May 16, 2012

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Clerk pro tem
Standing Committee on General Government
Room 1405 Whitney Block
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Toronto, ON
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Dear Madam,

Re: Aggregate Resource Act (ARA) Review

Please accept this letter and enclosure as the written submission from Friends of Rural Communities and the Environment (FORCE), to the Standing Committee on General Government, on behalf of our Communities.

We welcome the Committee’s review and consultation at this important early stage of the examination of the ARA. We appreciated the opportunity to address the Committee on May 14, 2012 and submit this more detailed submission to assist in the Committee’s important work to strengthen the Act and its related components.

Thank you, in advance, for the Committee’s consideration. We look forward to the ongoing dialogue between the Committee, the Ministry of Natural Resources, and other stakeholders as we collectively work to strengthen the regulatory framework for aggregate development in the province.

Respectfully submitted,

Graham Flint BASc, P. Eng
Chair & Spokesperson
INTRODUCTION

FORCE is a federally registered not-for-profit corporation. We learned early on that it is necessary to organize accordingly in order to participate in aggregate development processes, up to and including administrative tribunals, such as the Ontario Municipal Board (OMB). FORCE is a citizen-based advocacy group with hundreds of individual, business, and agriculture supporters in the communities of Campbellville, rural Milton, Kilbride, north Burlington, Mountsberg, Freelton, and Carlisle. FORCE was formed in June 2004 to protect our natural and built environments in the face of what is now St Marys Cement’s proposed Flamborough quarry.

We note upfront that our organization is neither anti-aggregate nor anti-road; indeed, our area is home to some of Ontario and Canada’s largest aggregate operations. We do, however, have significant issues with the current application before our communities.

We also believe that our organization has a responsibility to promote good government, and as such, we have participated in a number of past processes including the Provincial Policy Statement, the Greenbelt Act, and the Clean Water Act. We also sit on the Standards Development Panel of SERA (Socially and Environmentally Responsible Aggregate) – an organization active in developing voluntary certification standards for aggregate operations.

We welcome this new opportunity to participate in the Committee’s review of the Aggregate Resources Act and believe that we have some lessons to share based on our Communities’ experience.

THE COMMITTEE’S MANDATE

The Committee’s Terms of Reference, as we understand it, include, but are not limited to, the following areas: (1) the Act’s consultation process; (2) how siting, operations, and rehabilitation are addressed in the Act; (3) best practices and new developments in the industry; (4) fees and royalties; and (5) aggregate resource development and protection, including conservation and recycling.
The proposal facing our Communities is a proposed limestone quarry on the border of Hamilton and Halton Region. It would excavate some 3 million tonnes annually and would go below the established groundwater table. Movement of the aggregate would involve some 1600 extra truck trips per day or one truck every 26 seconds. The site is in the Drinking Water Protection Area for the community of Carlisle, along with potential impact on hundreds of private wells. It is in the Natural Heritage System of the Greenbelt, with a significant collection of protected features – Provincially Significant Wetlands, significant woodlands, significant wildlife habitat, streams and creeks in the Bronte Creek watershed, and Species at Risk, among other features. It is an active farming community, which has strongly embraced ‘buy local’ in the form of pick-your-own, farm gate sales, and farm markets. The concessions include their own rural residences, mixed with a number of rural residential developments, two elementary schools and a child care centre. The area is a mecca for cyclists from throughout the Greater Toronto Area. The proponent’s own documentation estimates an initial operation, and an expansion to adjacent lands, that would be operate 6 days per week and be in existence for some 60 – 70 years. The agricultural land would be permanently changed, especially by the time the lake based rehabilitation plan would be complete.

