

November 4, 2019

Sent by email to: aggregates@ontario.ca

Andrew MacDonald
Natural Resources Conservation Policy Branch
300 Water Street
Peterborough, ON
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Canada

Dear Mr. MacDonald:

RE: Proposed Amendments to the Aggregate Resources Act – Environmental Registry Notice #019-0556

The City of Guelph has a keen interest in the efforts of the Province of Ontario and the Ontario Ministry of Natural Resources and Forestry (MNRF) to amend the Aggregate Resources Act (ARA). We are in receipt of the Environmental Registry of Ontario Notice 019-0556 – Proposed amendments to the Aggregate Resources Act. The City notes that the Notice, while posted on September 20, 2019, was only recently updated with the proposed changes to the ARA on October 28, 2019. With the closing of the consultation on November 4, there is insufficient time to thoroughly review and consult internal City staff to provide fulsome comments on the proposed amendments. The comments provided below should be considered preliminary and are not the full extent of comments the City would provide if the Province had provided sufficient time for a thorough review. To that end, the City will provide more detailed comments on specific aspects of the proposed amendments, once the Province provides the specific details related to the regulatory proposals.

The City's interests are primarily with respect to protection of the environment and, in particular strengthening protection of water resources and preventing impacts to the City's water supply and Natural Heritage Systems (i.e., rivers, streams and wetlands) associated with aggregate operations.

Herein, the City of Guelph provides its comments on the following aspects of the Notice:

September 20, 2019 ERO Notice #019-0556 - Standards for Aggregate Extraction:

The following are the relevant details of the ERO Notice of concern to the City of Guelph with respect to Standards for Aggregate Extraction:

- 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.

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Mr. Andrew MacDonald

November 4, 2019

RE: **Proposed Amendments to the Aggregate Resources Act – Environmental Registry Notice #019-0556**

Page 2 of 11

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

September 20, 2019 ERO Notice #019-0556 - Regulatory Changes:

The following are the relevant details of the ERO Notice of concern to the City of Guelph with respect to Regulatory Changes for aggregate operations:

- Enhanced reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken.
- Clarifying requirements for site plan amendment applications
- Reviewing application requirements for new sites, including notification and consultation requirements

Background

While the City currently has no active extraction operation within its boundaries, substantial aggregate reserves are located in adjacent municipalities surrounding Guelph and a number of existing licensed aggregate facilities currently operate on lands near to the City boundaries. No doubt, lands in the vicinity of Guelph will be the subject of future license applications. Like all urban areas, the City relies upon aggregate resources for road building and construction projects. On the other hand, aggregate operations in close proximity to City residents can pose potentially significant impacts. For example, periodically, the City receives complaints from local residents with respect to concerns about blasting and noise impacts from a nearby quarry operation.

Protecting Our Drinking Water Supply: Guelph's Dolime Experience

One particular element of the proposed amendment (i.e., strengthening protection of water resources...) that is of crucial importance to the City is its capacity to ensure that existing and future aggregate extraction operations do not pose unacceptable risk to the City's municipal drinking water aquifer. Guelph residents are reliant upon this aquifer as their sole source of safe drinking water. Residents in the adjacent Townships, also rely on the bedrock aquifer for their water supply.

Mr. Andrew MacDonald

November 4, 2019

RE: Proposed Amendments to the Aggregate Resources Act – Environmental Registry Notice #019-0556

Page 3 of 11

The City has been involved in a longstanding dispute with an aggregate operator located in an adjacent township and the provincial Ministries of the Environment, Conservation and Parks (MECP) and Natural Resources and Forestry (MNRF) regarding the operation of a bedrock quarry (Dolime Quarry) and the protection of the City municipal water supply. The quarry sits adjacent to one of the City's significant municipal well fields and quarry dewatering has already interfered with the water supply capacity of the City's wells. The ARA license for the quarry allows excavation of an aquitard confining layer that protects the City's water supply aquifer from surface contaminants. The City is concerned that this excavation will threaten the City's water supply when the quarry shuts down, the quarry floods and surface water flows into the City's water supply aquifer thereby impacting the water quality of our existing drinking water sources.

