
VIA ONLINE SUBMISSION AT ENVIRONMENTAL REGISTRY OF ONTARIO

Ministry of the Environment, Conservation and Parks
c/o Reema Kureishy, Policy Analyst
Land Use Policy, Environmental Policy Branch
40 St Clair Avenue West, 10th Floor
Toronto, ON M4V 1M2

November 20, 2024

Re: ERO No. 019-9196 - Enabling Greater Beneficial Reuse of Excess Soil
Proposed Regulatory Amendments

Dear Ms. Kureishy,

On behalf of the City of Mississauga ("the City"), this letter is being submitted in response to proposal number 019-9196 that seeks to amend certain requirements under the Excess Soil Regulation.

The City is an active member of the Municipal Engineers Association (MEA) Excess Soil Working Group. The working group has met to discuss the proposed amendments and has prepared a separate detailed submission in response to that discussion and the proposed amendments. The City supports the comments made by the MEA Excess Soil Working Group in their letter dated November 15, 2024 and provides the following additional comments and questions for consideration:

1. Change the coming into force date of the landfilling restriction for excess soil meeting Table 2.1 residential standards (Section 22 of the regulation)

The City has no objection to the deferral of the landfill restriction. This change is not anticipated to impact of our work as the City already encourages diverting excess soil from landfills to either soil management sites or reuse sites whenever possible. That being said, with the clarification of the requirements for the QP declaration along with the proposed implementation of various reuse depots, the proposed deferral will allow the time required for municipalities and the industry to implement the amendments and set up and operate the reuse depots, respectively, prior to the landfill restriction coming into effect.

- With respect to the reference of "geotechnical instability", it is noted that the structural instability of soils may be difficult to demonstrate. Please consider revising this provision to instead reference "geotechnically unsuitable soils". Alternatively, it is requested that further clarification is included to provide guidance on what would be considered geotechnical unstable.
- Further clarification or guidance is requested with regard to what the MECP considers "reasonable effort" for the purpose of stating that no suitable reuse site could be located for the excess soil to be beneficial deposited at.

2. Exempt specified excess soil management sites from a waste environmental compliance approval (ECA) subject to rules

In general, we are supportive of these proposed amendments. Even though these types of facilities may not be directly applicable to all municipalities, the proposed amendments may lead to the creation of additional commercial facilities which will benefit municipalities.

A. Aggregate reuse depots

- The City does not have any additional comments/concerns to what has already been included in the MEA's comments.

B. Small liquid soil depots

- Given the proposed volumetric limits for these depots, the City assumes that these depots are meant to capture emergency and small volume projects versus providing an alternative option for excess soils generated as part of storm water management pond (SWMP) maintenance. If the intent is to provide an alternative option for SWMP maintenance, the limits proposed are not viable and would need to be significantly increased in order to reasonably support a SWMP maintenance project.

3. Enhanced reuse opportunities for aggregate and stormwater management pond (SWMP) sediment

In general, this is a welcome amendment, however the City has the following comments:

- With regard to excess soil that is part of engineered aggregate material or SWMP sediment being placed in a road right -of-way, it is requested that consideration be given to expanding the parameters from just asphalt related parameters to road activity related parameters. For example, metals, such as lead, zinc, iron, chromium, cadmium, nickel, and copper can be commonly seen exceedances related to car exhaust and wear and tear of tires and brakes, as well PHC F2 exceedances related to vehicle fluids like motor oils and lubricants.
- For purposes of clarity, can reference to reuse of engineered aggregate material and SWMP sediments within the "road right-of-way associated with an asphalt road" be expanded to include other asphalt surface outside the right-of-way, such as asphalt parking lots, works yard paved storage areas and driveways associated with municipal facilities.

4. Allow greater reuse of soil to be coordinated between similar infrastructure projects

The City does not have any additional comments/concerns to what has already been included in the MEA's comments.

