

Comments on Proposed Excess Soil Management Policy Framework

The Ontario Soil Regulation Task Force considers the Proposed Excess Soil Management Policy Framework to be a viable path forward to solving the problems that we have seen of excess soil disrupting local residents and contaminating the Ontario landscape. We hope that the following comments on the 21 actions proposed in the framework will help MOECC to fine tune the framework and the resultant legislation, regulation, enforcement, and guidance.

1 MOECC to work with partner ministries to develop a new regulation under the Environmental Protection Act requiring larger and/or riskier *source sites* to develop and implement *excess soil management* plans certified by a Qualified Person and made available to MOECC and local authorities.

By planning in advance for the testing and disposal of excavated soil, developers will be better able to build that cost into the development project. It is unfair for the costs of contaminated fill to be borne by an unsuspecting excavator or by the receiving municipality.

The regulation should include soil remediation sites as requiring excess soil management plans (ESMP). In our experience soil remediation sites have been the source of a lot of contaminated soil. The tracking of contaminated soil from cradle to grave must not be short circuited by a stop at a soil remediation facility.

OSRTF expects that the standards for bringing soil to a receiving site would be as well defined as the standards for bringing soil to a RSC property under O. Reg. 153/04.

We would hope that the regulation provides a clear definition of what is required in the ESMPs, such as defined sampling programs and the standards for the appropriateness of the receiving site. It cannot be left to the professional judgment of QPs when their governing bodies do not have standards of practise for excess soil management.

The requirement for a more rigorous definition of a QP has been brought up repeatedly and we are pleased to see it included in the action item.

Any regulation must be backed up with enforcement and severe consequences. MOECC must be able to put more enforcement officers into the field. In a business where the profits from the irresponsible dumping of contaminated fill have been estimated at \$6000 per load and a site can have hundreds of loads, small fines are just a cost of business.

2. MMAH and MOECC could require proof of an Excess Soil Management Plan for issuance of certain building permits.

By planning in advance for the disposal of excavated soil, developers will be better able to build that cost into the development project. When the costs of soil disposal are estimated in advance, there will be an incentive to reuse onsite or seek novel approaches.

3. MMAH and MOECC to promote linking requirements for *excess soil management* to applicable Planning Act approvals through guidance.

Commercial fill operations should be added to the list of land uses subject to the Planning Act. Commercial fill operations are large scale industrial operations that may continue for many years with traffic, dust, and noise and the potential for offsite adverse effects to the environment, human health, and property values. Contamination could limit the future uses of the land, e.g. too contaminated under RSC for residential use, effectively changing the zoning. The Planning Act has already defined the procedures for municipalities considering applications for these types of activities. In keeping with principle #7 for consistency as listed in Section 4.0 of the Framework, it is better to conduct the review of commercial fill operation applications under the provincial planning act than under individual municipal by-laws.

4. MOECC to work with Qualified Persons on *excess soil management* guidance.

Guidance is not sufficient. MOECC must work with the associations for engineers and geoscientists to redefine a QP to have training in the applicable body of science. The associations should define standards of practise that their members could be held accountable against. If they do not provide standards of practise, MOECC should require that a QP have a certain minimum number of hours of certified training in the subject area. GOWen Environmental and EPIC (Educational Program Innovations Center) offer related courses that could be tailored to this requirement.

5. MOECC to clarify when waste approvals apply to *excess soil processing sites* and prescribe requirements for temporary storage sites.

OSRTF's experience is that the existing approvals are not being updated. They should include more prohibitions based on the precautionary principle acknowledging that most soil remediation is only dealing with the volatile and digestible contaminants and not the metals and other persistent chemicals. Dilution is not the solution. We note that many of the existing approvals permit contaminated soil from outside the province to be brought in for treatment and disposal. Invasive species would be one concern.

6. MMAH with MOECC to consider approaches that would encourage municipalities to identify appropriate areas (e.g. industrial) for excess soil storage and processing to encourage local re-use, to be achieved through ongoing updates to the provincial land use planning framework, including the coordinated review of provincial plans.

Including these activities as a land use under the planning act should be sufficient encouragement. OSRTF would hope that the bulk of the encouragement would be directed to municipalities to deal with their own excess soil so that other municipalities do not need to.

