The latest proposed amendments to excess soil regulation in Ontario

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As Ontario continues the roll-out of its Excess Soil regime, the Ministry of the Environment, Conservation and Parks (MECP) has announced proposed amendments to the *Excess Soil Regulation* (the Regulation) and the Rules for Soil Management and Excess Soil Quality Standards. Among the key changes is a significant delay in the implementation of the landfilling restriction for excess soil outlined in Section 22 of the Regulation.

Originally set to take effect on Jan. 1, 2025, the landfilling restrictions would now be delayed until Jan. 1, 2027. Section 22 prohibits landfilling excess soil unless one of the following conditions is met:

1. The excess soil is used for a beneficial purpose at the landfill, such as daily cover, final cover, or construction of roads or berms.
2. A qualified person declares that placing the excess soil at a reuse site would be unsafe.
3. The excess soil does not meet the Table 2.1 standards of the Excess Soil Quality Standards for residential, parkland, or institutional use.

This two-year postponement offers relief to project leaders and contractors who might otherwise face challenges in finding appropriate options for final placement of “clean soil” where reuse sites are not readily available.

Additional clarifications on landfilling declarations

The proposed amendments also aim to clarify the declarations required by qualified persons to allow landfilling of excess soil that is unsafe for use at a reuse site. To dispose of excess soil at landfill, a qualified person must provide a declaration stating:

1. The excess soil contains a parameter without an applicable quality standard, and there are reasonable grounds to believe that its placement at a reuse site could cause an adverse effect.
2. The excess soil contains invasive species that should not be relocated.
3. The excess soil is geotechnically unstable, preventing reuse for structural purposes, and no suitable reuse site has been found despite reasonable efforts.

Enhancing local reuse and reducing costs for businesses

In response to stakeholder feedback, additional amendments have been proposed to make excess soil management more affordable and practical for the construction industry and municipalities. Key proposals include:

1. **Exemptions for specified excess soil management sites**
   Aggregate reuse depots and small liquid soil depots may be exempted from needing a waste Environmental Compliance Approval (ECA), provided they comply with specific regulatory rules. This proposal, initially introduced in October 2023, has been refined based on feedback (see ERO notice #019-7636).
2. **Enhanced reuse of aggregate and stormwater management pond (SWMP) sediment**
   Excess soil used in engineered aggregates or SWMP sediment involved in infrastructure projects would have increased flexibility regarding soil quality standards, particularly concerning asphalt-related contaminants and naturally occurring exceedances.
3. **Increased coordination between infrastructure projects**
   To improve soil reuse between infrastructure projects, excess soil may be transferred between the same type of infrastructure projects (*e.g.* road to road) managed by the same project leader without being subject to sections 3 to 5 of the Regulation and the reuse planning requirements, subject to specified conditions.
4. **Streamlined reuse planning requirements**
   Projects leaders transferring soil between infrastructure sites may be exempt from certain reuse planning requirements, including assessments of past land uses, sampling and analysis plans, and tracking systems. This streamlining applies as long as both the project area and reuse site are infrastructure projects or undertakings and is not limited to cases where the reuse site is owned by the project leader or a public body.
5. **In-situ sampling for SWMP sediment**
   For SWMP sediment, in-situ sampling and testing would be allowed, simplifying compliance with the required sampling under the Regulation.
6. **Regional mapping for naturally occurring background concentrations**
   The MECP is considering adopting regional mapping to identify areas where naturally occurring soil concentrations exceed quality standards, allowing for more efficient soil reuse without requiring site-by-site assessments. While some municipalities are already exploring such mapping, the MECP has indicated this approach may require further discussion before implementation.
7. **Other proposed amendments and clarifications**
   The proposal includes minor corrections and clarifications:
   Soil reuse within project areas: Soil temporarily stored off-site and returned to the same project area, without mixing with excess soil from other projects, will be treated as if it never left the project area. Soil moved within a project area, even to non-contiguous sections, will follow the same rules.
   Temporary soil use: Soil used temporarily in an undertaking to facilitate development (*e.g.*, for access roads) does not need to meet excess soil quality standards but must be removed after the project is completed, with no evidence of contamination.

Sampling of conditioned soil: Rules for sampling soil treated with substances (*e.g.*, for tunneling) will be clarified to ensure those substances are included in sampling plans and safety documentation.
Sampling frequency adjustments: Sampling frequency for parameters that are not contaminants of potential concern associated with a Potentially Contaminating Activity or Area of Potential Environmental Concern, can be reduced to the discretion of a qualified person if statistically justified, while sampling for contaminants of potential concern remains unchanged.
Expanded definition of public body: The definition of "public body" would include municipal corporations under the *Municipal Act, 2001*.
Multiple depots: Amendments will allow multiple depot types on the same or adjacent properties, except for small liquid soil depots.

Comment period

Stakeholders can provide feedback on the proposed amendments until **Nov. 21, 2024**. To learn more about how these changes may impact your projects, contact BLG's environmental law team for the latest advice and guidance.

By

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