



File Number A00 03 ERO 013-5000

May 28, 2019

**BY EMAIL & ENVIRONMENTAL REGISTRY**

Sanjay Coelho  
Ministry of the Environment (MOE) - Conservation and Parks  
Environmental Policy Branch  
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Email: [sanjay.coelho@ontario.ca](mailto:sanjay.coelho@ontario.ca)

Dear Mr. Coelho:

**Re: City of Ottawa Comments  
ERO Posting 013-5000  
Excess Soil Regulatory Proposal and Amendments to Record of Site Condition  
(Brownfields) Regulation**

Please find below comments regarding the 2019 Excess Soil Management Regulatory Proposal (ERO 013-5000) from the City of Ottawa (City). These comments are further to those that were submitted over the past few years by the City regarding previous ERO postings related to Excess Soils, made in Ontario Environmental Plan and the Reduction in Litter and Waste (copied attached).

It is the City's position that if the regulation is implemented as proposed, the intended benefits will not be achieved given the significant costs and extensive impacts to municipalities across the province. On an annual basis, the City of Ottawa oversees between 400 and 600 infrastructure projects, many of which generate excess soil. The majority of projects take place within the existing road right-of-way or on City property, with limited opportunities for beneficial soil reuse.

From a City of Ottawa perspective, the proposed regulation will result in additional quantities of soil being defined as contaminated due to the implementation of the volume independent excess soil standards that are more stringent than the currently used O. Reg 153/04 standards. These proposed volume independent standards will become the default environmental standards for most projects if there is potential for any excess being removed from the project site. This will result in disposal of additional quantities of soil in landfills, a reduction of capacity for solid waste facilities and ultimately a considerable cost increase to deliver infrastructure projects.

Ontario is a large and diverse province from a soil management perspective. What works in one area may not be as beneficial in another. The factors that impact excess soil management vary widely from region to region, including landfill needs for soil cover material vs. lack of landfill space, availability of reuse sites requiring soil, rates of urban infill, and existing geological conditions.

## Administrative and Financial Burdens to the City

The Ministry has acknowledged that there will be additional costs related to the testing and administration required by proposed regulation, while also claiming that cost savings to construction projects will be realized. Changes between the 2018 and 2019 versions of the proposed regulation have little impact on reducing the additional burden on City of Ottawa resources.

The Ministry asked for comments related to potential cost impacts related to implementation of the proposed excess soils regulation. Potential cost savings as detailed in the ERO regulatory impact statement, such as shorter transportation distances and reduction in soil disposal fees are not anticipated to be realized in Ottawa. The effective management and beneficial reuse of soils from heavy construction is very important, but the added greenhouse gas emissions from all the added truck activity should be assessed to evaluate the net benefit related to reuse of excess soils.

The requirement for municipalities to comment on the applicability of reuse sites being within municipally serviced areas, source water protection areas and/or highly vulnerable aquifers will be a financial and administrative burden to the City.

The requirement that excess soil cannot leave a project site unless a reuse site has already been identified, poses an administrative and logistical challenge on all City projects. For infrastructure projects, the City would have to either a) identify available receiving sites in advance of tender or b) download the responsibility of identifying receiving sites to the construction Contractor through the tender – with both options having substantial cost and time implications on every project.

The Ministry has indicated that a key aspect of this revised version of the proposed regulation is focused on reducing the burden related to implementation. From a practical perspective, the City is the adjacent landowner to every enhanced investigation property in the City. In many cases the City has obtained ownership of a portion of these current and former gas stations and dry cleaner properties due to road widening projects. According to the proposed regulation the entire roadway would now be subject to the sampling and analysis plan for enhanced sites. This is but one example of the proposed burden reduction proposals being nullified or of little value in our actual construction environment.

Simplification of the final upload of soil movement to the registry is a welcome change; however, the proposed regulation and soil rules documents do not reflect record keeping in the same manner. In addition to the summary record keeping upload to the registry, there is still an immense burden related to keeping track of every truck load of clean, contaminated & marginally impacted soil that is excavated, transported and ultimately disposed of. This will be extremely complicated task to administer over hundreds of projects and thousands of truckloads annually.

## City Concerns with Proposed Implementation Dates

The City is very concerned that the timelines to implement the proposed regulation are overly aggressive and that there is a general lack of consideration for on-going and partially implemented projects. The Ministry previously indicated that the proposed regulation would be finalized in 2018 with implementation beginning in January 2020. The regulation was not finalized in 2018, and a new draft was issued in May 2019 with the addition of some significant changes and a general lack of information in the interim. The implementation dates of January 2020 remain the same as when the final regulation was promised in 2018. The City had indicated in comments on the 2018 regulatory proposal that the timelines were too aggressive, and this version of the proposed regulation has an even shorter timeframe to implement.

Similar to other recently adopted regulations with a significant impact to municipalities, the proposed regulation should have a transitory period with a phased-in approach to reach the Province's ultimate objective. There should be a minimum of 4 years for the municipality to incorporate the changes and reach full compliance. This was a previous comment submitted by the City and not addressed by the Ministry. With the implementation dates remaining the same and the lack of a transition period, we are now in the position that contracts for 2020 construction have been awarded and we will have uncontrolled direct costs to these in progress contracts.

#### Consequences to the City as a result of the Proposed Excess Soil Regulation

The new component of this proposed regulation related to prohibition of landfill disposal for clean soils or soils that meet residential land use will be especially problematic for the City. This could place the City in the position where we have to pay for clean aggregate at our landfills and be prohibited from using available excess soils when we have a demonstrated need for the soil at our landfills for uses such as temporary road building, or site access and daily, interim or final cover. The prohibition in Section 11 of the proposed excess soil regulation should be changed from daily cover to demonstrated need for the excess soil.

The ultimate implications of the proposed regulations to the City are:

- The City will be required to direct considerable financial and staff resources to test, evaluate, haul, dispose, import, track, monitor and report on several hundred thousand tonnes of soil moving across the City without achieving the Province's intended benefits.
- Funding will be removed from much needed infrastructure renewal activities and there will be a reduction in the number of projects the City can complete each year.
- The redirection of funding to excess soil management will result in a less sustainable City.

We appreciate the continued opportunity to comment on the excess soil management proposal and would welcome further discussion on the impacts of the proposal to the City of Ottawa.

If you have any additional questions or concerns, please feel free to contact me directly at [Stephen.Willis@ottawa.ca](mailto:Stephen.Willis@ottawa.ca).

Sincerely,



Stephen Willis, MCIP, RPP  
General Manager  
Planning, Infrastructure and Economic Development  
City of Ottawa

Cc: Gordon MacNair, Director - Corporate Real Estate Office  
Alain Gonthier, Director - Infrastructure Services

Enclosures (4)



23 June 2017

Sanjay Coelho  
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VIA – EBR online submission

Re: Excess Soil Management Regulatory Proposal  
EBR Registry Number: 013-0299

Dear Mr. Coelho:

The City of Ottawa (the “City”) appreciates the opportunity to provide comments on the proposed Excess Soil Management Regulatory Proposal. Please find comments gathered from several City Departments to date below. The City may provide additional comments at a further date.

The City understands the intent of the proposed regulation and supports the beneficial reuse of soils. However, it is the City’s position that if the proposed regulation is implemented as proposed, it will not result in an increase in beneficial reuse of soil. The proposed amendments will have significant implications and substantial cost increases on every municipality and project owner in terms of having to undergo a complex and data-heavy exercise to every project. It will result in additional soils from City projects being disposed of in landfills, reduced capacity of solid waste facilities and increased costs for the delivery of projects.