7. MMAH and MNRF to consider amendments to legislation to remove restrictions on site alteration by-laws in conservation authority regulated areas.

We see this as acknowledgement that the municipalities and the conservation authorities have different mandates. While site-alteration by-laws can be very effective in regulating soil dump sites, Section 142(8) of the Municipal Act prevents them from being enforced in the regulated areas of a Conservation Authority where the Conservation Authorities Act, especially Clause 28(1), limits the ability of the CA to effectively protect the environment and the community from the dangers of soil dumps.

The attached OSRTF submission to the 2015 review of the Conservation Authorities Act fully supports this action item.

8. MMAH and MOECC to develop educational materials respecting *receiving sites*, including larger (commercial) sites, to inform municipalities in the development or updating of by-laws.

OSRTF has seen examples of the good portions of municipal by-laws negated by a poorly worded clause. We would hope that MMAH could provide a model by-law to municipalities and provide training. Our model by-law with model fill agreement, model fill management plan, and rationale document is available on request for their consideration.

Many of the considerations for municipal by-laws that are listed in this section of the Framework should, in accordance with the principle of consistency, be included into the provincial regulations.

9. MMAH and MNRF to explore, with partners, legislative and non-legislative ways to improve compliance and enforcement with Municipal Act and Conservation Authorities Act requirements.

OSRTF applauds this action to improve compliance and enforcement, with some concern that non-legislative ways would be toothless in dealing with the unscrupulous operators.

10. MNRF to consider requiring record keeping for *fill* being brought to licensed and permitted aggregate sites, through the current review of the Aggregate Resources Act.

To make any record keeping effective, MNRF must increase the number of inspectors in the field

The importation of soil to aggregate pits and quarries is of particular concern to OSRTF because many have been excavated to the water table. While layers of imported clean fill could potentially protect the groundwater, there have been many examples of supposedly clean fill turning out to be contaminated. Soil from risky sites, including soil remediation facilities, should be prohibited from the rehabilitation of pits. The neighbours who put up with the truck traffic, dust, and noise during the excavating of the pit, would not be pleased to see more traffic filling it. OSRTF does not see former pits as obvious receiving sites.

The rehabilitation under the Aggregate Resources Act plans can be completely overhauled through site plan amendments in the MNRF. Municipal approval is not required and the public is afforded no opportunity to comment. Pits and quarries are encouraged to be located "close to market" and, as a result, are often cited near sensitive environmental and residential areas based on the details in the initial applications. It is not appropriate to substantially modify these rehabilitation plans without local consideration and an approvals process that would afford a level of scrutiny equal to that for an application made outside of an Aggregate Resources Act licence boundary.

OSRTF asserts that the requirements for source sites and receiving sites listed in the MOECC BMP be immediately incorporated into Policy A.R. 600.03, Importation of Inert Fill for the Purpose of Rehabilitation.

11. OMAFRA and MOECC to develop best-practice guidance for farmers to limit impacts of the importation of soil onto farmland.

OSRTF has been involved lately in several cases before the Normal Farm Practices Protection Board (NFPPB) of large scale fill operations that have attempted to sidestep municipal by-laws and controls by claiming the agricultural exemption in the site alteration by-laws. These operations are typically for thousands of truckloads of material that contains minimal, if any, actual topsoil importation. As well as educating farmers as to the issues of importing large quantities of fill materials, OMAFRA and MOECC should be assisting municipalities before the NFPPB in protecting farmland from commercial fill operations. A policy statement under Section 9(1) of the Farming Food and Protection Act should be issued to indicate large scale filling is not consistent with the definition of an agricultural operation and is not a normal farm practice. The policy statement should also indicate that the MOECC BMP direction regarding source site and receiving site requirements should apply regarding fill importation to farmland.

12. MOECC to develop approaches and standards for re-use of excess soil that provide for environmental protection and sustainable re-use of excess soil.

As MOECC is well aware, the current Tables 1 to 6 of O. Reg. 153/04 do not address the impact of large volumes of low level contamination or the effect of salt impacted soils and the standards were not intended to be applied at clean receiving sites. Science and evidence based standards are crucial to the management of excess soil. Because the understanding of environmental and human health is continually evolving along with improving analytical techniques and the advancement of science, the precautionary principle should also be applied. OSRTF believes that the MOECC Standards Development Branch is eminently qualified to develop the appropriate standards, but OSRTF would be concerned if there was too much industry involvement in the review of the standards.

