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January 19, 2011

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 Association of Municipalities of Ontario
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 Municipality
 of Durham

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Garry H. Cubitt, M.S.W., C.S.W.
 Chief Administrative Officer

Dear Ms. Vanini:

Re: Request for AMO to Examine Issues Associated with Commercial Fill Operations and Aerodromes

I am writing to you at the request of Durham Region's Planning Committee to respectfully request that AMO use its good offices and resources to engage the Province to address the concerns of many municipalities in Ontario regarding **commercial fill operations**. There is a growing view across the Province that there is a need for greater regulation and oversight on commercial fill activities.

On January 11, 2011, Durham Region Planning Committee received a delegation from a concerned resident who outlined a range of concerns and issues associated with commercial fill operations. A copy of this delegation's speaking notes is attached for your review.

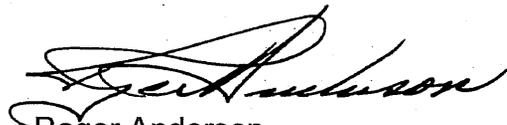
Among the points raised in the resident's submission is a concern that native healthy soils in sensitive areas may be compromised by the misuse of MOE's soil standards for the clean-up of brownfield sites. We acknowledge that local municipalities have the ability under the Municipal Act to regulate commercial fill activities through fill and site alteration by-laws; however, small municipalities often lack the resources to deal with operators who act in contravention of their fill permit. In Durham Region, our residents are concerned about the potential impacts from commercial fill on the environment and in particular, on the Oak Ridges Moraine where much of this commercial fill activity is currently taking place.



We are also aware of a situation whereby a commercial fill operator has advised that the fill being brought onto the site is being used to construct a heliport and/or airstrip, referred to collectively as an **aerodrome**. Because these types of facilities are under the jurisdiction of the federal government, the operators contend that local fill by-laws do not apply. Their claim is under dispute; however, it should be of concern to all municipalities that there is no approval process whatsoever at the federal level to construct a helipad or airstrip in a rural area. In particular, there is no requirement to consult with the local or regional municipality, or to provide notice to the public. As well, there is no requirement to submit grading or drainage plans to any public body for review and approval. The lack of even a basic approvals process is a concern in itself, but the fact that some fill operators are attempting to circumvent municipal fill by-laws by saying their fill is being used for an aerodrome, is a separate matter that we would respectfully request AMO to pursue with Transport Canada.

I would appreciate if you would let me know once your staff have opened a file on these matters. In the meantime, should you have any questions or require any additional information, please contact Alex Georgieff, Durham Region's Commissioner of Planning. Thank you in advance for your kind attention to these requests.

Yours truly,



Roger Anderson
Regional Chair and CEO

Enclosure

cc: Mr. Michael Buda, Director Policy & Research, Federation of Canadian Municipalities
The Honourable John Wilkinson, Minister of the Environment
The Honourable Rick Bartolucci, Minister of Municipal Affairs and Housing
Mr. M. de Rond, Clerk, Town of Ajax
Mr. T. Gettinby, CAO/Clerk, Township of Brock
Ms. P. Barrie, Clerk, Municipality of Clarington
Ms. S. Kranc, Clerk, City of Oshawa
Ms. D. Shields, Clerk, City of Pickering
Ms. K. Coates, Clerk, Township of Scugog
Ms. D. Leroux, Clerk, Township of Uxbridge
Ms. D. Wilcox, Clerk, Town of Whitby

My name is Carmela Marshall and I am speaking on behalf of a larger group of concerned citizens in Durham region.

This presentation aims to make it clear that the province has not given municipalities adequate regulatory tools to safely manage commercial fill operations, and until they do, municipalities need to enact bylaws and zoning regulations that will effectively prohibit these operations on sensitive lands like the Oak Ridges Moraine.

We became knowledgeable about commercial fill operations after Earthworx Industries started dumping fill into a rehabilitated gravel pit on Lakeridge Road last May after receiving a fill permit from Scugog Township.

The Township of Scugog has found that some of the soil tested contained concentrations of petroleum hydrocarbons, polyachromatic hydrocarbons, and heavy metals above acceptable concentrations levels, and has ordered the operation to stop dumping, however the trucks continue to arrive. There have been thousands of truckloads of fill coming in on lands that are considered sensitive and zoned agricultural.

I would like to make four points:

First is the lack of provincial regulation in regards to these operations.

The Province of Ontario, through the Environmental Protection Act and the Ministry of the Environment have regulations regarding the clean-up of brownfield sites – “brownfields” being described by the MOE website as *abandoned, idle, or under-utilized industrial and commercial properties where the previous property use caused environmental contamination. The land may need to be cleaned up before it can be redeveloped.*

Stated in the MOE guidelines for the remediation of brownfield sites, the frequently selected option for managing contaminated soil is **off-site disposal**.

However, the Environmental Protection Act and the accompanying regulations fail to define what is “clean fill” and what is “contaminated fill” or contaminated soil.

As well, the MOE has no current jurisdiction involving the movement of fill in Ontario and subsequently no jurisdiction over commercial fill operations or so called “clean-fill” dump sites.

This leaves a dangerous void in the protection of human and ecological health when accepting fill from brownfield sites.

My second point deals with the efforts of municipalities to regulate imported soils.

Municipalities, especially relatively small ones such as Scugog and Uxbridge, often lack the funding, staff and expertise required to monitor and regulate these operations.

