



RESIDENTIAL AND
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CONSTRUCTION
ALLIANCE OF
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RCCAO Constructing Ontario's Future

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December 15, 2014

Ministry of the Environment and Climate Change
135 St. Clair Avenue West, 6th Floor
Toronto, Ontario
M4V 1P5

Attn.: Chris Lompart, Atif Durrani

Re: EBR Application for Review: Excess Soil Management Policy Session
Follow-up recommendations from RCCAO Listening Session hosted October 16, 2014

Dear Chris and Atif:

On behalf of RCCAO and the Listening Session attendees we would like to thank you for the opportunity to meet with MOECC representatives and discuss the issues surrounding excess soil management policy needs in Ontario. As you know, over the past number of years RCCAO has jointly and actively participated with MOECC as a stakeholder in providing realistic and pragmatic solutions to excess soil handling challenges in Ontario.

We are very pleased that MOECC is undertaking this eighteen month EBR review on the need to examine provincial soil policy, but we wish to emphasize that there is an urgent need to implement the "Guide for Best Management Practices" rather than wait for all the possible policy and regulatory gaps to be addressed following the review. To ensure better outcomes, a multi-ministry approach will be critical in conjunction with active support from the construction and municipal sectors.

From time to time we hear of distressing situations where a BMP approach has not been followed (for example, the front cover story which was published by the Toronto Star on October 20th: "Following the Trail of a Dirty Secret: Toxic soil from construction sites is loaded up and shipped out – but no one is sure where"). Public confidence is eroded when these bad examples are brought to light. Thus, we cannot afford to put on hold solutions pending the

outcome of the current EBR soil policy review project (Note: we do not think that this will be the case but we wish to underscore the importance of proceeding with implementation of the BMP Guide).

Furthermore, we would like emphasize that responsible and timely action on the soil handling management file represents a great opportunity for MOECC to introduce positive climate change programs. In particular, a move away from a 'dig and dump' approach to a beneficial reuse model will reduce overall truck hauling distances which will in turn result in lower GHG emissions (as well as less wear and tear on roads and highways).

Accordingly the following comments document the items discussed at our October 16th, 2014 Listening Session. RCCAO has also had further meetings since this session with senior MOECC officials, including Deputy Minister Paul Evans. Pertinent items coming out of these meetings, including further direction from the Minister's mandate letter, are reflected in our comments. These recommendations cover both the current excess soil BMP implementation program and the inputs for further inclusion in MOECC's final soil policy review recommendations.

One of the key questions posed during the Listening Session concerned the priority components of a sustainable soil management framework. The following represent a summary of the Listening Session comments and more immediate recommendations for action. The 10 main items are not listed in order of priority and should be viewed as being interconnected components in order to develop a functional framework in Ontario.

- (1) **Development of an implementation plan, using a critical path approach:** The Province, led by the Ministry of Municipal Affairs and Housing with support from MOECC, must take a leadership role in assisting and informing municipalities on how to consistently apply the current BMP Guide (January 2014). To this end it would be helpful to provide documented BMP-related training materials and an organized implementation plan and schedule to assist in carrying out this training function in a consistent manner. This would require a documented project type implementation plan and timetable. RCCAO has prepared a Gantt-based implementation plan with a timetable for BMP outreach. We would be pleased to work with you to refine the development of such a tool to assist in ensuring a project-like approach for the effective and timely implementation of BMP-related activities.
- (2) **Communication to Ontario Qualified Persons (QP's):** There is a need to communicate to the Ontario QP's and environmental consultants, through proper training and communications, BMP applications. Beyond the mechanics of using BMP's there is a further need to facilitate and encourage the beneficial reuse of existing excess soils that are above Table 1. The root problem is that the proper repurposing of excess soils is not taking place due to the default position taken by most QP's who only recognize excess soils that meet current O.Reg. 153/04, Table 1 criterion as "clean soil." Longer term, MOECC should examine the introduction of new Tables covering recommended reuse applications to encourage repurposing of soil. This examination would be supported by recent studies identifying concerns with Table 1 background based soil criteria applications with respect to virgin aggregate and the false detections of PHC's in clean

soils with organic content > 5%. It is recommended that MOECC pursue, with appropriate Ministries (e.g., MMAH, MTO, MNRF, MEDEI, OMAFRA), industry experts and academics, an examination of what would constitute appropriate criteria for typical proposed future beneficial reuse of excess soils based on various application scenarios (e.g., municipal roadways, berms, pit and quarry infill). Post-Listening Session, RCCAO in its meetings with MOECC staff and the Deputy Minister identified the need to revisit the role of QP's in overseeing soil movement, planning for beneficial reuse of excess soils and the need for appropriate risk based "clean soil" Tables. The engagement of the Standards Branch to look at how other jurisdictions address risk-based soil quality criteria was discussed. This work could be integrated with the proposal for a pilot study project (see point #8) covering municipal infrastructure projects.