5. Reduce reuse planning requirements for excess soil moved between infrastructure projects

The City does not have any additional comments/concerns to what has already been included in the MEA's comments.

6. Allow in-situ sampling for stormwater management pond (SWMP) sediment

In general, we are supportive of the introduction of in-situ sampling for SWMP sediment, however provide the following comments/concerns.

- The inclusion of the post-dredging confirmatory sampling seems to defeat the purpose of the in-situ sampling benefits. The original approach of only allowing ex-situ or stockpile sampling was impractical as majority of SWMPs did not have the space requirement for drying and stockpiling the sediment and financial costs of the operations of dredging, hauling to offsite for drying, and sampling made this practice not feasible. While the proposed inclusion of in-situ sampling has removed the issue as it relates to space requirements for drying and stockpiling sediment, it only adds to the financial costs as the City would now be duplicating analysis by completing both in-situ sampling and then would still be required to haul the sediment offsite to dry and sample again. In addition, generally confirmatory sampling is something that we would typically negotiate with a reuse site on a per contract basis. There are significant concerns with this now being a regulated requirement and the implications that this would have on planning a project and ultimately the ownership and liability of that material. This proposed amendment would not alleviate the problems caused by the current requirements, but rather would cause further negative impacts to municipalities' costs, time and efforts involved with SWMP maintenance. Our recommendation is to impose either in-situ sampling only, or stockpile sampling only, not both.

7. Regional mapping of naturally occurring local background concentrations

The City currently has no plans to undertake any studies or prepare regional mapping of naturally occurring parameters that exceed applicable Site Condition Standards. To date, there have been no requests from development applicants or consultants to have one prepared. As the City is mostly urbanized, it would be difficult to distinguish naturally occurring substances from anthropogenic sources.

In general, while we encourage and would welcome regional mapping to assist with characterizing naturally occurring background concentrations, we believe that this should be a collaborative municipal and MECP/province initiative. Rather than having some municipalities participate in this undertaking while others do not, undertaking this collaboratively with the MECP/province will provide a more cohesive and consistent development and characterization of these naturally occurring contaminants.

8. Other clarifications and corrections

The City is supportive of the clarifications and corrections proposed to the current Regulation.

9. General Comments to the Regulation

The City provides the following additional comments to support the intended goals of the regulation:

- It is requested that consideration be given to requiring that all reuse sites accepting 10,000 m³ or more of excess soil must engage a Qualified Person to assist with developing and managing intake requirements. Further, it is requested that the MECP consider including a requirement for registered reuse sites to prepare a Fill Management Plan as part of their planning documents, to improve oversight and accountability.
- The City supports the MEA's comments in requesting that the MECP considers expanding the RPRA registration requirement to residential, parkland, institutional and/or agricultural or other uses project areas which are removing 2,000 m³ or more of excess soils. A flat fee rate is suggested for these projects, which would still be exempt from the planning document requirements. By requiring registration of these projects, this would both improve overall transparency of excess soil movement within Ontario as well as provide RPRA an additional revenue source to assist in addressing the financial impacts that are affecting RPRA.
- It is requested that consideration be given to expanding the RPRA registration requirements for reuse sites to include reuse sites where at least 2,000 m³ of excess soil is expected to be deposited. A flat fee rate model could be used for these site (i.e. reuse sites accepting volumes between 2,000m³ and 10,000m³), and these sites could be exempt from the additional procedure requirements currently required for reuse site that are receiving least 10,000 m³ of excess soil. By requiring registration of these sites, this would both improve overall transparency of excess soil movement within Ontario as well as provide RPRA an additional revenue source to assist in addressing the financial impacts that are affecting RPRA.
- Further to the above request regarding expanding the reuse site registration requirements, it is requested that consideration be given to expanding the scope of the RPRA website to include "soil matching" capabilities. As a number of source and reuse site data is already available on the website, it would be helpful to broaden the functionality of the application to allow reuse sites to list their availability to receive soils. The costs could be paid by registrants of source sites through a small increase in fees so that reuse sites could list at no cost. This would significantly help to find suitable reuse sites across the province. To date, it has been the City's experience that there are rarely any opportunities to reuse excess soil on any of its own properties or projects. The lack of a "soil matching" type of service and transparency of available reuse sites makes it very difficult if not impossible to identify a suitable reuse site in advance of issuing a contract tender. As such, the City is heavily reliant on contractors to identify suitable reuse sites post-tender and in some cases, this can result in excess soil having to be taken to a Class 1 SMS or waste disposal site, putting additional budgetary and scheduling strain on projects. By increasing transparency of available reuse sites and having a publicly available "soil matching" service, the City can better plan for the management and reuse of excess soils pre-tender, by ensuring reuse sites are identified and any additional acceptance requirements are satisfied, ultimately allowing for more excess soil to be beneficially reused.



