

April 6, 2022

Ministry of the Environment, Conservation and Parks
c/o Laura Blease, Senior Policy Advisor
Land Use Policy, Environmental Policy Branch
40 St. Clair Avenue W., 10th Floor, Toronto, ON M4V 1M2

Public Works

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**RE: ERO Registry Number 019-5203
Proposed Implementation Pause of Excess Soil Requirements in Effect January 1, 2022**

Dear Ms Blease,

These comments are provided by staff of the Regional Municipality of Peel. The Region of Peel staff have reviewed the proposed Implementation Pause of Excess Soil Requirements in Effect January 1, 2022 and appreciate the opportunity to provide feedback to the Province.

Regional staff are supportive and concur with the amendments to the Excess Soil Regulation that would pause the implementation of provisions that came into effect on January 1, 2022 until January 1, 2023. The pause would allow the gradual transition of the provisions and would allow further coordination with all parties involved to ensure a common understanding of responsibilities and related best practices.

In addition to the above, Regional staff have provided the following comments for your consideration to improve the effectiveness and overall efficiency of the Excess Soil Regulation.

Additional Comments

1. Reuse Sites are imposing sections 8 to 16 of the Excess Soil Regulation, which are related to the excess soil reuse planning, regardless if the project area is exempt from the reuse planning requirements, as stipulated in Schedule 2 (generating less than 2000 m³ of excess, fit state of repair, etc). As such, regardless of the volume of excess soil generated within a project area, the absence of any areas of potential environmental concern (APECs) and exemptions that may apply to the project, the Region has had to complete all reuse planning documents and meet sampling frequencies, even in the areas where no APECs exist. There is a noticeable disconnection between the objectives of the Regulation and reuse sites interpreting and applying the new rules. The Ministry of Environment, Conservation and Parks (MECP) needs to engage with reuse sites to educate and provide them with direction on the Excess Soil regulation requirements.
2. The MECP requires a more focused stakeholder engagement. It appears that the MECP engaged Qualified Persons (QPs), consultants and municipalities prior to the implementation of the Excess Soil Regulation; however engagement and training is also required for contractors, haulers and reuse sites as there appears to be a distinctive disconnect in regards to the requirements and responsibilities of the Excess Soil Regulation. The practice of contractors hiring a Qualified Person and

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undertaking sampling as required by the Regulation is also a new concept. The Excess Soil Regulations are complex and prior to their implementation on January 1, 2023, further coordination with all parties involved is required to ensure a common understanding of responsibilities and related best practices.

3. Sampling frequencies as stipulated in the Excess Soil Regulation are based on the volume of excess soil generated; however for linear and tunneling projects, it is impractical to collect excess soil samples from the depths where excess soil will be generated. Consideration should be given regarding sampling frequencies based on the depth of the excavation. For example based on the current “volume requirements” a project generating 6000 m³ of excess soil would require approximately 30 soil samples to be taken. The area of the project proposes 12 boreholes to a depth of 3 metres below ground surface (mbgs). In order to meet the sampling frequencies, 2-3 samples will be taken from each borehole (some samples duplicated). However, if the soil depths were considered, as the infrastructure would be installed at a depth of 3 mbgs, and the borehole would be to a depth of 3 metres, a more concise sampling plan could be devised.

Also, it is impractical to meet the sampling frequency in-situ, particularly for deep projects such as tunneling. Due to the density, it is also not feasible to stockpile in the right of way or if the work is being completed in a Regulated Area, Conservation Authorities will not allow any stockpiling within a Project Area. In this case, both in-situ and ex-situ sampling become impractical. It was also previously communicated to the Region that sampling frequencies did not need to be met for tunnelling projects if the QP would confirm in writing that the soil conditions to be encountered within the elevation of the tunnel were consistent. However, based on the feedback from reuse sites they are not accepting any QP discretion and are requiring all sampling to meet the sampling frequencies as stipulated in the Regulation. The MECP should consider more concise sampling frequencies in these instances and ensure there is a common understanding between project area and reuse site requirements.

Conclusion

We would like to thank the Province for providing the opportunity to comment on the proposed Implementation Pause of Excess Soil Requirements. We look forward to further and continued engagement from the Ministry as we work towards better understanding and implementation of the paused provisions.

Thank you,



Steve Fantin
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Regional Municipality of Peel