

## **Excess Soil Engagement Group (ESEG) – November 14, 2023**

### **Responses to discussion questions**

Discussion questions were provided for ESEG participants to provide written comments on. Below are some of the responses received.

#### **1) Do you agree with replacing some waste approvals for interim storage and processing sites/depots with standard rules?**

- “My concern is that without the oversight of MECP staff in reviewing an application, standard rules will get stretched in operation.”
- “Yes, there are a number of small landscape type operators that maintain stockpiles of topsoil, aggregate (pre-purchased from ARA pits and quarries) and fill. The fill may be from landscape projects where they are completing a cut and then is reused on other projects requiring a grade raise.

In the call it was discussed that the intent of depots is that they are short term in nature, for many landscapers handling soil within their yards is part of their ongoing business. The ECA process is lengthy and may limit/prevent these small businesses from operating.

Use of an EASR type process would be welcomed. This would be consistent with current and proposed requirements for depots (e.g. documentation confirming where material is coming from and going to, an operating plan prepared by a QP, requirements that material meet minimum quality standards (e.g. Table 2.1 RPI)), would seem reasonable. The suggestion that landscape depots would register would also make sense when they operate beyond 1 year.”

- “Yes, this will help expedite the reuse of excess soil.”

#### **2) Do you agree that more consistency across sites, e.g. storage volumes, is appropriate?**

- “It depends. Some variation is not a bad idea depending on the needs.”
- “Yes - this will make the rules less confusing and easier for compliance.”
- “Yes, however it would be best to start digital tracking at a much higher volume - for example 1000m<sup>3</sup>. Anything below can be tracked with a paper ticket system. Realistically, larger earthworks contractors/operators will be applying a digital system for all/most projects.”
- “No. limiting storage volumes will directly correlate with limitation for reusing excess soil.”

**3) Is it appropriate to more consistently use the Excess Soil Registry for awareness of these interim sites?**

- “The Registry is an important tool for monitoring for compliance.”
- “Yes, because some contractors and even some QPs seem to lack clarity on what needs to be registered and what is exempt. This way, there would be fewer disputes and misinterpretation.”
- “Yes, providing reporting exemptions apply (e.g. APU, SAP, etc.) apply where appropriate.”

**4) Will the revised rules for salt-impacted soil create more flexibility for reuse? Are there any concerns with revising the rules as proposed?**

- “There should be concern about the future use of the land and the upward migration of salt with upward water movement in dry conditions.”
- “Yes, the flexibility is needed in order to make reuse more possible in many cases, especially in urban environments.”
- “Would welcome some consideration of broadening the exemptions regarding the 100m setback from potable water use in circumstances where a hydrogeological assessment has been completed. This would allow a QP to consider the direction of groundwater flow and other factors (e.g. aquitard) when determining whether salt impacted soil could be placed without causing an adverse impact. An example would be some pits and quarries, which commonly have hydrogeologic data and are located in rural settings. In some cases wells may be 100 m upgradient but not downgradient, but the placement of salt impacted soil would still be limited.”
- “Not really, as there are still too many restrictions. Consider salt being an exemption for reuse in most cases where a QP can deem it suitable.”

**5) Will the proposals related to hauling records help to clarify the responsibility of all parties and provide for more consistent information?**

- “Yes. Previously, there have been many cases of incomplete records being entered by haulers and it was difficult to get the companies to re-enter the correct information needed.”
- “No, as industry should already know what details are to be tracked. And if not, this can be confirmed via their QP.”

**6) Is the exemption from the reuse planning requirements for landscaping projects at enhanced investigation sites appropriate? Would the lack of**

**required assessments or sampling from these sites be a concern for interim or reuse sites requesting that information?**

- “Could be an issue for the reuse sites ... similar to the low-risk project area exemptions. Hard for reuse site owners/operators/QPs to base a decision upon without specific detail. Exemptions in many people's minds means "do nothing".”
- “Yes it is appropriate. Most landscaping projects are within the top 1 m whereas most problematic contamination from enhanced investigation sites would likely be deeper and within groundwater. Retail gas station properties should be allowed to carry out shallow ornamental landscaping for property maintenance that would not disturb any impacted soil below. Of course, the property owner should check to make sure that there is no known contamination before undertaking any significant landscaping project that may excavate into an area of potential impacted soil.”

