

November 20, 2024

Ministry of the Environment, Conservation and Parks - Environmental Policy Branch
40 St Clair Avenue West
Floor 10
Toronto, ON
M4V1M2

Attn: Reema Kureishy

Submitted Online

**Reference: Proposed amendments to O. Reg. 406/19 "Enabling greater beneficial reuse of excess soil"
- Environmental Registry of Ontario: #019-9196**

Dear Ms. Kureishy,

The Canadian Brownfields Network (CBN) appreciates the opportunity to participate in the Ministry of the Environment, Conservation and Parks (MECP) invitation to comment with respect to the *Proposed amendments to O. Reg. 406/19, "Enabling greater beneficial reuse of excess soil" - Environmental Registry of Ontario: #019-9196*. The 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 MECP *Proposed amendments to O. Reg. 406/19, including related amendments to Regulation 347 and O. Reg. 153/04 under the Environmental Protection Act (EPA)* are welcome changes that reduce regulatory burden and increase the workability of the existing regulatory structure. However, CBN suggests that MECP consider further changes that would improve beneficial reuse opportunities and reduce regulatory burden for project proponents.

Specifically, we recommend the following key moves:

- MECP should remove all regulatory burden for reuse of aggregate and road subbase materials
- MECP should undertake regional mapping to support workability of current standards in the face of naturally occurring exceedances throughout the province
- MECP should undertake a review of regulatory compliance costs and benefits to public and private projects to inform further improvements and red tape reduction

We would be pleased to discuss these comments further with the MECP. In closing, we thank you for the opportunity to provide comments and input on the Amendment.

Kindest Regards,

Jason Hudson
Co- Chair, Technical Advisory Committee
Canadian Brownfields Network

Krista Barfoot
President
Canadian Brownfields Network

Table 1: Comments on the Proposed Amendments to O. Reg. 406/19: On-Site and Excess Soil Management (Proposed Regulatory Amendments to Enabling greater beneficial reuse of excess soil)

Section	Issue Description	Comment
1) Change the coming into force date of the landfilling restriction for excess soil meeting Table 2.1 residential standards (Section 22 of the regulation)	<p><i>Proposed Change: Amendment to the coming into force date of section 22 of the regulation from January 1, 2025, to January 1, 2027, a change of two years</i></p> <p>It is unclear what is the driver is to extend the deadline for landfilling restrictions.</p>	<p>Recommend maintaining the current deadline for landfilling restrictions for Table 2.1 ESQS soils on January 1, 2025, as we see no benefit for extending the deadline since there are plenty of alternatives for the beneficial reuse of Table 2.1 soils. The MECP and RPRA should look to facilitate greater connectivity between the source and potential receiver sites to enhance opportunities for beneficial reuse, rather than extending the landfill restrictions. We suggest the MECP and RPRA undertake outreach and education with municipalities and other stakeholders, to enhance beneficial reuse. In addition, consider mechanism to enhance to current RPRA database to create a marketplace for potential sources of excess soils, so that the potential receiver can identify appropriate soil for their project.</p> <p>In addition, further clarity should be provided that this restriction does not apply to Class 1 Soil Management Sites that operate under a waste disposal site ECA.</p>
2) Exempt specified excess soil management sites from a waste environmental compliance approval (ECA) subject to rules	<p><i>Proposed Change: Exempt the management of excess soil at additional types of Class 1 soil management sites from sections 27, 40 and 41 of the Environmental Protection Act, resulting in an exemption from the need to obtain a waste ECA. Such sites would need to comply with the rules governing the site set out in regulation.</i></p> <p>Proposed exemption does not go far enough in exempting aggregate reuse from unnecessary regulation.</p>	<p>Imposition of Rules governing aggregate reuse depots unnecessarily regulates areas of construction material management and does not align with the initial purpose of the excess soil Regulations. The inclusion of aggregate, topsoil and other materials in the excess soils regulation oversight will only lead to greater challenges in beneficially reusing these materials, rather than improving the existing processes for recycling these materials. The assumptions behind excess soil quality standards do not adequately support existing processes for recycling these materials.</p> <p>We recommend that aggregate recycling is exempt under the Excess Soil Regulation and Soil Rules, as well as the stated sections of the EPA, since the Excess Soil Quality Standards used for comparison purposes were not developed to compare bedrock extracted resources and/or their practical beneficial reuse.</p>

