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November 20, 2020

Ministry of the Environment, Conservation and Parks (MECP)
Land Use Policy (Environment and Climate Change)
40 St Clair Avenue West, Foster Building, Floor 10
Toronto, ON, M4V 1M2
Attn: Laura Blease

via email to laura.blease@ontario.ca

RE: ERO posting # 019-2462: Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse

Dear Ms. Blease,

We are writing on behalf of the member firms of the Ontario Environment Industry Association (ONEIA) to provide our response to the proposed regulatory amendment posted as per ERO #019-2462: Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse.

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.

ONEIA members are committed to working with various levels of government to enact smart regulations that protect the environment and drive the next generation of businesses. With this in mind, we would like to thank the Ministry of the Environment, Conservation and Parks (MECP) for the opportunity to review and provide comments on the proposed amendments to Ontario Regulation 406/19 and O. Reg. 153/04 under the Environmental Protection Act. Our Brownfields Committee and Excess Soil Working Sub-Committee engaged a range of our members and we are happy to provide this high-level feedback in the following table (Table One).

GENERAL COMMENTS

ONEIA members agree with the burden relief that is currently proposed with the amendments to Ontario Regulation 406/19 as a result of COVID-19-related delays to infrastructure projects and to support reuse of excess soil. Furthermore, ONEIA is also in agreement with the proposed amendments to Ontario Regulation 153/04 to continue to exempt temporary health and residential facilities from the need for a record of site condition if it is in response to the COVID-19 pandemic and its effects.

However, there are sections of the proposed amendments that need further clarifications as listed in Table One. We would also like to recommend further awareness training and outreach to support the proposed changes, especially for those sectors that will be most impacted by the potential amendments (e.g. municipalities, developers, topsoil producers and suppliers and those involved in tunneling construction).

Table One. ONEIA Comments on ERO# 019-2462

Item	Proposed Amendment	Comment
1	Extending Grandfathering	<ul style="list-style-type: none"> • The proposed amendment revised the grandfathering provision to extend the date by which construction projects must be entered into by one year; from January 1, 2021 to January 1, 2022. Will the end of the grandfathering provision also be extended by one year from January 1, 2026 to January 1, 2027? The amendment specific to extending the scope of the grandfathering provision to provide an exemption from the assessment of past uses, sampling and analysis plan and soil characterization report for projects which have already completed similar soil-related studies before January 1, 2022, the language doesn't match the contracting language in the regulation as it refers to "start" of construction instead of when construction projects must be "entered into". We recommend the language be updated to better match what is currently in the Regulation for better clarity around "entering contract". Note, what the Regulation requires in terms of what needs to be established in the contract to be eligible under this exemption remains unclear (i.e. does reuse site need to be established in that contract?) • Clarification is needed for "similar soil-related studies" to prevent interpretation of the word "similar". For example, what are the minimum requirements of the geotechnical studies with soil quality assessments to comply with "similar soil-related studies" requirements (frequency of sampling, level of characterization, etc.).
2	Environmental Compliance Approval (ECA) Relief for Low Risk Soil Management Sites	<ul style="list-style-type: none"> • What is meant by "temporarily" in this proposed amendment? Is this actually a new relief item, or is this just clarifying what the regulation already says is allowed for Class 2 Soil Management Sites? • Amendments include soil rules that apply to the management of the sites that would be exempt from an ECA. More specifically, requirements on soil quality being stored including that the soil must be dry soil and must be of equal or better quality than Table 2.1 Excess Soil Quality Standards for residential, parkland and institutional uses. Does this mean that any topsoil or soil that moves to a soil producer must meet Table 2.1? Further clarification on applicability of the exemption and soil rules to topsoil producers are needed as the excavation of topsoil in accordance with a permit issued under the Aggregate Resources Act is exempt from the O.Reg. 406/19. It is unclear, how the industry realistically benefits from the proposed amendment. • Furthermore, can topsoil be re-used onsite if processed on the same property without having to meet Table 2.1 standards? • Amendments indicated that "In relation to soil or soil mixes leaving these facilities - this must not cause an adverse effect when placed at the site that receives this soil. If soil or soil mixes are sold for the purpose of growing crops, garden produce and/or pasture, all requirements set out in Section D subsection 2 (2) of Part 1 of the Soil Management Rules must be met, including meeting Table 1 of the excess soil quality standards." Can MECP specify if soil producers must now test their products and meet Table 1 of the excess soil quality standards? Please indicate the actual burden

