



The TOWNSHIP of
NORTH DUMFRIES

May 15th, 2020

Resource Development Coordinator
MNR - Natural Resources Conservation Policy Branch - Resource Development Section
300 Water Street
2nd Floor, South tower
Peterborough, ON
K9J 3C7

Dear Sir / Madame:

**Re: Response to the Proposed Amendments to O.Reg 244/97 and the Aggregate Resources of Ontario Provincial Standards
ERO Number 019-1303**

Please find attached a response prepared by the Township of North Dumfries on the proposed amendments to O.Reg. 244/97 and other companion documents.

Thank you for the opportunity to provide comments on the draft amendments. If there is a need to elaborate on the contents of the attached statements made by the Township, please do not hesitate to contact the undersigned at (519) 632-8800 ext. 121 or via email at amcneely@northdumfries.ca

Yours truly,

Andrew McNeely, RPP
Chief Administrative Officer

Encl.



REPORT HIGHLIGHTS

- On February 12, 2020, the Ontario Government posted the Proposed Amendments to Ontario Regulations 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act (ARA) on the Environmental Registry of Ontario (ERO) #019-1303. Comments on the ERO posting are due by May 15, 2020.
- The proposed regulatory changes are in response to previous changes made to the *Aggregate Resources Act, RSO, 1990*, on December 10, 2019.
- Key changes under consideration in ERO #019-1303 includes:

A. For new pits and quarries:

- enhancing the information required to be included in summary statements and technical reports at the time of application
- improving flexibility in how some standard site plan requirements can be implemented and modernizing how site plans are created
- creating better consistency of site plan requirements between private and Crown land and better alignment with other policy frameworks
- updating the list of qualified professionals who can prepare Class A site plans
- updating the required conditions that must be attached to a newly issued licences or permit
- adjusting notification and consultation timeframes for new pit and quarry applications
- changing and clarifying some aspects of the required notification process for new applications
- updating the objection process to clarify the process

- updating which agencies are to be circulated new pit and quarry applications for comment

B: For existing pits and quarries:

- making some requirements related to dust and blasting apply to all existing and new pits and quarries (requirements which were previously only applied to new applications)
- updating and enhancing some operating requirements that apply to all pits and quarries, including new requirements related to dust management and storage of recycled aggregate materials
- providing consistency on compliance reporting requirements, while reducing burdens for inactive sites
- enhancing reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken
- clarifying application requirements for site plan amendments
- outlining requirements for amendment applications to expand an existing site into an adjacent road allowance
- outlining requirements for amendment applications to expand an existing site into the water table
- setting out eligibility criteria and requirements to allow operators to self-file changes to existing site plans for some routine activities without requiring approval from the ministry (subject to conditions set out in regulation)

C: Allowing minor extraction for personal or farm use:

- outlining eligibility and operating requirements in order for some excavation activities to be exempted from needing a licence (i.e., if rules set in regulation are followed). This would be for personal use (max. of 300 cubic metres) or farm use (max. 1,000 cubic metres)

Comments

Below are summaries of **existing** and **proposed** changes to O.Reg 244/97 and Provincial Standards (in text boxes) followed by staff comments. The numbers to the left of the boxes correspond to those used in the ERO posting:

1. Proposed changes for applications to establish a new site

Section	Current Approach	Proposed Approach
1.1.1 - Water Report	<p>Prepare water report to identify maximum depth of extraction if extraction is below the water table. Specify extraction depth if extraction is not proposed below the water table proposed site must show that extraction will be 1.5 metres above the water for pits and 2.0 metres for quarry.</p>	<ul style="list-style-type: none"> o Changes to how water table is established. o Content of water report including clarification of current requirement for the assessment of impact to water, water budget and better description of persons qualified to prepare a water report. o The addition of a new requirement to provide a summary of how local source water protection plans and policies are addressed.

Comments:

The proposed changes are for the most part are supportable as they will strengthen the content of the water report submitted in support of an application.

The **key element missing** however in the proposed amendment is the need to complete a **cumulative impact assessment** on the groundwater resources attributed to aggregate activity that occurs when aggregate operations are clustered in proximity to each other.

