



December 2, 2022

Reema Kureishy  
Environmental Policy Branch  
Ministry of Environment, Conservation and Parks  
40 St Clair Avenue West, 10th Floor  
Toronto, ON M4V 1M2

*Submitted electronically*

**RE: ERO - 019-6240: Amendments to Certain Requirements under the Excess Soil Regulation**

The Residential and Civil Construction Alliance of Ontario (RCCAO) is pleased to provide comments to the Ministry of Environment, Conservation and Parks (MECP) regarding the proposed amendments for to various elements of the Excess Soil regulation 406/19.

RCCAO has been involved with the MECP and other stakeholder organizations in promoting the environmentally responsible and beneficial reuse of excess soils in Ontario for over a decade. RCCAO appreciates the work that MECP has undertaken over the last several years to help limit the amount of healthy soil being sent to landfill and providing options for safe soil reuse.

RCCAO is supportive of the proposed risk-based approach including exempting low-risk projects from excess soil reuse planning requirements if excess soil is being removed from a project area at which the current or last property use was agricultural, residential, parkland or institutional. This approach will streamline the application of the excess soil regulation and ensure a more practical and focused regulatory implementation on higher-risk movement of soil.

Over the past year, O.Reg 406/19 has contributed to higher costs on infrastructure and construction projects, such as sewer and watermain projects. Regulatory provisions which set out soil management requirements and quality standards, such as, assessment of past uses, sampling and analysis, tracking system, soil characterization reports and excess soil destination assessment reports are creating additional works before and during projects.

O.Reg 406/19 defines *Project Leader* as "The person or persons who are ultimately responsible for making decisions relating to the planning and implementation of the project." The problem with "Project Leader" as currently defined in the regulation is two-fold. Firstly, the term which sets out responsibility and liability is vague and ambiguous. With reference to the loose definition provided in the current iteration, *Project Leader* can be interpreted to mean whatever the project owner chooses. Much worse, without a clear definition, this term can be applied indifferent ways to similar situations, threatening any intention of consistency in its application.

Public buyers of construction have generally opted to download *Project Leader* responsibilities onto contractors. Since the regulation's initial implementation, this regulatory risk transfer has added significant costs to project delivery. Excavation contactors are not designed to carry out *project leader* responsibilities.



Management of excess soil is a risk most appropriately held with a public buyer, retaining this risk will lower the cost and achieve optimal project delivery. If public buyers managing the risk of project leader responsibility also involves bearing its financial cost, there will be greater incentive to take measures to mitigate that risk.

To ensure a consistent and predictable implementation of excess soil requirements across Ontario and better manage risk, RCCAO would ask that the Ministry apply these regulations to municipal infrastructure and construction contracts as well as provincial ones. Currently, the excess soil requirements pertain to standard contract wording for provincial contracts and adding “municipal” to that applicability would be a small, but impactful change.

Municipalities are crucial partners in the management of excess soil, and it is important that their procurement policies respect the spirit of regulation 406/19 and work collaboratively with industry on its implementation. Having the regulation be consistent on both municipal and provincial level will ensure that industry has certainty in respect to regulation implementation and it is not faced with unpredictable downloading of responsibility from various municipalities across the region.

The historic practice of downloading, combined with the introduction of new complex regulation, has created confusion, inconsistency, and varying interpretations of new rules around the management of excess materials across Ontario. Ultimately, this has resulted in the rapidly escalating costs of construction without any significant improvement to the process the regulation sought to remedy.

As owners continue the practice of downloading these responsibilities and do not capitalize on the incentives to reuse their soil, the purpose of the regulation to promote the reuse of soils, reduce the amount of soil movement and disincentivize the reliance on virgin aggregate is lost. Thus, it is imperative that the Ministry provides standardized municipal requirements to ensure all municipalities are provided with a clear, uniform path to achievement.

RCCAO will continue its engagement on this issue and is looking forward to providing further input to MECP as the Ministry works toward full implementation of this regulation.

Sincerely,

A handwritten signature in black ink, which appears to read 'Nadia Todorova', is positioned below the 'Sincerely,' text.

Nadia Todorova  
Executive Director