



**ONTARIO SOIL
REGULATION
TASK FORCE**

November 27, 2019

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Submitted through ERO

Comments on ERO 019-0774 Bill 132, Better for People, Smarter for Business Act, 2019

These comments for ERO 019-0774 are for those aspects of Bill 132, Better for People, Smarter for Business Act, 2019 that relate to the dumping of excess soil. 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, including exhausted aggregate pits.

OSRTF speaks for 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 MECP's proposed regulations¹ for the management of excess construction soil.

The Concern over Excess Soil

The GTA is experiencing some of the most rapid growth in North America with highway expansions, new subway projects, and condo developments. More soil is being excavated than ever before. Just one excavation project could produce 150,000 truckloads of dirt to be dumped somewhere. Some of it may be virgin soil but in 2001 the Brownfield Act reduced the environmental liabilities for the redevelopment of polluted land. The Brownfield Regulations (O. Reg. 153/04) specify the degree of soil contamination permissible for the proposed new use of the brownfield. Any soil contaminated above this limit is dug out and disposed of. The soil may be contaminated with petroleum, heavy metals, or other toxins. The regulation does not require the excavated soil to be tracked to a suitable disposition. Some of this contaminated soil is added to the stream of dirt leaving the cities. The GTA produces 25 million cubic

¹ Consultation Draft: Ontario Regulation to be Made under the Environmental Protection Act: On-Site and Excess Soil Management.

meters² of excess dirt per year. That's two and half million truckloads heading out looking for a place to dump. Enough soil to build a hill almost 300 meters high every year or, at one metre deep, covers 2500 hectares each year. It is spread over agricultural land or into exhausted gravel pits and quarries. At a single commercial fill dump site there has been a truck every minute of the workday. The neighbours of such a site, who had expected life in a quiet rural surrounding, have their quality of life reduced through the heavy truck traffic, dust, and noise and the potential of environmental contamination of their air and water.

The high cost to an excavating company of properly dealing with contaminated soil from a former industrial site creates a very strong incentive to pass it off as clean fill. The legal firm of Loopstra Nixon quotes³ "...every load of hazardous soil dumped illegally is worth as much as \$6000 in saved tipping fees." There are several examples of contaminated soil being dumped in inappropriate locations.

- Soil brought in to reform an old gravel pit in Kawartha to agricultural use was tested by the Ministry of the Environment to be contaminated and unsuitable for agricultural use.
- A former gravel pit neighbouring the Natural Core Area of the Oak Ridges Moraine has, amongst other exceedances, free cyanide at 3000 times the limit despite the fact that the reports from the source sites indicated that the soil had been independently assessed to be within the limits.
- Remediated soil brought in to a sheep farm near Bailieboro turned out to be toxic to sheep.
- After accepting a few loads of clean fill for a parking pad, a homeowner in rural Pickering found that it had contaminated his water well with a carcinogen. The homeowner had obtained the proper permits from the municipality and the source sites had been verified to be clean.
- One site of over a million cubic meters of soil in the Greenbelt's Protected Countryside was found, when tested, to have contaminants of potential concern, with some concentrations not protective of the soil to groundwater pathway. The site had been well-monitored with professional oversight by a reputable third party, a public liaison committee, published source site reports, a scientific monitoring study, the full attention of the municipality, and a cooperative owner. Several had said it was a model of how commercial fill sites are to be operated. However, borehole testing found 22 of 45 samples over the limits for contamination. The town is seeking 100 million dollars from the operator to clean up the site.

The volumes and health risks of excess soil are well documented.

Comments on proposed revisions to ARA

Having attended several meetings with OSSGA⁴ and with the MOECC's Excess Soil Engagement Group we are aware of the desire of the aggregate industry to fill exhausted pits with excess construction soil and to dispense with the guideline⁵ that limits the quality of the imported fill to the cleanest classification – Table 1.

² 2017 UPDATE:QUANTIFICATION of Excess Construction Soils in Ontario; Residential and Civil Construction Alliance of Ontario; April 2017

³ Charles M. Loopstra, Q.C.; LOOPSTRA NIXON LLP; Toronto, Ontario at International Municipal Lawyers Association Conference "IMLA in Canada 2014"

⁴ Ontario Stone, Sand & Gravel Association

⁵ MNR Policy No. A.R. 6.00.03 Importation of Inert Fill for the Purpose of Rehabilitation, April 14, 2008

Throughout the proposed revisions in Bill 132 to the Aggregate Resources Act (ARA) there are several mentions of depth of extraction.

- *“...any restriction contained in the zoning by-law with respect to the depth of extraction at the site is inoperative.”*
- *“...to lower the depth of extraction from above the water table to below the water table...”*
- *and “...defining ‘below the water table’ “.*

It appears that it is the intention of the government to allow more pits to excavate below the water table. It is always a concern when the groundwater aquifer is exposed giving an open pathway for contaminants from a spill or runoff direct to the groundwater that supplies the neighbours’ drinking water. If the pit is dewatered it can dry up surrounding wells.

