



O.Reg 406/19: On-site and Excess Soil Management Regulation Proposals

AMO's Submission to the Ministry of the Environment, Conservation and Parks
on:

ERO 019-7636

November 24, 2023

Executive Summary

AMO appreciates the opportunity to provide comments on proposed amendments to O.Reg. 406/19 under the *Environmental Protection Act*, and the Rules for Soil Management and Excess Soil Quality Standards. These proposals could create opportunities to redirect more excess soil from landfill sites which will extend limited landfill capacity in Ontario communities.

While AMO is generally supportive of increased management and opportunities for reuse of low-risk excess soils, it is vital to ensure that the proposed changes do not have unintended consequences for municipalities or the environment. Soil reuse must be done with care and be balanced with adequate oversight and enforcement, particularly in relation to large volumes of excess soil, the expanded use of salt-impacted soil, and storage of soil adjacent to waterbodies.

Exemption of Specified Class 1 and Class 2 Excess Soil Management Operations from a Waste Environmental Compliance Approval (ECA)

We understand that the proposed amendments would exempt specified excess soil management operations from an environmental compliance assessment (ECA) subject to rules set out in regulation. We understand that these proposed rules would include maximum timelines for storage; restrictions on the storage of liquid soil; procedures to account for the source, type, and likely quality of received soil; and that exempted facilities would be required to register a notice on the Excess Soil Registry. The proposed amendments would also increase the volume of excess soil stored at certain Class 1 and Class 2 soil management sites from the current amount of 10,000m³ to 25,000m³.

Municipal governments play a pivotal role in ensuring that waste is properly managed to protect the health and safety of our communities and environment. Based on current landfill capacity and current waste disposal rates, Ontario is estimated to have only 10 years of remaining disposal capacity. Pressure on limited waste disposal capacity will be exacerbated by the provincial government's goal of building 1.5 million new homes by 2031. In general, AMO supports efforts to make it easier to reuse low risk excess soils in order to divert these materials from landfills.

However, AMO is concerned about monitoring and compliance of the affected soil management operations. The exemption from an ECA and increase of volume of soil must be balanced by appropriate oversight and enforcement to ensure that operators are following their obligations under the *Environmental Protection Act*, and other relevant legislation and policies. While many operators will abide by the requirements, there will be those who do not comply.

Municipalities routinely identify illegal hauling, dumping and soil depot operations which cause increased noise, pollution, and environmental impacts to our communities. Municipalities incur costs to enforce local bylaws and legal action against operators. This work is increasingly important not only for environmental protection, but for the health and safety of our communities. Municipalities

cannot be expected to monitor and enforce soil operations alone, and need provincial support to ensure that these activities are addressed and stopped.

AMO calls on the province to ensure that a strong education, monitoring and enforcement regime is in place for excess soils. It is essential that the rules for soil operators and haulers are clear; that the routine monitoring of soil operations is increased; and that strong penalties are in place for violators. The province must be proactive in this work and direct resources to audits and investigations before complaints are lodged about potentially illegal activity.

Enhanced reuse opportunities for salt-impacted soil

The proposed regulatory amendments enable more uses for salt-impacted soil including on properties that have community, institutional, parkland, and residential uses.

The use of salt-impacted soil should be done with care and in a way that does not increase liability of municipal Councils under the *Safe Drinking Water Act*, *Clean Water Act* and other legislation and regulations related to water protection. We are pleased to see that this proposal includes several requirements to ensure that this reuse is done diligently and with care to avoid potential environmental impacts. Specifically AMO supports:

- The requirement that expert certify a landscape or site plan regarding the concentration of salt-related contaminants and that the soil use would not affect existing or future vegetation.
- The proposal maintains the existing 100m setback from surface water bodies, potable wells, and properties expected to use groundwater wells for potable purposes.
- The requirement that source sites notify property owners that they are receiving salt-impacted soil, and the owners must consent in writing to the receipt of the soil.

The proposal would also allow use of salt-impacted soils on agricultural properties not used for growing crops or pasturing, or in natural areas. Because agriculture is essential to many local economies in Ontario, municipalities are concerned about ensuring that agricultural soil quality is not affected by salt-impacted soil. The province may wish to consider establishing a setback from the agricultural areas where salt-impacted soil would not be permitted.

Greater flexibility for storage of soil adjacent to waterbodies

The proposed regulatory amendments would allow the storage of soil within 30m of a water body under certain conditions. Similar to the reuse of salt-impacted soil, the storage of soil adjacent to waterbodies must be done with care and in a way that does not increase liability of municipal Councils under legislation and regulations related to water protection.

We are pleased to see that the proposed changes would require mitigation of potential adverse impacts to the water body, however it is unclear if there would be a reporting obligation for this type of storage. As with other elements of the proposed amendments, AMO calls on the province to ensure that there is an adequate monitoring and enforcement to protect water quality.

Conclusion

AMO supports increasing opportunities to reuse low-risk excess soil which will increase the diversion of these materials from Ontario landfills. However, it is vital to ensure that adequate oversight is in place to ensure there are no unintended impacts to the environment, drinking water, or municipalities. Thank you for considering AMO's concerns with respect to this matter.