

## **Report to the Council of New Tecumseth**

**Subject: Staff Report dated: CAO 2014-14 dated August 11, 2014**

**Date: August 20<sup>th</sup>, 2014**

**Prepared by: Carmela Marshall, Lakeridge Citizens for Clean Water**

### **Executive Summary**

The primary points of this document:

- The Township of New Tecumseth has the authority to require The Tottenham Airfield Corporation (TAC) to obtain a site alteration permit.
- There are significant tangible benefits for ensuring comprehensive regulation of large fill importation projects.
- The Staff Report and accompanying attachments make significant erroneous statements about the level of Ministry of the Environment (MOE) involvement with the TAC site. The MOE in fact does not “regulate” these operations nor has it “developed” the Fill Quality Protocol for the TAC site.
- The current Fill Quality Protocol by Cole Engineering does not include or address a significant amount of critical recommendations listed in the MOE’s Best Management Practices document. Therefore, we believe comments indicating that the Protocol meets or exceeds MOE expectations are misleading. Additional concerns regarding the staff report are discussed in this document.
- There have been significant developments in the world of excess soils, or “fill” in the past few years. These changes can rationalise the need for the Township to change its position on regulating fill at aerodromes/airports:
  - ✓ Two recent court decisions upholding municipal authority for filling activities at aerodromes,
  - ✓ An Advisory Circular from Transport Canada stating the applicability of provincial and municipal laws at aerodromes,
  - ✓ The final release of the Ministry Guidelines detailing Best Management Practices regarding Excess Soils in Ontario (MOE BMP). The BMP was developed in order to assist stakeholders, like municipalities, in managing excess soil (or fill) in a way that is protective of the environment and citizens.
- In recent years, there have been numerous violations and concerns raised with regards to filling activities in various municipalities in Southern Ontario. The most common

areas of concerns are the importation of contaminated soils, overfilling, quality of life issues for adjacent property owners, noise dust and mud concerns, traffic issues and illegal dumping. These issues also confirm the need for consistent and comprehensive regulation of these activities.

- Only through a regulatory framework, such as the permit process, can a municipality require and enforce the various items, such as but not limited to those listed in **Section 3d)**, in order to mitigate the potential for adverse effects from large filling operations. Many municipalities have incorporated most or all of these items in their fill agreements. Some have adopted much more.
- The Ministry of the Environment does not have the jurisdiction to regulate fill sites in this manner. The Municipality, through the Municipal Act, has been given the power to regulate fill sites in a comprehensive manner.
- Based on the various issues and the current reality of the day with regards to fill operations, we have put forth a new resolution recommending the Township require TAC to obtain a site alteration permit. This will give confidence to citizens and the Township that there is an approval authority, with jurisdiction, regulating operations and working vigilantly to ensure minimal risk to the environment and the public.

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## 1. Purpose

This document has been prepared to provide the rationale and benefits for requiring TAC to obtain a site alteration permit and to enter into a legal agreement with the Township.

## 2. Concerns and Errors in Staff Report CAO 2014-14

### a) Resolution and staff report

#### **1) Continue to ensure strict compliance with the soil protocol established by the MOE.**

The MOE did not “establish this Protocol”. Confirmation from the MOE was received on this point on August 18<sup>th</sup> in a phone conversation with Dolly Goyette of Central Region. Also, the Township will not be able to “ensure strict compliance with the soil protocol” as it has no authority to do so as it has not issued a permit where such requirement could be addressed.

TAC is also implementing this protocol on a “voluntary basis” as indicated by TAC and confirmed by the MOE. The MOE has not issued orders to ensure compliance and has not indicated it would do so if TAC decides to discontinue implementing the program. If TAC decided that it will go from quarterly monitoring to annual monitoring, or any other such change, the Township would have no control over that either as it has not stipulated requirements through a permitting process.

#### **2) Provide the Ministry of the Environment ...with an updated concept plan..**

To what end is this being done? In discussions with MOE, it was clear that they had not requested these plans. The Concept Plan is discussed further in Point e). It is important to note that in a conversation with the author of that Concept Plan on August 18<sup>th</sup>, it was indicated that the required volume of fill to compete operations was not included in the Plan nor would it be included.

#### **3) Provide the MOE and Township with updated verification reports that the fill being brought in is being done in accordance with the Concept Plan**

Again, to what end, as it was made clear the volume of soil would not be included in the concept plan? What value is the Plan if it is just a concept and can

apparently change at any time? In what way are Resolutions dealing with the Concept Plan helpful if fill volumes will not be provided?

The Staff Report discusses a November 2012 letter from the MOE indicating that the MOE was going to review operational protocols for the Airfield Site. In a June 2014 letter from the MOE, MOE could not say if TAC's Quality Assurance Protocol was consistent with the MOE Best Management Practices and that it would "review it". We are still waiting for MOE's assessment of the Protocol. We discuss this further in point 2c).

