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ONTARIO ENVIRONMENT INDUSTRY ASSOCIATION

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Reema Kureishy
Ministry of the Environment, Conservation and Parks (MECP)
Environmental Policy Branch
40 St. Clair Avenue West, Floor 10
Toronto, ON M4V 1M2

Submitted via the ERO portal and copy delivered via e-mail to:
mecp.landpolicy@ontario.ca

RE: ERO posting 019-7636: Proposed regulatory amendments to encourage greater reuse of excess soil

Dear Ms Kureishy,

On behalf of Ontario's more than 3,000 environment and cleantech firms, the Ontario Environment Industry Association (ONEIA) is writing to provide comments on the proposed regulatory amendment posted as ERO #019-7636: Proposed regulatory amendments to encourage greater reuse of excess soil.

Ontario is home to Canada's largest group of environmental and cleantech companies which employ more than 226,000 people across a range of sectors including private waste/resource recovery services, water and wastewater, brownfields remediation and redevelopment, and environmental consulting. These companies contribute more than $25-billion to the national economy, with approximately $5.8-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 would like to thank the MECP for the opportunity to review and provide comments on the proposal to encourage greater reuse of excess soil. Our Excess Soil Sub-committee has solicited input from our members and we are happy to provide the following feedback.

GENERAL COMMENTS

Overall, ONEIA members understand and support the intended propose of the amendments which is to encourage greater reuse of low-risk excess soils as part of a circular economy and to prevent usable soil from being disposed of in landfills as waste. We also support the waste designation clarification when excess soil is required by waste disposal facilities for certain operational purposes, such as final cover or berms, and is not being directed to landfills as waste.

The proposed amendments are written in plain language, and we recommend that the Ministry publish or share draft wording of the regulation amendments to provide opportunity for a more comprehensive review. Although we agree that the proposed amendments would reduce burden in relation to excess soil reuse planning requirements, particularly for smaller operations such as landscaping projects and would provide flexibility for reuse of salt-impacted soil, depending on the actual draft regulations some clarification and administrative or consequential amendments may be required.

The following table represents other specific comments offered by ONEIA members.

Table 1. ONEIA Specific Comments on ERO #019-7636

Item	Context	Comment
1	Exempt specified excess soil management operations from a waste environmental compliance approval (ECA) subject to rules	A. Topsoil and landscaping reuse depots • Per O.Reg. 406/19 regulation, “topsoil” has the same meaning as in subsection 142 (1) of the Municipal Act, 2001. Would the definition of “topsoil” be amended in the regulation? • The definition of topsoil in OPSS 802 specification differs from the proposed topsoil amendment (e.g., organic content, pH). In the absence of a full definition of “topsoil” under this amendment, it is not clear how material that constitutes topsoil under OPSS 802 but not under the general definition would be managed. • Maximum volume at any one time is limited to 25,000 m^3. Please clarify the rational for this limit as we think this could be a limiting factor for large depot sites. B. Aggregate reuse depots • The operation of a pit or quarry from which consolidated or unconsolidated aggregate within the meaning of the Aggregate Resources Act is excavated, including the use and production of recycled aggregate in the pit or quarry is non-application of regulation. Please clarify if this is related to recycled aggregate (per OPSS.PROV 1010) excavated from the project area (e.g., roadways) or crushed material (e.g. crushed rock). • Per proposed amendment, recycled aggregate does not include glass, concrete, asphalt, etc. Concrete is an aggregate, which does not align with OPSS.PROV 1010. Why is it excluded from Aggregate Reuse Depots? Can Granular A or B be composed of recycled concrete? Further clarification is needed. • The prohibition on asphalt and concrete could prohibit the receipt of aggregate that incorporates recycled materials per OPSS.PROV 1010. This would require discussion for alignment with the aggregate/recycled aggregate industry. • It is proposed that “The aggregate must be known to be of a quality that it can be reused in an infrastructure project (e.g., meets community quality standards if for road use) or if not tested, there are no indications (visual, olfactory, known history) of contaminants”. This reads as no testing is required if there are no indications (visual, olfactory, known history) of contaminants. Please clarify. If testing is required, what is the minimum frequency of testing and what method of testing is proposed for this aggregate product? • Will the Granular A/B material at the Aggregate Reuse Depots be required to meet any specific standards? C. Small liquid soil depots • Would the small liquid soil sites still be considered 'waste' sites or waste transfer sites from a zoning perspective? Or would this determination be up to each individual municipality? • Can multiple depots be located at the same property?

