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LONG-TERM THINKING FOR TODAY'S ISSUES

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June 17, 2019

The Honourable Rod Phillips,  
Ministry of Environment, Conservation & Parks  
11th Floor, Ferguson Block  
77 Wellesley Street West  
Toronto, ON M7A 2T5  
Delivered via email: [minister.mecp@ontario.ca](mailto:minister.mecp@ontario.ca)

**Re: ERO 013-5000: Excess soil regulatory proposal and amendments to Record of Site Condition (Brownfields) Regulation (Environmental Protection Act, R.S.O. 1990)**

Dear Minister Phillips

The Christian Farmers Federation of Ontario (CFFO) is an Accredited Farm Organization representing the interests of over 4,000 farm families in Ontario who are called to the vocation of farming. CFFO policy promotes economically, socially, and environmentally sustainable farming.

Thank you for the opportunity to respond to the proposed changes that are intended to support the development priorities of the *More Homes, More Choice Act, 2019*. We understand that the overall intention of the proposed amendments is to:

Address practical challenges and reduce unnecessary barriers to redevelopment and revitalization of historically contaminated lands, reducing red tape with removal of waste-related approvals for low risk soil management activities putting vacant, prime land back to good use, while protecting human health and the environment.

The proposals, as we understand them, will clearly facilitate development and benefit developers by reducing their costs. From an agriculture sector perspective, we support accelerated brownfields development if it results in farmland preservation, by reducing urban sprawl, and has no impact on water or soil quality.

Given our reading of the proposal, however, we question the emphasis on reduced controls related to potentially contaminated soils in the name of faster and lower cost development. The following proposal statements concern us, with particularly concerning terminology underlined:

The proposed amendments would reduce requirements to fully delineate contaminants for properties undergoing a Risk Assessment where further sampling is unnecessary to achieve good environmental outcomes. This provides some flexibility based on an acceptable rationale provided by a Qualified Person to the ministry. It is anticipated that this will lower costs associated with unnecessary sampling and remove delays in the Record of Site Condition and redevelopment process.

The proposed amendments would also enhance exemptions to meeting standards in specific circumstances by providing Qualified Persons increased judgement on contaminants that exceed ministry standards while maintaining appropriate levels of environmental protection. It is anticipated that this will lower costs associated with unnecessary environmental site assessment work and remove delays in the Record of Site Condition and redevelopment process.

The proposed amendments will also remove Record of Site Condition requirements for specific low risk redevelopment situations. It is anticipated that removal of the Record of Site Condition requirement will provide cost savings for business and property owners and support them in moving forward with their redevelopment projects.

Improving safe and appropriate reuse of excess soil by requiring testing, tracking and registration of soil movements for larger and riskier generating and receiving sites.

In short, the vague provisos listed above enhance exemptions, encourage subjective decision-making, reduce sampling requirements, and limit focus to only larger sites. We are concerned, therefore, that these changes raise the risks of increased environmental damage. This puts into question whether human and environmental health truly will be protected, as stated. Furthermore, removing red tape may equate with removing sensible protections. We caution that shifting risk and cost of contamination to the future by reducing short-run protections is not prudent or fair to future Ontarians. Furthermore, since there are no specific protections for food lands in these rules and regulations, where are the protections from contaminants fouling our scarce food producing soils? Farmers have already seen enough instances of inadequately tested soils contaminating the farms where they are imported, thereby risking human health and permanently removing land from food production. This must not be a consequence of changes to the regulations governing soil movements.

We also question whether it is sufficient to rely, as is proposed, on the reuse site owner and the “Qualified Person” to complete their own due diligence. This requires familiarity with all rules and requirements set in the Onsite and Excess Soil Management Regulation and associated documents. The proposal says this is expected of them so as to ascertain that excess soils meet standards generated by the Beneficial Reuse Assessment Tool (BRAT) and so are appropriate for use at their sites. The BRAT, however, will have no provincial government oversight. Hence, how will anyone know if compliance is adequate? There will be those who have significant monetary and time incentives to avoid bearing the cost of dealing with disposal of contaminants from some sites. Furthermore, to the naked eye, or by smell “testing,” as proposed by Section 14, all soils could appear benign. In the extreme, nuclear waste, broken glass, arsenic residues, PCB’s, etc., could go undetected by sight and smell so could be overlooked, or even camouflaged, without much trouble.

**Recommendation: Sufficient definitions, testing, tracking and rules for establishing liabilities for infractions must be put in place.**

To address our concerns the rules and regulations applying to excess soils should be revised to ensure the following are undertaken:

- Enforce use of a soil evaluation tool, such as the BRAT, to provide well-defined and centralized regulatory oversight. Such a tool should be used only after it has been well tested to ensure it delivers on site-specific and scientifically rigorous standards acceptable to all parties.
- Establish and standardize requirements for scientifically rigorous testing of excess soils *throughout* the loads when removed from sites.
- Apply universal rules and regulations to all sites, not only large ones (as is proposed). We concur with the Ontario Federation of Agriculture's (OFA's) recommendation of a 1,000m<sup>3</sup> threshold under Section 13.
- Develop precise definition of important terms, such as "top soil," in the rules and regulations, as also outlined by OFA.
- Require that any soils transferred to agricultural sites must raise soil quality onsite, delineating clear parameters for soil type and quality in the rules and regulations. This recommendation will require explicit reference to agricultural soils in the regulations and is necessary for the protection of our limited stock of quality food-producing soils. In this, we also agree with OFA and offer our input.
- Clarify legally enforceable liability and ensure that it rests with named individuals for all related future soil or water contamination and breach of rules and regulations. Setting liability is essential to ensuring strong incentives for compliance at all stages of excess soil management.

CFFO reiterates that agricultural lands must be specifically named in the excess soil regulations and rules and that food producing land must be protected from any and all negative consequences of excess soil imports. Essential to the governance framework for excess soil management is a clear statement of liability so as to strengthen enforcement. Furthermore, there should be no room for subjectivity on what is deemed to be "low risk", which could lead to slack or even corrupt practices by certain individuals.

Sincerely,



Clarence Nywening, President

Christian Farmers Federation of Ontario

CN/BD

cc: Hon. Doug Ford, MPP, Premier of Ontario  
Hon. Ernie Hardeman, MPP, Minister of Agriculture, Food and Rural Affairs  
Hon. Caroline Mulroney, MPP, Attorney General  
Hon. Steve Clark, MPP, Minister of Municipal Affairs and Housing  
Ms. Bonnie Lysyk, Auditor General of Ontario  
Mr. Keith Currie, President, Ontario Federation of Agriculture  
Mr. Peter Jeffery, Policy Advisor, Ontario Federation of Agriculture  
Robyn Kurtes, Director, Environmental Policy Branch  
Mr. Sanjay Coelho, Senior Policy Analyst, Environmental Policy Branch