Region of Peel
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REPORT
Meeting Date: 2022-06-23
Regional Council

For Information

REPORT TITLE: **Regulatory Changes for Reuse of Excess Soil in Pits and Quarries**

FROM: Kealy Dedman, Commissioner of Public Works

OBJECTIVE

To provide an overview of the recent amendments to Ontario Regulation 244/97 under the *Aggregates Resources Act*, which regulate the exporting and placement of excess soil in aggregate pits and quarries, and a summary of the opportunities and benefits to municipalities and the Region.

REPORT HIGHLIGHTS

- The Province has amended regulations under the *Aggregates Resources Act* to strengthen the soil quality, soil placement and reporting requirements associated with importing excess soil in aggregate pits and quarries.
- Changes made to Ontario Regulation 244/97 under the *Aggregate Resources Act* will require aggregate licence holders proposing the importation of excess soil for rehabilitation purposes to meet excess soil quality standards that currently exist under the *Environmental Protection Act*.
- The amendment helps to protect groundwater resources by requiring the most stringent quality standard for all excess soil placed below the water table and mandating the use of a qualified professional through the process.
- The changes will now require the same excess soil quality standards, tracking and reporting for mineral aggregate operations that is required at sites that are not licenced under the *Aggregate Resources Act*.
- The requirement for consistency is a supported improvement to the management of aggregate site rehabilitation.
- The standard of care that owners and operators of municipal drinking water systems are obligated to provide to ensure safe drinking water is not impacted by the changes to the regulations under the *Aggregates Resources Act*.
- The changes apply to both existing and future licence holders.

DISCUSSION

1. Background

On January 10, 2022 the Ministry of Northern Development, Mines, Natural Resources and Forestry released the “Proposed regulatory changes for the beneficial reuse of excess soil at pits and quarries in Ontario” on the Environmental Registry of Ontario. The purpose of the proposed changes was to create consistency between the provincial requirements under the O.Reg 153/04 and O.Reg 406/19 of the *Environmental Protection Act* (EPA) and the *Aggregate*

Resources Act (ARA) when importing excess soil into aggregate operations to facilitate rehabilitation.

Following a 45-day consultation period, the Province issued a Notice of Decision (see Appendices I and II) on April 29, 2022 confirming changes to Regulation 244/97 under the ARA, including the following key changes:

- excess soil stored or placed at a pit or quarry shall be in accordance with the Soil Rules and meet the Excess Soil Standards referenced in Ontario Regulation 406/19 On-site and Excess Soil Management under the EPA (i.e., Soil Rules and Excess Soil Standards)
- excess soil placed below the water table must meet the highest quality standards prescribed in the Excess Soil Standards (i.e. Table 1 Standards under Part IV.1 of the EPA, and also found in the Soil Rules)
- licensees that import more than 10,000 m^3 of excess soil or place excess soil below the water table must retain a Qualified Person to assess sites to determine the suitable excess soil quality standard and confirm that storage and placement is completed in accordance with the Soil Rules and Excess Soil Standards
- licencees are required to keep records that detail the source, quality and quantity of the excess soil received at the site

These changes come into effect July 1, 2022. As a result of the changes, the Province is aiming to achieve greater accountability and transparency for aggregate operators who import excess soil. The setting of soil quality standards and accountability for operators work towards greater protection of groundwater.

The changes address Regional comments that were submitted during the consultation period (Appendix III), which requested that the province:

- Encourage achievement of the highest standard of mitigation from potential impacts
- Add or expand current hydrogeologic study requirements to address the potential impacts
- Follow the most stringent standard possible for excess soil being placed below the water table and be subject to further oversight
- Require the consideration and mitigation of potential impacts to communities when applicants are requesting to fill-to-grade (e.g., truck traffic, noise, dust, and prolonged life of the site)
- Require consultation with municipalities and adjacent property owners and communities
- Address the potential overlap and interference with municipal regulation of fill at receiving sites under the *Municipal Act, 2001*

The alignment of excess soil management under the ARA and EPA improves the regulatory oversight provided by the Province and can assist municipalities in achieving the duty of care they are required to exercise when making decisions related to aggregate operations, which may impact sources of drinking water (e.g. under the *Planning Act*). The alignment places regulatory obligations and requirements on the Ministry of Northern Development, Mines, Natural Resources and Forestry and aggregate operators seeking to reuse excess soil for rehabilitation relating to the quality and handling of soil being imported, including documentation, tracking and record keeping. Existing policies under the ARA regarding the issuance of a new licence or amendments to existing licences or site plans continue to apply and be subject to ARA Regulations, Policies, Standards and Procedures.

