Friday, December 1, 2023

Online Portal Submission

Client Services and Permissions Branch
(Policy and Program Development Section)
Ministry of the Environment, Conservation and Parks
135 St. Clair Avenue West, Floor 1
Toronto, ON M4V 1P5

RE: Proposed regulatory amendments to encourage greater reuse of excess soil (ERO 019-7636)

The City of Guelph (City) has received notice through the Environmental Registry of Ontario (ERO 019-7636 - https://ero.ontario.ca/notice/019-7636) regarding the Ministry of the Environment, Conservation and Parks' (Ministry) proposed amendments to O. Reg. 406/19 (Excess Soil Regulation or Regulation) and the Rules for Soil Management and Excess Soil Quality standards (Soil Rules) to encourage greater reuse of low-risk excess soils as part of a circular economy and to prevent usable soil from being disposed of in landfill. We appreciate the opportunity to comment on the proposed changes. This submission contains the City's response to this consultation notice.

We understand that the Ministry is proposing these changes in order to try and remove barriers to reuse of low-risk soils.

Based on our review of this notice, our participation in several meetings and webinars with the MECP, consulting firms, legal firms, and other municipalities (2019 to present), and our experience with excess soil management in our City's construction projects, we have the following comments and questions for Ministry's consideration:

General Comments:

There have been seven (7) changes to the Excess Soil Regulation so far which do not include the proposed changes in this notice. The Regulation has many exceptions which are increasingly adding to confusion. None-the-less the City appreciates the Ministry's continued efforts to amend the regulation to encourage safe and beneficial reuse of excess soil. Specifically, the proposed aggregate reuse depots are an exciting opportunity, especially if the sharing of aggregates between neighbouring municipalities is encouraged. Additionally, as a significant portion of City generated excess soils are potentially salt-impacted the proposed "enhanced reuse opportunities for salt-impacted soil" amendment presents another great opportunity for the City to further the beneficial reuse of excess soil.

Some of the changes proposed (such as removing ECA requirements for third-party storage and processing of low-risk dry soil and small liquid soils sites and exempting low-risk areas of enhanced investigation project areas) appear to suggest that key requirements of the Regulation were hindering the reuse of soil. This appears to contradict with two key objectives of the Regulation: (i) to promote beneficial reuse of excess soils, and (ii) to prevent contaminated soils from being placed at unimpacted sites.

Proposed Amendments

Below is the summary of the proposed amendments to O.Reg.406/19, followed by the City's comments.

1. Exempt specified excess soil management operations from a waste ECA subject to rules.

   a. Topsoil and landscaping reuse depots

   - Topsoil is typically exempt from most of the requirements of the Regulation for Residential, Institutional, Parkland, and Agricultural (RIPA) land uses that are deemed low risks (i.e., no formal soil sampling and analysis), however it is stated that the excess soil and topsoil, which are proposed to be part of wholesale landscape depot, would have to meet Table 2.1 Excess Soil Quality Standards (ESQS) or cleaner (i.e., Table 1 ESQS). Does this imply that irrespective of low-risk sites that the soils would have to be sampled and analyzed for mandatory parameters or that sampling and analysis would have to be based on the findings of an Assessment of Past Uses (APU)?

     Please clarify the requirement: "Procedures would be required to be implemented to account for the source, type, and likely quality of received soil".

     - Considering the sampling requirement noted above, would the Ministry consider allowing excess soil from a project area used for community/commercial/industrial property use to be deposited, stored and processed at a retail landscaping soil depot (which is currently prohibited), provided that it meets Table 2.1 ESQS? It seems arbitrary to prohibit the retail sale of topsoil that can be shown to meet Table 2.1 standards, simply because of community/commercial/industrial property use.
     - The MECP should consider that the soil purchased from a retail landscape soil depot may be used for personal or community vegetable or fruit gardens for human consumption. Under the definition of O.Reg.153/04 Agricultural Use Table 1 includes the land use for field crops, fruit farming and market gardening. Under the proposed amendments, soils from a landscaping soil depot may exceed ESQS Table 1, despite meeting Table

2.1 ESQS.

b. Aggregate reuse depots

- "The aggregate must be known to be of a quality that it can be reused in an infrastructure project (e.g., meets community quality standards if for road use) or if not tested, there are no indications (visual, olfactory, known history) of contaminants."

  This is ambiguous, please clarify if testing to community ESQS will be required for aggregate to be accepted at the proposed depots.

