SUBMISSION TO REVIEW OF ONTARIO’S AGGREGATE RESOURCES ACT

Mister Chair, Committee members and guests – my name is Ric Holt. I am here today on behalf of Gravel Watch Ontario to present our position on a few key aspects of aggregate policy and management in Ontario.

Let me thank you for the opportunity to appear before this committee on the very important matter of the Review of Ontario’s Aggregate Resources Act.

Gravel Watch Ontario acts in the interests of residents and communities to protect the health, safety, quality of life of Ontarians and the natural environment in matters that relate to aggregate resources. We are a “coalition of coalitions”. As of 2011, we had 57 member organizations from across the province. Collectively, we advocate on behalf of tens of thousands of Ontarians whose lives have been affected in one way or another by pit or quarry developments.

All this is to say that Gravel Watch has a very good “ear to the ground” when it comes to the concerns of the citizens throughout aggregate-producing regions of our province.

Our members are the same people who have elected you and the other MPPs to represent their interests. Indeed, aggregate is a matter of significant public interest, and this should compel the Committee to ensure that a transparent, inclusive and fair review of the ARA is undertaken to ensure that those interests are fully considered in a balanced manner.

At one end of the spectrum of public interest, we have the aggregate industry. Their interest primarily lies in maximizing profits; and that purpose is well-served by maintaining most of the status quo. These norms do not represent a balanced approach to aggregate management, because they favour the industry at the expense of the general public. These norms include:

- proponent-driven approval without MNR intervention or oversight,
- a close-to-market policy which favours profit over the environment,
- self-enforcement of haulage limits,
- self-monitoring and reporting – essentially “filling out their own grade card”,
- collection of their own taxes,
- self-management of rehabilitation,
• a very close partnership and lobbying connection between the government and the Ontario Stone, Sand & Gravel Association, and
• inadequate penalties for non-compliance.

At the other end of the spectrum, we have the general public – residents, property owners, tax payers, neighbours and environmental groups, whose interests lie primarily in protecting their family and health; their drinking water, property values and air quality; among other things that are vital to community well-being. We will outline the tilt of their playing field shortly.

Gravel Watch can provide you with some assistance in your consideration of the full range of public interest issues by giving you some insights on what we're hearing over and over again from our members. There is a massive and growing outcry, and much of that outcry comes from a lack of notice and lack of transparency; and often simply from the frustration of trying to deal with aggregate licensing and zoning processes that the Environmental Commissioner of Ontario agrees are complicated, confusing and intimidating.

To briefly explain, this is what happens, from the perspective of a local resident, when a proponent decides to locate a gravel pit or quarry in their neighbourhood. Please try to imagine this process from the perspective of one of your constituents.

• Usually, unbeknownst to local residents, the proponent will spend years and large sums of money acquiring land, conducting tests and having expert reports and plans developed; always in support of their application.
• Once this application is submitted to MNR, assuming reports with all of the right titles are included, the license will be deemed complete and assigned an aggregate license number. As Ray Pichette of MNR conceded at this hearing, "We don’t comment on content, but on whether it’s complete."

Several years after the proponent has fully prepared himself, the local resident gets involved in the process.

• A resident within 120 metres of the site will receive a letter, notifying him a pit or quarry has been proposed, and advising him of a public meeting on the issue within 45 days.
• A notice appears once in a local newspaper, notifying readers of a license application. That “local” newspaper often has limited circulation in the local community – the notice is easily overlooked.
• In contrast to the years the proponent has had to prepare his submission, the resident has just 45 days after the notification, and only ten days after the public meeting, to gather, review and consider hundreds of pages of technical documents, charts and data. Often, access to the data is available only by visiting the MNR office and reviewing data over the counter.
• If he has any concerns with the proposal, the resident can draft a letter of objection to MNR and the proponent.
Bear in mind, this “resident” usually has little or no knowledge of how the licensing and zoning processes work, and no knowledge of how the objections and consultation process works. If he chooses to seek expert advice, he will often find that local experts refuse assistance because of conflicts with ongoing contracts with local aggregate producers – in essence the experts won’t risk ongoing work for the sake of a small one-time contract.