1. **Aggregate extraction is an environmentally, socially, and economically intrusive activity. It has the potential to cause long term adverse impacts in a number of areas that include, but are not limited to:**

   - **Removal of productive agricultural land from production**
   - **Impacts on remaining agricultural operations**
   - **Reduction of the critical mass of agriculture to support feed operations, equipment production and sales, and veterinary support, among others**
   - **Harm to the quality and quantity of surface and groundwater and other hydrological features**
   - **Detrimental effects on fish spawning and other aquatic species**
   - **Interference with threatened or endangered species and/or their habitats**
   - **Removal and disruption of significant woodlands and continuous natural linkages**
• Creation of road safety concerns and congestion
• Physical damage to roads
• Increases in smog and greenhouse gases
• Undermining of tourism with concomitant impacts on the local/regional economy, jobs, and recreation
• Creation of noise, dust and nuisance in otherwise quiet rural environments
• Risks to health from fine particulate matter, vehicle emissions, etc.
• Diminution in property values.

As such, aggregate extraction clearly warrants scrutiny and a robust regulatory framework to regulate its extraction and recycling for infrastructure and other societal purposes.

2. Aggregate extraction is not an interim, or temporary, land use. Interim land use trivializes the impacts, implies the land is returned to the same uses and implies a short period of time for disturbance. All these concepts are misleading. It will be our children’s children’s children who will still be living with the effects of this proposed development.

Members of the Committee will be aware that an aggregate application requires evaluation for both an ARA license and for Planning Act approvals, often including an Official Plan amendment (OPA) and zoning change. In our case, the proponent purchased land that required an OPA and is zoned Agriculture and Conservation management. The company is seeking a change to Industrial Extractive.

The proposed Flamborough quarry has been under review for over 8 years. OPA and zoning changes were filed in September 2004 by the original proponent. The current proponent joined the process in June 2006 when municipal, regulatory, and community concerns were already established. Most of the process is proponent driven; the proponent controls the information, its mode of exchange, timing, etc. The municipal governments in our area, other regulatory agencies, our Communities and other stakeholders have experienced a “hurry up and wait” cycle which are common to other applications and some unique to our own. The proponent applied for its ARA licence in January and then March 2009. Some illustrative examples of challenges include:
The proponent does not appear to understand the host community, adjacent haul route communities, or expectations of a neighbour to neighbour relationship. This does not appear to be part of the homework the current company did as part of its due diligence on the company/property purchase from the original proponent nor its monitoring of the project since its inception. The proponent did deploy stakeholder engagement early, but it began its community outreach, with what has been perceived locally, as a ‘divide and conquer’ strategy. Pamphlets/newsletters, phone solicitation, and door to door methods were deployed in the nearby rural settlement area of Carlisle beginning during summer 2006. By contrast, no contact with homes, farms, and businesses in direct proximity to the proposed development occurred at the same time. Further, the proponent has never agreed to meet, despite written requests, the community’s advocacy representative. Other stakeholders such as schools/councils have had similar experiences. Informal discussions have occurred at various open house forums hosted by the company. Public meetings have not always been held in the community, making it more difficult for some area residents to attend. The first public information centre regarding transportation haul routes was held some 20 km away, at the farthest edge of the study area, at the Royal Botanical Gardens. Another important meeting, the ARA public information centre was held in Waterdown, some 15 km away. The company has predominantly used an open house, information board approach. This does not allow the community to hear a common presentation, to hear a common response to questions asked, and to have questions heard stimulate other lines of inquiry.

The proponent has also shown an unwillingness to openly share information with the community and its representative. Prior to submission of the ARA application, it has been difficult to obtain electronic copies (which are easier to share with the community’s retained experts and with the community) or multiple paper copies of reports. Postings to the company’s website have not always occurred or occurred in a timely fashion. The company was not prepared to share draft reports, including materials prepared to support the Permit to Take Water application process, being shared with other stakeholders, such as governments and agencies, and peer reviewers. It is virtually impossible, however, for the community to provide input, once documents are finalized by ‘official’ stakeholders.

The proponent fails to represent itself consistently. While the company is happy to send colourful newsletters to area residents, on an infrequent timetable that serves its own messaging needs rather than a regular schedule (i.e. quarterly). It avoids direct and face to face communication on tougher issues. The proponent had its contractors make after-the-fact apologies in the case of unauthorized
borehole drilling. It had consultants represent it in home visits to properties with drilled wells within 1000m of the site, regarding the then proposed summer 2008 water testing program. It also had another firm represent it, in letters, sent to selected area residents about the official notification of the ARA application and public consultation stage.

