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April 10, 2022

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Submitted via the ERO portal and copy delivered via e-mail to  
[laura.blease@ontario.ca](mailto:laura.blease@ontario.ca)

**RE: ERO posting # 019-5203: Implementation Pause of Excess Soil Requirements in Effect January 1, 2022**

Dear Miss Blease,

On behalf of Ontario's more than 3,000 environment and cleantech firms, the Ontario Environment Industry Association (ONEIA) is writing to provide our comments on the proposed regulatory amendment posted as ERO # 019-5203: Implementation Pause of Excess Soil Requirements in Effect January 1, 2022.

Ontario is home to Canada's largest group of environment and cleantech companies which employs more than 65,000 people across a range of sub-sectors. This includes firms working in such diverse areas as water/wastewater/stormwater treatment and management, materials collection and transfer, resource recovery, organics processing, composting, recycling solutions, alternative energy systems, environmental consulting, brownfield remediation – to name just a few. These companies contribute more than \$8-billion to the provincial economy, with approximately \$1-billion of this amount coming from export earnings.

As you know, members of ONEIA are committed to engaging with the Province as it develops policies and regulations that are consistent with our principles of sound science, a sound environment and a sound economy.

ONEIA has been actively engaged with the Ontario Ministry of the Environment, Conservation and Parks (MECP) as it has worked over the past several years to develop and implement a needed regulatory framework for Excess Soils. We thank the MECP for the opportunity to review and provide comments on the proposal to pause the implementation of provisions in the Excess Soil Regulation that came into effect January 1, 2022, until January 1, 2023. To that end, we have attached a table that summarizes comments offered by a number of ONEIA members and our Excess Soil Working Group Sub-committee.

**GENERAL COMMENTS**

ONEIA members understand that the intention of the proposed pause is to provide a more gradual implementation of the regulation to allow for improved stakeholder understanding of it. While we agree that further education and outreach is needed to help organizations better understand the regulation, their responsibilities and related best practices, a pause in implementation of the provisions of the regulation that have already been in force for three months is unprecedented. A pause now will likely cause confusion and could have a number of unintended consequences.

We are confident that the MECP will find our comments both constructive and useful. As always, ONEIA is ready to provide further comment or consult with the MECP as needed on this topic. Should you have any questions or require additional information, please do not hesitate to contact the co-chairs of our Excess Soil Working Group, Tiana Robinson (tiana.robinson@stantec.com) and Bahman Bani (bahmen.bani@jacobs.com).

Yours truly,



Michelle Noble  
Executive Director  
ONEIA

## ATTACHMENT

### ONEIA Comments on ERO 019-5203

Item	Context	Comment
1	Impacts of the Proposed Pause	<ul style="list-style-type: none"> <li>• The commercial implications of a pause are expected to be significant for large soil management contracts executed after January 1, 2022 with work to take place in the 2022 calendar year, since these contracts anticipated the implementation of Sections 8 to 16 of O. Reg. 406/19 and were priced accordingly.</li> <li>• The commercial implications of a pause are expected to be significant for industries/sectors that have ramped up to support the regulation being in force in 2022 (such as analytical laboratories, receiving sites, hauling companies, etc.).</li> <li>• Significant effort and money have been spent to bring projects into alignment with the regulation being in force as of January 1, 2022 – effort and money that may not have been necessary if there is a pause. Is the MECP planning to compensate Project Owners for these costs? For example, will refunds be issued for the Owners who have registered and paid for their soil movements starting January 1, 2022?</li> <li>• A pause will cause challenges (such as analytical data gaps) in January 1, 2023 for projects in flight, since these projects will need to transition to a new method of soil management, unless they voluntarily elect to adopt the paused requirements.</li> <li>• It is our understanding that the pause will apply to Section 19, related to large reuse site registration, and Paragraph 6 of subsection 7(1), related to the registration requirements for residential development soil depots. Due to the current lack of available reuse sites in the Greater Toronto Area, a pause could undermine finding reuse sites using the registry tool. Also, if there is no registration requirement, there is greater potential for illegal dumping and/or fraudulent receiving until the regulation comes into force.</li> <li>• The implementation was already delayed once. Delaying it again could generate mistrust, and potentially erode confidence in the regulation, MECP, and regulatory process.</li> </ul>
2	Timelines	<ul style="list-style-type: none"> <li>• It is recommended that MECP clarify timing and confirm whether, if implemented, the delay will be effective as of the date the delay becomes law, or whether it will be retroactive to January 1, 2022.</li> <li>• It is recommended that MECP clarify whether there are plans to change any of the remaining phase-in dates of the regulation, such as the sunset clause for disposal of soils meeting Table 2 Residential/Parkland/Institutional criteria for reuse at landfills, aside from the provisions provided in the regulation.</li> </ul>
3	Extending Grandfathering Clause	<ul style="list-style-type: none"> <li>• The proposed amendment would pause the implementation of provisions that came into effect on January 1, 2022 until January 1, 2023. If January 1, 2023 becomes the new date that these provisions once again come into effect, will the grandfathering provision also be extended by one year from January 1, 2022 to January 1, 2023?</li> </ul>

