



Ontario
Home Builders'
Association

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Ministry of the Environment and Climate Change
135 St Clair Ave West, 6th Floor
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Re: EBR Application for Review: Need for Excess Soil Management Policy

About the Ontario Home Builders' Association (OHBA)

The Ontario Home Builders' Association is the voice of the new housing, land development and professional renovation industry in Ontario. OHBA represents over 4,000 member companies, organized through a network of 31 local associations across the province. Our membership includes home builders, commercial and residential land developers, renovators, manufacturers, suppliers, planners, architects, engineers and lawyers.

Introduction

The Ministry of the Environment and Climate Change (MOECC) received an EBR review application in November 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 sites is safe". The Ministry accepted to undertake a review that would identify key elements of soil management policy, if any, that need to be updated. OHBA is pleased to be given an opportunity to present our comments as part of the input towards the EBR Review on the Need for Excess Soil Management Policy and also appreciated the opportunity to attend a listening session with the MOECC on November 6, 2014.

OHBA notes that the broader provincial land-use planning policy framework supports the ongoing shift towards higher levels of intensification and that the resulting land development patterns and infrastructure to support intensification will produce increasing quantities of excess soil. OHBA notes that in evaluating the previous regulatory packages and standards for assessing soils, OHBA had consistently expressed concerns that the expanding and more stringent regulatory framework would undermine the broader provincial objectives of intensification and sustainable development. OHBA has concerns with respect to any additional risk-based public policy shifts beyond the current standards and recommends that the current tables should remain in force.

Ministry of the Environment and Climate Change Questions

1. What do you think should be the vision for the sustainable management of excess soil in Ontario?

Public policy should provide a clear framework for how excess soils are tested for table 1, 2 and 3 and how soils should be taken from the generator site to the receiver site.

- What principles do you believe should be used to guide the management of excess soil in Ontario?

There should be a broader recognition that excess soil is an asset, and that processes should be in place to facilitate the movement of soil from the producer/generator to the user in a transparent and simple manner that accounts for variability in the background chemistry of soil. The principle of conservation should be established to guide excess soil management including the intelligent reuse of soil in a manner that does not adversely affect the environment in its re-use (i.e., meets the test of being suitable for the intended use of the property and that contamination is not being moved from one location to another). OHBA suggests that a prescriptive “zero-risk” approach to moving excess soil is far too conservative and detrimental to sustainable development given the restrictive and narrow definitions of criteria and risk that are currently practiced in Ontario.

- What do you believe are the ideal performance measures associated with sustainable excess soil management?

OHBA suggests that an evaluation of the potential for adverse impacts to the environment using a risk-based approach (or MOECC generic guidelines) to determine “acceptable risk” should be at the discretion of a Qualified Person (QP). A prescriptive approach (i.e. all parameters in all samples meet all criteria/exposure scenarios all the time until the end of time) is not a practical means of assessing performance. The Ministry should not establish a new more restrictive conservative standard-based model, but rather use the existing risk-based standards and consider adjustments to Table 1 Standards to account for naturally occurring background materials.

2. What are some of your experiences with excess soil management and do they support its sustainable management?

Are there recent experiences or trends in excess soil management in Ontario that support or are contrary to sustainable excess soil management?

As noted earlier, the trend within the development industry is towards increased level of intensification which will result in increasing levels of excess soil, the majority of which is suitable for re-use. OHBA has made recommendations to the Ministry of Municipal Affairs and Housing with respect to municipal parking requirements that would, if implemented, reduce the production of excess soils. Parking requirements set by municipalities are often extremely onerous and are the antithesis of smart growth. Current parking requirements discourage intensification and significantly increase the cost of medium and high-density projects. Cost savings through a reduction of municipal parking requirements in residential projects would be passed onto consumers, increasing housing affordability in medium and

high-density developments while also having the benefit of producing less excess soils. Therefore, the MOECC should work with the Ministry of Municipal Affairs and Housing to proactively modernize and reduce municipal parking requirements.

Furthermore, infrastructure to support higher levels of intensification (i.e. Eglinton Crosstown) will also result in increased levels of excess soil. OHBA notes that a zero-risk approach by the MOECC and municipalities (local municipal by-laws/development requirements) in terms of importing fill onto sites does not assist in ensuring excess soil is properly handled. Also, some generators of excess soil see the Best Management Practices (BMP) process as too cumbersome (time, process, costs) to overcome or that it results in an unacceptable level of liability risk, so those producers often take the less sustainable approach of landfilling ("Dig & Dump").

OHBA further notes that while intensification developers typically produce excess fill, that greenfield developers often receive fill. There remains a significant challenge for greenfield developers to accept fill at a greenfield site that may require excess fill to deal with a variety of different development requirements (i.e. stormwater management). The current guidelines serve to limit fill being imported if any of the characteristics measure "higher" than the receiving site, even if the fill would meet the appropriate Table 1 criteria.

OHBA notes that for all municipal road construction works, there is an issue as a result of road salts being utilized over a period of many years. When the soil is removed, both the granular road-base and area around the storm sewers and laterals is usually considered contaminated under the Table 1 Standards. The end user may, in some cases, be unaware (based on current standards) when those contaminants (i.e. road salt) are introduced to a new location. OHBA is concerned that road salts and many other background materials occurring in the natural environment are being picked up in the Table 1 Standards. The Table 1 Standards are too restrictive and when taken out of context, hinder development and the movement of soils.

