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June 15, 2018

Laura Blease
Land Use Policy
Ontario Ministry of Environment and Climate Change
40 St Clair Ave W., 10th Flr
Toronto ON M4V 1M2

RE: Response to excess soil management regulatory proposal ERO
013-2774

Dear Ms. 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 above-noted proposal.

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. To that end, we have attached a summary table that represents comments offered by a number of ONEIA's members and the Excess Soil Working Group.

Overall, ONEIA is supportive of a mechanism that provides a framework for the appropriate management of excess soil that is based on sustainable and cost effective methods as well as appropriate responsibilities for the generation and beneficial reuse of excess soil. However, there are still a number of issues that we feel require further attention and these are outlined in the attached summary.

We are confident that the MOECC will find the comments useful. As always, ONEIA is ready to provide further comment or consult with the MOECC as needed on this topic. Should you have any questions, do not hesitate to contact the co-chairs of our Excess Soil Working Group, Grant Walsom (grant.walsom@xcg.com) and J.P. Marini (jpmarini@tnservices.ca).

Thank you for the opportunity to comment.

Yours truly,

Alex Gill
Executive Director

	Context	Section	Comment
1	Liquid Soil	Excess Soil - Excavated soil processed at project area, designation as waste, page 26	<ul style="list-style-type: none"> • As currently written we are concerned that processing of liquid excess soil may not be clearly defined for other processing options that may be considered remedial? The previous Consultation Draft version (January 2016) indicated that soil washing would not be considered an exempt process. • We encourage the MOECC to better define the overall objective of the processing method, providing a better definition of what “processing” entails. For example: <ul style="list-style-type: none"> - Does processing mean changing the characteristics of the soil in some way? Does it mean any sort of segregation? - Is solidification considered mixing? Solidification could be considered mixing that changes the leaching characteristics of soil. It is not clear in 17(3) of this Section would mean mixing with other substances such as concrete or is does this refer only to mixing with soil? - Will soil washing be considered an exempt process? • We are of the opinion that this section could be further improved to align with the objective of the soil processing. If no “processing” is proposed for the soil and it is just being moved within the Project Area and temporarily stockpiled for reuse, how would it be it designated? In general, we question why on-site movement of soil for the purpose of re-use is included in the Excess Soil Management Regulation since this is management of soil that would not be defined as “Excess”.
2	Liquid Soil	Excess Soil - Requirement to prepare excess soil management plan, page 9	<ul style="list-style-type: none"> • Subsection (4) of Section 6 indicates that an Excess Soil Management Plan (ESMP) is not required if there is danger to the health and safety of any person or the natural environment. • It is unclear what the intent of this Section is. Is this intended for immediate and acute threats to Health and the Environment or could this potentially include soils to be removed for remedial clean-up? • In our opinion this could potentially suggest that if soil is being excavated and removed from the Site to meet risk-based standards, that no ESMP is required. Is this because it is assumed that if risk-based standards are not met, the soil will not be going to a reuse Site under any conditions and will be disposed of? What if this soil is being removed and processed onsite for future removal to a reuse Site? Then we would assume that an ESMP would be desired under this scenario. • In our opinion this section needs to be clarified to better describe its objective. As written, we feel that it does not capture its intent.
3	Liquid Soil	Excess Soil - General requirements re excavation of soil, page 25	<ul style="list-style-type: none"> • This section discusses requirements to report or stop work during excavation if the presence of contaminants is noted/suspected. However, it does not make clear reference to “known” contaminants at the Site. This section could impact a Site where no ESMP is required because no excess soils are to be generated (i.e. all soil is to remain onsite). • We recommend that the addition of a clause that refers to a soil management plan, if it exists under the Reg. 153/04, should be followed.

4	Liquid Soil	Excess Soil - Other	<ul style="list-style-type: none"> • How does the proposed regulation apply to sites that are exempt from filing an ESMP? Do those projects just need to comply with the receiving site standards and no tracking is required? • The regulation does not contemplate the material/spoils generated by the tunnelling industry, nor the specific operations that are inherent in the industry during their generation of spoils (for example, the addition of amendments to support tunnelling works and to solidify liquid spoils). For some operations, there may be no feasible way to pre-sample the material to be excavated (given the expected addition of amendments during and following operations) and yet there may also be no means of storing the spoils onsite to support <i>ex situ</i> sampling prior to removal. Naturally elevated concentrations of parameters can be observed in tunnelled material (for example, BTEX in Georgian Bay shale) and, additionally, some prolific heavy contaminants (for example, TCE) have been found in materials removed from depth; thus, the spoils can also not just be assumed to meet generic standards. Given the volume of material generated by the tunnelling industry, we feel that specific consideration and clarification of how tunnelling spoils fit into this framework is needed. • It has been noted in various stakeholder meetings that there are limited identified “sinks”/reuse sites for excess soil. What happens if a beneficial Reuse Site cannot be identified for a Project and the material must then be sent to a waste disposal site? • Are there limitations or boundaries to how a Project Area can be defined. For example, for a municipality that owns all the roads in their boundaries, could their Project Area include their entire road network? • Knowing that complaints and issues will arise with soil movement activities, what are the options for a Project Leader to mitigate the potential for a non-compliance issue through engagement with the District Engineers or Provincial Officers? Understanding the MOECC does not have an approval function on the ESMP, what if in response to a complaint, the MOECC reviews the ESMP and disagrees with it?
5		Amendments to 153/04	<ul style="list-style-type: none"> • There doesn't appear to be a technical reason why the exemption for an RSC proposed for low-rise buildings could not be extended to scenarios in which the upper floor levels of an existing high-rise building are converted from commercial to a more sensitive use. Vertical spaces that are not in contact with the ground surface and may be individually owned have specific challenges for obtaining an RSC, including access to sampling at ground level. Perhaps the requirements for obtaining an RSC should be specific to spaces that are in contact with the ground surface, since it is only in these spaces in which access to subsurface contamination can truly be controlled. • It is again noted that there is no amendment in the posted regulation addressing soil that has a pH outside the “accepted” range. Options beyond additional sampling to average out values (not always practical), soil removal (which generally promotes unnecessary soil movement activities), or application of Table 1 Standards (prohibitive for delineation and increases redevelopment costs due to soil importation requirements) are needed. In many cases, the approach, as written, leads to soil removal to avoid application of Table 1 standards, even if there is no evidence that the locations

