

**Response to ERO posting # 019-2462: Extending Grandfathering for Infrastructure
Projects and Providing Additional Flexibility for Excess Soil Rules**

Submitted By:

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Introduction

SoilFLO welcomes the opportunity to provide input to the Ontario Ministry of the Environment, Conservation and Parks' regulatory proposal, *Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Rules* (ERO 019-2462). This submission will focus specifically on Proposed Change # 9 - Registry Delivery.

Previous Submissions Regarding Registry Delivery

SoilFLO has been an active participant in the Ministry's Excess Soils Engagement Group (ESEG) for the past four years. This group provided input that assisted in the excess soils regulatory package made into law on December 4, 2019. Since that time, SoilFLO has remained highly engaged with both Ministry and Ministerial Staff regarding implementation of the regulations and adoption of soil management practices within the industry that are compliant with the new framework.

SoilFLO has also been the lead proponent of The SoilKEY Consortium, of which it is a member. This consortium consists of a collection of industry corporations and Associations who have expressed an interest in operating the Excess Soils Registry as described within the Regulations. Such interest is preliminary and dependent upon many, yet to be decided, parameters as to the Registry's terms of reference.

SoilKEY is envisioned as a private for-profit organization that would be responsible for the Registry as well as ancillary services such as education, training, soil-matching, research and promotion of best management practices. The establishment of an industry-driven comprehensive excess soil management organization is consistent with both the Ministry's and ESEG stated preference for an industry-led, "one stop shop" for a wide array of programs and services related to excess soil management. Such an organization would be accountable to a duly authorized government entity through a contractual arrangement that would assure transparency and value for services delivered. The government entity would retain responsibility for establishment of registry fees, enforcement, levying of administrative penalties to industry transgressors and assurance of regulatory conformity. SoilKEY would be

guided in its efforts by an advisory board of respected stakeholders from a wide variety of constituencies.

Various iterations of the SoilKEY proposal have been sent to, discussed with and the subject of numerous meetings with Ministry and Ministerial staff over the past four years. The most recent submission regarding this proposal was submitted on March 12, 2020 and entitled “An Excess Soil Management Organization for Ontario”.

The Current Ministry Proposal

Section 9 of the current ERO posting proposes that the Excess Soils Registry be placed under the auspices of The Resource Recovery Authority (RPRA) via the provisions of *The Resource Recovery and Circular Economy Act*. Included in the rationale for this proposal was the comment that:

“It is anticipated that fees for registration using a RPRA-operated registry would be lower than other options explored given their existing registries and IT infrastructure to leverage.”

SoilFLO questions the validity of this assumption as neither SoilKEY (or, to our knowledge any other potential provider) were afforded the opportunity to quote on the cost of Registry operation.

SoilFLO, nonetheless, welcomes the proposal by the Ministry to identify a body that has the regulatory authority to carry forward the provisions of the excess soils regulations. In its discussions with Ministry and Ministerial staff both prior to and since the regulations being made into law, SoilFLO has emphasized the urgent need to identify a properly authorized body that has the legislative and legal infrastructure to oversee implementation of the regulations within the short timeline stipulated for the Registry to become operational. By identifying RPRA as a possible candidate for such authority, an important step has been taken, albeit at a very late date, to meet the timetable for regulation implementation.

The question now becomes in our mind, whether RPRA is the best fit for this job.

RPRA “Fit”

The current Ministry proposal is not definitive as to the role and scope of operation RPRA might assume with regards to the Registry. It is therefore unclear as to whether RPRA will, in fact, be responsible for the design, implementation and operation of the Registry or whether a third-party provider, selected by and accountable to RPRA will be charged with these responsibilities.

Section 9 of the ERO posting also recommends:

Integration of the registry with third-party platforms will facilitate exchange of information with other programs and systems, to provide a user friendly system and to ensure users do not have to re-enter information on their soil management activities, into multiple platforms.

It is not clear at this time whether RPRA would be the initiator or operator of any of these third party platforms. What is clear, however, as per the feedback provided by select ESEG Members to Ministry

staff during the October 29, 2020 consultation, was the preference that such programs be operated by a single provider with stakeholder involvement to guide development.

It is our position that there may be advantages in the engagement of RPRA as the identified regulatory authority to which an excess soil management organization would be accountable to because:

1. RPRA is an established organization that has experience in engaging broad and complex constituencies in changing organizational practices.
2. RPRA would have the Regulatory Authority and experience in such matters to levy fees, fines and ensure compliance with all aspects of the regulations.
3. RPRA has experience in Registry operation and the practical and technical challenges associated with same.
4. Time is exceedingly short for Registry implementation and there appear to be no other viable immediately available options to provide the proper administrative framework within this temporal constraint.

