

BENEFICIAL RE-USE



Rob Jowett

The provincial government has introduced new regulations which are intended to make the reuse of excess soils easier while reducing illegal dumping operations.

The **Environment, Conservation, and Parks Ministry** is making changes to the *Environmental Protection Act* to clarify when and where excess soils can be reused, and to help businesses plan the most efficient ways of reusing them. The changes also introduce an excess soil tracking mechanism to ensure that contaminated soil is disposed of properly and to place restrictions on landfilling clean soil that would be more suitable for sensitive areas. The new regulations will come into force in a phased manner, with the first ones taking effect July 1, 2020.

“The changes clarify when excess soil will be designated as waste and when it will not,” Environment, Conservation, and Parks Ministry spokesperson **Gary Wheeler** told *NRU*. “Excess soil that is being appropriately reused for a beneficial purpose will not be considered waste. These changes will also replace low-risk waste-related approvals with regulatory rules ensuring appropriate management, and

will restrict the deposit of clean excess soil at landfill sites when it can be beneficially reused [elsewhere]. This will reduce the amount of soil being sent to landfill.”

Currently, excess soil is classified as a waste product of development sites and is usually sent to landfills for disposal. Members of the development industry, and the construction industry in particular, have been seeking a new regulatory framework that would allow the excess soil extracted from construction sites to be reused on other sites as fill, rather than developers having always to find new soil for fill on new development sites. Around two million tonnes of excess soil are currently landfilled annually in Ontario.

“Excess soil is a resource, and not a waste,” **Ontario Home Builders Association (OHBA)** chief executive officer **Joe Vaccaro** told *NRU*. OHBA supported the ministry in its announcement of the new regulations. Vaccaro says the regulations will reduce the time and costs of dealing with excess soils, savings that can then be passed on to landowners and homebuyers.

“The old system treated excess soils as a waste product to be dumped into a landfill.

Turning that concept around [and] saying ‘how is excess soil a resource and how do we resource manage the excess soil?’ provides a whole different framework, and an opportunity,” says Vaccaro. “In that context, developers can look at what’s being pulled out of the ground as part of the development process, they can test it, they can document it, they can categorize it, and then they can find a reuse for that resource.”

The parts of the regulations that will come into force in July 2020 are specific to soil reuse. Soil excavated using passive aeration, passive dewatering, mechanical dewatering, mixing, soil turning, size-based sorting, and debris sorting will not be classified as a waste product. Contaminated soil will be classified as a waste unless a Qualified Person as defined by the *Environmental Protection Act* is retained by the development site project manager for an excavation site and can provide written procedures clarifying to how the soil may be reused safely.

The regulations set a requirement that development sites accepting excess soils are using the soil for beneficial reuse, such as for backfilling for excavation, to modify

site grading, or for site rehabilitation. The regulations also set out requirements about how different qualities of soil can be used, using the quality framework established in the [Rules for Soil Management and Excess Soil Quality Standards](#), which was introduced by the Environment, Conservation and Parks ministry in November.

The ministry’s requirements for brownfield sites are being loosened as well. Records of site condition will no longer be required in some cases, such as on sites where the contamination is already well understood and where the proposed redevelopment is considered a low-risk use.

The second phase of the soil regulations will come into force January 1, 2022, and concern the tracking, testing, and registration of excess soils. At that time, most excess soil will be required to have a notice filed with a public registry managed by the ministry. That notice will need to include a description of the project where the soil’s site of origin is coming from, a description of the project area, contact information for the project leader at the site of origin, and information about the soil itself and its intended reuse.

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Some projects, such as those generating a small amount of fill or sending contaminated fill directly to a waste disposal site, would be exempt from this registration requirement.

“It was a bit of a hodgepodge of people [not knowing] what was and wasn’t allowed or how to treat their soil,” **SoilFLO** president **Kevin Goldberg** told *NRU*. “So the first thing that this is going to do is it’s going to give clarity to the municipalities and jurisdictional areas [as] to how they are able to operate and how they are able to basically monitor the fill that’s coming into their municipalities safely.”

Goldberg says the registration will make reusing soil more efficient, as it will facilitate communication between those working on construction projects removing fill and those seeking it. This will be especially important for developments with sensitive uses, such as agricultural, which will be seeking a higher quality of soil than general development sites.

Goldberg says the registration process will also enable the province to stop illegal dumping operations by being able to track where soil is coming from and where it is supposed to go. Many municipalities, such as Hamilton and Clarington,

have had to create excess soil restrictions to stop unscrupulous operators from dumping soil with unknown characteristics on their fields.

“When [developers are] bidding a job, if [they receive] a low-priced bid, then that low price basically comes down to how far [away] and what is your fill site,” says Goldberg. “So everything that an excavator does is based on a cubic metre of soil. And... the price of [that cubic metre] is based on how far they have to travel to get rid of it and how much it costs them to dump it. And everything else is the same—the same price of diesel for their excavators, the same cost of labour, everything else is the same. So their ability to win [in the bidding process for development projects] comes down to [the proximity of] their dump site [to the site of origin].”

Goldberg adds that while there are not a lot of excavators who engage in illegal operations, until now, the lack of clear regulations and strong enforcement mechanisms made unscrupulous excavators more financially competitive than honest operators. Registration of excess soils makes project managers, who are either the landowner or someone beholden to the landowner, responsible for ensuring that

soil is registered, tracked, and reused responsibly.

“The biggest thing I would be concerned about is that the regulations... have teeth,” **GEOSOLV** president **Mark Tigchelaar** told *NRU*. “If they don’t put the resources [into] following through and being able to properly monitor things, things are still going to fall through the cracks. So there’s been stories about situations where soil’s been dumped on farmer’s fields and then it turns out it’s all [contaminated]. So those are the kinds of situations the industry’s trying to avoid.”

The new regulations also establish a site-specific tool to determine what kind of excess soil can be used as fill. What soil is allowed where is defined in the Rules for Soil Management and Excess Soil Quality Standards introduced in November, but the ministry has also created the Site-Specific Beneficial Reuse Assessment Tool, a resource which allows site owners to quickly and easily determine whether specific soil can be used on a specific site.

“[If] you want to set up a receiving site [for excavated soils], and you want to be able to accept soil that’s above and beyond the very, very stringent soil standards, you can use the [Beneficial Reuse Assessment] tool to identify whether or not you [have site-specific conditions that permit you to] accept certain contaminants at higher levels than the generic standards,” **XCG Consultants** partner **Grant Walsom** told *NRU*. “It will allow somebody to

say... ‘typically, I can only take a table one soil [as defined in part 15.1 of the *Environmental Protection Act*], but I run the [tool] and put all my inputs into the [tool] and it’s telling me that I can accept concentrations of certain contaminants to a little bit of a higher level than the generic standards are telling me that I can.”

Walsom says that the tool would allow for minor amendments to what type of soil is allowed on sites, and would not provide substantially different allowances than the Rules for Soil Management and Excess Soil Quality Standards. For example, some sites have higher-than-normal amounts of clay between the surface and the groundwater, meaning that those sites could accommodate higher levels of contamination without affecting the water supply.

The final phase of the regulations will concern restrictions on landfilling clean soil, unless the soil is needed for landfill operations. These restrictions, which will come into force January 1, 2025, are intended to ensure clean soil is available for sensitive sites like agricultural areas and schools, and that it is not wasted. Grandfathering provisions on permitted uses will be applicable from January 1, 2020 to January 1, 2026, to ensure existing contracts can be honoured. 🌱