

Friday, December 2, 2022

Reema Kureishy  
Policy Analyst  
Environmental Policy Branch  
40 St Clair Avenue West  
10<sup>th</sup> Floor  
Toronto, ON M4V 1M2

Dear Ms. Kureishy,

**RE: City of Guelph response to Amendments to Certain Requirements under the Excess Soil Regulation (ERO 019-6240)**

The City of Guelph (City) appreciates the opportunity to comment on the Ministry of Environment, Conservation and Parks' (MECP) proposal of "Amendments to Certain Requirements under the Excess Soil Regulation, Ontario Regulation 406/19, to remove the reuse planning requirements, including registration, sampling, and tracking, for excess soil moved from lower risk projects, and to enable larger temporary piles for soil storage". The City is appreciative of the MECP's efforts in trying to reduce requirements applicable to low-risk projects so the Regulation can focus on higher-risk movements of soil and to provide more flexibility when storing excess soil.

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 the City's construction projects; we have the following comments and questions for MECP's consideration:

**Comments/Questions:**

1. Removing reuse planning requirements from low-risk projects.
  - This exception could work well for low-risk source sites as Assessment of Past Use (APU), Sampling and Analysis Plan (SAP), Soil Characterization Report (SCR) and Excess Soil Destination Report (ESDR) will not be required. However, this could add risk to projects as reuse sites, including pits and quarries rehabilitation projects, rely on the APU, SAP, SAR and ESDR to accept soils from different source sites.
  - In most municipalities, including City of Guelph (Guelph), a Phase I/One ESA is one of the minimal requirements developers would have to submit as part of planning applications to clear environmental conditions for site developments. Based on the findings of Phase I/One ESAs, there is a potential for Phase II/Two, remediation and/or risk assessment. So, the

current requirements to satisfy Excess Soil Regulation are not a hurdle, in fact, it could be used to satisfy reuse sites to accept soils from low-risk sites. Further, if neither an APU nor Phase I/One ESA is completed at Site, at a minimum, then a “low risk” designation is not based on the actual Site condition.

- This exception could complicate things for municipalities like Guelph that have Site Alteration Permits to monitor soils coming from source sites outside of city boundaries. Our Site Alteration By-law requires developers who bring soils to Guelph to provide APU, SAP, SCR, and ESDR to meet the conditions of the permit, so that soils brought to Guelph are from source sites that have environmental baseline studies completed.
  - As for the tracking requirements, contractors are still required to track or provide a soil manifest or waybill for soil generated at source sites that is brought to reuse sites or disposed of at waste disposal sites as defined under O. Reg. 347. It is the City’s experience that there are uncertainties with contractors and soil haulers of the continued requirement for tracking of excess soils when there are exceptions and the no planning requirements. The MECP should consider providing more clear direction under these scenarios to ensure soil tracking occurs when soil planning is not.
2. Soil Storage Amendment: The City of Guelph is in support of this amendment.
  3. Based on our experience of implementing the key requirements of the Regulation for the past two years; we would like the MECP to take the following comments into consideration:
    - Previously, the exemption specified under section 14 of the Regulation did not relieve the requirement to register and track the excess soil movements of the project; only the excess soil reuse planning documents were exempted. However, the proposed changes for low-risk sites would exempt not just planning but the registration and tracking requirements as well. This change is not well explained and introduces significant risk for receiving sites. In essence, this is returning soil requirements for “low risk” sites to that which existed prior to the Regulation.
    - With the previous point in mind, it appears that the Regulation is intended to only apply to industrial/commercial/community and/or contaminated Sites. Is that the MECP’s intention? If so, it appears that the objectives of the Regulation, which includes providing greater transparency on excess soil movements and protecting agricultural lands, are not met.
    - The exceptions laid out in Schedule 2 of the Regulation could create confusion. For instance, the exemptions 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 to avoid misinterpretation. It should be clearly mentioned that, albeit planning requirement is not mandatory, a minimum number of soil samples and mandatory parameter analysis shall be completed based on QP led 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, Developer and/or contractor. Please note that 100 to 2,000 m<sup>3</sup> of soil is approximately 10 to 200 truckloads of soil.

