



*Excess Soil Regulation and Brownfields Amendments*



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## Excess Soil Regulation and Brownfields Amendments

SMART Remediation  
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Ontario 

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## Presentation Overview

- Provide an overview of the various elements of the excess soil regulation, including key dates when rules apply
- Discuss implementation moving forward
- Provide an opportunity for questions and discussion



[Inside Hamilton, May 2020](#)

**CAUTION:** This slide deck provides an overview of the regulatory amendments related to the management and reuse of excess soil. The descriptions of the regulatory changes in the slide deck are for convenience only and should not substitute for reading the latest versions of the regulations when determining how to comply with the regulatory requirements related to excess soil.

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## Final Regulatory Package

- MECP has completed extensive consultation on the excess soil regulation and associated consequential amendments, including 3 regulatory proposal notices. For the most recent 47-day consultation period (May 1-June 17, 2019), a total of 120 submissions were received and considered in the development of the final regulation.
- Products finalized (available on the Environmental Registry, ministry website, and/or e-laws):
  1. New regulation under the Environmental Protection Act (EPA) titled "On-Site and Excess Soil Management" O. Reg. 406/19
  2. Amendments to the Brownfields regulation (Records of Site Condition) under the EPA, O. Reg. 153/04
  3. Technical items adopted by reference in excess soil regulation:
    - I. "Rules for Soil Management and Excess Soil Quality Standards"
    - II. "Beneficial Reuse Assessment Tool" (BRAT)
  4. Consequential Amendments to the Waste regulation (General - Waste Management) under the EPA, Reg. 347
  5. Consequential Amendments to the Regulation on the Registration for Waste Management Systems under the EPA, O. Reg. 351/12

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## What Does this Package Do?

1. Provides **clear rules for beneficial reuse**
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
7. Addresses unnecessary barriers to brownfields redevelopment

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## Clear Excess Soil Reuse Rules - July 1, 2020

### Excess Soil Regulation:

- Excess soil may be reused, and is not considered waste, if:
  - If it is being beneficially reused, not stock-piled
  - Soil is dry and the quality and quantity of the soil align with that necessary for the beneficial reuse
  - The reuse site has consented in writing to take the soil (not illegally dumped)

### Soil Rules:

- Rules related to soil management and appropriate quality are in a document adopted by reference called *Rules for Soil Management and Excess Soil Quality Standards*
  - Generic risk-based standards**
    - 2 volumes - small are up to 350m<sup>3</sup> (same as O. Reg. 153/04) and infinite volumes are 350m<sup>3</sup> +
    - Based on land use category, similar to Brownfields (O. Reg. 153/04)
  - Site specific standards**
    - Recognition of standards specifying quality and/or quantity in a site specific instrument (e.g. municipal fill by-law, Aggregate Resource Act licence)
    - Allows site specific standards to be developed by a QP using the new Beneficial Reuse Assessment Tool, in some cases an instrument is required
    - Risk Assessments are still permitted with use of a QP and instrument
- More details are provided in the Soil Rules for additional clarity and flexibility
  - Standards that apply in specific circumstances or with specific limitations or requirements (e.g., set backs from water bodies)
  - Rules related to specific types of soil (e.g., soil with salt, soil mixed with compost)

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## Generic Excess Soil Quality Reuse Standards - July 1, 2020

Table Description	Small Volume O. Reg. 153/04 (up to 350 m <sup>3</sup> )	Volume Independent (350 m <sup>3</sup> +)
Full Depth, Background	Table 1	Table 1
Full Depth, Potable	Table 2	Table 2.1
Full Depth, Non-Potable	Table 3	Table 3.1
Stratified, Potable	Table 4	Table 4.1
Stratified, Non-Potable	Table 5	Table 5.1
Full Depth, Shallow Soil, Potable	Table 6	Table 6.1
Full Depth, Shallow Soil, Non-Potable	Table 7	Table 7.1
Full Depth, Within 30 m of a Water Body, Potable	Table 8	Table 8.1
Full Depth, Within 30 m of a Water body, Non-Potable	Table 9	Table 9.1

