



ONTARIO SOIL REGULATION TASK FORCE

March 25, 2016

Ministry of the Environment and Climate Change
Integrated Environmental Policy Division
135 St. Clair Avenue West
Toronto Ontario
By email to atif.durrani2@ontario.ca Chris.Lompart@ontario.ca

Dear Sirs

Comments on Proposed Excess Soil Management Policy Framework (EBR 012-6065)

It has been six years since citizens concerned about soil being dumped into a gravel pit on Lakeridge Road became organized and called for government action. Since that time one hundred million cubic meters of excess soil¹ has been excavated and dumped on lands in Ontario. The Proposed Excess Soil Management Policy Framework (The Framework) is the most significant action that has been taken by the provincial government to date. The Ontario Soil Regulation Task Force (OSRTF), with members from over twenty environmental and community groups, supports the framework in general, and asks MOECC and the provincial government to proceed with its fine tuning and implementation. Our primary areas of concern are described below with more specific comments in the attached document.

1. OSRTF fully supports the action items 1, 2, 7, & 18 that provide legislative and regulatory rules for better management of excess soil, especially changes to Ont. Reg. 153/04 to track contaminated soil to an acceptable receiving site. Because “clean fill” is a term commonly used it should be defined in regulations.
2. The Framework in Section 4.0 lists 9 *Principles*. Because they influenced much of the framework, the principles of “Precautionary Principle” and “Polluter Pays” should be added to the list.
3. The Framework uses the word “could” 42 times, as in “...excess soil management policy could be clarified and improved...”. We do hope that the coulds will become “should”, “must”, and “shall”.
4. Much of the Framework is about developing and providing guidance. Experience has taught us that because of the huge profits² that are possible by dumping contaminated soil irresponsibly, there are individuals who would disregard guidance. A man who has impersonated a police officer to steal from a grow-op³ and has been involved in at least four soil dumps is not likely to follow guidelines. Clearly worded and well defined regulations actively enforced with severe penalties are required to remove that incentive and to provide a level playing field for those that do follow the rules.
5. The Framework relies on the Qualified Persons (QP) and the Excess Soil Management Plans they produce for much of the implementation of the policy. However, there are very few professional

¹ Quantification of Excess Construction Soils in Ontario, RCCAO, 2012-10-09

² Site Alteration By-Laws and the Dirty Business of “Clean” Fill, Charles M. Loopstra Q.C., International Municipal Lawyers Association Conference (IMLA) in Canada, 2014

³ \$18 Million Pot Seizure, Six Arrested, Peterborough This Week, 2003-09-09

- practise standards for a QP to follow or to be found accountable against. There must be professional standards and accreditations in place before the QPs are given these important responsibilities. Similarly, there must be minimum requirements for Excess Soil Management Plans. The minimum requirements must define the contents of the plans and the minimum standards to be applied for each of the different types of situations. Not only should MOECC inspectors verify that a plan is being followed but also verify that the plan was adequately prepared.
6. The Framework makes no mention of the impact of the federal Aeronautics Act, which has limited the enforcement efforts at several of the fill sites in Ontario. Transport Canada and the federal government have recognized the problem and revised the Act. The MOECC, MMAH, and MNRF should provide guidance on the limits of the Aeronautics Act to their officers and to the municipalities and conservation authorities.
 7. Action item 12 mentions protection of sensitive sites. However the proposed action is too weak to give assurance to rural residents that their groundwater will be protected. They rely on groundwater for their drinking water. A contaminated well affects their health and the value of their homes. Source water protection zones, areas of high aquifer vulnerability, environmentally significant wetlands, etc. have been defined and recognized in other regulations but those regulations typically do not consider the impact of excess soil⁴. There are many acts and regulations that are being reviewed and revised right now. OSRTF requests that MOECC include the other ministries in this action item to ensure that the acts and regulations are revised to protect these sensitive areas.
 8. The section of The Framework on *Findings from Engagement* mentioned a need for: “*protection of sensitive areas of provincial and local interest, including natural heritage and hydrologic features and functions, farmland, and significant cultural heritage landscapes and archaeological resources*”. Action item 8 puts this responsibility on the municipalities but OSRTF feels that the Province must take some responsibility by including these considerations, along with considerations for invasive species, in its legislation and regulations.

Please refer to the attached document for more detailed comments on the 21 proposed actions and to OSRTF’s call for a Clean Soil Act from 2014 also attached. OSRTF does commend you and your colleagues in the other ministries for the effort that you have put into answering this EBR request and we thank you for having considered the comments we have provided.

We would welcome an invitation to take part in your stakeholder group.

Yours sincerely,



Ian McLaurin
OSRTF
ian.mclaurin@osrtf.ca
www.osrtf.ca

⁴ ORMCP, Snow storage prohibited in Area of High Aquifer Vulnerability, but not soil dumping.