

April 18, 2019

Cindy Acab
Resource Recovery Policy Branch
40 St. Clair Avenue West, 8th floor
Toronto, ON M4V 1M2

RE: Discussion paper on reducing litter and waste in our communities, ERO: 013-4689

The Residential and Civil Construction Alliance of Ontario (RCCAO) is pleased to respond to the Ministry of Environment, Conservation and Parks' *Reducing Litter and Waste in Our Communities: Discussion Paper* (the Discussion Paper). RCCAO understands and supports the MECP's approach to establish policy, plans and approaches that both recognize and address Ontario's current environmental and fiscal challenges.

The following comments are focused on the elements in the Discussion Paper that relate to the topic of excess soil. While we do not consider clean soil, or soil that has been lightly impacted by road salt, to be a "waste", much more must be done to divert soil from landfill sites. This is especially important as there is a scarcity of available landfill space and the siting of new landfills is difficult.

RCCAO has been a major stakeholder over the last eight years working with the Ministry and other organizations on proposing solutions to improve excess construction soil management. These activities have included support for the Ministry's *Best Management Practices (BMP) Guide* released in January 2014 and ongoing stakeholder engagement, including providing commentary on this topic as part of the *Preserving and Protecting our Environment for Future Generations: A Made in Ontario Environment Plan* in January 2019.

Further, in the fall of 2018, RCCAO produced [a three-part video](#) series in conjunction with the Greater Toronto Sewer and Watermain Contractors Association that illustrated how a BMP approach can save millions of dollars and significantly cut greenhouse gas emissions.

We have been generally supportive of the Ministry's December 2016 *Excess Soil Management Policy Framework* of 21 Action Items. This Framework recognized the need for a sound detailed implementation plan, accountability and an itemized timetable to get required results. A year ago, the Ministry released an *Excess Soil Management Regulatory Proposal EBR posting #013-2774* (April 16, 2018). Overall, this proposal is too complicated and technically complex, given the number of other regulations involved and virtually impossible to implement in a timely, straightforward manner. Most importantly we have a fundamental concern that this regulatory proposal, while appearing strong on technical detail, has significant shortcomings with respect to encouraging the beneficial reuse of excess, clean construction soils.

As recognized in the MECP's ERO proposal 013-4208, the responsible reuse of clean soil requires clear rules and standards that facilitate the safe, cost-effective and beneficial reuse of excess soils. Accordingly, we recommend the MECP revisit the implementation of the earlier Ministry BMP approach, utilizing a pragmatic, managed implementation plan that emphasizes public outreach, proper stakeholder training, pilot testing of critical elements and the creation of an interim excess soil governance entity to oversee and be accountable for the success of this needed program.

In summary, RCCAO has been engaged in the process of improving excess soil management practices in Ontario for close to a decade. There is an opportunity to streamline handling practices that will reduce infrastructure project costs while environmentally and responsibly reusing a valuable resource and reducing greenhouse gas emissions in Ontario.

Following are general comments that describe in more detail recommended steps to recognize how the proper handling of excess clean soils can contribute to an effective "waste" reduction policy. Previous efforts regarding the attempted implementation of agreed upon industry and government excess soil management practices simply need to be effectively acted upon with minimal new regulatory requirements imposed.

General Comments

RCCAO requests that the existing MECP's Excess Soils Engagement Group (ESEG) and the Market Working Group (MWG) be reconvened as soon as possible to revisit the 2016 *Excess Soils Management Framework* of 21 Action Items. This Framework had significant industry and MECP input and addresses the key elements involved in improving excess clean soil handling. This document remains a strong tool to build on, but several of the action items need realignment with the MECP's new objectives and approach in this area.

The ESEG should reprioritize the Framework's 21 Action Items with an initial emphasis on elements supporting the effective implementation of the Ministry's 2014 BMP Guide. For instance, Action Item #1 referenced the MECP working with partner ministries to develop a new EPA regulation. As outlined in RCCAO's and SOiil's written response to EBR # 013-2774 in June 2018, we have concerns with the complexity of the EBR proposal. Our specific comments and recommendations cover 13 areas of concern and have yet to be responded to, although we understand that Ministry staff has been receptive to many of the recommendations.

The development of proposed new regulation(s) and the subsequent harmonization with existing regulations represents a long, complicated process that puts significant uncertainty around many of the other twenty action items. This regulatory prerequisite, as outlined in EBR #013-2774, also runs counter to the Plan's stated objectives of reducing red tape and modernizing approvals in Ontario.

Action item #1 must be revisited but not at the expense of delaying the other action items directly supporting the implementation and adoption of MECP's 2014 BMP approach. These elements should proceed as quickly as possible as an initial guideline approach until a final (hopefully streamlined) new

regulatory framework is approved. A working example of this approach in Ontario was the development and adoption of the Ontario Contaminated Site Guidelines in the 1990's that were brought into regulation in 2004 with the *Brownfield Act* and Regulation 153/04.

Advancing the excess soil management file can provide a working model of how to put in place a "Smart Regulatory" model in Ontario based on similar approaches used in other jurisdictions such as the United Kingdom where beneficial soil reuse significantly redirects excess soils from limited landfill capacity. Adopting this type of approach and incorporating existing local municipal regulatory requirements will result in a Made in Ontario solution that best meets stakeholder needs and one that can be implemented in a timely fashion. Given efforts in this area over the last eight years, Ontario is long overdue to put in place a managed process with an accountable timetable to get results.

The key to moving ahead with a successful excess soil program and the eventual adoption of a realistic and workable regulatory framework in Ontario is the creation of a change mechanism to make it all happen in a timely fashion. It is recommended that a new governance body be created to oversee the finalization of the new excess soil regulatory framework as well as the interim implementation plan for the supporting program components based on the 21 Action Items. This proposed governance body, based directionally on the successful U.K. model, is intended to encourage the beneficial reuse of excess soils locally. This governance body would engage industry, government and academic representatives to nimbly develop, approve and implement final excess soil action plan items.