		<p>reduction the soil producing industry can expect from the amendments.</p> <ul style="list-style-type: none"> • Can MECP provide clarification on ECA requirements for temporary storage sites operated or owned by municipalities and other public bodies that stockpile more than 10,000 m³ of soil at any one time. • Will properties holding more than 10,000 m³ of soil for projects that are related to infrastructure projects and owned and operated by a public body be exempt from requiring to obtain an ECA?
3	Enabling Site-Specific ECA Soil Management Requirements	<ul style="list-style-type: none"> • There is no mention of Certificates of Property Use that sometimes indicate soil management requirements. It is unclear whether an ECA is required if a CPU outlines soil management requirement. Please provide further clarification on whether a site with a CPU in place with soil management requirements requires an ECA.
4	Flexibility in Excess Soil Storage for Reuse	<ul style="list-style-type: none"> • The proposed changes provide flexibility, if certain conditions are met, for excess soil to be stored at a location within 10 metres of a property line boundary. The amendment referenced small volumes being stored that are less than 500 m³ of excess soil; please note that the small volumes in the O.Reg. 406/19 refers to a different value (350 m³). We recommended use of different wording in the amendment to prevent any confusion. • Laboratory standard turn-around times can be up to 10 working days for some parameters for example Dioxins/Furans. Recommend changing the amendment and the condition for storage on a “very short-term” basis from one week to three weeks to allow for laboratory turn-around times. • Will these ECAs allow for alternative setbacks for soil stockpiles or alternative stockpile sizes to be proposed and approved?
5	Reuse of Salt-Impacted Soil	<ul style="list-style-type: none"> • We agree with the proposed changes. However, it is unclear how the initial rationale that prohibited the reuse was changed? Recommend the rationale to be updated to provide clarification on low risk or no risk associated from salt impacted soils to the groundwater in areas that will continue to receive salt application.
6	Reuse of Rock Mechanically Broken Down	<ul style="list-style-type: none"> • Clarification is needed on soil definition to clarify if the same definition for soil under the O.Reg. 406/19 applies to crushed rock? i.e. <2 mm in size or that pass US#10 sieve? • From a lab's perspective, this proposed amendment should also make clear that unless the rock is actually broken down on site, laboratories may not be able to process the samples as a soil matrix normally is; it is difficult to break down rock by crushing and grinding in the lab, without potentially introducing contamination from the machinery; laboratories have been asked about testing uncrushed rock under O.Reg. 406 and always have challenges with this. • The rationale indicated that clarification would allow a greater amount of materials that become excess soil to be reused, increase local beneficial reuse which in turn would provide opportunities for a number of economic, environmental, and social benefits. There are currently many concerns regarding the naturally occurring materials such as some metals and hydrocarbons that do not meet the excess soil guidelines within crushed rocks in Ontario, specifically Shale. Recommend that the MECP provide direction on how naturally occurring elevated concentrations in rock will be interpreted and managed since the SCS and ESQS don't account for background concentrations in rock (i.e., the OTRs have not been developed to account for normal background concentrations observed in rock material that has a particle size <2mm). There is

		<p>also a gap in industry's understanding of the geotechnical properties of crushed rock and suitability for reuse option.</p> <ul style="list-style-type: none"> • We recommend a more risk-based approach to be developed by the QPs to assess the suitability of crushed rock for reuse. • It is unclear how considering broken down rock into smaller pieces similar to soil as excess soil if moved off the project area, and managed according to the Excess Soil Regulation, would increase local beneficial reuse.
7	Updates to Leachate Testing and Related Requirements	<ul style="list-style-type: none"> • In addition to confirming that leachate analysis is not required for background level quality soils, clarification should be provided regarding the need for leachate analysis at the receiving sites that accept less than 350 m³ of excess soil (as indicated per Part II of the Rules, 1. Rules Associated with the use of Excess Soil Standards); understanding that total volume of excess soil accepted at a receiving site from other sources may not be available to a source site's QP at the time of testing) • Given leachate analysis is not required for background level quality soil, the MECP should provide clarification on the further use of Table 1 LSLs or indicate if they will be removed from the Soil Rules. • There are concerns with the use of the MECP's new modified Synthetic Precipitate Leachate Procedure (mSPLP) for some metals that will exceed general leachate screening levels. This may incorrectly cause leachate exceedances even though it may not have a leachate risk. Please clarify whether QPs can specify individual metals for mSPLP testing in circumstances for metals in a dataset that meet background levels in order to avoid exceedances of leachate screening levels for background bulk metal concentrations. • It is recommended to provide QPs with discretion on interpretation of the result of mSPLP for certain metals that exceeded leachate screening criteria but do not pose a risk. • Additional guidance for QP discretion for leachate testing is recommended so that QPs understand when and how technical justification for leachate testing should be applied.
8	Clarifications on Application to Aggregate Operations	<ul style="list-style-type: none"> • Aggregate Operations also offer mechanically broken-down rock to less than 2mm in size. Although aggregate operations are regulated under Aggregate Resources Act, if aggregate operations are excluded from the excess soil regulation, the proposed amendment may favour resource extraction rather than reuse of soils chemically similar in nature to aggregate. • There are also cases where aggregate operations may receive back material (e.g., granular B excavated from a construction project), and then sell it. This material that is not original to the site should not be exempt from the Excess Soil regulation, and yet appears to be based on the wording. The amendment suggests only what is being accepted and permanently placed at the operation would not be exempt, whereas it should be any material not originally mined at that site.
9	Registry Delivery	<ul style="list-style-type: none"> • The proposed changes note the use of the Resource Productivity and Recovery Authority (RPRRA) registry platform, instead of MECP's existing Environmental Site Registry. Although this has the potential to centralize with one platform for the excess soil registry, some form of implementation or coordination structure with industry is recommended to connect with those administering the registry including design and the aspects involved. • Further clarification is required to confirm if the proposed platform is an open source platform with public access or it is limited to administrating the registration through those platforms.

