

Down and Dirty about Excess Soil

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Overview

- **Ontario's Excess Soil Laws and Guidance**
- **What is Excess Soil? Where Can it Go?**
- **Excess Soil Risks and Liabilities**
- **British Columbia's Soil Relocation Framework**
- **Quebec's Soil and Soil Tracking Framework**
- **Case Study**
- **TEST!**

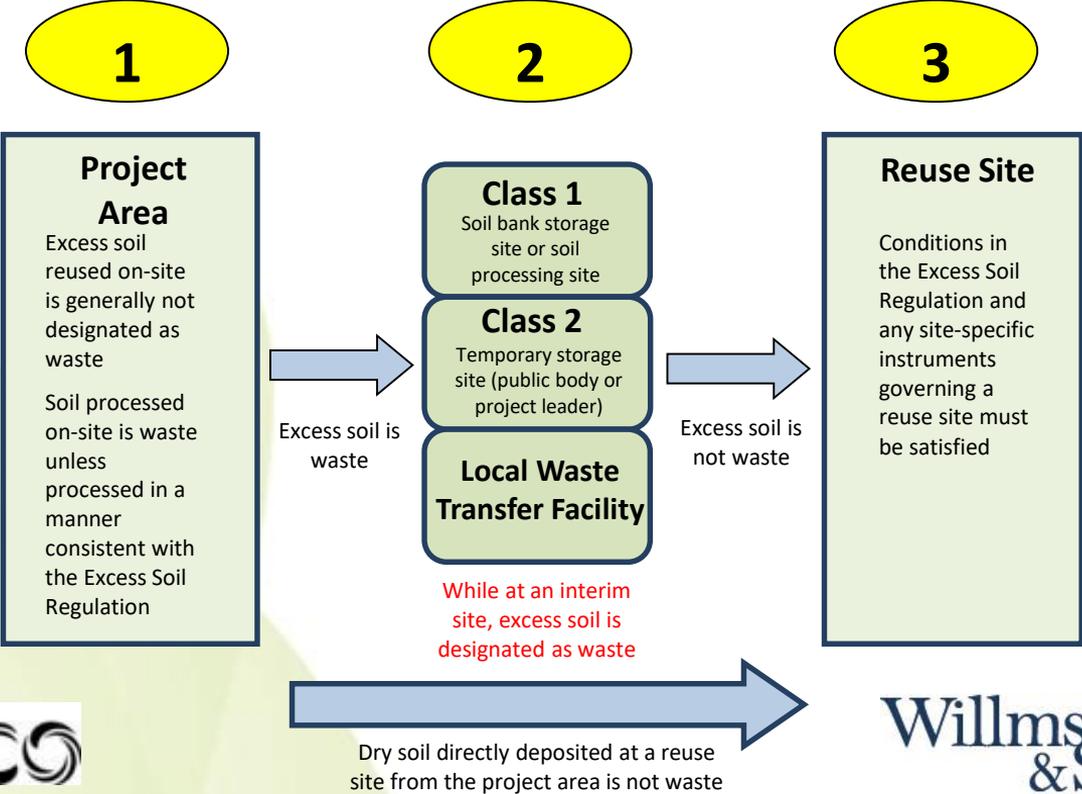
Ontario's Excess Soil Laws and Guidance

- [O. Reg. 406/19: On-Site and Excess Soil Management Regulation](#) (“Excess Soil Reg.”)
- Amendments to [O. Reg. 153/04](#) (RSC)
- Amendments to [Reg. 347](#) and [O. Reg. 351/12](#) (Waste Management)
- [Rules for Soil Management and Excess Soil Quality Standards](#) (“Soil Rules”)
- [Beneficial Reuse Assessment Tool](#)
- [Rationale Document for Reuse of Excess Soil at Reuse Sites](#) (Guidance)

What is Excess Soil?

- **Excess soil is soil excavated and removed from “project area”**
- **Excess soil is designated as “waste” unless it meets requirements set out in Excess Soil Reg. and Soil Rules and is reused (beneficial purpose)**
- **Excess Soil Reg. incorporates by reference**
 - Soil Rules, which contain specific rules and generic excess soil quality standards (ESQS) for excess soil management
 - Beneficial Reuse Assessment Tool (BRAT) to develop site-specific excess soil quality standards

When is Excess Soil Waste and Where Can Excess Soil Go?



Liquid soil is subject to different requirements

Excess Soil to Landfill?

