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Construction industry concerned about new Ontario soil regulations

Relief sought from cost burden

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A new Ontario soil regulation focused on brownfield redevelopment requires changes because it impacts civil construction sites from roads to sewer projects, industry officials say.

“This regulatory initiative will undoubtedly increase construction costs and unintentionally result in many infrastructure projects costing more for both government-owned and privately-owned projects,” says environmental lawyer Frank Zechner about the effect Ontario Regulation 511/09 could have on construction. Zechner prepared a review of the regulation for the Residential and Civil Construction Alliance of Ontario (RCCAO).

On Dec. 29, 2009 the Ontario government created a series of regulatory changes through Regulation 511/09 that addressed soil management. The new regulations followed stakeholder consultations by the Ministry of the Environment to determine the best methods to encourage the effective cleanup and development of brownfield sites. These sites tend to have historical soil and ground water contamination typically from industrial activities. The regulation is expected to be in effect by July 2011.

The regulation, though geared for brownfield sites, affects the management of surplus construction site soils and fill, from analytical requirements to determining potential soil disposal sites, industry officials say.

The more stringent disposal standards will “restrict and likely reduce” the number of sites willing and able to receive excess construction site soil, Zechner said. Also, more excess soil could likely fail to “meet the new standards demanded by the receiving site owners”.

“This will drive up costs. First on the soil testing side, more samples testing for more parameters will need to be collected, which increases the cost to prove soil meets a particular table,” Zechner said. “Second, as sites become more restrictive on the soil they’re willing to receive, the reduction in the number of sites available will drive up costs through basic supply and demand.

The list of soil contaminants to test for has expanded to 120 under the new regulation and more than half of the substances listed in the 2004 soil standards have lower tolerances now, Zechner’s review revealed.

Andy Manahan, executive director of RCCAO, said the regulation clearly is a concern for civil construction though it was originally intended to focus on brownfields. If exemptions or amendments to the regulation are not possible, he said, one possible solution is that construction contractors should maximize reuse of soils at the construction site, avoiding the need to move the soil or fill to another property.

“In the case of road, water and sewer work, the municipal roadway is generally regarded as one continuous parcel of land,” said Manahan. “There are no restrictions against the movement of soil from one part of a site to another, as long as the movement does not result in any offsite contamination or other adverse impacts to the natural environment.”

The new regulation does “somewhat change the landscape” concerning excess soils with its stricter rules on some materials and lack of specific guidelines or consideration of construction projects, said Karen Renkema, director of government relations at the Ontario Road Builders’ Association.

The new regulation also is not an entirely new issue since the disposal of excess construction materials has been an ongoing issue, added Renkema.

“We need to start thinking well before the design stage about excess materials. Why don’t we reuse the excess materials on the job site as opposed to taking the excess materials off site and trying to find a home for them,” said Renkema. “Within the design stage there are many different considerations that could be given to reusing the excess materials on that specific job. A municipality could use the material for something else, whether it is sloping, a berm or parkland.