

Dear Minister of Environment, Conservation and Parks, Hon. David Piccini,
Date: March 30, 2022

Introduction

Our stakeholder group represents several Developers, Consultants and Contractors that regularly deal with excess soils, in the London area. We are members of the London Developers Institute, London Home Builders, London District Heavy Construction Association, London District Construction Association and the Ontario Sewer and Watermain Association.

The London Excess Soils Stakeholder Group was formed to consolidate recommended changes to elements of O. Reg. 406/19 that are highly problematic, while maintaining the MECP's intent pertaining to this legislation.

In this report, we highlight broad concerns including:

- Increased, adverse **environmental impacts**
- Exacerbated **housing shortage**
- Sudden, **escalated costs** to the Construction Industry
- Complex, **confusing new rules** for soil excavation

Issue

The MECP is proposing to delay implementation of O. Reg 406/19 and is seeking further consultation with the Construction industry. We realize that the **intent of O. Reg 406/19 is to prevent illegal dumping, recognise excess soils as a resource and limit impacts to the environment related to managing and transporting excess soil.**

Based on discussions with the MECP, we understand that the proposed rollback predominantly results from the following:

- Difficulties and inconsistencies with implementation;
- Confusing language;
- Excessive costs;
- Construction delays;

The goal of the stakeholder group is to provide relevant comments and recommendations that benefit the construction industry and maintain the MECP's intent of O. Reg 406/19.

The Facts: Data and Fallout

Environmental Impacts

In the past, suitable receiving sites were sourced quickly by Owners or Contractors. These sites were always located as **close as possible** to the project area to mitigate transportation costs and emissions.

Currently, finding local reuse sites is next to impossible as a result of O. Reg 406/19's instrument requirement, confusing nature and registration requirements. Unless a site has been approved prior to tender, a Contractor has no option but to take reusable fill to landfills or sites with existing instruments

that can be significantly further away from the project. This is an unintended direct result of O. Reg 406/19 and is **against the MECP's intent of the regulation.**

Another hinderance to local fill reuse, is the fear factor that arises with these regulations. Owners of local receiving sites are regularly steering clear of accepting soils in a suitable location simply due to their inability to understand the complexities of the regulation and their desire to avoid risk.

As a direct result of O. Reg 406/19, soils are travelling much further and even worse being deposited at already overburdened landfills resulting in significant additional costs, irreparable environmental impacts and damage to municipal infrastructure. Premature filling of landfills will also result in garbage being trucked further in the future as well.

Projects completed by the stakeholder group in 2022 are seeing an average haul time increase of thirty (30) minutes round trip per load. Extrapolating that number for the estimated 25,000,000 cubic meters of excess soil generated in Ontario every year ([Ontario.ca](https://www.ontario.ca)) **yields an increase in CO2E of approximately 90,000 tonnes/year.**

Housing Delays

Housing supply and affordability has become a hot political topic in recent years. On February 8, 2022 the provincially commissioned **Ontario Housing Affordability Task Force** published their report on the state of housing affordability in Ontario ([OHA Task Force Report](#)). Chief among their concerns, is the lack of housing supply for Ontarians. **The OHA Task Force has proposed an ambitious goal of 1.5 million homes being constructed in Ontario in the next ten years.**

The sheer volume of work associated with O. Reg 406/19 adds months of additional studies and requirements prior to and during construction, including the following:

Requirement	Additional approximate timeline delay
QP historical assessment	1-2 weeks
Planning reports	1-4 weeks
Traffic control approval	1 week
Sampling and coordination (increased sample quantity)	1-2 weeks
Sampling reports	2-4 weeks
Locating and negotiating with receiving sites	1-2 months
Instrument application, agreements and municipal approvals	3-4 months
Fill management report/Owner approval	2-3 weeks

Oftentimes, these delays extend projects into poor weather conditions, further reduce housing supply and inflate house prices even further.

Escalating Costs

The costs of moving soils within the province have increased tremendously as result of O. Reg 406/19. Increased costs are related to:

1. Preconstruction – Additional reports, excessive testing and instrument requirements, engineering and associated delays.

2. Construction – Increased hauling distance, haul records, excavation inefficiencies, double handling, registration, reports and engineering.
3. Receiving site – Much higher tipping fees, registration, administration, reporting and risk.

