

O. Reg. 406/19: Excess Soil Landfilling Restriction – Information Session

Ministry of the Environment, Conservation and Parks

Disclaimer:

This presentation is intended to be a brief summary of some of the requirements of Ontario Regulation 406/19 - On-Site and Excess Soil Management (the Regulation) made under the Environmental Protection Act. This is for information purposes only and should not be construed as legal advice or substitute for seeking independent legal advice on any issues related to the Regulation. Any person seeking to fully understand how the Regulation may apply to any of the activities they are engaged in must refer to the Regulation. In the event of any inconsistency between the Regulation and this presentation, the Regulation will always take precedence.

Session Overview

- Context
- Overview of the landfilling provision and exemptions
- Additional information
- Appendices:
 - A: Decision tree: Key Steps for Owner/Operator of a Landfill or Dump
 - B: Additional resources

Context

- **Excess soil** is soil, crushed rock or soil mixed with rock or crushed rock, that is excavated at a project area and cannot be reused on-site; it could be from various construction or excavation activities (e.g. buildings, infrastructure, stormwater sediment, landscaping, etc.).
- [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. The [Rules for Soil Management and Excess Soil Quality Standards](#) (Soil Rules) document is incorporated by reference to the regulation.
- The Excess Soil 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 majority of the regulation is now in effect; the final provision restricting the landfilling of cleaner excess soil is in effect as of **January 1, 2027**.

Excess Soil Landfilling Restriction

- As of January 1, 2027, the Excess Soil Regulation restricts the deposit of excess soil meeting Table 2.1 residential, parkland, and institutional (RPI) standards or better quality, at a landfill or dump
- The regulation also provides exemptions from the restriction:
 - Based on ancillary uses: if the excess soil will be used for ancillary uses at the landfill or dump (e.g., daily or final cover, construction of roads or berms, etc.)
 - Based on a Qualified Person (QP) declaration: if a QP has determined that the excess soil is inappropriate for reuse based on one of the criteria provided in the regulation, and provides a declaration to the landfill owner or operators setting out required information

See Section 22 of the Excess Soil Regulation and Part II, Section A(1) of the Soil Rules document for the full requirements related to this provision

Excess Soil Landfilling Restriction

- **Note:** If an environmental compliance approval (ECA) for a landfill or dump allows acceptance of excess soil that meets Table 2.1 RPI standards or better, the owner or operator must still comply with the restriction set out in Section 22 of the Excess Soil Regulation
- This restriction is not relevant in the following situations:
 - Excess soil sent to Class 1 soil management sites (e.g., a waste transfer or processing station) which are not meant for long-term disposal
 - Excess soil exceeding Table 2.1 RPI being received at a landfill or dump, or excess soil mixed with other waste (e.g., construction and demolition waste) without any requirement to be separated out; in that case, acceptance of such material may be addressed by the facility's ECA

Excess Soil Landfilling Restriction – Exemptions

Despite the restriction, some exemptions may allow for excess soil meeting Table 2.1 RPI or better quality to be deposited at a landfill or dump

1) Exemption based on ancillary use

- The restriction does not apply if excess soil meeting Table 2.1 RPI or better quality is required by a landfill or dump for daily or final cover, or other ancillary uses to support the operational needs of the facility
- These ancillary uses can include, but are not limited to, grading, interim cover, creation of landfill liners, berms, roads, visual screens, land restoration in closed landfill portions, noise barriers, and planting beds for trees
- For sites (project areas) sending excess soil to a landfill and relying on this exemption, it is important to confirm with the landfill owner or operator that the soil will be used for this purpose
- Note the Excess Soil Regulation is silent on the quality of excess soil that can be used for any of these ancillary purposes; relevant provisions of the ECA would apply instead
- Excess soil deposited at a landfill or dump in accordance with the facility's ECA for uses other than daily or final cover, such as construction of roads or berms, would not be designated waste

Excess Soil Landfilling Restriction – Exemptions

2) Exemption based on QP declaration

- Excess soil meeting Table 2.1 RPI may also be deposited at a landfill or dump, if a QP has determined that it would be inappropriate to deposit the excess soil for final placement at a reuse site based on one of the three criteria below, and has completed and provided a declaration with their determination to the owner or operator of the landfill or dump
- Criteria for QP to determine excess soil is not appropriate for reuse and should be deposited at a landfill or dump:
 1. The excess soil contains a contaminant for which there is no applicable excess soil quality standard and there are reasonable grounds to believe placement of the excess soil at a reuse site may cause an adverse effect
 - “reasonable grounds” could mean it is known or could reasonably be suspected that the parameter may cause adverse effects to human health and/or the environment if finally placed at a reuse site
 2. The excess soil contains invasive species that should not be relocated to a location other than a landfill or dump
 - The QP is not expected to have expertise in invasive species, but should have received information from someone with relevant expertise that the soil contains an invasive species that should not be taken to a reuse site