Given the lack of provincial regulations for fill dump sites, municipalities have been struggling to deal with this issue through their site-alteration by-laws. Clearly, these by-laws were never intended to deal with the risks that commercial fill dumps pose to healthy native soils and precious groundwater resources. The municipalities have tried to cope by often “borrowing” MOE regulations that were **never** designed for use at a fill dump site.

The Ministry of the Environment's Soil and Ground Water Tables are sometimes referenced in municipal site-alteration by-laws. The MOE prescribes these tables for use when filing a Record of Site Condition which is a document that gets filed (on a voluntary basis) when you are going from one property use such as commercial or industrial to a more sensitive property use. In essence, they are prescribed for use as minimal cleanup standards at contaminated sites.

According to the Canadian Council of Ministers of the Environment (CCME), whose protocol and tables were referenced by the MOE when developing their own tables, their **Soil standards are for the cleanup of contaminated sites and must not be used to judge the contamination of clean sites. They represent "clean down to" levels at contaminated sites and not "pollute up to" levels for less contaminated sites.**

For example, the Lakeridge site was not a contaminated site to the knowledge of anyone including the MOE, however, these MOE tables are being referenced thereby allowing the existing healthy soils at the site to be potentially degraded to that of lower grade brownfield soil. The repercussions of this have never been assessed.

Also to consider, is the fact that starting in July 2011, today's "Best Science" has deemed it necessary, regarding the majority of the 120 contaminants listed in the tables, to considerably decrease the maximum acceptable concentration levels for these contaminants in soil. In effect, many standards considered acceptable today for protecting human and ecosystem health will no longer be acceptable once the new tables come into full effect. Point being is that the science used to develop these tables is by no means absolute. As well, these tables come with statements of limitations that must be recognized.

My third point brings me to a contention held by some that having a qualified person involved in the operation gives it some sort of safe operation stamp of approval.

Indeed for the Lakeridge site, a professional engineer (or in other words a qualified person) is retained to review soil origin reports, and a qualified person is (perhaps) on the other end preparing or having prepared assessment reports of the soil origin property.

Just to put things into perspective, the professional engineer for the Lakeridge site presented soil origin reports to the township and the MOE staff earlier this year and the MOE officers found the reports to be and I quote **"inadequate, incomplete and inaccurate"**. As well, months later, and after the fill permit was revoked by the township due to an adverse soil test, the MOE ordered the Scugog fill site to produce a report indicating all the soil origin sites and the quality of the soil received. At that time, the MOE found that **these** reports did not satisfy the requirements of their order. Why is this the situation if "qualified people" are involved in this process?

One reason may be that these "reports", or "assessments" of the soil origin sites, now being used as a record at the commercial fill dump site, were never prepared for use by the fill dump site operation. They were prepared for a specific circumstance, for a specific objective, for a specific person at a specific moment in time-perhaps years ago. **This again is another unfortunate and potentially catastrophic consequence of using regulations, reports and tables outside of the use for which they were prescribed.**

My fourth point speaks to the special risks involved with commercial fill operations and dump sites.

The risks are to the very things that sustain us as a society-our soil, our groundwater and our air. In terms of groundwater, it is not only the threat of contamination, which is next to impossible to clean-up, it is also the dangers and impairment to groundwater recharge areas by importing non-native fill, like clays for example, thereby impacting the recharge ability of the land. Unique landforms like the Oak Ridges Moraine are key contributors to vital ecological processes such as groundwater recharge. These risks are unacceptable. There is a problem here, however, this is not an impossible situation.

Some municipalities like Uxbridge, through their site alteration by-law, have **begun** to deal with this problem and to protect these vital resources, however, more is needed.

I respectfully submit the following:

1) Municipalities need to demand clear, effective regulations from the province to deal with the movement of fill and the operation of commercial fill dump sites. The **cumulative effects** across the moraine for example, due to these types of operations could be disastrous. We need to leave a positive legacy for generations, not an environmental liability. **Urgent appeals need to be made to the Ministry of the Environment and the Ministry of Municipal Affairs and Housing to address this unacceptable threat to the health of the citizens of Ontario and the health of the sensitive ecological processes which sustain us. In the meantime, municipalities need to include provisions in their by-laws and in their zoning, that prohibit these operations.**

2) Brownfield Sites need to be cleaned up not just dumped “somewhere else”. Municipalities can demand better solutions for the clean up and development of these sites. There is always an easier way, but an informed and more responsible way is what is necessary and obvious in this instance.

3) Municipalities need to declare fill operations what they are-a use of land and zone for them. They are not a mere site-alteration. Municipalities have the power through the planning act to declare them a use of land. Please question our government stakeholders and demand answers and solutions to this very serious issue.

Aerodrome Issue

Not to distract from the main message, however, there is also a contention held by the Lakeridge fill site that provincial and municipal laws do not apply as they have declared their site an aerodrome which lies under Federal Jurisdiction.

This is something that all municipalities need to be aware of as the repercussions of this statement, if left **unchallenged**, can be catastrophic and will make a mockery of things like the ORMCP, Greenbelt Plan and PPS.

The Region needs to support the township in any way possible and prevent this “contention” from spreading to other parts of the region. Like regulatory issues with fill dump sites, this particular situation is not just a Scugog problem-it is a Regional issue. With regards to the aerodrome, the region needs to get answers from the Federal Government and ask for clear, effective, consistent regulation to address this issue and assist in resolving this uncertainty through the courts if necessary.