Ministry of the Environment, Conservation and Parks

Excess Soil Regulation – Overview of Requirements

January 22, 2026

Association of Ontario Road Supervisors

Disclaimer:
This presentation is intended to be a brief summary of some of the requirements of Ontario Regulation 406/19 - On-Site and Excess Soil Management (the Regulation) made under the Environmental Protection Act. This is for information purposes only and should not be construed as legal advice or substitute for seeking independent legal advice on any issues related to the Regulation. Any person seeking to fully understand how the Regulation may apply to any of the activities they are engaged in must refer to the Regulation. In the event of any inconsistency between the Regulation and this presentation, the Regulation will always take precedence.

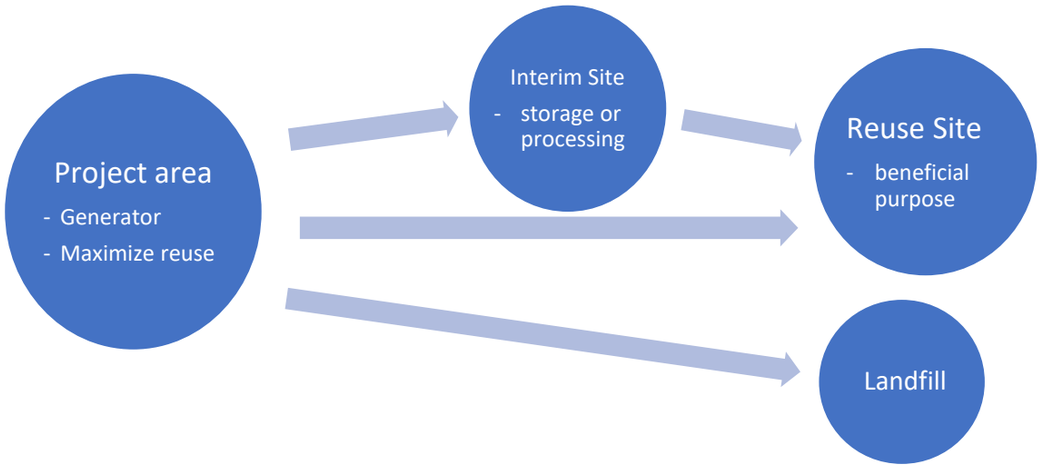
Ontario

Presentation Overview

- Overview of regulatory requirements
- Recent excess soil regulatory amendments
- Appendices
    - A: Flowcharts
    - B: Additional resources

Overview of the regulatory requirements

- Excess soil is soil that is excavated at a project area and cannot be reused on-site; it includes soil from construction activities (e.g. buildings, infrastructure, stormwater sediment).
- **O. Reg. 406/19: On-Site and Excess Soil Management** (the Excess Soil Regulation) under the *Environmental Protection Act* (EPA), was finalized in December 2019.
- The Regulation recognizes reusable excess soil as a resource, and its reuse is encouraged either in the project area or for a beneficial purpose at a reuse site; if not beneficially reused, it's waste.
- To help achieve excess soil reuse and proper management, the Excess Soil Regulation includes requirements and exemptions that apply to:
  - **Project areas** that generate excess soil
  - **Reuse sites** at which excess soil is beneficially reused
  - **Interim sites** for temporary soil storage and processing
  - **Hauling** of excess soil
  - **Landfilling** of excess soil



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Overview of the regulation: Project Areas

Reuse within a project area

- Soil reused in the project area is not considered “excess soil” and its reuse is not restricted (e.g., not subject to the reuse quality standards); proponents are encouraged to plan to maximize onsite reuse

Taking excess soil to a reuse site

- Criteria for reuse of excess soil at a reuse site, including:
    1. The reuse site owner or operator must consent in writing to the deposit of the excess soil
    2. The excess soil must be needed for a beneficial use
    3. The quality and quantity of excess soil must align with the beneficial use
    4. If the excess soil is liquid soil, its deposit must be permitted by a legal instrument
- Appropriate excess soil quality must be determined using:
    1. Excess soil reuse standards
    2. Site-specific standards developed by a qualified person (QP)
    3. Standards specified in an applicable legal instrument (e.g., a municipal by-law or permit)

Overview of the regulation: Project Areas

Some projects complete excess soil reuse planning requirements

- The excess soil reuse planning requirements include:
  1. Registration of a notice in the Excess Soil Registry (Registry) for the project
  2. Completion of an assessment of past uses and, if necessary, a sampling and analysis plan and a soil characterization report
  3. Completion of an excess soil destination assessment report
  4. Application of a tracking system