Excess Soil Landfilling Restriction – Exemptions

- Criteria for QP to determine excess soil is not appropriate for reuse and should be deposited at a landfill or dump (cont.):
 3. Due to the physicochemical characteristics of the excess soil, it is not suitable for reuse as structural fill at a potential reuse site, and despite reasonable efforts by the owner/operator of the site at which excess soil was loaded for transport to identify a reuse site at which the excess could be used for other beneficial purposes, no such reuse site has been identified
 - To make this determination, it is important that the QP's qualifications relate to geotechnical matters or are supported by an opinion by a geotechnical engineer or geoscientist
 - Physicochemical characteristics may include soil compressibility, bearing capacity, high organic content, or presence of substances such as oil, leading to instability or lack of load-bearing capacity (e.g., leda clays)
 - Reasonable efforts to identify a reuse site where this excess soil may be used for other beneficial uses (e.g., landscaping) may include checking the online [Excess Soil Registry](#) or soil matching sites, contacting local municipalities for reuse sites they own or operate, reviewing the [Ministry of Natural Resources public database](#) and contacting operators of local pits and quarries accepting excess soil , etc.

Excess Soil Landfilling Restriction – Exemptions

- Information required to be included in a QP declaration:
 - the amount of excess soil to be deposited at the landfill or dump
 - the location of the site at which the excess soil was loaded for transportation to the landfill or dump
 - which of the three criteria applied and an explanation of how it applied
 - the name and contact information of the qualified person who is providing the declaration
- This declaration must be provided to the landfill owner or operator

Additional information: Excess soil quality

Excess soil brought to a landfill or dump may or may not be accompanied by information on the quality of excess soil. In order to determine whether excess soil can be deposited in accordance with s. 22, below are some considerations for the owner or operators of landfills to consider:

Where reports are available on soil quality:

- Some project leaders for sites where excess soil was originally excavated from may be required under the Excess Soil Regulation to complete sampling and analysis to assess soil quality, while others may have completed this analysis for other reasons such as due diligence
- Where these reports are provided to a landfill or dump, the owner or operator should ensure the reports are reviewed, or that a confirmation is provided by the QP sending the excess soil to the landfill or dump, confirming whether the excess soil meets Table 2.1 RPI or better

Where reports are not available on soil quality:

- Sampling is not required to be done solely for the purpose of demonstrating if the excess soil can be deposited at a landfill or dump
- In some cases, the landfill or dump owner or operator may consider circumstances where it is reasonable to conclude that excess soil does not meet Table 2.1 RPI and should be landfilled (e.g., when excess soil is coming from a spill of pollutants)
- In other cases, the owner or operator may also consider circumstances where it is reasonable to conclude that excess soil is of better quality (e.g., small volumes of soil from residential properties with no known history of contamination). In this case it should not be accepted as waste without sampling results that indicate it does not meet Table 2.1 RPI or better, but can be used based on one of the exemptions provided under s. 22

Additional information: Summary of roles and responsibilities

Owners or operators of landfills or dumps:

- Confirm information about the incoming excess soil as needed, to determine if it can be accepted for deposit at the site or not
- If a QP declaration was provided, retain it for a minimum of 2 years from the date the excess soil was deposited

Owners or operators of sites loading excess soil for transportation:

- Liaise with the owner or operator of the landfill or dump in advance of transporting the excess soil, to determine compliance with s. 22
- Provide sampling results (if any) and be able to provide any other information on the soil
- If a QP declaration was received, retain it for a minimum of 2 years from the date the excess soil was deposited

Qualified Persons:

