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RE: Excess Soil Management Policy Framework – EBR #012-6065

The Ontario Stone, Sand & Gravel Association (OSSGA) is a not-for-profit association representing over 280 sand, gravel and crushed stone producers and suppliers of valuable industry products and services. Collectively, our members supply the substantial majority of the 164 million tonnes of aggregate consumed, on average, annually in the province to build and maintain Ontario's infrastructure needs. OSSGA works in partnership with government and the public to promote a safe and competitive aggregate industry contributing to the creation of strong communities in the province.

OSSGA appreciates the opportunity to provide comments on the Excess Soil Management Policy Framework and provide the following answers to the discussion paper questions as they pertain to the aggregate industry.

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

The proposed policy framework is a positive first step in developing policy tools and actions to improve the management of excess soil in Ontario. In general we agree with the goals and principles which align well with OSSGA's vision for sustainable management of excess soil in Ontario. We offer the following comments and recommendations concerning the proposed policy actions and tools.

Source Sites

OSSGA strongly supports placing the onus on the source site owner and agrees that the development of a regulation (**Action 1**) is important. To achieve the goal of beneficially reusing soil and securing public acceptance, tracking and enforcement will be important factors to consider.

Enforceability is a critical component to the success of this framework, regardless of the size of the site. Soil quality from all source sites, whether large or small, high risk or low risk, should be characterized and tracked. Aggregate sites with approval under the Aggregate Resources Act (ARA) to import soil may routinely accept soil from many smaller projects. Therefore, the smaller sites should not be exempted from following legal requirements and standards. As receivers, aggregate operators require assurance

that materials from small projects will be scrutinized in a similar manner as the large projects and the onus for this should also be placed on the source site owner. It is understood that the focus of the regulation is on larger sites, and we further understand that the framework proposes to develop guidance for smaller lower risk sites (**Action 14**) which we strongly support. OSSGA further recommends that the framework:

- Explore ways to manage materials from smaller projects by developing testing protocols at the source site as well as the receiving site that are pragmatic and cost effective.

OSSGA has no comment on **Action 2** and generally supports **Actions 3** and **4**.

With respect to the Ministry of Environment and Climate Change (MOECC) working with Qualified Persons (QP) on excess soil management guidance (**Action 4**), OSSGA recommends the development of the following tools and actions:

- A standard template for reports be developed so that different QPs are submitting reports with consistent information. This will facilitate the receiving site's ability to ensure the necessary information is present prior to accepting soil.
- QP reports should have a stale date to ensure that analytical results for material from a source site arriving at a receiving site are relatively current.

Interim Sites

OSSGA agrees with the proposal to allow for temporary excess soil storage where it supports beneficial reuse at an appropriate location. In general we are supportive of **Actions 5** and **6**.

These interim sites however may pose a new set of problems and it may be difficult to ensure the soil is re-used safely. Sites that receive soil from a temporary storage area will want assurance that the soil was not altered through co-mingling. Some questions to consider include:

- Who assumes liability for the soil at a temporary site, the source site or the interim site owner?
- How will material be managed at a temporary storage site to either prevent or control co-mingling of soil from multiple projects?

Therefore prescribing requirements for temporary storage sites (**Action 5**) is critical. Some recommended tools include:

- Establishment of a defined time frame for storing soil temporarily.
- The receiving location or final destination for soil must be known prior to temporary storage.
- Spot auditing.
- Sampling, tracking and record keeping protocols similar to what a source and receiving site would carry out.

- Incorporating back hauling (hauling loads of material both ways with one truck) into policy to address climate change and truck traffic concerns.

With respect to **Action 6**, if the province can successfully put this framework into action, with an effective means of recording soil quality, tracking movement and enforcement for non-compliance then municipalities and the Ministry of Natural Resources and Forestry (MNRF) may be more open to the idea of using aggregate sites as interim soil storage facilities. Material handling is what the aggregate business is all about. There are processes already in place to sample and analyze material. Environmental Compliance Approvals (ECAs), noise and dust best management practices and traffic plans are already established at aggregate sites. Generally, aggregate sites are close to market and can haul loads of material both ways with one truck, effectively reducing greenhouse gas emissions through increased efficiency. There are a lot of reasons why it makes sense for the aggregate industry to be an option in providing interim soil storage areas.

