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Comments Regarding Proposed Amendments to O. Reg. 406/19 – September 2023

***“1) Exempt specified excess soil management operations from a waste environmental compliance approval (ECA) subject to rules*** *C. Small liquid soil deposits. For clarity, material from cleaning out sewage works is not excess soil and would not be permitted at these sites; nor would liquid soil that is hazardous waste, that is from a soil remediation project or from an industrial stormwater pond.”*

* My 16-year study of over 130 SWM ponds shows that sediment contaminant sources are the same for residential, commercial and industrial SWM ponds when industrial operations are completely contained within a building. I would propose that Section 1) C. be amended to permit industrial SWM pond sediments at these sites if the ponds only receive runoff from parking lots and rooftops.

***“Section 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)*** *Clarify the conclusion that a QP must come to when using substances to solidify**liquid excess soil to avoid it being interpreted as a guarantee.*

* *Remove the requirement for QPs to confirm that there will be no adverse 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.*
* *Instead, clarify that QPs are responsible to undertake reasonable investigations and collect, compile and assess relevant information related to a polymer, including a manufacturers product information, and 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.”*
* I would propose that dewatering & bulking agents always be analyzed for the same analytes as are required for SWM pond sediments before they are mixed with the sediment.
* I have completed many chemistry studies for the following dewatering and bulking agents: polymers, wood chips, sawdust, yard compost and food compost. In several cases, I was consulted after contaminated materials had already been mixed into the sediment. For example:
  + Polymers mixed with diesel fuel as a standard method for producing a solution that would distribute evenly into the sediment.
  + Wood chips and sawdust contained natural biogenic toluene that was misinterpreted as possible fuel contamination.
  + Yard compost contained F3-F4G petroleum hydrocarbons (PHCs) that were consistent with asphalt pavement particles.
  + Food compost contained pyrogenic polycyclic aromatic hydrocarbons (PAHs) that were consistent with exposures to heated cooking processes.

***“7) Clarifying sampling and analysis requirements (Section B of Part 1 of the Soil Rules).*** *The following amendments would be made to clarify current requirements related to mandatory sampling and analysis plans.*

* *Stormwater management (SWM) pond sampling: Clarify that the minimum number of samples required when excavating and segregating based on zones can be distributed equally across the zones, based on some QP judgement, and are not intended to be applied per zone.”*
  + I would propose a clarification to state how this applies to insitu versus exsitu sampling rules.

***“9) Other clarifications and corrections*** *The following proposed amendments provide clarifications to assist with greater**understanding of the regulatory requirements, without changing the general policy**intent, including the following:*

*Regulation:*

* *Clarify the requirement for liquid soil transportation in section 17(3), that valves should be locked if they are part of the vehicle, to clarify that trucks with valves are not always required for liquid soil transportation.”*
  + Please clarify which conditions and circumstances would allow liquid soil (undewatered SWM pond sediment) to be transported in a vehicle that is not equipped with a locking valve? For example, would a dump truck with a sealed tailgate be permitted rather than a vacuum truck?

*“Soil Rules:*

*With respect to leachate analysis, clarify that if petroleum hydrocarbons and metal parameters are only being sampled because of the mandatory sampling and analysis plan requirements (i.e., they were not also associated with a potentially contaminating activity), they do not need leachate analysis as well.”*

* Please confirm if mSPLP and/or TCLP leachate testing for metals and PHCs is not required for routine SWM pond sediment chemistry analysis?