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**Member of Conservation Ontario**

May 15, 2019

**via email and mail to [Sanjay.Coelho@ontario.ca](mailto:Sanjay.Coelho@ontario.ca) and [Andre.Martin@ontario.ca](mailto:Andre.Martin@ontario.ca)**

Mr. Sanjay Coelho  
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Mr. André Martin  
Compliance, Planning and Spills Action Centre  
Ministry of the Environment, Conservation and Parks  
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Toronto ON M4V 1P5

Dear Misters Coelho and Martin:

**Subject: Central Lake Ontario Conservation Authority Comments for  
Excess Soil Regulatory Proposal and Enhancing MECP Enforcement Tools  
Environmental Registry of Ontario Notice Numbers 013-5000 and 019-0023  
CLOCA IMS No: ACAD7**

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At their meeting of May 14, 2019 the Central Lake Ontario Conservation Authority (CLOCA) Board of Directors passed the following Resolution:

Res. #55 Moved by C. Leahy  
Seconded by I. McDougall

***THAT Staff Report 5643-19 and the specific amendments and comments in the Discussion and Analysis Section be endorsed as CLOCA's comments on the Proposed Excess Soil Regulatory Package (Environment Registry Nos. 013-5000 and 019-0023); and,***

***What we do on the land is mirrored in the water***



***THAT Staff Report 5643-19 be circulated to watershed Members of Provincial Parliament, Members of Parliament, the Region of Durham, watershed municipalities and Conservation Ontario.***

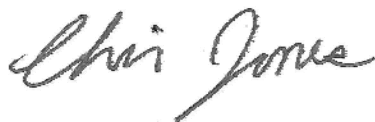
**CARRIED**

Accordingly, please find the endorsed Staff Report containing the comments of the Central Lake Ontario Conservation Authority enclosed with this letter.

The following specific changes are requested:

1. Directly reference Section 28 Regulations made under the Conservation Authorities Act, as a site specific instrument in the rules document in order to clearly address the interrelationship between excess soil and natural hazards from flooding and erosion and the need to ensure source water protection.
2. Lower proposed threshold for the application of reuse site rules from 10,000m<sup>3</sup> (i.e. 1000 dump trucks).to 1,000m<sup>3</sup> (i.e. 100 dump trucks) and require an Excess Soil Destination Assessment Report for all movements of excess soil equal or above 1,000m<sup>3</sup> (i.e. 100 dump trucks).
3. Expand upon the meaning of “Adverse Effect” for the operation of reuse sites to harmonize with other environmental law administered by MECP.
4. Ensure clarity as to when provincial standards apply and build local implementation capacity.
5. Efficient and effective enforcement is required at both the provincial and local levels

Yours truly,



Chris Jones, MCIP, RPP

**Director of Planning and Regulation**

CJ/

Encl. CLOCA Staff Report 5643-19



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# REPORT

## CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY

APPROVED BY C.A.O. 

**DATE:** May 14, 2019  
**FILE:** ACAD7  
**S.R.:** 5643-19  
**MEMO TO:** Chair and Members, CLOCA Board of Directors  
**FROM:** Chris Jones, Director, Planning and Regulation  
**SUBJECT:** **Proposed Provincial Excess Soil Regulations and Changes to Provincial Enforcement Powers**

### Purpose:

This report reintroduces and summarizes the proposed provincial excess soil regulations and newly proposed changes to provincial environmental enforcement powers and provides an analysis with respect to CLOCA's interests.

### Background:

CLOCA staff last reported to the Board of Directors on this matter at its May 16, 2017 meeting via Staff Report #5522-17, which addressed a *Proposed Excess Soil Regulatory Package* for comment. The former provincial government did not enact the proposals prior to last year's provincial election. The current government committed to "Reducing Litter and Waste in Our Communities & Keeping our Land and Soil Clean" as part of *Ontario's Environment Plan* released in November, 2018 by the Ministry of the Environment, Conservation and Parks (MECP). Specific actions as part of the Plan include:

- "Make it easier and safer to reuse excess soil:
  - Recognize that excess soil is often a resource that can be reused. Set clear rules to allow 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.
  - Work with municipalities, conservation authorities, other law enforcement agencies and stakeholders to increase enforcement on illegal dumping of excess soil."

