

November 20, 2020

Ministry of the Environment, Conservation and Parks

Sent via the Environmental Registry of Ontario

RE: Comments to MECP Regarding Proposed October 6, 2020 Amendments to the Excess Fill Regulation 406/19

Thank you for providing the Regional Municipality of Durham (Region) with the opportunity to review and comment on the Province's proposed October 6, 2020 amendments to Excess Fill Regulations 406/19. Please find following consolidated comments from the Regional Municipality of Durham Works Department on the proposed amendments.

1. Proposal to Extend Grandfathering for Infrastructure Projects and Provide Additional Flexibility for Excess Soil Reuse.

In general we are very supportive of the proposed October 6, 2020 Regulatory Amendments which add additional flexibility and clarity for excess soil reuse. In general until these amendments were proposed, we felt that the regulations were generally developed for development sites and site plan projects with little attention to linear infrastructure projects within Road Right of Ways. These amendments will allow the Region to better implement the regulations favourably for our linear infrastructure projects. We also find some of the additional flexibility in the proposed amendments will also greatly help us on our site plan projects.

2. Proposal to Extend Grandfathering for which construction projects must be entered into by one year; from January 1, 2021 to January 1, 2022.

The Region is very much in favour of extending the date applicable to the grandfathering provisions by which construction contract must be entered into by one year from January 1, 2021 to January 1, 2022. This is definitely required as a result of many parts of our projects being delayed due to managing COVID-19. Working through the complexities of managing these new Regulations for each of our projects is even more difficult while we are managing our work and projects with COVID 19.

We also note that managing these new Regulations are more complex than we first understood and this is particularly the case for linear infrastructure projects within Right of Ways. It will take time to work the Regulation requirements into each of our projects and in many cases will lead to significant increases in our Project Budgets. This will lead to large delays with projects being tendered in 2021 at a time when we should be leading with our projects to support recovery of our Economy.

If this information is required in an accessible format, please contact 1-800-372-1102.

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3. The proposed amendment to extend the grandfathering provision does not exempt projects from excess soil reuse provisions coming into effect January 1, 2021; it only applies to the provisions which come into effect January 1, 2022. Early adoption of regulatory requirements is a best practice and encouraged for all projects, where possible.

The expansion to the grandparenting of soil management contracts to include soil-related studies completed prior to January 1, 2022 will allow projects for which the design scope has been tendered for delivery in 2021 to proceed without additional cost or delay. It is our understanding that construction projects for which design studies have been completed but the construction contract itself has not yet been tendered would also fall under this grandparenting expansion. I would welcome the Ministry's confirmation on this point of understanding. The Region of Durham urges the Ministry to consider whether Section 8 (2) (b) "a contract with another person with respect to the management of excess soil" might include design contracts already awarded, such that construction works scheduled for 2022 may occur using the current design scope.

4. Proposal to Extend Grandfathering to Expand the scope of this exemption to provide an exemption from the assessment of past uses, sampling and analysis plan and soil characterization report for projects which have already completed similar soil-related studies before January 1, 2022 (e.g. geotechnical studies with soil quality assessments).

The Region is very much in favour of clarifying the scope of grandfathering to January 1, 2022 to include the assessment of past uses, sampling and analysis plan and soil characterization report completed by January 1, 2022. This clarification and time extension will definitely better ensure we are not repeating the geotechnical consulting work and adding large significant drilling programs to what we thought were completed consultant assignments. We have grave concerns that our Geotechnical Consultants work load will increase significantly beyond the services they will be able to provide to keep our projects moving forward in a timely manor. We are still learning and understanding the implications of the regulations on our design budgets and with respect to having our projects move ahead in a timely way.

5. Flexibility in Excess Soil Storage Reuse, Proposed change 1. Operation of site temporarily storing excess soil generated from greenfield development sites (residential, parkland, institutional, agricultural uses) and other low-risk development sites to be reused at similar or lower risk development sites;

We were concerned with many aspects of the Regulations being arbitrary and ignoring the conditions of the project. The same level of testing and controls is required for

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excess material being stored from a low risk site as a high risk site. We are very much in favour of this proposed change to the regulations, for the exemption for storing materials from a low risk site. This will reduce unnecessary efforts and costs which do little towards the goals of the regulation.

6. Proposed amendment 2) Environmental Compliance Approval (ECA) Relief for Low Risk Soil Management Sites, Proposed change 2. Operation of a site, such as a garden centre, that engages only in low-risk activities such as storing and blending (e.g. with compost) excess soil and is making that soil available for retail sale at or from that site as lawn or garden soil.

This proposed change definitely help's provide some clarity for some of our Depot Operation functions which involve reprocessing, storing and reusing various materials from our road right of ways. Heavily regulating these processes will generally lead to our Depot Operations avoiding positive environmental reuse and recycling.

The Region is concerned with different guidance we are receiving from different consultants with respect to the recycling and reusing of existing granular materials and topsoil from our road right-of-ways. The Region would like to expand these operations. We believe the Regulations may need further clarity with respect to our Depot Operations recycling and reusing operations.

7. Proposed amendment Enabling Site-Specific ECA Soil Management Requirements Provide new authority to enable ECAs under the EPA and the Ontario Water Resources Act to specify alternative soil management requirements from those identified in the Soil Management Rules for the site or activity to which the ECA applies.

