

May 31, 2019

Environmental Policy Branch
40 St Clair Avenue West, Floor 10
Toronto, ON M4V 1M2
Sanjay.Coelho@ontario.ca

Dear Sanjay Coelho,

RE: ERO # 013-5000 Excess Soil Regulatory Proposal and Amendments to the Record of Site Condition (Brownfields) Regulation

Thank you for the opportunity to comment on the Excess Soil Regulatory Proposal and amendments to the Record of Site Condition (ERO #: 013-5000). The Region of Peel-Public Health is supportive of the proposed legislation. However, we recommend that certain provisions of the regulatory proposal and the proposed amendments be strengthened to further protect public health. We also seek clarity on other sections within the proposal as it is unclear how they should be interpreted.

A. Proposed On-Site and Excess Soil Management Regulation

We support a regulatory framework for the reuse of excess soil that is protective of public health. We recognize that the testing, tracking and registration of soil movements in some part supports safe and appropriate reuse of excess soil. However, to further protect public health, we recommend the following changes be made to the regulatory proposal:

- i) Item 3 of the "Table" in Section 4(1) indicates that in situations where an "instrument" (as defined in s.3 (1) (4)) that deals with excess soil quality imposes a less stringent requirement than that specified by the applicable excess soil quality standard, the requirement in the instrument respecting excess soil quality must be satisfied.

Recommendation: We recommend that the less stringent requirement be allowed only if it is sufficiently protective of human health.

- ii) Section 4(2), Column 2, and Section 5(1), Item 4 states that the quantity of excess soil deposited at the reuse site must not exceed the quantity necessary for the purposes of the apparent beneficial purpose identified.

Recommendation: The legislation should clearly state who is responsible for determining the quantity of excess soil that can be deposited at the reuse site for the purposes of the apparent beneficial purpose. Consideration should also be given to how this will be enforced.

- iii) Section 7(3) (1st paragraph) exempts agricultural use from sampling and analysis plans.

Recommendation: We recommend that this exemption be removed as agricultural pesticides and heavy metals like lead and arsenic may be potential contaminants in the soil.

B. Amendments to O. Reg. 153/04 - Records of Site Condition

To further protect public health, we recommend the following changes be made to the proposed amendments to O. Reg. 153/04:

- i) Section 55(1) states that a qualified person may determine that a record of site condition (RSC) may be submitted without a phase two environmental site assessment provided that the use of the RSC property is for agricultural, commercial, community, institutional, parkland or residential use, and that the contaminants in the soil do not exceed the applicable soil quality standards based on the phase one site assessment.

Recommendation: We recommend that the wording be strengthened by adding that the RSC may be submitted without a phase two environmental site assessment provided that a soil sampling and analysis occurred in the phase one assessment to identify potential contaminants.

- ii) Schedule E, Section 7.1 states that *“For each contaminant of concern found on, in or under the phase two property, the investigation must demonstrate that appropriate steps have been taken to locate the maximum concentration”*. The term “appropriate steps” is vague, which may result in less than thorough methods being taken to locate the maximum concentration.

Recommendation: We recommend that a definition be included to ensure minimum standards are met.

- iii) Schedule A, Section 19 (2) states that if non-potable ground water standards are prescribed, the qualified person shall certify that the RSC property and all other properties located within 250 metres of the boundary of the property are supplied by a municipal drinking water system.

Recommendation: We recommend that consideration be given to whether or not this requirement is sufficiently protective of human health given the varying soil and hydrogeological conditions, and underlying aquifer systems that could exist at an RSC property, their impact on groundwater, and the possibility for wells to be negatively impacted just beyond the 250 metres.

C. Proposed Rules for On-Site and Excess Soil Management (Soil Rules)

We propose that the following recommendations be considered for the Soil Rules to further protect the health of Ontarians:

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- i) Part IV, Section 1(2) (8th paragraph) states that *“If the previous rules require both the use of shallow soil tables and the use of near a water body tables then the lower standard for each chemical applies when comparing the two tables”*. The “lower standard” may be interpreted to mean the less restrictive standard or the lower number.

Recommendation: We recommend that you clarify the meaning of “lower standard”. We also recommend that you require the more health protective standard to apply.

- ii) Part IV, Section 1(8) (4th paragraph) provides recommendations (i.e. for chemical analyses and qualified person oversight) when mixing larger volumes of compost with excess soil.

Recommendation: These should be mandated actions rather than recommendations in order to ensure that the resulting soil quality is protective of human health at the reuse site.

- iii) Part IV, Section 1(9) (4th paragraph) states that *“...the use of BRAT [Beneficial Reuse Assessment Tool] will not require oversight or approval by a public body unless the site-specific standards developed by the BRAT exceed a maximum threshold...”*. It is concerning that in cases where it is not possible or desirable for excess soil to meet the generic excess soil standards, that site-specific excess soil standards can be determined using BRAT, a tool that does not require oversight or approval by a public body.

Recommendation: We recommend that oversight be undertaken by a public body instead to ensure site-specific standards are protective of health.

- iv) Part IV, Section 1(10) (1st paragraph) states that *“It is recommended that the qualified person have experience in risk assessment or consults with professionals with expertise in risk assessment”*.

Recommendation: If BRAT is retained, we believe that this recommendation should be a mandatory requirement considering there will be no oversight over the use of BRAT, and to ensure site-specific standards are protective of health.

- v) Appendix 1 at the end of the “Additional Notes” section, states that *“For chemicals for which generic excess soil standards are not derived, if they are present in excess soil and known to have the potential to adversely impact human health or the environment, the qualified person should consider developing site-specific standards for those chemicals using a separate risk assessment, as outlined in Part IV”*.

Recommendation: We propose instead that that the qualified person should be **required** to develop site-specific standards using a separate risk assessment for chemicals known to have potential human health effects.

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vi)

- In Part II, Section 2(2), clarity is needed on what conditions must be met by a reuse site for reuse of excess soil.
- In Part II, Section 1(5) Item #3: What is the “quality” of the excess soil, and does it mean in terms of contaminant content based on the applicable Soil re-use standards?
- In Part III, Section 2(2) 1st paragraph: “professionally acceptable”
- In Part III, Section 2(2) 17th paragraph: “sufficient number of samples”
- In Part IV, Section 1(3) 3rd paragraph: “foreseeable future”

Recommendation: We recommend that these terms either be defined or be replaced by non-ambiguous terms, to ensure common understanding.

vii)

Part IV, Section 1(8) (3rd paragraph) states that the “*Fertilization regulations’ under the federal Fertilizers Act shall be considered when excess soil is blended with compost material and used at a reuse site.*” It is not clear however how the *Fertilization regulations* should be considered as these standards are conservative to account for long term cumulative effects of metals on human health.

Recommendation: More clarity is needed on how the *Fertilization regulations* should be used.

We hope that you will consider our comments as you move forward. If you have any questions about our comments, please contact Michelle Ng at 905-791-7800, ext. 2472 or via email at michelle.ng@peelregion.ca. Thank you again for your invitation to provide input.

Sincerely,



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Medical Officer of Health
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