On May 1, 2019, MECP posted the following policy proposals on the *Environmental Bill of Rights* Registry for comment until May 31:

- A new **Excess Soil Regulation** and complimentary changes to associated regulations under the *Environmental Protection Act*;
- New excess soil **Rules for On-Site and Excess Soil Management** to support the implementation of the new excess soil reuse regulation;
- Proposed changes to the *Environmental Protection Act* related to provincial **environmental enforcement powers** contained within in Schedule 6 to Bill 108, *An Act to amend various statutes with respect to housing, other development and various other matters*; and,
- Other matters related to brownfield development not related to CLOCA that are not addressed in this report.

Cont'd

### New Excess Soil Regulation

This new regulation, to be enacted by MECP under the existing provisions of the *Environmental Protection Act* (EPA), is the largest and most significant action the province is taking under the framework. In summary, the regulation would contain the following six (6) major elements:

1. Define Excess soil as a “Waste.”

A waste designation has specific meaning under the EPA, allowing for legal obligations related to tracking and hauling to apply. Excess soil would be designated as a waste from the time it leaves the property from which it is excavated. The waste designation on excess soil would cease where it is deposited in accordance with a site specific instrument (i.e. local permit) that authorizes the deposition of soil at a receiving site (referred to as a reuse site in the draft regulation).

2. Require “Project Leaders” to be responsible for managing and relocating excess soil generated by projects.

Project leaders of certain projects generating excess soil would be required to conduct ‘excess soil management actions’ before any excess soil leaves the project area. These actions would be required if the project area has never been used for an industrial use or other specified commercial uses; the primary purpose of the project is to remediate contaminated land; or the project is located inside a settlement area and involves more than 2,000m<sup>3</sup> of excess soil leaving the project area. Undertaking excess soil management actions would involve certain requirements, including in some cases characterizing the soil to determine the concentrations of contaminants in the soil. It would also include identifying appropriate receiving sites and tracking excess soil movements. Key actions would be required to be registered on a public registry. Excess soil characterization must be prepared or supervised by a Qualified Person (QP) and implemented by the project leader.

3. Require “Project Leaders” to prepare notices to a public registry.

A Project leader would be required to prepare and file a notice on a public registry. The notice would include:

- A description of the project;
- A description of the project area including the municipal address of each property within the project area including the geographic coordinates;
- Contact information of each project leader for a project, authorized agents and Qualified Persons;
- An estimate of how much soil will be removed from the project area by soil quality category;
- The name and contact information for the person ultimately responsible for the transportation of excess soil from the project area;
- An identification, including the municipal address, of each reuse site at which the excess soil is intended to be deposited for the purpose of final placement of soil including the type of property use at the reuse site and the undertaking for which the excess soil is intended to be used.

4. Establish an Excess Registry and associated Rules.

The regulation would require an excess soil tracking system to be developed by a QP on behalf of the proponent. Amongst other information, the tracking system would be able to produce a record of the source(s) of excess soil, excess soil quality details and intended reuse site(s). In order to help ensure that excess soil is tracked from a project area to a receiving site, a driver transporting a load of excess soil would be required to produce an excess soil hauling record upon request. A cumulative record of excess soil movement would be required to record the total amount of excess soil and the quality of the soil that has been moved to each reuse site at any point in time.

5. Provisions for Operators of Reuse Sites.

Section 13 of the proposed regulation contains specific rules for operators of reuse sites, which is defined as sites where at least 10,000m<sup>3</sup> (i.e. 1000 dump trucks) of excess soil is expected to be delivered for final placement in respect of an undertaking. In these instances, reuse site operators would be required to file a notice on the Registry, procedures must be established and implemented to account for every load of excess soil for final placement and to ensure that storage for final placement ‘does not cause an adverse effect.’

6. Transitional Phase-in Proposed.

It is proposed that the regulatory proposal be phased in over time.

- Excess soil provisions related to more flexible reuse rules and waste designation and approvals would come into effect in January 2020.
- Aspects of the excess soil regulation related to soil management planning (e.g. sampling, tracking and registration) would come into effect no later than January 2021.
- Restrictions on using excess soil in landfills would come into effect in January 2022 allowing time to ensure alternate reuse approaches are available as needed.