The implications are that the City will ultimately be required to direct funding to support this proposed regulation and as a result will deliver fewer projects. This will remove funding from the maintenance of City infrastructure and a less overall sustainable City. The City has an expectation that the Ministry of the Environment and Climate Change (MOECC) will be receptive to the following comments and will work with the City to address these concerns.

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## **SOILS THAT MEET TABLE 1**

Designating excess soils that meet the O. Reg. 153/04 Table 1 criteria as waste is overly conservative. Soils with testing results that meet Table 1 should be exempted from being designated waste and as such should not be required to be subject to the registration and tracking requirements. The City suggests a separate category for soils that have demonstrated through the prescribed testing protocols to meet Table 1. A revised tracking system whereby these “clean soils” (meets Table 1) are documented in bulk movements is a more reasonable approach that would reduce the administrative burden for documentation of clean fill.

The bulk movement system is only proposed for soils that meet Table 1 based on testing results. If the Qualified Professional (“QP”) has indicated that testing is not required, then the soils should not be allowed to use the bulk movement system – those soils should be subject to the proposed full registration and tracking requirements as proposed.

## **PRESENCE OF NATURALLY ELEVATED CONCENTRATIONS OF SUBSTANCES**

Similarly, the City has many areas that contain soils with naturally elevated concentrations of substances (i.e. background metals in clay soils). If demonstrated through laboratory testing that the receiving site soil is similar in chemical composition to the source site soils, bulk soil movement between the source and receiving sites with naturally elevated concentrations of substances would also be appropriate. These soils with naturally elevated concentrations of substances should also be exempted from being considered as waste when removed from the project area.

## **INFRASTRUCTURE PROJECTS**

The regulation as proposed does not adequately address the complex and multi-faceted nature of designing and managing municipal linear construction projects. While the proposal includes an exemption from the ESMP requirement for movement of soil between infrastructure projects with the same owner, the practical application the exemption does not offer significant relief to a municipality.

The proposal also includes an exemption for regular maintenance or repair of infrastructure without defining “maintenance”, which leads to some ambiguity.

Additionally, the tracking, registration, and ESMP requirements will impose a significant administrative and financial burden on the City. This burden may impact the City’s ability to deliver projects in the future.

The City is seeking clarity and guidance on management and tracking of soils which are exempt from the ESMP based on less than the 1000m<sup>3</sup> limit and not being transferred between infrastructure projects. Similarly, the City is seeking clarification on requirements in instances where the City is the owner of the receiving site when receiving soils from an ESMP exempt site.

The increased scope of investigation, more stringent soil standards, increased quantities of soil being landfilled will inevitably result in fewer municipal projects being delivered.

The requirement that excess soil cannot leave a project site unless a receiving site is identified poses another administrative and logistical challenge on all City projects. For infrastructure projects, the City would have to either a) identify available receiving sites in advance of tender or b) download the responsibility of identifying receiving sites to the construction Contractor through the tender – which in both instances have substantial cost and time implications on every project.

Coupling of projects for the purposes of transferring soils between infrastructure projects could lead to potential issues with the City becoming the constructor leading to labour and occupational health and safety concerns by putting two contractors together on the same construction site (i.e. directing a contractor from one project to deliver soil to a second construction site with a different contractor).

### **LOGISTICS OF INFRASTRUCTURE CONSTRUCTION IN BUILT ENVIRONMENTS**

It is extremely difficult to provide space for storage of excess soils within the defined project area on our construction sites in currently built environments. Many City infrastructure projects involve rehabilitation of underground utilities in built-up areas and there is simply no room for storage on-site, unless the City closes off entire street blocks for the purpose of storing material. Closing city streets for temporary soil storage, is not a feasible option as it impacts traffic mobility during construction, over and above the impact of the streets that are closed for the actual trenching operations.

If there is room on site to store the excavated material, some of it could be used as trench backfill. If these soils are transported for temporary storage, then the City would have to treat them as waste, and manifest accordingly during tracking and hauling. Trucking these soils to temporary sites, stockpiling and moving back to the source sites for backfill will introduce multiple handling of these soils and greenhouse gas generation associated with handling soils in this manner. In cases such as this, it may be more beneficial to transport the soils to suitable receiving sites instead.

### **HAULING & TRACKING RECORDS**

Tracking individual truckloads is a significant administrative burden on the City. The City encourages the Ministry to consider allowing bulk movements and tracking of similar materials (e.g. – the same truck moving multiple loads of the same material, from the same source site, to the same receiving site, on the same date, etc.) in order to ease the impact of this burden.

Regardless of whether an ESMP is required, the proposal requires the registration and tracking of every truckload of excess soil leaving a source site. It is understood that every truckload requires documentation in triplicate – one copy left at the source site, one copy kept by the truck, and one copy kept by the receiving site. It is likely that this will result in a dedicated resource on each and every project at the source site, who will represent the QP, and also potentially a dedicated resource at the destination site. This will not only be an administrative and resource burden to the City to implement, but it will be difficult to monitor for compliance.

The City recommends that the regulation include a requirement for receiving sites to produce a closure report.

## **TRANSITION PERIOD**

The City asks that multi-year contracts that are awarded prior to the coming into effect date of the proposed regulation be exempt from compliance. Requiring previously tendered contracts to comply with the new regulation will expose the City to significant financial risk. The City suggests a minimum four (4) year transition period for the implementation of the proposed regulation.

However, there may be specific projects that a transition period of longer than four years is required. The City requests that a process similar to the 2011 Brownfield update for notification of longer term transition projects be included to address this issue.

## **NEW SOIL STANDARDS**

The proposed regulation has also created a new set of excess soil standards for safe disposal of these excess soils. These proposed excess soil standards are more stringent than the existing soil standards contained in O. Reg. 153/04 that are used in Ontario. This will result in increased costs for additional quantities of excess soil that must be landfilled for disposal.

The proposed excess soil standards indicate that the O. Reg 153/04 standards will only be applicable up to a soil volume of 350m<sup>3</sup>. Does this volume trigger level indicate that a new set of O. Reg 153/04 standards may also be developed for situations where there is greater than 350m<sup>3</sup> of contaminated soil on brownfields site?

Does the proposed implementation of new soil standards based on volume trigger levels indicate that changes to the O. Reg. 153/04 standards will be modified to be based on volume of contaminated soil?

As the new excess soils standards are geared towards the suitability of the receiving site and the site investigations are completed on the source sites, the quantity of various scenarios based on assessing different receiving site options will lead to a multiplicity of options regarding the potential soil movement from each source site. This will result in overly complicated presentation of options with regards to interpretation of data and comparison tables.

The City suggests that the Ministry consider efforts to simplify the number of Standards tables for comparison by allowing the use of the brownfield standards for sites up to 5,000m<sup>3</sup>. Similarly, one set of standards for disposal, such as the volume independent standards, would simplify the presentation of soil disposal options.

## **IMPACT ON CITY LANDFILLS**

City owned and operated landfills require excess soil for waste operational requirements. Under the proposed regulation, these landfills will be required to post a notice on the website registry indicating that they have capacity to accept excess soils. The excess soil required by the landfill is not currently considered waste and as a result it does not affect the amount of waste received. Designating excess soil as waste will reduce the quantity of other waste that can be disposed at the landfill, which will reduce the lifespan and capacity of the City's solid waste facilities.

## **BUILDING PERMITS AND MUNICIPAL BY-LAWS**

The proposed regulation includes additional requirements for building permits and potential changes to municipal by-laws. These changes will necessitate additional staff and resources, which may not be feasible to implement.

It is not clear to the City how the MOECC remains the regulator but the municipality issues the building permits. Issuing permits would imply that the City would be responsible for review of soil management plans and responses to improper soil management.

