
For Information

REPORT TITLE: Ontario Regulation 406/19, On-Site and Excess Soil Management - Update

FROM: Andrew Farr, Interim Commissioner of Public Works

OBJECTIVE

To provide an update on the impact of *Ontario Regulation 406/19, On-Site and Excess Soil Management*, (O.Reg 406/19) on the Region of Peel's capital and operating programs.

REPORT HIGHLIGHTS

- In June 2017, staff reported to Regional Council on the proposed excess soil regulations.
 - In December 2019, the provincial government passed O. Reg 406/19 under the *Environmental Protection Act* to support the improved management of excess soil.
 - The regulation recognizes excess soil as a valuable resource and provides clear rules on the proper management and reuse of excess soil including more stringent oversight, testing, tracking, documentation and ownership of excess soil movement.
 - The regulation will be implemented in phases over the next five years.
 - Staff are taking a proactive approach to assess the impacts to business practices and identifying the changes needed to comply with the new regulation. This also includes working collaboratively with local and other Greater Toronto and Hamilton Area municipalities in order to assess the impacts of the new regulation and will report back to Council.
-

DISCUSSION

1. Background

In June 2017, staff reported to Regional Council on the proposed excess soil regulations. This report is a follow up to the initial report since the regulation was passed and will provide a detailed overview of the impacts and obligations of the Region in order to comply with the regulations.

Excess soil is material that is excavated during construction activities and is moved off-site for reuse or disposal because it cannot or will not be reused at the site from which it was generated. Regional capital projects engage in construction activities for water/wastewater, waste and roads which generate large quantities of excess soil. Most excess soil can be reused safely; however, some excess soil may contain contaminants which must be addressed when determining where this soil can be reused.

Ontario Regulation 406/19, On-Site and Excess Soil Management - Update

On average, 250 Regional capital projects are undertaken annually with most of these requiring excavation, remediation and disposal of soil. Annually, the Region generates an estimated 300,000 tons of excess soil, equating to 20,000 dump truck loads. By comparison, the excess soil generated is roughly equivalent to the amount of residential waste collected by the Region each year. Current annual haulage costs for Regional capital projects is estimated at \$20 million. It is expected the new regulation will impact some capital projects due to additional project oversight, along with expenses for testing, tracking and documentation of soil movement.

Risks associated with current industry practices may lead to improper management of excess soil which can negatively affect ground or surface water quality, as well the quantity of excess soils placed in natural areas and agricultural lands can have detrimental impacts. The movement of soil is also associated with local issues like noise, dust, truck traffic, road damage, erosion, drainage and other social, economic, health and environmental concerns.

Over the past several years, staff have worked collaboratively with the Ministry of the Environment, Conservation and Parks (the Ministry) throughout the development of the regulation and are committed to protecting and conserving excess soil as a valuable resource while maintaining the environment for present and future generations.

In December 2019, the provincial government passed the On-Site and Excess Soil Management Regulation (O. Reg 406/19) under the *Environmental Protection Act* (EPA) to support the improved management of excess construction soil. In addition, complementary and clarification amendments have also been made to other regulations O.Reg. 153/04 (Record of Site Condition), Regulation 347 (Waste Management), as amended by O.Reg. 408/19 and O.Reg. 351/12 (Waste Management Systems) to support the new requirements.

The new regulatory framework provides clarification on the responsibilities for both generators and receivers of excess soil in Ontario, and it will be implemented using a multi-phased approach over the next five years. The regulation also provides grandfathering provisions, applicable from January 1, 2021 to January 1, 2026, to recognize where work to be done is already stipulated in a contract. This grandfathering provision is currently under review and may be amended to extend the timeline by one year (from January 2021 to January 2022) as the Ministry recognizes the on-going challenges of COVID-19 which has redirected efforts towards supporting the community.

2. Regulatory Changes

As mentioned earlier, the new regulation supports the proper management of excess soil, recognizes excess soil as a valuable resource and will prevent the improper disposal/reuse of the soil, which will inhibit contamination of clean sites alongside reducing illegal dumping.