The Region is very much in favour of this proposed amendment. This will allow for some possible positive uses of the Region's excess salt impacted material in the future. For example if we wish to store material for a future bridge overpass embankment we could do so with proper approvals. Storage for such a project may involve longer timelines and larger volumes.

8. Flexibility in Excess Soil Storage for Reuse

The Region is very supportive of the proposed amendment.

The Region found the excess soil storage for reuse unworkable for our linear infrastructure projects within our public road right-of-way's. We were finding that the regulations were developed with development sites in mind and with little regards for salt impacted road right-of-way's. Many parts of the regulations were adding to our consultants and our confusion. This proposed change will help greatly. The "within 10

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metres of a property line boundary made no sense for our projects and would possibly lead to significant cost increases, double handling and a significant increase in carbon emissions.

The Region already has good experience with managing our short term materials storage on road right-of-ways in ways that protect neighbouring properties. We do not need policing.

The amount of time required to allow for soil testing may be more than a week in some cases. Allowing extended time period will be helpful as the contractor tries to manage its reuse on site as feasible.

9. Proposed Amendment 5) Reuse of Salt-Impacted Soil

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.

The Region is very supportive of the removal of clause. In general we were finding that this prohibition was making the use of salt-impacted soils unfeasible for the majority of our projects and would limit our options leading to increased trucking and huge costs increases. All soil within our right-of-way's is salt impacted. We found this rule was arbitrary and often did little to protect the environment.

10. Proposed Amendment with Reuse of Rock Mechanically Broken Down

With regards to the proposed amendment to include mechanical breakdown of rock to soil sized particles during tunneling, the Region looks forward to MECP to clarify the regulatory requirements while ensuring tunneling projects are not burdened with sampling, analytical and reporting requirements to meet environmental requirements for soil that is not geotechnically suitable for reuse. As tunneling projects result in soils mixed with water and rock particles. Several municipalities will be embarking on large tunneling projects in the next two years and will be continuing with the contract for several years.

11. Additional Excess Soil Standards Tables 2.1 to 9.1

Additional Excess Soil Standards Tables 2.1 to 9.1 are slightly confusing. Creating these volume independent standards may make characterization of soils difficult where excess soil meets volume independent standards (Table 2.1 to 9.1) but fails small volume standards (Table 2 to 9). Having one set of updated tables would avoid confusion and mistakes.

12. Additional leachate screening levels and ceilings.

Additional leachate screening levels and ceiling values do not promote the Ministry's goal of steamlining soil re-use, if anything it makes the process more laborious and expensive. The leachate analysis requirements (minimum 3 samples and at least 10% of the bulk samples) is not time or cost-effective.

13. Clarifications on Application to Aggregate Operations.

Although we are supportive of clarifications on application to aggregate operations the Region believes further work by the MECP and MNR (Ministry of Natural Resources) is required.

We are finding in our Region that we are obtaining very little help from operating materials extraction sites towards resolving many of our challenges with salt impacted materials from our road right-of-way's. In general we find there is currently very little leadership between the MECP and MNR working together to help aid the municipalities. In general material extraction sites are scared to discuss with us various possibilities where we could help each other. They are always concerned they will be shut down, will not be allowed to renew their licenses and so on. We strongly recommend that the two Ministries look at their goals with municipalities in mind with respect to excess salt impacted materials. We have many projects where excess soil which is salt impacted could be used for cover and restoration purposes on close by extraction sites. This would significantly reduce cost, trucking, reduce carbon emissions and in most cases be very low risk. However, we are never able to progress with these due to difficulties of the extraction sight dealing with MNR.

14. Further Clarification required with respect to testing frequency and excavated soil.

We are finding some confusion with respect to testing frequency based on excavated soil. Various experts keep noting to us that the frequency in the tables is based on the excess soil that is excavated and is exported from the site. However we read the information and it notes the frequency in the tables is based on the "excavated soil". This needs to be better clarified. On a Linear pipe project the majority of the material will go back to the excavation. On a Transportation project the majority of the excavated material is moved around the right-of-way. This should be clarified. Testing based on the excavated material and not the excess material excavated would lead to a lot of expensive testing where the excess volume maybe relatively small.

15. Goals of Ontario Regulation 406/19

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The Region understands that one of the primary goals of these regulations is to reduce greenhouse gas emissions. We are very much in favour of this goal along with the idea of a Regulation that leads to improved handling of excess material. Unfortunately, we believe without the proposed amendments and without further rule changes and amendments to the Regulations that the exact opposite will happen on our transportation and large linear infrastructure projects. Additional time for grandfathering will definitely help us to find solutions with our consultants helping.

16. Arbitrary timelines of 2 years for storage of a material

Arbitrary timelines of 2 years for storage of a material need to be considered for larger municipal projects. We note for a large project that involves a large embankment that storage may involve more than two years of storage of material from our construction projects before it is used. Some rules should be reviewed for municipal infrastructure projects.

17. 100 metre separation from Wells

We note the storage rules with respect to existing wells separation seems to be largely developed with development sites in mind. The 100 m separation seems to be regardless of the ground water flow direction and gradient, the type of well or the existing ground conditions. This would have been very difficult to manage on many of our rural road projects. The increased flexibility with soil storage reuse within right-of-way's will definitely help provide relief.

Please do not hesitate to contact the undersigned at 1-800-372-1102 ext. 3545 or by email at ron.trewin@durham.ca at your convenience should you require any further dialogue on these comments.

Sincerely,

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Copied to the Regional Municipality of Durham Works Department Ontario Regulation 406/19 working committee
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