Section	Issue Description	Comment
2) 1. Aggregate reuse depots	Accept excess soil that was part of an engineered aggregate product that will be reused as an aggregate product	<p>The proposed change has potential effects in the application of Ontario Regulation 153/04, where this type of material is often referred as a potentially contaminating activity (PCA) “Fill of Unknown Quality” that generates an area of potential environment concern (APEC). The proposed change suggests that aggregate reuse depots could accept untested materials; however, it is unclear if those materials, if used on a RSC site, would then become a PCA.</p> <p>The current proposal does not appear to help municipalities and other stakeholders with reuse of this material. Therefore, we recommend enhance beneficial reuse by:</p> <ul style="list-style-type: none"> - Clarifying that fill under a road should not be a PCA/APEC - Making all road subbase materials reusable as road subbase – reusable aggregate should simply be exempt from EPA, excess soils regulation, Soil Rules, and RSC regulation. <p>To support greater reuse of subgrade material, clarity is also needed for the fine component of Granular fill, including the sand component of Granular B fill, which is captured within the definition of soil or crushed rock. There could be confusion on whether the sand is part of the engineered product or part of the general fill.</p> <p>Current wording allowing “minor amounts of general fill” requires clarification to avoid misinterpretation.</p>
2) 1. Aggregate reuse depots	Waste asphalt, glass, ceramic or concrete, inert fill (rock), and new aggregate could be stored at the depot to produce an engineered aggregate product.	Consider defining “new aggregate” (from quarry or sand/gravel pit). It should be noted that asphalt grindings are used in some recycled aggregate, or placed on surfaces for construction purposes and do not appear to be mentioned within the amendment. We recommend inclusion of asphalt grindings under the exemption as an appropriate recycled material.
2) 2. Small liquid soil depots	Maximum quantity allowed would be 100m ³ of liquid soil (including any resulting sewage from the processing) at any one time and 200m ³ of dewatered/processed soil at any one time.	It is unclear how the small volume of 100 m ³ is going to benefit potential stakeholders. From our experience, small liquid soil depots are at a minimum 200m ³ to 500 m ³ by volume. We recommend reevaluating the benefit of this exemption and conducting additional research on small sized liquid soil depots in the market.

Section	Issue Description	Comment
3) Enhanced reuse opportunities for aggregate and stormwater management pond (SWMP) sediment	<i>Proposed Change: It is proposed that excess soil that is part of engineered aggregate as well as SWMP sediment, that is either being reused as engineered aggregate or in an infrastructure-related undertaking, would be provided flexibility in respect of the excess soil quality standards for asphalt road-related contaminants and naturally occurring exceedances</i>	<p>We submit that the need for this proposed change suggests that the ESQS are too low and are not applicable in urban environments or environments subjected to road runoff. We recommend that aggregate recycling and surface water pond sediment be exempt under the Excess Soil Regulation as the Excess Soil Quality Standards used for comparison purposes were not developed to compare aggregate and surface water pond sediment for beneficial reuse.</p> <p>Currently, the proposal requires the QP to confirm that exceedances are only from an asphalt source; however, forensic analysis on the source of certain PHCs is not fully adopted and additional research is required in collaboration with the laboratories to ensure the determination of asphalt sources. The exemption should align with the level of precision and certainty the laboratories can provide at this time.</p> <p>In addition, we suggest enhancement of beneficial reuse opportunities in urban environments by re-evaluating the applicability of ESQSs to materials used in urban environments. If the material is only being re-used within an urban environment, and for specific beneficial re-uses such as “construction materials”, we submit that the definition of “naturally occurring” materials be widened to include exceedances that are ubiquitous in urban environments.</p> <p>In addition, further clarification is required to define “near” an asphalt road, where these materials could be beneficially reused.</p>

Section	Issue Description	Comment
4) Allow greater reuse of soil to be coordinated between similar infrastructure projects	<i>Proposed Change: To enhance coordination and reuse of soil between infrastructure projects, it is proposed that soil associated with project areas (the location where soil is excavated) and reuse sites (the location where soil will be finally placed) for infrastructure projects of the same type (e.g., road to road – the definition of “infrastructure” in O. Reg. 406/19 identifies types of infrastructure) and by the same project leader, being undertaken concurrently, may be managed and reused between those projects</i>	To enhance coordination, we recommend that, as well as the same project leader, the exemption should also allow exchange of soils between any “public bodies”.
4) Allow greater reuse of soil to be coordinated between similar infrastructure projects	<i>Requirement that there is no evidence of visual or olfactory signs of contamination in respect of the soil being moved between coordinated project areas and reuse sites</i>	<p>It is noted that this sort of visual or olfactory evaluation will only really work for identification of organic contaminants and would not support identification of most inorganic contamination.</p> <p>We recommend QP oversight and engagement with QPCO to develop best practices for this type of soil movement.</p>

