

The Dirt On Excess Soil: Ministry of the Environment and Climate Change Releases Framework For the Regulation and Oversight of Excess Soil

By [Joanna Vince](#), Associate. © Willms & Shier Environmental Lawyers LLP



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The Ministry of the Environment and Climate Change has posted the Proposed Excess Soil Management Policy Framework on the Environmental Registry for review and comment. The Framework seeks to address gaps in the management of excess soil, including issues raised since the MOECC introduced Management of Excess Soil – A Guide for Best management Practices in January 2014.

The Framework generally targets sites that generate excess soil (source sites), though requirements would be imposed on interim sites and receiving sites. The Framework would require source sites to characterize excess soil, and then track and verify that excess soil reaches “an appropriate destination”.

The Framework suggests minimal changes to the current permitting and approval requirements for receiving sites. Local municipalities and conservation authorities will be responsible for oversight of receiving sites, unless the receiving sites are waste disposal sites and/or an Environmental Compliance Approval is required.

Most importantly, the Framework proposes to review the definitions of “soil” and better align the reuse of excess soil with existing waste regulations.

Comments

The Framework is posted on the Environment Registry and open for comments until March 26, 2016. The posting and Framework can be found [here](#).

New Regulation for Excess Soil Management

The Framework proposes to increase oversight of excess soil management through the use of enforceable provisions, including a new regulation. The regulation is not yet available for review, but Framework suggests what we might expect.

Under the Framework, the new regulation would apply primarily to source sites. Larger source sites would be required to create and implement soil management plans, certified by a Qualified Person to be available to the Ministry and local authorities for review. The soil management plan must include a tracking plan to ensure and verify excess soil arrives at the receiving site.

The Framework suggests that the regulation will have its own definition of a Qualified Person, but may draw on the Qualified Persons under the existing Brownfields regulation.

Unlikely to be borrowed from the Brownfields regime is the *Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act* (“Brownfields Standards”). The Ministry has previously stated, and confirms in the Framework, that the Brownfields Standards were not developed for excess soil, and should not be applied to excess

soil. Instead, the Ministry will prepare a new set of standards to apply to the reuse of excess soil, along with detailed testing requirements.

The Framework suggests that the excess soil standards will include both “generic” standards and specific risk based approaches with predictable risk management measures. Specific risk based approaches would apply to “uses” (for example berms, rehabilitation of aggregate sites) and circumstances (salt impacted soil).

The excess soil standards may also assist to determine when excess soil status change from a resource to a “waste”.

Failure to prepare and/or comply with the excess soil management plan and the excess soil regulation will lead to enforcement action under the *Environmental Protection Act*. We expect this will include prosecutions and Orders to prepare an excess soil management plan and/or remove excess soil if it has been deposited at an unacceptable site.

Temporary sites for the storage of excess soil (interim sites) will only be permitted where the soil storage is temporary, promotes beneficial reuse of soil, complies with some minimal requirements and is close to either the source site or a receiving site. The regulation is expected to set out when an Environmental Compliance Approval will be required for an interim site.

Use of Existing Tools to Manage Concerns – By-laws, Approvals and Permits

In addition to a new regulation, the Framework proposes using existing tools (by-laws, approvals, permits) to manage excess soil.

The Framework states that excess soil management requirements will be integrated into Environmental Compliance Approvals and planning approvals. The Framework proposes that the excess soil management plan required by the regulation would also be required before a building permit could be granted.

It is unclear why the excess soil management plan must be tied to building permits. The regulation will require the plan. The Ministry can prosecute for failure to prepare a soil management plan, and likely Order the owner and operator of the source site to prepare an excess soil management plan if one is lacking.

Municipalities will be left with the task of overseeing receiving sites. The Framework proposes using municipal by-laws to require receiving sites to prepare and comply with fill management plans.

But when is Soil “Waste”?

One of the major concerns around excess soil management is the need to recognize excess soil as a resource, and not a waste. This is not only because soil has significant potential for reuse. If soil is classified as a “waste”, it becomes subject to the elaborate waste regime, including permitting, transportation and approval requirements. If soil is viewed as waste, it is more likely to end up in a landfill than reused.

To address this concern, one of “principles” of the Framework is that excess soil should be treated as a resource and not waste, where the soil can be safely reused.

The Framework suggests a need to differentiate excess soil management from waste management and is proposing to review existing waste regulations to ensure consistency with excess soil management regulations.

[Joanna Vince](#), is an associate at Willms & Shier Environmental Lawyers LLP in Toronto. She can be reached at 416-862-4830 or by e-mail at jvince@willmsshier.com.

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