

Caution:

This draft regulation is provided solely to facilitate public consultation under section 16 of the Environmental Bill of Rights, 1993. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the draft regulation are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION
to be made under the
ENVIRONMENTAL PROTECTION ACT
ON-SITE AND EXCESS SOIL MANAGEMENT

CONTENTS

	<u>INTERPRETATION AND APPLICATION</u>
<u>1.</u>	Interpretation
<u>2.</u>	Non-application of Regulation
	<u>EXCESS SOIL - DESIGNATION AS WASTE</u>
<u>3.</u>	Designation as waste
<u>4.</u>	Exemption from designation, if reuse site governed by instrument
<u>5.</u>	Exemption from designation, if reuse site not governed by instrument
	<u>EXCESS SOIL - OBLIGATIONS AND PROHIBITIONS</u>
<u>6.</u>	Non-application of sections
<u>7.</u>	Before removing soil from project area
<u>8.</u>	Qualified persons, conflict of interest
<u>9.</u>	Documents to be updated by qualified person
<u>10.</u>	Updates to information in registry
<u>11.</u>	Before depositing specified excess soil, landfilling site or dump
<u>12.</u>	Transportation
<u>13.</u>	Operation of reuse site
	<u>EXCAVATED SOIL - GENERAL</u>
<u>14.</u>	General requirement re excavation of soil
<u>15.</u>	Excavated soil processed at project area, designation as waste
<u>16.</u>	Excavated soil processed at local waste transfer facility operated by public body
	<u>MISCELLANEOUS</u>
<u>17.</u>	Temporary soil storage site, exemption from ss. 27, 40 and 41 of the Act
<u>18.</u>	Registry, additional purposes
<u>19.</u>	Registry, contents public
<u>20.</u>	Form of notices, declarations
<u>21.</u>	Records retention
	<u>COMMENCEMENT</u>
<u>22.</u>	Proposed commencement for consultation purposes
<u>Schedule 1</u>	Non-application of sections 7 and 10

INTERPRETATION AND APPLICATION

Interpretation**1. (1) In this Regulation,**

“dry soil” means soil that is not liquid soil;

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

“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,
- (d) for the operation of dry cleaning equipment, or
- (e) for a gas or oil pipeline or any associated facilities;

“excess soil” means soil that has been excavated as part of a project and removed from the project area for the project;

“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);

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

“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;

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

“project” means, subject to subsection (4), any project carried out on a single property or a group of adjoining properties that involves the excavation of soil and includes any form of development, the construction, reconstruction, erecting or placing of a building or structure of any kind or the establishment, replacement or alteration of infrastructure;

“project area” means, in respect of a project, the property or the adjoining properties on which the project is carried out, subject to subsection (4);

“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;

“public body” means,

- (a) a municipality, local board or conservation authority, or
- (b) a ministry, board, commission, agency or official of the Government of Ontario;

“qualified person” means,

- (a) a qualified person within the meaning of section 5 of Ontario Regulation 153/04, and
- (b) for the purposes of subsections 5 (2), (3) and (4), a qualified person within the meaning of section 5 or 6 of Ontario Regulation 153/04;

“Registry” has the same meaning as in Part XV.1 of the Act;

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

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

“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;

“soil bank storage site” means a waste disposal site, other than a temporary soil storage site, that,

- (a) operates for the primary purpose of storing, on a temporary basis, excess soil delivered from one or more projects, and
- (b) is operated by a person who is not the project leader for all of the projects from which the stored excess soil was delivered;

“soil processing site” means a waste disposal site, other than a temporary soil storage site, at which excess soil is temporarily stored and processed for the purpose of reducing the concentration of contaminants in the excess soil;

“Soil Rules” means the document entitled “Rules for On-Site and Excess Soil Management”, dated [*date to be confirmed*], published by the Ministry and available on a website of the Government of Ontario;

“temporary soil storage site” means a waste disposal site,

- (a) at which excess soil is stored on a temporary basis, and

(b) which is located on a property owned by a public body or by the project leader for the project in relation to which the stored excess soil was excavated.

(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. Gasoline outlet.
4. Garage.
5. Industrial use.

(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.

(4) If a project leader is carrying out more than one project relating to infrastructure and all of the projects are being carried out along the same corridor, all of those projects are considered to be one project and the project area consists of all of the properties on which the projects are being carried out, even though the project areas may not be adjoining.

