

Gravel WATCH

O N T A R I O



October 30th, 2019

Ministry of Natural Resources and Forestry
Natural Resources Conservation Policy Branch
300 Water Street
Peterborough, ON
K9J 3C7

Via email:
Aggregates@Ontario.ca

Re: Submission from Gravel Watch Ontario to
ERO proposal 019-0556 Proposed Amendments to the Aggregate Resources Act

Gravel Watch Ontario is a province-wide coalition of citizen groups and individuals engaged in matters that relate to aggregate resources. Formed in 2003 we have over 15 years of experience in advising and informing both communities and government agencies in aggregate matters. Gravel Watch Ontario is pleased to provide our submission on the proposal to amend the Aggregate Resources Act. We remain committed to working with all stakeholders, industry and non-industry alike, to ensure that aggregate legislation, policy and the associated regulatory framework provides for the supply of aggregates Ontario needs while at the same time respecting the natural environment as well as the communities where these industrial activities occur.

Sincerely,
Graham Flint, B.A.Sc, P. Eng

A handwritten signature in black ink that reads "G. Flint". The signature is written in a cursive style and is underlined with a single horizontal stroke.

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Gravel Watch Ontario
Submission to
ERO: 019-0556

Proposed amendments to the Aggregate Resources Act

Thank you for the opportunity to comment on the proposed changes to the Aggregate Resources Act (ARA).

Gravel Watch Ontario is a province-wide coalition of citizen groups and individuals that 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. Formed in 2003 we have over 15 years of experience in advising both communities and government agencies in aggregate matters.

Background

Gravel Watch Ontario continues to raise concerns about the legitimacy of the engagement the government is making with stakeholders outside of the aggregate industry on this file.

The environmental registry posting speaks to an Aggregate Summit held in March 2019. Attendance at this summit was focused on the industry and with the exception of a small number of “non-producing industry partner” organizations, all non-industry voices were excluded from the event. Even top aggregate producing municipalities who wanted to attend were excluded.

The posting refers to an online survey. That survey was not balanced in its approach. It did not provide an opportunity to express a viewpoint different from the government’s assertions. The questions were leading and framed with the government intentions rather than asking for stakeholder perspectives.

Gravel Watch Ontario which has worked diligently over many years to be a constructive voice in aggregate matters, has been unable to engage in any meaningful way with this current government. Our telephone calls, emails and

written letters have been ignored. When we were finally able to arrange a meeting with staff from the Minister's office, and despite confirming the meeting the day before, when we arrived the key policy advisor was unavailable to meet with us and there has been no further communication.

The introductory language in the posting creates the impression of a thorough consultative process having been completed. Non-industry stakeholders would express the exact opposite. We have been shut-out and ignored.

Context

Gravel Watch Ontario does not believe that there is a problem that needs to be addressed when it comes to the supply of aggregates in Ontario.

A review of documentation as far back as the 1970s shows that a consistent theme from the industry is that we are facing a crisis of aggregate supply in Ontario. Yet over the decades there is little to no evidence of any major project being delayed or deferred because of a lack of aggregate supply.

Furthermore, the price of aggregates when adjusted for constant dollar value, has not appreciably increased. If aggregates were supply constrained, price escalation would be expected. Industry participants themselves speak to a highly competitive industry where the difference between securing a contract or not is measured in fractions of pennies.

And finally, there are recent examples such as the Acton Quarry expansion which was advocated for based in part on need and a supply crisis, that has recently been made dormant because of a lack of demand. All these factors would indicate that the industry is not supply constrained.

Gravel Watch Ontario Submission

Gravel Watch Ontario finds a disturbing lack of specifics in the proposal. It is difficult to provide feedback on the topics presented because the description of the government's intentions is so vague. Even proposals that Gravel Watch

Ontario would be likely to support are presented in such a vague manner that it is difficult to provide that support because it is impossible to comprehend what exactly is intended given that so few details have been provided.

10/30/2019 Update: On Monday Oct 28th, the first day that the legislature is back in session after a five-month break, Bill 132 was introduced. The Bill makes amendments to a number of pieces of existing legislation including the Aggregate Resources Act. Having introduced this Bill prior to the closing of the consultation period for the original proposal makes a mockery of the process. It is in contraction to any expectations of good government.

Notwithstanding this affront to good governance, Gravel Watch Ontario will be submitting our input so that it will be on the record. We have made edits to sections of our original submission, flagged as “10/30/2019 Update”, to reflect our initial comments from the Bill 132.

We will also be commenting on changes to the ARA contained within Bill 132 which deal with matters not reflected in the original environmental registry proposal.

Proposed Amendments to the Aggregate Resources Act

- strengthen protection of water resources by creating a more robust application process for existing operators that want to expand to extract aggregate within the water table, allowing for increased public engagement on applications that may impact water resources. This would allow municipalities and others to officially object to an application and provide the opportunity to have their concerns heard by the Local Planning Appeal Tribunal.