Item	Context	Comment
		• It is not clear if it is prohibited for a reuse site to add a liquid soil depot in order to process liquid soil for reuse at that property. Please clarify. • The amount of liquid soil being stored or otherwise managed at the site at any one time would not be permitted to exceed 200m3. Please clarify the rational for this limit
2	Enhanced reuse opportunities for salt-impacted soil (Section D, Part I in the Soil Rules)	• The current restriction for salt-impacted soil is 30 m to a surface water body, not 100 m. Please clarify the set-back limit and/or if the MECP intends to amendment the setback limit. • Please clarify what documentation would be required to be produced (e.g. site plan, landscape plan) to allow for the reuse of salt impacted soil at a community, institutional, parkland or residential property. • Please provide a list of credentials allowed to certify salty soil. Landscape Architect is mentioned in the proposed amendments, but would a botanist or restoration specialist suffice?
3	Enable greater soil management at Class 2 soil management sites and create greater alignment at local waste transfer facilities and depots (section 21 and 25 of the Excess Soil Regulation and associated provisions in the Soil Rules)	• Currently there is no storage limit for local waste transfer facilities in the Soil Rules and in the definition of these site in O.Reg. 347 (as amended). For large infrastructure projects that have limited space at Project Areas (for example, linear road, sewer, transit projects), the proposed 25,000 m3 limit will limit the reuse of these materials for these projects. • Please clarify once the Class 2 sites are leased by a public body to a third-party, who will become/take on the role of the Project Leader. • If soils from different project areas can be combined at Class 2 sites, are there going to be subsequent changes to registry requirements to track soil through to final receivers and dates of soil movement from Class 2 sites? • What about Class 2 sites receiving less than 2,000 m3? Will these still require notification to the Director? From a practical perspective and for transparency, the use of the Registry for Class 2 sites is preferred over notification to the Director. Suggest, that the Registry be applied to all Class 2 sites receiving greater than 100 m3.
4	Hauling record exemptions and clarifications (section 18 of the Excess Soil Regulation)	• For the requirement of a hauling record, currently both the Reuse Site and source Project Area require a copy of the hauling record. Is it still necessary for the Hauler to have and keep a copy?
5	Exempt landscaping projects at enhanced investigation project areas from the reuse planning requirements (Schedule 2 of the Excess Soil Regulation)	• The definition of Landscape Projects (LPs) will be very helpful. • In general, the planning and hauling record exemptions should be applied to all LP excavating 100m3 or less as in many cases for small LPs the Project Leader is the "homeowner". How does a homeowner confirm the information on the hauling records? • Additionally, some landscaping projects including pool excavations could generate greater than 100 m3. For LPs, the MECP could consider the volume limit of 350m3 as this aligns with the trigger for soil quality standards, i.e, <350 m3 O.Reg. 153/04 Site Condition Standards vs >350m3 Excess Soil Quality Standards (volume independent) • The exemption will apply to 100m3 or less of excess soil from an area within an enhanced investigation project area that is not known to have any potentially contaminating activities. However, if there is an enhanced investigation project area, there would be a PCA. This should read as “from an area within an enhanced investigation project area that is not within known APEC”.
6	Clarify the responsibility of a qualified person (QP) when dewatering or solidifying liquid soil (section 6(4) of the	• The product information sheets for Polymer manufacturers for tunnel projects often provides limited detail. Is the expectation that bench scale testing is generally required to satisfy the QP requirement for "reasonable investigations"?

Item	Context	Comment
	Excess Soil Regulation, as well as associated rules under the Soil Rules)	• Additionally, the amendment speaks to the QP "verifying" the polymer and their breakdown products. This language can still be interpreted as a guarantee. Noting that if the initial products are unknown per the supplier information, then determining the breakdown products is not possible and is also very subjective to the site-specific circumstances.
7	Clarifying sampling and analysis requirements (Section B of Part 1 of the Soil Rules)	• For sampling of tunneling spoils, what is the procedure for determining sampling frequency requirements when adopting a hybrid (mix of in-situ and ex-situ sampling) approach? Further clarification is required.
8	Greater flexibility for storage of soil adjacent to waterbodies (storage rules in the Soil Rules document)	• The storage constraints of "other soil could not be brought to that area for storage" could be problematic for lakefilling/Infilling projects that are importing "Excess Soil" to be placed into the water body and storing those soils within 30-m of a water body. • Section 2 of the Regulation considers lakefilling/infilling as a non-application of the Regulation. Clear language in the Regulation/Soil Rules would be necessary for the use and storage of Excess Soil for lakefilling/infilling projects.
9	Other clarifications and corrections	• Including the operator in the provision is important from a contracting/liability perspective. This allows a proper delegation of authority. More clarification is needed on operation's requirements. What is the definition of the operator? • Would the chain of custody be transferred from the Project Leader to the facility operator upon acceptance, similar to a Class 1 Soil Management site, given that the soil will be processed and the Project Leader will have no direct oversight distribution of the soil after processing?

We appreciate the ability to provide our comments and welcome any additional opportunities to discuss our ideas further. Should you have any questions or require additional information, please do not hesitate to contact us at info@oneia.ca

Yours truly,

Michelle Noble
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