		<ul style="list-style-type: none"> The amendment indicated that the purpose of the registry would be expanded to include integration with other third-party platforms (e.g., tracking and/or soil matching systems and other non-regulatory programs), considering cost, security, and other relevant matters. It is unclear how integration with other third-party platforms can be achieved.
10	Minor Clerical Updates	<ul style="list-style-type: none"> We recommend that the MECP provide further clarification that the minimum parameter list will apply for all samples collected within the project area, but for additional contaminants of potential concern (COPCs) as defined by the APECs identified in the Past Uses report, samples collected for these additional COPCs will differ across the project area and be determined by the APEC boundaries. It is our understanding that all soil samples collected during the soil characterization must include PHC/BTEX, metals, hydride forming metals, EC/SAR (in areas of salt use), other COPCs identified from the assessment of past uses, and leachate analysis. It is important to clarify that “each sample” in Item 5 is referring to all the samples collected from a particular APEC and not from the entire site. For example, if COPCs in APEC 1 are PCBs and PAHs; and COPCs in APEC 2 are OCP, clarification is needed that parameters sampled from APEC 1 do not need to include the COPCs identified in APEC 2 and vice versa based on the QP discretion. There will be a much larger cost burden if each sample from a given site must be analyzed for all COPCs present throughout the Site, rather than the COPCs identified from the applicable APEC.
11	Minor Amendments to the Record of Site Condition Regulation (O. Reg. 153/04)	<ul style="list-style-type: none"> Recommend further language that clearly defines what is meant by “Temporary” for the health and residential facilities (e.g., 12 months, 18 months?).
12	Appendix - Updates to the Analytical Protocol	<ul style="list-style-type: none"> With regards to the mSPLP method, the update to the Analytical Protocol should be clear in identifying which parameters are to be analyzed and the associated detection limits; for labs that have already set up the MECP mSPLP method, the scope likely only extends to the parameters with generic leachate standards and not the entire list of compounds; our understanding is that it is possible labs would be asked to provide mSPLP testing for parameters that don't have generic leachate standards (like PAHs), but for which the QP may decide to develop site specific ones; it is impossible for labs to anticipate what the required detection limits may be in a leachate and ensure accreditation reflects it. With regards to the removal of filtration for B(a)p – while we are in agreement with this (as we have seen from internal studies, filtration of water samples removes upwards of 70-80% of target compounds), we would recommend including a provision that allows alternate methods such as decanting, in an effort to separate a larger portion of the sediment from the water sample under the understanding that alternate methods employed would augment standard “whole-bottle analysis” techniques on duplicate samples and not replacing existing accepted practice. With regards to the update on compound bis(2-chloroisopropyl)ether (in response to BV's discussion with the Lab Services branch), the amendment document indicates an error in the correct compound name; the amendment should be clear that the correct compound name is bis(2-chloro-1-methylethyl) ether with CAS# 108-60-1.

We appreciate the ability to provide our comments and welcome any additional opportunities to discuss our ideas further. Please contact our office at info@oneia.ca or at (416) 531-7884 should you have any questions.

Yours truly,

A handwritten signature in black ink that reads "Alex Gill". The signature is written in a cursive, flowing style.

Alex Gill
Executive Director