The Staff report contains quotes regarding MOE involvement on the Site. Staff commented that in July 2014, MOE "again" attended the site. It is important to understand that in terms of MOE "attending" the site, documentation indicates this was done in October 2012, October 2013 and then July 2014. Staff then quote Ian Blue indicating MOE has been "vigilant" about fill quality on the site. The concern is that a compilation of all these quotes leads one to believe MOE is deeply involved with this site and that MOE has a complete understanding of all of the fill that is going in or has ever gone in to this Site. This is simply not the case. At no time did MOE staff do a complete review of all source site reports or take soil samples for analysis. MOE repeatedly indicates that it does not regulate these kinds of activities and that is the message that should be well understood by Council.

Comments were made in the Staff Report about MTO jurisdiction and permitted volume of trucks per day. It is important to note that while the Township cannot increase the volume of trucks per day beyond what MTO permits, it has the right to decrease the volume of trucks entering the site based on issues over which MTO has no jurisdiction, i.e. quality of life issues, noise issues, and the like.

If the Township issued a permit, it could make a mandatory wheel washing station a requirement of the permit (we are unsure if one already exists at the airfield). The Township could also incorporate requirements for mud mats on site, prohibitions on operations during extreme rain events that would otherwise track considerable mud on roads, etc. Other municipalities have included these kinds of items in their fill agreement requirements. MTO requirements do not prohibit the Township from having their own requirements with regards to mud and dust on roads (or on Site), etc.

**b) Letter from J. Feheeley**

Mr. Feheeley writes in his August 11, 2014 letter to council that the MOE “developed” and “established” the Soil Protocol for the site. In a phone conversation with Dolly Goyette of the MOE on August 18, 2014, Ms. Goyette indicated that the MOE **did not** develop or write the Protocol. Ms. Goyette went on to say that the MOE “developed and wrote the MOE Best Practices Document.

Mr. Feheeley suggests that the Soil Protocol “meets or exceeds” MOE standards. Again, Ms. Goyette of the MOE could not confirm this protocol as being a model protocol that met or exceeded MOE BMP standards. In a June 11, 2014 email, Ms. Goyette indicated that MOE will “review the Protocol to determine if it is consistent with the MOE BMP”. We are not certain how comments can be made that the Protocol “meets or exceeds MOE standards”. We discuss this further in point e).

In response to concerns by residents that the soil was not being monitored as it was not being “tested” by the MOE, Mr. Feheeley writes that that the MOE does “random inspections”. We submit that taking a couple of truck tickets once every 6 months, as seems to be the case, is not the same as collecting soil samples on a consistent basis for analysis-something members of the public would like to see the Township doing. It is important to note that when the MOE has gone in to other fill sites of concern in Kawartha, Otanabee, Clarington and Scugog, for example, it has taken samples and has, in all 4 cases, found adverse results. It is also important to note that some of these sites had Soil Protocols and/or site QPs monitoring operations and despite that, unacceptable testing results were still found.

Mr. Feheeley also indicated that the Township should require TAC to submit a “Concept Plan” and that this would allow the Township to understand how much fill is needed for the operations and therefore how much is left to come in. This point is addressed in point f) below. No fill volume was included in the Plan and it would appear, through a phone discussion on August 18<sup>th</sup> with the consultant who drafted the plan, that no final volume will be offered. This is a concern.

**c) Letter from Ian Blue**

Mr. Blue indicates that the municipality cannot achieve a “greater regulation or oversight ...or require more stringent testing than the owner currently has in place.” It must first be understood that no one is currently “regulating” the site so any type of “regulation” would be more than what exists now. In terms of testing, we speak to that in point d) below. There is absolutely the opportunity to require more stringent testing than the owner has in place. The Township could require testing of

every truck if it wanted to do so. Currently, audits are done on a quarterly basis for the year and we are not privy to the number of samples taken.

It could be one sample per quarter or two or three and without knowing how much fill was deposited each quarter, how can one make the statement that the owner's testing regime is stringent?

Mr. Blue also indicated that Lakeridge Citizens for Clean Water, along with other residents "oppose this fill operation." LCCW has never opposed the fill operation. We understand very well that the Township can't prohibit it. We have always indicated from the beginning that **regulation is key**. We have never said we oppose it. We have only advocated that the Township regulate it through its fill by-law. It is important to note that we were very vocal when the Township enacted a prohibitive by-law and indicated that the by-law would be a problem if they wanted to "regulate" fill at the airfield. We recommended amending the by-law to include an exception as you can't regulate something you prohibit outright. The advice has not been taken to date.

Mr. Blue references the very first draft of the MOE BMP and that the "Town is satisfied that TAC is following the BMP". Since the submission of this letter, dated May 23<sup>rd</sup> 2013, a much more comprehensive draft has been finalized. As discussed in Point e) below, we feel the Protocol in place at the Airport is lacking when compared to the final MOE BMP document.

