**CITY OF MISSISSAUGA**

**COUNCIL ENDORSED COMMENTS ON EXCESS SOIL REGULATORY PROPOSAL - POSTED MAY 1, 2019**

**Environmental Registry of Ontario No. 013-5000**

| **COMMENT No.** | **TOPIC HEADING** | **DOCUMENT REFERENCE**  ***(section, subsection, para.#., etc.)*** | **COMMENT** | **ACTION**  **REQUESTED** |
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| **PROPOSED CHANGES TO REG. 347** | | | | |
| n/a |  |  | NO COMMENT.  *(Amendments to Reg. 347 only to add definitions related to excess soil and refer to the proposed excess soil regulation.)* | N/A |
| **ON-SITE AND EXCESS SOIL MANAGEMENT REGULATION** | | | | |
| 1 | Definition – Excess Soil | s. 1(1) | Is it assumed that the term “excavated” extends to the use of a dry vac and/or suction excavator for the purposes of removing excess soil from the surface of a project area. Please confirm that this interpretation is correct. | Clarification |
| 2 | Definition – Project Leader | s. 1(1) | The definition of a Project Leader may need to be modified to include the General Contractor, rather than the property owner. In municipal construction contracts, the municipality has usually placed responsibility on the contractor to retain a Qualified Person and manage soils in accordance with applicable law and dispose of soils to licensed facilities, as applicable. It has been the contractor’s responsibility under a contract agreement to locate their own disposal facilities.  Under such circumstances under a construction contract, it is our opinion that the General Contractor should be defined as the Project Leader, rather than the property owner or project manager representing the property owner.  In addition, where the property owner or agent has overall responsibility for a project and retains a Qualified Person, and the property owner/agent is relying on the Qualified Person to advise on how to manage soil and find reuse locations, could the Qualified Person be defined as the Project Leader? | Modification |
| 3 | Soil Bank Storage Site and Soil Processing Site | s. 1(1) | The definition indicates that soil bank storage sites and soil processing sites are waste disposal sites that will operate on a temporary basis for the storage of excess soils from one or more projects and is not operated by the project leader.  What will be maximum term for storage of excess soils at a soil bank or soil processing site? How will operators keep track of excess soils received and transferred elsewhere to a final reuse site, particularly if mixing from different source sites is permitted?  Please confirm that the Project Leader’s liability and responsibility ends once excess soils are received by a soil bank or soil processing site. | Clarification |
| 4 | Exemption from waste designation if reuse site governed by instrument | s. 4(1) Table | Under Item 3, where under Column 1 there is an instrument that imposes less stringent requirements than the applicable excess soil quality standard in accordance with the Soil Rules, then under Column 2 the requirements in the instrument are permitted to stand, and not comply with the Soil Rules. Is this the actual intent to allow municipalities to pass by-laws and create permits that allow less stringent soil quality standards than the proposed excess soil regulation?  If yes, what is the rationale behind this?  If municipalities do pass by-laws that allow less stringent excess soil requirements than the regulation, would municipalities then be held liable and be subject to orders and fines under the *Environmental Protection Act* for non-compliance with the more stringent On-Site and Excess Soil Management regulation? The proposed wording in this table appears to indicate that the ministry would only enforce up to the requirements under the instrument and not the regulation. Please confirm. | Clarification |
| 5 | Exemption for waste designation if reuse site is not governed by instrument | s. 5(1)(1) | As per this section, the quality of excess soil going to a reuse site must not exceed applicable excess soil quality standards of that reuse site. In scenarios where a project area is exempt from section 7 and as such is not required to complete a Soil Characterization and Excess Soil Destination Assessment Report, it is unclear what the sampling and analytical requirements are in order to show that the soil meets the quality standards.  In this scenario, is the excess soil to be sampled as per the frequencies and parameters identified in the Regulation if the soil is being transported to a reuse site? Or, is the acceptable sampling and analytical requirements to be determined by the QP of the reuse site? | Clarification or further guidance. |
| 6 | Before depositing specified excess soil, landfilling site, or dump | s. 11(1) | While there is good intent in this section to promote beneficial reuse of good quality soils and prevent unnecessary disposal at a landfill or dump, what if the owner of the source site cannot find a reuse site within the necessary timeframe of the project and the Project Leader has no other recourse than to send the soils to a disposal facility?  While every effort will be made to reuse good quality soils, and until there are soil bank sites made available or a soil matching service is made available, there may be occasions where a significant amount of excess soil is generated for a large-scale project and there are not enough reuse sites are available or ready to take the soils at a given point in time, and there is insufficient storage space available on the project site until a reuse site can be identified.  Could this be added as a valid reason that a Qualified Person could also cite on a declaration to the operator of a landfill or dump, under s. 11(3)?  Will the ministry provide information on how to find potential reuse sites to help Project Leaders? | Consider addition or clarification to regulation, or further guidance. |