## **PHASE ONE ENVIRONMENTAL SITE ASSESSMENTS FOR INFRASTRUCTURE PROJECTS**

Even though the proposed regulation allows for modifications to the Phase One ESA scope, it is likely limited in application for City projects based on the transfer of liability from City investigations to contracted parties acting on behalf of the City for implementation of soil movements. Modifications to the Phase One ESA scope will result in increased risk to the City.

For infrastructure corridor type projects – conducting Phase One ESA investigations to the full scope of O.Reg. 153/04 will be onerous with regards to the following sections:

- Conducting a chain of titles search for all parcels (especially areas with multiple parcels) will be difficult. This could be especially difficult for linear projects, where the City is acquiring portions of hundreds of parcels associated with road widening.
- Based on the lead time between investigations (typically 2-3 years) and when the projects are conducted, most investigations will be over 18 months old, which would put them out of compliance with the investigation date requirements in O.Reg. 153/04
- Soil management plans cannot be finalized until the contracts are tendered (indicating the trucking contractors, trucking routes, etc.). Testing & preparation of the front end portions of the soil management plans will be conducted by the City & will be in draft format. Potential issues with conflict between works conducted by QP on behalf of the site owner and finalization of soil management plans by QP working on behalf of the site contractor (i.e. reliance on data collected by other QP's, testing locations selected, exclusions to sampling by QPs, sample results over 18 months, etc.).
- The City of Ottawa suggests a similar approach to what is currently done with Permits to Take Water, where the City has obtained a draft version of the PTTW and then passed the permit on to the contractor. A draft version of the excess soil management plan can be based on work completed by the City and handed off to the contractor to be finalized upon award of the successful tender.

## **PROJECT AREAS WITH MULTIPLE PROPERTY OWNERS**

The City is seeking clarification on how large project areas being constructed by the same proponent would work with multiple property owners. This would include projects where the City is using lands where it does not have permanent ownership. Included within the project area are staging areas where the City has a license of



occupation for use as temporary soil storage sites. The soils at these temporary soil storage areas are ultimately re-used within the same project area. The City is unclear as to how the MOECC proposes to address these sites with multiple owners in terms of the requirement for soils to be manifested and tracked even if they are within the same project area.

#### **PROJECT AREA AND TRANSFERRING SOILS VIA PUBLIC ROADS**

The definition of project area is not clear in the proposed regulation. For larger projects, the movement of soil typically involves transportation of soils on public roads. The lack of definition raises some ambiguity.

#### **EXCESS SOIL TRANSPORTED OUT OF PROVINCIAL JURISDICTION**

The proposed regulation does not address the scenario where the receiving site for excess soil is located outside of the Provincial Jurisdiction in terms of the extent to which the proposed requirements would apply.

#### **EASEMENTS AND WORKS IN THE RIGHT OF WAY**

If the City acquires an easement across a property for purposes such as underground utilities installation, the City may then generate excess soil during work on the easement lands. According to the proposed regulation, the property owner (not the City) would be required to comply with all of the excess soil requirements. Similarly, the City provides easements to various parties (gas companies, telecoms etc.) on City property and they may generate excess soil, even though they are not the property owner. In this scenario, where does the responsibility lie for compliance with proposed regulations?

#### **TEMPORARY RECEIVING SITES**

There may be circumstances where soils brought temporarily to a site for a period longer than the two years should be allowed under the proposed regulation. This would include sites where material is imported to the site for pre-loading of the native soil to consolidate the soils. There should be an allowance to have the material on site for more than two years in these circumstances, by including provisions to update the registry on a regular basis with current information on the soil.

#### **LIKE TO LIKE ESMP EXEMPTIONS**

The City understands that parks and building of libraries and community centres are not considered as infrastructure exempt projects. The City is proposing that transfer of soils from the same proponent, in like to like (i.e. park to park) sites would be exempt from the requirements of an ESMP. Similarly, transfer from more sensitive to less sensitive (i.e. park to road project), that these would also be exempt from the requirements of an ESMP.

#### **REGISTRY AS SOIL MATCHING RESOURCE**

The majority of City construction projects result in an excess of soils. Finding suitable receiving sites for these excess soils is logistically challenging. It would be useful if the soil registry could be utilized as a resource for receiving sites that are seeking soils.

### **ACCEPTABLE AMOUNTS OF INERT MATERIALS IN SOILS**

The City is seeking clarification of the amount of inert materials such as brick and glass that would be considered as acceptable in soils.

### **QUALIFIED PERSONS AS MUNICIPAL EMPLOYEES**

The City is seeking clarification on what is considered an "indirect interest" in a project for a Qualified Person (QP). It is not clear, as currently drafted, that an employee of a municipality may act as a QP for their employer in cases where the employer is undertaking a project.

### **SOIL PROCESSING**

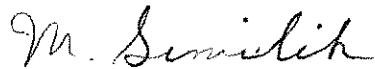
The City is seeking clarification on what is considered processing of soils and whether screening of soils would be exempt from being considered processing.

### **ELEVATED BACKGROUND CONCENTRATIONS CHANGES TO BROWNFIELDS REGULATION**

There is a proposed amendment to O. Reg. 153/04 to allow for an exemption from investigation of fill that has already been placed on a site (bullet 6, page 34) containing naturally elevated concentrations of substances. The City recommends that this exemption be extended to allow for the importation of soil that has naturally elevated concentrations of substances and not just previously placed soils.

Please don't hesitate to contact me if you have any questions.

Sincerely,



Marian Simulik  
General Manager, Corporate Services and City Treasurer

cc: Gordon MacNair, Director, Corporate Real Estate Office  
Alain Gonthier, Director, Infrastructure Services





File Number

07 June 2018

Ms. Laura Blease  
Senior Policy Advisor  
Ministry of the Environment and Climate Change  
Policy and Program Division  
Environmental Policy Branch  
40 St Clair Avenue West, Floor 10  
Toronto ON M4V 1M2

Dear Ms. Blease

**Re: City of Ottawa Comments – ERO Posting 013-2774 – 2018 Excess Soil Management Regulatory Proposal**

Please find below comments regarding the 2018 Excess Soil Management Regulatory Proposal (ERO 013-2774) from the City of Ottawa (City).

The City understands the intent of the proposed regulation and supports the beneficial reuse of soils. However, it is the City's position that if the regulation is implemented as proposed, the intended benefits will not be achieved given the significant costs and extensive impacts to municipalities across the province.

The proposed regulation will result in additional disposal of soils in landfills, a reduction of capacity for solid waste facilities and ultimately a considerable cost increase to deliver infrastructure projects.

On an annual basis, the City of Ottawa oversees between 400 and 600 infrastructure projects, many of which generate excess soil. The majority of projects take place within the existing road right-of-way, and much of the excess soil generated by these projects will likely be considered contaminated under the proposed regulation.

The implications are that the City will ultimately be required to direct considerable funding to test, evaluate, haul, dispose, import, track, monitor and report on several hundred thousand tons of soil moving across the City if this proposed regulation is adopted as presented. This will remove funding from much needed infrastructure

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renewal activities that will continue to increase pressure to deliver services to residents, businesses and visitors and result in a less sustainable City.

Beyond the economic and logistic implications, the City is also concerned that the timelines to implement the regulation are overly aggressive. Given the magnitude of the implications, there is insufficient consideration for on-going construction projects, imminent design assignments, and appropriate planning of future funds.

Similar to other recently adopted regulations with a significant impact to municipalities, the proposed regulation should have a transitory period with a phased-in approach to reach the Province's ultimate objective. There should be a minimum of 4 years for the municipality to incorporate the changes and reach full compliance.

The City is also concerned with the added pressure on existing roads from the increased heavy truck activity across its network. It is well known that heavy vehicle traffic is more detrimental to the expected life of a road than passenger vehicles. The Province should consider the detrimental impact on municipal roads imposed by the significant increase in haulage that will result from the adoption of this regulation as it is proposed.

