



Canadian Brownfields Network (CBN)  
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December 3, 2022

Reema Kureishy  
Environmental Policy Branch  
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Sent via email: [mecp.landpolicy@ontario.ca](mailto:mecp.landpolicy@ontario.ca)

**Reference: Proposed Amendments to Ontario Regulation 406/19 (ERO Number 019-6240)**

**Dear Reema,**

The Canadian Brownfields Network (CBN) appreciates the opportunity to provide input regarding proposed amendments to Ontario Regulation 406/19, which were released for public comment on November 3, 2022 (ERO Number 019-6240). CBN's Technical Advisory Committee (TAC) has solicited and compiled comments from interested members for the purpose of making this submission on behalf of CBN. CBN has a diverse membership of site owners, developers, consultants, and industry association representatives who are active in the area of brownfield development within Ontario and across Canada.

CBN is committed to supporting the redevelopment and reuse of brownfield properties through advocacy for regulations and policies that are founded on sound science and appropriate risk, are harmonized across jurisdictions, and provide clarity and certainty with respect to brownfield redevelopment.

The proposed amendments to Ontario Regulation 406/19 are intended to reduce the burden on the regulated community, and streamline the movement of excess soil from lower risk projects. CBN appreciates that the Regulatory amendments have been designed to provide additional flexibility to the regulated community, and recognize the specific measures, such as increasing stockpile volumes will reduce inefficiency in excess soil management.

CBN supports the concepts contemplated by the regulatory amendment but recommends that additional clarity be built in to ensure that loopholes do not develop that undermine the intent of the Regulation. The specific issues and suggestions for improvement are included in the attached Table. The comments are general in nature, as the proposed Regulation has not been released for public comment.

We would be pleased to discuss these comments further with the Ministry.

In closing, we thank you for the opportunity to provide comments and input on the proposed amendments.

Kindest Regards,

A handwritten signature in black ink, appearing to read 'Peter Sutton', with a long horizontal flourish extending to the right.

Peter Sutton  
Chair, Technical Advisory Committee  
Canadian Brownfields Network

A handwritten signature in blue ink, appearing to read 'John Georgakopoulos', with a long horizontal flourish extending to the right.

John Georgakopoulos  
President  
Canadian Brownfields Network



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**Table 1: Specific Proposed Guidance Issues and Suggestions for Improvement**

Issue Description	Comment
The wording of the proposed Regulatory amendment has not been provided.	The proposal does not include the wording of the Regulatory amendment. The applicability of Regulation 406/19 is heavily dependent on the definitions being used, and the lack of precise wording introduces uncertainty. The Ministry should consider releasing the proposed language to stakeholders for input.
Definition of low risk projects.	A key component of the proposed amendment is the removal of reuse planning requirements from “low-risk projects”. The proposed wording of the Regulation has not been provided, so specific comments cannot be provided. However, the posting mentions “most recently used” as part of the land use definition, which is not well defined. It does open the potential for abuse, or misleading statements. As an example, a Project Leader could apply this definition to a former industrial property that is currently vacant land or used as a hay field after industrial uses ceased. Further, unless a Project Leader is required to rely upon the advice of a Qualified Person to confirm the status of the project area (for example, following the completion of an Assessment of Past Use), there is an increased potential for abuse of the “low-risk” definition.
Role of the Qualified Person (low risk projects)	For low-risk sites, the Qualified Person does not have a defined role, and it is possible for soil to move from a source site without any Qualified Person involvement. The Ministry should consider if a different type of documentation from a QP, such as a summary of historic land use and a sampling program with a reduced sampling frequency would be an appropriate approach to ensure that some documentation is prepared to support soil movement from low risk sites. In the absence of such document, the original intent of the regulation (namely, to shift the burden for appropriately characterizing the environmental quality of excess soils to Project Leaders) once again falls on owners/operators of reuse sites.

