



June 17, 2019

Sanjay Coelho
Environmental Policy Branch
Ministry of the Environment, Conservation and Parks
40 St Clair Avenue West
Floor 10
Toronto, ON

By e-mail to Sanjay.Coelho@ontario.ca and through ERO website

Comments on Excess soil regulatory proposal - ERO 013-5000

The Ontario Soil Regulation Task Force (OSRTF) has been involved with the issue of excess soil since its formation in 2015 by citizens groups that had been dealing since 2010 with the problems of the dumping of excess soil in inappropriate places. It has helped over 20 citizen groups from Clarington, to Ramara, to Chatsworth, to Grimsby in an arc over the golden horseshoe. Its leaders have taken several professional training sessions on soil contamination. Its members were instrumental in court cases and a federal legislative amendment that closed the federal aerodrome loopholes that were used at several sites. OSRTF has produced a peer reviewed model municipal site alteration by-law and presented to many town councils to improve their by-laws and is involved in OMB and the Normal Farm Practices Protection Board hearings in support of those by-laws. It was OSRTF members who pressed their MPP to initiate the review that has ultimately led to these proposed regulations in EBR 013-2774. OSRTF has been involved with MECP in the policy review and the development of the regulations through the regular meetings of the Excess Soil Engagement Group.

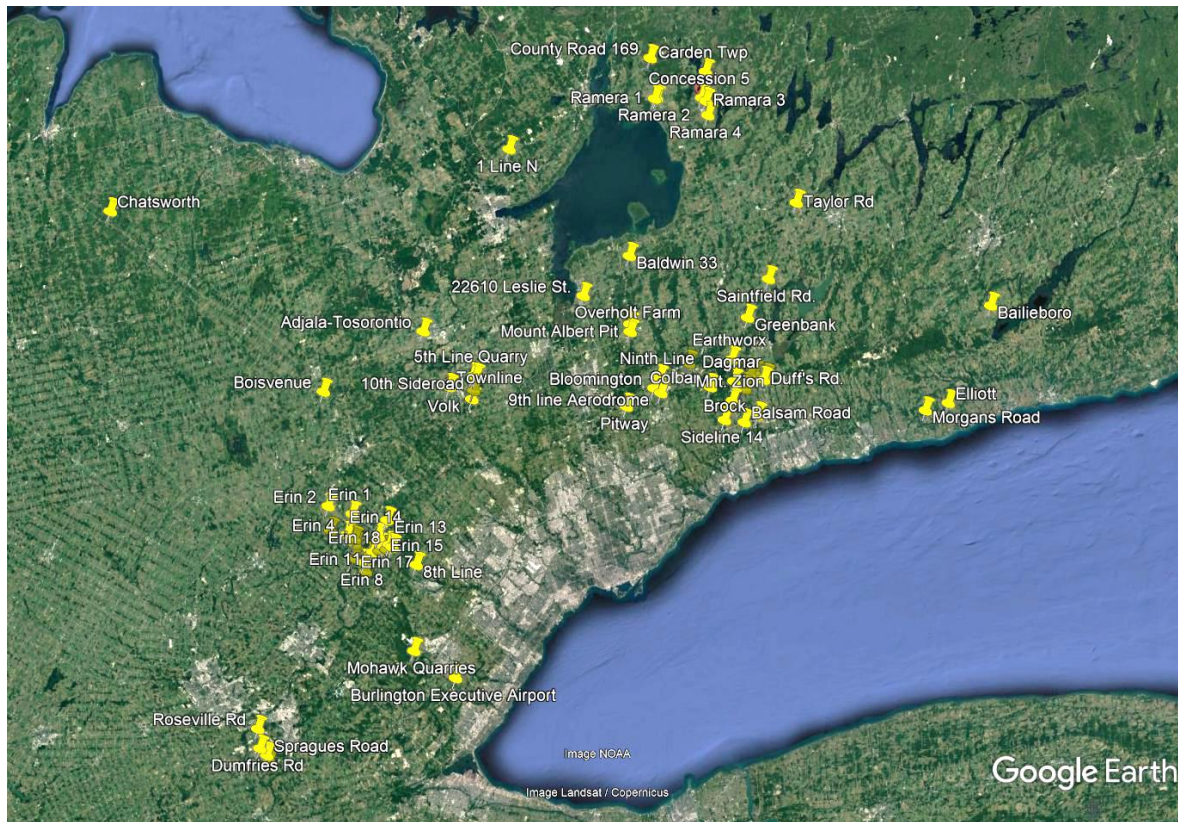
The next page maps 72 soil receive sites that OSRTF members have located by following trucks. The clustering of sites is only because of a diligent member in that area. We suspect that there must be many more to be able to get rid of 25 million cubic meters of soil every year.

OSRTF appreciates all the effort, time, and care that have gone into the process that led to these regulations and is generally very pleased with the results. The regulations will be a very large improvement and in our opinion achieve a balance between protection of the environment and human health and economic development and re-development. **However, the neighbours and municipalities of the receiving sites should not have to bear the costs of cheap development of the source sites.**

Our comments on the regulatory package are spread over two additional documents also submitted.

- OSRTF Comments on Soil Rules - June 2019 ERO 013-5000.PDF
- OSRTF Comments Excess Soil Reg-June 2019 ERO 013-5000.PDF

Some of the content of this Regulatory Proposal 013-5000 is the same as the content of the regulatory proposal of a year ago. Some of our comments from last year are repeated here.



