

November 1, 2019

Andrew MacDonald
Natural Resources Conservation Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street Peterborough, ON
K9J 8M5

RE: Proposed Amendments to the Aggregate Resources Act (ARA) (ERO #019-0556)

Dear Mr. MacDonald:

Thank you for the opportunity to provide comments on the proposed amendments to the Aggregate Resources Act.

By way of introduction, CBM Aggregates, is a division of St. Marys Cement Inc. (Canada) and is a leading aggregate producer in the Province of Ontario. We operate close to 80 licences across the province and have a long local history within the communities in which we operate, spanning over 100 years. Our success is based upon our connection within the communities in which we operate, and promoting environmental responsibility and compliance in all aspects of our business. We also pride ourselves on our strong record in safety and our many examples of outstanding rehabilitation.

We wanted to thank you for the opportunity to provide comments on the proposed amendments to the Aggregate Resources Act.

The proposed changes to the ARA are important to reducing red tape, and promote environmental stewardship and economic growth within the aggregate industry. We offer the following comments for your consideration.

Proposed Amendments to the ARA

MNRF Proposal:

1. *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.*

CBM Response:

In addition to the appeal mechanism, we suggest that the Ministry take this opportunity to address some flaws in the current system could be instrumental in reducing red tape. Based on our own experience, these amendments can take an extraordinary amount of time to be processed, and in some cases much longer than an ARA application for a new licence. We can share our experience with one amendment to go below water which took over 9 years to process. In another recent case, despite providing extensive technical supporting information for over a 5yr period, a below water major amendment request was denied due to a lack of municipal support. As you can imagine, this kind of delay and uncertainty creates tremendous pressure for our business operations.

We would like it clarified that a proposed appeal mechanism would also be available to an applicant in the event that approval of an amendment application is denied. We also strongly encourage the Ministry to implement process timelines for below water amendments, so that decisions can be made in a timely manner.

MNRF Proposal:

- 2. 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.*

CBM Response:

We note that this proposed change goes hand in hand with the proposed change to the Provincial Policy Statement that clarifies that extraction depth is controlled through the ARA and not through municipal “vertical” zoning. (PPS 2014, draft Policy 2.5.2.4).

We support this proposed change.

MNRF Proposal:

- 3. 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 license, 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.*

CBM Response:

We understand that the proposed change would prevent the requirement for haul route agreements that require financial contributions for wear and tear, or routine maintenance on haul roads. This would apply to both host and “drive through” municipalities.

CBM is aware of the increasing trend for municipal haul route agreements to be requested as part of new licence applications. We note that while certain road improvements may be appropriate to address safe and efficient access for a new aggregate operation, such as an entrance improvement or a turning lane, municipalities already receive a financial contribution through the annual TOARC levy, based on production. The levy was increased in 2017 and we understand that there may be further increases considered in the future. Further contribution to road maintenance creates an uneven playing field for business, since other road users, including possibly other aggregate operations which may have been approved several years ago, are not subject to the same financial requirements.

We are unaware of any other business that utilizes trucks for delivering their product to the market having to contribute financially in this way to municipalities and, as such, we are supportive of the proposed change.

MNRF Proposal:

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

CBM Response:

We are fully supportive of a consistent, and simplified process to deal with access to aggregate in road allowances where there is a mutual interest to extract the material. There are numerous examples of “ridges” of high quality aggregate resource between licensed areas.

We have our own examples where access to these resources has been supported by the Municipality and MNRF, however it didn’t stop CBM from having to undergo a length licensing process in order to get to the place where this wise management of the resource could take place.

This is an excellent opportunity to extend the life of existing operations where the land use and activity is well established, with mutual benefits to both the licensee and the municipality. Consistency, and a simplified process are welcome as progressive changes.

MNRF Proposal:

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

CBM Response:

CBM currently manages over 70 licences across the Province. We have experienced a wide range of processing times for both major and minor amendments, depending on the area of the province and the staff compliment at the District offices. We note that aggregate program staff in the District offices have a large workload which may involve numerous licence applications. The minor site plan amendments are considered 'lower priority' at the MNRF can take months, or even years to process, even if they are very straightforward.

