

Ministry of the Environment, Conservation and Parks

Excess Soil Engagement Group Meeting

May 7/10, 2019

Presentation Overview

1. Excess Soil Regulatory Proposal – Sanjay Coelho, MECP
2. Excess Soil Sampling Regime - Rose Ash, MECP
3. Excess Soil Standards and the Beneficial Reuse Assessment Tool – Paul Welsh, MECP
4. Brownfields Regulatory Amendments for Burden Reduction – Rose Ash/Dean Therrien, MECP
5. Supporting Guidance and Education– Chris Lompart, MECP
6. Wrap Up and Next Steps – Chris Lompart, MECP



Recent Key Policy Efforts

Ongoing engagement efforts have informed the development provincial excess soil policy:

- Spring 2018 Environmental Registry posting of draft regulation
- November 2018, proposed **Made-in-Ontario Environment Plan** recognizes excess soil as a resource and included an action of setting clear rules for reuse of excess soil.
- November 2018, Parliamentary Assistant Andrea Khanjin spoke at the Canadian Urban Institute's second annual **Excess Soil Symposium** and indicated the ministry's intention to work with partners to bring forward an excess soil regulation.
- March 6- April 20, 2019, Environmental Registry posting of the discussion paper "**Reducing Litter and Waste in Our Communities**".

On May 1, 2019, the ministry posted an **excess soil regulatory proposal** on the Environmental Registry for 30 days (May 1-May 31). The proposal includes:

- A new proposed **On-Site and Excess Soil Management Regulation**
- Complementary **amendments to Regulation 347 (Waste-General)**
- Complementary and burden reduction **amendments to O. Reg. 153/04 (Records of Site Condition)**
- A proposed document to be adopted by reference titled "**Rules for Onsite and Excess Soil Management**", including requirements related to excess soil assessment, sampling, and characterization, destination assessment reports, tracking systems and applicable soil quality standards and related rules
- A proposed "**Beneficial Reuse Assessment Tool**" (BRAT)

Summary of Input Received

- General support; pleased regulation was proposed and appreciated that MECP listened to input provided through previous engagement efforts; seeking finalization of this proposal ASAP

Excess Soil Reuse and Waste Designation

- Exemption from waste designation for appropriately reused soil generally provides needed clarity
- Exemptions from certain waste approvals supported; request streamlining of other approvals
- Some definitions need to be clarified
- Agree that standards help to clarify where excess soil can be reused and are useful for municipalities and others in permitting; some further refinement suggested; some concern about allowing less stringent standards

Source Site Responsibility

- Soil management plan requirements supported to facilitate better up front planning
- Some industry concern about administrative burden
- Requests for simplification (reduced detail and record requirements), flexibility for the timing of some elements, and some further exemptions in (e.g., stormwater sediment, reuse in some infrastructure)
- Appreciation that the sampling approach provides clarity and some flexibility; some concerns about sampling frequency, some further discretion of Qualified Persons requested

Transparency and Public Accountability: support for public registry development, to promote transparency

Compliance: some industry and municipalities requested a proactive compliance regime be established

Programs: clear expression that guidance, education, pilots and Qualified Person training are essential

Timelines: general agreement with scale of transition times; some requests for extensions and recognition of contracts

Key Policy Changes in 2019 Regulatory Proposal

The current regulatory proposal builds on earlier proposals, with revisions to respond to input received. Many changes are more detailed, the following are some key changes:

1. Burden Reduction:

- Reduced requirements related to sampling, tracking system, hauling records, registration, and other excess soil management actions.
- Removal of approval for listed processing activities at additional locations.

2. Focus on key requirements of excess soil management planning:

- Key actions related to an excess soil management plan remain – sampling, tracking and registration
- Minor information and formatting has been removed (will be in best practices).

3. Strengthening of controls at large reuse sites and landfills:

- Registration and verification requirements introduced for large reuse sites.
- Limited restriction on soil going to landfill

These revisions are described in more detail further on in this presentation.

Reuse Rules and Waste Designation

Proposed

Excess Soil Not Designated Waste

Excess soil leaving a project area would not be designated waste if the following conditions are met:

- The excess soil is being directly transported to a reuse site for final placement;
- The operator of the reuse site has consented in writing to the deposit of the excess soil;
- The excess soil is dry and remains dry until it is finally placed; and
- The quality and quantity of soil are appropriate for the beneficial use, determined in accordance with a site specific instrument or the regulated Soil Rules.

