

**Pause of Some Provisions in O. Reg. 406/19, On-Site and Excess Soil Management (the regulation)**

**Frequently Asked Questions and Answers**

	<b>Question</b>	<b>Response</b>
<b>Which Provisions are Paused?</b>		
<b>1</b>	What elements of the regulation are paused?	<p>The requirements in the regulation that came into force on January 1, 2022 are temporarily suspended from the date the amending regulation took effect on April 20, 2022 until January 1, 2023. This includes:</p> <ul style="list-style-type: none"> <li>• the excess soil reuse planning requirements for project areas, including filing a notice on the Excess Soil Registry (Registry), the requirement to keep notices up to date, assessment of past uses, sampling and analysis plans, soil characterization and excess soil destination assessment reports, and the implementation of a tracking system</li> <li>• the requirement to file and update notices on the Registry for larger reuse sites and residential development soil depots, and</li> <li>• the requirement to carry a physical hauling record</li> </ul> <p>See Appendix with detailed list of paused provisions</p>
<b>2</b>	What elements of the regulation continue to be in effect?	<p>The pause does <b>not</b> apply to any of the provisions that came into effect prior to January 1, 2022. Provisions that continue to be in effect include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• the criteria used for determining when excess soil is a resource for reuse, and not designated as waste if they are met, such as obtaining written consent for deposit of excess soil at a reuse site, that the excess soil is being beneficially reused, and the soil quality and quantity is appropriate for the beneficial use</li> <li>• the related excess soil reuse standards and rules in the document incorporated by reference into the regulation “Rules for Soil Management and Excess Soil Quality Standards” (Soil Rules)</li> <li>• exemptions from the need for waste-related approvals in various circumstances (e.g., low risk soil management activities)</li> </ul>
<b>Reason for Pause</b>		
<b>3</b>	Why were certain elements of the regulation paused?	<p>There are several reasons for the temporary suspension of certain provisions of the regulation until January 1, 2023 including:</p> <ul style="list-style-type: none"> <li>• to provide additional time for those stakeholders who require greater understanding of the regulation, to enable consistent implementation and to improve coordination across organizations</li> <li>• to deliver additional government and industry led education, outreach, guidance, templates, tools and supporting resources</li> <li>• to provide an opportunity to assess the need for any future refinements to the provisions that are temporarily suspended</li> </ul>

<b>Existing Contracts and Active Projects</b>		
<b>4</b>	If our project is completed by Jan 1, 2023, are we required to provide all the reports as described in the Soil Rules or on the Registry?	Projects completed prior to January 1, 2023 would not be subject to the reuse planning requirements outlined in sections 8 to 16 of the regulation, including registration of notices in the Registry, updating of notices and the completion of any reports associated with these sections.
<b>5</b>	How will the pause impact projects that are either currently underway or which start in 2022 and continue into 2023?	<p>For projects continuing into 2023 which are either currently underway or scheduled to commence in 2022 and have not yet registered, the project leader will need to assess whether they are required to register a notice in the Registry, therefore triggering the planning requirements. If the project leader is required to file a notice in the registry for a project, then the notice must be filed by January 1, 2023, and the planning requirements would need to be completed. Assessments completed prior to January 1, 2023 for a project would be deemed to meet the requirements of the regulation for the purpose of continuing with soil management for that project.</p> <p>Project leaders are able to voluntarily file a notice in the Registry before January 1, 2023 to ensure they are in compliance with that obligation once the temporary suspension of that obligation ends.</p> <p>If a project leader had filed a notice in the Registry after January 1, 2022, but before the pause, they would be responsible for updating that notice as of January 1, 2023, and on a go forward basis as may be required pursuant to the regulation. Project leaders can continue to update their notice in accordance with the regulation voluntarily during the pause to ensure they are in compliance with that obligation once the pause ends.</p> <p>If projects are currently underway and an applicable soil management contract was entered into for the project prior to January 1, 2022, these projects would continue to be exempt from the planning requirements until January 1, 2026.</p>
<b>6</b>	Why was the existing contract exemption clause not extended to 2023?	One of the primary purposes for the pause was to provide an opportunity to work out appropriate soil management requirements for contracts. Contracts currently being developed that would involve work after January 1, 2023, are expected to be determining what is necessary to be in those contracts to help ensure compliance with the regulation. Short-term contracts under which excess soil management is completed in 2022 would not have to incorporate these requirements.
<b>7</b>	Can contracts entered into before 2022 still take advantage of the exemption from	The pause does not change the contract exemption date by which a project leader must enter into a contract related to the management of excess soil in order to be exempt until 2026 from the reuse planning requirements that have been temporarily suspended until January 1, 2023.

