

CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: April 2, 2013	
SUBJECT/REPORT NO: Amendments to the Site Alteration By-law No. 03-126, as Amended by By-law No. 05-115 and Further Amended by By-law No. 11-262 (PED12184(a)) (City Wide) (Outstanding Business List Item)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Jason Thompson (905) 546-2424 Ext. 3933
SIGNATURE:	

RECOMMENDATION

- (a) That amendments to Site Alteration By-law No. 03-126, as amended by By-law No. 05-115, and further amended by By-law No. 11-262, as set out in Report PED12184(a), be approved and that the draft amending By-law, attached as Appendix "A" to Report PED12184(a), which has been prepared in a form satisfactory to the City Solicitor, be enacted;
- (b) That staff be directed to continue to monitor the effectiveness of the Site Alteration By-law and submit as part of the 2014 Capital Budget process monies for a comprehensive review and update of the Site Alteration By-law; and,
- (c) That the item respecting the City of Hamilton's request to the Ministry of the Environment (MOE) to establish a process to govern the quality of fill imported to a receiving site be identified as complete and removed from the Planning Committee's Outstanding Business List.

EXECUTIVE SUMMARY

At the October 16, 2012 Planning Committee meeting, staff was directed to report back in the first quarter of 2013 with appropriate amendments to the City's Site Alteration By-law to govern the quality and quantity of fill imported to a receiving site: specifically, to govern the quality of fill imported to a receiving site, to implement additional controls with respect to berming, to approve trucking to and from a site, including routes and times, in advance and to confirm that site alteration will not result in a reduction in the overall soil fertility of large rural properties.

As a result, staff is recommending a series of amendments to the City's Site Alteration By-law that are designed to strengthen the City's control of site alterations, particularly in the rural areas of Hamilton. These amendments have been incorporated into the amending Site Alteration By-law as shown in Appendix "A" of this Report and include among others:

- provision for a soil fertility report signed by a qualified professional confirming that there is no overall reduction in the soil fertility on sites designated Agriculture and Rural in the Rural Hamilton Official Plan;
- specifics on trucking to and from the site including the routes to be used and the times these routes will be used;
- provision that the work proposed under the Fill Permit will meet the standards set out in the applicable Table in "Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*" (Ministry of the Environment, April 15, 2011); and,
- provisions to ensure that fill placed or dumped for the purpose of creating a berm shall not exceed a maximum height of 2 metres and along adjoining property lines grades shall meet existing elevations with slopes no greater than 33% grade.

The recommended measures will increase the City's ability to ensure fill sites are better managed to minimize the potential impacts on the community and the environment.

In addition, the Ministry of the Environment is currently undertaking a review regarding the best management practices for soil management in Ontario. As a result, staff is recommending that a comprehensive review and update be done of the City's Site Alteration By-law.

Alternatives for Consideration – See Page 9

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial/Staffing: Recommendation (b) will require the hiring of an outside consultant to complete a review and provide recommendations for the implementation of an updated Site Alteration By-law.

Legal: There are no legal implications associated with this Report.

HISTORICAL BACKGROUND (Chronology of events)

At the October 16, 2012 Planning Committee meeting, staff was directed to report back in the first quarter of 2013 with appropriate amendments to the City's Site Alteration By-law to govern the quality and quantity of fill imported to a receiving site.

Chronology:

December 14, 2011: Council received correspondence from the Town of East Gwillimbury, in the form of a Council resolution, requesting the Province to establish guidelines, regulations and a Provincially-regulated approval process to govern the quality of fill imported to a receiving site. The correspondence was received by Council and recommended that the item be referred to the General Manager of Public Works Department for a report to the Public Works Committee.

January 25, 2012: Council referred the correspondence respecting the East Gwillimbury resolution to the General Manager of Planning and Economic Development Department for a report to the Planning Committee.

February 22, 2012: Council received correspondence from the Town of Halton Hills requesting the Province to establish guidelines, regulations and a Provincially-regulated approval process to govern the quality of fill imported to a receiving site.

July 12, 2012: Council received additional correspondence from the Town of East Gwillimbury, in the form of a Council resolution, further requesting the Province to establish regulations to govern the quality of fill imported to a receiving site.

October 16, 2012: Information Report brought forward to Planning Committee to deal with the resolutions from the Town of East Gwillimbury and the Town of Halton Hills (see Appendix "B" to Report PED12184(a)).

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January 25, 2013: Staff attended a symposium which discussed the management and methods of dealing with large scale fill operations in Ontario. There were over 250 representatives from across Ontario who attended the symposium to discuss the growing issue of managing large scale fill operations.

March 15, 2013: Notice in The Hamilton Spectator outlining the proposed amendments to the Site Alteration By-law.

POLICY IMPLICATIONS

The City of Hamilton currently regulates fill material through the City's Site Alteration By-law and Engineering Design Guidelines. Approval of the proposed amendments to the Site Alteration By-law will strengthen the City's control of site alterations, particularly in the rural areas of Hamilton.

RELEVANT CONSULTATION

The following Departments and Agencies that were consulted include:

- Legal Services Division, City Manager's Office
- Building Services Division, Planning and Economic Development Department
- Engineering Services Division, Public Works Department
- Hamilton Water Division, Public Works Department
- Landscape Architectural Services Section, Public Works Department
- Parking and By-law Services Division, Planning and Economic Development Department
- Planning Division, Planning and Economic Development Department
- Grand River Conservation Authority
- Hamilton Conservation Authority
- Conservation Halton
- Niagara Peninsula Conservation Authority

City staff has also contacted and consulted with the Hamilton Halton Homebuilders Association (HHHBA), Hamilton and District Heavy Construction Association (HAND), staff from the Town of Caledon, the Town of Whitchurch-Stouffville, the Town of Markham and the Town of East Gwillimbury. As a result of this consultation, the proposed amendments are deemed to be appropriate and it is recommended that a comprehensive review of the Site Alteration By-law be undertaken to update the current By-law.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

1. Soil Fertility of Fill Placement on Rural Properties

To address Committee's concern regarding the ability to preserve agricultural lands when they are subject to an application for a Site Alteration Permit staff is proposing the following amendment to Section 4.4. – Permits and Plans of the Site Alteration By-law.

“if the site is designated Agriculture, Rural and/or Specialty Crop under the Rural Hamilton Official Plan, a soil fertility report that:

- (i) confirms the site alterations will not result in a reduction of the overall soil fertility of the site; and,*
- (ii) is prepared and signed by:*
 - 1. a person who holds a licence, limited licence or temporary licence under the Professional Engineers Act; or,*
 - 2. a person who holds a certificate of registration under the Professional Geoscientists Act, 2000 and is a practising member, temporary member or limited member of the Association of Professional Geoscientists of Ontario.”*

The purpose of this provision is to require a soil fertility report prepared by a qualified professional for those lands designated Agriculture, Rural and/or Specialty Crop in the Rural Hamilton Official Plan. The fertility report would need to demonstrate that the fill being placed on large rural properties does not result in an overall reduction of soil fertility ensuring that the lands could be actively farmed once the filling of the property has ceased. This provision would not apply to properties within the urban area as the intent is to provide assurance that rural properties will maintain their agricultural viability.