| 7 | Before depositing specified excess soil, landfilling site, or dump | s. 11(1) | Is it to be assumed that excess soils that meet the circumstance describe in schedule 1, item 2 (less than 100 m3 going to a waste disposal site that is not a TESSS) are exempted from requirements under section 11, | Clarification |
| 8 | Before depositing specified excess soil, landfilling site, or dump | s. 11(2) | In this subsection, the term “sensitive sites” is neither defined in the regulation nor in the Soil Rules document. For clarity, please add a definition for “sensitive sites”, or otherwise explicitly indicate “agricultural, residential, parkland or institutional uses”. | Add definition or change wording. |
| 9 | Declaration by Qualified Person to operator of landfilling site or dump | s. 11(3) | Does the Qualified Person need to have soil samples collected with laboratory analyses in order to be able to make this declaration? In excess soil cases where less than 2000 m3, there are no soil sampling or reporting requirements mandated. Could the Qualified Person then make a declaration based solely on visual and olfactory evidence? | Clarification |
| 10 | Temporary Soil Storage Site – Maximum amount of soil stored | s. 17(1)(3) | This section indicates that the amount of excess soil stored at a TESSS at any one time must not exceed 2,500 m3, however, the Excess Soil Rules Part II s. 3(4) states that the maximum size of each pile of stored excess soil at a TESSS must not exceed 2,500 m3. Please provide clarification as to whether the 2,500 m3 maximum volume should refer to the total volume at a TESSS, or the individual piles and revise the text accordingly. | Clarification/ revised wording |
| 11 | Temporary Soil Storage Site –  Written record of intended reuse site | s. 17(1)(4)(ii) | Where a public body is the owner of a temporary soil storage site and where excess soils are generated by an infrastructure project of less than 2000 m3 and is composed of topsoil, the regulation indicates that such excess soils are exempt from sections 7 and 10, thus not requiring a Qualified Person and not requiring the preparation of the formal documents required elsewhere in the regulation and in the Soil Rules.  As per s. 17(1)(4)(ii) and the Excess Soil Rules Part II s. 3(2)(iv), temporary soil storage sites are required to have a written record identifying the intended reuse site(s) prior to receiving the excess soils and the date on which the reuse site(s) can start receiving the excess soil. However, in the scenario described above, there will be hundreds of locations where excess soils will be generated from multiple, non-adjacent road allowances at several times throughout the spring and summer season to clear out stormwater ditches and at present, the City of Mississauga disposes of such excess soils to a waste disposal facility. The City would like to beneficially reuse this soil in other road allowances, however, there will be hundreds of locations where this soil could be reused.  Would it be satisfactory to the ministry in such cases, that the public body maintain an annual list of potential reuse site locations prior to the start of each ditch maintenance season and the anticipated timelines for the maintenance to occur, and instead of tracking individual municipal addresses, to keep a list of streets and intersections where work will be performed in order to be able to use municipal works yards as temporary soil storage sites, mix soils of similar quality (which are all comprised of topsoil) and then send off to multiple reuse sites per the annual list? | Clarification |
| 12 | Temporary Soil Storage Site – Storage time constraint | s. 17(1)(7) | It has been identified that the current maximum time of 2 years may not be sufficient to accommodate beneficial reuse of excess soil as it pertains to infrastructure projects.  Given the proposed restrictions to when soil can be sent to a landfill or dump site (to come into effect January 2023) and to encourage the beneficial reuse of excess soils, could consideration be given to providing an exemption to the maximum storage time of excess soils at TESSS’ owned by public bodies? (Similar to the exemption included for the final placement of excess soil for infrastructure projects [s. 5(1)(6)]). | Consider revision |
| 13 | Temporary Soil Storage Site – Soil characterization and written notification. | s. 17(4)(2) | At the City, soils collected via dry vac and/or suction excavator for the purposes of regular infrastructure maintenance (storm drainage ditches) are brought back to municipal works yards to be characterized prior to transport to an off-site licensed waste disposal facility, as characterization at the project area is not a viable option. Further, this scenario falls under Schedule 1, item 1 (and perhaps item 4) of the regulation and therefore, sections 7 and 10 do not apply. Historically, these soils generally meet O. Reg. 153/04 Table 3 Site Condition Standards for residential/parkland/institutional land uses and have the potential for beneficial reuse after sorting to remove debris.  As per s. 17(4)(2), in order for excess soils to be stored at a TESSS, a notification is to be provided to the Director and must include a description of the quality of the excess soil. Could this be interpreted as quality based on the information present at that time (i.e. historical information)? Following characterization at the TESSS, if information provided in the notification is determined to no longer be accurate, corrected information will be provided in accordance with the Regulation. Please confirm that this interpretation is correct. | Clarification |
