



**Submission to ERO: 019-6767**

**Proposed changes to the Aggregate**

**Resources Act, Ontario Regulation 244/97 to expand self-filing activities and a new policy regarding amendments to existing aggregate approvals.**

Gravel Watch Ontario (GWO) 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 20 years of experience assisting both communities and government agencies in matters related to aggregate matters.

GWO appreciates the opportunity to comment on ERO 019-6767 which proposes changes to the Aggregate Resources Act, Ontario Regulation 244/77 to expand self-filing changes to legal site plans by aggregate operators and a new policy regarding amendments to existing aggregate licenses. In the 2020 review of the Aggregate Resources Act, each of these five amendments were proposed for self-filing but did not go forward at that time and are being proposed here again, three years later.

GWO's response will focus first on the expanded list of eligible site plan changes not requiring Ministry approval and then on the proposed policy revision. The expanded activities identified are:

- Changing site entrances or exits
- Adding, removing or re-locating above-ground fuel storage
- Adding importation of materials for recycling where processing activities have already been approved for the site
- Adding, removing or re-locating portable processing equipment or portable asphalt or cement processing equipment for public road authority projects

The proposed policy provision is that proponents are not required to notify and consult stakeholders with respect to "nonsignificant changes to operations or rehabilitation" provided no other concerns have been identified.

Since the public interest theory of regulation in economics claims that government regulation acts to protect and benefit the public, i.e. "the welfare or well-being of the general public" and society<sup>1</sup>, both aspects of the ERO will be considered in relation to the ERO's proclamation that:

" the regulatory framework that manages aggregates must be **fair, predictable and adaptive** enough **to be effective, while managing and minimizing the impact** that extraction operations may **have on the environment and communities that surround them**".

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<sup>1</sup> Quoted in Wikipedia from Hantke-Domas, Michael (March 2003). "The Public Interest Theory of Regulation: Non-Existence or Misinterpretation?". *European Journal of Law and Economics*. **15** (2): 165–194.

## **General Comments:**

It is GWO's contention that the identified expanded list of activities in the ERO are not "small or routine" nor "do they have neutral environmental consequences when compared with environmental impacts associated with site plan amendments". The expanded activities are changes to the land use which increases the risk for additional negative social and environmental impacts. They should not be considered as merely default activities for aggregate extraction sites. Reprocessing of used materials deemed aggregate, for example, is a distinct type of activity that would require its own set of regulations that go beyond the site specific approach of pit and quarry operations. To fully inform the regulatory process, these added activities require the full involvement of all stakeholders potentially affected by the change in land use, i.e. Indigenous peoples, municipalities, sector agencies and the public. Meaningful consultation cannot be reduced to 'may be' statements in terms of mere notification and ill-defined consultation processes. GWO strongly recommends that these activities remain subject to arms' length regulatory oversight and comprehensive approval processes to avoid the implementation of this type of initiative creating more problems than it resolves.

## **PROPOSED ADDITIONAL SELF-FILING ACTIVITIES NOT REQUIRING APPROVAL**

Self-filing site plan amendments shifts government responsibility for regulatory compliance to aggregate producers which essentially enable a self-regulated industry that has no arms' length oversight, public interest filter or consideration for cumulative effects. Instead, self-filing is deemed to be "effectively reducing burden and efficiency to aggregate operations while continuing to manage the impact of lower-risk activities on aggregate sites". Public interest, however, is to benefit society as a whole, rather than particular vested interests.

Cumulative self-filed site plan amendments could fundamentally change the operational nature of an aggregate site. For additions such as reprocessing and storage the greatest concern is the potential for impact from fugitive emissions of noise, dust and vibrations and possible contamination of groundwater when located on a permeable pit floor. For elements such as stockpiling, their relocation or removal can give rise to visual concerns or emissions of dust and noise. The relocation of entrances can create significant concerns for shared users of impacted roadways. An adjacent property owner or resident may look at the proposed site plan and say, "I can live with an entrance being place there" and not raise any objections. However, if the entrance had been moved to a different location, serious opposition may arise. A new entrance/exit could require the need for a traffic study, climbing lanes and traffic signals.

Reprocessing of aggregates raises a number of issues that merit a set of regulatory requirements developed specifically for each type of material. A pit is not a recycling yard. Haulers of recycled product as well, have little or no knowledge of haul routes and the movement of material to and from aggregate sites which increase the volume of truck traffic that is a consideration at the approval stage. In addition, given the recent restrictions placed on municipal governments such as eliminating their ability to control the depth of extraction in aggregate sites, the province must improve, not reduce their approach to studying the impact of aggregate extraction on groundwater resources. It is common practice to conduct multiyear groundwater studies and this requirement should not be reduced within an

assumptive framework that impacts will be trivial. It is common place that aggregate operations are located in rural areas where residents and businesses drink their ground water.

GWO strongly opposes the concept of self-filing amendments to site plans. The proposed amendments are more than operational issues. They are land use planning issues that need to be well-thought-out. The chart following summarizes the changes that will occur to land use from the expanded activities with an identification of their potential impacts.

