

Dear Minister of Environment, Conservation and Parks, Hon. David Piccini,

Date: October 17, 2022

Priority	Issue	Current requirement	Proposed Requirement	Goal achieved
1	Clean table 1 soils are included in the regulation	All soil is tested similarly and included in the regulation.	Clean table 1 soil/topsoil exempt from O. Reg 406/19 after baseline sampling requirements. See Baseline and Secondary Sampling Recommendations below table	Significantly reduce costs, eliminate emissions, and get houses and infrastructure projects built faster. Low risk and non-contaminated sites don't get overburdened with requirements meant for APECs.
2	Reduce sampling requirements	Complicated formula from the MECP Soil Rules (see below)	Decreased baseline and secondary (non table 1 compliant and APEC) sampling requirements. Give QP's more discretion.	Significantly reduce costs and get houses and infrastructure projects built faster.
3	Expedite receiving site approvals	Multiple layers of government to approve, stringent O.Reg requirements	Create standard requirements/processes, eliminate planning reports and instrument requirements, depoliticize approvals, issue earthworks approvals within a mandated timeframe	Significantly reduce the costs of new homes, get houses to market faster, and decrease emissions. Deter double handling of soil. Facilitate local fill movement.
4	Reduce planning and construction report requirements	APU, SAP, SCR, ESDAR	Combine and eliminate reports where possible. Remove planning requirements for non-environmentally sensitive sites. LESS can provide recommendations.	Reduce costs and get houses and infrastructure projects built faster. Reduce dumping at landfills.
5	Simplify the regulation	O.Reg 406/19 and MECP Soil rules are complex and reference other legislation often	Provide links in regulation to specific references in other documents. Eliminate legal jargon and remove redundant/complicated requirements. Review all verbiage to ensure regulation's effectiveness of achieving MECP goals.	Eliminate confusion, reduce costs, environmental impacts and counter-productive to MECP mandate verbiage. Ensure soil is used as a resource whenever possible.

			Red line document can be provided by LESS.	
6	Eliminate pile size requirements	Max 2,500 cu.m per pile	No maximum. Current requirement is very problematic. Refer to LESS report	Reduce emissions and costs
7	Allow like project areas and reuse sites to reuse soil	Table 2 site can receive table 2.1 (more stringent)	Agricultural sites should be able to reuse table 2 fill. Eliminate tables 2.1, 3.1, 6.1, 8.1 (revert to previous tables)	Reduce emissions and costs. Ensure soil is used as a resource whenever possible.
8	Standardize excess soil management on Municipal projects	All municipalities are reacting differently	Provide standard, recommended special provisions, tender items and contract language for reference. LESS can provide recommendations.	Significantly reduce taxpayer costs. Ensure soil is used as a resource whenever possible. Prevent municipal soil dumping at landfills.
9	Allow for reuse of more salt impacted soils	Buried 1.5m deep in backyards and roads	Bury 0.6m deep in backyards and roads (topsoil isn't typically deeper than 0.6m)	Ensure reuse of salt impacted soil whenever possible. Prevent municipal soil dumping at landfills.
10	Eliminate or simplify registration requirement	Registration of project areas and reuse sites	Registration not required or greatly simplified (one page document). Load tracking records can be supplied to MECP upon request. Simplified MECP database for reuse projects	Eliminate confusion, reduce costs
11	Maintain truck tracking requirements when regulation applies	Load tracking	Maintain load tracking requirements in case contaminated soil is discovered.	Prevent illegal dumping.

