Navigating the New Excess Soils Regulations for OSWCA Members
Introduction

• December 4, 2019 a new On-site and Excess Soil Management Regulation (406/19) was released

• Phased approach with some regulatory requirements coming in to effect July 1, 2020 and January 1, 2021

• Amendments were made to the Records of Site Condition Regulations (O.Reg. 153/04) on December 4, 2019
Introduction - Outline

• Times these regulations come up
• A summary of the changes
• What do these changes mean for you
• How to move forward
Watermain Project

- Upgrades to watermains to meet demand
- Sensitive Site
- Reuse or landfill?
Sanitary Sewer Project

- Increased demand
- Post ≠ Pre quality
- Construction contamination
- QP required
Road/Trench Project

- Barrier wall
- Salt and “natural” impacts
- Reuse of soil
- Minimal disposal
EXCESS SOIL Regulation O. Reg. 406/19 ():
July 1, 2020

Important Definitions

**Project:** any project that involves the excavation of soil and includes:

- (a) any form of development or site alteration,
- (b) the construction, reconstruction, erecting or placing of a building or structure of any kind,
- (c) the establishment, replacement, alteration or extension of infrastructure, or
- (d) any removal of liquid soil or sediment from a surface water body
EXCESS SOIL Regulation O. Reg. 406/19 (): July 1, 2020

Important Definitions

**Project area:** a single property or adjoining properties on which the project is carried out
EXCESS SOIL Regulation O. Reg. 406/19 ():
July 1, 2020

Important Definitions

**Project Leader:** the person or persons who are ultimately responsible for making decisions relating to the planning and implementation of the project
Summary of EXCESS SOIL Regulations:
July 1, 2020

Excess soil not waste
EXCESS SOIL Regulations:
July 1, 2020

Reuse site that is governed by an instrument (i.e. by-law):

- Quality Requirements
- End Use Constraints
- Volume Constraints
EXCESS SOIL Regulations:
July 1, 2020

Reuse site that is NOT governed by an instrument (i.e. by-law):

• Final Placement Standards

• Beneficial Purpose

• Quantity Limits

• Qualified Person
EXCESS SOIL Regulations:  
July 1, 2020

On-Site and Excess Soil Management

• Transportation

• Depositing Soil at a reuse site:
  • at least 10,000 m$^3$ for final placement
  • Not applicable to infrastructure projects
  • not infrastructure and not less than 10,000 m$^3$ of soil)
EXCESS SOIL Regulations:
July 1, 2020

Small volumes (up to 350m³) and independent volumes (350m³+)

Restrictions:
• Environmentally Sensitive Areas, nearest water body
• Potable vs. Non-Potable
• Depth to Groundwater and Overburden thickness
• Land use (i.e. Agriculture)
EXCESS SOIL Regulations:
July 1, 2020

Salt Impacted Soils can be reused if:

• salting is expected (i.e. parking lots, roads etc.)
• non potable - Industrial/commercial
• More than 1.5m below the surface
• More than 30m of water
• More than 100m of a drinking water well
• More than 2m above the water table
• Not where crops/pasture activities occur
• Notification & sampling is required
EXCESS SOIL Regulations:
July 1, 2020

Environmental Compliance Approval for waste (O. Reg. 347) is not required under certain regulatory rules
• Contractors will be able to haul dry or liquid excess soils without an ECA
• Contractors can process low risk soils on-site
• Contractors can transfer up to 10,000m³ to temporary storage sites
• Infrastructure can use site specific standards and don’t have to be reused in 2 years
EXCESS SOIL Regulations:
January 1, 2022

Public registry

Tracking System if registered

Registered Site Requirements (completed by a QP):
• Assessment of Past Uses
• Sampling and Analysis Plan
• Excess Soil Characterization Report
• Excess Soil Destination Assessment Report
EXCESS SOIL Regulations:
January 1, 2022

Exemptions for the registry and planning rules include:

• 100m³ or less
• Emergency
• Infrastructure projects - fit state of repair
• not from an enhanced investigation project
• Topsoil (Municipal Act) transported directly as topsoil reuse
EXCESS SOIL Regulations:
January 1, 2022 and January 1, 2025

- 2022: Tracking and Inspection of every load for large reuse sites

- 2025: Clean soil can not be deposited at landfill sites unless it is used for cover or beneficial use for landfill functions

- Grandfather clause: contracts before January 1, 2021
Summary of New Regulations:
Immediate Changes O. Reg. 153/04

• Salt and traction control ... not contamination

• Drinking water ... not contamination

• Naturally occurring ... not contamination

• Building Conversions ... ground floor uses
Summary of New Regulations:
Immediate Changes O. Reg. 153/04

- Temporary Roads ... don’t need a Record of Site Condition

- Hydroponics ... industrial

- Delineation .... [not your problem]
Summary of New Regulations:
Phased Changes July 1 2020 O. Reg. 153/04

- Potable vs. non-potable ... need municipal consent to use non-potable *but you don’t care*

- Excess Soil (defined by reg) can be used at a Record of Site Condition Property *you kind of care*

- Religious Buildings ... institutional land use *but you don’t care*
What Does it all Actually Mean???