<b>Proposed Self-Filing Activity Not Requiring Ministry Approval</b>	<b>Changes Occurring in Land Use</b>	<b>Potential for Social/Environmental Impact</b>
<b>Changing Site Entrances or Exits</b>	haul routes, location and number of entrances	<p>increased truck traffic, noise and dust, nuisance impacts, increased land use conflicts</p> <p>cumulative effects not only associated at the specific site but in relation to the industrial activity on the broader landscape</p>
<b>Adding or removing or re-locating above-ground fuel storage</b>	additional or change in location changes above ground fuel storage, changes its relation to the landscape which can trigger additional or new hazards into the environment	<p>risk of fire, explosions, and increased contamination of land and water sources</p> <p>Increased health hazards caused by noise, dust, stress.</p> <p>emission of organic compounds and particulate materials related to benzene, a known carcinogen</p> <p>cumulative effects not only associated at the specific site but in relation to industrial activity on the broader landscape</p>
<b>Adding the Importation of recycling materials when processing activities have already been approved for the site</b>	Stockpiling and storage of concrete, asphalt, bricks, glass and ceramics	<p>release of heavy metals such as cadmium, chromium, copper, nickel, lead and zinc and polycyclic aromatic hydrocarbons into the soil and groundwater.</p> <p>cumulative effects not only associated with the specific site but in relation to industrial</p>

		activity on the broader landscape
<b>Adding, removing or relocating portable processing equipment</b>	<p>Increased presence, number and location of portable processing equipment</p> <p>Additional or change in location changes its relation to the broader landscape, which can trigger, additional and new hazards into the environment</p>	<p>Health hazards caused by noise, dust, and stress such as skin and eye irritation, respiratory conditions. Silica is a known carcinogen.</p> <p>Emission of organic compounds and particulate materials such as benzene, a known carcinogen.</p> <p>cumulative effects not only associated to the specific site but in relation to broader industrial activity on the landscape</p>
<b>Adding, removing or relocating portable processing asphalt or cement processing equipment for public road authority projects</b>	<p>Increased presence, number and location of portable processing equipment</p> <p>Additional or change in location changes its relation to the broader landscape, which can trigger, additional and new hazards into the environment</p>	<p>Health hazards caused by noise, dust, and stress such as skin and eye irritation, respiratory conditions. Silica is a known carcinogen.</p> <p>Emission of organic compounds and particulate materials such as benzene, a known carcinogen.</p> <p>cumulative effects not only associated to the specific site but in relation to broader industrial activity on the landscape</p>

**PROPOSED CHANGES TO NOTIFICATION AND CONSULTATION**

MNRF proposes that proponents not be required to notify and consult stakeholders with respect to “non-significant changes to operations or rehabilitation”, provided no other concerns have been identified. The term ‘significant, however, is not defined. The uncertainty that a potential aggregate site creates in host communities, however, can be extreme. The determination of what is small and routine or what is assumed to have neutral impact is also critical and not universally agreed to by all stakeholders. What may be considered a minor change by one stakeholder may be a major change giving rise to serious concerns by another. All site amendments should include a process where

stakeholders can request further consideration and exploration of the proposed changes based on the impacts that these changes may create.

GWO contends that significance ratings need to be identified through consultation with all stakeholders and through a cumulative lens within the regional landscape that considers past, present and future developments, their complexities, interconnections and limits to growth thresholds related to both natural forces as well as human activities. The change could be so significant that a site which had been managed in compliance with regulations could become incompatible with additional changes to the land use. Dust, and in particular small particle air contaminants, are a major threat to overall health and need to be addressed as such. Historically the issue of air quality and related health impacts have been largely absent from the technical studies required to support a proposed aggregate operation. To avoid the potential for long-term impacts and irreversible consequence to the health of the natural environment and people, required studies need to go beyond the site specific aspects to the landscape level of analysis and through a cumulative impact lens.

Side-stepping notification and consultation keeps changes to land use out of the public view with no option to appeal. The design for self-filing essentially exempts aggregate operations from zoning regulations, laws, policies and controls that safeguard the environment, human health and safety which are contained in such documents as the Planning Act, Official Plans, the Provincial Policy Statement and Clean Waters Act. In addition, there is lack of capacity within MNRF in terms of staffing requirements, expertise and financial resources which restricts government's ability to fulfill their mandate for compliance and enforcement.

The individual and cumulative impacts of this broad range of self-filed amendments could transform an existing site into one unrecognizable from its current form. Such a transformation would be in direct conflict with the goal of expediting "small and routine" amendments. This factor alone should prevent MNRF proceeding with implementation of this proposal in order to prevent land use conflicts, long term changes or irreversible effects before they occur.

## **APPLICATIONS TO AMEND LICENSES, PERMITS, AND SITE PLANS UNDER THE AGGREGATE RESOURCES ACT**

Although this document presents further detail regarding significant and non-significant changes, they reflect GWO's contention stated earlier that the expanded list of activities are land use planning issues, not operational and as such, need to be scrutinized at the landscape level of analysis, not a cookie cutter approach to 'known' impacts that overlook nuances within the context. MNRF has operational not planning expertise as well as not having the financial and staffing capacity to adequately address these changes, monitor or enforce terms and conditions. The approach proposed in Section 5.1 Planning and Land use side steps the planning role.