- The soils generated from most of the City infrastructure projects (e.g., road reconstruction, sewer/watermain upgrades etc.) appear to exceed Table 2 Site Condition Standards (SCS) for chemical parameters. This makes the reuse of soil very difficult as reuse of soils from one municipal infrastructure project to another is not typically feasible; not only because the volume of excavated soils often exceeds the volume of fill required, but also because these projects, in most cases, have different contractors who do not want to take responsibility and liability for each other's soil. As such, it is recommended that municipalities and private organizations (e.g., soil brokers, landfill facilities' owners etc.) be allowed to store and reuse "minimally" impacted soils, so that these soils can find a reuse location in infrastructure projects of surrounding municipalities not just in the municipality where the source sites are located.
- Much of the soils (subbase to maximum depth of 3 m below subbase) sampled in our infrastructure projects are impacted with salt (EC and SAR) above the Table 2 or 3 SCS. The exception for Salt-Impacted Excess Soil should be revised to allow salt impacted soil to be brought to residential and institutional property use. Further, the non-potable standard requirement should be removed as the requirement to ensure that soil is not placed within 100 metres of a potable water well is sufficiently protective of water supply.
- The Regulation puts a lot of responsibility on the source sites. However, the Regulation is somewhat silent on the responsibilities of reuse sites. In several meetings with the MECP and consulting firms, the City's Project Leaders for source sites were reminded that reuse site owners or authorized representatives may ask for additional samples and/or analysis of additional parameters. This uncertainty, real or perceived, hinders Project Leaders' decision making, especially when the Regulation is followed to the letter of the word by the source site. So, it is recommended that responsibility and accountability of the reuse site owners/representative be made clear to avoid confusion.
- It appears that Guelph has a high concentration of zinc in soil. As such, we intend to complete a background concentration study for zinc and maybe other metal parameters. Therefore, it would be helpful if the MECP could draft a guidance document on how to complete such studies, in accordance with section D. 2 (3) of the Soil Rules.
- The regulation currently includes an exemption from planning requirements for situations whereby owners are maintaining infrastructure in a fit state of repair. There is no guidance on the expectations for how to store the soils removed from infrastructure repairs under maintaining a fit state of repair. For example, watermain or sanitary main breaks and repairs. Minimal soil (<100 m<sup>3</sup>) is generated during each occurrence however, under a municipal setting, this happens very frequently. It is not realistic or practical to

individually stockpile soils from each separate watermain or sanitary main break/repair due to the lack of space at City yards, frequency, and other operational limitations. The Soil Rules would benefit from the inclusion of modified sampling requirements for this scenario's fit state of infrastructure.

- 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., hydrovac trucks); this does not seem feasible. Except for hydrovac trucks, there are not many other trucks that are equipped with a "locking valve". As such, the City recommends that the MECP either let municipalities continue sampling in-situ, or if ex-situ sampling is absolutely required, then allow the municipality to collect the required number of samples in-situ to be dried on-site or off-site and subsequently analyzed by a laboratory.

### **Closure**

Despite the temporary suspension of the Regulation since April 20, 2022, the proposal included in this ERO posting appears to not fulfill the MECP's objectives of providing a better understanding of the requirements, and coordination between the parties involved in the implementation of the Regulation, to ensure a common understanding of responsibilities and related best management practices. The City is still uncertain about various aspects of the Regulation listed above. We request the MECP to provide guidance on how the Regulation is to be interpreted in various situations, as this would streamline the implementation of the Regulation.

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

Sincerely,

**Jayne Holmes, P. Eng., PMP**, Deputy Chief Administrative Officer

Infrastructure, Development and Enterprise

**Location:** 1 Carden Street, Guelph, ON N1H 3A1

**T** 519-822-1260 extension 2248

**TTY** 519-826-9771

**E** jayne.holmes@guelph.ca

guelph.ca