

Comments on the proposed Excess Soil Regulations ERO 013-5000
From Ontario Soil regulation Task Force OSRTF info@osrtf.ca
2019-06-17

Interpretation section:

1. (1) In this Regulation,

“excess soil” means soil that has been excavated as part of a project and removed from the project area for the project;

“reuse site” means a site at which excess soil is used for a beneficial purpose and does not include a waste disposal site;

“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;

Non-application of Regulation

(2) This Regulation does not apply to aggregate, within the meaning of section 1 of the Aggregate Resources Act, to which that Act applies.

Comment [cm1]: The word “undertaking” is not technically defined. Although we already had a discussion with MECP legal on this point, we wish to reiterate that it may be necessary to define it, just as you have defined “project area”. Undertaking should include all the land that received the imported soil. We would also ask the MECP to consider any implications of not defining “reuse site”. There are also concerns with not clearly defining “project” and “project area” to only include the source site for excess soil.

Comment [ISM2]: Proposed definition: “excess soil” means material, other than demolition waste, that has been excavated as part of a project and removed from the project area for the project.

Comment [ISM3]: The definition must still hold after going through soil processing and at the reuse site.

Comment [ISM4]: So sites with no beneficial use are waste sites.

Comment [ISM5]: Definition is too limiting excluding rock, organic material, contaminated aggregate, etc.

Comment [ISM6]: Problematic - Definition of aggregate in ARA includes “sand, clay, earth”. Perhaps the non-application should be for material removed under the ...

EXCESS SOIL — DESIGNATION AS WASTE

Designation as waste

3.

(1) Excess soil is designated as waste, except if all of the following conditions are satisfied:

...

(2) If, at any time, the conditions mentioned in subsection (1) cease to be satisfied in respect of excess soil, the excess soil is designated as a waste and continues to be so designated until one of the following events:

1. The conditions mentioned in subsection (1) have been satisfied again.
2. In a case where a provincial officer has issued an order mentioned in subsection (3) in respect of the excess soil, the order has been complied with.
3. Subject to subsection (5), the fifth anniversary of the day on which the undertaking for which the excess soil is used at the reuse site is completed.

Comment [cm7]: We wonder if it is necessary to include language in this section that any actions by the MECP will not prohibit or hinder or lessen any actions taken by any other regulating authority (eg. Municipality) having jurisdiction. For example, even if the MECP has issued orders and given time to comply with orders, that does not prevent a municipality from charging and convicting a proponent under their by-laws.

Comment [cm8]: Page 7 of the document: There can be instances where the undertaking is completed at an aerodrome site for example. As long as they can land planes, they may say the undertaking is completed, however, the soil still does not meet the quality requirements of the municipality. This is a finicky point, however, we have seen proponents finding those finicky points and using them to defend non-compliance actions. Perhaps this is addressed well enough through paragraph 6 of Section 3. We can see this being more problematic for farmland situations. The "undertaking" could be to elevate the farmland. The proponent could say that the "undertaking" is complete. However, the quality of soil could still be in non-compliance with Section 4. of the Reg. We feel this could be a loophole to get around the waste designation depending on how quickly the MECP acts. The proponent would just have to truck in a bunch [...]

TABLE

Item	Column 1 Manner in which instrument addresses excess soil quality	Column 2 Conditions respecting excess soil quality
1.	Instrument does not deal with excess soil quality.	The condition set out in paragraph 1 of subsection 5 (1) must be satisfied.
2.	Instrument deals with excess soil quality and imposes a requirement that is equivalent to or more stringent than the applicable excess soil quality standard as determined in accordance with the Soil Rules.	The condition set out in paragraph 1 of subsection 5 (1) must be satisfied.
3.	Instrument deals with excess soil quality and imposes a less stringent requirement than the applicable excess soil quality standard as determined in accordance with the Soil Rules.	The requirement set out in the instrument respecting excess soil quality must be satisfied.

