



November 20, 2020

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*Sent electronically*

**Re: ERO posting # 019-2462: Extending Grandfathering for Infrastructure Projects and Providing Additional Flexibility for Excess Soil Reuse**

### **Background**

The Residential and Civil Construction Alliance of Ontario (RCCAO) is not-for-profit, industry based organization composed of construction associations, union representatives and developers. RCCAO is pleased to respond to the Ministry of the Environment, Conservation and Parks (MECP) request for comments on the proposed regulatory amendments posted October 6, 2020 under ERO #019-2462.

RCCAO has been involved with the MECP and other stakeholder organizations in promoting the environmentally responsible and beneficial reuse of excess soils in Ontario for over a decade. In providing construction sector input over the years, we have promoted the adoption of industry and provincial Best Management Practices (BMP) for handling and managing excess soils in Ontario. This has included involvement with numerous task groups, as well as liaison with different associations and citizen groups. RCCAO continues to endorse the use of the MECP's Excess Soils Engagement Group (ESEG) as key entity to advance the excess soils agenda in Ontario. The current structure can be adapted to comprise subcommittees which will be tasked with various implementation issues such as regulatory compliance and outreach plans to achieve better outcomes.

RCCAO supports a "smart regulation" approach which is characterized by achieving better outcomes through a strong working relationship between government, the broader industry, academia and citizens. Accordingly, RCCAO has conducted jurisdictional scans to determine which approaches and models might work best in Ontario. Early in our review, we were impressed with CL:AIRE, a progressive organization based in the United Kingdom.

From this experience and evolving working relationships, RCCAO produced a construction industry BMP in 2012 and created a platform for excess soil matching in 2013. While the Supporting Ontario Infrastructure Investments and Lands (SOiIL) web site still exists, a

decision was made to discontinue this matching service earlier this year because of the Ministry's objective to create a Registry. In addition, RCCAO and the Greater Toronto Sewer and Watermain Contractors Association (GTSWCA) developed three excess soil construction [videos](#) to promote the BMP concept in 2018.

RCCAO has commissioned well-regarded studies, including those on quantifying the amount of excess soil that is generated across the province on an annual basis. This research was done at the request of the Ministry and has been cited at numerous conferences over the years. Prior to this, RCCAO and GTSWCA, in conjunction with the Ontario Society of Professional Engineers, published a study on "[Excess Soil Management: Ontario is Wasting a Precious Resource](#)", which took a case study approach to demonstrate the environmental and economic advantages of adopting the BMP approach.

Drawing from these working relationships and business-focused experiences, RCCAO appreciates the opportunity to provide comments on the key areas of the proposed amendments in ERO #019-2462.

### **Brief Overview of Proposed Amendments.**

Based on involvement over the past several months with organizations such as the Ontario Environment Industry Association (ONEIA) and ESEG, RCCAO takes no exception with the thrust of ten proposed amendment areas. RCCAO supports the submission made by ONEIA which are of a more technical nature. These changes include, for example: (5) reuse of salt-impacted soil, (6) reuse of rock mechanically broken down, and (7) updates to leachate testing and related requirements

As such RCCAO will comment more briefly on the following points:

#### **Proposed Change #1 – Extending Grandfathering**

RCCAO agrees that due to COVID-19 related delays and uncertainties there is a need to further extend grandfathering time frames related to infrastructure projects. In recognizing the extensions, it underlines an urgent need for MECP to develop and coordinate municipal sector and construction industry sector communications, outreach and training. Completion of BMP Fact Sheets and other supporting training and outreach materials must be part of a managed roll out plan. Recognizing that COVID-19 has made implementation difficult, it is remains unfortunate that the Fact Sheet development process has taken so long (first discussed by MECP staff in January 2020).

Despite these extensions there is danger that the MECP may run out of runway before devising a robust outreach plan. As per the Ministry's 2016 Framework document, there is continued validity in a multi-Ministry approach. Although the Ministry of Municipal Affairs and Housing is best suited to facilitate outreach efforts to the municipal sector, we have heard

very little recently about any plans in this regard. In addition to paper-based documents and web site solutions, it would be beneficial to take more advantage of social media to get the word out.

