



Qualified Persons Community of Ontario (QPCO)
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Laura Blease
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Land Use Policy, Environmental Policy Branch
Ministry of Environment, Conservation and Parks
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Submitted via the ERO portal and copy delivered via e-mail to laura.blease@ontario.ca

RE: Implementation Pause of Excess Soil Requirements in Effect January 1, 2022
(ERO number: 019-5203)

Dear Ms. Blease:

The Qualified Persons Community of Ontario (QPCO) was formed in 2021 as a network of Qualified Persons (QPs), as defined in Ontario Regulation 153/04 (as amended). Since July 2021, the Community has grown to over 130 members. QPCO was created to enhance the practice of QPs and required submissions to the Government of Ontario and its various Ministries. Its mandate is to:

- discuss and understand industry challenges within the various regulations where QPs are specified;
- create a basic online directory for QPs;
- explore training opportunities and
- identify advocacy and engagement opportunities with regulators, stakeholders, and the public.

This letter has been prepared in response to the ERO posting regarding the proposed pause of the excess soil requirements that came into effect as of January 1, 2022 (ERO Number: 019-5203) to January 1, 2023.

QPCO is not in favour of the proposed implementation pause. Our reasoning for this is outlined as follows:

- The full implementation date has now passed and the requirements have been in effect since January 1, 2022. The time to announce a pause, if one was contemplated, was before the January 1, 2022 implementation date. Many of the projects that we as QPs have seen and are actively engaged in are already working with the current status of the Regulation in full effect.

- A pause now will not increase understanding of the requirements for those who are asking for the pause, it only delays the inevitable.
- It is unlikely that the benefits of an eight-month pause will be greater than continuing the implementation of the regulation and rules in 2022.
- Confidence in the Ministry of Environment, Conservation and Parks (MECP) and the overall Excess Soils Regulatory framework will likely be diminished.
- Change is hard to accept; however, it has been over two years since this regulation and its framework was announced officially. Furthermore, years of consultation and meetings/presentations preceded the December 2019 regulatory release.
- The RPRA Registry has been launched and is working successfully. Pausing at this point would be an unfair burden to the stakeholders who have proactively invested significant time and finances into adopting the regulatory process for 2022.
- A pause now would negatively impact procurement for needed municipal infrastructure. Municipal contracts have been put in place and RFPs/RFTs/RFQs for 2022 infrastructure contracts have been written with the 2022 requirements in place. Municipal budgets anticipating the added costs to implement the Regulation have already been put in place for the 2022 season. These budgets are funded with tax-payer moneys and the tax-payers benefit from the surety that the Excess Soil Regulation provides.
- A pause now will cause confusion and increase costs. Confusion will arise for those who have been adopting and embracing the Regulation. A delay will add additional project costs for these stakeholders who will have to change course mid project. These are costs for work already incurred that will no longer be necessary and for consulting fees for time navigating what the changes mean to their project.
- A pause now will also negatively impact Entrepreneurial Tracking System providers who have geared up for the 2022 construction season and have employed the resources to support implementation of the requirements
- Tracking Systems and Hauling Records requirements do work to prevent the acts of illegal dumping and provides transparency to the industry. The ramping up of these requirements for 2022 will lose momentum and will risk falling back to pre-2020 activities.

If the regulatory pause is taken regardless of unsupportive responses received to the ERO notice, we recommend the following be undertaken during the pause to make the best of the situation:

- Get the Administration Penalties (APs) set for implementation before January 1, 2023 and provide ample education and outreach around the APs program and how it will be implemented with the Excess Soil Regulation.
- Work diligently with the Ministry of Northern Development, Mines, Natural Resources and Forestry to get the proposed changes for the reuse of excess soil at pits and quarries rehabilitation sites in place as early in 2022 as possible, and assist in the education and outreach around these positive amendments.
- Continue working with the Ministry of Transportation (MTO) regarding their proposed updates to OPSS 180 and their associated forms so that they align with the Regulation and eliminate



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duplication of effort for projects that must meet both the MTO and the Regulation for compliance.

- Work with municipal leaders in getting workable alignment for commercial fill sites and approvals to ensure that the balance of excess soil supply and demand for places to move the soil to can be achieved without high market prices, bidding wars, monopolies and price fixing.
- Use the time to continue education, outreach, training, fostering partnerships, and ensure that the appropriate supporting MECP/government resources and funding are in place.

If regulatory changes are contemplated with this proposed pause, and the Regulation will be opened for changes/amendments, the following suggestions are offered:

- Consider removing the liquid soils aspects from the Excess Soil Regulation and place it within its own Regulatory framework and within a system of Compliance Approvals management.
- Consider further clarity in Regulation definitions such as Project Leaders, Local Waste Transfer Facilities, Fit State of Repair, etc.
- Consider revising the Regulation definition for Soil and Rock to specify a percent passing of the US #10 sieve to align with geotechnical classifications.
- Consider reviewing the definitions of Earth, Rock and Shale in OPSS 206 Topsoil in OPSS 802 to align the Regulation definitions with industry standards.
- Consider exemptions for sampling for the use of recycled aggregates that meet the specifications in OPSS 1010 for linear infrastructure projects.
- Consider further clarity for activities for pond sediment management, topsoil reuse rules, small quantity exemptions for low-risk sources such as the residential pool excavation and how it affects reuse sites. (Also undertake further education and outreach with landscapers, small excavation firms, foundation specialists and others requiring clarification.)
- Consider further clarity on the intersection of this Regulation and O. Reg. 153/04 and how site remediation activities are affected.
- Consider developing Best Practices for QPs representing reuse sites and pits and quarries rehabilitation sites. Provide education and outreach of the Best Practices when developed.

We thank the MECP and the Policy Team for their continued efforts on this important file. We hope this letter provides some feasible suggestions and food-for-thought for how to move forward. We welcome the opportunity to discuss our position and recommendations further, and would be happy to continue to work with the MECP Policy Team exploring methods to expand the training and outreach that appears to be desired, with or without the proposed pause.

Respectfully yours,

The QPCO Excess Soils Working Group Leadership Team

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