

November 20, 2024

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

Subject: Proposed regulatory amendments to O.Reg. 406/19 (ERO number 019-9196)

The City of Toronto's Engineering and Construction Services and Transportation Services divisions (the City) have reviewed the proposed amendments to Ontario Regulation (O.Reg.) 406/19 On-Site and Excess Soil Management (the Regulation) outlined in ERO# 019-9196 and appreciates the opportunity to provide comments to the Ministry of the Environment, Conservation and Parks (MECP) on this proposal.

City staff attended webinars and engagement meetings with the MECP during the consultation period, where preliminary concerns and questions from the City regarding the proposed amendments were shared with the MECP. The City would like to provide the following formal comments and questions for the MECP's consideration:

General Comments

- The City acknowledges and appreciates the MECP's intent and efforts in trying to encourage greater reuse of excess soil with these proposed amendments. While the City is generally supportive of the proposed changes, we feel that these amendments require further consultation and refinement of specific details to avoid misinterpretation and confusion in the industry. The City recommends the MECP consider delaying the implementation of these proposed amendments until detailed requirements for each of these proposed changes have been fine-tuned through additional consultations with industry stakeholders.
- The frequent number of amendments to this Regulation has resulted in increased confusion within the industry, potentially undermining the intent of this Regulation. Some of the proposed amendments are meant to provide additional clarity and details to currently existing requirements within the Regulation. Therefore, the City recommends the MECP consider issuing a guidance document or information sheet to provide further details and specifics for some of these proposed changes. Furthermore, we would like to request the MECP provide a marked-up version of the Regulation showing all amendment changes over the years cumulatively.

- The Resource Productivity and Recovery Authority (RPRA), which is responsible for the management of the Excess Soil Registry, continues to increase their fees associated within the filing of a project area notice annually, to recover costs incurred due to lower than anticipated notice filings each year. With the additional exemptions proposed under the current amendment, even fewer project areas will be required to file a notice on the Excess Soil Registry. This will continue to drive up the cost of notice filing fees, financially burdening municipalities, where most of the infrastructure projects do not meet the criteria for these exemptions. The City recommends that the MECP consider implementing a flat rate filing fee requirement for all projects moving excess soils, regardless of exemptions, to alleviate some of the deficit incurred by RPRA, as well as to provide a transparent reporting database for excess soils projects. This will provide visibility to registrants and the public on all projects moving excess soils within the province, which was the initial intent of the Excess Soil Registry.
- The City recommends that the MECP consider amending the Regulation to require all reuse sites accepting excess soils greater than 10,000 m³ to retain a qualified person (QP) to ensure all requirements under the Regulation are being followed. Currently, the requirement to have a QP at reuse sites is a best practice recommendation, but not a mandatory regulatory requirement.

Specific Comments

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)

- While the City supports the amendment of the coming into force date of Section 22 of the Regulation to allow the industry and the MECP additional time for outreach and educational efforts to clarify exceptions from this restriction, this change is expected to have minimal impact to the City as most of the excess soils that are meeting Table 2.1 residential standards on City projects are already being diverted away from landfills.
- The proposed amendment provides for an exemption criterion where the qualified person (QP) can conclude that the excess soil cannot be reused “due to its geotechnical instability”. The City would like to request that the MECP provide a clear definition for the term “geotechnical instability”.
- Clarification is requested for what would be considered as a “reasonable effort” being made to find reuse sites for excess soils meeting Table 2.1 residential standards.
- Furthermore, clarification is requested around the process for sending excess soils that meet the Table 2.1 residential standards to a landfill if no reuse site can be located, once the landfilling restriction comes into effect. We recommend the MECP consult with landfill operators to develop a list of acceptance criteria or an

acceptance form to be filled in by the Project Leader and their QP to provide clear requirements on the process to be followed when requesting for the disposal of excess soil in these circumstances.

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

- Aggregate reuse depots and small liquid soil depots: The City agrees with, and is supportive of, creating these new types of facilities to encourage aggregate and liquid excess soil reuse.
 - Under Prohibited materials, it is stated that *“Any material at a depot found to be unusable in an engineered aggregate product, including following processing, must be promptly disposed of.”* We would like to request that the MECP provides specifics as to whether there is a defined timeline within which a material should be determined as being unusable, and whether there any specific disposal requirements for such material.
 - The proposed amendment notes that these types of depots will *“be required to provide a written notice to the MECP Director and the relevant local municipality to facilitate compliance, before commencing and upon closure of operations”*. The City would like to clarify the MECP’s intent in requiring this notification to the local municipality. The City would also like to clarify the MECP’s intent for the City’s role in this notification process.
 - The City would like to confirm that the MECP (and not the City) will be responsible for the enforcement of compliance under the Regulation for these types of depots.

