

Notice of Outcome

Application for Review under the *Environmental Bill of Rights* File No. R2003008

In accordance with section 61 of the *Environmental Bill of Rights* (EBR), two residents of Ontario applied to the Environmental Commissioner of Ontario (ECO) to have portions of the *Aggregate Resources Act* (ARA) reviewed in order to protect the environment. In their application, the residents requested that the Ministry of Natural Resources (MNR) undertake a review because they believe that the intention of the Act to “require the rehabilitation of land from which aggregate has been excavated” is not being accomplished.

This Notice of Outcome has been prepared to fulfill the ministry’s obligations under the EBR. In accordance with subsection 71(2) of the EBR, this notice must state what action, if any, the ministry has taken or proposes to take as a result of the review.

Decision to conduct a review

On November 12, 2003, MNR received EBR Application for Review File No. R2003008. In accordance with Part IV of the EBR, MNR considered the application and determined that the public interest warranted a review. The applicants and the ECO were notified on January 30, 2004, of the decision.

Conclusions of the Review

MNR’s review has concluded that:

- the fundamental principles of the ARA and the specific sections of the Act provide a solid foundation for achieving the purpose of carrying out progressive and final rehabilitation of aggregate sites;
- the allegations that the transparency of The Ontario Aggregate Resources Corporation (TOARC) is not adequate and that MNR’s partnership with TOARC violates MNR’s Statement of Environmental Values (SEV) for openness were both determined to be unfounded. TOARC is transparent in its dealings under the ARA and in its relationship with the MNR. This relationship is not in violation of the Ministry’s SEV;
- although there are many examples of companies performing excellent progressive rehabilitation, it is apparent that the significant component of the aggregate industry is falling behind;
- improvements are recommended to improve enforcement and monitoring of the effectiveness and efficiency of the management of rehabilitation efforts across the province; and
- additional matters for improvement will need to be considered by the government (see the attached review report).

Recommendations of the Review and Actions MNR has Taken or Proposes to Take

The review resulted in 25 recommendations, described below according to the action MNR has taken or proposes to take.

MNR is committed to a long term strategic approach to improving the Aggregate Resources Program and rehabilitation of aggregate sites.

MNR has already made significant steps to improve rehabilitation efforts by immediately incorporating 21 of the recommendations in the review report into MNR's Aggregates Resources Program. In addition, during the review, MNR has hired three additional aggregate inspectors and increased support dollars for all inspectors.

Supportive role by MNR

To promote better rehabilitation of pit and quarry sites and to increase public awareness of TOARC rehabilitation, MNR (through MNR's representative on the Board and staff liaison) will work with and encourage TOARC actions with regards to the following:

- 1) conduct more research and education regarding techniques to promote better rehabilitation of pit and quarry sites (e.g. more efficient or effective techniques or materials, cost-saving methods) [report recommendation # 12];
- 2) perform more rehabilitation of revoked licence and permit sites [report recommendation # 21]; and
- 3) undertake greater efforts to educate the public and stakeholders regarding the trust's rehabilitation efforts and to publicize (e.g. news releases, educational videos for schools, landowners with an environmental interest, website) their results [report recommendation # 24].

Immediate implementation by MNR – can be put into effect now without the need for legislative or significant policy changes.

The following recommendations now being incorporated into MNR's Aggregate Resources Program provide strong direction to Aggregate Inspectors to verify that extraction companies' rehabilitation efforts comply with the Act.

To improve enforcement of rehabilitation requirements and minimize the potential for adverse environmental impacts related to aggregate operations, MNR has directed Aggregate Inspectors to:

- 4) determine what progressive rehabilitation, in accordance with the site plan, is being performed whenever they are inspecting a pit or quarry to ensure compliance with the Act, the regulations (including the Aggregate

- Resources of Ontario Provincial Standards (AROPS)), the site plan, and the conditions of the licence [report recommendation # 1];
- 5) when determining inspection priorities to include sites with historical rehabilitation compliance issues and/or sites with significant portions of the site disturbed as a priority [report recommendation # 2];
 - 6) when carrying out the process for approving and/or reviewing a site plan for a new application, ensure that progressive rehabilitation of the site is clearly illustrated and/or described on the plan and the disturbance on the site is minimized [report recommendation # 3];
 - 7) undertake a review of the existing site plan while performing an audit of a site to determine whether the requirement to progressively rehabilitate the site is enforceable. For problem sites, where the site plan does not have this specific requirement or is sufficiently vague or too flexible as to render the plan unenforceable, initiate a site plan amendment request [report recommendation # 4]; and
 - 8) continue to issue subsection 48(2) rehabilitation orders, where applicable, as a priority when inspecting aggregate operations [report recommendation # 15].

In addition to the above, MNR will:

- 9) treat the Greenbelt Plan as a pilot area to assess whether the approach should be applied province-wide (to all existing aggregate operations) [report recommendation # 5]; and
- 10) undertake an assessment of its capacity for monitoring and enforcement including ensuring the rehabilitation of sites [report recommendation # 18].