If the conditions cease to be satisfied (i.e. the excess soil is not being reused according to the regulation), the soil is designated waste:

- If the conditions are satisfied again, it would not be designated waste
- If not satisfied, the soil could be disposed of as a waste at a waste disposal site
- Such soil not managed appropriately could be subject to compliance and enforcement action
- If soil has been beneficially reused in a completed undertaking for at least five years, without compliance action, there would no longer be potential for the waste designation to be applied; if any concerns are found other provisions of the *Environmental Protection Act* may be used to address a potential adverse effect

Reuse Rules and Waste Designation

Quality and Quantity Requirements for Reuse (not designated waste)

1. If the reuse site is governed by a site specific instrument:
 - Excess soil governed by a site specific instrument complies with the quality and quantity requirements in that instrument.
 - Where the instrument does not contain quality requirements, the Soil Rules apply.
 - Where the instrument does not contain quantity requirements, the quantity of excess soil brought to the reuse site must be consistent with the identified beneficial purpose.
2. If no site specific instrument applies to the reuse:
 - Quality must meet the applicable excess soil quality standards (generic) or the site-specific standards developed by a qualified person using the Beneficial Reuse Assessment Tool.
 - Quantity must not exceed the quantity needed for the identified beneficial purpose at the reuse site.
 - The primary use of the reuse site must not be the deposit of excess soil, and deposited soil must be finally placed within one year (except if infrastructure or extended by a provincial officer).

Site specific instrument or by-law includes, for example, a site alteration permit under the Municipal Act, a license under the Aggregate Resources Act, or any other site-specific instrument under an Act of Ontario or Canada that may regulate the quality or quantity of excess soil.

Reuse Rules and Waste Designation

On-Site Processing

- Excess soil being processed on-site is a waste and subject to approvals except in relation to certain types of processing which are subject to rules
- Processing types not subject to an approval are: passive aeration, passive drainage, mixing if not to reduce contaminant concentrations, soil turning, size based sorting, removal of debris.
- As with other soil excavated on-site, processed soil would not be a waste unless it leaves the property
- Applicable rules relate to preventing various adverse effects (noise, dust, erosion control, leaching, odour), limiting the size of storage piles and contact with vegetation.

Haulers Transporting Excess Soil

- Hauling of excess soil would not be subject to waste approvals, but would be subject to regulated rules
- Hauled soil that is a waste (e.g. liquid soil) is subject to the rules listed in section 16 of Regulation 347
- Hauled soil that is not waste (e.g. dry soil going to a reuse site) is subject to listed rules in the regulation which are a subset of this in Regulation 347, such as carrier being leak-proof and covered
- All hauled excess soil would be required to have a record with it setting out specified information (this is significantly reduced)
 - Electronic or paper, usually produced by source site but the hauler must have the record
 - During transportation – information on quantity, source site and destination plus contacts, date and time leaving, and hauler information
 - Upon arrival at the destination – date and time of deposit, name and contact of the person that received the soil and declaration that the soil was received
 - Copy of record provided by hauler to deposit site operator

Reuse Rules and Waste Designation

Temporary Storage Sites

- Temporary soil storage sites would not require waste approvals, but would be subject to regulated rules (in the Soil Rules document); processing of the types permitted on-site are now permitted at temporary sites, except passive dewatering
- Rules are similar to those for on-site processing, plus record-keeping related to soil origin, intended reuse sites and quality

Works Yards

- Field operations-related exemptions from approvals in Regulation 347 may apply to dry and liquid excess soil storage at a local waste transfer facility
- Excess soil at a local waste transfer facility of a public body (e.g. municipality, MTO) would also be able to be processed, without approval, if the processing is of a type listed for on-site processing
- Rules applied to these sites, in addition to provisions in Regulation 347, are the same as those rules that apply to on site processing

Processors and Soil Bank Storage Sites

- Soil bank storage sites and off-site soil processing facilities would continue to require a waste approval in accordance with Regulation 347
- This would include privately owned liquid soil processing facilities

Landfill Restriction

- It is proposed that soil that meets Table 2.1 for residential, parkland and institutional, would not be able to be deposited at an landfill except as daily cover

Reuse Rules and Waste Designation

Comments Received (and response)

- Suggestion that the QP should determine whether excess soil is reusable (QPs assess quality relative to standards and develop site specific standards)
- Requests for clarification on 5 year period in which soil may be designated waste (clarification regarding orders issued is added; guidance will also clarify)
- Suggestion that clean soil and topsoil should not be considered waste (if clean, only waste if not reused or disposed; use as topsoil would be a beneficial use)
- Concerns about designating liquid soil, including sediments, as waste (if dewatered, can be treated same as dry soil, hauling does not require approval)
- Concern about landfilling of excess soil that might otherwise have reuse potential (standards help clarify reuse; restriction on landfill added)
- Concern about instruments taking precedence over ministry standards (provides for transition and site specific approaches, expected that most instruments will refer to standards)
- Recommendation to address soil importation from outside Ontario, and leaving Ontario (tracking and new compliance tools help address importation of improper fill)
- Concerns with movement not occurring unless all reuse sites identified (reuse sites can now be identified later but must be in registry before being used)
- Need for enhanced provincial enforcement; clarity on enforcement roles and responsibilities needed (improved enforcement with clearer rules; new enforcement tools; more clarity through guidance)
- Concern about soil from Quebec (enhanced compliance and enforcement – waste rules, hauling record, reuse site registration, proposed administrative penalties and licence plate seizure)