The creation of a dedicated excess soil governance body has been proposed to the Ministry in the past in the form of a Soils Ontario entity. At the time the Ministry commissioned EY to prepare a report on "Market Based Tools for Excess Soil Management" which was circulated to ESEG members in August 2017. Given the stated objectives of MECP's new Plan, many of the EY recommendations do not fit with the Province's mandate to contain costs. RCCAO and SOiIL would appreciate the opportunity to further describe the Soil Ontario proposal and how it best aligns with the preferred provincial direction.

Specific Recommendations

With specific reference to the sections of the Discussion Paper covering excess soil, RCCAO recommends several definitive action items for the MECP to consider as next steps. These recommendations are consistent with our earlier more detailed comments and recommendations made in our June 2018 response to the Ministry's Excess Soil Management Regulatory Proposal (EBR Posting #013-2774). To move expeditiously on excess soil regulatory reform there is a need to "re-constitute" the most recent regulatory proposal in the context of current government objectives and expectations. To make this happen with respect to advancing excess soil related items the following is recommended:

1. Reconvene the ESEG as soon as possible

There is a need to advise ESEG stakeholders updated on the direction which is envisioned based on the responses to last year's EBR #013-2774 consultation. Clarity is required around how the Ministry sees both the original proposal and submitted new comments and how these fit within the framework of the new *Made in Ontario Environment Plan*. In terms of consistency with the new mandate, we recommend there be a revisit of the Excess Soil Management Policy

Framework of 21 Action Items and prioritization of items supporting proper implementation of the BMP Guide. Regardless of final regulatory proposal details, the BMP guidelines will be a core component and we recommend that the Ministry move forward with applicable implementation support programs as originally intended.

2. Utilize ESEG as a steering committee to identify a smaller stakeholder Task Group which would be tasked with developing a robust implementation plan for action items

ESEG has been an excellent sounding board to discuss policy direction but it is too large to implement strategic policies and programs. In addition, meetings organized by Ministry staff are held too infrequently, with the last session taking place in December 2017. The proposed Task Group will assist with rolling out deliverables and could also be responsible for direct oversight of the excess soil management program, including the setting of a timetable and regular tracking of progress. The Task Group should include government, industry and academic stakeholders with the intent of becoming a formal, not-for-profit entity. Such an entity would be responsible for maintaining the currency of BMP guidelines, overseeing the proposed Excess Soil Management Plan (ESMP) Registry, developing and managing outreach and training programs, promoting Qualified Professional (QP) training, co-ordinating pilot tests and overseeing web-based soil matching initiatives.

3. Establish an Ontario “Smart Regulation” model for excess soil management to encourage effective beneficial reuse of soils

Senior Ministry personnel in the past have been receptive to pursuing and creating a joint industry/government “Smart Regulatory” model based on the UK’s successful CL:AIRE model. Based on the recommendations of an outside consultant (EY) to create an organizational structure that would result in a group composed of 6.5 FTE positions, two of which would be government staff. Unfortunately, ESEG members have not been afforded a chance to properly debate the proposals contained in EY’s report, but there is a view that it would be too top down and too expensive.

An alternative Smart Regulation model would involve the creation of a not-for-profit governance managing structure which would be at arm’s length from the MECP but have accountability through joint industry / government participation and oversight through ESEG as a steering committee and ultimately the MECP. Reference is made to a “Soil Ontario” proposal presented to senior MECP representatives previously. Conceptually, initial seed government funding would create an entity which over time would become self financing.

4. Revisit the full legal and liability implications of identifying excess soils as a waste by default as originally described EBR #013-2774

The ability to responsibly and beneficially reuse excess soils from both new development and brownfield sites is severely restricted by the starting point where excess, clean soil is considered a waste by default. Progressive jurisdictions encourage the reuse of excess soils based on the material’s end use where a risk-based approach is involved. This is of importance concerning the reuse of salt impacted (SAR) soil on infrastructure projects. Clear rules (e.g., BMP’s) that

facilitate excess soil handling as a beneficial reuse opportunity versus a waste have the potential to reduce project costs and extend the life of landfill sites.

5. Reduce illegal dumping of fill

The Canadian Urban Institute organized an “Ontario Excess Soil Symposium” that was held in November 2018. Several panellists encouraged more public outreach and education to increase awareness about the costs of dumping and the benefits of reusing excess or clean soil. A multi-ministry approach has been suggested as an effective way of advancing the excess soil agenda, with the outreach component being delivered by the Ministry of Municipal Affairs and Housing. In addition, better enforcement is essential to achieving the desired outcomes, with a focus on the “bad actors”. Tracking of truck movements, including the quantity and quality of soil, will help to build a data base, which can then be used to monitor performance over the longer term.

Closing Comments

RCCAO continues to advocate for responsible excess soil management practices supporting beneficial reuse clean soil in Ontario. From a general industry standpoint, we support the direction and principles that MECP has recommended in the proposed *Made in Ontario Environment Plan* and now in its Discussion Paper on litter and waste. Given the past eight years that joint industry and government stakeholders have worked on this issue, it is time to implement specific programs on an urgent basis.

Our recommendations are in alignment with previously identified action items. To ensure that the Ministry proceeds in an appropriate direction, re-engagement with ESEG members needs to happen soon. The creation of an ESEG steering committee or a Task Group will be important to prioritize work efforts and put in place an implementation process and timetable. This work effort would be in parallel to the longer-term efforts to define the most effective combination of best management practices and the proposed regulatory model to be used in Ontario.

Sincerely,



Andy Manahan
Executive Director