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November 21, 2024

Attention: Reema Kureishy

Ministry of the Environment, Conservation and Parks
40 St Clair Avenue West
Toronto, ON M4V 1M2

Dear Reema Kureishy,

Reference: Proposed Amendments to Ontario Regulation 406/19 – Enabling greater beneficial reuse of excess soil” Environmental Registry of Ontario: #019-9196

Thank you for the opportunity to provide feedback on the proposed amendments to Ontario Regulation 406/19. Stantec Consulting Ltd. continues to engage regularly with our clients and industry partners on the beneficial reuse of excess soil and our comments (attached) are reflective of those on-going discussions.

Regards,

Stantec Consulting Ltd.

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Section	Proposed Change	Summary of Proposal Details	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)	<p>Amend the coming into force date of section 22 of the regulation from January 1, 2025, to January 1, 2027, a change of two years.</p> <p>Clarify the existing exception in subsection 22(3) that allows for landfilling of excess soil if a qualified person is of the opinion that it would be “unsafe to finally place the excess soil at a reuse site”</p>	<p>Our understanding from some clients is that a majority of soil considered ‘contaminated’ due to local naturally-occurring elevated concentrations of one or more parameters ends up in landfills. This landfilling restriction should be deferred until such time as a framework is developed per Item 7 of the proposed amendment package.</p> <p>MECP is encouraged to clarify and reinforce the understanding that the landfilling restrictions do not apply to Class 1 Soil Management Sites operating under an ECA for a “Waste Disposal Site”.</p>
2	Exempt specified excess soil management sites from a waste environmental compliance approval (ECA) subject to rules	<ol style="list-style-type: none">Aggregate reuse depots<ol style="list-style-type: none">Accept excess soil that was part of an engineered aggregate product that will be reused as an aggregate productPrimarily aggregate material or recycled materialWaste asphalt, glass, ceramic or concrete, inert fill (rock), and new aggregate could be stored at the depot to produce an engineered aggregate product.No liquid soil or haz waste permittedCrushing of soil or other materials is permittedStorage of up to 1 year25,000 m³ maximumQuality of excess soil used to form the aggregate product: not associated with a PCA or APEC and not visual or olfactory evidence of impact. If testing done, must meet ICC standards except for salt-related and asphalt-related parametersSmall liquid soil depots<ol style="list-style-type: none">Includes liquid soil from SWM PondsLimited to 100 m³ of liquid soil and 200 m³ of dewatered / processed soilTracking and operational requirementsSampling required for soil leaving the site (not required for incoming liquid soil)	<p>Consider defining ‘new aggregate’ (i.e., that this means aggregate sourced directly from a licensed quarry or pit).</p> <p>Clarify what would be subject to the 1-year storage time limit. Would processed, re-useable aggregate also be subject to this time limit?</p> <p>With respect to the soil quality aspect, we note that “Importation of Fill Material of Unknown Quality” is a PCA contributing to an APEC for most, if not all, of the potential excess soil that could be taken from an existing roadway for the purpose of aggregate rehabilitation. Accordingly, the statement that the excess soil not be associated with a PCA or APEC should be qualified to exclude this obvious PCA.</p> <p>The 100 m³ liquid and 200 m³ processed limits seem restrictive for application to SWM facility operations or other larger scale projects, especially with the time required to test processed soil before it leaves site.</p> <p>Consider adding an option to test the discharge water at a specified frequency and for specified parameters, and if the quality is acceptable, to discharge it to the natural environment.</p>
3	Enhanced reuse opportunities for aggregate and stormwater management pond (SWMP) sediment	<p>Excess soil associated with engineered aggregate or SWM Pond sediment – flexibility for reuse for asphalt-related contaminants and naturally occurring exceedances.</p> <ul style="list-style-type: none">- Soil with PHC F3, F4, PAHs is deemed to meet the standard is being used under or near an asphalt road undertaking- Naturally occurring exceedances can be reused as engineered aggregate provided the parameter is not associated with a PCA/APEC	<p>How would a QP manage an identified metal impact that is believed to be associated with a background / naturally occurring conditions, but which is also included in a standard metals COPC grouping for the PCA and APEC associated with “Importation of Fill Material of Unknown Quality”?</p>
4	Allow greater reuse of soil to be coordinated between similar infrastructure projects	<p>Soil associated with project areas and reuse sites for infrastructure projects of the same type and by the same project leader, being undertaken concurrently, may be managed and reused between those projects without being subject to sections 3 to 5 of the regulation (which provides that excess soil that leaves the project area is designated as waste unless it meets the criteria set out in sections 3 to 5, including the applicable excess soil quality standards)</p> <ul style="list-style-type: none">- soil management activities are being undertaken concurrently as one coordinated effort across all of the project areas and reuse sites- The excess soil is being reused for a beneficial purpose- 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.	<p>Confirm the situation to which transportation and on-site soil management requirements apply. This statement in the proposed amendments comes following a statement relating to soil not being reused across coordinated project areas and reuse sites. What transportation requirements apply for the movement of soil between infrastructure projects of the same type?</p>

5	Reduce reuse planning requirements for excess soil moved between infrastructure projects	<p>It is proposed that if a project leader for an infrastructure project area is required to file a notice in the Registry under section 8 of the Regulation, and is moving excess soil to another infrastructure-related undertaking, the project area will be exempt from requirements associated with completion of an assessment of past uses, a sampling and analysis plan and sampling analysis report, excess soil destination assessment report and implementing a tracking system.</p> <p>This proposal differs from the existing exemption in that it is not limited to situations where the reuse site for an infrastructure undertaking is owned by the project leader or a public body and can be relied on as long as both the project area and reuse site are for infrastructure projects or undertakings</p>	No comment
6	Allow in-situ sampling for stormwater management pond (SWMP) sediment	SWMP sediment could be collected in-situ and then tested, following the in-situ sampling frequencies in the regulation.	No comment
7	Regional mapping of naturally occurring local background concentrations	MECP have heard from some stakeholders that a mapped approach may be useful for applying this deeming provision to enable greater reuse of excess soil as it would avoid site-by-site assessments. As such, MECP is seeking input on the concept and feasibility of the proposed approach	Stantec is in favour of further developing our understanding of local background conditions, similar to what has been for metals in soil in Thunder Bay (<i>Technical Memorandum, Updated Soil Background Concentrations for Elements in the Thunder Bay Area, Ontario, Canada</i> , MECP, November 2023). An undertaking of this nature would be best led by the MECP with support from the Municipalities, who could assist in focusing the efforts to particular parameters, as it is likely that most Municipalities are already aware of local background conditions that limit the reuse of excess soil.
8	Other clarifications and corrections	<ul style="list-style-type: none"> i) Flexibility with temporary soil movement from a project area and back to the same project area or within a project area that will later be contiguous ii) Temporary situations (driveway / access road). Not required to meet ESQS iii) Document additives to soil processing (e/g. tunneling) iv) The frequency at which samples must be analyzed for parameters that are included in the minimum parameter sampling list but are not contaminants of potential concern associated with a PCA or APEC, would be able to be reduced at the discretion of the qualified person. v) The definition of “public body” would be expanded to also include corporations established by municipalities under s. 203 of the Municipal Act, 2001. vi) The regulation would be amended as needed to allow the establishment of more than one type of depot by the same owner or operator at the same property or adjoining properties, with the exception of small liquid soil depots (i.e., another type of depot cannot be set up at the same or adjoining properties where a small liquid soil depot is set up). 	No comment