**New Rules for On-Site and Excess Soil Management**

A document titled “Rules for On-Site and Excess Soil Management” is proposed to articulate the province’s mandatory implementation and technical requirements for excess soil. The document would be integrated and adopted into the proposed excess soil regulation through a reference in the final enacted regulation. The document details the requirements for soil tracking systems, soil characterizations, sampling and analysis and soil standards to be used for final placement of excess soil at a reuse site. Generic soil quality standards are set out along with a process allowing for a site-specific standard to be developed using ministry guidance.

**New Provincial Enforcement Powers: Administrative Penalties and Vehicle Plate Seizure**

Also posted to the Environment Registry for comment are proposed amendments to the *Environmental Protection Act*, which would enable ‘administrative penalties’ for a broad range of environmental violations under that act, which would require further regulations to take effect. If passed, the regulations could provide for:

- A \$200,000 maximum administrative penalty per contravention, or higher if the economic benefit achieved via the violation was higher;
- Provisions for review and/or appeal and for reduction in amounts if violators take action to prevent or mitigate the contravention;
- Annual reporting.

A second initiative would permit and update the process the province uses to seize vehicle plates when serious environmental violations occur.

Both of these initiatives would be limited to MECP enforcement officers and would not apply to CLOCA’s Enforcement Officers.

**Discussion and Analysis**

The release of the draft excess soil regulation, implementing rules and proposed changes to the province’s enforcement powers under the *Environmental Protection Act* for public review and comment prior to enactment is welcome and indicates that the province intends to take regulatory action in order to close a significant policy

and regulatory gap in relation to excess soil and provincial enforcement. CLOCA staff continues to support the proposed emphasis on source site regulation as appropriate and necessary. The proposed excess soil regulation will create a provincial policy and regulatory framework around the critical issue of excess soil instead of the current patchwork of municipal and conservation authority by-laws and policies that currently exist in the absence of provincial action.

#### Areas for Improvement

CLOCA's direct regulatory interests are confined primarily to reuse sites and the operationalization of the soil reuse regulation in this regard. Based upon our review, we have identified the following areas for improvement to be considered by MECP prior to the final enactment of the regulations:

- **Directly reference Section 28 Regulations made under the *Conservation Authorities Act*, as a site specific instrument in the rules document in order to clearly address the interrelationship between excess soil and natural hazards from flooding and erosion and the need to ensure source water protection.**

The proposed framework places much weight on "site-specific instruments" for the regulation of reuse sites. It's clear from the drafting of the regulation that MECP intends that municipal site-alteration and fill by-laws will do the heavy lifting for regulating reuse sites. However, the proposed regulation would continue to provide for the application of conservation authority regulations and permit requirements to those portions of receiving sites that are within conservation authority regulated areas. In CLOCA's watershed, for example, our regulation covers approximately 42% of the landscape. The importance of these regulations for the protection of public health and safety and environmental protection (i.e. wetlands), necessitates that the proposed implementing rules specifically make reference to conservation authority regulations as part of the site-specific regulatory context in order to protect against aggravating or creating new flooding and erosion natural hazards.

In addition, the placement of large quantities of excess soil could have adverse effects to source water quality and quantity, specifically within designated vulnerable areas, as identified in Source Water Protection Plans. The proposed rule document must also identify the imperative of drinking water source protection when considering appropriate excess soil reuse sites.

- **Lower proposed threshold for the application of reuse site rules from 10,000m<sup>3</sup> (i.e. 1000 dump trucks).to 1,000m<sup>3</sup> (i.e. 100 dump trucks) and require an Excess Soil Destination Assessment Report for all movements of excess soil equal or above 1,000m<sup>3</sup> (i.e. 100 dump trucks).**

Section 13 of the proposed regulation exempts reuse site operator rules for all reuse sites planned to receive less than 10,000m<sup>3</sup> (i.e. 1000 dump trucks) of excess soil, which is far too high of a threshold. Even small amounts of fill misplaced can destroy wetlands, cause erosion and flood plain impacts and other concerns. A much more appropriate threshold for reuse site rules would be 1,000m<sup>3</sup> (i.e. 100 dump trucks), which could potentially still exempt too many sites. The ministry should lower the threshold to at least 1,000m<sup>3</sup> (i.e. 100 dump trucks) and potentially lower, based on an impact analysis.

