



Report: PDL-CPL-20-06

Region of Waterloo
Planning, Development and Legislative Services
Community Planning

To: Regional Chair Karen Redman and Members of Council

Date: March 24, 2020

File Code: D05-02

Subject: **Proposed Regulatory Changes Under the Aggregate Resources Act**

Recommendation:

That the Regional Municipality of Waterloo forward Report PDL-CPL-20-06, dated March 24, 2020 to the Ministry of Natural Resources and Forestry as the Region's response to the Province's proposed regulatory changes under the Aggregate Resources Act, Environmental Registry of Ontario Posting No. 019-1303.

Summary:

The Provincial government is consulting on several proposed regulatory changes under the Aggregate Resources Act. The intent is to streamline the way aggregate resources are regulated in Ontario, while also protecting the environment and addressing community impacts.

This report outlines staff's comments and recommendations on the proposed changes with respect to four areas of Regional interest: source water protection; public notification and consultation; compliance assessment reporting; and aggregate rehabilitation. To meet the Province's March 30, 2020 commenting deadline, an advanced copy of this report has been submitted to the Province as a placeholder pending Council's consideration.

Report:

On February 12, 2020, the Provincial government released a series of proposed regulatory changes governing the extraction of mineral aggregates in Ontario. The proposed changes stem from the government's recent amendments to the Aggregate Resources Act (ARA), which were enacted in December 2019 as part of Bill 132, "the

Better for People, Smarter for Business Act”. The details of the current regulatory proposals can be viewed on the Environmental Registry of Ontario’s website at <https://ero.ontario.ca/notice/019-1303>.

Regional Council submitted its comments on Bill 132 to the Province last fall through reports PDL-CPL-19-41 (November 5, 2019) and PDL-CPL-19-41.1 (November 13, 2019). In general, Council’s comments focused on four main themes: ensuring source water protection; improving public notification and consultation; strengthening compliance assessment reporting; and enhancing aggregate rehabilitation. An update on these themes and how they have been addressed in the Province’s proposed regulatory changes is provided below.

Source Water Protection

The Region is one of the largest municipalities in Canada that relies on groundwater for most of its drinking water. A large share of the Region’s drinking water sources overlaps with significant deposits of sand, gravel and other mineral aggregate resources. Extracting aggregates close to, or below the water table in these source water areas has the potential to impact the quantity and quality of water in a Regional supply well. Such impacts could potentially occur through contamination caused during the extraction process (e.g., fuel spills), or through land use activities following the rehabilitation of the site (e.g., road salt, agricultural pesticides, or nutrients).

When the Province enacted Bill 132, it amended the ARA to prohibit the use of municipal zoning to restrict the depth of extraction of an aggregate operation. This change came into effect on December 10, 2019. During the consultation period for Bill 132, Council had asked the Province not to make this specific change to give municipalities a stronger role in protecting groundwater resources. While the Province did not act on Council’s request, it is proposing several other regulatory changes to help protect groundwater resources, including:

- establishing new rules for how the water table is established;
- improving the content of water reports to better assess potential impacts to water;
- requiring water reports to be prepared by a registered Professional Geologist or exempted Professional Engineer;
- requiring applicants to identify whether the proposed operation is in a wellhead protection area, or have the potential to cause a significant threat to a local water source; and
- improving how aggregate recycling activities are carried out to better protect water resources.

While staff are generally supportive of these changes, it is our view that some of the technical requirements being proposed represent minimum standards and may not be adequate in all situations. For example, the proposed rules for establishing the water table would require applicants to monitor groundwater levels for a one-year period. By contrast, the Region's hydrogeological study guidelines currently require a minimum of two years of monitoring data where there is a potential risk to drinking water sources. This standard provides a better picture of water level trends, which will become increasingly variable in the future because of the impacts of climate change (e.g., higher annual precipitation rates will result in increasing groundwater levels and higher water table). **Accordingly, staff recommend that the Ministry of Natural Resources and Forestry (MNR) require applicants to submit a minimum of two years of groundwater monitoring data to establish the water table where there is a potential risk to drinking water sources (e.g., extraction below the water table, aggregate washing, etc.).**

The proposed regulations would also require new and existing aggregate operations to have a dust mitigation strategy. Other than water, the only Provincially approved dust suppressants are both chloride-based chemicals. Applying these chemicals on an open sand and gravel pit would result in the chloride recharging water supply aquifers, thereby increasing chloride levels in public and private wells. If a pit is being proposed in a source water protection area, the Region would request that chloride-based dust suppressants not be used. **Given that dust suppression would now be required at all pits, staff recommend that the Province view aggregate extraction activities as a threat under the Clean Water Act, which would be subject to the same risk mitigation measures required for winter road and parking lot maintenance.**