- These requirements apply in three circumstances:
  1. Project areas with a past or present use as an “enhanced investigation project area”
  2. Project areas that are being remediated by removing excess soil in order to reduce the concentration of contaminants, including for the purposes of filing a Record of Site Condition (RSC)
  3. Projects generating 2000m³ or more of excess soil and that are in a settlement area, unless the project is on a property currently used for a residential, parkland, institutional (school) or agricultural use
     - “Area of settlement” means an area of land designated in an official plan for urban uses including urban areas, urban policy areas, towns, villages, hamlets, rural clusters, rural settlement areas, urban systems, rural service centres or future urban use areas, or as otherwise prescribed by regulation

Overview of the regulation: Project Areas

Exemptions from reuse planning requirements

- Some projects triggered to complete excess soil reuse planning requirements may be exempt. These exemptions reflect low risk scenarios, scenarios where delaying soil removal may cause a concern, or scenarios to help encourage reuse in similar projects. Other requirements under the regulation would still apply, however.
- These exemptions include the following (see **Schedule 2** of the regulation):
    1. **Projects related to maintaining infrastructure in a "fit state of repair",** other than excavation of excess soil from a stormwater management pond (i.e. pond cleanouts)
    2. If **100 m³ or less of excess soil is being directly transported to a waste disposal site**, such as a landfill (this does not apply a Class 2 soil management site), or a local waste transfer facility
    3. The excess soil is excavated as a part of an **infrastructure project and is being reused (finally placed) as part of an undertaking related to another infrastructure project** with the same project leader or a public body
    4. The **reason for removal of excess soil is to alleviate an immediate danger** to human life, health of any person, the natural environment, property, or to respond to a spill
    5. To **respond to an order**
    6. **Topsoil,** that is not from an enhanced investigation project area or remediation site, is **being reused as topsoil**
    7. **If 100 m³ or less of excess soil is removed from a landscaping project** from an enhanced investigation project area and is **confirmed by a QP to be unimpacted by contamination**

Overview of the regulation: Reuse Sites and Interim Sites

Reuse site requirements

- Ensure the reuse criteria are met
- Sites accepting greater than 10,000m^3 of excess soil, unless part of an undertaking related to an infrastructure project, must:
  1. file a notice on the Excess Soil Registry.
  2. implement procedures related to incoming soil to ensure soil received is appropriate

Interim storage and processing sites

- May be exempt from waste approval but subject to rules
  - Project leader controlled:
    - Class 2 soil management site – intended to store soil from the project leader's projects in advance of a known reuse site being able to accept excess soil
    - Local waste transfer facility – amassing of soil from field operations, and properly managed from there
  - Third party sites:
    - Residential Development Soil Depots (soil that meets table 2.1 residential; all of these sites are required to file a notice on the registry and provide copy to local municipality)
    - Landscaping Soil Depots (topsoil or other landscaping product; required to provide notice to district office and a copy to local municipality)
    - Aggregate Reuse Depots (for producing recycled engineered aggregate products; required to provide notice to district office and a copy to local municipality)
- Some low-risk processing allowed
- Limitations apply, e.g., maximum quantity limits

Overview of the regulation: Hauling, storage, and landfilling

Hauling

- Haulers of excess soil are required to have a hauling record to help confirm where soil originated and where it is being taken to; this record facilitates compliance efforts
- The owner or operator of the site where the soil is loaded for transport must ensure that a record is created, and confirm that the information within the record is accurate

Storage rules

- Storage rules apply to sites to prevent adverse impacts, including setbacks from waterbodies and erosion control requirements
- Note: municipalities could vary from these requirements through their by-laws and permits

Landfills

- As of January 1, 2027, there is a restriction on the deposit of clean soil (i.e., if it could be used at a residential property) at landfill sites
- Despite this, excess soil meeting cleaner standards may still be deposited at a landfill in some circumstances (e.g., if excess soil is needed for final or daily cover or other ancillary uses at the site; if a qualified person determines excess soil is inappropriate for use based on criteria provided in the regulation and provides a declaration to the landfill owner or operator)

Recent Excess Soil Regulatory Amendments

The ministry has made amendments to increase soil management flexibility, provide clarity to reduce costs, and enable greater beneficial reuse of excess soil, especially in relation to infrastructure projects. These amendments went into effect in October 2025. Information about these amendments is available at ERO #019-9196.