Item	Context	Comment
4	Protection of the Environment	<ul style="list-style-type: none"> <li>• It is unclear how pausing the regulation is in alignment with the MECP's statement that "our regulatory framework under the Excess Soil Regulation (O. Reg 406/19: Onsite and Excess Soil Management) as it was in effect before January 1, 2022 continues to apply, and the Ministry of the Environment, Conservation and Parks (ministry) will continue to act on non-compliance to ensure our environment is protected." If this holds true, to what benefit does the pause have on the environment?</li> <li>• It is recommended that MECP provide a clear and detailed explanation of what is still required and what is paused; there is concern that this pause may be liberally interpreted to mean disregard for the regulation as a whole.</li> <li>• The MECP should clarify whether the Ministry intends to revisit aspects of the regulation (e.g., sampling frequency, planning requirements, and landfilling cut-off criteria) during the pause if it is implemented.</li> </ul>
5	Outreach/Education	<ul style="list-style-type: none"> <li>• There is a lack of certainty in whether greater outreach/education will result in greater compliance. How will the MECP's approach change for the rest of the calendar year if this pause goes through?</li> </ul>
6	Receiving Sites	<ul style="list-style-type: none"> <li>• For receiving sites, a pause will cause confusion and could have negative effects. It is unclear how the approvals process will function under a pause, and how the industry might be impacted in terms of sampling and analysis plans and acceptance of soil.</li> </ul>
7	Alternative Solutions to Implementing a Pause	<ul style="list-style-type: none"> <li>• Increased outreach through training and education sessions for stakeholders that might be struggling with the regulatory requirements.</li> <li>• Extend the current O. Reg. 406/19 transition approach for existing reports to January 1, 2023 – e.g., Section 11(3) and 12(6) - Reports/sampling/studies undertaken before January 1, 2022 will be "deemed to satisfy requirements" as the industry adjusts to the new soil management planning requirement deliverables.</li> <li>• Implement and communicate leniency on non-compliance issues, for the proposed duration, instead of a complete pause of the regulatory requirements. Delay of enforcement of planning rules and tracking requirements for projects initiated after January 1, 2022 to allow Project Leaders and Contractors more time to transition to the new requirements.</li> <li>• Concentrate MECP outreach to receiving facilities, Qualified Persons (QPs) and Project Leaders to ensure full understanding of the sampling frequency requirements, since there appears to be a lot of misunderstandings in the industry that result in either over-sampling or insufficient sampling, or a lack of flexibility for projects that are exempt from Sections 8 to 16 of O. Reg. 406/19.</li> </ul>
8	Implementation Plan	<ul style="list-style-type: none"> <li>• If the proposed pause goes forward, we recommend that MECP prepare an implementation plan to address the re-start of the paused regulatory requirements well ahead of January 1, 2023, to avoid potential for further postponement of the regulation's implementation.</li> <li>• We recommended that MECP be proactive during the pause period, by continuing to engage with the industry and address project specific as well as broad common challenges.</li> <li>• Provide outreach for receiving sites, especially pits and quarries, to help them determine the soil quality they require and help them reach a better position to accept soil from grandfathered or exempt projects, as well as accept soil from non-APECs without sampling (e.g., do not need to always default to the minimum sampling requirements for all excavated soil).</li> </ul>

Item	Context	Comment
9	Potential Further Amendment to the Regulation	<ul style="list-style-type: none"> <li>• Lessons learned since January 1, 2022 include the need for additional flexibility for the storage of liquid soils within Project Areas and at temporary storage sites. While the storage limit of 10,000 m<sup>3</sup> and provisions for local waste transfer facilities may be sufficient for vacuum truck operators and small-scale generators of liquid soil, large infrastructure projects that generate enormous volumes of liquid soils via tunneling spoils require additional flexibility to prevent schedule delays and cost overruns while maintaining safe conditions and compliance with O. Reg. 406/19. In order to achieve greater flexibility for large scale generators of liquid soil, a fast-tracked application/approval process for Environmental Compliance Approvals (ECAs) is recommended, along with a non-ECA solution such as storage within Project Areas or at a Class 2 temporary storage site or a new class of storage site for intermediate volumes (e.g., 25,000 m<sup>3</sup>).</li> <li>• Although the intent of the regulation is to promote beneficial reuse of soil as a resource, the unintended consequence is a significant cost burden to projects, partly due to sampling requirements. The requirement to test all samples for metals, hydride forming metals and petroleum hydrocarbons (PHC) and benzene, toluene, ethylbenzene, and xylenes (BTEX) can be burdensome when the contaminant(s) of potential concern (COPCs) identified during the Assessment of Past Uses does not include metals or PHC. This would also better align with the principles of O.Reg. 153/04. For example, if the identified Area of Potential Concern is due to bulk salt storage, and the only COPC are electrical conductivity and sodium adsorption ratio, the MECP should reconsider whether it is necessary to test all samples for non-COPC mandatory parameters.</li> <li>• The small project on residential properties Resource Sheet is very helpful but neglected to mention that reuse sites still have the right to ask for testing (in addition to agreeing in writing). It is recommended that MECP consider adding this clarification to the Resource Sheet.</li> </ul>