• Written consent required for reuse sites effective **July 1, 2020**
• Qualified Persons QPs required to classify soil quality
• Excess Soil may be reused: not a waste and beneficially reused
• Soil needs to meet quality and quantity requirements
• Two categories
  • Generic
  • Site Specific
• Tracking and registry official start **January 1, 2022** with exemptions

• **Illegal to landfill clean soil after January 1, 2025**
What about the trucks?

- only be collected and transported in a vehicle that can do so safely and without nuisance
- Bodies need to be able to withstand abrasion and corrosion
- Need to be leakproof and covered
- Liquid valves need a locking system and need to be locked when unattended
- Owner/operator of the vehicle must be present when transferring liquid
What about Tracking?

• The following information must be provided to a provincial officer if requested (verbally until 2022):

  • Location loaded
  • Date and time loaded
  • Quantity in load
  • Name of individual aware of quality of load
  • Name of corporation, partnership or firm transporting including the driver’s name and the number of plates issues for the vehicle
  • Location the load is being deposited
What about Infrastructure work?

Exemptions and allowances

• Reuse sites do not need to file a notice on the registry (2022)

• Limited to the length of time needed to complete the project

• Moving soil from infrastructure project to infrastructure project owned by the project leader
What is your path ahead?

- **DO I NEED TO EXCAVATE?**
  - **NO** → **NA**
  - **YES** → **CAN I REUSE ON SITE?**
    - **NO** → **DO I HAVE A RECEIVER SITE?**
      - **NO** → **WHAT IS MY SOIL QUALITY?**
        - **NO** → **WHAT IS MY SOIL QUALITY?**
          - **YES** → **CONFIRMATORY SAMPLING**
            - **YES***
            - **NO**

*TRACKING DOCUMENTATION REQUIRED AS PER APPLICABLE REGS; CONFIRMATORY SAMPLING COMPLETED PRIOR TO LEAVING SOURCE SITE*
What is your path ahead?

WHAT IS MY SOIL QUALITY?

EXCEEDS SOME STANDARDS

NOT CLASSIFIED

CLASSIFY USING BRAT

ARRANGE AND HAUL* TO APPROPRIATE RECEIVER SITE

EXCEEDS ALL STANDARDS

HAUL* AS WASTE

*TRACKING DOCUMENTATION REQUIRED AS PER APPLICABLE REGS
What is your path ahead?

1. **Can I reuse on site?**
   - Yes → Confirm quality → Confirmatory sampling → Yes → Haul* as waste
   - No → DO I NEED TO EXCAVATE?

2. **DO I NEED TO EXCAVATE?**
   - Yes → EXCEEDS SOME STANDARDS → Classifier using BRAT → ARRANGE AND HAUL* TO APPROPRIATE RECEIVER SITE
   - No → WHAT IS MY SOIL QUALITY?

3. **WHAT IS MY SOIL QUALITY?**
   - Exceeds all standards → Confirmatory sampling → Yes → Haul* as waste
   - Not classified → *Tracking documentation required as per applicable regs

4. **Can I reuse on site?**
   - Yes → Confirm quality → Confirmatory sampling → Yes → Haul* as waste
   - No → DO I HAVE A RECEIVER SITE?

5. **DO I HAVE A RECEIVER SITE?**
   - Yes → Confirm quality → Confirmatory sampling → Yes → Haul* as waste
   - No → WHAT IS MY SOIL QUALITY?

*Haul* as waste

Environmental Specialist for Construction
GEMS Opinion - Why Care?

• Liability rolls down to contractors
  • Most of the liability will fall with the owners of the soil – Project leader?
  • Not clear if can owners delegate ownership of soil (& liability) to contractors by contract
  • Contractors are at the discretion of the Owner’s QP(s) and the Receiver’s QP(s)

• Better option – tracking where dirt ends up and who’s responsible (pays) when something isn’t right [less likely to land on you when there’s a paper trail]

• More flexibility for you and sourcing backfill material – more paper work
Results, Not Advice
Thank you! Questions?