- (3) **Using U.K. Best Practices to support the role of Qualified Persons:** MOECC is currently working with the Professional Engineers of Ontario (PEO) and Association of Professional Geoscientists (APGO) "one on one" to develop new guidelines and training materials for QP's to apply and implement the BMP's. This process and the development of supporting guidelines should be a transparent process to allow input from industry, consultants and municipal stakeholders into the final QP guidelines. Listening Session participants have expressed concern about how the PEO and APGO guidance document is being developed behind closed doors and that the final process may be construed as self-serving without balanced input from all excess soil stakeholder participants before finalization. The need for appropriately qualified soil engineers is a critical underpinning of soil policy implementation in Ontario.

RCCAO would recommend that current successful excess soil handling Codes of Practices (COP's) such as those used in the United Kingdom be examined. The UK program involves dedicated COP training sessions by regulatory and industry experts. A Qualified Person does not necessarily have to be an engineer in the UK competency and certification process. RCCAO is willing to facilitate dialogue between MOECC and CL:AIRE (Contaminated Land: Applications in Real Environments) so that there is a better understanding of the UK approach to training, outreach and other matters.

- (4) **Municipal Outreach to encourage more front-end planning for soils management:** For the successful development and implementation of Ontario soil policies which support the current BMP Guide there must be awareness at the front-end design and planning stage for both development and redevelopment projects. Consequently, broader outreach and training is required with the municipal planning and approvals sector to facilitate the planned beneficial reuse of excess soils from projects. Encouraging an early soil planning focus allows proponents to design this aspect into the overall project plan ensuring that tendering and procurement processes will result in a more level playing field during the bidding process. In other words, a bid for a project that does not specifically identify planned excess soil disposal arrangements, based on beneficial reuse, will have a competitive advantage if excess soil is dumped at the cheapest and most economically opportune landfill option.
- (5) **Standardized Tools to support BMP implementation within the municipal sector:** In alignment with point #4, work should be initiated through the Municipal Engineers Association of Ontario

(MEA) to have standardized contracting tools developed to encourage the sustainable beneficial reuse of excess soils. Similarly there should be formal engagement with broader industry organizations operating in the municipal sector, such as the Ontario Good Roads Association (OGRA) and others, to develop implementation training tools and guidance documents supporting the application of BMP's at the municipal level.

MEA and entities involved in excess soil handling should be encouraged to develop practice and guidance documents that design and evaluate infrastructure projects that repurpose excess soils in compliance with BMP requirements. RCCAO would encourage the MOECC and MEA to participate with industry contractors in developing and sharing recommended best practices for excess soil handling. This activity should be supported by organizations like the Association of Municipalities of Ontario (AMO) for developing a municipally-focused strategy for the beneficial reuse of excess soils and the implementation of standardized municipal tools to accomplish same.

- (6) **Better notification procedures for excess soil movement:** Municipal attendees at the Listening Session identified the need for municipal government awareness and training with respect to "trans boundary excess soils movement" activities. Essentially there was felt to be a need for MOECC or identified other responsible party, to provide some form of notification and oversight (approval) for significant volumes of soil being removed from one jurisdiction and relocated to another. This would be more than simply a courtesy call as proper communication is important for potentially impacted communities. For example, this will assist in ensuring that traffic concerns would be properly coordinated and addressed. MOECC recently initiated site project inspection visits in the GTA to assess the level of understanding and application of BMP principles. It is recommended that these inspection visits should be formalized and tracked. This information will assist in determining BMP uptake and future follow-up enforcement needs. Similarly at receiving sites outside of the GTA there should be formal documentation and follow-up from MOECC visits and inspections pertaining to BMP usage.
- (7) **Remediation of pits and quarries:** MOECC should work with and assist the MNRF in developing a more progressive rehabilitation approach to planning the in filling of pits and quarries. There should be a proactive, broad-based master plan to re-purpose pits and quarries that identifies quantities of soil required to accomplish rehabilitation planning. Today the MNRF approach is based on only a "fit in the box" process by issuing permits based on volume ceilings. Permitting should be more outcomes-based to fit with a longer-term, coordinated rehabilitation plan. In planning and identifying opportunities to reuse excess soils and to maximize soil matching opportunities, including web-based applications such as SOiIL (Supporting Ontario Infrastructure Investments and Lands), pit and quarry rehabilitation represents a powerful, and cost-effective method to accomplish this recommendation.
- (8) **Pilot Testing of BMPs:** Municipal contractors requested that MOECC work across Ministries and with local municipalities to move quickly on doing pilot testing work regarding the beneficial reuse of excess soils for municipal infrastructure projects. This is particularly critical to the sewer and water main industries and those doing work on road rights of way. Primary concern is the

