



**Ontario**  
Home Builders'  
Association

November 21, 2024

Ministry of the Environment, Conservation & Parks  
Reema Kureishy  
Environmental Policy Branch  
40 St Clair Avenue West, 10<sup>th</sup> Floor  
Toronto, Ontario  
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**Re: ERO #019-9196 Enabling Greater Beneficial Reuse of Excess Soil**

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### **The Ontario Home Builders' Association**

The Ontario Home Builders' Association (OHBA) is the voice of the residential construction industry in Ontario, representing 4,000 member companies organized into 28 local associations across the province, from Niagara to Thunder Bay and Windsor to Ottawa. Members include builders, developers, professional renovators, trade contractors, suppliers, and manufacturers serving the residential construction industry. The residential construction industry employed over 550,000 people, paying \$38.8 billion in wages, and contributed over \$83.8 billion in investment value across Ontario in 2023.

Please accept the below as our submission to the government's request for feedback on a proposal for amendments to *Ontario Regulation 406/19* (the Excess Soil Regulation) and the Rules for Soil Management and Excess Soil Quality Standards, which is being submitted on behalf of OHBA and its 28 local associations including but not limited to the Building and Land Development Association (BILD), West End Home Builders' Association (WE HBA), Greater Ottawa Home Builders' Association (GO HBA), and London Home Builders' Association (LHBA).

### **Environmental Registry Background**

The Ministry of the Environment, Conservation and Parks (MECP) is proposing amendments to *Ontario Regulation 406/19* (the Excess Soil Regulation) and the Rules for Soil Management and Excess Soil Quality Standards, to make it easier and more affordable for businesses in the construction industry and municipalities to reuse more excess soil locally.

In 2019, the government made the Excess Soil Regulation, supported by the Soil Rules document and risk-based soil reuse standards, to provide clear rules supporting the reuse of excess soil and to help stop illegal dumping of excess soil. The Excess Soil Regulation is now largely in effect. A final provision for restricting landfilling of cleaner soil is going to take effect on January 1, 2025.

The government has advised that since 2019, you have heard and responded to stakeholder concerns and suggestions and continue to collaborate with stakeholders and Indigenous communities to ensure effective implementation of this regulation. This proposal reflects ongoing stakeholder input and includes the following amendments:

1. Change the in-effect date of the restriction on landfilling certain types of excess soil by moving it out by two years, from January 1, 2025, to January 1, 2027, to allow more time to understand

and apply the restriction with minimal confusion and disruption. Clarification of an exception to this restriction is also proposed.

2. Remove requirements for waste Environmental Compliance Approvals (ECAs) for third-party storage and processing of excess soil at aggregate reuse as well as small liquid soil processing sites, with regulatory rules to be followed instead (note: this is a revised proposal from what was previously proposed in October 2023; see ERO #[019-7636](#)).
3. Enable greater reuse of aggregate and storm-water management pond (SWMP) sediment by providing some flexibility related to meeting applicable excess soil quality standards in respect of asphalt-related contaminants and naturally occurring exceedances.
4. Allow greater flexibility for the reuse of soil, that is not known or likely to be contaminated, between project areas and reuse sites of infrastructure projects of the same type and by the same project leader, being undertaken concurrently, including not subjecting the soil to the waste designation and reuse criteria.
5. Adding exemptions for project areas for infrastructure from most of the reuse planning requirements if the soil is being moved to an infrastructure reuse site, when the project areas and reuse sites are owned by different project leaders and reuse site operators. Filing a notice in the Excess Soil Registry for these project areas would still be required.
6. Where sampling and analysis is required, allow in-situ sampling of storm-water management pond (SWMP) sediment to reduce time and cost associated with its characterization.
7. Consider the use of regional mapping of areas that naturally exceed the excess soil standards for certain parameters as a basis for enabling greater reuse of excess soil with such exceedances.
8. Other clarifications and corrections, including for delineating project areas and temporary off-site storage of soil before being returned to the project area, temporary use of excess soil to facilitate an undertaking, and sampling clarifications to account for substances added to soil to facilitate excavation.

## Previous Engagement

Over the past several years, OHBA has consistently (with some policy specific caveats) been supportive of the MECP's plans to modernize the excess soil management framework and to improve efficiencies within the RSC (Record of Site Condition) process. OHBA has responded to several consultations and provided the Ministry with our recommendations and expert advice as it relates to the management of excess soils regulatory framework and achieving the provincial objective to build 1.5 million new homes in the coming decade.