- **Notifications by the proponent are not consistent, they are not always done as required by regulators, and they are not always done in a way that best reaches the community.** Notices for the Public Information Centres for the transportation haul route study did not always meet the City of Hamilton and areas Combined Aggregate Resource Team (CART) Terms of Reference with respect to maximum notice/frequency in local weeklies and direct notification of residents along the potential haul routes. The ARA notification signage required on site was posted at two entrances to the 11th Concession East property, but not on the 1869 Milburough Line property. This latter property is proposed to be used for access to the site and for the GRS system, among other functions. The ARA public notification and public information centre notice in daily newspapers and local weeklies may have met legal requirements for the ARA but their placement in two inch columns in the public/community notice sections at the back of the Classified Section in the Hamilton Spectator and the Flamborough Review did not serve to fully notify area residents. This is in contrast to the community’s advocacy group which took out full page ads to alert residents. The ARA letter notification was sent to some residents by registered mail, to some by regular mail, and to others as third class occupant mail.

- The proponent has not abided by local regulations, provided reliable information, and or been fully accountable for its own actions or those of parties representing it.
  - During 2006, the proponent, through its agent, a consulting engineering firm, drilled some 40 unauthorized boreholes in area roads, some which had recently undergone much needed upgrading and paving at municipal taxpayers’ expense. The City of Hamilton indicated that it does not have a permit policy for boreholes; that is, Hamilton does not even allow external companies to drill boreholes; only city crews are authorized for this work. Milton confirmed that the consultants made enquiries with it, but no permits were issued. The proponent did not immediately take full responsibility. Eventually, the contactor apologized and recompense was paid.
Impacts upon groundwater quantity and quality have been a key concern for the community and municipalities from the beginning, substantiated by consultants to the proponent’s own technical findings that unmitigated impacts of quarry dewatering on the community would be “unacceptable”. This has led to much scrutiny of the proposed mitigation system. The community has asked repeatedly for details on successful GRS systems including, such matters as: geologic setting, aquifer characterization, climate, nature of operation, size of operation, number of years in operation, purpose of GRS, number of years GRS has been in operation, assessment of success/failure, and long term operating performance date. From the beginning of the project, there has been little credible information offered in the way of successful long term demonstrations of such systems, for the same purpose. Indeed, the literature review provided by to support a 2006 Permit to Take Water (PTTW) application illustrated the long term operating failures of such systems. Recent citations by the proponent or its consultants have included a Florida landfill example, a Florida quarry example, and a closed quarry in Kirkfield, Ontario. No material information on any of these sites has been provided by the company to the regulators or the community.

- The proponent has failed to keep commitments to the community and to complete comprehensive scientific analysis. In Community Newsletter #6, dated Fall 2007, the company stated unequivocally that it “...is committed to successfully demonstrating our GRS method here in Flamborough, before this system is implemented or added as a component to our final application”. The ARA application has now been submitted and no GRS system of any type has been successfully tested on site. The company has not completed the related hydrogeology work plan submitted to CART and to the provincial regulator, prior to ARA submittal. At one point, in October 2007, the Hamilton Medical Officer of Health’s office issued a rare section 11.1 notice to the MOE under the Health Promotion and Protection Act due to concerns about potential impacts on the groundwater based drinking system and wells. A 3 phase gated Permit to Take Water in order to conduct baseline, pump, and modelled mitigation testing was issued to the company by MOE in July 2008. MOE required a redo of phase 1 as its results were compromised by heavy precipitation. The company refused to redo the first phase. Indeed, when the company submitted its ARA application in 2009, it wrote to MOE and indicated it did not require further testing as it had sufficient data. MOE indicated that it would revoke the permit if no further testing would proceed. The company asked MOE not to revoke the permit but no further testing was undertaken and the permit expired in June 2009. Recent technical documents outline that the company does not intend to prove its mitigation
system until after it is licensed and has a quarry face blasted. Nor did the company complete the transportation haul route study promised to our municipalities and conservation authority.

