



November 20, 2020

Laura Blease
Land Use Policy (Environment, Conservation and Parks)
40 St. Clair Ave West
Foster Building, 10th Floor
Toronto, ON M4V 1M2

Re: Conservation Ontario's Comments on "Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse" (ERO #019-2462)

Ms. Blease:

Thank you for the opportunity to provide comments on "Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse" (ERO #019-2462). Conservation Ontario (CO) is the network of Ontario's 36 conservation authorities (CAs). These comments are not intended to limit the consideration of comments shared individually by CAs through the review and consultation process.

It is understood that this proposal includes proposed amendments and complementary updates to O. Reg. 406/19 and O. Reg. 153/04; Rules for Soil Management and Excess Soil Quality Standards; Rational Document for Development of Excess Soil Quality Standards; the Beneficial Reuse Assessment Tool; and the Protocol for Analytical Methods Used in the Assessment of Properties under Part XV.1 of the *Environmental Protection Act*. The proposed amendments would i) extend the grandfathering provisions in response to the COVID-19 pandemic; ii) exempt low-risk projects from obtaining an Environmental Compliance Approval (ECA); iii) enable site-specific ECA soil management requirements; iv) provide flexibility with conditions to store excess soil within 10 m of a property line boundary; v) remove the prohibition of reusing salt-impacted soil within 2 metres of a water table; and vi) clarify that the regulation applies to rock that is mechanically broken down into soil-like particles.

Conservation Ontario has no concerns with the proposal to extend the grandfathering provisions given the impact that COVID-19 has had on the lives of Ontarians. With regard to the proposal to exempt low risk storage and processing sites from obtaining a waste-ECA, it is unclear how MECP will ensure that the best practices are adhered to if there is no notification to MECP about the activity in the first place. This may limit MECP's ability to ensure that the requirements surrounding the exemption are followed. It is important to recognize as well that other site-specific instruments may apply to these activities, so MECP should undertake efforts to coordinate communication with these groups with regard to any ECA exemptions.

Conservation Ontario has no objection to the proposal to enable site-specific ECA soil management requirements where MECP deems it to be appropriate. It is recommended that in documentation to industry that MECP identifies that other site-specific instruments may also apply to these activities. Conservation Ontario is supportive of the proposal to add a provision to the Excess Soil Regulation which

clarifies that the regulation applies to rock that is mechanically broken down into soil-like particles. In general, Conservation Ontario supports an overall broadening of the definition of “soil” as found within the regulation.

Finally, Conservation Ontario is not supportive of the proposal to remove the prohibition of the reuse of salt-impacted soil within 2 metres of a water table. It is suggested that consistency with Drinking Water Source Protection Assessment Reports be sought, which identifies that activities less than 3 m above the aquifer may constitute a transport pathway and require notification to the local Source Protection Authority under the *Clean Water Act* (Section 27 of Ontario Regulation 287/07).

The salt-impacted soil placement could have leaching effects and impact the aquifer through anthropogenic sources and naturally occurring transport pathways in both ground and surface waters. It is strongly suggested that Source Water Protection considerations continue to be included in any updates to the Excess Soil Regulation. As part of the regulatory framework, there should be a sound process for flagging vulnerable areas, which include: Wellhead Protection Areas (WHPA), Intake Protection Zones (IPZ), Issue Contributing Areas (ICA), vulnerable aquifers and significant ground water recharges areas. It is noted that there has been an increase in identifying Road salt Issue Contributing areas across the province.

Finally, the *Clean Water Act* provides the legislated framework that puts in place requirements to reduce the amount of road salt entering drinking water sources. Mandatory policies apply in certain areas and can be found in the Ministry approved Source Protection Plans. This should be noted in any updates to the Excess Soil Regulations. The reuse of salt-impacted soil also has the potential to impact private sources of drinking water.

Once again, thank you for the opportunity to provide comments on the “Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse”. Should you have any questions about these comments, please contact me at extension 226.

Sincerely,



Leslie Rich
Policy and Planning Liaison

c.c. All CA GMs

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