

ONTARIO PARTIALLY SUSPENDS IMPLEMENTATION OF PHASE 2 OF EXCESS SOIL REGULATION UNTIL JANUARY 2023

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On April 21, 2022, the Ministry of the Environment, Conservation and Parks announced their decision to implement a temporary suspension of certain provisions in the [On-Site and Excess Soil Management](#) under the [Environmental Protection Act](#) (the “**Excess Soil Regulation**”) that came into effect on January 1, 2022 (“**Phase 2**”). These provisions will instead come into effect on **January 1, 2023**. The stated reason for this suspension is to “provide more time to understand the provisions and refine their implementation” (see the announcement on the Environmental Registry of Ontario [here](#)).

The Ministry’s announcement further indicates that changes have been made to the Rules for Soil Management and Excess Soil Quality Standards document, which are consequential to the regulatory amendments, and reflect the amended dates.

While some of the Phase 2 provisions remain in effect, the provisions suspended until December 31, 2022 include the following:

- Project Leaders:
 - Suspension of requirement for Project Leaders to file notices in the Excess Soil Registry (“**Registry**”) before removing soil from the project area that will become excess soil (ss.8(1)) and updating that notice in respect of a project (s.9);
 - Suspension of requirements related to the development and application of a tracking system (s.16);
 - Suspension of requirements relating to assessment of past uses (s.11), sampling and analysis plans (s.12), soil characterization reports (s.12), and excess soil destination reports (s.13);
 - Suspension of requirements under s.15 where the Project Leader or operator of the project area or any other person working in the project area becomes aware of a circumstance described in that section;
 - Soil assessments that did not meet all regulatory requirements but were completed before January 1, **2023** (previously 2022) will be recognized and will not need to be repeated (ss.11(3) and 12(6)). This enables assessments completed during the pause to be recognized for ongoing projects after January 1, 2023;

- January 1, 2022 remains the contract exemption date by which a Project Leader must enter into a contract in order to be exempt from reuse planning provisions that come into effect January 1, 2023.
- Owners and Operators of Reuse Sites:
 - Suspension of requirements relating to reuse sites described in ss.19(1) and (1.1) to take the steps described in ss.19 (3), including filing a notice in the Registry in respect of the reuse site and updating such notice (ss.19 (6) and (7)).
- Operators of Residential Development Soil Depots
 - Suspension of the requirement to file a notice in the Registry until January 1, 2023 (ss.7(1) and (4)), and requirements to update a notice filed in the Registry are similarly suspended (ss.7(7) and (8)).
- Transporters
 - The requirement for a hauling record will be deemed to be met if the information described in ss.18(1), such as where soil originated and where it is being taken to, is provided verbally to a provincial officer upon request;
- Notably, the amendments do not impact provisions of the Excess Soil Regulation that were in effect before January 1, 2022, including:
 - the criteria used for determining when excess soil is a resource for reuse, and not designated as waste, if they are met;
 - the related excess soil reuse standards and rules; and
 - exemptions from the need for waste-related approvals in various circumstances (e.g. low risk soil management activities).

For more details on this suspension, please visit the Environmental Registry of Ontario announcement ([here](#)).

Please also see our previous bulletins for more information on Phase 1 and 2 of the Regulation and how to prepare and plan your project in compliance with the Excess Soil Regulation: [The Quick and Dirty on Ontario's New Excess Soil Regulations](#) and [The Quick and Dirty on Phase Two of Ontario's Excess Soil Regulation](#), and for how to ensure your construction contracts align with the new excess soil regime: [Ontario's New Excess Soil Regulations – Construction Contract Implications](#). If you would like to discuss, please contact Talia Gordner, Annik Forristal or Kailey Sutton.

by [Talia Gordner](#) and [Kailey Sutton](#)

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

The logo for mcmillan, featuring the word "mcmillan" in a lowercase, sans-serif font. The "m" and "c" are in a dark red color, while the "m", "i", "l", "l", "a", and "n" are in a light blue color. The logo is positioned in the upper left corner of a banner image that shows a low-angle view of a modern glass skyscraper against a clear sky.

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