

Mr. Sanjay Coelho, Senior Policy Analyst  
Ministry of the Environment, Conservation and Parks  
Environmental Policy Branch  
40 St Clair Avenue West, Floor 10  
Toronto, ON M4V 1M2  
[Sanjay.coelho@ontario.ca](mailto:Sanjay.coelho@ontario.ca)

May 30, 2019

Dear Mr. Coelho;

**RE: ERO #013-5000 Excess Soil Regulatory Proposal and Amendments to Record of Site Condition (Brownfields) Regulation**

Walker Industries Holdings Limited (Walker) is pleased to provide comments related to the Excess Soil Regulatory Proposal and Amendments to Record of Site Condition (Brownfields) Regulation (ERO #013-5000). For nearly 130 years, Walker has operated businesses in the aggregates, material recovery, residuals management, and emulsion production sectors in Ontario. Through our Environmental and Aggregates divisions, Walker has extensive experience with soil management in Ontario through our landfills, compost facilities, pits and quarries, including rehabilitation, excavation and final placement. We apply best management practices in our operations to optimize the beneficial reuse of excess soils in our operations. Thank you for the opportunity to provide comments to the Ministry for consideration.

The issues associated with the improper classification of soils, the lack of transparency related to the movement and final disposal of soils, and the barriers to reuse soils for rehabilitation and reclamation are well documented. Walker commends the government for taking the important steps necessary to rectify these issues and improve environmental outcomes.

To this end, we have specific comments on several areas of the regulatory proposal and amendments.

## Framing the Problem

---

The core issues with the management of excess soil in Ontario relate to the following:

- Barriers and a lack of incentives that prevent or discourage the reuse of soils;
- A lack of adequate requirements for the proper classification of excess soils; and
- A lack of transparency and accountability related to the transportation and final disposition of excess soils.

The media and the local political leaders who have dealt with these challenges within their communities have highlighted these issues. However, there is no evidence that landfills have been an issue regarding the management of excess soil.

Landfills in Ontario accept excess soil for two main reasons:

- Soil is used as annual daily landfill cover, which is part of environmental compliance requirements for landfills, designed to address nuisance related issues like odour and blowing material.
- The soil is contaminated and may cause an environmental risk if it is not sent to a landfill.

The price to dispose of clean soils at a permitted and highly regulated landfill will always be prohibitive as compared to an unregulated site and beneficial reuse. The data in the government proposal supports this with under 10 percent (2 million cubic metres) of the total amount of excess soil generated (25 million cubic metres) being sent to landfill. This amount of material is comparable to the amount of cover used by landfills in Ontario based on the Ontario Waste Management Association's (OWMA) latest landfill survey. The numerous concerns raised over the last ten years have focused on contaminated materials being dumped improperly rather than managed effectively at landfill sites.

Contrary to the preamble in the regulatory proposal, landfills offer an advantage to managing soils as landfill sites are highly regulated. Regulations require the landfill site to reduce risks and adverse impacts on affected communities and along haul routes by addressing dust and noise pollution, truck traffic, managing risks related to surface and ground water or soil contamination and road damage. It is the unregulated source sites and reuse sites that often lack these requirements and have been the focus of public concern.

## Disposal Ban

---

Walker is not supportive of the proposed disposal ban and associated restrictions for excess soils. We do not express this concern lightly as Walker is very supportive of increasing the amount of materials diverted from disposal to higher value uses such as quarry rehabilitation, reuse onsite and blending with soil amendments such as compost. We have also been supportive of the implementation of a disposal ban related to food and organic waste. However, disposal bans need to be approached and utilized in a thoughtful manner.

Our concerns are the following:

- Soils used in landfills help to mitigate environmental risks by decreasing odours, are listed as an approved material in Regulation (232/98), and are often a requirement of environmental approvals from the Province. They also provide a means to manage contaminated soils and mitigate risk to the environment. The Province should want to support both of these outcomes. This significantly differs from a ban on food and organic waste which reduces greenhouse gas generation and ensures nutrients are returned to the environment.
- There is no data to indicate clean soils are being improperly managed at landfills. In fact, the Ministry's data as noted above indicates the opposite. The use of a disposal ban sends the wrong message; that landfills are part of the problem and will encourage more contaminated soil to be managed in an improper manner. How soils are managed should be consistent with the potential environmental risk they pose.

