

May 24, 2018

## **PROPOSED ONTARIO EXCESS SOIL REGULATORY CHANGES**

The Ministry of Environment and Climate Change (MOECC) has proposed an on-site and excess soil management regulation, with complementary regulatory amendments. The latest draft has been uploaded to the Environmental Registry (<https://www.ero.ontario.ca/notice/013-2774>), along with supporting documents and is open for comments until June 15, 2018. This letter outlines relevant sections of the proposed excess soil management regulation, as it may relate to the construction and transportation industry.

Key topics and potential questions regarding the proposed regulation are summarized in Table 1, including the following:

1. Definition of soil
2. When is excess soil a waste
3. Definition of liquid soil
4. Definition of a project
5. When is an excess soil management plan required?
6. What are the requirements for the project leader?
7. What are the sections relevant to the transportation industry?
8. What is the timeline for the regulatory changes?

This letter does not constitute a legal opinion and should be read in conjunction with the following MOECC document and other relevant documents available for download:

- “Ontario Regulation to be made under the Environmental Protection Act, On-site and Excess Soil Management”. Consultation Draft. Posted on the Environmental Registry of Ontario on April 16, 2018.

The deadline for comments is June 15, 2018.

We trust that this letter is sufficient for your purposes. If you have any questions or require additional information, please call



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Katherine Rispoli, M.A.Sc, P.Eng., ing.

**Table 1. Summary of relevant sections of the proposed excess soil regulation**

TOPICS AND POTENTIAL QUESTIONS	RELEVANT SECTION(S) IN DRAFT PROPOSED REGULATION	ADDITIONAL COMMENTS
1. Key Definition: Soil	<p><b>Part I GENERAL 1. (1) – Page 3</b> specifies:</p> <p><i>“soil” means unconsolidated naturally occurring mineral particles and other naturally occurring materials resulting from the natural breakdown of rock or organic matter by physical, chemical or biological processes that are smaller than 2 millimetres in size or that pass the US #10 sieve;</i></p>	<p>In addition, <b>Part I GENERAL 2. (2) – Page 5</b>, specifies:</p> <p><i>“This Regulation does not apply to aggregate, within the meaning of section 1 of the Aggregate Resources Act, to which that Act applies.”</i></p>
2. When is excess soil designated a waste?	<p><b>Part II EXCESS SOIL 3. (1) – Page 5</b> specifies:</p> <p><i>“Excess soil is designated as waste, except if all of the following conditions are satisfied:”</i></p> <p><i>[The excess soil must be directly transported to a reuse site from, i. a project area, or ii. a soil bank storage site, temporary soil storage site or soil processing site. AND,</i></p> <p><i>The excess soil must be <u>dry soil</u> and must remain dry soil until it is finally placed at the reuse site]</i></p>	<p>Additional conditions apply, see Draft Regulation.</p>
3. Key Definition: Liquid Soil	<p><b>Part I GENERAL 1. (1) – Page 2-3</b> specifies:</p> <p><i>“liquid soil” means soil that has a slump of more than 150 millimetres using the Test Method for the Determination of Liquid Waste (slump test) set out in Schedule 9 to Regulation 347 of 3 the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the Act</i></p>	<p>Note: <i>“<u>dry soil</u>” means soil that is not liquid soil;</i></p>

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4. Key Definition: Project	<p><b>Part I GENERAL 1. (1) – Page 3</b> specifies:</p> <p>“project” means any project carried out on a single property or a group of adjoining properties that involves the excavation of soil and includes any form of development, the construction, reconstruction, erecting or placing of a building or structure of any kind or the establishment, replacement or alteration of infrastructure;</p>	<p>In addition, “<i>project area</i>” means, in respect of a project, the property or the adjoining properties on which the project is carried out;</p> <p>Definition for “adjoining properties” provided in PART I GENERAL 1. (3) page 5</p>
5. When is an Excess Soil Management Plan (ESMP) required?	<p><b>Part II EXCESS SOIL 6. (1) – Page 9</b></p> <p><i>“The project leader for a project shall ensure that, before removing soil from the project area that will become excess soil once removed, an excess soil management plan is prepared in accordance with section 7, with respect to the project and the project area”</i></p>	<p>Exemptions to preparing an ESMP:</p> <p><b>Part II EXCESS SOIL 6. (2) (3), (4), (5) – Page 9-11. Key exemptions :</b></p> <ul style="list-style-type: none"> <li>• <b>Less than 2000 m<sup>3</sup> of soil</b> (with certain conditions);</li> <li>• Less than 100 m<sup>3</sup> of soil is being brought to a waste disposal site;</li> <li>• Emergency work, or <u>maintaining infrastructure in a fit state of report (definition may be up to interpretation)</u></li> <li>• Excavated soil is top soil (with certain conditions)</li> </ul>
6. Requirements for the project leader?	<p><b>Part II EXCESS SOIL, key sections :</b></p> <ol style="list-style-type: none"> <li>1. When is an ESMP required?</li> <li>10. Requirements to implement the ESMP, including record keeping</li> <li>12. Requirement to file a notice in the Registry before removing soil</li> <li>13. Information to be filed in the Registry after removing soil</li> </ol>	<p>May also need to retain QP to assess past uses and/or conduct a Phase One ESA prior to completing an ESMP (see <b>Part II EXCESS SOIL 7. (7) – Page 15</b>)</p>

TOPICS AND POTENTIAL QUESTIONS	RELEVANT SECTION(S) IN DRAFT PROPOSED REGULATION	ADDITIONAL COMMENTS
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**Part II EXCESS SOIL 6. (15) – Page 23, includes :**

7. Sections relevant to transportation?	<ul style="list-style-type: none"> <li>• Rules for transporting soil</li> <li>• Record requirements during transportation</li> <li>• Record requirements after soil is deposited</li> </ul>	–
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**PART IV COMMENCEMENT**

8. What is the timeline for the regulatory changes?	<p><i>Proposed commencement for consultation purposes</i></p> <p>22. (1) <i>Subject to subsection (2), this Regulation comes into force on the later of</i></p> <p><i>January 1, 2020 and the day it is filed.</i></p> <p>(2) <i>The following sections come into force on the later of January 1, 2021 and the day this Regulation is filed:</i></p> <ol style="list-style-type: none"> <li>1. <i>Sections 6 to 14.</i></li> <li>2. <i>Sections 19 and 20.</i></li> </ol>	–
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