

Excess Soil Webinar Series

8. Soil Depots and Storage/Processing Sites

Date and Time: November 26th, 2021
9:00am to 11:00am

Excess Soil Webinar Series - Schedule

Topic Areas	Date and Time
1. Project Area - Source Sites	Wed October 27 th , 2021 9:00am to 11:00am
2. Reuse Sites	Fri October 29 th , 2021 9:00am to 11:00am
3. Transportation of Excess Soil (Dry and Liquid)	Wed November 3 rd , 2021 9:00am to 11:00am
4. Infrastructure Projects	Fri November 5 th , 2021 9:00am to 11:00am
5. Excess Soil Registry - Regulatory Requirements	Fri November 12 th , 2021 9:00am to 11:00am
6. Vac Trucks and Liquid Soil Management	Fri November 19 th , 2021 9:00am to 11:00am
7. Qualified Persons (QP) and Excess Soil Planning	Wed November 24 th , 2021 9:00am to 11:00am
8. Soil Depots and Storage/Processing Sites	Fri November 26th, 2021 9:00am to 11:00am

Presentation Overview

- Welcome to Webinar Series - 8 - Soil Depots and Storage / Processing Sites
- Overview of Regulatory Requirements
- Best Practices
- Frequently Asked Questions and Answers
- Health Break
- Open Discussion, Additional Question and Answer Period
- Additional Resources and Opportunities

- Appendix A: Waste Designation Flow Chart
- Appendix B: Procedures for Mixing Substances for Dewatering or Solidification
- Appendix C: Residential Development Soil Depot - Registry Details

Your MECP Excess Soil Team

Some of our MECP team members include:

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RSCs and Brownfields

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Operations

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Overview of Regulatory Requirements Relevant to Soil Depots and Storage / Processing Sites



Toronto Waterfront, Don River
Project Filling - MECP, Jan. 2019

DISCLAIMER

This presentation 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.

Overview of Regulatory Requirements

- Regulation titled **O. Reg. 406/19: On-Site and Excess Soil Management** (Excess Soil Regulation) under the Environmental Protection Act (EPA), was finalized in December 2019, supported by:
 - Rules for Soil Management and Excess Soil Quality Standards
 - Beneficial Reuse Assessment Tool (BRAT)
 - Complementary provisions in O. Reg. 153/04 (Brownfields Remediation Regulation), Reg. 347 and O. Reg. 351/12 (Waste Management Regulations)

Phased Regulatory Implementation	Timing
Reuse Rules and Waste Designation Clarification - Including excess soil reuse standards	January 1, 2021
Excess Soil Reuse Planning Requirements - For larger or riskier generating projects (some exemptions) <ul style="list-style-type: none"> - Assessment of past uses, and if required sampling and characterization - Destination assessment report - Tracking and registration - Hauling record - Larger reuse site registration	January 1, 2022
Restriction on the deposit of clean soil at landfill sites	January 1, 2025

Types of Interim Sites

- There are several different types of interim sites under the Excess Soil Regulation that can be utilized for the purpose of storage on a temporary basis and/or processing excess soil and/or liquid soil
- In most cases, these interim sites do not require a waste Environmental Compliance Approval (ECA), however some interim sites would require a waste-ECA
- The following table summarizes the types of interim sites in the Excess Soil Regulation and where a waste-ECA would be required:

Type of Interim Site	Waste-ECA Required?
Residential Development Soil Depot	No
Retail Landscaping Soil Depot	No
Local Waste Transfer Facility	No
Class 2 Soil Management Site	No
Soil Bank Storage Site (Class 1 Soil Management Site)	Yes
Soil Processing Site (Class 1 Soil Management Site)	Yes

Class 1 Soil Management Sites

- Class 1 sites are waste disposal sites, which include soil banks and soil processing sites, that take responsibility for dry and/or liquid soil deposited at that site
- They can potentially accept soil from many project areas (a project leader may consider these a final destination)
- Generally, these sites require a waste-ECA, and a project leader or contractor may consider establishing one to facilitate excess soil storage, processing and/or reuse across many projects and undertakings