The proposed regulation would require an Excess Soil Destination Assessment Report (Destination Report) to be prepared only in instances where the excess soil project would involve remediation of contaminated land. As it stands, a Destination Report would simply identify each reuse site including the municipal address of each reuse site; identify additional alternative reuse sites in the event that the primary site cannot be used and provide an

estimate of the quality and quantity of excess soil that will be deposited at each location. These requirements are not onerous and should apply to most, if not all, excess soil movements to assist site specific regulators (which in CLOCA's watershed will be municipalities). It is recommended that the Destination Report requirements be aligned with the lower section 13 thresholds requested above.

- **Expand upon the meaning of “Adverse Effect” for the operation of reuse sites to harmonize with other environmental law administered by MECP**

The proposed excess soil regulation indicates that where reuse site operator rules apply, the operator shall ensure that: “procedures are established and implemented to ensure that the storage of excess soil for final placement in respect of an undertaking at the reuse site does not cause an adverse effect.” Firstly, this provision should be expanded to the final placement of excess soil generally and not simply to any temporary “storage” measures on site. Secondly, the term adverse effect within the context of reuse sites must be expanded to include an adverse effect upon natural hazards, watershed hydrology, drinking water source protection designated vulnerable areas, and “Environmentally Sensitive Areas,” as defined in the proposed rules document. Given that the proposed regulation relies upon local administration of site-specific instruments (i.e. local by-laws) for the regulation of the operation of reuse sites, the reuse site provisions must enable, and harmonize with, the appropriate suite of environmental law that protects the local environment, including natural hazards, watershed hydrology and sources of municipal drinking water supplies.

- **Ensure clarity as to when provincial standards apply and build local implementation capacity.**

The proposed soil reuse regulation sets out quality and quantity standards in two separate tables in section 4 and alternatives based on the whether or not local site-specific instruments (i.e. local by-laws) adequately direct both excess soil quality and quantity for reuse sites. This scheme will require each local jurisdiction to assess the competency of their existing legislation against the new regulation and apply both their local by-laws and portions of the new provincial rules. In this context, MECP needs to proactively reach out to inform and build local regulatory capacity to ensure that the local regulation of reuse sites is efficient and effective.

- **Efficient and effective enforcement is required at both the provincial and local levels**

The proposed enforcement improvements for provincial MECP officers discussed above is supported and reveals the needed capacity and operational improvements at the ministry level with respect to enforcement tools. In addition to its own toolbox, MECP needs to also follow-up on the *Ontario's Environment Plan* commitment to: “Work with municipalities, conservation authorities, other law enforcement agencies and stakeholders to increase enforcement on illegal dumping of excess soil.” As a first step, MECP should reach out to Conservation Ontario to begin discussion as to how enforcement of illegal dumping of excess soil at local level can be accomplished. A second step should include the timely proclamation of the unproclaimed enforcement provisions of the *Conservation Authorities Act* and that joint training with provincial officers and conservation authority officers be facilitated by the ministry.

### **Conclusion**

CLOCA staff recommends that MECP carefully consider and respond to the detailed commentary on the proposed soil reuse regulation contained this report. The proposed provincial actions indicate that the long period of a provincial policy and regulatory gap in relation to excess soil is about to end, however the new regulation and guidance could be severely undermined if MECP does not have the operational capacity or inclination to



rigorously administer the new provisions. MECP needs to support local regulators of receiving sites, especially municipalities and conservation authorities, as they will carry a new unfunded mandate to work within the proposed regulatory framework. CLOCA staff will need to work very closely with our municipal colleagues to re-confirm or establish new operational protocols with watershed municipalities including amendments or replacement of CLOCA's *Large Fill Policy, May 2014* should the proposals be enacted.

**RECOMMENDATIONS:**

*THAT Staff Report 5643-19 and the specific amendments and comments in the Discussion and Analysis Section be endorsed as CLOCA's comments on the Proposed Excess Soil Regulatory Package (Environment Registry Nos. 013-5000 and 019-0023); and,*  
*THAT Staff Report 5643-19 be circulated to watershed Members of Provincial Parliament, Members of Parliament, the Region of Durham, watershed municipalities and Conservation Ontario.*

CJ/ms