The concerns related to designation of RPRA as the designated organization for the design, implementation and operation of the Registry and other related programs are as follows:

1. RPRA is first and foremost a waste-reduction organization dedicated to elimination of waste via a circular economy. The central tenet of the Excess Soil Regulations is to remove excess soil from a waste designation and thus to facilitate stakeholder attitudes and practices that properly view it as a resource. To have the Registry and associated programs administered on an operational basis by a waste-reduction entity is antithetical to the substantial efforts of stakeholders and government alike over the past decade to regard excess soil as other than waste.
2. RPRA has not been involved in any of the ESEG consultations to date. It would appear that the reason for such non-involvement has been that the excess soil management arena has not been a focus of RPRA's mandate. Introduction of an entity that may play a key operational role (if RPRA is the actual operator of the Registry and associated programs) at this late date appears incompatible with the previous commitments for the implementation of solutions to excess soil management challenges be industry-led. There are no better ambassadors to facilitate the required changes in attitudes and practices in excess soil management than experienced and credible industry stakeholders who speak the language of their colleagues.

Proposal for Consideration

It is our submission that the most desirable option would be to have RPRA invested with the legislative responsibility as the Excess Soils Registrar along with the accompanying responsibilities and authorities for the levying of fees and penalties. The actual responsibility for design, implementation and operation of the Registry and associated programs, with the aim of achieving a "one stop" portal for stakeholders in the excess soil arena, is best delegated to an entity, duly selected by RPRA and responsible to it through a contractual arrangement.

This entity would have an advisory board, subject to MECP and RPRA consultation regarding its Membership and Terms of Reference, to guide its implementation and operation.

Requirements Going Forward

No matter what vehicle is chosen for the delivery of the Registry and associated programs, time is of the absolute essence. It is far from certain whether RPRA, should it become the designer, implementer and operator of the Registry, can fulfill this function by January 1, 2022. It is also far from certain whether private entities such as The SoilKEY consortium would be interested in participating in Registry development and operation absent of clear parameters, operating agreements and sufficient timelines to ensure success.

Aside from the absolute need for clear, fulsome and expedient decisions to be made to achieve the multitude of good intentions embedded in the regulations, it is our submission that the following are integral and essential to successful implementation on a go-forward basis.

Respectfully, they are as follows:

1. Integration of messaging and decision making between Ministry and Ministerial personnel. Throughout this saga, there has been a disconnect between the policy framers and deciders leaving the stakeholders confused and uncertain as to whether their voices are being correctly heard. To that end, having a duly authorized member of Ministerial staff at all future stakeholder engagement sessions would be of great value.
2. No matter who is responsible for the Registry, the Ministry must be prepared to assign senior policy, legal and information technology personnel from its own ranks as dedicated resources in program implementation.
3. Dedication of sufficient personnel and financial resources from the Ministry to assist in the education and rollout of the new regulatory package. One cannot underestimate the dearth of knowledge amongst stakeholders regarding the new regulations and their impact upon them.

Whatever decisions are made regarding Registry and Program delivery, SoilFLO stands ready to assist, as able, to facilitate successful outcomes.

About SoilFLO Inc.

SoilFLO Inc. is an Ontario-based private corporation committed to the improvement of excess soil management outcomes. It is the only private entity in the Province that has taken a comprehensive approach towards achieving this objective. Through consultations and engagement with stakeholders in government, industry and environmental stewardship, SoilFLO has created and implemented proprietary digital excess soil management solutions that:

- Appropriately plan for and reduce the costs of excess soil management.

- Implement digital tracking procedures to ensure soil provenance and the delivery of excess soil to appropriately approved receiving sites.
- Provide digital records to reduce administration and reconciliation costs and to ensure accuracy for stakeholders in the excess soil supply chain.
- Provide excess soil generators and receivers with enhanced opportunities to engage cooperatively.

SoilFLO's systems are currently being utilized at private development and large infrastructure projects in a variety of locations throughout Ontario as well as in other Provinces and the U.S.

SoilFLO has also been at the forefront of promoting excess soil management education in Ontario and, for the three years, has been the lead sponsor of Ontario's Excess Soil Symposium as well as a provider of numerous webinars and information sessions to stakeholder groups throughout Ontario. Further information about SoilFLO is available on its website at <http://soilflo.com/>.