Reuse Rules and Waste Designation

Key Changes Based on Input

- Most proposed revisions to the waste designation section are generally minor clarifications
- Clarification will be given in guidance on various matters, e.g. the 5-year rule
- Affect of 5-year rule on orders clarified
- Low-risk processing added to temporary storage sites and public body works yards, with rules
- Restriction on excess soil going to landfill if it can be used at a sensitive use site

Excess Soil Reuse Planning

Proposed

Excess Soil Reuse Planning Requirements

- Project leader would ensure key excess soil management actions (not a plan) are completed for certain sites:
 1. Assessment of past uses and, if necessary, a sampling and analysis plan and excess soil characterization report
 2. Completion of an excess soil destination assessment report
 3. Implementation of a tracking system
 4. Registration
- Reuse planning actions would, generally, be required to be completed before any soil leaves the property if (see Schedule in the regulation):
 - a) The project area was previously used for an industrial use or certain commercial uses (e.g. gas station, bulk liquid dispensing, dry cleaning, gas and oil pipeline, garage), referred to as “enhanced investigation project area” in this regulation
 - b) The project area is in a settlement area and at least 2,000m³ of excess soil is being removed
 - c) The project is a remediation project
- Planning requirements are not required if:
 - a) Less than 100m³ of excess soil is leaving the project area and the soil is taken directly to a waste disposal site;
 - b) The excess soil is being removed for emergency purposes or to respond to a spill or an order;
 - c) The excavation of excess soil is necessary for the maintenance of infrastructure;
 - d) The excess soil is top soil, it is being moved to another project for reuse as top soil and the project area from which the soil was delivered is not an enhanced investigation property or a remediation project.

Excess Soil Reuse Planning

Assessment and Characterization

- Qualified person would prepare or oversee preparation of:
 - An assessment of past uses (not required for stormwater pond clean out or if 153/04 phase one ESA completed)
 - A sampling and analysis plan, if potentially contaminating activity, enhance investigation project area, or stormwater pond
 - A soil characterization report with the results of the analyses undertaken
 - An excess soil destination assessment report identifying each deposit site being used and the estimated quality and quantity to be taken to each, and documentation verify appropriateness
- If soil is being moved from a project area that has a sensitive use to another sensitive use or between certain types of infrastructure projects (public highways, transit lines, and sewage and water distribution systems), then a qualified person does not have to be retained to prepare these documents
- Qualified Person defined as per O. Reg. 153/04
- Update of inaccuracies within 30 days; records retained for 7 years

Tracking Systems

- The project leader would be required to establish a tracking system of procedures and records that meet the requirements in the Soil Rules, including verification of:
 - Segregation of excess soils of varying qualities
 - Awareness and appropriateness of reuse site for each load of soil
 - Quality of soil in a carrier, and volume of soil in a carrier
 - Date and time a load leaves a project area and is deposited at a reuse site, verified by site operators
 - Vehicle identification and that a load is not tampered with
 - The site at which the soil was deposited and information on who verified receipt
 - The total amount of soil received at each site and confirmation that it matches the amount sent

Excess Soil Reuse Planning

Source Site Registration (significantly reduced)

- Applies to applicable source sites, i.e. from an enhanced investigation property, a remediation project or a project are of 2000m³ in a settlement area
- Before soil is moved from the project area:
 - A notice would be required to be filed in the Registry including information on location, project, project leader, qualified person, person responsible for transportation, and amount of soil and soil quality
 - Notice to also include reuse sites and other deposit sites that will be used, including temporary sites and alternate sites
 - Information on any peer review or certification process related to the soil management actions
 - Declarations by the project leader and qualified person
- A project leader would be required to update the registry:
 - If any deposit site is to be used not in the Registry, it must be added before that site is used
 - To correct any aspect of the notice that is inaccurate or incomplete, within 30 days
 - Upon completion of all excess soil being removed, to include information on how much soil was taken to each deposit, and the date the last load was removed.

