

## Comments on Sections 4.3 of the Draft LSRCA Watershed Development Guidelines- Large Scale Fill Placement Guidelines

Submitted by: The Ontario Soil Regulation Task Force (OSRTF) and Lakeridge Citizens for Clean Water (LCCW)

Date March 13<sup>th</sup>, 2015

**LCCW and the OSRTF are pleased to submit the following comments regarding the Large Fill Policy Section of the LRSCA Guidelines.**

If you would like to discuss further, please do not hesitate to contact us. [info@lakeridgecitizens.ca](mailto:info@lakeridgecitizens.ca) or [carmela@lakeridgecitizens.ca](mailto:carmela@lakeridgecitizens.ca)

1. We agree with prohibiting large scale filling in landform conservation areas 1 and 2 of the Moraine; however note that CLOCA took that out of its large scale fill policy indicating that they could not defend that prohibition. We were hoping to understand LSRCA rationale for this prohibition and if the MNR supports it as an acceptable policy for all CAs on the Moraine.
2. Soil Quality requirements need to be consistent with MOECC BMP requirements (Management of Excess soil-A Guide for best Management Practices) i.e. **“no contaminating up”**. Therefore **pre-assessment** of native soils at the receiving site must be completed. Statements in the draft LSRCA Guidelines such as, the soil quality must show that it is “inert fill” or must meet “O. Reg. 347” requirements are not consistent with the MOECC BMP Guidelines.

Please note the following excerpt from the MOECC BMP “Soil placement should not degrade the existing conditions at a Receiving Site; for example, a new contaminant should not be introduced to the Receiving Site and the concentration of an existing contaminant should not be increased at the Receiving Site.”

3. Re: section 4.3.8, there needs to be **mandatory** Soil Management Plans from source sites with **well-defined requirements for documentation** such as those listed in **the OSRTF draft Fill Management Protocol attached**. The listed LSRCA requirements need to be more comprehensive in this respect. Incorporation of MOECC guidelines regarding source site documentation should be included here.
4. Incorporate HAV areas, SGRAs and well head protection areas into your “prohibited areas for large fill sites” section.

5. We recommend a **mandatory**, LSRCA peer reviewed, Soil Management Plan for the **receiving site. This plan should be developed and implemented by the receiving site's mandatory "Qualified Person" as defined in O. Reg. 153.** Costs for the LSRCA peer review should be borne by the proponent. The OSRTF "Draft Fill Management Protocol" details specific requirements to incorporate into such plans. Although it is written for municipalities, there is very little, if any, adaptation that needs to be done in order for Conservation Authorities to use it as a model.
6. We recommend a **mandatory** "chain of custody" record for **all** truckloads going into large fill sites (i.e. comprehensive Fill Ticket documentation). Please see the OSRTF Draft Fill Management Plan for specific requirements for Chain of Custody documentation. These requirements reconcile the MOECC BMP requirements.
7. We recommend a **mandatory** Environmental Impact Study for large fill projects.
8. Detail clear and minimum actions that the LSRCA will undertake to ensure proper oversight and enforcement of operations. All costs associated with these activities will be borne by the proponent. Activities such as LSRCA sampling of soils—daily or weekly with multiple samples taken, peer reviews of all documents, audits of daily operating procedures, etc. Please see the LCCW draft of Municipal Enforcement Responsibilities which again can be easily adapted for Conservation Authorities.
9. **Mandatory** minimum security deposits should be listed in the event the conditions of the permit are not met.
10. **Mandatory** minimum audit sampling requirements to be completed by the proponent at a frequency reflective of the volume of soil being received at the site, as per MOECC BMP requirements. We recommend at least 1 audit sample per source site per day to be done at the receiving site as detailed in our draft FMP attached. For source site sampling at the source site, as the MOECC BMP does not detail the frequency, we recommend the sampling regime detailed in the MOECC Document, "Bringing Soil 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.)**
11. **The re-vegetation plan should be phased** and well defined for large fill sites so as to avoid sediment loading to nearby water-bodies due to exposed soils. This is with the understanding that larger projects can take years to complete.

