

## Environmental Protection Act

### ONTARIO REGULATION 406/19 ON-SITE AND EXCESS SOIL MANAGEMENT

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*This is the English version of a bilingual regulation.*

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#### INTERPRETATION AND APPLICATION

##### Interpretation

1. (1) In this Regulation,

“Beneficial Reuse Assessment Tool” means the data file entitled “Beneficial Reuse Assessment Tool” and dated November 19, 2019, as amended from time to time, that is maintained by the Ministry and is available on a website of the Government of Ontario; (“Outil d’évaluation pour la réutilisation bénéfique”)

“Class 1 soil management site” means a soil bank storage site or a soil processing site; (“site de gestion des sols de catégorie 1”)

“Class 2 soil management site” means a waste disposal site at which excess soil is managed on a temporary basis and that is,

- (a) located on a property owned by a public body or by the project leader for the project from which the excess soil was excavated, and
- (b) operated by the project leader for the project from which the excess soil was excavated; (“site de gestion des sols de catégorie 2”)

“crushed rock” means a naturally occurring aggregation of one or more naturally occurring minerals that is mechanically broken down into particles that are smaller than 2 millimetres in size or that pass the US #10 sieve; (“roche concassée”)

“dry soil” means soil that is not liquid soil; (“sol sec”)

“dump” has the same meaning as in Regulation 347; (“décharge”)

“enhanced investigation project area” means a project area used,

- (a) for an industrial use,
- (b) as a garage,
- (c) as a bulk liquid dispensing facility, including a gasoline outlet, or
- (d) for the operation of dry cleaning equipment; (“zone du projet d’étude avancée”)

“excess soil” means soil, crushed rock or soil mixed with rock or crushed rock, that has been excavated as part of a project and removed from the project area for the project; (“sols de déblai”)

“Excess Soil Standards” means the document entitled “Part II: Excess Soil Quality Standards”, published by the Ministry and dated December 8, 2020, available on a website of the Government of Ontario as Part II of the document entitled “Rules for Soil Management and Excess Soil Quality Standards”; (“normes sur les sols de déblai”)

“infrastructure” means all physical structures, facilities and corridors relating to,

- (a) public highways,
- (b) transit lines and railways,
- (c) gas and oil pipelines,
- (d) sewage collection systems and water distribution systems,
- (e) stormwater management systems,
- (f) electricity transmission and distribution systems,
- (g) telecommunications lines and facilities, including broadcasting towers,
- (h) bridges, interchanges, stations and other structures, above and below ground, that are required for the construction, operation or use of the items listed in clauses (a) to (g), or
- (i) rights of way required in respect of existing or proposed infrastructure listed in clauses (a) to (h); (“infrastructure”)

“landfilling” has the same meaning as in Regulation 347; (“enfouissement”)

“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; (“sol liquide”)

“local waste transfer facility” has the same meaning as in Regulation 347; (“installation locale de transfert des déchets”)

“Ontario Regulation 153/04” means Ontario Regulation 153/04 (Records of Site Condition — Part XV.1 of the Act) made under the Act; (“Règlement de l’Ontario 153/04”)

“project” means any project that involves the excavation of soil and includes,

- (a) any form of development or site alteration,
- (b) the construction, reconstruction, erecting or placing of a building or structure of any kind,
- (c) the establishment, replacement, alteration or extension of infrastructure, or
- (d) any removal of liquid soil or sediment from a surface water body; (“projet”)

“project area” means, in respect of a project, a single property or adjoining properties on which the project is carried out; (“zone du projet”)

“project leader” means, in respect of a project, the person or persons who are ultimately responsible for making decisions relating to the planning and implementation of the project; (“chef de projet”)

“public body” means,

- (a) a municipality, local board or conservation authority,
- (b) a ministry, board, commission, agency or official of the Government of Ontario or the Government of Canada,
- (c) a port authority under the *Canada Marine Act*, or
- (d) the Toronto Waterfront Revitalization Corporation under the *Toronto Waterfront Revitalization Corporation Act, 2002*; (“organisme public”)

“qualified person” means,

- (a) subject to clause (b), a qualified person within the meaning of section 5 of Ontario Regulation 153/04, and
- (b) for the purposes of subsections 5 (2) to (5), 6 (4), paragraph 7 of subsection 19 (4), section 20 and section 13 of Schedule 1, a qualified person within the meaning of section 5 or 6 of Ontario Regulation 153/04; (“personne compétente”)

“Registry” means the registry described in section 50 of the *Resource Recovery and Circular Economy Act, 2016* (“Registre”)

“Regulation 347” means Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the Act; (“Règlement 347”)

“residential development soil depot” means a soil bank storage site that is temporarily operated for the purpose of managing, on a temporary basis, excess soil that will ultimately be transported to a reuse site for final placement in respect of an undertaking at a reuse site; (“dépôt de sols pour aménagement résidentiel”)

“retail landscaping soil depot” means a soil bank storage site that is operated for the purpose of producing excess soil for landscaping or gardening products that is to be promptly packaged for retail sale to meet a realistic market demand, or to be offered for retail sale to meet a realistic market demand; (“dépôt de vente au détail de sols pour aménagement paysager”)

“reuse site” means a site at which excess soil is used for a beneficial purpose and does not include a waste disposal site; (“site de réutilisation”)

“rock” means a naturally occurring aggregation of one or more naturally occurring minerals that is 2 millimetres or larger in size or that does not pass the US #10 sieve; (“roche”)

“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; (“sol”)

“soil bank storage site” means a waste disposal site, other than a Class 2 soil management site, at which excess soil is managed on a temporary basis and that is operated, by a person who is not the project leader for all of the projects from which the excess soil was excavated, for the primary purpose of storing the excess soil from one or more projects until the excess soil can be transported to a site for final placement or disposal; (“site d’entreposage pour banque de sols”)

“soil processing site” means a waste disposal site, other than a Class 2 soil management site or a soil bank storage site, at which excess soil is managed on a temporary basis, that is operated for the primary purpose of processing excess soil, including processing in order to reduce contaminants in the excess soil; (“site de traitement de sols”)

“Soil Rules” means the document entitled “Part I: Rules for Soil Management”, published by the Ministry and as amended from time to time, available on a website of the Government of Ontario as Part I of the document entitled “Rules for Soil Management and Excess Soil Quality Standards”; (“règles concernant les sols”)

“supervisee” means an individual who is supervised by a qualified person; (“personne supervisée”)

“topsoil” has the same meaning as in subsection 142 (1) of the *Municipal Act, 2001*; (“sol arable”)

“vehicle” includes a trailer or other equipment attached to the vehicle. (“véhicule”) O. Reg. 406/19, s. 1 (1); O. Reg. 775/20, s. 1

(2) For the purposes of the definition of “enhanced investigation project area” in subsection (1), the following terms have the same meaning as in Ontario Regulation 153/04:

1. Bulk liquid dispensing facility.

2. Dry cleaning equipment.
3. Garage.
4. Gasoline outlet.
5. Industrial use. O. Reg. 406/19, s. 1 (2).

(3) For the purposes of this Regulation, two properties are adjoining if the boundary of one property touches or, were it not for an intervening highway, road allowance, railway line, railway allowance or utility corridor, would touch the boundary of the other property. O. Reg. 406/19, s. 1 (3).

(4) For the purposes of this Regulation, a requirement to identify or include in a document the location of a site or property shall be complied with by,

- (a) if the municipal address is available, identifying or including the municipal address; or
- (b) if the municipal address is not available, identifying or including a description of the location by another means. O. Reg. 406/19, s. 1 (4).

#### **Non-application of Regulation**

2. (1) This Regulation does not apply in respect of the following:

1. The excavation of soil that is hazardous waste or asbestos waste, both within the meaning of Regulation 347.
2. The operation of a pit or quarry from which consolidated or unconsolidated aggregate within the meaning of the *Aggregate Resources Act* is excavated, including the use and production of recycled aggregate in the pit or quarry.
3. The excavation of topsoil in accordance with a permit issued under the *Aggregate Resources Act*.
4. The production of peat from a peat extraction operation.
5. The final placement of excess soil on the bed of a surface water body. O. Reg. 406/19, s. 2.

(2) Despite paragraph 2 of subsection (1), this Regulation applies to the deposit and final placement of excess soil at a pit or quarry for reuse at the pit or quarry, including for the purpose of rehabilitating the pit or quarry. O. Reg. 775/20, s. 2.