Reuse Site Registration and Procedures

- Applies to a reuse site accepting at least 10,000m³ of excess soil for an undertaking
- Before soil is received:
 - A notice would be required to be filed in the Registry including information on location, undertaking, applicable standards and volume needed, and that procedures are in place
 - Procedures are in place to verify where soil is delivered from and that the quality of soil received is appropriate, and that soil is inspected as it arrives
- Updating of the notice once all soil is received indicating completion and date, and volume received

Record Retention

- Seven years for reuse planning documentation, by QP and project leader and qualified person
- Two years for hauling records, by each related party

Excess Soil Reuse Planning

Comments Received (response):

- Support for /concern with 2000m³ (left as is)
- Indication that while requirements have been streamlined over time, some remain onerous and costly, examples included:
 - Tracking and registration of clean soil (only required for over 2000m³ from settlement areas)
 - Frequent updates on the registry (no set time now – beginning, end, and if new deposit site to be used)
- Suggestion to require registration of QPs (QP certifies their work, education/training is recognized as important)
- Indication that reuse sites need more oversight (registration requirements added for large sites)
- Request to reinstate infrastructure to infrastructure exemption from 2017 proposal (added back in relation to characterization, registration still required)
- Concern about landfill capacity and unnecessary landfilling of excess soil (proposed restriction for soil that meets Table 2.1 for residential, parkland and institutional)
- Support for electronic systems (not made mandatory because of small operators, guidance will recommend)
- Various definitions need clarity:
 - project leader – can there be more than one? (yes, for example in a partnership situation)
 - can a municipal road network be a project area? (no, but multiple areas along the same corridor can be one project)
 - should align the definition of environmentally sensitive areas with the Provincial Policy Statement, Clean Water Act (largely does, but some variation reflecting different general purposes of policies)
- Need for provincial guidance, including templates, and education (recognized; plans being confirmed)

Excess Soil Management Planning

Key Changes Based on Input:

- Eliminated excess soil management plan formatting details, kept key actions
- Reduced detailed requirements associated with tracking system, hauling record and registry
- Records retention time reduced for hauling records (now two years)
- Oil and gas pipelines added to list of activities that trigger planning
- New requirement for registration for large reuse sites ($10,000\text{m}^3$)
- Soil moved from a sensitive site or certain infrastructure sites to a similar site would not be required to undertake some reports.
- New reuse sites can be added to registry, and ongoing registry updates only required for new reuse sites and inaccuracies

Source Site Sampling

- Assessment and characterization requirements are mandatory for sites where excess soil management actions are required as well as in areas with an industrial use, certain commercial uses, remediation projects, potentially contaminating activities, where evidence of contamination is discovered during excavations, and stormwater management pond cleanouts.
- Key elements proposed to be carried out in accordance with the Soil Rules:
 1. **Assessment of past uses** – An “up-front” assessment to determine the potential for contaminants to have impacted soil to be excavated. Key components include records review, interviews, site reconnaissance, conceptual site model and evaluation and reporting.
 2. **Sampling and analysis plan** – This includes requirements for in-situ and stockpile sampling with the preferred approach being in-situ sampling; a simplified volume based frequency for in-situ sampling and minimum sampling frequencies for sampling from stockpiles; minimum parameters to be tested (e.g. petroleum hydrocarbons , BTEX, metals), as well as leachate analyses requirements; and limited QP discretion for sampling frequencies and analytical parameters for soil destined for a landfill.
 3. **Excess soil characterization report** - Details reporting requirements related to evaluation of the results, cross-sections, figures, tables and narrative descriptions to illustrate the investigation activities including where samples were collected, the results of analysis, hydrogeological information etc.

Source Site Sampling

Sampling for Stormwater Management Pond Sediment

- Sampling applies to all stormwater management pond sediment, including industrial ponds (considered an industrial use) to ensure proper characterization to determine appropriate reuse (or disposal)
- Once sediment has been dewatered, stockpile sampling is undertaken
- To reduce sediment variability, if sediment is segregated in stockpiles (by sediment zones), the in-situ sampling frequencies can be followed (e.g., 1 sample per 250 m³), otherwise stockpile sampling frequencies apply
- Minimum parameters to be tested similar to soil, with the addition of PAHs, EC, SAR, and cyanide, and leachate analyses requirements

Alignments with Reg. 153/04 - Sampling for Soil Brought to a RSC Property

- For soil being brought to a RSC property, it must be sampled as part of the excess soil management actions and meet the soil quality standard for the intended use of the RSC property
- For soil brought to a property that later becomes the subject of a RSC, the soil must be sampled in accordance with excess soil rules or Reg. 153/04 at the source site or prior to placement to not be considered a potentially contaminating activity (i.e. importation of fill material of unknown quality)
- If soil sampling was not required at the source site, it must be sampled in accordance O. Reg. 153/04 before being brought to a RSC property
- Attainment rules and BRAT do not apply to soil being brought to a RSC property
- The QP at the RSC property may wish to confirm the sampling at the source site was adequate, to meet sampling requirements in O. Reg. 153/04

