as filing a notice and mandatory sampling and analysis), would often not apply to sites removing less than 2000 m<sup>3</sup> of excess soil from the project area. However, these planning requirements may apply to smaller projects if the excess soil is from an enhanced investigation site, like an industrial location or gas station, or another site that is a soil remediation project.

# Frequently Asked Questions and Answers

## 6. What are the excess soil restrictions for landfills?

- Excess soil that is suitable for reuse should be viewed as a resource and not disposed of as a waste.
- The regulation restricts cleaner quality excess soil from filling up valuable landfill space, as of January 1, 2025.
- More specifically, excess soil may not be deposited at a landfill or dump if that excess soil meets Table 2.1 (full depth potable) of the generic excess soil quality standards for residential, parkland or institutional uses.
- However, it is recognized that excess soil that meets this level of quality may be required by a landfill for daily or final cover, or for other beneficial uses to support their operational needs, which will continue to be permitted.

# Additional Resources

# Excess Soil Webinar Series - Schedule

Topic Areas	Date and Time
1. Project Area - Source Sites	Wed October 27 <sup>th</sup> , 2021 9:00am to 11:00am
2. Reuse Sites	Fri October 29 <sup>th</sup> , 2021 9:00am to 11:00am
3. Transportation of Excess Soil (Dry and Liquid)	Wed November 3 <sup>rd</sup> , 2021 9:00am to 11:00am
4. Infrastructure Projects	Fri November 5 <sup>th</sup> , 2021 9:00am to 11:00am
5. Excess Soil Registry - Regulatory Requirements	Fri November 12 <sup>th</sup> , 2021 9:00am to 11:00am
6. Vac Trucks and Liquid Soil Management	Fri November 19 <sup>th</sup> , 2021 9:00am to 11:00am
7. Qualified Persons (QP) and Excess Soil Planning	Wed November 24 <sup>th</sup> , 2021 9:00am to 11:00am
8. Soil Depots and Storage Sites	Fri November 26 <sup>th</sup> , 2021 9:00am to 11:00am



# Additional Resources

For additional information, including a variety of guidance and tools developed by internal and external partners:

- Ontario Government Excess Soil Page: [ontario.ca/page/handling-excess-soil](https://ontario.ca/page/handling-excess-soil)
- Ontario Provincial Standard Specification (OPSS) 180 - General Specification for the Management of Excess Materials: currently being updated by MTO
- RPRA's Excess Soil Registry: [rpra.ca/excess-soil-Registry](https://rpra.ca/excess-soil-Registry)
- Ontario Environmental 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>
- Ontario Society of Professional Engineers (OSPE) - Best Practices for Aggregate Pit and Quarry Rehabilitation: <https://ospe.on.ca/excess-soil-reports/>
- Canadian Urban Institutes (CUI) - Excess Soil By-Law Language Tool: <https://canurb.org/initiatives/excess-soil-by-law-tool/>
- OSSGA document on Excess Soil Best Management Practices for Pits/Quarries [https://www.ossga.com/rehabilitation\\_and\\_excess\\_soil/](https://www.ossga.com/rehabilitation_and_excess_soil/)

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# **Open Discussion, Additional Question and Answer Period**

# Appendix

# Schedule 2

## NON-APPLICATION OF SECTION 8 OF THE REGULATION

1. All of the following circumstances apply:

- 1. After making reasonable efforts to take into consideration any past reports about past uses and activities respecting the project area, the project leader is of the opinion that the project area is not and has never been, in whole or in part, an enhanced investigation project area.
- 2. The primary purpose of the project is not remediating contaminated land.
- 3. In the case of a project area, any part of which is located in an area of settlement within the meaning of the *Planning Act*, the amount of soil to be removed from the project area is less than 2,000 m<sup>3</sup>.

2. Both of the following circumstances apply:

- 1. The amount of soil to be removed from the project area is less than 100 m<sup>3</sup>.
- 2. The excess soil is directly transported to a waste disposal site that is not a Class 2 soil management site.

3. The reason for excavating the soil that will become excess soil is one of the following:

- 1. Danger to the health or safety of any person.
- 2. Impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it.
- 3. Injury or damage or serious risk of injury or damage to any property or to any plant or animal life.
- 4. The duty imposed by subSection 93 (1) of the Act.
- 5. An order made by any authority with jurisdiction to make the order.
- 6. Maintaining infrastructure in a fit state of repair, except if the excavation of soil is from a stormwater management pond for the purpose of maintaining the facility in a fit state of repair.

4. All of the following circumstances apply:

- 1. The excavated soil is topsoil.
- 2. The topsoil is transported directly to a reuse site from the project area for use as topsoil at the reuse site.
- 3. After making reasonable efforts to take into consideration any past reports about past uses and activities respecting the project area from which the excavated soil was transported, the project leader is of the opinion that the project area is not and has never been, in whole or in part, an enhanced investigation project area.
- 4. The primary purpose of the project from which the excavated soil was transported was not remediating contaminated land.

5. REVOKED: O. Reg. 775/20, s. 18 (2).

6. Both of the following circumstances apply:

- 1. The excess soil is excavated as part of an undertaking related to infrastructure.
- 2. The project leader for the undertaking related to infrastructure intends, after removing the excess soil from the project area, to finally place it at a reuse site that is owned by the project leader or a public body and that is part of another undertaking related to infrastructure.

7. Both of the following circumstances apply:

- 1. The soil is being deposited at a local waste transfer facility.
- 2. The amount of soil to be deposited at the local waste transfer facility is 100 m<sup>3</sup> or less.