#### DESIGNATION AS WASTE

#### **Excess soil**

3. (1) Subject to subsection (2), excess soil is designated as waste. O. Reg. 406/19, s. 3 (1).

(2) Excess soil is not designated as waste if all of the following criteria are satisfied:

1. The excess soil is directly transported to a reuse site from a project area, a Class 1 soil management site, a Class 2 soil management site or a local waste transfer facility.
2. Except if the owner or operator of the reuse site is the project leader for the project from which the excess soil was delivered, the owner or operator of the reuse site or a person authorized by the owner or operator has consented in writing to the deposit of the excess soil at the reuse site.
3. The excess soil is dry soil and remains dry soil until it is finally placed at the reuse site, or, if it is not dry soil, an instrument described in paragraph 4 authorizes the excess soil to be deposited at the reuse site.
4. If the reuse site is governed by one of the following instruments, the conditions set out in section 4 are satisfied:
  - i. A permit that is issued under a by-law passed under section 142 of the *Municipal Act, 2001* or section 105 of the *City of Toronto Act, 2006*.
  - ii. Provisions of a by-law passed under section 142 of the *Municipal Act, 2001* or section 105 of the *City of Toronto Act, 2006*.
  - iii. A licence or permit issued under the *Aggregate Resources Act*.
  - iv. An approval under the *Planning Act*.
  - v. A certificate of property use issued under section 168.6 of the Act.
  - vi. Any other site-specific instrument under an Act of Ontario or Canada that may regulate the quality or quantity of soil that may be deposited for final placement at the reuse site.
5. If the reuse site is not governed by one of the instruments set out in paragraph 4, the conditions set out in section 5 are satisfied. O. Reg. 406/19, s. 3 (2).

(3) If, at any time, the criteria mentioned in subsection (2) cease to be satisfied in respect of excess soil, the excess soil is designated as a waste and continues to be so designated until one of the following events:

1. The criteria mentioned in subsection (2) have been satisfied again.
2. In a case where a provincial officer has issued an order mentioned in subsection (4) in respect of the excess soil, the order has been complied with.
3. Subject to subsection (6), the fifth anniversary of the day on which the undertaking for which the excess soil is used at the reuse site is completed. O. Reg. 406/19, s. 3 (3).

(4) Subject to subsection (5), if a provincial officer has determined that the criterion mentioned in paragraph 4 or 5 of subsection (2) is not being satisfied, the provincial officer may, by order under section 157 of the Act, specify conditions that apply in respect of the excess soil instead of the criterion that is not being satisfied. O. Reg. 406/19, s. 3 (4).

(5) The provincial officer shall not issue an order mentioned in subsection (4) unless all of the following criteria are met:

1. The provincial officer is of the opinion that it is not practicable in the circumstances to satisfy the conditions mentioned in paragraph 4 or 5 of subsection (2).
2. The provincial officer is of the opinion that, if the conditions specified in the order were met, no adverse effect would result, having regard to the following factors:
  - i. The quality and quantity of the excess soil that has been deposited for final placement at the reuse site.
  - ii. The beneficial purpose for which the excess soil is to be used at the reuse site.
  - iii. The conditions at the reuse site, including the type of property use. O. Reg. 406/19, s. 3 (5).

(6) If an order has been issued in respect of the excess soil before the fifth anniversary mentioned in paragraph 3 of subsection (3) and the order has not been complied with as of the fifth anniversary, the excess soil is designated as a waste until such day as the order is complied with. O. Reg. 406/19, s. 3 (6).

(7) For the purposes of paragraph 3 of subsection (3), the day on which the undertaking for which the excess soil is used at the reuse site is completed shall be determined having regard to any documents provided by the operator of the reuse site relating to the completion of the undertaking. O. Reg. 406/19, s. 3 (7).

(8) Despite the requirements under subsection (2), excess soil that leaves a retail landscaping soil depot is not designated as waste as long as,

- (a) the excess soil meets the soil quality standards set out in the Soil Rules for the purposes of this subsection; and
- (b) the excess soil leaves the retail landscaping soil depot pursuant to a purchase of soil of less than 25 m<sup>3</sup>. O. Reg. 775/20, s. 3.

**Excess soil, reuse site governed by instrument**

4. (1) The conditions set out in this section apply for the purposes of paragraph 4 of subsection 3 (2).

(2) If the reuse site is governed by an instrument in which the quality of excess soil deposited at the reuse site is addressed in the manner described in Column 1 of the following Table, the conditions set out opposite in Column 2 of the Table must be satisfied:

TABLE

Item	Column 1 Manner in which instrument addresses excess soil quality	Column 2 Conditions respecting excess soil quality
1.	Instrument deals with excess soil quality and imposes a requirement that is equivalent to or more stringent than the applicable excess soil quality standard as determined in accordance with the Excess Soil Standards.	The condition set out in paragraph 1 of subsection 5 (1) must be satisfied.
2.	Instrument deals with excess soil quality and imposes a less stringent requirement than the applicable excess soil quality standard as determined in accordance with the Excess Soil Standards.	The requirement set out in the instrument respecting excess soil quality must be satisfied.

(3) If the reuse site is governed by an instrument in which the quality of excess soil deposited at the reuse site is not addressed, the condition set out in paragraph 1 of subsection 5 (1) must be satisfied.

(4) If the reuse site is governed by an instrument in which the quantity of excess soil deposited at the reuse site is addressed in the manner described in Column 1 of the following Table, the conditions set out opposite in Column 2 of the Table must be satisfied:

TABLE

Item	Column 1 Manner in which instrument addresses excess soil quantity	Column 2 Conditions respecting excess soil quantity
1.	Instrument does not specify the maximum amount of excess soil that may be deposited but does identify the beneficial	The quantity of excess soil to be deposited at the reuse site must not exceed the quantity necessary for the beneficial purpose

	purpose for which the excess soil is to be used.	identified.
2.	Instrument specifies the maximum amount of excess soil that may be deposited.	The maximum amount of excess soil specified in the instrument must not be exceeded.

(5) If the reuse site is governed by an instrument that does not specify a maximum amount of excess soil that may be deposited at the reuse site and does not identify the beneficial purpose for which the excess soil is to be used, the quantity of excess soil to be deposited at the reuse site must not exceed the quantity necessary for the purposes of the apparent beneficial purpose for which the excess soil is to be used, as determined by examining the circumstances in which the instrument was obtained, the type of undertaking for which the excess soil is to be used and any other relevant circumstances.

**Excess soil, reuse site not governed by instrument**

5. (1) For the purposes of paragraph 5 of subsection 3 (2), the following conditions must be satisfied:

1. The quality of the excess soil that has been finally placed or that is intended to be finally placed at the reuse site must not exceed the following:
  - i. The applicable excess soil quality standards as determined in accordance with the Excess Soil Standards, unless subparagraph ii applies.
  - ii. Subject to subsection (4), if the excess soil does not meet an applicable excess soil quality standard mentioned in subparagraph i in respect of a parameter, the site-specific excess soil quality standards developed for the reuse site in respect of that parameter in accordance with subsections (3) and (5).
2. The primary use of the reuse site must not be the deposit of excess soil.
3. There must be an identified beneficial purpose in connection with the undertaking for which the excess soil is to be used at the reuse site, such as,
  - i. backfill for an excavation carried out for the purposes of any form of development,
  - ii. final grading carried out for the purposes of any form of development,
  - iii. achieving the grade necessary for,
    - A. any development,
    - B. an undertaking related to infrastructure,
    - C. landscaping, or
    - D. another project governed by an instrument issued by a public body, or
  - iv. the placement of fill to assist in the rehabilitation of the reuse site.
4. The quantity of excess soil deposited or to be deposited at the reuse site must not exceed the quantity necessary for the beneficial purpose identified.
5. Subject to subsections (6) and (7), the excess soil must be finally placed no later than two years after it is deposited at the reuse site.
6. The excess soil must be finally placed in accordance with any requirements set out in the Soil Rules. O. Reg. 406/19, s. 5 (1); O. Reg. 775/20, s. 4 (1, 2).

(2) For the purposes of subparagraph 1 ii of subsection (1), only a qualified person shall develop and apply site-specific excess soil quality standards for the reuse site or supervise the development and application by a supervisee. O. Reg. 775/20, s. 4 (3).

