



RESIDENTIAL AND
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RCCAO / SOiil RESPONSE TO THE PROPOSED EXCESS SOIL MANAGEMENT POLICY FRAMEWORK

EBR #012-6065



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RCCAO / SOiil

25 North Rivermede Rd., Unit 13, Vaughan, ON L4K 5V4

EXECUTIVE SUMMARY

Improvements to the way that “clean” or excess construction soils are managed in Ontario will require coordinated efforts by many stakeholders. After a two-year consultation and review process, we are most supportive of the direction and actions which are proposed in the **Excess Soil Management Policy Framework**, released on January 26, 2016. This new direction will require more up-front planning and multi-ministry support, but will result in a range of economic and environmental benefits.

The framework document has identified what is required to successfully address and implement a responsible and workable process for beneficially reusing excess soils in Ontario. The Residential and Civil Construction Alliance of Ontario (RCCAO) and Supporting Ontario Infrastructure Investments and Lands (SOiIL), in consideration of the framework’s 21 proposed action items, recommends that there be an immediate focus on the following activities:

- Establish, as quickly as possible, the proposed multi-ministry Excess Soil Stakeholder and Engagement Group (ESSEG) and prepare a prioritized implementation action plan complete with a timetable and identification of accountable parties.
- Set up a smaller, dedicated oversight group to execute the ESSEG implementation plan, including municipal / industry outreach and training associated with the 2014 MOECC Best Management Practices Guide.
- Incorporate excess soil management best practices on a fast-track basis using proven approaches from other jurisdictions, with the objective of establishing a smart regulatory regime that will become market driven and self-sustaining.
- Form a MOECC Qualified Persons working group, including existing QP practitioners and other relevant stakeholders, to finalize training and excess soil technical standards in support of existing BMPs.

These key activities would underpin Ontario’s new system to implement existing Best Management Practices. Adoption of these key activities would facilitate early coordination capability for identifying new technologies and processes to advance

BMPs. In addition, adoption of BMPs would further support climate change initiatives associated with improved excess soil handling practices (e.g., by reducing overall hauling distances).

INTRODUCTION

RCCAO and SOiIL are pleased to provide requested comments and feedback on the above EBR review application posted January 26, 2016 (Reference EBR #012-6065). RCCAO has participated as an active stakeholder with the Ontario MOECC over many years with respect to a responsible and effective excess soil management process in Ontario.

While the issue of “clean dirt” may appear to be a rather simple, low-technology issue, the reality is that it is a very complex subject with a lot of different moving pieces. This is particularly true given the high profile local public concerns and media attention that can be involved and the existing regulatory framework that is not progressive in itself to facilitate the responsible beneficial reuse of excess soils.

RCCAO has focused efforts to improve the handling of excess soils through a number of initiatives, including the following:

- Actively participating in the development of the MOECC’s “Management of Excess Soil – A Guide for Best Management Practices” (BMP Guide), released in January 2014.
- Hosting roundtables to bring together a cross-section of construction, engineering, municipal, provincial and other representatives to discuss issues surrounding BMP implementation.
- Hosting a “Soils Room” at the 2015 OGRA/ROMA annual conference.
- Forming an Excess Construction Soils Steering Committee, with representation from across the construction sector, including a municipally focused association, to respond to MOECC consultations and to provide advice on how to advance the effective handling and beneficial reuse of soils.
- Releasing “Best Management Practices for Handling Excess Construction Soils” in November 2012, based on the U.K. CL:AIRE model (Contaminated Land: Applications in Real Environments).

- Commissioning research reports, with two at the request of the Ministry of the Environment: Quantification of Excess Construction Soils in Ontario (October 2012) and Survey of Municipal Soil By-Laws (March 2013).
- Travelling to London, England in September 2013 to attend CL:AIRE's annual conference on Sustainable Land Management.
- Launching an electronic soil-matching service in late 2013 under the auspices of SOiL to encourage beneficial reuse of excess soils based on the anticipated release of MOECC's BMP Guide.
- Working with other jurisdictions, but in particular CL:AIRE which uses its very successful Definition of Waste: Development Industry Code of Practice (COP) approach. This engagement has provided insight and knowledge on how to establish a new, joint "Smart Regulation" regime in Ontario.
- Engaging with senior MOECC staff and policy representatives on needs and requirements in Ontario to advance BMP implementation.
- Continuing engagement with the municipal sector through Ministry of Municipal Affairs and Housing (MMAH), the Association of Municipalities of Ontario (AMO), as well as direct engagement with concerned municipalities on development of consistent local site alteration by-laws and procurement processes supporting BMP uptake and beneficial reuse of soil.
- Speaking at conferences and participating with many organizations (e.g., ONEIA, OSPE, GTSWCA, OSSGA, OSRTF and others) to promote outreach, education and pilot studies.

The preceding is a partial list which demonstrates the breadth of engagement activities that RCCAO has been involved in pertaining to the improved handling of excess soils in Ontario. RCCAO accordingly is able to speak with knowledge and credibility on what needs to be put in place to advance the key issues surrounding a better way to get things done.

