SOIL-MAT ENGINEERS & CONSULTANTS LTD.

401 Grays Road · Hamilton, ON · L8E 2Z3

www.soil-mat.ca info@soil-mat.ca 905.318.7440 / 800.243.1922 (*toll free*) 905.318.7455

November 21, 2024

LAND USE POLICY, ENVIRONMENTAL POLICY BRANCH
40 St. Clair Ave West – 10th Floor
Toronto, Ontario
M4V 1M2

FORMAL COMMENTS
PROPOSED AMENDMENTS TO REGULATION 406/19

Further to the recently proposed amendments to O. Reg 406/19 I take this opportunity to provide formal comments. These comments are provided in my professional capacity as a Qualified Person [QP] under the Regulation, and experience providing consulting services for soil management to a range of clients and projects, including land development for residential, commercial and industrial uses, municipal infrastructure projects, institutional projects, and others.

These comments are offered to the current proposed amendments, as well as to our experience with the use and implementation of the Regulation to date.

1) CHANGE COMING IN FORCE DATE OF SECTION 22 TO JANUARY 1, 2027

No concern with this delay.
Clarifying the meaning of "unsafe to finally place the excess soil at a reuse site" to include material that is geotechnically unsuitable for structural purposes is wise. One of the challenges for many projects is excess soil that is geotechnically unsuitable, due to topsoil or minor debris, but is environmentally suitable. It is appropriate to allow this material to be accepted to landfill where an alternative reuse site cannot be reasonably located.

2) AGGREGATE REUSE DEPOTS

Latitude for accepting material for making an engineered aggregate product is reasonable.

The storage limitation of 25,000 m3 (inclusive of all material at the site) is very restrictive. Many such sites, such as recycled aggregate producers, routinely have much larger volumes of material stockpiled. This is a function of market demand, and available space on the site. A limitation of 25,000 m3 is unnecessarily restrictive to the viable operation of such sites. Especially considering there is no distinction for the available area for use as storage. It is not clear what is achieved, protected or

prevented, or how limiting the volume of stockpiles in this manner supports responsible beneficial reuse of excess soil. Such sites should be allowed larger volumes, reasonably as a function of available space, and market demand. Otherwise, it will not be viable for operators, and avenues for efficient beneficial reuse of material will be less likely to be pursued.

3) ENHANCED REUSE OPPORTUNITIES FOR AGGREGATE AND SWMP SEDIMENT

Allowance for material with elevated parameters associated with an asphalt road to be beneficial reused within a roadway is prudent. This will allow for greater reuse options as part of municipal infrastructure projects.
Restricting such reuse to soil that is part of engineered aggregate is unnecessarily restrictive. Geotechnically suitable soil would be equally appropriate for use within roadway right of ways.
With respect to SWMP sediment, the reuse of such material is most likely geotechnically unsuitable for reuse within a road right of way, so this does not afford much opportunity for reuse.

NATURALLY ELEVATED EXCEEDANCES IN ENGINEERED AGGREGATE

This is a prudent concept, and will afford opportunities for greater beneficial reuse. However, why is it limited to only soil being reused as engineered aggregate? This is unnecessarily restrictive. Soil meeting the same basic requirements outlined would be equally appropriate for reuse in many cases, such as infrastructure projects, within road right of way, etc.

What is the process for establishing an elevated parameter as naturally occurring?
Will the MECP be providing further detail or guidance on this?
Will broad regional studies be required, and if so who is expected to undertake and bear the cost for such studies?
Would a QP be able to exercise professional judgement based on local experience?

4) ALLOW GREATER REUSE OF SOIL TO BE COORDINATED BETWEEN SIMILAR INFRASTRUCTURE PROJECTS.
5) REDUCE REUSE PLANNING REQUIREMENTS FOR EXCESS SOIL MOVED BETWEEN INFRASTRUCTURE PROJECT.

It is prudent to simplify the reuse of soil from infrastructure projects.
It would be helpful for the MECP to provide refined guidance or direction, and greater allowance, for temporary storage sites to specifically support the handling and reuse of soil from infrastructure projects. In particular, allowing for greater temporary storage volumes taking into consideration the timing of multiple projects that may be generating excess soil versus those that require it often do not line up. In this context, 25,000 m3 is not a large volume of material.

6) ALLOW IN-SITU SAMPLING FOR SWMP SEDIMENT

This is practical to allow reasonable characterisation of sediment in advance, which will allow for improved planning for material reuse or disposal.
The requirement for post-dredging confirmatory sampling is counterproductive, and introduces and unneeded uncertainty. It reduces the degree to which initial sampling data can be relied upon for decision making. Initial sampling if done appropriate would be reasonably representative, and so confirmatory sampling should not be required unless there is specific evidence or cause for concern noted in the dredged material.

7) REGIONAL MAPPING OF NATURALLY OCCURRING LOCAL BACKGROUND CONCENTRATIONS.

Who is going to be tasked with such studies? Will MECP provide specific direction and support to municipalities to conduct such studies?

8) OTHER CLARIFICATIONS AND CORRECTIONS

The noted clarifications are helpful.
If the Regulation will allow for operation of more than one type of depot by the same owner or operator on the same or adjoining properties, the Regulation should also allow for a much larger storage volume limit. 25,000 m3 is unnecessarily restrictive for a single use, let alone to manage multiple depot uses. Storage volume limits should be a function of the size of site, and operation, in order to allow for viable effective management

ADDITIONAL COMMENTS

Can the MECP revisit or clarify the reasoning for different Standards between Regulation 153/04 and 406/19 [i.e. Table 2 vs 2.1, 3 vs 3.1, etc.]? This creates unnecessary confusion and potential problems. As an example, the Standard for PHC F2 on Table 2 RPI is 98ppm, while on Table 2.1 RPI it is 10ppm. This is a significant difference, with no clear rationale. It creates a situation where a site can have Phase Two ESA or remediation work done, be shown to meet the Reg 153 Standards and have an RSC acknowledged, but once that material becomes excess as part of construction it would potentially be considered unsuitable under Regulation 406 to accept to a reuse site of the same land use.

Can MECP revisit or clarify the ceiling values for use in statistical method. Many of the ceiling values are the same or only marginally higher than the standard value. For example, the standard for Lead under Table 2.1 and 3.1 RPI is 120ppm, and the ceiling value is the same. This precludes the ability to make use of the statistical method, even in cases where the actual requirements are met. This does not make sense on a rational mathematical basis, nor support or facilitate beneficial reuse of soil. Rather the opposite, by creating situations where material that could be reasonably reused for a beneficial purpose is deemed necessary to dispose of as waste.

I appreciate the opportunity to provide input and feedback on the Regulation. Consistent engagement with the QP community is critical to achieving effective and efficient beneficial soil reuse.

Please feel free to contact our Office if you have any questions.

Yours very truly,
Soil-Mat Engineers & Consultants Ltd.

Ian Shaw, P.Eng, QP_{ESA}
Senior Engineer