| 14 | Non-application of Sections 7 and 10 | Schedule 1 | For an temporary excess soil storage site owned by a public body and for excess soils <2,000 m3, comprising of topsoil generated from linear infrastructure maintenance work from multiple non-adjacent road allowances, the sources would be coming from hundreds of municipal addresses and some properties with no municipal addresses, and the reuse sites would be along different and multiple road allowances.  It is our interpretation that this scenario falls under Schedule 1, item 1 (and perhaps item 4) of the regulation and therefore, sections 7 and 10 do not apply.   1. Please confirm that this is the correct interpretation. 2. In lieu of a Soil Characterization and/or Excess Soil Destination Assessment Report, what type of documentation, if any, would satisfy the ministry that the public body is in compliance with the regulation for the proper use of the temporary soil storage site and reuse of topsoils? | Clarification |
| 15 | Liability for Non-compliance by Contractors | N/A | If a property owner, which could be a public body, forms a contract with a company to perform construction or maintenance work on behalf of the public body and in which the contract specifies that the contractor must abide by all applicable law, if the company does not comply with the regulation for the movement and reuse of excess soil, would the property owner be held liable by the ministry for the unlawful act of the company or would the ministry only view the company as being liable and subject to orders, charges, penalties, etc. under the regulation or Act? | Clarification |
| 16 | Liability for Non-Compliance and Record Keeping |  | As part of the City’s usual municipal works process, there are various scenarios in which a third-party (i.e. developer) is responsible for the construction of roads and services on City owned lands. In these scenarios, the City enters into an agreement with a developer, at which point the lands are dedicated to the City and the developer is obligated to complete the necessary road and services construction with the dedicated right-of-way. While the City does review some aspects of the work (i.e. the design), the City does not review the construction practices and contract documents (e.g. soil management, construction tender documents etc.), nor are copies of these documents submitted to the City upon completion of the work. In addition, the City does not enter into any contracts with the developer the work that is being completed.  Please provide clarification regarding what obligations the City would have with regards to conditions imposed on the developer as part of the agreement and what records the City would be required to obtain and retain (if any). Further, please provide clarification as to if the City (being the property owner) would be held liable by the ministry for the unlawful act of the third-party or would the ministry only view the third-party as being liable and subject to orders, charges, penalties, etc. under the regulation or Act. | Clarification |
| 17 | Record Keeping – Municipal Addresses | N/A | Many infrastructure project areas and potential infrastructure reuse sites do not have a municipal address, but instead are conducted along segments of right of ways, which may or may not be adjacent. While these projects may be exempt from some or all of Sections 7 and 10 of the Regulation, if the excess soil is to be taken to a TESSS and then onto a similar infrastructure project for reuse, a record of the municipal addresses for the project area and the reuse site is currently required as per the regulation.  Could consideration be given to revising the references to municipal addresses of project areas and reuse sites to include alternative location identifiers for situations where municipal addresses are not available? | Consider revision |
| **RULES FOR ON-SITE AND EXCESS SOIL MANAGEMENT** | | | | |
| 18 | General Comment – Use of OPSS | n/a | It is recommended that the ministry consider reviewing the Ontario Provincial Standards Specifications (OPSS) for the management and disposition of materials, e.g., GC 4.03 to ensure consistency with the industry. | Recommendation for guidance materials |
| 19 | Excess Soil Planning and Management Requirements | Part II | As a general comment, for the City of Mississauga’s Capital Works Delivery work, this will likely add additional time to project duration and requires more analysis and reporting during the planning and detail design phases, before initiation of construction tender development.  What consideration is being given to multi-year construction projects that are already underway under an executed contract and fixed budget? Even with the one year phasing-in transition period for the activation of the formal excess soil documentation and reporting, existing construction contracts may need to be amended and at significant additional cost, which have not been budgeted as part of the multi-year capital plan. |  |
| 20 | Temporary Soil Storage Sites | Part II, 3. | In cases where the temporary soil storage site is owned by a public body, excess top soil is generated from regular infrastructure maintenance work (*i.e*., clearing out stormwater ditches), total excess soil to be stored is less than 2000 m3, and there are hundreds of locations throughout the municipality as part of this work. The soils are all topsoil and would be tested to ensure that no contaminants are present and are of similar quality. These soils would be mixed and stockpiled from multiple locations prior to depositing at final reuse sites.  In lieu of providing specific municipal addresses, could the public body instead provide a list of streets and intersections where excess soils originated per period of time and a list of potential reuse sites as streets/intersections where the soils could be reused during the spring/summer season? This would be more reasonable for the municipality to be able to track and provide to the ministry on an annual basis.  Also, it may not be physically possible to keep soils from multiple road ditches segregated prior to confirmation of soil sampling, due to limited space available in municipal works yards. However, the City of Mississauga has been testing all stockpiled soils by a Qualified Person over several years, which demonstrate the soils are generally all of similar quality, only showing impacts by EC/SAR. Could the municipality instead provide a soil screening procedure of how it would audit stockpiled soil quality and segregate soils that show any evidence of impacts (olfactory, visual) in order to be permitted as a temporary soil storage site?  As stated earlier, at present the City of Mississauga disposes of all such excess soils to a landfill and would like to beneficially reuse such soil in other road allowances. | Clarification |