Source Site Sampling

Comments Received:

- Aspects of the Assessment of Past Uses are onerous and prescriptive and not practical for linear projects
- Sampling frequencies are not high enough vs are onerous. Some concern about differences between in situ and stockpile sampling frequencies
- Analytical parameters for should be more rigorous vs. allow more QP discretion on selection of analytical parameters. Soil sent to landfill should be not be subject to same sampling frequencies as soil for re-use.
- Leachate analysis is onerous and costly, SPLP procedure is not common in Ontario, not clear why leachate rules necessary here but not in Reg. 153/04
- Stormwater management pond sediment analysis is costly, leachate analysis is not necessary, and should incorporate TRCA instructions for sediment sampling and analysis

Source Site Sampling

Key Changes Based on Input:

- Key components of the assessment of past uses are maintained with clarity to reflect the flexibility available in meeting the requirements. Added discretion on completion of interviews where impractical or unnecessary (e.g. linear projects)
- Additional QP discretion on sampling (e.g., in-situ or stockpile sampling), and sampling and analysis for soil destined for a landfill. For stormwater management ponds, added flexibility to use in-situ sampling frequency if sediment is segregated and dewatered by sediment zone
- QPs have the discretion to add on other analytical parameters; the minimum parameters are appropriate based on ministry experience. Cyanide added to the stormwater management pond minimum parameter list per TRCA guidance
- Leachate analysis applies to a limited number of parameters (e.g., metals, hydride forming metals, and some organic compounds). Method will be made available, with plan to incorporate the SPLP method into the Analytical Protocol in the future
- Reduced burden and complexity by removing some requirements in the sampling and analysis plan (e.g., managing stockpiles, determining if additional samples are needed prior to excavation, details related to managing heavily impacted soil destined for landfill can be placed into guidance)
- Some requirements in the characterization report removed (e.g., stockpile sampling and management, details related to leachate testing, soil destined for landfill, quality assurance/quality control and reporting requirements can be placed into guidance)

Excess Soil Standards

- Excess soil standards developed using a similar approach as Brownfield standards
- Two sets of excess soil standards (based on soil volume):
 - Small Volume (<350 m³ or up to <1000 m³ with rationale provided by the QP) - Use applicable Brownfield standards
 - Large Volume or Volume Independent – Use applicable Volume Independent Excess Soil standards
- Provision also provided for developing site-specific excess soil standards using the Beneficial Reuse Assessment Tool (BRAT) or by conducting a Risk Assessment
- Leachate Screening Levels developed for some contaminants (e.g., metals and some organic compounds) to assess potential impacts to groundwater
- Ceiling values also developed as maximum “not to exceed” values when used in conjunction with the statistical attainment approach for determining if soil meets the applicable standard or not
 - Statistical attainment approach requires a minimum sample size of 20, the 95% UCLM and 90th percentile must be less than or equal to the applicable standard, and the maximum concentration measured must be less than the ceiling value

Excess Soil Standards

- Excess soil standards provided in a series of Tables for different property uses. Different tables account for soil volume and various site attributes (e.g., groundwater potability, within 30 m of a water body, etc.).

Table Description	Small Volume	Volume Independent
Full Depth Background (same as O. Reg. 153/04)	Table 1	Table 1
Full Depth, Potable	Table 2	Table 2.1
Full Depth, Non-Potable	Table 3	Table 3.1
Stratified, Potable (standards for both surface & subsurface soil)	Table 4	Table 4.1
Stratified, Non-Potable (standards for both surface & subsurface soil)	Table 5	Table 5.1
Full Depth, Shallow Soil (<2 m overburden), Potable	Table 6	Table 6.1
Full Depth, Shallow Soil (<2 m overburden), Non-Potable	Table 7	Table 7.1
Full Depth, Within 30 m of a Water Body, Potable	Table 8	Table 8.1
Full Depth, Within 30 m of a Water body, Non-Potable	Table 9	Table 9.1

Beneficial Reuse Assessment Tool (BRAT)

- BRAT is an Excel-based tool that allows the development of site-specific excess soil standards. BRAT also generates site-specific leachate screening levels and ceiling values.
- Allows modification of a limited number of physical characteristics of a reuse site, such as depth to groundwater, soil texture, hydraulic conductivity, fraction of organic carbon and distance to surface water
- Includes predefined “Site Use Characteristics” such as no buildings or a hard cap.
 - Similar in concept to the predefined risk management measures allowed under the MGRA model
 - Only applicable if reflects existing site uses or planned uses for the reuse site; not as a mechanism to manage potential risks associated with excess soil
- Requires the Qualified Person to sign declaration statements specific to using the BRAT.
- Typically, does not require oversight or approval by a public body unless:
 - Site-specific standards generated by BRAT exceed a maximum threshold (based on a multiplier of the applicable generic standards)
 - Site use characteristics are utilized in the BRAT