Mr. Blue also indicates that if the Township were to win in court it would have "the additional expense of formally assigning staff and hiring consultants to replicate the work of the MOE". For fill permits in the various municipalities we have researched, the standard is that for any expense associated with the fill operation, such as consulting fees or oversight by Township staff and inspectors or the like, it is at the expense of the proponent, either directly or through the collection of tipping fees. The Township can require tipping fees to cover costs of enforcement and monitoring as a condition of the permit.

In terms of "replicating" the work of the MOE, as detailed in Point a), we consider the MOE's actual involvement and review of material as minimal. It has not taken 1 single sample of soil for auditing. It has in no way reconciled **all** source site reports to loads received for the airfield now or in the past. In a June 2014 email, we asked ***"Has the MOE gone on site and taken any other truck tickets, since November 2012, for the purpose of reconciling them to source site test reports. How often does this happen?"*** The MOE response, ***"In October 2013, ministry staff***

***conducted a site visit in response to a concern regarding black coarse grade material entering the site. Reports and sample results were reviewed and it was determined that the material was suitable for the site. The ministry has not reconciled any further source site test reports.”***

We reaffirm our position that the Township, the approval authority, would have considerable power to regulate this site and enforce requirements, such as those detailed in Section 3 d), in a manner that the MOE never will for a “clean fill site”.

**d) Cole Engineering Annual Report**

The Annual report leaves out how many audits were actually taken during each quarter and leaves out the analytical results. When we attempted to contact to Cole to understand the number of samples actually taken, they indicated they could not release the information and to call the TAC lawyer for more info. We have not heard back. In the past, TAC’s lawyer indicated that “there would never be an instance where it would be appropriate to distribute test results” so we do not anticipate any more transparency here. This is a concern.

The MOE BMP stipulates implementing “audit protocols, **representative** of the volume of excess soil that is being received from **each** source site”. It may also be of interest for Council to understand that for some other fill sites, there are requirements to post the audit test results and source site documentation on line for the public to view. It is a concern that perhaps the Township may not even privy to these test results and even more of a concern that the Township has no authority to request more auditing than is currently taking place or to do its own auditing. There is also the fact that this is a **voluntary** Protocol and TAC is under no obligation to conform to it or to continue to implement it for the life of the operation. Should it become a financial burden, they could technically abandon it as no one is enforcing it through law.

**e) Cole Fill Protocol**

This is a barely 3 page protocol that is very thin in its requirements, in our opinion, if one reconciles it to the Ministry Standards as set out in the MOE’s Best Management Practices(BMP), and if one compares it to various other protocols in place at other large fill sites. The MOE BMP went from being a 9 page draft document in 2012 to a much more comprehensive and finalized 19 page document in January 2014. The Cole Protocol was “updated” in June 2014, however no changes were made to the

actual document itself aside from the fact that instead of indicating “Green Soils, in corporation with Hybrid Contracting will prepare monthly reports...”, it indicates “Hybrid Contracting will prepare monthly reports...”. There was no indication of incorporation of the new requirements in the MOE BMP. It is also a concern that the protocol only discusses procedures for managing Green Soils fill, however it states that it receives fill from other sources. We have included a model DRAFT fill protocol that we have been working on that encompasses requirements found in protocols we have researched, as well as further requirements we added to ensure better reconciliation the MOE BMP document. Please see Section 5 below for this document.

**f) TAC Concept Plan**

The plan does not list the volume needed for the completion of the project. In speaking with the consultant who prepared the report, it was indicated that the volume was purposely left out as the plan is only a concept and build out could take exceptionally longer and require more fill depending on market demands, changes in design, addition of hangars etc.

Therefore, it is a concern that the operations can carry on indefinitely with no regulatory oversight by the approval authority with jurisdiction, namely the Township.

### **3. Rationale for Regulating the importation of Fill to the Tottenham Airfield**

**a) New Developments in law and policy**

We speak to these developments in the Recommended Resolution in Section 6 of this report. These are the recent Burlington Court decisions finding in favour of the municipality to regulate fill at aerodromes, and the December 2013 Advisory Circular from Transport Canada advising other municipal and provincial laws can apply at airports, along with the 2014 release of the MOE’s Best Management Practices. These are significant enough developments to rationalize Council changing its former position that it would not or could not regulate fill at aerodrome sites to now being confident that it can and should regulate fill operations in its jurisdiction.

**b) Regulatory Jurisdiction**

It is within the Township’s power and jurisdiction to regulate site-alteration activities involving large quantities of fill, so long as it does not fall within the regulated area

of the Conservation Authority, or is associated with a licenced pit or quarry or such other exemptions as detailed in the Municipal Act. The MOE does not regulate fill sites.