prevalence of roadway Sodium Adsorption Ratio (SAR) impacted material where it could be re-purposed in non-potable water area applications.

The Greater Toronto Sewer and Watermain Contractors Association (GTSWCA) has volunteered to participate in a pilot test of BMPs and the different components involved. This would include reuse of SAR impacted material, utilizing soil matching processes, use of electronic truck tracking, the role and protocols for appropriately trained engineers, examining the municipal tendering process and procurement practices. All study outcomes would be made available so that best practices and lessons learned could be analyzed for implementation elsewhere.

- (9) **Development of an excess construction soils model by-law:** The Listening Session recommended that further work be done across Ministries (e.g., MOECC, MMAH, MNRF) to look at the need for a standardized excess soil by-law approach. This would be done by looking at current existing new by-laws (e.g., Whitchurch-Stouffville, Scugog) to determine best components of a model by-law. This study could then in turn be the basis for the development of a recommended “Model Excess Soil By-law” that could be made available to other municipalities. We recommend that the MMAH take a lead role related to the Planning Act and sustainability requirements. Further work should be done in this area on creating a “LEED like” methodology to rate and compare different municipalities in terms of their adopted by-laws and practices that encourage the beneficial reuse of excess soils. Creative thinking will be required to encourage municipalities to adopt and use new improved soil handling by-laws. This effort will result in not only better outcomes but also in a more level playing field between jurisdictions.
- (10) **Encouraging adoption of a clear policy approach to Soils BMPs, with no loopholes:** The current “loophole” regarding federal airports or aerodromes and Federal / Provincial jurisdiction on approvals, excess soils handling quality parameters and general oversight of materials being received at airports should be examined. It is recommended that a clear policy acceptable to all orders of government, including receiving site municipalities, should be developed and implemented. This policy would require usage of BMP requirements and avoid the current legal and regulatory confusion that allows unacceptable practices to take place to the detriment of the local community involved.

Most of the preceding items were discussed and identified at our October 16, 2014 Listening Session but certain issues have been previously identified at other stakeholder discussion sessions. In a number of cases, the issues and potential solutions go beyond MOECC boundaries. It is anticipated that this EBR soil policy review and examination will put more emphasis on actively engaging other Ministries. There is a pressing need to get on with the proper implementation of the recently released BMP guidance document and the filling of gaps in implementation. For the construction sector there is a small window during the first quarter of 2015 to inject excess soils planning requirements and protocols into work plans prior to the start of the construction season.

To expedite activities and recommendations previously identified, RCCAO will initiate preparation of a Gantt-type project management soil policy implementation chart to assist MOECC in identifying industry excess soils handling priorities and recommended actions. Major focus will be on the shorter term implementation of existing BMP's to encourage the proper handling of excess soils and their beneficial reuse. Longer-term, this project management perspective will identify timing sequences and inter-ministry policy gaps in support of MOECC's soil policy review process.

In closing, immediate MOECC support is critical in moving on some of the BMP-related recommendations made in this letter. RCCAO would be pleased to meet and further discuss with MOECC action items that will promote the beneficial reuse of excess soils in Ontario. These efforts would be in support of modernization of approvals initiatives in Ontario and the opportunity to fast track implementation of "win-win-win" pilot projects as part of a pragmatic provincial climate change agenda.

Yours truly,

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RCCAO

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Copy to: All Listening Session participants, others

RCCAO member organizations:

Greater Toronto Sewer and Watermain Contractors Association
L.I.U.N.A. Local 183
Heavy Construction Association of Toronto
Joint Residential Construction Council
Toronto and Area Road Builders Association
Carpenters' Union
Residential Carpentry Contractors Association
International Union of Operating Engineers, Local 793
International Union of Painters and Allied Trades, District Council 46
Ontario Formwork Association