Comment [cm9]: Re: column 2 Item 2. It is understood here that even if the municipality chooses more restrictive soil quality standards, that the soil will not be considered a waste by the MECP as long as it meets the MECP standards contained in the soil rules. We can understand this stance, as long as the MECP is confident that it has done all the work necessary to put forth the soil quality standards it has considering all the science that exists and considering the precautionary principle regarding the science that ...

Comment [cm10]: Item 2 of column 2 indicates that paragraph 1 of 5(1) must be satisfied. In ii) of Paragraph 1, subsection (2) which then links to subsection (3) that indicated Bratt shall be used by the QP to come up with the soil quality standards. However, a look at the Soil Rules (Part IV 1. 10) iv. indicates that ...

Comment [ISM11]: Re: Item 3. The Soil Rules should be respected in all cases. Other instruments should not be allowed to pollute the environment.

Comment [cm12]: We would like to put forth how we see this section addressing illegal dumping of soil, whether it meets municipal soil quality criteria or not. Because most municipal by-laws indicate that **no amount of soil** can be deposited without a permit, if soil were to be deposited without a permit, (i.e.no ...

TABLE

Item	Column 1 Manner in which instrument addresses excess soil quantity	Column 2 Conditions respecting excess soil quantity
1.	Instrument does not specify a maximum amount of excess soil that may be deposited and does not identify the beneficial purpose for which the excess soil is to be used.	The quantity of excess soil to be deposited at the reuse site must not exceed the quantity necessary for the purposes of the apparent beneficial purpose for which the excess soil is to be used, as determined by examining the circumstances in which the instrument was obtained, the type of undertaking for which the excess soil is to be used and any other relevant circumstances.
2.	Instrument does not specify a maximum amount of excess soil that may be deposited but does identify the beneficial purpose for which the excess soil is to be used.	The quantity of excess soil to be deposited at the reuse site must not exceed the quantity necessary for the beneficial purpose identified.
3.	Instrument specifies the maximum amount of excess soil that may be deposited.	The maximum amount of excess soil specified in the instrument must not be exceeded.

Exemption from designation, if reuse site not governed by instrument

5.

(1) For the purposes of paragraph 5 of subsection 3 (1), the following conditions must be satisfied:

1. The quality of the excess soil that is intended to be finally placed at the reuse site must not exceed,

i. the applicable excess soil quality standards as determined in accordance with the Soil Rules, or

ii. the site-specific excess soil quality standards developed for the reuse site as described in subsection (2).

2. The primary use of the reuse site must not be the deposit of excess soil.

3. There must be an identified beneficial purpose in connection with the undertaking for which the excess soil is to be used at the reuse site, such as,

Comment [ISM13]: Good! But this means that the big commercial fill sites without a beneficial use are waste sites.

Comment [cm14]: "Identified" how, by whom?

6. (2) For the purposes of subparagraph 1 ii of subsection (1), the operator of a reuse site shall retain a qualified person to develop and apply site-specific excess soil quality standards for the reuse site.

(3) A qualified person retained as described in subsection (2) shall use the Beneficial Reuse Assessment Tool to develop and apply site-specific excess soil quality standards in accordance with the Soil Rules and shall complete a declaration attesting to the accuracy of the information and the assumptions provided as inputs for the Beneficial Reuse Assessment Tool.

Non-application of sections

6.

The requirements of sections 7 and 10 do not apply to a project leader in respect of a project and its project area if one of the sets of circumstances described in Schedule 1 applies.

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

Before removing soil from project area

7.

(1) The project leader for a project shall ensure that, before removing from the project area soil that will become excess soil once removed, the requirements set out in this section are complied with in respect of the project and the project area.

(2) Subject to subsection (3), the project leader shall ensure that a qualified person prepares or oversees the preparation of the following documents, in accordance with the Soil Rules, in respect of the project and the project area:

1. Subject to subsection (4), an assessment of past uses of the project area.
2. A sampling and analysis plan, if any of the following circumstances apply:

...