2. Berming – Additional Controls

There is currently no provision in the Site Alteration By-law with respect to limitations on height and setbacks for berms along a property line. Generally applicants have complied with the Site Alteration By-law by preparing grading plans detailing the elevations of fill being imported to a receiving site. However, in some instances berms have been constructed in the rural area with heights that have the potential to impact adjacent farming practices, conceal operations

that are in non-compliance with the Zoning By-law and impact the flow of surface drainage across properties.

To address these issues staff is proposing the following amendment to Section 16 of the Site Alteration By-law:

“(c.1) despite the City of Hamilton Storm Drainage Policy and the City of Hamilton Development Engineering Guidelines, both as amended or replaced from time to time, fill placed or dumped within 6 metres of a property line shall:

- (i) not exceed a maximum height of 2 metres; and,*
- (ii) meet existing elevations at property lines with slopes no greater than 33% grade (3 H to 1V),*

unless exempted in writing by the Senior Director of Growth Management after completion of a site plan approval process, modified as necessary by the Senior Director of Growth Management, including payment of the fee for a minor site plan approval.”

The intent of this provision is to limit the height of a berm to 2 metres to be consistent with the maximum provision for a fence while ensuring that the elevations at the base of the berm meet existing elevations at the property lines. Any exemptions to extend a berm higher than 2 metres would require a comprehensive review with necessary studies to justify the increase in height, which could include berming to deal with noise attenuation.

3. Process to Govern Quality of Fill

In review of the current Site Alteration By-law there is limited reference to regulations and standards regarding soil quality and environmental protection. As a result, staff is proposing an amendment to the Site Alteration By-law to require all soil being imported to a receiving site to meet the standards set out in the applicable Table in “Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the Environmental Protection Act”. The addition of this provision to the Site Alteration By-law will ensure that anyone applying for a Site Alteration Permit within the boundaries of the City of Hamilton will be required to demonstrate as part of the application process that the soils being imported to a receiving site meet the standards set out in the applicable table of the Environmental Protection Act.

In addition, staff is proposing to amend Section 9.1 (g) of the City's Site Alteration By-law to include *"or any applicable regulations passed under these acts including R.R.O. 1990, Reg 347 entitled "General – Waste Management", passed under the Environmental Protection Act, R.S.O. 1990, c. E.19."* (see Appendix "A" to Report PED12184(a)).

This amendment will strengthen the current by-law to ensure that work proposed under Site Alteration Permits will not contravene Regulation 347 entitled "General Waste Management" passed under the Environmental Protection Act, in addition to the Ontario Heritage Act, Building Code Act, Planning Act, Municipal Act, Drainage Act and Federal Fisheries Act.

4. Additional Controls for Truck Routes

Another issue expressed by Planning Committee at its meeting held October 16, 2012 was the volume of trucks and the routes they were taking through the City of Hamilton when travelling to and from a receiving site. To address this issue and make sure that all applicants are aware of the need for a plan showing the specific routes that the trucks will be travelling to and from a receiving site staff has included the following requirement to be included as part of the Control Plan when applying for a Site Alteration Permit.

"Specifics on trucking to and from the site including the routes to be used and the times these routes will be used."

This provision will ensure that all truck routes for fill operations will be reviewed as part of the application process and limit the distance a truck may travel on roads not designed to accommodate such demands. As part of the review the Director would have the ability to limit the times that specific routes would be used and ensure that all existing by-law(s) governing this are adhered to. This requirement will also allow staff to revoke a Site Alteration Permit should the applicant not be using the truck route described in the Control Plan that was approved by the City.

Staff has also included as part of the requirements for the Control Plan that the name, address, telephone number and e-mail address of an emergency contact shall be posted on the site. Having this information displayed at the entrances of a receiving site would allow a neighbour or passerby to contact the appropriate individual should there be an emergency or if they have any questions regarding the details of the activities occurring on site.

5. Comprehensive Review of the Site Alteration By-law

In 2003, Council enacted Site Alteration By-law No. 03-126 in an attempt to monitor and control the potential impacts to private lands caused by the importing and movement of soil within the boundaries of the City of Hamilton. The current By-law was designed to ensure adherence to best practices, soil quantity and quality and protection to both the environment and infrastructure.

Over the past year, the Ministry of the Environment (MOE) has been meeting with various stakeholders including municipalities, roads and waste associations, professional bodies, including the Association of Municipalities of Ontario (AMO) (see Appendix "C" to Report PED12184(a)), and other Provincial ministries to discuss current and future soil management regulations and options. As a result of these discussions the MOE has prepared a draft document that provides guidance and outlines the best management practices for managing excess soils generated from redevelopment and construction projects. The MOE encourages the reuse of excess soil for fill provided that the use of the excess soil does not have the potential to negatively impact the environment, human health, or water quality as described under the MOE's acts and regulations.

In addition, many municipalities have been amending their site alteration by-laws to deal with the increasing number of requests for fill placement and site alterations within their boundaries. The increase in the number of requests for fill placement is the result of a growing number of land development and infrastructure projects in the Greater Toronto Area (GTA).

To date the number of requests for fill permits within the City has not increased, however, based on the research undertaken by staff it is recommended that the City's Site Alteration By-law be comprehensively reviewed and updated to reflect the proposed recommendations of the MOE's guide for best management practices for soil management in Ontario and to reflect the more current site alteration by-laws of other municipalities. This would also be a proactive approach to deal with the potential future increases in fill placement within the City of Hamilton boundaries as the policies and regulations in neighbouring municipalities become stricter.

6. Control Management Plan

In addition to the proposed amendments noted above, it is also recommended that Control Management Plans be reviewed as part of Draft Plan of Subdivision and Site Plan approvals where it is recognized that soil will be either imported or exported to or from the development site. Currently, if staff as a component of preconstruction meetings determines that a site is deemed to be not balanced and material is either being imported or exported to another site will require the

consultant to provide all appropriate testing and the location of where the soil is going to or coming from. Control Plans shall conform to the Ministry of the Environment regulations and the City's Site Alteration By-law.

7. Public Notice

The Municipal Act, 2001 does not require public notice in advance of passing a by-law regulating fill placement and site alteration. However, to ensure the public is aware of the proposed amendments, notice was provided in The Hamilton Spectator on Friday, March 15, 2013.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Should the recommendations of this report not be supported, then the current Site Alteration By-law would remain unchanged and the issues of berming, soil quality and reduction in overall soil fertility of large rural properties would not be addressed. In addition, the Site Alteration By-law would not be monitored and updated to reflect the increasing pressures of large scale fill operations and any concluding recommendations from the Ministry of the Environment's guide for best management practices for soil management in Ontario. Therefore, this alternative is not recommended.

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

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Strategic Objective

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.
- 2.2 Improve the City's approach to engaging and informing citizens and stakeholders.
- 2.3 Enhance customer service satisfaction.

