June 16, 2019

The following represents Infrastructure Ontario’s combined comments on the various supporting documents:

Proposed Beneficial Reuse Assessment Tool

* Not all drop down menu options show properly.
* BRAT input – cell C96 – typo
* What type of additional work is expected to be required as per cell C42 in NOTES section
* BRAT Input tab:
	+ “Site Use Characteristics Applied for the Reuse Site” – for the whole reuse site property or just the area where the excess soil is being applied?
	+ Row 91 – How to answer “Leachate Screening Levels Are Met” question if we’re not applying the generic excess soil standards in Appendix 1?
	+ What is meant by “leachate analysis being completed as a pathway modifier”?
* BRAT Input\_Leachate:
	+ How do you know whether to choose Y or N?

Proposed On-Site and Excess Soil Management Regulation

* Project area definition: is it only for the properties that are “affected” by construction or it also includes properties required for staging or laydown of equipment?
* Page 11, A sampling and analysis plan, if any of the following circumstances apply: in-situ sampling or for the excavated soil?
* Page 11, number 3: do we have a table of contents or example for the soil characterization report? Who can write that? Could the results of a Phase Two ESA be used instead?
* Page 12, number 4: do we have a table of contents or example for the excess soil destination assessment report? Who can write that?
* Page 14, number 10: is there going to be some sort of directory for sites/undertakings in need of excess soil? How is it expected that a site in need of soil will be available at the time of excess soil removal?
* Is any sort of audit required to ensure work is done properly?
* Who pays for excess soil transportation: the source or the receiving site (if used as part of an undertaking)? is soil to be used as part of an undertaking at a site, to be paid for?
* Page 22, number 3.i: does this mean by sampling or just visually?
* Page 24, number 8: why would the soil be processed while being stored? To reduce contaminants?
* The **Designation as waste** suggests that excess soil that is directly transported to a reuse site from a soil bank storage site, temporary soil storage site or soil processing site is not waste, but would be waste if it is directly transported from a source site to a soil bank storage site, temporary soil storage site or soil processing site.
	+ Comment: Is this correct? If so, then “waste soil” at one of the storage sites is no longer waste if it is transported directly to reuse site?
* “excess soil” means soil that has been excavated as part of a project and removed from the project area for the project;
* “soil” means unconsolidated naturally occurring mineral particles and other naturally occurring materials resulting from the natural breakdown of rock or organic matter by physical, chemical or biological processes that are smaller than 2 millimetres in size or that pass the US #10 sieve;
	+ Comment: So if we excavate a roadbed, construction rubble, etc. that is not “naturally occurring”, this would not be considered to be soil? If so, are there any rules about reuse of these materials?
* Comment: The regulation does not describe responsibilities or awareness for the owner(s) of any of the sites involved in management of excess soils. So if there’s an environmental problem related to the management of excess soils, to whom would MECP issue an Order if the owners are not involved in the management of these soils?

