Update on Regulatory Proposals

- Ontario Ministry of Agriculture, Food and Rural Affairs

February, 2021

Ontario

Context

- OMAFRA seeks to engage Indigenous communities and partners on two regulatory proposals initially brought to the AN Lands Forum in 2019.
- These proposals are part of Ontario Government's Open for Business initiative and aim to make it easier to do business in the province, while maintaining environmental protection for our natural resources:

1. Amendments to the General Regulation under the *Nutrient Management Act*
   - Anticipate posting a draft regulation for public consultation this spring.
   - If approved, it would allow for the production of renewable natural gas at on-farm anaerobic digestion facilities that are regulated under the Act.
   - These changes would create economic opportunities for agricultural producers while maintaining environmental protection.
2. New regulation to implement the enabling Drainage Act amendments passed July 2020.
   - Was posted for public consultation in the form of a Discussion Paper. (posting closed on Feb 7, 2021)
   - The regulation would include new streamlined processes and would incorporate the Drainage Act and Conservation Authorities Act Protocol by reference.
   - If approved, these changes would-reduce administrative burden, streamline approvals and address stakeholder concerns while maintaining environmental standards.

- We look forward to your insights on the proposed regulatory changes.

Proposal to Support On-Farm Renewable Natural Gas
- *Nutrient Management Act, 2002*

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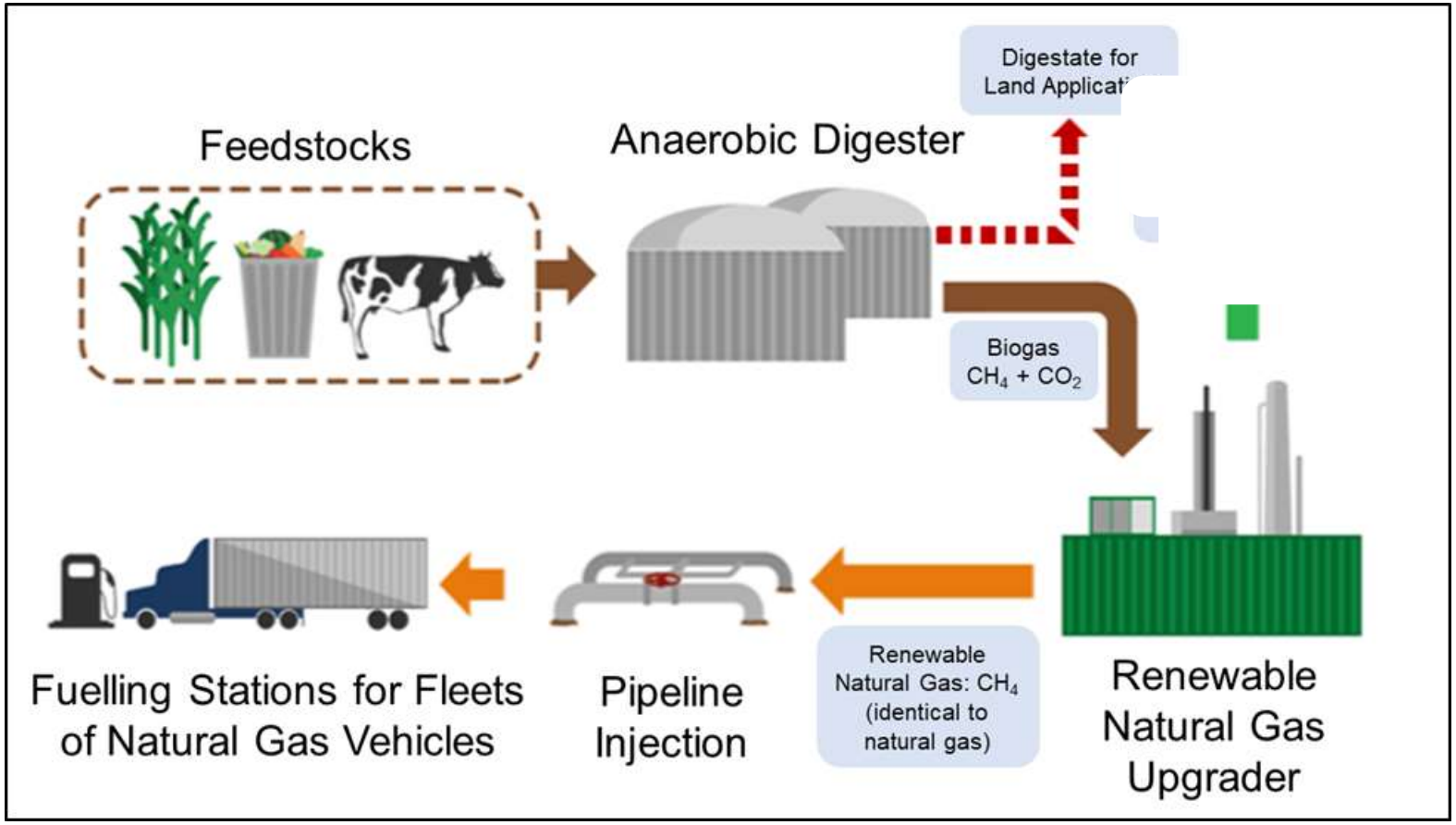
Context

