ONTARIO STONE, SAND
& GRAVEL ASSOCIATION

Essential materials for building a strong Ontario

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(sent via email to laura.blease@ontario.ca*)*

Re: OSSGA comments on Revised Excess Soil Management Regulatory Proposal

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The Ontario Stone, Sand & Gravel Association (OSSGA) appreciates the opportunity to comment on the Ministry of the Environment and Climate Change's (MOECC) Revised Proposed Excess Soil Regulatory Package (EBR Registry No. 013-0774). OSSGA previously commented on the MOECC's Excess Soil Management Regulatory Proposal (EBR 013-0299) in June 2017. These comments should be read in conjunction with our comments on the first regulatory proposal released in April 2017.

OSSGA is a not-for-profit association representing over 280 sand, gravel and crushed stone producers and suppliers of valuable industry products and services. Collectively, its members supply the substantial majority of the more than 160 million tonnes of aggregate consumed each year in the province to build and maintain Ontario's infrastructure. OSSGA works in partnership with the public and government agencies at all levels to promote a safe and competitive aggregate industry, contributing to the creation of strong communities.

Excess soil is a key resource, and the aggregate industry often utilizes this material by exporting it for use on other jobs or by importing it on site for rehabilitation. OSSGA strongly supports the beneficial reuse of soils but we have some concerns with the revised regulations. In the following sections we provide comments and recommendations to improve the proposed regulations and better align them with current policies and procedures applicable to the aggregate industry.

Harmonization with the *Aggregate Resources Act* (ARA)

Rehabilitation plans mandated through the ARA are dependent on the receipt of clean fill; therefore, it is important that these regulations align with aggregate resources policies and procedures. It is our perception that while the MOECC has afforded the opportunity of a site with a Provincial Instrument to consider the receipt of excess soils; there has been little meaningful dialogue with the MNRF on the implementation of such strategies under these Provincial Instruments. The proposed regulation will not be successful in identifying favoured reuse sites if they will never be permitted, leading to additional and unnecessary disposal of excess soils in landfills.

Thus, OSSGA would like to better understand to what extent the Province is committed to the use of licensed ARA sites and how that is to occur.

Introduction of Project Leader

The role of the "Project Leader" is vague. While we understand that the role of the Project Leader is important as they are the ones who are in control of the operations at the source/reuse site, there could be the scenario where the split in duties could potentially create a situation where both parties would blame each other for liability should an adverse condition occur. It is currently unclear whether the Project Leader has the authorization to legally bind a company or officer to those decisions. It is also unclear whether the Project Leader must be independent of the owner/operator. This could lead to loss of independence by the project leader, and negatively impact the level of oversight.

OSSGA also notes that while the regulations include guidance for the qualified person preparing or overseeing the preparation of the plan for the source site, there is little guidance for the qualified person responsible for overseeing the deposition of excess soil at the reuse site.

Provincial Officer

In Part II, section 3, the regulation refers to "Provincial Officer" who may enforce and issue orders under the regulation. As this could be interpreted to mean a designate of several agencies and parties, this should be better defined if it is to refer to an officer under the EPA.

Topsoil

The proposal states, with respect to topsoil that a "project leader is not required to ensure the preparation of an excess soil management plan in respect of a **project and its project area**" if top soil does not originate from an industrial use property.

In the proposed regulations, "project" refers to any "project carried out on a single property or a group of adjoining properties that involves the excavation of soil and includes any form of development, the construction, reconstruction, erecting or placing of a building or structure of any kind or the establishment, replacement or alteration of infrastructure." It is currently unclear whether pits or quarries are exempt from the definition of project.

Aggregate operations by definition are industrial properties however in the majority of cases, topsoil never comes into contact with any operations (e.g. when topsoil is removed from a newly licensed site before extraction commences). Topsoil is typically re-used on site during progressive rehabilitation, however there are situations where topsoil is removed from site as a product. As a result, aggregate operations removing topsoil should NOT require an Excess Soil Management Plan (ESMP). Additionally,

other materials that are removed from sites licensed under the ARA (i.e. clay or overburden) should also be exempt from the requirement of an ESMP.

Revised approach to waste designation

OSSGA is pleased to see the that the waste designation would not be applied when excess soil is directly reused in accordance with the proposed regulation. OSSGA was very concerned with the uncertainty surrounding the waste designation at reuse sites presented in the previous regulation. This approach is more in line with the MOECC's commitment to sustainable excess soil management and a circular economy; and we support that the current proposal will cease to designate imported soil as excess soil five years after the reuse site is completed.

OSSGA also notes that the proposed regulations state that a project leader or person transporting excess soil must retain records of the activity for seven years, yet this is inconsistent with the timeline for excess soil designation of five years.

The regulations do not take into account the scenario that source location operators will have long since "disappeared" over the ensuing five-year period following shipment and OSSGA is quite concerned that reuse sites would become liable for the waste by default when a source owner cannot be located. Under the proposed regulations it is unclear who would be liable should the materials be found to be waste in the intervening five-year period especially for "absent" source owners.

Excess Soil Management Plan (ESMP) Requirement

The first proposed regulation outlined the criteria for an ESMP as 1,000 m^3 or excess soil or any volume of excess soil removed from an area with a Potentially Contaminating Activity (PAC) and we expressed our concerns that smaller source sites would not be managed and characterized in accordance with the regulation.