On behalf of the City of Mississauga, we appreciate your consideration of our comments regarding the proposed amendments to certain requirements under the Excess Soil Regulation and we look forward to continuing to work in collaboration with MECP policy staff.

Respectfully yours,

Imshun Je

Manager, Environmental Site Management & Compliance
T: 905-615-3200 ext. 4256

City of Mississauga | Transportation & Works Department,
Infrastructure Planning & Engineering Services Division
Environmental Services Section

cc: Emma Calvert, Acting Director, Infrastructure Planning & Engineering Services
Lincoln Kan, Manager, Environmental Services
Katrina MacDonald, Project Manager, Environmental

Attachments:

- MEA Excess Soils Working Group Comments to ERO No. 019-9196 re: amending Reg. 406/19

About the Municipal Engineers Association (MEA)

The MEA is a non-profit Association representing the interests of over 1,200 licensed professional engineers in Ontario. The majority of our members are employed by over 100 Ontario municipalities, representing 90% of the population of Ontario. We also have members from provincial agencies, conservation authorities and consulting engineers who are designated as the engineer-of-record for small Ontario municipalities.

For over 60 years the MEA and its members have provided various specific expertise associated with municipal engineering in Ontario. MEA, together with MTO, are the co-proponents of Ontario Provincial Standards & Specifications; and MEA is the proponent for the Municipal Class Environmental Assessment (MCEA). The MCEA was first developed/prepared by the MEA in 1987 on behalf of Ontario municipalities and, since its inception, the MCEA process has been a collaboration between the Ministry of Environment, Conservation, and Parks (MECP) and the MEA.

Proposed Regulatory Amendments to Encourage Greater Reuse of Excess Soil (ERO No. 019-9196)

On October 18, 2024, the Ministry of the Environment, Conservation and Parks (MECP) has posted a proposal on the Environment Registry (ERO No. 019-9196) amending Reg. 406/19 (the excess soil regulation) and the Soil Rules to encourage greater reuse of low-risk excess soils and to prevent usable soil from being disposed of in landfills.

Every year, municipalities and conservation authorities generate and reuse millions of tonnes of excess soil in capital projects (both infrastructure projects and non-infrastructure projects) and through the operations and maintenance of facilities and assets. The MEA and its Excess Soil Working Group appreciate the MECP's continual effort to ensure the regulation stays practical and effective, and to achieve greater reuse of usable excess soils as part of a circular economy. We collected comments from our members and the organizations they represent. The following are the comments and questions for the Ministry's consideration:

Proposal 1 - Change the coming into force date of the landfilling restriction for excess soil meeting Table 2.1 residential standards (Section 22 of the regulation)

- The MEA is neutral on this amendment. No comments/concerns.

Proposal 2 - Exempt specified excess soil management sites from a waste environmental compliance approval (ECA) subject to rules

- MEA believes this is a welcome amendment. However, we wish to express the following comments/concerns:

1. Aggregate Reuse Depots (ARD)

- a. The soil quality requirements for soil to be taken to the ARD includes that either:
 - i. The excess soil was not associated with a potentially contaminating activity (PCA) or area of potential environmental concern (APEC), and there is no visual or olfactory evidence of contamination; or,
 - ii. If sampling was undertaken, it meets community use standards, except in respect of salt-related parameters, asphalt-related parameters and naturally occurring exceedances.