The rural countryside is vitally dependent upon a sustainable and secure groundwater regime. Groundwater supplies individual wells for area farms, businesses and residents, and, as a baseflow contribution to area watercourses, wetlands and associated natural features and systems. In some areas of the Province, the rural countryside represents the recharge area and the groundwater system supports large production wells for adjacent urban centres.

The *Aggregate Resources Act* only requires on the Application Submission to identify and assess any potential impacts of extraction on natural features and systems on or within 120 metres of the site. Similarly the hydrogeological functions only require the assessment and potential impact on the site or the zone of influence. Part of the problem is that each site is assessed on its own merits and assessment. The cumulative effects of aggregate extraction is not explicitly outlined as a requirement for review and consideration

Further attention and expansion of policies and direction on the protection of the groundwater regime is required.

Section	Current Approach	Proposed Approach
1.1.2- Cultural Heritage Report	<i>The ARA requires the preparation of a cultural heritage report to determine if any significant archaeological resources may be present on the proposed site, and if so, assess potential impacts and propose mitigation strategies. Current focus is on archaeological resources although an assessment of impacts to the built heritage and cultural heritage landscapes may sometimes be required.</i>	<i>Update the cultural heritage report requirements to ensure that the scope and content is consistent with the Province's cultural heritage policy framework. Applicants will benefit from the tools and information developed by the province to streamline approvals for other types of development.</i>

Comments:

The proposed changes are supportable. The proposed changes will ensure that the Province will mandate that aggregate operators to do more to protect the social fabric of the community. The Township continues to advocate for the inclusion of social impacts assessment in the review of applications for new aggregate operations.

Section	Current Approach	Proposed Approach
1.1.3- Natural	<i>All pit and quarry applications are required to include a natural heritage features on or within proximity to the proposed pit or quarry. If any of these features are located on or within 120 metres of the proposed pit or quarry, the report must determine any potential negative impacts on the features or their ecological functions and propose any necessary measures to prevent, mitigate or remediate the negative impacts.</i>	<i>The natural heritage report requirement is to be aligned with the current Statement (PPS) and the four Provincial Plans (Oak Ridges Moraine Conservation Plan, the Greenbelt Plan, A Place to Grow: Growth Plan for the Greater Golden Horseshoe, and the Niagara Escarpment Plan) to make this requirement updated to include policies related to, and natural heritage systems.</i>

Comments:

The proposed changes are generally supportable in their intent. However, the Township is concerned that the **proposed 120 metres study area may not sufficient in some examples** based upon the scale and intensity of the proposed activities planned within the pit or quarry, and, in the context of the cumulative impacts when aggregate operations are clustered in close proximity. Further consideration should be given in the amendments to the Regulation stating that a qualified individual should complete a pre-screening based upon the proposal and its setting to determine whether an assessment greater than 120 metres would be appropriate.

Section	Current Approach	Proposed Approach
1.1.4 - Agricultural Impact Assessment (AIA)	<i>Current Provincial Standards do not require an AIA to be submitted as part of an application for an ARA licences.</i>	<i>To align with Provincial Plan policies, all applications for new pits and quarries on private land be required to include an Agricultural Impact Assessment if the proposed pit or quarry is within a prime agricultural area that is also located within a portion of a Provincial Plan.</i>

Comments:

The proposed changes are supportable. The requirement for an Agricultural Impact Assessment will enhance the Township's objective to preserve more agricultural lands for local farm production and is consistent with the principle that the aggregate operation is intended to be an interim land use activity.

Section	Current Approach	Proposed Approach
1.1.6- Summary Report	<i>Provide summary statement for Class A licence applications to include information about planning and land use considerations</i>	<i>Proposed application requirements will require that the summary statement for proposed pits and quarries on private and Crown land to ensure that these are aligned with operations of the site reflected on the ARA site plan.</i>

Comments:

The proposed changes are supportable.

