



December 2, 2022

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

RE: ERO Posting # 019-6240: Amendments to Certain Requirements under the Excess Soils Regulation 406/19

Dear Ms. Kureishy,

Walker Industries Holdings Limited (Walker) is writing to provide our comments on the proposed regulatory amendment posted as ERO # 019-6240 to Ontario Regulation 406/19, the Excess Soils Regulation.

Walker has been a part of the Niagara community since 1887 starting as a single cut stone quarry and has evolved to a multi-divisional diversified enterprise across North America. Our values include caring about our people, our neighbours, and the environment, and working in partnership with our communities to build a sustainable future. Among our multiple divisions, which include critical services and infrastructure for communities to manage waste, recover resources and contribute to a circular economy, Walker currently operates aggregate pits and quarries in the Niagara, Essex, Simcoe, Grey and Bruce Regions and landfills in the Niagara Region. Rehabilitation of these pits/quarries and the use of excess soils for operational needs of our landfills are both beneficial reuses of excess soils.

We thank the Ministry of Environment, Conservation and Parks (MECP) for the opportunity to review and provide comments on the proposed amendments to the regulation and offer the following comments/concerns:

Proposed Amendments Regarding Low-Risk Sites

- Low-risk sites have been defined as sites where the current or last property use of the site was agricultural, residential, parkland, or institutional, and that are not an enhanced investigation project area, nor known to be impacted by historical contamination. However, adjacent properties are not taken into consideration and which may have directly affected the quality of the soil within the project area.
- Within the amendment, we see the responsibility to determine if project areas are in fact low-risk rests with the Project Leader. Typically such an assessment would be completed by a Qualified Person (QP) through the completion of an assessment of past

uses (APU) or Phase I Environmental Site Assessment. It would be beneficial for the MECP to prescribe the steps required for the determination of sites as low-risk, such as the completion a background review of the site and its adjacent properties, and site reconnaissance and furthermore who may complete these steps so that appropriately qualified persons are ensuring that these requirements are being followed.

- Ontario Regulation 153/04, directly mentioned in this amendment, also lists potentially contaminating activities (PCAs) which may be found on the defined low-risk properties. For example, large scale application pesticides (PCA 40) on agricultural properties, and bulk storage of petroleum (PCA 41), routinely observed on institutional properties in the form of historical use of heating oil, both of which may affect the quality of the excess soil and should be appropriately assessed.
- Exempting all low-risk properties may reduce or widen the standard of due diligence being applied with respect to the quality of the soil being removed. This can lead to an increase in the review timelines for soil acceptance by re-use sites, additional sampling being requested by reuse sites, and potentially create some animosity between parties who both wish to move the project along and beneficially reuse the soil. It was understood that the minimum sampling requirements would be regulated (in the Soil Rules), however could be amended by a QP based on the APU or results of sampling. The MECP dictating minimum sampling requirements, alleviates the burden of the reuse site to define its sampling requirements.
- Placing the onus for determining the minimum acceptable sampling requirements on the reuse site may also cause different acceptance standards to be developed based on the level of risk tolerance of a re-use site and further transfers liability to reuse sites and away from source sites, which is contrary to the basis of the regulation in requiring source sites to determine soil quality and soil characterization. Furthermore, placing the responsibility for demonstrating soil reuse potential on reuse sites, may result in excess soil having to travel farther (increasing its carbon footprint) to reach its final destination, if soils are not appropriately classified by the source site.
- It is unclear if all low-risk sites are exempt, or if low-risk sites are exempt to a certain tonnage/volume. Currently sites producing greater than 10,000 cubic metres must complete planning documentation, including tracking of the soil. It would be prudent for low-risk sites generating this quantity of soil to also register in order to provide transparency on soil management activities to both the public and the environmental industry stakeholders. This in turn can be used to determine the efficacy of the regulation and the ability to assess how the regulation is meeting its objective.

Proposed amendment regarding soil storage

- Walker agrees with the increase in allowable soil storage volumes to 10,000 cubic meters, provided that the appropriate measures are implemented on-site to protect the interests of surrounding land-users and the public. Generally we see a limitation within



our licenses and approvals respecting stockpile storage heights that are established with respect to site conditions of the facility.

The excess soils regulation was created to divert soils that could be beneficially reused away from landfills, to place the responsibility for soil characterization on the source site, and to prevent the illegal dumping of soils. We would encourage the MECP to dictate the steps involved in determining a sites as a low risk site in order to create consistency across the excess soil management practice and to remove the need for the reuse site to determine the level of risk involved with receiving soils from these sites.

We thank you for your consideration of our comments. Should you have any questions or require additional information, please do not hesitate to contact us at cbarnes@walkerind.com or rgalagoda@walkerind.com.

Sincerely,

Carrie Barnes, P.Ge.
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