The proposed framework document identifies a path forward and guiding principles for policy and program development. RCCAO takes no exception to the majority of proposals given the number of stakeholder consultations and information exchanges that have taken place over the years. For the most part, the document covers all the policy needs touching on beneficial reuse of excess

soils. The critical issues involved concern actions and priorities necessary to implement recommendations in a timely manner.

MOECC released the BMP Guide in January 2014 and this document represents the preferred approach and model for dealing with the management of excess soils in Ontario. MOECC conducts field assessment surveys to monitor BMP usage. Accordingly, the province, through its multi-ministry approach, should put in place an implementation plan for BMP outreach to the construction industry and to the municipal sector to promote adoption of existing BMP requirements within site alteration by-laws and local procurement practices. This initiative should not be further delayed awaiting proposed final framework details.

The following feedback will focus primarily on implementation and proposed action plans in terms of priorities and processes. General comments will reinforce the observation that stronger direction (leadership) and clear, enforceable rules (accepted practices) must be put in place with clear roles and responsibilities (accountability) for those involved in the different components. It is noted that the framework report's reference sections and numbering nomenclature make commenting problematic in certain areas.

GENERAL COMMENTS

RCCAO is pleased to provide the following general comments by specific section in the proposed framework:

2.0 Need for a Revised Policy Framework

(2.1) The nine policy areas identified on page 6 are all legitimate and have been identified in the past by stakeholders. One further consideration contained within the summarized findings is the need for policy direction for integrating soil recycling activities to further support beneficial reuse of excess soils.

(2.2) The need to incorporate approaches from other leading jurisdictions is a key finding. Adopting measures used by CL:AIRE in the U.K. provides a proven

mechanism to move to a “Smart Regulation” regime whereby regulators and industry work cooperatively to advance excess soils handling approaches in a cost-effective manner that would have a market-based focus. Within this approach is the need to clarify the roles of excess soils-handling participants and provide necessary, ongoing training and certification regarding soil categorization standards, tracking and beneficial reuse. This is key to making things work and a change from historic soil handling roles tied to waste management and brownfield redevelopment soil-handling approaches.

3.0 Policy Framework Approach

The policy framework approach as outlined makes sense. The biggest challenge will be creating the new “policy tools” that will involve regulatory changes with reference to Regulation 347, O.Reg. 153/04 and provincial standards (OPSS180/1010). For Source Sites, the creation of a new regulation will require significant time to develop and obtain legislative approval. It would be most unfortunate if we did not proceed with BMP implementation while waiting for a new regulation. RCCAO strongly believes that implementation will be best achieved through the establishment of the ESSEG. We further recommend that the primary focus be on BMP Guide adoption across Ontario.

4.0 Goals and Principles

The proposed framework document has two stated goals:

- (1) “Protect human health and the environment from inappropriate relocation of *excess soil*”
- (2) “Enhance opportunities for the *beneficial reuse of excess soil*”

It is strongly suggested that a third goal be introduced to support Ontario’s climate change goals and opportunities tied to an improved excess soils handling process. There are limited bona fide opportunities to create ready-made legitimate, measurable programs that can demonstrate reductions in greenhouse

gas (GHG) emissions. It is suggested that a third goal should be recognized as follows:

- (3) Reduction of GHG emissions through improved management of excess soils, including the beneficial reuse of soils wherever possible.

5.0 Policy Needs and Actions

This section makes reference to the 21 actions to be taken under six heading categories. For each category listed, RCCAO provides the following comments and recommendations as summarized below:

- (1) Source Sites – 4 actions – 2 commented recommendations
- (2) Interim Sites – 2 actions – 1 commented general recommendation
- (3) Receiving Sites – 5 actions – 1 commented recommendation
- (4) Technical Standards – 3 actions – 1 commented general recommendation
- (5) Planning for Re-use Opportunities – 3 actions – 1 general recommendation
- (6) Integration and Implementation – 4 actions – 2 important recommendations

For Source Sites, reference is made to partner ministries developing a new regulation within the Environmental Protection Act. This proposed regulation would require a Qualified Person (QP) to certify that an excess soil management plan (the Plan) was prepared.

Recommendation 1: The Plan should include references to undertaking the pursuit of local soil-matching opportunities as part of planning and include clear criteria to define “larger sites.”

Recommendation 2: The new regulation should clearly define a QP as an individual, familiar with and trained in all aspects of excess soil management. This will require additional “niche” training and competency determination beyond current O.Reg. 153/04 requirements. As used in other jurisdictions, an outcomes-based approach for training and certifying QPs in implementing soil BMP requirements should be the goal. A dedicated training, certification solution is the fastest and most effective approach, not just adjusting existing regulatory

requirements designed for application to Record of Site Condition (RSC) completion situations.

