



December 03, 2022

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

Sent via email submission.

RE: COMMENTS ON AMMENDMENTS TO CERTAIN REQUIREMENTS UNDER THE EXCESS SOIL REGULATION (ERO # 019-6240)

On behalf of the Ontario Road Builders' Association (ORBA), we would like to provide the following written comments in response to the proposed amendments to certain requirements under *O.Reg. 406/19: On-Site and Excess Soil*, as posted on the Environmental Registry of Ontario, ERO # 019-6240.

The Ontario Road Builders' Association is proud to represent the road building sector in Ontario. Our members build and maintain the majority of provincial and municipal roads, bridges, transit and transportation infrastructure across the province. The road building sector directly and indirectly employs approximately 56,000 workers at peak season and impacts all Ontarians.

Since 2016, ORBA has been rigorously involved in consultations on potential excess soil regulations through the advisory Excess Soils Engagement Group. When *O.Reg. 406/19: On-Site and Excess Soil* was enacted, ORBA supported the modernization of Ontario's soil management regime. ORBA has hosted the Ministry of Environment, Conservation and Parks on numerous occasions for educational sessions, informing our membership of changes and every phase of the regulation as it was implemented.

At the beginning of the year, ORBA members were pleased to see the implementation of phase-2 excess soil requirements delayed until January 1, 2023. Although contractors had invested significant time and money to become compliant for January 1, 2022, the extra time for educational purposes and selective piloting by the Ministry of Transportation was helpful. That said, many of the systems and compliance mechanisms still remain untested by a majority of our members. Some of these systems and resources include sampling and transportation, tracking/hauling systems, creating protocols for the assessment and placement of excess soil, and filing notices on the new registry.

Removal of Reuse Planning Requirements from Low-Risk Projects

In response to the newly proposed amendments, we support the removal of the reuse planning requirements for low-risk projects, including registration, sampling and tracking. This would include project areas recently used for agricultural, residential, parkland or institutional purposes, as defined in the Records of Site Condition Regulation.

Although this amendment will help to ease the burden for new roads and highways being built on exempted land uses, existing roadways are not included, as they are considered community use. A majority of our member's business occurs on existing roads and highways, either through rehabilitation or expansion projects. We suggest that MECF consider adding road subgrade material as low-risk, to help increase reuse opportunities.

Regardless of the exemption for low-risk projects, reuse sites will still be liable to ensure soil is coming from a low-risk project site and therefore, uncontaminated. Consistency between this new amendment and reuse sites may require additional clarity. For example, contractors anticipate that they may still be required by reuse sites to have all documentation and soil sampling results, thus making the new amendment redundant. In order for the excess soil regime to be successful, clarity is needed at all levels. It will be equally as important to ensure there are transition provisions for currently active, low-risk projects.

Increase to Temporary Soil Storage Piles

In response to this amendment, we support the increase of temporary soil storage piles from 2,500 cubic metres to 10,000 cubic metres. Contractors continue to be proactive in the management of excess soil and make every possible effort to re-use excess soil on projects to avoid the landfill. Increasing the size of the temporary storage piles will provide more opportunity to do so.

That said, there are several issues to consider with this amendment. Increasing stockpile volumes may require an overall increase in footprint for project sites/reuse sites, which could prove to be problematic in densely populated areas. Similarly, on big projects in particular, where there are significant efforts for beneficial re-use, we suggest no limits be placed on the maximum soil storage limit and stockpile size. Under the regulation, contractors are already required to have significant measures in place to prevent adverse effects, such as erosion fencing, cover and drainage. These limits constrain contractors' ability to maximize beneficial reuse.

ORBA members are also concerned with the one-week timeline requirement under Section C (1) 4. Piling and transporting this volume of soil could prove to be difficult within the allotted timeframe. Allowing contractors more time to store the soil would give them more of an opportunity to re-use the excess soil on another project. Particularly on large projects, contractors might not have another project ready by the time of the excess soil destination assessment report. We suggest increasing this one-week requirement.

Comments in this letter have been prepared through consultation with all levels of our membership. Above all else, the road building industry needs certainty and consistency in the Ministry's approach to regulating the management of excess soil.

Thank you for the opportunity to provide comments. Please do not hesitate to contact Brianna Puigmarti, Senior Policy Advisor at Brianna.puigmarti@orba.org with any questions regarding this submission.