(3) The qualified person described in subsection (2) or the supervisee shall use the Beneficial Reuse Assessment Tool to develop and apply site-specific excess soil quality standards in accordance with the Soil Rules. O. Reg. 775/20, s. 4 (3).

(4) The qualified person or supervisee shall not use the Beneficial Reuse Assessment Tool to develop and apply a site-specific excess soil quality standard for the purposes of subparagraph 1 ii of subsection (1) in circumstances that are identified in the Soil Rules as circumstances in which the Beneficial Reuse Assessment Tool can only be used under the authority of a site specific instrument mentioned in paragraph 4 of subsection 3 (2). O. Reg. 406/19, s. 5 (4).

(5) If the qualified person is retained by the operator of the reuse site, the qualified person shall,

- (a) complete a declaration attesting to the accuracy of the information and the assumptions provided as inputs for the Beneficial Reuse Assessment Tool; and
- (b) ensure that the operator of the reuse site is given a copy of the declaration and the output worksheet generated when using the Beneficial Reuse Assessment Tool. O. Reg. 775/20, s. 4 (4).

(5.1) If the qualified person described in subsection (2) is retained by a person other than the operator of the reuse site, including by the project leader of the site from which the excess soil is excavated, then before the person responsible for the retaining permits any excess soil that is subject to a site-specific excess soil quality standard to be deposited at the reuse site,

- (a) the person who retained the qualified person or the qualified person shall ensure that the operator of the reuse site receives the declaration and output worksheet mentioned in clause (5) (b) and any other reports the qualified person prepares in respect of the reuse site to support the development of the site-specific excess soil quality standard; and
- (b) the qualified person shall ensure that the reuse site operator is authorized to rely on the documents mentioned in clause (a), with that reliance to be based on any assumptions, reuse site characteristics or other conditions that apply to the site-specific excess soil quality standard that the qualified person developed when using the Beneficial Reuse Assessment Tool. O. Reg. 775/20, s. 4 (4).

(6) A Director may, by written notice provided to the operator of the reuse site, authorize an extension, not exceeding five years, of the two-year period mentioned in paragraph 5 of subsection (1), if the Director is satisfied that,

- (a) the extension is necessary in order for the excess soil to be used for a beneficial purpose; and
- (b) the extension will not result in an adverse effect. O. Reg. 406/19, s. 5 (6).

(7) Paragraph 5 of subsection (1) does not apply if the excess soil is to be finally placed at a reuse site that is part of an undertaking related to infrastructure. O. Reg. 406/19, s. 5 (7).

#### **Excavated soil processed at project area**

6. (1) Subject to subsection (3), excavated soil or excavated crushed rock that is processed at the project area at which the soil was excavated is designated as waste. O. Reg. 406/19, s. 6 (1); O. Reg. 775/20, s. 5 (1).

(2) Excavated soil or excavated crushed rock designated as waste under subsection (1) is no longer designated as waste once processing is completed, if the soil remains at the project area. O. Reg. 406/19, s. 6 (2); O. Reg. 775/20, s. 5 (2).

(3) If excavated soil or excavated crushed rock is processed by one of the following methods at the project area at which it was excavated, it is not designated as waste:

1. Passive aeration.
2. Passive dewatering.
3. Mechanical dewatering.
4. Mixing, if the soil being mixed with it is of similar quality to it and the mixing is not carried out for the purpose of diluting the concentration of contaminants in the soil.
5. Soil turning.
6. Size-based sorting.
7. Sorting it for the purpose of removing debris.
8. Subject to subsection (4), mixing it with a substance or other material that is intended to dewater or solidify it. O. Reg. 406/19, s. 6 (3); O. Reg. 775/20, s. 5 (3).

(4) If the substance or other material mentioned in paragraph 8 of subsection (3) contains a natural or synthetic polymer, the excavated soil or excavated crushed rock is designated as waste unless the project leader for the project or the operator of the project area retains a qualified person to do the following or to supervise a supervisee to do the following and the qualified person or supervisee does the following:

1. Develop written procedures to ensure the appropriate and safe use of the substance or other material within the project area during the dewatering or solidification process, having regard to,
  - i. any information supplied by the producer of the substance or other material, and
  - ii. any other information that, in the opinion of the qualified person, is relevant to the use of the substance or other material.
2. Give a copy of the written procedures to the project leader or to a person designated by the project leader.
3. If, after the excess soil is dewatered or solidified, it will be finally placed at a reuse site, prepare a document that sets out the following:
  - i. Identification of the substance or other material, the mixing rates used to dewater or solidify the soil and the amount of liquid soil that was dewatered or solidified.
  - ii. Having regard to the information mentioned in subparagraphs 1 i and ii, instructions regarding storage and final placement at the reuse site of the dewatered or solidified excess soil to ensure that the storage and final placement do not cause an adverse effect at the reuse site.

iii. Confirmation that if the instructions referred to in subparagraph ii are followed, the storage and final placement of the excess soil will not cause an adverse effect. O. Reg. 406/19, s. 6 (4); O. Reg. 775/20, s. 5 (4).

(5) If the excavated soil or excavated crushed rock is processed at the project area by a method set out in paragraph 8 of subsection (3) and will be finally placed at a reuse site after it is dewatered or solidified,

(a) the project leader or operator of the project area shall ensure that a copy of the document mentioned in paragraph 3 of subsection (4) is given to the owner or operator of the reuse site; and

(b) the owner or operator of the reuse site shall ensure that the instructions set out in the document are followed. O. Reg. 406/19, s. 6 (5); O. Reg. 775/20, s. 5 (5).

(6) If the excavated soil or excavated crushed rock is processed at the project area by a method set out in subsection (3), the project leader shall ensure that it is processed in accordance with any requirements governing the processing that are set out in the Soil Rules. O. Reg. 406/19, s. 6 (6); O. Reg. 775/20, s. 5 (6).

(7) For greater certainty, nothing in this section relieves a person from complying with subsection 9 (1) of the Act or subsection 53 (1) of the *Ontario Water Resources Act* when carrying out processing by a method set out in subsection (3). O. Reg. 406/19, s. 6 (7).

#### MANAGEMENT EXEMPTION

##### **Certain depots, exemption from ss. 27, 40 and 41 of the Act**

7. (1) The management of excess soil that is dry soil at a retail landscaping soil depot or a residential development soil depot is exempt from sections 27, 40 and 41 of the Act if the following conditions are met:

1. The amount of excess soil stored at the retail landscaping soil depot or residential development soil depot at any one time must not exceed the amount set out in the Soil Rules for the purposes of this section.
2. If the retail landscaping soil depot or residential development soil depot is operated on land owned by another person, the operator must obtain the written consent of the owner of the land to operate the depot.
3. The operator of the retail landscaping soil depot or residential development soil depot must ensure that the quality of the excess soil accepted and managed at the depot meets the excess soil quality standards set out in the Soil Rules for the purpose of this section.
4. If excess soil is processed while being stored at the retail landscaping soil depot or residential development soil depot, it must be processed in accordance with any requirements governing the processing that are set out in the Soil Rules and by one of the following methods:
  - i. Passive aeration.
  - ii. Mixing of soil, if the soil being mixed with it is of similar quality to it and the mixing is not carried out for the purpose of diluting the concentration of contaminants in the soil.
  - iii. Soil turning.
  - iv. Size-based sorting.
  - v. Sorting for the purpose of removing debris.
5. The operator of a retail landscaping soil depot must provide written notice to the Director in accordance with subsection (3),
  - i. before the excess soil begins to be deposited at the retail landscaping soil depot, if the depot commences operation on or after January 1, 2021, or
  - ii. within 90 days after January 1, 2021, if the depot was operating before that date.
6. The operator of a residential development soil depot must ensure that a notice described in subsection (4) is filed in the Registry,
  - i. before the excess soil begins to be deposited at the residential development soil depot, if the depot commences operation on or after January 1, 2022, or
  - ii. if the depot was operating on the day this section comes into effect, on January 1, 2022.
7. Excess soil from a residential development soil depot must not be deposited for final placement in respect of an undertaking at any reuse site identified in the Soil Rules for the purposes of this provision.
8. The operator of the depot must only operate either a retail landscaping soil depot or a residential development soil depot, not both.



