



June 3, 2019

Sanjay Coelho
Environmental Policy Branch
40 St. Clair Ave West, Floor 10
Toronto, ON M4V 1M2

Re: Conservation Ontario's Comments on the "Excess soil regulatory proposal and amendments to Record of Site Condition (Brownfields) Regulation" (ERO #013-5000) and "Holding polluters accountable by enhancing Ministry of the Environment, Conservation and Parks' enforcement tools" (ERO #019-0023)

Dear Mr. Coelho:

Thank you for the opportunity to provide comments on the "Excess soil regulatory proposal and amendments to Record of Site Condition (Brownfields) Regulation" and "Holding polluters accountable by enhancing Ministry of the Environment, Conservation and Parks' enforcement tools". Conservation Ontario (CO) is the network of Ontario's 36 conservation authorities (CAs). In addition to the opportunity to provide these comments, Conservation Ontario is appreciative of the Ministry of Environment, Conservation and Parks (MECP) including CA/CO staff members as part of the Excess Soil Engagement Group. These comments are not intended to limit consideration of comments shared individually by CAs through this consultation process.

Conservation Ontario is supportive of the government's efforts to clarify the requirements for the reuse of excess soil, limit the amount of healthy soil being sent to landfill and lower greenhouse gas emissions from the sector. The proposed emphasis on source site regulation is appropriate and necessary to ensure the success of the framework. Conservation Ontario is also supportive of the actions outlined in "A Made-in-Ontario Environment Plan" which proposes to: make it easier and safer to reuse excess soil; recognize that excess soil is a resource that can be reused; and work with municipalities, conservation authorities, other law enforcement agencies and stakeholders to increase enforcement on illegal dumping of excess soil.

Key Recommendations for Improvement to [Implementation of] this Regulatory Proposal

Include both soil quality considerations and considerations related to the appropriateness of the receiving/reuse site

The "Rules for On-Site and Excess Soil Management" focuses almost exclusively on contaminated soils or soils which may cause contamination. There is little recognition that other environmental impacts could result from the placement of large quantities of fill, including a very narrow approach to natural hazard management. It is therefore recommended that the definition of "environmentally sensitive area" be amended to include

“hazardous lands” as defined in the Provincial Policy Statement to direct fill placement outside of areas subject to flooding and erosion hazards.

In addition, the placement of large quantities of excess soil could have adverse effects to source water quality and quantity, specifically within designated vulnerable areas, as identified in Source Water Protection Plans. The proposed Rules document must also identify the imperative of drinking water source protection when considering appropriate excess soil reuse sites.

The requirement to accept at least 10,000 m³ of excess soil prior to a reuse site requiring registration and demonstrating that procedures are in place to verify where the soil is delivered from and that the quality of soil received is appropriate seems excessively high, particularly when there are no explicit safeguards to direct fill outside of hazardous lands and limited rules associated with the protection of source water. It is recommended that the protection of hazardous lands and source water quality and quantity be strengthened or that the 10,000 m³ threshold be reduced.

Use of site specific instruments

Much of this proposal focuses on producing guidance materials for others to implement on an operational basis. Under this new framework it makes the most sense that the Province and municipalities would have the lead for setting fill quality considerations, as their regulatory authority applies throughout their jurisdiction (as compared to CAs who have limited regulatory jurisdiction). With that being said, additional thought should be given regarding how to integrate CA approvals under S. 28 of the *Conservation Authorities Act* into this framework, in order to protect against aggravating or creating new natural hazards and to streamline the process for proponents. The CA role in source protection planning should also be acknowledged. For example, while we do support the new wellhead protection areas amendment that would create a specific certification statement to verify that the property owner has received written consent from the municipality to use non-potable standards in wellhead protection areas, it is recommended that municipalities consult with the local CA(s) for source protection planning prior to providing written consent. This requirement for written consent should extend to wellhead *and* intake protection zones.

In addition to the recommended amendment to the Records of Site Condition regulation to address intake protection zones, it is recommended that the Ministry of Environment, Conservation and Parks establish a working group with municipalities and CAs to discuss implementation of this regulatory framework and to develop guidelines and/or best practices. Any guidance issued by the Province should be “ground truthed” by industry and other stakeholders to ensure that it works for all parties. This guidance should serve to provide clarity around the role of the Province and when provincial soil standards apply; as well as build local implementation capacity.

Develop a Multi-Agency Enforcement and Compliance Protocol

Conservation Ontario is supportive of the proposal to modernize the administrative penalties under the *Environmental Protection Act* and to enable future regulations to prescribe administrative penalties in areas such as the management of excess soil. Conservation Ontario is happy that the proposal would improve the ability of the Province to take enforcement action against those who illegally deposit excess soil. The “A Made-In-Ontario Environment Plan” contains a commitment to “work with municipalities, conservation authorities, other law enforcement agencies and stakeholders to increase enforcement on illegal dumping of excess soil”.

The need for the Province to develop guidelines to implement the permissive component of the excess soil regulatory proposal is highlighted above. At the same time, the Ministry, in collaboration with municipalities, CAs and other law enforcement agencies, should develop a multi-agency enforcement and compliance protocol, to outline how these groups should work together in dealing with compliance and enforcement issues, including collaborating on prosecution efforts, where appropriate.

It is noted that monitoring and compliance issues contributed greatly to the genesis of this excess soil regulatory proposal. MECP needs to support local regulators of receiving sites, especially municipalities and conservation authorities, as they will carry new responsibilities within the proposed regulatory framework. Joint training of officers should be a priority as part of this protocol. It should also be acknowledged that the Province and municipalities have more regulatory tools available to address non-compliance with this regulatory proposal; for example, the five year period in which soil may be designated waste far exceeds the limitation for proceeding with respect to an offence under the *Conservation Authorities Act*.

Provide adequate training and education to those who will need to implement the framework

It is noted that some elements of this regulatory proposal would come into effect in January 2020. With the close proximity to the date of implementation, it is recommended that the Ministry provide training to those who will need to implement the framework as soon as possible. Conservation Ontario is prepared to assist with coordination of training for the CAs.

As this regulatory proposal includes phased implementation, it is recommended that the Province develop a user-friendly summary of the key elements to be implemented at each phase. This summary should be posted as part of any decision on the Environmental Registry and used as a communications tool for municipalities, CAs and other interested stakeholders.

Thank you for the opportunity to provide feedback on the “Excess soil regulatory proposal and amendments to Record of Site Condition (Brownfields) Regulation” and “Holding polluters accountable by enhancing Ministry of the Environment, Conservation and Parks’ enforcement tools”. Conservation Ontario looks forward to working with the Ministry as it moves towards implementation of these regulations. Should you have any questions about this letter please contact me at extension 226.

Sincerely,



Leslie Rich, RPP
Policy and Planning Liaison

c.c. all CA CAOs/GMs

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