- The proponent has demonstrated a tendency to take on authority greater than its own. The company, and its consultants, have created and used terms which are not defined or approved approaches in government regulatory circles, including by MNR, and it has pushed the boundaries on the role that accepted concepts should have. Examples include creation of the term Provincially Significant Resource, for the quality of the aggregate resource, and Peripheral Forest Edge Habitat, regarding the areas to be excluded from Significant Woodlands. The Adaptive Management Plan presented, in its undefined state, and in the absence of solid understanding of the aquifer/baseline and a viable mitigation plan, pushes the AMP beyond its original meaning, purpose and scope.

  - Below is an excerpt from the recent Joint Aggregate Review Team (JART) report on a nearby proposed aggregate expansion in adjacent Halton Region. It indicates, from a similarly constituted aggregate review team, what the role of an AMP should be and speaks to the inappropriateness of any AMP being seen and used as a linear mechanism for engineering an approval.

    - “It is JART’s expectation that an AMP would accompany a complete and scientifically sound proposal which would include details of the anticipated mitigation measures. The...AMP would have to be based on a thorough knowledge of the site and the areas around the site. This is essential to acquire confidence in the potential feasibility of mitigation. It is through this understanding that the breadth of uncertainty and potential risk can be understood prior to making a decision on new quarry application. This is a bottom up approach rather than a top down approach. Confidence cannot be attained in the absence of detailed understanding.

    - Within the context of JART meetings, JART considered how engineered mitigation can have an influence on planning recommendations. JART is of the opinion that the ...applications, along with the scientific studies detailing mitigation measures, need to be comprehensive and stand alone from the AMP, with respect to the merits of the proposal. Therefore, {the company} may be confused about the intent of the AMP and that it could be seen as a mechanism for deferral of the evaluation of various engineering and
mitigation measures until after an approval or that an AMP could be used to garner an approval through an engineered solution.”

3. No approvals are guaranteed under ARA or Planning Act – it needs to be recognized that an application is a ‘buyer beware’ situation where the proponent is speculating on an outcome. The proponent should understand the content and process requirements for successful application evaluation and review and the proponent should act in a manner consistent with earning a social license to operate.

4. Aggregate development applications trigger the ARA, but also involve the Planning Act and a range of other legislative and regulatory initiatives that need to consistently approach the evaluation, operation, rehabilitation and enforcement of the proposed development. Roles and oversight require clarification between MNR, MOE, other regulatory agencies, municipalities, and Conservation Authorities. There are a range of issues identified as part of the 5 year review of the PPS, in particular, that need to be addressed.

5. Significant clustering of key natural heritage and hydrological/source protection values, especially in the Greenbelt, where lake-based water system extensions are prohibited, speaks to the need to prioritize conflicting provincial priorities and establish a screening mechanism to screen out applications in conflict with same.

6. Technical studies should be based on the up to date land use and planning designations, feature assessments, and the most recent science. Complicated long term mitigation systems require fulsome consideration for assessment, approval, and monitoring.

7. There is an imbalance of power and resources between the proponent and municipalities and community groups that should be addressed so that appropriate scope, content and peer review of technical studies can occur. Communication and consultation improvements are needed.

The proponent triggered the 45 day consultation on its ARA application, and supporting technical studies, in early April 2009. A public open house was held where individuals and regulators were invited to attend, view display boards, and ask questions. The notification and objection process relies on outdated provisions for distance from the site and registered mail. The limited timeframe is difficult for municipalities and community groups to be able to make professional, substantive comments.
Unlike the proponent, who has technical experts on an ongoing retainer or major project basis, municipalities have a multitude of other work and applications before them to juggle with preparation of a staff report; timing may or may not coincide with peer reviewers’ availability, and with committee and council schedules for decision prior to the deadline. Community groups cannot afford to keep their experts on ongoing retainer; instead, they must hope that their experts will be able to squeeze the project work in amongst existing client load.