In recent years, OHBA responded to several MECP consultations with our recommendations focused on excess soils:

- Proposed regulatory amendments to encourage greater reuse of excess soil – Dec 2023 submission - ERO 019-7636
- Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse – November 2020 Submission (ERO 019-2462)
- Excess Soil Management Regulatory Proposal – June 2019 submission (ERO 013-5000)
- Excess Soils Management Framework - June 2017 submission (EBR 013-0299)
- Excess Soils Management Framework - January 2016 submission (EBR 012-6065)

OHBA is an active member of the Ministry's Excess Soil Engagement Group, and we appreciate ongoing opportunities for engagement and input from the regulated community. OHBA has also engaged directly with the MECP to facilitate education and training opportunities with MECP Ontario Public Service staff to ensure our members are up-to-date and aware of regulatory compliance measures.

OHBA notes that the excess soil management framework is a complex regulatory compliance mosaic and that any further amendments to O. Reg 406/19 (Excess Soils Regulation) and any amendments to the rules for Soil Management and Excess Soil Quality Standards must be carefully rolled out during the implementation phase to ensure that positive outcomes are in fact achieved, given the many actors and diverse nature of sectors involved in excess soils. While OHBA remains generally supportive of the excess soils regulatory framework, we appreciate implementation flexibility and Ministry efforts to make it easier and more affordable for businesses in the construction industry to reuse more excess soil locally.

### **OHBA Response**

OHBA continues to support provincial actions which streamline processes and approvals to facilitate the reuse of excess soils in a transparent and predictable framework that is required to support increasing housing supply. We are strongly supportive of the provincial goal to build 1.5 million new homes across Ontario over the next decade. Achieving such an ambitious goal will require cooperation from all three levels of government and public policy adjustments to expedite both infrastructure and housing. The residential construction industry has participated in and supported the general direction of several initiatives over the past few years to improve and modernize the excess soils framework in Ontario.

OHBA remains supportive of the Made-in-Ontario Environment Plan commitment to: "recognize that excess soil is often a resource that can be reused. Set clear rules to allow industry to reduce construction costs, limit soil being sent to landfill and lower greenhouse gas emissions from trucking by supporting beneficial reuses of safe soils." This approach will ensure that excess soils are properly traced without creating a significant new red tape and paperwork regime. OHBA welcomes the more consistent approach under provincial guidance for soil management, which should not act as a barrier to opportunities for remediation, reuse and intensification.

It is important to recognize that the old fractured legislative environment concerning excess soil management contributed to significant and increasing costs of residential construction. Industry regulatory compliance requirements, as well as local municipal government policies, operational procedures and contractual practices will all have adoption complexities which is why we are appreciative of the MECP recognizing the need for provincial leadership.

From a residential construction and land development industry perspective, the proposed content of the Environmental Registry posting is welcomed overall, as it should make it easier and more affordable as well as expediting development applications and construction processes.

## **OHBA Specific Comments related to ERO 019-9196 Proposed Content**

Through efforts to help municipalities, industry and others to implement the new Excess Soil Regulation, MECP has identified opportunities to provide additional regulatory flexibility, clarity and refinement. Proposed amendments are intended to further increase local excess soil reuse and improve the efficiency of excess soil management, while being protective of human health and the environment. For projects with a low risk of environmental impact, the proposed regulatory changes would allow for additional soil management flexibility, and as a result, would increase the benefits of proper excess soil management and local beneficial soil reuse.

We can confidently say that several of the proposed amendments relating to greater flexibility of soil reuse are positive and will assist with the underlying intent of the Regulation. However, we would like to flag some overall themes and messaging that we are hearing from our members that we ask for additional consideration to be given:

- An overall need for modernization of the system and way that soil is transferred, accounted for and managed – this includes documentation, reporting, registry, and tracking requirements.
- A renewed focus on the fact that excess soil is not waste and must be treated as a resource capable of reuse.
- Soil management is too complicated, inconsistently managed and treated differently across various municipalities of the province, and increasing changes to the regulation do not bring more confidence in its powers.
- Better enforcement and greater accountability are critical at all levels of the management and movement process.
- Reminder that the developer or owner is the liable party – this responsibility cannot be passed onto the consultants and the onus must be maintained at the owner level for ensuring that soil is properly managed and complies with reuse standards.
- Receivers must strive for assurance and providence of the soil they are taking in.
- Ultimately, good soil management means cost savings which means increased compliance.
- Soil management is not a one size fits all exercise, and there needs to be space and consideration for nuances and flexibility, as well as space to adapt to project specific challenges, but the regulation is becoming increasingly complicated and not able to allow for that.

It has been proposed that the subject of excess soils must be approached and considered from two perspectives: a business perspective, and a regulatory perspective. We encourage the government to approach this subject with both those lenses applied going forward as you deliberate and consider what more needs to be done in the space of excess soils management. From a business perspective, the system is archaic, broken, and needs to be expeditiously brought into the 21st century. It is an outdated system that is not efficient, and all parties involved in the process are paying the cost for it – at the end of the day, modernizing saves money.

