

December 1, 2023

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

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

The City of Toronto's Engineering and Construction Services and Toronto Water divisions (the City) have reviewed the proposed amendments to Ontario Regulation (O.Reg.) 406/19 On-Site and Excess Soil Management (the Regulation) outlined in ERO # 019-7636 and appreciates the opportunity to provide comments to the Ministry of the Environment, Conservation and Parks (MECP).

The City acknowledges and appreciates MECP's intent and efforts in trying to encourage greater reuse of excess soil with the proposed amendments. While the City is generally supportive of the proposed changes and recognizes that the proposed changes will benefit certain industry stakeholders, they lack applicability to municipal facilities and capital projects, especially for a municipality like Toronto where municipal-owned real estate is limited and land price is high.

City staff attended webinars and engagement meetings with MECP during the consultation period where preliminary concerns and questions from the City regarding the proposed amendments were shared with MECP. The City would like to provide the following formal comments and questions for MECP's consideration:

General Comments

- It is requested that MECP provide an updated draft of the Regulation and Soil Rules document that highlights the proposed changes for review to avoid confusion in interpreting the actual language.
- It is requested that MECP delay the implementation of the amendments to a later date than the proposed January 1, 2024. It is also requested that MECP undertake a phased approach with the proposed notice filing requirement for the new Class 1 Soil Management Sites, local waste transfer facilities, and Class 2 Soil Management Sites, to allow sufficient time for the Excess Soil Registry to be updated and the industry to prepare for the changes in their projects and facility operations.

- Regarding the proposed registry filing requirements for the three new types of Class 1 soil management sites, Class 2 soil management sites, and local waste transfer facilities, it is crucial for MECP to provide details on how the filing would work (e.g., filing frequencies and costs).

Specific Comments

1) Exempt specified excess soil management operations from a waste environmental compliance approval (ECA) subject to rules

A. Topsoil and Landscaping Reuse Depots

- The City agrees with, and is supportive of, expanding the current retail landscaping soil depot requirements to include topsoil reuse facilities.
- The second last bullet point states that *“Packaged topsoil and landscaping products being distributed for retail sale, and any sale of up to 25 m³ to a reuse site from a retail outlet (this is an expansion of the current provision) would not be designated a waste”*. It is requested that MECP use clearer language to describe the exemption indicating its intent to exempt “unpackaged” and “packaged” topsoil from the waste designation.
- It is noted that the proposed amendment uses “up to 25 m³” and the current language in Section 3 (8) of the Regulation uses “less than 25 m³”. It is requested that MECP use consistent wording.

B. Aggregate Reuse Depots

- The City agrees with, and is supportive of, creating a new type of facility to encourage aggregate reuse.
- The third bullet point indicates that acceptable aggregate material shall not include glass, concrete, asphalt etc.; however, the recycled aggregates (e.g., granular A or B) from municipal road work contain percentages of crushed glass, recycled concrete, and recycled asphalt as it is allowed under Ontario Provincial Standards Specifications (OPSS). This requirement would limit the reusability of municipal road aggregates and it is requested that MECP remove or revise this requirement.

C. Small Liquid Soil Depots

- The City agrees with, and is supportive of, creating this new type of facility to encourage liquid excess soil reuse.

2) Enhance reuse opportunities for salt-impacted soil

- The City agrees with, and is supportive of, expanding conditions where salt-impacted soil can be reused while ensuring that the potential adverse impact of the salt-impacted soil placement is kept minimum.
- The current Soil Rules allows salt-impacted soils to be placed at an industrial or commercial site where non-potable standards are applicable; however, the amendments (first bullet point of section 2) indicates that this condition would be replaced by a set of new conditions. It is understood that this was not MECP's intention and rather MECP intended to expand the current rules with the new conditions. It is requested that MECP retain the current salt-impacted excess soil rules and expand them with the new conditions.
- The last sub-bullet point under the first bullet point states that salt-impacted soil shall not be placed within 100 m of a waterbody, which is inconsistent with the 30 m restriction stated in the current Soil Rules. It is requested that MECP clarify this requirement to remain consistent with the Soil Rules.

3) Enable greater soil management at Class 2 soil management sites and create greater alignment at local waste transfer facilities and depots

- The City generally agrees with, and is supportive of, amending certain rules for Class 2 soil management sites and local waste transfer facilities to enhance their usability for excess soil management.
- The first sub-bullet point under the 7th bullet point indicates that local waste transfer facilities will be required to file 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). The City has the following comments and requests for clarification:
 - Regarding the greater than 2,000 m³ of dry excess soil trigger, it is requested that MECP provide clarification around the 2,000 m³ (i.e., confirm that once a local waste transfer facility anticipates that more than 2,000 m³ of dry excess soil will be received, the registry notice filing requirement for the facility is triggered).
 - The City generates both dry and liquid excess soil on a daily basis that would go to the City's local waste transfer facilities from fit state of repair operations on linear infrastructure, including drinking water and sewer laterals. Assuming the registry notice is intended on a frequent basis, such as every incoming load, filing notices on the registry at this frequency would be labour intensive, highly impractical, and the associated registry fee filing would be a huge financial

burden. Therefore, it is requested that MECP confirm whether registry filing for municipally owned and operated local waste transfer facilities is meant to be a one-time process for the lifetime of the facility operation, or to reflect each and every load of dry and liquid excess soil received by the facility. The City feels strongly that overly frequent filing for these low-risk municipally owned local waste transfer facilities is unnecessary and discourages beneficial reuse of excess soil. It is noted that the Toronto Water Division already made the argument that liquid excess soil should not be considered subject waste, including liquid industrial waste, meaning a Director Notification should not be required; Since a notification to the Director is argued to not be required as per O. Reg. 347, the City argues that a registry notice should also not be required under the O. Reg. 406/19 for the City's local waste transfer facilities that accept liquid soil generated from water and wastewater infrastructure maintenance and repair.