9. The operator of a retail landscaping soil depot must provide written notice of the closure of the depot to the Director in accordance with subsection (5) within 90 days after the closure of the depot.
  10. Any other conditions set out in the Soil Rules with respect to the deposit and storage of excess soil at a retail landscaping soil depot or residential development soil depot must be met. O. Reg. 775/20, s. 6.
- (2) Before excess soil is managed at the retail landscaping soil depot or residential development soil depot after December 31, 2020, the owner or operator of the depot shall ensure that the following steps are taken:
1. Procedures are developed and applied to account for every load of excess soil to be deposited at the retail landscaping soil depot or residential development soil depot.
  2. Procedures are developed and applied to ensure that the storage of excess soil at the retail landscaping soil depot or residential development soil depot does not cause an adverse effect. O. Reg. 775/20, s. 6.
- (3) For the purposes of paragraph 5 of subsection (1), the written notice must include the following:
1. The location of the retail landscaping soil depot.
  2. The name of the operator of the retail landscaping soil depot.
  3. If the operator does not own the property on which the retail landscaping soil depot is located, a letter from the owner of the property indicating that the owner has given the operator consent to operate the depot on the property.
  4. If the operator does not own the property on which the retail landscaping soil depot is located, the name, mailing address, postal code, telephone number and email address of the owner.
  5. If the retail landscaping soil depot commences operations on or after January 1, 2021, the date on which the storage and, if applicable, processing, of excess soil is expected to begin.
  6. If the retail landscaping soil depot is in operation before January 1, 2021, an estimate of the amount of excess soil stored at the site.
  7. If an instrument mentioned in paragraph 4 of subsection 3 (2) has been issued governing the retail landscaping soil depot, identification of the body that issued the instrument, the date the instrument was issued and to whom the instrument is issued, and, if there is an instrument identification number, that number.
  8. A declaration by the owner or operator of the retail landscaping soil depot stating that the steps described in paragraphs 1 and 2 of subsection (2) have been and will continue to be taken. O. Reg. 775/20, s. 6.
- (4) For the purposes of paragraph 6 of subsection (1), the notice filed in the Registry must include the following:
1. The location of the residential development soil depot.
  2. The name of the operator of the residential development soil depot.
  3. If the residential development soil depot commences operations on or after January 1, 2022, the date on which the storage and, if applicable, processing, of excess soil is expected to begin.
  4. If the operator does not own the property on which the residential development soil depot is located, the name, mailing address, postal code, telephone number and email address of the owner.
  5. If the residential development soil depot is in operation before January 1, 2022, an estimate of the amount excess soil stored at the site.
  6. If an instrument mentioned in paragraph 4 of subsection 3 (2) has been issued governing the residential development soil depot, identification of the body that issued the instrument, the date the instrument was issued and to whom the instrument is issued, and if there is an instrument identification number, that number.
  7. A declaration by the owner or operator of the residential development soil depot, stating that the steps described in paragraphs 1 and 2 of subsection (2) have been and will continue to be taken. O. Reg. 775/20, s. 6.
- (5) For the purposes of paragraph 9 of subsection (1), the written notice must include the following:
1. The location of the retail landscaping soil depot.
  2. The date when the depot ceased operations.
  3. Confirmation that all excess soil has been removed from the depot. O. Reg. 775/20, s. 6.
- (6) If the operator of a retail landscaping soil depot becomes aware that any information in the written notice mentioned in paragraph 5 of subsection (1) is no longer complete or accurate, the operator must ensure that the Director is notified and provided with the completed or corrected information within 30 days after the day the operator becomes aware that the information is no longer complete or accurate. O. Reg. 775/20, s. 6.

(7) If the operator of the residential development soil depot becomes aware that the notice filed in the Registry in respect of the depot is no longer complete or accurate, the operator shall ensure that the notice is updated within 30 days after the day the operator becomes aware that the information is no longer complete or accurate. O. Reg. 775/20, s. 6.

(8) Where a residential development soil depot closes, the operator of the depot must update the notice filed in the Registry within 30 days after closure of the depot and must indicate the date when the depot ceased operations. O. Reg. 775/20, s. 6.

**Note: Sections 8 to 16 come into force on January 1, 2022.**

## REGISTRY

### Notice to be filed on Registry

**8.** (1) Subject to subsections (2) and (3), the project leader for a project shall ensure that, before removing from the project area soil that will become excess soil once removed, a notice is filed in the Registry setting out the information listed in Schedule 1.

(2) This section does not apply to a project leader in respect of a project and its project area if,

(a) one of the sets of circumstances described in Schedule 2 applies; or

(b) the project leader entered into a contract with another person with respect to the management of excess soil from the project before January 1, 2021.

**Note: On January 1, 2022, clause 8 (2) (b) of the Regulation is amended by striking out “January 1, 2021” at the end and substituting “January 1, 2022”. (See: O. Reg. 775/20, s. 7)**

**Note: On January 1, 2026, subsection 8 (2) of this Regulation is revoked and the following substituted: (See: O. Reg. 406/19, s. 29 (1))**

(2) This section does not apply to a project leader in respect of a project and its project area if one of the sets of circumstances described in Schedule 2 applies. O. Reg. 406/19, s. 29 (1).

(3) The project leader may, before filing a notice in the Registry, remove from the project area soil that will become excess soil once removed if the following conditions are satisfied:

1. The preparation of a sampling and analysis plan is required under this Regulation in respect of the project and it is impracticable to conduct the required sampling at the project area.

2. The soil is removed from the project area and delivered to a local waste transfer facility or a Class 2 soil management site in accordance with this Regulation for the purposes of conducting the required sampling.

3. The project leader ensures that the required sampling is conducted promptly upon delivery of the soil to the local waste transfer facility or the Class 2 soil management site.

(4) If soil is removed as described in subsection (3) before filing a notice in the Registry, the project leader shall ensure that the notice is filed in the Registry setting out the information listed in Schedule 1 before the excess soil is transported from the Class 2 soil management site or the local waste transfer facility to a Class 1 soil management site, reuse site, landfilling site or dump.

### Updating of information on Registry

**9.** (1) A project leader for a project who is required to file a notice under section 8 in respect of the project shall ensure that, before depositing excess soil at a Class 1 soil management site, Class 2 soil management site, reuse site, local waste transfer facility, landfilling site or dump, the information required to be included in the notice filed in the Registry under sections 10, 12 and 14 of Schedule 1 is information in respect of the applicable location.

(2) A project leader mentioned in subsection (1) shall ensure that within 30 days after all soil that will become excess soil once removed has been removed from a project area or Class 2 soil management site, the notice filed in the registry in respect of the project is updated with the following information:

**Note: On January 1, 2022, subsection 9 (2) of the Regulation is amended by striking out “project area or Class 2 soil management site” in the portion before paragraph 1 and substituting “project area, local waste transfer facility or Class 2 soil management site”. (See: O. Reg. 775/20, s. 8 (1))**

1. The amount of excess soil removed from the project area as part of the project that was deposited at each of the following:

i. A Class 1 soil management site.

ii. A Class 2 soil management site.

iii. A reuse site.

iv. A local waste transfer facility.

v. A landfilling site or dump.

2. The date on which the last load of excess soil was removed from the project area or Class 2 soil management site, as the case may be.

**Note: On January 1, 2022, paragraph 2 of subsection 9 (2) of the Regulation is revoked and the following substituted: (See: O. Reg. 775/20, s. 8 (2))**

2. The date on which the last load of excess soil was removed from the project area, local waste transfer facility or Class 2 soil management site, as the case may be.

(3) If a project leader or a person authorized to file a notice in the Registry on behalf of a project leader becomes aware that the notice filed in the Registry in respect of the project is no longer complete or accurate, the project leader or authorized person shall ensure that the notice is updated within 30 days after the day the person becomes aware that the information is no longer complete or accurate.

#### **Registry, contents public**

**10.** (1) The Director shall ensure that notices and other documents that are filed in the Registry under this Regulation are available for examination by the public.

(2) If the Director becomes aware of a clerical, grammatical or typographical error in a notice or other document that has been filed in the Registry under this Regulation, the Director may cause the error to be corrected.

(3) The Director may cause a notice or other document that has been filed in the Registry under this Regulation to be updated to add new information and remove previous information if the Director becomes aware of, and the update relates to, a change in location or a change to a mailing address, postal code or email address.

**Note: On January 1, 2022, section 10 of the Regulation is revoked. (See: O. Reg. 775/20, s. 9)**

### DOCUMENTATION AND TRACKING

#### **Assessment of past uses**

**11.** (1) Subject to subsection (2) and section 14, if the project leader for a project is required to file a notice under section 8 in respect of the project, the project leader shall ensure that, before filing the notice, a qualified person prepares or supervises the preparation of an assessment of past uses of the project area in accordance with the Soil Rules.