The effective management and beneficial reuse of soils from heavy construction is very important, but the added greenhouse gas emissions from all of the added truck activity should be assessed to evaluate the net benefit. The regulation should be assessed against the intended reductions from the "Climate Change Mitigation and Low-carbon Economy Act, 2016".

The role of the MOECC in the enforcement and the oversight of the regulation has not been made clear, but the City strongly believes this is a Ministry obligation and should not be downloaded to municipalities through Site Alteration By-laws or the use of similar instruments. Beyond these overarching comments, The City prepared specific comments against line items of the proposed regulation. These are presented below in Section 1. Section 2 reiterates earlier City comments that were not addressed in the proposed regulation from the previous 2017 posting on the environmental registry.

## **Section 1 – Comments related to current 2018 regulatory posting**

### **Large Volume Soil Reuse Sites**

The City is concerned that putting the responsibility on municipalities to enact a site alteration by-law or other municipal instrument that would result in approval of reuse sites is a downloading of a provincial responsibility and that enforcing through the existing tools (i.e., By-laws) at the City's disposal may not be sufficient. This downloading will lead to pressure on municipalities to hire additional staff and develop technology to review and approve reuse site applications in a timely manner.

Additional resources would be needed to monitor compliance once reuse sites are approved.

This reliance on municipalities also has the potential to create inequities across the province due to the variance in By-laws or lack of By-laws between jurisdictions. The potential for excess soil to be removed from a project area in one municipality, be transported across various municipalities before being deposited at a reuse site could make each load subject to a wide range of oversight and enforcement.

The MOECC is proposing that soil banks and other facilities will be waste disposal sites and will be required to obtain Environmental Compliance Approvals (ECAs). Large volume soil reuse sites will effectively be soil disposal sites and should be subject to MOECC approval and the ECA process, not municipal approval and oversight. This should also not be restricted to the boundaries of settlement areas.

The City has concerns regarding the transfer of liability when soil is deposited as a reuse site. Along vesting approval and oversight of large reuse sites with MOECC, the Section 42 of the Environmental Protection Act could be amended to provide immunity for soil that is deposited at a reuse site, similar to what it provided for waste deposited at landfills.

In addition, the City has concerns related to these large volume soil reuse sites that require specific expert review and approval. These include:

- The potential for pre-existing contamination that may be present at a reuse site. A baseline environmental site assessment should be conducted, prior to the acceptance of any excess soil at a future reuse site. A baseline environmental site investigation will also serve to protect those site owners that send soil of documented suitable quality for reuse as well as property owners in the vicinity of the reuse site.
- The previous best management practices approach to a reuse site, indicated that the reuse site must be appropriate for use. The City is concerned that there could be changes to physical soils on reuse sites, such as capping a sandy site with large volumes of clay which would change the infiltration and runoff characteristics of the reuse sites. Similar to a baseline environmental quality report, there should be operational requirements of suitable soils to be imported to these reuse sites.

Large volume reuse sites, should be required to submit detailed background reports related to their baseline hydrogeological & chemical quality for MOECC approval. Municipalities and Conservation Authorities should be consulted for their input. The MOECC should review and approve large volume reuse sites. Upon completion of filling of these large volume reuse sites, a final closure report should be conducted.

All these documents should be supported by an on-line registry of large volume reuse sites.

### Source Water Protection

Wellhead protection areas typically extend outside village boundaries or settlement areas into the general rural area. Currently wellhead protection areas cover 250 km<sup>2</sup> within the City of Ottawa, which includes 60 km<sup>2</sup> areas where significant drinking water threat policies apply (up to and including wellhead protection area – Zone C). In addition, the City encompasses 17 km<sup>2</sup> of wellhead protection areas for drinking water supply wells from other municipalities for which the City implements Source Protection Policies.

The proposed excess soil regulations should align with the Clean Water Act and the associated Tables of Drinking Water Threats and Circumstances. The proposed excess soil regulations should also provide consideration to local Source Protection Plan policies with regards to municipal drinking water supplies and the potential impact to both water quality (soil quality standards) and water quantity (potential changes to hydrogeologic properties or the local groundwater flow regime).

### Excess Soil Transported Out of Provincial Jurisdiction

The proposed regulation does not address the scenario where the receiving site for excess soil is located outside of the Provincial Jurisdiction in terms of the extent to which the proposed requirements would apply. The City of Ottawa is adjacent to the province of Quebec, less than 100 kilometres from the U.S. border, and also contains hundreds of hectares of federally owned land. The proposed regulation does not provide any indication of how excess soil moving to, or from these jurisdictions will be addressed.

Under the ECA for City owned landfills in Ottawa, the only waste that can be accepted must be from within the City's footprint. Soil used for daily and interim cover however can be accepted from outside the City, including soil from outside the province. If all excess soil deposited at the landfill is designated as waste, the landfill will no longer be able to accept this soil for beneficial reuse as cover.

### On-Site and Excess Soil Management – Draft Regulation – Section 1 – Interpretation

"liquid soil" definition – There are portions of Ottawa that contain very soft clay soils. To solely define liquid soil based on a slump test fails to take into consideration the cohesion of naturally occurring clay soils and how these clay soils change based on their behaviour with increased water content. Dewatering of these soft clay soils is not a simple process, such as draining sands or storm water sediment. Similarly, vacuum truck excavation of these naturally occurring soft clay soils is not feasible. A slump test may not be an accurate measure of naturally occurring clay soils as liquid soils for the purpose of this regulation. There needs to be special consideration with

regards to dealing with soft clay soils such that they can be considered excess soil for reuse purposes and are not defined as liquid soil.

“reuse site” definition – Excluding waste disposal sites from being considered as a beneficial reuse of excess soils fails to take into account the operational needs of waste disposal sites. Landfills operating under MOECC ECAs and regulations are required to use soil as daily, interim, and final waste cover. Excess soils from project sites are beneficially reused to meet the soil cover requirements of these sites. Waste disposal sites will be one of the few types of facilities that will be able to beneficially reuse excess soils that are above the new proposed excess soils regulations, provided that the use falls within the waste disposal site’s ECA.

If waste disposal sites are not able to source excess soils to meet operational needs, they must go to market to purchase soils. In many cases these soils are clean sand aggregate from local aggregate operations. This prevents these clean aggregates from being beneficially used elsewhere and impacts the local aggregate supply. If the clean aggregate is used within the footprint of the landfill, it will result in these soils becoming contaminated. The cost to purchase this soil for operational needs would likely be reflected in increased tipping fees which may in turn lead to an increase in illegal dumping. Use of excess soils above the proposed excess soil standards at a waste disposal site is a sustainable and beneficial reuse of soils.

#### On-Site and Excess Soil Management – Draft Regulation – Section 3 (1) - Designation as Waste

Under the proposed regulation soil that is deposited at a licensed landfill will be designated as waste. As noted above, this designation is contrary to the beneficial use of soil as daily, interim and final cover. In addition, the waste designation will impact a licensed landfill’s compliance with daily and annual maximum waste tonnage limits dictated in the landfill ECA. If the soil is now waste and therefore counts against the ECA waste limit, either a reduction in waste received or reduction in soil required for operational needs would be the outcome of the proposed regulation.

An increase in ECA waste limits to account for soil that is now waste would be an onerous undertaking, requiring extensive City resources and extensive public consultation when in reality the amount of soil being received would not be changing.

