SMART Remediation

Excess Soil Regulation Overview

Chris Lompart
MECP
SMART Toronto and Ottawa

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Excess Soil Regulation Overview

SMART Remediation
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Ontario

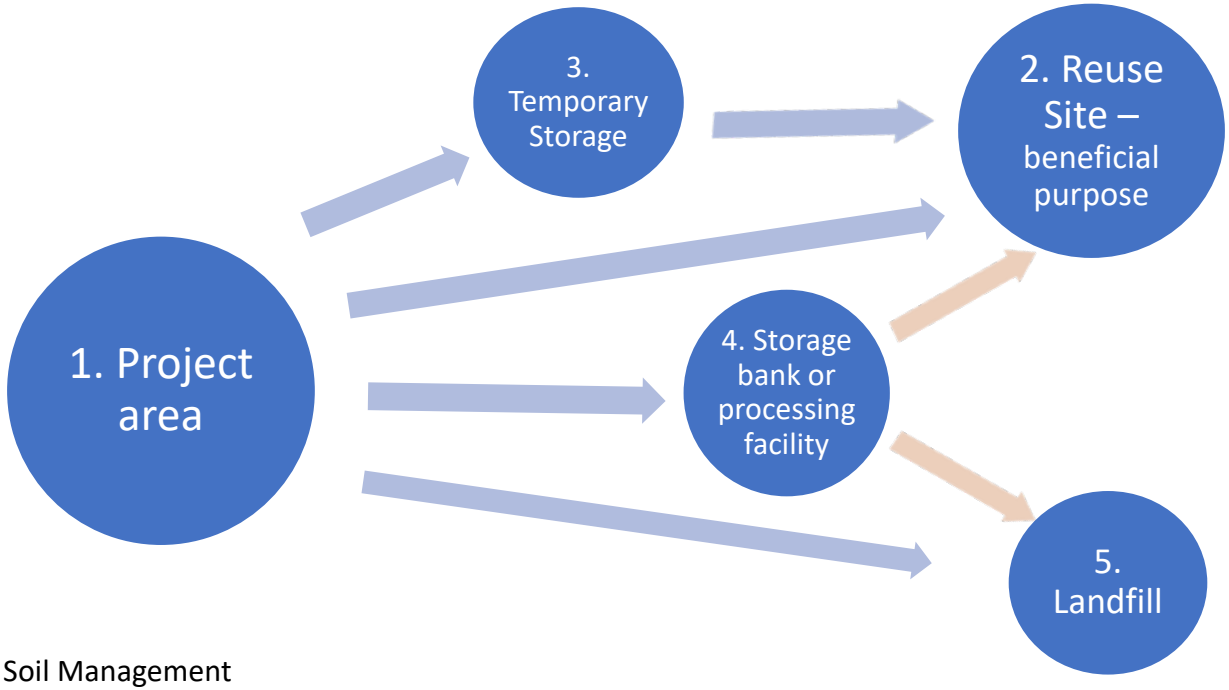
Context - Why is excess soil regulated?

- Excess soil is soil that is excavated at a project area and cannot be reused on-site; it includes soil from construction activities (e.g. buildings, infrastructure, stormwater sediment).
- Over 26 million m^3 of excess soil is generated annually
- The Excess Soil Regulation was prompted due to:
  - Illegal dumping of construction soils
  - Concern that excess soil may contain contaminants that may be a risk to human health or the environment at a reuse site (unknown basis for reuse)
  - Need to encourage reuse of excess soil on-site or locally to reduce project costs, greenhouse gas emissions, use of limited landfill capacity, and impacts related to noise, dust, safety and road wear.
  - Several large "commercial fill" operations that had poor oversight and generated significant local concern (e.g. Scugog, Burlington, Waterdown,…).