2. Site Plan & Licence / Permit Conditions

Section	Current Approach	Proposed Approach
1.2.1 - Site Plan Standards - Improving Flexibility	<i>Items identified on the site plans for pits and quarries are currently identical even though these operations and where they are located may be different.</i>	<i>Items listed on the site plan to differ based type of operation and location including:</i> <ul style="list-style-type: none"> o <i>How and where fencing is required</i> o <i>Not showing how trees and stumps are disposed; rather a note that they will be disposed</i>

Comments:

The Township supports the principle to make the approval process more flexible and align with the uniqueness of sites. However, the requirement for fencing is a community safety issue which should continue to be a primary site plan requirement of all aggregate operations.

Section	Current Approach	Proposed Approach
1.2.2- Site Plan Standards- Modernization	<i>Issuance of ARA licence or permit is not streamlined with other approvals or land use policies that apply to development.</i>	<i>Align approval process with other policy frameworks and to improve consistency between Crown land and private land applications. e.g.:</i> <ul style="list-style-type: none"> o <i>Requirement to provide details on the importation of excess soil.</i> o <i>Identification of maximum disturbed area.</i>

Comments:

The proposed changes are supportable.

Section	Current Approach	Proposed Approach
<p><i>1.2.3- Qualified Professional to Prepare Site Plans</i></p>	<p><i>Currently, a site plan accompanying an application for a Class A license (private land) must be prepared under the direction and certified by a professional engineer, Ontario Land Surveyor or landscape architect</i></p>	<p><i>i) The list of professionals will be updated to include professional geoscientists and professional planners</i></p>

Comments:

The proposed changes are supportable.

Section	Current Approach	Proposed Approach
<p><i>1.2.4 - Prescribed Licence and Permit Conditions (New Sites)</i></p>	<p><i>Prescribed conditions address potential impacts of new pits and quarries, such as dust and blasting. Prescribed conditions vary depending on the type of operation and cannot be changed later.</i></p>	<ul style="list-style-type: none"> <i>o Prescribed conditions not related to the ARA (e.g. Permit to Take Water) are to be communicated by the MNRF to operators in a letter.</i> <i>o noise mitigation if sensitive receptor in Class B licences is located 500 meters from site boundary.</i> <i>o apply conditions related to dust and blasting in new sites and on existing sites if they were not originally included.</i>

Comments:

All provisions relevant to regulating operational activity at a licensed aggregate site should be included in the ARA site plan. This will ensure that the operation conditions are contained in one document and is therefore easily accessible and referenced.

The reduction of noise mitigation requirement for Class B licences from **2000** metres to **500** metres of a sensitive receptor is appropriate.

3. Notification and Consultation Requirements

Section	Current Approach	Proposed Approach
1.3.1- Notification and Consultation Timeframes	<p><i>Current notification standards:</i></p> <ul style="list-style-type: none"> - Complete application:(20 and 15 days for applications on private lands and Crown land respectively) - Notification Period (45 and 20 days for applications on private lands and Crown land respectively) 	<p><i>Proposed Notification day increased to 60 calendar days for applications on private and Crown lands</i></p> <p><i>20 days to deem applications on both private and Crown lands complete</i></p>

Comments:

The proposed changes are supportable.

Section	Current Approach	Proposed Approach
1.3.2- Notification and Consultation Process	<p><i>Application circulation to properties owners with 120 meters radius of proposed pits and quarries, with notification also published in local newspapers and invitation to a Public information session</i></p>	<p><i>Varied notification types are proposed:</i></p> <ul style="list-style-type: none"> <i>i) 150 metres and 500 meters notification for private lands and Crown lands application respectively for the removal of over 20,000 tonnes per year.</i> <i>ii) Digital notification allowed an option</i> <i>iii) Municipalities to provide contact information to operators;</i> <i>iv) Consultation with Indigenous communities.</i>

Comments:

Although the radius for notification has been increased from 120 metres, the Township is still concerned that the radius is still not large enough to reach many of the residents that may be impacted by the aggregate operations. The potential impact of aggregate operations extends beyond the immediate abutting properties and in the rural countryside it is not uncommon to have larger frontage properties. **The Township recommends an increase in the notification radius to a minimum of 500 metres.**

The proposal to provide notification through digital media will primarily benefit aggregate operators. Many people in the rural countryside do not have reliable internet access and their contact information is not readily available. The Township continues to recommend the combination use of local newspapers, increased circulation radius to adjacent owners by regular mail, and, a property sign board (minimum of 1.2 m x 1.2 m) posted at the property frontage as reliable means for notification.