Nonetheless, staff and elected officials in Hamilton, Burlington, Milton and the Region of Halton, as well as their Medical Officers of Health, all objected to the proposed quarry as part of the ARA process during the spring of 2009. They not only objected, but many passed specific resolutions calling on the Province to deny the license or stop the quarry. Other public agencies and stakeholders such as Conservation Halton, the Niagara Escarpment Commission, the Hamilton Wentworth District School Board, individual public and private schools, the Halton Region Federation of Agriculture, the Hamilton-Wentworth Federation of Agriculture all objected. So did the MNR (with 7 full pages of objections) and the MOE. Along with these institutional stakeholders, more than 1200 area residents also formally objected to the proposal.

Less than seven months later, with no changes to the application, and no technical study updates, the proponent began the notification of the 20 day re-objection phase for residential and agency stakeholders. All the institutional objections were reconfirmed during winter 2010, along with more than 1000 area residents.

8. Consultation processes and procedures require updating and modernization.

9. The objection and re-objection phases need to be reviewed such that proponents demonstrate meaningful attempts to address objections before seeking to confirm re-objections. Trying to “shake off” objectors through process fatigue should not be implicitly possible.

NO was the decision from our Communities, our local and regional governments, the relevant regulatory agencies, and all other stakeholders.

In April 2010, the Provincial Government made a decision to use an existing tool under the Planning Act, a Ministerial Zoning Order or MZO, to freeze the current Agriculture and Conservation Management zoning on the property. This action appears to reflect the unanimous stakeholder positions which had developed.
The company then pursued its interests before the Ontario Municipal Board and sought a hearing to revoke or amend the MZO. Hamilton, Milton and Halton made decisions to participate along with the Provincial Government. These municipalities also requested that the Province declare a Provincial Interest or DPI in the proceedings based on the issues involved. The Province made a decision to declare a Provincial Interest to the Board in April 2011 as the preliminary hearing process was underway.

The proponent then chose to adjourn the OMB hearing and to escalate the situation to the courts by launching a Judicial Review to challenge the Province’s MZO and DPI decisions, claiming that the decisions were made inappropriately and for improper reasons. Allegations based on incorrect facts and information have been made against FORCE, some of its volunteers, and other stakeholders.

Our Communities disagree with the company’s interpretation of events and feel that to make an accusation that the reasons for the provincial decisions was for other than the fact and science based concerns related to the project is disrespectful to the private and public professionals who have evaluated the project and recommended that it should not proceed. We also feel that the proponent has not exhausted its remedies before the OMB.

The company, under another corporate entity, SMC VCNA LLC, then filed a NAFTA application for arbitration under Chapter 11. The Federal Government communicated in March 2012 to SMC and to the US State Department that there were issues regarding the investor’s status given its limited business activities in Canada and that it is wholly owned by a Brazilian conglomerate, Brazil not being a signatory to NAFTA. The proponent has since filed a Judicial Review to the Federal Court and we are told has filed a second NAFTA claim.

When you add in an appeal of the Ministry of Environment’s decision to deny a Permit to Take Water (PTTW) to the Environmental Review Tribunal, and the subsequent judicial review application of the ERT’s decision to uphold the MOE’s position, there are 6 legal and quasi-judicial actions underway.

These legal and quasi-judicial actions detract from examination of the merits of the application itself and place a chill on municipal and public participation.

10. The evaluation and review process for aggregate development applications needs to be able to reach a NO outcome, where warranted to ensure the legitimacy of the process.
11. Municipalities, community groups, and other stakeholders need efficiency, transparency and certainty too. This is a position that industry proponents often advocate.

