

May 30, 2019

Mr. Sanjay Coelho
Environmental Policy Branch
Ministry of the Environment, Conservation and Parks
40 St. Clair Avenue West, 10th Floor
Toronto, ON
M4V 1M2

Dear Mr. Coelho;

RE: ERO 013-5000 Excess soil regulatory proposal and amendments to Record of Site Condition (Brownfields) Regulation

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 38,000 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.

Few Ontarians are aware that agriculture and agri-food processing is Ontario's largest economic driver. From field to fork, Ontario's agriculture and agri-food sector contributes \$39.5 billion to the province's economy and supports 822,483 jobs. Provincial policies that jeopardize the ability of our agriculture agri-food sector to prosper and grow are short-sighted and counter-productive.

While Ontario seemingly covers a vast area, 1.07 M km² or 415,598 mi² with distinctly different geographic and climatic regions and their associated soils, the stark reality is that only 4.6% of Ontario's land base can support **any** agricultural production, and our most productive soils; Classes 1, 2 and 3, account for even less.

Taken together, OFA believes these realities underscore the need to include appropriate rules and protections to ensure the ability of our finite and shrinking agricultural lands to produce safe, affordable food are never compromised due to improper reuse of excess soils.

OFA has focussed its comments on the draft "On-Site and Excess Soil Management Regulation" and the draft "Rules for On-Site and Excess Soil Management" portions of this posting.

Comments on the draft "On-Site and Excess Soil Management Regulation":

There is no definition of "topsoil" in the draft regulation. While topsoil is defined in the draft "Rules for On-Site and Excess Soil Management", OFA recommends that the draft regulation contain the same definition for topsoil as found in the draft Rules.

There is also no language in the draft regulation addressing payments to the owner of a soil reuse site receiving payment from the source site. OFA believes that if a soil reuse site does receive payment for allowing excess soil to be placed on his/her property, that this should be included in the tracking system.

The term “garage” is cited in section 1.(2), but it is not defined. Does it refer to the range of repair shops and facilities for motor vehicles and commercial motor vehicles? Defining the term “garage” will add clarity to the draft regulation. OFA recommends that the term “garage” be defined to mean the range of repair shops and facilities for motor vehicles and commercial motor vehicles.

We find the language in item 3 of the first Table on page 8 to be confusing. It seems to suggest that if there is a lower excess soil standard in an instrument versus the soil rules, that the lower standard prevails? OFA believes that where there is any difference between an instrument and the soil rules, that the higher standard should always apply, to ensure that there are no opportunities for the improper reuse of excess soils.

In section 7, when excess soils are coming from an urban settlement area, we believe that some minimum level of soil testing should be done to ensure that it is not contaminated in any way, before it is allowed to leave the project area. OFA recommends that section 7 of the draft regulation be amended to require soil testing in this instance.

Section 7.(8)10 should note both the current use and the Official Plan and/or Zoning By-law designation. They can differ. An area can be designed in the Official Plan and/or Zoning By-law as “future urban” but currently be used for agriculture. When considering excess soil reuse options, the most restrictive use should be determining the applicable soil reuse option.

Section 13 speaks to the operation of a reuse site, but it sets a minimum excess soil amount of 10,000m³. Amounts less than 10,000m³ seem to be unaddressed. From OFA’s perspective, this is unacceptable. We strongly recommend that the threshold be dropped to 1,000m³.

Section 14 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 look and sniff, 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.

Comments on the draft “Rules for On-Site and Excess Soil Management”:

While prime agricultural lands are not “environmentally sensitive” in the same sense as the areas set out as such in the draft Rules, we firmly believe that prime agricultural lands should be recognized and protected from the improper reuse of excess soil for their unique ability to produce food. This reinforces the sense that the interests and needs of farmers and rural residents matter little to urban residents. This oversight is unacceptable, particularly considering the reality that agricultural land, although comprising only 4.6% of Ontario’s area, supports a diverse and complex agricultural system that supports food production, as well as natural heritage features. 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 prime agricultural lands be afforded protection under these regulations, based on their inherent value as the source of our food.

OFA further recommends that topsoil destined for reuse on agricultural land undergo testing at an agriculture-accredited laboratory, with soil health parameters included in the testing regime.

Section 1(1) of Part II of the draft Rules requires the Excess Soil Destination Assessment Report to include the “estimated volume and quality of soil to be removed from the project area as excess soil”. OFA applauds the Ministry for this.

We note that there seems to be no requirement in Part II of the draft Rules specifying that topsoil and subsoil be separated at a project site, temporary storage site or soil bank.

In Part III, section 1.(7)iii contains no definition of “most recent uses” of the project area. This is too vague. There should be a specified time period or at least indicate when the project area was designated as an agricultural use, or perhaps also a residential use.

In Part IV, OFA welcomes the statement in 1 (7) iv 3.3. that salt impacted excess soils are excluded from lands “that will be used for growing crops or pasturing livestock”. It underscores the inherent value of Ontario’s agricultural lands, and the need to ensure that the reuse of excess soils never compromises their ability to produce food.

Section 8 speaks to excess soils blended with compost. OFA recommends that this section be amended to preclude any reuse of blended soils on lands “that will be used for growing crops or pasturing livestock”.

The current draft of the Rules for On-Site and Excess Soil Management seem to have dropped the guidance on addressing invasive species that were in the 2018 version. Movement of excess soil from source site through temporary storage to soil back to final reuse site provides many opportunities for the introduction and spread of invasive species. In the 2018 version of the Rules for On-Site and Excess Soil Management, OFA characterized their mere “consideration” for controlling the introduction and spread of invasive species as far too weak. Invasive species have proven to be virtually impossible to eradicate, once established. The negative impacts of invasive species fall not only on our natural environments (wetlands, woodlots, etc.), but also on agricultural lands and society in general. OFA strongly 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.

The current draft of the Rules for On-Site and Excess Soil Management seem to have dropped the requirements for a Traffic and Transportation Management Plan. There are requirements for Temporary Storage Sites to manage the off-site adverse effects of noise, dust, etc. However, the adverse impacts of dust, noise, truck traffic, etc. on agricultural crops, livestock and the movement of farm vehicles are overlooked. OFA strongly recommends that the impacts of dust, noise, truck traffic, etc. on agricultural crops, livestock and the movement of farm vehicles be added back as key elements in any Traffic and Transportation Management Plan.

OFA believes its recommended changes to the draft “On-Site and Excess Soil Management Regulation” and the draft “Rules for On-Site and Excess Soil Management” should be reflected in the final versions. We need to include appropriate rules to protect our finite and shrinking agricultural lands from improper reuse of excess soils to ensure Ontario’s ability to produce safe, affordable food is never compromised.

Sincerely,



Keith Currie
President

KC/pj

cc: The Honourable Rod Phillips, Minister of the Environment, Conservation and Parks
The Honourable Ernie Hardeman, Minister of Agriculture, Food and Rural Affairs
OFA Board of Directors