

Construction industry looks for solutions

MANAGING CLEAN FILL

By Kristine Janzen

Concerns from the construction industry about increasingly restrictive municipal regulations on the source location of clean commercial fill, especially in **Durham Region**, are unlikely to be resolved at the provincial level any time soon. While excess soil is a major by-product of infrastructure renewal, intensification and brownfield redevelopment projects—key provincial planning policy directives—a recent draft of best practices for soil management from the **Ministry of the Environment** reinforces local control over the regulation of clean commercial fill operations.

In March, Clarington council approved amendments to its site alteration by-law to restrict clean fill dumping to fill originating from within the municipality. (*See NRUGTA edition March 28, 2012.*) With other Durham Region municipalities working on similar revisions to their regulations, long-term policy and legislative changes, or a more comprehensive regional plan, may be needed to address restrictive municipal regulations for commercial clean fill operations.

“It’s not very helpful for the province to allow municipalities to do whatever they want because if the Clarington by-law gets passed in a similar way across other municipalities then it’s going to be tougher to find a home for excess soils, and we’ll have to transport them further from the city. You can’t say wherever soils come from, for example downtown Toronto condo projects you’ve got to deal with them within your own boundary. We do need a multi-municipality solution,” explained **Residential and Civil Construction Alliance of Ontario** executive director **Andy Manahan** in an interview with *NRU*.

While regulating fill operations falls under the jurisdiction of local municipalities, contractors hired to undertake large provincial infrastructure projects requiring a significant amount of soil management, such as the Eglinton-Scarborough Crosstown LRT, may have an increasingly difficult time finding locations to store fill.

According to Manahan, **Metrolinx** isn’t assisting Eglinton-Scarborough Crosstown construction contractors to find locations to move excess soil.

“[Metrolinx’s] answer was, we don’t want to be overly prescriptive because that may lessen innovative solutions from coming forward,” said Manahan. “While I can follow that argument, in this situation, I think you have to work with contractors together to try to identify solutions.”

While the environment ministry has been working with stakeholders to provide guidelines on best practices for soil management, with an updated draft released at the end of April, it does not specifically address siting or source guidelines for clean fill operations.

“There isn’t right now a role that the province seems to be taking to deal with clean commercial fill,” commented Durham Region senior solicitor **Jason Hunt** in an interview with *NRU*.

Maintaining local control of the location of fill operations and source of fill is upheld by the province in its draft best management practices.

“Our goal is to clarify the rules and requirements for soil management to promote sustainable practices. Municipalities and conservation authorities are responsible for managing and permitting clean fill sites. We will continue to work with municipalities and conservation authorities as they permit fill sites and will make sure soil movement does not impact local communities and the environment,” ministry spokesperson **Cynthia Ulba** told *NRU*.

“The proposed guidance does not specifically address site location, as this is often a local decision based on site permitting and/or zoning,” explained Ulba.

While fill by-laws are the jurisdiction of area municipalities in Durham Region, the region is

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currently working on a model by-law for use by its lower-tier municipalities. It is intended to provide common language and ensure environmental concerns are addressed in standards included in local by-laws.

“The works committee has asked the region to provide a model by-law,” said Hunt. “The intent of that is for the region to share the best practices among the local area municipalities. All of the local municipalities within the Region of Durham are taking steps to regulate commercial fill... There’s not a lot of misunderstanding or difference between the municipalities as to what a commercial fill operation is. [While] municipalities may differ on what they consider small, medium and large operations from a regulation standpoint, there is a fairly consistent standard in terms of the level of regulation within our region at the local level.”

Included in the latest draft best management practices are clarifications of various types of activities that are and are not covered in the scope of the draft, enhanced information on beneficial reuse options and a new section related to civil construction projects. The update explicitly recognizes the role of infrastructure projects, intensification and brownfield redevelopment, pursuant to the policy directions outlined in the *Provincial Policy Statement* and *Growth Plan for the Greater Golden Horseshoe*, in generating large amounts of excess soil.