In general, we have no concerns with these requirements, with one exception. As a rule, Qualified Persons (QPs) classify existing aggregate materials under roadways as PCA 30 "Importation of Fill Material of Unknown Quality". Therefore, and considering the new definition of "Engineered Aggregate Product" (EAP) which explicitly excludes "general fill or earth," would the Ministry please consider exempting EAP from PCA 30 with the caveat that the EAP must be brought directly to an ARD for this exemption to apply.

- b. Provide clarity around the requirement that "Excess soil in the engineered aggregate product leaving the depot must meet appropriate standards for the reuse site where it will be finally placed in order to lose its waste designation." Is this requirement referring to "excess soil and other materials brought to the depot... to make an engineered aggregate product." or is this referring to the EAP itself?

If referring to the EAP than this requirement appears to conflict with the intent of allowing aggregate to be brought to the ARD without sampling provided it was not associated with a PCA or APEC and has no visual or olfactory signs of being affected by the release of a contaminant.

Further, provide clarity on what "appropriate standards" means. Presumably, this is referring to the typical Excess Soil Site Condition Standards (ESCS) with the proposed exemptions for Petroleum Hydrocarbons (PHCs) and polycyclic aromatic hydrocarbons (PAHs) that can be attributed to expected asphalt road weathering (e.g., from asphalt, tire wear).

- c. As these soil management sites/depots will be exempted from waste ECA, please ensure and confirm the MECP will be the responsible body for the oversight, monitoring and compliance of these proposed operations and this responsibility would not be downloaded to municipalities. For example, typically an ECA regulated facility would have to consider municipal planning requirements such as zoning, neighboring sites etc. as part of the application/approval process prior to permitting such a facility. By removing the ECA requirement, what mechanisms will be in place to ensure that these facilities are only being established in appropriate areas.
- d. Based on discussions with the MECP, the proposed sites would be exempt from a waste ECA and would operate similar to Class 1 Soil Management Sites. It would be beneficial to explicitly clarify that the Project Leader's requirements and responsibilities (exporting) under O. Reg. 406/19 would be fulfilled upon acceptance of excess soil at one of the new proposed facilities (i.e. topsoil and landscaping reuse depots, aggregate reuse depots, small liquid soil depots) and that ownership and liability of the excess soils transfers to these sites upon acceptance or deposit at the site, similar to how ownership and liability are transferred under a waste ECA/ESAR (EPA s.42). Similarly, please clarify the requirements and responsibilities (importing) when receiving/reusing/accepting excess soil as a reuse site and/or as commercial products of recycled materials.

2. Small liquid soil depots:

- The MEA is neutral on this amendment. No comments/concerns.

Proposal 3 - Enhanced reuse opportunities for aggregate and stormwater management pond (SWMP) sediment

- This is a welcome amendment. However, we have the following comments/concerns:
 - As the common practice for majority of municipalities is to apply de-icing material as part of their regular winter maintenance, it is requested that consideration be given to providing an exemption to the 30m setbacks from water bodies and potable water wells when it comes to the placement of salt impacted engineering aggregate material within a road right-of-way.

Proposal 4 - Allow greater reuse of soil to be coordinated between similar infrastructure projects

- This is a welcome amendment. However, we have the following comments/concerns:
 - Provide clarity around the requirement that “There is no evidence of visual or olfactory signs of contamination in respect of the soil being moved between coordinated project areas and reuse sites” applies only to the contaminated soil itself and does not prevent the application of this amendment more broadly. Alternatively, as this requirement is in essence a duplication of Section 23 of the Regulation, it is recommended that it simply be removed from this specific amendment.
 - In a multi-tier municipal structure, it is common for the lower and upper tier municipalities to coordinate the planning of infrastructure projects to minimize disruption to traffic, businesses and residents and avoid duplication. Would the MECP consider expanding this exemption to allow for coordination between municipal entities assuming it meets all the other criteria of predetermined planning and that the excess soil is being moved between similar infrastructure projects being undertaken by those municipal entities?