If the Township has sole jurisdiction over site-alterations, then it must exert its power to regulate or there will be a significant gap that has the potential to adversely impact people and the environment. Many filling operations have proven to be associated with negative impacts as discussed below. Filling activities are not operations that have demonstrated they can go without regulatory oversight.

### **c) Issues with the Fill Industry**

There are many documented instances of filling operations resulting in undesirable situations such as:

- **Contaminated fill placement**
- **Overfilling in violation of permit agreements**
- **Drainage concerns on adjacent properties**
- **Dust, mud and noise issues resulting in health and safety concerns on roadways and quality of life issues**
- **Illegal dump sites**

These issues can and have occurred at various fill sites despite having qualified persons managing operations, and having established protocols in place to mitigate the potential for adverse impacts due to fill importation. Therefore, it is critical that the approval authority due their due diligence and review, audit, survey, monitor, sample, etc. at these sites in order mitigate risk. This type of oversight necessitates a regulatory framework that, for fill sites, is established through issuance of a fill permit. Over the past few years, the continued occurrences of the fill issues mentioned above have instigated rigorous review by municipalities of their site-alteration by-laws. In most instances, significant amendments to by-laws have been recommended to allow for more comprehensive permit requirements and oversight of these operations, particularly the larger ones.

Below we have included a list of violations and concerns we have collected for various fill sites across southern Ontario in the last few years. This is not a complete list. Additional information on each site, along with accompanying documentation in the way of MOE Orders, Technical Reports etc. can be found on our website under "CASE STUDIES", [www.lakeridgecitizens.ca](http://www.lakeridgecitizens.ca)

**Earthworx Site, Township of Scugog** – Concern – Contaminated Soil

**Otonabee South – Monaghan Fill Site** – Concern -Contaminated Soil

**Morgans Road Site, Municipality of Clarington** – Concern – Alleged Over filling and Contaminated Soil Issues

**Mount Albert Pit Site, East Gwillimbury** – Compliance Issue – Overfilling

**Sideline 14 Site, City of Pickering** – Concern – Contaminated Soil

**Taylor’s Road Site, City of Kawartha Lakes** – Concern -Contaminated Soil

**Tottenham Airfield, Town of New Tecumseth** – Concern – No permit – Township not enforcing by-law

**5511 Bloomington Rd., Town of Whitchurch Stouffville** – Compliance Issue – Overfilling

**13282 Ninth Line, Town of Whitchurch Stouffville** – Compliance Issue – No permit – Owner alleges to be building an airstrip

**Burlington Airport, City of Burlington** – Concern – Airport claiming Federal Immunity to City by-laws

**Brock Aggregates Site, Town of Whitby** – Concern – Overfilling

**Greenbank Airways Site, Township of Scugog** – Concern -Quality of imported soil and various non-compliance issues

**d) Accountability to citizens and protection of the environment**

Only through a regulatory framework, such as the permit process, can a municipality require and enforce the various items, such as but not limited to those listed below, in order to mitigate the potential for adverse effects from large filling operations thereby ensuring the protection of the environment and its citizens. Many municipalities have incorporated most or all of these items in their fill agreements. Some have adopted much more. In order to gain the trust of its citizens, municipalities must do their due diligence and enforce the rules and regulations that are completely within their power to do.

- Require a comprehensive Fill Management Plan in which you have input and control
- Require frequent audit testing of incoming materials at your discretion
- Ability to approve soil quality standards
- Ability to approve and refuse source sites
- Ability to go on site at any time to survey, sample, monitor, inspect, and request documentation to ensure compliance with the permit requirements
- Require pre and post site-assessments and other relevant studies
- Require ground water monitoring
- Impose Requirements for sediment and erosion control and drainage
- Impose requirements to control dust, noise and traffic
- Limit the volume of trucks per day and operating hours
- Retain the services of a consultant, at the expense of the proponent, to peer review all documentation and studies
- Ability to require financial assurance, securities, and tipping fees for compliance and enforcement activities
- Ability to have penalties for non-compliance
- Ability to require the proponent have insurance which also names Township
- Require a complaints protocol
- Ability to restrict operations in bad weather- i.e. heavy rain and high winds

#### **4. Fill Management Protocol by LCCW - DRAFT**

##### **Fill Quality Control Procedures**

(This protocol is with regards to the site at (\_\_\_\_\_) hereby after referred to as “the Site”)

Draft by LCCW with some excerpts adapted from the Greenbank and Dagmar Fill Quality Protocols

##### **INTRODUCTION**

The following document describes soil quality control protocols at the Site located at (\_\_\_\_). These protocols are administered and enforced by the Site’s Qualified Person (“QP”), on behalf of the client. The Township will be responsible for ensuring compliance through audits, inspections or any other means deemed appropriate by the Township.