- Further to the above, it is requested that MECP consider waiving any associated Excess Soil Registry fees for municipally owned and operated local waste transfer facilities.
- The City has local waste transfer facilities that accept and manage excess soil generated from emergency fit state of repair projects. Excess soil excavated to address an emergency is already exempted from completing Excess Soil Registry filing, planning reporting, and soil tracking under the Schedule 2 of O.Reg. 406/19. Therefore it is requested that MECP consider allowing an exemption for registry filing for municipal owned local waste transfer facilities that only accept excess soil generated from emergency fit state of repair projects.

4) Provide hauling record exemptions and clarifications

- The City generally agrees with, and is supportive of, exempting specified small projects from physical or electronic hauling records, and adding clarifications to the hauling record requirements.
- Subsection a. under section B requires the owner or operator of the source site to confirm the accuracy of the information provided in the hauling records before soil is removed from the source site. However, it should be noted that only partial information is available on the hauling records prior to soil removal from the source site (i.e., information related to soil deposition at the receiving site is not available at that time). This means that before the soil is removed from the source site, only the information available at that time can be verified. Therefore, it is requested that MECP clarify that only the hauling information available at the time the soil leaves the source site is required to be verified.
- The responsibility of confirming the accuracy of the hauling information would create administrative and financial burden to the City while it is also unrealistic for City staff

to review the hauling information on a truck-by-truck basis. Therefore, it is requested that MECP change the responsible party to only the operator of the site rather than the owner or the operator for municipal projects.

5) Exempt landscaping projects at enhanced investigation project area from the reuse planning requirements

- The City agrees with, and is supportive of, exempting landscaping projects at low-risk portions of enhanced investigation project areas from the reuse planning requirements (i.e., notice filing on the Excess Soil Registry, reuse planning document preparation, and soil tracking).
- The City has properties that were developed on historical landfills where applicable environmental remediation and/or risk management work was completed to support the current property use (e.g., soft cap placement for current parkland use). Some life-cycle replacement/repairs and small-scale upgrades at these properties such as playground resurfacing and bench and lighting installation would require shallow excavation within the “cap” and generate small amounts of excess soil (e.g., less than 100 m³). Currently this type of work would trigger the full reuse planning requirements unless the excess soil is destined to a waste disposal site (section 2 of Schedule 2 of the Regulation exemption). Since the quality of this excess soil is generally “clean”, it would not be allowed to be deposited at a landfill after 2025 (Section 22 of the Regulation). Without an applicable exemption, the full reuse planning requirements imposed on this type of municipal project can be excessive and financially burdensome. Therefore, it is requested that MECP consider expanding the applicable projects to include low-risk shallow excavation works that generate less than 100 m³ at properties underlain by historical landfills or areas of potential environmental concern (APECs) to be exempted from the reuse planning requirements, provided that the current risk management measures (e.g., capping) in place are retained at the discretion of the project Qualified Person (QP).

6) Clarify the responsibility of a QP when dewatering or solidifying liquid soil

- The City agrees with, and is supportive of, the proposed clarifications to the responsibility of a QP when substances are used for dewatering or solidification of liquid soil.

7) Clarify sampling and analysis requirements

- The City agrees with, and is supportive of, the clarifications made to the current requirements related to the mandatory sampling and analysis plans.

- The City has more than 60 stormwater management ponds and has found the current stormwater management pond sampling and analysis requirements (e.g., sampling methodology and frequency) outlined in the Soil Rules challenging to practically implement. The current rules do not allow for in-situ sampling of stormwater management ponds unless an Environmental Compliance Approval (ECA) is obtained for each pond. The current sampling and analysis requirements under the Regulation are established based on ex-situ or stockpile sampling after the pond sediment is removed and dewatered. This approach has significant implications on the space requirement for drying and stockpiling the sediment and financial costs of the operations of dredging, hauling to offsite for drying, and sampling. From a scientific perspective, industry experts have completed studies to conclude that the results of samples obtained in-situ are comparable to the results of samples obtained ex-situ (i.e., sediment removed, dewatered, and stockpiled). Therefore, it is requested that MECP consider expanding the sampling requirements associated with stormwater management pond to allow for an in-situ sampling approach or a hybrid sampling approach.

8) Provide greater flexibility for storage of soil adjacent to waterbodies

- The City agrees with, and is supportive of, amending rules to enable storage of sediment and soil near waterbodies for projects excavating in or adjacent to that waterbody.
- It is noted that “water body” defined under O.Reg. 153/04 does not include a pond constructed on the property for the purpose of controlling surface water drainage such as a stormwater pond. The water bodies related to soil storage referred in the first bullet point do include stormwater ponds. It is requested that MECP define water body in O.Reg. 406/19.
- To mitigate potential adverse impacts of stockpiled excess soil to the adjacent water body, it is requested that MECP consider setting a buffer zone requirement between the soil storage and the water body.

9) Provide other clarifications and corrections

- The City agrees with, and is supportive of, the additional clarifications and corrections proposed to assist with better understanding of the requirements of the Regulation.
- The fourth last bullet point under the Regulation section references “subsection 3 (2)” regarding the Project Leader and the owner of the reuse site being the same. The correct reference should be “section 3 (2) 2” instead.

- The last bullet points under both the Regulation section and the Soil Rules section indicate other minor corrections or clarifications will be made. It is requested that MECP provide an updated draft of the Regulation and Soil Rules document that highlight these changes for review.

We appreciate your consideration of our comments, and we would be pleased to speak with you about these comments at your convenience. We look forward to continuing to work in collaboration with MECP on the Regulation.

Regards,



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