(2) An assessment of past uses of the project area is not required if either of the following circumstances applies:

1. The project relates to the excavation of soil at a stormwater management pond.
2. A phase one environmental site assessment within the meaning of Ontario Regulation 153/04 has been prepared in respect of the project.

**Note: On January 1, 2022, section 11 of the Regulation is amended by adding the following subsection: (See: O. Reg. 775/20, s. 10)**

(3) If, before January 1, 2022, a project leader undertakes an assessment of the project area to determine the likelihood that one or more contaminants have affected any soil that may become excess soil in respect of a project, that assessment shall be deemed to satisfy the requirements for an assessment of past uses required by this section for that project. O. Reg. 775/20, s. 10.

#### **Sampling and analysis plan, soil characterization report**

**12.** (1) Subject to subsection (3) and section 14, if the project leader for a project is required to file a notice under section 8 in respect of the project and any of the circumstances set out in subsection (2) apply, the project leader shall ensure that, before filing the notice, a qualified person prepares or supervises the preparation of a sampling and analysis plan in accordance with the Soil Rules.

(2) For the purposes of subsection (1), a sampling and analysis plan is required if any of the following circumstances apply:

1. The assessment of past uses prepared in accordance with section 11 or phase one environmental site assessment mentioned in paragraph 2 of subsection 11 (2) identifies a potentially contaminating activity within the meaning of Ontario Regulation 153/04.
2. Any part of the project area is or has ever been an enhanced investigation project area.
3. The project involves the excavation and removal of excess soil from a stormwater management pond.

(3) A sampling and analysis plan is not required if the soil to be excavated is to be deposited at a Class 1 soil management site.

(4) If a sampling and analysis plan is required to be prepared in respect of a project, the project leader shall,

- (a) ensure that a qualified person implements or supervises the implementation of the plan;
- (b) develop and apply procedures to ensure that, as soil is excavated and stored in stockpiles, the soil is segregated and stockpiled in accordance with the Soil Rules and that any soil that is sampled and analysed is kept segregated from other soil; and

- (c) before filing the notice on the Registry under section 8, ensure that a qualified person prepares or supervises the preparation of a soil characterization report in accordance with the Soil Rules.
- (5) A soil characterization report mentioned in clause (4) (c) shall include the following information:
1. The results of sampling and analysis and an assessment of those results, including a description of the parts of the project area that were sampled and analysed.
  2. A description of which soil may be reused within the project area, with or without processing at the project area, and which soil may be deposited at a Class 1 soil management site, landfilling site or dump.
  3. Having regard to the Excess Soil Standards, identification of the type of potential reuse sites to which excess soil from the project area may be transported for final placement.

**Note: On January 1, 2022, section 12 of the Regulation is amended by adding the following subsection: (See: O. Reg. 775/20, s. 11)**

(6) If, before January 1, 2022, a project leader undertakes a sampling and analysis plan to analyze the concentration of contaminants of any soil in the project area that may become excess soil in respect of a project, the plan shall be deemed to satisfy the requirement for a sampling and analysis plan required by this section and a report that is prepared describing the results of implementing the sampling and analysis plan shall be deemed to satisfy the requirements of a soil characterization report set out in subsection (5) for that project. O. Reg. 775/20, s. 11.

**Excess soil destination assessment report**

**13.** (1) Subject to section 14, if the project leader for a project is required to file a notice under section 8 in respect of the project, the project leader shall ensure that, before filing the notice, a qualified person prepares or supervises the preparation of an excess soil destination assessment report in accordance with the Soil Rules.

(2) The report shall be based on the results of any required assessment of past uses of the project area, any required soil characterization report and any information gathered in respect of the potential sites at which the excess soil may be deposited, and shall include the following:

1. Identification of each Class 1 soil management site, reuse site, local waste transfer facility, landfilling site or dump at which the excess soil will be deposited, including the location of each site.
2. Identification of contingency measures to be implemented in the event that the excess soil cannot be deposited at a site identified under paragraph 1, including the location of an alternate site.
3. An estimate of the quality and quantity of excess soil that will be deposited at each location identified under paragraph 1.

**Exception, documents not required**

**14.** (1) Subject to subsection (2), a project leader is not required to ensure the preparation of documents under sections 11, 12 and 13 if one of the following circumstances applies:

1. All of the project area from which soil is to be removed is an agricultural or other use within the meaning of Ontario Regulation 153/04.
2. All of the project area from which soil is to be removed is a parkland use, residential use or institutional use, each within the meaning of Ontario Regulation 153/04, or any combination of these three types of use, and the soil to be removed from the project area will not be transported for final placement at a reuse site that is an agricultural or other use within the meaning of that regulation.

(2) Subsection (1) does not apply with respect to a portion of a project area known by the project leader to be affected by the discharge of a contaminant.

**Documents to be updated**

**15.** (1) This section applies to a project leader who is required to ensure that a qualified person prepares or supervises the preparation of a document under section 11, 12 or 13.

(2) If the project leader or the operator of the project area or any other person working in the project area becomes aware of any of the following circumstances, the project leader or the operator of the project area shall ensure that a written record of the circumstance is immediately created, including the date on which the circumstance became known to the project leader, operator of the project area or other person:

1. Additional testing of excess soil reveals that the soil characterization report does not accurately reflect the quality of excess soil that is to be transported to a reuse site for final placement.
2. An area of potential environmental concern, within the meaning of Ontario Regulation 153/04, that is not identified in the assessment of past uses is identified within the project area.
3. Excess soil is intended to be transported to a reuse site for final placement and the reuse site is not identified in the excess soil destination assessment report.

(3) The project leader or the operator of the project area shall ensure that within 30 days after the day the project leader or the operator of the project area becomes aware of the circumstance under subsection (2), a qualified person or a supervisee reviews all documents required to be prepared by or under the supervision of a qualified person under sections 11, 12 and 13 and makes any necessary amendments to those documents to reflect the circumstance.

(4) In addition to complying with subsection (3), the project leader or the operator of the project area shall ensure that the qualified person or supervisee provides to the project leader or operator of the project area any further recommendations in writing to ensure that excess soil is disposed of in accordance with the requirements of this Regulation.

**Note: On January 1, 2022, subsection 15 (4) of the Regulation is amended by striking out “or supervisee”. (See: O. Reg. 775/20, s. 12)**

#### **Tracking system**

16. The project leader for a project shall, if the project leader is required to file a notice under section 8 in respect of the project, before removing from the project area soil that will become excess soil once removed, develop and apply a tracking system, in accordance with the Soil Rules, to track each load of excess soil during its transportation and deposit at a reuse site, Class 1 soil management site, local waste transfer facility, landfilling site or dump, and any transportation to and from a Class 2 soil management site.

### TRANSPORTATION OF SOIL

#### **Excess soil**

17. (1) The transportation of excess soil in a vehicle is exempt from sections 27, 40 and 41 of the Act.

(2) For greater certainty, section 16 of Regulation 347 applies in respect of a vehicle transporting excess soil that is designated as waste.

(3) The owner and operator of a vehicle transporting excess soil that is not designated as waste shall ensure that the excess soil is collected and transported in accordance with the following rules:

1. The excess soil shall only be collected and transported in a vehicle that has been constructed to enable the excess soil to be transferred safely and without nuisance.
2. Bodies of vehicles shall be constructed to withstand abrasion and corrosion from the excess soil.
3. Bodies of vehicles shall be leakproof and covered where necessary to prevent the emission of offensive odours, the falling or blowing of material from the vehicle or the release of dust or other airborne materials that may cause air pollution.
4. If the excess soil is liquid soil,
  - i. valves that are part of the vehicle shall have a locking system and shall be locked when the vehicle contains the liquid soil and the owner or operator of the vehicle is not in attendance, and
  - ii. whenever liquid soil is being transferred to or from the vehicle, the owner or operator of the vehicle must be present.

#### **Information to be provided**

18. A person who is operating a vehicle for the purpose of transporting excess soil shall provide the following information to any provincial officer, upon request:

1. The location at which the excess soil was loaded for transportation.
2. The date and time the excess soil was loaded for transportation.
3. The quantity of excess soil in the load.
4. The name of an individual who may be contacted to respond to inquiries regarding the load, including inquiries regarding the soil quality.
5. The name of the corporation, partnership or firm transporting the excess soil, the name of the driver of the vehicle and the number plates issued for the vehicle under the *Highway Traffic Act*.
6. The location at which the excess soil is to be deposited.

