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642 Woolwich Street,

Guelph ON, N1H 3Y2

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Laura Blease
Senior Policy Advisor
Land Use Policy
Ministry of Environment and Climate Change
Environmental Policy Branch
40 St Clair Avenue West,
Foster Building, Floor 10
Toronto, ON
M4V 1M2

Dear Laura Blease,

Re: EBR 013-2774 Excess Soil Management Regulatory Proposal

The Christian Farmers Federation of Ontario (CFFO) is an Accredited Farm Organization representing the interests of over 4,000 farm families in Ontario.

Proper soil management is a foundational component of farming operations and of the health and success of the agricultural sector as a whole. Good soil stewardship leads to healthy yields and a more stable livelihood for the farmers taking proper management approaches. Soil from off-farm construction projects may cause environmental or human health damage and impact crop production if not managed effectively. Therefore, it is very important that excess soil being imported to agricultural land is properly regulated.

The CFFO has four key recommendations on elements of the Excess Soil Management Regulatory Proposal that may be addressed so that soil importers, like farmers, can safely and easily receive and integrate excess soil into their land. First, we will address overlaps in the soil reporting phase between brownfield project leaders and soil importers (i.e., farmers). Second, we consider exemptions to the permit process for farmers conducting normal farm practices, as described by the Farming and Food Production Protection Act (FFPPA), 1998. Third, we recommend the need for random quality checks of excess soil to be relocated to a reuse site, so that farmers can be assured they will receive acceptable quality soil for food production. Lastly, we suggest a mediating tool to facilitate the exchange of information between brownfield project leaders and interested importers.

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1) Eliminate the overlap in which both brownfield project leaders and soil importers submit similar information regarding soil quality, quantity, and plans for transportation.

Eliminating redundancies in the reporting process as well as utilizing the best practice guidelines, developed by OMAFRA and MOECC, farmers may limit the impact of imported soil onto their farmland without needing to invest significant time and money into certain aspects of permit preparation. As brownfield project leaders are already required to outline the quality and quantity, as well as the plans for transportation, it may be redundant for farmers to provide the same information to the local municipality for permit purposes. Instead, when it is required that excess soil management plans (ESMPs) be used, the municipality should review the ESMP provided by the brownfields project leader.

Furthermore, accounting for dust and noise can be resolved with the education provided in the best practice guidelines in the "[Importation of Soil onto Agricultural Land](#)" [OMAFRA Factsheet](#).

2) Exemptions within the permit process should be in place for farmers undertaking normal farming practices, as defined by the Farming and Food Production Protection Act (FFPPA), 1998.

The OMAFRA Factsheet, "Importation of Soil onto Agricultural Land," provided with the Excess Soil Management Regulatory Proposal, lists several beneficial reuses of imported soil onto agricultural land. These include adding soil amendments to improve soil health and crop yields, increasing the amount of usable farmland, and undertaking grade alterations to improve the safe and efficient operation of farm equipment, among others.

For those projects where farmers may require imported soil for the purpose of enhancing these and other "normal farm practices," the exemptions in the Farming and Food Production Protection Act (FFPPA), 1998 should take effect. For instance, the FFPPA includes protection for farmers against municipal by-laws that restrict a normal farm practice carried on as part of an agricultural operation, as well as nuisance complaints made by neighbours, provided the situation involves normal farm practices. Though we support regulating soil quality, especially for food production, municipalities should not prohibit the use of fill as described in section 142 of the Municipal Act (2001), as long as it is to support these normal farm practices and complies with site-specific standards formulated through Table 1 of O.Reg 153/04.



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The FFPPA [defines normal farm practices](#) as ones which are “conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances.” In many cases, a site may need to be filled back to grade for agricultural purposes. Using fill is commonplace in many agricultural operations and this is the case if the importation of soil is necessary for increasing production or to reduce negative effects on production. By allowing some exemptions for operations that simply enhance current farm practices, farmers will save time and money by not having to do unnecessary work providing more information than needed for municipal permits.

3) Protect soil importers through direct quality checks of excess soil by the government before transport in order to prevent importers from receiving inadequate soil and to assure the accountability of brownfield developers.

The proposed policy assigns reasonable duties to both the project leader and the soil importer. Assuring acceptable soil quality for the soil’s intended reuse is a good example. Maintaining healthy soil is an important part of being a successful farmer and to maintain healthy soil, farmers need to make sure that they are not importing contaminated or poor-quality soil because of the risk this poses to the food system.

Since there is financial incentive for project leaders to mix poor-quality soil or even contaminated soil with good soil, it should be expected that landowners importing excess soil will unfortunately receive contaminated soil on occasion. Government inspection of the soil itself is an essential component of the soil reuse process to ensure the safety of the imported soil for farmers or any other soil importer. Random quality checks before the excess soil is transported from the excavation site to the receiving site will stop those who seek financial gain by mixing contaminated or poor-quality soil with the better-quality soil that is expected by the importer.

This is also important for excess soil designated as topsoil. Prolonged storage or delayed transport of topsoil will degrade the soil quality due to the breakdown of organic matter, nutrient leaching, and soil compaction (see OMAFRA Factsheet for importing soil onto agricultural land). Project leaders are required to outline transportation schedules as part of the ESMP but are not obligated to transport topsoil in a timely fashion. Therefore, it is especially important that direct quality checks and timely transportation are a part of the excess soil management plan. The excess soil management plan should also include protections for soil importers if they discover that they have received undisclosed contaminated soil so that they are not held fully responsible for dealing with the contamination problem and cleanup and so that they may hold their soil provider accountable.

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4) Establish a mediating tool to facilitate linking brownfield project leaders to interested importers.

The Excess Soil Management Plan expresses the importance of finding nearby reuse sites and making sure that imported soil is of an acceptable grade and quality, but there is no mention of a tool that will allow project leaders to easily find suitable willing importers for their given quality of excess soil. The proposed policy guides these project leaders regarding what they must do in order to find a reuse site. For example, they must create an ESMP in which they identify an appropriate reuse site and how the soil will be transported. Though the management plan describes the steps that must be taken so that the excess soil may be properly removed from the excavation site, the overall regulatory proposal lacks a tool to facilitate linking both exporter and importer.

This could be done best through a database that provides interested potential reuse site options within proximity to the soil excavation site. Project leaders in charge of excess soil would list the amount of soil and its characterization, as required for an ESMP, while potential soil importers would be able to show their availability and site-specific standards, as derived from Table 1 of O.Reg 153/04. A government-run online database would be an effective tool in which brownfield project leaders could easily display soil qualities and gradients to potential importers, simplifying the process for importers, like farmers, to find acceptable soil for their project. This would allow brownfield projects to quickly find suitable and willing importers and allow farmers to find quality soil that will meet the needs of their specific project.

Summary

The CFFO recognizes that good soil stewardship is foundational to both human health and farming success, as well as the health of the broader environment. Many important regulations have been suggested in the Excess Soil and Regulatory Proposal that ensure the safe reuse of excess soil.

It is important that the government provides support so that excess soil can be reused effectively, but farmers will always be the ones at the frontline of soil reuse on farms across the province. For a farmer, the health of their land is of paramount importance. Farmers need their land for their livelihood and use it to feed communities around the world. Government needs to consider the extent to which regulations can be streamlined to avoid duplication of effort, while also ensuring sufficient protection for those reusing excess soils, especially for farmers who will reuse those soils to produce food.

We appreciate this opportunity to respond to this proposal, and we thank you for your consideration of our comments.

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Sincerely,

Clarence Nywening, President
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