



STAFF REPORT ACTION REQUIRED

Protecting Toronto's Moraine-Sourced Groundwater

Date:	August 27, 2012
To:	Public Works and Infrastructure Committee
From:	Executive Director, Technical Services
Wards:	All
Reference Number:	P:\2012\Cluster B\TEC\PW12022 (AFS #15723)

SUMMARY

The purpose of this report is to provide a review of existing mechanisms for testing soil leaving Toronto development sites, and to make recommendations to encourage greater consistency and transparency in testing soil at development sites, as requested by Member Motion 19.5, adopted by City Council on March 6, 2012.

RECOMMENDATIONS

The Executive Director of Technical Services recommends:

1. City Council request the Ministry of the Environment to enact regulations to ensure that excess soil placement is provincially regulated in a manner that is consistent across the province and in accordance with the provisions of the Environmental Protection Act.

Financial Impact

Receipt of this report will have no financial impact.

DECISION HISTORY

Notice of Motion MM19.5, adopted by City Council at its meeting of March 6, 2012, contained two requests:

1. City Council request the Deputy City Manager Cluster B and appropriate staff to review existing mechanisms for testing soil leaving Toronto-area development sites.
2. City Council request the Deputy City Manager Cluster B to report back to Council, through the Public Works and Infrastructure Committee in the third quarter of 2012, with recommendations for implementing a process to encourage greater consistency in soil quality testing and transparency for municipal development sites, with special attention to Brownfield sites.

ISSUE BACKGROUND

In Ontario, the disposal of waste materials and the remediation of brownfield sites are both governed by the *Environmental Protection Act* ("EPA"), administered by the provincial Ministry of the Environment ("MOE"). The MOE has general authority to address environmental contamination and non-compliance with provisions of the EPA. MOE action may include prosecution, orders, administrative penalties, and other measures.

The movement or transfer of waste material is regulated under Part V of the EPA and Ontario Regulation 347 (the "Waste Management Regulation"). However, excess soil is exempt from these provisions if it meets the definition of "inert fill", as defined in the Regulation. Inert fill is defined as "earth or rock fill or waste of a similar nature that contains no putrescible materials or soluble or decomposable chemical substances". The MOE has not provided chemical parameters to define inert fill, nor has MOE created new regulations to manage excess soil, classified as inert fill, leaving development sites.

In cases where brownfield sites are redeveloped to more sensitive use, in addition to the Waste Management Regulation, Ontario Regulation 153/04 (as amended) applies. As a result, a Record of Site Condition ("RSC") must be filed in accordance with the EPA. The Regulation governs soil-testing procedures and dictates the quality of the soils that can either be brought in or remain on the development site, not soils leaving the site.

Excess soil placement is not identified as a drinking water threat under the *Clean Water Act* and is not specifically regulated under this legislation. The Clean Water Act does give conservation authorities the mandate to develop Source Protection Plans applicable to their Source Protection Areas. A Source Protection Plan is a plan to protect drinking water sources as prepared under the Clean Water Act. Excess soil placement is not identified as a threat, and is not currently being considered in the development of Source Protection Plans.

COMMENTS

In the preparation of this Report, staff have consulted with the City Solicitor, the MOE, and members of the source protection region for Credit Valley, Toronto and Region, and Central Lake Ontario ("CTC").

Existing Mechanisms for Testing Soils Leaving Toronto Development Sites

There are no existing municipal requirements for testing soil leaving Toronto-area development sites.

Currently, it is the responsibility of the landowner when disposing of excess soil that meets the definition of waste to comply with the MOE Provincial Regulations and Acts. It is the MOE's responsibility to enforce these requirements in accordance with the EPA and regulations, and ensure material is disposed of only with approved equipment and at approved facilities.

Over the last 20 years, there has been a lack of regulatory certainty in relation to the handling of excess soil. Recently, the Ministry has released a draft guideline entitled *Soil Management – A Guide for Best Management Practices*, dated April 19, 2012 ("Guideline"). The draft Guideline identifies the need to manage excess soil in a sustainable manner. However, the Guideline is not a regulation and relies on the landowner to self-regulate. The Guideline provides no guidance on how to apply excess soil in different environmental settings.

There appears to be a provincial regulatory gap concerning excess soil placement. To ensure uniformity across the province it is recommended that the MOE be requested to establish regulations governing the testing and placement of excess soil, using the same criteria and methods set out in the RSC regulation. This will ensure a uniform set of standards and procedures that will apply across the Province of Ontario.

Potential Process for Soil Quality Testing

The jurisdiction of the City of Toronto to regulate excess soil placement applies only within the City's limits. The testing of Toronto area excess soil would not alone ensure environmental protection if receiving sites outside of Toronto do not prohibit acceptance of certain contaminants or continue to receive untested soils from other areas. This would arguably create a costly and unfair burden on Toronto development.

CONCLUSIONS

There are no existing municipal requirements for testing soil leaving Toronto-area development sites. It is within the mandate of the MOE to enforce the EPA and address environmental contamination and non-compliance. To date, the MOE has neither provided chemical criteria to define inert fill (excess soil), nor has it adopted a regulation to manage excess soil leaving development properties.

The recent MOE draft Guideline identifies the need to manage excess soil in a sustainable manner but is not a regulation and therefore not enforceable. It relies on a self-regulation approach that places the regulatory obligation with the landowner.

In order to ensure uniformity across the province it is recommended that the MOE be encouraged to enact a regulation that governs excess soil in accordance with the requirements of the EPA as enforced by the MOE.

CONTACT

Sam Badawi
Senior Environmental Project Manager
Development Engineering
Tel: 416-392-0893
Fax: 416-392-4426
E-mail: sbadawi@toronto.ca

John D. Minor
Manager, Soil & Ground Water Quality
Development Engineering
Tel: 416-338-2824
Fax: 416-392-4426
E-mail: Minor@toronto.ca

Graham J. Rempe
Solicitor, Legal Services
Tel: 416-392-2887
Fax: 416-392-3848
E-mail: grempe@toronto.ca

SIGNATURE

Peter M. Crockett, P. Eng.
Executive Director
Technical Services