Section	Current Approach	Proposed Approach
1.3.3- Objection Process on Private Land	<i>Objectors then have 20 days to respond if they feel their objections have not been adequately addressed. These responses need to be delivered personally or by registered mail. If nothing is received from the objector within 20 days, it is deemed that there is no longer an objection.</i>	<i>Objection period will continue to be 20 days however, the 20 days will not be counted until the 60 days period of notification has lapsed.</i>

Comments:

The proposed changes are supportable. It is an acceptable improvement to the existing period of notification. Notwithstanding, the Township recommends that the Ontario Regulation should include provisions that will specify how the objections received have been addressed by the proponent.

Section	Current Approach	Proposed Approach
1.3.4- Circulation to Agencies	<i>Circulation of application on private and Crown lands are made to all agencies regardless of the applications.</i>	<ul style="list-style-type: none"> o <i>List of agencies will be updated to reflect current government organization and responsibilities</i> o <i>Agencies circulation on private lands will be aligned with applications on Crown lands.</i>

Comments:

The proposed changes are supportable. The Township recommends that this list of agencies includes the Department of Fisheries and Oceans (DFO). The DFO, the federal lead for safeguarding waters and managing Canada's fisheries, oceans and freshwater resources, should be circulated on aggregate applications that are in proximity to freshwater resources.

4. Prescribed Rules for Minor Excavations

Section	Current Approach	Proposed Approach
2.1- Excavation from Private Land or Land Owned by a Farm Business	<i>new</i>	<p><i>Persons or farm operations on private land that meet specific criteria would not need to obtain a licence under the ARA from the ministry if:</i></p> <ul style="list-style-type: none"> o <i>they follow rules set out in the regulations (See Schedule 1).</i> o <i>Meet other approval such as <u>Planning Act</u> approval.</i>

Comments:

The proposed changes are supportable. However, the Township recommends that persons or farm operations should be required to provide notification for residents within 500 metres radius for **information purposes only**.

Section	Current Approach	Proposed Approach
2.2- Excavation within a Highway Right of Way for Road Construction	<i>new</i>	<p><i>Provide clarity in regulation that municipalities or the Crown would not require a licence or permit to excavate aggregate if the following conditions are met:</i></p> <ul style="list-style-type: none"> o <i>the aggregate is being excavated as part of a public road construction project, and</i> o <i>the excavation is occurring within the established right of way of a highway owned by a municipality or the Crown.</i>

Comments:

The proposed changes are supportable.

5. Operating Requirements for all Sites (New & Existing)

Section	Current Approach	Proposed Approach
<p>3.1.1- Miscellaneous Changes</p>	<p><i>Operators are required to note any variances from the operational standards on their site plans.</i></p>	<ul style="list-style-type: none"> o <i>Removal of the requirement for Fencing around the property boundary. But, property should still be clearly demarcated. But fencing may be required if raised as a concern where a proposal is located to a sensitive land use.</i> o <i>Indication that trees and stumps will be properly disposed of and not buried on the site</i> o <i>Requirement to remove scrap on an ongoing basis and that scrap cannot be located with 30 metres of any body of water.</i>

Comments:

The Township recommends that all aggregate sites should be fenced as this is a community safety issue. Fencing is necessary to warn intruders/trespassers of possible dangers. Free access to an aggregate pit can be dangerous for trespassers as stockpiles can collapse, etc., The lack of fencing could increase the legal liabilities for the aggregate operators.

