

Excess soil regulations headed down a ‘rabbit hole’

by Angela Gismondi Jul 6, 2017

The Ontario Ministry of the Environment and Climate Change (MOECC) recently requested input on new excess soil regulations and although industry stakeholders are pleased that the government is taking action to ensure soils are appropriately handled, they are worried that some of the regulations may have unintended consequences.

Industry stakeholders are concerned about new excess soil regulations being proposed by the Ontario Ministry of the Environment and Climate Change. The implementation date of Jan. 1, 2018 has many in the industry concerned it isn't enough time for municipalities and the private sector to understand what the changes are, and the ultimate objective of trying to reuse soils rather than going to landfill was missed. - Photo: FILE PHOTO

A shared concern among all sectors is the proposed implementation date of Jan. 1, 2018.

"What is being proposed is fairly complex and I think there needs to be some more lead time for both municipalities and the private sector to get a real handle on what the changes are. Ultimately, it is going to impact some business practices and it's pretty difficult to see that happening in just six months," said Michael Collins-Williams, director of policy at the Ontario Home Builders' Association.

"So we have strongly recommended that the province, if they pass these regulations, have a longer transition period. It is a big package, there are a lot of moving parts and a lot of changes here."

In the Excess Soils Management Policy Framework, issued December 2016, the ministry outlined 21 recommendations. The first action item was to develop a regulatory package that was posted to the Environmental Bill of Rights at the end of April. The deadline to make submissions was June 23.

The Residential and Civil Construction Alliance of Ontario (RCCAO) and Supporting Ontario Infrastructure Investments in Lands (SOIIL) submission urges the MOECC to reconsider the Best Management Practices (BMP) approach, and also provides recommendations to better implement the regulatory framework should the ministry choose to go that route.

"We are concerned that some of the new requirements are going to potentially slow the process down, add additional costs and we're concerned especially for the smaller and medium-sized sites that there's some pretty significant new requirements,"

Michael Collins-Williams
Ontario Home Builders' Association

Andy Manahan, executive director of the RCCAO, explained the current proposal moves away from the original risk-based objectives of the BMP approach, which could have resulted in positive outcomes if there had been more of an implementation effort.

"There was really no outreach to the municipal sector, no education, no training, no real awareness building. I think that's part of why maybe the ministry said the BMP isn't working, let's try the regulatory approach but they didn't give it a fair chance," said Manahan.

According to the RCCAO, reverting to a waste classification for all excess soils is counterproductive to the ministry's objective to reuse clean excess construction soil.

"From an enforcement point of view that might be good for the ministry, but for our ultimate objective of trying to reuse soils rather than going to landfill...this regulatory package will set back efforts to beneficially reuse excess soils," Manahan noted. "Once we go down this rabbit hole it will be difficult to turn around."

RCCAO/SOILL also recommends phasing in the implementation period.

"(Hauling) is one of the sectors that is kind of like the Wild West, even the contractors, they have their list of haulers but there is no way to control these guys. It's just take the load, here's the price and off you go down the highway," said Manahan, adding it would be difficult to train a group of haulers that don't really belong to an association.

"They're really fragmented, a lot of them are independent operators. They own their own trucks."

The Ontario Sewer and Watermain Construction Association (OSWCA) thinks the proposed regulatory package is a good move forward and will allow the sector, which does a lot of digging, to price contracts more reliably. However, the proposed timeline is a concern.

"I think there are still some substantial issues that have to be addressed and dealt with, especially when it comes to proper timelines before this really gets pushed forward," said Patrick McManus, stakeholder relations manager for OSWCA. "If they do a phased roll out over a few years on a sector by sector basis, that's going to reduce a lot of uncertainty, a lot of the externalities that could happen. It's going to allow them to adjust their regulations and policies before there is a full implementation across all industries."

From a general public policy perspective, McManus said the immediate designation of soil as a waste product may be an issue.

"Some municipalities are going to be on top of it and prepared for this and they're going to figure out ways to reuse that soil immediately. They're going to see the economic benefit of doing that, but there are going to be a lot of municipalities that don't have that capacity to build in something new into their contracts or rethink the way that they're doing their contracts," said McManus. "That's going to be problematic because some municipalities will see the reliability in terms of price and risk in just sending it all to a landfill, even if there are opportunities to reuse it."

He suggested using a model that is employed in the U.K., where they don't designate it as waste right away.

"If there is an opportunity to reuse it somewhere that's kind of the first priority. It is only designated as waste if there is no reuse opportunity. That's the direction that we think the government should be moving towards because then it's going to reduce the carbon footprint on construction projects. It's going to reduce the cost on construction projects. It's going to avoid some of the difficulties that we foresee happening with the trucking or hauling industry because of the designation of waste," said McManus.

Collins-Williams said a little more clarity is needed from the province on the new requirements.

"We are concerned that some of the new requirements are going to potentially slow the process down, add additional costs and we're concerned especially for the smaller and medium-sized sites that there's some pretty significant new requirements," he said.

"When you're building a subdivision, it's different individual building permits. Sometimes it's multiple builders on a site, so while it might appear to be a significant amount of soil being moved from one site technically its individual builders and contractors that are each operating separately."

Like many others in the industry, Collins-Williams also has an issue with the soil being designated waste once it leaves the site.

"I think most players out there are going to do the right thing and look for opportunities to reuse soil but I'm worried that that sends the wrong signal. There may be some operators out there, they'll take the easiest route out and they will take the soil to a waste facility and essentially dump it rather than looking for opportunities for reuse," he stated.