Class 2 Soil Management Sites

- Class 2 soil management sites are a type of waste disposal site that are exempt from the requirement to obtain a waste-ECA if regulatory rules are followed
- Class 2 soil management sites are either owned by a public body or by the project leader from where the soil originated and are to be operated by the project leader

The following conditions must be met to provide an exemption from a waste-ECA:

- The site can only accept dry soil
- The excess soil stored at a Class 2 soil management site at any time must only be the excess soil in respect of projects of the project leader
- The maximum amount of excess soil that can be stored at any one time - 10,000 m³
- Stockpile segregation from various project areas is required unless they have both the same applicable excess soil quality standards table and planned reuse site
- Additional record keeping requirements with key information on the excess soil management activities taking place at the site, including the reuse site(s), Class 1 soil management site(s) and landfill(s) the excess soil is destined for
- Before storing excess soil at the Class 2 soil management site, the project leader for the project from which the excess soil was transported must obtain written consent from the operator of the reuse site for the deposit of the excess soil

Class 2 Soil Management Sites - Continued

- The project leader or the operator of the Class 2 soil management site must provide written notice to the Director of the local Ministry office, before the excess soil begins to be deposited at the Class 2 soil management site
- If the Class 2 soil management site is owned or leased by a public body that is not the project leader for the project from which the excess soil was transported, the public body or authorized person must consent in writing to the temporary storage

Processing permitted at a Class 2 soil management site:

- Passive aeration
- Specified mixing of soil with similar qualities and not for the purpose of diluting concentrations of contaminants in the soil
- Soil turning
- Size-based sorting
- Sorting for the purpose of removing debris

Local Waste Transfer Facilities

- These sites are recognized under [Regulation 347](#) as a storage location that is **not primarily a waste management operation**, and are described as a site:
 - At which waste from field operations is received, bulked, temporarily stored and transferred
 - That is owned or controlled by the person who undertakes the field operations or by a person on whose behalf those field operations are undertaken
 - At which no waste is received other than waste from field operations, and
 - That is used primarily for functions other than waste management (e.g., a site used primarily for equipment storage)
- **Field operations** include construction, maintenance of a highway, environmental testing, etc.
- Local waste transfer facilities must be owned by a public body or operated by a project leader for an infrastructure undertaking to take advantage of the exemption from a waste-ECA

Local Waste Transfer Facilities - Continued

- Local waste transfer facilities are exempt from section 27, 40 and 41 of the *Environmental Protection Act* (i.e., the requirement for waste-ECAs) under Regulation 347, if the criteria for exemption are met
- Written notice may be required to be given to the Director one month before the facility is established, notice would identify the facility and set out the facility's location and the quantities and types of wastes that are at or are anticipated to be at the facility
- Other applicable requirements from Regulation 347 related to local waste transfer facilities may also apply, such as:
 - Availability of fire-fighting equipment and spill clean-up and containment equipment
 - Access to the facility controlled by gates, fencing, attendants or other security measures
- Municipalities, for example, could plan for their sites to accept liquid soil from their projects (even if their project is undertaken by a contractor) and ensure that the site operates in a manner that allows them to be exempt from needing a waste-ECA, while following the requirements of the Excess Soil Regulation

Local Waste Transfer Facilities - Continued

- The Excess Soil Regulation allows limited types of processing for excess soil that may be done at a local waste transfer facility, without needing a waste ECA if regulatory rules are followed
- These are listed in [subsection 6\(3\)](#) of the regulation and include:
 - Passive aeration and passive dewatering
 - Mechanical dewatering
 - Mixing of soil of similar quality
 - Soil turning
 - Size-based sorting and sorting for the purpose of removing debris
 - Mixing with another substance that is intended to dewater or solidify the soil or crushed rock

Sampling at Class 2 Soil Management Sites and Local Waste Transfer Facilities

- There are some additional flexibilities under the Excess Soil Regulation that allow for sampling to take place at either a Class 2 soil management site or a local waste transfer facility
- This is permitted if it is impracticable to conduct the required sampling at the project area e.g., as a result of insufficient access or room for in-situ sampling or to undertake stockpile sampling at the project area
- The project leader must ensure that the required sampling is conducted promptly upon delivery of the soil to the Class 2 soil management site or local waste transfer facility
- The notice that is required to be filed to the Registry typically before excess soil leaves a project area, will be permitted to be filed before the excess soil is transported from the Class 2 soil management site or a local waste transfer facility to a Class 1 soil management site, reuse site, landfilling site or dump

