

Friday, April 8, 2022

Laura Blease
Ministry of the Environment and Climate Change
Land Use Policy
Environmental Policy Branch
40 St. Clair West
10th floor
Toronto, ON M4V 1M2

Dear Ms. Blease,

RE: Implementation Pause of Excess Soil Requirements in Effect January 1, 2022 (ERO 019-5203)

The City of Guelph (City) appreciates the opportunity to comment on the Ministry of Environment, Conservation and Parks' (MECP) proposal of "Implementation Pause of Excess Soil Requirements in Effect January 1, 2022" (Pause).

The City is appreciative of the MECP's efforts in trying to support organizations across the province with the goal of better understanding of requirements of the O. Reg. 406/19- Onsite and Excess Soil Management (Regulation); implementation of soil management processes; and coordination between different parties on common understanding of responsibilities and best management practices (BMP).

Based on our review of the posting; participation in several meetings and webinars with the MECP, consulting and legal firms (2019 to present); and our experience with excess soil management in City's construction projects; we have the following comments and questions for MECP's consideration:

Comments/Questions:

1. The Planning Requirements of the Regulation came into effect January 1, 2022, and in anticipation of the Regulation, the City prepared the excess soil documents listed below to align the City's construction projects with the requirements of the Regulation. These documents were finalized in March 2021 and have been put into use since then.
 - a. **Scope of Work** for Qualified Person, Geotechnical Engineers and Hydrogeological Engineers or Geoscientists
 - b. **Special Provisions for Earth Excavation**, which is included in the City's Linear Infrastructure Standards (LIS) as a Special Provision
 - c. **Excess Soil Management Checklist** for the City's Construction Project Managers/Engineers

- d. **Hauling Form** (Contractor/Subcontractor)
- e. **Beneficial Reuse Release Form** (Site Owner/Authorized Personnel), and
- f. **Weekly Summary Form** (Contractor/Consultant)

As such, a Pause, would impact our current LIS and executed contract agreements. Therefore, we ask if the MECP could indicate that the Pause is optional so that work can continue as originally intended?

- 2. The City understands that not all municipalities, consultants, contractors, subcontractors (e.g., soil haulers), and others seem to be interpreting the Regulation the same way, and this seems to have created some confusion. So, in addition to pausing the Regulation, the City suggests the MECP use the remainder of 2022 to clarify the requirements and nuances of the Regulations, and make amendments to the Regulation, as required.
- 3. Based on our experience of implementing the key requirements of the Regulation, the City would like the MECP to take the following comments into consideration:
 - a. The Regulation seems to have several exceptions, which could be creating confusion. For instance, the exemption regarding quantities of soil less than 100 cubic meter (m^3) is exempt from the Planning Requirement, which could be interpreted as “no need” for soil sampling and laboratory analysis, thus giving way for the soils to be reused or disposed of as the contractor and/or the Project Owner pleases. As such, the City recommends that flow charts specifying the step-by-step process be prepared for key scenarios based on soil volumes, so that there is minimal room for interpretation. For instance, for soil quantity less than 100 m^3 , it should clearly be mentioned that albeit planning requirement is not mandatory, minimum number of soil samples and parameter analysis shall be completed based on site reconnaissance for the proper reuse or disposal of soils, and soil records of total quantity, reuse/disposal etc. be maintained by the Project Leader.
 - b. Based on our discussion with the MECP, it is our understanding that the lateral connections of utilities/services by a private property owner or developer from the City’s rights-of-way (ROW) to a private property is deemed one project regardless of the ownership and only one set of registration and tracking requirements is necessary, if it is under the same project leader. However, it is not clear who is ultimately responsible for soils reuse or disposal generated during the utility/service connection or in other words, if soil ends up in the wrong place, is City liable for the private property owner’s or developer’s or

contractor's working on behalf of the owner/developer's oversight? If so, this needs to be clearly stated in the Regulation.