The amendments include:

- Exempt aggregate reuse depots from a waste environmental compliance approval, subject to rules.
- Enable greater reuse of aggregate and stormwater management pond (SWMP) sediment with asphalt-related standards exceedances in areas near asphalt roads, and greater reuse of aggregate with naturally occurring exceedances of reuse standards.
- Allow greater reuse of soil between similar infrastructure project areas and reuse sites of the same project leader or where the reuse site owner or operator is a public body.
- Remove reuse planning requirements (other than a notice in the Excess Soil Registry) for excess soil moved between infrastructure project areas and reuse sites with different owners.
- Allow in-situ sampling of SWMP sediment to reduce sampling and storage, making sediment management more practical and less costly or time-consuming.
- Provide sampling frequency flexibility for parameters that are not contaminants of potential concern at a site.

Additional Information

Maintaining infrastructure in a fit state of repair

- This is an exemption from needing to complete the reuse planning requirements, and is provided under Schedule 2 of the Excess Soil Regulation
- In general, fit state of repair refers to maintenance and would include projects that are repairing infrastructure or replacing existing infrastructure with similar infrastructure
- Generally, it would not result in increased capacity or a different alignment - those would be considered new infrastructure
- Examples of infrastructure maintenance may include culvert replacement, roadbed repair or pipe replacement
- Temporary infrastructure that is part of the maintenance or replacement process and that will be removed, such as a by-pass pipe or a minor road diversion, may be considered part of maintenance
- New construction, such as building a road, or a transit right of way, digging a tunnel for a new subway or digging a new sewage/watermain tunnel, would not be considered maintenance
- Re-aligning (vertically or horizontally), twinning, adding capacity or widening of a pipe or road would also not fall under this exemption, although some minor increase in capacity or realignment to meet more current operating standards may be acceptable

Considerations related to Municipal Site Alteration Bylaws

- Using a site-specific instrument such as a municipal by-law or permit would give a municipality significant authority in deciding what the reuse site will look like and how excess soil will be used.
- Municipalities should proactively undertake due diligence to determine what site-specific instruments may be used to manage excess soil for an undertaking, and what they will address.
- These instruments may include requirements related to the location, depth, quality and/or quantity of excess soil appropriate for the proposed beneficial purpose and undertaking on the reuse site.
    - Typically, for excess soil (or fill) quality, this would be a specific table of standards referenced in the instrument.
    - In relation to excess soil quantity, the site-specific instrument may include a volume of excess soil that may be deposited for a particular undertaking, or it may include other information that informs the applicable quantity, such as the area for placement of fill and the fill elevation to be achieved.
- If the site-specific instrument is silent on quality and/or quantity, then the rules in the regulation apply, including the applicable standards and rules in the Rules for Soil Management and Excess Soil Quality Standards.
- Municipalities are responsible for enforcing site-specific instruments that they issue, including by-laws and permits that regulate the quality and quantity of excess soil.

Flexibility in reuse rules for road and infrastructure projects

Reuse of material with common road-related contaminants (salt, asphalt, naturally elevated parameters)

- Excess soil with exceedances of specific parameters such as those related to salt or asphalt, or with exceedances of parameters that may be naturally present in the excavated soil or rock (e.g., some metals) may be reused and deemed to comply with the excess soil quality standards

  1. Salt-impacted excess soil is soil with exceedances of certain parameters solely due to the application of substances for vehicular or pedestrian safety

  - It could be reused in other areas where substances may be applied for snow/ice (e.g., roads, sidewalks, parking lots), any industrial or commercial use properties, and 1.5m or below the surface at other properties (some exceptions may apply)
  - Some restrictions apply, such as setbacks from potable wells and waterbodies and a 1.5m depth requirement for areas used for growing crops or pasturing livestock

  2. Asphalt-impacted excess soil is soil with exceedances of some parameters, particularly petroleum hydrocarbons F3 and F4, and polycyclic aromatic hydrocarbons, solely due to asphalt. This may particularly be the case for excess soil from roadwork projects.

  - The standards for the specific parameters may be deemed to be met if asphalt-impacted excess soil is confirmed to not be impacted by any other contamination and is reused within projects where similar impacts would also be found (for example, under an asphalt road or parking lots).
  - Some restrictions apply, such as not reusing this material under asphalt paths in parkland, agricultural, or other sensitive use sites.