  The term "aggregate" used within this amendment is confusing as it is not defined within O.Reg.406/19. However, under O.Reg.153/04 subsurface soil is defined as:

  "means soil that is more than 1.5 metres beneath the soil surface, including the bottom .5 metres of any non-soil surface treatment such as asphalt, concrete or aggregate above the soil surface, but excluding the thickness of any such non-soil surface treatment that is greater than .5 metres;"

  Furthermore, the definition of 'aggregate' under the Aggregate Resources Act R.S.O.1990 is:

  means gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite or other material; ("agrégats")

  The current amendment implies that excess soils excavated from roadways, may be reused as aggregate for infrastructure projects. However, there is different interpretations of the word 'aggregate' within excess soils as compared to the engineering term. Please provide clarification in the amendment.

- Will aggregate pits and quarries be considered aggregate reuse depots, or eligible to register as depots despite that they operate under the Aggregate Resources Act?

- These facilities would only accept excess soil that can be reused (recycled aggregate) to meet a realistic market demand as an aggregate product in an infrastructure or building project (not general fill or soil amendment) and does not include glass, concrete, asphalt, etc.; any material found to be unusable for these purposes must be promptly disposed of."
  Prohibiting excess soil that contains glass, concrete, and/or asphalt from use in the proposed aggregate depot seems miss guided and at odds with existing practises.

The Ministry of Natural Resources (MNR) policy A.R. 5.00.15 issued April 5, 2007 states that "Through recent changes to the Ontario Provincial Standard Specification (OPSS), MTO now allows recycled asphalt (RAP), crushed concrete, and 15% crushed glass and ceramics in granular base applications. This change should encourage municipalities to consider substituting recycled aggregate materials for natural aggregate materials when building new roads, reducing the need for virgin aggregate."

If the goal is to encourage appropriate re-use of aggregate as road base material than the City strongly recommends that the Excess Soil policy aligns with MNR policy A.R. 5.00.15 and allows recycled asphalt (RAP), crushed concrete, and 15% crushed glass and ceramics in granular base applications. Additionally, clarification on the engineering use of the word aggregate should be more clearly defined per the above comments.

- The proposed amendments do not address what rules would be associated with the transfer of materials from the aggregate reuse depots to a project area. Would such a transfer be considered equivalent to purchasing aggregate from a licensed pit and/or quarry (i.e., exempt from the regulation)? Please clarify.

c. Small liquid soil depots

- The proposed volumetric limits of 200m^3 of liquid soil and 2,000m^3 of dewatered soil at the small liquid soil depot is unusual, considering that under the current rules up to 10,000m^3 of liquid soil is allowed to be stored and/or processed at project areas and local waste transfer facilities, and 25,000m^3 of dry excess soil is allowed to be stored at local waste transfer facilities. Please consider revising this limit to improve consistency across the regulation.

2. Enhanced reuse opportunities for salt-impacted soil (Section D, Part I in Soil Rules).

- Currently, salt-impacted soils can be placed at industrial and commercial sites where non-potable excess soil quality standards can be applied to a reuse site. Generally, non-potable standards cannot be used in areas that are not serviced by municipal drinking water systems. For the majority of the municipalities with a source water protection (SWP) plan in-place, especially with salt as one of the issue contributing parameters, the use of non-potable excess soil standards could be an issue. Further discussion with SWP branch of the Ministry of Environment Conservation and Parks, and Conservation Authorities could be beneficial.

- Current wording implies the existing rule to allow salt impacted soils at industrial and commercial sites where non-potable excess soil quality standards can be applied is going to be replaced (with new language regarding community, institutional, parkland, and residential sites), despite no replacement wording for industrial and commercial sites being provided. Please clarify if the existing rules regarding placement of salt impacted soil at industrial and commercial sites will be removed, or simply amended as appears to be the intent.

3. Enable greater soil management at Class 2 soil management sites and create greater alignment at local waste transfer facilities (LWTF) and depots (section 21 and 25 of the Excess Soil Regulation and associated provisions in the Soil Rules).

- "Amending clause, a) of the definition of Class 2 soil management sites to include a property owned or controlled by a public body, enabling public bodies to lease properties for the purpose of operating a Class 2 site."
  Is this for meant for municipal projects or private development projects as well? Please Clarify.
- Can the MECP confirm that planning requirements will continue to be exempt under the circumstance whereby, during municipal operations, soils are generated during emergency works/repairs and/or maintaining infrastructure in a fit state of repair. Under these scenarios soils may be transported and temporarily stockpiled in a Class 2 Soil Management Site owned by the municipality, where soils are consolidated across several emergency works/repairs and/or maintenance of infrastructure in a fit state of repair sites, until future testing may be completed to arrange off site soil disposal or reuse.