- **The Nutrient Management Act** regulates materials containing nutrients in ways that support agricultural operations while protecting the environment.
  - Appropriate storage and application of manure to farmland.
  - Use of off-farm materials (e.g. food processing waste, municipal biosolids) as nutrient sources for agricultural crops while diverting more materials from landfill.
  - Use of additional agricultural materials (e.g. milkhouse washwater) as nutrient sources for agricultural crops.
  - Requirements for anaerobic digestion facilities built on farms that use manure and other agri-food waste to produce biogas, supplying electricity to market and digestate as a nutrient source for crops.

On-Farm Anaerobic Digester Producing Renewable Natural Gas

Anaerobic digestion can create and increase revenue streams on-farm and reduce the amount of food and organic waste that goes to landfill.



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Proposal

- The Ministry of Agriculture Food and Rural Affairs and the Ministry of Environment Conservation and Parks are proposing changes to anaerobic digestion facility rules under the *Nutrient Management Act, 2002*.
- The proposed changes include:
  - Design and construction requirements that enable production of renewable natural gas (RNG), while avoiding noise and odour concerns and maintaining environmental oversight;
  - Increased flexibility in the types and amount of feedstocks for agricultural producers to process in on-farm Regulated Mixed Anaerobic Digestion Facilities (RMADFs); and
  - Simplified operational requirements related to sampling and analysis

Proposed Regulatory Amendments

1. Design and Construction Requirements

- As the Renewable Natural Gas sector develops, it is important to update these regulations to ensure the rules allow for on-farm RNG production that protects people and the environment.

Proposed Changes:

A. Clarify design requirements to enable biogas upgrading to renewable natural gas on an agricultural operation under the Nutrient Management Act.

B. Clearly define what components fall under the definition of an on-farm RMADF and therefore are required to meet certain rules within the regulation, for example setback requirements, and systems required to reduce potential noise and odour.

C. Clarify digester tank design to ensure liner and containment requirements provide the same environmental protections as other permanent storage systems on the farm.

Proposed Regulatory Amendments

2. Permitted Feedstocks

- Farmers have told the government that they need a greater quantity and variety of feedstocks to make renewable gas generation effective, efficient and economical.

Proposed Changes:

A. Increase the quantity limits of off-farm materials (materials that do not come from an agricultural operation) with requirements to mitigate possible noise and odour impacts. (from 10,000 cubic meters/year to 40,000 cubic meters/year)

B. Remove restrictions on the quantity of on-farm materials (materials from agricultural operations).

C. Provide greater flexibility for the types of off-farm materials that can be used in the digester, for example allowing Source Separated Organics to be used in the digester, along with new odour and set-back requirements.

Proposed Regulatory Amendments

3. Simplify Operational Requirements

- Farmers who operate digesters have identified the need for flexibility in case of unexpected feedstock management challenges.

Proposed Changes:

A. Reduce requirements (i.e. lab analysis) for accepting a single load of off-farm anaerobic digestion materials that is to be diverted to another on-farm RMADF if it is already known to be acceptable under the *Nutrient Management Act, 2002*.

Drainage Act
Regulation Proposal

Ontario

What is the Drainage Act?

- Drainage is critical for supporting agricultural food production. It can provide environmental and economic benefits such as improved crop productivity and flood control, help reduce nutrient loss and soil erosion and support wildlife.
- Three Acts regulate drainage in rural communities:
  - *Drainage Act,*
  - *Agricultural Tile Drainage Installation Act,*
  - *Tile Drainage Act.*
- The Drainage Act regulates municipal drains - shared community infrastructure often built on private land. Municipal drains provide benefits to many property owners within a watershed, and the costs of building and maintaining them are shared among those property owners.
- The construction of these drains must be done in a way that prevents flooding and supports agricultural production but does not have negative environmental impacts.
- OMAFRA administers the Drainage Act but does not approve drainage projects.
- Municipalities are responsible for implementing the Drainage Act process, approving and charging the costs of drainage construction, improvements, maintenance and repair.