The Dolime Quarry is a below-water table quarry operation and requires on-going water taking which is discharged to the nearby Speed River. The quarry is the largest private water-taker in the vicinity of the City of Guelph and dewateres 11,000,000 Liters of water each day as part of its dewatering operations. For comparison, the City's average water taking is approximately 47,000,000 L/day. Eight municipal supply wells are located within two kilometers of the quarry property. The water taking from the quarry is derived from the same bedrock aquifer that the City uses for its municipal water supply. Quarry water taking therefore is in competition with the City's drinking water supply wells for limited groundwater resources. The water taking of the quarry reduces the water quantity that is available for the municipal water supply.

The City has been engaged in this dispute since 2007. The City has appealed the MECP Permit to Take Water for the quarry and has been in mediation on the appeal since 2014. Recently the quarry owner and the City have reached a tentative proposal to address the City's water quality and water quantity concerns. The proposal would close the quarry, bring the quarry into the City and allow the City to take control of the quarry's water supply. This innovative and unique approach is a reflection of the difficulties associated with addressing impacts of the quarry to water resources.

Protecting Our Drinking Water Supply: Guelph's Threats to Water Quantity

Under the Province's Clean Water Act (CWA), the City of Guelph has completed a Tier 3 Water Budget and Local Area Risk Assessment. The study has found that Guelph's water supply is at significant risk of not being able to meet the needs of its future population as dictated by the Province's Places to Grow policies. The Province has defined a Wellhead Protection Area for water quantity (WHPA-Q) wherein water quantity is to be protected under the CWA. The greatest non-municipal threat to the City's water quantity in the WHPA-Q, as defined by the City's Tier 3 Water Budget project, is the quarry dewatering noted above. Risk management measures to eliminate the dewatering of the quarry, if implemented, were shown to restore the water quantity to the municipal supply and reduce the significant water quantity risk. However, the ARA license and particularly the rehabilitation plan for the quarry are difficult to change.

Mr. Andrew MacDonald

November 4, 2019

RE: Proposed Amendments to the Aggregate Resources Act – Environmental Registry Notice #019-0556

Page 4 of 11

Protecting Our Drinking Water Supply: New Proposed Quarry Operations

Recently (June 25, 2019), there was an ERO Notice 019-0240 for another quarry operation in proximity to the City of Guelph. The Notice was for a Permit to Take Water for an existing ARA license. The ARA site license was issued in 1993 and allows excavation of the same bedrock formations as for the Dolime Quarry. The City's concerns mirror concerns presented for the Dolime Quarry. Dewatering operations are proposed to be significant (up to 21,500,000 Liters per day). The depth of excavation allowed in the site license will penetrate the aquitard and dewatering for the excavation will draw water from the same aquifers as used by two of the City's water supply wells located approximately 1.8 km to the north and to the east, respectively. The City is concerned that the existing ARA site license will result in excavation into the aquitard, resulting in risks to the City's water supply and the ARA, as it is current enacted, does not provide an amenable process to change the site license to reflect the potential environmental impacts and protection requirements for the City's water supply.

The City's Interest in Positive Changes for the ARA

The following comments and recommendations on the proposed amendment to the ARA draw on the experience and expertise of City staff, and the City's historical experience dealing with issues arising from aggregate operations.

Given the potential for existing and future aggregate operations to impact the security of its drinking water supply and to affect City residents through other potential impacts, the comments below are provided to resolve current gaps and deficiencies in the current regulatory framework to ensure a robust and balanced framework of laws, regulations and policies for environmentally sound management of the Province's aggregate resources.

