

March 30, 2022

To Whom It May Concern:

Re: Environmental Registry of Ontario Posting 019-5203 March 11, 2022, Implementation Pause of Excess Soil Requirements in Effect January 1, 2022

The management of excess soil from construction is a complex undertaking that is a \$1 Billion annual industry in Ontario with companies involved in its characterization, excavation, transport and disposition. Until recently however, this aspect of the construction pro forma has been given little regard as to cost management or outcomes. The result has been the entrenchment of inefficient business practices and, at times, unacceptable placement of contaminated soils causing harm to human and environmental health. In some cases, such activity has been illegal yet prosecutions have been scant with some bad actors preferring to take their chances with the law and pay the relatively small fines, if caught, as a cost of business.

While excess soil generation is a by-product of robust economic development, particularly in urban centres, the consequences of improperly disposed soil is of great concern to those living in the hinterlands where such soils are mostly deposited.

For the past six years, representatives of the industries involved in the excess soil chain of custody, both individually and through their collective Associations, have given freely and extensively of their time and expert knowledge to assist the Provincial Government in bringing forward a Made in Ontario, industry-driven regulatory package to improve practices and outcomes in the management of excess soil from construction while increasing penalties for non-compliance. SoilFLO Inc. has been proud to be a member of this government advisory body.

The collaborative effort of this stakeholder engagement group with MECP staff, resulted in the making into law in 2019 of **O. Reg. 406/19: On-Site and Excess Soil Regulation**, an initiative that enjoyed a broad base of support. Since its declaration, this Regulation has been recognized in jurisdictions around the world as being a leader in its class. It shines as a rare example of industry, government and environmental stewards agreeing upon a regulatory framework. Consequently, the above-captioned ERO posting, on March 11, 2022, of the proposal to pause regulatory implementation without any prior consultation with those who have been at the table for the past six years was received with surprise and dismay. The lack of specificity and solid rationale for suggesting this unprecedented measure of pausing a Regulation already in effect has been of additional concern to stakeholders. How are they to respond to objections in the absence of clear identification of issues?

The heart of this Regulation lays in the requirements, which came into effect January 1, 2022, that those responsible for the movement of large quantities of excess soils displaced from construction projects be accountable for their actions. These requirements have compelled those involved in the chain of custody of excess soil management to bring their practices into the 21st Century while providing protection from the serious environmental and human health consequences resulting from improperly placed contaminated soils. As a result of these practice improvements, case studies have documented that those entities that invest in modernizing their soil management practices save substantial costs and

administrative headaches while achieving superior adherence to construction scheduling not to mention improved environmental consequences.

Since the making into law in 2019 of the Regulation, leagues of industry representatives and Associations as well as Ministry staff have presented numerous educational sessions to inform thousands of stakeholders of the benefits of improved excess soil management practices and the new regulatory requirements.

It is understandable that among the vast array of entities involved in this sector that there will be a few that are resistant to new regulations and methods of operation. It is unacceptable nonetheless, that the objections of the few take precedent over the consensus of the many. It is for that reason that we request that the proposed “Pause” to the implementation of those portions of the Regulation that assure transparency and accountability in soil movements until January 1, 2023, not be adopted.

Our specific reasons for recommending that a pause not be applied to regulatory implementation are as follows:

1. Merriam Webster dictionary defines a pause as:

“temporary inaction especially as caused by uncertainty : HESITATION”

Indeed, within the short period since the ERO posting, there has been much confusion and misunderstanding about what aspects of the Regulation may be subject to pause. It has already provided grist for those embarking on improved soil management practices to hesitate due to uncertainty as to the ultimate disposition of the Regulation. The impact of a pause will result in a loss of momentum and gains to date achieved in soil management practices and outcomes. It will raise the question in the mind of industry and the public about whether the Government is truly committed to improving this important environmental liability.

2. The root of the challenge to improve soil management practices is attitudinal, not educational. Simply put, this aspect of the construction process has been given little regard or respect in past years. Commonly, the idea of giving thought to the handling of construction dirt was not top of mind. Rising costs, business inefficiencies, and environmental consequences however have necessitated a shift in approach. Those businesses that wish to remain competitive and sustainable are cognizant of the importance of improving their soil management practices. Those who have been resistant to change due to entrenched attitudes have done little. There is no assurance that a pause will ignite a shift in practices among the recalcitrant few. Instead of using a pause to improve practice, it is likely that they will view such an interruption to regulatory compliance as a reason to continue with their former conduct.
3. Because the measures of the Regulation that would be paused under the ERO proposal are fundamental to the provenance of soil disposition and ensure that the right soil goes to the right place, the door is left widely open to those disposed to illegal dumping operations to continue such practices.

4. Many companies and related professionals involved with excess soil from construction have invested significant human and monetary resources to modernize their soil management practices with its resultant environmental benefits. To pause such progress as a result of a small contingent of discontented parties is an affront to those who have chosen to be compliant with prescribed law.
5. Unless arrangements are made, along with the associated costs of same, to refund fees paid to companies who have properly registered their excess soil activities on the Provincial Registry as required, the enactment of a pause that does not require fee payments is a patently unfair business practice and penalizes those that have played by the rules.
6. The Government has benefitted from thousands of free person hours over the years from industry experts who have volunteered their time to assist in the shaping and rollout of the Regulation. As little as eleven days prior to the ERO posting, many of these experts attended a virtual meeting hosted by MECP to review the status of the Regulation. Some of those in attendance were representatives of large industry groups and Associations. At that meeting, at which SoilFLO was in attendance, the general tone reflected positively upon the rollout of the Regulation. Not a single voice contemplated or hinted at a recommendation to pause implementation. The impact upon the continued goodwill of those who have given so generously of their time to bring the Regulation to fruition should be weighed carefully in any decision to undertake measures that may result in the Regulation becoming ineffectual.
7. The delay in promoting modernization of the excess soil industry is antithetical to the overarching Government agenda to promote technological advancement in business.

Instead of adopting a pause in regulatory implementation we respectfully suggest that the Government redouble its efforts to provide robust educational resources for those requiring such supports. In addition, the Government may wish, for the balance of this calendar year, to orient its enforcement provisions under the Regulation towards education instead of prosecution, when warranted, for those that require additional time to become regulatory compliant.

The Excess Soil Regulation must also be viewed in context as part of a larger business and environmental management shift. Accordingly, on a go-forward basis, we believe the Government has a co-ordination and leadership role in identifying and resolving issues arising from the implementation of the Regulation. This could include, among others, such initiatives as:

1. Co-ordination among Government Ministries and Agencies in bid/tender and contract language to ensure all projects involving the import/export of large quantities of soil clearly delineate the responsibilities of all parties.
2. Updating regulatory approvals that ensure a robust supply of appropriate repository sites for excess soil.
3. Building upon the strengths of the Provincial Registry to offer ancillary services such as Soil Matching.
4. Marketing and export of the expert and world-leading practices in soil management to other jurisdictions.

None of the above initiatives require a pause in regulatory implementation.