Section	Issue Description	Comment
5) Reduce reuse planning requirements for excess soil moved between infrastructure projects	<p><i>Proposed Change: It is proposed that if a project leader for an infrastructure project area is required to file a notice in the Registry under section 8 of the Regulation, and is moving excess soil to another infrastructure-related undertaking, the project area will be exempt from requirements associated with completion of an assessment of past uses, a sampling and analysis plan and sampling analysis report, excess soil destination assessment report and implementing a tracking system. These are the reuse planning requirements other than filing a notice in the Registry</i></p>	<p>Further clarity is required to confirm whether or not the exemption from planning requirements would also apply to movements between Infrastructure-related project areas and temporary storage sites outside the project area (e.g. Class 2 Soil Management Sites).</p> <p>We recommend that the tracking requirements of soil movements within and outside the project area, and between infrastructure-related undertakings, is tracked and records are retained by the project leader.</p>
6) Allow in-situ sampling for stormwater management pond (SWMP) sediment	<p><i>Proposed Change: Where sampling and analysis is required, it is proposed that SWMP sediment could be collected in-situ and then tested, following the in-situ sampling frequencies in the regulation</i></p> <p>Post-dredging confirmatory sampling would be required to ensure results are still representative; the frequency and parameters may be determined by the qualified person.</p>	<p>It is unclear why, after in-situ sampling has taken place, additional post-dredging sampling would be required. This is inconsistent with other excess soil reuse sampling where the QP would complete in-situ and/or ex situ sampling to the align with volumes being removed from the project area, but confirmatory ex-situ sampling is not required.</p> <p>It is recommended that the same premise as standard excess soils sampling be applied to settlement pond sediment sampling for consistency.</p>

Section	Issue Description	Comment
7) Regional mapping of naturally occurring local background concentrations	<i>Proposed Change: MECP is considering the use of regional mapping of areas that naturally exceed the excess soil standards as a basis for enabling greater reuse of excess soil with such naturally occurring exceedances.</i>	<p>We are strongly supportive of initiatives by the MECP to undertake regional mapping of naturally-occurring exceedances.</p> <p>We recommend this work effort be undertaken by the MECP, since the work effort to undertake this is significant, and is best undertaken at a provincial scale rather than local municipal scale. This work is necessary to support the workability of existing stringent ESQS that were put in place by the province. The province also has access to the most data regarding naturally occurring exceedances acquired through:</p> <ul style="list-style-type: none"> - Site specific risk assessments using naturally occurring exceedance rationale - RSCs using naturally occurring exceedance rationale - Ontario typical range data used in standards development - Ontario geological survey mapping - Existing studies completed in Guelph, Ottawa, Thunder Bay <p>Despite any initiatives regarding regional mapping of background concentrations, the regulation should continue to support QP-rationale for site specific assessment of naturally occurring exceedances.</p>
8) Other clarifications and corrections	<i>Proposed Change: (i) flexibility with temporary soil movement from a project area and back to the same project area or within a project area that will later be contiguous</i>	It is unclear what requirements will apply to the temporary storage area in these cases.

Section	Issue Description	Comment
8) Other clarifications and corrections	<i>Proposed Change:</i> <i>vi) The regulation would be amended as needed to allow the establishment of more than one type of depot by the same owner or operator at the same property or adjoining properties, with the exception of small liquid soil depots</i>	<p>It is unclear why the small liquid soil depots would not be allowed to be established adjoining other types of depot. We recommend this exclusion be removed.</p>
General comment	<i>Regulatory compliance since O. Reg 406/19 may have caused significant escalation in compliance costs without the returns of reduced costs of soil management</i>	<p>Since it has now been several years since the implementation of O. Reg. 406/19, we suggest a review of the costs of compliance for public and private projects, including QP costs and administrative burden for stakeholders across the industry. We believe there are possibly unintended and unanticipated costs to the regulation that may exceed those originally considered in the cost benefit analysis of the regulation. In addition, we believe the intent of increasing beneficial reuse to reduce costs of soil management has not come to fruition. Our understanding from our membership is that instead, excess soil management has increased costs to public and private projects, A fulsome reanalysis of the regulatory impact would be greatly appreciated to refine or refute this perception. .</p>