



Qualified Persons Community of Ontario (QPCO)
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Reema Kureishy
Environmental Policy Branch
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Submitted via the ERO portal and copy delivered via e-mail to mecp.landpolicy@ontario.ca

Re: Enabling Greater Beneficial Reuse of Excess Soil (ERO # 019-9196)

Dear Ms. Kureishy,

The Qualified Persons Community of Ontario (QPCO) is a network of Qualified Persons (QPs), as defined by Ontario Regulation 153/04 (as amended). Since it was formed in July 2021, the Community has grown to over 150 members. QPCO is a collaborative community where QPs share knowledge, advance best practices and elevate the profile of QPs in our industry. Our Mission is to:

- Engage and advocate on regulations, policy and guidance material based on technical expertise and practical experience;
- Prepare, distribute and provide technical guidance on best practices;
- Host professional engagement and networking activities to share knowledge and practical experience from environmental practitioners, regulators, industry and stakeholders; and
- Provide a platform to facilitate continuous improvement of the QP practice in Ontario.

This letter has been prepared with input from the QPCO membership in response to the ERO posting Enabling Greater Beneficial Reuse of Excess Soil (ERO # 019-9196).

QPCO greatly appreciates the time and effort the Ministry of Environment, Conservation and Parks (MECP) has put into understanding stakeholder concerns related to the application of the Regulation and addressing the practicability of the Regulation through continued updates, webinars, and revisions to the Regulation. To that end, **QPCO is in general support of the proposed amendments. However, we would like to point out that although these amendments are positive and are intended to provide greater reuse opportunities, there is a general fatigue within the industry for the number of amendments and changes that have**

occurred in a relatively short time frame. We appreciate the “getting-it-right” attitude and reduction of red-tape, but a review on how to streamline the regulation to more generic categories (such as various depots and reuse opportunities) that can be managed and updated through expanding the Soil Rules would be suggested. Also, QPCO also suggests to the MECP that enforcement with public notifications be part of the Excess Soil Regulatory framework moving forward. This comes from numerous accounts by QPs that owners and project leaders are consistently requesting “find me an exemption” and reports of poor compliance across the Province, especially the further away from the GTHA and Ottawa regions that the sites are.

To further enhance the proposed amendments, QPCO recommends continued outreach to stakeholders to ensure that the Regulatory requirements of excess soil reuse are incorporated into projects of all types and sizes. This would also promote awareness amongst the user and end-user communities and reduce poor soil management practices and the default perception of disposing soil at a dump as the most viable and economical option. Additionally, QPCO, is of the strong opinion that an enforcement framework needs to be implemented to ensure that consequences of non-compliance are fully understood.

QPCO would like to provide some recommendations that would further support the reuse of excess soil and strengthen the practicability of the Regulation. The comments are provided in the table below for reference.

We thank the Ministry of Environment, Conservation and Parks and the Policy Team for their continued efforts on this important matter. We hope this letter provides some feasible suggestions for MECP to consider. We welcome the opportunity to discuss our position and recommendations further and would be happy to continue to work with the MECP Policy Team on outreach related to the regulation.

Respectfully yours,
The QPCO Excess Soils Working Group Leadership Team

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Proposed Amendments	QPCO Comments
Change the coming into force date of the landfilling restriction for excess soil meeting table 2.1 residential standards (Section 22 of the regulation)	<p>QPCO is of the opinion that delaying the landfill restriction date only further delays proper reuse practices. Landfilling is still viewed as an easy disposal option, and far too much soil that could be beneficially reused is being transported to landfills. This will only stop when the restriction comes into effect.</p> <p>Additional Consideration: Placing a stiff registry fee on soil disposal to landfill may assist in diversion from landfills and spur consideration of alternative options, as well as ensuring that “waste” is reserved for landfill and not “clean” or “relatively clean” soil. This registry fee would assist RPRA on the much-needed cost recovery.</p>
Exempt specified excess soil management sites from a waste environmental compliance approval (ECA), subject to rules	<p>Aggregate Reuse Depots</p> <p>It is noted that Landscape Depots and Class 2 SMS are allowed a two-year storage period before the soil must be removed/finally placed, with allowance for a five-year extension with authorization by a MECP Director. By making the aggregate reuse depot only one year for reuse and only up to two years with Director permission it adds more variability and uncertainty for depot owners. Further, many municipal projects may take two years before they start backfilling. It would be helpful for municipalities to have a longer reuse window. We would recommend that initial storage timelines and optional extension timelines be aligned with the timelines for other depots/SMS for consistency and to ensure these depots get used.</p> <p>If these depots are only providing a notice directly to the MECP and not registered with the RPRA Excess Soil Registry, how will potential source and receiving sites find out about them? We suggest that these types of depots be required to file a</p>