	planning requirements until 2026?	The exemption date continues to apply to contracts that were entered into before January 1, 2022.
<b>Excess Soil Registry</b>		
<b>8</b>	What happens if a project leader or reuse site owner has already filed a notice on the Registry for a project that will continue after Jan 1, 2023? Can it be voluntarily updated for the rest of 2022? Does it only need to be updated starting Jan 1, 2023?	For project areas and reuse sites that have already filed a notice in the Registry, updates can be made to those notices and are encouraged voluntarily during the period of the pause. Commencing January 1, 2023, the obligation to update a site's registration in accordance with the regulation resumes.
<b>9</b>	Will fees be charged during the pause?	Yes, users that initiate a notice filing during the temporary suspension of requirements under the Excess Soil Regulation (from April 21 to December 31, 2022) are required to pay the associated 2022 Registry fees.  RPRA's Registry fees cover the costs to build, deploy and operate the Registry, and to provide ongoing support and training materials to Registry users. Users who choose to wait until January 1, 2023 to file their notices will pay the 2023 Registry fees. 2023 Registry fees will be consulted on and set in the fall of 2022.
<b>10</b>	Will the Registry fees already paid be refunded?	No, users that filed notices in the Registry and paid the associated Registry fees before the temporary suspension came into effect on April 21, 2022, were complying with the necessary requirements of the regulation. Notices filed before the pause will continue to be recognized after January 1, 2023. No refunds will be issued.
<b>11</b>	How will implementation in 2022 move forward, many contracts are already in place, some are being amended and some will remain the same?	Parties may choose to move ahead with contracts as drafted which may already include provisions pertaining to the completion of the planning requirements or they may choose to continue to voluntarily comply with any of the requirements that came into effect on January 1, 2022 throughout the pause. Although compliance with these provisions is not required until January 1, 2023, aligning with these requirements is a best practice.
<b>Waste Designation and Soil Management Rules</b>		
<b>12</b>	Am I required to receive written consent from a reuse site owner or operator to deposit soil at their reuse site during the pause?	Yes, the requirement for a reuse site owner or operator to consent in writing to the deposit of excess soil at the reuse site remains in effect.
<b>13</b>	Are the excess soil reuse standards in effect during the pause?	Yes, the quality of the soil deposited at a reuse site must meet the applicable standards for that site. There are rules to determine which Table in the Excess Soil Quality Standards apply to a particular reuse site,

		<p>which include consideration of the property use of the reuse site (residential, industrial, parkland, commercial or agricultural etc.). In addition to the standards themselves, the related sampling and analysis methodologies such as the ministry’s Synthetic Precipitation Leaching Procedure (mSPLP) also continue to apply during the pause.</p> <p>While there is no minimum amount of sampling required during the pause, it is ultimately up to the reuse site operator and any person involved in the deposit of the excess soil at the reuse site to determine if, in their opinion, sampling is necessary to determine that the excess soil meets the applicable excess soil quality standards before it is deposited at the reuse site. In other words, it is a risk analysis that those persons must undertake. In some instances, based on the history of the site where the excess soil is excavated, those persons may feel sampling is not required, especially if assessments and/or sampling may have already taken place at this site prior to the planned movement, to confirm the excess soil has not be affected by the discharge of a contaminant.</p>
<p><b>14</b></p>	<p>How can the waste designation be lifted if there is no requirement for a physical hauling record or tracking of the soil to confirm direct transport in 2022?</p>	<p>Meeting the criteria that must be satisfied to avoid the waste designation is not dependant on the physical hauling record or tracking system. As outlined in section 3 of the regulation, if criteria are met that are set out in that provision of the regulation, excess soil can be beneficially reused, and would not be designated as waste under Part V of the <i>Environmental Protection Act</i>. This includes ensuring direct transport to a reuse site, obtaining the reuse site owner or operators consent in writing to the deposit, that the soil is dry and remains dry until finally placed (unless a site-specific instrument is in place to authorize the deposit of liquid soil) and that there is a beneficial purpose associated with the reuse of that excess soil which aligns with its respective quality and quantity. While the hauling record and tracking systems would assist in ensuring these criteria are met, they are not mandatory to have in place during the pause and they do not form part of the criteria set out in section 3.</p>
<p><b>15</b></p>	<p>How does this impact sampling and analysis that takes place in 2022?</p>	<p>The amendments changed the timing of when mandatory sampling is required to be completed, to January 1, 2023. The requirements, when in effect, have not changed as a result of the amendments. If any assessment of past uses, sampling and analysis plans and/or soil characterization reports are completed in 2022 for the project, and they don’t meet all of the regulated requirements, these studies will be deemed to meet the requirements and can be used to support reuse planning requirements that come into force January 1, 2023.</p>
<p><b>16</b></p>	<p>Do the exemptions from environmental compliance approvals, and the associated rules that must be met, continue to apply for specified soil</p>	<p>Yes, the exemptions from requirements for environmental compliance approvals for activities such as low risk soil processing and soil hauling, continue to apply, as do the related rules such as keeping soil covered while in transport.</p>