Waterdown Garden Supplies, Hamilton, illegal contaminated soil storage – Inside Hamilton, May, 2019

The Excess Soil Regulation: Overview

- **O. Reg. 406/19: On-Site and Excess Soil Management** (the Excess Soil Regulation) under the *Environmental Protection Act* (EPA), was finalized in December 2019, supported by:
  - Rules for Soil Management and Excess Soil Quality Standards (Soil Rules)
  - Beneficial Reuse Assessment Tool (BRAT)
- The Regulation recognizes reusable excess soil as a resource, and its reuse is encouraged either in the project area or for a beneficial purpose at a reuse site; if not beneficially reused, it's waste.
- The Excess Soil Regulation recognizes a number of management options to help achieve soil reuse and proper management.



Ontario

Overview of the regulation

Reuse within a Project Area

- Soil reused in the project area is not considered “excess soil” and its reuse is not restricted; plan to maximize reuse onsite

Taking Excess Soil to a Reuse Site

- Criteria for reuse of excess soil at a reuse site :
    1. The reuse site operator must consent in writing to the deposit of the excess soil
    2. The excess soil must be needed for a beneficial use
    3. The quality and quantity of excess soil must align with the beneficial use
    4. If the excess soil is liquid soil, its deposit must be permitted by a legal instrument
- Appropriate excess soil quality must be determined using:
    1. Excess soil reuse standards
    2. Site-specific standards developed by a qualified person (QP)
    3. Standards specified in an applicable legal instrument

Overview of the regulation

Some Projects Complete Excess Soil Reuse Planning Requirements

- These ensure understanding of soil, confirmation of reuse sites, tracking and availability of information

- These requirements apply in three circumstances:
  1. Project areas with a past or present use as an **"enhanced investigation project area"**
  2. Project areas that are **being remediated by removing excess soil** in order to reduce the concentration of contaminants, including for the purposes of filing a Record of Site Condition (RSC)
  3. Projects **generating 2000m³ or more** of excess soil and that are **in a settlement area**, **unless the project is on a property currently used for a residential, parkland, institutional (school) or agricultural use**
- Other exemptions may apply

- 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 assessment report**
  4. Application of a **tracking system**

Overview of the regulation

Reuse Site Requirements

- Ensure the reuse criteria are met
- Sites accepting greater than 10,000m^3 of excess soil, unless part of an undertaking related to an infrastructure project, must:
  1. file a notice on the Excess Soil Registry for accountability and transparency
  2. implement procedures related to incoming soil to ensure soil received is appropriate

Class 2 Storage Sites and Local Waste Transfer Facilities (project leader sites)

- Exempt from ECA but subject to rules
- Limitations apply, e.g., 10,000m^3 max.

Class 1 Storage Sites (third-party storage and processing)

- Require an ECA unless exempt
- Two types currently exempt: Residential Development Soil Depots and Retail Landscaping Depots
- Exempt depots are subject to limitations apply, e.g., soil type/quality, 10,000m^3 max.

Overview of the regulation

Landfills

- As of January 1, 2025, there is a restriction on the deposit of clean soil (if it could be used at a residential property) at landfill sites; some exceptions

Hauling

- Haulers of excess soil are required to have a hauling record to help confirm where soil originated and where it is being taken to

Storage Rules

- Storage rules apply to sites to prevent adverse impacts

Proposed Regulatory Amendments

- Amendments have been made a few times to make the regulation more practical and further enable reusable excess soil
- To encourage greater reuse of low-risk excess soils, a proposal for amendments to the Excess Soil Regulation was posted for 45 days on the Environmental Registry of Ontario (ERO), from October 17th to December 1st, 2023 (ERO 019-7636).
- Proposed amendments included the following:
  - removing need for Environmental Compliance Approvals (ECAs) for third-party storage and processing of readily usable low-risk soils (e.g., aggregate and topsoil), and for small liquid soil processing sites
  - enhancing usability of project leader owned/operated storage sites by increasing acceptable volume at these sites
  - increasing opportunities for reuse of salt-impacted soil in low-risk circumstances
  - Other amendments to clarify provisions and assist with greater understanding of the regulatory requirements