##### **PURPOSE**

The purpose of this procedure is to prevent the placement of soils with unacceptable levels of contamination. For the objective of this document, soil is defined as it is in Ontario Regulation 153/04, namely:

*“unconsolidated naturally occurring mineral particles and other naturally occurring material resulting from the natural breakdown of rock or organic matter by physical, chemical or biological processes that are smaller than 2 millimeters in size or that pass the US #10 sieve”.*

### **Regulatory Compliance**

Any soils received at the site or destined for the site shall be managed in accordance with the ministry of the environment and Climate Change’s (“MOECC”) “management of excess soil – a guide for best management practices” (moe-bmp) (January 2014 or as amended). All handling, sampling, assessing and receipt of soils at the site, shall be done in accordance with the provisions of o. reg. 153/04, where applicable. It should be noted that, for the purposes of this document, the applicability of the provisions of reg. 153/04 are not limited to sites where a record of site condition (rsc) has been submitted to the MOE, but rather the provisions of this regulation apply and must be adhered to for to any site where excess soils are generated/received for disposal. Compliance with either of the documents listed in this paragraph does not abrogate the need to comply with any other applicable federal, provincial or municipal legislative or regulatory requirements.

### **SOURCE SITE APPROVAL PROTOCOLS**

Care needs to be taken to delineate and distinguish fill quality at every source property to ensure acceptable soils only are received at the Site. The most important level of quality control occurs at the source Site.

Before accepting any soil from a source other than a soil remediation facility, the QP must receive:

All documentation regarding the environmental conditions of the source property, including all Phase I and/or II Environmental Site Assessment (“ESA”) reports, and/or remediation reports. The documentation must be signed by a QP;

A Soil Management Plan (“SMP”) for the source site that will be utilized to ensure that soil transported to the Site meets the soil quality standard approved by the Municipality as

designated in the agreement. (Note that in most instances the standard used will be Table 1. There shall be no “contaminating up”.)

**The SMP will include as a minimum:**

- Indicators that define all areas to be excavated with the estimated volume of excess soil to be managed off-site and the representative chemical composition of the excess soil, along with detailed instructions to on-site contractors identifying the depth of soil to be excavated for off-site management;
- Appropriate characterization of all excavated soil by a QP, or a person under the supervision of a QP, to determine the volume and chemical composition of the soil that is to be managed off-site;
- Appropriate sampling and laboratory testing to ensure that all chemical parameters in the soil are identified and characterized; The sampling frequency of shipped soil must, at a minimum, follow the standards as set out in Reg. 153/04 for soils shipped to an RSC property (Refer to PIBS 8429e – April 2011 namely 1 sample for every 160 cubic metres for the 1<sup>st</sup> 5000 cubic metres from each source site, than 1 in every 300 cubic metres after that for soils from each source site. The QP of the receiving site must sign off that this has been done.)
- Documentation signed by a QP with appropriate and representative soil analysis, confirming the quality of fill meets the soil Site condition standards designated in the agreement, including the SAR and EC standards.

If soil is received at the Site from any soil remediation facility, such as GFL, a copy of the compliance approval, along with relevant schedules, must be obtained, reviewed by the QP of the Site and provided to the Municipality.

Before accepting any soil from a soil treatment facility, such as the GFL Environmental soil recycling facility (Note that we are using GFL – Green For Life as the example):

Before the soil leaves a GFL treatment site, the receiving site QP will obtain and review relevant compliance testing and/or analytical reports and background documentation as required by GFL's Environmental Compliance Approval, reconcile the volumes of tested soils vs. shipped volumes according to the requirements in the compliance approval and schedules and approve the movement of soil from treated cells prior to shipment to the Site.

Any information provided to the QP must be prepared or reviewed by the facility's QP, or a person working under his/her direct supervision, before it is presented for review to the Site QP.

A tracking system has been implemented by GFL to distinguish and identify the movement of soil from each approved cell. This necessitates a bill of lading that is linked to GFL's soil reports and identifies the ultimate disposal destination of the soils. The treated cell name and pad number will be written on the bill of lading to assist in tracking the soil being shipped to and received at the Site. A copy of GFL's "Bill of Lading" shall be maintained at the Site office for each load of soil shipped by GFL to the Site for inspection by municipal staff. Each form will list the source of the soil, the quantity and the cell and pad number associated with the treated soil.

The QP and /or municipal staff may require additional sampling or testing of soils from GFL over and above those parameters defined in GFL's Environmental Compliance Approval.

For any soils received from other soil recycling or soil remediation facilities, other than GFL, the QP must assess and impose similar safeguard and testing requirements to those implemented for GFL, regarding compliance testing and document and report review. The Municipality may require further sampling and testing of soils at these facilities at their sole discretion, (particularly those facilities with outdated compliance approvals) before any soils are shipped to the Site from these facilities.