Examples of London based construction projects that are experiencing significant cost effects related to O. Reg 406/19 have been included below in Figures 1,2 and 3. **All costs shown are new costs that are a direct result of the implementation of O. Reg 406/19.**

Supportive documentation showing detailed calculations has been included with our group’s submission. Even our most conservative estimates show nine figure **costs that will be absorbed by taxpayers and homeowners.**

“An estimated 25 million cubic metres of excess soil is generated in Ontario every year.”
www.ontario.ca

Figure 1 – Municipal Road Reconstruction

Municipal Road - London Ontario: Queens Avenue BRT project; Shared Provincial and Federal funding.
 (Complete Sewer, Water, and Road Reconstruction)
 (Approx. 1120m & 53,150m³ excess soil)

	Per m of Road		Per m ³ of Soil	
	Low	High	Low	High
Preconstruction Costs	\$49.13	\$85.69	\$1.03	\$1.90
Construction Costs	\$80.86	\$718.26	\$1.77	\$15.19
Receiving Site	\$18.14	\$18.54	\$0.39	\$1.87
Grand Total	\$148.12	\$822.49	\$3.20	\$18.97

120,000km of paved road in Ontario: Stats Can 2003

Cost of 120,000km of road in ON w/ 50% infrastructure & 100 year life cycle	\$88,873,555	\$493,493,686
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Figure 2 – Apartment Site

Residential Development - 300 South Carriage - London (172 units)
 (High rise building - one storey of underground parking)
 (Approx. 25,000m³ export)

	Per m ³ of Soil	
	Low	High
Preconstruction Costs	\$6.70	\$13.21
Construction Costs	\$1.77	\$24.19
Receiving Site	\$0.39	\$1.87
Total per cu.m	\$8.86	\$39.28
Per Apartment	\$1,288.00	\$5,710.00
50,261 Apts-2021 (Starts per CMHC)	\$64,736,168.00	\$286,990,310.00

Figure 3 – Single Family Home

Residential Development - Summerside Phase 17 - London (174 units)		
(Subdivision - approximately 50,000m ³ export)		
	Per m ³ of Soil	
	Low	High
Preconstruction Costs	\$5.53	\$11.52
Construction Costs	\$1.77	\$24.19
Receiving Site	\$0.39	\$1.87
Total per cu.m	\$7.69	\$37.58
Per Single Family Home	\$2,235.00	\$10,926.00
26,373 SF starts-2021 (per CMHC)	\$58,943,655.00	\$288,151,398.00

Confusing New Rules

The regulations are not user friendly and have created confusion and inconsistency across the province. Municipalities are particularly divided and are using a wide range of strategies to manage these regulations during tendering and construction. Examples have been included below:

Municipality	Strategy
City of Sarnia	Geotechnical firms conduct complete soil studies prior to tendering.
Municipality of Durham	Locations supplied for excess soil disposal.
City of London	Hybrid model with partial testing completed prior to tender, the remainder of the testing is required to be completed by the Contractor.

Countless other municipalities and Developers have avoided dealing with O. Reg 406/19 altogether and are continuing to place the onnness heavily on the Contractor. Due to risks, unclear contractual language, and Municipal uncertainty/inability to understand the regulations, projects are rife with redundancy and added costs.

Recommendations

Eliminate Table 1 Requirements

Table 1 soils are deemed to be “clean” soil and are the majority of soil reused in Ontario. There are no restrictions where this soil can be placed as it is essentially deemed safe.

We recommend that once a QP has deemed soils on a project to meet the rigorous Table 1 classification requirements, O. Reg 406/19 regulations should no longer apply.

Additionally, a review of salt impacted soils by the MECP is warranted. It seems illogical that roads (including the heavily salted 401) are salted regularly and trees and grass continue to grow in the boulevards, yet salt impacted soils are required to be buried 1.5m deep. Considering vegetation doesn't grow in subsoil, we suggest a depth of 0.6m would be more suitable.

Expedite Receiving Site Approval Process

It is crucial that receiving sites, especially low risk Table 1 sites, be approved quickly at all levels of government. An instrument should not be required to move fill. Also, Municipal or Conservation Authority requirements should be streamlined across all municipalities to allow for more soil to be reused locally. Alternatively, an EASR (Environmental Activity and Sector Registry) like process similar to the low-risk water taking permits is another solution that could be considered to streamline the approval process.

We also recommend that the MECP work with the Provincial Government to prevent Municipalities from making soil movements political. Low risk receiving sites should not be a long-drawn-out process requiring staff and council approval. Municipalities and Conservation Authorities should be required to issue a permit within five (5) business days if the applicant agrees to comply with standardized requirements.