Section	Current Approach	Proposed Approach
3.1.2- Dust	<p><i>Dust mitigation on site is required if a sensitive receptor is located within 2000 metres of the site boundary.</i></p> <p><i>Apply water or another provincially approved dust suppressant to internal haul roads and processing areas to mitigate dust (for permits, this condition only applies if a sensitive receptor is located within 500 metres of the boundary of the site).</i></p>	<ul style="list-style-type: none"> o <i>Requirement to mitigate dust regardless of their proximity to a sensitive receptor.</i> o <i>Aggregate permit holders would only need to mitigate dust if a sensitive receptor is located within 1000 metres of the boundary of the site.</i> o <i>aggregate permit holders with a sensitive receptor located within 1000 metres of the boundary of the site be required to apply water or another provincially approved dust suppressant to internal haul roads and processing areas as needed to control dust.</i> o <i>Prepare and follow a Best Management Practices Plan (BMPP) for fugitive dust control if a sensitive receptor was located within 1000 metres of the boundary of the site</i>

Comments:

The proposed changes are supportable.

Section	Current Approach	Proposed Approach
3.1.3- Blasting	<p><i>Requirement to monitor blasts for ground vibration and blast overpressure (e.g., noise) and operate to ensure compliance with provincial guidelines of the boundary of the site).</i></p> <p><i>Retain monitoring reports and provide them to the ministry upon request.</i></p>	<ul style="list-style-type: none"> o <i>Requirement to Monitor all blasts for ground vibration and blast overpressure (noise) and adhere to provincial guidelines.</i> o <i>Implement measures to prevent fly rock from leaving the site during blast events if a sensitive receptor is within 500 meters of the boundary of the site.</i> o <i>Retain all blast monitoring reports and make them available upon request to the ministry.</i>

Comments:

The proposed changes are supportable.

Section	Current Approach	Proposed Approach
3.1.4 - Recycling	<i>new</i>	<ul style="list-style-type: none"> o <i>Where aggregate recycling activities are already approved to occur on a site, the site would need to be operated in accordance with the following requirements:</i> o <i>Recyclable asphalt may not be stored within 30 meters of a water body or within two meters of the established ground water table and may not be co-mingled with scrap material(s).</i> o <i>Any rebar or other structural metal must be removed from recyclable aggregate materials during processing and placed in a separate scrap pile.</i>

Comments:

While the Township supports the principle of recycling, it also acknowledges the dangers of allowing the recycling of asphalt products in aggregate pits due to the increase in the potential for ground water contamination. The Township recommends that:

- o the recycling of asphalts should be prohibited in all aggregate pits.
- o No toxic or hazardous materials should be recycled in aggregate pits. Since most aggregate pits are predominantly located in the rural area, it is important to protect against the contamination of ground water and continually safeguard the source of drinking water for rural residents.
- o The Province should establish a separate application process to permit recycling operations on aggregate pits. The document submitted in support of the process must identify the type of materials, the projected volume of products and the recycling process.
- o Recycling operations should not be permitted within a 30 metre radius of a water body. The proposed 30 metres radius is not far enough; a much farther radius should be established in combination with a berm to control the overland flow of surface water migrating to the waterbody.
- o To protect against ground water contamination, the recycled material should be stored only on impermeable surfaces that have a minimum depth of two metres. Storage within the water table should not be permitted.

Also, to protect the primary source of drinking water for the rural residents, the Township recommends that recycling in aggregate sites (excluding recycling of asphalt products) should be allowed **only** where the operator has demonstrated, through a hydrogeological study which is peer reviewed by the Municipality and its agency(ies), that a proposed recycling operation will have no negative impact on ground water. This report should specify the proponent's plan to protect the quality and quantity of ground water

The Township is concerned that permitting recycling as of right in aggregate pits will unduly extend the life span of the aggregate pit. Since aggregate operations are interim land uses, the Township recommends that recycling operations that are permitted in aggregate pits should be assigned a specified time duration.

6. Annual Compliance Reporting

Section	Current Approach	Proposed Approach
<p>3.2.1- Compliance Assessment Reports</p>	<p><i>Requirement to submit an annual Compliance Assessment Report (CAR) to the ministry and local municipality(ies).by September 30th each year with the self-assessment made between May 1st and September 15th</i></p>	<ul style="list-style-type: none"> o <i>Develop a "smart form" that would pre-populate sections of the form based on previously submitted information</i> o <i>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,</i> o <i>Enhance the rehabilitation information required (see section 3.2.2 for more information),</i> o <i>assessment period would be April 1st to September 15th but the September ' 30 submission date remains</i>