	<p>notice on the RPRA Excess Soil Registry for a fee. This would also assist RPRA on the needed cost recovery and keep the Registry costs for other options affordable.</p> <p>These types of depots will be abused if enforcement is not administered. Sites will pop up claiming to be 'aggregate Reuse Depots' with no notice provided to the MECP. How are QPs supposed to verify the legitimacy of these sites if they are not on the Registry? Are we expected to contact the MECP to check if a notice has been sent to the Director? We recommend these types of depots be administered through a similar system to the EASR permits where site operators/owners would be required to self-declare prior to operating and would then show up on a searchable database. This would also allow for ease of enforcement.</p> <p>A Qualified Person should be required to oversee development and sign-off on the procedures or operational requirements (similar to item 3 for liquid soil depots), and a closure plan. It is anticipated Aggregate Reuse Depots would have less constraints than the Small Liquid Soil Depots.</p>
	<p>Small Liquid Soil Depots</p> <p>Expanded Analytical List:</p> <p>Although QPs understand that there is very little pre-characterization of hydrovac soils and ensuring the soil quality is assessed, the expanded suite of analyses will add significant costs. The proposed minimal parameter sampling list seems overly conservative for the quality of liquid soil most of these sites are anticipated to accept.</p> <p>To make these small liquid soil depots more usable, it would be helpful to allow QP discretion on the minimum sampling list for cases where the QP has access to source sites soil characterization data. The QP could then review the SCRs in combination with the load tracking to determine what parameters need to be tested based on the SCRs provided. Alternatively, the MECP could consider this for small liquid soil depots which are only accepting liquid soil from a single or</p>

	<p>limited number of source sites or only low-risk source sites. The MECP could also add a limitation that if liquid soil from enhanced investigation properties is accepted, then the full list will be required regardless of QP discretion.</p> <p>Lack of Registry: Like the Aggregate Reuse Depots, if these depots are only required to notify the Director through the MECP and are not registered with the RPRA Excess Soil registry, how will potential source and receiving sites find out about them? All types of storage/processing/reuse sites should be required to file a notice on the RPRA Registry. This will assist in the cost recovery through fees that RPRA needs. It also keeps the transparency and accountability that was a pillar of the establishment of Excess Soil Regulatory Framework. Addition of this type of Registry only adds red-tape if the notice filing activity is onerous and cumbersome. The current notice filing activity is not onerous or cumbersome when we consider the “transparency and accountability that it adds to the system.</p> <p>These types of depots will be abused if enforcement is not administered. Sites will pop up claiming to be ‘Small Liquid Soil Depots’ with no notice provided to the MECP (or RPRA Registry). How are QPs supposed to verify the legitimacy of these sites if they are not on the Registry? Are we expected to contact the MECP to check if a notice has been sent to the Director? This is onerous and cumbersome with the potential to add unnecessary time and effort and will add administrative work to the already resource-taxed MECP. As for the Aggregate Reuse Depots, we recommend these types of depots be administered through a similar system to the EASR permits where site operators/owners would be required to self-declare prior to operating and would then show up on a searchable database. This would also allow for ease of enforcement as the rules for operating such facilities would be pre-determined, specific, and would be acknowledged by the operator/owner as part of the EASR application and approval upon declaration with signature.</p> <p>Zoning:</p>
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Deeming liquid soil as a 'waste' has implications with respect to zoning and where these types of facilities will be allowed to operate, which should be discussed or pointed out in the guidance document. QPCO would be more than happy to further discuss this option and to assist in developing guidance around this type of system with the MECP.