The environmental documentation will be reviewed by the Site's QP before the soil is shipped to the Site. The QP determines whether soil from the source site is acceptable for use as fill at the Site and whether the documentation provided is adequate to ensure that soil transported to the Site meets the appropriate Standards. If the QP is unsure of the quality of the proposed soils, he/she must either order or undertake resampling or additional sampling from the supplier before further considering these soils for receipt at the Site.

In the event that a source site contains contaminated soil that must be removed to an appropriately approved facility (other than the Site), the QP must require a clearance letter from a QP confirming that all of the contaminated material has been removed from the source property before it may be shipped for deposition at the Site. Note that the Township must approve all source sites before soil is shipped to the Site. For fill from any source site, once the above criteria have been met and assured as being correct, a customer is permitted to purchase fill tickets from the Site operator, which are colour-coded by customer for tracking purposes. The number of tickets issued is based upon the customer's estimates of the volume of fill to be generated from the source property. That being said, before any soil is shipped to the Site, the volume of soil must be approved by the QP based on a review of all documentation and analytical data. Should the operators of the source site wish to ship more soil than what has been approved by the QP and the Municipality, the QP will undertake appropriate and additional review, requesting documentation indicating the rationale for increased soils

volume. The Municipality shall be notified forthwith to facilitate their review and approval of the additional soils.

Following confirmation that the quality of fill from the source property or remediation facility is acceptable for placement at the Site, the QP will forthwith post all sample analysis reports on the internet at a unique website created for the Site (e.g. [www.the Site.net](http://www.the Site.net)) The Soil Analysis Reports will show that the source site sampling meets the designated standard in the agreement and that the soil is of a quality that meets the appropriate protocols for the Site's fill quality control procedures. The web page will be available to the public for review. Note that all source site approval letters and audit testing of soils at the Site shall be posted as well.

Every customer must be made aware that any fill that arrives at the site and is contaminated or that contains demolition materials or other waste materials will not be accepted at the Site and/or will be returned to them or disposed properly at their cost. The QP shall record, in a log kept at the Site, any instances when fill is returned under these circumstances, recording the source site, hauler, date of the incident, and any and all information pertaining to the unacceptable fill. This information shall be reported to the Municipality forthwith for review and action if applicable. (Note that the Township has the ability to withdraw approval of the Source site based on these incidences.) This information is to be summarized in the quarterly reports submitted to the Municipality. (Note that the quarterly reports are to summarize all fill volumes and loads received per month for each source site, all complaints received and action taken, all testing results in relation to the Site including groundwater sampling on and off Site and any breaches of the Agreement, by-law fill management protocol and appendices to the Agreement.)

#### **ON-SITE FILL RECEIVING PROCEDURES**

There must be a QP and/or a competent representative at the Site at any time that the Site is open for receipt of fill. The QP is responsible for monitoring the quality of incoming fill received at the Site. Any fill received at the Site shall be handled in accordance with a Site Specific SMP, as defined in the MOE-BMP, for the Site.

A sample fill ticket has been inserted here for information. A similar one is to be developed and implemented by the QP for the site and must include the quantity of soil on board every vehicle (note the volume must be added to the sample fill ticket provided). All fill tickets must be retained by the Site for review by the Township at their request.

(Note: the following fill ticket is taken from the MNR's Aurora Fill Protocol)

No: 0000001

<b>Name and Location of Generating Location:</b>
<b>Date Shipped:</b>
<b>Time Shipped:</b>
<b>Haulage Company:</b>
<b>Truck Number:</b>
<b>Licence Plate:</b>
<b>Signature of Authorized Personnel at Generating Location</b>
<b>Date Received:</b>
<b>Time Received:</b>
<b>Assigned Location for Deposit at Receiving Site:</b>
<b>Signature of Authorized Personnel at Receiving Site:</b>

ANY UNSIGNED OR INCOMPLETE FORMS WILL RESULT IN REFUSAL OF LOAD AT THE RECEIVING LOCATION.

WHITE COPY - RECEIVING SITE  
YELLOW COPY - HAULAGE COMPANY  
PINK COPY - GENERATING LOCATION

Trucks transporting fill material must enter the Site from routes designated in the Agreement.

Each source site has different coloured fill tickets. A fill ticket must be presented to the Site's gate staff before the truck offloads its soil. Gate staff must check to ensure that the colour-coded fill ticket is valid. Gate staff will give all fill tickets to Site administration staff for record-keeping purposes by the end of each working day. Each bill of lading originating from a GFL soil recycling facility will clearly show which cell and pad the soil originated from.

Administration staffs are to keep the following documentation for the tracking of all incoming loads of soil and for review by the Township at their request:

- Name and location of the source site. For all GFL accepted soils, the cell name and pad number will be attached to each load;
- Date and time of arrival of each load at the Site;
- Company name and complete vehicle identification number (VIN) or licence plate number of each truck that delivers fill;
- Daily volumes of soil received from each treated cell or source property;

- Confirmation by the QP acknowledging that the quality and quantity of the soil is acceptable for receipt at the site;
- Details of any rejections of any loads of soil due to visual inspection or review of analytical results, including reasons why the load was rejected and where it went subsequently.

