

Attachment 1. Excess Soil Regulatory Proposal and Amendments to Record of Site Condition (Brownfields) Regulation

Environmental Registry of Ontario, ERO Number 013-5000

Ministry of the Environment, Conservation and Parks

Comments and Responses

Niagara Region, Public Works Department

Transportation Services, Waste Management, and Water/Wastewater Divisions

Document	Section	Sub-Section	Comment	Response
Proposed On-Site and Excess Soil Management Regulation	Interpretation and Application	1. (1) In this Regulation,	"soil" means unconsolidated naturally occurring mineral particles and other naturally occurring materials resulting from the natural breakdown of rock or organic matter by physical, chemical or biological processes that are smaller than 2 millimetres in size or that pass the US #10 sieve;	By this definition no particles greater than 2 mm (i.e., course sand) will constitute as being soil. This definition does not appear to include any percentage of gravel or cobble within the excavated material. Possibly amend the definition to state that the matrix of the excavated material will be no greater than 2 mm, and so will allow for random larger sizes to be present in the soil, as is the case for glacial till that is present over a wide geographical area within the Province.
Proposed On-Site and Excess Soil Management Regulation	Excess Soil - Obligations and Prohibitions	Before depositing specified excess soil, landfilling site or dump 11. (1)	No person shall deposit, or cause, permit or arrange for the deposit of excess soil described in subsection (2) at a landfilling site or dump unless the excess soil will be used as daily cover.	The defined permitted use of "daily cover" is too restrictive. Niagara Region does not use soil as daily cover (the meaning of which is to cover the waste at the end of the working day, and to remove the cover at the beginning of the following day prior to depositing waste). Niagara Region and other municipalities use removable tarps or woodchips or other approved Alternate Daily Covers as daily cover, as this preserves more landfill capacity for waste deposit and ensures that a proper hydraulic connection is maintained between layers of waste. The phrase "daily cover" should be amended to be "daily cover, interim cover and/or final cap" so that other beneficial uses for the soil can be permitted.
Proposed On-Site and Excess Soil Management Regulation	Excess Soil - Obligations and Prohibitions	Before depositing specified excess soil, landfilling site or dump 11. (2)	The excess soil mentioned in subsection (1) is excess soil that is reusable on sensitive sites and that meets the soil quality requirements set out in the Soil Rules for the purposes of this subsection.	Makes little sense to use clean soil that could be re-used in sensitive areas as daily cover over waste. If anything, that soil could be used for final landfill capping purposes. Contaminated soil could be used as daily cover since it will become impacted by waste anyway by removing it the next day prior to placing the next layer of waste.
Proposed Rules for On-Site and Excess Soil Management	Part IV Reuse of Excess Soil and Application of the Standards for Reuse of Excess Soil at Reuse Sites	7) iii. Local Background Concentrations	1. An excess soil standard may be deemed to be met if the following criteria are met: 1. A qualified person has demonstrated that the excess soil contains a parameter that is naturally occurring at the reuse site and that does not exceed the naturally occurring range of concentrations typically found within the area of the reuse site; and 2. Documented evidence of the naturally occurring parameter concentrations is provided to the reuse site owner and retained by the reuse site owner and qualified person.	Will a data clearinghouse of geographical locations/reuse sites that have a local background greater than Table 1 be developed so that any Qualified Person can search the database for areas of naturally elevated background. It would be cost and time inefficient to "keep re-inventing the wheel" for multiple QP's to prove local background for each project over multiple time periods for the same geographical area.

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Proposal Summary	Purpose of the regulations	Excess soil	The proposal would clarify that a project leader is responsible for managing and relocating excess soil generated by the project. Relocation of soil would be based on the level of contaminants in the soil using flexible risk-based reuse standards.	While the project leader is mentioned a number of times, it does not define which involved party it is; client, contractor, sub-contractor, receiving site, etc.
Proposal Summary	Other information	Excess soil	The development of a new excess soil regulation supported by amendments to existing regulations including O. Reg. 347 and O. Reg. 153/04 made under the Environmental Protection Act supports key changes to excess soil management. Changes include: <ul style="list-style-type: none"> clarifying that excess soil is not a waste if appropriately and directly reused development of flexible, risk-based reuse excess soil standards and soil 	While flexible standards are discussed, it is not apparent of who decides upon the flexibility. Would it be better to have a definitive set of criteria/rules or a process flow-chart to standardize the process?
Proposal Summary	Other information	Proposed On-Site and Excess Soil Management	The proposed regulation would set rules related to the relocation and reuse of excess soil. Excess soil leaving a project area would not be designated waste provided: <ol style="list-style-type: none"> The quality and quantity of excess soil relocated is appropriate for the intended use based on referenced rules or other instruments The excess soil is being directly transported to a reuse site for final placement The operator of the reuse site has consented in writing to the deposit of the excess soil; and The excess soil is dry and remains dry until it is finally placed 	The term "dry soil" is used but it is not defined. Will specifications be provided for the classification of the various soil types?
Proposal Summary	Not applicable	Not applicable	Not applicable	Niagara Region agrees with the necessity of the proposed changes but state that a well-defined, easy to understand set of criteria/rules would benefit the public and private sectors and allow for a consistent approach.
Proposal Summary	Not applicable	Not applicable	Not applicable	Niagara Region would like to see the roles and responsibilities of the various titles mentioned such as "Qualified Person" and elaboration as to whether persons are required at both the excavation and receiving ends. Any clarification as to the need to be a Professional Engineering (P.Eng.) should be stated; if required, this may substantially increase costs.
Proposal Summary	Not applicable	Not applicable	Not applicable	On the receiving end, who is responsible? Is the Owner responsible to retain a "Qualified Person" if requested?

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Proposal Summary	Not applicable	Not applicable	Not applicable	Quarries need the ability to use excess soil that meets multiple tables for remediation. Currently most quarries can only accept excess soil that does not exceed Table 1. If it was better defined in the quarry license/ECA that soil meeting multiple tables could be accepted this would provide producers of excess soil more choices when looking for a suitable receiving site.

Last revised on June 12, 2019.