APPENDICES / SCHEDULES

- Appendix "A" - By-law to Amend Site Alteration By-law No. 03-126
- Appendix "B" - October 16, 2012 Information Report (PED12184)
- Appendix "C" - Ministry of the Environment, Soil Management – A Guide for Best Management Practices

JT:mh

Authority: Item [REDACTED]
Planning Committee
Report: 13-[REDACTED] (PED12184(a))
CM: [REDACTED]

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

To Amend By-law No. 03-126

Being a By-law for Prohibiting and Regulating the Alteration of Property Grades, the Placing or Dumping of Fill, and the Removal of Topsoil

WHEREAS Council enacted a by-law for Prohibiting and Regulating the Alteration of Property Grades, the Placing or Dumping of Fill, and the Removal of Topsoil being City of Hamilton By-law No. 03-126;

AND WHEREAS this By-law amends City of Hamilton By-law No. 03-126;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. Section 4.4 of By-law No. 03-126 is amended by adding the following new subsection 4.4 (d.1):
 - (d.1) if the **site** is designated Agriculture, Rural and/or Specialty Crop under the Rural Hamilton Official Plan, a soil fertility report that:
 - (i) confirms the site alterations will not result in a reduction of the overall soil fertility of the **site**; and,
 - (ii) is prepared and signed by:
 1. a person who holds a licence, limited licence or temporary licence under the Professional Engineers Act; or
 2. a person who holds a certificate of registration under the Professional Geoscientists Act, 2000 and is a practising member, temporary member or limited member of the Association of Professional Geoscientists of Ontario.

2. Section 6 of By-law No. 03-126 is amended by adding the following new subsection 6(d.1):
 - (d.1) specifics on trucking to and from the **site** including the routes to be used and the times these routes will be used;
3. Section 6 of By-law No. 03-126 is amended by adding the following new subsection 6(u.1):
 - (u.1) the name, address, telephone number and email address of an emergency contact;
4. Section 9.1 of By-law No. 03-126 is amended by adding the following new subsection 9.1(a.1):
 - (a.1) that the proposed trucking to and from the **site** minimizes negative impacts on the public and the municipal infrastructure;
5. Subsection 9.1(g) of By-law No. 03-126 is deleted and replaced by the following new subsection 9.1(g):
 - (g) that the work proposed under the **permit** does not involve contravention of the Environmental Protection Act, R.S.O. 1990, c. E.19, the Ontario Heritage Act, R.S.O. 1990, c. 0.18, zoning or land use by-laws, the Building Code Act, S.O. 1992 c. 23, the Planning Act, R.S.O. 1990, c. P.13, Municipal Act, S.O. 2001, c. 25, the Drainage Act, R.S.O. 1990, c.D.17. and the Federal Fisheries Act, R.S.C. 1985, c. F-14 or any applicable regulations passed under these acts including R.R.O. 1990, Reg 347 entitled "General – Waste Management", passed under the Environmental Protection Act, R.S.O. 1990, c. E.19. Where such acts, regulations or by-laws require approval such approval shall be obtained and proof submitted or will be obtained and submitted before the work under the **permit** is carried out; and
6. Section 9.1 of By-law No. 03-126 is amended by adding the following new subsection 9.1(h):
 - (h) that the work proposed under the **Permit** will meet the standards set out in the applicable Table in "Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*" (Ministry of the Environment, April 15, 2011) as amended or replaced from time to time;
7. Section 16 of By-law No. 03-126 is amended by adding the following new subsection 16(c.1):
 - (c.1) despite the City of Hamilton Storm Drainage Policy and the City of Hamilton Development Engineering Guidelines, both as amended or

replaced from time to time, ensure that **fill placed** or **dumped** within 6 metres or a property line shall:

- (i) not exceed a maximum height of 2 metres; and,
- (ii) meet existing elevations at property lines with slopes no greater than 33% grade (3H to 1V),

unless exempted in writing by the **Director** after completion of a site plan approval process, modified as necessary by the **Director**, including payment of the fee for a minor site plan approval;

8. Section 16 of By-law No. 03-126 is amended by adding the following new subsection 16(h.1):

(h.1) ensure that work which is the subject of the **Permit** meets the standards set out in the applicable Table in "Soil, Ground Water and Sediment Standards for Use Under Part XV.1 of the *Environmental Protection Act*" (Ministry of the Environment, April 15, 2011) as amended or replaced from time to time;

9. Section 16 of By-law No. 03-126 is amended by adding the following new subsection 16(j.1):

(j.1) ensure, if the site is designated Agriculture, Rural and/or Specialty Crop under the Rural Hamilton Official Plan that the site alterations do not result in a reduction of the soil fertility of the **site**;

10. Section 1 of Schedule "B" to By-law No. 03-126 is amended by adding the following new subsection 1(h.1):

(h.1) post at each entrance to the **site** in a conspicuous place the name, address, telephone number and email address of the emergency contact;

11. This By-law comes into force on the day it is passed.

PASSED and ENACTED this [REDACTED] day of [REDACTED], 2013.

R. Bratina
Mayor

Rose Caterini
Clerk



CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: October 16, 2012	
SUBJECT/REPORT NO: Resolutions from the Town of East Gwillimbury and the Town of Halton Hills Respecting the Need for Provincial Guidelines and Regulations to Govern the Quality of Fill Imported to a Receiving Site (PED12184) (City Wide) (Outstanding Business List Item)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Jason Thompson (905) 546-2424 Ext. 3933
SIGNATURE:	

RECOMMENDATION

- (a) That the City of Hamilton supports the resolutions passed by the Councils of the Town of East Gwillimbury and the Town of Halton Hills (attached as Appendices "A", "B", and "C" to Report PED12184) regarding the need for Provincial guidelines and regulations to govern the quality of fill imported to a receiving site;
- (b) That this endorsement be forwarded to the Council of the Town of East Gwillimbury, the Council of the Town of Halton Hills and the Ministry of the Environment (MOE);
- (c) That the Ministry of the Environment (MOE) be requested to establish guidelines, regulations and a Provincially regulated approvals process to govern the quality of fill imported to a receiving site.

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- (d) That the Planning and Economic Development Department be directed to report back in 2013 with appropriate amendments to the Site Alteration By-law to govern the quality and quantity of imported fill to a receiving site.
- (e) That items "N", "Q", and "S" respecting Provincial Regulations regarding Commercial Fill Operations and the need for Provincial guidelines and regulations to govern the quality of fill imported to a receiving site be identified as complete and removed from the Planning Committee's Outstanding Business List.

EXECUTIVE SUMMARY

The Council of the Town of East Gwillimbury adopted a resolution on November 21, 2011 and further resolution on June 25, 2012 requesting the Ministry of Environment to establish guidelines, regulations and a Provincially regulated approvals process to govern the quality of fill imported to a receiving site other than for the purposes of Brownfield redevelopment. The November 21, 2011 resolution was originally referred to Public Works Committee however after further discussion Council at its January 25, 2012 Council meeting referred the item to Planning Committee for report (Planning Committee Outstanding Business Items "N" and "Q").

The City of Hamilton Council on February 22, 2012 received a similar resolution adopted by the Council of the Town of Halton Hills on February 6, 2012. This resolution was also referred to Planning Committee for report (Planning Committee Outstanding Business Item "S").