The approaches and standards must consider that even if the excess soil is chemically clean it may not be appropriate for all receiving sites owing to considerations of invasive species (seeds and root segments in the soil), hydrological impact (clay soil in a recharge zone), or landform preservation (filling a valley).

With regard to the protection of sensitive sites, OSRTF believes contaminated soils, soils from soil remediation operations, and large scale receiving sites must be prohibited from sensitive sites. The sensitive areas have already been defined in other regulations as Areas of High Aquifer Vulnerability, Source Water Protection Zones, etc. Adding soil dumps to the lists of prohibited actions in or near these areas should be straightforward and is necessary to ensure effective protection of sensitive sites. Many of the relevant laws and regulations are being revised now so action must take place immediately. The greenbelt areas are worthy of special protection. This action item must include MMAH, MNRF and the other ministries in implementing approaches, some of which would have been provided during other reviews in 2015. OSRTF's submission to the 2015 review of the Greenbelt Acts is attached for reference.

With regard to risk based approaches, the risks must be scientifically evaluated, not merely on the basis of land use, and must consider the impact upon the wider environment, something more like an environmental assessment.

13. MOECC to develop clear guidance to inform requirements for testing of excess soil.

It would be appropriate for testing standards to include onsite screening tools such as hydrocarbon sniffers and sensors for metals to supplement the expensive and time consuming laboratory testing. However, the testing, in whichever form it might be, must be rigorous and enforceable. The precision that has been applied in O. Reg. 153/04 in defining the number of samples to be tested should also be applied to the definition of where in-situ samples should be taken.

14. MOECC to develop guidance for smaller, lower risk source or receiving projects or sites

The definition of smaller lower risk sites and their testing protocol will require careful thought. For example, an excavation for an addition to a home might be considered low risk, but there may have been a large spill of furnace oil.

15. MMAH with MOECC to identify opportunities to encourage municipalities to develop soil re-use strategies as part of planning for growth and development (e.g. official plans, master planning) through ongoing updates to the provincial land use planning framework, including the coordinated review of provincial plans.

The emphasis should be on reuse within the municipalities' own boundaries, such as the proposed Humber Islands.

16. MOECC to develop guidance for the consideration of *excess soil* in the environmental assessment processes that govern large scale infrastructure and other development projects.

OSRTF would hope that the guidance becomes a defined requirement of the environmental assessment process.

17. Province to support pilot projects identifying opportunities and procedures for *excess soil* re-use.

MOECC could consider managing a receiving site to build a hill for recreational uses of skiing, water slides, mountain biking, etc. in an area of the province that does not have hills for these types of recreation.

The industry developed SOiIL website provides an example to which can be added a system to ensure soil quality and site suitability following the MOECC standards that are developed from the Framework.

18. MOECC to integrate and align various aspects of provincial policy.

OSRTF regards the redefinition of "inert fill" and a definition of the commonly used term "clean fill" to be essential to rectifying the problem of what it has labeled as dirty dirt. The definitions must be defensible in court and based on the current science.

OSRTF believes that if O. Reg. 153/04 had included consideration for the receiving site, the dirty dirt problem would have been much less severe. The tracking of contaminated soils from source to final disposition must be included in O. Reg. 153/04.

19. Province, including MOECC, MTO and MEDEI, to review and update existing guidance for provincial projects (e.g. transportation and infrastructure) to ensure alignment.

Alignment could be assured by including large scale MTO and MEDEI projects into the requirement in proposed action item 1 for excess soil management plans.

20. MOECC to develop a stakeholder group (and potential sub-working groups) to provide input on proposed policies, technical matters, guidance and implementation, including coordination with external programs.

OSRTF would be glad to participate in the stakeholder group(s).

21. Industry and MOECC will jointly investigate approaches to program delivery, e.g. like the UK CL:AIRE model, that promote market-based mechanisms to encourage the reuse of *excess soil*.

Onsite reuse and soil matching services will become attractive to industry when un-monitored and un-regulated dumping in rural lands is no longer viable.



Site on Lakeridge Road in 2011