			<p>with soil pH outside the allowed range are causing issues at the site, or that the pH issue is extensive.</p> <ul style="list-style-type: none"> We recommend that the regulation should leave open options that would allow for more soil to be left in place if there is a good technical rationale to do so. Blanket rules that encourage the removal of soil without any technical consideration do not align with the MOECC's goal of preventing unnecessary movement and unnecessary landfilling of soil.
6	Standards		<ul style="list-style-type: none"> We encourage the Ministry to review and revise some of the proposed leachate standards listed within the most recent draft of the Excess Soils Management Regulations, posted to the EBR (April 2018). Many of the leachate standards are set near, at or below typical commercial laboratory reporting limits using current best available technologies that are economically achievable. As a result, data variability, which is inherent at low levels in most test methods, becomes a significant factor when evaluating and interpreting the test results. In general, it would be challenging to enforce or <i>scientifically defend</i> any data between an MDL and the RL because of the uncertainty and lack of consistency. We strongly recommend that: <ul style="list-style-type: none"> Results between the method detection limit (MDL) and the reporting or quantitation limit (RL) should be considered as estimates more so than absolute values All soil and leachate standards have a minimum value of 10 X MDL or a typical RL, whichever is lower. We encourage the Ministry to consult with the commercial analytical laboratory industry to ensure that all Excess Soils Management standards are realistically achievable and can be <u>quantified reliably</u> using current best available technology. In this regard, leachate standards supporting the Excess Soils Management Regulation should be based on laboratory <i>quantitation</i> or reporting limits, not detection limits.
7	Project Leader and QP		<ul style="list-style-type: none"> Under Part 1: General Interpretation - "Project Leader" means, in respect of a project, the person or persons who are ultimately responsible for making decisions relating to the planning and implementation of the project. Comment – This is new terminology and the definition, introduced for the first time, requires further clarification. The original intent of the proposed Excess Soil Regulation EBR #013-0299 as posted April 27, 2017 referenced the site property owner as the person having overall responsibility and ultimately the liability for the movement of excess soils off site. In addition to clarifying the liability involved, the responsibilities and liabilities of the new Project Leader role require alignment with the responsibilities of the Qualified Person (QP) responsibilities and the professional liabilities associated with the production of ESMPs. Consistent with previously identified O. Reg. 153/04 QP issues involving QP education, training, competency assessment and relevant experience credentials, there is now a need to put in place similar requirements for the new Project Leader role and position this role and responsibilities between the site owner and QP's involved in project. It is strongly recommended that a working group be put in place engaging PEO, OSPE, APGO and other associated and appropriate professional bodies to develop: clear role definitions; identify appropriate training needs and procedures; and

			<p>a system of ensuring and documenting QP proficiency and competency to support the proposed new Excess Soils Regulatory requirements.</p>
8	Temporary Soil Storage Sites		<ul style="list-style-type: none"> • If a key objective of the policy review resulting in the draft regulation is the beneficial re-use of excess soil, then the approach needs to provide for pragmatic ways to achieve this. One major constraint occurs when soils suitable for re-use are being excavated from the project site but the receiving location is either not ready to receive them or is not yet known as an approved receiving site. This is often the situation. • In these situations, temporary storage is important and the draft regulation provides for temporary soil storage sites (TSSS), but this is limited only to public sites or those where the project leader for the project site and the receiving site is the same. As written, this precludes the ability to store soils for other situations (e.g. where there are different project leaders responsible for different sites). In these cases, it appears a soil bank storage site, requiring an environmental compliance approval, a more complicated permit would be required that may take considerable time and resources. This could be a real problem if the point is to facilitate re-use. There is a need to ensure greater flexibility in the temporary storage of excess soils, while providing tools that protect against soils not being relocated properly. For this reason, we recommend that the proposed regulation be reconsidered to ensure that any additional approvals required for soil storage are simplified and streamlined. • It is noted that utilization of a temporary soil storage site has limitations, i.e., the receiving site must be identified in advance when discussions may be occurring, but the final placement of the excess soils has not yet been decided. This is another limiting factor that supports the need for MOECC to reconsider temporary soil storage in the proposed regulation.
9	Guidance		<ul style="list-style-type: none"> • In order to facilitate a clear understanding of re-use strategies and provide a uniform approach for the industry in excess soils management, it is recommended that the Ministry provide a comprehensive process flow diagram. This will enable industry to better adapt the new Regulation and assist in classifying soils for re-use and making decision on re-use sites.