72 Fill Sites Located by OSRTF Members

Soil Definition

The regulation's definition is too limited and is problematic when aggregate is excluded but aggregate is defined in the ARA as including "...sand, clay, earth...". Suggested wordings are provided in the comments.

Waste Designation

OSRTF agrees with a default waste designation. When the operators pay to dispose of the material it is a waste. The comments express our concerns in several areas of how the waste designation can be removed.

We are most concerned with the Table [4. (1)] that allows an instrument with less stringent requirements on soil quality to set the criteria. Municipalities or other bodies with less expertise than MOECC must not be allowed to disregard the soil standards that have been so carefully set. This is especially troubling if it would allow aggregate pits under a revised Aggregate Resources Act to rehabilitate by filling from below water table to original grade with Table 3 soil.

Assessment of Past Uses

The current use of an area as parkland, residential, or institutional is not sufficient for it to be exempt from an assessment of past uses. We point as an example to the excavation of Exhibition Place for a hotel that encountered contamination from land filling that had occurred many decades before. Agricultural use is also not universally benign. Intensively fertilized or irrigated land can build up fertilizers, pesticides or salts to contamination levels.

Beneficial Use

The overview document Ontario's Excess Soil Management Policy Framework and Proposed Regulation makes two statements that OSRTF agrees with wholeheartedly.

"if excess soil is being reused for a beneficial purpose and the quality of the soil is appropriate for the reuse site, it would not be considered waste."

"If excess soil is being deposited at a site that is used primarily for depositing excess soil, that soil would be considered a waste and associated Environmental Compliance Approvals (ECAs) would be required."

However, this is not carried into all aspects of the regulations. We believe that section 5. (1) Exemption from designation, if reuse site not governed by instrument must also apply as well to sites with instruments if the intentions of the policy are to be upheld. Inexperienced or poor municipalities can be bullied or deceived into receiving waste.

Is filling an old gravel pit with millions of loads over decades to create a pasture at the original grade a beneficial use creating pasture or is it primarily for depositing excess soil? Is the distinction in the regulation defensible in court? We would hope that such a site would be deemed a waste site and require an ECA protective of the groundwater and surrounding environment and residents.

Registry

The registry would be very important to our members and the public. The registry should be available to the public to verify that the soil dumping in their neighbourhood is covered by these regulations. Prospective buyers of a property should be able to see if it has non-native soil. OSRTF is pleased with this latest proposal for the contents and use of the registry, but we do believe that the transportation records should include an indication of soil quality and the registry number.

Source Responsibility

The Framework placed the responsibility on the source site for the soil until it reached its final destination. In the regulations the ultimate responsibility is the project manager, who may move on or dissolve before the impact of irresponsible actions are evident. The ultimate responsibility must be on the owner of the source property who would then become cognisant of that responsibility when he signs a declaration in the plan that acknowledges ultimate responsibility for the excess soil throughout its movements.

Environmentally Sensitive Area

The definition of ESA does not include areas of high aquifer vulnerability or well-head protection areas. We believe that the precautionary principle must be applied here to protect human health and property values because we have seen supposedly clean soil turn out to be contaminated when tested at the receiving site and have examples of contaminants finding their way to the groundwater. The comments argue that definition must be expanded to include areas of high aquifer vulnerability and well-head protection areas as designated in provincial or municipal plans and thus limit any soil deposited in those areas to Table 1.

Soil Processing Sites

The regulation and soil rules assume that soil from processing facilities has been adequately remediated according to their Environment Compliance Approvals. We do not believe this to be a correct assumption given the non-homogeneity of contamination in soil, the very small amount that is actually tested, the ineffectiveness of remediation on all contaminants, and the variation in the ECAs that are granted to different sites. Most of the examples we have of receive sites with contamination (Earthworx, Greenbank, Volk Airfield, Taylor Road, Bailieboro, Pickering Sideroad) are soils from soil remediation facilities. Serious inadequacies must be addressed in these ECAs concerning anything from the sampling frequency of outgoing processed or remediated soils, to requirements for reporting when exceedances are found after export to the receiving site, to mandatory operational changes when repeated exceedances are discovered at the receiving site. There also needs to be clear language in ECAs that holds facilities accountable when their exported soils are found to have exceedances at receiving sites. Because of the uncertainty and the real potential for serious contamination of these soils, even if labeled as Table 1, have no place in environmentally sensitive areas. The comments contain specific recommendations.

Guidance

Following the approval of these regulations support and guidance will be critical for the implementation. The registry has to be designed and implemented - tracking systems promoted - Qualified Persons trained – outreach to excavation and trucking businesses, etc. More importantly, municipalities, being responsible for most of the receiving site instruments, will need guidance through a number of informational campaigns. They could be assisted by an updated Best Management Practices document, a model soil management plan, a model site-alteration by-law, and guidance on protecting their citizens and environment with more stringent conditions than given in the soil regulations.

Enforcement

During the past year media coverage has made it public that there is a lot of illegal dumping and some of it is by organized crime. Strong enforcement with the force of the provincial government will be needed to reduce it. Municipal by-law officers just do not have the clout that is necessary. MECP will have to provide strong enforcement of these soil regulations to level the playing field for the reputable operators.

Please contact OSRTF at our usual contact addresses for any clarification, supporting information, or discussion.

OSRTF thanks the team that has managed this process and produced these regulatory proposals.

Best regards,



Ian McLaurin and Carmela Marshall
ian.mclaurin@osrtf.ca carmela_marshall@yahoo.ca
Ontario Soil Regulation Task Force
96 Chalk Lake Road, Port Perry, Ontario, L9L 1V9
www.osrtf.ca