



March 23, 2016

Mr. Atif Durrani
Senior Policy Advisor
Ministry of the Environment and Climate Change
Integrated Environmental Policy Division
Land and Water Policy Branch
135 St Clair Avenue West, Floor 6
Toronto, ON M4V 1P5

**Response to the proposed Excess Soil Management Framework
EBR Reference Number 012-6065**

Dear Mr. Durrani,

On behalf of the Ontario Professional Planners Institute (OPPI), I am submitting the Institute's response to the Ministry of the Environment and Climate Change (MOECC) with regards to the consultations on the proposed Excess Soil Management Framework.

OPPI is the recognized voice of the Province's planning profession. Our almost 4,500 members work in government, private practice, universities, and not-for-profit agencies in the fields of urban and rural development, community design, environmental planning, transportation, health, social services, heritage conservation, housing, and economic development. Members meet quality practice requirements and are accountable to OPPI and the public to practice ethically and to abide by a Professional Code of Practice. Only Full Members are authorized by the Ontario Professional Planners Institute Act, 1994, to use the title "Registered Professional Planner" (or "RPP").

OPPI members have reviewed the "Excess Soil Management Framework" from the perspective of Registered Professional Planners who provide their professional services and expert opinions to the public and private sectors in Ontario, including municipalities, conservation authorities and community groups. Representatives from OPPI participated in consultations leading to the January 2014 "Management of Excess Soil – a Guide to Best Management Practices" document. More recently, OPPI members attended the briefing session held by the Ministry of the Environment and Climate Change (MOECC) on March 2, 2016, prior to the completion of this submission. OPPI has also made submissions on other, related initiatives in the recent past, including the review of the Conservation Authorities Act and the "Blueprint for Change" for the Aggregate Resources Act.

Our submission is oriented around the "Proposed Actions" summarized in the "Priorities and Timeline" table in Section 6, pages 29 and 30 of the "Framework" document, as well as the "Questions for Consideration" identified in Section 7. We focus our attention on those issues for which there is a planning-related interest.

Overall, we are pleased to see that a more rigorous and accountable framework for dealing with excess soil is being considered for the Province of Ontario.

Responses to “Proposed Actions”

1. *MOECC to work with partner ministries to develop a new regulation under the EPA requiring larger and/or riskier source sites to develop and implement excess soil management plans certified by a Qualified Person and made available to MOECC and local authorities.*

OPPI agrees that it would be beneficial to focus efforts on source sites that present the greatest scale and/or risk. OPPI looks forward to seeing clearer criteria for identifying sites that will be subject to the regulation. If decisions are to be left to the discretion of “Qualified Persons,” OPPI supports the definition found in the Brownfields regulation, which limits QPs to members of professional organizations that have appropriate ethical standards and enforcement and disciplinary processes.

2. *MMAH and MOECC, could require proof of an Excess Soil Management Plan for issuance of certain building permits.*

OPPI will have greater confidence in the proposed process if there is a commitment on the part of MOECC to monitor, review and report on Excess Soil Management Plans, at least on a sample basis. There may be instances where soil removal takes place before a building permit is issued, in which case the records for removal and deposition of soil would be relevant as well.

3. *MMAH and MOECC to promote linking requirements for excess soil management to applicable Planning Act approvals through guidance.*

We suggest that to promote consistent implementation, the linkage to Planning Act approvals be established through regulatory requirements and/or policy (Provincial Policy Statement - PPS), rather than guidance or “best practice”.

In addition, requirements for excess soil management should be linked with permits issued under Section 28 of the *Conservation Authorities Act*, and consideration should also be given to the regulation of source sites for which no permit or planning approval is required, and where there may be a lack of existing regulatory or enforcement tools.

We note that excess soil deposition and storage is not considered a land use under the Planning Act. While there are controls on “site alteration” in some circumstances, the scope for municipalities to control this activity through planning policy and approvals processes is limited (for example, it cannot be a permitted and regulated use in a Zoning By-law). On the other hand, soil processing facilities that involve “development”, as defined, would be subject to the full suite of tools available under that legislation.

4. *MOECC to work with Qualified Persons...*

This matter falls outside our area of interest as professional planners.

5. *MOECC to clarify when waste approvals apply to excess soil processing sites and prescribe requirements for temporary storage sites.*

OPPI supports this proposed clarification.

6. *MMAH with MOECC to consider approaches that would encourage municipalities to identify appropriate areas (e.g. industrial) for excess soil storage and processing to encourage local re-use, to be achieved through ongoing updates to the provincial land use planning framework, including the coordinated review of provincial plans.*

It may be difficult for municipalities to pre-determine storage and processing locations in a land use planning context. Landowners, residents and municipalities may not agree on where these activities should occur. Furthermore, soil storage and soil processing may take a variety of forms, both temporary and longer term. As noted above, the scope for control of soil storage activities under the Planning Act is limited. It may only be possible for the municipality to set out guidelines for these activities. There may be a concern, as well, that municipalities that identify soil processing and storage sites will attract more of these facilities than those that do not identify such sites.

Where soil storage is proposed in an industrial or “employment” area, there is potential to displace or defer future employment uses, which are otherwise protected by the PPS.

7. *MMAH and MNRF to consider amendments to legislation to remove restrictions on site alteration by-laws in conservation authority regulated areas.*

As indicated in its response to the review of the Conservation Authorities Act, OPPI supports any measures that will close gaps and resolve potential conflicts between different agencies and legislative regimes. This applies as much to excess soil as it does to development as a whole.