12. Legislation is needed to protect public participation from Strategic Lawsuits Against Public Participation (SLAPP).

Analyzing the proponent’s application has involved countless community volunteer hours, hundreds of thousands of dollars in legal and technical expert fees, and analysis of other organizations’ studies and review of pertinent OMB decisions. We have attempted to list key sources as an Appendix at the end of this paper. The following recommendations, albeit not exhaustive given the tight Committee timeframe, reflect the lessons we have learned from our case and others.

FORCE RECOMMENDATIONS

1. Recognize the need for a robust regulatory framework for aggregate development given its intrusiveness, while understanding the necessity of aggregates for infrastructure and other societal uses

2. Address “presumptive development” and “approval entitlement” directly
   a. Change the purpose statement in the ARA. It currently reads as if all aggregate developments are to proceed and implies impacts are to be minimized. It needs to be understood that a NO outcome is possible. Where an approval is to be granted, appropriate environmental, social, and economic mitigation is requisite.
   b. Make aggregate instruments subject to the MNR’s Statement of Environmental Values
   c. Consider MNR roles and other oversight matters, along with the appropriate role for MOE, municipalities, agencies like the Niagara Escarpment Commission, and Conservation Authorities

3. Ensure consistency between the related and interconnected policy/legal frameworks
   a. Update the Provincial Policy Statement as per the recent 5 year review consultations to address such key issues as demonstration of need, close to market, interim land use, and reconcile the conflicting priorities between aggregates and key natural heritage features and source protection values
b. Add a screening mechanism in the ARA and Planning Act to screen out applications which significantly conflict with key natural heritage features and key hydrological/source protection values.

c. Amend the Greenbelt Plan to give its Natural Heritage System the same status and protections from aggregate developments as the Natural Core Areas in the Oak Ridges Moraine Plan and the Escarpment Natural Area and Escarpment Protection Area land designations in the Niagara Escarpment Plan.

d. Ensure that Assessment Report and Source Protection Plans, and/or their amendments, under the Clean Water Act, fully address man-made transportation corridors, including aggregate developments in vulnerable areas defined by the Act and adopt appropriate policies consistent with the prescription of ARA instruments under the companion CWA regulation.

e. Consider the advantages and disadvantages of using an Environmental Assessment approach to large aggregate development (i.e., Melancthon proposal) in lieu of and/or in conjunction with the ARA. What might be the threshold sizes? How might this be consistent with the approach to large landfill sites?

f. Protect community stakeholders by supporting SLAPP (Strategic Lawsuits Against Public Participation) legislation, particularly as it pertains to aggregate and other development proposals.

4. Develop/amend policy directions reflected in ARA and related/interconnected policy legal frameworks to ensure key protection of natural heritage, water, and agricultural resources

   a. Develop a clear policy on maximum disturbed area. This has been contemplated by MNR in provisions in the Greenbelt Plan but needs to be fully developed as a policy direction to protect resources, maintain corridors, and ensure that progressive rehabilitation keeps pace with extraction.

   b. Protect agricultural lands – in particular, Classes 1 – 3, and specialty crop areas. Ensure consistency with policies, such as renewable energy projects, where for example, there are restrictions on ground mounted PV solar panels on Class 1 – 3 lands.

   c. Consider the industry trend to overly complicated, long term mitigation systems. End the practice of perpetual pumping systems. End the trend of Adaptive Management Programs (AMPs) which act as ‘get out of jail free cards’ – ensure that mitigation systems are proven and that AMPs are designed to address management of defined risks for adverse potential impacts.
d. Ensure that the Provincial Standards require the most up to date land use
designations, feature assessments, and science

e. Evaluate the industry shift towards “net gain”. “No negative impact” should be the goal, without consideration of mitigation. “Net gain”, accounting for mitigation, needs to be scientifically based and within the same eco-region. Minimum 3:1 replacement value ratios, as espoused by organizations like the Nature Conservancy of Canada for extractive industries, should be reflected in the Standards and Policy and Procedures Manual.