The ability to self-file routine amendments would be a positive change in reducing red tape and would allow Ministry field staff more time to focus on priority matters.

Regulatory Changes under Consideration**MNRF Proposal:**

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

CBM Response:

While we are generally supportive of the concept of better information on rehabilitation, we are concerned at the lack of detail on what "enhanced reporting" means and whether it will become overly onerous for site operators. We caution that the rehabilitation information should be able to be collected and reported by company staff, without the need to hire outside professionals as this potentially adds significant costs.

We strongly recommend that the information being collected will actually be used. We are concerned that the organization and analysis of additional information will be difficult to manage with limited staff resources. The Ministry should look carefully at what information should be collected, how it will be managed and to what end.

We understand that there is a public concern in many communities with sites being left dormant, without rehabilitation being done, and it is not clear how this proposed change would address this concern, if that is indeed what this proposed change is aimed at doing.

MNRF Proposal:

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

CBM Response:

As mentioned above, we support this proposed change, and recommend that the list of activities that would qualify for self-filing be scoped to ensure that the change is meaningful and not restricted to a small subset of activities.

MNRF Proposal:

3. *Clarifying requirements for site plan amendment applications.*

CBM Response:

The proposed changes should carefully look at ways to speed up the review and approval of site plan amendments. As an industry, we need predictability. With some exceptions, the process has generally become far too lengthy. Provincial Standards should be revised to introduce target dates for approvals and if there is a need for EBR posting, it should be done concurrently with review of the application for site plan amendment, not after the fact as this creates unnecessary delays in the process.

MNRF Proposal:

4. *Streamlining compliance assessment reporting, while maintaining the annual requirements.*

CBM Response:

We believe the streamlining of compliance assessment reports is consistent with the Ministry's approach to enforcement (i.e. risk-based, educational, and generally collaborative). The current Compliance Assessment Report forms have a number of items that are very similar and could be consolidated (eg. C9 Stripping (overburden), C10 Overburden Seeded, C17 Topsoil (location/seeded)). We would support the option for electronic filing.

We note that submitting a detailed annual compliance report for unopened or inactive sites has limited value. For those sites, we suggest that the Ministry could consider a less detailed form.

MNRF Proposal:

5. *Reviewing application requirements for new sites, including notification and consultation requirements.*

CBM Response:

The proposed change should examine opportunities for harmonization between ARA and Planning Act process timelines. We support a notification and consultation process where all stakeholders are given full opportunity to review, comment and participate. At the same time there needs to be clear timelines and limits so that the process has a reasonable prospect of a conclusion.

Overall the ARA licence application process has changed dramatically over time. The costs and timing for a new application have significantly increased. We also suggest that, over the past 10 years, agencies have increasingly stepped outside of their jurisdiction and broadened their role in commenting and ultimately “approving” reports, applications and Site Plans as part of ARA and The Planning Act application review processes. This has caused overlap, and in some cases duplication of review, thereby increasing the time and cost for review and instilling an unclear leadership role, where the Province’s voice gets lost when dealing with provincially significant resources. This duplication adds exponentially to the length of time for an application to proceed through due process as well as the cost of an application.

The objective should be quality and complimentary agency review to support good decision making, not quantity of reviews, which does not add to the decision making process.

Consideration should be given to identifying a single agency responsible for the application process, and eliminate multi-agency review and comment on the same reports and Site Plans. Potentially, to ensure consistency across Districts, applications could be reviewed through a central Regional or Provincial group of Ministry staff.

And as stated previously in our submission, it is critical that a better performance standards and process timelines be regulated in order to support greater certainty for aggregate businesses in Ontario.

Conclusion

We appreciate the opportunity to be engaged with the ongoing consultation of the proposed changes. We are happy to provide specific examples from our own experiences to illustrate and support the comments we have provided above.

Please feel free to contact me with any questions or concerns.

Yours truly,
ST. MARYS CEMENT INC. (CANADA)



David Hanratty, P. Geo.
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