OHBA notes that additional regulations beyond the existing generic standards (of which the majority is based on Table 1 and 2) further restricting the movement of excess soil will reduce the feasibility of intensification efforts (especially outside the GTA).

- Why do you think these trends are happening?

A prescriptive zero-risk approach if adopted by MOECC and municipal stakeholders is not helpful in that the road blocks and costs associated with navigating through the perceived hoops of regulations and permits do not encourage best practices. The difficulty in addressing soil movement between geographies and districts in a timely and consistent manner presents a time consuming and costly hurdle for generators to overcome. There is also a tendency to assume that once a contractor takes the soil that they will 1) honour the terms of the contract (most will, some won't) and 2) that the soil, once they take it, belongs to the contractor (legally yes, but in the eyes of the public, the generator and regulator are responsible).

3. What are priority components of a sustainable excess soil management framework? Does existing policy in Ontario support such an approach?
- Are there barriers or challenges to sustainable excess soil management, including implementing:
 - Best management practices (provincial or industry);
 - Existing regulatory tools (such as municipal by-laws, conservation authority regulations).

OHBA notes that S. 142 of the Municipal Act allows any municipality to pass a by-law prohibiting or regulating the placing or dumping of fill. So a prospective generator/producer or receiver of soil is faced with regulation from two sources:

- (a) Municipal regulation, which may take the form of a blanket prohibition; as well as
- (b) MOE policy which may be overly stringent with respect to cleanliness.

OHBA notes that this presents a challenge with respect to the management of excess soil. OHBA recommends that MOECC should deal with environmental concerns, while municipalities maintain control over the land-use planning implications of large fill operations, but not their environmental aspects. This would provide greater clarity and certainty for all stakeholders.

- If there are barriers, what do you think is needed to remove them or to move to a more sustainable direction?
- Who should address any barriers (e.g. levels of government, industry, NGOs, others)?
- Beyond what may have already been discussed, are there projects or initiatives that you or others are undertaking to support sustainable excess soil management?

Current guidelines for Best Management Practices (BMP) for the management of excess soil are a reasonable process for larger projects, however, OHBA notes that the guidelines can be a challenge for small volumes of excess soil produced by smaller home builders and/or land developers. Finding sites to accept/receive soil, especially from smaller sites where soil composition may be mixed and not ideal for re-use continues to be a challenge. Guidelines should reflect how to deal with smaller volumes of excess soil (i.e. thresholds) for smaller producers/generators.

An additional challenge is in the transparency of actions taken by all parties, and having good information available for review and analyses such that the public and the various parties in the process can see that a logical approach has been taken so that there is no adverse effect on the environment. The MOECC also needs to support the application of the BMP guidelines and also be prepared to educate the public when the public lacks sufficient background to technically evaluate the matter.

Another challenge is demonstrating adequate characterization of both the receiving site and the excess soil, as there is currently no guidance on characterization in the document. This leads to different approaches to professional opinions of soil characterization. Defaulting to the stockpile sampling protocol in O.Reg. 153/04 as amended can lead to over-characterization and over-regulation for low-risk/homogenous sites. OHBA therefore suggests the Ministry consider establishing a lower threshold of sampling frequency.

4. Do you have additional information that might help support a sustainable excess soil management framework in Ontario?
- Do you have information (e.g. on specific sites, summary information, data trends), which may support or inform performance measurement?
 - Do you have thoughts on how we may access this information?

Our members experience has been that most excess soils meet the Table 2 or Table 3 Standards. Exceptions are legacy industrial sites, gas stations, etc., but even then it is a smaller sample of the soils that don't meet these standards.

Conclusion

The excess soils management framework requires greater consistency and a recognition that the regulatory framework can be a challenge for smaller operators. Essentially one set of rules exists for large projects and for small infill sites. The BMP has essentially become a process in which soil moves and additional regulations or restrictions would limit intensification opportunities. Furthermore, the BMP assists with an evaluation of what materials are likely to be impacted through the construction cycle and assists to evaluate up front what the cost will be and what needs to be done to allow for the beneficial re-use of excess soil. Lastly, OHBA is concerned that further changes to increase standards would create more challenges in managing excess soil and further challenge intensification efforts.

OHBA supports a framework that achieves certainty, reliability and consistency while maintaining flexibility and practicality. The BMP and regulatory environment ultimately should encourage best practice that all stakeholders can readily follow and not avoid through the application of risk-based standards, as opposed to defaulting to prescriptive risk-adverse standards (ie. Table 1 and 2) that results in "dig & dump" and prevents the opportunity for the beneficial re-use of soil in land development projects.

OHBA appreciates the opportunity to provide comments to the Ministry of the Environment and Climate Change and to provide advice on the potential regulatory improvements. OHBA strongly supports a balanced approach to the environmental, social and economic goals of the province to ensure a prosperous and high quality of life for Ontario citizens.

Sincerely,



Michael Collins-Williams, MCIP, RPP
Director, Policy
Ontario Home Builders' Association