



Office of the Commissioner of Infrastructure Services / City Engineer

November 21, 2024

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

Dear Ms. Kureishy:

RE: City of Windsor Comments – ERO Posting 019-9196 – Proposed Amendments to the Excess Soil Regulation

We are writing to provide comments on the proposed amendments to the Excess Soil Regulation, as outlined in the Environmental Registry of Ontario Notice (ERO Number 019-9196). As stakeholders in the municipal sector, we appreciate the Ministry's ongoing efforts to address the challenges associated with excess soil management and we would like to offer several key areas where we believe further adjustments could improve the practical application and overall effectiveness of the proposed amendments.

1. Aggregate Reuse Depot

During the recent webinar, it was noted that "excess soil accepted at the site must be of a quality that can be readily reused in a range of aggregate operations (i.e., excess soil was not associated with any potentially contaminating activities (PCAs) or areas of potential environmental concern (APECs)), and if sampling was undertaken, soil must meet community standards (with some exceptions for salt, asphalt-related contaminants, and naturally occurring exceedances)."

While this provides some clarity, we believe the amendments should allow for more flexibility, particularly regarding aggregates impacted by road-related activities. Granular road base often shows exceedances of certain contaminants, such as metals, typically resulting from long-term use as an urban roadway (e.g., deposits from car exhaust and brake pads). Furthermore, granular material from infrastructure projects is often associated with a Potentially Contaminating Activity (PCA) or Area of Potential Environmental Concern (APEC) due to the presence of fill of unknown quality.

We recommend that these additional parameters be considered for inclusion in the exceptions list and allow for the reuse of these materials in future infrastructure projects that are expected to experience similar impacts.

Additionally, we propose that hard surface pavements (roadways and parking areas) be considered as an effective cap for contaminants in excess soil. By utilizing hard surface pavement as a protective cap, the potential for contaminant migration could be mitigated, making this a practical solution for reusing excess soil while still maintaining environmental safeguards.

Finally, we suggest that once aggregates are delivered to an aggregate reuse depot, the responsibility for ensuring proper management and compliance with regulatory requirements should shift to the depot operator. The project leader should be absolved of liability once the material is accepted at the depot. Depot operators should then be held accountable for verifying that the materials meet the necessary standards for final placement.

2. Regional Mapping of Naturally Occurring Local Background Concentrations

The consideration for regional mapping of naturally occurring background concentrations is a key component of the proposed amendments. However, we believe this requirement places an undue burden on stakeholders, particularly municipalities, which are often responsible for the majority of compliance activities. The cost and complexity of conducting this mapping at a regional level are substantial, and this responsibility will likely result in additional financial strain on municipalities already tasked with managing numerous regulatory requirements.

Given these challenges, we strongly recommend that the Ministry take on the responsibility of conducting regional background concentration mapping. This would ensure that the mapping is done consistently, scientifically, and accurately across the province, providing all stakeholders with a reliable baseline to reference. It would also help mitigate disparities that might arise from inconsistencies in how private entities or municipalities conduct their own mapping efforts. By assuming this responsibility, the Ministry would ensure that the data is accurate, rigorous, and reflective of the true environmental conditions of each region. This would streamline the regulatory process, promote fairness, and reduce unnecessary costs for municipalities and other stakeholders.

3. Temporary Use of Excess Soils

The proposed regulation states that excess soil temporarily used in an undertaking (e.g., for a temporary driveway or access road) should be treated the same as excess soil temporarily stored at a reuse site and would not be required to meet the excess soil quality standards under sections 3 to 5, provided certain conditions are met. While the flexibility offered by this provision is welcome, we believe that clearer guidelines are needed.

Additionally, the stipulation that the area for the temporary undertaking must be owned or operated by the same project leader as the project from which the excess soil originated should be reconsidered. This

requirement could prove overly restrictive, particularly in cases where the temporary use area is operated or owned by a different party. We recommend that this provision be removed, as it could unnecessarily complicate project execution and lead to inefficiencies.

4. Municipalities' Compliance Burden

Finally, we would like to emphasize that municipalities bear a significant portion of the compliance burden under the current regulations. Given that municipalities are often at the forefront of managing excess soil generated by construction, infrastructure, and development projects, we believe the proposed amendments should be adjusted to provide more flexibility and reduce the compliance burden on municipalities. Loosening some of the more restrictive provisions would make the regulation more practical and manageable.

As municipalities continue to manage the majority of excess soil compliance activities, including the associated financial burden, it is essential that the Ministry consider these operational realities and ensure that the regulation strikes an appropriate balance between environmental protection and the practical needs of municipalities and other stakeholders.

Conclusion

In conclusion, while we support the Ministry's intention to improve the regulation and management of excess soil, we believe that increased flexibility regarding the reuse of recycled aggregate and a more equitable distribution of the costs related to regional background concentration mapping would enhance the overall effectiveness of the proposed amendments. We hope that these considerations will be given due attention as part of the consultation process, and we look forward to continuing to work collaboratively with the Ministry to ensure that the regulation is both practical and beneficial for all stakeholders.

Thank you for the opportunity to provide feedback. Should you require any further information or clarification, please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Meneses'.

Sarah Meneses
Environmental Compliance Coordinator

SM/si

Cc: Executive Director of Engineering/Deputy City Engineer, Attn: Stacey McGuire
Commissioner of Infrastructure Services/City Engineer, Attn: David Simpson
Manager of Design, Attn: Fahd Mikhael