



**CHEMISTRY INDUSTRY
ASSOCIATION OF CANADA**

**ASSOCIATION CANADIENNE DE
L'INDUSTRIE DE LA CHIMIE**

June 15, 2018

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**Re: Chemistry Industry Association of Canada Comments on EBR 013-2774 Excess Soil
Management Regulatory Proposal – April 16, 2018**

The Chemistry Industry Association of Canada (CIAC) is pleased to offer comments on the Excess Soil Management Regulatory Proposal published April 16, 2018 in Ontario's Environmental Registry. The CIAC recognizes there have been previous consultations on this topic and commends the Ministry for continuing the consultations and dialogue. CIAC supports the concept of beneficial use for excess soil, thereby avoiding waste and reusing soil appropriately. This is a positive contribution for the environment and supports a number of progressive environmental policies of the Government of Ontario.

However, as presented this proposal raises a number of concerns from artificially creating waste to negative impacts on critical economic development. While others who have more expertise in this subject matter may provide extensive comments on the details, we will only provide comments on some key issues directly relevant to our industry and stakeholders. Overall we urge the Government of Ontario to consider all comments that make the regulatory proposal efficient and effective, so the citizens of Ontario can enjoy a sustainable future where both the environment is preserved and the economy prospers.

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Our major concern is the applicability of this proposal to industrial locations given there already exists a regulatory regime to manage soils. It is suggested as Environmental Compliance Approvals (ECAs) exist to manage soils/wastes, that industrial facilities be granted an appropriate exemption from the proposal.

The comments and input provided in this submission are intended to promote a pragmatic approach to soil handling where our industry faces challenges. Our input is provided in the spirit of continuous improvement and aligned to our Responsible Care® principles, all while supporting the Ministry's effort to deliver a practical regulatory framework.

About Ontario's Chemistry Industry

CIAC represents companies that produce industrial chemicals (including petrochemicals, inorganic chemicals and resins) in Canada, as well as companies which provide services to the Canadian chemistry industry. Ontario's \$22-billion chemistry industry is the province's third largest manufacturing industry and second largest manufacturing exporting sector, directly employs 46,000 Ontarians in well-paying jobs, supports over 230,000 Ontario jobs in other sectors, and provides important inputs to a range of key manufacturing sectors in the province including automotive, forest products, construction, and food and beverage. The industry is global and Ontario's chemical manufacturers must compete globally both for market share and investment.

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All actions by CIAC members are governed by Responsible Care. Responsible Care is the flagship program of our industry that ensures our members innovate for safer and greener products and processes, and work to continuously improve their environmental, health and safety performance. Launched in Canada in 1985 and now adopted globally and recognized by the United Nations, CIAC member-companies strive to "do the right thing and be seen to do the right thing." This is our commitment to sustainability – delivering results for the betterment of society, the environment, and the economy.

Comments, Observations and Suggestions

The input below is generated from the April 18th EBR posting, input from CIAC members and discussion with similar industrial associations.

(1) CIAC supports the MOECC objective of using excess soil for a beneficial use. Any regulatory activity should manage soil with an ecologically responsible approach and in a cost effective manner. The final initiative should not create an undue burden and should utilize existing regulatory tools.

It is recommended, when the final proposal is developed, a review be undertaken to determine if undue actions are prescribed, costs are reasonable and the overall environmental improvement objectives are achieved. As currently presented, there are notable questions that the proposal cannot effectively deliver on these concerns.

(2) To date there have been extensive consultations on these regulatory proposals, on the Ontario EBR and with certain stakeholders ranging from consulting engineering companies to municipalities. However it is suggested whole segments of stakeholders have been inadvertently missed (e.g. industrial entities). It

is suggested before the next version of the proposal is presented, the Ministry undertake outreach to these additionally impacted parties for discussion.

It should be noted the current working groups on this subject do not include all impacted stakeholders.

(3) The definition for soils presented in the proposal raises some concerns.

In the proposal any soil from an industrial site would automatically be classified as a waste. This is not appropriate. We strongly assert that simply because soil originated from an industrial site, it does not automatically mean it should be considered a waste. If an industrial company buys a greenfield property (with no previous industrial use) and rezones the parcel to industrial and removes soil, that soil should not be a waste (unless analyzed and confirmed to be unacceptable). The final tool should not turn clean topsoil into a waste solely because of the definition.

The current regulatory proposal requires all industrial properties to develop an excess soil management plan after 100 m³ of soil is moved, regardless of the historical use of the land. Other stakeholders are allowed to move up to 2000 m³ of soil before an excess soil management plan is required. Industrial properties should have the same exemptions applied as other stakeholders as there are already existing regulatory requirements in place to manage waste.

In addition, definitions should be delineated. The definition of project area should not be all the continuous property of a proponent. In the case of our industry, we agree soil from a process area should be subject to rigorous scrutiny to determine the risk and the standing as a waste. However areas far from a process area and with no inappropriate history should not automatically have materials become a waste. The current regulatory requirements pertaining to waste can handle these situations. The definition of project area needs flexibility.

(4) The automatic designation of industrial soil as a waste is a concern. Currently, there are processes in place for industry where testing occurs – these results should be recognized in any requirement that determines standing for excess soil in a tool, regulation or policy. Further the addition of an Excess Soil Management Plan (ESMP) to this process is a concern.

