



1 DECEMBER 2023

To: Reema Kureishy
Environmental Policy Branch
40 St Clair Avenue West, 10th Floor
Toronto, ON, M4V 1M2

[ERO Electronic Submission](#)

ERO Number: 019-7636

RE: Proposed Regulatory Amendments to encourage greater reuse of excess soil

The Waterloo Region Home Builders Association (WRHBA) is the recognized leader and the voice of the new residential home construction, land development, and professional renovation industries in the Regional Municipality of Waterloo, ON. We are an association of knowledgeable, trusted, resourceful, and local professionals, and together, we create vibrant, thriving, and sustainable communities across our regional area comprised of three municipalities and four townships. WRHBA member companies construct over 90% of all new residential construction, making it one of the most significant economic engines driving the Region's economy, creating over 22,000 jobs, 1.5 billion in wages, and 3 billion in investment value.

As an Association, we are invested in bringing insight to public policy decision-makers at all levels of government on matters that affect the residential development and construction industry in addressing housing affordability and choice for consumers.

The WRHBA is writing to express its support of the Ontario Home Builders Association's (OHBA) submission that was developed through consultative input from Associate members across our 27 provincial chapter affiliates.

Environmental Registry Background

The Ministry of the Environment, Conservation and Parks is proposing amendments to Ontario Regulation 406/19 (the excess soil regulation) and the Rules for Soil Management and Excess Soil Quality Standards 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.

Background

OHBA is supportive of the Made-in-Ontario Environment Plan and the Housing Supply Action Plan. A key component of these plans is to modernize the excess soil management framework, promote the reuse of excess soils and to improve efficiencies within the RSC (Record of Site Condition) process. OHBA is also a member of the Excess Soils Engagement Group.

In recent years, OHBA has responded to several consultations on excess soils:

- Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse – November 2020 Submission (*ERO 019-2462*)
- Excess Soil Management Regulatory Proposal – June 2019 submission (*ERO 013-5000*)
- Excess Soils Management Framework - June 2017 submission (*EBR 013-0299*)
- Excess Soils Management Framework - January 2016 submission (*EBR 012-6065*)

Detailed Feedback

OHBA continues to support provincial actions that streamline processes and approvals to facilitate the reuse of excess soils in a transparent and predictable framework required to support an increasing housing supply. We strongly support the provincial goal to build 1.5 million new homes across Ontario over the next decade. Achieving such an ambitious goal will require cooperation from all three levels of government and public policy adjustments to expedite both infrastructure and housing. Through OHBA and our 27 Chapters, the residential construction industry has participated in and supported the general direction of several initiatives over the past few years to improve and modernize the excess soils framework in Ontario.

OHBA notes that the excess soil management framework is a complex regulatory compliance mosaic that must be carefully rolled out during the implementation phase to ensure that positive outcomes are in fact achieved given the many actors and diverse nature of sectors involved in excess soils. OHBA remains supportive of the *Made-in-Ontario Environment Plan* commitment to: “recognize that excess soil is often a resource that can be reused. Set clear rules to allow industry to reduce construction costs, limit soil being sent to landfill and lower greenhouse gas emissions from trucking by supporting beneficial reuses of safe soils.” The new approach will ensure that excess soils are properly traced without creating a significant new red tape and paperwork regime. OHBA welcomes the more consistent approach under provincial guidance for soil management, which should not act as a barrier to opportunities for remediation, reuse, and intensification.

It is important to recognize that the old fractured legislative environment concerning excess soil management contributed to significant and increasing costs of residential construction. Industry regulatory compliance requirements, as well as local municipal government policies, operational procedures and contractual practices, will all have adoption complexities which is why we are appreciative of the MECP recognizing the need for provincial leadership.

From a residential construction and land development industry perspective, the proposed content of the Environmental Registry posting is welcome and will expedite development applications and construction processes. OHBA is supportive of clarifying the responsibility of a QP dewatering or solidifying liquid soil. Furthermore, we support that the Ministry has provided greater clarity on sampling and analysis requirements. OHBA supports exempting specified excess soil management operations from approvals, and we encourage the Ministry to allow greater flexibility by providing standard rules rather than waste approvals for interim storage processing sites (i.e., depots).