#### On-Site and Excess Soil Management – Draft Regulation – Section 7.(3).11 – Contents of Plan; and Soil Rules Document – Part II – Section 5 Ai.– Tracking System - page 5

The logistics of infrastructure construction in built environments will make it extremely difficult to implement on site storage as required in these sections. Many City infrastructure projects involve rehabilitation of underground utilities in built-up areas and there is simply no room for soil storage or processing on-site. Generally



the only option would be to, close off entire street blocks beyond excavation areas for the sole purpose of storing and/or processing soil. Closing city streets for the sole purpose of stockpiling and segregating soils based on environmental quality during excavation is not feasible. This closing of streets would impact additional property owners, residents and traffic mobility during construction, over and above the impact to streets that are closed for the actual trenching operations.

Given this limitation in physical space, there should be an exemption from the waste designation for off-site temporary storage and/or processing of soil if the soil is returned to the project site for beneficial use during the life of the project.

#### On-Site and Excess Soil Management – Draft Regulation – Section 22 – Proposed Commencement for Consultation

The City is concerned that the timelines to implement these strategies are too aggressive and that there is a general lack of consideration for on-going and partially implemented projects. The City again stresses that there should be a minimum of four years transition period and that multi-year projects that we are under contractual obligation to deliver, should be excluded from this regulation. Requiring previously tendered contracts to comply with the new regulation will expose the City to significant financial risk.

However, there may be specific projects for which a transition period of longer than four years is required. Of particular concern, are multi-year fixed price City building contracts such as the light rail construction projects. The City requests that a process similar to the 2011 Brownfield update for notification and subsequent exemptions for longer term transition projects be included to address this issue.

#### On-Site and Excess Soil Management – Draft Regulation – Section 22 – Proposed Commencement for Consultation and Soil Rules Document – Part III – Mandatory Leachate Analyses Requirement

Current leachate testing that is conducted in relation to soil disposal and landfill acceptance of soil as a solid non-hazardous material does not correspond with the proposed excess soil leachate standards. The proposed chemical parameters and detection limits of many parameters do not match those specified under Ontario Regulation 558. This discrepancy will lead to additional leachate testing beyond ESMP requirements for any excess soil proposed for landfill disposal. Given that some portion of excess soil from every right-of-way project generally requires landfill disposal, these projects will be burdened with the additional time and expense of two sets of leachate tests.

In addition to the disconnect with current leachate testing for landfill disposal, discussions with members of the technical advisory groups for the proposed excess soils requirements have revealed that the laboratory methods to meet the required detection limits are not finalized. Furthermore, there will be at least an additional six

months delay to obtain certification when the laboratory methods are finalized for the leachate testing method.

Collection of in-situ soil samples is not a trivial expense and is usually completed years ahead of our construction projects. The City is presently conducting soil investigations for many proposed construction projects that are projected into 2020 and 2021 construction. As these leachate samples cannot be analyzed currently to meet the proposed requirements, the City requests that any requirements for leachate testing be implemented four years after the laboratories are able to provide certified analysis for these tests.

Soil Rules Document – Part II – Section 5 – Tracking System - page 5

Soils that are demonstrated to meet Table 1 Standards through analytical testing should be exempted from registration and tracking requirements, regardless of the volume of excess soil generated. If all soils leaving a project area have been demonstrated through the prescribed testing protocols to meet Table 1, a revised tracking system whereby these “clean soils” are documented in bulk movements is a reasonable approach that would reduce the administrative burden for documentation of clean fill.

The bulk movement system is only proposed for soils that meet Table 1 based on testing results. If the Qualified Professional (“QP”) has indicated that testing is not required, then the soils should not be allowed to use the bulk movement system. These non-tested soils should be subject to the proposed full registration and tracking requirements as proposed.

Soil Rules Document – Part II – Section 5 – Tracking System - page 5 and Part IV – Section 7 – Local Background Concentrations

The City has many areas that contain soils with naturally elevated concentrations of substances (i.e. background metals in clay soils). If demonstrated through laboratory testing that the receiving site soil is similar in chemical composition to the source site soils, bulk soil movement between the source and receiving sites with naturally elevated concentrations of substances would also be appropriate. These soils with naturally elevated concentrations of substances should also be exempted from being considered as waste when removed from the project area.

The City is also concerned that many clay soils that are otherwise suitable for reuse, may be excluded from use based on the naturally occurring salt levels within the soils. If proper baseline environmental site condition reports are conducted at a potential reuse site containing clay soils in the Ottawa area, it is likely to contain naturally occurring salt levels that may also be above potable water use standards. In addition to the chemical quality, a fulsome hydrogeological understanding of how these naturally occurring saline clay soils behave is critical. In many cases, these

clay soils act as a barrier to protect the underlying potable water use aquifers and their natural salinity should not be a detriment to beneficial reuse.

Soil Rules Document – Part II – Section 6 – Excess Soil Destination Assessment and Identification - page 11

Preparing reports based on where soil may potentially be reused will result in extremely complicated reports that will be very difficult to interpret. Currently, when conducting an investigation on a source site, it is a simple process given that there is only one set of standards for comparison, based on the current property use. For example, a park in a municipally serviced area would generally be Table 3, residential/parkland/institutional soil standards.

If the report now needs to extrapolate where soils could be *potentially* reused, all of the tables could then be used for comparison, which will create confusion of the interpretation of soil characterization source site reports. The proposed Soil Rules include nine sets of generic conditions (Tables 1 to 9) and variations in small & large volume standards, in addition to different criteria based on land use – agricultural, residential/parkland/institutional; or commercial/community/industrial. Most of these categories have different standards for all property use scenarios. For all of these different site conditions there are also corresponding leachate analysis requirements for specific parameters. Lastly, adding the proposed statistical compliance method and ceiling value standards is another further set of numbers to look at for all differing soil disposal and land use types.

When our site investigations are conducted in the construction planning phase, the potential reuse site is generally not known. To generate soil characterization tables with differing disposal volumes for all potential reuse sites will result in reports that are unnecessarily complex and will make the tender process very complicated for project bidders.

Soil Rules Document – Part III – Assessment of Past Uses - page 15

Even though the proposed regulation allows for modifications to the assessment of past uses (Section 7, Schedule D Compliance), it is likely limited in application for City projects based on the transfer of liability from City investigations to contracted parties acting on behalf of the City for implementation of soil movements.

Modifications to the assessment of past uses scope will result in increased risk to the City.

Soil Rules Document – Part IV – Section 2-C – Municipal Comment - page 30

This section of the Soil Rules document indicates that in order to use the non-potable soil quality reuse tables that you must follow Section 35 of the O. Reg. 153/04, which states that there is a need to notify the Clerk of the municipality of the intent to use non-potable criteria & the municipality has 30 days to respond.

Portions of the City that are supplied by municipal water spans over 417 km<sup>2</sup> within our urban area. However, within this urban area, there are several areas of the City that were previously not supplied with municipal water and still exist on private services. Therefore, we cannot presume that all excess soil reuse sites can apply non-potable water use criteria within our general urban boundary.

In addition, there are 26 smaller rural villages outside of the general urban area. Some of these are connected to the central water supply, some are on stand-alone municipal wells, and others are on private water supply wells. Municipal wells also have designated wellhead protection areas under the Clean Water Act and local Source Protection Plans.

Commenting on every site that would like to apply non-potable water use standards in proximity to these settlement areas will cause an administrative and financial burden to the City to verify that the site is municipally serviced and whether or not there are conditions that would prevent the use of these standards.

#### Soil Rules Document – Part IV – Section 13 – Statistical Compliance - page 37

Using statistical compliance methods to meet the proposed excess soils reuse standards creates a conflict with the single point compliance method that is used under the Records of Site Condition Regulation. If a small volume reuse site is allowed to import excess soils up to the Ceiling Values standard, then the portions of the site receiving soils above the Records of Site Condition Standards but below the appropriate Ceiling Values Standard will now be out of compliance with the Records of Site Condition Standard. If a Record of Site Condition were to be subsequently filed on this reuse site, these soils that are above the Records of Site Condition Standards would be required to be removed, to file a generic Record of Site Condition.