The Ministry of Environment is currently undertaking a review regarding the best practice of managing excess soil that is generated by excavation during construction activities. As a result, staff supports the resolutions of the Town of East Gwillimbury and the Town of Halton Hills to ensure that the issues encountered by municipalities is included in the Ministry's review of managing excess soils.

Alternatives for Consideration – See Page 5

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial/Staffing:

There are no financial or staffing implications associated with these recommendations provided the recommended study is included and approved as part of the 2013 Work Program for the Planning and Economic Development Department.

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Legal:

There are no legal implications associated with these recommendations.

HISTORICAL BACKGROUND (Chronology of events)

At the December 14, 2011 Council meeting, City Council received correspondence from the Town of East Gwillimbury, in the form of a Council resolution, requesting the Province to establish guidelines, regulations and a Provincially regulated approval process to govern the quality of fill imported to a receiving site other than for the purpose of Brownfield redevelopment (see Appendix "A"). The correspondence was received by Council and recommended that the item be referred to the General Manager of Public Works Department for a report to the Public Works Committee.

At the January 25, 2012 Council meeting the correspondence respecting the East Gwillimbury resolution requesting the Province to establish guidelines, regulations and Provincially regulated approval process to govern the quality of fill imported to a receiving site other than for the purpose of Brownfield redevelopment was referred to the General Manager of Planning and Economic Development Department for a report to the Planning Committee.

Further, at its meeting of February 22, 2012, City Council received correspondence from the Town of Halton Hills respecting Provincial Regulations regarding Commercial Fill Operations (see Appendix "B"). The correspondence was also a Council resolution, similar to the Town of East Gwillimbury, requesting the Province to establish guidelines, regulations and a Provincially regulated approval process to govern the quality of fill imported to a receiving site other than for the purpose of Brownfield redevelopment.

At the July 12, 2012 Council meeting, additional correspondence, in the form of a Council resolution, was received from the Town of East Gwillimbury further requesting the Province to establish regulations to govern the quality of fill imported to a receiving site other than for the purpose of Brownfield redevelopment (see Appendix "C"). This additional correspondence was endorsed by the City Council.

POLICY IMPLICATIONS

The City of Hamilton currently regulates fill material through the City's Site Alteration By-law and Engineering Design Guidelines. Approval of the recommendations will require further evaluation for the regulation of fill being imported to receiving sites and amendments to the Site Alteration By-law.

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RELEVANT CONSULTATION

Internal City of Hamilton Departments/Divisions consulted include:

- Development Planning
- Building Services
- Legal Services
- Public Health Services
- Parking and By-law Services
- Operations and Waste Management
- Environment and Sustainable Infrastructure
- Strategic Services – Special Projects

City staff have also contacted and consulted with staff from Peel Region, City of Toronto, Town of Caledon, Township of West Lincoln and the Grand River Conservation Authority. As a result of this consultation it has been determined that amendments to the Site Alteration By-law No. 03-126, as amended by By-law No. 05-115, and further amended by By-law No. 11-262 is required to adequately deal with the importing of fill within the City of Hamilton.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

Over the past few years municipalities have seen an increase in the transportation and disposal of fill material within and across their boundaries. The movement of large quantities of fill has become a profitable commercial activity resulting in fill material travelling further and often ending up in a different municipality from its point of origin. Some of the issues that arise with the placement of fill at a receiving site include: noise, increased truck traffic, hours of operation, soil quality, public notification, dust, drainage impacts, ground water quality, loss of agricultural land and potential changes in the hydrological function of the area. As a result, it is important that appropriate controls are put in place to deal with the increasing demand to deal with the disposal of fill on sites where the receiving material is generated off-site, specifically for properties that fall outside the areas regulated by the presiding Conservation Authority. Therefore, it is recommended that direction be given for staff to review and amend the Site Alteration By-law to further govern the quality of fill imported to a receiving site.

With the Provincial increase in the transportation and disposal of fill material, a number of municipalities and conservation authorities are currently in the process of reviewing or amending their fill or site alteration by-laws. The main issues being considered are with respect to proper enforcement and monitoring of the fill operation, appropriate

SUBJECT: Resolutions from the Town of East Gwillimbury and the Town of Halton Hills Respecting the Need for Provincial Guidelines and Regulations to Govern the Quality of Fill Imported to a Receiving Site (PED12184) (City Wide) - Page 5 of 6

public consultation and the possible loss of agricultural land for those municipalities with large rural areas.

In light of the concerns expressed by the Town of East Gwillimbury and the Town of Halton Hills, it should be noted that there is no single Provincial legislation that applies directly to the removal, placement, definition, transportation and grading of fill when addressing the total potential impacts associated with fill operations. Municipalities can deal with most aspects of fill placement and grading through site alteration by-laws, however, without Provincial guidelines and regulations there is no consistent approach with how municipalities deal with the importing of fill within their boundaries. Therefore, it is staff's recommendation that the MOE be requested to establish guidelines, regulations and a Provincially regulated approvals process to govern the quality of fill imported to a receiving site. This would ensure a uniform set of standards and procedures that would be applied across the entire Province.

It should also be noted that the MOE is currently undertaking a review regarding the best practice of managing excess soil that is generated by excavation during construction activities. It is staff's understanding that the review is in the form of a guideline and is not a regulation and, therefore, not enforceable which is why it is recommended that the MOE establish regulations and a Provincially regulated approvals process in addition to the guidelines for governing the quality of fill imported to a receiving site.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

An alternative is to not support the resolutions of the Town of East Gwillimbury and Town of Halton Hills and direct staff to wait for the Province to develop regulations and guidelines to govern the quality of fill imported to a receiving site. This alternative is not recommended by staff as the Province would not be made aware that the City of Hamilton has concerns regarding the importing of fill to receiving sites and that commercial fill operations are becoming more prevalent and the City should be more proactive in dealing with the importing of fill material to a receiving site within the City of Hamilton.

SUBJECT: Resolutions from the Town of East Gwillimbury and the Town of Halton Hills Respecting the Need for Provincial Guidelines and Regulations to Govern the Quality of Fill Imported to a Receiving Site (PED12184) (City Wide) - Page 6 of 6

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

Financial Sustainability

- ♦ Effective and sustainable Growth Management

Intergovernmental Relationships

- ♦ Influence Federal and Provincial policy development to benefit Hamilton
- ♦ Maintain effective relationships with other public agencies

Environmental Stewardship

- ♦ Natural resources are protected and enhanced
- ♦ Aspiring to the highest environmental standards

Healthy Community

- ♦ Plan and manage the built environment

APPENDICES / SCHEDULES

- Appendix "A" – Letter from the Town of East Gwillimbury dated December 6, 2011
- Appendix "B" – Letter from Town of Halton Hills dated February 9, 2011
- Appendix "C" – Letter from the Town of East Gwillimbury dated June 28, 2012

:JT/ra
Attachs. (3)

5.9



Fernando Lamanna, BA

Deputy Clerk
Legal and Council Support Services
905-478-4282 x1240
flamanna@eastgwillimbury.ca