An EASR type process to replace some waste approvals for interim storage and processing sites/depots with standard rules would be welcomed. This would be consistent with current and proposed requirements for depots. The salt impacted soils clarifications are very positive. Allowance to use that soil in more circumstances is positive.

Flexibility is needed in order to make reuse more possible in many cases, especially in urban environments. OHBA would welcome some consideration of broadening the exemptions regarding the 100m setback from potable water use in circumstances where a hydrogeological assessment has been completed. This would allow a QP to consider the direction of groundwater flow and other factors (e.g. aquitard) when determining whether salt impacted soil could be placed without causing an adverse impact.

OHBA supports the exemption from the reuse planning requirements for landscaping projects at enhanced investigation sites. Most landscaping projects are typically within the top one meter, whereas the most problematic contamination from enhanced investigation sites would typically be deeper and within groundwater. We also note that, in general, the planning and hauling record exemptions should be applied to all landscaping projects excavating 100m³ or less, as in many cases, for small landscapers, the project leader is the actual "homeowner." We do note that the landscape architect certification component in relation to salt use may be an overreach.

OHBA believes the intent of the Ministry was to improve opportunities for reuse of aggregates by introducing aggregate reuse depots. Specifically, the ERO posting notes for 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."* OHBA is concerned by some language (and clarified in a recent Q&A opportunity) in the ERO proposal that will cause significant compliance risk to companies that reuse aggregates. We note for Ministry consideration:

- Practically, most aggregate for reuse will not meet the "site condition standards" set by the Ministry. Either due to naturally occurring metals in rock, or inherent nature of concrete or asphalt that will often "contaminate" the aggregates when placed under a road, or the integration of crushed concrete or recycled asphalt products into the granular itself. None of these conditions make the aggregate less appropriate for reuse under similar conditions (e.g. under a new roadway), and these are existing and important circular economies that should be encouraged.
- Per proposed amendment, recycled aggregate does not include glass, concrete, asphalt, etc. Concrete is an aggregate, which does not align with OPSS.PROV 1010. Why is it excluded from Aggregate Reuse Depots? Can Granular A or B be composed of recycled concrete? Further clarification is needed.
- The prohibition on asphalt and concrete could prohibit the receipt of aggregate that incorporates recycled materials per OPSS.PROV 1010. This would require discussion for alignment with the aggregate/recycled aggregate industry.
- Any compliance scenario that involves testing of aggregates (whether reused or from a pit) and comparison to soil standards should be avoided at all costs, because the results will consistently not meet environmental standards.

There is an ongoing need for greater dialogue between industry and the MECP to provide feedback on how the Regulations are working and can be improved over time. The Ministry should recognize and support the world leading legislative and industry expertise in this sector and continue to seek advice to further improve the regulatory framework. Lastly, the Ministry needs to recognize and fully appreciate the huge shift that will occur with the January 1, 2025, deadline for acceptance of many kinds of soils at landfills comes into effect.

With this looming deadline, the Ministry should:

- Be engaging with stakeholders to identify issues and prepare plans, especially as in some areas of the Province, there are few deposit sites available other than landfills.
- Increase compliance as there may be an increase in those opting to illegally deposit soils at landfills despite the ban.
- Increase educational outreach to prepare stakeholders for these changes.

Conclusion

In closing, OHBA strongly believes that there continue to be opportunities for the province to streamline Ontario's environmental approvals processes to ensure that Ontario is open for business while balancing environmental protections. Overall, OHBA is supportive of the regulatory proposal with a few caveats, as articulated in our submission above. We support the provincial government's objective to continuously improve the protection of health and the environment while facilitating the safe and appropriate relocation of soil. It is important that the government have a strong framework for excess soils management without overburdening the sector with significant additional red tape. We believe we can maintain the integrity of the approval process while finding efficiencies and that the current proposal by the MECP is another positive step to modernize the excess soils regulatory framework.

On behalf of our 4000+ member companies, we appreciate the opportunity to provide the provincial government with our feedback and recommendations. In coordination with our 27 Chapter HBAs, we would be pleased to meet directly with MECP officials to discuss further.

Sincerely,

WATERLOO REGION HOME BUILDERS' ASSOCIATION



Marie Schroeder,
Executive Officer
c: OHBA