Some potential options to address this conflict are:

- Remove the statistical compliance method and ceiling values standards from all excess soils reuse standards;
- Amend the Records of Site Condition Regulation to allow for the same statistical compliance methodology, including Ceiling Values tables; or
- Remove the statistical compliance method and ceiling values for small volume standards; and ensure that the ceiling values for the volume independent soil standards do not exceed the Record of Site Condition small volume standards.

#### **Section 2 – Comments from 2017 excess soil plain language posting, still requiring comment**

## **INFRASTRUCTURE PROJECTS**

The requirement that excess soil cannot leave a project site unless a reuse site has already been identified poses an administrative and logistical challenge on all City projects. For infrastructure projects, the City would have to either a) identify available receiving sites in advance of tender or b) download the responsibility of identifying receiving sites to the construction Contractor through the tender – which in both instances have substantial cost and time implications on every project.

## **HAULING & TRACKING RECORDS**

Tracking individual truckloads is a significant administrative burden on the City. The City encourages the Ministry to consider allowing bulk movements and tracking of similar materials (e.g. – the same truck moving multiple loads of the same material, from the same source site, to the same receiving site, on the same date, etc.) in order to ease the impact of this burden.

## **REGISTRY AS SOIL MATCHING RESOURCE**

The majority of City construction projects result in an excess of soils. Finding suitable receiving sites for these excess soils is logistically challenging. It would be useful if the soil registry could be utilized as a resource for identifying receiving sites that are seeking soils.

Yours truly



Marian Simulik  
General Manager,  
Corporate Services and City Treasurer



Stephen Willis, MCIP, RPP  
General Manager, Planning,  
Infrastructure and Economic  
Development

cc Gordon MacNair, Director, Corporate Real Estate Office  
Alain Gonthier, Director, Infrastructure Services



File Number A02-99

25 January 2018

Nathaniel Aguda  
Project Manager  
Ministry of the Environment, Conservation and Parks  
Policy and Program Division  
Environmental Policy Branch  
40 St Clair Avenue West, Floor 10  
Toronto ON M4V 1M2

Dear Mr. Aguda

**Re: City of Ottawa Comments – ERO Posting 013-4208 – Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environmental Plan**

These comments are limited to the portion of the section titled CLEAN SOIL located on pages 44-45 of the Environmental Plan.

The City of Ottawa agrees that a clear set of rules and guidance for the management of excess soils is a benefit to everyone in Ontario. In this regard the City provided comments on both the 2017 EBR and 2018 ERO Excess Soil Regulation postings, and welcomes the opportunity to comment on the current Environmental Plan.

One of the guiding principles of the Environmental Plan is clear rules and strong enforcement, emphasizing reducing regulatory burden for responsible businesses. This intention to make regulations simpler and reduce administrative requirements is emphasized throughout the Environmental Plan. The City strongly concurs with this philosophy. The comments submitted by the City on the 2017 and 2108 proposed excess soil regulations noted that if these regulations were implemented they would impose a significant administrative and financial burden on municipalities. This will remove funding from much needed infrastructure renewal activities and result in a less sustainable City.

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The City noted that although the stated intention of the proposed excess soil regulations was to encourage beneficial reuse and reduce the amount of soil being disposed in landfills, the net result would actually be the opposite. The complex and burdensome regulation would make landfill disposal the most sensible option from a financial and administrative perspective. The previous proposed regulation would result in additional disposal of soils in landfills, a reduction of capacity for solid waste facilities and ultimately a considerable cost increase to deliver infrastructure projects.

The City is supportive of setting clear rules to allow the industry to reduce construction costs, limit soil being sent to landfill and lower greenhouse gas emissions from trucking by supporting beneficial reuses of safe soils. While the City agrees that soil should not be sent to landfill as waste material, it is important to note that landfills are required to use soil to cover waste. Excess soils from project sites are beneficially reused to meet the soil cover requirements of these sites. Waste disposal sites will be one of the few types of facilities that will be able to beneficially reuse excess soils in an environmentally sustainable manner, provided that the use falls within the waste disposal site's Environmental Compliance Approval (ECA).

The City is supportive of revising the brownfields regulation and the record of site condition guide to reduce barriers to redevelop and revitalize historically contaminated lands, putting vacant prime land back to good use, as long as the soil generators site is appropriately characterized to identify whether or not hazardous soils are present.

The role of the MECP in the enforcement and the oversight in any future regulation has not been made clear, but the City strongly believes this is a Ministry obligation and should not be downloaded to municipalities through Site Alteration By-laws or the use of similar instruments.

Beyond these overarching comments, The City prepared specific comments against line items of the proposed excess soils regulation in the 2018 Environmental Registry posting (ERO 013-2774). Should the draft version of the previous regulation be considered, comments submitted by the City of Ottawa should still be considered for implementation in any future version of a regulation related to Excess Soils. In addition to the comments related to the previous version of the proposed regulation, the City of Ottawa also had some concerns related to the following items:

- Large Volume Soil Reuse Sites
- Excess Soil Transported Out of Provincial Jurisdiction
- Source Water Protection
- Registry as a Soil Matching Resource

Ontario is a large and diverse province from a soil management perspective. What works in one area may be harmful in another. The City suggests guidelines, the 2014 Best Management practices and simplified ECA approvals related to soil storage and disposal may better serve the province.

Nathaniel Aguda  
January 24, 2019  
Page 3

Yours truly



Marian Simulik  
General Manager, Corporate Services,  
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Stephen Willis, MCIP, RPP  
General Manager, Planning,  
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cc Gordon MacNair, Director, Corporate Real Estate Office  
Alain Gonthier, Director, Infrastructure Services





*\*\*Draft, pending council approval\*\**

20 April 2019

Cindy Acab  
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**Re: Comments Regarding Reducing Litter and Waste in Our Communities:  
Discussion Paper, EBR Registry Number: 013-4689**

The City of Ottawa (The City) is pleased to submit the following draft comments in response to the EBR posting regarding the Reducing Litter and Waste in Our Communities: Discussion Paper. The City fully supports the commitments of decreasing the amount of waste going to landfills and increasing the province's overall diversion rate.

The City faces many challenges related to litter and illegal dumping as litter pervades all aspects of our communities from our streets, to our parks, rivers, and waste water systems. Larger volumes of waste are being generated and its changing composition to lightweight plastics makes it easier to leak into our environment. Products and packaging such as cigarette butts, chewing gum, drink containers, snack wrappers, fast food packaging, and beverage cups are some of the most problematic litter types.

The City plays a key role in helping to address litter throughout our community by:

- Creating and maintaining infrastructure (e.g. collection bins in public spaces, equipment within wastewater facilities, street cleaners);
- Dedicating costly resources to collect litter;
- Planning and leading community clean-up days (Cleaning the Capital);
- Providing education and awareness campaigns on the issue;
- Enacting bylaws (e.g. fines, requirements related to collection bins); and,
- Ensuring compliance and enforcement (e.g. bylaw officers, Solid Waste Inspectors and public reporting through the City's 311 call centre).

In 2010, waste collection services at City of Ottawa facilities were aligned with those provided under the Municipal Solid Waste Services residential and multi-residential collection contracts. The focus was and remains to be on:

- Reducing the quantity of facilities in the commercial collection program by transitioning small to midsize facilities to the municipal curbside collection

program. This results in cost savings as well as consistent and full access to blue/black box and green bin programs at these facilities and tenants are required to fully participate in the residential recycling programs under the provisions of the Solid Waste By-Law.

