

Ministry of the Environment, Conservation and Parks

# When is Excess Soil Reuse Planning Required?

For projects generating excess soil from a project area described in [section 8 of O. Reg. 406/19 – On-Site and Excess Soil Management](#) (Excess Soil Regulation), the project leader is required to ensure that a notice is filed in the [Excess Soil Registry](#) (Registry) before removing excess soil from a project area. The project is exempt from this requirement if one of the sets of circumstances described in [Schedule 2](#) of the Excess Soil Regulation applies (provided in more detail below), or if the project leader entered into a contract related to the management of excess soil from the project before January 1, 2022. Projects that are required to file a notice in the [Registry](#) are also required to complete other reuse planning requirements as specified in [sections 11-13 and 16](#) of the Excess Soil Regulation. Maximizing on-site reuse of soil should be considered during the design of the project. This may avoid triggering these requirements. This document provides a plain-language description and a flowchart of when excess soil reuse planning is required.

## Reuse planning requirements include:

- 1) filing a **notice on the Registry** and updating it as needed (s. 8-9)
- 2) conducting an **assessment of past uses** (s. 11), and if required, a **sampling and analysis plan** and **soil characterization report** (s. 12)
- 3) an **excess soil destination assessment report** (s. 13)
- 4) developing and implementing a **tracking system** (s. 16)

Note: Other regulatory requirements under the Excess Soil Regulation may still apply to your project, even if you are exempt from the Registry and reuse planning requirements.

## Which projects are subject to excess soil reuse planning?

If at least one of the following three circumstances under [section 8](#) of the regulation applies to a project area, then reuse planning is required (unless an exemption applies):

1. Projects for which all or part of the project area has a past or present use that is an **"enhanced investigation project area"** (for example, a gas station). This does not apply if a Record of Site Condition (RSC) was filed in respect of the project area and

there was no risk assessment, and if no part of the project area was used as an enhanced investigation project area since the filing of the RSC.

2. If any part of the project area is **in an area of settlement** within the meaning of the *Planning Act* (such as cities and towns) and the **amount of soil to be removed from the project area is 2,000m<sup>3</sup> or more, except if the project is currently, or was most recently, used for residential, institutional, parkland, or agricultural or other uses** (as defined under [O. Reg. 153/04](#)). If the whole project area is located outside of an area of settlement, this trigger does not apply even if 2,000m<sup>3</sup> or more of soil will be removed, but one of the other two circumstances may still apply.
3. All or part of the project area is being **remediated by removing excess soil from the project area for the purpose of reducing the concentration of contaminants** (including remediating a project area to file an RSC).

## Exemptions from reuse planning requirements

[Schedule 2](#) sets out circumstances that would exempt project leaders from the requirement to file a notice in the Registry, meaning the reuse planning requirements would not apply if one of the below circumstances are satisfied, even if one of the three circumstances listed above apply to the project area. Project areas are exempt if:

- less than 100 m<sup>3</sup> of excess soil is being removed from the project area and it is being directly transported to a waste disposal site that is not a Class 2 soil management site, such as a landfill
- the reason for the excavation and removal of excess soil is in response to an emergency, such as a current danger to the health or safety of any person, a serious risk of injury or damage to any property or to any plant or animal life, to respond to a spill, to respond to an order, or to maintain infrastructure in a "fit state of repair" (except if the excavation of excess soil (sediment) is from a stormwater management pond)
- topsoil is excavated and transported directly for reuse as topsoil at a reuse site, there is a low risk of contamination as the project area (in whole or in part) has never been an enhanced investigation project area, and the primary purpose of the project where the soil was excavated was not the remediation of contaminated land
- the excess soil is excavated as a part of an undertaking related to infrastructure and after removal from the project area, the excess soil is being reused (finally placed) at a reuse site that is owned by the same project leader or a public body and that is part of another undertaking related to infrastructure
- the excess soil is being deposited at a local waste transfer facility and the amount of excess soil to be deposited is 100 m<sup>3</sup> or less.

## Partial and temporary exemptions

Within [section 8](#) of the Excess Soil Regulation there is a time-limited exemption from the requirement to file a notice in the Registry and complete the planning requirements if the project leader has entered into a contract related to the management of excess soil before January 1, 2022. This exemption applies until January 1, 2026. If the project has not been completed by January 1, 2026 and meets any of the circumstances in subsection 8 (1.1) to complete planning requirements, and none of the circumstances described in Schedule 2 apply to exempt the project from reuse planning, then at that time, the excess soil reuse planning requirements would become applicable to that project.

Within [sections 11 and 12](#) of the Excess Soil Regulation, exemptions are provided for the completion of an assessment of past uses, sampling and analysis plans and soil characterization reports for specific projects if similar studies or assessments have been completed for that project before January 1, 2023. In that circumstance these studies and assessments can be deemed to satisfy the regulatory requirements. Sections 11 and 12 of the Excess Soil Regulation also describe specific circumstances in which an assessment of past uses, a sampling and analysis plan, and soil characterization report are or are not required.

### **Disclaimer:**

*This document 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 document, the Regulation will always take precedence.*

For more information, visit Ontario's [Handling excess soil](#) webpage

# Reuse planning requirements flow chart

**Does at least one of these circumstances apply to your project?**

- 1) Any part of the project area is in an area of settlement (e.g., cities and towns) and 2000 m<sup>3</sup> or more of excess soil will be removed, unless the whole project area is currently or most recently used for residential, institutional, parkland or agricultural or other use
- 2) The project area has a past or present use, in whole or in part, as an enhanced investigation project area (e.g., gas stations, industrial use), unless a Record of Site Condition (RSC) has been filed which does not involve a risk assessment and the project area has not been used as an enhanced investigation project area since
- 3) All or part of the project area is being remediated by excavating and removing excess soil from the project area for the purpose of reducing the concentration of contaminants, including for the purpose of filing an RSC

