**Draft Excess Soil Proposed Regulation and Amendments to Ontario Regulation 153/04 - 2019 Jacobs Comments**

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| Item # | Regulation | Commenter | Comment |
| 1 | Amendments to 153/04, Section 55 (pages 8-9) | Jacobs | * Section 55 language refers to an “RSC Property”. Per the definitions provided in O.Reg. 153/04 as amended July 2017, an “RSC property” is a property in respect of which a record of site condition is submitted for filing or is filed. As such, the requirements documented in the updated Section 55 text are understood to only be specific to properties for which an RSC has been submitted for filing or is filed based on a Phase One ESA (Section 55) or Phase Two ESA (Section 55.1). Please confirm this interpretation is correct.
* Assuming the interpretation noted in the bullet above is correct, why are these requirements even needed in O.Reg. 153/04? Why doesn’t soil importation to these properties post-RSC filing simply default to the requirements of the Draft On-Site and Excess Soil Management Regulation (Draft Regulation)?
* It is noted that nothing is included in Section 55 that is specific to a property for which an RSC is submitted for filing or is filed based on an RA. It is understood that for a property for which an RSC is submitted for filing or is filed based on an RA, that post submission of the RSC for filing, soil importation to these properties will be in accordance with the CPU. Please confirm this understanding is correct.
* The proposed Section 55 text indicates that the requirements of Schedule E must be met for soil imported to the property and that soil placed at the property must meet the *applicable soil quality standards, as determined in accordance with the Soil Rules*. It is unclear how Section 55 considers items in the Draft Regulation in terms of soils that may be exempt from sampling (i.e., items 1 and 4 listed in Schedule 1 of the Draft Regulation for small volume movements from “clean” source sites, and use of topsoil). Why do the regulations not appear to align on these items? If topsoil is exempt from Section 7 and 10 of the proposed regulation, meaning it is exempt from sampling, reporting, and registration requirements, when being reused at non-RSC sites it seems inconsistent to not also be exempt from these requirements when imported to an RSC site. Either the soil can be presumed to be protective of reuse site conditions without sampling, or it can’t; the actual placement location should not matter.
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| 2 | Amendments to 153/04, Schedule E (pages 15-18) | Jacobs | * Item 21 (2) states: *The heading immediately before section 30 and sections 30 to 34 of Schedule E to the Regulation and the heading immediately preceding are revoked and the following substituted…* It twice seems to refer to the heading before Section 30. Is that an error, or is the second reference to the heading (underlined above) removing yet another heading somewhere before this section?
* The headings before Section 30 and 32 both reference the “Phase Two Property”. Per the definitions provided in O. Reg. 153/04 as amended July 2017, a “phase two property” is a property that is the subject of a phase two environmental site assessment. The definition of the phase two property is understood to be specific to a property for which a phase two ESA is being completed to support filing an RSC. Please confirm this understanding is correct and, as such, the requirements included in Sections 30, 31, and 32 apply to a property for which an RSC is being sought but has not yet been submitted for filing or is filed.
* The text in Section 31 2. ii. refers to *the applicable soil quality standard, as determined in accordance with the Soil Rules*. The Soil Rules do allow the development of site-specific excess soil standards for reuse sites – which will be relevant for phase two properties for which an RA is being completed to support filing an RSC. It is unclear how the amendments to Section 30 and 31 are accounting for the standards specified in a risk assessment prior to the RSC being submitted for filing. Given the lag in time that can occur between the risk assessment being accepted by the Director and the CPU being finalized, an inability to apply the accepted RA standards during that lag period can be a burden to development projects. The regulation should provide an allowance to apply the standards specified in a risk assessment to support reuse of excess soil once the risk assessment has been accepted by the Director.
* The text in Section 31 (1) 5. does not align with the sampling requirements in the Draft Regulation (i.e., it does not speak to the stockpile sampling table or the insitu source site sampling option). The text in Section 31 (2) then appears to negate the Section 31 (1) 5. text, as it references the Draft Regulation requirements. Does the inclusion of the text in Section 31 (1) 5. and Section 31 (2) mean that either sampling frequency option can be applied (i.e., either the traditional sampling frequency in O.Reg. 153/04 or the newer frequencies included in the Draft Regulation)?
* Section 32 is specific to *soil excavated in the Phase Two Property and considered for reuse* within the Phase Two Property. Section 35 of the regulation is specific to soil excavated at the phase two property *during the phase two field investigation or in the course of remediation.* In the course of developing a site, soil may be moved for the purpose of grading changes to support site construction. It’s unclear if the language included in Section 32 is inclusive of soil moved to support grading changes or should be understood to align with the language in Section 35 (i.e., it is specific to soil excavated at the phase two property during the phase two field investigation or in the course of remediation). The sampling requirements per Section 36 would be very cumbersome for soil moved to support grading changes over the course of site construction. Please clarify.
* Section 32 refers to *the applicable site condition standards or any standard specified in a risk assessment*. At what point in time can the standards specified in a risk assessment be applied? Per the second comment on Schedule E, it is understood that these requirements are specific to a Phase Two Property for which an RSC has not yet been filed and as such it is understood that the standards specified in a risk assessment can be applied to support soil reuse prior to RSC filing. Please confirm.
* Nothing seems to replace Sections 33 and 34, although the concepts are captured in the updated Section 31 and 32 text. Are Sections 33 and 34 just revoked with no new text added?
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