Ontario's Excess Soil Management Policy Framework and Related Proposed Excess Soil Reuse Regulation

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SMART Remediation
Toronto, ON | January 25, 2018

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Ministry of the Environment and Climate Change

SMART Remediation
January 25, 2018

Overview

- Delivering Ontario's Excess Soil Management Policy Framework
- Proposed Excess Soil Reuse Regulatory Package
- Potential Changes to Regulatory Package
- Programs
- Next Steps

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Delivering Ontario's Excess Soil Management Policy Framework

- In January 2014, MOECC released ***Management of Excess Soil- A Guide for Best Management Practices*** (BMP).
- At the same time, the ministry agreed to undertake a **review of the need for excess soil management policy**, which was completed in January 2016.
- The review led to the development of the **Excess Soil Management Policy Framework** which was finalized in December 2016.

The Excess Soil Management Policy Framework has **2 overarching goals**:

1. Protect human health and the environment from inappropriate relocation of excess soil
2. Enhance opportunities for the beneficial reuse of excess soil and reduce greenhouse gas emissions associated with the movement of excess soil

MOECC's Excess Soil Management Policy Framework includes **21 key actions**, some are complete, many are underway and a few are longer term.

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Proposed Excess Soil Reuse Regulatory Package

- In April, 2017, the ministry released a regulatory proposal on the Environmental Registry for a 60-day comment period which included:
  - A a **new proposed excess soil reuse regulation**,
  - **Complementary amendments** to existing regulations, and
  - **New proposed standards and sampling guidance**.
- **110 comments** were received on the proposal, and MOECC has supplemented this with over **35 meetings** in the spring through fall of 2017 with interested stakeholders and Indigenous communities.
- MOECC is **currently reviewing the input received** on this regulatory proposal based on written comments and meetings with stakeholders and Indigenous communities, and considering changes to the regulatory proposal.

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Excess Soil Reuse and Waste Approvals

Excess soil may be reused when it is relocated to an **appropriate receiving site** if:

1. The excess soil is deposited at a receiving site and the following criteria are met:

- the excess soil deposited at the receiving site is **in accordance with the Ministry's proposed Reuse of Excess Soil At Receiving Sites**, and
- the excess soil **has been used at the receiving site** (e.g., backfill , final grading, etc.) and
- The receiving site is **not being used solely or primarily for the purpose of depositing excess soil**.

2. The excess soil is deposited at a receiving site **that is governed by a site specific instrument or by-law** e.g., site alteration permit under Municipal Act, a license under the Aggregate Resources Act

3. If the excess soil **originates from an infrastructure project**, the excess soil is **deposited at a project area of an infrastructure project that belongs to the same proponent**

- **Excess Soil Haulers -** to require approval unless going to receiving site or temporary excess soil storage site and **Liquid Soil Haulers**, including vacuum trucks, to require an approval

- **Excess Soil Processing** - on-site passive dewatering of liquid waste, passive aeration and soil turning are examples of on-site processing that would not require approval, soil banks and offsite soil processors would require an approval

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Proposed Excess Soil Management Plans

- This proposed regulation is intended to **clarify the responsibility** for excess soil management of the source site owner to help ensure excess soil is properly relocated.

- An **excess soil management plan would be required** to be prepared for specific projects.

- There would be **2 key triggers** for a source site owner to be required **to prepare a Plan** for a project:

    1) **Quantitative Trigger** - if a certain quantity of excess soil is to be moved off site
    2) **Qualitative Trigger** - if excess soil is coming from an area with a current or known past potentially contaminating activity (i.e. an activity that may have caused contamination, such as fuel storage or industrial processing)

- Some **exemptions** are proposed from the need for a Plan e.g., addressing emergencies such as spills and emergency infrastructure failure, regular maintenance of infrastructure, movements outside of settlement areas, etc.