5. Examine publicly available documentation from voluntary certification approaches to identify the gaps between the existing regulatory framework and where progressive companies are prepared to go
   a. Identify gaps as pertains to the ARA, Provincial Standards, and the Policy and Procedures Manual and other related/interconnected policy/legal frameworks
   b. Consider amendments to each of the laws and prescribed instruments to narrow the gaps
   c. Recognize the synergistic relationship between voluntary certification approaches and the ARA. Establish a cyclical review period for identification and narrowing of gaps, i.e. every 5 years (and sooner for more urgent issues). A 5 year cycle is reasonable given that few, if any, legislative changes would likely be contemplated, but changes to the Standards and Manual would be likely.

6. Modernize the licensing process to meet changing societal expectations
   a. Change the process to an evaluation and review process versus an approvals process as noted in the “presumptive development section”
   b. Change the Provincial Standards so that the ARA s. 11 completion check is not simply a checklist approach to required content but a quantitative/qualitative assessment of whether the application and companion technical studies are “complete” and ready for evaluation/review. One suggestion is to have all materials reviewed by Joint Agency Review Teams – comprised of the involved municipalities, MNR, MOE, NEC as applicable - for “completion”. It should be noted that “completion” does not equate to “approval”.
   c. Level the playing field for other stakeholders, specifically municipalities and community groups/residents
      i. Provide early and equal access to all proponent application submissions and technical reports
ii. Ensure application submissions and reports are shared in draft form so that feedback can be heard and reflected

iii. Ensure application submissions and reports are available electronically and are posted on-line

iv. Require proponents to provide peer review funding to municipalities to facilitate their independent review and evaluation of applications – this is a recognition of the varying capacities of different sized municipalities, the impacts of transfer payment reductions, and that not all municipal Official Plans require this

v. Require proponents to provide resources to the community for their participation and review/analysis of proponent documents

d. Update the minimum consultation requirements

i. Change the 45 day objection response deadline to allow for a much longer response time

ii. Extend the minimum notice requirements to better reflect that people’s schedules are booked months in advance not two weeks to one month

iii. Allow exchange of communication by e-mail and standard mail rather than registered mail. Determine appropriate confirmation of receipt approaches

iv. Change the consultation mode requirements. Open houses are not conducive to learning about a proposal and asking questions. Consider a requirement for presentations and Q&A sessions; people learn more and are able to build supplementary lines of inquiry when they hear a question and its response...Guard against the establishment of Community Liaison Committees only which may not permit disagreement with proponent proposals, may restrict information circulation and resources to them

v. Consider a series of consultation approaches including discussion meetings by topic, i.e. haul routes, natural environment, water impacts, etc.

vi. Require the proponent to have incorporated changes to the application, and/or materially updated technical studies, and/or...before triggering the re-objection notification and deadline

vii. Open up consultation on site plan amendments so that municipalities and community stakeholders are fully involved

viii. Require municipal and conservation authority approval for a change from an above to a below the water table operation based on peer reviewed hydro-geological assessments
7. Address outdated industry practices perpetuated by the ARA and its Standards, Policies and Procedures
   a. Update minimum distance requirements for impact assessments, consultation notification requirements, and setbacks. They may be different for each purpose. Look at the inconsistency between minimum distance for these items with landfills and renewable energy projects
   b. Place sunset clauses on current and future licenses/permits
   c. End the practice of perpetual licenses
   d. Consider extensions to sunset dates only where there is a documented/justified rationale and where there is agreement by the host municipality and community to the revised sunset date
   e. Place tonnage limits on current and future licenses/permits
   f. End the practice of allowing licenses granted decades earlier to be made operational. With the passage of time, and changed land use patterns, data, etc. a new application should be required
   g. Require a minimum time before an application denied (whether by Minister, OMB or Consolidated Hearings Board) can be re-initiated by the same or a different proponent on the site