While this proposal would seem to support a thorough analysis and participation by stakeholders in decisions regarding extraction below the groundwater table, without the detail of the “more robust application process” no conclusions can be drawn as to the adequacy of what is being proposed. Further the proposal forces concerned stakeholders such as municipalities to act as appellants rather than decision makers. Prior recommendations to treat the change from above to below

groundwater extraction as requiring a new aggregate licence application would still be the preferred approach.

- clarify that depth of extraction of pits and quarries is managed under the Aggregate Resources Act and that duplicative municipal zoning by-laws relating to the depth of aggregate extraction would not apply

One of the cornerstones of aggregate policy in Ontario has been the interlock between zoning control by the municipality and the aggregate licence managed by the Province. Land use planning is a key responsibility of Ontario municipalities. Municipalities are also responsible for ensuring clean drinking water for their residents. To take away the ability of municipalities to manage where and how aggregate extraction occurs within the groundwater table would impede their ability to manage and protect groundwater supplies. Municipalities need the ability to determine whether extraction occurs above or below the groundwater table and their tool for doing so is zoning.

- clarify the application of municipal zoning on Crown land does not apply to aggregate extraction

Gravel Watch Ontario offers no comment on this proposal

- clarify how haul routes are considered under the Aggregate Resources Act so that the Local Planning Appeal Tribunal and the Minister, when making a decision about issuing or refusing a licence, cannot impose conditions requiring agreements between municipalities and aggregate producers regarding aggregate haulage. This change is proposed to apply to all applications in progress where a decision by the Local Planning Appeal Tribunal or the Minister has not yet been made. Municipalities and aggregate producers may continue to enter into agreements on a voluntary basis.

This proposal seeks to prohibit the Minister or the Local Planning Appeal Tribunal (LPAT) from forcing an agreement between aggregate producers and municipalities. Gravel Watch Ontario has no concern over that prohibition as long as it does not in any way prohibit or limit the Minister or LPAT from considering the spectrum of transportation issues related to proposed aggregate extraction.

The limitation should only impact the ability to force an agreement between the applicant and the municipality.

10/30/2019 Update: Language in Bill 132 does not seem to address this issue as presented in the original proposal. Language in Bill 132 states “the Minister or Local Planning Appeal Tribunal cannot have regard to road degradation that may result from proposed truck traffic to and from the site.” This is very different from the proposal and can not be supported.

- improve access to aggregates in adjacent municipal road allowances through a simpler application process (i.e. amendment vs a new application) for an existing license holder, if supported by the municipality

Once again there are no details provided of the “simpler process” as described in this proposal. There is no indication of what stakeholders will be involved. Lacking any specifics makes it difficult to comment on the proposal’s merit.

Gravel Watch Ontario would offer that such a proposal to expedite expanding extraction activities into adjacent municipal road allowances should only be considered for road allowances that are bordered by existing aggregate extraction on both sides.

Allowing the removal of road allowances for sites where the opposite side of the allowance may have a land use other than extraction (such as a natural feature protection, agricultural use, or residential use, etc.) could impact the original evaluation of the extraction site’s viability for aggregate extraction. The road allowance could very well have been considered a necessary buffer or setback. If an expansion into a one-sided road allowance were to be requested, then a full new licence application process should be followed as the existing processes would require.

- provide more flexibility for regulations to permit self-filing of routine site plan amendments, as long as regulatory conditions are met.

This is yet another example where the lack of specifics makes it impossible to comment. One observation we would offer is that if this kind of provision is implemented, then the requirement to keep site plans up to date needs to be

strictly enforced. We would recommend that tools such as Pits and Quarries Online be used as the depository for site plans so that a single authoritative source for site plan information could be made available to all stakeholders.

10/30/2019 Update: While not reflected in the environmental registry proposal, Bill 132 appears to bring into force amendments to the ARA made previously under the Aggregate Resources and Mining Modernization Act, 2017 but not previously proclaimed into effect. Many of these seem to deal with Ministerial discretion to waive or change aspects of the current aggregate regulatory environment. When the 2017 legislation was introduced the decision not to proclaim those sections was justified by the fact that regulatory detail was required in order to scope the use of this new Ministerial discretion. Gravel Watch Ontario is extremely concerned that proclaiming these discretionary powers without the intended regulatory limitations creates uncertainty and the potential for misapplication. The provisions originally left un-proclaimed should remain that way until the intended regulations are consulted upon and created.

Proposed Regulatory Changes

The proposal includes a section that is introduced as “we are also considering some regulatory changes”. Like the proposed changes to the ARA, details about these changes under consideration are vague and lack the specifics which would allow Gravel Watch Ontario to provide detailed feedback. The following are our preliminary comments.

- enhanced reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken.