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Proposed Excess Soil Management Plan Contents

- The proposed **required contents of an Excess Soil Management Plan** would include:
  1. project description and soil management requirements
  2. involved **Qualified Persons** (QPs) and contractors
  3. excess soil sampling plan and **excess soil characterization**
  4. excess soil **receiving site locations**, ownership and property information
  5. **tracking system** and description of records being kept
  6. statements **certified by the QP** and proponent relating to the veracity of information, work under taken, and completeness
  7. a **cumulative record** of excess soil moved (receiving sites, volume, quality)

- Excess soil management plans would be **prepared and certified by a qualified person**
  - Professional Engineers and Professional Geoscientists, as defined in O. Reg. 153/04

- No person would be able to **construct a building with shoring**, unless a Plan has been prepared and registered in the Registry, proposed as applicable law under the **Building Code**

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Proposed Tracking and Record Keeping Requirements

Required Tracking System

- The proponent must ensure that a soil **tracking system is developed and implemented**, as part of their Excess Soil Management Plan
- The tracking system would **include auditing procedures** to ensure the system is being implemented and **is able to produce necessary records**
- **Excess soil hauling record to include** all soil movements, and to be **available with the truck**

Required Records

- **Cumulative record of excess soil movements** would be kept at source sites completing an Excess Soil Management Plan

Required Registration

- Registration to a **new online registry** is proposed, once an Excess Soil Management Plan has been prepared, with periodic updates as soil moves
- Key information from a Plan would be registered, **not the full plan**, including all receiving sites
- Excess soil quality registered would be **by category** (e.g., applicable generic standard, site specific standard)
- **Registry requirements** proposed for some excess soil movements which are not subject to an Excess Soil Management Plan (e.g., **infrastructure projects and stormwater pond maintenance of larger volumes**)

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Proposed Sampling Requirements

Excess Soil Characterization Requirements

- Characterization requirements would be **applicable to sites for which a Plan is required and for Stormwater Pond Clean Outs**
- Key elements of the characterization required include **a phase one environmental site assessment**, and if required a **sampling and analysis plan** and an **excess soil characterization report**
- **Sampling is mandatory** in areas associated with a potentially contaminating activity or a past land use that was industrial or specified commercial uses, such as gas stations
- **Minimum sampling frequency** provided for **in-situ sampling** and **sampling in stock-piles**
- **Minimum parameters** to be tested are provided

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Proposed Reuse of Excess Soil at Receiving Sites

- Proposed excess soil reuse standards include:
  - **Land use-based** and **potability-based standards** (similar to brownfields Tables 2 &3)
  - **Table 1 of the brownfields standards** would required in certain circumstances
  - **Three size categories**: up to 350m^3 (can be justified to 1000m^3) which are the same standards as the brownfields regulation; up to 5000m^3 and infinite volume.
  - Rules provided for reuse in **certain circumstances**: environmentally-sensitive areas; salt in soil; natural background; agricultural land; and soil originating from an APEC
  - Additional standards being developed for sub-surface, where no buildings are present, under pavement, at aggregate pits, and other scenarios
- The proposed regulation recognizes a new **Site Specific Beneficial Reuse Assessment Tool** (under development) to allow alternative site specific standards to be developed by a Qualified Professional.
- **Alternative risk assessments**, such as community-based risk assessments, are also proposed to be acceptable through more formalized procedures e.g., via site specific instruments.

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Complementary & Minor Amendments to Brownfields Reg.

