



File Number A00 03 ERO 019-5203

31 March 2022

Laura Blease  
Land Use Policy, Environmental Policy Branch  
Ministry of the Environment, Conservation and Parks  
40 St Clair Avenue West, 10<sup>th</sup> Floor  
Toronto, ON M4V 1M2

Dear Ms. Blease,

**Re: City of Ottawa Comments – ERO Posting 019-5203 – Implementation Pause of Excess Soil Requirements in Effect January 1, 2022**

The City of Ottawa is fully supportive of the Ministry's proposed temporary pause of the implementation of provisions that came into effect in the January 1, 2022 Excess Soil Regulations until January 1, 2023. The proposed pause is welcomed and would provide more time for gradual implementation and better understanding of the regulation.

During this "pause", we plan to engage in further Ministry consultation, with the goal of refining the paused provisions of the Excess Soils Regulations to ensure that they are clear, effective, and practical to support sustainable soil management while preserving our ability to maintain and expand the infrastructure that our residents rely on every day. We will also continue to work with our industry partners to find innovative solutions to our unique geo-regional soil management challenges.

Over the past years it has been apparent during discussions with other municipalities, consulting engineers, contractors etc. that not all parties share the same understanding and interpretation of 406/19 regulatory requirements. The disparity of opinion has led to much confusion when contracting projects generating excess soil. Further to our previous ERO posting comments related to Excess Soils, the City of Ottawa provides the following additional comments for your consideration:

- The proportion of excess soils generated from infrastructure renewal projects that would be identified as contaminated under the current regulation's stringent soil quality criteria is very significant. Additional discussion is warranted with the Ministry regarding testing requirements and practical options for the appropriate deposition of excess soils generated from urban rights-of-way.
- Schedule 2 of the regulation provides several exemptions for project areas from Section 8 requirements; however, the regulation also obliges reuse sites to have

knowledge of the quality of the soil they receive. This has led to most reuse sites defaulting to the full testing requirements of the Regulation as a best management practice, which for practical purposes renders the exemption useless to the project owner. In the absence of a City-owned reuse site, the testing requirements for these low volume and/or low risk sites are prohibitively expensive when compared with the costs of maintenance work being undertaken.

- The City has received different opinions on whether the exemption from Section 8 also exempts the project from the documentation and tracking required by Section 11 to 16 of the Regulation. In 2022 and prior to full implementation, the City will be seeking additional Ministry guidance on the practical application of exemptions to the Registry, tracking and testing requirements.
- The Regulation and Soil Rules do not recognize concerns with soil that is mechanically unsuitable for beneficial reuse. Much of the Ottawa area is underlain by sensitive glaciomarine silts and clays, portions of which have near-liquid characteristics once disturbed. These wet clays are not structurally stable nor suitable for any engineered construction use, and landfills cannot beneficially reuse them for cover material without significant screening and/or additives to improve their consistency. This severely limits the available disposal and reuse options for these soils, which are encountered widely across the City. We hope to work with the Ministry to find a mutually agreeable means of managing this material.
- The reuse and/or disposal of the glaciomarine silts and clays above is further complicated by the presence of naturally occurring metals concentrations in excess of the least restrictive Excess Soil Reuse Standards as well as O. Reg 153/04 Site Condition Standards. The City proactively commissioned the development of new geo-regional site condition standards to address these naturally occurring metals and have presented the study to the District MECP office, however it is not clear at this time what the mechanism to see the regional standards officially recognized and accepted by the Ministry and local receiving sites (including local pits and quarries, where excess soils of this nature have historically been deposited). In 2021 we saw increased disposal of this materials in landfills as a result of both its mechanical and naturally occurring metals concentrations. Additional consultation with the Ministry is required in 2022 to more fully determine an appropriate and sustainable solution to the deposition of these materials.
- Beneficial re-use of stormwater management pond sediments is challenging. The proposed regulation pause would provide additional opportunities for municipalities and the Ministry to share lessons learned on recent pilot projects to help develop practical soil management solutions that meet the intent of the regulation.
- The majority of the City's infrastructure projects take place within the grade restricted existing road right-of-way or on City property, with limited opportunities for beneficial soil reuse. The exemptions provided to municipalities to move excess soil from one infrastructure project to another has limited value as very

few projects require additional soil, there is limited capacity to store excess soil until final placement, and coordinating timing and Ministry of Labour concerns between projects operated by different contractors can be impractical. Currently in the Ottawa area there is a lack of sites that require soil for beneficial reuse. In speaking with other municipalities this is an issue province-wide and we will be seeking Ministry guidance on how the regulation could facilitate the selection and development of suitable sites for the reuse or deposition of these materials.

Presently, the majority of available reuse sites are quarries and pits operated by large contracting firms. This has led to an escalation in disposal fees as well as limiting the ability of smaller contractors to provide a competitive bid as they do not control a reuse site to include in their bid. A delay in the implementation will provide the City time to continue to work towards establishing our own reuse sites and other property owners to establish reuse sites.

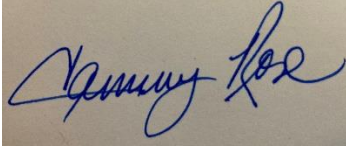
- The costs to undertake the necessary documenting and testing is cost prohibitive, particularly for small scale projects. Although the regulation attempts to address this concern with the provision of several exemptions, as previously noted the requirements of reuse sites render most exemptions moot. In addition, many City projects are “bundled” maintenance projects involving small spot-repairs at multiple sites, with minimum testing requirements of 3 tests per site being requested by reuse or disposal sites. These projects can take place in a mixture of urban and rural settings, with some repair sites within the contract qualifying for a Section 2 exemption, while others are adjacent to enhanced investigation properties such as gas stations, dry cleaners, or industrial properties and do not. We hope to work with the Ministry to establish a temporary soil bank on City property where we can stockpile and test soils from these smaller-scale maintenance projects sites, determine whether soils can be beneficially reused or require disposal at a landfill, and then reuse or dispose of accordingly, in advance of knowing the ultimate reuse/disposal location.

While we continue to work diligently towards compliance with the intent of the Regulation, the City of Ottawa contends that the implications of the regulations, as presently understood, continue to be problematic and specifically that:

- The City will be required to direct considerable financial and staff resources to test, evaluate, haul, dispose, import, track, monitor and report on several hundred thousand tonnes of soil moving across the City without achieving the Province’s intended benefits of beneficial reuse and reduced landfilling volumes.
- To offset increased costs on existing projects, funding will need to be removed from much needed infrastructure renewal activities and there will be a reduction in the total number of projects the City can complete each year.

We appreciate the continued opportunity to comment on the excess soil management and would welcome further discussion on the impacts to the City of Ottawa.

Yours Truly,

A handwritten signature in blue ink on a light-colored background. The signature is cursive and appears to read "Tammy Rose".

Tammy Rose  
General Manager  
Infrastructure and Water Services Department

cc Alain Gonthier, General Manager, Public Works Department  
Stephen Willis, General Manager, Planning, Real Estate & Economic  
Development