

Excess Soil Requirements (O. Reg. 406/19)

Resource Sheet for Small Projects on Residential Properties (Landscaping, Pool Installation and Small Construction)

This resource sheet with frequently asked questions will help to inform landowners, contractors and excavators who are managing soil (earth) from small residential projects of the requirements under [O. Reg. 406/19: On-Site and Excess Soil Management](#) (the “excess soil regulation”).

Excess Soil - means soil, crushed rock, or soil mixed with crushed rock, that has been excavated as part of a project and removed from the project area for the project

Why is excess soil regulated?

The Ministry of the Environment, Conservation and Parks, regulates excess soil to ensure it is not illegally dumped at a property that does not agree to accepting it for reuse. The excess soil regulation also helps ensure that excess soil being reused is of appropriate quality for the reuse site, and that soil with more significant contamination is identified and taken to a waste disposal site.

How does the excess soil regulation affect small residential projects?

When working on small residential projects it is important to remember that some requirements in the excess soil regulation that apply to **all** soil movements, also apply, this includes:

- Any reuse sites accepting excess soil for reuse in their project (undertaking) must agree in writing to accept the soil - this is not required for excess soil that is sent to waste disposal sites for disposal, storage and/or processing
- Ensuring the person who is transporting excess soil has a hauling record with the necessary information
- Some soil storage rules may apply as outlined in the [Rules for Soil Management and Excess Soil Quality Standards](#) document (Soil Rules)
- Being aware of any signs that your soil may be contaminated (odour, soil staining, buried tanks), which may affect your procedures for excavation and options for disposal of soil

Additional rules such as sampling and analysis and registering key information onto the [Excess Soil Registry](#) apply to large projects and projects more likely to have contaminated soil and would not usually apply to small residential projects.

Requirements for **soil testing, registration and tracking** do not typically apply to small residential projects

What can I do with my soil?

1. Try to reuse the soil on the property where it was excavated as part of the project.
2. If on-site reuse is not possible, it may be taken to another site for reuse. Before moving it, remember:
 - The reuse site owner or operator must agree in writing to accept the excess soil before the soil is transported
 - The contractor for your project may facilitate this agreement, to help fulfill the requirements on the excess soil that is generated
 - A copy of this agreement must be provided to the project leader (i.e., the owner of the property where the soil originated/was excavated)
 - It is also advisable to confirm the planned reuse of the excess soil and to ensure that the quantity of soil you are transporting to the reuse site aligns with that use

- If there is no reason to believe the soil from a small residential project is contaminated, then soil testing is not required by the regulation to take that soil to a reuse site
3. Excess soil can also be taken to a soil storage depot, called a residential development soil depot or a retail landscaping soil depot under the regulation. Only soil that is not suspected to have contamination can be taken to one of these depots. There is no requirement for the depots to agree in writing to accept the excess soil, however, it is always advisable to confirm ahead of time if there is any information related to the excess soil that they are accepting that they may require.
 4. If there are concerns that the excess soil may have unacceptable levels of contaminants for reuse or there are no local reuse sites available, it may be taken to a soil management facility such as a soil processing site or to a landfill for disposal. There is no requirement for a landfill, soil bank storage site or soil processing site to agree in writing, as they would otherwise be approved to take this soil.

Permits - some projects may also require a municipal site alteration permit or other approvals. This regulation does not affect the need or process for obtaining such permits.

What rules apply if soil is stored in the project area?

To help prevent impacts to neighbours and the environment, the excess soil regulation and Soil Rules include some soil storage rules. These would often not apply to small residential projects, especially if the soil is moved soon after excavation, but this should be confirmed.

Storage rules include:

- Do not cause an adverse effect (this may, for example, mean controlling dust and sediment)
- Stored soil must be set back 10m from a property line if more than 500m³ and storage is longer than 1 week, which are unlikely for residential projects
- Storage must be set back 30m from a water body (e.g., stream)
- Note that through a municipal fill permit or conservation authority permit, alternate storage rules may apply

What is a hauling record?

When excess soil is being transported, the person who is operating the vehicle (i.e., hauler) must ensure that a hauling record is available at all times during transportation. The requirement to have a hauling record applies to the hauler. However, the hauler needs information from the project operator where soil originates before they can leave to relocate the soil, including:

- The project location (i.e., the location where the excess soil was loaded for transportation)
- Contacts for the project, in the event there are inquiries on the load e.g., questions on soil quality
- The date and time the soil is loaded and the approximate volume in the load (i.e., quantity of soil)
- The destination site where the excess soil will be deposited

Once deposited at the reuse site, the hauling record is finalized with confirmation of receipt of the excess soil and a copy of the final hauling record must be provided back to the owner where the soil originated.

Additional information on the soil or project area, such as “residential pool excavation”, can also be provided in the hauling record, if desired, to help describe the likely quality of the soil.

Do I have to test, track, or register my excess soil?

The excess soil regulation has additional requirements that **would not** typically apply to small residential projects, as they would often be eligible for an exemption to these types of planning requirements.

Exempt projects would not need to:

- Register a notice in the Excess Soil Registry
- Develop a tracking system to track each load of excess soil during its transportation and deposit
- Hire a qualified person to conduct an assessment of past uses for your property and possibly soil sampling and analysis, and the completion of an excess soil destination report

These requirements are only triggered in circumstances that would not typically apply to a smaller residential project, such as:

1. The project is on a former industrial site, or bulk fuel station (e.g., gas station)
2. The project site is being remediated for contaminants (e.g., brownfields redevelopment)
3. The project is moving 2000m³ or more from a settlement area (i.e., city, town); this is about 200 truck loads and far exceeds normal soil movements from residential pool and landscaping projects, it also does not apply to rural projects

What if I find contaminated soil?

If during excavation an observation is made that the soil being excavated has been affected by a contaminant (e.g., a smell or visual clues), work must stop to ensure procedures are followed to:

- Segregate potentially contaminated soil that is already excavated
- Identify the portion of the property that is contaminated and areas of planned excavation that may have contaminants and modify the project accordingly
- Properly dispose of any excavated soil that may be contaminated at an appropriate waste disposal facility

Unexpected Contamination - soil with significant contamination may be a hazardous waste requiring properly approved expertise to manage that soil

Are any of the records generated required to be kept by the project leader?

Documents related to these requirements, such as agreements with reuse sites, must be kept for seven years, and copies of hauling records are to be kept for two years.

For more information:

- Contact your local MECP district office: [Ministry of the Environment, Conservation and Parks district locator | ontario.ca](#)
- Visit the Managing Excess Soil webpage: [Handling excess soil | ontario.ca](#)

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 and the Rules for Soil Management and Excess Soil Quality Standards - a document incorporated by reference in the regulation. 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.