To **align requirements at record of site condition sites with proposed excess soil requirements**, the following amendments are proposed:

- **Fill quality requirements** would meet the new Excess Soil Reuse Standards for soil brought to a Record of Site Condition property
- **Sampling requirements** would be made consistent for excess soil coming to a record of site condition property, e.g., stockpile, and, where applicable sampling leaving an RSC property

- Additional amendments proposed through the **Modernization of Brownfields initiative** , including:
  - Limited ministry discretion to help resolve **delineation** challenges at risk assessment sites
  - Increased allowance for Qualified Person judgement on **exceedances** related to treated drinking water, naturally occurring substances and salt
  - Removal of RSC requirements for **conversions to residential use** for undertakings considered low risk and/or barriers to intensification (temporary roads, low-rise commercial buildings, churches)
  - Clarification that a day care centre under the Child Care and Early Years Act is an "institution use" under the regulation

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Proposed Key Changes To Regulatory Package

Transition in Requirements:

- Modernization of Brownfields amendments could come into effect **immediately upon filling**
- **Reuse standards, clarifying waste designation and approvals** to come into effect Jan 1, 2020
- **Excess Soil Management Plan and registry** requirements to come into effect Jan 1, 2021
- Some linked requirements may be phased in to align with in effect dates (e.g., Building Code)

Reuse Provisions:

- Be clear that excess soil **reused in a project area is not waste**
- **Excess soil being relocated to a reuse site is not waste in transit**
- Rebrand "receiving sites" as **"reuse sites"** to ease waste stigma, and other rewording
- **Remove limitation** that the same proponent is needed for relocation between some infrastructure projects (roads, water, sewer)
- Allow haulers of **dry excess soil** to haul without an approval; some permit by rule requirements
- Allow liquid soil (only soil, not other debris) including vacuum trucks, stormwater pond clean outs and dredging **to be hauled to works yards**, subject to rules, **without an approval**
- Clarity that **liquid soil slurry dewatering facilities** (in the business of dewatering liquid soil) accepting liquid soil from multiple sources be required to obtain an **approval**

Required Excess Soil Management Plan:

- Change quantity threshold to **2000m^3** to only capture intended projects (condos, and larger commercial, industrial, infrastructure)

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Confidential Draft for Discussion

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Proposed Key Changes To Regulatory Package

Sampling Requirements:

- Revise **qualitative trigger to align with sites requiring testing** and **Records of Site Condition** and/or **remediation** (e.g. industrial sites and garages, dry cleaners, and gas stations)
- Sampling still mandatory, but the requirements in regulation will be reduced such that a **sampling plan is developed based on meeting key objectives** and a **few key requirements** such as minimums for sampling frequencies and minimum analytical parameters

Tracking, Record-Keeping, Registry:

- Focus tracking requirements on off-site movements to reduce burden in details while ensuring documentation of movements; reframe tracking system section to be objective-based
- Focus Qualified Professionals on technical matters, allow others to update records and registry
- **Reduce info in hauling record** if not from site with an ESMP - focus on key details - source and receiver info, date, etc.
- Reduce records updating times for ESMPs and infrastructure projects from 28 to 60 days

Clarification of Terms - modify wording where terms are unclear, e.g. maintenance of existing infrastructure, project area, Crown land, settlement areas, etc.

Receiving Site Oversight:

- Consider requiring larger receiving sites (e.g., 10,000m³ or greater) to **register or compile records** - volume, applicable quality, source sites and to require Qualified Person oversight
- **Excess Soil Reuse Standards - use two size categories** for excess soil standards (rather than three); **add new tables**; **expand attainment rules** to beyond Table 1

Next Steps

- **Finalize the Excess Soil Regulatory Package** - Environmental Registry posting closed June 23, 2017, posting can be viewed via the Environmental Registry at: https://www.ebr.gov.on.ca/ERS-WEB-External/ (EBR # 013-0299)
    - MOECC and other Ministries are currently considering input received as we move forward to finalize the regulatory package
- In 2018-19, the ministry is expecting to work with key partners to undertake **education and training** on the proposed regulatory package as well as developing and updating **key guidance and outreach materials**, **new reuse standards** and will commence development of the **new online registry** for excess soil
- The final **Excess Soil Management Policy Framework**, 2016, which speaks to the development of guidance among other elements, can be viewed via the Environmental Registry at https://www.ebr.gov.on.ca/ERS-WEB-External (EBR # 012-6065)

For questions on the framework or regulatory proposal please contact:

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