Non-application of Regulation

2. (1) This Regulation does not apply to excavated soil that is hazardous waste or asbestos waste, both within the meaning of Regulation 347.

(2) This Regulation does not apply to aggregate, within the meaning of section 1 of the *Aggregate Resources Act*, to which that Act applies.

EXCESS SOIL — DESIGNATION AS WASTE

Designation as waste

3. (1) Excess soil is designated as waste, except if all of the following conditions are satisfied:

1. The excess soil must be directly transported to a reuse site from,
 - i. a project area, or
 - ii. a soil bank storage site, temporary soil storage site or soil processing site.
2. The operator of the reuse site or a person authorized by the operator must have consented in writing to the deposit of the excess soil at the reuse site.
3. The excess soil must be dry soil and must remain dry soil until it is finally placed at the reuse site.
4. If the reuse site is governed by one of the following instruments, the conditions set out in section 4 must be satisfied:
 - i. A permit that is issued under a by-law passed under section 142 of the *Municipal Act, 2001*.
 - ii. Provisions of a by-law passed under section 142 of the *Municipal Act, 2001*.
 - 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 must be satisfied.

(2) If, at any time, the conditions mentioned in subsection (1) 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 conditions mentioned in subsection (1) have been satisfied again.
2. In a case where a provincial officer has issued an order mentioned in subsection (3) in respect of the excess soil, the order has been complied with.
3. Subject to subsection (5), the fifth anniversary of the day on which the undertaking for which the excess soil is used at the reuse site is completed.

(3) Subject to subsection (4), if a provincial officer has determined that the condition mentioned in paragraph 4 or 5 of subsection (1) 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 condition that is not being satisfied.

(4) The provincial officer shall not issue an order mentioned in subsection (3) 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 condition mentioned in paragraph 4 or 5 of subsection (1).
2. The provincial officer is of the opinion that, if the different 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.

(5) If an order has been issued in respect of the excess soil before the fifth anniversary mentioned in paragraph 3 of subsection (2) 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.

(6) For the purposes of paragraph 3 of subsection (2), 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.

Exemption from designation, if reuse site governed by instrument

4. (1) For the purposes of paragraph 4 of subsection 3 (1), 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 does not deal with excess soil quality.	The condition set out in paragraph 1 of subsection 5 (1) must be satisfied.
2.	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 Soil Rules.	The condition set out in paragraph 1 of subsection 5 (1) must be satisfied.
3.	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 Soil Rules.	The requirement set out in the instrument respecting excess soil quality must be satisfied.

(2) For the purposes of paragraph 4 of subsection 3 (1), 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 a maximum amount of excess soil that may be deposited 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.
2.	Instrument does not specify a maximum amount of excess soil that may be deposited but does 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 beneficial purpose identified.
3.	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.

Exemption from designation, if reuse site not governed by instrument

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

1. The quality of the excess soil that is intended to be finally placed at the reuse site must not exceed,
 - i. the applicable excess soil quality standards as determined in accordance with the Soil Rules, or
 - ii. the site-specific excess soil quality standards developed for the reuse site as described in subsection (2).
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, or
 - iii. achieving the grade necessary for,
 - A. planned development,
 - B. landscaping, or
 - C. another project governed by an instrument issued by a public body.
4. The quantity of excess soil to be deposited at the reuse site must not exceed the quantity necessary for the beneficial purpose identified.
5. Subject to subsections (5) and (6), the excess soil must be finally placed no later than one year after it is deposited at the reuse site.
6. After the excess soil is deposited and before it is finally placed, it must be stored in accordance with the Soil Rules.

(2) For the purposes of subparagraph 1 ii of subsection (1), the operator of a reuse site shall retain a qualified person to develop and apply site-specific excess soil quality standards for the reuse site.

(3) A qualified person retained as described in subsection (2) shall use the Beneficial Reuse Assessment Tool to develop and apply site-specific excess soil quality standards in accordance with the Soil Rules and shall complete a declaration attesting to the accuracy of the information and the assumptions provided as inputs for the Beneficial Reuse Assessment Tool.

(4) The qualified person shall give a copy of the declaration mentioned in subsection (3) to the operator of the reuse site.

(5) A provincial officer may, by order, authorize an extension, not exceeding two years, of the one-year period mentioned in paragraph 5 of subsection (1), if the provincial officer 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 adverse effects.