12. We note section 4.3 does not detail the condition under which there would be a **cancellation of permission**. This may be important to include. We also note that a fees schedule is not included in this section. We recommend that the LSRCA indicate a minimum tipping fee to allow for monies to oversee operations, conduct peer reviews of documents, etc. with any further costs to investigate, audit, sample etc. being borne by the proponent.
13. Re: section 4.3.13, the final statement in this section implies the LSRCA will allow large scale **fill placement for agricultural purposes**. We **caution** using any kind of wording that could imply large scale filling is an agricultural practice. The Normal Farm Practices Protection Board makes rulings on what is a “normal farm practice”. To date, this Board has not indicated that proponents declaring the need for large quantities of fill for farmland should be exempt from approval authority requirements in this regard. In fact, the direct opposite is true.

Also, allowing filling in early spring may impact ground nesting birds and therefore facilitate non-compliance with the Migratory Birds Act (a federal act). An EIS that incorporates looking into this situation may be necessary in some circumstances.

14. Re: section 4.3.15, the **possible permit conditions listed should be more comprehensive**. Please see the OSRTF Large Scale Fill Agreement and FMP models attached for more details. We also suggest that **interim audits on grading, volume, sampling for quality of fill**, etc. be required **throughout the operations, not just after completion of the operation**. There should also be conditions for reporting to the LSRCA—again please see the attached model documents.

We believe many of the requirements listed in the two OSRTF model documents attached reconcile to the 5 tests that the authority has to consider, namely the control of flooding, erosion, dynamic beaches, pollution, and conservation of land.

We request that this Board make a resolution to strengthen the Large Scale Fill Placement Guidelines. At a minimum, there should be reconciliation to the MOECC Excess Soil Best Management Practices Guidelines.

**Sincerely,**  
**Carmela Marshall**  
**On behalf of LCCW and OSRTF**

## **Some important changes since the last LSRCA policy on large scale fill placement.**

- 1) Release of finalized **MOE BMP Ministry of the Environment's, Management of Excess Soils- A Guide for Best Management Practices January 2014** – although not legislation, this should impact minimum requirements in LSRCA Large Scale Fill Placement Guidelines.
- 2) The Ministry of the Environment received an **EBR review application on November 25, 2013** requesting the province assess the need to establish a “*new comprehensive, province-wide policy to address the problem of compromised soil and to ensure that fill being dumped on to sites is safe*”.
- 3) **Strengthening of several municipal Site-Alteration By-Laws and Conservation Authority Large Scale Fill Policies.**
- 4) Various **investigations** and **court challenges** in various municipalities regarding issues with large scale fill sites. A sample listed is here:
  - Investigation into dumping of contaminated fill at rehabilitated gravel pit in the City of Kawartha Lakes
  - Charges and **convictions** for dumping contaminated fill at a sheep farm in Peterborough County
  - Stop work orders and court cases in Whitchurch Stouffville for overfilling
  - Ontario Superior Court Ruling in Amaranth and a Normal Farm Practices Protection Board ruling for Halton both assuring approval authority jurisdiction with regards to filling and farmland
- 5) Provincial and Municipal jurisdiction at aerodromes well established:
  - Significant Amendments to the Aeronautics Act through passing of Bill C-43 in December 2014 (see below) that no longer allows indiscriminate location and expansion of aerodromes. This impacts those applications for fill at aerodromes-i.e. Baldwin Airport.
  - **2 court cases** in Burlington that declare municipal jurisdiction over fill operations at aerodromes, November 13, 2013 and June 11, 2014
  - Release of **Advisory Circular from Transport Canada**, December 2013 reiterating other provincial and municipal controls at aerodromes.
- 6) **Launch of “Project Clean Dirt” by OSRTF. Further research by LCCW and OSRTF of breaches and issues at various large fill sites resulting in the drafting of a “Model Agreement” and a “Model Fill Management Plan” as part of “Project Clean Dirt.”**  
**We have attached a Project Summary for reference, originally prepared for the OGRA/ROMA conference. The “Models” listed above are also attached.**

## Excerpts from Transport Canada's Advisory Circular

...The Aeronautics Act does not grant immunity to an aerodrome operator/developer from compliance with all other valid applicable provincial legislation or municipal bylaws....

