

TOP AGGREGATE PRODUCING MUNICIPALITIES IN ONTARIO

c/o Township of North Dumfries
2958 Greenfield Road
P.O. Box 1060
Ayr, Ontario NOB 1E0

Chair: Sue Foxtan
Vice-Chair: Scott Macpherson

October 30th, 2019

Hon. John Yakabuski,
Minister of Natural Resources & Forestry
Whitney Block, 6th Floor, Room 6630
99 Wellesley Street North
Toronto, Ontario M7A 1W3

Dear Minister Yakabuski

**Re: Response to Proposed Amendments to the Aggregate Resources Act
ERO Number 019-0556**

On behalf of the Top Aggregate Producing Municipalities in Ontario (TAPMO), I am submitting our response to the proposed amendments to the *Aggregate Resources Act* as sponsored by your Ministry.

TAPMO represents over forty (40) local Municipalities across Ontario that have significant reserves and annual production of aggregate, stone and sand materials. TAPMO's membership is diverse in its composition, however, we share the common perspective that local Municipalities have a vital role to play in ensuring a sustainable aggregate industry for Ontario and as an Association representing aggregate rich communities. TAPMO members seek to develop long-term best practices and constructive, sustainable solutions that will ultimately benefit all stakeholders. In this capacity TAPMO plays a vital role in interpreting legislation and Municipal priorities. TAPMO is also uniquely positioned to lead and facilitate discussions.

In this context TAPMO provides the following comments on the proposed amendments to the *Aggregate Resources Act*.

A. General Observation and Statement

TAPMO recognizes that the Province is expected to periodically update legislation to ensure its policies accurately reflect the sitting government's priorities.

As a general statement, however, we would ask that the Province provide more detail and context to the information presented through ERO Number 019-0556. The

Hon. John Yakabuski
ERO Number 019-0556
October 30th, 2019

contents of the on-line posting are broadly worded statements that lack detail and specifics. TAPMO wants to ensure that the changes proposed by the Government achieve the intended goals when implemented while simultaneously aligned with the balance and forward looking perspective of ensuring access to aggregate related material in a comprehensive, sustainable and thoughtful manner. We ask and encourage the Province to consider providing more guidance and details in this respect before finalizing the amendment to the Act.

B. Below the Water Table Extraction

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.

Municipal Councils, because of the decisions associated with land use activity implemented through By-laws approved under the authority of Section 34 of the *Planning Act*, could be drawn into a liability claim if there are off-site impacts associated with the operation of a pit / quarry where extraction of materials occurs below the water table. If the Province moves forward with the proposed amendments, the Act should indemnify Municipalities and their respective Councils from legal exposure and claims.

An inherent weakness exists within the current regime and would be further exasperated under the proposed Amendments to the *Aggregate Resources Act*. Local Municipalities are responsible for establishing permitted land use activities through General Zoning By-laws and amendments thereto. A License cannot be issued by the Ministry under the *Aggregate Resources Act* for a landholding that does not have the appropriate zone classification and associated permissions. The Province, under the proposed amendments to the Act have stated that the decision to permit extraction below the water table is within the domain of the Ministry through its administration and approval process.

TAPMO firmly believes that local Municipalities should be part of this review and decision making process.

TAPMO is concerned about how extraction below the water table fits with the foundational principles of drinking water source protection. As a general principle, since protecting drinking water is essential to human health, the fundamentals of the economy and the natural environment, why would any extraction below the water table be permitted?

Hon. John Yakabuski
ERO Number 019-0556
October 30th, 2019

If extraction below the water table is to be permitted by the Province, the cumulative effects of extraction needs to be clearly articulated, studied and assessed. As can be witnessed from the attached Aerial Photo No. 1 (extract from Township of Puslinch) there are several quarries and pits in close proximity to each other. 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.

**Township of Puslinch
Aerial Photo No. 1**



Hon. John Yakabuski
ERO Number 019-0556
October 30th, 2019

Part of the problem is that each site is assessed on its own merits and assessment. The cumulative effects of aggregate extraction below the groundwater table is not explicitly outlined as a requirement for review and consideration. TAPMO strongly believes that any consideration for extraction below the water table should be assessed in a comprehensive fashion, including cumulative impact and assessment.

C. Prohibition on Vertical Zoning by Municipalities

The Province is proposing to amend the *Aggregate Resources Act* to prohibit Municipalities from regulating the depth of aggregate extraction in General Zoning By-laws or amendments thereto. TAPMO does not support this proposed change for the following reasons:

- i. A municipality's authority to restrict the use of land under the *Planning Act* includes the right to set both the horizontal and vertical boundaries of the permitted use as set out in Section 34. Therefore, municipalities have the authority to set the vertical limits of a mineral aggregate operation through zoning;
- ii. Extraction of aggregates close to, or below the water table has the potential to impact the quantity and quality of water, including vulnerable and sensitive groundwater resources. Many municipalities and/or private individuals and businesses across Ontario rely on groundwater for their potable water supply. It is therefore inappropriate to prevent Municipalities from using Zoning By-laws to protect their valuable groundwater resources;
- iii. Currently, any operator licensed for an above-water-table pit can apply to extend extraction down into the water table. All that is required is a site plan amendment approved by the Ministry. Such an amendment may or may not be circulated to Municipalities, and if circulated, they have a limited role in the review and no right of appeal. To address this issue, some Municipalities have passed Zoning By-laws that would trigger a Zone change application whenever an operator applies to increase the depth of extraction. This process enables the Municipality to require the submission of studies, and identify any potential groundwater issues, prior to the approval of an amendment to the By-law; and,
- iv. On a more regular basis aggregate, concrete and asphalt recycling is occurring as permissive activities. It may be appropriate in certain instances to provide a greater separation between the storage / processing area to protect the groundwater regime. As site conditions

Hon. John Yakabuski
ERO Number 019-0556
October 30th, 2019

are variable, vertical zoning can be an effective tool to identify these localized conditions and provide the appropriate measure of security.

D. Public Engagement for Site Plan Amendments relating to Water Resources

The Province is proposing to introduce a more robust application process for existing aggregate operators that want to extract within the water table, however, there are limited details on this proposal in the draft amendment.

The process at a high level as proposed by the Province may potentially allow for increased public engagement on site plan amendments that may impact water resources. It may also allow Municipalities and others to formally object to such amendments to the Ministry and give parties the right to appeal to the Local Planning Appeal Tribunal (LPAT) if their concerns are not addressed.

TAPMO supports the overarching principle of the proposed change and believe it would help increase the level of Municipal involvement whenever existing operators propose to increase the depth of extraction below the water table. Currently, the Ministry has the sole discretion to decide whether and to whom to circulate any such requests, and there are no rights of appeal. If adopted, this change could provide for public consultation and notification to Municipalities, who would have input into the technical studies necessary for the proposed site plan amendments. This would effectively give Municipalities and others the right to appeal which could achieve the same objectives sought through vertical zoning noted above in Section C of this correspondence.

TAPMO encourages the Province to implement a more robust application process for site plan amendments that may impact water resources. TAPMO also believes, however, that further modifications are required so that the new process would also apply to situations where:

- i. An existing above-water-table operation applies for permission to extend extraction below 1.5 metres of the water table;
- ii. An existing below-water-table operation applies for permission to extract deeper underground and penetrate the aquitard overlying a municipal aquifer.

Finally, TAPMO requests that the Province furnish additional details on this proposed process so that further comments can be provided. Groundwater resources are to fragile and vulnerable --- we need to get this right.

Hon. John Yakabuski
ERO Number 019-0556
October 30th, 2019

E. Aggregate Haul Routes

The Province is proposing to significantly alter how aggregate haul routes are considered under the *Aggregate Resources Act* such that the Minister and the LPAT, when making a decision about issuing or refusing an aggregate license, cannot impose conditions requiring agreements between municipalities and aggregate operators regarding aggregate haulage.

This change would apply to all applications in progress where a decision by the Minister or the LPAT has not yet been made. Municipalities and aggregate producers could enter into agreements only on a voluntary basis.

TAPMO does not support these proposed changes. In considering applications for a new or expanding aggregate operation, Municipalities typically require applicants to carry-out reasonable road improvements (e.g., installing turn lanes, facilitating safe access to and from the site), or to direct truck traffic to certain haul routes. These requirements are often secured through agreements between the Municipality and the aggregate operator. As such, it is essential that Municipalities maintain the ability to require applicants to enter into agreements related to reasonable roads improvements and aggregate haul routes.

TAPMO requests that the Province not amend the Act such that the Minister and the LPAT cannot impose conditions requiring agreements between municipalities and aggregate producers relating to reasonable road improvements and aggregate haulage.

F. Minor Expansions into Road Allowances

The Province is proposing appropriate mechanisms to facilitate the amendment to an existing abutting license on private property to accommodate minor expansions onto / through a road allowance where the Municipality is an agreeable partner. TAPMO supports this objective.

G. Public Notification and Consultation Requirements

The Province through the proposed amendment has identified that it is reviewing its current application requirements for new aggregate sites, including public notification and consultation requirements. While the Province has not released any details, TAPMO would be supportive of any measures that would enhance the current public participation process.

The current zoning and licensing process for new aggregate operations follows a dual process under the *Planning Act* and the *Aggregate Resource Act*. The process can be fairly complex and difficult to navigate for community members who are less familiar with aggregate terminology and planning procedures. A common complaint is that more

Hon. John Yakabuski
ERO Number 019-0556
October 30th, 2019

time and clearer information is needed for the public to participate effectively in the process. Where public concerns cannot be satisfactorily resolved, this can result in costly and protracted LPAT hearings that effectively take the final decision out of the hands of Council and the public.

H. Streamlining Compliance Reporting

At present the Act requires aggregate operators to conduct an annual self-assessment of their aggregate operation and to submit a Compliance Assessment Report to the Ministry and the host Municipality.