(6) 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.

(7) For the purposes of this section,

“Beneficial Reuse Assessment Tool” means the data file entitled “Beneficial Reuse Assessment Tool” and dated [*date to be confirmed*], as amended from time to time, that is maintained by the Ministry and is available on a website of the Government.

EXCESS SOIL — OBLIGATIONS AND PROHIBITIONS

Non-application of sections

6. The requirements of sections 7 and 10 do 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 1 applies.

Before removing soil from project area

7. (1) The project leader for a project shall ensure that, before removing from the project area soil that will become excess soil once removed, the requirements set out in this section are complied with in respect of the project and the project area.

(2) Subject to subsection (3), the project leader shall ensure that a qualified person prepares or oversees the preparation of the following documents, in accordance with the Soil Rules, in respect of the project and the project area:

1. Subject to subsection (4), an assessment of past uses of the project area.
2. A sampling and analysis plan, if any of the following circumstances apply:
 - i. The assessment of past uses under paragraph 1 identifies a potentially contaminating activity within the meaning of Ontario Regulation 153/04.
 - ii. Any part of the project area is or has ever been an enhanced investigation project area.
 - iii. The project involves the excavation and removal of excess soil from a stormwater management pond.
3. If a sampling and analysis plan is required under paragraph 2, a soil characterization report that includes the following:
 - i. 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.
 - ii. 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 soil processing site, a soil bank storage site, a landfilling site or a dump.
 - iii. Identification of the type of potential reuse sites at which excess soil from the project area may be deposited for final placement, having regard to the excess soil quality standards set out in the Soil Rules.

4. Based on the results of the assessment of past uses of the project area and the soil characterization report, an excess soil destination assessment report that,
 - i. identifies each reuse site, soil bank storage site, soil processing site, landfilling site or dump at which the excess soil will be deposited, including the municipal address of each reuse site,
 - ii. identifies additional reuse sites at which excess soil may be deposited in the event that a reuse site identified under subparagraph i cannot be used, including the municipal address of each additional reuse site, and
 - iii. provides an estimate of the quality and quantity of excess soil that will be deposited at each location identified under subparagraph i.

(3) Subsection (2) does not apply to a project leader in respect of a project and project area if the project does not involve the remediation of contaminated land and one of the following circumstances applies:

1. All of the project area from which soil is to be removed is an agricultural use.
2. All of the project area from which soil is to be removed is a parkland use, residential use or institutional use, or any combination of these three types of use, and the soil to be removed from the project area will be not be transported for final placement at a reuse site that is an agricultural use.
3. The project relates to one of the following categories of infrastructure and the soil that is to be removed from the project area will be transported for final placement at a reuse site that is a use in respect of one of the following categories:
 - i. Public highways.
 - ii. Transit lines and associated corridors and facilities.
 - iii. Sewage collection systems and water distribution systems and associated facilities.

(4) 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.

(5) If a sampling and analysis plan is required under paragraph 2 of subsection (2), a qualified person shall implement or oversee the implementation of the sampling and analysis plan.

(6) The project leader shall establish and implement procedures to ensure that, as soil is excavated and stored in stockpiles at the project area, 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.

(7) The project leader shall establish and implement 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 for final placement or at a soil bank storage site, soil processing site, landfilling site or dump, and any transportation to and from a temporary soil storage site.

(8) The project leader shall ensure that a notice is filed in the Registry setting out the following information:

1. A description of the project.
2. A description of the project area, including,
 - i. the municipal address of each property that is located, in whole or in part, within the project area, and
 - ii. 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.
3. The name, mailing address, postal code, telephone number and email address of each project leader for the project.
4. 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.

5. 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.
6. 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 subsection (2).
7. An estimate of how much soil will be removed from the project area, broken down by any soil quality categories set out for the purpose of this paragraph in the Soil Rules.
8. 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.
9. An identification, including the municipal address, of each temporary soil storage site at which the excess soil is intended to be stored.
10. An identification, including the municipal address, 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,
 - i. the type of property use of the reuse site, and
 - ii. the undertaking for which the excess soil is intended to be used.
11. The applicable excess soil quality standards for each reuse site mentioned in paragraph 10, 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, 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.
12. An identification, including the municipal address, of each soil bank storage site, soil processing site, landfilling site and dump at which excess soil is intended to be deposited.
13. If the project leader undertakes a peer review of any of the actions required to be taken under this section 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 the conducting the peer review or the certification process.

