May 16, 2012

Via E-mail (tamara_pomnski@ontla.ola.org)

Standing Committee on General Government
Room 1405, Whitney Block
Queen’s Park
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Re: Aggregate Resources Act Review

Ecojustice Canada is submitting the following comments to the Standing Committee on General Government with respect to the Committee’s review1 of the Aggregate Resources Act2 (“ARA”). Ecojustice is Canada’s leading non-profit organization of lawyers and scientists devoted to protecting the environment. Since 1990, we have helped hundreds of groups, coalitions and communities in the courts, before administrative tribunals, as well as making submissions such as these, on a wide variety of issues related to protection of our air, water, wildlife and natural spaces. Ecojustice agrees with and adopts the recommendations presented by the Canadian Environmental Law Association on May 14, 2012.3 We also make additional comments and elaborations below.

We agree with CELA that the key problems with the legislative and regulatory framework related to aggregate extraction that need to be addressed in this review are:

- impact of the 2005 Provincial Policy Statement (“PPS”) on the siting and approval process under the ARA;
- adequacy of compliance and enforcement under the ARA; and
- the slow rate of rehabilitation of abandoned pits and quarries in the province.4

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1 According to the Referral from the House, the “Committee’s focus shall include, but not be limited to, the following areas: The Act’s consultation process; How siting, operations, and rehabilitation are addressed in the Act; Best practices and new developments in the industry; Fees / Royalties; and, Aggregate resource development and protection, including conservation/recycling.”


3 CELA’s submission can be downloaded at: http://www.cela.ca/publications/submissions-aggregate-resources-act.

4 It should be noted, however, that the “slow rate” is a matter of perspective. The fact that there are very few abandoned pits and quarries in Ontario is a testament to the fact that the industry is well-regulated.
Ecojustice also agrees with the remarks of the Environmental Commissioner of Ontario (ECO) made before the Committee on May 7, 2012. The ECO began his remarks with two key concerns that are related to the legal and regulatory framework, though not part of the ARA per se. As the ECO explains, there are some arguments that have been used to justify the current framework. The argument that aggregates must be extracted “close to market”, the ECO contends, is soon to be moot. Ontario will be required to extract/obtain aggregates further and further away from the primary market in southern Ontario. As such, we agree with the ECO that “close to market” should not be an overriding consideration in making decisions regarding aggregate extraction. Further, the ECO takes issue with describing aggregate extraction as an “interim land use”. The ECO contends that this term trivializes the environmental impact of aggregate extraction activities, implies that the land will be returned to the same use, and suggests that the activities are temporary. We agree with the ECO that using such a term to describe aggregate extraction activities should be halted.

The ECO also raised the concern related to the interaction of the PPS and the ARA. Within the PPS, there is no requirement to demonstrate “need” in order to justify the aggregate extraction activities proposal. As stressed by the ECO and CELA, this runs contrary to all other municipal decisions regarding land use. Ecojustice agrees with CELA, that the ARA licencing process (notwithstanding the current PPS policy6) must require that proponents demonstrate need. Complementary changes should also be made to the PPS.

During the last review of the ARA, Ecojustice (then Sierra Legal Defence Fund) lawyer Doug Chapman stressed the importance of enforcement and cautioned against allowing the industry to self-assess and self-regulate, absent a duty on the part of the Ministry to inspect.7 These concerns are being raised again. As the ECO stated in his submissions, there must be a commitment to

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4 CELA’s submission, supra, at p.3.
6 PPS policy 2.5.2.1 states that “Demonstration of need for mineral aggregate resources, including any type of supply/demand analysis, shall not be required, notwithstanding the availability, designation or licensing for extraction of mineral aggregate resources locally or elsewhere.”
7 Standing Committee on General Government, Oct 10, 1996. Mr. Chapman’s submissions are captured in the Hansard at: [http://www.ontla.on.ca/committee-proceedings/transcripts/files_html/1996-10-10_g047.htm](http://www.ontla.on.ca/committee-proceedings/transcripts/files_html/1996-10-10_g047.htm).
independent inspections and there must also be the capacity and resources available to carry out an effective enforcement program. The regulated community will then face incentives that ensure greater compliance. Ecojustice adopts CELA’s Recommendation #2 which states:

(a) funding should be made available to restore the number of aggregate field inspectors to a level that will enable more frequent and thorough monitoring of a greater number of pits and quarries in the province; and
(b) MNR should increase the current per tonne licence fees and royalties charged on extraction of aggregates to a level sufficient to continue to fund staff capacity within MNR.\(^8\)

Finally, Ecojustice submits that the Ministry of Natural Resources must be required to ensure that the cumulative impact of aggregate resource extraction activities is assessed, independent of the information provided by proponents.

Ecojustice hopes these submissions will assist the Committee in its review.

Sincerely,

[original signed by]

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\(^8\) CELA’s submission, *supra*, at p.7.