December 6, 2011

Association of Municipalities of Ontario (AMO)
Attn: Monika Turner, Director of Policy
200 University Ave., Suite 801
Toronto, Ontario M5H 3C6

Dear Ms. Turner:

For your information and records, at its regular meeting held Monday, November 21, 2011, the Municipal Council of the Town of East Gwillimbury adopted the following resolution:

*WHEREAS municipalities are faced with requests from Commercial Fill Operators to place fill in, for example, either previously undisturbed areas or expired gravel extraction pits;
AND WHEREAS municipalities have limited resources and ability to regulate this type of operation other than through zoning restrictions and agreements associated predominantly with operational protocol;*

AND WHEREAS the issue of soil quality of fill imported to a receiving site potentially has a significant cross jurisdictional environmental impact that should be elevated to the Provincial level through the Ministry of the Environment;

AND WHEREAS the Ministry of the Environment has established criteria for quality of fill for Brownfield redevelopment but not for the importation and placement of fill within, as an example, undisturbed areas or expired gravel extraction pits;

BE IT THEREFORE RESOLVED that the Province, through the Ministry of the Environment, establish guidelines, regulations and a Provincially regulated approval process to govern the quality of fill imported to a receiving site other than for the purpose of Brownfield redevelopment;

AND FURTHER, THAT the Clerk forward copies of this resolution to York-Simcoe MPP, Julia Munroe, the Ministry of the Environment, the Association of Municipalities of Ontario and all Ontario Municipalities for their consideration.

If you have any further questions feel free to contact the undersigned.

Yours truly,

Fernando Lamanna, BA
Deputy Clerk
Legal and Council Support Services

DISCLAIMER

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Appendix 'B' to Report PED12184 (Page 1 of 2)

5.7



VIA EMAIL

February 9, 2012

Mr. Ted Arnott, M.P.P.
Wellington-Halton Hills
181 St. Andrew Street East
2nd Floor
Fergus, ON N1M 1P9

Dear Mr. Arnott,

Re: Council Resolution regarding Provincial Regulations Regarding
Commercial Fill Operations.

Please be advised that Council for the Town of Halton Hills at its meeting of
Monday, February 6, 2012, adopted the following:

Resolution No. 2012-0046

WHEREAS municipalities are faced with requests from Commercial Fill
Operators to place fill in, for example, either previously undisturbed areas or
expired gravel extraction pits;

AND WHEREAS municipalities have limited resources and ability to regulate
this type of operation other than through zoning restrictions and agreements
associated predominantly with operational protocol;

AND WHEREAS the issue of soil quality of fill imported to a receiving site
potentially has a significant cross jurisdictional environmental impact that
should be elevated to the Provincial level through the Ministry of the
Environment;

AND WHEREAS the Ministry of the Environment has established criteria for
quality of fill for Brownfield redevelopment but not for the importation and
placement of fill within, as an example, undisturbed areas or expired gravel
extraction pits;

NOW THEREFORE BE IT RESOLVED:

...2

1 Halton Hills Drive, Halton Hills, Ontario L7G 5G2

Tel: 905-873-2601 Toll Free: 1-877-712-2205 Fax: 905-873-2347 Web: www.haltonhills.ca

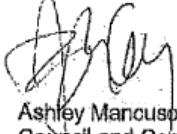
Appendix 'B' to Report PED12184 (Page 2 of 2)

February 9, 2011
Page 2 of 2

THAT the Town of Halton Hills requests that the Province, through the Ministry of the Environment, establish guidelines, regulations and a Provincially regulated approval process to govern the quality of fill imported to a receiving site other than for the purpose of Brownfield redevelopment;

AND FURTHER THAT the Clerk forward copies of this resolution to Mr. Ted Arnot, MPP for Wellington-Halton Hills, Mr. Jim Bradley, Minister of the Environment, AMO, and all Ontario Municipalities for their consideration.

Yours truly,



Ashley Mancuso
Council and Committee Services Coordinator

- c The Honourable Jim Bradley, Minister of the Environment
Association of Municipalities of Ontario (AMO)
Ontario Municipalities

Appendix 'C' to Report PED12184 (Page 1 of 1)



Town of
East Gwillimbury

Fernando Lamanna, BA

Deputy Clerk
Legal and Council Support Services
905-478-4282 x1240
flamanna@eastgwillimbury.ca

5.9

June 28, 2012

Association of Municipalities of Ontario (AMO)
Attn: Monika Turner, Director of Policy
200 University Ave., Suite 801
Toronto, Ontario M5H 3C6

Dear Ms. Turner:

For your information and records, at its regular meeting held Monday, June 25, 2012, the Municipal Council of the Town of East Gwillimbury adopted the following resolution
#C2012-326:

WHEREAS the Ministry of the Environment (M.O.E) is currently establishing guidelines for municipalities to use regarding the quality of fill imported to a receiving site;

AND WHEREAS this only partially addresses Council resolution C2011-476, passed Monday, November 21, 2011;

BE IT THEREFORE RESOLVED that the Province, through the M.O.E; be requested to establish regulations and a Provincially regulated approval process to govern the quality of fill imported to a receiving site other than for the purpose of Brownfield redevelopment;

AND FURTHER, THAT the Clerk forward copies of this resolution and resolution C2011-476 to York-Simcoe MPP, Julia Munro, the Ministry of the Environment, the Association of Municipalities of Ontario and all Ontario Municipalities for their consideration and action.

Please find enclosed a letter dated December 6, 2011 addressed to AMO, which represents resolution C2011-476 originally passed by Council on November 21, 2011.

If you have any further questions feel free to contact the undersigned.

Yours truly,

Fernando Lamanna, BA
Deputy Clerk
Legal and Council Support Services

Cc: The Honourable Jim Bradley, Minister of the Environment
Julia Munro, MPP, York-Simcoe

DISCLAIMER

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"Our town, Our future"

19000 Leslie Street, Sharon, Ontario L0G 1V0 Tel: 905-478-4282 Fax: 905-478-2808
www.eastgwillimbury.ca

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Ministry of the Environment

Soil Management – A Guide for Best Management Practices

The Ministry of the Environment (ministry) encourages the beneficial reuse of excess soils in a manner promoting sustainability and protection of the environment.

Excess soil is generated mainly by excavation during construction activities and cannot be reused at the site of generation. In most cases, this excess soil needs to be managed off-site. Excess soil must be managed in a sustainable manner in order to maintain a healthy economy while protecting the environment. The renewal of infrastructure, intensification of urban areas and the redevelopment of brownfield sites are important policy set out in the Growth Plan for the Greater Golden Horseshoe, the Provincial Policy Statement under the *Planning Act*, and are activities important to maintaining a healthy economy. These often activities generate large amounts of excess soil.

Where ever possible, the ministry first encourages all stakeholders to take measures to minimize the amount of soil generated during projects. For the soil that must be managed, the ministry encourages the reuse of excess soil as fill, where appropriate, provided that the use of the excess soil does not have a potential to cause an adverse effect to the environment, human health or impair water quality, as described under the ministry's Acts and Regulations. All stakeholders that generate, haul or receive excess soil are responsible for ensuring that the excess soil is being managed in an environmentally sound manner in accordance with all regulatory requirements.