It is on this basis that the City of Guelph provides the following comments as they relate to the Standards for Aggregate Extraction and the Regulatory Changes identified above and listed in ERO Notice # 019-0556:

- **Regulatory Changes – Review application requirements:** The City has found that the Aggregate Resources Act (ARA) does not allow for an aggregate license to be reviewed following its initial issuance even when new information is revealed that changes the basic understanding of the potential impacts of the quarry. The Province should consider establishing an expiry/renewal process whereby the license expires after a set number of years (i.e. 5 to 10 years) and is reviewed and assessed upon expiry to determine whether conditions of operation or rehabilitation need to be revised prior to the license being renewed. A renewal process would strengthen protections of water resources and create a more robust application process. The City believes the license renewal process would provide an opportunity to reconsider Section 12(1) (Matters to be considered by the Minister) of the Act to determine if the license needs to be modified. Recently amendments to the ARA Section 12(1) which now require the Minister to have regard to “any possible

Mr. Andrew MacDonald

November 4, 2019

**RE: Proposed Amendments to the Aggregate Resources Act – Environmental
Registry Notice #019-0556**

Page 5 of 11

effects on ground and surface water resources including on drinking water sources” which may not have been considered when the license was first issued.

- Standards for Aggregate Extraction – Strengthen protection of water resources: The City has found that there are difficulties in changing the operating conditions of the issued licenses except for when the licensee voluntarily requests or offers to change the license. This includes situations where evidence of potential conflicts with the purpose of the ARA is brought forward (i.e. to minimize adverse impacts on the environment in respect of aggregate operations) or when presented with significant stakeholders concerns on matters to be considered by the Minister in issuing the license. To protect water resources, the Minister has the ability to use the ARA to order studies and reports as necessary to investigate existing and potential environmental impacts as per Sections 62.3 and 62.4. However, it is our understanding that the supporting regulations are not yet in place to allow the Minister to do so. The development of regulations in support of these sections should be completed without delay.
- Standards for Aggregate Extraction – Allowing for increased public engagement on applications: The City is also supportive of enhanced consultation with the licensee and the MNRF prior to and during the license application process. For applications in the area of the City (i.e., within the City’s WHPA-Q), the City has considerable relevant information that can be used in the development and review of license applications, either amendments to existing licenses or applications for new licenses. The City should be pre-consulted during the application process and allowed to review and comment on the application and supporting documents. In this manner, the MNRF could ensure that relevant information on the geological and hydrogeological settings are considered in the application and that potential environmental impacts are adequately identified and addressed. A major deliverable from the Tier 3 study included a state-of-the-art numerical groundwater flow model, which can be used to evaluate potential environmental impacts of existing and new aggregate site licenses. We are prepared to work with MECP, MNRF and proponents to assess the potential for impacts for proposed developments within the WHPA-Q. The City also has groundwater/surface water modelling tools and monitoring data that could be made available to inform the evaluation of potential environmental impacts associated with aggregate operations. Enhanced consultation during the application process would help to mitigate time and effort that may be required in objections to an application and appeals to the Local Planning Appeal Tribunal.
- Regulatory Changes – Clarifying requirements for site plan amendment applications: When considering existing or new aggregate licenses, the Province should consider the Discussion Summary: Water Technical Group produced in 2014 by the MNRF under the ARA Review. The Water Technical Group, comprised of surface and groundwater technical experts from provincial ministries, conservation authorities and municipalities, had a mandate to review the ARA site license process with respect to water resources and to provide advice on potential changes needed to the hydrogeological assessment of ARA applications and on the assessment of cumulative impacts on water resources. The Group explored opportunities to

Mr. Andrew MacDonald

November 4, 2019

RE: **Proposed Amendments to the Aggregate Resources Act – Environmental Registry Notice #019-0556**

Page 6 of 11

align the ARA application process with other technical requirements such as the MECP Permit to Take Water process and provided advice on the need for changes to the existing ARA framework to ensure adequate protection of our water resources, including municipal drinking water sources. The Province should consider implementing the recommendations of the Water Technical Group.