The regulation will require more stringent oversight and will focus on the following key areas:

Accountability of the Project Leader:

- There will now be greater responsibility by project owners, like the Region, to ensure that excess soils reach the appropriate receiving sites. Currently in the Region, the transportation and disposal of excess soil generated is done by contractors based on the recommendations of environmental consultants. The new regulation requires project leaders (the Region) to be accountable for the oversight of any excess soil removed from projects, whether it is contracted out or not.

Ontario Regulation 406/19, On-Site and Excess Soil Management - Update

Oversight and Compliance:

- Clearer definitions on the roles, responsibilities and oversight in the management of excess soils for both source and receiving sites, including retaining Qualified Persons for specific regulatory requirements. A Qualified Person, defined as per the regulation is a person with a license or limited license under the *Professional Engineers Act* or the *Professional Geoscientists Act*. The Qualified Person will be responsible for preparing or overseeing all documentation including the assessment of past uses, sampling and analysis plan, soil characterization report and excess soil destination report.
- Ultimately, compliance responsibilities do not end once soils are removed from properties, but rather remains from the time the soil is excavated to the point where soil reached the designated destination.

Documentation, Tracking and Registration:

- Enhanced enforcement mechanisms and tools are required to address illegal activities (i.e. illegally dumping contaminated soils and landfilling clean soils instead of reusing).
- This means the Region is responsible for tracking each load of excess soil from the source site to the receiving site and upload to the Ministry's Public Registry.

As mentioned, this regulation will be implemented using a multi-phased approach over the next five years, with three milestones (2021, 2022 and 2025). Below is what can be expected at each stage of implementation:

Legislative Requirements		
January 1, 2021	January 1, 2022	January 1, 2025
<ul style="list-style-type: none"> • Waste designation • Soil rules for receiving sites • Verbal tracking of soil loads leaving Regional sites 	<ul style="list-style-type: none"> • Formal documentation system to track soil loads leaving Regional sites • Reporting into the Provincial soil registry • Written approvals from receiving site before soil is moved from Regional sites • Retention of Qualified Persons to ensure compliance with the regulations • Ensure soil transport does not contribute to local issues like noise, dust, truck traffic, road damage, erosion, drainage, social, economic, health and environmental concerns 	<ul style="list-style-type: none"> • Restrictions on landfilling clean soil

3. Impacts to the Region

Currently, the Region follows industry guidelines and uses practices as outlined in the Guide from Best Management Practices set out by the Ministry of the Environment, Conservation and Parks when managing excess soil. As part of the capital project delivery process, the Region outsources the responsibility for movement of excess soil to contractors and environmental consultants.

Given the magnitude of the changes of the new regulations, the implementation will occur in three milestones over the next five years. To ensure compliance with the upcoming regulatory requirements, staff have been working to evaluate and update current business practices for each of the milestones.

Ontario Regulation 406/19, On-Site and Excess Soil Management - Update

(a) Short Term Impacts – January 1, 2021

For January 2021, the implementation will include the definition of waste designation, where excess soil will be designated as waste from the moment it leaves a project area unless it is beneficially being reused and not stockpiled in accordance to the regulation.

The first stage of the regulatory implementation requires that the Region develop new procedures to provide oversight of excess soils including retaining Qualified Persons for all capital projects, reviewing and revising current process and practices to adhere to the regulation, updating current agreements and contract language, providing overall project oversight for the new regulation and educating capital project staff on the regulation.

Regional consultants and contractors must also understand the new regulation, applicable environmental legislation and municipal by-laws for environmental requirement. Qualified Persons must oversee the required testing, tracking and documentation for all reuse soil, traffic and transportation plan, evidence documents to support compliance with the regulation and verbal hauling information, where haulers are required to provide key information on the soil loads.

(b) Mid-Term Impacts – 2022

For January 2022, the regulation will require that the Region develop a documentation, tracking and registration system to track each load of excess soil from the source site to the receiving site. The documentation, which must be prepared by a Qualified Person includes an assessment of past uses, sampling and analysis plan, soil characterization report and excess soil destination assessment report.

