

Enbridge's Feedback on Proposed Excess Soil Regulation Amendments

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Headquartered in Calgary, Alberta, Enbridge's common shares trade under the symbol ENB on the Toronto (TSX) and New York (NYSE) stock exchanges.

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Executive Summary

Enbridge appreciates the opportunity to comment on the Ministry of the Environment, Conservation and Parks' (MECP) Proposed Regulatory Amendments to Encourage Greater Reuse of Excess Soil (ERO #019-7636) for the Excess Soil Regulation that came into effect January 1, 2022. Enbridge notes that this new proposed amendment exempts specified types of Class 1 facilities from sections 27, 40 and 41 of the Environmental Protection Act resulting in an exemption from the need to obtain a waste Environmental Compliance Approval (ECA), and instead follow rules in regulation. Enbridge is supportive of these amendments and acknowledges these provisions will facilitate excess soil regulatory compliance.

Small Liquid Soil Depots Exemption

From our response letter to the previous regulatory amendment ERO #019-5203 issued April 8, 2022, we commented that the most difficult aspect of compliance since the onset of O. Reg. 406/19 has been and continues to be management of liquid soils. Few receiving sites across the province have appropriate instruments in place to allow for acceptance of liquid soils from projects, which leaves large geographical gaps with few or no options for disposal where on-site processing is not feasible. Enbridge acknowledges that the new proposed amendments will provide more flexibility for small volume (200 m³) receiving sites to manage liquid excess soil.

The removal of ECA permitting requirements and establishing specific rules under O. Reg. 406/19 will allow small volume liquid soil depots to accept liquid soil from various project areas that utilize hydro-excavation to generate excess soil. We note that wastewater generated from liquid soil processing would still require appropriate management in accordance with requirements under the Ontario Water Resources Act (OWRA), including any requirements for sewage works approvals. It is also noted that excess soil (up to a maximum of 2,000 m³), whether liquid or solid, could not remain at the site for more than six (6) months.

It is recommended that the storage time align with existing local waste transfer facilities (LWTF) and Class 2 Site timelines to two (2) years. We are also seeking clarification on whether the MECP will provide an expedited approval mechanism for obtaining sewage works ECAs for these small liquid soil depots. Also, from our experience, the liquid soil management industry (receiving sites and hydrovac operators) have varying levels of knowledge of how to apply O. Reg. 406/19 to their operations.

Enbridge also recommends that targeted, plain language technical guidance, additional documentation and/or educational resources be made available by MECP to this industry to help them understand the requirements (rules, permitting, storage, fencing, sampling, etc.) for setting up these facilities and carrying out these operations.

Local Waste Transfer Facilities (LWTF)

It is understood that the amendments will enable increased volumes (up to 25,000 m³) of excess soil to be managed at Class 2 soil management sites and create greater alignment between LWTF and depots under section 21 and 25 of the Excess Soil Regulation and associated provisions in the Soil Rules.

As it pertains to LWTF, there will be greater alignment with Class 2 sites requirements, specifically requiring the filing of a notice on the Excess Soil Registry if accepting greater than 2,000 m³ of dry excess soil and any amount of liquid soil (instead of the current requirement to notify a director for storing liquid industrial waste). Enbridge seeks clarification as to whether this is a new type of Notice to be filed and would this be in addition to a notice of project area.

Enhanced Investigation Project Area Landscaping Exemption

The amendments include an exemption for Reuse Planning Requirements (Schedule 2 of the Excess Soil Regulation) for landscaping projects excavating 100 m³ or less of excess soil within Enhanced Investigation Project Areas (EIPAs) that are not known to have any potentially contaminating activities (PCAs) and there are no known or apparent reasons to suspect that the soil is impacted by contaminants.

Enbridge Gas pipeline installation/maintenance projects are typically shallow trench excavations that have similar scope to landscaping projects (e.g., construction of walkways, retaining walls, decks, fences, and ponds). Reuse Planning Requirements are already exempted from EIPAs where less than 100 m³ of excess soil is generated and sent to a Class 1 facility. Furthermore, large infrastructure projects may extend further within portions of EIPAs that have no PCAs. Based on this understanding, Enbridge recommends that this exemption be extended to infrastructure projects of any volume of excess soil generated within EIPAs that have the same conditions.

Soil Rules

Enbridge notes that MECP has clarified that soil rules provisions apply to both soil and crushed rock as intended (e.g., in the soil characterization sections). However, by applying sampling requirements to crushed rock, this may limit aggregate recyclers from accepting roadbed aggregates. Enbridge recommends MECP remove sampling requirements for crushed rock that originates from Right of Way projects.

Additionally, it is clarified that the Table 1 standard and leachate table standard for Cadmium (agricultural and other land use) are revised to reflect the fact that the background value is not based on measurements. There are examples of other background parameters across the province (e.g., Vanadium, Molybdenum, Uranium, etc.) where background standards are naturally exceeded. Enbridge recommends to MECP that revisions be made to the applicable standards for additional background parameters.

Previous Amendment

From our response letter to ERO #019-5203 issued April 8, 2022, Enbridge provided additional comments regarding changes to the Reuse Planning Requirements and whether their application in certain scenarios is in line with the MECP's intent of the regulation. This is specifically apparent for project areas which only partly include land parcels that meet the definition of EIPAs. The additional time, cost, and effort to apply Reuse Planning Requirements to projects is significant, and it is Enbridge's continued position that it should not be done when the benefits of completing the undertaking are low.

We reiterate our recommendation that the MECP considers including conditions in the regulation which allow project leaders to subdivide or delineate project areas for the specific purpose of being able to apply the Planning Requirements only to portions of the overall project area designated as EIPAs. Alternatively, the MECP could revise the conditions of Schedule 2 of the regulation to explicitly exempt projects from application of Sections 8-16 of the regulation, when all the following criteria apply:

- The project area is within an Area of Settlement,
- The project is not being completed for the purpose of remediating contaminated land,
- The project area is only partly comprised of one or more EIPA(s),



- Less than 100 m³ of excess soil is generated from the EIPA portion of the overall project area,
- The excess soil generated from the EIPA portion of the project area is directly transported to a waste disposal site that is not a Class 2 management site, and
- The remaining part of the project area which is not considered an EIPA does not generate greater than 2000 m³ of excess soil.

Conclusion

Enbridge appreciates having the opportunity to comment on the government's Proposed Regulatory Amendments to Encourage Greater Reuse of Excess Soil (ERO #019-7636) for the Excess Soil Regulation and is supportive of the proposal. If you have any questions or require additional information, please do not hesitate to contact Abel Kome, Government Affairs Specialist (abel.kome@enbridge.com).