

THE QUICK AND DIRTY ON AMENDMENTS IMPACTING LOW-RISK AND CONTAMINATED PROJECTS UNDER ONTARIO'S EXCESS SOIL REGULATION

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On December 9, 2022, the Ministry of Environment, Conservation and Parks (the “**Ministry**”) filed and published [O.Reg. 555/22](#) (the “**Amendments**”), which amends the [On-Site and Excess Soil Management Regulation](#) (the “**Regulation**”) under the [Environmental Protection Act](#) (the “**Act**”). In our [previous bulletin](#), we discussed the original [Proposal for Amendments to Certain Requirements under the Excess Soil Regulation](#), which was published on the Environmental Registry of Ontario on November 4, 2022 and remained open for comments until December 4, 2022 (the “**Proposal**”).

The Amendments narrow the application of the planning, assessment and soil characterization requirements for the reuse of excess soil from certain types of projects under Phase Two of the Regulation (the “**Reuse Planning Requirements**”) scheduled to come into force on January 1, 2023. The Reuse Planning Requirements are discussed in detail in our earlier bulletin, [The Quick and Dirty on Phase Two of Ontario's Excess Soil Regulation](#).

The Reuse Planning Requirements originally would apply to any defined project in the Regulation, which includes any form of development or site alteration, construction, reconstruction, infrastructure work or removal of liquid soil or sediment from a surface water body. As a result of the Amendments, the Regulation now specifies which projects have to comply with the Reuse Planning Requirements – namely, where a project (i) has an enhanced investigation project area, (ii) involves the removal of at least 2,000 m³ of excess soil and the project area is within a settlement area (as defined in the *Planning Act*), and (iii) involves the removal of excess soil to reduce the concentration of contaminants in the project area.

The Amendments come eight months after Ontario suspended certain requirements in the Regulation until January 1, 2023. This suspension was intended to provide time for municipalities, developers, and other stakeholders to gain a greater understanding of the Regulation and for the Ministry to consider the need for improvements to the Regulation. The provisions impacted by this suspension are discussed in greater detail in our bulletin, [Ontario Partially Suspends Implementation of Phase 2 of Excess Soil Regulation Until January](#)

[2023](#).

This bulletin provides an overview of the Amendments coming into effect on January 1, 2023, which create two new exemptions and remove one existing exemption to the Reuse Planning Requirements under the Regulation. Notably, the Rules for Soil Management and Excess Soil Quality Standards have not been amended as of the date of this bulletin to increase the maximum size of storage stockpiles as originally contemplated in the Proposal.

Low-Risk Use of Project Area

The Reuse Planning Requirements will apply to any part of the project area involving the removal of 2,000 m³ of excess soil or more, subject to certain regulated exemptions under the Regulation. The Amendments provide for an additional exemption to the Reuse Planning Requirements where the entire project area's current or most recent use meets the definitions of certain "low-risk" uses as defined in [O.Reg. 153/04](#). The low-risk uses are defined as residential use, institutional use (such as a school), use as a childcare centre or religious building, parkland use, or agricultural use.

However, the low-risk exemption will not apply even if the current or most recent use is a designated low-risk use when the project area, or any part of it, was impacted by historical soil contamination or was used as an enhanced investigation project area (meaning, a project area that was used for any industrial use, use as a garage or bulk liquid dispensing facility, or use for the operation of dry cleaning equipment)..

Enhanced Investigation Project Areas

Where the Project Leader (defined in the Regulation and discussed in more detail in [this bulletin](#)) determines that the project area is determined to be an enhanced investigation project area, the Reuse Planning Requirements will apply to the project. However, there is a limited exemption to the Reuse Planning Requirements for projects that have been an enhanced investigation project area. The Reuse Planning Requirements will not apply where both of the following two criteria are met: (i) a Record of Site Condition has been filed in respect of the project area that does not rely on a Risk Assessment completed pursuant to the *Environmental Protection Act*, and (ii) no part of the project area has been used as an enhanced investigation project area since the Record of Site Condition was originally filed.

Projects Involving Environmental Remediation

The Amendments remove the existing exemption from the Reuse Planning Requirements applicable to projects where the project area is not and has never been an enhanced investigation project area, the primary purpose of the project is not remediating contaminated land, and the amount of excess soil to be removed is

less than 2,000 m³. In its place, the Amendments provide that the Reuse Planning Requirements will apply where all or part of a project area is being remediated by excavating and removing excess soil to reduce the concentration of contaminants on, in or under the project area. This includes remediating a project area for the purpose of filing a Record of Site Condition.

Additional Resources

Please also see our previous bulletins for more information on Ontario's excess soil regime:

- Phase 1 and Phase 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](#);
- How to ensure your construction contracts align with the new excess soil regime: [Ontario's New Excess Soil Regulations – Construction Contract Implications](#); and
- The suspended provisions coming into force on January 1, 2023: [Ontario Partially Suspends Implementation of Phase 2 of Excess Soil Regulation Until January 2023](#).

If you would like to discuss, please contact Talia Gordner, Annik Forristal or Kailey Sutton.

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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.

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