Each incoming loads of fill is monitored by the QP or his representative as it is dumped at the tipping area to verify that no unacceptable materials are included in the load. Each Incoming load is to be visually inspected and screened for odours, staining, debris or other forms of contamination whether known or suspected. The daily shipments are then checked by the QP against approved source properties or approved cells from GFL. Note that soils from each source site shall be deposited in segregated areas within the fill area so that it can be assessed and remediated if necessary.

Fill that is observed to contain unacceptable materials must be returned to the customer. The fill ticket is forfeited in these circumstances. Staff at the tipping area then contact the Site administration staff, who then record the rejected load. The QP also keeps a record of the contaminated load and its fate. If the truck has already left the Site, fill may be reloaded on the next truck from that customer or segregated and stockpiled for return to the source property forthwith. If the QP has information that there is a potential or confirmed contravention GFL's Environmental Compliance Approval (ECA), then the QP shall forthwith notify the MOE. Soils from the source site will not be permitted to be shipped to the Site until the unacceptable material is returned and until it can be demonstrated that the remaining soil at the source site or treatment cell meets the appropriate standard through confirmatory sampling of stockpiles or excavation at frequencies required by O. Reg. 153/04 for confirmatory sampling of stockpiles and excavation. See Table 2 and 3 from O. Reg. 153/04, as amended.

The QP (or His/her representative) will collect a minimum of one audit sample per day of soil received from each approved source property. The Municipality shall be copied directly by the laboratory on reports for all audit samples taken. Samples shall represent the volume of soils shipped to the Site from the source. Audit sampling protocols are to be developed and utilized by the QP, sufficient to produce results that would be representative of the volume of excess soil that is being received from each Source Site.

It is understood that the Municipality will retain their own QP to collect samples for testing at the frequency agreed to in the Agreement.

The GFL Soil Treatment Facility will require additional sampling if soil from more than one source cell is transported to the Site within any one month. Depending on the source site conditions and field observations, additional or more frequent sampling may be required for

each source property. In the event that analytical results from any audit sample indicate a concentration greater than the Site Condition Standards, the QP will immediately notify its client of the findings and provide recommendations for mitigation.

### **Contingency Plan**

A Contingency Plan shall forthwith be developed for review and approval by the Municipality to deal with failed or contaminated loads of soil. Provisions must be included to deal not only with offsite soils, but those that were inadvertently or knowingly accepted at the Site. Provisions in the plan must include, as a minimum, a rationale for how much fill is to go back and why and how much confirmatory sampling is to be done at the receiving site to ensure fill from adverse audit tests is all accounted for and removed. An adverse audit test is a test that does not meet the approved standards.

The Contingency Plan will also address operational issues such as flooding, slumping or collapse of berms, crevicing and the like and will include provisions to mitigate and report on these issues. A geotechnical engineer will provide a report that addresses drainage concerns and will provide a plan that must be followed in order to prevent any adverse drainage issues from occurring.

### **Security/ Enforcement**

The fill site will be monitored with security cameras located in such a manner as to record all movement of soil in the fill area.

There will be a gate at the entrance to the fill site that will be located outside of business hours.

There will be personnel at the entrance to the fill area at all times during hours of operation controlling traffic and directing trucks to the appropriate areas.

### **Daily Site Inspection Report**

Aside from the other reports and documentation listed throughout the protocol, a daily site inspection report will be generated and made available to the Township upon request. The checklist will include the following :

- Date of inspection
- Weather conditions
- Name of inspector
- Haule route condition

- Grading condition
- Drainage conditions
- Safety concerns
- Dust and noise monitoring
- Security camera function
- Personnel/Operators names

### **Amendments to Protocol**

"This protocol will be deemed amended once reviewed and approved by the Director of Public Works and Parks, The Municipality and Municipal Council. Amended protocols shall form part of the Legal Agreement with the Municipality.

## **5. List of Recommended Township Oversight Responsibilities by LCCW - DRAFT**

**Township Compliance Enforcement Responsibilities** – Draft by LCCW in cooperation with the Ontario Soil Regulation Task Force August 2014

All Township Compliance Audit Reports are to be documented and made available on the Township website. This will require daily, weekly and monthly reporting as detailed below.