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Other Legislation that Impacts Drainage Projects

Drainage engineers and drainage superintendents must consider and adhere to various provincial and federal legislation and policies when completing a drain project. See examples below for applicable legislation.

This often requires the municipality to obtain environmental permits and approvals from various agencies and other levels of government to ensure drainage projects do not have negative environmental impacts.

Examples of Applicable Legislation and Other Agency Approvals	
Federal	Species at Risk Act, Fisheries Act, and the Migratory Birds Convention Act, Canadian National Parks Act
Provincial	Conservation Authorities Act, Endangered Species Act, Fish and Wildlife Conservation Act, Ontario Heritage Act, Ontario Water Resources Act, Environmental Protection Act, Nutrient Management Act, Clean Water Act
Other Agencies	Utility and railway approvals

What is Being Proposed?

- Amendments to the Drainage Act to reduce regulatory burden were included in Bill 197, COVID-19 Economic Recovery Act which was introduced on July 8, 2020 and passed on July 21, 2020.
- The amendments enabled a new regulation to implement the following changes:
  - A simplified process for minor improvements to municipal drains;
  - A simplified process for approving updates to Engineer's Reports for changes to the design made during construction; and
  - Adoption of the Drainage Act and Conservation Authorities Act Protocol (DART Protocol) by reference in regulation.
- We are seeking your input so that the proposed regulation considers indigenous and treaty-protected rights and traditional knowledge and that the benefits of municipal drains are experienced by all communities.
- The new regulation is intended to support benefits of:
  - **economic competitiveness** by making it easier and more cost effective to ensure existing drains perform well
  - **increased opportunity for collaboration** in the development of protocols to ensure environmental protections are maintained
  - **enhanced climate resiliency** by encouraging the uptake of new technologies and approaches to manage water flow

Minor Improvements:

Eligibility Criteria

The following are proposed criteria which an eligible minor improvement project would have to meet to be considered for the streamlined process.

- The property owner initiates the improvement which is only on the one property.
- The property owner is paying the full construction cost for the minor improvement.
- The property owner has already obtained agreement from applicable neighbouring properties.
- The minor improvement will not impact future repair and maintenance costs and how they are shared among other property owners in the watershed.
- The minor improvement does not change how much water the drain can handle.

Example: A property owner may want to widen a drainage crossing which could be considered a minor improvement if it meets the above criteria.

Figure B10–3. Farm equipment on a private crossing.

Proposed New Process

- The municipality would assess if a proposed project meets established criteria that would be outlined in the regulation.
- Timelines in the process would be shortened (and some requirements could be reduced). For example, the engineer would have 90 days to complete a report versus 1 year which the current improvement process requires. A shorter site meeting would also be required.
- Existing requirements for environmental permits would remain.

Updating the Engineer's Report:

Eligibility Criteria

A) Unforeseen Construction Issues

- The design changes are as a result of unforeseen and unavoidable circumstances
- Current approvals (CAA, DFO, etc.) support the required changes
- The required changes do not exceed 10% of the total project cost.

B) Change due to Permitting Requirements

- The design changes were unforeseen because another agency required them as a result of their permit process (CA, DFO).

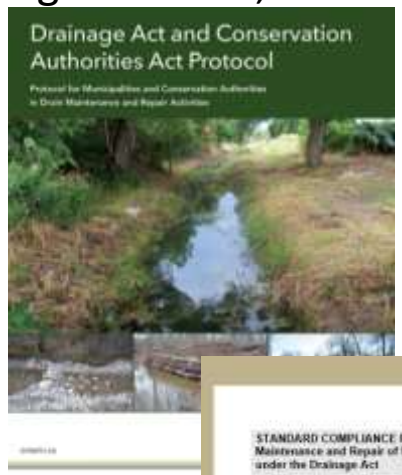
Example: An engineer or contractor realizes during construction that soil conditions are different than expected and the drain route needs to be shifted or made wider than designed.