- Providing access to recycling in all eligible (as determined by volume of waste generated) facilities (over 500 facilities)
- Aligning and streamlining commercial waste collection (large-scale facilities) contracts to enhance efficiency in collection practices

Furthermore, the City leads a successful community litter action program, Cleaning the Capital. The program has been active since 1994, and there have been more than 20,000 cleanup projects since the program's inception. When the Province is considering its support for a day of action, it is important to consider waste diversion options for litter collection as many recyclables can be found in litter. Furthermore, it will be instrumental to ensure the day of action against litter aligns well with existing programs and initiatives operated by municipalities. We would also welcome the Province's support to create additional visibility to these efforts. For example, the Ministry could:

- Coordinate province-wide messaging and seek partnership opportunities with sponsors to help fund or support municipal clean-up efforts;
- Provide information about best practices in addressing litter;
- Provide greater recognition to community leaders; and,
- Collaborate or initiate voluntary actions across the Province especially related to problematic litter such as fast-food packaging, cigarette butts and chewing gum.

Managing litter in our community does have an impact on our municipal budget and ultimately the burden is born by municipal taxpayers. As such, staff support the notion of the Province exploring options for producer responsibility in the area of collecting and diverting recyclables in parks and public spaces.

The City supports a strong provincial role in developing and implementing a comprehensive strategy to address litter in our community. We also support a stronger action plan for those who illegally dump waste or litter in neighborhoods and parks and suggest the Province consider strengthening litter and illegal dumping laws, especially related to roadside litter.

The City supports the Province's commitment to increase waste diversion in multi-unit residential buildings. This is a shared priority, and we recognize there are many challenges to increasing participation and diversion in this particular sector. In Ottawa, residents living in multi-residential buildings only divert 17% of their waste, representing huge opportunities to increase diversion in this sector. The City recommends the Province consider the following initiatives:

- Review the Building Code to ensure multi-unit buildings are better designed to accommodate source separation for all diversion streams, especially organics, make participation in diversion streams as convenient as garbage, and include

design requirements for the safe and efficient delivery of waste diversion programs and collection services;

- Provide information about best practices in addressing litter;
- Consider a standardized approach for multi-residential properties to increase diversion and participation in recycling programs;
- Provide funding opportunities for research, innovation and infrastructure upgrades, such as chute diverters, building expansions/upgrades to accommodate proper recycling infrastructure/storage, that may drive resource recovery in existing buildings that were built before recycling programs existed, as well as mixed waste processing to recover resources from the waste stream;
- Lead an Ontario-wide promotion and education campaign targeted at lagging areas such as multi-unit residential buildings. Require multi-unit residential owners to provide and post waste diversion information to residents;
- Place more emphasis on the role multi-unit residential building owners play in improving diversion in their facilities – it is not solely the responsibility of the municipal government;
- Standardize the materials collected across the Province as part of the move to full producer responsibility for paper, plastic and packaging; and,
- Expand the designation of recyclables not covered under current diversion programs to include common IC&I items such as power tools, appliances and carpets.

The City welcomes the Province's consideration of designating new materials that are currently not covered under any of the existing diversion programs. The City recommends when reviewing a harmonized list of materials accepted in the Blue Box Program across the Province, that they take in consideration:

- How these materials would be collected. Some materials may not be supported in the regular curbside collection system or other municipal supported programs.
- That this will cause impacts to municipalities whose technology cannot handle material that they may be regulated to take, potentially, resulting in more contamination.

The City supports the Province's intent on taking more action on waste reduction & diversion for the Institutional, Commercial & Institutional (IC&I) sectors given they represent 60% of Ontario's waste stream. Based on our experiences, we recommend the Province take a more concerted approach for the IC&I and C&D sectors, including setting appropriate targets, mandatory waste audits and enforcement. The current regulations have been largely ineffective in driving waste reduction and diversion efforts in areas which represent the greatest opportunities for immediate results. These sectors should be considered for early implementation. The City supports the recommendation of introducing requirements for the IC&I sector to track diversion rates and submit information to the Resource Productivity and Recovery Authority.

The City supports the transition of the Blue Box Program to full producer responsibility by making producers environmentally accountable and financially

responsible for recovering resources and reducing waste associated with their products and packaging. Producers are best positioned to reduce waste, increase the resources that are recovered and reincorporated into a circular economy and enable a consistent province-wide system that makes recycling easier and more accessible. The City is a member of the Municipal 3Rs Collaborative and supports the approach to transition the Blue Box Program to full producer responsibility as outlined in a letter from the Association of Municipalities Ontario President, Jamie McGarvey, to Minister Phillips on March 19, 2019. The City requires timeline and framework certainty as soon as possible in order to develop interim steps that will enable a smooth transition that is seamless and disruption-free for residents of Ottawa. The transition of this program should expand and enhance, not disrupt services to residents and should include a fully funded and extensive standardized outreach campaign. Furthermore, the City has assets and contractual concerns that must be considered, and having advanced timeline and framework certainty will enable the City to best position itself and municipal taxpayers for the transition.

The City also supports the expansion of full producer responsibility to a number of items that the discussion paper references (e.g. small and large appliances, power tools, rechargeable batteries, fluorescent bulbs and tubes, carpets, mattresses, clothing and textiles, furniture and other bulky items). We also suggest the Ministry consider other products and packaging that are not captured in recycling or re-use programs, but have inadvertently ended up in the landfill. This could include:

- Any product or package with an electrical current;
- Compostable products and packaging (understanding the challenges this has for the current municipal infrastructure – see section 2.6);
- Construction and demolition waste;
- Durable plastics such as children’s toys, play structures, outdoor patio furniture and like products; and,
- “Flushable” products.

Staff also recommend that the Province consider establishing a financial policy that directs a portion of the fines imposed on producers for missing targets to municipalities as the impact of missing a target will impact local waste management programs.

The City supports the concept of avoiding food waste, rescuing surplus food and standardizing the approach for the promotion and education of best practice(s) for meal planning and food storage. We support initiatives that would prevent food waste, and agree with the Ministry’s recommendations to build a culture of food avoidance and support the safe donation and rescue of surplus food.

We recommend the Province consider developing and implementing a provincial food reduction campaign to drive awareness and behaviour change to reduce the amount of food waste generated. The campaign should be collaborative across the entire supply chain (e.g. brand holders, retailers, various levels of government, consumers, and the waste management sector). It could be informed by similar

collaborative initiatives like that of the “Love Food, Hate Waste” campaign in the UK. We also recommend that the Province engage with the federal government on food waste prevention and discuss labelling (e.g. best before dates, consistent public education campaigns etc.).

Staff recommend that the consideration of food and/or organics disposal restrictions/ban needs to take into account the geographic and population differences in Ontario. It should also take into account the work already taken by municipalities to fund infrastructure, collection and education programs to drive the majority of organics diversion in the province. The proposal to ban food waste from landfills must involve extensive consultations and be tailored to each community’s specific needs.

From a municipal waste service provision perspective, it is noted that organics management programs are significantly more-costly than other waste management services and in the absence of any provincial funding (or other external funding sources), municipalities are reliant on property taxes or user fees to support these initiatives. This remains a challenge and therefore, the Province should consider alternative sustainable funding mechanisms or incentive programs to help support these programs to ensure their longer term success.

The discussion paper also identifies a proposal to ban food waste from landfills. The City agrees that the implementation of a ban is a potentially beneficial policy tool that, if implemented correctly, would help build sustainable end markets as a means to direct reuse or recycling and drive investment while at the same time preserve landfill capacity. Although the implementation of a ban would be at the direction of the MECP, considerations such as where a ban is applied (i.e. transfer station, landfill, curbside, etc.), length of time to implement (typically phased in over a number of years), how a ban is communicated/promoted and who/how a ban is enforced and funded still needs to be determined. Specifically, limited capacity to process organics in the province exists and will need to be addressed to allow sufficient time to accommodate such a significant shift in expected processing capacity requirements if a policy tool such as a landfill ban on organics be implemented. This also identifies the importance of why modernizing the approvals process is necessary. In any event, we are in agreement with the Province’s commitment to undertake further consultation in developing the ban with municipalities and other stakeholders.

