



Ontario Federation of Agriculture

Ontario AgriCentre

100 Stone Road West, Suite 206, Guelph, Ontario N1G 5L3
Tel: (519) 821-8883 • Fax: (519) 821-8810 • www.ofa.on.ca

June 15, 2018

Ms. Laura Blease, Senior Policy Advisor
Environmental Policy Branch
Ministry of the Environment and Climate Change
40 St. Clair Avenue West, 10th Floor
Toronto, ON
M4V 1M2

Dear Ms. Blease;

RE: EBR Registry No. 013-2774 Excess Soil Management Regulatory Proposal

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 37,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

While Ontario covers a seemingly vast area, 1.07 M km² or 415,598 mi² with distinctly different geographic and climatic regions and their associated soils, we cannot lose sight of the stark reality that only 4.6% of Ontario's land base can support **any** agricultural production. Even less than that 4.6% contains our most productive soils; Classes 1, 2 and 3.

The 2016 census shows a continuation of the decline in the area being farmed over the 2011 census. Over this 5-year period, 319,700 acres went out of agricultural production. The previous census period, (2006-2011) saw 642,000 acres go out of production. From OFA's perspective, these losses are unsustainable if Ontario is to maintain its role as a major supplier of food, fibre and fuel for Ontarians, Canadians and the world.

Comments on the draft regulation:

Section 6. (2)1.i states that excess soils from a "garage" cannot be reused. We fully concur that soils from garages as well as from a range of industrial and commercial facilities where there is a high likelihood of contamination should never be reused but should always be treated as waste. However, we can find no definition of the term "garage" in either the draft regulation or the "Rules for On-Site and Excess Soil Management". Are we to assume that this reference is to a motor vehicle repair facility/shop? Furthermore, 6. (2)1.ii refers to a "bulk liquid dispensing facility". Similar language is also found in 6. (5) on page 11 and in and in 7. (3)7 on page 12. Is the intended focus solely on petroleum motor fuel (diesel and gasoline) dispensing facilities, or is there a broader focus? Are similar restrictions to be applied to excess soils from other industrial and/or commercial activities? OFA requests that the Ministry of the Environment and Climate Change clarify the application of the proposed regulation and/or the "Rules for On-Site and Excess Soil Management" with respect to garages, petroleum motor fuel dispensing facilities and other industrial/commercial activities that may contaminate soils.

Section 8 (page 16) requires only “visual and olfactory” observations. OFA doubts if a quick look and a sniff test are truly sufficient to detect soil contamination. In lieu of a quick observation, OFA recommends random core samples, either to the proposed depth of excavation or to bedrock, whichever come first, be used to check for potential contamination.

The draft regulation does not mention compliance inspections of source sites, reuse sites, testing labs and trucking companies. In the absence of random, in-person compliance inspections, how can the Ministry of the Environment and Climate Change ensure Ontarians that the multiple excess soil players are fully compliant with its excess soil regulations? OFA requests that the Ministry of the Environment and Climate Change commit to random, in-person compliance inspections throughout all stages of the excess soil journey, i.e. of source sites, testing labs, trucking companies and reuse sites.

Related to this if contaminated soils are deposited at a reuse site despite of the presence of an Excess Oil Management Plan and any requisite inspection and testing, who will pay for the ensuing clean up? Our position would be that the generator of the excess soils, along with the QP who prepared the Plan should be 100% responsible for the clean up costs. OFA recommends that the draft regulation be amended to ensure that the generator of the excess soils, along with the QP who prepared the Plan will be 100% responsible for all necessary clean up costs.

The draft regulation does not prohibit the owner of a reuse site from accepting payment for receiving excess soil. While OFA does not oppose this, we do recommend that any payments for receipt of excess soil be noted in both the Excess Soil Management Plan and MOECC’s on-line registry.

Portions of the proposed regulation will come into effect January 1, 2020, with the remainder of the regulation in force on January 1, 2021. Substantial development activity, with its associated excess soil, will occur in the interim without the benefit of this regulation and the Ministry of the Environment and Climate Change’s oversight. OFA views this delay as excessive and recommends that the Ministry advance its “in force” dates.

Comments on the Rules for On-site Excess Soil Management:

The list of environmentally sensitive areas is set out on page 4-5. We have no arguments with the areas listed, but we do note that surface water features are absent. The Provincial Policy Statement definition of natural heritage features and areas includes fish habitat, which would include the full range of surface water features such as rivers, streams, lakes, etc. OFA requests that the definition of environmentally sensitive areas be expanded to include fish habitat and surface water features.

For some unexplained reason, prime agricultural lands are not afforded similar treatment as environmentally sensitive areas. This reinforces the feeling of agricultural and rural Ontarians that their interests and needs matter little to urban Ontarians. This oversight is unacceptable, particularly considering the reality that agricultural land, although comprising only 4.6% of Ontario’s seemingly vast area, supports a diverse and complex agricultural system that supports the agricultural production which Ontarians and others beyond depend upon for safe, affordable food. Enabling the loss of this valuable and diminishing resource through burial under excess soil is, in our view, short sighted and unacceptable. OFA demands that our prime agricultural lands be afforded protection under these regulations, based on their inherent value as the source of our food.

Section 7 of the draft regulation speaks to the content of an Excess Soil Management Plan but overlooks addressing the impacts of soil reuse on water quality and quantity. As the likely

destination for excess soils will be in areas solely dependent on private water wells, matters related to water quality and quantity are key. OFA requests that water quality and quantity impacts be included under Section 7, Requirements re preparation, contents of plan.