(Rules for Soil Management and Excess Soil Quality Standards and Rationale Document for Development of Excess Soil Quality Standards, MECP November 2019)

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## Screening Matrix of Key Site Conditions to Select Standards - July 1, 2020

Table	Table 1	Table 2/2.1	Table 3/3.1	Table 4/4.1	Table 5/5.1	Table 6/6.1	Table 7/7.1	Table 8/8.1	Table 9/9.1
<b>Site Condition</b>									
Property is an Environmentally Sensitive Area.	✓	x	x	x	x	x	x	x	x
Groundwater use condition is potable.	✓	✓	x	✓	x	✓	x	✓	x
Land Use is Agricultural or Other.	✓	✓	x	x	x	✓	x	✓	x
Overburden thickness is unknown or is less than 2 m.	✓	x	x	x	x	✓	✓	x	x
Depth to groundwater is unknown, is less than 3 m below ground surface or the capillary fringe is <0.8 m from the base of the gravel crush of any existing/future building foundation*.	✓	x	x	x	x	✓	✓	x	x
Nearest water body is unknown or less than 30 m from the property.	✓	x	x	x	x	x	x	✓	✓
Excess soil may be placed at any depth.	✓	✓	✓	x**	x**	✓	✓	✓	✓
Stratified site conditions must be maintained to ensure that surface soil and subsurface soil meets the applicable stratified condition standards.	✓	x	x	✓	✓	x	x	x	x

(Rules for Soil Management and Excess Soil Quality Standards and Rationale Document for Development of Excess Soil Quality Standards, MECP November 2019)

Notes: x This table may not be appropriate. ✓ This table may be acceptable, see Section 5.1 for other considerations.

\* This site condition is applied to volatile chemicals only. \*\* Standards for subsurface soil in Tables 4/4.1 & 5/5.1 must be applied only for soil placed at 1.5 m below ground surface or deeper.

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## Exemption of Low-Risk Activities from Waste Approvals - July 1, 2020

### Excess Soil Regulation and Soil Rules:

- Regulation and Soil Rules document specifies certain regulatory rules, that if satisfied, would not require an approval (e.g. Environmental Compliance Approval)
- The following activities are exempt from approvals (subject to certain rules):
  - Hauling of excess soil (dry or liquid)
    - Rules generally relate to containment and safety during transportation, and the requirement for haulers to provide information on soil they are transporting, if stopped and asked
  - Low-risk on-site processing
    - Including passive dewatering, some mixing of soils, sorting of soil and debris, mixing additives for solidification for transportation
    - Rules help to prevent adverse effects and retain confidence in processed material
  - Temporary soil storage sites (Class 2 Sites)
    - Can be used to store up to 10,000 m<sup>3</sup>; some low-risk processing of dry soil is permitted
    - Rules help to ensure stored soil is ultimately reused, appropriately, and there are no adverse effects
  - Local waste transfer facilities can be used to do the same low-risk dry soil processing activities as Class 2 sites, as well as some low-risk liquid soil processing activities (e.g., passive dewatering) by public bodies and infrastructure companies
  - General storage rules which apply to all sites (e.g., set-backs from water bodies, pile size)

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## Improved Reuse Planning to Support Reuse - January 1, 2022

### Excess Soil Regulation and Soil Rules:

- Project leaders of some sites generating excess soil would be subject to certain planning requirements to help ensure soil is reused properly, some activities will require QP oversight
- The trigger for the planning requirements is whether the project leader is required to file a notice in the online, public registry before removing excess soil from the project area
- Generally the requirement to file a notice, which triggers the planning requirements, applies to larger urban sites (settlement areas greater than 2000m<sup>3</sup>) and sites more likely to have past/present activities which could result in contaminated soil (e.g., gas stations, industrial sites)
- Planning requirements include:
  - Complete an Assessment of Past Uses and, 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
  - Complete an Excess Soil Destination Assessment Report to verify that intended reuse sites can accept the soil to be sent to them
  - A qualified person or supervisee of the qualified person undertakes this work
- If the project leader is required to file a notice on the registry, they must 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
- Several exemptions to these requirements are included in the regulation, including in situations where soil is to be reused at a less sensitive site or in certain infrastructure undertakings (i.e., when soil is moving from an infrastructure project to an infrastructure project with the same owner or a site owned by a public body)