- Standards for Aggregate Extraction – Strengthen protection of water resources: The MNRF must rely on the MECP on environmental matters where responsibilities have been delegated under the Environmental Protection Act (EPA) and the Ontario Water Resources Act (OWRA) such as Permits to Take Water, Certificates of Approval and environmental impact assessments. Particularly where there are allegations of adverse impact with respect to the operations under the license, we have found that the two ministries do not work independently of each other with the MECP taking direction on the scope of its assessment from the MNRF. We believe the MECP should conduct its assessment independently with respect to its mandate in enforcing the Environmental Protection Act (EPA), the Ontario Water Resources Act (OWRA) and Clean Water Act (CWA), rather than assessing the potential impacts under the license conditions and the ARA and/or as directed by the MNRF. Where quarries need to obtain MECP water taking permits or discharge permits these need to be more tightly integrated into MNRF regulated quarry licenses and permits and MNRF approved closure plans (i.e., enhance reporting on rehabilitation...). We also suggest that the Province review the document “An Agreement to Address the Roles and Responsibilities of the Ministry of the Natural Resources and the Ministry of Environment Regarding Aggregate Extraction Operations within the Province of Ontario” (May, 2008) to determine if the Agreement provides sufficient independent environmental protection under the ARA, EPA, OWRA and CWA. The MECP – MNRF agreement needs to be updated to properly reflect the regulatory conditions of today rather than 2008 and prior to the CWA. The City also believes that the MECP should play a role in the assessment and approval of aggregate licenses, particularly with respect to strengthening protection of water resources to ensure that the operations and conditions under the license are consistent with the requirements of the EPA, OWRA and CWA.
- Standards for Aggregate Extraction – Strengthen protection of water resources: The ARA needs to be updated to recognize the requirements of the Ontario Safe Drinking Water Act and the Clean Water Act. Where there are real or potential conflicts, the protection of municipal drinking water should take precedence over aggregate resources as per Section 105 of the CWA. Aggregate licenses should be revised, where necessary, to recognize the priority of municipal Source Protection Plans under the CWA. Currently excavations below the water table under aggregate licenses that remove a protective aquitard thereby exposing a water supply aquifer to surface contaminants is not considered a threat under the CWA. However the threat is real and applies directly to the intent of ARA Sec. 12(1): “the effect of the operation of the pit or quarry on the environment”; “the effect of the operation of the pit or quarry on nearby communities” (i.e. municipal water supplies); and “any possible effects on ground and surface water resources including on drinking water sources”. The

Mr. Andrew MacDonald

November 4, 2019

RE: **Proposed Amendments to the Aggregate Resources Act – Environmental Registry Notice #019-0556**

Page 7 of 11

ARA must have regard to the environmental protection requirements of the CWA and ensure that the aggregate licenses are fully protective of municipal water supplies.

- Regulatory Changes – Enhanced reporting on rehabilitation: Of particular concern of the City are the conditions in aggregate licenses with respect to rehabilitation. The rehabilitation plans are often vague and developed much in advance of the final closure of the pit or quarry and, by the time the license operations are closed may be out-of-date or inconsistent with surrounding land uses. Again, an expiry and renewal process could review the rehabilitation plan to ensure that it is protective of the environment and the physical setting upon closure. It would also provide an opportunity to incorporate new scientific information, particularly with respect to potential environmental impacts, into the rehabilitation plan to enhance environmental protection. Furthermore, the rehabilitation plans are intended to be progressive but little effort is usually expended on rehabilitation until the very late stages of operations. An expiry and renewal process would provide the opportunity to ensure that rehabilitation is progressing in pace with extraction prior to the license being renewed. It would also ensure that post-closure impacts such as ponding of water and bacterial contamination from ponds can be considered and addressed, if necessary.
- Regulatory Changes – Aggregate Fees: The Province may also want to consider the application of Financial Assurances to aggregate licenses, as are done in some EPA applications (Part XII), for rehabilitation of some pits and quarries to ensure that the rehabilitation plans can be implemented, especially where the risks to municipal water supplies are high (i.e., Dolime Quarry). The City understands that the current Aggregate Resources Trust would not be sufficient to address significant environmental impacts such as the replacement of a municipal water supply. Financial assurances would place the responsibility for the rehabilitation and perpetual care of the pit or quarry on the site owner rather than on the municipality or province. Alternatively, the Province could consider increases to fees to offsets the reported shortfalls in the Aggregate Resources Trust to ensure that sufficient funds are available to address rehabilitation and impact mitigation.