To improve industry awareness of their rehabilitation responsibilities and information management, MNR will:

- 11) direct Aggregate Inspectors to verify the disturbed area and areas of progressive and final rehabilitation, during an audit by MNR of the annual Compliance Assessment reports or an inspection of a site [report recommendation # 6];
- 12) establish a protocol, in cooperation with TOARC, to transfer the information referred to in recommendation #11 above to TOARC, by April 1, 2007 [report recommendation # 7];
- 13) create a central database of sites where a rehabilitation order has been issued and provide a list of those sites on the ministry's internet website, by December 2006 [report recommendation # 16];
- 14) continue to educate and train the aggregate industry, in collaboration with the Ontario Stone, Sand and Gravel Association (OSSGA) (formerly the Aggregate Producers' Association of Ontario) and TOARC, regarding the importance of providing accurate rehabilitation information and the legal consequences for failing to provide that information [report recommendation # 8];

- 15) incorporate the use of new technologies (e.g. GIS technology, satellite imagery) to determine landscape changes within licenced/permited sites and to track those changes over time. A pilot project will be established for sites within the Greater Toronto Area by April 1, 2006 [report recommendation # 11];
- 16) continue with the recent years' enhanced role in research initiatives (e.g. improved database system, promoting rehabilitation), by maximizing opportunities to partner with TOARC and the scientific, research and technical communities [report recommendation # 13];
- 17) establish a formal cooperative approach between MNR and TOARC, as soon as practicable, to improve information management systems, including the creation of base-line data, ensuring compatibility of the data and the ability to generate data to monitor and promote rehabilitation [report recommendation # 14];
- 18) continue with the recent years' enhanced efforts to educate and train the aggregates industry, in collaboration with TOARC and the OSSGA, regarding the importance of performing progressive rehabilitation, methods to enhance rehabilitation and the legal consequences for failing to perform the required rehabilitation [report recommendation # 17];
- 19) seek an amendment to the Indenture Agreement (and legislative amendments, if required), as soon as practicable, to ensure that the protection of source water is included as one of their selection criteria for rehabilitation candidates under the MAAP program [report recommendation # 23]; and
- 20) monitor TOARC's rehabilitation efforts of sites where licences have been and if required, seek an amendment to the Indenture Agreement (including whether the current governance structure of the Board is appropriate), to ensure that satisfactory results are achieved [report recommendation # 22].

To ensure transparent public access to information and data about environmental performance, MNR will:

- 21) seek an amendment to the Indenture Agreement to ensure transparent public access to as comprehensive a range of information and data as possible by applying the principles of the *Freedom of Information and the Protection of Privacy Act* (FIPPA) to all TOARC Board decisions (including how sites are evaluated and selected for rehabilitation), in co-operation with TOARC and the OSSGA [report recommendation # 20].

Additional consideration required - requires legislative or significant policy changes and/or consultation with partners and the public.

The balance of recommendations 22 - 25 below require further examination by the government. The following matters require further consideration:

- 22) develop mechanisms, in consultation with the OSSGA, by April 1, 2007, to improve the accuracy of reported rehabilitation information including the merits of requiring the licensee/permittee to submit an annual rehabilitation report [report recommendation # 9];
- 23) feasibility of developing an electronic filing system for compliance assessment reports (CARs) and improving efficiencies to data and information management for new licence and permit applications and existing reporting requirements under the ARA (e.g. production, rehabilitation), by April 1, 2007 [report recommendation # 10];
- 24) examine in detail, within 2 years, in collaboration with key stakeholders, the merits of a rehabilitation incentive system, including the re-introduction of the former rehabilitation security deposit system [report recommendation # 19]; and
- 25) feasibility of designating by regulation, under the ARA, all significant aggregate resource areas in Ontario (i.e. non-designated private land) as soon as is reasonably possible to create a “level” playing field and to ensure rehabilitation requirements and environmental safeguards under the ARA are applicable throughout the province [report recommendation # 25].

Other Recent Initiatives

Oak Ridges Moraine Conservation Plan, Greenbelt Plan

Recent government initiatives have been implemented, such as the policies of the Oak Ridges Moraine Conservation Plan and the Greenbelt Plan, which require strict adherence to enhanced rehabilitation standards including maximizing rehabilitation areas and minimizing disturbed area on an on-going basis during the life-cycle of aggregate operations, and determining the maximum allowable disturbed area for each of the existing 88 mineral aggregate operations within the Protected Countryside Area of the Greenbelt Plan. These initiatives demonstrate the government’s renewed commitment to rehabilitation and ensuring the protection of the environment.

Enforcement

MNR has recently implemented a new compliance leadership model that will improve how the ministry carries out compliance activities and realigns enforcement services to support government priorities and the strategic direction and priorities outlined in MNR’s “Our Sustainable Future” document. Changes to be implemented include: establishing an integrated “Compliance Steering Committee” and the development of an improved framework to support risk-based compliance planning. Better risk assessment will ensure enforcement resources are focused and in support of MNR’s strategic priorities.

This new direction will also better support other Inspections, Investigations and Enforcement Secretariat initiatives and projects that are integrated across

ministries with regulatory responsibility. For example, a pilot project has commenced to develop and establish a model for sharing observations within the aggregate sector among the ministries of Labour, Transportation, Natural Resources and Environment which will initiate compliance activity at high-risk workplaces.

Public Transparency

MNR recognizes and supports the need to ensure transparent public access to information and data about environmental performance. To improve transparency to the public, the number of charges under the ARA, along with the court assessed penalty, is summarized on MNR's internet web site.