Comment [cm15]: We assume MECP will be responsible to ascertain if Bratt was used properly in this instance as this requirement is for situations where no instrument, such as a municipal by-law, exist.

Comment [cm16]: Item 4 – 4 in Schedule 1 indicates “1. The primary purpose of the project is not remediating contaminated land.”
If digging a foundation for a building, the primary purpose of the project may be to do just that. However, if all or part of the soil is contaminated, this may not be captured appropriately if the primary purpose is really to dig the foundation. Getting rid of the soil was going to happen anyway. Please consider if Item 1 above adequately addresses the intention.

Comment [ISM17]: After excavation how is this soil handled? Different from the other items in Schedule 1, it is possible to be contaminated.

(3) Subsection (2) does not apply to a project leader in respect of a project and project area if the project does not involve the remediation of contaminated land and one of the following circumstances applies:

...

1. All of the project area from which soil is to be removed is an agricultural use.
2. All of the project area from which soil is to be removed is a parkland use, residential use or institutional use, or any combination of these three types of use, and the soil to be removed from the project area will be not be transported for final placement at a reuse site that is an agricultural use.

(8) The project leader shall ensure that a notice is filed in the Registry setting out the following information:

14. A declaration by the project leader, stating the following:

.....

Updates to information in registry

10. (2)

1. The amount of soil removed from the project area during the project that was deposited at each of the following:

Transportation

12.

(4) A person who is transporting excess soil shall ensure that a record setting out the following information is available at all times during the transportation:

Comment [cm18]: We feel this terms should be defined, especially the term "contaminated land".

Comment [ISM19]: There should still be an assessment of past and current uses. Think of parks built over old dumps and fields contaminated by fertilizer, pesticides and salt from irrigation.

Comment [cm20]: We trust it is clear that the Notice must be filed to the registry BEFORE removing any soil from the project area. We also assume there will be a template for people to follow here. The registry should be searchable by source site or receiving site address. We still believe that the completed soil characterization reports should be included, perhaps in a separate MECP accessible section only if privacy is a concern. MECP should have easy to these results in anticipation of any future issues.

Comment [ISM21]: The owner of the land should responsible.

Comment [ISM22]: "at each individual site in the following categories"

Comment [ISM23]: Include an indication of the soil quality and the Registry number.

Operation of reuse site

13. (1) This section applies to the operator of a reuse site at which at least 10,000 cubic metres of excess soil is expected to be delivered for final placement in respect of an undertaking.

(3) 1. ii. ... centroid of [the [reuse site?]] measured...

Excavated soil processed at project area, designation as waste

15. (3) If excavated soil is processed at the project area at which it was excavated by one of the following methods, it is not designated as waste:

Records retention

21. (1) A project leader and an operator of a temporary soil storage site, a soil bank storage site, a soil processing site, a landfilling site, a dump or a reuse site shall retain every document and record that the person created or acquired under this Regulation for a period of at least seven years after the date that the document or record is created or acquired, as the case may be.

(3) A person transporting excess soil shall retain a record required under section 12 in respect of excess soil for a period of at least two years after the date that the record was created.

Comment [cm24]: We fully support the addition of this new section to the proposal. We would also recommend that a copy of any permit issued or letter from the regulating authority that a permit has been issued is included in this section, if relevant. This way, if members of the public notice activity, they can search by municipal address and see that there is a permit in place or notify the appropriate authorities if they suspect illegal dumping activity.

Comment [ISM25]: Typo

Comment [ISM26]: Fully aware that many contaminants are not removed by these processes.

Comment [ISM27]: Just to be clear add "if the soil remains at the project area"

Comment [cm28]: We assume that because the reuse site and the source site will be given copies of the hauling records, that that is the reason why the haulers only have to retain the records for 2 years. As long as there is a requirement on the source and receiving site to retain the copies for 7 years, would support this item. Please be aware, that some of the problematic sites that still lie contaminated and unused and in litigation are going on year 10. The Earthworx site in Scugog is one of those sites.