

REGULATORY UPDATE: ONTARIO EXCESS SOIL REGULATION



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ONTARIO EXCESS SOIL REGULATION

- **Regulation:** Ontario Regulation 406/19: *On-Site and Excess Soil Management*
 - Legislation: Ontario *Environmental Protection Act*
 - Regulator: Ontario Ministry of the Environment, Conservation and Parks (MECP)
- **Purpose:** to support the proper management of excess construction soil by ensuring soil is not wasted, and to provide clear rules on managing and reusing it, while protecting human health and the environment.



WHAT YOU NEED TO KNOW

- **Phased Implementation:**
 - Excess Soil Regulation introduced in 2019
 - January 1, 2021: reuse rules, including risk-based standards, waste designation and approvals came into force
 - Testing, Tracking and Registration (Soil Registry) requirements originally came into force January 1, 2022, but on April 20, 2022 were suspended until January 1, 2023
 - January 1, 2025: restrictions on landfilling soils are expected to come into force

TEMPORARY SUSPENSION / “PAUSE”

- On April 20, 2022, O. Reg. 388/22 came into force temporarily suspending the following requirements of the Excess Soil Regulation through December 31, 2022:
 1. operator of residential development soil depot to file notice on Soil Registry (s. 7);
 2. Project Leader to file and update notice on Soil Registry prior to removal of excess soil from project area; (ss. 8 - 9);
 3. assessment of past uses (s. 11), sampling and analysis plan, soil characterization report (s. 12), excess soil destination assessment report (s. 13), requirement to update those documents (s. 15);
 4. tracking requirements (s. 16); and,
 5. file a notice and any update regarding reuse on Soil Registry (s. 19).

WHAT IS “EXCESS SOIL”?

- *“**Excess Soil**” means soil, crushed rock or soil mixed with rock or crushed rock, that has been excavated as part of a project and removed from the project area for the project*
- *“**Project Area**” means, in respect of a project, a single property or adjoining properties on which the project is carried out*
- Excavated soil is not considered “excess soil” until it leaves the project area.
- Excess soil is designated as waste unless it meets the criteria set out in the Excess Soil Regulation.

WHICH PROJECTS ARE REGULATED?

- **“Project”** means any project that involves the excavation of soil and includes,
 - (a) any form of development or site alteration,
 - (b) the construction, reconstruction, erecting or placing of a building or structure of any kind,
 - (c) the establishment, replacement, alteration or extension of infrastructure, or
 - (d) any removal of liquid soil or sediment from a surface water body



WHICH PROJECTS ARE REGULATED?

- **Non-application:** requirements under the Regulation apply to most construction projects, but there are some exemptions from the application of the Regulation or certain requirements:
 - **Section 2: Non-application of the Regulation**
 - **Schedule 2: Non-application of Section 8 of the Regulation**
 - Sections 8, 11, 12, 13 (sampling, analysis and registry requirements) do not apply if the amount of soil to be removed from the project area is less than 100 m³ and the excess soil is directly transported to a waste disposal site that is not a Class 2 soil management site
- **Grandfathering:** if the project leader entered into a soil management contract before January 1, 2022 Sections 8, 11, 12 and 13 do not apply (grandfathering provision s. 8(2) to be revoked January 1, 2026).

WHO IS RESPONSIBLE?

- *“Project leader” means, in respect of a project, the person or persons who are ultimately responsible for making decisions relating to the planning and implementation of the project*
- It is not clear whether full delegation of the project leader role is possible. However, aspects can be delegated.
- Consider in construction contracts.



SOIL RULES AND EXCESS SOIL STANDARDS

- **Rules for Soil Management and Excess Soil Quality Standards**
 - Part I: Rules for Soil Management (“**Soil Rules**”)
 - Part II: Excess Soil Quality Standards (“**Excess Soil Standards**”)
- **Soil Rules:**
 1. assessments of past uses, sampling and analysis plans, excess soil characterization reports and excess soil destination assessment reports
 2. soil storage and processing
 3. requirements for excess soil tracking systems
 4. applicable soil quality standards and related reuse rules

HOW WE CAN HELP

1. Exemptions / non-application
2. Requirements and timing
3. Construction contracts and excess soil agreements
4. Liability, including environmental liability



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