OSSGA supports consistent characterization requirements to ensure that excess soil is acceptable and compatible with a reuse site, regardless of the volume. The MOECC should develop policy guidance for pragmatic and cost-effective protocols that provides assurance to reuse sites that the incoming material is clean.

Under the revised regulations, if more than 2,000 m^3 of soil is removed from a project area, an ESMP is required. It is unclear whether the MNRF would adopt the 2,000 m^3 volume as a minimum for importation to licensed aggregate sites.

OSSGA remains concerned about the requirement to identify excess soil reuse site locations in an ESMP, which must be registered prior to the commencement of operations. There should be flexibility to indicate in the ESMP that a reuse site will be identified prior to commencement of excavation. The regulation does not address the potential reality that there could be more source sites than available reuse sites. There should be no possibility to prohibit development due to the lack of local / viable reuse sites. This limitation could result in preventing municipalities from issuing building

permits because no available reuse site can be determined, and result in excess soil being unnecessarily sent to landfills. The proposed regulations must align with Ontario's Long-Term Infrastructure Plan.

Sampling Requirements

OSSGA is concerned about the different guidance (and the rationale behind it) for the number of samples required for stockpile sampling vs. in-situ sampling frequencies. These sampling frequencies are onerous (32 samples required for 5,000 m^3) and may be impractical for larger projects. We recognize that it will be up to the source site QP to determine an appropriate number of samples based on site history/previous uses. As receivers, we will likely see a range of rationales utilized by the source site. To provide assurance that the material we are accepting is clean, it would be beneficial to better understand how the MOECC arrived at these frequencies.

New Provincial Soil Quality Standards

OSSGA recognizes that many aggregate operations are licensed to operate below the water table. Below water table quarries, for example, require progressive and final rehabilitation including 3:1 slopes which can require imported materials to complete. However, it is uncertain whether the proposed new soil quality standards account for the potential of use in submerged environment. If a different standard is required, then it needs to be clearly stated for such applications so that inappropriate filling does not occur for leachable conditions.

Pits and quarries receive approvals from the MNRF to import fill in accordance with their site plans, however there is a disconnect between MNRF policy and the proposed regulations with respect to standards. Under Aggregate Policy 6.00.03, the soil standards for Sodium Adsorption Ration (SAR) and Electrical Conductivity (EC) do not apply to subsurface soil which is defined as 1.5 metres beneath the soil surface. The revised excess soil regulations now specify standards for salt impacted soils less than 1.5 metres which is inconsistent with MNRF policy 6.00.03.It is unclear whether MNRF will be adopting all or portions of these standards for pits and quarries.

The importation of fill into a site for rehabilitation may be a long-term project, lasting several decades. We are concerned about aggregate sites that are currently permitted to bring in soil that was approved under the ARA and meets certain standards (i.e. Table 2 soils under O.Reg 153/04) but may not meet the proposed standards. Also, regulatory standards change over time. As these standards change, how will these sites be grandfathered in?

Dewatering Pond Sediments

Under section 6.(4) a project leader is not required to prepare an ESMP for infrastructure maintenance except "if the excavation of soil is from a storm water management facility for the purpose of maintaining the facility in a fit state of repair."

OSSGA is concerned that the clean sediments captured in dewatering ponds are not inadvertently classified as storm water sediments. OSSGA suggests that dewatered sediments from aggregate operations be exempt from waste classification since they are derived from a clean mechanical crushing process in the same way all other aggregate products are currently classified. Additionally, as aggregate operations are already governed under the ARA, dewatered sediments should be exempt from this requirement. This concern is raised since ARA licensed facilities are classified as industrial operations and could be subject to unwarranted requirements strictly due to this designation as opposed to the nature of the operations. This would be a concern if the sediment is transported off site.

Consultation with MNRF and Municipalities

OSSGA encourages the MOECC to work closely with the MNRF to ensure that aggregate policies and procedures align with the proposed excess soil regulations. Aggregate sites can play a vital role as reuse sites, further encouraging the sustainable use of excess soil in a circular economy.

OSSGA also continues to encourage the MOECC to work closely with municipalities to promote the beneficial re-use of soil through the application and implementation of science-based standards. Without extensive and uniform support across municipalities, there will continue to be a risk-adverse approach to excess soil management through the banning of imported soil.

Transition Time, Tracking and Record Keeping

Many of OSSGA's members also provide a broad range of construction services (i.e. road construction, sewer and water, infrastructure, site development). We support the Ontario Road Builder's Association (ORBA) and the Ontario Sewer and Watermain Construction Association's (OSWCA) concerns regarding the proposed timeline and rollout (and how this may impact existing contracts), the need for training and awareness, and suggested improvements to registry updates, record keeping, and the proposed tracking system.

Conclusion

Pits and quarries can play a pivotal role in the beneficial reuse of excess soil, but their utilization will ultimately depend on alignment with the ARA and effective consultation with the MNRF.

Thank you again for the consideration of our comments. Should you have any questions or concerns, please do not hesitate to contact Ashlee Zelek, Manager of Environment and Education at 647-727-8778.

Sincerely,

Norman Cheesman
Ontario Stone, Sand & Gravel Association

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