

December 2, 2022

Ms. Reema Kureishy
Policy Analyst
Land Use Policy, Environmental Policy Branch
Ministry of the Environment, Conservation and Parks
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Public Works

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RE: ERO Registry Number 019-6240
Proposed Amendments to Certain Requirements under the Excess Soil Regulation

Dear Ms. Kureishy,

Region of Peel staff have reviewed the proposed amendments to certain requirements under the Excess Soil Regulation and appreciate the opportunity to provide feedback to the Province.

Though the Region of Peel acknowledges that the proposed amendments under ERO Registry Number 019-6240 would benefit certain stakeholders, they are not specifically beneficial to capital projects carried out by municipalities, including the Region. Regional staff would like to take this opportunity to provide the following feedback/comments for your consideration to improve the effectiveness and overall efficiency of the Excess Soil Regulation.

Comments

1. For volume independent Excess Soil Quality Standards (ESQS), many of the parameters included in volatile organic compounds (VOCs) and/or polycyclic aromatic hydrocarbons (PAHs) remain the same regardless of whether Table 1 standards are utilized or if Table 2.1 and/or Table 3.1 standards are utilized. There are challenges as background concentrations exist for specific parameters that marginally exceed the ESQS and the contractor is then not able to beneficially utilize this soil at a reuse site but rather must classify the soil as “waste”, where it is disposed of at a waste disposal facility at an excessive cost to the Region. For example, many of our projects in residential areas are being tested for VOCs and the concentration of tetrachloroethylene (PCE) is marginally over the 0.05 µg/g standard as stipulated in Table 1, Table 2.1 and Table 3.1 of the ESQS; however, if the volume dependent standards were utilized, these parameters would meet the standards. It is recommended that the Ministry of Environment, Conservation and Parks (MECP) work with their standards group to identify a more practical use of the standards for these specific parameter groups to ensure the spirit of the regulation is being met.
2. There continues to be a noticeable disconnect between the objectives of the regulation and the interpretation/application of the new rules by reuse sites. The

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MECP should increase engagement with reuse sites and Qualified Persons (QPs) to educate and provide them with direction on the Excess Soil regulation requirements. In our experience, reuse sites continue to impose sections 8 to 16 of the Excess Soil Regulations, regardless of whether the project area is exempt from the reuse planning requirements as stipulated in Schedule 2.

3. Sampling frequencies as stipulated in the Excess Soil Regulation are based on the volume of excess soil generated; however, for linear and tunneling projects, it is impractical to collect excess soil samples from the depths where excess soil will be generated during the planning and design stage. In order to meet the requirements of the regulation, we are required to take these additional soil samples as the soil is removed via the tunnelling excavation methods. Consideration should be given to sampling frequencies based on the depth of the excavation. For example, based on the current “volume requirements” a project generating 6000 m³ of excess soil would require approximately 30 soil samples to be taken. The area of the project proposes 12 boreholes to a depth of 3 metres below ground surface (mbgs). In order to meet the sampling frequencies, 2-3 samples will be taken from each borehole (some samples duplicated). However, a more concise sampling plan could be devised if the soil depths were considered, as the infrastructure would be installed at a depth of 3 mbgs, and the borehole would be to a depth of 3 metres.

Also, it is impractical to meet the sampling frequency in-situ, particularly for deep projects such as tunneling. Due to the density, it is also not feasible to stockpile in the right of way or if the work is being completed in a Regulated Area, Conservation Authorities will not allow any stockpiling within a Project Area. In this case, both in-situ and ex-situ sampling become impractical. It was also previously communicated to the Region that sampling frequencies did not need to be met for tunnelling projects if the QP would confirm in writing that the soil conditions to be encountered within the elevation of the tunnel were consistent. However, based on the feedback from reuse sites they are not accepting any QP discretion and are requiring all sampling to meet the sampling frequencies as stipulated in the Regulation. The MECP should consider more concise sampling frequencies in these instances and ensure there is a common understanding between project area and reuse site requirements.

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Conclusion

Thank you for the opportunity to comment on the proposed amendments and allowing the Region to provide feedback on the proposed amendments to certain requirements under Excess Soil Regulation. We look forward to continued engagement with the Ministry as work continues towards full implementation of the regulations in 2023.

Sincerely,



Steve Fantin
Director, Operations Support
Public Works
Regional Municipality of Peel