| 21 | Depositing excess soil at a landfill or dump | Part II, 6 | Table 2.1 has been referenced in this section. Please provide clarification as to whether this refers to Table 2.1 in Appendix 1, 2 or 3. | Correction to text |
| 22 | Assessment of past uses – compliance exemption | Part III, 1(4)(iii) | This section states “Where a qualified person forms an opinion mentioned in a) and b) above, the qualified person shall, in the assessment of past use report…”. It appears this should reference “i)” and “ii)”, as there is not “a” and “b” listed in the section. | Correction to text |
| 23 | Assessment of past uses – compliance exemption | Part III, 1(4)(iv) | It is unclear why this subsection has been included or how it affects the compliance exception. Please provide clarification. | Clarification/ Correction to text |
| 24 | Soil Characterization – sampling requirements | Part III.2.(2)(x)(5) | This section makes reference to an “item 5 (below)”. This reference could not be located and it is unclear what this is a reference to. Please provide clarification. | Clarification/ Correction to text |
| 25 | Soil Characterization – sampling requirements | Part III.2.(2)(xi) | This section makes reference to “parameters listed in (i) and (ii)”, and “contaminants outlined in item 4 (below)”. These references could not be located and it is unclear what these references are to. Please provide clarification. | Clarification/ Correction to text |
| 26 | Soil Characterization – sampling requirements | Part III.2.(4)(i) | This section makes reference to leachate analysis being required based on “Section 5 of Part IV of this Document”, however the referenced section pertains to generic excess soil standards that are “N/A”, “N/V” or not listed and not leachate requirements. Please provide clarification. | Clarification/ Correction to text |
| 27 | Heavily impacted soil that cannot be reused | Part III.2.(5) | Please clarify which standards should be referenced in this section as it appears to contain an incorrect reference:  Part III.2(5) indicates “…exceeding the full-depth excess soil standards for RPI property uses small volume excess soil standard tables set out in Appendix 2 of Part IV of this Document…”.  The tables included in Appendix 2 of Part IV of this document are the Generic Leachate Screening Level tables. In addition, the tables in Appendix 2 are volume independent as leachate analysis is not required for small volumes. | Clarification/ Correction to text |
| 28 | Table 1: Full Depth Background Site Condition Standards | Standards Tables, Table 1 | In the Notes section, under item labeled “#”, it states that the standards in this table are the same as those in Table 2 of *Soil, Ground Water, and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act,* dated April 15, 2011, providing site condition standards applicable under O. Reg. 153/04 and set for coarse textured soils. However, it appears this should reference Table 1 site condition standards of O. Reg. 153/04. | Correction to text. |
| **PROPOSED CHANGES TO O. REG. 153/04** | | | | |
| 29 | Change of property use restrictions | s. 4(1) and (2) [of the amending document] | Under this section, Section 15 of the Regulation has been revoked and substituted with a revised Section 15 – exemption to change in use. As per the proposed amendments, s. 15(2) indicates that the change in use restriction does not apply for an industrial, commercial and community (ICC) use property where the change in property or building use is for the purposes of indoor religious gatherings. It is the City’s understanding that this exemption is to be revoked one year after the amending regulation is filed.  It is the City’s understanding that this exemption has been included to provide a transition period for ongoing development projects of ICC properties being converted to the use for indoor religious gathering purposes. However, it is unclear how this exemption will affect a further change in use of that same property or building from the indoor religious gathering use to a residential, parkland or institutional use (other than indoor religious gathering purposes).  Could consideration be given to including an exemption, similar to that listed in s 15(1)(iii)C.), such that a change in land use would be prohibited for a change of a property or building that is being used for indoor religious gathering purposes to a residential, parkland or institutional use (other than indoor religious gathering purpose) where that property or building was previously exempt under subsection 15(2) with respect to conversion from ICC to an indoor religious gathering use. | Clarification/ Consider Revision |
| 30 | Excess Soil, Phase One ESA | s. 16 [of the amending document] | Under this section, Section 55 of the Regulation has been revoked and substituted with a revised Section 55. As per the proposed amendments, s. 55(1)(2), “The qualified person who is conducting or supervising the phase one environmental site assessment must have determined that the concentration of contaminants in the soil does not exceed the applicable soil quality standards, as determined in accordance with the Soil Rules”. Please confirm if the “soil” in this statement refers to the excess soil brought to and finally placed at the RSC property (not the existing soil at the RSC property). | Clarification |