

Ontario Sewer and Watermain Construction Association



**OSWCA Submission to the Ministry of Environment, Conservation
and Parks – Amendments to Certain Requirements under the Excess
Soil Regulation ERO number 019-6240**

December 2022



December 2nd, 2022

Reema Kureishy
Environmental Policy Branch
Ministry of Environment, Conservation and Parks
40 St Clair Avenue West, 10th Floor
Toronto, ON M4V 1M2

**Re: Amendments to Certain Requirements under the Excess Soil Regulation
ERO number 019-6240**

The OSWCA represents over 800 member companies across the province. Our members construct, rehabilitate, and supply materials for water and wastewater systems throughout Ontario's 444 municipalities. This work is critical for the delivery of clean drinking water and maintenance of proper sanitation systems.

OSWCA has been involved with the MECP and other stakeholder organizations in promoting the environmentally responsible and beneficial reuse of excess soils in Ontario for over a decade. RCCAO appreciates the work that MECP has undertaken over the last several years to help limit the amount of healthy soil being sent to landfill and providing options for safe soil reuse.

OSWCA is supportive of the proposed risk-based approach including exempting low-risk projects from excess soil reuse planning requirements if excess soil is being removed from a project area at which the current or last property use was agricultural, residential, parkland or institutional. This approach will streamline the application of the excess soil regulation and ensure a more practical and focused regulatory implementation on higher-risk movement of soil.

As part of this work, our members make up a large contingent of excavators impacted by Ontario Regulation 406/19. Each sewer and watermain projects in Ontario require some form of excavation, as well as the management of excess soils.

OSWCA applauds the Ministry of Environment, Conservation, and Parks' decision to seek additional feedback on Ontario Regulation 406/19 (O.Reg 406/19). Removal of planning requirements, including registration, sampling, and tracking, for excess soil moved from lower risk projects, and enabling larger temporary piles of soil for storage will help Ontario meet its long-term housing and infrastructure objectives.

The Problem

Over the past year, O.Reg 406/19 has contributed to higher costs on sewer and watermain projects. Regulatory provisions which set out soil management requirements and quality standards, such as, assessment of past uses, sampling and analysis, tracking system, soil characterization reports and excess soil destination assessment reports are creating additional works before and during projects.



O.Reg 406/19 defines *Project Leader* as “The person or persons who are ultimately responsible for making decisions relating to the planning and implementation of the project.” The problem with "Project Leader" as currently defined in the regulation is two-fold. Firstly, the term which sets out responsibility and liability is vague and ambiguous. With reference to the loose definition provided in the current iteration, *Project Leader* can be interpreted to mean whatever the project owner chooses. Much worse, without a clear definition, this term can be applied in different ways to similar situations, threatening any intention of consistency in its application.

Public buyers of construction have generally opted to download *Project Leader* responsibilities onto contractors. What has become evident since the regulation's initial implementation - this regulatory risk transfer has added significant costs to project delivery. Excavation contractors are not designed to carry out *project leader* responsibilities.

Public buyers have an obligation to achieve projects of a desired procurement outcome at the best possible price - based on a balanced judgement of financial and nonfinancial factors relevant to the procurement. This term is referred to as “Value for Money” (VFM).

It is a common, internationally recognised test for benchmarking expenditure to achieve policy objectives. It supports the concept that better outcomes can be achieved when resources are used more efficiently, and risk is transferred appropriately.

Management of excess soil is a risk most appropriately held with a public buyer, retaining this risk will lower the cost and achieve optimal project delivery. If public buyers managing the risk of project leader responsibility also involves bearing its financial cost, there will be greater incentive to take measures to mitigate that risk.

The Solution

Ontario Regulation 406/19 should set out clear responsibilities for public buyers and shall not allow a public buyer to contract themselves out of *project leader* responsibilities.

In Order to achieve greatest value for money in publicly funded construction projects where O.Reg 406/19 applies, public buyers shall be responsible for:

- 1) Filing a Notice in the Excess Soil Registry, including all responsibilities associated with registry compliance
- 2) Provide assessment of past uses
- 3) Sampling and analysis plan
- 4) Soil characterization report
- 5) Excess soil destination assessment report:
- 6) Develop and apply a tracking system for projects required to file a notice on the Registry to track excess soil during its transportation and deposit.

Currently, various responsibilities of soil management may be delegated to contractors to undertake on behalf of a project owner, this has proven to be ineffective and has added needless costs to public infrastructure projects. Municipal construction and engineering departments are uniquely situated to undertake or oversee *project leader* activities under the regulation.



Understanding the complexity of the Regulation and the inexperience of many owners in managing their excess materials has resulted in limited, if any, achievement of the intention of the Regulation, it is imperative the Ministry clarify the intention of the Regulation and provide unambiguous guidance regarding implementation. Specifically, the Ministry ought to provide standardized municipal requirements to ensure all municipalities are provided with a clear, uniform path to achievement.

OSWCA appreciates having the opportunity to provide input into this consultation process. By reviewing and addressing these concerns and recommendations, the MECP would be ensuring the proper adoption of rules based on the intent of this regulation and would be helping to clarify some of the ongoing uncertainty.

Please do not hesitate to contact us (905-629-7766 or steven.crombie@oswca.org) if you have any questions or need information regarding OSWCA and its membership.

Sincerely,

A handwritten signature in black ink, appearing to read "Pm", followed by a horizontal line extending to the right.

Patrick McManus
Executive Director