Residential and Landscaping Soil Depots

- Retail landscaping soil depots and residential development soil depots are considered soil bank storage sites, both depots are exempt from waste-ECA requirements if the requirements outlined in Part 1 of the Rules for Soil Management are followed
- Liquid soil is not permitted to be managed at either of these depots
- Permitted low risk processing activities at these depots include:
 - Passive aeration
 - Mixing of soil, if the soil being mixed with it is of similar quality to it and the mixing is not carried out for the purpose of diluting the concentration of contaminants in the soil
 - Soil turning
 - Size-based sorting
 - Sorting for the purpose of removing debris

Residential and Landscaping Soil Depots - Continued

- The operator of the depot must only operate either a retail landscaping soil depot or a residential development soil depot, not both
- If the depot is operated on land owned by another person, the operator must obtain the written consent of the owner of the land to operate the depot
- Before excess soil is managed at the retail landscaping soil depot or residential development soil depot after December 31, 2020, the owner or operator of the depot shall ensure that the following steps are taken:
 1. Procedures are developed and applied to account for every load of excess soil to be deposited at the retail landscaping soil depot or residential development soil depot
 2. Procedures are developed and applied to ensure that the storage of excess soil at the retail landscaping soil depot or residential development soil depot does not cause an adverse effect

Residential Development Soil Depots

- The amount of excess soil stored at any one time must not exceed 10,000 m³
- Excess soil deposited at the depot must be for the purpose of meeting a realistic market demand within the same or adjacent lower tier or single tier municipality
- Excess soil accepted and managed at the depot meets the excess soil quality standards in Part I: Rules for Soil Management - for a residential, parkland or institutional property uses in Table 2.1
 - For properties serviced by current or planned municipal drinking water systems, residential property use standards in Table 3.1 non-potable can be used
- Excess soil leaving these facilities cannot be deposited for final placement on either an agricultural property or an Environmentally Sensitive Area
- No excess soil from commercial, industrial or community property uses shall be deposited, stored or processed at this type of depot unless soil characterization indicates the applicable standards mentioned above are met

Residential Development Soil Depots - Continued

- The operator of a residential development soil depot must ensure that a notice is filed in the Registry before excess soil is deposited at the depot (if depot commences operation on or after January 1, 2022) or on January 1, 2022 (if depot was operating before January 1, 2022), see Appendix C for details
- If the operator of the residential development soil depot becomes aware that the notice filed in the Registry in respect of the depot is no longer complete or accurate, the operator shall ensure that the notice is updated within 30 days after the day the operator becomes aware that the information is no longer complete or accurate
- Where a residential development soil depot closes, the operator of the depot must update the notice filed in the Registry within 30 days after closure of the depot and must indicate the date when the depot ceased operations

Retail Landscaping Soil Depot

- The amount of excess soil stored at any one time must not exceed 10,000 m³
- Excess soil deposited at the depot must be for the purpose of producing soil-related landscaping products

Soil Quality

- Excess soil accepted and managed at the depot meets the excess soil quality standards set out in Part I: Rules for Soil Management - for a residential, parkland or institutional property uses in Table 2.1
- Excess soil used in a product or sold as a product leaving the depot must meet Table 2.1 for residential, parkland or institutional property uses and if mixed with compost subsection 1 (1) of section D of the Soil Rules apply
- No excess soil from commercial, industrial or community property uses shall be deposited, stored or processed at this type of depot

Retail Landscaping Soil Depot - Continued

- Excess soil that leaves a retail landscaping soil depot is not designated as waste as long as, the excess soil meets the applicable soil quality standards set out in the Soil Rules and the excess soil leaves the retail landscaping soil depot pursuant to a purchase of soil of less than 25 m³
- The operator of a retail landscaping soil depot must provide written notice to the Director before the excess soil is deposited at the depot (if the depot is starting operations on or after January 1, 2021) or within 90 days after January 1, 2021 (if depot was operating before that date)
- If the operator of a retail landscaping soil depot becomes aware that any information in the written notice is no longer complete or accurate, the operator must ensure that the Director is notified and provided with the completed or corrected information within 30 days after the day the operator becomes aware that the information is no longer complete or accurate
- The operator of a retail landscaping soil depot must provide written notice of the closure of the depot to the Director within 90 days after the closure of the depot