- The current regulatory proposal is next to impossible for the government to oversee and enforce in any meaningful way. We are concerned about the precedent it sets for future disposal bans which we would like to see established in a manner that can be readily enforced.
- There has been neither discussion about this approach, nor analysis of what this approach might mean in different areas of the Province. We are very concerned about perverse implications that could be created including increased export to other jurisdictions, and issues particularly related to more rural and remote communities.

**We recommend that the government not move forward with the proposed disposal ban at this time.** Data will be captured within the first few years of the implementation of the regulation. At that point the government will be in a better position to understand the issue and whether this is an appropriate mechanism.

We are supportive of diverting materials from landfill for beneficial reuse, if the proper regulations are in place to allow for safe remediation. As an example, facilities in New Brunswick take low impact soils and blend them with value added products such as compost, or biosolids, which contain organic compounds that bind the hydrocarbons. **We recommend that the MECP revise the existing regulatory framework to allow soils below Table 1 limits to be remediated and turned into topsoil through this process.**

## Transparency

---

Transparency and accountability related to generation, transportation and final disposition of excess soil is pivotal. We strongly support these provisions within the proposal and would **recommend that the Province empower the Resource Productivity and Recovery Authority (RPR) as the Registry.** The RPR already has a system in place that collects, consolidates and analyses data for very similar purpose. This helps to build an economy of scale and improve back office efficiencies. Walker understands that the RPR operates on a fee per service basis to ensure oversight and enforcement is properly resourced. We would however want to ensure that data shared does not compromise commercial confidential relationships as is the case with extended producer responsibility regulations.

It is also important that reporting should not duplicate reporting that is already occurring. Section 12 (5) appears to duplicate the requirements already in place for landfill reporting under Environmental Compliance Approvals.

While Walker would like to see these changes implemented as soon as possible, it is also important to ensure they can be effectively implemented. **Consideration should be provided as to whether the current timelines are too aggressive.**

## Ensuring Proper Operation of Reuse Sites

---

Section 13 (2) 3 of the proposed regulation provides that reuse sites must have established and implemented procedures to ensure reuse sites do not cause adverse effects. Although the term adverse effect does provide broad powers, it would be helpful if it provided a description of these requirements (i.e. sites shall develop a procedure for the protection of ground water, surface water, air emissions, noise and traffic).

Walker also has concerns with section 16 of the regulation that allows for local waste transfer facilities operated by a public body to process excess soils without the need to amend their approval. **We understand the need to ease the burden related to approvals but this is better achieved through the use of mechanisms that can be broadly applied across the sector such as the Environmental Activity and Sector Registry (EASR).** Environmental risks are equally present for both private and public operations and should be governed accordingly.

## Enabling Safe and Efficient Reuse of Excess Soil

---

As within all aspects of Walker operations, we are also seeking new ways to increase or preserve the value of our resources. As a result, we are supportive of the many steps the regulations are taking to increase the amount of materials that can be reused and the ability to blend materials.

### Alignment with Aggregate Resources Act (ARA) Policies

Progressive and final rehabilitation plans, mandated through the Aggregate Resource Act (ARA), are dependent on the receipt of clean fill and include final land-uses such as lakes, agriculture operations or naturalized wetland habitat. It is important that the Proposed On-Site and Excess Soil Management rules and regulation align with current aggregate resources act policies and procedures. There is already a system in place governed by the Ministry of Natural Resources and Forestry (MNR) to manage reuse sites under the ARA. **MECP rules should be adapted to align with MNR.**

The ARA references specific parameters from the Soil, Ground Water and Sediment Standards (2011) in MNR's policy A.R.6.00.03.<sup>1</sup> The intention of this policy is to ensure importation of fill into aggregate operations is responsibly completed and that plant growth is not affected in the case of final pit/quarry rehabilitation. The previous MECP soil standards document did not include the soil quality standards for sodium adsorption ratio (SAR) and electrical conductivity (EC) standards for subsurface soil below 1.5 metres in depth and were designated as "Not Applicable" (Tables 4 & 5 in the soil quality standards). Since plant growth is affected primarily by surface soil, subsurface soils (>1.5 mbs) were historically not held to the same criteria. The subsurface is defined by the final grade once rehabilitation was complete.

