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Ministry of the Environment, Conservation and Parks
Environmental Policy Branch
40 St. Clair Avenue West, Floor 10
Toronto, Ontario M4V 1M2
Attn: Mr. Sanjay Coelho
Sent via email: sanjay.coelho@ontario.ca

Re: Submission Regarding Excess Soil regulatory proposal and amendments to Record of Site Condition (Brownfields) Regulation, ERO 013-5000

Dear Mr. Coelho:

The Canadian Brownfields Network (CBN) appreciates the opportunity to participate in Ontario Ministry of Environment, Conservation and Parks (MECP) invitation to comment with respect to Excess Soil regulatory proposal and amendments to Record of Site Condition (Brownfields) Regulation. CBN's Technical Advisory Committee (TAC) has solicited and compiled comments from interested members for the purpose of making this submission on behalf of CBN. CBN has a diverse membership of site owners, developers, consultants, and industry association representatives who are active in the area of Brownfield Development in Canada.

Amendments to Record of Site Condition (Brownfields) Regulation

The CBN is supportive of the proposed modifications to the Record of Site Condition Regulation, which serve to address well-known issues in the RSC process including salt-related impacts, non-standard delineation, and naturally-elevated concentrations in fill. We trust that the MECP is continuing to monitor ongoing development industry concerns with the RSC process and its intersection with the Planning Act and Building Code Act, in the interest of continuing to identify and address barriers to brownfield redevelopment.

Excess Soil Regulatory Proposal

The CBN is pleased that MECP is developing processes for the management of excess soil and recognizing the value of soil which may be reused within the community. Providing opportunities for local reuse of soil not only has the potential to reduce costs for property development, but by avoiding transportation of soil long distances through communities can reduce the carbon footprint and improve safety. Further, having a clear regulatory regime addressing management of excess soil will mitigate the reputational issues and public concern that has been raised regarding appropriate storage and placement of excess soils or poor quality soils that should not have been represented as "Excess Soil". We understand that the MECP's two goals in developing the regulatory proposal are 1) the protection of human health and the environment, and 2) the reduction of soil landfilling through increased beneficial

reuse. While the first goal can be achieved with the regulatory proposal, there continues to be inherent issues with the regulatory proposal that may result in reduced beneficial reuse opportunities and increased soil landfilling. These issues are noted in more detail below.

Standards

The proposed regime is unlikely to result in increased beneficial reuse of excess soils since the proposal leans heavily on generic excess soil standards which most soils produced from urban developments will exceed. Based on the volumes of excess soils moved in a typical development project, it is most likely that the most frequently used generic standards will be the most stringent volume-independent standards which are more stringent than the current record of site condition standards which are used today by industry in making determinations for reuse opportunities for excess soils. Widespread education to all stakeholders with regards to the Beneficial Reuse Assessment Tool (BRAT) will be critical in enabling material soil reuse opportunities – our current experience with site specific risk assessment (SSRA) in the context of brownfield development suggests that municipalities in particular continue to be resistant to its application and expect the same resistance would extend to use of the BRAT. The rationale provided frequently in the SSRA context is that municipalities will not accept the model because they do not have the expertise to understand it or interpret their results.

Similarly, the concept of soil quality needs to be taken out of the jurisdiction of the municipality as the standards for soil need to be applied uniformly across the province. The municipalities are expecting direction and technical expertise in the decision making of acceptable soil standards as they are not involved in the derivation of the standards yet they are invited to make those standards more stringent in their community. The opportunity for communities to accept the provincial standards or develop more stringent standards may result in variability across the province and uncertainty for the movement of soil.

Limitations on Temporary Excess Soil Storage

Finding suitable sites that will accept excess soil within Ontario will be challenging once the excess soil regulation comes into effect. There are many factors that affect the acceptance of excess soil to a site, including weather, soil type required and moisture content. This will result in a need for soil to be kept in storage until a suitable location is found. Based on discussions with contractors that move soil from site to site, it is common that approximately 1,000 cubic metres of soil is moved from a site in a day. As a result of the likely shortage of suitable sites and limited space on the project area, the need for temporary storage sites will increase especially during the periods of the year when the weather hinders the placement of soil. As such, it is recommended that the MECP reconsider the limit of only 2,500 cubic metres, and maximum allowance of 5,000 cubic metres, as this only allows for 2 ½ to 5 days' worth of soil movement. An increase to 10,000 cubic metres would be more realistic considering the challenges identified above.

Restriction of Landfilling

While we understand that the purpose of the inclusion of this clause was intended to reduce landfilling of otherwise-reusable soils, we believe the consequence of such a clause will be opposite to its intention. The introduction of the clause setting the standard at which soil must not be landfilled (e.g. Table 2.1) will likely inadvertently serve to set the bar for conservative landowners and municipalities as the baseline for acceptable quality of soils and likely reduce reuse opportunities for soils exceeding Table 2.1 (despite meeting BRAT-derived or other generic standards). Further, we suggest that there is already financial incentive for generators of excess soil to avoid landfilling as there is a significant cost

associated with disposal. As such, this clause is unnecessary in driving behavior since practically, most soils meeting Table 2.1 would be beneficially reused in the market today in the absence of regulation.

Responsibility of Receivers

The burden of the work to comply with these regulatory requirements continue to be applied almost exclusively to the generators and transporters of excess soil. The receivers of excess soil continue to have limited responsibility or liability with respect to accepting soil which is an apparent lack of the cradle-to-grave vision for managing excess soil. The responsibility for acceptance and ultimate placement and stewardship of soils at a reuse site must be appropriately shared with the reuse site. Further, we understand that the increased stringency of proposed generic excess soils SCS is at least partly driven by reuse site volumes. We urge the MECP to consider rather than introducing stricter generic standards that are likely to be applied widely and result in more soils being directed to landfill, to apply regulatory oversight to larger-volume fill sites to ensure that these are managed appropriately to ensure the safety of human health and the environment.

Closing

We would be pleased to discuss these comments further with the MECP. Given the importance of the issue to the development industry, CBN would also be pleased to assist in facilitating further consultation with the industry in order to better understand the issues and solutions.

In closing, we thank you for the opportunity to provide comments and input on the Excess Soil regulatory proposal and amendments to Record of Site Condition (Brownfields) Regulation and associated documents.

Kindest Regards,



Monisha Nandi, P. Eng.
Chair, Technical Advisory Committee
Canadian Brownfields Network



D. Grant Walsom, P.Eng.
President and Executive Chairman
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