

Public Works

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peelregion.ca

February 22, 2022

MNDMNRF - RPDPB - Resources Development Section
300 Water Street
2nd Floor, South Tower
Peterborough, ON K9J 3C7

Dear Cathy Curlew,

Re: ERO Registry Number 019-4801

Proposed Regulatory Changes for the Beneficial Reuse of Excess Soil at Pits and Quarries in Ontario

The Region of Peel staff have reviewed the proposed Changes for the Beneficial Reuse of Excess Soil at Pits and Quarries in Ontario and appreciate the opportunity to provide feedback to the Province. The comments provided below are from Regional staff and additional comments may be provided at a later date upon further consideration by Regional Council.

The following comments are provided for your consideration.

General Comments

The current ARA processes allow pit and quarry operators to import fill and excess soil to facilitate rehabilitation. However, there is currently little provincial oversight to monitor the source, quality and suitability of materials being imported. It is understood that the proposed regulatory measures will require aggregate operators to retain qualified professionals (QPs) to provide oversight at sites receiving large quantities of excess soil (>10,000m³) or if placing excess soil below water table and keep detailed records to provide that sites which are authorized to import fill for rehabilitation are applying appropriate soil quality standards and maintaining a standard of information similar to requirements that would apply to receiving sites that are not regulated under the ARA. It is also understood that all ARA approval holders (existing and future) that are authorized to import excess soil for rehabilitation purposes, at a minimum, follow the applicable standards and rules in the Rules for Soil Management and Excess Soil Quality Standards under the *Environmental Protection Act* (EPA).

Regional staff are supportive of the principle of creating consistency between requirements under the *Environmental Protection Act* and the *Aggregate Resources Act* (ARA) provided that matters relating to municipal jurisdiction, community impact, environmental and public health are considered and addressed in the proposals.

Minimizing environmental, community and social impacts from extraction operations is a policy of the Regional Official Plan. In addition, the Regional Official Plan promotes progressive rehabilitation in a manner that conforms with Provincial plans and policies. Regional staff is supportive of applying a framework that would require a licensee to ensure that imported soil at a receiving site has undergone a detailed assessment of past uses for the excess soil including a sampling and analysis plan and soil characterization report. Also,

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in order to assist municipalities in monitoring potential impacts, the implementation of the excess soil Tracking System within pits and quarries is important. Requiring the inclusion of excess soil importation data and compliance verification in annual ARA Compliance Assessment Reports for individual licences should also be considered with the regulations.

Proposed Ontario Regulation 244/97 Changes

Recommendation 1: Encourage licence holders to achieve the highest standard of mitigation against potential impacts.

As noted in the ERO 019-4801, the applicable standards and rules in the Rules for Soil Management and Excess Soil Quality Standards represents a minimum requirement. Aggregate licence holders should be encouraged to strive to achieve the highest level of mitigation against adverse impacts that can be achieved for a future property or site conditions.

Recommendation 2: Consider adding or expanding current hydrogeologic study requirements to address the potential impacts of importing large quantities of excess soil.

In addition to soil quality standards, the Province should ensure that rigorous study standards are listed as a requirement and will apply when the importation of excess soil is considered as part of an aggregate operation prior to ARA licence approvals being granted or when non-minor amendments to an existing ARA licence or site plan are considered. It is recommended the Ministry address the need for hydrogeological study requirements when large quantities of excess soil are proposed as part of an ARA licence's soil rehabilitation plan. This is potentially important at sites where changes to groundwater quality have the potential to impact off-site sensitive uses including adjacent municipal drinking water sources or concentrations of private wells or when changes to the imperviousness of imported soil has the potential to impact local recharge and discharge to sensitive environmental features.

Recommendation 3: Site-specific standards for excess soil being placed below the water table should follow the most stringent standard possible and be subject to further Ministry of Northern Development, Mines, Natural Resources and Forestry oversight.

Subject to confirmation that hydrogeological conditions are suitable, the recommendation that the most stringent Table 1 soil quality standards under the EPA O. Reg. 406/19 will apply when excess soil is placed below the water table is supported. This requirement should be specified for both new and existing licences under the ARA.

Regarding circumstances where a site-specific standard, developed through the use of the Beneficial Reuse Assessment tool (BRAT) in accordance with O.Reg. 406/19 may be used, Regional staff support the proposed regulation to require the Ministry of Northern Development, Mines, Natural Resources and Forestry to review and approve the site-specific standard, particularly when excess soil is being placed in proximity to sensitive land uses, subject to consultation with affected municipalities and communities.

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Proposed Rescinding Policy, A.R. 6.00.03, Importation of Inert Fill for the Purpose of Rehabilitation

Recommendation 4: Require mitigation against potential future impacts to communities.

The proposed amendment will require, for applications proposing to fill-to-grade, that potential impacts to the community from the fill operation and prolonged life of the site will be considered. Regional staff recommend that this requirement be significantly strengthened. Impacts to the community should be considered and mitigated against to the greatest possible extent.

Recommendation 5: Require consultation with municipalities and adjacent property owners/surrounding communities.

Applicants proposing to amend an existing licence or site plan to change the amount of fill (i.e. quantity of excess soil) that is approved for importation should be required to provide public notification and consult with the affected municipality, local community and adjacent property owners.

Recommendation 6: Subject to further consultation with municipalities, the Ministry should address the potential overlap and interference with municipal regulation of fill at receiving sites under the *Municipal Act*

The proposal provided little information on the potential overlap and interference with the regulatory authority afforded to municipalities under the Municipal Act in jurisdictions that have adopted municipal fill by-laws. It is unclear if the new regulation will enable municipalities that wish to provide oversight and regulate the importation of large quantities of excess soil at aggregate sites under their Municipal Act authority will be able to do so. Additional consultation with affected municipalities should be undertaken on this question. The two sets of regulatory authorities should be complementary and achieve similar outcomes.

Conclusion

We would like to thank the Province for providing the opportunity to comment on the proposed changes to the ARA for the Beneficial Reuse of Excess Soil at Pits and Quarries. The streamlining and consistency between the two pieces of legislation is beneficial provided the regulatory standards will be implemented with appropriate oversight and address any potential impacts to local communities and the natural environment. If you have questions, require further clarification or would like to discuss our comments and recommendations, please contact name at adrian.smith@peelregion.ca.

Kind Regards,



Adrian Smith, Chief Planner
and Director of Planning and Development Services