**Ontario Sewer and Watermain Construction Association**



***OSWCA Submission for ERO#* 019-7636*– Proposed amendments to O. Reg. 406/19: On-Site and Excess Soil Regulation and the Rules for Soil Management and Excess Soil Quality Standards***

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December 1st, 2023

**Submitted via email to:** MECP.LandPolicy@ontario.ca

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**ERO #019-7636**

**Proposed amendments to O. Reg. 406/19: On-Site and Excess Soil Regulation and the Rules for Soil Management and Excess Soil Quality Standards**

On behalf of our members, the Ontario Sewer and Watermain Construction Association (OSWCA) would like to provide the following comments and recommendations to the Ministry of Environment, Conservation and Parks’ (MECP) consultation on additional amendments to Ontario Regulation 406/19.

OSWCA understands the need for continuous improvement of Ontario Regulation 406/19 (O.Reg 406/19) in order to adjust its rollout to help organizations better understand their requirements and help them to implement proper soil management processes that meet the intent of the regulation. OSWCA applauds the Ministry of the Environment, Conservation and Parks’ commitment to defining and implementing a regulatory regime to improve the removal, disposal, and re-use of excess soils.

OSWCA appreciates the current proposal ERO #019-7636 aimed at ensuring that the regulation can be more easily implemented and understood and reducing requirements on lower risk activities to achieve greater reuse of readily usable excess soils as part of a circular economy.

OSWCA would like to make the following recommendations for necessary changes that will help to address these issues.

**1. Alignment with Existing Regulations**

OSWCA supports the proposed enhanced reuse opportunities for salt-impacted soil; however, there remains further opportunities for harmonizing the approach to salt-impacted soil with existing regulations.

Specifically, OSWCA calls on MECP to further amend the proposed enhanced reuse opportunities for salt-impacted soil to include a similar approach taken within in O. Reg. 153/04, the Soil, Groundwater and Sediment Standards for use under the Environmental Protection Act and the accompanying Rationale Document (MOE, 2011) for potable groundwater scenario where a stratified soil approach can be maintained.

For greater clarity, Table 4 soil standards do not provide a value for Electrical Conductivity and Sodium Adsorption Ratio for any land use if soil is placed and maintained at a depth greater than 1.5 metres below ground surface. It is understood that this is a result of the primary driver of risk posed by EC/SAR which is outlined in the Rationale Document as being protective of soil organisms and plants. It is unclear to industry and consultants because the approach taken to brownfield redevelopment is less stringent than that taken with the beneficial reuse of salt-impacted soil, especially considering its widespread use and ubiquitous presence in urban environments.

Accordingly, OSWCA hereby requests that the MECP consider removing the SAR/EC standards for subsurface soils as provided by Excess Soil Quality Standards Table 4.1 and Table 5.1.

**2. Adopt a Zonation Approach**

We note that salt impacted soils were being permitted on agricultural properties so long as they are not used in naturalized areas, crop fields, or pasturing areas. When considering the application of stratified site condition standards, with the appropriate salt impacted soil exemptions, there is an inherent spatial zonation that occurs for the reuse site. This would ease the acceptance restrictions on large properties that may have an environmentally sensitive receptor on a small portion away from the proposed excess soil placement area.

As it stands, only sites where Table 2.1/3.1 apply are eligible to accept excess soil with quality that meets Table 4.1/5.1 ESQS as the later tables are less conservative than any other site condition standards.

We therefor request that Ministry consider adopting a zonation approach to excess soil reuse sites, where a property can accept multiple soil qualities based on the site condition standards applicable to an area of the site, with appropriate setbacks.

**Concluding Notes**

OSWCA appreciates having the opportunity to provide input into this consultation process. By reviewing and addressing these concerns and recommendations, the MECP would be ensuring the proper adoption of rules based on the intent of this regulation and would be helping to clarify some of the ongoing uncertainty.

Please do not hesitate to contact Patrick McManus or Steven Crombie in our office (905-629-7766 ext. 222 or patrick.mcmanus@oswca.org or steven.crombie@oswca.org ) if you have any questions or need information regarding OSWCA and its membership.

Sincerely,

Patrick McManus

Executive Director