Comments:

The proposed changes are supportable

Section	Current Approach	Proposed Approach
3.2.2- Rehabilitation Reporting	<i>Requirement to submit a rehabilitation report with information on the size of area that has been disturbed, any areas undergoing progressive or final rehabilitation, the sloping of faces, the importation of material to support rehabilitation (if permitted), final elevation, and vegetation.</i>	<i>Operators would be required to include this additional information:</i> <ul style="list-style-type: none"> o <i>phase of their planned excavation they are working in</i> o <i>details on what rehabilitation activities they have undertaken that year</i> o <i>a description of final rehabilitation activities that were conducted that year and, if known, the final intended use (e.g., agricultural, recreational, natural).</i>

Comments:

The proposed changes are supportable. However, the Township is disappointed in that the proposed changes do not go far enough to deal with dormant aggregate sites, and, the promotion of comprehensive rehabilitation.

Specially the Township would offer the following further items for consideration as part of the broader issue of progressive and timely rehabilitation of aggregate sites as follows:

- o The Ministry should consider that **if no rehabilitation has occurred over the reporting period to follow up with the operator and ask additional questions about why rehabilitation has not occurred on the site;**
- o There needs to be a **stronger link to the issue of compliance reporting, rehabilitation plans and timelines for rehabilitation aligned to the rehabilitation requirements as set out in the Agricultural Impact Assessments and the maximum disturbed area provisions,** where applicable. It is important to remember that aggregate activity is only intended to be an interim land use. The prompt return of lands to a rehabilitated state is an important objective;
- o **The issue of dormant sites cannot be ignored.** The Township has consistently raised concerns about these sites and no meaningful action has been taken. The proposed amendments would appear to make it easier for dormant sites to continue to exist by providing for a less burdensome compliance reporting system. The Township requests that if there has been no activity for a period of three years, that the Ministry provide an Order or equivalent to have the Owner commence with rehabilitation practices;

- o Where a cluster of aggregate sites are in operation, a concerted effort to promote comprehensive rehabilitation is an important objective. Direct Ministry involvement in pursuing the principles of comprehensive rehabilitation is required to bring adjacent aggregate operations together.

Section	Current Approach	Proposed Approach
3.3.1- Site Plan Amendment Process	<i>Requirement for an amendment to their site plan, include written request to the ministry with information on description of the proposed amendment, rationale for requesting the amendment, a sketch of revised pages of the site plan depicting the proposed amendment and any other information required by the ministry to assess the implications of the proposed amendment</i>	<ul style="list-style-type: none"> o <i>information must be submitted using a standard form to request a change to a site plan: include name, address, geographic location and licence/permit number, a description of the proposed amendment(s), a description of how the proposed amendment(s) will change the operation, and the reason for the request(s).</i> o <i>Requirement for new technical drawings</i> o <i>A schedule that clearly describes the amendment.</i>

Comments:

The proposed changes are supportable. The Township recommends the inclusion of a notification requirement for all site plan amendment to facilitate comments from area residents.

Section	Current Approach	Proposed Approach
3.3.2- Amendment to Expand Road Allowance	<i>new</i>	<i>Applications to for an amendment application to expand into a road allowance must submit prescribed information and provide notification.</i>

Comments:

The proposed changes are supportable.

Section	Current Approach	Proposed Approach
3.3.3- Amendment to Expand Existing Site Below the Water Table	<i>Requirement to notify Landowners within 120 meters radius</i>	<i>Requirement include new and more detailed process and information.</i>

Comments:

The proposed changes are supportable. For applications for extraction below the water table, the Township requests that the notification radius should (new site or expansion of an existing site) be 1 km

Section	Current Approach	Proposed Approach
3.3.4- Self-filling of Site Plan Application	<i>new</i>	<i>Self-filling is specific to site that meet certain requirements.</i>

Comments:

There are merits in allowing some minor amendments to be handled through a self-filing process. However, the Township does have the concern that some of these amendments will go without consideration of potential impacts external to the site (ie: relocation of a haul route or processing equipment on the site)

The potential does exist, unless more framework is provided, that the process does not lend itself to transparency and engagement with the public.

