

# COVID-19 delays Ontario's new excess soil regime

June 26, 2020

Ontario's comprehensive excess soil management regime was set to be phased in starting July 1, 2020, much to the anticipation of the land development industry, municipalities, landowners, and consultants. The implementation of the first phase of the new excess soil regime is now pushed back to January 1, 2021, due to the COVID-19 outbreak.

## What you need to know

- The *On-Site and Excess Soil Management Regulation* (Excess Soil Regulation) creates new obligations for persons ultimately responsible for projects involving the excavation of soil, including any site alteration, construction of a building or infrastructure, or sediment removal.
- The Excess Soil Regulation was filed on December 4, 2019, and is set to come into effect in a phased approach, beginning on July 1, 2020.
- Supporting consequential amendments were made at the time to the *Records of Site Condition Regulation* (O. Reg. 153/04), *General: Waste Management* (Regulation 347), and the *Waste Management Systems EASR Regulation* (O. Reg. 351/12), all under the *Ontario Environmental Protection Act*.
- Ontario Ministry of Environment, Conservation, and Parks (MECP) [provided notice on June 12, 2020](#), delaying the provisions that would have come into effect on July 1, 2020, until January 1, 2021. The current waste regulatory framework will continue to apply until that time.
- The implementation of the consequential amendments to other regulations, which relate to the first phase of changes, are also delayed.
- The timing of the next phases of the implementation of the Excess Soil Regulation remain unchanged.

## Important features of the new excess soil management regime

Construction and other excavation activities in Ontario generate an estimated 25 million cubic metres of excess soil annually, which is generally classified as "waste". Currently,

excess soil is transported and disposed of at landfill sites at significant cost, re-used on or offsite under uncertain conditions, or, occasionally, illegally dumped.

The aim of the changes to the excess soil management regime is to provide certainty in how excess soil is to be characterized, and clarify the conditions pursuant to which soil may be reused on-site, or transferred to another site for re-use. One of the goals of the new regime is to encourage the reuse of excess soil that meets prescribed standards, and limit the impacts to the environment, community health, and transportation infrastructure.

The new regime will also seek to enhance certainty for parties that choose to accept excess soil, as well as the consultants, haulers, and developers involved in transporting excess soil, by establishing testing requirements, and a system for tracking and registration of soil shipments.

### **Excess Soil: from waste to reuse for a beneficial purpose**

The Excess Soil Regulation allows soil to not be designated as waste if all of the prescribed conditions are met, including:

- The soil is directly transported to a reuse site from a soil storage site, a soil-processing site, or a project area. The regulation broadly defines “project” to include any project that involves the excavation of soil;
- The operator of the reuse site has consented in writing to the deposit of the excess soil;
- The quality and quantity of the soil meets the prescribed standards according to the MECP guidance document entitled “Rules for On-Site and Excess Soil Management”;
- The excess soil will be used for a “beneficial purpose.” This term is not defined in the regulation, but examples given in connection with development are backfill for excavation, final grading, and achieving the necessary grade for a planned development or infrastructure project.

The provisions of the Excess Soil Regulation that govern the designation of excess soil are part of the first phase of implementation that is now set for January 1, 2021.

### **Responsibilities of the “Project Leader”**

The Excess Soil Regulation places responsibility for excess soil onto the person or persons “who are ultimately responsible for making decisions relating to the planning and implementation” of the project which is the source of the excess soil.

The project leader will be required to ensure a Qualified Professional will implement a soil sampling and analysis plan, and prepare a soil characterization report as well as other documentation obligations. A tracking system must then be implemented to track each load of soil as it is transported from the project area to the reuse site. The Regulation will also establish a public registry where the project leader will be required to publish a notice before removing the soil, subject to certain exemptions. This next phase will come into effect on January 1, 2022.

The final phase to be implemented is the restrictions on landfilling of specified excess soil, which is set to come into effect on January 1, 2025.

## Extensive changes underway despite delay

The new excess soil management regime will alter the way risk is allocated amongst those involved in construction projects and soil reuse sites at the same time as it may reduce development costs and environmental impacts associated with shipping excess soils. While soil management contracts that are entered into before January 1, 2021, will be grandfathered until 2026, project leaders and consultants will benefit from ensuring their business is ready for the new world of soil assessments and tracking systems.

BLG's environmental team can assist you with understanding the implications of the Excess Soil Regulation.

By

[Gabrielle K. Kramer, F.F. \(Rick\) Coburn, Barbora Grochalova](#)

Expertise

[Environmental](#)

---

### BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

### BLG Offices

#### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

#### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

#### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

#### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

#### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.