Flexibility in reuse rules for road and infrastructure projects

Reuse of material with common road-related contaminants (salt, asphalt, naturally elevated parameters) - ***continued***

3. Excess soil with naturally occurring exceedances

- Flexibility is provided for the reuse of excess soil and recycled engineered aggregate (e.g., from road base excavations), if it contains exceedances that are known to be due to naturally occurring elevations of certain contaminants and is to be reused within an infrastructure project
- Some criteria are required to be followed (e.g., having a QP confirm that the exceedances for specified parameters are known to be occurring naturally at the project area; confirming the material is not impacted by a potentially contaminating activity, etc.).

For more details on these reuse rules, please review Part I, Section D of the Soil Rules document

Flexibility in reuse rules for road and infrastructure projects

Reuse between separated project areas part of the same single larger planned initiative

- Excess soil finally placed at multiple separated project areas forming part of the same single larger planned initiative and would be adjoining upon completion (e.g., a road project) is not designated waste when it is reused
- Some criteria apply, such as ensuring the soil is segregated from excess soil from any other project areas that are not part of the same single large planned initiative, and there is no visual/olfactory sign of contamination in the excess soil unless it confirmed that final placement of the soil would not cause an adverse effect

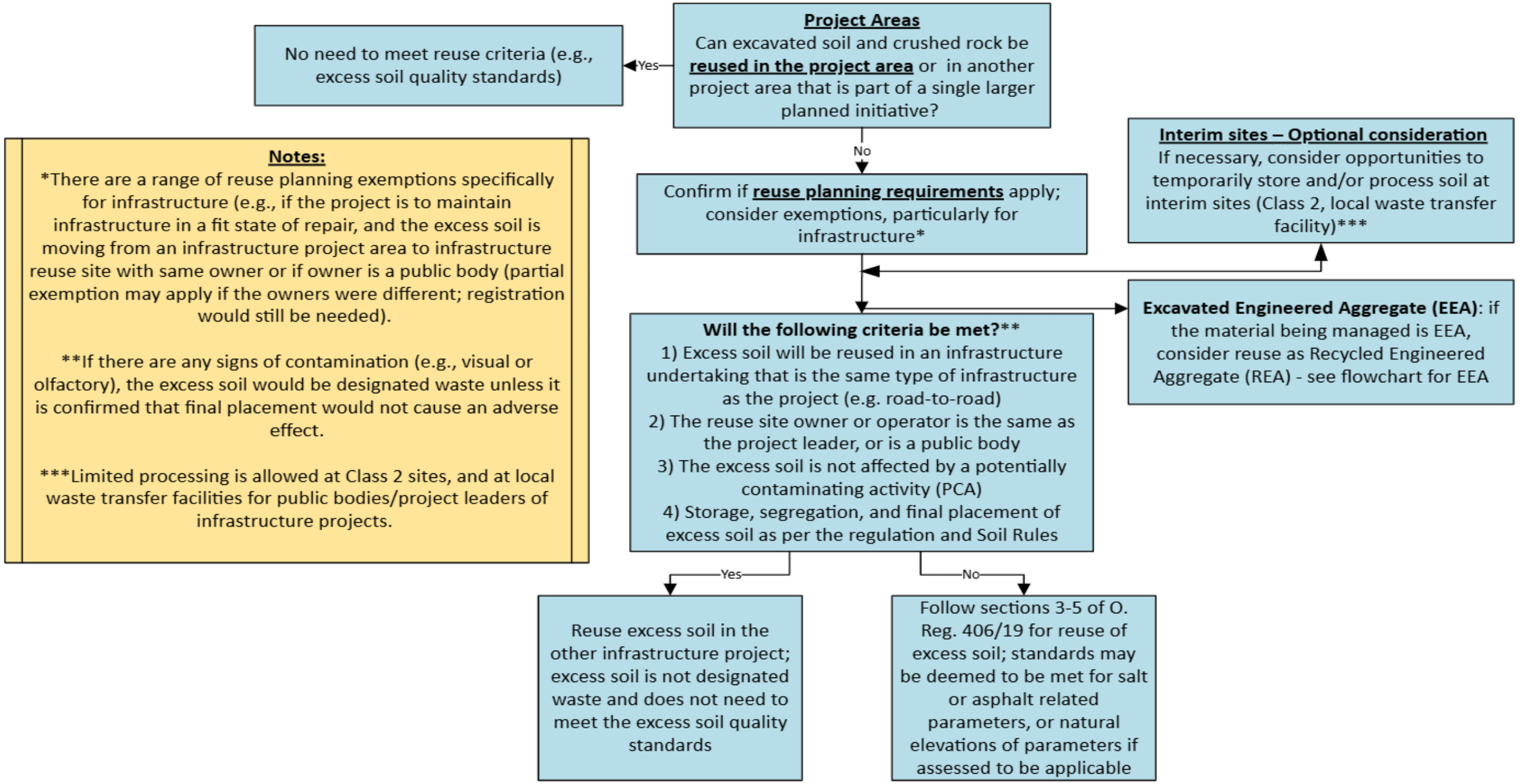
Reuse between infrastructure project areas and reuse sites that are infrastructure undertakings

