



December 1, 2022

Reema Kureishy  
Environmental Policy Branch  
10th Floor, 40 St Clair Avenue West  
Toronto, M4V 1M2

Submitted via ERO Online Filling Portal

**File Number: ERO - 019-6240 Amendments to Certain Requirements under the Excess Soil Regulation**

Dear Ms. Kureishy:

The Ontario Society of Professional Engineers (OSPE) is the advocacy body and voice of the engineering profession. Ontario currently has over 85,000 professional engineers, 250,000 engineering graduates, 6,600 engineering post-graduate students and 37,000 engineering undergraduate students. We operate with the needs and responsibilities of the engineering community at our core, advocating in professional and policy capacities.

We are pleased to respond to the call for consultation for the Amendments to Certain Requirements under the Excess Soil Regulation.

The proposed revisions to the regulation and rules clarifying exemptions for low risk sites are reasonable, however, we offer the following comments for your consideration:

- Project Leaders may not always have the necessary training and experience to properly assess the need for further assessment. Although institutions (e.g. schools), parks and residential properties represent a lower risk, we are aware of circumstances where soil historically placed at some of these sites would be considered relatively contaminated (i.e. would not meet non-potable industrial standards), particularly in areas that were developed at much earlier period of time. The MECP should consider providing additional guidance to Project Leaders regarding these risks and the due diligence that should be undertaken to confirm that a source site is truly “low risk”. In the absence of this guidance, it is anticipated that some Project Leaders may incorrectly interpret the MECPs exemptions for low risk sites as signalling that these sites represent no risk.
- Acceptance of soil at a reuse site is contingent upon the Owner’s satisfaction that soil is appropriate for reuse, and in particular that soil accepted will not represent a future liability. Although some flexibility in how soil is assessed, with consideration to the relative risk of the source is reasonable, further guidance regarding reasonable standard

of care is required. In the absence of guidance on commonly accepted practice, a patchwork of expectations will evolve which may make it more difficult to encourage beneficial reuse. For example:

- If a source site is proposing to move low risk soil, is the expectation that the source site produce an assessment of past uses summary (or similar) to document efforts made to evaluate risk? It is anticipated that many reuse site owners and their representatives will be unwilling to accept a source site's word that the material is "low risk" in the absence of documentation produced by a QP demonstrating how that conclusion was reached.
- It is anticipated that many reuse sites will implement some degree of audit sampling to confirm that excess soil is consistent with representations made by the source site and to verify that there has been no substitution or alteration of material in transit. In the absence of some minimum level of characterization how will a reuse site demonstrate to a Provincial Officer or other public stakeholders (e.g. municipal government, neighbours) that the beneficial reuse does not represent an adverse impact if/when concern is raised?

If due diligence is lacking, improper placement of soil may erode public trust in the beneficial reuse of excess soil.

- It is our understanding that soil tracking requirements were implemented to ensure transparency in soil handling. Tracking provides confidence to reuse sites that material they are receiving is from acceptable sources, and provides transparency to the public and MECP regarding the type of soil being accepted, sources of the material, and clarity regarding who is responsible for the reuse site. Consideration should be made to keeping a tracking requirement, perhaps based on the volume of material received (i.e. maintaining a tracking requirement for reuse sites accepting larger volumes of low risk excess soil).

There is an opportunity to create a framework that offers clarity and efficiency to ultimately protect the public. Ontario has two powerful resources that can fulfill this necessity: Professional Engineers of Ontario (PEO) and OSPE. PEO has the capabilities and authority to administer thoughtful practicing guidelines for engineering professionals to abide by while OSPE is equipped to advocate for engineers to continue protecting the public and the environment. OSPE is available to support the Ministry of Environment, Conservation and Parks (MECP) in developing regulations that are practical in nature while maintaining public trust, directly informed through the input of our qualified members.

To this end OSPE remains committed to supporting the MECP with the development and communication of best practices – particularly as they may relate to QPs. OSPE advocates for Project Leaders to seek the guidance of qualified and experienced QPs when evaluating excess soil.

As the advocacy body for engineers in Ontario, we have a responsibility to our members and the broader engineering community to provide tangible solutions for society's biggest challenges. We thank you for the opportunity to be a part of the consultation process for the Excess Soil Regulation. We look forward to the results and following the recommendations provided.

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

Sandro Perruzza  
Chief Executive Officer  
Ontario Society of Professional Engineers

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