

Information Webinar

Implementation Pause of January 1, 2022 Requirements in O. Reg. 406/19: On-Site and Excess Soil Management

Dates: April 28th, 2022 – 9:30-10:30 a.m.

May 2nd, 2022 – 10:00-11:00 a.m.

DISCLAIMER

This presentation is intended to be a brief summary of the temporary suspension of some of the requirements of Ontario Regulation 406/19 On-Site and Excess Soil Management (the regulation) made under the Environmental Protection Act. This is for information purposes only and should not be construed as legal advice or substitute for seeking independent legal advice on any issues related to the regulation. Any person seeking to fully understand how the regulation or temporary suspension may apply to any of the activities they are engaged in must refer to the regulation. In the event of any inconsistency between the regulation and this presentation, the regulation will always take precedence.

Overview

- Overview of the pause
- What does the pause mean for:
 - Projects / Project leaders
 - Reuse sites
 - Haulers
 - Residential development soil depots
 - Excess Soil Registry (Registry)
- Next steps
- Questions
- Appendix A: Requirements suspended until January 1, 2023

Overview of the pause

- From March 11 to April 10, 2022, Ontario consulted on a proposed temporary suspension of certain provisions in O. Reg. 406/19: On-Site and Excess Soil Management (Excess Soil Regulation) that came into effect on January 1, 2022, until January 1, 2023
- Ontario received 166 comments through the [Environmental Registry of Ontario \(ERO\)](#) consultations and additional input was provided through meetings with stakeholders and Indigenous communities
- On April 21, 2022, Ontario moved forward with the decision to suspend certain provisions in the Excess Soil Regulation that came into effect on January 1, 2022, until January 1, 2023.
- This includes pausing the registration and planning requirements for projects, requirements for larger reuse sites, the hauling record, and registration requirements for residential development soil depots (see Appendix A for full list and sections of suspended provisions).
- These actions can continue as a best practice, particularly for projects already underway (e.g. voluntary filing and updates in the Registry, or continuing use of hauling records)
- These amendments are available on e-Laws in the amending regulation, O. Reg. 388/22:

[O. Reg. 388/22: ON-SITE AND EXCESS SOIL MANAGEMENT \(ontario.ca\)](#)

Overview of the pause

Why are these provisions paused?

- While there has been overall support on the Excess Soil Regulation, and much effort from many parties to implement the regulation, the Ministry of the Environment, Conservation and Parks (MECP) heard more time was needed to:
 - implement the provisions that came into effect on January 1, 2022
 - better understand responsibilities under the regulation
- The pause of certain provisions of the Excess Soil Regulation provides more time for:
 - gradual implementation
 - better understanding of the Excess Soil Regulation
 - Consideration of refinements to these provisions, if necessary, to ensure they are clear, effective, practical, and focused to those circumstances most necessary to support sustainable soil management.

What does this pause not effect?

Provisions in place prior to January 1, 2022

- The pause does **not** apply to any of the provisions that came into effect prior to January 1, 2022 (most came into effect on January 1, 2021), including (but not limited to):
 - Criteria to determine if excess soil is designated as waste (sections 3 - 5)
 - Excess soil transported to a reuse site
 - Reuse site owner or operator provides written consent for the deposit of excess soil
 - Excess soil is dry unless a site-specific instrument authorizes liquid soil
 - Beneficial purpose for the reuse of the excess soil
 - Excess soil quality and quantity aligning with the beneficial purpose at the reuse site
 - Appropriate excess soil reuse quality standards and reuse rules, including use of site-specific standards
 - Provisions describing soil management activities (e.g., transportation of excess soil/hauling, storage, excavation procedures, records retention, low-risk processing for which ministry approvals are not required and associated rules apply)

What does this pause mean for project leaders?