**Note: On January 1, 2022, section 18 of this Regulation is revoked and the following substituted: (See: O. Reg. 406/19, s. 29 (2))**

#### **Hauling records**

18. (1) A person who is operating a vehicle for the purpose of transporting excess soil shall ensure that a record including the following information is available at all times during the transportation:

1. The location at which the excess soil was loaded for transportation.
2. The date and time the excess soil was loaded for transportation.

3. The quantity of excess soil in the load.
4. The name of an individual who may be contacted to respond to inquiries regarding the load, including inquiries regarding the soil quality.
5. The name of the corporation, partnership or firm transporting the excess soil, the name of the driver of the vehicle and the number plates issued for the vehicle under the *Highway Traffic Act*.
6. The location at which the excess soil is to be deposited. O. Reg. 406/19, s. 29 (2).

(2) Upon arriving at a Class 1 soil management site, Class 2 soil management site, reuse site, local waste transfer facility, landfilling site or dump, the person who is transporting the excess soil shall ensure that the record mentioned in subsection (1) includes the following information:

1. The date and time the load of excess soil is deposited.
2. The name and phone number of the individual at the Class 1 soil management site, Class 2 soil management site, local waste transfer facility, reuse site, landfilling site or dump who acknowledges that the excess soil has been deposited on the date and at the time specified under paragraph 1.
3. A declaration by the individual mentioned in paragraph 2, stating that the individual acknowledges the deposit of the excess soil. O. Reg. 406/19, s. 29 (2).

(3) The person who is transporting the excess soil shall ensure that the individual mentioned in paragraph 2 of subsection (2) is given a copy of the record containing the information mentioned in that subsection. O. Reg. 406/19, s. 29 (2).

#### DEPOSIT OF EXCESS SOIL

**Note: Section 19 comes into force on January 1, 2022.**

##### **Operation of reuse site**

**19.** (1) Subject to subsection (2), this section applies to the owner or operator of a reuse site at which at least 10,000 m<sup>3</sup> of excess soil is expected to be deposited for final placement in respect of an undertaking.

**Note: On January 1, 2022, subsection 19 (1) of the Regulation is amended by striking out “Subject to subsection (2)” at the beginning and substituting “Subject to subsections (1.1) and (2)”. (See: O. Reg. 775/20, s. 13 (1))**

**Note: On January 1, 2022, section 19 of the Regulation is amended by adding the following subsection: (See: O. Reg. 775/20, s. 13 (2))**

(1.1) This section only applies to a reuse site that is in operation on the day this section comes into force if at least 10,000 m<sup>3</sup> of excess soil is expected to be deposited for final placement in respect of the undertaking at the reuse site after this section comes into force. O. Reg. 775/20, s. 13 (2).

(2) This section does not apply to a reuse site that is part of an undertaking related to an infrastructure project.

**Note: On January 1, 2022, subsection 19 (2) of the Regulation is amended by striking out “to an infrastructure project” at the end and substituting “to infrastructure”. (See: O. Reg. 775/20, s. 13 (3))**

(3) Before excess soil for final placement in respect of an undertaking may be deposited at the reuse site, the owner or operator of the reuse site shall ensure that the following steps are taken:

1. A notice described in subsection (4) is filed in the Registry.
2. Procedures are developed and applied to account for every load of excess soil to be deposited at the reuse site for final placement in respect of an undertaking.
3. Procedures are developed and applied to ensure that the storage of excess soil for final placement in respect of an undertaking at the reuse site does not cause an adverse effect.

(4) For the purposes of paragraph 1 of subsection (3), the notice must include the following information:

1. A description of the reuse site, including,
  - i. the location of each property that is located, in whole or in part, within the reuse site, and
  - ii. the geographic coordinates of the centroid of the reuse site measured using a global positioning system receiver and projected on the Universal Transverse Mercator coordinate system.
2. A description of the undertaking at the reuse site in respect of which the excess soil is to be finally placed.
3. The name, mailing address, postal code, telephone number and email address of the operator of the reuse site.
4. If the operator of the reuse site is not the owner of the site, the name, mailing address, postal code, telephone number and email address of the owner.
5. An estimate of the quantity of excess soil for final placement in respect of an undertaking that will be deposited at the reuse site.

6. The applicable excess soil quality standards for the reuse site, as determined in accordance with the Excess Soil Standards.
7. If site-specific excess soil quality standards have been developed for the reuse site by a qualified person or a supervisee, including by using the Beneficial Reuse Assessment Tool, an indication that this is the case and the name and contact information of the qualified person or supervisee who developed the site-specific excess soil quality standards.

**Note: On January 1, 2022, paragraph 7 of subsection 19 (4) of the Regulation is revoked and the following substituted: (See: O. Reg. 775/20, s. 13 (4))**

7. If site-specific excess soil quality standards have been developed for the reuse site by a qualified person, including by using the Beneficial Reuse Assessment Tool, an indication that this is the case and the name and contact information of the qualified person who developed the site-specific excess soil quality standards.
8. If an instrument mentioned in paragraph 4 of subsection 3 (2) has been issued governing the reuse site, identification of the body that issued the instrument, the date the instrument was issued and to whom the instrument is issued, and if there is an instrument identification number, that number.
9. An estimate of when the first and final loads of excess soil for final placement in respect of an undertaking will be deposited at the reuse site.
10. A declaration by the owner or operator of the reuse site, stating that the steps described in paragraphs 2 and 3 of subsection (3) have been and will continue to be taken.

(5) For the purposes of paragraph 2 of subsection (3), the procedures must provide for the following:

1. For each load deposited, identification of the project area, Class 1 soil management site or Class 2 soil management site from which the excess soil was transported.
2. Ensuring that all relevant reports and information in respect of the excess soil to be deposited at the reuse site are obtained by the owner or operator of the reuse site before the excess soil is deposited at the reuse site.
3. Ensuring that before the owner or operator of the reuse site permits a load of excess soil to be deposited at the reuse site, the load is inspected by the owner or operator of the reuse site or a person acting on the owner or operator's behalf to ensure the load is appropriate for depositing at the site and that it is consistent with any reports and information referred to in paragraph 2.

(6) The owner or operator of the reuse site shall ensure that within 30 days after the final load of excess soil for final placement in respect of an undertaking has been deposited at the reuse site, the notice filed in the Registry includes the following information:

1. Confirmation that all excess soil for final placement in respect of an undertaking has been deposited at the reuse site.
2. The total amount of excess soil for final placement in respect of an undertaking deposited at the reuse site.
3. The date on which the final load of excess soil for final placement in respect of an undertaking was deposited at the reuse site.

**Note: On January 1, 2022, section 19 of the Regulation is amended by adding the following subsection: (See: O. Reg. 775/20, s. 13 (5))**

(7) If the owner or operator of the reuse site becomes aware that the notice filed in the Registry in respect of the reuse site is no longer complete or accurate, the owner or operator shall ensure that the notice is updated within 30 days after the day the owner or operator becomes aware that the information is no longer complete or accurate. O. Reg. 775/20, s. 13 (5).

#### **Beneficial Reuse Assessment Tool**

**20.** If an owner or operator of a reuse site retains a qualified person to develop or to supervise the development of site-specific excess soil quality standards using the Beneficial Reuse Assessment Tool, whether or not the site is governed by an instrument mentioned in paragraph 4 of subsection 3 (2), the qualified person shall ensure that a copy of each of the following is given to the Ministry in accordance with the Soil Rules:

1. A declaration attesting to the accuracy of the information and the assumptions provided as inputs for the Beneficial Reuse Assessment Tool.
2. The output worksheet generated when using the Beneficial Reuse Assessment Tool.

#### **Class 2 soil management site, exemption from ss. 27, 40 and 41 of the Act**

**21.** (1) The management of excess soil that is dry soil at a Class 2 soil management site is exempt from sections 27, 40 and 41 of the Act if the following conditions are met:

1. In the case of a Class 2 soil management site that is owned or leased by a public body, if the public body is not the project leader for the project from which the excess soil was transported, the public body or a person authorized by the public body must have consented in writing to storage of the excess soil at the site.

