

THE QUICK AND DIRTY ON ONTARIO'S PROPOSED AMENDMENTS TO THE EXCESS SOIL REGULATION

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Update (December 23, 2022): On December 9, 2022, Ontario published O.Reg 555/22 amending the Regulation. The amendments are scheduled to come into force on January 1, 2023. For more information, see our bulletin available [here](#).

On November 4, 2022, the Ministry of Environment, Conservation and Parks (the “**Ministry**”) published a [Proposal](#) for amendments to the [On-Site and Excess Soil Management Regulation](#) (the “**Regulation**”) under the [Environmental Protection Act](#) (the “**Amendments**”). The Amendments are intended to reduce compliance costs and increase flexibility in Ontario’s excess soil regime.

The Amendments come seven months after Ontario temporarily 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. Our bulletin detailing the requirements impacted by this suspension can be found [here](#).

This bulletin provides an overview of the Amendments, which focus on removing reuse planning requirements from low-risk projects and providing more flexibility in the storage of excess soil.

Removing Reuse Planning Requirements From Low-risk Projects

There are planning, assessment and soil characterization requirements for the reuse of excess soil from certain types of projects under the Regulation. These requirements are discussed in greater detail in our previous bulletin, [The Quick and Dirty on Phase Two of Ontario's Excess Soil Regulation](#).

The Amendments propose an exception to these requirements for projects on low-risk sites, such as land that has recently been used for agricultural, residential, parkland or institutional uses (e.g., childcare centres, schools and religious buildings). However, this exception would only be available where the project area has not been (i) used as an enhanced investigation project area, meaning any industrial use, use as a garage or bulk liquid dispensing facility or for the operation of dry cleaning equipment, or (ii) impacted by historical soil

contamination.

Excess Soil Storage Requirements

The limit of maximum stockpile size under the [Rules for Soil Management and Excess Soil Quality Standards](#) (the “Soil Rules”) published under the Regulation has been found to be limiting by some stakeholders depending on the size of their site. The Amendments propose to increase the permitted size of soil storage stockpiles under the Soil Rules from 2,500 cubic metres up to 10,000 cubic metres.

Additional Resources

For more details on the Amendments, please visit the Environmental Registry of Ontario announcement available [here](#). The comment period for the Amendments is currently open and will remain so until December 3, 2022.

Please also see our previous bulletins for more information on:

- 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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