- c. The same argument as above can be made for the exemption regarding quantities of soil less than 2,000 m³. Not necessitating the Planning Requirement for soil volume less than 2,000 m³ especially for infill developments could become complicated in the future; so high-level APU and environmental investigation should be encouraged.
- d. The soils generated from a majority of City infrastructure projects (e.g., road reconstruction, sewer/watermain upgrades etc.) may regularly exceed Table 2 Site Condition Standards (SCS) for chemical parameters making the reuse of soil within the City potentially very difficult. Further, reuse of soils directly from one municipal infrastructure project to another is not feasible as 1) the volume of excavated soils is typically more than the volume of fill required, 2) these projects have different contractors and each does not want to take on the responsibility and liability of the other, and 3) soils would require double handling due to differences in project schedules, etc. As such, it is recommended that municipalities and private organizations (e.g., soil brokers, landfill facilities' owners etc.) be encouraged to store and reuse "minimally" impacted soils; so, that these soils can find home in other similar infrastructure projects not just in the municipality where the source sites are located but also surrounding municipalities.
- e. Most of the soils (subbase to maximum depth of 3 m below subbase) based on our infrastructure projects seem to be impacted with salt (EC and SAR) at concentrations above the Table 2 or 3 SCS. If the soil impact is only due to salt, then these soils should be allowed to be reused anywhere except Well Head Protection Area- A (WHPA-A) and agricultural fields.
- f. The Regulation puts a lot of responsibility on source sites, perhaps rightly so. However, the Regulation is somewhat silent on the responsibility of reuse sites. In several meeting with the MECP and consulting firms, the municipalities PMs, and Engineers, who are the Project Leaders for the source sites, are reminded that there is a possibility that the reuse site owners or authorized representatives can ask for additional number of samples, analysis of additional parameters, and sampling outside of area of potential environmental concerns (APECs) and that we should be prepared for such possibilities. This uncertainty, real or perceived, does not help but rather hinders the Project Leaders' decision making. This is especially troublesome when the Regulation is followed to the letter by the source site Project Leader, yet still the reuse Site QP requires more. So, it is recommended

that responsibility and accountability of the reuse site owners/representative be made clear to avoid confusion.

- g. It appears that the City of Guelph has high background concentrations of zinc in soil; therefore we intend to complete a background concentration study for zinc and maybe other metal parameters. As such, it would be helpful if the MECP could draft a guidance document on how to complete such background studies to support managing excess soils.

4. Sediment and liquid soils reuse from Stormwater Management Ponds

- a. It appears that the beneficial reuse evaluations for sediments must be based on sediment that has been pre-dried, stockpiled and sampled in accordance with the O. Reg. 153/04 soil sampling requirements. Since most ponds do not have sufficient on-site space for stockpiling/drying, this would require that the wet sediment be transported to a temporary drying facility in vehicles that would be fitted with a "locking valve" system (e.g., vac trucks), which does not seem feasible. As such, the City recommends that the MECP either let the municipalities continue with the in-situ sampling or if ex-situ sampling is absolutely required, then allow the municipality to collect the required number of samples in-situ, have them dry on-site or off-site, and analyze the sample in the laboratory, as opposed to hauling and temporarily storing the entire sediment from the pond to a new location on- or off-site.
- b. It is also recommended that on-site reuse of sediment be encouraged, and be based on a feasibility study, so that the decisions are made on site specific data and information.
- c. The Consolidated Linear Infrastructure Environmental Compliance Approval (CLI ECA) Application has a section titled: Residue Management System Information, does this mean that the beneficial reuse of sediments from stormwater management pond will be managed and monitored through Stormwater Management System CLI ECA for the municipalities?

Closure

Once again, we appreciate the opportunity to provide input and trust that our comments outlined above will be given due consideration.

Sincerely,



Terry Gayman, P. Eng.

General Manager/City Engineer

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