

# Comments to Proposed Amendments to O. Reg. 406/19 and O. Reg. 153/04

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## **Responding to ERO # 019-2462 Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse**

**To the attention of Laura Blease [laura.blease@ontario.ca](mailto:laura.blease@ontario.ca)**

Comments from Ontario Soil Regulation Task Force, a volunteer non-profit dedicated to the improvement of the regulation of excess soil in Ontario by federal, provincial and municipal governments. OSRTF is a member of MECP's ESEG, has presented to countless town councils, and assisted over 25 community groups dealing with sites receiving soil.

In order of importance.

### **9) Registry Delivery**

#### *Proposed Change*

- 1. Amend the registry identified in sections 8 to 10, and 19 of the Excess Soil Regulation for the purposes of filing notices for large and high-risk excess soil generating projects and large reuse sites to be a registry operated by the Resource Productivity and Recovery Authority (RPRA), instead of MECP's existing Environmental Site Registry.*
- 2. Section 7 related to the purposes of the registry would be removed as the Registry would now be under the Resource Recovery and Circular Economy Act (RRCEA); however, the purposes will be maintained through that Act and mechanisms under that Act, such as a letter of Direction from the Minister to RPRA. The purposes would be expanded to include integration with other third-party platforms (e.g., tracking and/or soil matching systems and other non-regulatory programs), considering cost, security and other relevant matters.*

OSRTF does not object to the operation of the registry by RPRA. As a new organization we could hope that they have new technologies and eager staff for the development of the Registry. However they will need the subject matter expertise of MECP and the ESEG.

General comments on the registry were previously submitted to MECP in response to the ESEG meeting of October 29. There is one aspect that should be addressed by an amendment to the regulations.

OSRTF has examined the regulation for the references to the Registry noting the information and data to be placed there. From the viewpoint of neighbours of reuse sites and, by extension, the municipal officials and the MNRF aggregate inspectors, information on the site specific instruments at reuse sites should be available for all reuse sites. This would enable persons to enter an address of a site where soil dumping is observed and have the Registry reveal if the site has oversight from an instrument and, if there are problems, to trace back to the operator of the source site. Otherwise, small scale illegal dumping will continue unchecked.

Schedule 1 of the regulation sets out the information to be in the notice filed into the registry by the operator of the source site. It includes information on the source site and its operator, and some information on the reuse sites that will receive the soil. Besides the “location” and “type of property use” of the reuse site to be recorded, the regulation requests “the undertaking for which the excess soil is intended to be used.” and “The applicable excess soil quality standards...” to be recorded. However, other than this terminology, Schedule 1 is not very specific on the information to be registered for the reuse site. This could make it difficult for a municipality to use the registry to monitor activities within its boundaries.

More specific and detailed information is to be registered by the operator of a large reuse site. This includes the GPS coordinates of the site and the tombstone details of any by-law or site alteration permit or other instrument that it may operate under. This should be searchable by municipal officials to crosscheck against their records, but it only applies to large sites.

While this might be considered to be a detail that can be included during the design of the Registry, it must be included in the regulation 406/19 to prevent legal challenges.

**Propose O. Reg. 406/19 - Schedule 1 – INFORMATION TO BE SET OUT IN NOTICE - Paragraph 12 be amended to:**

12. A description of each reuse site at which the excess soil is intended to be deposited for the purposes of final placement including,

- (a) the municipal address and/or geographic coordinates;
- (b) type of property use of the reuse site;
- (c) the undertaking for which the excess soil is intended to be used; and
- (d) if an instrument mentioned in paragraph 4 of subsection 3 (2) has been issued governing the reuse site, identification of the body that issued the instrument, the date the instrument was issued and to whom the instrument is issued, and if there is an instrument identification number, that number.

## 10) Minor Clerical Updates

### *Proposed Change*

6. In section 19 of the Excess Soil Regulation, clarify that the need for registration of a reuse site receiving 10,000 m<sup>3</sup> or more of excess soil is determined considering only excess soil brought to reuse sites for final placement in respect of an undertaking after January 1, 2022.

Is a correction needed to ensure the registration of a reuse site if it is going to accept 9,999 m<sup>3</sup> from multiple undertakings? The exception for infrastructure projects should be limited to the reuse site being an infrastructure project, otherwise the “related to” wording might be interpreted for excess soil coming from an infrastructure site and going to a farmer’s field.

**Propose O. Reg. 406/19 – Section 19 (1) and (2) be amended to:**

19. (1) Subject to subsection (2), this section applies to the owner or operator of a reuse site at which at least 10,000 m<sup>3</sup> of excess soil is expected to be deposited, or has been deposited, for final placement.

(2) This section does not apply to a reuse site that is an infrastructure project.

## **5) Reuse of Salt-Impacted Soil**

### *Proposed Changes*

*It is proposed that the current requirement found in Part 1, Section D subsection 1 (3) clause 1 ii (c) of the Soil Management Rules that prohibits the reuse of salt-impacted soil within 2 metres of a water table be removed.*

OSRTF objects to any amendment that has the potential to endanger the quality of the drinking water that local residents rely on.

## **8) Clarifications on Application to Aggregate Operations**

### *Proposed Changes*

*The following are proposed clarifications related to aggregate operations:*

- 1. Clarify the “Non-Application of Regulation” provision, in subsection 2 (2) of the Excess Soil Regulation, to specify that the exemption for aggregate operations is in relation to material leaving the operation; it does not apply to excess soil imported to rehabilitate the site or to be used for other beneficial reuse purposes.*
- 2. Delete the duplicative exemption from the excess soil reuse planning requirements for projects under the Aggregate Resources Act (ARA) by moving up terminology in section 5.2 of Schedule 2 to the Excess Soil Regulation, to replace the non-application clause found in section 2 paragraph 2.*

Yes please. We have already heard of operators trying to use the exemption for aggregate operations to import excess soil.

## **6) Reuse of Rock Mechanically Broken Down**

### *Proposed Changes*

*Add a provision to the Excess Soil Regulation clarifying that the regulation applies to rock that is mechanically broken down into soil-like particles in the same way that the regulation applies to soil.*

Considering that natural earth does contain stones and rocks, the 2mm size limit does seem to be too limiting, whether or not it was due to natural or mechanical breakdown. In fact, for some applications larger sizes would be more suitable for reuse. However, retain the distinction between excess soil and mining waste.

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