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November 21, 2024

Environmental Policy Branch  
40 St Clair Avenue West  
10th Floor  
Toronto, ON  
M4V 1M2  
Canada

Dear Ms. Kureishy,

**Re: ERO Posting number (019-9196) – Enabling greater beneficial reuse of excess soil**

Thank you for the opportunity to provide comments on the proposed amendments to Ontario Regulation 406/19. The City of Hamilton is in support of the proposal, however, and respectfully, the draft changes of the regulatory language should be provided to fully understand the mechanisms of the proposed changes.

With respect to the proposed changes, please find the following comments for each section:

**1. Change of the coming into force date of the landfilling restriction for excess soils meeting Table 2.1 residential standards**

The proposed change does not materially change the requirements as imposed by the regulation. Hamilton has proactively modified the project planning approach to characterize soils to Table 2.1 RPI standards to meet the current date of January 1, 2025. Where required under the proposed extension, Hamilton will modify contract language once the effective date of the proposed change is finalized.

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

When moving from a permitted facility regime to a permit by rule regime, a municipality may be concerned that first point of contact will now fall on the municipality to address. While the notification to “relevant local Municipality” may appear to capture a municipal acknowledgement and opportunity to engage with a proposed facility, municipalities may not have the mechanisms in place to take on the oversight of and the environmental knowledge and understanding of the

requirements to identify any instances of noncompliance. Siting of such facilities may encroach on surrounding land users, and to whom municipalities may now become the first point of contact for inquiries and complaints.

Could a mechanism within the EASR program be a better suited means to allow such facilities? This would allow for tracking of in-coming and out-going soil volumes to be monitored and balanced and for additional regulatory responsibility to be imposed on the facility.

**i. Aggregate Recycling Depots (ARDs)**

The allowance of ARDs will promote an advancement of recycling components of roadways, specifically concrete, asphalt and granular materials or engineered aggregate product.

For greater assurance, the final regulatory language should clearly identify that materials received by an ARD would now be accepted and its ownership transferred to the ARD operator, like other waste disposal sites operated under permit and/or registration.

**ii. Allowance of Small Liquid Soils Depots**

The final regulatory language should clearly identify that materials received by a Small Liquid Soils Depot would be accepted and ownership of the material transferred to the Small Liquid Soils Depot operator, like other waste disposal sites operated under permit and/or registration.

**3. Enhanced reuse opportunities for aggregate and SWMP sediment**

Where the occurrence of asphalt road related contaminants and/or naturally occurring exceedances are identified within potential re-use materials, a QP would be required to assess the origin of the natural occurrence to aggregate sources. Considering that currently the primary sources of aggregate are not required to complete environmental testing of the aggregate materials, should the determination of the naturally occurring chemical composition of the materials not fall on the producer of the materials (i.e., at source) and therefore the project leader's requirement would only pertain to anthropogenically added constituents?

**4. Allowance of greater reuse options for soils transferred between similar infrastructure**

The proposed amendment imposes a restriction on transferring soils between similar infrastructure projects. As the project leader of both projects is one in the same, the associated risk in transferring soils between project areas of the same project leader falls to a best practice requirement to ensure that due diligence testing is conducted on the intended materials to be transferred and on the

intended receiving site. The ability for project leaders to coordinate projects to be managing soils concurrently is challenging and may require projects to be tendered in pairs of a cut project and a fill project. While theoretically this is logical, in practice a number of factors could stall the transfer of soils and lead to delays on both projects. As such, the requirement to coordinate concurrent projects is not a favored approach.

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

The current wording of the regulation states within the Schedule 2 Exemptions and specifically for infrastructure exemptions that the condition

*“2. The project leader for the undertaking related to infrastructure intends, after removing the excess soil from the project area, to deposit it for final placement at a reuse site that is owned by the project leader or a public body and that is part of another undertaking related to infrastructure.”*

Infrastructure projects are generally completed by public bodies and where infrastructure assets are developed by non-public entities, the assets are often transferred to public bodies. With the understanding that the role of project leader cannot be contracted to third party (i.e., the contractor) and therefore the project leader is responsible for ensuring compliance with the regulation and liable for such. With the understanding that the exemption for infrastructure projects was granted because those public bodies are entrusted to dutifully work in the interest of the public with respect to protecting the public interest.