- **On January 1, 2025, landfilling excess soil will be prohibited unless**
 - excess soil supports operation of landfill
 - Qualified Person (QP) declares that it would be “unsafe” to finally place excess soil at a reuse site, or
 - excess soil exceeds Table 2.1 of ESQS
- **Same laws applicable to waste apply to excess soil being landfilled rather than beneficially re-used**

Filing Notice on Registry (Project Leader)

- **Two exemptions from notice-filing requirement**
 - excess soil falls under exemption in Schedule 2 of Excess Soil Reg.
 - executed contract for excess soil management before January 1, 2022
- **If not exempt from notice-filing requirement**
 - file notice and updates on registry
 - (up to) four reports prepared by Qualified Person
 - formal tracking system

Potential Environmental Liabilities Arising from Excess Soil

- **Regulatory Liability**

- Orders and charges for non-compliance with excess soil laws
 - against companies
 - against individuals (including corporate D&Os)

- **Civil Liability (Lawsuits)**

- companies and individuals may be sued
- precedent from Ontario Court of Appeal (*Midwest*) for lifting corporate veil in environmental lawsuit against corporate D&Os

Project Leader(s) is/are Ultimately Responsible

- **Broad definition of “project leader” in Excess Soil Reg. can result in far-reaching liability**
 - persons who are “ultimately responsible” for decisions relating to project planning and implementation will be subject to project leader’s obligations when managing excess soil
 - future case law will clarify who may be “ultimately responsible”

BC Excess Soil

- **Contaminated soil is governed by *Contaminated Sites Regulation* (“CSR”) under *Environmental Management Act* (“EMA”)**
- **Amendments to CSR and other regulations governing soil relocation will include**
 - new process for uncontaminated soil relocation
 - proposed process will require person removing soil to determine soil quality
 - if substances in soil meet relevant land use standards, then person removing soil must submit online notification form to BC’s Ministry of Environment and Climate Change Strategy

BC Excess Soil (cont.)

- **The Contaminated Soil Relocation Agreement process and definition are to be removed from the EMA**
- **Relocation of contaminated soil will be regulated under existing provisions**
 - Part 2 of EMA (waste discharge authorizations)
 - Part 4 of EMA (CSR regulatory tools, such as Approvals in Principle)

BC Excess Soil (cont.)

- **Proposed soil sampling frequencies mirror Ontario's *Soil Rules* currently**
- **Guidance for high volume receiving sites is proposed to be similar to Ontario (e.g. soil management plans, record keeping, monitoring requirements, etc.)**
- **BC MECCS is considering requiring soil vapour assessments for commercial and industrial quality soil or PCOCs include specified volatile chlorinated substances**

BC Excess Soil (cont.)

- **Relocation of contaminated soil will be regulated under existing provisions**
 - Part 2 of EMA (waste discharge authorizations) and,
 - Part 4 of EMA (CSR regulatory tools, such as Approvals in Principle)

QC Excess Soil

- **The *Regulation respecting the traceability of excavated contaminated soils* (the “Regulation”)** came into force on **November 1, 2021**
- **The Regulation is being implemented in phases**
 - November 1, 2021: applies to transportation of certain large-scale projects (5,000 metric tonnes or more)
 - January 1, 2022: applies to transportation of certain medium-sized projects (1,000 metric tonnes or more) and certain receiving sites (1,000 metric tonnes or more) where conditions apply, and
 - January 1, 2023: applies to all projects

QC Excess Soil (cont.)

Attestra is responsible for the administration of Traces Quebec. Notices will require

- **Before hauling soil:**
 - Source site
 - Soil quality
 - Estimate volumes
 - Load time
 - Hauler ID (GPS confirmed)
 - Receiving site ID
- **Upon receipt:**
 - Verification of pre-haul information
 - Time of receipt

Quebec Excess Soil (cont.)

- **Quebec has instituted a tariff-based system where a levy of \$2/tonne of contaminated soil will be applied to the owner of the source site**
- **Contaminated soils are defined as those that contain contaminants from human activities (e.g. in a concentration greater than the limit values in Schedule I, soils containing contaminants listed in Schedule III, etc.)**
- **200 tonnes is the “tipping point” where notices must be filed prior to soil being moved**

CONTACT INFORMATION



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Case Study (1/2)

- **Company A is owner of project area (source site) within City of Ottawa from which excess soil was excavated**
- **Company A entered into contract with Company B requiring Company B to load, transport and receive Company A's excess soil as well as other waste (concrete and plastic debris)**
- **Total volume of Company A's excess soil is 1,900 m³**
- **Company A and Company B executed their contract for this work on December 1, 2021**

Case Study (2/2)

- **Company A retained Qualified Person to conduct soil sampling and testing of Company A's excess soil before excess soil was transported from project area**
- **Company B owns and has Environmental Compliance Approval for "class 1 soil management site" to temporarily store and process excess soil and other non-hazardous waste**
- **Company B intends to eventually either send Company A's excess soil to reuse site(s) for beneficial reuse and/or landfill for disposal**

Test!

- **Is Company A required to file notice on registry?**
- **Does Company B require MECP approval to haul excess soil?**
- **Does Company B require MECP approval to haul non-excess soil waste?**
- **Does Company B require MECP approval to receive excess soil as class 1 soil management site?**