2. Drinking Water Responsibilities Under the *Safe Drinking Water Act, 2002* and *Clean Water Act, 2006*

The *Safe Drinking Water Act, 2002* provides a set of provincewide standards and rules to help ensure access to safe, high quality, reliable drinking water. Section 19 of the Act expressly extends legal responsibility to people with decision-making or operating authority over municipal drinking water systems. It requires that they exercise a standard or duty of care, diligence and skill with regard to a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation.

The standard of care that owners and operators of municipal drinking water systems are obligated to provide to ensure safe drinking water is not impacted by the changes to the regulations under the ARA. Owners and operating authorities will continue to be responsible to ensure drinking water systems:

- Provide water that meets prescribed drinking water quality standards
- Operate in accordance with the Act and its regulations
- Are properly maintained
- Are staffed and supervised by qualified persons
- Comply with all sampling, testing and monitoring requirements
- Meet all notification and reporting requirements

The *Clean Water Act, 2006* is a component of a multi-barrier approach to protecting sources of municipal drinking water by restricting or prohibiting land uses and activities, that may be a drinking water threat, in vulnerable areas around the drinking water source. The Act protects existing and future sources of drinking water through the implementation of locally developed source protection plans. Three source protection plans have been approved and apply in Peel. The plans set out policy requirements using a range of tools to prohibit, regulate or restrict activities in areas where activities are, or could be, a significant drinking water threat. The excavation and removal of mineral aggregates and the rehabilitation of mineral aggregate sites are not prescribed drinking water threat activities under the *Clean Water Act, 2006*; however, certain activities that may be carried out in a mineral aggregate operation are prescribed and are subject to requirements in the source protection plans (e.g. fuel handling and storage).

At a recent Regional Council meeting, members of Council highlighted collective and individual liability with respect to the operation of municipal drinking water systems and questioned whether members of Regional Council should be indemnified from liability regarding aggregate extraction below water table. The regulation does not provide for indemnification, but does provide greater regulation of this activity.

Under the *Clean Water Act, 2006*, aggregate licences and site plans administered by the Ministry of Northern Development, Mines, Natural Resources and Forestry are prescribed instruments and are subject to source protection plan requirements for regulated significant drinking water threat activities. While the Region is the operator of the Municipal Drinking Water System under the *Safe Drinking Water Act, 2002*, and part of the implementing body for the local source protection plan under the *Clean Water Act, 2006*, the Region is not the regulatory authority for aggregate licenses under the ARA. The regulation of the import of excess soil for beneficial reuse at licenced aggregate operations is the responsibility of the Province. As such, failure to ensure compliance with the new standards prescribed by the amendments to Ontario Regulation 244/07 would rest with Province.

Regulatory Changes for Reuse of Excess Soil in Pits and Quarries

Should any licence or site plan be issued or amended under the *Aggregate Resources Act* to include the beneficial reuse of excess soil for site rehabilitation purposes, there are now assurances to municipalities that the importing of soil as a part of an on-going operation will be conducted to a province-wide standard with oversight from the Province.

3. Opportunities and Benefits

The Region continues to explore the feasibility and partnership opportunities that will assist in the beneficial reuse of excess soil generated by Peel's capital works projects. Staff has identified an opportunity with Credit Valley Conservation (CVC) for a partnership on two potential sites, including former aggregate sites in the Town of Caledon - Pinchin Pit and the Capstone Property (previously known as Flaherty Pit West). These properties have been identified as priorities for enhanced ecological restoration as well as future Credit Valley Parks. The acceptance of excess soils meeting required standards for soil quality at these two properties will facilitate their enhanced restoration, while potentially providing the Region of Peel with a dedicated and reliable fill site to meet capital program needs.

The CVC and Region are required to adhere to the excess soil standards and requirements under the *Environmental Protection Act* which is intended to ensure protection of groundwater.

CONCLUSION

The recent amendments to the *Aggregate Resources Act* create greater accountability, transparency and regulatory oversight when excess soil is being imported into pits and quarries. These changes can provide assurances to the Region of Peel and the Town of Caledon regarding the quality and placement of imported soil when making decisions related to aggregate operations, particularly if proposed uses or activities have a potential to impact sources of drinking water. The requirement for pit and quarry operators to obtain a licence and conduct operations in accordance with approved site plans, including rehabilitation works, has not changed. The Town and Region maintain the ability to comment on proposed new and amendments to existing aggregate licences in order to communicate any concerns related to the excess soil used in the rehabilitation process.

APPENDICES

Appendix I – Notice of Decision - Proposed Regulation Changes under the *Aggregate Resources Act*
Appendix II – Summary of Decision - Regulatory Changes for the Beneficial Reus of Excess Soil at Pits and Quarries in Ontario
Appendix III – Region of Peel Comment Letter

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