In addition, reuse sites apparently do not receive test reports for the soil they will receive. We understand that they receive hauling records, which includes soil quantity, date and time, where it originated from and key contact information. OFA does not view this as sufficient. OFA recommends that the regulation and Rules for on-site and excess soil management be modified to require that the soil test data, particularly related to soil quality, be provided to the reuse site **before** any excess soil is deposited at the reuse site. Lastly, there are no requirements for justification studies for excess soil reused on agricultural land. If one of the overarching goals of this exercise is to ensure “beneficial reuse” of excess soil, then OFA strongly recommends that a justification study be an absolute requirement for any excess soils, including topsoil, being deposited at the reuse site that is in an agriculturally-designated portion of a municipality. This justification study should be completed by a Qualified Person with education and expertise in agricultural soils and speak to the agronomic rationale for depositing excess soil on this property, the types of soil being deposited, the depths of deposit and the compatibility of the excess soils with the native soils on the farm.

Page 13 speaks to stakeholder engagement sessions. Overall, we view this as positive. However, it is not clear if these sessions are intended/required for source sites or reuse sites or both. Additionally, is there a defined distance, e.g. 1 kilometre, around a source or reuse site for those invited to participate? Lastly, are these sessions also for stakeholder and businesses along haul routes? OFA recommends further clarification on stakeholder engagement sessions, to address the geographic extent of them.

In OFA’s opinion, mere “consideration” for controlling the introduction and spread of invasive species is far too weak (page 13). Invasive species have proven to be virtually impossible to eradicate, once established. The negative impacts of invasive species fall not only on natural environments (wetlands, woodlots, etc.), but also on agricultural lands and society in general. OFA recommends that there should be a requirement on the part of the generator of excess soils to eradicate, to the best of their ability, invasive plants from excess soil destined for reuse.

Page 14 speaks to Traffic and Transportation Management Plan. Overall, this is positive. However, the impacts of dust, noise, traffic on agricultural crops, livestock and the movement of farm vehicles are overlooked. OFA requests that the impacts of dust, noise, traffic on agricultural crops, livestock and the movement of farm vehicles be added as key elements in any Traffic and Transportation Management Plan.

Pages 32-33 speak to salt impacted soil (7.D). OFA opposes the reuse of “salt impacted soil” where they could negatively impact an area’s native soils. Salt impacted soils should never be reused on agricultural land, regardless of the salt content of the farm’s native soil. Adding salt impacted soils to an area where the soils are already negatively impacted by salt only exacerbates the problem. Salt impacted soil should be treated to remove its salt content before it is reused. Otherwise it should be treated as waste. OFA recommends that no salt impacted soils be reused on agricultural land unless remediated to remove any salt contamination.

Excess soil regulation and municipal site alteration by-laws:

The Municipal Act does empower local municipalities to regulate and enforce site alteration, but the capacity of local municipalities varies. Municipalities with a small population usually have a small tax base, leaving them with little capacity to monitor and enforce a rigorous site alteration by-law. Furthermore, the Ministry of the Environment and Climate Change seems to defer

considerable responsibility to municipal “site specific instruments” to regulate the reuse of excess soils. OFA views this stance as naïve. Small rural municipalities are home to the available “space” for the reuse of excess soil, but they lack the capacity to develop and enforce effective by-laws, necessitating provincial support to develop effective site alteration by-laws and then the capacity to enforce them. These municipalities could also use provincial support in the likely event they will have to defend their by-laws in the courts.

To emphasize this, we note the questions posed by residents and farmers for a recent application to deposit excess soils on agricultural lands in a lower tier municipality;

- i. What tests will be done on the fill?
- ii. Why are only 1 out of 100 truck loads being tested?
- iii. Is the fill being tested for salt?
- iv. Is the fill being tested for all possible contaminants?
- v. Who sets the testing protocols?
- vi. Are the same testing guidelines applied across Ontario?
- vii. Is Table 1, 2 or 3 soils being accepted at this site?

These questions emphasize the need for close coordination between the Ministry of the Environment and Climate Change and municipalities on excess soil reuse and municipal roles, responsibilities and options under “site alteration” bylaws. Therefore, OFA strongly recommends that the Ministry of the Environment and Climate Change and the Ministry of Municipal Affairs financially assist municipalities in the development of effective site alteration by-laws combined with effective enforcement of these by-laws.

The Ontario Federation of Agriculture notes that the Ministry of Natural Resources and Forestry amended the Aggregate Resources Act in 2017. Its stated intention is to follow the legislative amendments with changes to the Act’s Regulations, Operating Standards and Policies. The rehabilitation of aggregate pits and quarries affords an opportunity to beneficially reuse clean excess soils to enhance the quality of pit and quarry rehabilitation. OFA requests that the Ministry of the Environment and Climate Change’s Excess Soil Management Regulatory Proposal work in harmony with the Ministry of Natural Resources and Forestry’s forthcoming changes to its Regulations, Operating Standards and Policies.

The Ontario Federation of Agriculture welcomes this opportunity to provide its perspective on the Excess Soil Management Regulatory Proposal. Ensuring that our agricultural lands are never compromised through inappropriate excess soil reuse is paramount. We look forward to the incorporation of our recommendations and suggestions into the final version.

Sincerely,



Keith Currie
President

KC/pj

cc: OFA Board of Directors