Risk Assessment

- Site-specific excess soil standards can also be developed by completing a risk assessment
- Risk assessments require oversight by a public body and a site-specific instrument
- If the qualified person wishes to use the BRAT for developing site-specific standards in exceed of the maximum threshold (based on a multiplier of the applicable generic standards), then all requirements for a risk assessment must be met

Excess Soil Standards and Reuse Rules

Key Comments

- Some stakeholders appreciate the flexibility of the proposed excess soil regulation (e.g., statistical attainment, use of BRAT, limited restrictions on reuse sites), but:
 - Some concern that proposed volume independent standards and leachate screening levels are overly stringent (e.g., as compared to brownfield standards)
 - Some concerns with implementation of standards and associated rules (seen as overly complex)
- Other stakeholders had concerns with respect to:
 - the lack of specific restrictions on reuse sites,
 - the potential 'patchwork' of soil standards that may result from site-specific standards,
 - broader concerns regarding the potential for adverse effects to the environment and human health
- Concerns were also identified that excess soil standards (and rules) could create possible conflicts with other rules and regulations (e.g., O. Reg. 153/04, O. Reg. 347, municipal bylaws, etc.)
- General support that providing guidance and clarity on the use of standards and rules would be beneficial

Excess Soil Standards and Reuse Rules

Key Changes:

DOCUMENT	PROPOSED CHANGES
Rationale Document	<ul style="list-style-type: none"> - Additional guidance to improve understanding of implementation of excess soil standards and attainment approach. - Expectation that this will help explain and justify differences between excess soil requirements and other regulations (e.g., O. Reg. 153/04).
Soil Rules (Part IV)	<ul style="list-style-type: none"> - Further clarification to rules document (e.g., compost blended w/ soil; meeting standards via statistical compliance; leachate testing, etc.).
Soil Rules (Appendixes 1, 2 and 3)	<ul style="list-style-type: none"> - Additional QA/QC and updated science was incorporated to develop volume independent excess soil standards, leachate screening levels and ceiling values (e.g., align with new drinking water standards, new toxicity reference values, etc.).
BRAT model and User Guide	<ul style="list-style-type: none"> - Additional improvements to BRAT to better align with current science. - Addition of a maximum threshold to require BRAT output to be treated as a risk assessment (requires review by a public body and site-specific instrument). - Plan to update the BRAT User Guide and develop guidance/fact sheets to improve understanding of applicability of BRAT and using BRAT as part of a risk assessment. - Expected that different reuse sites will have different site-specific standards as a result of site-specific factors (e.g., distance to nearest waterbody; no buildings). No concern re: “patchwork of standards” as BRAT standards expected to have similar protection of human health and the environment as generic standards.

Record of Site Condition Amendments Excess Soil Alignment and Burden Reduction

Objective

- Amendments to align RSC Regulation with New Excess Soil Regulation –(importation of soil, sampling frequencies, etc.)
- Revise the RSC regulation to address practical challenges by reducing barriers to redevelop and revitalize historically contaminated lands, putting underutilized or vacant prime land back to good use
- The proposed regulatory amendments will reduce burden on 153/04 requirements for proponents

Change from Spring 2018 Regulatory Proposal

- No substantive changes with some minor additions

Record of Site Condition Amendments Burden Reduction

Non-Standard Delineation

Challenge: Meeting delineation requirements under O. Reg. 153/04, specifically delineation to generic standards, causes practical challenges at some Risk Assessment (RA) properties.

Proposed amendment would provide ministry discretion on delineation requirements when a QP provides a rationale that shows:

- All contaminants of concern (COC) are identified
- Appropriate steps have been taken to locate the maximum concentration.
- Additional efforts to delineate are unlikely to contribute meaningful information about the distribution and extent of contaminants at the property.
- The RA property is appropriately characterized

Substance Used for safety Under Conditions of Snow/Ice

Challenge: Activities undertaken to satisfy the requirements to file a RSC, including the undertaking of RA where salt is the only substance that exceeds the applicable site condition standard, may not lead to significant environmental or human health benefits.

A proposed amendment would deem a standard not to be exceeded when substance has been used for the purpose of traffic and pedestrian safety under conditions of snow/ice. This is an expansion of the current exemption for public roadways. Can be applied using a ESA Phase 1 or ESA Phase 2 approach.