For Interim Sites, the framework references new EPA regulations clarifying when waste Environmental Compliance Approvals (ECA) apply to excess soil processing. This regulatory approval mechanism goes against fundamental current recycling and objectives to beneficially reuse excess soils as a resource. To date, only eight ECA sites for soil processing have been approved in Ontario in 13 years. A timelier, effective approval mechanism is clearly required for interim sites and the creation of “soil hubs” designed for smaller infrastructure and development projects to encourage local beneficial reuse of excess soils. A network of interim soil storage sites would also reduce GHG impacts and shorten haulage distances substantially. Local regulatory amendments would be required including site alteration by-law standards to encourage the creation of interim storage sites.

For Receiving Sites, the framework envisions a number of policy actions and legislative amendments impacting municipalities and Conservation Authorities. Outreach and training across the province, particularly in the mechanics of using the existing BMP Guide, is essential. It would be preferable to adopt a model excess soil site alteration by-law which makes reference to the BMP Guide as this would avoid the current problem of each municipality developing its own requirements. The development of training support materials should include the creation of tailored BMPs for unique situations where more specific requirements are involved, such as large earth-moving opportunities.

For Technical Standards, the framework proposes policy actions as well as developing approaches and standards for beneficial re-use of excess soils. As stated these standards should not solely be based on existing O.Reg. 153/04 approaches and Tables. Soil reuse standards should be risk-based and tied to the “Suitable for Use” test for relocated soil based on current and future land use. Appropriate rapid testing and sampling protocols in the field should be developed that incorporate new technology and big data availability.

For Planning for Re-Use Opportunities, the framework recommends policies whereby municipalities recognize opportunities to better plan the reuse of

excess soils through official plan, master planning. This policy is part of municipal outreach requirements previously referenced and having an emphasis on longer range, front end planning as part of local approvals.

For Integration and Implementation, the framework recommends policy actions primarily involving needed amendments to current regulations. This is to be accomplished by creating a new MOECC stakeholder group, the Excess Soil Stakeholder and Engagement Group (ESSEG), as a joint government, industry stakeholder working group to oversee and coordinate planned sub-working groups involved in identified policy development work. While supportive of the need for a multi-ministry type of steering group the planned three to four times a year meeting schedule is not frequent enough, at least in the early stages, to move forward in a timely manner on so many policy items. There is a need to create a dedicated entity solely responsible for developing the detailed action plan, timetable, deliverables and needed accountability. As referenced in this policy section, a joint stakeholder-MOECC approach, similar to the CL:AIRE model, is needed. The creation of such an entity should be pursued as quickly as possible to provide needed organization and priority-setting for the 21 proposed actions. The creation of a market-driven, eventually self-sustaining entity similar to CL:AIRE represents an achievable target, pending ESSEG direction.

6.0 Priorities and Timeline

The identified 21 actions outlined in the proposed framework are to be prioritized based of consultation and feedback. The majority of action items are identified as currently underway or short term (2016). If this is the intention as stated, a large number of activities will have to be clearly articulated and put into a plan to achieve this aggressive timetable. This will require dedicated resources and constant communication given the high potential for overlap. Ongoing external communication will be required to keep different projects and activities on point and delivered on time.

The key priorities and front-end timelines critical to achieving all of the other action items are as follows:

- Timely creation of the ESSEG multi-ministry working or steering group and a referenced entity to deliver the action plan on a coordinated basis.
- Municipal and industry outreach and training on implementing BMPs and promoting beneficial soil reuse locally.
- Proper training of QPs in the development of soil management plans as part of the front-end Source Site planning and approval process for projects.
- MOECC commitment and support for pursuing and developing market-based, long term “Smart Regulation” approaches similar to the CL:AIRE model in the U.K. Creation of such an entity would provide the needed mechanism to coordinate and implement all the identified framework policy recommendations.

SPECIFIC COMMENTS

RCCAO commends MOECC for taking a leadership role in reaching out to stakeholders in order to identify all of the various policy issues involved in the proper and effective management of excess soils in Ontario. As stated by the MOECC at the very beginning of the Excess Soils Engagement session on March 2, 2016, the No. 1 suggestion by stakeholders was “just get on with it.” After so many years of stakeholder consultation, all of the major issues have been identified. Key solutions, such as proper implementation of MOECC BMPs, unfortunately have not been aggressively promoted.

In the true spirit of “getting on with it”, RCCAO strongly encourages MOECC to move on the creation of an excess soils business-type identity in Ontario. As outlined in the framework, the creation of a CL:AIRE-like entity will provide the necessary hands on discipline to implement the major recommendations in the framework. Equally as important, the endorsement and creation of such an entity allows the MOECC to proceed with piloting and creating a “Smart Regulation” approach for developing and delivering on an ongoing basis a state-of-the-art system for industry engagement in responsibly conducting business on


a level playing field. This approach also has the benefit of providing a useful tool to incorporate climate change type programs, in a positive and consultative manner, to external stakeholders and industry.

Should you wish to discuss any of these EBR framework comments and suggestions in further detail please do not hesitate to contact RCCAO or SOiIL directly.



Andy Manahan
Executive Director
RCCAO

905 760-7777
manahan@rccao.com



Alan Durand
Project Manager
SOiIL

647 888-3797
adurand1590@rogers.com