#### Proposed Change #4 – Flexibility in Excess Soil Storage for Reuse

One of the stated MECP objectives of creating an excess soils management regime was the fundamental premise of beneficial reuse of excess soil. To facilitate more reuse there should be recognition that for low risk situations, more flexibility should be given to subject matter experts such as Qualified Professionals (QPs) and Project Leaders (PLs) to use their professional experience to make reuse decisions. This flexibility could be accomplished by recognizing designated pilot test projects where there have been real world applications. Further, allowing QPs and PLs to use best professional judgment to put forward progressive soil reuse projects will speed up the process, potentially avoiding situations where temporary storage sites must be used (moving piles of soil more than once adds considerably to proforma costs).

#### Proposed Change #9 – Registry Delivery

RCCAO continues to emphasize that the development of a Registry is the key external interface between the public at large and the industry sector contractors and municipalities involved. Without a functional Registry, outcomes will be worse, transactions will become more complex and overall effectiveness will be diminished considerably. Projects could be thwarted if a well functioning Registry is not in place as there will be more regulatory uncertainty which compounds the legal liability for agents in the process. The Registry is where the rubber will meet the road in terms of deliverables.

Equally important to a functioning electronic registry is the need to have the Registry accountable and effectively managed, not just from a technology standpoint, but from an accountable leadership perspective. The need for an effective governance model to be put in place to oversee the development and implementation of the Registry is a critical element. Over the years a number of proposals have been made by proponents. RCCAO, for example, made a submission to MECP in 2016 to create a Soil Ontario organization. While the proposal might have been ahead of its time, it did have an influence on the Ministry to commission a report on market-based approaches to excess soil management. This study was tabled in May 2017 by major management consulting firm.

As the MECP has moved away from the originally planned Registry as part of the MECP's existing Environmental Site Registry there are some legitimate concerns raised. This new proposal to put the Registry under the auspices of the Resource Productivity and Recovery Authority (RPRA) under the Resource Recovery and Circular Economy Act (RRCEA) poses some new challenges. While understanding the government's approach to centralize electronic delivery platforms for efficiency and economy of scale purposes, RCCAO supports

the examination and inclusion of the following capacities within the proposed new registry framework.

- Education and training services for industry stakeholders
- Matching service for those who have excess soil with those who either need or can receive excess soil
- Promotion of services of industry participants (engineering firms, environmental consultants, qualified persons, general contractors, excavators, haulers, receiving sites etc.) via website advertising
- Financing for rehabilitation of exhausted quarry sites (with cost offset from receiving portion of tip fees)
- Consultation and service provision to stakeholders (including generators and municipalities) to ensure regulatory compliance
- Data compilation and analysis on soil movements and outcomes which may be of great value to all industries involved in soil movement
- Advocacy for improved outcomes
- Research to quantify industry metrics and provide examples of proven best management practices
- Development of export criteria and branding for the “Made in Ontario” leadership in excess soil management to be implemented in other jurisdictions

To design and develop a new registry model within the RPRA mandate that will have the facility to fully meet current and future user needs as outlined above, an appropriate managing structure will have to be created. RCCAO proposes the following steps be taken to ensure that a state-of-the-art registry be developed in a timely fashion within the proposed RPRA domain:

1. Under the direction of the ESEG create a focused Registry Task Group or committee (industry, government and other stakeholders) to move quickly on all aspects of what a modern, effective excess soil Registry should look and operate as including a governance model
2. The Registry Task Group should work with RPRA to identify and scope out problems and opportunities for the proposed new Registry and assign accountability for delivery of the various components to be developed
3. Examine options and determine the best open source, electronic platform to be used
4. Identify linkages for further future opportunities to have the Registry to be used for soil tracking, soil matching and other non-regulatory options
5. Registry Task group to prepare a short term implementation plan and timetable with best estimate of costs for the first phase of a basic Registry capturing information
6. Registry Task Group to separately prepare a second phase longer term all encompassing Registry proposal outlining the architecture and components of a



state-of-the-art Registry including all the outside and third party, public needs to ensure a robust system

7. Lastly, the Registry Task Group to recommend back to ESEG and MECP an appropriate governance model to oversee and direct the Registry in the longer term

RCCAO appreciates that the MECP understands our concerns about the importance of implementing an effective Registry structure with the requisite components. We are pleased that MECP has called a meeting for Nov. 20, 2020 to have a more detailed discussion on various aspects of the Registry. It is unfortunate, however, that this is the same day that the consultation process for this ERO filing is due. As such, we trust that there will be ongoing dialogue with the Ministry to develop a Registry which functions effectively.