Record of Site Condition Amendments Burden Reduction

Discharge of Treated Drinking Water

Challenge: Leaking municipal water mains or large scale purges of municipally treated drinking water can lead to the exceedance of applicable site condition standards of such substances as chloroform and bromoform.

A proposed amendment would deem a standard not to be exceeded at RSC properties where a QP determines that a standard is exceeded solely because of the presence of treated drinking water by-products (e.g.: chloroform would not be considered a COC at these sites). Can be applied using a ESA Phase 1 or ESA Phase 2 approach.

Naturally Elevated Concentrations

Challenge: When soil containing naturally-occurring elevated concentrations of substances are moved to a different location they become “contaminants” and must be investigated as part of the phase two environmental site assessment.

A proposed amendment would clarify the allowance for exceedances of naturally-occurring parameters in fill historically placed on a property as long as concentrations are shown to be similar to local levels. The activities related to the historically placed fill would need to have occurred prior to Environmental Site Assessment work.

Record of Site Condition Amendments

Burden Reduction

Indoor Gathering of People for Religious Purposes

Challenge: Religious buildings tend to have uses and activities similar to schools, many house daycares, and have historically been located in residential areas; however, as a “community use” under O. Reg. 153/04, a RSC is required when converting to residential.

A potential amendment would move religious buildings to the institutional category and:

- allow religious buildings to be converted to residential without requiring a RSC.
- required a RSC to insert a religious building onto a industrial, commercial or community property.
- provide a 1-year transition to ensure those that already planned to place a religious building into a industrial, commercial or community property to allow them to move forward under current rules (i.e. 1-year window to get building permit without a RSC)

Urban Agriculture (New)

Challenge: The expansion of agricultural activities in urban centers that do not use soil from the property, notably with the legalization of cannabis, is triggering a RSC requirement due to a perceived link to agriculture

A proposed amendment would clarify that a RSC is not required to cultivate/grow crops in industrial, commercial or community buildings when soil used is not from the property.

Record of Site Condition Amendments Burden Reduction

Temporary Roads (Revised Language)

Challenge: The current definition of “road” in O. Reg. 153/04 does not distinguish between temporary roads and more permanent roads, causing an RSC to be required before a temporary road in a construction area can be converted to a residential use.

A proposed amendment would remove the RSC requirement for a temporary road if this road will no longer exist when all phases of the construction/development are complete.

Mixed Use – All Commercial to Residential (Revised Language)

Challenge: Undertaking the assessments and any remediation required for an RSC could be challenging if the building is not being demolished and rebuilt. The requirement for an RSC may also be a disincentive to reuse some buildings, for example in old downtown areas.

A proposed amendment would allow conversion of upper floors of low-rise, commercial-use buildings to mixed-use residential without a RSC.

- Would not apply to larger buildings or industrial or specified commercial property uses (garage, bulk liquid dispensing facility, including a gasoline outlet, or dry cleaner).
- Subsequent conversion of the ground floor from commercial to residential use would require the filing of an RSC.

Record of Site Condition Amendments

Burden Reduction

Wellhead Protection Areas (New)

Challenge: There is confusion surrounding the requirement to obtain written consent from the municipality to use non-potable standards in a wellhead protection area.

A proposed amendment would create a specific certification statement to verify that the QP or the property owner has received written consent from the municipality to use non-potable standards in wellhead protection area.

Removal of Consideration of Wells in Municipally Services Areas (New)

Challenge: Making the determination of no wells present within the study area to use non-potable standards is difficult and likely unnecessary if area is municipally serviced for drinking water.

A proposed amendment would remove the need to consider wells when proposing to use non-potable standards when the area is municipally serviced.

Record of Site Condition Amendments Burden Reduction

Certificate of Status

A proposed amendment would eliminate the requirement for the QP to provide a Certificate of Status and reduce administrative burden and cost.

Horizontally Severed Properties

A proposed amendment would provide clarity on how to meet regulatory requirements and obtain a RSC for a horizontally severed property (e.g. stacked units in a condominium)

Clarifying the “18 Month” Requirement (Revised Language)

A proposed amendment would revise the language about the 18 month requirements related to the last day of work for ESA Phase 1 and ESA Phase 2.