**"Ministry decisions to amend existing approvals under the Aggregate Resources Act (ARA) are not prescribed under the PPS and provincial plans. However, when processing amendments under the Act, MNRF will have regard to the PPS and/or policies contained in the relevant provincial plan."**

Having 'regard to the PPS or provincial plans totally diminishes the principle of the land use initially approved under zoning as well as the identification and consideration of the potential social and environmental impacts that could occur.

## SUMMARY

All phases of aggregate development from site preparation to rehabilitation can negatively affect both the environment and people in various ways, some phases more severely than others. Expanding the opportunity for industry to unilaterally include additional activities without oversight or transparency and involvement of the general public puts the environment and social well-being at risk. Coupled with the continuous onslaught of ERO regulatory proposals that dismantle environmental protections, there is increased concern regarding cumulative impacts associated with unfettered development. The overall impact of changes to operational sites could dramatically change the cumulative negative impact in an area for years to come.

### **Undermining the Rule of Law**

GWO's concerns relate also to process and the determination of criteria for site plan amendments as well as for the ability of the Minister to over-ride previous bureaucratic and/or tribunal decisions. Of particular concern are agreements that were reached during negotiations between objectors and proponents and typically recorded as site plan notes during those proceedings but not identified as being an 'agreement' between parties to move forward, or where a tribunal decisions include specific conditions for project approval. Without these agreements and conditions, tribunals may not have issued positive direction on Zoning, Official Plan amendments or ARA applications. Under the proposed process, these decisions can be overturned at a later date which makes a mockery of the tribunal appeal process. There is no system in place to track these decisions which puts into question the ability of the Ministry to actually have 'due regard' to ensure that the terms and agreed upon conditions are upheld.

Aggregate reprocessing is a distinct industrial process that by default should not be located in extractive aggregate sites. Added industrial activities increase the burden on the environment and communities. Self-filing is only efficient for industry when impacts are considered from the broad assumption they will be neutral and determined by reference only to the past experience of internal expertise. This cookie cutter approach implies impacts are common, well understood and that standard mitigation strategies are sufficient to address adversities and neglects stakeholder knowledge and experience, the unique characteristics of the surrounding area and the current rise of severe environmental events due to the rapid rate of climate change.

Overall, it is GWO's contention that the proposed self-filing is **neither fair, predictable and adaptive nor does it manage and minimize impact to the surrounding environment and communities.** Self-filings are only effective in reducing the burden for industry to conduct rigorous analysis and is only efficient in reducing their administrative costs in order to provide business certainty. Effectiveness, efficiency and certainty are certainly worthy objectives to achieve but they should not occur at the expense of the environment, meaningful consultation or certainty of all stakeholders. Industry is accountable to their company's shareholders and their bottom line, not the public interest which puts them in a conflict of interest situation since they stand to gain financially from this advantage.

Regulators are mandated to represent society's interest rather than the private interests of the regulator or the particular regulated entities. The success of any regulation depends upon the methods

and practices of the proponent and the degree to which the public and indigenous peoples are meaningfully involved. Nothing less than a transparent and participatory process can raise awareness about the full scope of issues and cumulative effects that occur otherwise, the process is essentially a superficial scan by industry.

#### **GWO RECOMMENDATION**

Gravel Watch Ontario strongly recommends not to proceed with the implementation of this proposal. We have attached a list of specific recommendations the Ministry should address before attempting any future changes.

**ATTACHMENT**  
**Detailed Recommendations**

- acknowledge that reprocessing aggregate represents additional Class III industrial activity and has associated fugitive emissions such as noise, dust and vibration and possible contamination of groundwater when located on a permeable pit floor
- recognize reprocessing activities as distinct types of activity for approved aggregate sites which would require a new license, studies conducted at the landscape scale and set of regulations dealing with these activities and situated in industrial settings close to the source and destination for the product
- limit reprocessing facilities/recycling yards in municipally approved locations and under the best practice regime. This includes oversight from MOE, MNRF, Ministry of Labour and Ontario Government Standards for the finished product.
- continue to undertake notification and consultation in relation to any change in land use with all the potentially affected stakeholders and reinstate the requirement to have approvals from other ministries as part of the ARA regulations
- require additional studies at the landscape scale rather than site specific studies alone in order to identify and address impacts that go beyond the narrow scope of technical studies
- include comprehensive air quality analysis for all new, existing and additional activities.
- prepare regulations in a way that enables a variety of communication vehicles which are now generally accepted and used by civil society
- limit the use of phrases such as ‘may be required’ in final regulations
- ensure comprehensive circulation requirements so the application is thoroughly reviewed by other ministries and impacts are thorough understood
- create certainty through good governance processes
- focus on a sustainable future that balances the economy with nature before there are irreversible effects.