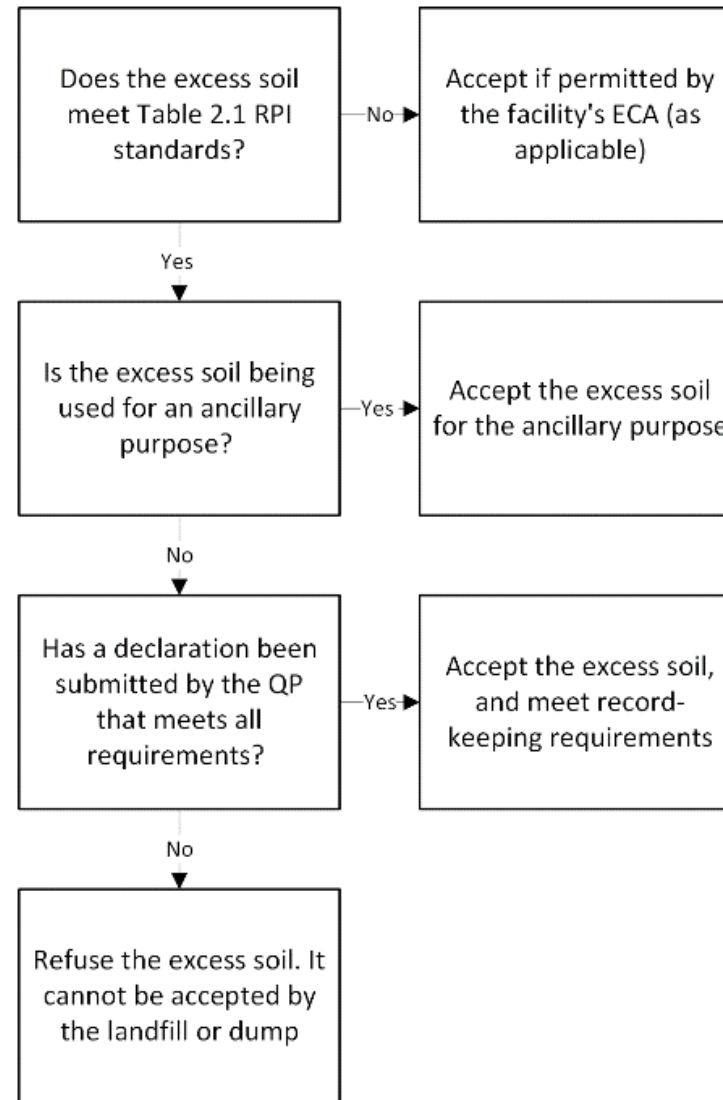
- Work on behalf of any parties to liaise with the owner or operator of a landfill or dump
- Prepare a declaration if seeking to landfill excess soil meeting Table 2.1 RPI or better, based on the exemption under s. 22
- Retain the declaration for a minimum of 7 years after the day the document was prepared

MECP Resource Sheet: Restriction on the Landfilling of Excess Soil

- This resource has been developed to assist stakeholders in understanding the landfilling restriction, and includes the following:
 - Detailed overview of the requirements about when should excess soil cannot be accepted at a landfill or dump, exemptions, and best practices
 - A chart to help the landfill or dump operator take steps to meet different requirements
 - A form giving suggested components of a qualified person (QP) declaration

Appendix A: Decision tree: key steps for the owner or operator of the landfill or dump

Decision Tree: Key steps for the owner or operator of the landfill or dump



Appendix B: Additional Resources

Additional Resources

- Ontario Government Excess Soil Page: [Handling excess soil | ontario.ca](#)
- Excess Soil Fact Sheets: <https://www.ontario.ca/document/excess-soil-fact-sheets>
- Ontario Provincial Standard Specification (OPSS) 180 - General Specification for the Management of Excess Materials: [MTO Technical Publications](#)
- RPRA's Excess Soil Registry: <rpra.ca/excess-soil-registry>
- Ontario Environment Industry Association (ONEIA) - Best Practices and Templates:
 - Hauling Best Practices and Template: [Hauling Best Practices - Ontario Environment Industry Association](#)
 - Temporary Sites Best Practices: [Temporary Sites Best Practices - Ontario Environment Industry Association](#)
 - Qualified Persons Best Practices: [Best Practices for QPs - Ontario Environment Industry Association](#)
- Qualified Person Community of Ontario (QPCO): [QPCO – Qualified Persons Community of Ontario](#)
- Ontario Society of Professional Engineers (OSPE) - Best Practices for Aggregate Pit and Quarry Rehabilitation: [Excess Soil Reports • Ontario Society of Professional Engineers](#)
- OSSGA document on Excess Soil Best Management Practices for Pits/Quarries: [OSSGA Excess Soil Guidance](#)
- Canadian Urban Institutes (CUI) - Excess Soil By-Law Language Tool: <https://canurb.org/initiatives/excess-soil-by-law-tool/>

Questions?

For further information on the regulation, please visit the ministry's [Handling Excess Soil webpage](#), or contact MECP's Land Use Policy Team at mecp.landpolicy@ontario.ca

Thank you!