



**ONTARIO SOIL
REGULATION
TASK FORCE**

January 8, 2015

Chris Lompart,
Land use Policy,
MOECC,
Toronto
[via e-mail to chris.lompart@ontario.ca]

Dear Mr. Lompart

OSRTF would like to thank you for the opportunity that you gave us, and others, on October 15 to discuss the issue of compromised soils and your review of the situation under EBR #R2013005.

Rural residents have been concerned for many years about the impact of commercial fill sites on the quality of their lives and the quality of their well water. The rural municipalities around Toronto have become enmeshed in the issue to the extent that fill was a factor in some of the recent municipal elections. Frequently a front-page item in the rural weekly papers, it has recently reached The National on TV and the front page of the Toronto Star, and just lately eight MPPs spoke in the Legislature on a motion on commercial fill.

We in OSRTF, now numbering 15 community and environmental groups, believe that a Clean Soil Act is required to address this issue that is spread across several jurisdictional areas. Our website at <http://osrtf.ca> lists seven main points (attached) of what we believe is needed and a companion site at <http://lakeridgecitizens.ca> contains supporting information and rationales.

There are three main areas of concern – aerodromes, commercial fill operations, and contaminated soil.

Aerodromes have become attractive places to dump soil because the operators believed they could convince local officials that they were outside of provincial and municipal regulation. Recent court cases and new powers given to the federal Minister of Transport through Aeronautics Act amendments are a step in the right direction to stop unregulated soil dumping at aerodromes. Building upon that, MOECC should provide input to the federal regulations for the transport minister's new powers to stop development at aerodromes. MMAH should be advising municipalities on their rights to regulate fill at aerodromes.

Commercial fill operations are large industrial activities covering many hectares of land and hundreds of trucks a day with all the associated noise, traffic, and dust - aside from the concerns for the quality of the surface water runoff and groundwater. Yet in many municipalities, these operations are initiated with a simple over-the-counter site alteration permit. If commercial fill operations were expressly included in the Planning Act as a use of land and an industrial

operation, careful reviews and public input would be assured. Any large development project should be required to have a soil management plan that provides for the safe disposal or reuse of the project's soil. Municipalities must have strong site-alteration by-laws that regulate for the quality of life impacts on the neighboring residents and have adequate monitoring for the protection of the air, soil, and water environment. (In the next few months, OSRTF will be providing municipalities with a model by-law for their consideration.)

Contaminated soil is our primary concern. It impacts the reuse of land for growing food and the potability of residents' well water. As MOECC would be well aware of, there have been several cases of contaminated soil having been dumped in rural lands – Earthworx, Braat Farm, Taylor's Road, Sideline 14... It is inexcusable that soil deemed too contaminated for an area with a municipal water supply is dumped where residents rely on groundwater for their drinking water. As a paper by the Loopstra Nixon law firm stated¹, every load of hazardous soil dumped illegally is worth as much as \$6000 in saved tipping fees. That strong incentive to dump contaminated soil as "clean fill" has to be stopped by tracking soil from Record of Site Condition sites and by providing an enforceable definition of "clean fill". A soil management plan should be a required component of any development permit. The total loading of contaminants at a site must be considered. While one load of a mildly contaminated soil at a location may not have a significant impact, shouldn't there be a different standard if many thousands of loads are dumped at one site? The current standards for stratified soils in O. Reg. 153/04 consider the impact of salt impacted soils upon agricultural crops. Shouldn't the standards also consider the impact of that salt upon the groundwater?

The MOECC's Management of Excess Soil – A Guide for Best Management Practices is a big step in improving this situation, but it is only voluntary. We also feel that it allows too much freedom in the professional judgment of the Qualified Person when professional practice standards for such activities are not sufficiently well defined.

You asked about principles and approaches. Primarily, the overriding principal should be, "Don't pollute up." Different approaches should apply to different areas. There should be consideration for source water protection areas, significant wetlands, vulnerable aquifers, for farmland protection, the preservation of landforms, and more stringent protection in the greenbelts. A natural living soil on the land is a valuable resource, but if soil is contaminated and in a truck that is looking for a place to dump it, it must be considered a waste.