Our suggested approach is to allow municipalities to enact site alteration by-laws that apply to the jurisdiction as a whole, including CA regulated areas. The CA would then deal with the issuance of a permit within the regulated area if the proponent already meets the requirements of the site alteration bylaw. This could be achieved through deletion of Section 142(8) of the Municipal Act, and through passage of a regulation that establishes the order of precedence.

8. *MMAH and MOECC to develop educational materials respecting receiving sites, including larger (commercial) sites, to inform municipalities in the development or updating of by-laws.*

OPPI supports the need for education in implementing a new framework for excess soil.

9. *MMAH and MNRF to explore, with partners, legislative and non-legislative ways to improve compliance and enforcement with Municipal Act and Conservation Authorities Act requirements.*

This is linked with Item 7 above. OPPI supported the introduction of such tools as stop work orders in its response to the Conservation Authorities Act Review, and continues to support more effective enforcement of these and Municipal Act requirements. At the same time we believe that policies and land use frameworks developed under the Planning Act should provide the overall context within which these provisions operate.

- 10. MNRF to consider requiring record keeping for fill being brought to licensed and permitted aggregate sites, through the current review of the Aggregate Resources Act.*

OPPI fully supported record keeping for fill importation at aggregate sites in its response to the Blueprint for Change regarding the Aggregate Resources Act, and continues to do so.

- 11. OMAFRA and MOECC, to develop best-practice guidance for farmers to limit impacts of the importation of soil onto farmland.*

The importation of soil, whether on agricultural land, farmland or elsewhere, can have a wide range of impacts on ground and surface water quality and quantity, on natural heritage, and on communities in such areas as uncontrolled working hours, noise, dust, traffic, and tracking of mud on roads. In the case of aggregate extraction, these impacts are controlled through a legislative and regulatory regime under the Aggregate Resources Act. In the case of excess soil importation, we believe that such impacts are also best controlled through regulation, compliance and enforcement rather than “best practices,” which would be difficult to enforce.

- 12. MOECC to develop approaches and standards for re-use of excess soil that provide for environmental protection and sustainable re-use of excess soil.*

- 13. MOECC to develop clear guidance to inform requirements on testing of excess soil.*

- 14. MOECC to develop guidance for smaller, lower risk source or receiving projects or sites.*

While items 12, 13 and 14 are generally technical matters that fall under the EPA rather than planning legislation, OPPI is generally in support.

- 15. MMAH with MOECC to identify opportunities to encourage municipalities to develop soil re-use strategies as part of planning for growth and development (e.g. official plans, master planning) through ongoing updates to the provincial land use planning framework, including the coordinated review of provincial plans.*

While OPPI is generally supportive of soil re-use strategies, as noted under items 3 and 6 above, the level of detail with which this can be addressed in planning documents is likely limited. There is potential for conflict with existing policies regarding the protection of employment lands.

- 16. MOECC to develop guidance for the consideration of excess soil in the environmental assessment processes that govern large infrastructure and other development projects.*

- 17. Province to support pilot projects identifying opportunities and procedures for excess soil re-use.*

- 18. MOECC to integrate and align various aspects of provincial policy including Regulation 347 (Waste) and O. Reg. 153/04*

- 19. Province, including MOECC, MTO and MEDEI, to review and update existing guidance for provincial projects (e.g. transportation and infrastructure) to ensure alignment.*

20. MOECC to develop a stakeholder group (and potential sub-working groups) to provide input on proposed policies, technical matters, guidance and implementation, including coordination with external programs.

21. Industry and MOECC will jointly investigate approaches to program delivery, e.g. like the UK CL:AIRE model, that promote market-based mechanisms to encourage the reuse of excess soil.

OPPI is supportive of the approaches outlined under items 16-21. We are prepared to participate in the stakeholder group identified under item 20.

Questions for Consideration

The following responses to the Questions for Consideration in Section 7 of the Framework document are drawn from the above discussion related to each proposal.

1. Does the proposed policy framework include adequate policy tools and actions to improve the management of excess soil in Ontario? If not, what additional tools or actions would you suggest?

As noted under items 2, 3, and 11 above, OPPI would prefer approaches that ensure greater accountability and rigour in enforcement, for example through regulation and monitoring rather than through guidelines and “best practices”.

2. Are you aware of examples of existing best practices from other jurisdictions that may be helpful to Ontario that you would like to share?

Holland and Quebec, in addition to the U.K. system which already informs the “Framework”.

3. Which proposed actions do you see as a priority?

The framework should be implemented as a whole. Clearer timelines are needed for items listed in the “Proposed Action” table as “Longer-term”, as many of these would be essential components of a proposed Framework.

4. What role do you see for you or your organization in implementing the proposed framework?

OPPI is prepared to participate in a stakeholder group and to participate in any dissemination of materials or education related to the implementation of the framework that arises from this process.

5. What role do you see for industry or non-governmental organizations in supporting delivery of excess soil programs for soil matching, tracking, and promoting innovation, etc.?

OPPI does not expect to be involved in these activities.

6. How can the province best continue to engage you or your organization and the public as it moves forward?

Through EBR postings and direct contact and invitations to consultation and educational events.

7. Do you have any other comments or feedback?

None at this time.

We welcome the opportunity to meet with you and your staff to discuss our submission and answer any questions. Please feel free to contact me by email at l.ryan@ontarioplanners.ca or by phone at 416-668-8469.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Ryan', followed by a horizontal line.

Loretta Ryan, RPP, CAE
Director, Public Affairs
Ontario Professional Planners Institute