In practice, these standardized reports are simply collected by the Ministry and are not systematically reviewed for errors or omissions. The Province is now proposing to streamline these compliance reporting requirements through the amendment to the Act.

While TAPMO can appreciate the need for streamlining, the Province has not released any details on how the current compliance reporting process would be changed. It is important to maintain a high level of compliance reporting, particularly for larger aggregate sites, to ensure compliance with the Act and to monitor rehabilitation and public safety matters. TAPMO is concerned that the proposed change could potentially downgrade the current self-compliance assessment process which would be detrimental in the context of more complex operations where there is a greater possibility of impact on the groundwater regime and/or area environmental features.

I. Rehabilitation

The issue of rehabilitation was not extensively discussed in the proposed Amendment to the Act.

The Province is considering new regulations that would require more enhanced reporting from aggregate operators on the progress of their rehabilitation efforts. This reporting process would require operators to provide more context and detail on where, when and how rehabilitation is or has been undertaken. The content, scope and frequency of the new reporting process would be prescribed through regulations under the Act, which have yet to be released by the Province.

TAPMO supports this proposed change to better monitor and help improve rehabilitation rates in Ontario. However, we note that enhanced reporting on rehabilitation will not in itself result in higher rehabilitation rates. Other potential measures that the Province could include to improve the timely rehabilitation of lands would be to require security deposits, establishing tighter rehabilitation timelines, and increasing enforcement and fines for unnecessary delays in rehabilitation.

Hon. John Yakabuski
ERO Number 019-0556
October 30th, 2019

TAPMO continues to express concerns about the lack of comprehensive rehabilitation of aggregate sites where there are abutting properties. Recognizing that most aggregate sites were initially agricultural operations, it is important that the appropriate level of rehabilitation occur to avoid sterilization of the land and return the lands to productive use.

As can be seen on Aerial Photo Number 2 (Township of North Dumfries) there is a dominance of existing and pending aggregate operations occurring within this concession block. Each property has its own rehabilitation plan with the typical 3:1 side slopes at the site perimeter. These lands represented a block of significant investment in agriculture and supported a range of grain crops.

**Township of North Dumfries
Aerial Photo No. 2**



Hon. John Yakabuski
ERO Number 019-0556
October 30th, 2019

In the absence of comprehensive rehabilitation and the coordination / integration between licensed areas, the land base for agricultural purposes will be marginalized when it is returned back to its end use.

TAPMO seeks a more definitive statement and direction from the Province with the amendments to the Act addressing the issue of comprehensive rehabilitation.

J. Recycling – Concrete, Aggregate and Asphalt Products

The proposed amendment to the Act is silent on the issue of recycling and blending of spent aggregate materials (ie: concrete and asphalt) with virgin material for reuse in the marketplace. Operators are being more progressive and are seeking recycling opportunities as permissive uses within the notes on their site plans and licenses.

In principle, TAPMO supports the premise of recycling as it has to be recognized that stone, sand and gravel are finite resources. Also, the efficient and proper utilization of recycled materials will slow down the need for virgin materials which may delay the opening of new pits or quarries.

The concern of TAPMO, however, is the lack of studies and analysis on recycled materials and their contents (ie: co-mingled products like drywall, etc). Best practices and regulations should be drafted to provide more direction on appropriate handling, sorting and storage of the recycled product especially in the context of the protection of the groundwater regime. Follow up information should be provided by the Province in this regard.

K. Fees

The proposed amendment to the Act does not speak to or address the issue of fees paid to lower tier or upper tier municipalities. TAPMO seeks discussions with the Province and the Ontario Stone Sand & Gravel Association to pursue amendments and enhancements to the present fee structure.

Pre-2017, the aggregate industry and Municipalities had initial discussions about an amount equivalent to \$0.54 per tonne. Recognizing that road building costs are a significant investment by Municipalities and that the aggregate industry does not pay Development Charges for their operations, it is time to reopen and move forward with an adjustment in the fee structure.

Further, TAPMO recommends that the annual indexation for the fee should be tied to the Construction Price Index.

Hon. John Yakabuski
ERO Number 019-0556
October 30th, 2019

TAPMO and members of the Executive would welcome the opportunity to meet with you and senior members of your Staff to discuss the proposed amendments to the *Aggregate Resources Act* and to elaborate on the contents of this submission. We believe that constructive two-way dialogue on the proposed Amendments would be appropriate and mutually beneficial.

On behalf of TAPMO and its member municipalities, I look forward to on-going discussions on this matter and the request for a meeting with your Office.

Yours truly,



Sue Foxton, Chair
[Mayor, Township of North Dumfries]

Copy to:

Mike Harris Jr., Parliamentary Assistant, Ministry of Natural Resources & Forestry
Brock Vandrick, Chief of State, Minister of Natural Resources & Forestry
Adam Bloskie, Director of Policy & Stakeholder Relations, MNRF
Monika Turner, Director of Policy, Association of Municipalities Ontario
TAPMO Member Municipalities