8. Consider MNR Role and Address Oversight Capacity, including with other actors
   a. Consider MNR’s capacity and roles. Is it not a conflict for MNR to try to protect key natural heritage and hydrological features and approve/regulate aggregates? Do the ministry’s functions need to be split? Or do approvals need to be dealt with through Environmental Assessment (as per question above) or through a hearings board? Should aggregate developments all be subjected to Consolidated Hearings Board, not just OMB, since they involve planning and environmental issues?
   b. Increase the tonnage levies, including an annual review to account for inflation and for technological advancements, and provide dedicated funding to the aggregate program
   c. Increase the municipal portion of the tonnage levy and discuss means to share beyond the immediate host community where there are adjacent communities that are impacted by haul routes, etc.
   d. Ensure independent capacity for data collection and policy development regarding the resource, reserves, demand forecasts, etc.
   e. Address capacity deficits especially in compliance/enforcement (see separate section), evaluation/review of applications – ensure sufficient internal hydrogeology and natural heritage feature/biodiversity capacity – and mitigation system monitoring
9. Modernize and Improve the Effectiveness of Compliance and Enforcement
   a. Prioritize inspections based on risk and impact
   b. Include both scheduled and random inspections
   c. Utilize GPS, satellite and real-time technology approaches for monitoring pit and quarry operations and for monitoring/tracking haulers. This approach has already been used by other regulated sectors such as the waste management sector
   d. Post inspection and other reporting documentation on-line in a timely fashion
   e. Utilize a National Pollutant Release Inventory approach to provide publicly available on-line annual assessments

10. Develop province wide strategy for conservation, reuse and recycling
    a. Ensure the Provincial Government and municipalities collect data including the amount of aggregate used, type of aggregate used, its purpose (road, regional highway, provincial highway, 400 series, sidewalks, bridges, sewers, building construction, etc.), its sourcing (specific pit/quarry), % virgin aggregate, % recycled aggregate, etc.
    b. Ensure the Provincial Government and municipalities forecast projections for future demand based on long range infrastructure and capital plans
    c. Set quantifiable goals with timeframes based on data
    d. Develop template RFP provisions for recycled content provisions for key aggregate use purposes
    e. Investigate and report on 3Rs practices in other jurisdictions that can be adopted/modified for adoption
    f. Measure and report on progress
    g. Develop inter-ministerial strategies to address identified hurdles including establishment of recycling facilities (including on-site at aggregate operations during licensed time period), Building Code limitations, and highway specifications
    h. Address restrictions that prevent recycling activities on-site at aggregate operations
    i. Ensure suitable controls such that with mandatory recycled content or mandated recycling, extraction land uses do not turn into long term industrial plants (i.e. tie recycling processing to license timeframe), consider maximum ratio of imported to virgin materials, screening of imported materials for environmental concerns, and storage protocols (i.e. concrete lined storage areas)
11. Make rehabilitation a priority
   a. Address maximum disturbed area policy as noted above such that progressive rehabilitation keeps pace with extraction
   b. Establish quantifiable goals and timetables for current and future licenses/permits
   c. Measure and report on progress
   d. Review the purpose and success of TOARC. Determine the most appropriate means to address abandoned and outstanding rehabilitation requirements
   e. Consider the re-introduction of security deposits

CONCLUSION

Thank you again for the opportunity to input to the Committee’s considerations of aggregate development and regulation.

Review of the ARA is about updating and strengthening the regulatory framework to reflect current standards and expectations. All of the affected communities across the province hope that the Committee will ensure that evaluation of proposed aggregated developments is comprehensive, accountable, and inclusive and, that where aggregate extraction is licensed, that it is operated responsibly, transparently, and remains accountable to the communities that host it.

As the Environment Commissioner of Ontario pointed out in a 2005 Toronto Star article, there is no shortage of rock in this province. The question is where and how we should extract and recycle it and what kind of legacy we want to leave to our children and grandchildren. This Committee’s recommendations regarding the ARA, the Provincial Standards, the MNR Aggregates Policy and Procedures Manual, and related policy and legal frameworks, will help to shape that legacy.

Our Communities wish the Committee well in its deliberations.
SOURCES


Environment Commissioner of Ontario, Thinking Beyond the Near and Now, ECO Annual Report 2002-3 (Toronto, ECO, 2003)


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