Transport Canada's position with respect to the applicability of provincial or municipal laws has been consistent with the Scugog decision in that the jurisdiction of the federal government over aerodromes and their operation does not necessarily exclude the application of provincial or municipal laws.

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.

## Excerpt from Burlington Court Case

**Burlington, Ont., Nov. 14, 2013** – On Nov. 13, 2013 a Milton Superior Court ruled the City of Burlington's site alteration bylaw applies to the Burlington Airpark.

In his [decision](#) the Honourable Justice J. Murray also ruled that:

- As the city's bylaw is valid and binding on the Burlington Airpark.
- The city is able to enforce its bylaw
- The Airpark's [application](#) against the city is dismissed
- The City of Burlington is entitled to its legal costs.

In arriving at his decision, Justice Murray found that the city's site alteration bylaw made pursuant to the *Municipal Act, 2001* was a "valid exercise of property and civil rights under section 92(13) of the *Constitution Act, 1867*". Justice Murray further found that the city's bylaw did "not impair the federal aeronautics power or create an operational conflict between the provisions of the by-laws and the federal aeronautics power." In determining that the city's bylaw did not intrude on the core federal power to regulate aeronautics, Justice Murray concluded that the city's site alteration bylaw "was designed to regulate the use of landfill for the protection of the environment and for the safety, health and welfare of municipal residents" and "was not enacted for the purpose of regulating federal undertakings."

"The bylaw is not an attempt by the municipality to regulate slopes or surfaces of runways, runway shoulders or the slopes and strength of runway shoulders. While regulating the quality of fill may have an impact on the manner of carrying out a decision to build airport facilities in accordance with federal specifications, such regulation will not have any direct effect upon the operational qualities or suitability of the finished product which will be used for purposes of aeronautics. As a result, the by-law does not impact or intrude on the core of the federal power which, as noted above, is the authority absolutely necessary to enable Parliament "to achieve the purpose for which exclusive legislative jurisdiction was conferred."

## Bill C-43-Excerpt

R.S., c. A-2

### DIVISION 2 AERONAUTICS ACT

**143. The *Aeronautics Act* is amended by adding the following after section 4.3:**

Ministerial order

**4.31 (1)** The Minister may make an order prohibiting the development or expansion of a given aerodrome or any change to the operation of a given aerodrome, if, in the Minister's opinion, the proposed development, expansion or change is likely to adversely affect aviation safety or is not in the public interest.

Exemption

**(2)** An order under subsection (1) is exempt from examination, registration or publication under the *Statutory Instruments Act*.

**144. Section 4.9 of the Act is amended by adding the following after paragraph (k):**

**(k.1)** the prohibition of the development or expansion of aerodromes or any change to the operation of aerodromes;

**(k.2)** the consultations that must be carried out by the proponent of an aerodrome before its development or by the operator of an aerodrome before its expansion or any change to its operation;

## Part 4 – Division 2

### Overview: *Aeronautics Act*

The proposed (no longer proposed—Bill received Royal Assent on December 16, 2014!) amendments address aviation safety and public interest concerns while encouraging the responsible development and operation of aerodromes in Canada.

The proposed amendments to the *Aeronautics Act* would provide the Minister of Transport with the authority and necessary tools to effectively respond to an increasing number of aerodrome issues pertaining to development, location, land-use and consultation.

The amendments would provide the Minister of Transport with the authority to make an order prohibiting the development, expansion or a change to the operation of an aerodrome if, in the Minister's opinion, there is a risk to aviation safety or if it is not in the public's interest.

The proposed amendments would also provide the Governor-in-Council with the authority to make regulations to prohibit the development, expansion or a change to the operation of aerodromes, as well as the authority to require proponents and operators of aerodromes to consult prior to the development, expansion or change to an aerodrome or its operations.