

Ontario Sewer and Watermain Construction Association



**OSWCA Response to the Ministry of Environment, Conservation and
Parks' Regulatory Amendments: *Extending Grandfathering for
Infrastructure Projects and Providing Additional Flexibility for Excess
Soil Reuse***

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Submitted via Email: laura.blease@ontario.ca

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**Re: OSWCA Response to the Ministry of Environment Conservation and Parks’
Extending Grandfathering for Infrastructure Projects and Providing Additional
Flexibility for Excess Soil Reuse**

On behalf of our members, the Ontario Sewer and Watermain Construction Association (OSWCA) would like to provide the following comments and recommendations for changes to the Ministry of Environment, Conservation and Parks’ regulatory amendments, titled *Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse* (ERO number 019-2462). The OSWCA welcomes the Ministry’s regulatory amendment proposal to provide additional flexibility for excess soils reuse; however, there remain some key areas where efficiencies still exist and elements within this document which would benefit from further clarification.

The OSWCA has long supported excess soil regulatory proposals which will help mitigate and address the disjuncture between existing regulation and practices in the field which remain costly, and in need of greater provincial direction and oversight to realize greater environmental, cost, and logistical efficiencies. It is for this reason why we greatly appreciate the Ministry’s past proposals which require owners to properly characterize soil in their project design; to identify soil disposal sites and reuse options; to disincentivize the continued reliance on virgin aggregate on public works projects; and, to eliminate the practice of downloading all responsibility for soil disposal onto contractors.

The OSWCA supports these past changes which will help to improve accountability around soil reuse and disposal, which in turn will create a more even playing field for construction companies bidding on projects across the province, and result in fewer disputes over added claims costs – ultimately providing a cost savings to local taxpayer over the life of a project. Too, such regulation will help limit the amount of healthy soil being sent to landfill, as well as provide clearer, risk-based options for safe reuse.

Lessons-learned



Considering the effects of these regulation may not be fully realized all parties to the construction contract have experience operating under all the new processes and provisions (i.e., risk-based standards, waste designations and approvals, resting, tracking and registration and restrictions on landfilling soils), the OSWCA would urge the Ministry to adopt a policy-testing and lessons-learned approach. That is, understanding the depth and breadth of these changes, the sum of which overhauls how earthworks projects are designed, tendered, and constructed in the province, it is imperative for the Ministry to provide for post implementation consultations and/or allow for feedback of past experiences with regards to the new rules to be actively considered, and acknowledge that there may be difficulties or unintended consequences of some rules. Understanding the intention of the regulations are to recognize excess soil as a valuable resource, reduce clean soil going to landfills as a waste and prevent inappropriate disposal of contaminated soil, it is important to re-evaluate and ensure the purposes of such changes are being accomplished, particularly for regulatory changes of this size and scope.

Extending Grandfathering

One particularly important element we would like to highlight in the proposal is the Ministry's commitment to phase the amendments in over time. While many of our industry partners would have greatly benefited from these changes taking effect immediately, we are cognizant of the need to ease the transition and take the necessary time to "get it right" to ensure long-term success. As such, we are supportive of the gradual phase in.

Further, the OSWCA understands the Ministry's proposal to revise the grandfathering provisions and extend the date by which construction projects must be entered into by one year; from January 1, 2021 to January 1, 2022. We appreciate the impetus for this amendment, as it addresses COVID-19 related contract delays by ensuring projects which were previously anticipated to be grandfathered, but were delayed by the pandemic, will still be grandfathered. Unfortunately, however, many of our contractor members would have greatly benefited from the earliest possible implementation of the provisions which eliminate the practice of downloading all responsibilities of assessment, management and relocation of excess soil, from the owner to the contractor.

However, notwithstanding the above noted understanding for extending grandfathering provisions, this proposal is one which could certainly benefit from further clarification. That is, this clause which ultimately determines what rules a contract must comply with is fairly vague and of ambiguous meaning, a fatal flaw for such a critical element within a policy document. We urge the Ministry to provide further explanation on this amendment and specify, in plain language, what rules these contracts will be exempt



from and what rules these contracts will be subject to, as per the grandfathering provision (i.e., the proposed amendment does not exempt projects from excess soil reuse provisions).

Additionally, the OSWCA applauds the Ministry's proposal to expand the scope of the exemptions to provide an exemption from assessment of past uses, sampling and analysis plan and soil characterization reports for projects which have already completed similar studies before January 1, 2022. This exemption will help reduce administrative redundancies, avoid costly delays and allow projects to move forward based on assessment which were previously completed. This is particularly important during Ontario's economic recovery period, as it is evermore important that infrastructure projects continue to be tendered without interruption.

Environmental Compliance Approvals (ECA) Relief for Low-Risk Soil Management

The OSWCA supports the Ministry's proposal to provide an exemption for the need to obtain an ECA for the identified low risk activities. This proposed change is particularly important as it does not compromise environmental health and is aligns with standard industry practice to temporarily store excess soil generated from greenfield development sites, and other low risk development sites, to be reused at similar development sites. By way of specific example, it is common practice to compile topsoil from greenfield development sites and redistribute it to development sites for fill. As such, this proposal is welcomed.

Enabling Site Specific ECA Soil Management Requirements

The OSWCA supports the proposal to enable ECAs to specify alternative soil management requirements from those identified in the Soil Management Rules. This is a significant improvement, as the Soil Management Rules may not always align with best practices for a particular project and in these cases site-specific modifications would be beneficial. This change, which would allow for alternative requirements, may provide more opportunities for excess soil reuse and for this reason we are in support of the proposal.

Flexibility in Excess Soil Storage for Reuse

The OSWCA is in support of the proposal to provide flexibility for excess soil to be stored at a location within 10 metres of a property line boundary, as in many cases this setback is not practical or required. By way of example, certain projects, particularly in the sewer and watermain sector, have narrow sites which do not have 10 metres of space to temporarily store soil after excavation and before it is moved.

Reuse of Salt-Impacted Soil



The reuse (or lack thereof) of soil which has been impacted by road salt continues to be a major issue for contractors building linear public infrastructure and one particularly area where opportunities for efficiencies still exist. That is the Soil Management Rules currently require that salt-impacted soil be finally placed at least 1.5 metres below the surface.

However, given the existing allowances for re-using salt-impacted soils in roadways, sidewalks, and parking lots, we appear to have already acknowledged that there are minimal, if any, adverse impacts of these soils. Therefore, a further relaxation of the limits on the depth that salt-impacted soils must be buried in new institutional, commercial, and industrial (ICI) developments should also be considered, to expand the reuse options, thus resulting in the potential for significant cost-savings. We recommend that the MECP, at the very least, introduce a broad pilot which allows for a 25% reduction in the depth that this soil has to be buried in areas designated for ICI construction. By limiting the pilot to new developments in the GTA, the Ministry can closely monitor the impacts of this relaxed standard. Too, the Ministry will be able to compare the adverse effects, if any, to the cost savings and reduction in carbon footprint that would come with broader reuse applications.

Concluding Notes

The OSWCA appreciates having the opportunity to provide input into this consultation process. The proposed regulatory amendments make an important step in the right direction for how excess soils are managed in the province. Moving this process forward is important to managing the costs and long-term environmental sustainability of excavation and earthmoving projects across the province. Nevertheless, it is crucial that we get this entire process right before it is applied entirely across the province.

Please do not hesitate to contact Patrick McManus in our office (905-629-7766 ext. 229 or patrick.mcmanus@oswca.org) if you have any questions or need information regarding OSWCA and its membership.