Updates to Clarify Conceptual Site Model Requirements (New)

Proposed amendments would reduce some repetition and clarify the need to prepare figures by analytical parameter group

Record of Site Condition Amendments for Burden Reduction

COMMENT RECEIVED	PROPOSED RESPONSE/ACTION
<p>General support for proposed amendments with a need for clarity on ministry expectations</p>	<p>Ministry will provide outreach timed with the implementation of amendments (if approved) and follow up with updates to guidance to clarify expectations</p>
<p>Removal of requirement to file a RSC may limit a municipalities ability to mitigate risk</p>	<p>Municipalities encouraged to have local policies that require a RSCs outside of regulatory requirements if there is suspected or known contamination issues at a property</p>
<p>What are the ministry expectations to obtain flexibility on delineation requirements (i.e. Non-Standard Delineation (NSD)) for RA properties?</p>	<ul style="list-style-type: none"> • Qualified Persons are expected to delineate Risk Assessment properties to generic standards before considering NSD • Early engagement with the district office is critical when delineation efforts are exhausted and challenges cannot be overcome
<p>Why is there a four-storey limit for the amendment that allows full commercial properties to convert upper floors to residential without a RSC?</p>	<ul style="list-style-type: none"> • The limit ensures that larger redevelopment projects use the opportunity to assess potential contamination and remediate if necessary • The ministry has proposed to raise the limit to six storeys

Implementation/Commencement

- Proposed regulatory amendments related to excess soil, and brownfields were posted on the Environmental Registry for consultation for 30 days starting on May 1.
- Final approval of both the excess soil regulation and brownfields modernization regulatory amendments could be in Spring/Summer 2019.
- Brownfields amendments are proposed to come into effect **on filing**
- Excess soil regulations would be phased in allowing greater time for aspects that require more education, guidance or program development, and that may affect existing contracts due to procedural changes:
 - **January 2020** – revised excess soil reuse rules and waste designation
 - **January 2021** – requirements for testing, tracking and registration
 - **January 2023** – restrictions on landfilling of soil that can be used at a sensitive use site.

Guidance, Training and Education

Excess Soil:

Update Provincial Excess Soil Guidance	<ul style="list-style-type: none"> - Update MECP BMP, develop templates - Update Brownfields RSC Guide - Complete the development of the Beneficial Reuse Assessment Tool User Guide - Explore opportunities to develop an internal compliance strategy with guidance - Seek partnership with other ministries to update relevant guidance
Education and Outreach	<ul style="list-style-type: none"> - Seek partnership with industry, municipalities, and organizations to lead development and carryout education and outreach activities
Qualified Person Guidance & Training	<ul style="list-style-type: none"> - Seek partnerships to lead delivery - Develop guidance for Qualified Persons - Develop and deliver related training
Laboratory Leachate Protocol	<ul style="list-style-type: none"> - Complete laboratory protocol for the new excess soil leachate requirements

Brownfields

Non-Excess Soil Related Amendments to Regulation 153/04 Outreach	<ul style="list-style-type: none"> - Outreach to QPs to be delivered through webinars and potentially through in-person sessions aligned with amendments coming into effect - Updated Brownfields RSC Guide to be published following engagement with QPs and municipalities
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What We Heard on the May 7th ESEG

Regulatory Component / Theme	Comment(s)
Proposed Regulation	<ul style="list-style-type: none"> • General support for the proposed regulation, believe that past input was well reflected in the proposal. • The proposal provides certainty and clarity for the management of excess soil in Ontario
Limited restriction on soil going to landfill	<ul style="list-style-type: none"> • Concerns about the proposed restrictions on Table 2.1 (R/P/I) soil going to landfill due to a lack of options to accept these soils • Remote communities may not have the option to find a reuse site and must landfill • Additional guidance and clarification is needed on soils that cannot be landfilled
QP training	<ul style="list-style-type: none"> • QP training remains voluntary which raises concern about adequacy of work undertaken
Tracking	<ul style="list-style-type: none"> • Clarity/guidance on some tracking requirements, e.g. that excess soil during transportation has not been tampered • There is currently a lack of confidence in the market about the quality of excess soil that is being moved around
Reuse Sites	<ul style="list-style-type: none"> • Concerned about some of the complexity of requirements to reuse soil; may reduce reuse opportunities
Soil Banks/Processing/Landfill	<ul style="list-style-type: none"> • Explore options to reduce the requirements for establishing a soil bank, processing facility and/or soil landfill
Sampling	<ul style="list-style-type: none"> • Concerns about the additives to solidify stormwater sediment and other liquid solid (e.g. tunnelling), some may increase certain contaminants, some are inert
Temporary Storage Soil Sites	<ul style="list-style-type: none"> • Clarification on leasing / contracts to use land as TSSS are needed
Transition and implementation	<ul style="list-style-type: none"> • Support the proposed timelines – seek finalization ASAP • Guidance is needed to support the implementation timelines
Brownfields	<ul style="list-style-type: none"> • Some non-mandatory RSCs may be generating extra excess soil (e.g. for roads) • Need for guidance to explain interaction of soil/RSC rules