

Comment from OSRTF re ERO 019-6240

Every year thousands of trucks carry 25 million cubic meters of soil around the province looking for a place to dispose of it ([QUANTIFICATION of Excess Construction Soils in Ontario by the Residential and Civil Construction Alliance of Ontario](#)). Each year that is enough soil to fill the Rogers Centre (SkyDome) 16 times or bury 1000 hectares over two meters deep. Some of it is good topsoil but a lot of it is subway tunnelling spoil, demolition debris, hard clay, infertile subsoil, stinking of petroleum (Soil excavation can be a dirty business; Globe and Mail; February 19, 2012), or containing high concentrations of cyanide. Some of the polluted soil goes to rural properties as “clean fill” (Following the Trail of GTA’s Dirty Secret; Toronto Star front page October 20, 2014) or is dumped illegally without proper permits (Court fines Flamborough land owners for taking dirt; CBC News; July 13, 2015) and even into wetlands. Rural residents and municipalities are being subjected to the costs of this soil disposal with road wear, noise, dust, bylaw enforcement costs, pollution of their drinking water, and cleanup costs (Uxbridge Township v. Corbar; “The estimated cost of removal, transportation, disposal and monitoring of this contaminated non-hazardous fill is \$9,745,541”). Reputable excavation businesses are undercut by irresponsible companies and organized crime (GTA building boom spawns shadowy ‘black market’ for waste soil; CBC News; August 13, 2018). Operators can make huge profits by passing contaminated soils off as clean fill. One lawyer wrote that they could earn as much as \$6000 per truck load (Site Alteration By-Laws and the Dirty Business of “Clean” Fill; Charles M. Loopstra, Q.C.; International Municipal Lawyers Association Conference IMLA in Canada 2014).

After many years of consultations with ENGOs, municipalities, conservation authorities, and the industry, the provincial ministry responsible for the environment produced new soil regulations that required a qualified person to supervise the examination and movement of excess soil. This could include soil testing and GPS tracking to approved disposal sites. Despite years of transparent deliberation including annual excess soil symposiums and a phasing in of the regulations from 2019 to 2022, the Ford government paused the latest phase of the implementation of the regulation to give more time for developers to adjust to it. As of January 1, 2022 the regulation required the source and disposal sites to be registered, supervised and assessed of risk by a qualified person, and the soil to be tracked from excavation to disposal or reuse. However, responding to developers, the Ford government in April paused this implementation until January 2023 - after having been in effect for four months. Having spent time, effort, and money to implement the systems they knew were needed, as well as signing contracts based on these regulations, reputable excavation and engineering companies vocally expressed their dissatisfaction with this pause to the Ministry at their Excess Soil Engagement Group meeting of March 23, 2022.

On November 3rd, the Ford government went further to appease developers. It proposed ([ERO 019-6240](#)) to exempt “low risk” soil from the soil regulations. It defines “low risk” as soil from land in agricultural, residential, parkland, or institutional use. Although soil from these classes of land might be lower risk than soil from an industrial site, it still has risks from heating oil leaks, septic fields, road salt build up, pesticide residue, feedlots, or demolition waste. Parkland may have once been industrial land or even a dump ([Niagara Falls Review: Former landfill earns North American honour as parkland](#)). A parkland designation could have been applied to reduce the exposure risk by limiting any soil contact to short visits. A “low risk” land use designation can be given to land whose contaminated soil is overlain with 1.5 meters of cleaner soil ([Rules for Soil Management and Excess Soil Quality Standards](#)). Soil deemed to be safe where there is a municipal water supply can be considered unsafe when it is moved to an area where residents rely on wells. Because the requirement for an assessment of past land uses is also being proposed to be rescinded, none of this contamination can be discovered beforehand. The

risk for contamination is therefore not insignificant. Additionally, contaminated soil can affect the future uses of the disposal site ([Ontario Regulation 153/04 - Records of Site Condition](#)), perhaps even removing it from any future residential use - resulting in a net loss of developable land.

Rescinding the soil regulations for “low risk” sites will allow illegal dumping to continue unabated. Illegal dumping has been a big problem for rural municipalities. Without the soil registry and tracking, how can we expect a receiver of soil, and the municipality enforcing its site alteration bylaw, be assured that the thousands of truck loads came from a “low risk” source site? If the soil can not be traced back to the responsible parties the unsuspecting land owner is responsible for all cleanup costs and fines. If a site is truly low risk, an assessment of past uses is not any more onerous or expensive than any other planning or study that should be undertaken before developing a property. Registering a site in the Excess Soil Registry (<https://rpra.ca>) is done online and is effective immediately. Commercially available load tracking systems provide additional business benefits and can be implemented in 20 minutes (<http://soilflo.com>). The regulations do provide exemptions from the registry and tracking and other sections for very low risk sites and operations. Abiding by the soil regulations is not a significant cost or delay to the development of land that is truly low risk.

These supposed “low risk” lands in agricultural, residential, parkland, or institutional use were included in the soil regulations after much research, consideration, and collaboration. The accompanying rationale document is 107 pages long and references 183 scientific publications. The soil regulations must not be tossed out on the request of a few developers. Rescinding the soil regulations for “low risk” sites may provide a small savings to a developer excavating the soil but only by passing all the costs and all the out-sized risks to the land owner and to the municipality receiving the soil.

Do not implement this proposal.

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The Ontario Soil Regulation Task Force (OSRTF) has been involved with the issue of excess soil since its formation in 2015 by over 20 residents’ groups that had been dealing since 2010 with the problems of the dumping of excess soil in inappropriate places. Its leaders have taken several professional training courses on soil contamination. OSRTF has written a model soil bylaw, presented to many town councils and other bodies, and taken part in the Excess Soil Engagement Group meetings with the Ministry of the Environment, Conservation and Parks.