Proposal 5 - Reduce reuse planning requirements for excess soil moved between infrastructure projects

- This is a welcome amendment. No comments/concerns.

Proposal 6 - Allow in-situ sampling for stormwater management pond (SWMP) sediment

- This is a welcome amendment. However, we have the following comments/concerns:
 - The requirement for post-dredging confirmatory sampling is unclear and somewhat conflicts with the benefit of in-situ sampling. What material, specifically, is to be sampled and when is it to be sampled? Is it the excavated sediment, or is it the limits of the excavation? Is it after excavation but prior to dewatering, or after dewatering but prior to beneficial re-use?
 - In general, a major benefit of in-situ sampling is the certainty it provides for tendering (i.e., you can competitively bid the handling of X amount of Y quality sediment), which drives down the cost of storm water management pond maintenance. However, due to the natural variability of the environmental quality of excess soils, confirmatory samples present the risk of a change of classification (i.e., a change from meeting the Table 2.1 I/C/C Site Condition Standards to exceeding them for one or more

parameters). Further, it is unclear what a change in environmental quality in the confirmatory sample would mean for the sediment that has already been excavated, and potentially processed (i.e., dewatered) as it would not be possible to delineate the confirmatory sample.

- Lastly, it could be argued that there is no need for confirmatory samples as the burden of proof to classify the sediment quality should have already been met if meeting the MECPs own requirements for sampling frequency and analyzed parameters.
 - Therefore, it is requested that the need for confirmatory samples be removed.
 - In addition, confirmatory sampling is typically negotiated with a reuse site on a contract basis. We are concerned with the proposal to make this a regulated requirement and are unsure of the implications that would have on planning a project as well as the ownership and liability of that material.

Proposal 7 - Regional mapping of naturally occurring local background concentrations

- The MEA supports the idea presented in Proposal 7. Regionally mapped naturally occurring background concentrations will theoretically make it easier to beneficially re-use excess soils. As very few details are provided in the proposal, and as it has been stated by the MECP that this proposal specifically is not intended to be enacted in time with the other proposals contained in this ERO, the MEA cannot provide any specific comments at this time and looks forward to future opportunities to review new details and provide feedback.
- However, in general the MEA would like to see a proposal from the MECP that outlines how it intends to administer this initiative while ensuring cohesive and consistent development and characterization of these naturally occurring contaminants. Of note, it would seem necessary for the MECP to publish a framework for site selection, sampling frequency, and statistical analysis, at the minimum.
- Further, to incentivise this initiative it would be beneficial if the MECP were to offer financial compensation to the Municipalities or other public bodies who undertake this work.

Proposal 8 - Other clarifications and corrections

- These are welcome clarifications and corrections. No comments/concerns.

General Comments on the Regulation

Since the implementation of the Regulation in 2019, a number of amendments have come into effect that have affected the requirements for filing notice for a project on the Excess Soil Registry, particularly the Regulation pause in 2022 and the addition of an exemption from filing notice for “low risk” sites. As these amendments directly impacted the volume of notices filed on the Registry resulting in a loss of revenue for RPRA, consideration should be given to expanding the requirements for registration to projects which are currently exempt under Section 8 paragraph 2 from registration and the planning documents. These project areas (residential, parkland, institutional and/or agricultural or other uses) would still be exempt from the planning document requirements but could be subject to registration and a flat fee. This is similar to the proposal 5 of this ERO and would increase transparency of the overall movement of excess soil within Ontario while also addressing the financial impacts that is affecting RPRA.

The MEA would be pleased to meet with the Minister to review our comments and work together to improve management of excess soils throughout the Province.