- Where excess soil is managed between project areas and reuse sites that are both infrastructure of the same type (e.g., road-to-road) and where the project leader and reuse site owner or operator is the same person or the reuse site is owned/operated by a public body, that excess soil would not be designated a waste (i.e., does not have to meet the reuse quality standards) when it is finally placed for reuse
- Some criteria apply, such as ensuring that excess soil is segregated from excess soil from other project areas (unless they meet the same criteria above).

For more details, please review sections 5.4 and 5.5 of the Excess Soil Regulation.

Appendix A: Flowcharts

Reuse Pathways for Excess Soil from Infrastructure Projects



Reuse considerations for excavated engineered aggregate

Excavated engineered aggregate (EEA) intended for reuse as recycled engineered aggregate (REA)

Reuse onsite at **project area?**

Yes

Excess soil quality standards do not need to be met

Was project area impacted by a PCA?
(Note: EEA that will be reused as REA is not considered "fill material of unknown quality")

No

Is it taken to a **LWTF or Class 2 site?** (low risk processing allowed at Class 2 sites without a waste ECA, and at some types of LWTFs)

Direct transport

No - Direct transport

Reuse site

Use as REA based on placement rules (e.g., for salt, asphalt, natural elevations of parameters) and for purpose it was engineered for

Yes

Is it acceptable for management at an **aggregate reuse depot?** (must meet rules, including excess soil meeting Table 3 ICC)

Direct transport

No

EEA designated waste
- Follow sections 3-5 of O. Reg. 406/19 for reuse of excess soil. Depending on the PCA, standards may be deemed to be met for salt or asphalt related parameters, or natural elevations of parameters
- Follow Reg. 347 for use or disposal of other waste materials

Notes:

- If excess soil is asphalt-impacted or salt-impacted, follow appropriate rules in regulation and Soil Rules (e.g., consent from reuse site; storage rules; hauling requirements; placement rules and restrictions

- If there is suspected natural elevation of a parameter at the project area in excess soil and REA, follow rules for determination and placement (e.g., only placed in infrastructure projects)

-If there are any signs of contamination (e.g., visual or olfactory), the REA would be designated waste unless it can be confirmed that final placement would not cause an adverse effect

Appendix B: Additional Resources

Ontario

Additional Resources

- Ontario Government Excess Soil Page: ontario.ca/page/handling-excess-soil
- Excess Soil Fact Sheets: https://www.ontario.ca/document/excess-soil-fact-sheets
- Canadian Urban Institute (CUI) - Excess Soil By-Law Language Tool: https://canurb.org/initiatives/excess-soil-by-law-tool/
- Ontario Provincial Standard Specification (OPSS) 180 - General Specification for the Management of Excess Materials: MTO Technical Publications
- RPRA's Excess Soil Registry: rpra.ca/excess-soil-registry
- Ontario Environment Industry Association (ONEIA) - Best Practices and Templates:
    - Hauling Best Practices and Template: https://www.oneia.ca/excess-soils/hauling-best-practices
    - Temporary Sites Best Practices: https://www.oneia.ca/Temporary-Sites-Best-Practices
    - Qualified Persons Best Practices: https://www.oneia.ca/qp-best-practices
- Qualified Person Community of Ontario (QPCO): QPCO – Qualified Persons Community of Ontario
- Ontario Society of Professional Engineers (OSPE) - Best Practices for Aggregate Pit and Quarry Rehabilitation: https://ospe.on.ca/excess-soil-reports/
- OSSGA document on Excess Soil Best Management Practices for Pits/Quarries: https://www.ossga.com/rehabilitation_and_excess_soil/