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

- The City agrees with, and is supportive of, the proposed exemptions for the reuse of asphalt-road impacted engineered aggregate materials and asphalt-road impacted SWMP sediment at locations where these materials will continue to be exposed to asphalt impacts i.e., such as for beneficial reuse on an asphalt-road undertaking. However, clarification is requested for the definition of “asphalt-related parameters” and “naturally occurring exceedances” and details on how acceptable levels of each of these parameters will be defined.
- The City agrees with, and is supportive of, the proposed exemptions for the reuse of engineered aggregate with naturally occurring exceedances where a qualified person (QP) has demonstrated that such exceedances are consistent with the levels found naturally in new aggregates sourced locally for that area.

- The City would like to request clarification from the MECP as to whether this exemption will include a restriction limiting reuse of such material to the local area from where it is excavated (i.e., specific geographic limits on reuse), to avoid the unintended consequences of placing engineered aggregate material with naturally occurring exceedances in a geographic location where these exceedances are not typically found in naturally sourced new aggregates.

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

- The City agrees with, and is supportive of, the proposed exemptions for the reuse of soil between infrastructure projects of the same type managed by the same project leader.
- The City recommends the MECP consider expanding this exemption to permit the coordination of soil reuse between different public bodies conducting similar infrastructure projects, to allow for collaboration between different municipalities and between different municipal tiers.
- The City would like to request clarification from the MECP as to whether a timeframe will be specified for when the soil is excavated at one project and reused on another similar infrastructure project. During consultation sessions with the MECP, it was indicated that this timeframe might be defined as being within the same construction season. However, as infrastructure projects often take place over several years and multiple construction seasons, the City would like to request the MECP consider a longer time duration (i.e., 2 to 5 years) for permitting the reuse of excess soils on similar infrastructure projects owned by the same project leader.

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

- The City agrees with, and is supportive of, the proposed exemptions for the reuse of soil between infrastructure projects managed by different project leaders.
- The proposed amendment offers an exemption from completing sampling requirements for the movement of excess soils between different infrastructure projects managed by different project leaders. However, from a practical perspective, it is very unlikely that a reuse site will accept excess soil without requiring some level of due diligence sampling to determine soil quality. This need to conduct due diligence sampling will negate the intent of this exemption.
- While the City understands that the intent of this exemption is to promote a greater reuse of excess soils between infrastructure projects, the removal of the mandatory requirement for soil sampling prior to reuse can potentially result in the

transportation of excess soil to a reuse site, even if it does not meet the soil quality standards for that reuse site, inadvertently spreading contamination to the reuse site.

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

- The City agrees with, and is supportive of, the proposed amendment to permit in-situ sampling of SWMP sediment.
 - The City would like to request that the MECP reconsider the need for post-dredging confirmatory sampling following in-situ sampling. From a scientific perspective, industry experts have completed studies to conclude that the results of samples obtained in-situ are comparable to the results of samples obtained ex-situ (i.e., sediment removed, dewatered, and stockpiled). Therefore, it is requested that MECP consider omitting this redundant and costly requirement for post-dredging confirmatory sampling as a requirement within the Regulation. If post-dredging sampling is requested by a reuse site, the specific requirements for this sampling program should be negotiated between the project leader and reuse site on a project-to-project basis, as opposed to being a mandatory requirement within the Regulation.

7) Regional mapping of naturally occurring local background concentrations

- The City agrees with, and is generally supportive of, the proposed amendment for the MECP to utilize regional mapping for areas with naturally occurring exceedances to enable greater reuse of excess soils within that region.
 - The current proposal recommends municipalities or other local public bodies undertake studies necessary to develop regional scale maps to document areas with naturally occurring exceedances in their local region. However, as municipal boundaries don't directly align with geological boundaries for soil formations, it is recommended that the MECP undertake the development of regional maps on a provincial scale instead. A further suggestion is for the MECP to consult with the Ontario Geological Survey and the Ministry of Municipal Affairs and Housing (responsible for maintaining the Oak Ridges Moraine mapping program) in the development of regional maps for naturally occurring local background concentrations. Other provincial ministries that could be consulted include the Ministry of Agriculture, Food and Rural Affairs, and the Ministry of Natural Resources.
 - If the MECP still intends to recommend that regional maps be prepared by local municipalities for their specific regions, the MECP should be providing funding support and resources to facilitate such research studies.

- The City would be interested in further discussions with the MECP to understand which naturally occurring parameters would be of interest and/or are suspected to be present in the local soils of Toronto to get a better understanding of the need and value in undertaking such a study for the soils within the City of Toronto.

8) Other clarifications and corrections

- The City agrees with, and is supportive of, the additional clarifications and corrections proposed to assist with better understanding of the requirements under the Regulation. It is our understanding that these proposed minor changes do not affect the general policy intent.

We appreciate your consideration of our comments, and we would be pleased to speak with you about these comments at your convenience. We look forward to continuing to work in collaboration with MECP on the Regulation.

Regards,



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