Key Definitions

Residential Development Soil Depot: a soil bank storage site that is operated for the purpose of managing on a temporary basis, excess soil that will ultimately be transported to a reuse site for final placement in respect of an undertaking at a reuse site

Retail Landscaping Soil Depot: a soil bank storage site that is operated for the purpose of producing excess soil for landscaping or gardening products that is to be promptly packaged for retail sale to meet a realistic market demand, or to be offered for retail sale to meet a realistic market demand

Class 1 Soil Management Site: a soil bank storage site or a soil processing site

Soil Bank Storage Site: a waste disposal site, other than a Class 2 soil management site, at which excess soil is managed on a temporary basis and that is operated, by a person who is not the project leader for all of the projects from which the excess soil was excavated, for the primary purpose of storing the excess soil from one or more projects until the excess soil can be transported to a site for final placement or disposal

Soil Processing Site: a waste disposal site, other than a Class 2 soil management site or a soil bank storage site, at which excess soil is managed on a temporary basis, that is operated for the primary purpose of processing excess soil, including processing in order to reduce contaminants in the excess soil

Key Definitions - Continued

Topsoil: has the same meaning as in subsection 142 (1) of the [Municipal Act, 2001](#) which means those horizons in a soil profile, commonly known as the “O” and the “A” horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat

Local Waste Transfer Facility: has the same meaning as in [Regulation 347](#); a site,

- (a) at which waste from field operations is received, bulked, temporarily stored and transferred
- (b) that is owned or controlled by the person who undertakes the field operations referred to in clause (a) or by a person on whose behalf those field operations are undertaken
- (c) at which no waste is received other than waste from field operations, and
- (d) that is used primarily for functions other than waste management

Class 2 soil management site: a waste disposal site, other than a Class 1 soil management site, at which excess soil is managed on a temporary basis and that is,

- (a) located on a property owned by a public body or by the project leader for the project from which the excess soil was excavated, and
- (b) operated by the project leader for the project from which the excess soil was excavated

Soil Storage Rules for Interim Sites

The following applies to **dry soil** stored at any site, including all interim sites:

- Soil is to be stored and managed to prevent any adverse effects associated with its receiving, processing, storage and movement - to manage noise, dust, mud tracking, leaching, run-off and erosion as well as any potential air or odour impacts
- Soil must be stored in stockpiles and the maximum size of each stockpile shall not exceed 2,500m³
- Any soil that is sampled and analysed must be kept segregated from other soil and soil of different qualities intended for different beneficial uses
- The soil must not be stored within 30 metres of a waterbody and within 10 metres of the property line (boundary), unless any of the following apply:
 - 500m³ or less of excess soil will be stored at any one time at the project area
 - Excess soil storage at the project area for a week or less
 - The storage location has a physical barrier (e.g., concrete wall) between the excess soil and the property boundary
 - The storage is taking place in a public road right-of-way
- Soil shall be stored in a manner that prevents any contaminants from the soil from leaching into the ground water

Soil Storage Rules for Interim Sites - Continued

The following applies to **liquid soil** stored at either a project area or a local waste transfer facility:

- All storage and processing locations of liquid soil, processed, dewatered or solidified soil and process residues shall be readily accessible for inspection by a provincial officer
- No more than 10,000m³ of liquid soil, processed, dewatered or solidified soil and process residues may be present at the site at any one time
- All liquid soil, processed, dewatered or solidified soil and process residues that are liquid shall be stored in a leakproof container on an impermeable surface in a manner sufficient to contain and prevent the material from escaping into the natural environment
- Both dry and liquid soil can generally be stored for a period of up to 2 years, with some exceptions e.g., with written permission from a Director of the Ministry, the excess soil can be stored at some interim sites for up to an additional 5 years
- Regardless of if you are managing dry or liquid soil, other approvals may still be required depending on the facility and the processes used