There are several management options for excess soil that should be evaluated when soils are generated from construction projects. These options include:

- reusing the excess soil at the project site or other redevelopment sites where the quality of the soil is appropriate;
- remediating soil at the point of generation;
- use of the excess soil for site alteration or re-grading;
- the management of the excess soil at approved soil recycling or treatment facilities;
- placement at a commercial fill site; or
- disposal at a ministry-approved landfill site.

Excess soil reuse is encouraged where the analysis of the soil determines that the soil is appropriate to be placed at another site provided there are no adverse effects to human health and/or the environment.

Purpose of Document

This document is intended to provide guidance and outline best management practices for the management of excess soils generated from redevelopment and construction projects. Typically these soils are generated at construction projects such as large-scale residential construction activities (subdivisions, condominiums), large-scale commercial projects (commercial builds,

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factories, warehouses, retail establishments) and similar types of development activities.

The document provides guidance on how to handle excess soil from a source site where it is generated, through to the transportation of the excess soil to a site where the soil can be reused for a beneficial purpose, such as site alterations, re-grading, or filling in excavations, along with temporary storage at stockpiling sites. These best management practices are consistent with the ministry's mandate under the *Environmental Protection Act*, R.S.O 1990, c. E. 19 (EPA). The EPA provides the ministry with the authority to address a discharge to the natural environment that is causing or may cause an adverse effect. These best practices are intended to assist in preventing and mitigating the potential for adverse effects to the environment and human health by those generating excess soils and those managing the receipt of excess soil for beneficial or commercial purposes. Adverse effect is specifically defined under the EPA. The ministry will assess the potential for adverse effect on a site-by-site basis.

These 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. These are sites where small quantities of excess soil are being managed, such as the excavation required for the construction of a residential swimming pool or the excavation of soil at small-scale road building or repair projects.

Those involved in small-scale projects or soil management activities are encouraged to consider these best management practices and consult with receiving site owners on reuse or disposal options before moving excess soil off-site.

This document also provides guidance on temporary soil banks, procurement practices and provides examples of where beneficial reuse of excess soil is encouraged.

Considerations for Municipalities and Conservation Authorities

Options for managing excess soil may include the placement of excess soil at commercial fill sites or the establishment of temporary soil banks. In considering the appropriateness of these options, those handling excess soil must meet all applicable legal requirements including adherence to current provincial regulations, bylaws and permitting regimes established by local municipalities and/or conservation authorities. These best practices are intended to complement existing approvals under other provincial legislation and municipal by-laws, such as an existing site plans under the *Aggregate Resources Act*, R.S.O. 1990, c. A.6 (administered by the Ministry of Natural Resources) for permitted and licensed pits and quarries, or site alteration permits issued in accordance with local by-laws. These agencies are encouraged to consider these best practices when issuing permits or approvals, or when establishing by-laws for the management of excess soil.

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General

Where environmental concerns are identified at a site, the ministry may assess all activities related to soil management, including those occurring at the generating or source site, hauling operations and soil receiving sites, and take appropriate abatement actions within the ministry's current legislative mandate on a case-by-case basis. This may include issuing preventative measures orders to ensure that environmental and community health and safety are protected from the potential for adverse effects associated with improper soil management.

For the purpose of this document, soil is defined as it is in Ontario Regulation 153/04 (Records of Site Condition – Part XV.1 of the EPA), namely:

Excess soil unconsolidated naturally occurring mineral particles and other naturally occurring material resulting from the natural breakdown of rock or organic matter by physical, chemical or biological processes that are smaller than 2 millimetres in size or that pass the US #10 sieve.

This document does not apply to materials outside the scope of the above definition, such as engineered fill products, asphalt, concrete and re-used or recycled aggregate product and/or mine tailings. Although not addressed under the requirements of this document, those managing these products should ensure the reuse and placement of these materials does not cause or have the potential to cause an adverse effect.

When handling excess soil, 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. This includes the introduction of contaminants to a receiving site or introduction of invasive plant or animal species. Consideration should be given to the existing conditions at any site before receiving excess soils to assess the appropriateness of the site to receive excess soils.

Excess soil should be free of odours, visible staining or debris. Excess soil which contains debris, such as garbage, shingles, painted wood, or other such waste, should be managed appropriately at a ministry-approved waste management site or recycling facility and should not be used as fill.

If, at any time, the soil management activity causes odours, pests, litter, dust, noise or other such negative impacts, including impacts from traffic and transportation, the ministry recommends that appropriate remedial actions be taken immediately to alleviate the adverse effect. This includes suspending all soil management activities, such as soil excavation, transportation or receiving, if necessary.

The ministry recommends that soil analysis be undertaken by a laboratory with an internationally recognized accreditation body [e.g. Standards Council of Canada (SCC) or Canadian Association for Laboratory Accreditation (CALA)] in accordance with the International Standard ISO/IEC 17025 – General Requirements for the Competence of Testing and Calibration

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Laboratories.

Public consultation recommended through these best management practices may be undertaken in conjunction with other public communication activities, such as those required for the purpose or zoning or permitting through municipal by-laws.

Excess Soil Management

To effectively manage excess soils, the ministry recommends that best management practices be adopted by both soil source sites and soil receiving sites. These best practices are intended to assist in mitigating the potential for adverse effects to the environment and human health.

In addition to these best management practices, those engaging to any soil management activities are encouraged to consider all applicable industry codes of practice.

Best Management Practices for Source Sites

It is recommended that all sites that generate excess soil requiring off-site management retain the services of a Qualified Person (QP) as described under Section 5 of Ontario Regulation 153/04 - Records of Site Condition (O. Reg. 153/04), to develop a Soil Management Plan.

It is recommended that the Soil Management Plan include the following:

- A site plan that identifies all areas to be excavated with the estimated volume and soil quality of each area, along with detailed instructions to on-site contractors identifying the area and depth of soil to be excavated for off-site management.
- All excavated soil be appropriately characterized by a QP, or a person under the supervision of a QP, to determine the volume and chemical composition of the soil that is to be managed off-site.
- Soil should be tested to ensure that chemical parameters in the soil are characterized based on the assessment of the QP.
- All soil removed from the site be accompanied by documentation signed by a QP with appropriate and representative soil analysis, confirming the soil quality is acceptable for the intended receiving site based upon a review of the fill management plan at the receiving site.

It is recommended that excess soil not be transported from a Source Site to a potential receiving site without confirmation of a Fill Management Plan from the Receiving Site.

Once excess soil is removed from the Source site for off-site management, it is recommended that the QP obtain and maintain written documentation from the receiving site confirming that the soil was received and the quality and quantity was acceptable.

The Source Site should make available, any and all documentation, including all past environmental site assessment information, to the Receiving Site QP, if requested.

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Best Management Practices for Commercial Fill and Other Large Receiving Sites

The ministry expects that all sites that manage excess soil will be constructed, operated and maintained in a manner that ensures the health and safety of all persons and prevents adverse effects to the environment or impairment to water quality.