Adjoining Properties:

If small liquid soil depots cannot be set up at adjoining properties and they are not registered in a Publicly-accessed registry (such as RPRA), how would an adjoining property owner know about the presence of an adjacent small liquid soil depot? It is very possible that two adjoining sites under separate ownership may setup depots, only for the second one to find out after investing in facility setup that the MECP will not allow them to register as their neighbour did first.

Wastewater:

The proposed amendment states "As a condition of exemption from the requirement for a waste ECA, the small liquid soil depot must have appropriate facilities where any wastewater and liquid process residues (i.e., sewage) from dewatering the liquid soil must be collected and that sewage must be discharged to a sanitary sewer or hauled to and disposed of at a wastewater treatment facility governed by a s. 53 ECA.

- It has been our experience that most municipalities do not want these types of wastewater discharged to the sanitary sewer network. Additional guidance on water management and how discharges to surface water systems could be accomplished (i.e., containment, batch testing, limits on timing for discharges, meeting PWQOs), similar to mobile water treatment systems that operator under an ECA would be most welcome.

"If the small liquid soil depot drains or discharges its sewage directly or indirectly into a ditch, drain or storm sewer or water or watercourse, the depot would not qualify for an exemption from the waste ECA"

	<ul style="list-style-type: none"> • Would on-site ponds that do not flow off-site be permitted for management of the wastewater, with the owner/operator required to comply with quality requirements, periodic clean-out, security, etc.? • This is a new restriction, which favours sites in an urban setting. If the site has a section 53 ECA, will that be acceptable? <p>Allowed storage time and quantity:</p> <p>Maximum quantity allowed would be 100m³ of liquid soil (including any resulting sewage from the processing) at any one time and 200m³ of dewatered/processed soil at any one time.</p> <ul style="list-style-type: none"> • The maximum storage of processed soil has been reduced 10-fold to only about 4 days of receiving, which makes exemption irrelevant and is, in essence much lower than this when you factor in waiting on laboratory analyses. • The daily receiving limit would be limited to 100m³ of liquid soil. This is a new restriction and may make this a less useful exemption, as previously there was no restriction on flow-through. <p>If all of the above points remain unchanged, this exemption is unlikely to be utilized, rendering it pointless. QPCO would be willing to assist the MECP on developing a system of requirements and guidance for an ESAR type approval for small-liquid soil processing depots, that would include specific rules for water management that would align with the requirements of a section 53 approval.</p>
Regional mapping of naturally occurring local background concentrations	<p>This is a great initiative and would be very helpful in many regions. Some consideration should be given to who is going to be responsible for funding and completing these studies. Municipalities likely hold much of the data that would be needed, but generally wouldn't have the funding to publish one of these reports on their own.</p> <p>Assuming only public bodies could publish these reports, how would the studies be publicized to industry upon completion?</p>

	<p>Would these studies also be usable to justify naturally occurring background concentrations for Record of Site Conditions filed under O. Reg. 153/04.</p> <p>Would the MECP provide an example or guidance on what one of these studies would require to be considered sufficient to prove naturally occurring local background concentrations?</p> <p>A process for establishing and determining local-background concentration claims and how to document and make the findings publicly available should be established. Statistically defensible data and understanding how to interpret anthropogenic factors and concentration outliers would be a significant part of developing the mechanism to identify local-background concentrations. Further, reference to the Ontario Typical Ranges raw data and background studies would be necessary. A working group of OSPE, MEA and QPCO members (with heavy reliance on geochemistry and geosciences) with the MECP and perhaps MNRF would be suggested for establishing the process on declaring zones with specific local background concentrations. Further, management of excess soil with local background concentrations should also be considered through additional guidance that could be created through the same working group identified above.</p>
General Comments	<p>The MECP should consider a requirement for any large reuse sites (accepting more than 10,000 m³ of excess soil) to require consultation with a Qualified Person (QP) for soil acceptance review. The recommendation to use a QP for any size of site could be included in the outreach and engagement activities.</p>