Baseline and Secondary Sampling Recommendation

1. Complete an environmental screening study similar to an Environmental Site Assessment (ESA) Phase I.
2. If the site has no environmental concern, a minimum baseline **insitu** testing program will be recommended: 3 Bulk Analysis and 3 Leachate Testing.
3. If the site has no environmental concern, a minimum baseline **stockpile** testing program will be recommended: For stockpile <6,000m³, 6 bulk and 3 leachate will be recommended. For >6,000m³, 6 samples plus one bulk sample per 2,000m³.
4. If any issue is identified, follow the protocol for ESA assessment and potentially delineation for the impacted areas.
5. If the test data passed O.Reg 153 Table 1, no further action should be required. Materials can be moved to any reuse sites.
6. If the screening tests didn't all pass Table 1, further analysis will be recommended:
 - a. Under QP's discretion on the sampling protocol and at a minimum to follow;
 - b. >600m³ of excess soil, test 1 sample per 1,000m³
 - c. For roadwork, test 1 sample per 100 lineal meter of alignment
 - d. If more than 10 samples, duplicate sampling and testing protocol will be executed
7. If the test results passed Table 2 and 3, the materials can be transported to a site which is similar to the site class.

Current Sampling Requirements

*** Minimum sampling Requirements**

From MECP Rules for Soil Management and Excess Soil Quality Standards

15. In Situ Sampling

In addition to the rules set out in clauses i-v in paragraph 14 in subsection 2 (3) in Section B of PART I of this document (above), the following additional rules apply to samples collected using an in situ sampling approach (in relation to the area identified where sampling is required):

- i. a minimum of three soil samples shall be analyzed if less than 600 cubic metres of *soil* will be excavated;

- ii. if more than 600 cubic metres of *soil* will be excavated, at least one soil sample shall be analyzed for each 200 cubic metres of *soil* for the first 10,000 cubic metres of *soil* to be excavated;
- iii. at least one soil sample shall be analyzed for each additional 450 cubic metres after the first 10,000 cubic metres of *soil* to be excavated; and
- iv. at least one soil sample shall be analyzed for each additional 2,000 cubic metres after the first 40,000 cubic metres of *soil* to be excavated.

16. Stockpile Sampling

In addition to the rules set out in clauses i-v in paragraph 14 in subsection 2 (3) in Section B of PART I of this document (above), the following additional rules apply to samples collected using a stockpile sampling approach:

- i. A sufficient number of samples shall be collected at different depths within a stockpile to characterize the depth profile and the spatial variation, laterally and vertically, of the *contaminant of potential concern (COPC)* within the stockpile;
- ii. Soil samples shall not be collected from the surface of the stockpile; rather, techniques and equipment need to allow for collection of samples from the entire stockpile, including the core; and
- iii. Unless section 17 applies (stormwater management pond sediment), the sampling frequencies specified in Table 2 of Schedule E, to *O. Reg. 153/04*, Minimum Stockpile Sampling Frequency shall be followed.

From O. Reg 153/04 - RECORDS OF SITE CONDITION - PART XV.1 OF THE ACT

TABLE 2
MINIMUM STOCKPILE SAMPLING FREQUENCY

Item	Column 1 Stockpile Volume (m ³)	Column 2 Minimum Number of Samples
1.	≤ 130	3
2.	> 130 to 220	4
3.	> 220 to 320	5
4.	> 320 to 430	6
5.	> 430 to 550	7
6.	> 550 to 670	8
7.	> 670 to 800	9
8.	> 800 to 950	10
9.	> 950 to 1100	11
10.	> 1100 to 1250	12
11.	> 1250 to 1400	13
12.	> 1400 to 1550	14
13.	> 1550 to 1700	15
14.	> 1700 to 1850	16
15.	> 1850 to 2050	17
16.	> 2050 to 2200	18
17.	> 2200 to 2350	19
18.	> 2350 to 2500	20
19.	> 2500 to 2700	21
20.	> 2700 to 2900	22
21.	> 2900 to 3100	23
22.	> 3100 to 3300	24
23.	> 3300 to 3500	25
24.	> 3501 to 3700	26
25.	> 3700 to 3900	27
26.	> 3900 to 4100	28
27.	> 4100 to 4300	29
28.	> 4300 to 4500	30
29.	> 4500 to 4700	31
30.	> 4700 to 5000	32
31.	> 5000	The amount determined by applying the formula set out in paragraph 6 of section 36 of this Schedule.

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

Figure 2 – Apartment Site

Residential Development - 300 South Carriage - London (172 units)		
(High rise building - one storey of underground parking)		
(Approx. 25,000m ³ 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 onus 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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