In addition, the Province is proposing new rules that would exempt certain low-risk activities from the requirement to get a license to extract aggregates (e.g., extracting aggregates for personal use on a farm). One of the conditions to qualify for exemption is that excavation does not occur within a Category A or B Wellhead Protection Area (WHPA) under the Clean Water Act. **While staff support the intent of this proposal, we recommend that the Province strengthen it by prohibiting outright all aggregate extraction activities within a Category A or B WHPA under the Clean Water Act, to further prevent or minimize the risk to municipal drinking water.**

Public Notification and Consultation

The current zoning and licensing process for new mineral aggregate operations follows a dual process under the ARA and the Planning Act. The process can be fairly complex and difficult for community members to navigate. A common complaint is that more time and clearer information is needed for the public to participate effectively in the process. The Province is proposing to alleviate this problem by:

- extending the current notification period under the ARA from 45 to 60 days to allow more time for agencies and interested parties to review and comment on mineral aggregate applications;
- allowing applicants to request an extension past the current two-year overall consultation process deadline, thereby giving applicants more time to resolve any objections from the community;
- requiring applicants to notify residents (who may not be landowners) located within 150 metres of a proposed aggregate operation. Applicants would continue to be required to notify landowners (who may not be residents) within 120 metres of a proposed pit; and
- establishing new requirements for applications to expand an existing mineral aggregate operation into the water table.

In general, staff support these changes and feel they are an improvement over the current notification requirements. **Despite these improvements, however, we reiterate our previous recommendation to the Province that municipalities be given the ability to appeal the MNRF's decision (to expand an existing aggregate operation into the water table) to the Local Planning Appeal Tribunal, if the municipality's concerns regarding source water protection are not fully addressed through the application process.** In the absence of any appeal rights, any outstanding concerns could only be referred to the Tribunal for a hearing at the discretion of the MNRF.

Compliance Assessment Reports

Currently, the ARA requires operators to conduct an annual self-assessment of their operation and to submit a Compliance Assessment Report to the MNRF. In practice, these reports are simply collected by the MNRF and are not systematically reviewed for errors or omissions. The Province is proposing to improve this process by:

- developing a “smart form” that would pre-populate sections of the form based on previously submitted information;
- streamlining the required assessment information for sites that have been inactive for more than three years, to focus on assessing compliance to requirements for gates, demarcation of boundaries and monitoring; and
- enhancing the rehabilitation information required (see section below).

Staff generally support these changes and feel they should help operators stay familiar with what activities are permitted on their site. It should also help them ensure that any

potential impacts are avoided or appropriately mitigated. Despite our broad support, however, staff note that the effectiveness of the self-assessment process will ultimately depend on the accuracy of the information submitted by the operators. **Consequently, staff recommend that the MNRF review its current site inspection and enforcement rates to ensure that the self-reported data is accurate.**

Aggregate Rehabilitation

As part of the Compliance Assessment Reports noted above, aggregate operators are currently required to provide information on the progress of their rehabilitation efforts. Currently, the required information is fairly limited and does not detail the type or nature of the rehabilitation activities currently underway. This lack of information makes it difficult for municipalities to monitor rehabilitation rates in their communities and assess how operators are advancing towards full rehabilitation. To help address this problem, the Province is proposing to require operators to report additional information on:

- progressive and final rehabilitation activities;
- which phase of the planned excavation they are working in, if phases are identified on their site plan;
- details on what rehabilitation activities have been undertaken that year (e.g., seeding, planting of trees, rough grading, backfilling slopes); and
- a description of final rehabilitation activities that were conducted that year and, if known, the final intended use (e.g., agricultural, natural, recreational).

Staff generally support these changes and feel the additional information will provide more context and detail on where, when and how rehabilitation is or has been undertaken. The changes will also provide more transparency on how sites are advancing towards full rehabilitation, and encourage operators to better demonstrate their ongoing efforts. The MNRF has indicated that it also working on additional guidance for operators and municipalities, such as best management practices for rehabilitation. **Staff support this initiative and recommend that the Province collaborate with municipalities and other stakeholders in the development of rehabilitation best management practices.**

Next Steps:

While the Province has not indicated when the proposed regulatory changes might come into effect, staff anticipate it will likely occur later this spring or early summer. Staff will continue to monitor any changes and report back to Council as required.

Corporate Strategic Plan:

This report supports three objectives in the Region's Strategic Plan 2019 – 2023, including protecting water resources, supporting a thriving economy, and recognizing the unique needs of our rural communities.

Financial Implications:

Nil.

Other Department Consultations/Concurrence:

This report has been prepared in collaboration with Water Services staff.

Attachments

Nil.

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