In addition, Gravel pits should be allowed to fill to pre-extraction grades accessing more air space for Contractors to take greater advantage of two-way hauling during gravel purchases.

Reduce Sampling Requirements

Invasive and costly sampling and testing requirements in the MECP Soil Rules are excessive and should be reduced significantly according to local QPs. Not all project areas have the same risk of contamination and should be sampled accordingly. For example, farm fields or deep soils with poor percolation rates don't have the same inherent risk of contamination as industrial lands.

We recommend revising MECP Soil Rules tables for different property classifications and areas of potential concern. **Historically, sampling was approximately 5-20% of what is required under the new regulations.** The pendulum has swung too far.

Simplify the regulation

The current regulation and associated documents are confusing. The documents reference each other and it is difficult to locate relevant information. We recommend that the documents be reworded and reconfigured for easier comprehension. Complex regulations are only going to create confusion and discourage compliance. It has become evident that Engineers and Municipalities are struggling to understand the regulation, thus there is little chance Contractors and Developers, with limited technical knowledge, will fully abide by the regulation.

Although illegal dumping has predominantly been a Toronto problem, this regulation applies across Ontario. Additional consultation with stakeholders in the Development industry province wide is warranted.

Standardized Municipal Requirements

Standard contract language and requirements should be available for Municipalities to eliminate confusion and excessive costs. Contractors and Developers work and build in many different regions and would be greatly aided by uniform rules and structure across all municipalities.

Eliminate Pile Size Requirements

In the past, **The MECP Rules for Soil Management and Excess Quality Standards** was considered a best practices document. With the implementation of O. Reg 406/19 and the references therein, the

document has become part of the regulation. Included in the MECP soil rules is a little-known excerpt that limits soil pile sizes to 2,500 cu.m. This requirement is far too restrictive and unnecessary. For example, one of the stakeholders has a project that is short 250,000 cu.m of fill and would therefore need **one hundred fill piles** onsite in order to complete the project. This pile size requirement poses many problems, including not having sufficient room onsite to stockpile fill, double handling of soil to complete cut/fill beneath the piles, closer infringement on residential neighbours, excessive emissions, drainage issues between the piles, windblown dust from much larger operations, and excessive costs.

Combine Report Requirements

In order to streamline the process and reduce the burden being placed on already overworked and often unavailable Geotechnical Engineer's as part of this regulation, reports should be combined or reduced on all projects and eliminated for Table 1 soils.

Conclusion

We are pleased to hear that the MECP is proposing to rollback 2022 requirements for O. Reg. 406/19, is seeking further consultation from stakeholders and intends to amend the regulation accordingly. There has certainly been a number of challenges associated with the regulations that warrant adjustment. Based on our group's discussions with the MECP, it is also evident the province was unaware of the resultant delays, environmental impacts, and actual costs associated with O. Reg 406/19 that extend into the several hundred-million-dollar range in 2022 alone.

In conclusion, we recommend a number of opportunities to reduce costs to already struggling homeowners and taxpayers, while **still achieving the MECP goal of preventing illegal dumping, recognising excess soils as a resource and limiting impacts to the environment related to managing and transporting excess soil. The recommendations provided in the body of the document and table below also meet the goals of the provincial and federal government and the mandate of the Ontario Housing Affordability Task Force by reducing housing prices and getting homes to market faster.**

Our recommendations include:

Recommendations	Goal achieved
Expedite receiving site approvals	Significantly reduce the costs of new homes, get houses to market faster, and eliminate emissions
Remove clean table 1 soils from O. Reg 406/19	Significantly reduce costs, eliminate emissions, and get houses built faster
Reduce sampling requirements	Significantly reduce costs and get houses built faster
Standardize excess soil management on Municipal projects	Significantly reduce taxpayer costs
Simplify the regulation	Eliminate confusion, reduce costs
Eliminate pile size requirements	Reduce emissions and costs
Maintain truck tracking requirements	Prevent illegal dumping
Reduce planning and construction report requirements	Reduce costs and get houses built faster

Thank you for taking these comments into consideration while reviewing the excess soils regulations in the province. We look forward to the changes and welcome you to contact us with any inquiries or opportunities for further discussion.

Sincerely,

The London Excess Soils Stakeholders Group.

Aar-con Enterprises Corp., Drewlo Holdings, York Developments, Blue-Con Construction, J-AAR Excavating, AAROC Aggregates, and EXP (London).

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