From a regulatory perspective, accountability and enforcement must be top of mind as the Ministry continues to address this industry and make modernizations to the regulation and process. Resistance to change does not mean that responsibilities and accountability of persons operating in the excess soils industry can be ignored. Penalties must be reassessed, be improved and be more robust in their enforcement abilities. Additionally, a complaint-based system must not continue to be the norm. While this is often forgotten, municipalities as a public body are also project owners, and therefore must be

subject to the same rules and standards as all other actors in the space. Municipalities must be responsible for their fill as well. Proactive and transformative investigation and dispute resolution must become the standard.

We also request that on a go forward basis, the Ministry must engage in detailed dialogue with stakeholders *prior* to the posting of these proposals on the Environmental Registry to ensure that there are no adverse unintended consequences resulting from these changes. The short posting period for these amendments, and at such a late quarter of the year, and with some of the proposed regulations coming into effect on January 1, 2025, does not allow for substantial time for consideration of any amendment changes and renders the consultation as more of a 'checking of a box' exercise rather than the seeking of meaningful and valuable dialogue from critical stakeholders. Accordingly, OHBA believes it is in the interests of all for the Ministry to engage in more fulsome discussions with stakeholders *prior* to posting regulatory amendments on a go-forward basis.

Regarding some of the more specific items and aspects of the consultation, please see additional comments below:

- 1. Change the in-effect date of the restriction on landfilling certain types of excess soil by moving it out by two years, from January 1, 2025, to January 1, 2027, to allow more time to understand and apply the restriction with minimal confusion and disruption. Clarification of an exception to this restriction is also proposed.**

We are particularly concerned about the proposed postponement of accepting "cleaner" soils at landfills from the original implementation date of January 1, 2025, until January 1, 2027.

This proposed postponement frustrates the underlying intent of the Regulation to promote beneficial reuse of soils where possible. The continued allowance of such soils to be dumped into landfills perpetuates attitudes and practices of regarding such soils as garbage. It also has the ancillary effect of wasteful use of precious air space within landfills.

The original provision within the Regulation to limit the use of cleaner soils at landfills was made public 5 years ago when the Regulation was made into law. Since that time, innumerable webinars, publications, and conferences have occurred to educate stakeholders about this and other provisions contained within the Regulation. The argument that some stakeholders are not yet ready to change their soil management practices to accommodate this change and thus, its implementation on January 1, 2025, as first scheduled, may result in increasing instances of illegal dumping and lends itself to more opportunities for the intransigence and willful ignorance of excess soil generators in bringing their operations into regulatory compliance, which cannot be the intent or outcome at such a critical juncture.

Furthermore, it is safe to assume that it is unlikely that the proposed extension of this deadline to January 1, 2027, will be changed at this late juncture, and the Ministry would be well advised to limit the underlying harm emanating from this measure that suggests it is "soft" on its intent to improve excess soil management outcomes by:

1. Announcing its intention to investigate and prosecute egregious cases of excess soil management violations.
  2. Devoting resources to better ensure regulatory compliance and publicizing high profile cases of compliance enforcement.
  3. Providing and promoting educational resources to all stakeholders well in advance of the new prohibition deadline of January 1, 2027 of cleaner soils in landfills to ensure a smooth transition to the new requirement.
- 2. Remove requirements for waste Environmental Compliance Approvals (ECAs) for third-party storage and processing of excess soil at aggregate reuse as well as small liquid soil processing sites, with regulatory rules to be followed instead (note: this is a revised proposal from what was previously proposed in October 2023; see ERO [019-7636](#)).**

OHBA is supportive of the proposal to provide an exemption from the need to obtain an ECA for the operation of third-party storage and processing of excess spill at aggregate reuse, as well as small liquid soils processing sites. The regulatory package includes rules that would apply to the management of the lower-risk sites that would be exempt from an ECA.

The MECP has proposed to provide flexibility, if certain conditions are met. OHBA is generally supportive of increased flexibility for storage that is low risk provided the term 'third-party storage' does not lead to the proliferation of sites that store unsuitable fill indefinitely. Another suggestion would be allowing for the reuse of excess soils for new road construction in residential subdivisions and/or easing the EPA Tables to allow for greater acceptance at aggregate quarries. Quarries are well suited in terms of location, scale and expertise, to sort, store, mix and sell suitable fill back into the market.

- 3. Enable greater reuse of aggregate and stormwater management pond (SWMP) sediment by providing some flexibility related to meeting applicable excess soil quality standards in respect of asphalt-related contaminants and naturally occurring exceedances.**

The MECP has proposed to provide flexibility, if certain conditions are met. OHBA is generally supportive of increased flexibility for storage that is low risk provided the volumes are either limited or the storage time is short.

