



July 3, 2012

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Ministry of the Environment
Operations Division
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Re: Conservation Ontario's Comments on "Soil Management- A Guide for Best Management Practices"

Dear Ms. Anderson:

Thank you for the opportunity to provide comment on the Ministry of the Environment's (MOE) "Soil Management – A Guide for Best Management Practices" document. Conservation Ontario (CO) is the umbrella agency, representing Ontario's 36 Conservation Authorities (CAs). Through the review of this BMP document, CA staff found many similarities between this document and the "Large-Scale Fill Operations Policy Discussion Paper" recently endorsed by CO Council. CA staff found it helpful to have BMPs confirmed in a draft provincial document and consider this to be an important first step in addressing large-scale fill issues.

This letter will start by highlighting some high-level general comments and then provide some specific comments on this document.

Context

Recently many CAs have received application for or have encountered non-compliance situations dealing with large-scale fill operations. Given the change in scale and scope of fill movement, the provincial direction for intensification and the potential for large profit, there is a large demand for receiving sites and CAs are often dealing with these operations in a reactive manner. CAs have a scoped regulatory responsibility under Section 28 of the *Conservation Authorities Act* and must adhere to what is set out in the Act for their regulatory reviews. It is now more challenging than ever for CAs to deal with the entire lifecycle of projects, from excavation to deposition, as fill often leaves the source CA watershed and that CA's regulatory scope.

General Comments

Need for a Provincial Fill Strategy

Consistent with what the Ministry has heard from other sectors, such as the Ontario Waste Management Association and the Residential and Civil Construction Alliance of Ontario, there is a need for a more holistic

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approach to be undertaken to fill management activities in Ontario. While Conservation Ontario recognizes this document as an important first step, this document does not eliminate the need for a provincial fill strategy to integrate the full life-cycle of fill, including into the planning process. Conservation Ontario encourages the MOE to continue working with other Ministries, Municipalities, Conservation Authorities, other regulatory and land use approval authorities and industry to develop a provincial fill strategy.

This document fails to acknowledge any gaps in policy at the provincial level to adequately address large-scale fill issues. Similarly, this document does not address the limited ability operationally, financially and jurisdictionally of regulators (especially CAs) to deal with the suite of potential impacts (environmental and social) that large-scale fill operations present. While it is acknowledged that this document is largely operationally focused, an accompanying policy discussion of legislative gaps would be helpful.

Enforcement

This document represents a commendable first step by MOE to address large-scale fill issues. As a BMP document there are inherent limitations with its application, as there is no trigger for its adoption, except by the “good players”. This reliance on voluntary adoption may put those “good players” at a disadvantage when quoting for a job, which is a concern for all involved in review of these applications.

The current enforcement costs to CAs including staffing, peer review, legal proceedings, etc in an attempt to manage large-scale fill activities far exceed the payment that they receive for their permits. As most fill is moved from one CA watershed to the next, there is limited ability for CAs to control the full life-cycle of fill. A provincial fill strategy is required to adopt a regulatory framework particularly for the source sites to help reduce the costs associated with “policing” the movement of soil, which is currently borne largely by enforcement agencies within the jurisdictions receiving the fill. The cost of enforcement is an example of an externalized cost: the receiving jurisdiction bears the expense of enforcement while the originating jurisdiction reaps the economic benefit of the new development. This externalization of costs is unsustainable.

Additional Considerations within This Document

This document is fairly narrow in its description of soil and its size threshold for this BMP to apply (see specific comments below). This leaves a wide range of fill movement which is outside of the scope of this document. For example, Georgian Bay Shale is a commonly excavated material from downtown Toronto. As a large portion of fill material is originating from the Greater Toronto Area, it is concerning that this document may not apply to this material. Similarly, it is concerning that this document ‘exempts’ small-scale projects, but does not provide a threshold for what a small-scale project is. It also does not take into account the cumulative effect of many small-scale projects.

While this document makes reference to commercial fill, it does not define it and instead focuses on fill with positive reuse purpose. CA experience has shown that a lot of the fill is being deposited in rural areas, where there is limited development potential in the foreseeable future. This would indicate that the fill is not being deposited for “beneficial reuse”. This document should acknowledge the difference between operations designed to generate substantial revenues only and those sites with a legitimate need for fill, with an identified end use.