Best Practices



Best Practices

Excess Soil Storage

- It is recommended when storing excess soil at the project area, an interim site, or a reuse site, those responsible for the soil management activities should review any municipal by-laws (if applicable)
- This will help to confirm if there are any additional rules and requirements they must follow in relation to excess soil storage, processing and/or management
- This may include additional local requirements such as restrictions on noise and operation hours, dust and mud tracking and in preventing other adverse impacts from the proposed soil management activity
- It is also recommended that the stockpiles of excess soil be structurally stable to ensure they do not topple over during rain, wind, or snow events

Best Practices

Notification to the Ministry

- Although the regulatory requirement is to notify the Ministry about interim sites before soil is received there, early notification is recommended
- Ideally, the local Ministry district office should be notified early in the process, at least 30 days before soil begins to migrate to the site, in the event that there are concerns with the temporary site, this provides time for the temporary site manager to discuss and resolve any issues with the Ministry
- You can find the appropriate Ministry office to notify by using the ministry's district locator map and searching for the location of the proposed site
- Consultation with the local municipal or regional government and conservation authority is also recommended early in the process

Best Practices

Qualified Person Oversight

- It is recommended, that a QP oversee the management and storage of excess soil at an interim site, in particular for larger projects
- This will help to ensure that the excess soil stored and/or processed at that site does not cause adverse effects to the environment and does not degrade the quality of excess soil stored at the interim site for reuse
- QP oversight at interim sites may include confirmatory sampling, this might be particularly useful for the depots where a soil quality standard applies at these sites

Frequently Asked Questions and Answers

Frequently Asked Questions and Answers

1. Can excess soil from multiple project areas be temporarily stored at an interim site?

- If the project leader has multiple project areas, excess soil from those sites can be stored at the project leader's Class 2 soil management site as long as the various excess soils from different project areas, which are different quality and are destined for different beneficial reuses, remain segregated and are managed in accordance with the Excess Soil Regulation and Part I of the Rules for Soil Management
- However, if soil originates from project areas of different project leaders, this would then be considered a Class 1 soil management site and a waste-ECA would need to be obtained for this activity

Frequently Asked Questions and Answers

2. Is a waste-ECA required for contractors involved in the temporary storage and/or processing of excess soil?

- Specified parties (e.g., public bodies) can identify local waste transfer facilities or Class 2 soil management sites to which contractors could temporarily relocate excess soil from that project leader's projects, if all regulatory rules are followed a waste-ECA would not be required
- Contractors that are not primarily in the business of waste management can make use of the field operations exemption outlined in Regulation 347 for local waste transfer facilities without needing a waste-ECA, if all the applicable rules under Regulation 347 as well as the Excess Soil Regulation are followed (e.g., storage rules, security/barriers, etc.)
- All other contractors offering the service of storing or processing excess soil at a property they own would require a waste-ECA to operate such a facility, in addition to any other approvals required based on the nature of the service offered

Frequently Asked Questions and Answers

3. What are the project leader's obligations in relation to its material once soil is accepted at a Class 1 soil management site?

- A project leader who is taking excess soil to a Class 1 soil management site is responsible for ensuring appropriate quality of the soil, for transporting the excess soil to the site and to follow any requirements the Class 1 soil management site may have on the soil when it arrives e.g., confirmatory sampling
- Once excess soil or liquid soil is at a Class 1 soil management site, the Class 1 soil management site takes responsibility for the dry and/or liquid soil deposited at that site

Frequently Asked Questions and Answers

4. Can sampling take place at any of the interim sites? Who can complete the sampling at an interim site?

- In general, the Excess Soil Regulation requires sampling to take place at the project area, before excess soil is moved offsite
- However, it is recognized that sometimes it is not practical or feasible to sample at the project area, as such the regulation provides flexibility for sampling to occur “promptly” upon arrival at specified interim sites (either a Class 2 soil management site or a local waste transfer facility are permitted)
- The requirements on who must conduct this sampling is the same regardless of where the sampling takes place, this must be undertaken by or under the supervisions of a Qualified Person (QP)