<b>COMPLIANCE AREA</b>	<b>TIMING</b>	<b>ACTION (Inspect and Ensure Compliance)</b>
Onsite – trucks and loads	Periodic - unannounced  (weekly at a minimum)	Ensuring operator screening/smell test of each truck, collecting of fill tickets, recording of licence numbers on each fill ticket, GPSing loads, ensure QP or designate onsite when loads arrive
Site operations	Periodic - unannounced  (weekly at a minimum)	Filling within footprint authorized by permit; hours of operation; drag out onto road
Load reconciliation	Ongoing  (weekly at a minimum)	Reconcile <b>monthly</b> source site loads and volumes received with load/volumes approved for the source site and ensure there is the appropriate number of audit

		tests for each source site every month
Traffic issues	Periodic - unannounced	Queuing on road, following haul route including weekends, speeding, engine brakes, covered loads
Sampling	Daily	Collect <b>daily</b> audit samples for the Municipality at the Municipality's complete discretion (no input from site operator or site QP); marking sampling locations with GPS. Municipal Consultant will retain possession of the samples until they are handed over to the laboratory for analysis. <b>1 sample for every 10 trucks is recommended at a minimum.</b>
SARA – species at risk	Ongoing	Monitor Site usage by species of concern (e.g. Barn Swallow, Bobolink, Eastern Meadowlark, etc.) and determine if site operations are threatening them
Source sites	Ongoing	Ensure all source sites have a comprehensive SMP (Soil Management Plan) and documentation signed by a QP indicating the quantity of soil that is going to be shipped from the source site and indicates the soils have been tested appropriately (Ensure the Receiving Site has the necessary amount of tests from the Source Site that reconcile to Reg. 153 requirements for “Soils brought to an RSC property.”**see

note below)

Source sites	Ongoing	Ensure there are the necessary number of compliance tests for volumes approved from remediation/recycling facilities (i.e. GFL)
Source site spot checks	Unannounced and random	Travel to the source site – inspect operation and review sample protocols
Complaints – Quality of life – noise, dust, traffic	Unannounced and random	Follow-up on complaints and ensure answers are sought and offered. Audit for compliance along entire haul route. All complaints are to be included in the quarterly reports.
Soil volumes	Ongoing	Ensure onsite volumes are known and audited monthly – engineer to assess
Adjoining properties	Ongoing	Ensure no intrusive activities are ongoing there, such as dust, noise, erosion or <b>drainage</b> issues
Compliance	Ongoing	Ensure enforcement is undertaken and logged when issue identified/confirmed
Miscellaneous	Ongoing	Determine the receiving Site operator, source site operator and QP/consultant all operate at arm's length
Compliance with Fill Quality Protocol, MOE BMP and Reg. 153/04	Ongoing	Confirm ongoing compliance with Fill Quality Protocol, MOE BMP and Reg. 153/04
Compliance with Complaint response Protocol	Ongoing	Confirm ongoing compliance with Complaint Response

Compliance with Extreme  
Weather Protocol

Ongoing

Confirm ongoing compliance  
with Extreme Weather Protocol

\*\* we have made reference to reg. 153 and the testing frequencies for “Soils brought to an RSC property”—this should be the default even if an RSC is not going to be filed. However, if the intent is to change the use from extractive to farmland—this should be done.

## 6. Recommended Resolution

Whereas recent court decisions regarding the Burlington Airpark ensure municipalities have the right to regulate fill at aerodromes and,

Whereas Transport Canada released an [Advisory Circular](#) in December 2013 that states, “the jurisdiction of the federal government over aerodromes and their operation does not necessarily exclude the application of provincial or municipal laws.” And, “For those structures or activities that are determined not to be integral to aviation, it is expected that the proponent of an aerodrome comply with all applicable provincial legislation and municipal by-laws.” And,

Whereas the Ministry of the Environment released their document, Management of Excess Soil –A Guide for Best Management Practices in January 2014 and,

WHEREAS this Guideline was compiled over 3 years of public consultation and was significantly strengthened and more comprehensive compared to the 2012 version and,

WHEREAS the Ministry of the Environment has consistently declared they do not regulate fill sites and,

WHEREAS the Town has the power under the municipal act to enact by-laws for the protection of the environment and its citizens and,

WHEREAS Section 142 of the Municipal Act 2001 authorizes the Council of the Township of new Tecumseth to pass By-laws for prohibiting or regulating any alteration of the grade (topography) of land through the movement, removal or placement of topsoil, soil or fill within the Town of New Tecumseth other than those areas subject to regulations made under Clause 28(1) of the Conservation Authorities Act, R.S.O. 1990, c.27, as amended

WHEREAS appropriate controls are required to ensure filling activities are conducted in a manner to ensure environmental protection and the mitigation of impacts caused by filling activities,

**We recommend:**

- 1) That the Township amend its fill by-law in order to permit the Township to regulate fill operations in special cases where they would have otherwise been prohibited and
- 2) That staff be directed to draft a generic site-alteration agreement and fill management plan that considers existing agreements and fill protocols already in place in other municipalities and present these to TAC, Council and the community for comments and,
- 3) That the Township require that Tottenham airfield obtain a site alteration permit and enter into a legal agreement with the Township before importing any more fill to the property.

Respectfully submitted,

Carmela Marshall

Lakeridge Citizens for Clean Water