We do note that the Minister, in Section 12 of the ARA, “...shall have regard to,... (e) any possible effects on ground and surface water resources including on drinking water sources...” in issuing a licence, but we wonder if the same regard would be given for a site plan amendment. It is especially troubling that the proposed revisions to the ARA open the door for site plans to be amended without government oversight to protect the local population.

“...the holder of an aggregate permit may make such amendments to the site plan as may be prescribed without the approval of the Minister if the amendments are prepared and submitted to the Minister in accordance with the regulations...”

*Bill 132 proposes an amendment striking out “minor” in
67 (1) The Lieutenant Governor in Council may make regulations,
...(e) governing site plans including,
...(iii) ~~minor~~ amendments that may be made without the Minister’s approval;*

We strongly oppose this direction moving towards extraction below the water table and reducing the oversight of site plan amendments.

MECP has been developing regulations for the management of excess soil that cover the quality of the excavated soil and its transportation to the site of its disposal. However, the draft soil regulations state that the oversight from the provincial environment department would end when the soil is dumped at a receiving site governed by the ARA. Therefore, the ARA regulations for pit rehabilitation are critical.

OSRTF strongly opposes the dumping of excess soil in exhausted pits because of the danger posed to the groundwater resources that the surrounding public relies on for their drinking water. Not only can contaminated drinking water affect health, a water well test report listing a contaminant drastically lowers property value. One may argue that if the soil used to rehabilitate a pit has been tested at the source to be suitable for the site, there should not be a concern about filling the pit with excess construction soil. We dispute this on the following grounds.

Short pathway to groundwater: The rationale document⁶ that MECP provided with its draft regulations makes it clear that protection of the groundwater is an important component of the determination of

⁶ Rationale Document for Development of Excess Soil Standards - Draft For Public Consultation; April, 2018; Ministry of the Environment and Climate Change

safe levels of contaminants in soil. The MECP soil standards do not even contemplate the dumping of soil into the water as there would be a direct pathway for contaminants to enter the groundwater. As many pits are excavated in porous sand and gravel to just above the water table the pathway from the contaminated soil to the groundwater is very short.

Unreliable soil tests: Of all the soil disposal sites that OSRTF has been able to get reports of the in-situ soil sampling tests on the deposited soil, all have found contamination above Ministry of the Environment limits, even though the soil quality reports from the source site have been acceptable. Because the huge profits that can be made, unscrupulous⁷ sampling could be responsible for this but even the most responsible sampling and testing can not catch all contamination. Only a tiny fraction of the soil is actually sampled – perhaps 1 thimbleful out of 50 truckloads.

Changing standards: In the last few years the standards set by the provincial ministry have gone through three iterations as new science has emerged. Contaminant concentrations that were acceptable in the 2004 version of the “Soil, Ground Water and Sediment Standards, for Use under Part XV.1 of the Environmental Protection Act” are, for several chemicals, not acceptable now.

The application of the precautionary principle would conclude that exhausted pits and quarries are not a safe place to dispose of excess soil but the ARA revisions in Bill 132 would make it easier to do so.

Comments on Environmental Protection Act changing to administrative penalties

Bill 132 proposes that the Environmental Protection Act be amended by striking out “environmental penalty” and substituting “administrative penalty” and specifying new limits on penalties.

Subject to subsection (8), the total amount of the administrative penalty shall not exceed \$200,000 for each contravention.

(8) The total amount of the administrative penalty referred to in subsection (7) may be increased by an amount equal to the amount of the monetary benefit acquired by or that accrued to the person as a result of the contravention.

For a large commercial fill operation depositing loads from hundreds of trucks a day the \$200,000 maximum fine would amount to the profit from one month of operation. Contravening the regulations for the handling of excess soil would become a minor cost of business for a commercial fill operation and not provide an incentive to operate the site to protect the environment and human health. Although the proposed revision would allow for the fine to be increased to “equal to the amount of the monetary benefit acquired”, we don’t believe that an “Open for Business” government would do so. The penalty should be related to the impact of the contravention on the environment and the impact of that environmental degradation on the surrounding residents. A contaminated groundwater aquifer is a huge loss to the residents and property owners who had relied on it to provide safe drinking water for their wells.

⁷ Organized crime has been linked to excess soil dumping in news reports in Quebec and in Ontario

Penalties must be set to be relative to the damage done by the contravention of the environmental regulation and not limited to the extra profit made by the business.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ian McLaurin". The signature is fluid and cursive, with the first name "Ian" being more prominent and the last name "McLaurin" following in a similar style.

Ian McLaurin
Chair, Ontario Soil Regulation Task Force

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