Given the potential for high profit in large-scale fill operations, this document should also address the various players that are often involved in these facilities, such as developers, consultants, excavation companies, brokered trucks or trucking companies, fill management companies, etc. Second and third-hand ownership of materials can make tracking and assignment of responsibility extremely difficult for regulators. The recommendations for source and receiving sites (while supported), seems to pre-suppose a non-convoluted

chain of custody. These recommendations may need to be altered to reflect the complex business area of fill management.

Specific Comments

Below you will find comments from Conservation Authorities regarding specific sections of the “Soil Management- A Guide for Best Management Practices” document.

Introduction

- The document “encourages the beneficial reuse of excess soils”. As a general principle, the document should also encourage soil conservation and preservation as a means to reduce excess fill from development activity.
- In the second paragraph, the following words are inverted: “often activities”.

Purpose of Document

- Page 1, the examples of where soil is generated should include infrastructure projects completed by agencies/municipal/provincial and federal bodies.
- As per our comments above, Page 2, 2nd paragraph indicates that the “best practices are not intended to apply to small-scale construction activities or maintenance and construction activities at single-dwelling residential properties, or activities associated with small-scale municipal road work or sewer and water main construction”. Further direction is required as to when an undertaking is to be considered “small-scale”. Cumulatively, many small-scale operations may still have a large impact, particularly when placed in natural hazard or environmentally sensitive land, such as the land that CAs regulate.

General

- The document indicates that “all reasonable steps should be taken to prevent any adverse effect on the environment, human health or the impairment of water quality resulting from soil management activities”. Conservation Authorities agree with this statement, however it is important to note that issues of drainage and hydrology also should be major considerations. For example, if soils of lower permeability are brought into receiving sites and placed on top of soils of higher permeability, this will reduce infiltration and increase runoff.
- In that same paragraph, the document indicates that “[c]onsideration should be given to the existing conditions at any site before receiving excess soils to assess the appropriateness of the site”. The guide should provide more detail as to the type of considerations (i.e. soil type, natural features, natural hazards, etc) should be taken into account.
- The BMP suggests that appropriate remedial actions be undertaken if negative impacts occur during soil management activities. Additional guidance is required to illustrate what are unacceptable impacts from “odours, pests, litter, dust, noise or other such negative impacts, including impacts from traffic and transportation”. Some of these impacts seem to be inherently tied to the operations themselves. Additionally, addressing many of these impacts are beyond the regulatory authority of the Conservation Authority under the *Conservation Authorities Act*. Should the operators not voluntarily take action, this document needs to be clear as to what MOE proposes to do.
- It is suggested that the BMP should recommend that public consultation activities be proponent-led. There is no ability under the *Conservation Authorities Act* to require public consultation, so the public’s ability to participate will be limited in CA regulated areas.

Best Management Practices for Source Sites

- The BMP makes reference to the Soil Management Plan addressing the “soil quality” and “chemical parameters” in the soil. While the role of the Qualified Professional (QP) is understood, in order to

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review applications, CAs need clear documentation and standards of what is acceptable soil quality. This is particularly important given the range of CA technical capacity across the province.

- It is recommended that where there is the capacity for large volumes of excess fill to be produced through a particular development associated with a planning application, that a Soil Management Plan form part of the approval.
- The Soil Management Plan should also include:
 - A characterization of the permeability of the soil (for future drainage and hydrology considerations); and
 - A clear description of the proposed system of tracking the movement of soil from the source site to the receiving site.

Best Management Practices for Commercial Fill and Other Large Receiving Sites

- The BMP references “commercial” fill, but does not provide a definition of it.
- It is good that this section of the document recommends that the owner of the site undertake public consultation. It is unclear however what affect the community’s comments would have on a proposal, particularly where there is no requirement for public consultation (i.e. an application under the *Conservation Authorities Act*).
- While it is beneficial that the MOE is recommending public consultation, the proponents should also be directed to pre-consult with municipalities and CAs and other appropriate agencies. This consultation should be done in advance of the Fill Management Plan, as different agencies may have additional requirements.
- The document indicates that an assessment should be undertaken to establish the pre-fill site conditions of soil and ground water, but there is no accompanying discussion of if or when ongoing monitoring should occur to determine whether background conditions have changed. This is particularly important when the proposal includes placing low permeability soil on top of high permeability soil. This will have a negative impact on the hydrology of the site and will reduce infiltration, thus increasing runoff volumes and flow rates being conveyed to adjacent properties.
- It is recommended that the Fill Management Plan include the following additional requirements:
 - Soil compaction requirements;
 - Existing and proposed grades;
 - Timing and duration of filling activities;
 - Total volume of fill to be accepted at the Receiving Site; and
 - Final rehabilitation plan and use.
- While CAs appreciate the addition of erosion control into the BMP document, it should be emphasized that these controls need to be inspected regularly and maintained.
- Based on the requirements set out in the Fill Management Plan, it would appear that the QP would have to be on site at all times when the site is receiving fill to monitor the incoming trucks. Please clarify if this is correct and also clarify whether or not a staging area is required, in order to receive all of the appropriate documentation prior to the fill being deposited, as outlined in the “record keeping” section.
- This document should provide additional guidance on what constitutes appropriate audit sampling protocols. Many commercial sites receive several hundred loads per day. In this case, a monthly audit sample is inadequate. It is suggested that the minimum sampling be revised, as monthly is likely more appropriate for small-scale projects (to which this document does not apply).
- The Fill Management Plan recommends that sites “not receive any excess soil from a Source Site without confirmation of a Soil Management Plan from the Source Site”. While that is supported, it is recommended that the MOE also direct greater effort to creating real-time tracking of soil movement operations as a BMP.
- The BMP document indicates that owner/operators “may need to establish Financial Assurance, with the appropriate Municipality or Conservation Authority”. Conservation Ontario’s discussion paper on

