

# Goodmans<sup>LLP</sup> Update

## Ontario Postpones Commencement of Excess Soil Regulation

The Province of Ontario recently announced that the implementation of the new Excess Soil Regulation, *O. Reg 406/19: On-Site and Excess Soil Management (O. Reg 406/19)*, would be delayed as a result of the COVID-19 pandemic. O. Reg 406/19 will be implemented in three phases. The first phase only will be delayed by six months to January 1, 2021 to allow the construction industry to prioritize their response to the COVID-19 pandemic. This delay will also provide the construction industry with additional time to adjust to the new regime of excess soil management.

### Regulation of Excess Soils

In December 2019, the Province of Ontario enacted O. Reg 406/19. This regulation provides a complete code for the movement of soils between two or more properties, which was previously subject to a patchwork of municipal and provincial regulation.

Under O. Reg 406/19, soils excavated as part of a project that are to be moved off-site, known as excess soils, are deemed to be a “waste” and cannot be re-used, except as specified in the regulation. In particular, excess soils can be transported and re-used at a site if the site owner consents to the transfer, the soil remains sufficiently dry, and the re-use site is subject to an enumerated instrument, such as a site alteration permit or certificate of property use. Excess soils must be excavated, stored, and deposited in accordance with O. Reg 406/19, which includes specific requirements to ensure that excess soils do not contain contamination exceeding applicable provincial standards. Finally, all transportation of excess soils must be tracked, documented, and filed with the Province in a similar manner to hazardous wastes governed under *Regulation 347: General Waste Management*.

Currently, O. Reg 406/19 is not in force. The provincial government initially proposed that O. Reg 406/19 would be brought into force in three phases on the dates set out below:

- First phase: July 1, 2020 for the standards governing the re-use of excess soils, the processing of excess soils at project areas, and transportation of excess soils;
- Second phase: January 1, 2022 for the standards governing all documentation, tracking, and filing requirements associated with the removal of excess soils from a project area, as well as the operation of re-use sites; and
- Third phase: January 1, 2025 for the prohibition against depositing excess soil at landfilling sites.

### Delay of First Phase

On June 12, 2020, the provincial government enacted *O. Reg 270/20: On-Site and Excess Soil Management*, which delays the first phase of provisions were set to come into force. The first phase provisions and consequential amendments to existing regulations are now scheduled to come into force on January 1, 2021. Other implementation dates set out in O. Reg 406/19 remain unchanged.

For more information, please contact any member of the [Environmental Law Group](#).

All Updates are available at [www.goodmans.ca](http://www.goodmans.ca). This Update is intended as a general summary for educational purposes only and should not be relied upon as legal advice with respect to any particular set of circumstances. If you require advice as to your circumstances, please contact any member of our Municipal, Planning & Property Tax or Environmental Law Group.

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