Frequently Asked Questions and Answers

5. What rules govern the use of natural or synthetic polymers at interim sites?

If a natural or synthetic polymer is mixed for dewatering or solidification, a Qualified Person (QP) must be retained to carry out specified procedures, including:

- Developing written procedures to ensure the safe use of the substance within the project area during the dewatering or solidification process
- Giving a copy of the written procedures to the project leader or a person designated by the project leader
- Preparing a document for the reuse site outlining information on the substances (mixing rates, amount of liquid soil) as well as how to store and manage the dewatered/solidified excess soil to ensure it doesn't cause an adverse effect
- See Appendix B for further details

Frequently Asked Questions and Answers

6. When substances are being used for the purposes of dewatering or solidifying the soil, does this impact the sampling and analysis that is required?

- If substances are being used for dewatering or solidification (whether non-polymer or polymer), and sampling and analysis is required, then:
 - The sampling must take place before mixing, if the QP is of the opinion that mixing will affect the characterization with respect to the applicable excess soil quality standards
 - The sampling can take place after mixing, if the QP is of the opinion that mixing will not change the outcome
- Whether a natural or synthetic substance is added to the soil, the mixing in of the substance should be stated in the characterization report along with the QP's opinion regarding impact on sampling and analysis results

Bio Break - Health Break

Open Discussion, Additional Question and Answer Period

Additional Resources

Additional Resources

For additional information, including a variety of guidance and tools developed by external partners:

- Ontario Government Excess Soil Page: ontario.ca/page/handling-excess-soil
- Ontario Provincial Standard Specification (OPSS) 180 - General Specification for the Management of Excess Materials: currently being updated by MTO
- RPRA's Excess Soil Registry: rpra.ca/excess-soil-registry
- Ontario Environment Industry Association (ONEIA) - Best Practices and Templates:
 - Hauling Best Practices and Template: <https://www.oneia.ca/excess-soils/hauling-best-practices>
 - Temporary Sites Best Practices: <https://www.oneia.ca/Temporary-Sites-Best-Practices>
 - Qualified Persons Best Practices: <https://www.oneia.ca/qp-best-practices>
- Ontario Society of Professional Engineers (OSPE) - Best Practices for Aggregate Pit and Quarry Rehabilitation: <https://ospe.on.ca/excess-soil-reports/>
- Canadian Urban Institutes (CUI) - Excess Soil By-Law Language Tool: <https://canurb.org/initiatives/excess-soil-by-law-tool/>
- RSC Guide (*currently in draft and to be updated soon*): <https://ero.ontario.ca/notice/019-2551>