  Please also clarify if all soil movements into/out of a LWTF will need to be captured on the registry under this scenario? Please note such a change would be extremely disruptive to municipal operations and is strongly discouraged.
- Considering soil brought to and from LWTF is dynamic, please confirm if the 2,000m^3 limits is per soil activity, or is a cumulative amount over a certain amount of time (i.e., 1 year)

4. Hauling record exemption and clarification (section 18 of the Excess Soil Regulation)

- No comment.

5. Exempt landscaping projects at enhanced investigation project areas from the reuse planning requirements (Schedule 2 of the Excess Soil Regulation)

- This amendment has the potential to cause issues for municipalities, developers, and the Ministry. It appears to conflict with the requirements of O. Reg. 153/04, as amended.

  The amendment as currently worded would allow up to 100m^3 (i.e., ~10 truckloads of soil) to be removed from an industrial property without any formal testing requirements, including for the construction of retaining walls, walkways, and ponds.

  At a Record of Site Condition (RSC) property "the requirements concerning soil excavated at the Phase Two Environmental Assessment (ESA) property for possible reuse" include "determining reliably":

  > (a) whether the applicable site condition standards or any standard specified in a risk assessment with respect to the property, for all contaminants in the soil have been met; and
  >
  > (b) whether, when the soil is reused at the Phase Two ESA property, the property meets the applicable site condition standards, or any standard specified in a risk assessment.

  Further, many RSC properties will have Certificate of Property Use (CPU) requirements, and more generally, known or potentially contaminated Sites (i.e., Enhanced Investigation Areas) will likely have Soil Management Plans (SMP). Both CPU's and SMP's indicate a minimum level of sampling required to characterise soil. It is also worth noting that the MECP Guelph District office has approved more than 400 RSCs since 2011.

  Therefore, it is recommended that clear language be included which emphasizes that existing soil management/characterization requirements at properties such as these must be considered prior to the application of "landscaping exemptions". If this is not done there is a risk that contaminated soils will be inappropriately excavated and likely even re-used by landscaping companies who will be operating without the guidance of a Qualified Person (QP) or without the knowledge gained through an Assessment of Past Uses (APU) report.

- It is unclear how a low-risk area (i.e., not known to have potentially contaminating activities) could be determined without completing an Assessment of Past Uses (APU) at a minimum, which would not be required if this activity was exempt.

- Has the MECP consulted with professional associations such as the Professional Geoscientists of Ontario (PGO) or Professional Engineers of Ontario (PEO) to confirm whether a QP would agree to define a site as low risk?

- Can the MECP clarify who confirms what is deemed a low risk project area if neither a QP will be involved or an APU prepared?

6. Clarify the responsibility of a qualified person (QP) when dewatering or solidifying liquid soil (section 6(4) of the Excess Soil Regulation, as well as associated rules under the Soil Rules)

- Please clarify if sediment amended with polymers can be reused on or off the sites, if the QP determines they do not pose adverse effect.

7. **Clarifying sampling and analysis requirements (Section B of Part 1 of the Soil Rules)**

Stormwater management (SWM) pond sampling

- 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, which does not seem feasible. As such, the City recommends that the MECP either allow municipalities to complete in-situ sampling or if ex-situ sampling is absolutely required, then allow the municipality to collect the required number of samples in-situ, have the samples dry on-site or off-site, and analyze the samples in the laboratory, as opposed to hauling and temporarily storing the entire sediment from the pond to a new location on- or off-site without knowing the quality as it could not be sampled.

8. Greater flexibility for storage of soil adjacent to waterbodies (storage rules in the Soil Rules document)

- No comment.

9. Other clarifications and corrections

a. Regulation

- *"Include "operator" in provisions of the Excess Soil Regulation and Soil Rules, as needed, to clarify that operational requirements directed at project leaders could be carried out by either the project leader or the operator of the project area"*

  Please add "…the operator of the project area retained by Project Leader to work on their behalf".

Closure

We appreciate the opportunity to provide input and trust that our comments outlined above will be given due consideration. Should you have any questions, please do not hesitate to get in touch.

Sincerely,

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