



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

November 30, 2023

Re: Conservation Ontario's comments on the "Proposed regulatory amendments to encourage greater reuse of excess soil" (ERO#019-7636)

Thank you for the opportunity to comment on the "Proposed regulatory amendments to encourage greater reuse of excess soil" (ERO#019-7636). Conservation Ontario (CO) represents Ontario's 36 Conservation Authorities (CAs), whose mandatory programs and services include natural hazard management and Drinking Water Source Protection.

Protection of Drinking Water Sources and Application of Source Protection Plans

Appropriate safeguards must remain in place to ensure that reuse of salt-impacted soil would not adversely impact municipal drinking water sources. It is Conservation Ontario's opinion that that proposed 100m setback from existing or planned potable wells for use of salt-impacted soil at certain properties is insufficient to protect municipal drinking water sources from potential contamination. Rather, Conservation Ontario strongly recommends the proposed rules be amended such that, in addition to the proposed 100m setback, the use of salt-impacted soil should not be allowed in protection zones identified under the *Clean Water Act, 2006* where the vulnerability score is 10. It is also strongly recommended that the use of salt-impacted soil should not be allowed in Issue Contributing Areas for chloride identified under the *Clean Water Act, 2006*.

Further, the proposal to exempt specific excess soil management operations from requiring an Environmental Compliance Approval (ECA) is not supported. The current framework under the *Clean Water Act, 2006* allows for these activities to be managed through prescribed instrument policies as provided in Source Protection Plans. The proposed exemption would remove the ability for local Source Protection Plan policies to

effectively manage these activities. If approved, Conservation Ontario strongly recommends that the exemption not apply to excess soil management operations where the activities are identified as significant drinking water threats under the *Clean Water Act*.

Consideration of Natural Hazards

This proposal, the *Environmental Protection Act*, and the Rules for Soil Management and Excess Soil Quality Standards generally do not provide direction for the placement or storage of excess soil as it relates to natural hazards. This is a significant gap, as a proponent could meet requirements under the *Environmental Protection Act*, and still be undertaking works within an area regulated for natural hazards by a local CA (e.g., storage of excess soil within 30m of a water body, which may be directly in the floodplain). Such works may require written permission from the local CA for the temporary or permanent placing, dumping or removal of any material (e.g., excess soil). To assist proponents with navigating the legislative and regulatory landscape for excess soil, the Ministry is encouraged to clarify the need to avoid natural hazard areas and to promote coordination amongst applicable regulatory authorities (including CAs) to ensure effective and appropriate reuse of excess soil.

Compliance with Rules in Regulation (Enforcement and Monitoring)

Conservation Ontario appreciates the Province's objectives of clarifying regulatory requirements and exploring opportunities for greater reuse of excess soil in Ontario. However, we are concerned with the proposed shift to exempt certain excess soil management operations from requiring a waste ECA and direct proponents to follow rules in regulation instead. The ECA process involves direct Ministry review of applications, ensuring that the activity will not adversely affect the environment or human health. The shift to a rules in regulation approach would remove direct provincial oversight of these activities, which is concerning particularly in areas where municipal drinking water sources require protection from contamination

Thank you for the opportunity to provide comments on the "Proposed regulatory amendments to encourage greater reuse of excess soil" (ERO#019-7636). Additional detailed comments are provided in Attachment 1 to this letter. Please contact the undersigned should this letter require any clarification.

Sincerely,

Nicholas Fischer

Nicholas Fischer
Policy and Planning Liaison

1 Attachment: Detailed Comments
c.c: All Conservation Authority CAOs/GMs

Attachment 1:

Detailed Conservation Ontario Comments the “Proposed regulatory amendments to encourage greater reuse of excess soil” (ERO#019-7636)

Proposed Amendments	Conservation Ontario Comments
<p>Exempt specified excess soil management operations from a waste environmental compliance approval (ECA) subject to rules</p> <p>A. Topsoil and landscaping reuse depots</p> <p>B. Aggregate reuse depots</p> <p>C. Small liquid soil depots</p>	<ul style="list-style-type: none"> • Conservation Ontario is concerned that the proposal to exempt specified excess soil management operations from the current requirement to obtain a waste Environmental Compliance Approval (ECA) would weaken provincial oversight of these activities in areas where municipal drinking water sources require protection from contamination. If the amendments proceed as proposed, these exemptions must be complemented by appropriate oversight and enforcement to ensure operators are appropriately following the rules outlined in regulation. • The current framework allows these activities to be managed through prescribed instrument policies (e.g., waste ECAs as outlined in subsection 1.0.1(1)(7) of the <i>Clean Water Act, 2006</i>) in source protection plans. The proposed exemption would take away the ability for local source protection plan policies to manage these activities through the ECA process. • Conservation Ontario recommends that the proposed exemption should not apply to excess soil management operations where the activities are identified as significant drinking water threats under the <i>Clean Water Act, 2006</i>.
<p>Enhanced reuse opportunities for salt-impacted soil (Section D, Part I in the Soil Rules)</p>	<ul style="list-style-type: none"> • Conservation Ontario is concerned that enhanced reuse opportunities for salt-impacted soil would not adequately protect municipal drinking water sources. Specifically, the 100m setback from existing or planned potable wells or properties expected to use groundwater wells for potable purposes is insufficient to protect municipal drinking water sources from contamination from salt-impacted soil. Under the <i>Clean Water Act, 2006</i>, well head protection zones have been identified for each well and are based on best available science and technical assessment. Studies undertaken consider the vulnerability/permeability of the soil and time of travel of water and contaminants to the well. Protection zones where activities are identified as significant drinking water threats can exceed the 100m setback.