Our Coordinates

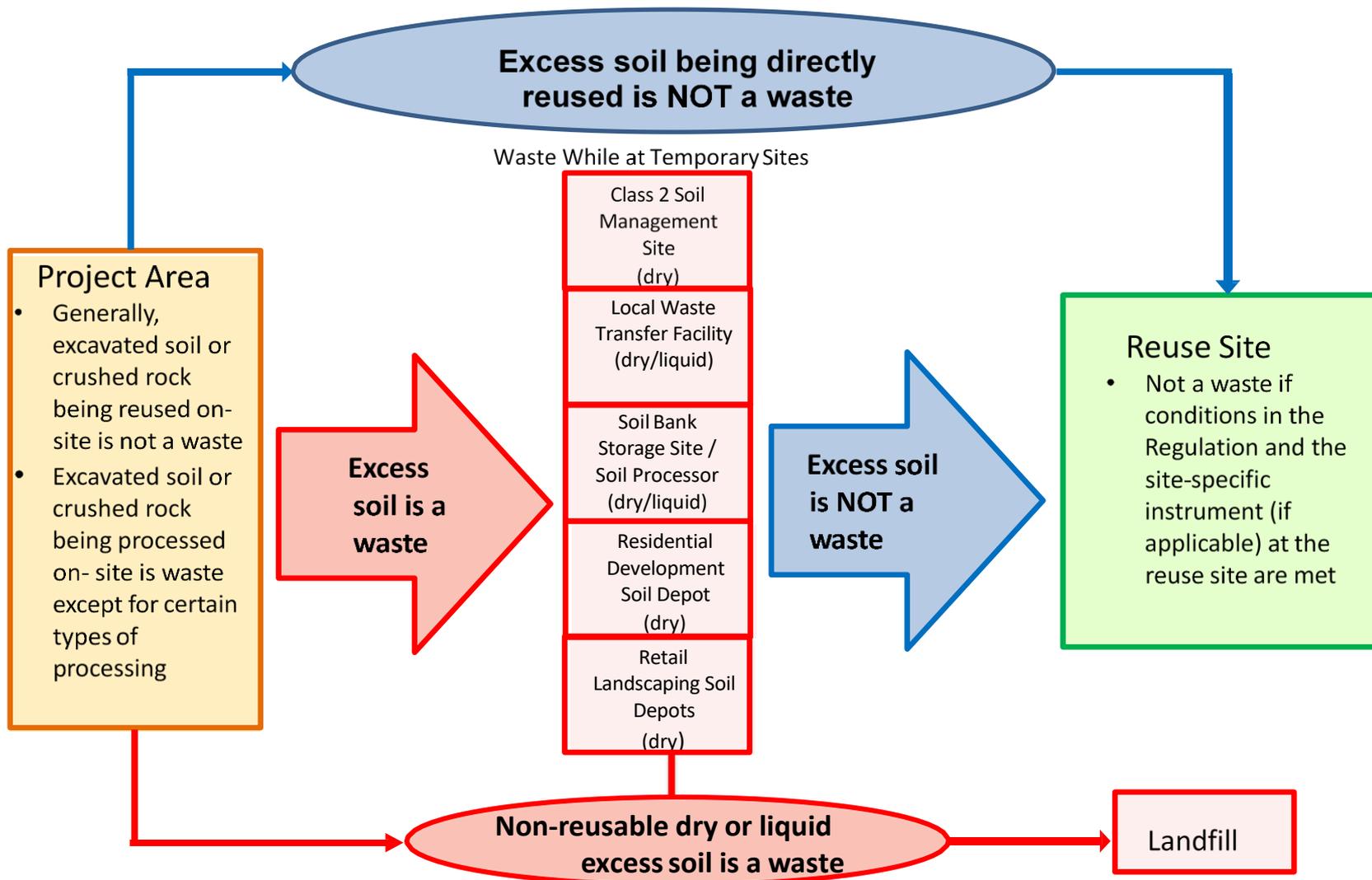
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THANK YOU!

Appendices

Appendix A: Waste Designation Flowchart



Appendix B: Procedures for Mixing Substances for Dewatering or Solidification

If a natural or synthetic polymer is mixed with excavated soil or crushed rock for dewatering or solidification, a QP must be retained to carry out specified procedures. This includes:

- Developing written procedures to ensure the appropriate and safe use of the substance within the project area during the dewatering or solidification process, (including any information provided by the producer of the substance and any other information that the QP deems to be relevant to the use of the substance)
- Giving a copy of the written procedures to the project leader or a person designated by the project leader
- If the excess soil will be finally placed at a reuse site, preparing a document that lists:
 - The substances, the mixing rates used and the amount of liquid soil that was dewatered or solidified
 - Instructions on proper storage and final placement of the dewatered or solidified excess soil at the reuse site, to ensure that it does not cause an adverse effect
 - Confirmation that if the above instructions are followed, the storage and final placement of the excess soil will not cause an adverse effect

Appendix C - Residential Development Soil Depot - Registry Details

The notice filed in the Registry for these depots must include the following:

1. The location of the residential development soil depot
2. The name of the operator of the residential development soil depot
3. If the residential development soil depot commences operations on or after January 1, 2022, the date on which the storage and, if applicable, processing, of excess soil is expected to begin
4. If the operator does not own the property on which the residential development soil depot is located, the name, mailing address, postal code, telephone number and email address of the owner
5. If the residential development soil depot is in operation before January 1, 2022, an estimate of the amount excess soil stored at the site
6. If an instrument mentioned in paragraph 4 of subsection 3 (2) has been issued governing the residential development soil depot, identification of the body that issued the instrument, the date the instrument was issued and to whom the instrument is issued, and if there is an instrument identification number, that number
7. A declaration by the owner or operator of the residential development soil depot, stating that the steps described in paragraphs 1 and 2 of subsection (2) have been and will continue to be taken