

Ontario's new excess soils legislation: legal obligations and risk management (webinar)

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Ontario's recently updated excess soil regime applies to an extremely broad list of construction projects, meaning stakeholders will have to consider these new requirements when planning, contracting, budgeting for and carrying out projects.

During Osler's webinar on changes to the regime, Jennifer Fairfax, partner, Litigation and Regulatory, Environmental, Indigenous and Land, and Andrew Wong, partner, Commercial, discussed how the new regulatory framework will affect participants across the construction industry as it exposes them to new risks and legal requirements. They explored new definitions introduced in the legislation, the types of projects likely to be affected, new responsibilities for stakeholders, impacts on CCDC documents and more.

The new regime focuses on the assessment, excavation, removal, transport and storage of on-site and excess soils at construction projects. The first phase of the regime, which introduces provisions relating to waste designation and reuse or disposal of materials, came into effect on January 1, 2021, with Phases 2 and 3, which introduce requirements relating to documentation, testing and tracking and to the use of clean soil at landfill sites, set to arrive in 2022 and 2025.

"[The excess soil regulation](#) deems excess soil 'waste' unless an exception applies," says Jennifer. "What's important to understand is that you have to meet all of the criteria for your excess soil not to be deemed 'waste.' This is where the regulation really has its meat." If any of the criteria is not met, that soil must be managed according to the province's waste management legislation.

Starting next year, project sites will need to have a qualified person for sampling and testing purposes, a defined procedure and training protocol for managing excess soil, and carefully maintained monitoring and records, among other requirements.

Construction project owners utilizing standard industry documents like [the CCDC 2](#) and [CCDC 31](#) when dealing with contractors and consultants should be extremely careful when delegating these new responsibilities to other stakeholders. The Ministry of the Environment is still likely to see ultimate responsibility as sitting with project owners. As such, the Osler presenters note that it will be prudent for leaders to decide — in the early stages of a project — who will be responsible for tracking compliance with the new regulation and [rules](#) [PDF] and how to ensure proper oversight. As most construction projects deal with soil in some manner, the scope of the work and risk profiles for contractors and consultants are also likely to change, necessitating amendments to those standard contracts.

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