The exemption provided in section 4(1) of the proposed On-Site Excess Soil Management regulation does address conflicts between the proposed excess soil rules and a

---

<sup>1</sup> Available at <https://files.ontario.ca/environment-and-energy/aggregates/269650.pdf>.

site-specific instrument that provides soil quality requirements. However, it is unclear whether this exemption also applies to policies that have been implemented by other ministries when there has been an exemption from a specific quality standard. **We would strongly urge the government to continue to allow the ARA permits and policies to take precedent.** There is no rationale to discourage this usage and a change would create substantial issues for the rehabilitation of pits and quarries.

## Quality Criteria Changes in the Rules for On-Site and Excess Soil Management

Soil from municipal road, infrastructure and local reconstruction projects that meet MECP excess soil criteria is beneficially reused as a resource at aggregate operations for rehabilitation.

In the proposed “Rules for On-Site and Excess Soil Management”, surface soils have been changed to have the same chemical standard for soil that is being deposited as a subsurface soil. **Walker recommends that the criteria for subsurface soils be changed to match the previous criteria or to a reasonable compromise that would provide the correct level of environmental protection as well as a benefit to reuse sites.**

Salt impacted excess soil could be a fraction of excess soil from these projects due to the surficial use of this substance for safety of pedestrian and vehicular traffic.

Aggregate operations are an ideal site for beneficial reuse of excess soils as they give project managers the ability to make one trip for placement of excess soil and returning to the project site with aggregate material. The proximity of aggregate operations to municipal projects make them an ideal site for beneficial reuse. Developing rules that prevent placement of excess soil does not align with previously established policies or goals to reduce truck traffic.

Given the current regulations, including electrical conductivity requirements, there is often not enough suitable material available for pit and quarry rehabilitation. Consideration may be given to the idea that excess soils that match background conditions at a site, including on-site soil and stone extracted, could be used to return a site to its original state through rehabilitation with no adverse effect. Currently, the Table 1 limits require use of rehabilitation materials that are better than the native soils, in most cases.

We need strong provincial leadership to ensure that aggregate resources continue to be available to support provincial infrastructure and growth requirements, including the requirement for an effective beneficial reuse site. The proposed rules and regulation will not be successful in identifying favoured receiving sites if they will never be permitted. Thus, Walker is interested in hearing to what extent the Province is committed to the use of licenced ARA sites as reuse sites and how that is to occur.

## Sampling and Analysis Plan Requirements

The requirements for importation of excess soil have been outlined in the Rules for On-Site and Excess Soil Management as well as the proposed revisions to Ontario Regulation 153/04. Sampling requirements are not consistent between the proposed drafts.

Draft Amendments Ontario Regulation 153/04 Section 31(1)5 states:

*At least one sample shall be analyzed for each 160 cubic metres of soil for the first 5,000 cubic metres to be assessed at each source property from which soil is being brought to*

*the phase two property, following which at least one sample for each additional 300 cubic metres of soil which is to remain on, in or under the phase two property shall be analyzed.*

This conflicts with the Rules for On-Site and Excess Soil Management Part III section 2.2(viii), which states:

*For an in-situ sampling approach, the following rules apply (in relation to the area identified where sampling is required):*

- 1. A minimum of three soil samples must be analyzed if less than 600 cubic metres of soil will be excavated;*
- 2. At least one soil sample shall be analyzed for each 200 cubic metres of soil for the first 10,000 cubic metres of soil to be excavated; and*
- 3. At least one sample for each additional 450 cubic metres after the first 10,000 cubic metres of soil to be excavated, shall be analyzed;*

Between the Rules and the Amendments there is one set of requirements for in-situ sampling and one set for accepting excess soil. Consistency between these two regulatory documents would prevent future confusion for project managers who characterize excess soils as well as receiving sites who review characterization reports and approve materials for beneficial reuse. As these regulations and rules are directly linked, the requirements for sampling should be aligned.

Thank you again for the opportunity to provide feedback and please contact us if you would like to discuss any of the issues above in more detail.

Sincerely,



Tim Murphy, R.P.P., MCIP  
Vice President, Environmental Performance  
Walker Industries