Proposed New Process

- The streamlined process for updating an Engineer's Report is only available as a result of eligible construction activities. For example, if the field site conditions (e.g. soil conditions) or a conservation authority permit required a change to the drain design.
- Includes how any additional engineering costs would be charged back to those impacted by the drain.

Incorporating Technical Protocols: New Protocol Development

- The proposed regulation would incorporate the Drainage Act and Conservation Authorities Act Protocol by reference. This Protocol was developed by the Drainage Act and Regulations Team (DART), including MNRF, OMAFRA, conservation authorities, drainage engineer professional associations, farm organisations, and the Rural Ontario Municipal Association



Example: Debris and beaver dam removal is an eligible maintenance activity under the DART Protocol. The Protocol requires flooding upstream and downstream to be minimized by drawing the water down slowly. It also requires the work to be performed to minimize debris and erosion.

- Development of new protocols could take place collaboratively through the existing DART framework or through an expanded framework including municipal stakeholders, Indigenous communities and partners, the Federal Department of Fisheries and Oceans and other agencies.

- Potential new protocols could include:
  - Expansion of the current DART Protocol (for drain construction and improvement projects)
  - Protocols for meeting the requirements of the Endangered Species Act, the Fisheries Act and other possible legislation
  - A protocol for work across transportation corridors

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Prescribed Persons

Rationale

- The recent changes to the *Drainage Act* allow for the new regulation to prescribe persons that must be notified in various sections of the Act. Moving the list of persons to be notified to a regulation would make it easier to update the lists in future.
    - Sections 5 (1) (b), 6 (1), 10 (2), 10 (8), 41 (1) of the *Drainage Act* specify notification requirements (see Appendix slide)
    - In prescribing persons in the proposed regulation, OMAFRA would make any administrative updates. For example, the Ministry of Natural Resources would be replaced by the Ministry of Natural Resources and Forestry for each relevant section.
- No other changes to persons requiring notification have been proposed at this time.

Thank you!

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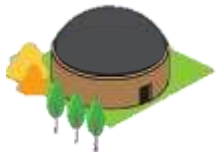
Appendix: Key Terms in the *Nutrient Management Act*



Anaerobic Digestion: A sequence of processes by which microorganisms break down biodegradable material in the absence of oxygen. The process is used to manage waste and/or to produce fuels.

Feedstock: Raw material to supply or fuel a machine or industrial process.

Biogas: Gaseous fuel produced by the fermentation of organic matter.

Digestate: The material remaining after the anaerobic digestion of a biodegradable feedstock.

Nutrient: A substance that provides nourishment essential for growth, energy, and the maintenance of life.

Solid and Liquid Digestate Effluent: Liquid material remaining after the anaerobic digestion process that can be spread on land/fields.

Source Separated Organics (SSO): Municipally collected material that is biodegradable and comes from either a plant or an animal, separated from other types of waste (e.g., recycling, garbage).

Appendix: Notifications in the *Drainage Act*

Clause of Act	Current persons
Drainage works constructed on petition Section 5 (1) (b)	- each petitioner, the clerk of each local municipality that may be affected, and the conservation authority that has jurisdiction over any lands in the area or, if no such conservation authority exists, the Minister of Natural Resources
Notice that environmental appraisal is required Section 6 (1)	- a local municipality, conservation authority or the Minister of Natural Resources
Consideration of [engineers] report Section 10 (2)	- every owner of land within the area requiring drainage as determined by the engineer or described in the petition, as the case may be; - any public utility or road authority that may be affected by the drainage works; - any local municipality and conservation authority entitled to notice under section 5 or, if no authority is entitled to notice, to the Minister of Natural Resources; and - the Minister
Referral to Tribunal Section 10 (8)	- a conservation authority or regional office of the Ministry of Natural Resources, the Minister of Natural Resources
Notice of drainage works Section 41 (1)	- the owners, in the initiating municipality, as shown by the last revised assessment roll to be the owners of lands and roads assessed for the drainage works or for which compensation or other allowances have been provided in the report; - the clerk of every other local municipality in which any land or road that is assessed for the drainage works or for which compensation or other allowances have been provided in the report is situate; - the secretary-treasurer of each conservation authority that has jurisdiction over any land affected by the report; - any railway company, public utility or road authority affected by the report, other than by way of assessment; - the Minister of Natural Resources where land under his or her jurisdiction may be affected by the report; and - the Director
Notice to conservation authority Section 78 (2)	- the secretary-treasurer of each conservation authority that has jurisdiction over any of the lands that would be affected