Taken at face value this proposed change to enhance reporting on rehabilitation would seem appropriate as the information currently being collected has been inadequate to truly understand the state of rehabilitation activities across Ontario.

- allowing operators to self-file changes to existing site plans for some routine activities, subject to conditions set out in regulation. For example, re-location of some structures or fencing, as long as setbacks are respected

As before the key to this proposal is what activities would be considered “routine” and therefore candidates for this approach. The challenge to defining such a set of activities is that aggregate operations are very site specific. What may be routine for one or even many sites across the province, may not be considered routine at another site by some stakeholders. Gravel Watch Ontario’s recommendation for this type of situation is to move forward with an expedited process, but to also provide an ability for stakeholders to raise concerns over the proposed changes. Once those concerns have been raised the proposed changes would then need to be considered under a more thorough process which would attempt to resolve the concerns being raised.

- allowing some low-risk activities to occur without a licence if conditions specified in regulation are followed. For example, extraction of small amounts of aggregate if material is for personal use and does not leave the property

Without a clarification on what type of activities would be considered “low-risk” it is difficult to comment on this proposed change. The specific example given would seem to be appropriate. However, given the extreme relief that this proposal offers from existing requirements, the scenarios where it could be applied would need to be extremely limited.

- clarifying requirements for site plan amendment applications

Gravel Watch Ontario fully supports this proposal provided the intent of this proposal is to clarify and not simply reduce the documentation required. Application requirements and evaluation processes should ensure only appropriate and well reviewed aggregate extraction activities take place.

- streamlining compliance reporting requirements, while maintaining the annual requirement

Gravel Watch Ontario has been on the record of supporting an annual compliance reporting requirement. Annual Compliance Reports are another example of information that should be added to Pits and Quarries Online. We would support a modernization of the existing reporting requirements to ensure they are meeting the current needs of the various stakeholders. We are however

concerned if the focus of this “streamlining” initiative is to somehow reduce the original intended purpose of the compliance reporting requirements. Without more information it is impossible to tell what is contemplated.

- reviewing application requirements for new sites, including notification and consultation requirements

Significant multi-stakeholder work was done previously in this area. Recommendations were made in the Blueprint for Change document which would represent an appropriate starting point for any proposed changes. The existing requirements have fallen out of step with current societal expectations and fail to acknowledge the new technological tools that are now readily available.

The Ministry also indicated a desire to hear input regarding aggregate fees.

In addition to supporting municipalities and the abandoned site program, Gravel Watch Ontario believes that there are two other areas that aggregate fees need to more thoroughly support.

First the fee structure should provide an incentive to encourage operators to manage their licences in accordance with the general characterization that aggregate extraction is an interim land use. There are many examples of sites going “dormant” because of an operator choice in response to perceived market conditions. The fee structure used by the province should provide incentive for operators to continue extraction and move forward with progressive and final rehabilitation. Dormant pits and quarries should carry an additional cost.

(It should be noted that it is Gravel Watch Ontario’s observation that aggregate extraction should not in the general case be considered an interim land use given the numerous extraction sites across the province that have been in operation for many decades.)

Secondly the fee structure should support a robust aggregate program within MNRF. For example, the current role played by the Ontario Ministry of Natural Resources and Forestry during the siting process is deficient when put in the context of their overall mandate in managing aggregates. While MNRF aggregate staff oversee the applicant’s execution of a “proponent driven process” for a

licence application, they do not weigh in on the content of those application documents.

An application for a proposed aggregate operation includes many technical studies. Assessing the validity, accuracy and completeness of those studies is effectively outsourced to the municipalities and other participants during the administrative review of those applications in LPAT hearings. MNRF, as the lead government ministry for the management of aggregates in Ontario, should have the expertise to evaluate applications and enforce consistent best practices across the province. The fee structure should support the implementation of such a program.

Conclusion

Gravel Watch Ontario and its members appreciate the opportunity to add our perspective to the discussions of proposed changes to the Aggregate Resources Act and related regulations.

We have attached our submission from March 2019 prepared and submitted as a response to being excluded from the Aggregate Summit as well as the Ministry's refusal to engage with Gravel Watch Ontario. In that submission we present Gravel Watch Ontario's overarching recommendations for the aggregate file.

We are also attaching our submission to the recent proposal to make changes to the Provincial Policy Statement (PPS) aggregate policies (ERO 019-0279) as they deal with some of the same matters discussed here.

10/30/2019 Update: Despite the disappointing introduction of Bill 132 on October 28th with changes to the Aggregate Resources Act before the comment period for this solicitation of stakeholder input has even closed on November 4th, we remain committed to providing that input in any case. We are however concerned that this government is not committed to considering a broad range of perspectives and therefore not acting in a way which is in the best interest of all Ontarians.

Should you have any questions or would like to discuss our comments in more detail, please feel free to contact us.