2. The excess soil stored at the Class 2 soil management site at any one time must only be excess soil in respect of projects of the project leader.
3. The amount of excess soil stored at the Class 2 soil management site at any one time must not exceed 10,000 m<sup>3</sup>.
4. Subject to subsection (2), before storing the excess soil at the Class 2 soil management site, the project leader for the project from which the excess soil was transported must,
  - i. obtain written consent from the operator of the reuse site at which the excess soil will be deposited, and
  - ii. prepare a written record identifying the intended reuse site at which the excess soil to be stored at the Class 2 soil management site will be finally placed and confirming that the consent mentioned in subparagraph i has been obtained.
5. The project leader mentioned in paragraph 4 must update the record if there is any change in the intended reuse site.
6. The record mentioned in paragraph 4 must be made available by the project leader or the operator of the Class 2 soil management site while the excess soil is stored.
7. Subject to subsection (3), the excess soil must be finally placed at a reuse site no later than two years after the excess soil is first deposited at the Class 2 soil management site.
8. If excess soil is processed while being stored at the Class 2 soil management site, it must be processed in accordance with any requirements governing the processing that are set out in the Soil Rules and by one of the following methods:
  - i. Passive aeration.
  - ii. Mixing of soil from projects that have the same project leader, if the soil being mixed with it is of similar quality to it and the mixing is not carried out for the purpose of diluting the concentration of contaminants in the soil.
  - iii. Soil turning.
  - iv. Size-based sorting.
  - v. Sorting it for the purpose of removing debris.
9. The project leader or the operator of the Class 2 soil management site must provide written notice to the Director in accordance with subsection (4) before the excess soil begins to be deposited at the Class 2 soil management site.
- 9.1 The project leader or the operator of the Class 2 soil management site must provide written notice of the closure of the site to the Director in accordance with subsection (4.1) within 90 days after the closure.
10. Any other conditions set out in the Soil Rules with respect to the deposit and storage of excess soil at a Class 2 soil management site must be met. O. Reg. 406/19, s. 21 (1); O. Reg. 775/20, s. 14 (1, 2).

(2) Paragraph 4 of subsection (1) does not apply if a project leader or an operator of a project area has transported excess soil to a Class 2 soil management site and the conditions set out in subsection 8 (3) are satisfied, in which case the project leader must instead take the steps required under subparagraphs 4 i and ii of subsection (1) as soon as possible after complying with section 12 in respect of the project area. O. Reg. 406/19, s. 21 (2).

(3) The Director to whom written notice is provided under paragraph 9 of subsection (1) may authorize in writing an extension, not exceeding five years, of the two-year period mentioned in paragraph 7 of subsection (1), if the Director is satisfied that,

- (a) the extension is necessary in order for the excess soil to be used at a reuse site; and
- (b) the extension will not result in an adverse effect. O. Reg. 406/19, s. 21 (3).

(4) For the purposes of paragraph 9 of subsection (1), the written notice must include the following:

1. The location of the Class 2 soil management site.
2. A description of the quality and quantity of excess soil to be deposited at the site.
3. The name of the project leader for the project from which the excess soil is to be transported.
4. The name and phone number of the individual who, on behalf of the project leader, is responsible for supervising the Class 2 soil management site.
5. If the Class 2 soil management site is operated by a public body, the name of the public body.
6. The date on which the storage of the excess soil at the Class 2 soil management site is expected to begin and the date on which it is expected to end. O. Reg. 406/19, s. 21 (4).

(4.1) For the purposes of paragraph 9.1 of subsection (1), the written notice must include the following:

1. The location of the Class 2 soil management site.



2. The date when the site ceased operations.

3. Confirmation that all excess soil has been removed from the site. O. Reg. 775/20, s. 14 (3).

(5) If the project leader becomes aware that any information in the written notice mentioned in paragraph 9 of subsection (1) is no longer complete or accurate, the project leader must ensure that the Director is notified and provided with the completed or corrected information within 30 days after the day the project leader becomes aware that the information is no longer complete or accurate. O. Reg. 406/19, s. 21 (5).

(6) For greater certainty, nothing in this section relieves a person from complying with subsection 9 (1) of the Act or subsection 53 (1) of the *Ontario Water Resources Act* when carrying out processing by a method set out in paragraph 8 of subsection (1). O. Reg. 406/19, s. 21 (6).

**Note: Section 22 comes into force on January 1, 2025.**

#### **Landfilling site or dump**

**22.** (1) Subject to subsection (2), no person shall deposit, or cause, permit or arrange for the deposit of excess soil at a landfilling site or dump if the excess soil meets the soil quality standards set out in the Excess Soil Standards for the purposes of this subsection.

(2) Subsection (1) does not apply if the excess soil will be used for daily cover, final cover, the construction of roads or berms or to support any other type of ancillary use that supports the operation of the landfilling site or dump.

(3) Despite subsection (1), the deposit of excess soil described in that subsection is permitted at a landfilling site or dump if a qualified person is of the opinion that it would be unsafe to finally place the excess soil at a reuse site, has completed a declaration stating the opinion and has given the declaration to the owner or operator of the landfilling site or dump at which the excess soil is deposited.

### EXCAVATION — GENERAL

#### **Procedure required**

**23.** (1) The project leader or the operator of a project area shall ensure that a procedure is developed and applied with respect to what must occur if any person working in the project area makes an observation during soil excavation within the project area, including any visual or olfactory observation, that suggests that the soil being excavated may be affected by the discharge of a contaminant. O. Reg. 406/19, s. 23 (1).

(2) At a minimum, the project leader or the operator of the project area shall ensure that the procedure mentioned in subsection (1) sets out the following:

1. All soil excavations in the project area must immediately cease upon the observation being made, until such time as the project leader directs that soil excavations may be resumed.
2. The project leader or the operator of the project area must immediately be notified of the observation.
3. The project leader or the operator of the project area, upon being notified of the observation, must, before directing that soil excavations may be resumed, ensure that all necessary steps are taken to ensure that,
  - i. all excavated soil or excavated crushed rock that is affected by the discharge of a contaminant is identified and is segregated from other excavated soil or excavated crushed rock in the project area,
  - ii. the portion of the project area that is affected by the discharge of a contaminant is determined, and
  - iii. any excess soil from that portion of the project area is disposed of in accordance with this Regulation.
4. If a project leader was required to ensure that a qualified person prepared or oversaw the preparation of documents under this Regulation, the project leader shall, before authorizing any soil to be removed from the project area where the observation was made,
  - i. obtain the advice of a qualified person regarding what steps are necessary in order to ensure the outcomes mentioned in subparagraphs 3 i, ii and iii, and
  - ii. request that the qualified person advise on whether any of the documents required under this Regulation require revision as a result of the observation. O. Reg. 406/19, s. 23 (2); O. Reg. 775/20, s. 15.

#### **Storage**

**24.** Except where an instrument regulates the management of soil at a site, including an instrument mentioned in paragraph 4 of subsection 3 (2), the operator of a project area, local waste transfer facility, Class 2 soil management site, retail landscaping soil depot, residential development soil depot or reuse site shall ensure that any soil, excess soil or crushed rock at the site is stored in accordance with the Soil Rules. O. Reg. 775/20, s. 16.

#### **Processing at local waste transfer facility**

25. Despite there being no authority under Regulation 347 for waste to be processed at a local waste transfer facility within the meaning of that Regulation, if the local waste transfer facility is operated by a public body or by a project leader in respect of an undertaking related to infrastructure, any excess soil stored at the local waste transfer facility may be processed at the facility by a method specified in subsection 6 (3) and subsections 6 (4), (5) and (6) apply, with necessary modifications, to the processing of the excess soil. O. Reg. 775/20, s. 16.

#### MISCELLANEOUS

##### Qualified persons, conflict of interest

26. (1) No qualified person shall prepare or supervise the preparation of documents under this Regulation in respect of a project in which the qualified person holds a direct or indirect interest.

(2) No qualified person shall develop and apply site-specific excess soil quality standards under this Regulation in respect of a reuse site in which the qualified person holds a direct or indirect interest.

(3) Despite subsections (1) and (2), a qualified person may act in respect of a project or reuse site in which his or her employer holds a direct or indirect interest.

(4) Nothing in this section shall be construed so as to derogate from any obligations imposed on the qualified person under the *Professional Engineers Act* or the *Professional Geoscientists Act, 2000*.

##### Form of notices, declarations

27. (1) A notice required to be filed in the Registry shall be prepared in accordance with the Soil Rules and in the form, if any, approved by the Director and available on a website of the Government of Ontario.