	management activities during the pause?	
<b>Education and Guidance During the Pause</b>		
<b>17</b>	What additional training and outreach will be provided during the pause?	The Ministry is currently working on a plan to address key education and outreach needs during the pause. This includes planning for additional Ministry-led and industry-led guidance, tools and resources and educational sessions in 2022 and beyond.
<b>Enforcement During the Pause</b>		
<b>18</b>	How can the Ministry enforce against illegal dumping during the pause?	The fundamental provisions of the regulation - specifically the provisions of the regulation that make clear when excess soil is a designated waste (sections 3 to 5) continue to be in effect. Accordingly, where excess soil is deposited at a reuse site and it does not satisfy all the criteria in section 3 (for instance, the excess soil does not meet that applicable excess soil quality standards) - the excess soil is a waste and the Ministry can require the removal of that waste from the reuse site or that alternative measures be taken with respect to the excess soil so that it can remain at the reuse site.
<b>19</b>	How will contaminated soil problems be dealt with during the pause, what efforts will be made in regard to compliance and enforcement?	Consistent with the Informed Judgement Matrix and policies in the Ministry's Compliance Policy, the Ministry will continue to take a risk-based approach to our compliance and enforcement activities, including addressing issues of illegal dumping. We will also continue to work closely with partner enforcement authorities including other ministries, municipalities and conservation authorities who all have authority and instruments that support the management of excess soil.
<b>Potential Regulatory Amendments</b>		
<b>20</b>	Will the regulation be changing further in 2022 and if so, what will the changes focus on?	Any refinements to the regulation would require consultation, including posting on the Environmental Registry of Ontario and Cabinet approval. The scope of any proposed changes would be determined in summer and fall, 2022.
<b>21</b>	Should I wait to implement the regulation until any amendments are finalized, and will I have time to implement any new changes before January 1, 2023?	The current regulatory provisions that are paused will come into effect again on January 1, 2023. That is what the current law states, and it is appropriate to plan accordingly. If amendments are proposed that may be a challenge to implement before January 1, 2023, then a transition period for those specific provision(s) may be incorporated into the proposal.

## **Appendix: Regulatory Amendments Resulting in the Pause**

Regulatory amendments were made to O. Reg. 406/19 by O. Reg. 388/22 and came into effect upon filing on April 20, 2022. To view the amending regulation, see this [link to O. Reg. 388/22](#) in e-Laws. Note that the consolidated version of O. Reg. 406/19 in e-Laws may not be updated for several months.

Amendments to the regulation provide a temporary suspension of the following provisions until December 31, 2022:

- the requirement for the operator of a residential development soil depot to update a notice filed in the Registry under subsections 7 (7) and (8)
- the requirement for a project leader to file a notice in the Registry before removing soil from the project area that will become excess soil under subsection 8 (1)
- any requirement for a project leader to update the notice filed in the Registry in respect of a project under section 9
- any requirement related to the preparation of an assessment of past uses under section 11, a sampling and analysis plan under section 12, a soil characterization report under section 12, and an excess soil destination report under section 13
- any requirement under section 15 where the project leader or operator of the project area or any other person working in the project area becomes aware of a circumstance described in that section
- any requirement related to the development and application of a tracking system under section 16
- any requirement for the owner or operator of a reuse site described in subsections 19 (1) and (1.1) to take the steps described in subsection 19 (3) including filing a notice in the Registry in respect of the reuse site
- any requirement for the owner or operator of a reuse site to update a notice in respect of the reuse site in the Registry under subsections 19 (6) and (7)