We appreciate the problem of setting the scope of your review. While not wanting regulations to unduly impact the excavation and disposal of soil for a basement for a single family home or for a swimming pool, a single truckload from an old gas station must be properly tested, monitored, and disposed of. The involvement of MOECC and MMAH was mentioned above. Ministry of Natural Resources should be involved, especially with the review of the Aggregate Resources Act in 2015, which would be looking at the use of excess construction soil in the rehabilitation of pits and quarries. MNR should also be looking at coordinating the fill policies of the Conservation Authorities with those of the surrounding municipalities for such things as noise control, permit fees, and monitoring. Also in 2015, the three greenbelt acts will be under review - acts that are silent on soil dumping but not on gazebos. The Ministry of Agriculture, Food, and Rural Affairs should be interested in protecting farmlands from soil and water contamination and

¹ SITE ALTERATION BY-LAWS AND THE DIRTY BUSINESS OF "CLEAN" FILL"; Charles M. Loopstra, Q.C.; International Municipal Lawyers Association; May 29, 2014

in educating farmers and rural landowners of the dangers of “clean fill”. OMAFRA can provide guidance on the “normal farm practice” exemption.

The Ontario Soil Regulation Task Force appreciates this opportunity to contribute to your review and is available at any time to provide any additional input.

Best regards,

A handwritten signature in black ink, appearing to read "Ian McLaurin". The signature is fluid and cursive, with the first name "Ian" and last name "McLaurin" clearly distinguishable.

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

1. Fill Brownfield Regulatory Gaps

MOE to amend O. Reg. 153 to track contaminated soil to approved receiving sites.

Ensure entire source site sampling and compatibility with the receiving site.

2. Clarify use of MOE Soil and Groundwater Tables

MOE to develop Standards and Regulations for soil placement outside of O. Reg 153.

Consider accumulative effect for large fill site.

Determine if salt impacted soils affect ground water.

A clear definition of “inert fill”/“clean fill”.

Create a soil table specific to Commercial fill with clear definitions.

Elevate MOE BMP Guidelines to Regulations.

3. Gain Jurisdiction over Aerodromes

Transport Canada to specify that the environmental quality of fill is not integral to aviation.

Municipalities to be educated and supported by MMAH on their rights regulating fill at Aerodromes.

4. Ministry of Municipal Affairs and Housing involvement

MMAH 2015 review of ORMCP and NEP to consider fill impacts.

Large-scale fill projects defined as development.

High Aquifer Vulnerability and Significant Groundwater Recharge Areas in ORMCP and NEP to be protected from fill.

The Planning Act to define commercial fill operation as a use-of-land.

Municipal Act and/or Planning Act to require a materials management plan for excess soil as part of any future large-scale development.

Amend the Municipal Act so that site alteration by-laws do apply in CA regulated areas.

5. Stronger Municipal By-laws

Municipal by-laws to regulate and monitor large-scale fill operations.

MOE Standards Development Branch to develop fill guidelines for municipalities.

MMAH, Conservation Ontario, & AMO to provide model by-laws to municipalities and CAs.

Increase municipal fees to effectively recover costs of monitoring the operations.

Use independent consultants to provide monitoring services.

Municipalities to consider a large scale fill site as a change in land use and subject to planning.

Have municipalities engage in pre-selection and pre-approval of targeted fill sites under zoning.

Municipalities to request Material Management Plans for excavated material in building permits and development projects.

Improved coordination/consultation between municipalities and Conservation Authorities (CAs) on applications for large-scale fill.

6. Stronger Conservation Authorities

CAs need to better regulate fill operations.

MMAH, Conservation Ontario & AMO to provide model by-laws to municipalities and CAs.

MNR to develop CA regulations to allow them to expand from their current emphasis on flooding.

For those CAs that do not have fill policies in place, articulate requirements for large-scale fill operations in a Policy document (e.g., CLOCA's Large Fill Policy).

Require a meaningful amount of financial assurance to deal with any potential future liabilities.

Improved coordination/consultation between municipalities and Conservation Authorities (CAs) on applications for large-scale fill.

7. Better rehabilitation of Aggregate sites

MNR 2015 review of Aggregate Resources Act to consider fill impacts for soil quality and landform conservation.

Link to MOE fill regulations for rehabilitation.

Undertake bioregional landscape planning and rehabilitation.

Mechanisms such as conservation easements for long term protection.