14. A declaration by the project leader, stating the following:
 - i. That the project leader has conducted reasonable inquiries to obtain all information relevant to compliance with this section.
 - ii. If a qualified person was required to prepare or oversee the preparation of documents under subsection (2),
 - A. that the project leader has disclosed to the qualified person all the information obtained as described in subparagraph i, and
 - B. that the project leader has, for the purpose of assisting the qualified person in preparing or overseeing the preparation of the documents, provided the qualified person with all necessary access to the project area and has authorized the qualified person to make any inquiries of the project leader's employees and agents.
 - iii. That the information filed in the Registry is complete and accurate to the best of the project leader's knowledge.
 - iv. That the project leader will establish and implement all necessary procedures to ensure that all necessary steps are taken to ensure that this section is complied with and to ensure that excess soil from the project area will be disposed of in compliance with this Regulation.
15. If a qualified person was required to prepare or oversee the preparation of documents under subsection (2), a declaration by the qualified person stating the following:
 - i. That the project leader has provided the qualified person with all necessary access to the project area and authorized the qualified person to make any inquiries of the project leader's employees and agents, for the purpose of assisting the qualified person in preparing or overseeing the preparation of the documents.
 - ii. That the qualified person has prepared or overseen the preparation of the documents.

- iii. That the documents are complete and accurate and meet the requirements of this Regulation to the best of the qualified person's knowledge.

Qualified persons, conflict of interest

8. (1) No qualified person shall, in respect of a project in which the qualified person holds a direct or indirect interest, prepare or oversee the preparation of documents under subsection 7 (2).

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

(3) 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*.

Documents to be updated by qualified person

9. (1) This section applies to a project leader who is required to ensure that a qualified person prepares or oversees the preparation of documents under subsection 7 (2).

(2) If the project leader or a contractor or subcontractor of the project leader becomes aware of any of the following circumstances, the project leader shall ensure that within 30 days after the day the project leader becomes aware of the circumstance, a qualified person reviews the documents required to be prepared under subsection 7 (2) and makes any necessary amendments to those documents to reflect the circumstance:

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) In addition to amending the documents under subsection (2), the project leader shall ensure that the qualified person provides to the project leader any further recommendations in

writing to ensure that excess soil is disposed of in accordance with the requirements of this Regulation.

Updates to information in registry

10. (1) A project leader shall ensure that, before depositing excess soil at a temporary soil storage site, reuse site, soil bank storage site, soil processing site, landfilling site or dump, the information required to be included in a notice filed in the Registry under paragraphs 9, 10 and 12 of subsection 7 (8) is information in respect of the applicable location.

(2) A project leader shall ensure that within 30 days after all soil to be removed as part of a project has been removed from a project area, the notice filed in the registry in respect of the project is updated with the following information:

1. The amount of soil removed from the project area during the project that was deposited at each of the following:
 - i. A reuse site.
 - ii. A soil processing site.
 - iii. A soil bank storage site.
 - iv. A landfilling site or dump.
2. The date on which the last load of soil was removed from the project area.

(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 is no longer complete or accurate, the project leader or other 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.

Before depositing specified excess soil, landfilling site or dump

11. (1) No person shall deposit, or cause, permit or arrange for the deposit of excess soil described in subsection (2) at a landfilling site or dump unless the excess soil will be used as daily cover.

(2) The excess soil mentioned in subsection (1) is excess soil that is reusable on sensitive sites and that meets the soil quality requirements set out in the Soil Rules for the purposes of this subsection.

(3) Despite subsection (1), the deposit of excess soil described in subsection (2) 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 operator of the landfilling site or dump at which the excess soil is deposited.

Transportation

12. (1) The transportation of excess soil 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 or carrier transporting excess soil that is designated as waste.

(3) The owner and operator of a vehicle or carrier 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 or carrier that has been constructed to enable the excess soil to be transferred safely and without nuisance.
2. Bodies of vehicles and carriers shall be constructed to withstand abrasion and corrosion from the excess soil.
3. Bodies of vehicles and carriers shall be leakproof and covered where necessary to prevent the emission of offensive odours, the falling or blowing of material from the vehicle and carriers or the release of dust or other airborne materials that may cause air pollution.