The need for an ESMP is questioned. We agree there should be a volume threshold for an ESMP but it is questioned if excess soil/materials from regular maintenance and or the repair of infrastructure or process equipment needs an ESMP. In such situations an exemption for an ESMP would be recommended.

A proponent, especially when covered by an industrial ECA, should have the ability to test soils and determine the risk and therefore the standing of whether the soil is a waste and/or how it can be used. Organizations should have the ability to “test out” of this “new” waste regime and be governed by the existing regulatory requirements.

(5) In general the definitions presented in the proposal also raises some concerns. Issues identified include:

- What is meant by a “project leader”, greater understanding of this role and the associated responsibilities is needed.
- Increased focus on receiving sites is warranted. All points in the material handling cycle should be appropriately managed (regulated).
- Should “instrument” be defined, other legal regimes define instrument.
- Should the term “individual” be defined, typically under law there is an understanding of what constitutes an individual but clarity is suggested with this proposal.
- Given the movement of soils (materials or wastes) the proposal should consider, where does the long term liability reside? All parties, including the receiving site should inherit some responsibility.
- Should a definition of soil quality be added to the regulation – this is a key determinant for action and should be understood.
- Are definitive definitions for the various materials including wastes applicable to this regime and aligned with other regulation(s) needed?

(6) While the increased beneficial use of excess soil is supported, there is a concern with what constitutes beneficial use. It is suggested beneficial use be discussed broadly with all stakeholders and consensus terminology such as “beneficial use”, “beneficial reuse”, and “use” be developed. It is questioned if ultimately such terminology be enshrined in regulation. Industry, municipalities or the community should decide based on scientifically validated soil quality guidelines what is best for their situation(s).

Further, the concept of site specific soil standards is introduced in the Beneficial Reuse Assessment Tool (BRAT). The application of this concept or tool introduces the risk that local or differing soil quality standards will be developed. This could result in a patchwork of standards throughout the province. It is recommended the province as the regulator and in consultation with scientifically competent technical experts establish uniform soil quality standards for the province of Ontario.

(7) With this proposal there appears to be a significant increase in administrative burden i.e. paperwork, that is not value added. Issues include a large and cumbersome registry, a tracking system and lengthy rules/procedures i.e. a “Rules for On-Site and Excess Soil Management” document, all of which make the overall process long, complex, cumbersome i.e. unworkable.

The registry should be reviewed on the basis of: Is the proposed registry workable? Is the operational guidance workable?

The Ministry needs to step back and carefully scrutinize each element of the proposal, at a detailed level, to ensure it is needed or is value added. It is strongly suggested before implementation the sections be reviewed with a broad range of stakeholders to ensure they are pragmatic across numerous situations. This analysis could also involve impacted stakeholders to determine the cost of compliance or impacts on economic viability of projects.

Given the proposal, we are concerned the approach is overly onerous, to the point of being cumbersome, unworkable, complex and prohibitively expensive for project proponents. In some cases, we foresee the

burdens prescribed by this proposal will not allow economic activity (including job creating and socially needed developments) and the beneficial use of soils, whether the soils originate from greenfield or brownfield properties.

(8) As proposed, the approach will create a new and separate material (waste?) control regime i.e., ESMPs, documents (manifests?) and even a process to register on a land title. There are significant concerns with duplication. It is suggested any proposal work within the existing tools available to the government and ensure duplication be avoided.

It is suggested the current Environmental Compliance Approval process be utilized to manage excess soil activities. Further, it must be recognized existing ECAs could be utilized to manage soils outside any new regime.

An example of a negative unintended consequence of this proposal is the creation of waste. It is currently possible for a company to treat soils from multiple company sites at one location. Thereby returning soil to conditions of beneficial use. However as presented, this new regime would prevent these activities from occurring and the materials would automatically be classified as waste and require deposit to a landfill (taking up space inappropriately). In particular, section 17 of the proposed regulation would not allow soil from other company sites to be dewatered at a single location, even if this location had an appropriate environmental compliance approval to complete this activity.

Conclusion

Any regulatory proposal should promote sustainability, where there is social acceptance, environmental benefit and programs are delivered in a cost effective manner. A well-structured and effective regulatory program will support Ontario's competitive position, investment opportunities, cluster development, and should not cause greater complexity, uncertainty and delays in the processing of approvals.

CIAC is supportive of the Ministry's effort to encourage the use of excess soil in an environmentally responsible manner. Overall we are concerned, as presented the proposal is overly onerous, contains significant duplication, is overly prescriptive and requires considerable paperwork for very little actual environmental benefit

Examining this proposal in more detail, we question the application to industry. There are numerous outstanding questions for application to industry. Development and consultations on the proposal to date have been with municipalities and consulting organizations with the targeted application to builders and municipalities. It is suggested that the proposal be applied to municipalities and non-industrial applications. If industry is to be included, more extensive consultations are required unless exemptions are added to the proposal. In the industry consultations, greater clarity will be needed so constructive discussion can result.

Ontario's \$22-billion chemistry industry is the third largest manufacturing industry and second largest manufacturing exporting sector in the province, directly employs 44,000 Ontarians in well-paying jobs and supports over 230,000 Ontario jobs in other sectors. Such significant economic activity (and the associated societal benefits) should be supported by the excess soil management proposal. To develop and deliver an effective proposal we are pleased to offer our time, knowledge and expertise for future

discussions (feedback opportunities) with the objective of developing an effective and pragmatic regulatory regime.

For any questions, or to discuss this input, please do not hesitate to contact me.

Regards,



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