Proposed Amendments	Conservation Ontario Comments
	<ul style="list-style-type: none"> • In addition to maintaining the current 100m setback, Conservation Ontario recommends the following amendments to the proposed rules to provide further protection for municipal drinking water sources: <ul style="list-style-type: none"> ○ Use of salt-impacted soil should not be allowed in protection zones identified under the <i>Clean Water Act, 2006</i> where the vulnerability score is 10; and, ○ Use of salt-impacted soil should not be allowed in Issue Contributing Areas for chloride identified under the <i>Clean Water Act, 2006</i>. • While the MECP is proposing to retain rules that prohibit placement of salt-impacted soils within 100m of wells and 30m of surface water bodies (<i>note: the proposal incorrectly states that the current setback from surface water bodies is 100m</i>), as well as new prohibitions for use at agricultural properties in areas used for growing crops, there is no discussion of the impacts of natural hazards. For example, there is potential for salt-impacted soil placed in areas susceptible to flooding to transport the salt during flood events or to increase the flood risk. It is recommended that placement of salt-impacted soils in natural hazard areas be considered in the proposed amendments to protect sources of drinking water. While a restriction exists for placement of salt-impacted soil within 30m of a surface water body, Conservation Ontario notes that floodplains can extend significantly further than 30m from a water body. Proper setbacks should also be considered for sites receiving salt-impacted soil to avoid interaction with stormwater management facilities. • With appropriate safeguards in place to protect municipal sources of drinking water, Conservation Ontario acknowledges that the proposal would enhance opportunities to reuse salt-impacted soil in areas where it is deemed to have minimal impact. If the amendments proceed, Conservation Ontario recommends road projects be prioritized for the re-use of salt-impacted soil, given the elevated levels of chloride which exist in these areas due to road maintenance. • The proposed rules state that a landscape plan would need to be prepared and certified by an expert (e.g., a licensed landscape architect) to permit the use of salt-

Proposed Amendments	Conservation Ontario Comments
	<p>impacted soil on properties with a community, institutional, parkland or residential use. This expert would be required to identify the acceptable concentration of salt-related contaminants in these areas. Conservation Ontario is concerned that a landscape architect may not have the necessary expertise to determine acceptable chloride concentration (as opposed to, for example, a Qualified Person). Greater clarity is required as to what information an expert such as a landscape architect would base their decision-making on. It is recommended that such experts base their assessments on targets identified in relevant source protection and watershed plans, where such exist.</p>
<p>Enable greater soil management at Class 2 soil management sites and create greater alignment at local waste transfer facilities and depots (section 21 and 25 of the Excess Soil Regulation and associated provisions in the Soil Rules)</p>	<ul style="list-style-type: none"> As part of the proposed amendments for Class 2 soil management sites, the Ministry is proposing to allow mixing of soil from different projects areas into one stockpile so long as there is confidence that the mixed soils are of similar quality and there is no evidence of contamination. Conservation Ontario requests additional clarity on how “confidence” will be determined to allow for the mixing of soils from different areas into a single stockpile.
<p>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)</p>	<ul style="list-style-type: none"> Conservation Ontario requests clarification on the rationale for removing the requirement for a QP to confirm there will be no negative effect from the use of a polymer, or to ensure that the polymer and any potential break down products will not result in an adverse effect. The proposal is to instead require a QP to undertake their investigation to verify that “such information does not identify concerns that an adverse effect may result from the use of these polymers, or their breakdown products, for this purpose in soil.” This shift seems to imply the project leader or operator will make the final decision regarding the use of a polymer, rather than this decision coming from a QP. Having a QP attest to there being “no negative effects” prior to the use of a polymer is an important baseline to assist with monitoring the effects on the surrounding environment. Conservation Ontario recommends the current process be retained which required a QP to confirm that the storage and final

Proposed Amendments	Conservation Ontario Comments
	<p>placement of the excess soil will not cause an adverse effect.</p>
<p>Greater flexibility for storage of soil adjacent to waterbodies (storage rules in the Soil Rules document)</p>	<ul style="list-style-type: none"> • Conservation Ontario is concerned with the proposal to allow soil storage within 30m of a water body for projects excavating in or near that area. Through regulations made pursuant to Section 28 of the <i>Conservation Authorities Act</i>, CAs regulate development, including the temporary or permanent placing, dumping or removal of any material, on sites located within CA regulated areas. Storage of soils in the floodplain is generally not supported by CAs due to the associated natural hazards. As a result, the changes facilitated by the proposed regulatory amendment may conflict with CA regulatory policies and may result in a contravention of an individual CAs' Section 28 regulation. While Conservation Ontario acknowledges the proposed amendments would only permit storage if mitigation measures are in place to minimize adverse effects to the water body, it is unclear what level of monitoring and Ministry-led enforcement would occur to ensure these sites appropriately employ mitigation measures. Therefore, it is recommended that soil storage occur outside of the hazard area to mitigate any adverse impacts on the waterbody, including sources of drinking water.