

New Ontario soil regulations getting down and dirty

<http://dailycommercialnews.com/en-US/Government/News/2016/5/New-Ontario-soil-regulations-getting-down-and-dirty-1015485W/>

by Ian Harvey May 2, 2016

New regulations governing where and how excess excavated soil from construction sites may be stored and disposed of have had final input from stakeholders and are moving into the implementation stage.

The new regulations will put licensing and oversight of soil receptors under the jurisdiction of Ontario municipalities. In doing so, however, it opens the door for those communities to make an application for a soil site a politically polarized issue.

On the surface the rules seem prudent enough but there are some concerns that the soil disposal may become the next pariah of local municipalities with a pushback similar to that faced by the quarry sector, says stakeholders.

John Tidball, a certified specialist in environmental law at Miller Thomson LLP who acts for many developers, said the soil receptors could face many of the similar issues faced by the quarry sector: "They don't like the trucks, the noise and the dust. In many ways it's the same."

He said some municipalities have already moved to block landowners from accepting excavated fill as an example of LULU – Locally Unwanted Land Use.

The regulations haven't been drafted but they will follow the guidelines posted by the Ministry of the Environment and Climate Change in January. The Excess Soil Management Policy Framework follows two years of stakeholder and ministry discussions.

As it stands, however, how excess excavated soil is handled and either stored for reuse or disposed of has become a major headache for Ontario's environment ministry. Some haulage operators have simply found a friendly farmer or landowner and dumped loads without either testing the soil for contaminants or ensuring the site won't pollute local waterways. In using unlicensed, unregulated sites, haulers can save up to \$6,000 a load.

In the absence of clear regulations and enforcement, brownfield standards are being applied to construction sites, which many critics say is a heavy-handed approach and misdirected.

The new rules puts the onus on the generator of the excess soil – the contractors and ultimately the owners – to ensure the dirt is categorized according to a set table of standards for contaminants and treated accordingly. The more polluted the soil the more stringent the handling, storage and disposal regimes. Lesser polluted soil can be treated and then stored with

clean fill at an interim site ready for reuse, while unuseable soil will be disposed off according to the rules at licensed facilities.

General contractors can't just sign off with a haulage contractor and assume the soil is being properly disposed off. There will have to be a manifest in place certifying the type of soil and that it is being shipped to a licensed site approved for that classification and a chain of documentation assuring the plan was executed as written, note stakeholders.

The regulations will also create the position of "qualified person" who will ensure compliance at each juncture of the process.

Andy Manahan, executive director of the Residential and Civil Construction Alliance of Ontario (RCCAO), said there are two main welcome changes to the issue of how excess soil is handled, one being the multi-ministry approach which will allow for better co-ordination as the regulations take effect and two, pushing to see excess soil as a resource which can be reused efficiently and only treated as waste if deemed necessary.

Given the scope of the shift, he said, the RCCAO is pushing for the creation of a steering committee of all stakeholders including ministry representatives to devise an orderly implementation and creation of key standards such as defining a "qualified person's" certification and role.

Having the ministries such as Municipal Affairs and Housing, Transportation and Natural Resources on board for discussions is invaluable, he said, because there is a lot of crossover.

The transportation ministry, for example, not only generates excavated soil but may be able to provide locations for storage and reuse along highway corridors and at bridge abutments and in creating berms.

Municipal affairs can offer guidance and educational materials to support municipalities who will be responsible for regulation of sites.

He said RCCAO also looked at how other jurisdictions handle excess excavated soil in the U.K., Quebec, the Netherlands and some U.S. states.

In Britain, for example, he said the industry-led, volunteer group, Contaminated Land: Applications in Real Environment (CL:AIRE), is an independent not-for-profit organization which promotes regeneration of contaminated land.

Among the best practices promoted, it allows for non contaminated land to be reused without a permit and allows users to determine if the soil is clean fill.

"During the build up to the London Olympics in 2012 CL:AIRE created a website for a soil matching service where they could connect people looking for soil with those who had soil," said Manahan.

"At one point two-thirds of the people on the site were looking for soil."

An RCCAO effort to create a similar site in Ontario hasn't been so successful, he said, mostly because of the differences in demand and geography.

On the practical side, definitions could be problematic, going forward, says Tidball, noting while there is still discussion around what excess soil is, he's not too concerned.

"Though there could be issues around the margins," he said.

"In downtown Toronto you dig through soil and then you have soft shale and then it gets harder and then you get to rock. The issues though are what's the level of contamination and is there any clean fill there?"

Toronto is especially challenged because there is so much contamination from historic industrial usage and it all adds cost. As such the change is needed because there's no agreement on what needs to be done to categorize a site's soil.

"There's a vast array or range of what people will send," Tidball said.

"Essentially, they say, it is clean soil please take it. They send everything from a simple lab report right up to a full scale Phase One or Phase Two analysis."

For the bigger players it's not a huge jump because they have already backed the concept into their process and have a "qualified person" on board.

Still, he said, you can't guarantee anything.

"I have a client who hired a consultant that did a full Phase Two investigation of the site, did a reasonable amount of work and then the Ministry of Environment came along and tested for contaminants they hadn't tested for because they hadn't expected it. Now everyone's asking who is responsible for the soil."