October 28, 2019 ERO Notice #019-0556 - Comments on Bill 132: Schedule 16

As noted above, the Province, on October 28, 2019, has provided Bill 132, Better for People, Smarter for Business Act. Within Bill 132, Schedule 16 provides the proposal for changes to the Aggregate Resources Act. While the comment period on Bill 132, from October 28 to November 4, 2019, is short and has not provided the City with adequate time to thoroughly review the proposal, the City herein provides a summary of its comments on the proposal.

Bill 132 – Schedule 16 Summary:

Mr. Andrew MacDonald

November 4, 2019

RE: **Proposed Amendments to the Aggregate Resources Act – Environmental Registry Notice #019-0556**

Page 8 of 11

Various amendments are made to the Aggregate Resources Act, including the following:

1. In considering whether a license for a pit or quarry under the Act should be issued or refused, 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.
2. New provisions provide for the following specified provisions in zoning by-laws to be inoperative:
 - i. restrictions on the depth of extraction in specified circumstances, and
 - ii. prohibitions against a site being used for the making, establishment or operation of pits and quarries where the surface rights are the property of the Crown.
3. Several amendments relating to licenses and permits are made. Some of these amendments were enacted as part of Schedule 1 to the Aggregate Resources and Mining Modernization Act, 2017 but not proclaimed into force; these are reproduced in the Schedule in order to allow for them to come into force on the day the Better for People, Smarter for Business Act, 2019 receives Royal Assent.
4. New provisions are included to address the process for dealing with the following circumstances in which changes to a license or permit are desired:
 - i. where a licensee wishes to lower the depth of extraction from above the water table to below the water table, and
 - ii. where a licensee or permittee wishes to expand the boundaries of the area subject to a license or permit into an adjacent road allowance.

The City has organized its comments on Bill 132 - Schedule 16 according to the numbering scheme of Schedule 16 with reference to the specific ARA section for clarity. We have omitted amendments for which the City has no comments.

2 Section 12:

The proposed amendment indicates that the “Minister or the Local Planning Appeal Tribunal (LPAT) shall not have regard to road degradation that may result from proposed truck traffic to and from the site”. This amendment requires further explanation on the rationale for this amendment. It is expected that, in some cases, increased heavy truck traffic to and from an aggregate site will result in road degradation and maintenance and repair will fall to the municipality. An explanation is required as this seems inconsistent with the matters to be considered by the Minister in ARA Section 12 including (b) the effect of the operation of the pit or quarry on nearby communities and; (c) any comments provided by a municipality in which the site is located. In addition, this proposed change reduces valuable input on the license from municipalities for which the province is promoting the changes to the ARA – “managing and minimize impacts to communities”.

3 Section 12.1:

The proposed amendment changes zoning by-laws and states “... any restriction contained in the zoning by-law with respect to the depth of extraction at the site is inoperative”. The proposed amendment lessens the ability of municipalities to protect water resources used for municipal

Mr. Andrew MacDonald

November 4, 2019

RE: Proposed Amendments to the Aggregate Resources Act – Environmental Registry Notice #019-0556

Page 9 of 11

drinking water or for protection of natural heritage features. Increases to depths of extraction should consider the drinking water sources used for municipal drinking water and extraction depths should not enter aquifers used for municipal drinking water, particularly in Wellhead Protection Areas. This proposed amendment, in some cases, appears contrary to the purpose of the proposed amendments to the ARA: to manage/minimize impacts on communities. It is also contrary to matters to be considered by the Minister in ARA Section 12: (a) the effect of the operation of the pit or quarry on the environment; (b) the effect of the operation of the pit or quarry on nearby communities; (c) any comments provided by a municipality in which the site is located; (e) any possible effects on ground and surface water resources including on drinking water sources. The City would prefer that this amendment not be enacted.

4 Section 12.2:

The proposed amendment states: “Upon issuing a license, the Minister may attach such conditions to the license as he or she considers necessary”. The City would recommend that the Minister considers conditions of the license that are protective of municipal drinking water and prevent excavation into municipal drinking water sources.

5(1) Subsection 13(1) to (3) and 5(2) Subsection 13(1) to (3):

The proposed amendment to the ARA will change the process whereby the Minister or the Licensee will make amendments to the site license. As presented, the proposed amendments are confusing in that 5(1) repeals and substitutes Subsections 13(1) to (3) and then 5(2) Subsections 13(1) to (3) as re-enacted by subsection (1) are repealed and substituted by new subsections. The Province should provide a rationale and clarity as to its intentions with the proposed amendments.

