**Pinchin Ltd. Comments On Proposed Amendments to Ontario Regulation 153/04**

Comment 1

Regarding non-standard delineation, the first sentence in the proposed amendment to Section 7 of Schedule E (i.e., the addition of Section 7.1) reads as follows:

**Non-standard delineation**

**7.1**  If the Director has accepted a risk assessment relating to the phase two property, a qualified person may, instead of complying with clause 7 (4) (c) of this Schedule, conduct a non-standard delineation in accordance with the following rules:

This wording implies that non-standard delineation can only be conducted after a risk assessment has been accepted. Elsewhere in the proposed amendments, wording refers to completing non-standard delineation as part of the Phase Two Environmental Site Assessment completed to support a risk assessment, which would precede the risk assessment. For example, the amendment to Clause 18 (e) of Schedule A reads:

 (e) if a risk assessment has been accepted by the Director in relation to the RSC property under section 168.5 of the Act, the identification number of the risk assessment and, if a non-standard delineation was conducted in accordance with section 7.1 of Schedule E as part of the phase two environmental site assessment, an indication that such a non-standard delineation was conducted

It is Pinchin’s understanding that non-standard delineation is a Phase Two Environmental Site Assessment option that can be used to allow a risk assessment to be approved without having full delineation provided all of the conditions set out in Section 7.1 are met. The wording in the first sentence of Section 7.1 implies that non-standard delineation can only occur after risk assessment approval which appears to be contradictory to the wording elsewhere in the proposed amendments and to the understood intent of non-standard delineation. As such, the wording in the first sentence of Section 7.1 should be modified to align with the rest of the proposed amendments regarding non-standard delineation.

Comment 2

For Report Section 7 (Review and Evaluation of Information), Sub-Heading (iv) (Phase One Conceptual Site Model) of Table 1 of Schedule D, the amendment indicates that the current wording is to be replaced by two bullets referencing Section 49.1. The wording that is being replaced lists the key components of the Phase One Conceptual Site Model so it would appear that the two bullets should be in addition to the current wording, rather than to replace it.

**Pinchin Ltd. Comments On On-Site and Excess Soil Management Regulation**

Comment 1

The definition of “soil” in Section 1 is the same as the definition of “soil” in Ontario Regulation 153/04, excluding the exemption for a shallow soil property in the latter. In Pinchin’s experience, there are a lot of misconceptions regarding what constitutes soil. For example, are engineered fill materials, such as limestone screenings defined as soil? We assume these would be considered unconsolidated naturally occurring mineral particles; however, what constitutes the “natural breakdown of rock or organic matter by physical, chemical or biological processes” is unclear. Does mechanical crushing, sorting and screening and other manipulation mean it is not a “natural” breakdown, and thus it is not soil?

Comment 2

Section 2 (2) states that the “Regulation does not apply to aggregate, within the meaning of section 1 of the *Aggregate Resources Act”*. The definition of aggregate from Section 1 of the latter is:

 “aggregate” means gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite, rock or other prescribed material;

Based on the above, a significant amount of excess soil that will be generated in the future will not have to follow the Excess Soil Management Regulation (e.g., sand, clay, earth). It would appear that this is not the intent of the Regulation and rather than cross-reference the definition of aggregate from the *Aggregate Resources Act,* the Regulation should provide a standalone definition of aggregate for the purpose of excess soil management.

Comment 3

Regarding Section 21 – Records Retention, subsection (4) indicates that the qualified person is to retain documents or records related to excess soil management for at least seven years. This problematic for qualified persons who retire or change companies and this should be amended to state that the records or documents should be retained for at least seven years by the qualified person or the company that employed the qualified person.

**Pinchin Ltd. Comments On Rules For On-Site and Excess Soil Management**

Comment 1

In Part I, Section 1, the definition of an “environmentally sensitive area” is similar, but not identical, to the definition of an “area of natural significance” in Ontario Regulation 153/04, with several additional clauses in the former. It is not clear why these two terms are not aligned.

Comment 2

The term “operator” is used in several places in Part II, Section 2 – Tracking System and this term should be defined.

Comment 3

For Part II, Section 2 – Tracking System, in subsection 7), it is stated that the tracking system must be able to verify that the excess soil has “not been tampered with, replaced, added to or otherwise modified” during transportation form the project area to the deposition site. In practical terms, this is not achievable without some form of electronic surveillance for each vehicle transporting excess soil. This subsection should be removed from the Regulation unless the MECP can provide a practical solution as to how a tracking system can be set up so that subsection 7) can be complied with.

Comment 4

For Part IV, Section 1 – Generic Excess Soil Standards, the first bullet in subsection 1) vii does not make sense as currently written and there appears to be wording missing.

Comment 5

For the Notes on Tables 2 to 9 and 2.1 to 9.1 in Appendix I, the first column in the fourth row of the table reads “Overburden thickness is unknown or is less than 2 m”. The phrase “over more than 1/3 of the site” should be added to this. Also, the footnotes to this table have a footnote regarding use of Tables 4/4.1 and 5/5.1 marked by “\*\*” but “\*\*” does not appear in the rest of the table so it is not clear what is being footnoted.