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December 2, 2022

Reema Kureishy  
Ministry of the Environment, Conservation and Parks  
Environmental Policy Branch  
40 St. Clair Avenue West  
10<sup>th</sup> Floor  
Toronto, ON  
M4V 1M

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

**RE: ERO posting # 019-6240: Amendments to Certain Requirements under  
Excess Soil Regulation**

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 # 019-6240: Amendments to Certain Requirements under the Excess Soil Regulation.

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 \$25 billion to the provincial 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 thank the MECP for the opportunity to review and provide comments on the recently proposed amendments to regulation. To that end, we offer the following comments:

**General Comments**

ONEIA members understand that the intention of the proposed amendments is to help ensure the regulation is effective and practical, especially for low-risk sites. In general, ONEIA members are supportive of amendments that help streamline requirements and promote effective and practical implementation. It would be helpful if MECP were to provide a draft of all changes to the regulation, so that they can be reviewed in their full legal context.

## **Proposed Amendments Regarding Low-Risk Sites**

Under Section 14 of the regulation, agricultural and residential, parkland or institutional (RPI) sites were already exempt from producing planning documentation (including Assessment of Past Uses, Sampling and Analyses Plan, Soil Characterization Report, and Excess Soil Destination Assessment Report) so long as excess soil from RPI sites was not going to be placed finally at an agricultural site, and the site generating the excess soil was not known to have been affected by the discharge of a contaminant.

While the proposed amendment alleviates the notice filing (which would presumably be a minor undertaking since these sites were already exempt from planning documentation), tracking requirements, and allows for deposition of excess soil at agricultural sites, it is unclear how it will markedly reduce the requirements for low-risk sites.

Additionally, the proposed change raises some potential concerns, including:

- The proposed change may further reduce transparency around the quality of soil that receiving sites may consider accepting, which could lead to delays in the acceptance of shipments or limit the number of sites available that will accept these shipments. This could lead to unintentional bottlenecks in the soil reuse network or result in soil that could otherwise be reused locally having to be shipped to a more distant reuse site, thereby increasing the carbon footprint of the project and truck traffic.
- No longer requiring a notice be filed on the registry for low-risk sites reduces the transparency of the process related to soil movements for the public.
- Placing the onus on a Project Leader to make the determination if their site meets the low-risk criteria runs the risk of not having proper due diligence, which is necessary to determine if the project area was used as an enhanced investigation project area or was impacted by historical contamination. This type of determination is typically made by a Qualified Person.
- The commercial implications of the proposed amendments are expected to be significant for industries/sectors that have ramped up to support the regulation being in force in 2023 (such as analytical laboratories, soil tracking vendors, Resource Productivity and Recovery Authority, etc.).

Finally, to further streamline the application of the regulation, we ask MECP to consider similar easing of the planning requirements for low-risk road reconstruction projects that are not enhanced investigation areas or known to be affected by a contaminant discharge, subject to following the Salt-Impacted Excess Soil requirements outlined in the Soil Rules. These sites are considered community use and the proposed low-risk exemption would not apply.

If the proposed amendments go forward, we recommend that MECP provide outreach especially for receiving sites, to help them determine the soil quality they require and to help them be appropriately positioned to accept soil from low-risk sites. Similar outreach to municipalities to help them engage receiving sites early in the tender process would also be beneficial. This could be accomplished through a multi-ministry approach with the Ministry of Municipal Affairs and Housing (MMAH), perhaps through the establishment of an O.Reg. 406/19 coordinator within the MMAH, similar to the establishment of the Brownfields Coordinator role with the implementation of O.Reg. 153/04.

## **Proposed Amendments Regarding Storage Requirements**

ONEIA members suggest that the MECP consider the following:

- Increase the stockpile size restriction further, or eliminate the stockpile size restriction in its entirety. At larger construction sites, it would not be uncommon to have stockpiles

larger than 10,000 m<sup>3</sup>. Limiting stockpile sizes impacts overall site management with respect to space and traffic flow. In some cases, soil might be disposed of unnecessarily simply because there is not enough space available for multiple stockpiles of 10,000 m<sup>3</sup>, when it could otherwise have been reused on-site. Instead, we recommend that MECP incorporate other mandatory management practices into the regulation to mitigate the potential for adverse effects, or work with the industry to create a best management practices guidance document on this topic.

- Lift the 10 m property boundary setback requirements for small footprint urban projects as well as linear infrastructure projects, subject to having appropriate measures in place to manage complaints and mitigate adverse effects (see comment above regarding the development of other mandatory stockpile management practices). Similar to the above, this would allow for more storage and help with traffic flow and promote the reuse of soils within the Project Area.

We are confident that the MECP will find our comments both constructive and useful. As always, ONEIA is ready to provide further comments 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 us at [info@oneia.ca](mailto:info@oneia.ca)

Yours truly,

A handwritten signature in black ink that reads "Michelle Noble". The signature is written in a cursive, slightly slanted style.

Michelle Noble,  
Executive Director, ONEIA