

## *Time to Dish the Dirt – Ontario’s Excess Soil Regime Becomes Law*

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*On December 4, 2019, Ontario’s Ministry of the Environment, Conservation and Parks (“MECP”) filed the long-awaited On-Site and Excess Soil Management Regulation (“Excess Soil Regulation”) and complementary amendments to Ontario’s Records of Site Condition (O Reg 153/04) and Waste Management (Reg 347 and O Reg 351/12) regulations. The Excess Soil Regulation and complementary regulatory amendments will come into legal force in phases.*

Most provisions in the new [Excess Soil Regulation](#)<sup>1</sup> will come into force on July 1, 2020.<sup>2</sup> Property owners, developers, consultants, contractors, and municipalities will all be affected. This new law regulates how excess soil is to be managed in Ontario, including:

- 1 when “excess soil” is considered “waste”
- 2 when handling of “excess soil” is exempt under Ontario’s “waste” regime (including under Reg 347)
- 3 when “excess soil” can be lawfully re-used at a property, and
- 4 how “excess soil” that is not “waste” can be lawfully transported.

The remaining provisions of the Excess Soil Regulation will not come into force until January 1, 2022,<sup>3</sup> January 1, 2025<sup>4</sup> and January 1, 2026, respectively.<sup>5</sup>

[Rules for On-site and Excess Soil Management](#) (which govern the quality of excess soil) are incorporated into law by reference in the Excess Soil Regulation, and include the new Excess Soil Quality Standards.<sup>6</sup>

The new Beneficial Reuse Assessment Tool (a model for developing site-specific excess soil quality standards) is also incorporated into law by reference in the Excess Soil Regulation.

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<sup>1</sup> O Reg 406/19.

<sup>2</sup> O Reg 406/19, ss 1 to 7, 17, 18, 20, 21, 23 to 28 and 30.

<sup>3</sup> O Reg 406/19, ss 8 to 16, 19, 29(2) and 29(3) come into force on January 1, 2022. These sections relate to, among other things, filing of notices on the Environmental Site Registry and required documentation.

<sup>4</sup> O Reg 406/19, s 22 comes into force on January 1, 2025. Section 22 prohibits the deposit of excess soil at landfilling/dump sites unless the excess soil is needed for beneficial operation of the landfill/dump site or it is unsafe to place the excess soil at a reuse site.

<sup>5</sup> O Reg 406/19, s 29(1) comes into force on January 1, 2026. Section 29(1) modifies exceptions to the requirement to file a notice in the Environmental Site Registry under section 8.

<sup>6</sup> Rules for Soil Management and Excess Soil Quality Standards (2019).

The following amendments to existing regulations have already come into force (as of December 4, 2019) or will come into force by July 1, 2020 or January 1, 2021:

- ◆ amendments to [O Reg 153/04 \(Records of Site Condition\)](#)<sup>7</sup>
- ◆ amendments to [Regulation 347 \(General: Waste Management\)](#),<sup>8</sup> and
- ◆ amendments to [O Reg 351/12 \(Registrations Under Part II.2 of the Act – Waste Management Systems\)](#).<sup>9</sup>

The MECP has also released the following guidance documents:

- ◆ Guide for Developing Site Specific Excess Soil Quality Standards Using the Beneficial Reuse Assessment Tool (BRAT),<sup>10</sup> and
- ◆ [Rationale Document for Development of Excess Soil Quality Standards](#).

Stay tuned for our articles that delve into the details of the new Excess Soil Regulation and associated regulatory amendments.

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<sup>7</sup> O Reg 407/19. Sections 1(2), 13 to 17, 20(2), 21, 22(8), 22(9), 22(10), 24(9), 25(2), 25(12), 25(13), 25(15), 25(17), 26(2), 26(7), 26(10), and 26(13) come into force on July 1, 2020. Section 5(2) comes into force on January 1, 2021. The remaining sections of O Reg 407/19 came into force on December 4, 2019.

<sup>8</sup> O Reg 408/19, which comes into force on July 1, 2020.

<sup>9</sup> O Reg 409/19, which comes into force on July 1, 2020.

<sup>10</sup> A Guide for Developing Site Specific Excess Soil Quality Standards Using the Beneficial Reuse Assessment Tool (BRAT), version: 1.0 (November 19, 2019).