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## Key Exemptions - Excess Soil Regulation Planning Rules - January 1, 2022

Certain excess soil movements are **exempt** from the requirement to file a notice on the registry and the associated planning requirements:

- If 100m<sup>3</sup> or less is moved directly to a waste disposal site (but not a Class 2 Soil Management Site)
- Removal of soil due to emergencies e.g., danger to health, safety or damage to any person, property, plant or animal life
- Projects that are related to maintaining infrastructure in a fit state of repair
- Reusable soils from a project that is not/has not been an enhanced investigation project area, the primary purpose of the project is not to remediate contaminated lands and the project is within a settlement area where the amount of excess soil to be removed is 2000m<sup>3</sup> or less
- Topsoil as defined in the *Municipal Act* which is transported directly for reuse as topsoil at a reuse site and is not/has not been an enhanced investigation project area and the primary purpose of the project is not to remediate contaminated lands

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## Large Reuse Sites and Landfill Restrictions - January 1, 2022 and January 1, 2025

### Excess Soil Regulation (January 1, 2022):

#### Greater Assurance that Large Reuse Sites are not Receiving Waste Soil

- 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 every 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

### Soil Rules (January 1, 2025):

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

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

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## Implementation Dates

Regulatory Provisions	Timing
<b>Brownfields</b> <ul style="list-style-type: none"> <li>- Limited additional sampling to delineate contaminants for Risk Assessment sites</li> <li>- Flexibility for elevated parameters in specific circumstances e.g., natural background, salt impacted soil, etc.</li> <li>- Removing the requirement for a RSC for specific low risk redevelopments</li> </ul>	December 4, 2019
<b>Reuse Rules and Waste Clarification</b> <ul style="list-style-type: none"> <li>- Clear reuse rules, excess soil reuse standards and site-specific standards e.g., BRAT</li> <li>- Clear waste designation</li> <li>- Reduced waste approvals for low risk soil management activities</li> </ul>	July 1, 2020
<b>Excess Soil 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, larger reuse site registration</li> </ul>	January 1, 2022
<b>Excess Soil as a Resource Not a Waste</b> <ul style="list-style-type: none"> <li>- Restrict the deposit of clean soil at landfill sites, unless the soil is needed for cover or purposes beneficial to the functioning of the landfill</li> </ul>	January 1, 2025
<b>Grandfathered Contracts</b> <ul style="list-style-type: none"> <li>- For contracts entered into by January 1, 2021 - to allow time for business practices to adapt and to provide necessary supporting guidance and outreach</li> <li>- If this exemption applies, notice does not need to be filed in the registry and associated planning requirements are not triggered until January 1, 2026</li> </ul>	Grandfathering exception expires on January 1, 2026

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## Implementation and Outreach

Implementation and outreach will be undertaken in phases as key regulatory requirements come into effect, and will be undertaken in collaboration with partners.

- MECP website will be updated as materials are developed; may include links to partner sites as well

### January 2020 to Spring 2020

- Outreach to build awareness of brownfields amendments in effect (to QPs, professional associations, municipalities, stakeholder organizations)
- Build early awareness and basic understanding of excess soil regulations; sector-specific materials; integration with contracts is also an early priority

### Before July 2020 in effect date

- Continue to build awareness of reuse rules, aspects of the regulation that would be effective in July 2020
- Start to build more in-depth understanding; e.g., new guidance for the Beneficial Reuse Assessment Tool
- Working with partner organizations to reach various sectors

### July 2020 - January 2022 in effect date, ongoing

- More comprehensive guidance to support reuse planning and tracking requirements (e.g. revised Excess Soil Best Management Practices, templates for soil planning, updated municipal guidance, etc.)
- New online registry completion, testing, availability
- Ongoing program development (e.g., pilot projects)

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## BIG Thank You - To All Who Contributed

### Questions?

#### Key Contacts:

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