**7) Would the proposed amendments add flexibility for soil management and affect the reuse potential of soil for your projects? Do they provide cost savings?**

- “Minimal for Developers/Future homeowners. Changes focused on problems encountered by others. Best addition is allowing soil to not be tested prior to export to a Class 2 site. Ultimate reuse site is often not known and shouldn't be required either.”
- “Not a lot of changes will affect my clients ... infrastructure contractors, developers. The aggregate depots will assist with municipalities in time, once they have figured this out and set up locations for this management.”
- “As a municipality, we generally support these amendments however the majority is not applicable to our needs and cost savings that these amendments can provide is minimal.”
- “Yes the proposed amendments propose more flexibility overall. We do have some concerns for requiring registration at municipal Local Waste Transfer Facilities that were previously exempted if total excess soil storage was less than 2000 cu. m. This will create extra administrative work for us on a more frequent basis that had not been previously anticipated.”
- “Yes, the flexibility to operate a temporary storage yard without an ECA will allow for more effective solutions.”

**8) Do the proposed amendments address practical challenges? Please highlight any concerns regarding unintended consequences, and provide examples where possible.**

- “Liquid soil small site management. Could be problematic for sure. Sites will be popping up everywhere and many will not abide by the OWRA requirements. Management of liquid soil at ECA approved facilities provides the backstop on the quality and ensures appropriate management.”
- “These amendments do address a number of problems we have encountered over the past year regarding consistency in application and confusion about how to interpret the rules between QPs and contractors. The unintended consequence is creating more work for municipalities to register LWTFs on the Registry for temporary excess soil storage that had previously been exempted. There is already a considerable amount of work involved in trying to keep track of the soils internally, hiring QP companies, completing the extra number of soil samples required, etc. This requirement seems a bit excessive and unnecessary.”
- “The concept of aggregate reuse depots is good. Many of the projects that we are seeing are connected with road infrastructure. Over time the original road base aggregate material becomes "contaminated" with fines and would meet the definition of excess soil, and is spec'd for removal because it no longer meets geotechnical requirements; while also requiring sampling and handling as excess soil. This material would be an excellent candidate for reuse within similar infrastructure because with some sorting it could be returned to geotechnical spec. I think this is the intent of the aggregate reuse depot.  
 However, in our experience this granular material from beneath roadways commonly exceeds reference standards for PHCs and/or PAHs even when there is not a PCA adjacent to roadway (e.g. gas station, garage). We think that this may be due to historical oiling (e.g. for dust-suppression, particularly former dirt roads in rural areas) but also in some cases due to past pulverization of asphalt (common practice during resurfacing between major rehabilitation events). A prohibition on processing of granular material containing asphalt and/or concrete may be overly limiting, particularly because many aggregate producers sell products with these materials already incorporated, or these materials become incorporated into granulars over time (e.g. during road pulverization). Reuse of aggregate products containing some asphalt and/or concrete beneath roads and/or parking lots would seem reasonable (e.g. if it will be placed beneath a paved or concrete surface) and would ensure that material excavated from this type of infrastructure could be returned to similar infrastructure following some processing to return it to appropriate geotechnical specifications.”

**9) Are there any other practical clarifications that the Regulation or Rules document could benefit from? (Note: significant suggestions would need to be consulted upon before being made.)**

- “A compliance framework should be established, communicated and implemented. AMPs and public notice of violators (or at least repeat offenders) should be implemented.”
- “There was concern that the regulations were being watered down, but these changes largely seem to be tidying up based on practicalities noticed during use.”
- “Need to clarify the definition of "top soil"”
- “Define "temporary"; confirm topsoil reuse conditions; confirm mixed use soils are acceptable provided they are reviewed by a QP.”
- “Generally supportive of moving lower risk activities to an EASR type process, where operating requirements/limitation are specified, and a QP could be retained to help the owner prepare necessary operating documents. For higher risk activities an ECA could be required. It is the small operators (e.g. landscapers, contractors) that seem to be caught up in the rules and regulations. Creating opportunities for them to store reasonable volumes of low risk material would promote reuse, level the playing field, and help to reduce regulatory costs. Such sites could still be required to register on the registry to help facilitate public transparency and transparency to the MECP.

The depot concepts are great, but we keep finding circumstances where small operators would not strictly fit within the definitions of the depots. Many reuse sites are requiring some testing of material to know what they are receiving. Creating opportunities for smaller operators to batch loads to make testing costs more reasonable would be helpful (e.g. a contractor that does driveways and may excavate small quantities (e.g. 5-10 m<sup>3</sup>) from multiple low risk (e.g. residential) properties. Allowing them to aggregate something like 100 m<sup>3</sup> would be helpful.”