- Once the proponent receives an objection, they can take whatever time they wish to respond.
- Once they receive the proponent’s response, often filled with cut-and-paste “motherhood” and unsupported assurances, the resident has only 20 days to consider the response and prepare and submit a further response. If they do not respond within 20 days, it is deemed that the objection has been resolved.

Local residents have limited funds and no time to review and evaluate the data. They have only a vague and common sense expectation of the negative impacts the operation will likely have on their homes, property values, health, and family; and on the natural environment, water and landscape because of noise, traffic, dust, etc.

- If the proponent cannot, or chooses not to, resolve all objections within two years, they submit a summary of outstanding objections to MNR, who refer the case to the OMB. MNR does not evaluate the validity of the objector’s arguments, nor of the proponent’s responses. (The ARA provides MNR with the opportunity to deny an application, but only very rarely does this happen.)
- OMB will evaluate the case as a planning issue under the PPS.

Where is support from the local municipality during this process? Typical costs for a municipality to contest an appeal at OMB can range from hundreds of thousands of dollars to millions of dollars. Thus, there is a significant disincentive for a municipality to review or object to an inappropriate application. Home owners and community are often left to contest an inappropriate application on their own.

- Gravel Watch has information from our members that they have spent $400K, $500K, and even over $2 million to contest applications. Some of these cases are pending; others OMB has agreed with the residents and declined applications. In either case, the money is gone.

This money comes out of the resident’s pocket. It is not a cost of doing business or a tax write-off. It is not paid for out of taxes. It is paid for by your constituent out of his own pocket with after-tax dollars. It is paid for by dramatically cutting his lifestyle… perhaps by dipping into his children’s education funds, or his own RRSPs and retirement savings. If the application is ultimately approved, it is also paid by the resident out of his home equity, as his property value plummets.
Most often, those contesting a pit or quarry and faced with costs far beyond their means simply give up and relent to the negative impacts of aggregate extraction.

To make the public process all the more frustrating and futile, once the municipality and residents have negotiated the proposal and site plans with the proponent as a condition of zoning, MNR and the proponent can unilaterally change these site plan conditions without approval of the municipality or other government agencies, and without notification of the residents. Examples include a change from above water to below water extraction, hours of operation, and excavation area. Further, since there are no sunset clauses on licenses, the life of the pit or quarry can be extended far beyond the expectations of the municipality or residents.

What can be changed in the aggregate legislation, policies and procedures to fix this?

- Require early public notification of an intent to submit a license application to MNR.
- Increase the public notification period from 45 to 120 days. Mr. Pichette of MNR noted that this would not be overly onerous.
- Extend the notification area beyond 120 metres. Mr. Pichette also agreed the area could be expanded.
- Require full public notification and consultation – and municipal approval – of all significant amendments to the license and site plans after zoning approval.
- Eliminate the “no need to show need” provisions of the ARA so we only license what we need.
- Require consideration for cumulative impacts for all new proposals.
- Eliminate the close-to-market policy so that we extract where it’s most appropriate and least sensitive; not where it’s most convenient.
- Apply “sunset clauses” – finite time limits – on extraction, so that the public knows when operations will cease and when the lands will be rehabilitated.
- Require MNR to provide expert peer review of submissions, rather than simply confirming that reports with the right titles are submitted with the application. Alternatively, provide municipalities and / or residents with funds to do so.
- Provide municipalities with funding to support OMB hearings.

In closing, I would like to again thank you and applaud you. We at Gravel Watch are encouraged that the Provincial Government and this committee are undertaking this Review. We are also encouraged by acknowledgements by the industry at this hearing that clearly indicate the Act and the regulations need improvement. Gravel Watch Ontario will also be providing a written submission to the Committee that will build on these comments and add others.

We at Gravel Watch look forward to working with the government including the Ministry of Natural Resources and other related ministries, with the industry, and with the certification groups, to improve the management of this province’s vital aggregate resources.
Appendices to this document

Gravel Watch’s Platform/Concerns/Recommendations
This gives an extensive set of recommendations.
Gravel Watch’s Critique of MNR’s Consolidated Report for SAROS
http://www.gravelwatch.org/saros.htm
See Also: Recommendations on the ARA by Gravel Watch Member Helen Purdy