The City supports these proposed amendments when supported with the following clarifications. It is uncertain as to the basis on which the Minister would amend a license. The Minister doesn't have the ability to request investigations, studies and reports on the ARA operation currently, therefore the Minister is unable to identify or defend requested changes to ARA licenses. Subsection 13(3), 13(3.2) and 13(3.3) indicates that the amendments to the license shall be in “accordance with the regulations”. It is the City's understanding that the regulation (O.Reg. 244/97) does not support the process that may be required for this amendment and that changes to the regulation are required. Therefore, until the regulation is amended, these proposed amendments are inoperative.

5(5) Section 13

The proposed amendment provides for an “Exemption, no hearing required” “if the Minister adds a condition to the license or varies a condition of the license for the purpose of implementing a source protection plan under the Clean Water Act”. The City is supportive of this amendment.

6(1) Subsection 13.1

The proposed amendment is with respect to “Amendment re depth of extraction” and “Procedure, application for amendment”. The amendment applies for “if a license or site plan does not allow extraction below the water table in an area and the licensee wishes to amend the license or the site plan to lower the depth of extraction from above the water table to below the water table in that area”. The application process would be the same as if the application was for a new license. The

Mr. Andrew MacDonald

November 4, 2019

RE: **Proposed Amendments to the Aggregate Resources Act – Environmental Registry Notice #019-0556**

Page 10 of 11

City is supportive of this amendment. We note that there could be a requirement to amend the regulation to support this amendment.

7(1) Subsection 13.2

The proposed amendment is with respect to “Expansion of boundaries”. An expansion would follow the application process for a new license. The amendment would also allow for an amendment application if “the proposed expansion area is wholly within a portion of a road allowance directly adjacent to the boundaries of the area subject to the license”. The City is uncertain as to the implementation of this particular amendment with respect to the road allowance since there is typically setback, fencing and berm requirements associated the boundaries of the aggregate operations. Prior to enacting this change, the Province should provide further clarification as to how this amendment would be implemented and an assessment of potential impacts with respect to municipal road operations.

12 Subsection 36.2

The proposed amendment is with respect to an “Expansion of boundaries” for an aggregate permit in that the application shall be as for a new permit for the expansion area. The City is supportive of this proposed amendment.

13 Section 37

The proposed amendment allows the Minister to attach conditions to the permit as he or she may consider necessary. The City is supportive of this amendment providing the Minister takes into consideration the potential for impacts of municipal drinking water resources and natural heritage systems and ensure protection of water quantity and quality of drinking water sources.

14 Section 37.1

This amendment is with respect to annual aggregate permit fees. The City recommends that the Province review the aggregate fees and consider whether there are sufficient fees to support the Aggregate Resources Trust particularly with respect to aggregate operations in the area of municipal drinking water sources. Where there is the potential for aggregate operations to impact municipal water supplies upon closure of the operations, the costs to mitigate the potential impacts may be substantial and may include expensive remediation of the aggregate sites and/or replacement of impacted municipal water supply systems.

15 Subsection 37.2

This amendment is with respect to amendments of aggregate permits and site plans and is similar to that proposed for aggregate licenses in 5(1) and (2) for Section 13. The same City comments apply as per comments provided for Section 13.

We thank you for the opportunity to provide our comments to you. We look forward to further specific details related to the regulatory proposals for the Aggregate Resources Act. We hope our comments have assisted you in amending the ARA to ensure that strong protections for the environment is maintained and that communities such as the City of Guelph are no longer impacted

Mr. Andrew MacDonald

November 4, 2019

RE: **Proposed Amendments to the Aggregate Resources Act – Environmental
Registry Notice #019-0556**

Page 11 of 11

by aggregate operations. Should you have any questions regarding our comments, please contact Guelph Water Services.

Sincerely,

**Guelph Water Services
Infrastructure, Development and Enterprise Services
City of Guelph**