The City supports seeking a stronger commitment from the federal and provincial governments on the development of a Canada-wide (or Provincial-wide) single-use plastics strategy and the development of national/provincial standards for recyclability to discourage the use of difficult-to-recycle plastics.

The Province should consider striving to ‘build a culture of plastic waste avoidance’ similar to food waste avoidance, with promotion and education efforts directed at changing the mindset of Ontarians.

The Province should consider developing guidelines for how companies can advertise materials as being recyclable in the province and consider working with the federal government to create national guidelines. Consumers may buy materials that are advertised as recyclable, with good intentions, but these materials may end up in landfills in different municipalities because they cannot be recycled. It is not enough to confirm that there are municipal or industry collection systems where the product is sold in order to make a claim of recyclable or compostable. There must also be facilities that are able to process the collected materials and reuse them as an input to another product that can be marketed and used.

The Province should also consider working with the federal government to target action, such as reduction strategies, bans, fees, or recycled content requirements, to reduce the use of disposable single-use products.

Whatever strategies and approaches are undertaken should consider that some municipalities, including the City, accept plastics in their organics program. Elimination of single use plastics may have impacts on participation rates in the City's program.

The City supports the Province working with industries to build consensus on how compostable products and packaging can be best managed to ensure they do not go to landfills, but rather are accepted in all organics-processing facilities. This may include funding to change technology to accept existing non-compostable products or modifying regulations.

The City supports the concept of extended producer responsibility and believes that producers of compostable products and packaging should be responsible to meet the associated outcomes established under a Resource Recovery and Circular Economy Act regulation. Property taxpayers should not have to pay for a system when they have no influence over the types of materials entering the waste stream. Government policies should focus responsibility on those that can most effectively and efficiently drive change – that being producers.

Existing organic processing infrastructure, including the one the City contracts to process municipal organic waste, has been primarily designed for treatment of food waste, items like soiled paper products, and non-compostable products and packaging waste. Ensuring successful degradation of compostable products and packaging will require costly changes and upgrades to existing facilities. The impacts of the upgrades on beneficial end products such as biogas and compost are unknown and should be adequately tested and understood. These upgrades should not be funded by taxpayers.

Other initiatives we recommend that the Ministry work towards:

- Full producer responsibility for compostable products and packaging through development of take back programs for these products,
- A standard for compostability and stricter requirements related to advertising so property taxpayers are not burdened by companies making misleading claims,
- Consistency across product/packaging categories to avoid cross-contamination between recycling and organic processing streams and avoid consumer confusion,
- Assistance for current municipal organic processing facilities to change their processes and/or infrastructure to allow them to determine the feasibility of processing these products in existing systems or researching what types of facilities would be required for their management (e.g. research and innovation), and
- Requirements for future organic processing facilities in Ontario to consider in their planning process how and if they might process certified compostable products and packaging. The Province should not require facilities to process these materials as it will likely add processing costs and impact their end product.

The City supports exploring opportunities for innovative technologies that recover value from materials that otherwise would be landfilled, including chemical recycling and thermal treatment. The City supports technologies that consider recovery as both an energy recovery and waste disposal option.

With respect to soil management, the City agrees that a clear set of rules and guidance for the management of excess soils is a benefit to everyone in Ontario. In this regard, the City provided comments on both the 2017 EBR and 2018 ERO Excess Soil Regulation and 2018 ERO Environmental Plan posting.

One of the guiding principles of the discussion paper is clear rules and strong enforcement, emphasizing reducing regulatory burden and maintaining competitiveness and growth for responsible businesses. The City strongly concurs with this philosophy. The comments submitted by the City on the 2017 and 2018 previously proposed excess soil regulations noted that if these regulations were implemented they would impose a significant administrative and financial burden on municipalities. This would remove funding from much needed infrastructure renewal activities and reduce competitiveness and growth resulting in a less sustainable City.

The City noted that although the stated intention of the previously proposed excess soil regulations was to encourage beneficial reuse and reduce the amount of soil being disposed in landfills, the net result would actually be the opposite. The previously proposed regulation would make landfill disposal the most sensible option from a financial and administrative perspective. It would also result in additional disposal of soils in landfills, a reduction of capacity for solid waste facilities, and, ultimately, a considerable cost increase to deliver infrastructure projects.

We expect that additional regulation related to excess soils will result in a significant increase to the amount of excess soil trucked in Ontario and generation of greenhouse gases. The Province should consider the detrimental impact on municipal roads imposed by the significant increase in haulage that will result from the adoption of additional rules and regulation. The effective management and beneficial reuse of soils from heavy construction is very important, but the added greenhouse gas emissions from all of the added truck activity should be assessed to evaluate the net benefit.

The City is supportive of setting clear rules to allow the industry to reduce construction costs, limit soil being sent to landfill and lower greenhouse gas emissions from trucking by supporting beneficial reuses of safe soils. While the City agrees that soil should not be sent to landfill as waste material, it is important to note that landfills are required to use soil to cover waste. Excess soils from project sites are beneficially reused to meet the soil cover requirements of these sites. Waste disposal sites will be one of the few types of facilities that will be able to beneficially reuse excess soils in an environmentally sustainable manner, provided that the use falls within the waste disposal site's Environmental Compliance Approval (ECA).

The City is supportive of revising the brownfields regulation and the record of site condition guide to reduce barriers to redevelop and revitalize historically contaminated lands, putting vacant prime land back to good use, as long as the soil generators site is appropriately characterized to identify whether or not hazardous soils are present.

The role of the Ministry in the enforcement and the oversight in any future regulation has not been made clear, but the City strongly believes this is a Ministry obligation and should not be downloaded to municipalities through Site Alteration By-laws or the use of similar instruments.

Ontario is a large and diverse province from a soil management perspective. What works in one area may be harmful in another. The City suggests the following may better serve the Province:

- clear guidelines and rules,
- a return to the 2014 Best Management practices, and
- simplified ECA approvals related to:
  - o soil storage (both temporary and longer term),
  - o soil treatment and
  - o disposal.

The City supports making changes to the approval process to modernize and expedite processes where possible. However, it is important to emphasize that this is not about making it easier to get approvals. Waste management facilities do pose potential environmental risks so ensuring proper due diligence should not be compromised in expediting approval processes.



With respect to the Province recommending that municipal governments and the communities they serve will have a say in landfill siting approvals. The City strongly supports this local say and look forward to further discussions with the Province on the mechanisms that can be implemented to provide this, above and beyond what is currently provided through the Environmental Assessment process.

The transition of the Blue Box program to full producer responsibility through a regulation under the RRCEA is the biggest priority for the City of Ottawa. Having the producers who design products and packaging responsible for the end of life management of these materials will increase the economic utility of these resources and result in innovative collection, processing and marketing strategies to increase the amount of this material diverted from landfill.

Additionally, the City encourages the Province to consider the opportunity to increase gas capture and collection from landfills, with a particular focus on technologies that displace the burning of GHG-intensive fuels, such as natural gas.

The City of Ottawa thanks the Ministry for the opportunity to comment on the “Reducing Litter and Waste in our Communities” discussion paper.

For further information on the City’s comments, please contact Marilyn Journeaux, Director of Solid Waste Services at 613.580.2424 x 21528 or [Marilyn.Journeaux@ottawa.ca](mailto:Marilyn.Journeaux@ottawa.ca) .

Sincerely,

Original signed by

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Public Works and Environmental Service Department