(2) A declaration required under this Regulation or the Soil Rules or any other document or record required to be prepared under this Regulation or the Soil Rules shall be prepared in the form, if any, approved by the Director and available on a website of the Government of Ontario.

##### Records retention

28. (1) Subject to subsection (3), the following persons shall retain every document and record that the person created or acquired under this Regulation for a period of at least seven years after the date that the document or record is created or acquired:

1. A project leader or an operator of a project area.
2. An owner or operator of a Class 1 soil management site, reuse site, local waste transfer facility, landfilling site or dump.
3. An operator of a Class 2 soil management site.

(2) If a project leader or operator of a project area has entered into any contracts relating to the management of excess soil from the project area, including the transporting of excess soil from the project area, the project leader or operator of the project area shall retain the contract for at least seven years after the date the contract was entered into.

(3) A qualified person shall,

- (a) retain any document or record prepared by the qualified person or prepared under the oversight of the qualified person under this Regulation for a period of at least seven years after the date that the document or record is prepared; or
- (b) make reasonable efforts to ensure that a copy of any document or record mentioned in clause (a) is stored for the period referred to in clause (a) in the offices of the firm, corporation or partnership where the qualified person was employed at the time when the document or record was prepared.

(4) A qualified person or the offices of the firm, corporation or partnership at which the qualified person was employed at the time when the documents or records were prepared, shall, upon request, make any documents or records prepared by the qualified person or prepared under the oversight of the qualified person available to any public body responsible for the management of excess soil.

**Note: On January 1, 2022, section 28 of this Regulation is amended by adding the following subsection: (See: O. Reg. 406/19, s. 29 (3))**

(5) A person transporting excess soil and all persons mentioned in subsection (1) shall retain a record required under section 18 in respect of excess soil for a period of at least two years after the day that the excess soil was loaded for transportation. O. Reg. 406/19, s. 29 (3).

29. OMITTED (PROVIDES FOR AMENDMENTS TO THIS REGULATION).

30. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 406/19, s. 30; O. Reg. 270/20, s. 1.

SCHEDULE 1  
INFORMATION TO BE SET OUT IN NOTICE (SECTION 8 OF THE REGULATION)

1. A description of the project.
2. A description of the project area, including,
  - (a) the location of each property that is located, in whole or in part, within the project area and the geographic coordinates of the centroid of the property measured using a global positioning system receiver and projected on the Universal Transverse Mercator coordinate system; or
  - (b) if the project area includes linear facilities, a narrative description of the location of the project area including each end point and the geographic coordinates of each end point measured using a global positioning system receiver and projected on the Universal Transverse Mercator coordinate system.
3. The name, mailing address, postal code, telephone number and email address of each project leader for the project.
4. If the project leader is not the operator of the project area, the name, mailing address, postal code, telephone number and email address of the operator of the project area.
5. If a person authorized by the project leader files the notice on behalf of the project leader, the name and email address of that person.
6. If the project leader is a firm, corporation or partnership, the name of the person who is authorizing the filing on behalf of the firm, corporation or partnership.
7. If applicable, the name, mailing address, postal code, telephone number and email address of each qualified person who prepared or oversaw the preparation of documents under this Regulation.
8. An estimate of how much excess soil will be removed from the project area, broken down by any applicable Table in the Excess Soil Standards that the excess soil meets, if it is to be finally placed at a reuse site.
  - 8.1 A list of all substances or other materials, including any natural or synthetic polymers but not including water, that may be in the excess soil as a result of using that substance or material in the excavation process or of the mixing of that material or substance with excavated soil or crushed rock.
9. The name of the person who is ultimately responsible for the transportation of excess soil from the project area, the mailing address, postal code, telephone number and email address of the person and if the person is a corporation, the individual to be contacted about inquiries regarding the transportation of excess soil.
10. The location of each Class 2 soil management site and local waste transfer facility at which excess soil is intended to be deposited and temporarily managed.
11. If the project leader is not the operator of the Class 2 soil management site mentioned in section 10, the name, mailing address, postal code, telephone number and email address of the operator of the Class 2 soil management site.
12. The location of each reuse site at which the excess soil is intended to be deposited for the purposes of final placement and for each reuse site, a description of,
  - (a) the type of property use of the reuse site; and
  - (b) the undertaking for which the excess soil is intended to be used.
13. The applicable excess soil quality standards for each reuse site mentioned in section 12, as determined in accordance with the Soil Rules, or, if site-specific excess soil quality standards have been developed for a reuse site by a qualified person, including by using the Beneficial Reuse Assessment Tool, an indication that this is the case and the name and contact information of the qualified person who developed the site-specific excess soil quality standards.
14. The location of each Class 1 soil management site, landfilling site or dump at which excess soil is intended to be deposited.
15. If the project leader undertakes a peer review of any of the actions required to be taken under this Regulation or subjects any of the actions to a certification process, a description of the peer review or certification process, including identification of the person responsible for conducting the peer review or the certification process.
16. A declaration by the project leader, stating the following:
  1. That the project leader has conducted reasonable inquiries to obtain all information relevant to compliance with this Regulation.
  2. If a qualified person was required to prepare or supervise the preparation of documents under this Regulation,
    - i. that the project leader has disclosed to the qualified person or supervisee all the information obtained as described in paragraph 1,

- ii. that the project leader has, for the purpose of assisting the qualified person or supervisee in preparing the documents, provided the qualified person or supervisee with all necessary access to the project area and has authorized the qualified person or supervisee to make any inquiries of the project leader's employees and agents, and
  - iii. that the qualified person has completed the applicable declarations, as outlined in the Soil Rules.
3. That the information filed in the Registry is complete and accurate to the best of the project leader's knowledge.
  4. That the project leader will develop and apply all necessary procedures to ensure that all necessary steps are taken to ensure that this Regulation is complied with and to ensure that excess soil from the project area will be disposed of in compliance with this Regulation.

O. Reg. 406/19, Sched. 1; O. Reg. 775/20, s. 17.

## SCHEDULE 2 NON-APPLICATION OF SECTION 8 OF THE REGULATION

1. All of the following circumstances apply:
  1. After making reasonable efforts to take into consideration any past reports about past uses and activities respecting the project area, the project leader is of the opinion that the project area is not and has never been, in whole or in part, an enhanced investigation project area.
  2. The primary purpose of the project is not remediating contaminated land.
  3. In the case of a project area, any part of which is located in an area of settlement within the meaning of the *Planning Act*, the amount of soil to be removed from the project area is less than 2,000 m<sup>3</sup>.
2. Both of the following circumstances apply:
  1. The amount of soil to be removed from the project area is less than 100 m<sup>3</sup>.
  2. The excess soil is directly transported to a waste disposal site that is not a Class 2 soil management site.
3. The reason for excavating the soil that will become excess soil is one of the following:
  1. Danger to the health or safety of any person.
  2. Impairment or serious risk of impairment of the quality of the natural environment for any use that can be made of it.
  3. Injury or damage or serious risk of injury or damage to any property or to any plant or animal life.
  4. The duty imposed by subsection 93 (1) of the Act.
  5. An order made by any authority with jurisdiction to make the order.
  6. Maintaining infrastructure in a fit state of repair, except if the excavation of soil is from a stormwater management pond for the purpose of maintaining the facility in a fit state of repair.
4. All of the following circumstances apply:
  1. The excavated soil is topsoil.
  2. The topsoil is transported directly to a reuse site from the project area for use as topsoil at the reuse site.
  3. After making reasonable efforts to take into consideration any past reports about past uses and activities respecting the project area from which the excavated soil was transported, the project leader is of the opinion that the project area is not and has never been, in whole or in part, an enhanced investigation project area.
  4. The primary purpose of the project from which the excavated soil was transported was not remediating contaminated land.
5. REVOKED: O. Reg. 775/20, s. 18 (2).
6. Both of the following circumstances apply:
  1. The excess soil is excavated as part of an undertaking related to infrastructure.
  2. The project leader for the undertaking related to infrastructure intends, after removing the excess soil from the project area, to finally place it at a reuse site that is owned by the project leader or a public body and that is part of another undertaking related to infrastructure.
7. Both of the following circumstances apply:
  1. The soil is being deposited at a local waste transfer facility.
  2. The amount of soil to be deposited at the local waste transfer facility is 100 m<sup>3</sup> or less.

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