(4) A person who is transporting excess soil shall ensure that a record setting out the following information is available at all times during the transportation:

1. An identification, including the municipal address, of 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. An identification, including the municipal address, of the location at which the excess soil is to be deposited.

(5) Upon arriving at a temporary soil storage site, a soil bank storage site, a soil processing site, a landfilling site, a dump or a reuse site, the person who is transporting the excess soil shall ensure that the record mentioned in subsection (4) sets out the following:

1. The date and time that the load of excess soil is deposited.
2. The name and phone number of the individual at the temporary soil storage site, soil bank storage site, soil processing site, landfilling site, dump or reuse site 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.

(6) The person who is transporting the excess soil shall ensure that the individual mentioned in paragraph 2 of subsection (5) is given a copy of the record containing the information mentioned in that subsection.

Operation of reuse site

13. (1) This section applies to the operator of a reuse site at which at least 10,000 cubic metres of excess soil is expected to be delivered for final placement in respect of an undertaking.

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

1. A notice is filed in the Registry in accordance with subsection (3).
2. Procedures are established and implemented to account for every load of excess soil for final placement in respect of an undertaking received at the reuse site.
3. Procedures are established and implemented 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.

(3) For the purposes of paragraph 1 of subsection (2), the notice must include the following information:

1. A description of the reuse site, including,
 - i. the municipal address 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 how much excess soil for final placement in respect of an undertaking will be deposited at the reuse site.
6. The applicable excess soil quality standards for the reuse site, as determined in accordance with the Soil Rules, or, if site-specific excess soil quality standards have been developed for the reuse site by a qualified person, 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.

7. 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.
8. A declaration by the operator of the reuse site, stating that the steps described in paragraphs 2 and 3 of subsection (2) have been and will continue to be taken.

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

1. For each load received, identification of the project area, temporary soil storage site, soil processing site or soil bank storage site from which the excess soil was delivered.
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 operator of the reuse site before the excess soil is deposited at the reuse site.
3. Ensuring that before the operator of the reuse site permits a load of excess soil to be deposited at the reuse site, the load is inspected 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.

(5) The operator shall ensure that within 30 days after the final load of excess soil for final placement in respect of an undertaking has been received at the reuse site, the notice filed in the Registry is updated to include 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 received at the reuse site.
3. The date on which final load of excess soil for final placement in respect of an undertaking was received at the reuse site.

EXCAVATED SOIL — GENERAL

General requirement re excavation of soil

14. (1) The project leader for a project shall ensure that a procedure is established and implemented with respect to what must occur if an employee or agent of the project leader or an

employee or agent of a contractor or subcontractor of the project leader 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 contaminants.

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

1. All soil excavations in the project area must cease immediately upon the observation being made, until such time as the project leader directs that soil excavations may be resumed.
2. The project leader must be notified of the observation immediately.
3. The project leader, 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 that is affected by contamination is identified and is segregated from other excavated soil in the project area,
 - ii. the portion of the project area that is affected by contaminants 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 subsection 7 (2), the project leader shall, before authorizing any soil to be removed from the project area where the observation was made,
 - i. obtain the input 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 subsection 7 (2) require revision as a result of the observation.

Excavated soil processed at project area, designation as waste

15. (1) Subject to subsection (3), excavated soil that is processed at the project area at which the soil was excavated is designated as waste.

(2) Excavated soil designated as waste under subsection (1) is no longer designated as waste once processing is completed, if the soil remains at the project area.

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

1. Passive aeration.
2. Passive drainage.
3. Mixing of soil excavated at the project area, if the soil being mixed is of similar quality and the mixing is not carried out for the purpose of diluting the concentration of contaminants in the soil.
4. Soil turning.
5. Size-based sorting of soil.
6. The sorting of soil for the purpose of removing debris.

(4) If the excavated soil 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.

(5) 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).

Excavated soil processed at local waste transfer facility operated by public body

16. 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, any excavated soil stored at the local waste transfer facility may be processed at the facility by a method specified in subsection 15 (3) and subsections 15 (4) and (5) apply, with necessary modifications, to the processing of the excavated soil.