- 4. Allow greater flexibility for the reuse of soil, that is not known or likely to be contaminated, between project areas and reuse sites of infrastructure projects of the same type and by the same project leader, being undertaken concurrently, including not subjecting the soil to the waste designation and reuse criteria.**

Member feedback suggests that the tables be redesigned, particularly when dealing with public infrastructure, so that there are more practical options to reuse the excess soils. There is a concern that an endless supply of excess material from road reconstruction will infinitely outpace the opportunities for reuse. There is no circumstance, subject to the EPA Tables, that the volume of excess excavated road material will ever be matched to projects that require fill. For reuse, the fill also needs to be suitable for compaction.

Only the worst soils should end up in landfills. Projects need to be designed with reuse in mind and uses under the EPA need to be expanded to achieve the goals of this legislation. Too often, it is more economical to landfill the material after accounting for trucking costs.

To enhance coordination, we support the recommendation by the Canadian Brownfields Network that, as well as the same project leader, the exemption should also allow exchange of soils between any “public bodies”.

**5. Adding exemptions for project areas for infrastructure from most of the reuse planning requirements if the soil is being moved to an infrastructure reuse site, when the project areas and reuse sites are owned by different project leaders and reuse site operators. Filing a notice in the Excess Soil Registry for these project areas would still be required.**

Simply put, there must be more opportunity to reuse fill, or these may become another name for landfills. Alternatively, consideration could be given to a streamlined process for municipalities to set up their own reuse facilities given they are producing the fill. In speaking with the Canadian Brownfields Network, we also support their recommendation that the tracking requirements of soil movements within and outside the project area, and between infrastructure-related undertakings, is tracked and records are retained by the project leader.

**6. Where sampling and analysis is required, allow in-situ sampling of storm water management pond (SWMP) sediment to reduce time and cost associated with its characterization.**

OHBA supports the recommendation put forth by the Canadian Brownfields Network on this item, in that: After in-situ sampling has taken place, why the need for additional post-dredging sampling would be required is unclear. This is inconsistent with other excess soil reuse sampling where the Qualified Professional would complete in-situ and/or ex situ sampling to align with volumes being removed from the project area, but confirmatory ex-situ sampling is not required. It is recommended that the same premise as standard excess soils sampling be applied to settlement pond sediment sampling for consistency.

**7. Consider the use of regional mapping of areas that naturally exceed the excess soil standards for certain parameters as a basis for enabling greater reuse of excess soil with such exceedances.**

We are strongly in support of the use of regional mapping of areas that naturally exceed the excess soil standards and would support the initiative being undertaken by MECP to undergo this mapping of naturally occurring exceedances. Naturally occurring composition is an important factor. There are examples of quarries that were unable to bring in fill that left the property because of ties to naturally occurring composition and this should be more adequately addressed. This said, we believe this work is best undertaken at a provincial scale rather than the local municipal scale, as it must be a coordinated, comprehensive workable mapping system, and able to be utilized consistently and integrated across the province.

**8. Other clarifications and corrections, including for delineating project areas and temporary off-site storage of soil before being returned to the project area, temporary use of excess soil to facilitate an undertaking, and sampling clarifications to account for substances added to soil to facilitate excavation.**

We do not have any comment to provide on this proposed change.

**Conclusion**

The Ontario Home Builders' Association and our local associations respectfully submits the feedback and recommendations contained within this submission regarding the proposed regulation amendments to O. Reg. 406/19, enabling greater beneficial reuse of excess soil. We encourage the Minister of Environment, Conservation and Parks to take into consideration all content contained within as the government deliberates the intricacies and nuances of this policy and the development of proposed changes to the regulation.

Overall OHBA is supportive of the regulatory proposal. OHBA supports the provincial government's objective to continuously improve the protection of health and the environment while facilitating the safe and appropriate relocation of soil. It is important that the government have a strong framework for excess soils management without overburdening the sector with significant additional red tape. We request that a keen eye be given to ensuring that the proposed changes take into account modernization, cost savings, unnecessary complications and stringent requirements, and finally we also request that on a go forward basis, the Ministry engage in detailed dialogue with stakeholders prior to the posting of these proposals on the Environmental Registry to ensure that there are no adverse unintended consequences resulting from these changes.

OHBA appreciates the opportunity to provide feedback on the proposed excess soil management regulation and looks forward to ongoing dialogue and consultation with the provincial government. Our We appreciate the opportunity to comment on this proposal. We look forward to continuing our ongoing engagement with the Ministry staff to ensure that our collective efforts are fulfilling our shared goals of delivering on Ontario's housing supply targets while improving housing attainability for current and future Ontarians.