Receiving Sites

In general OSSGA agrees with the policy needs outlined in this section. As mentioned above, aggregate sites already address: “nuisance effects” through ECA’s for air and noise, best management practices for noise and dust, traffic plans and wherever possible operators haul loads of material both ways which addresses impacts related to climate change and truck traffic.

A concern we have is that currently councils have, and exercise, the ability to ban fill from entering municipalities. If this practice continues it will frustrate the purpose of this framework, which is to beneficially re-use soil and limit how much is treated as waste. Also municipalities can still restrict soil to Table 1 which is, in our experience, usually a misapplication of O. Reg. 153/04 standards. This issue is not adequately addressed in this framework and solutions for this need to be explored.

No comment on **Action 7**.

While OSSGA supports the development of educational materials about receiving sites (**Action 8**), we wish to ensure that municipalities do not require fill management plans for aggregate sites. This would be a duplication of effort as aggregate operations are already governed by site plans, which already include a fill management component. Therefore we strongly recommend the following:

- Responsibility of fill management at a licensed aggregate site should remain within MNRF’s oversight and this should be stated specifically within the framework and echoed in educational material.

OSSGA firmly believes that enforcement is a critical piece for this framework to be effective. We acknowledge that **Action 9** likely recognizes what OSSGA sees as a lack of coordination between

regulators and a lack of capacity to enforce. OSSGA appreciates the positive role that Conservation Authorities and municipalities play, and see the value of exploring ways to improve compliance with these partners. That said, it is important for the aggregate industry that enforcement of fill management at licensed aggregate sites remain under the jurisdiction of the MNRF and the MOECC as follows:

- MOECC to approve the QP's plan from the receiver once soil quality criteria are established.
- MNRF to dictate where the fill should go at a particular site, through rehabilitation plans.

With respect to **Action 10**, many licensed aggregate sites are already keeping records for fill being brought in and have fill protocols since this provides a level of protection for the aggregate operator. OSSGA has no major concerns with this general concept and recommends the following:

- Develop a guideline for record keeping so all sites operate according to common principles.
- MNRF should continue to work closely with MOECC on excess soil policy, and develop mechanisms that allow operators to implement projects efficiently.
- OSSGA should be directly involved in the discussions on the development of record keeping requirements and guidelines.

No comment on **action 11**.

Technical Standards

OSSGA agrees that MOECC needs to provide direction on technical matters. In particular, the quality of fill brought into aggregate sites should not default to Table 1. If the MOECC decides to allow greater flexibility for soil criteria, it will not provide the aggregate industry any greater flexibility if the MNRF still requires adherence to Table 1. MOECC and MNRF need to collaborate on this. MOECC should set the standards and MNRF should determine appropriateness for rehabilitation. **Defaulting to Table 1 is unacceptable**, there needs to be some flexibility in regard to the tolerance for the potential incorporation of some soil of quality 'marginally' outside the limits. To this end OSSGA firmly supports MOECC taking action to develop approaches and standards for re-use of excess soil (**Action 12**) and recommends the following:

- Incorporate some flexibility by developing multiple approaches for standards such as fill quality that reflects the regional soil characteristics and alternative site specific standards.

From this, an important question emerges for further consideration:

- How do we get to that site specific requirement in such a way that everyone is using a consistent process?

OSSGA also firmly supports the development of clear guidance to inform requirements for testing of excess soil (**Action 13**). Sampling and analytical protocols should be required at source sites so that receivers know the quality of soil they are bringing in.

In our view, soil quality should be characterized prior to the tendering package so that the results of the analysis can be included in the tender. Bidders should be given the responsibility to determine the appropriate receiving site. Acceptance of the bid should be contingent on confirmation from the source site and a QP that the receiving site is a viable location.

Small volumes

If sampling and testing protocols are not developed for small volumes of soil, receiving sites could be taking on significant risk. Licensed aggregate sites that have MNRF approval to import fill, generally accept soil from many small source sites. Therefore OSSGA strongly supports the development of guidance for smaller, lower risk source or receiving projects (**Action 14**), provided this includes the development of protocols and testing requirements.

Clear guidance should include:

- How to select contaminants of concern.
- How to pick the analysis.
- Sample number and frequency.