Issue Description	Comment
Role of the Project Leader (low risk projects)	The proposal suggests that the responsibility to determine if a property is an enhanced investigation project area or has been impacted by historical contamination would fall to the Project Leader. The Project Leader may not have the appropriate skills/training to understand/document the historic use of a Project Area, or to confirm if historic contamination has occurred. The Ministry should consider whether the Project Leader alone should make this determination.
Limited visibility on sources of “clean fill”.	Lower risk source sites, such as green fields and residential properties, represented a source of high quality fill for receiving sites. These source sites will no longer be identified on the Excess Soil Registry, reducing the ability of receiving sites to review the Registry to identify potential soil quality matches.
MECP may face additional challenges in enforcement.	If a Project Leader determines that a source site is “low-risk”, it is possible that little or no sampling or documentation will be completed to support soil movement. This introduces some of the same challenges MECP has faced in the past, with soil being moved without documentation. The absence of a requirement to file a notice on the Excess Soil Registry will limit the Ministry’s ability to be informed of such soil movements. The Ministry should carefully consider whether there will be sufficient enforcement mechanisms and resourcing to address this gap.
Removal of Section 14	Section 14 of the Regulation includes language to clarify that the exception under Section 14 does apply to the movement of soil to a reuse site that is an agricultural or other use. The Ministry should consider the need for similar language in the revised regulation.
Proposed clarification changes.	The proposal indicates that additional clarifications will be made regarding triggers for reuse planning, and the scope of remediation projects. The Ministry should engage with stakeholders to ensure that the proposed changes are practical, and will promote the beneficial reuse of soil without increasing compliance costs.
Soil stockpile sizes have increased, but remain relatively small for large projects.	The increase in maximum stockpile size is a positive change and supported by CBN. The Ministry could also consider a variable stockpile size, or different maximum sizes for different types of projects. For a large Project Area, 10,000 m <sup>3</sup> remains a relatively small stockpile, and would result in additional compliance costs and handling efforts, and in many cases, increased landfilling of soils where beneficial reuse would have otherwise been possible. A stockpile size that is variable based on the Project Area size and/or the type of land use could be considered. As an alternative, simply maintaining an outcome-based rule could be effective, such as requiring that stockpiles must be managed in a manner that does not cause adverse effect.

Issue Description	Comment
Amendment to remove agricultural, residential, and institutional from the Registry and Planning Document requirements.	Although in principle, it appears that this is supposed to simplify the process especially for properties that would be involved with building more housing under the More Homes Built Faster – the reality is that the Receiving Site (Reuse Site, Class 2 Temporary Site or even Class 1 or Waste Disposal Facility) will need something to allow them to provide “written acceptance” of the soil (Section 3 of the Regulation). Without adequate documentation, the Ministry’s goal of increased beneficial reuse of soils within the province could be undermined, as receiving sites will not likely be in a position to take these soils. The Ministry should consider if the Regulatory requirements for receiving sites adequately addresses this potential.
Missing information related to municipal projects and linear infrastructure	One thing that has come up (so far) is that the proposed amendments appear to focus on development of buildings/properties, but there is no mention of municipal Projects or infrastructure. It seems that road and sewer projects passing through agricultural “green field” might need to file a notice on the registry while the adjacent properties would not. If the regulatory amendment is adopted, the Ministry will need to address how road and sewer projects traversing “low risk” Project Areas will be treated.
Inconsistency regarding Local Waste Transfer ownership	It appears that the amendments didn’t address the inconsistency in Local Waste Transfer ownership requirements under O. Reg. 406/19 and the Soil Rules document. The Ministry should provide formal clarification, along with any necessary revisions to the Soil Rules document and/or amendments to O. Reg. 406/19, in order to explicitly state LWTF ownership and ECA requirements.
Outreach and education	If the regulatory amendment is adopted, communications with regards to the regulatory change must explicitly remind receiving sites and Record of Site Condition sites of their continued obligations with regards to accepting soils from these “low risk” source sites. A consistent and ongoing outreach and education program should be developed to build familiarity with these requirements going into the 2023 construction season, and beyond.

Issue Description	Comment
Outreach and education	<p>Broader outreach is required to Project Leaders, including Project Leaders at low risk properties, and owner/operators of reuse sites of regulatory obligations. Informal polling by CBN members suggests a poor understanding of regulatory obligations outside of the legal and consulting (Qualified Person) communities. While these communities have been engaged regarding the requirements of O. Reg. 406/19, the Ministry should recognize that the legal and consulting communities are only engaged in excess soils decision making on an advisory basis, and even then only if specifically engaged to do so by a Project Leader or an owner/operator of a reuse site. The Ministry will need to carefully consider how it will ensure that Project Leaders and owners/operators of reuse sites are aware of their responsibilities and obligations, and comply with the same.</p>