The Region must file the information on the Ministry's Public Registry with the above listed documents prior to any soil leaving the project area. The Region will be responsible for tracking each load of soil prior to the soil leaving the site and approval in writing must be provided by the receiving site prior to any soil removal. Documentation records will need to be retained for seven years and hauling records for two years.

The Region will need to retain Qualified Persons for all capital projects to ensure the above is completed in accordance with the regulation. The Region will also need to ensure that the movement does not contribute to local issues like noise, dust, truck traffic, road damage, erosion, drainage, social, economic, health and environmental concerns.

(c) Longer Term Impacts – 2025 and beyond

For January 2025, the regulation limits the restriction on landfilling of clean soil. This will restrict the landfilling of clean soil to be reused but will not affect the use for daily or final cover, the construction of roads and berms and other beneficial operational needs. The Region has already commenced planning to ensure the beneficial use of excess soil and are looking into reuse strategies to ensure this deadline is met.

Ontario Regulation 406/19, On-Site and Excess Soil Management - Update

4. Proposed Direction

In order to implement the above requirements, staff have created an internal Working Group and Steering Committee. In addition, staff will engage local municipalities to discuss a coordinated approach moving forward and evaluate emerging solutions to these new regulatory requirements.

Staff will continue to plan and implement new processes to address the January 1, 2021 regulatory requirements and study the future impacts of the new regulation. In addition to planning for regulatory requirements, staff are also investigating options for a future state in relation to soil management for the Region.

Staff are also evaluating strategic considerations including if the Region should be managing and storing excess soils storage directly or should it be outsourced, will the Region accept material from outside Peel, will the Region consider third party partnerships with local municipalities and Conservation authorities and what the role of the waste management division will be in relation to excess soil.

The expected outcomes of the new regulation and subsequent changes to the Regional processes will provide transparency and accountability around the reuse of excess soils, the testing, tracking and documentation of soil movement.

It will also provide those responsible for managing excess soil, such as generators, haulers and receivers the tools needed to address concerns about illegal relocation of soil, therefore providing greater certainty of environmental protection through flexible, risk-based rules and soil reuse standards.

Non-compliance with the Regulation could lead to fines, orders and other penalties issuable under the *Environmental Protection Act*.

FINANCIAL IMPLICATIONS

Staff are assessing the impacts of the regulation by reviewing and adjusting current business processes, amending construction contracts, assessing receiving sites, developing partnerships and evaluating strategic considerations as noted above. External consultants will be retained to assist with this effort. This work will result in an estimated one-time implementation cost of \$2 million and will be included in the 2021 Regional budget submission.

Current annual haulage costs for Regional capital projects is estimated at \$20 million. The new regulatory requirements that include additional project oversight, testing, tracking and documentation will impact these costs. The extent of these impacts are being assessed, however preliminary estimates indicate a one to three per cent increase in overall capital project costs (i.e. \$4 million annually). These increases will be captured in future budget submissions as the new regulation is phased in.

Ontario Regulation 406/19, On-Site and Excess Soil Management - Update

CONCLUSION

The protection and conservation of soil is a valuable component of maintaining the environment for present and future generations. The new regulation, O. Reg 406/19 is a key step to support proper management of excess soils, ensuring valuable resources are not wasted.

The new regulation will have a significant impact to the Region and the construction industry. Staff will continue to assess the impacts of the more stringent oversight, testing, tracking, and documentation requirements mandated by the regulation.

Given the regulation will be implemented using a multi-phased approach over the next five years, staff are committed to working collaboratively with industry, local partners and municipalities.

Staff will report back to Council as needed throughout the implementation process.

For further information regarding this report, please contact Steve Fantin, Director, Operations Support, Ext. 4438, Steven.Fantin@peelregion.ca.

Authored By: Cam Johnston, Manager, Engineering Technical Services

Reviewed and/or approved in workflow by:

Department Commissioner, Division Director, Financial Support Unit, Legal Services and Procurement.

Final approval is by the Chief Administrative Officer.



J. Baker, Chief Administrative Officer