Aggregate sites will most likely reject loads from small sites if soil quality analysis does not become a requirement because aggregate sites will not be willing to assume the risk, or take on the full cost of testing. These loads may end up being dumped illegally or treated as waste. Essentially the principle of soil as a resource will be violated and the goals of beneficial reuse will not be achieved.

Streamlining policy

In general OSSGA supports integrating and aligning various aspects of provincial policy (**Action 18**) and sees it as an important step in streamlining various policy and legislative pieces.

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

OSSGA is not currently aware of any other existing best practices from other jurisdictions.

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

The following are OSSGA's top nine priorities:

- **Action 1:** MOECC to work with partner ministries to develop a new regulation under the EPA requiring larger and/or riskier source sites to develop and implement excess soil

management plans certified by a Qualified Person and made available to MOECC and local authorities.

- **Action 4:** MOECC to work with Qualified Persons on excess soil management guidance.
- **Action 8:** MMAH and MOECC to develop educational materials respecting receiving sites, including larger (commercial) sites, to inform municipalities in the development or updating of by-laws.
- **Action 9:** MMAH and MNRF to explore, with partners, legislative and non-legislative ways to improve compliance and enforcement with Municipal Act and Conservation Authorities Act requirements.
 - MOECC and MNRF to remain the regulators at licensed sites.
- **Action 12:** MOECC to develop approaches and standards for re-use of excess soil that provide for environmental protection and sustainable re-use of excess soil.
- **Action 13:** MOECC to develop clear guidance to inform requirements on testing of excess soil.
- **Action 14:** MOECC to develop guidance for smaller, lower risk source or receiving projects or sites.
- **Action 20:** MOECC to develop a stakeholder group (and potential sub-working groups) to provide input on proposed policies, technical matters, guidance and implementation, including coordination with external programs.
- OSSGA proposed new action: MOECC to develop clear guidance for interim sites that include requirements for testing soil quality.

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

- As leaders in material handling and movement, OSSGA wishes to participate as a member of the stakeholder group and relevant sub-groups. The aggregate industry has the capacity to re-use excess soils and is experienced and knowledgeable in handling materials from source to receiving site, record keeping and developing materials management plans.

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

- The building, construction and development industries are in the best position to lead the delivery of the excess soil program as generators and receivers. These industries can support the delivery of the soil program by applying their expertise to help inform the development of

policy tools and actions that make sense on-the-ground. To that end, as part of the building and construction sector, members of OSSGA and the aggregate industry can play a significant role.

- OSSGA supports the efforts by the building, construction and development sectors and their representative Associations in developing tools that support excess soil management (i.e. the matching registry developed by Supporting Ontario Infrastructure Investments and Lands (SOiIL)).
- Industry non-government organizations such as OSSGA have a role to play in partnering with the government and the public to promote the beneficial re-use of soil in a safe, competitive and efficient manner and to encourage the responsible use of soil resources through good stewardship practices.

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

- The province can best continue to engage OSSGA by being transparent, keeping us well informed of progress through regular communication, to involve us in stakeholder consultation sessions, and by seeking advice from our members.
- Provide OSSGA and the public with the opportunity to contribute to and comment on the draft regulations, guidelines and educational materials that emerge from this process.
- Engage municipalities early on and consistently throughout this process.

7. Do you have any other comments or feedback?

OSSGA is in agreement that this policy framework should not include aggregates but it will be critically important that this be communicated specifically and appropriately within the framework itself. Material that is supplied to or removed from building and construction projects, or supplied for the rehabilitation of aggregate sites is often stone, sand and gravel (aggregate).

This framework presents the MOECC the ideal opportunity to provide guidance and direction for other regulators who have in the past misapplied Table 1 standards under O.Reg. 153/04, to virgin aggregate material. There has been a policy gap in this area for a very long time and OSSGA strongly advises that the MOECC take a leadership role in closing that gap. Eliminate the miscommunication that has existed for so long in the misapplication of brownfields standards to aggregate material.

Should you have any questions or concerns regarding the above, please don't hesitate to contact Cynthia Robinson, Manager of Environment & Education at 905-507-0711 ext. 205.

Thank you again for the consideration of our comments. We look forward to further participation in this process through the stakeholder working groups.

Sincerely,
ONTARIO STONE, SAND & GRAVEL ASSOCIATION

Ryan Wall
Chair, OSSGA Inert Fill Committee