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Large-Scale Fill Operations also explores the possibility of CAs taking financial assurances, but not in the specific context of soil *quality*. At this point in time, it may not be in a CA's best interest to take on financial assurances against contaminated soils, as there is a lack of guidance in this subject area. Given the potential costs associated with the remediation of a contaminated site, it is unlikely that a CA will have received sufficient securities from the proponent to undertake the work. Therefore, additional guidance from MOE must be forthcoming if the goal is to have CAs take on these assurances.

Procurement Practices

- Conservation Ontario has a similar section within their paper and strongly supports addressing the full life-cycle of fill (as per the comments above), rather than solely addressing it through the receiving site.
- CO has made some suggestions as to where the concept of addressing the full life-cycle of fill can be incorporated elsewhere within the MOE BMP document.

Best Management Practices for Temporary Soil Banks

- CO appreciates the reference in this section to the possible requirement of a CA permission for the placement of fill.
- It is unclear within this section as to whether or not an approval would be required in all cases from MOE for a soil banking operation. If an approval is not required from MOE, it is unclear how a CA would enforce that soil should not be stored for a period greater than 2 years.
- If MOE is not taking a lead in managing these soil banks, it would also be very difficult for CAs to approve them, given MOE's advice that daily site inspections be undertaken. CAs do not have the capacity to fulfill this recommendation.
- CA staff have also expressed a similar concern (as described above) with the possibility of CAs taking financial assurances for these banks.
- In terms of best management practices, it is recommended that the following be added:
 - Maximum volume of fill to be accepted at the Temporary Soil Bank; and
 - Vegetation of stockpiles in lieu of or in addition to covering soil piles if topsoil is being stockpiled for any length of time.

Civil Construction and Other Development Activities

- In recent years, a number of CAs have experienced significant problems with illegal fill placement within their watersheds. This illegal activity often stems from soil generated at brownfield developments and infrastructure projects within the Greater Toronto Area, as a result of intensification within existing urban areas. Enforcement of unauthorized filling and grading activities within areas regulated by CAs is a significant workload and resource issue. Should MOE elect to keep civil construction outside of the scope of this paper, it is recommended that an additional paper be generated, dealing with this significant environmental issue.

General Comments on the Documents

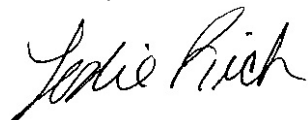
MOE should consider adding the following to this document:

- A section on "Best Management Practices for Hauling Soil". This section could outline BMPs for hauling activities (e.g. noise and dust control, contingency plans in the event of a spill, MTO requirements, etc);
- A list of agencies/ministries/levels of government to contact (in general terms) for questions, non-compliance reporting, etc (e.g. MOE, MNR, Municipalities and local CAs); and
- A glossary.

Once again, thank you for the opportunity to provide comment on MOE's "Soil Management- A Guide for Best Management Practices". Conservation Ontario would like an opportunity to remain engaged and assist MOE where possible, in future iterations of this document. Conservation Ontario would also be interested in participating in any future working groups that MOE assembles on this important topic.

Should you have any questions about this letter, please do not hesitate to contact me at extension 228. I look forward to continuing to work cooperatively with you on this issue.

Sincerely,

A handwritten signature in black ink that reads "Leslie Rich". The signature is written in a cursive, flowing style.

Leslie Rich
Policy and Planning Officer