MISCELLANEOUS

Temporary soil storage site, exemption from ss. 27, 40 and 41 of the Act

17. (1) The deposit and storage at a temporary soil storage site of excess soil that is dry soil is exempt from sections 27, 40 and 41 of the Act if the following conditions are met:

1. In the case of a temporary soil storage site that is owned by a public body, if the public body is not the project leader for the project from which the excess soil was delivered, 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 temporary soil storage site must only be excess soil in respect of projects of the project leader.
3. Subject to subsection (2), the amount of excess soil stored at the temporary soil storage site at any one time must not exceed 2500 cubic metres.
4. Before storing the excess soil at the temporary soil storage site, the project leader for the project from which the excess soil was delivered must,
 - i. obtain written consent from the operator of the reuse site at which the excess soil will be deposited for final placement, and
 - ii. prepare a written record identifying the intended reuse site at which the excess soil to be stored at the temporary soil storage 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 kept at the temporary soil storage 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 stored at the temporary soil storage site.
8. If excess soil is processed while being stored at the temporary soil storage site, it must be processed by one of the following methods:

- i. Passive aeration.
 - ii. Mixing of soil excavated at the project area, if the soil being mixed is of similar quality 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 of soil.
 - v. The sorting of soil for the purpose of removing debris.
9. The project leader for the project from which the excess soil was delivered must provide written notice to the Director in accordance with subsection (4) no later than one month before the excess soil is transported to the temporary soil storage site.
 10. Any other conditions set out in the Soil Rules with respect to the deposit and storage of excess soil at a temporary soil storage site must be met.

(2) Upon written request, the Director to whom written notice is provided under paragraph 9 of subsection (1) may authorize, in writing, the amount of excess soil stored at any one time at the temporary soil storage site to be an amount not exceeding 5000 cubic metres, if the Director is satisfied that the increase in storage will not result in an adverse effect.

(3) The Director to whom written notice is provided under paragraph 9 of subsection (1) may authorize in writing an extension, not exceeding two 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.

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

1. An identification, including the municipal address, of the temporary soil storage 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 delivered.
4. The name and phone number of the individual who, on behalf of the project leader, is responsible for supervising the temporary soil storage site.
5. If the temporary soil storage 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 temporary soil storage site is expected to begin.

(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.

(6) If excess soil is processed at a project area, 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.

(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.

Registry, additional purposes

18. For the purpose of paragraph 3 of subsection 168.3 (2) of the Act, the Registry has the purposes of,

- (a) allowing the filing of notices and other documents under this Regulation; and
- (b) facilitating public access to information respecting the management of excess soil, including information contained in notices and other documents filed in the Registry under this Regulation.

Registry, contents public

19. (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 to,

- (a) a mailing address, postal code or email address or a change in a mailing address, postal code or email address; or
- (b) a municipal address or a change in a municipal address.

Form of notices, declarations

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

Records retention

21. (1) A project leader and an operator of a temporary soil storage site, a soil bank storage site, a soil processing site, a landfilling site, a dump or a reuse site 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, as the case may be.

(2) If a project leader 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 shall retain the contract for at least seven years after the date the contract was entered into.

(3) A person transporting excess soil shall retain a record required under section 12 in respect of excess soil for a period of at least two years after the date that the record was created.

(4) A qualified person shall retain any documents or records 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.

COMMENCEMENT

Proposed commencement for consultation purposes

22. (1) Subject to subsections (2) and (3), this Regulation comes into force on the later of January 1, 2020 and the day it is filed.

(2) Sections 6, 7, 9, 10, 13, 18 and 19 come into force on January 1, 2021.

(3) Section 11 comes into force on January 1, 2023.

SCHEDULE 1 NON-APPLICATION OF SECTIONS 7 AND 10

Item	Column 1 Circumstances
1.	<p>All of the following circumstances apply:</p> <ol style="list-style-type: none"> 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 <i>Planning Act</i>, the amount of soil to be removed from the project area is less than 2,000 m³.
2.	<p>Both of the following circumstances apply:</p> <ol style="list-style-type: none"> 1. The amount of soil to be removed from the project area is less than 100 m³. 2. The excess soil is directly transported to a waste disposal site that is not a temporary soil storage site.
3.	<p>The reason for excavating the soil that will become excess soil is one of the following:</p> <ol style="list-style-type: none"> 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.	<p>All of the following circumstances apply:</p> <ol style="list-style-type: none"> 1. The excavated soil is top soil within the meaning of subsection 142 (1) of the <i>Municipal Act, 2001</i>. 2. The top soil is transported directly to a reuse site from the project area for use as top soil 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 delivered, 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 delivered was not remediating contaminated land.