



November 20, 2024

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

Re: Region of Waterloo Comments – ERO #019-9196 - Proposed Regulatory Amendments to Excess Soil Regulation – Enabling Greater Beneficial Reuse of Excess Soil

The Region of Waterloo is an active member of the Municipal Engineers Association's (MEA) Excess Soil Working Group. Some members of the Working Group have met directly with the Ministry to discuss the proposed regulatory amendments to the Excess Soil Regulation and the Rules document. Appended to this letter is a separate detailed submission prepared by the MEA, which the Region endorses and fully supports.

Region of Waterloo staff have also independently reviewed the Ministry's proposed regulatory amendments. In general, the Region of Waterloo supports the intent of the proposed amendments and appreciates the Ministry's attempt to address some continuing challenges associated with O. Reg. 406/19, particularly as it pertains to implementing the Regulation during construction of linear infrastructure projects. However, we feel that some of the proposed amendments require further consultation and stakeholder engagement to ensure that they are well understood and can be implemented as intended.

When O. Reg. 406/19 was first introduced, interpreting the requirements and crafting municipal standards and specifications to administer contracts in compliance with the Regulation was a substantial undertaking. Since that time, several significant amendments have been implemented, requiring changes to those standards and specifications. With each round of amendments, interpreting the Regulation has become more complex, particularly when considering other related regulations governing waste and aggregate resources. At the Region of Waterloo, even those deeply entrenched in implementing the Regulation struggle to understand it in its entirety.

We respectfully request that the MECP limit changes to the Regulation on January 1, 2025 to those related to SWMP sediments, and the deferral of the landfill restriction window. Other proposed amendments could potentially be provided through guidance documents once additional stakeholder engagement has been undertaken, or perhaps through a more extensive redrafting of the Regulation that incorporates all past and present amendments in a more cohesive document.

Notwithstanding the above, we provide the following specific questions and comments for consideration by the Ministry regarding the current set of proposed amendments.

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)

We are supportive of the recommended deferral and proposed clarifications. Additional clarification is required on the level of delineation required where materials of mixed characterization are encountered (which is in most instances). For example, if excess soil within a Project Area is predominantly comprised of material that exceeds Table 2.1 RPI and the plan is to take all of that excess soil to landfill, but the Project Area also contains small pockets of material that meets Table 2.1 RPI, clarity is needed to understand the extent to which the “clean” material needs to be delineated and handled separately.

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

1. Aggregate reuse depots

Processing and Allowed Storage Time and Quantity

If excess soil is permitted to be mixed and sorted, tracking the maximum storage time for any given source of excess soil will not be feasible.

If the Aggregate Reuse Depot were to be located at a gravel pit site or at a residential development, for example, clarity is required on how the restrictions on “maximum volume” inclusive of “all material” would be applied.

To be successful, clarity is required to better understand the need for restrictions on storage time and quantity and the intent of these restrictions

Procedures and Operational Requirements

Additional clarity is needed regarding:

- The purpose of “Collecting and maintaining information on source sites...including quantity and quality of incoming material”.
- Whether the Project Leader at the source site is to be accountable for maintaining records of aggregate material sent to an Aggregate Reuse Depot.
- The purpose of maintaining records of “sites from which excess soil and other material was received, to which engineered aggregate products were distributed, and to which unusable excess soil and other material was sent”.

As Aggregate Reuse Depots will be mixing and sorting material, the above requirements are onerous for the Aggregate Reuse Site owner and the data collection would not be meaningful (i.e. what comes in will not be the same as what goes out).

Soil Quality

To ensure consistency, additional details are required on “asphalt-related parameters and naturally occurring exceedances” and how acceptable levels of each of these parameters will be defined. Leaving this to the discrepancy of QPs may result in different interpretations from project to project or at the source versus the receiving sites.

Additional clarification is required whether “Excess soil in the engineered aggregate product leaving the depot must meet appropriate standards for the reuse site where it will be finally placed...” is referring to quality standards or engineering standards. If the reference is to quality standards, requiring material imported from an Aggregate Reuse Depot to meet quality standards when the same does not apply to material imported from a gravel pit raises questions as to whether it will discourage reuse and limit the viability of operating an Aggregate Reuse Depot.

2. Small liquid soil depots

No comment at this time.

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

No comment at this time.

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

The clarifications proposed are well intentioned but will have limited practical benefit for our linear infrastructure projects. The vast majority of those projects produce excess soil – there are very few with net fill requirements.

The requirement that the source and reuse sites be managed by the same Project Leader is restrictive, particularly for two-tier municipalities.

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

Please provide clarification on this approach, including:

- Whether infrastructure reuse sites will be able to accept material from another infrastructure source site with no soil characterization completed.

- How does this approach function when there is a requirement to file with the Registry.
- Relationship to amendment #4 above.

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

No comment at this time.

7) Regional mapping of naturally occurring local background concentrations

While we support a mapping initiative, this should be implemented by MECP.

8) Other clarifications and corrections

- i. Clarification is required whether the planning requirement exemptions for material taken temporarily off-site apply, regardless of whether or not the off-site location is owned by the Project Leader.
- ii. Leaving sampling frequencies for contaminants that are not associated with a PCA or APEC to the discretion of QPs will lead to inconsistent approaches from project to project. Receiving sites may choose not accept materials where testing frequencies are less than stipulated in the Regulation, despite this clarification.
- vi. Storage limitations that apply to “all material” may make it difficult for a single owner to operate multiple depots on one property.

We appreciate the opportunity to provide comments on the proposed amendments to the Excess Soil Regulation. If possible, we would like to have an opportunity to review the final wording of the proposed amendments in advance of their adoption.

Sincerely,



Frank Kosa, P.Eng.
Director, Design & Construction

cc: Jennifer Rose – Commissioner, Engineering and Environmental Services

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.