| **Topic** | **Issue** | **Comment** |
| --- | --- | --- |
| Interpretation | Page 2:“excess soil” means soil that has been excavated as part of a project and removed from the project area for the project  | If the project area is much smaller than a property and a property owner wishes to temporarily store the excavated material from a “project area” on the property but outside of the “project area”:* Would this material be “excess soil”
* Would there be special requirements to return the soil to the “project area”?
 |
| Interpretation | Page 3:“project”“project” means, subject to subsection (4), any project carried out on a single property or a group of adjoining properties…  | Recommendation (see italics below):Revise definition as follows:“project” means, subject to subsection (4), any project carried out on *a portion or all of* a single property or a group of adjoining properties… |
| Interpretation | Page 3:“project area” means, in respect of a project, the property or adjacent properties…”  | What is meant by “property”? For IO, would it be equivalent to an N number? What are the implications if a project (e.g., park/trail) is being carried out on a much larger property (i.e., Ontario Place)? |
| Interpretation | Page 3:“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  | Would a better term be “proponent” as defined in the EAA?The “project leader” may not be an owner. |
| Interpretation | Pages 4-5:Temporary soil storage site:(b) which is located on a property owned by a public body or by the project leader for the project in relation to which the stored excess soil was excavated.  | Project leader of a project that generates excess soil has to own a site used as a temporary storage site, but must not be the owner of a soil bank storage site. What is the rationale for this distinction?Clarification needed that a “project leader” is also an owner? |
| Interpretation | Page 5, (3)For the purposes of this regulation, two properties are adjoining if… | Should this definition include situations where there is an intervening right of way? |
| Designation as Waste | Page 6, Item 4 (v) A Certificate of Property Use issued under Section 168.6 of the Act | If soil is excavated from a “project area” (e.g., park/trail) and stored at a temporary storage site on the same property (e.g., Ontario Place), would it be possible to return it to the “project area” as backfill if it does not comply with requirements of a CPU for the “project area” that may address RMMs such as caps, but not backfill? |
| Exemption from Designation, if reuse site not governed by instrument | Page 95(1)5. Subject to subsections (5) and (6), the excess soil must be finally placed no later than one year after it is deposited at the reuse site.  | What is the technical reason for the one-year restriction? It may prevent a proponent from storing soil of a specific quality that’s difficult to obtain pending its placement for an undertaking at a much later date.  |
| Transportation | Page 19, Item (5)1. The date and time that the load of excess soil is deposited | Recommendation:Revise Item 1 to read as follows:The *location,* date and time that the load of excess soil is deposited.This would be a good cross-reference to match the information to be provided under (4), 6 on the identification of the location at which excess soil is to be deposited |
| Transportation | Page 19, Item (5)3. A declaration by the individual…acknowledges the deposit of the excess soil. | Recommendation:Revise Item 3 to read as follows:A declaration by the individual…acknowledges the deposit of the excess soil *at the identified temporary soil storage site, soil bank storage site, soil processing site, landfilling site, dump or reuse site*.The *location,* date and time that the load of excess soil is deposited |

Proposed Amendments to Reg. 153/04

* How to establish what constitutes “naturally occurring range of concentrations”?  Based on QP’s professional judgement or published data?
* Definitions of both “soil bank storage site” and “temporary storage site” imply that excess soils being taken to these places would be considered “waste”.  Clarify if that means that waste approvals would be required to transport soils to these facilities?
* **Horizontal severance**

**22.1** A phase one or phase two environmental site assessment shall take into account every property at or below the ground surface that is above or below the phase one or phase two property.

Does this mean to include these properties as part of the phase one or phase two “site” or just included within the assessment boundary?

* Definition of “well” in subsection 35(1) was revoked but will it be replaced with a new definition?
* Section 15, subsection (1), paragraph 2, item v:

The existing building envelope is to remain unchanged and there will be no addition to the exterior portions of the building.

How does this apply in the case of changing the building envelope by constructing additional storeys (up to 6)?

* **17. (1) Subsection 4 (1) of Schedule A to the Regulation is amended by adding the following paragraph:**

4.2 Whether there are one or more properties at or below the ground surface that are above or below the RSC property and the property identification numbers, if any, of those properties.

Does this imply that there can be RSCs for just a particular floor of a multi-storey building?

* **(8) Report Section 6 (Review and Evaluation), Sub-Heading (x) (Phase Two Conceptual Site Model) of Table 1 of Schedule E to the Regulation is revoked and the following substituted:**

|  |  |  |  |
| --- | --- | --- | --- |
| 6. Review and Evaluation  | not applicable  | (x) Phase Two Conceptual Site Model  | 7. If the exemption set out in paragraph 1 or 2 (and 3?) of section 49.1 of the regulation is being relied upon, provide a statement as to the reliance upon the exemption and a narrative description of the rationale for relying upon the exemption, which may be based on information gathered during the site investigation. 8. If the exemption set out in paragraph 3 (is this supposed to be 4?) of section 49.1 of the regulation is being relied upon, provide, i. a statement as to the reliance upon the exemption, ii. a narrative description of the rationale for relying upon the exemption, which may be based on information gathered during the site investigation, and iii. one or more cross-sections and one or more figures in plan view of the phase two property that demonstrate, through identification of sample locations, sample depths and contaminant concentrations, the distribution of the contaminant in question laterally and vertically and the range of concentrations of that contaminant on, in or under the phase two property.  |