Prior to establishing a site for the purpose of receiving excess soil, it is recommended that the owner of the site undertake public consultation sufficient to ensure that the local community and land owners are aware of the proposal and have an opportunity to comment on the proposal. The owner of the site should also undertake an assessment to establish the pre-fill site conditions for soil and ground water.

The ministry recommends that all sites established to receive excess soil retain the services of a QP, as described under Ontario Regulation 153/04 (O. Reg. 153/04), to design and implement a Fill Management Plan.

The Fill Management Plan should include a rationale for site location, including considerations related to future use of agricultural lands, source water protection areas, and groundwater recharge areas.

It is recommended that the Fill Management Plan include the following:

- Copies of applicable permits/zoning Municipalities, Conservation Authorities, and Provincial Ministries where applicable)
- Appropriate Soil Quality Parameters for excess soil to be received at the site to be determined by the QP, based on site location/sensitivity, anticipated land uses, ground water use/sensitivity, pre-existing site concentrations or other factors as determined by the QP to ensure that there is no likelihood of adverse effect based on the importation of soil to the site.
- Characterization and pre-approval by the receiving site owner of all soil Source site locations prior to acceptance of any soil;
- Dust and Noise Controls;
- Traffic and Transportation Management;
- Receiving Soil
 - It is recommended that fill receiving sites not receive any excess soil from a Source Site without confirmation of a Soil Management Plan from the Source Site, which includes documentation from the Source Site QP with the analysis for the quantity and quality of soil being brought to the site;
 - Visual inspections of all incoming loads to screen for odours, visible staining or debris.
- Record Keeping
 - A system be established that provides written documentation for the tracking of all incoming loads of soil. This documentation should include, but is not limited to:
 - Date and Time of arrival to the site;
 - Name and Location of the Source site;

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- Quantity of excess soil received;
 - Analytical records from the Source site signed by a QP;
 - Written confirmation by the Receiving Site QP acknowledging that the soil is acceptable for receipt at the site;
 - Rejections of any loads of soil due to visual inspection or review of analytical results
 - Once excess soil is received, written documentation must be provided to the Source site, confirming the soil was received and the quality was appropriate.
- Appropriate Signage at the site which identifies the Company Name, Hours of Operation, and, Daily and After-hours contact telephone numbers.
 - Public Notification.
 - Stormwater Management (to prevent ponding and flooding)
 - Erosion control and run-off controls to address potential impacts to drainage and to ensure materials remain where placed.
 - Audit Sampling Protocols
 - A sampling protocol be designed by a QP that would be representative of the volume of excess soil that is being shipped from a Source site and include a minimum of but not limited to monthly audit sampling from each source prior to deposit at the fill site.
 - Soil Placement/Segregation Plan.
 - This Plan will include provisions to ensure soil from each Source site is deposited in segregated locations within the Fill area such that it can be assessed and, if necessary, remediated.
 - Contingency Plan to identify actions that are to be taken in the event that audit sampling or other information identifies concerns with soil quality from a Source site
 - Owners/Operators may need to establish Financial Assurance, with the appropriate Municipality or Conservation Authority, against the site in advance of establishing operations to address any issues that may arise.

Similar provisions related to Receiving Soil, Record Keeping and Audit Sampling Protocols, should also be included in the Fill Management Plan when excess soils are received from soil treatment or soil recycling facilities.

Procurement Practices

Those who engage in procuring services related to large-scale soil management, such as municipalities, government ministries and agencies, should consider incorporating these best management practices when tendering contracts that may include the movement of excess soils.

Consideration should be given to ensuring that procurement products specify the need for Soil Management Plans at the site of excavation, and identifying the appropriateness of the receiving sites based on a Fill Management Plan. This is recommended to ensure that the owner of the site where the soil is being excavated is aware of the soil management considerations and

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ultimate destination of the excavated soil in order for the owner to meet their regulatory responsibilities under applicable provincial legislation.

Best Management Practices for Temporary Soil Banks

In some cases, excess soil requires temporary storage prior to being reused. These locations are often referred to as Soil Banks.

As Soil Banks are likely to be established on a wide range of sites with site specific considerations, proponents are encouraged to consult with the local ministry District Office to clarify the appropriate controls to be implemented to prevent adverse environmental impacts – please use the following link for the appropriate office in your area.
(http://www.ene.gov.on.ca/environment/en/about/regional_district_offices/index.htm)

Consideration should also be given to whether other municipal or conservation authority approvals or permits are required for soil banking operations. This may include local restrictions for site volumes and stockpile heights.

Prior to establishing a temporary soil bank, the owner/operator should demonstrate that the excess soil is being stored on an interim basis, for direct transportation to receiving site, with an intended beneficial reuse. This includes the identification of potential soil receiving sites prior to establishing the soil bank. The ministry expects that all sites establishing temporary Soil Banks will be constructed, operated and maintained in a manner that ensures the health and safety of all persons and prevents adverse effects to the environment or impairment to water quality.

Soil shall not be stored at a soil bank for a period greater than 2 years. In the event that the banked excess soil cannot be reused within a 2 year period, the owner/operator must have a contingency plan for the appropriate off-site disposal or alternative reuse of all soil stored in the temporary soil bank. Soil storage may be extended for a period up to 5 years subject to consultation with the local District Office and the potential for a ministry approval to be required.

All incoming soils should be appropriately characterized by a QP (as described within O.Reg 153/04) and appropriate Soil Quality Parameters should be determined by the QP based on the intended reuse opportunities. Mixture and dilution of contaminated soils for management through soil banking is not supported through these best management practices.

Operational best management practices for soil banking encouraged by the MOE should include but are not limited to:

- Sites should be paved or otherwise covered with an impermeable surface.
- Sites should establish a stormwater management, erosion and run-off control plan.
- Site should establish a Dust Control Plan.
- Soil storage piles should be covered all times while not in use.
- Limits to Stockpile Heights based on site location and surrounding landuse.
- Site Signage and Security.
- Hours of Operation - with reference to local by-laws.

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- Transportation Plans for trucks entering and leaving the site.
- Appropriate Truck Cleaning Areas.
- Daily Site Inspections.
- Notification to Surrounding land owners.
- Record Keeping Requirements.
- Audit Sampling Protocols for incoming soils determined by a QP.
- Financial Assurance may be required by the ministry, at the discretion of the Regional Director, or by municipalities or conservation authorities as part of an approval or permission.

The establishment of soil treatment facilities will continue to fall under the Environmental Compliance Approval requirements under Part V of the EPA. Soils that require treatment or are destined for treatment at an approved soil treatment facility cannot be stored at a temporary location (off the site of generation) without an Environmental Compliance Approval.