- Project leaders are not required to complete the “excess soil reuse planning requirements” (sections 8 - 16) from the date the pause is in effect until January 1, 2023, when compliance would once again be required
- Over this period, project leaders are not required to:
 - File or update a notice in the Registry
 - Complete an assessment of past uses
 - Complete a sampling and analysis plan and soil characterization report, if required, including meeting the minimum sampling requirements
 - Complete an excess soil destination assessment report
 - Implement a tracking system related to the movement of excess soil
- Assessments and reports commenced prior to January 1, 2023 for the project would not need to be repeated and can be recognized for ongoing projects after January 1, 2023
- The contract exemption date of January 1, 2022 remains unchanged. This is the date by which a project leader must have entered into a contract related to the management of excess soil from the project area in order to be exempt from reuse planning provisions that now come into effect January 1, 2023
- January 1, 2022 is still the date for projects to comply with MECP’s Synthetic Precipitation Leaching Procedure (E9003 or mSPLP) if leachate sampling was undertaken

What does this pause mean for reuse sites?

- Larger reuse sites, those accepting 10,000m³ or greater, are not required to:
 - file or update a notice on the Registry; or
 - develop and apply procedures to account for every load of excess soil deposited at the reuse site or to ensure that the storage of the excess soil does not cause an adverse effect
- These requirements restart as of January 1, 2023 for larger reuse sites

What does this pause mean for haulers?

- Haulers are not required to have physical or electronic hauling records during the transportation of excess soil, until January 1, 2023
- During this period, haulers transporting excess soil are deemed to comply with the requirement for a hauling record if they provide key information (verbally) on the excess soil movement (e.g., source location, quantity of soil, and location where soil is being deposited) to a provincial officer, upon request

What does this pause mean for residential development soil depots?

- A notice is not required to be filed on the Registry as a condition of establishing a residential development soil depot, until January 1, 2023
- Requirements to update any information in the notice are also paused until January 1, 2023

What does this pause mean for existing notices on the Registry?

- The Registry will remain open for users during the temporary suspension of the registration and reporting requirements
- Notices already filed or that are voluntarily filed will continue to be recognized after January 1, 2023
- Notices already filed before the pause came in effect will remain on the Registry as notices that were necessary to meet a requirement at the time
- Requirements to update any information in a notice are paused until January 1, 2023, however voluntary updates are encouraged as a best practice

Next steps

- During this temporary suspension, MECP will continue to:
 - conduct education and outreach efforts
 - develop additional guidance materials and resources.
- Assess the need for regulatory amendments to ensure the Excess Soil Regulation is clear, effective, practical, and focused. Any proposed amendments would be consulted on before being finalized.

Questions

Our Coordinates

For further questions:

- **Policy** - Laura Blease laura.blease@ontario.ca and Reema Kureishy Reema.Kureishy@ontario.ca
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- **Approvals** - Andrew Neill andrew.neill@ontario.ca
- **Brownfields** - Dean Therrien dean.therrien@ontario.ca

Appendix A: Requirements suspended until January 1, 2023

1. **Reuse planning requirements** - soil assessments, sampling and analysis, characterization and destination reports, tracking and registration (sections 8 to 16 of O. Reg. 406/19)
 - See paragraphs 2 to 6 in subsection 28.1(1) of O. Reg. 406/19, introduced by O. Reg. 388/22
 2. **Larger reuse sites** - registration and the development and application of certain procedures (section 19 of O. Reg. 406/19)
 - See paragraphs 7 and 8 of subsection 28.1(1) of O. Reg. 406/19, introduced by O. Reg. 388/22
 3. **Hauling record** - haulers transporting excess soil are deemed to comply with the requirement for a hauling record in section 18 if they provide key information in subsection 18 (1) to a provincial officer on request
 - See subsection 28.1(2) of O. Reg. 406/19, introduced by O. Reg. 388/22
 4. **Registration requirement for residential development soil depots** (section 7 of O. Reg. 406/19)
 - See subsections 1(1) to (3) of O. Reg. 388/22 and paragraph 1 of subsection 28.1(1) of O. Reg. 406/19, introduced by O. Reg. 388/22
 5. **Soil assessments and sampling completed before January 1, 2023** will not need to be repeated, and can be recognized for ongoing projects after January 1, 2023 (sections 11 and 12 of O. Reg. 406/19)
 - See sections 2 and 3 of O. Reg. 388/22
- These changes came into effect upon filing April 20, 2022