

April 5, 2013

Inconsistent municipal soil framework needs work

KELLY LAPOINTE

staff writer

Members of the construction industry are calling on the Ontario Ministry of Environment (MOE) to finalize its best management practices (BMP) for excess soils after a recent survey found that most GTA municipalities have inconsistent frameworks with the province.

“The more things we can get done sooner, the better it will be in terms of our ultimate objective, which is let’s not do the dig and dump approach anymore, let’s start moving towards re-use of soils,” said **Residential and Civil Construction Alliance of Ontario (RCCAO)** executive director Andy Manahan.

The report, Survey of Municipal Soil By-laws, says inconsistent framework contributes to difficulty for contractors and developers trying to obtain or dispose of excess construction soil.

The objective of the review was to seek out relevant bylaws addressing the deposit of clean excess soil in 135 municipalities in the Greater Toronto Area (GTA). Previously reviewed municipalities were also revisited to review any amendments.

Seventy out of 143 upper and lower tier municipalities reviewed have a fill bylaw. Only eight municipalities made reference to the MOE’s soil quality criteria tables (O.Reg. 153/04). Eight municipalities define contamination based upon concentrations greater than naturally occurring on the receiving property.

Survey findings suggest municipalities located nearest to the Toronto area have developed site alteration bylaws governing the placement of soil; however, most site alteration bylaws do not specifically reference O.Reg. 153/04 criteria tables to define soil quality criteria.

Municipalities further away from the immediate GTA appear to be slower to adopt a fill bylaw as fill disposal has not posed a significant issue so far, says the report.

Some municipalities have restrictions or bans on soils shipped from outside their jurisdictions because of liability concerns.

The [Association of Municipalities of Ontario](#) (AMO) and a number of municipalities have said regulations are needed, not just BMPs. Manahan said regulations take longer to develop than a BMP.

Some municipalities that responded to the survey confirmed they currently do not have fill bylaws and state that they will not be implementing such bylaws in the near future, says the report.

The report has several recommendations, including continuing work with the provincial-municipal-industry working group to develop a consistent approach for soil management in municipal bylaw and procurement practices.

It says the province should consider providing guidance to municipalities through the Planning Act or the Provincial Policy Statement to include comprehensive soil management planning as a requirement for site

development applications.

It suggests that the province provide guidance to municipalities on the specific regulations and the applicable soil quality criteria table(s) that should be used in municipal bylaws.

“There are so many different types of municipalities with different degrees of staff experience and different types of bylaws,” said Manahan.

“If we’re going to start getting a more consistent approach, maybe MOE combined with the AMO and other municipal organizations, or even with RCCAO, can start to talk about what a better bylaw would look like.”

It also recommends that the MOE should start tracking the incorporation of soil management practices into municipal bylaws as it would provide an overview of the status of employed best practices.

The report says there should be ongoing formal education and capacity building to help municipalities with the development, monitoring and dissemination of experiences with soil management in municipal bylaws and procurement practices.

The government should support a consultation program, such as a series of ongoing sponsored symposiums, to capture, track developments and share successful approaches, suggested the document.

The government should also choose a key municipality and put resources in it to develop and pilot test an integrated model site alternation bylaw. The report says the bylaw should have appropriate regulatory references to O.Reg. 153/04 and should adopt the principles of the finalized MOE BMP.

Manahan said in order to move forward with the already released best management practices for handling excess construction soils; it needs the finalized MOE Soil Management BMP.

The government posted a draft document on the Environmental Registry for public comment on Nov. 19, 2012 for a period of 60 days. The public comment period ended on Jan. 21, 2013.

“It would really help to have MOE finalize theirs because I think it would send out a very strong signal that the province is supportive of it and that they reference the industry BMP in their document and that means that our document carries more weight,” he said.

So far, the construction industry BMP has been positively received. Manahan received a letter from Minister of Environment Jim Bradley commending RCCAO’s efforts on the sustainable management of soil.

Manahan has also spoken with the Progressive Conservatives and New Democratic Party on the issue.

The RCCAO is in the process of creating a new organization, Supporting Ontario Investments in Infrastructure and Lands (SOiIL), modeled after Contaminated Lands: Applications in Real Environments in the United Kingdom. A legal framework analysis has been commissioned and organizers are looking into aspects such as insurance before SOiIL is launched.