Civil Construction and Other Development Activities

While excluded from the broader scope of these best practices, the ministry promotes the reuse of excess soil generated by civil construction activities. This includes roadway and road right-of-way construction, sewer and water main construction, as well as other development activities, such as the construction of parking lots and small commercial developments. Reusing excavated soil from these construction activities, where appropriate, to support similar construction development activities, limits the need to import soil from natural or virgin sources. It also reduces the environmental impacts and costs associated with taking excess soils to commercial fill or landfill sites. All soils imported to a site for reuse should be of a quality appropriate for anticipated future land uses and to prevent adverse effects. Municipalities are encouraged to consider these soil reuse options in their procurement practices, and when issuing approvals or permits that include soil management and importation.

Ontario Regulation 153/04 Considerations

Under Ontario Regulation 153/04, Records of Site Condition, the ministry developed soil standards which support the filing of a Record of Site Condition (RSC). These generic standards were developed using scientific models and technical assumptions in order to meet specific objectives designed to support the redevelopment of brownfield sites in Ontario. These standards are not intended to address overall soil management activities. In some cases, these standards may not be appropriate to address soils being imported to a site without consideration being given to the rationale document used in their development. If used for any other purpose other than filing an RSC, a Qualified Person should consider the appropriateness of the proposed application and whether the assumptions used in the development of the generic standards remain valid. A Qualified person may determine that the generic standards are appropriate or may need to modify standards to suit the application.

Those managing soils are encouraged to consider this document when assessing the appropriate soil standards to apply to a site – "Rationale for the Development of Soil and Ground

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Water Standards for Use at Contaminated Sites in Ontario, revised version April 15, 2011"
available at http://www.ene.gov.on.ca/environment/en/resources/STDPROD_086519.html

In addition, owners of both Source sites and Receiving sites may be submitting a record of site condition (RSC) for filing under O. Reg. 153/04. Where this is the case, detailed requirements will apply. Before a Receiving site owner who intends to submit an RSC for filing receives excess soil, the owner and QP will need to review and comply with applicable provisions of O. Reg. 153/04 dealing with the receipt of soil at a RSC property. The provisions in this best practices document are intended to address general movement of excess soil for use as fill and are not intended and must not be taken to replace O. Reg. 153/04. For additional information, please refer to the ministry's website (www.ene.gov.on.ca), and the Fact Sheet entitled, "Bringing Soil to an RSC Property" (PIBS 8429e – April 2011).

Commercial Fill – Meeting notes from January 7, 2013 Teleconference

Qualified Person (QP)

- Does landowner retain or the contractor retain the QP?
- Who retains the QP at the receiving site and who do they report to? If retained by the contractor at the receiving site, they may not necessarily be turned away by the operator.
- QPs are to adhere to standards → municipality has a contract with the operator at the receiving site, increases confidence that the QP is doing the appropriate work, stipulated in contracts with the site owner.
- East Gwillimbury example: bylaws in place, QP is hired by the contractor AND the Town at the receiving site → "polices" the QPs, standard structure in place, QP may overlook parameters at the source site → the Town employs one of the QPs and the proponent pays the costs
- Vacuum on guidance regarding the standards under O.Reg
- QP makes rules, but there is action from the Ministry if QP makes bad decision.
- Ministry will not make rules but will penalize a QP if poor decision is made → QP may not want to sign off on a final decision, then what?
- Weak guidelines in BMP for QPs
- Other questions to consider: who manages QPs? Who enforces? What are the penalties for non-compliance?

BMP Document Vagueness – Planning Considerations

- Given the impact of fill and the amount of development, further guidance is required, has a direct connection to land use planning applications → site plan applications, subdivisions, etc. Durham's "aerodrome loophole" – fill operations proceeding as an aerodrome site
- Questions on responsibilities:
 - Who is responsible to respond to complaints in the community?
 - What is the protocol for contaminated soils?
 - What are the impacts from foreign soil?
- No considerations where it's the appropriate land use for fill sites – same example as solar projects – will they be located on prime agriculture, etc.
- Where should fill sites be located? Will this be done through OPs?
- Fill sites are not mentioned in the PPS
- East Gwillimbury: restricted fill operations to expired extraction pits
- How does the BMP address the current regulatory regime? There are gaps: who regulates CA or municipalities?
- How does the BMP align with goals and plans? Processes are vague → need clarity on what exactly this document is intended to address, clarity needed to manage expectations
- Other jurisdictions e.g. UK, have robust planning processes in place for commercial fill issue

Municipal Roads

- BMP makes no mention of commercial fill haul routes of trucks → neighbouring municipalities located on routes that may be impacted (noise, dirt, dust, damage to road infrastructure) – compensation not mentioned in BMP
- How do you consult with proponents on this issue? How do you enforce compliance?
- Site alteration bylaw does not apply to CAs, exempt from the bylaw → CAs do not require road damage deposits on behalf of municipalities – how can we make this become a requirement?

Temporary Soil Banks

- Mixed reactions across jurisdictions on the benefits of temporary soil banks – no one size fits all approach
- Soil wandering sites, no detailed plans to prevent the mixing of contaminated soil with clean soil
- What are the requirements for testing?
- How long is temporary? When does the clock start? After the first load, the last load? What happens once the 5 years have expired? Extensions are up to the Ministry's district office.
- In certain areas, temporary soil banks are preferred, use these sites instead of having fill go to landfill.
- Each municipality has views on how they want to regulate commercial fill – document is a guidance tool, municipalities should be allowed to figure out temporary soil banking on their own.
- Waterloo Region looking into a feasibility study to set up a temporary soil bank, looking for a permanent position.
- Temporary soil banking can occur on municipal lands

Source and Receiving Sites

- Source sites are the best place to manage the soil quality issues, much better than the receiving sites
- No interpretation on analysis of soils, needs to be conducted at a lab by a professional geotech person – Interpretation/analysis of quality of soil needed, when is it considered contaminated?

Let the leaders lead

- Some municipalities may be ahead of the curve of the BMP – should use BMP only as a resource/guidance tool to fill gaps, still too vague however

Regulation of Contaminated Fill

- Municipalities overwhelmingly prefer that contaminated soil issues should be regulated and uploaded to the Province, should be a provincial responsibility
- Clean excess soil is a municipal responsibility, site alteration bylaws are essential
- Fill is coming from urban sites – the chances of it being clean are low
- QPs need to determine if the soil is clean under O.Reg, if not clean, use regulatory mechanisms → keep mostly clean soils out of landfill, guidelines should address this

- Who is managing fill that's contaminated at other sites?

Other Ministerial Involvement

- Ministries do not seem to be engaged, has MMAH commented on the BMP? → planning component on this issue (assessment site, taxation, etc)
- Soil as a natural resource, not articulated by the Ministry – it's too important to be classified as waste

Definitions

- A lot of terms are still too vague
- Tables need defining
- Excess soil definition is vague
- Role and responsibilities of the QP needs to be clearly defined → QPs need to be given guidance, standardization of record keeping, waste management regulations, etc,
- No definition for a commercial fill site, no definition for a large scale site

Site Alteration Bylaws

- Gaps within the document and how the legislation works, not a legal document, it doesn't have teeth
- Ministry needs to develop a model site alteration bylaw to deal with excess soil

Other Considerations

- What's the appropriate level of financial security? Need the province to share information with stakeholders.
- What are the applicable industry codes of practice for managing excess soil?