* Make all reasonable inquiries to determine if the phase one property is located within an area designated in the official plan of the municipality in which the phase one property is located as a well-head protection area or another area designated in the official plan as an area for the protection of ground water.

Is this meant to also include designations related to groundwater vulnerability based only on soil type (even if the groundwater isn’t being used as a potable source)?

Proposed Rules for On-Site and Excess Soil Management

* Stockpile sampling table (Table 2.1) – Clarify that the number of samples in this table refer to the number of required lab analysis samples and not field screening samples.
* Page 17 – Item x.5. – “leachate analysis for certain contaminants as outlined in item 5 (below).”  Reference should be to item 4 (not 5).
* Page 20 - If stratified soil standards are used on a reuse site, then the reuse site owner, occupier, or person who has charge, management or control of the reuse site must ensure that surface soil and subsurface soil on, in or under the property or properties comprising the reuse site meets the applicable stratified condition standards for all prescribed contaminants. This responsibility must be communicated to subsequent property owners.

Does this mean that the reuse property owner would have to do soil characterization on their property too?

Page 4

* What is meant by “project leader”? How does this position relate to property owner?
	+ According to the regulation, “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: The proposals do not clearly state responsibilities of a property owner of a project area and/or of a destination site.

Page 7, Part II

* Use consistent terminology: destination site or deposit site?
* If soil is to be stored temporarily, is the temporary site a “destination or deposit site”?
* According to the regulation
	+ “**reuse site**” means a site at which excess soil is used for a beneficial purpose and does not include a waste disposal site
	+ “**soil bank storage site**” means a **waste disposal site**, other than a temporary soil storage site, that,
		- (a) operates for the primary purpose of storing, on a temporary basis, excess soil delivered from one or more projects, and
		- (b) is operated by a person who is not the project leader for all of the projects from which the stored excess soil was delivered;
	+ “**soil processing site**” means a **waste disposal site**, other than a temporary soil storage site, at which excess soil is temporarily stored and processed for the purpose of reducing the concentration of contaminants in the excess soil;
	+ “**temporary soil storage site**” means a **waste disposal site**,
		- (a) at which excess soil is stored on a temporary basis, and
		- (b) which is located on a property owned by a public body or by the project leader for the project in relation to which the stored excess soil was excavated.

Page 7, Part II, item 5

* Terms used are:
	+ Reuse site
	+ Soil bank storage site
	+ Soil processing site
	+ Landfill
		- Are these the only possible “destination sites”?

Item 5 (iv)

* If the site on which excess soil is to be deposited is a soil bank storage site, a soil processing site, or a landfill, what is the value of knowing the standards that would apply to that site?

Item 5 (viii)

* Shouldn’t written consent be required for all destination sites, not just reuse sites?

Item 5 (IX)

* Should a project leader be given this responsibility? Should it be restated as “If a QPESA determines that there is a higher concentration…’

Page 8 (v)

* Could there be situations where a temporary soil storage site has to be used to store excess soil and an intended use/destination is not known? How are these situations to be addressed?

Page 8, Item 2(2)

* Could the operator/carrier be directed to a site that is not a reuse site? What would be the requirements in this situation?

Page 26, IV (3)

* If more than one property use applies to a reuse site, then the standards applicable to the most sensitive property use apply.

Comment: For properties close to water, there may be a small portion that would be considered more sensitive while a larger portion may be considered to be less sensitive. In this situation, should it be possible to delineate the two different areas and apply different standards to them?