Where other non-public bodies are completing infrastructure projects, should this be considered as a special case, and rather than modifying the existing infrastructure exemption, could the amendment be written to address this special case where infrastructure projects being executed by a non-public body?

As written, this item is unclear, because the proposed amendment now enters a notion that third parties may be allowed to work on infrastructure projects and can be contracted to assume the role of Project Leader even though the third party may not be the owner of the infrastructure. This would allow that non-public body to direct excess soils management, take control of materials, and redirect materials to other project areas and other project leaders and in this case other parties working on behalf of the owners of infrastructure projects.

The MECP should provide clarification on the following:

- Can the role of Project Leader be contracted to a third party?
- If so, would a municipality be jointly responsible for any legal contraventions to the regulation?
- What would be the contractual language to allow this role to be transferred?

- Does this only apply to large P3 type projects, and if so, could these, few projects be considered special cases?

With the understanding that the role of Project Leader cannot be delegated or contracted to a third party, the intent and use of the proposed amendment is unclear.

## **6. In-situ sampling of SWMP**

The allowance of earlier and systematic testing across the network of SWMP systems would allow municipalities higher operating efficiency and for resources to be used more effectively, both of which favour a municipality.

## **7. Regional mapping of naturally occurring local background concentrations**

Establishing regional mapping of naturally occurring background concentrations within geologic regions of Ontario would be beneficial to enable more complete assessments of soil quality. We would certainly be interested in participating in studies and providing data pertaining to naturally occurring background conditions, to assist in this undertaking. However, do municipalities hold the authority to complete such studies? Furthermore, if studies may be used by third parties to establish baseline conditions and that may cross between regional boundaries, should the studies be conducted at a municipality's expense?

As the regulatory authority, should the MECP or another provincial authority be tasked with undertaking these baseline studies or should this responsibility be taken on by the producers of aggregate products (i.e., the primary source of the subject materials)?

## **8. Other clarifications and corrections**

### **i. Temporary transfers to facilitate construction.**

This proposed clarification would facilitate and clarify how materials can be used as part of the construction project. However, does this change require an amendment or could this clarification be provided within a guidance document?

### **ii. Use of conditioning agents to facilitate construction**

This proposed clarification would facilitate and clarify how materials can be used as part of the construction project. However, does this change require an amendment or could this clarification be provided within a guidance document?

**iii. Removal of components from minimum sampling screening criteria where no reason to believe these exist.**

This proposed clarification would clarify the role of QPs and the discretion that the QP may take in completing their assessments. However, does the current language in the existing regulation not already allow the QP to use their discretion to identify where APECSs and in turn PCOC may not be applicable to the objectives of the assessment? If so, does this change require an amendment or could this clarification be provided within a guidance document?

**iv. Definition of Public Bodies to include corporations established by municipalities.**

The proposed clarification does provide clarification to municipalities, and we are in favour of this proposal.

**v. Allowance of multiple depots on single and adjacent sites provided that non-small liquid soils depots continue to require their own separate and non-adjacent site.**

We are in favour of this proposal as the standard allowance for the operation of multiple depots on the same site.

Would the MECP consider an allowance for public bodies to be able to operate multiple forms of depots, including small liquid soils depots on the same and on adjacent properties, provided that the properties are owned by the same public body? This would allow the public body the opportunity to manage all sources of excess soils, limited to excess soils owned by the public body, at one location, yielding greater operational efficiency.

Again, the City of Hamilton respectfully provides these comments to the proposed changes posted under ERO 019-9196 and appreciates the efforts of the MECP to promote greater beneficial re-use of soils.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jackie Kennedy', is positioned above the printed name and title.

Jackie Kennedy  
Director, Engineering Services  
Public Works  
City of Hamilton