Comment

On

Proposals to Modernize

Regulations under

The Aggregate Resources Act

By



March 8, 2020

The Oxford Coalition for Social Justice (OCSJ) is dedicated to improving the social justice and the quality of life through advocacy, education and action on health, education, environmental, aboriginal rights, fair wages, human rights, peace, and safe & sustainable food issues. Because Oxford County is the scene of significant aggregate extraction, the Aggregate Resources Act is of vital interest to us in that extraction, haulage, dormancy, closure and rehabilitation all have significant impacts on quality of life and through it on social justice.

The Oxford Coalition for Social Justice is pleased to see the development of regulations under the Aggregate Resources Act after lengthy consultations. Further, the Coalition recognizes that municipal governments and their organisations at provincial levels, e.g., TAPMO. ROMA and AMO will likely join Gravel Watch Ontario in comment on the regulations. Modernizing technologies for the submission of documents as electronic files recognizes that the 21st century is here, that electronic documents are cheaper and quicker to create, submit and /or update. These comments are offered in good faith with the intention that local and provincial applications of good laws, intelligent regulations and vigorous monitoring (including enforcement) can have social, environmental and economic benefits.

1. **Regulations, best practices and guidance documents.**

While regulations are established to set minimum standards, the Coalition is glad to see that best management practices and guidance are available to encourage responsible operators to exceed regulatory lower limits. Conversely, the use of incentives to move aggregate companies from minimum standards to best practices is needed. Doubtless, best practices should produce economic benefit for the extraction company alongside the advantages to human and environmental health, but initial encouragement may be necessary. These incentives can take the form of prioritizing purchases from exemplary producers: the largest portion of product is sold to municipal and/or provincial governments. Buying power can move the practices in ways that the failed proposed industry initiative, the CornerStone Standards, could not.

Regulations, the minimum standards, need to be high enough that they provide assurance to communities in which new and existing extraction zones occur that human and environmental health will be assured. Recent medical reports that lives are shortened by exposure to diesel exhaust, a feature of pits and quarries, lead us to believe that dust and fine particulate matter need to be reduced in the air to below health standards. (The MECP’s standards on air quality relate to visibility not to health and cannot be used as a measurement in pit and quarry extraction, crushing, haulage and loading or blending).

**Recommendations:**

1. Establish health standards around pits and quarries for dust which are clear, precise, and enforceable.
2. Incentivize best practices.
3. Prevent non-compliance through vigilance.
4. **Unintended consequences of decisions**
	1. Shared or ceded authority to regulate; diminished consultation and consent

The MNRF, in its effort to provide clarity in its regulations, cedes authority to the Ministry of the Environment, Conservation and Parks, the Ministry of Labour and the Ministry of Agriculture, Food and Rural Affairs. While in theory this should be a good thing, in practice it is fraught with difficulty. As noted above, the standards related to dust and fine particulate matter at the MECP are not founded on human health science. The enforcement of Labour standards within a work site do not guarantee the health or safety of people residing in the vicinity, meaning that ceding all authority to Labour removes necessary protections for the population. With its 20% reduction in budget, OMAFRA has too few staff to ensure the protection of prime farmland or to ensure increasing soil fertility in currently active farm properties or those being rehabilitated from previous aggregate uses.

2.2 Reduction of the role of Conservation Authorities in licencing

The MNRF is in need of Conservation Authorities’ expertise in the protection of surface and ground water. Conservations Authorities’ trained staff and the municipal governments they represent are vital to reasonable decision-making around aggregate extraction sites. Not just source water for drinking water is important. Watersheds are active ecological zones for which Conservation Authorities are covenanted to protect and enhance. The narrowing of their mandates has made this work more difficult if not impossible. The Oxford Coalition for Social Justice calls on the MNRF to write a role into permitting, management and closure plans for aggregate extraction sites that will ensure the safety and prosperity of the environment and those species, including human, which inhabit it.

2.3 Indeterminate water tables and/or below water table extraction

Water tables in times of climate change, unusual rains or drought, and rising human consumption rates (due to population growth among others) are variable. Without adequate, localized scientific data on water tables over a four-season period, there is significant danger of interference with the water table, thus with sources of drinking water. It is important that pits and quarries do not extract below the water table in order to preserve potable water as well as headwater zones of watersheds. The reservation of vertical zoning for below-ground extraction by the MNRF risks imperilling populations and eco-systems. Rather, vertical zoning needs to start at the water table’s highest level, provide an adequate buffer and filtration zone, and account for emerging scientific knowledge of the infiltration of chemicals.

2.4 Natural Heritage and Archeology

The Oxford Coalition for Social Justice acknowledges and respects that First Nations have inhabited Ontario for generations. It is not unsurprising to find archeological evidence of their presence and traditional uses of the land. Similarly, where Natural Heritage identifies lands has having significance, that too needs to be respected. Under the proposed regulations, aggregate operators could deem an area of their land as having archeological finds without consulting experts in the field. While there may be some cases where archeological significance may be obvious – middens, burial sites, oral records, etc. – it seems far more logical to have a site scanned for First Nations or settler artefacts signifying occupation and/or use, than to reserve section from extraction than vice versa. The bulldozer driver removing overburden is not likely to spot objects or features of archeological significance.

2.5 Property boundaries

Pits and quarries in rural Ontario are tempting to a variety of people: below water table sites draw bathers and fishers; gravel pits appeal to riders of ATVs; quarry walls entice climbers. The opportunities for fatalities have been realized over the years. While fences are hard to keep up, people are even harder to keep out. Nonetheless, the removal of the requirement to fence aggregate sites can lead to deaths and injuries, as well as to lawsuits about creating places of danger. Signage about no trespassing is insufficient as indeed page wire fences are.

2.6 Road allowances in rural settings are not always utilized by the municipality in sparsely settled areas. Being map features, they can help separate kinds of activities or categories of land. In cases where the road allowance separates land uses, they are vital in the protect of wetlands from other uses, of source water protection zones from lands available for various purposes. An unused road allowance should not be considered without importance.

**Recommendations:**

1. Recognize the importance of the work of Conservation Authorities on aggregate theory and practice
2. Educate and train adolescents and adults on safety around pits and quarries.
3. Recognize the inherent and treaty rights of First Nations, Metis and Innuit peoples to river basins.
4. Cease permitting below water pits or quarries.

**3. Impacts beyond the pit or quarry site**

As much as MNRF’s current regulations suggest that it should contain all dust, fine particulate matter and fly rock, it is not the case. Both track-out and air-borne dust remind us that dust is ubiquitous in the vicinity of aggregate operations. Further, the science on the most harmful portion of dust to human health – fine particulate matter – travels farthest from the point of origin. PM 2.5 can cause damage to the lungs, heart and brain according to Dr. Ray Copes of Public Health – Ontario (among others). Berms and tree plantations around the perimeter of pits and quarries do not effectively mitigate the dangers to people who breathe nearby.

Pits and quarries are vectors for the rapid entry of a variety of substances into the water table and thus into drinking water for groundwater-dependent individuals and communities. Sites in rural Ontario can bring fertilizers and other chemicals into source waters. Emerging science in Canada and the USA on the dangers of atrazine should be a caution. Dewatering of quarries has effects on water quantity and quality.

**Recommendations:**

1. Regulate to reduce injury or sudden deaths in humans.
2. Stop environmental degradation
3. Trade pit and quarry permits as a priority for monitoring, compliance and levying finds for infractions which have negative impacts.
4. Fund emerging science through Canadian universities to provide yet better data on the interpenetration of aquifers with other water.
5. **Responsibility to and of the public, the ministry, the industry**
	1. Self-filing for routine amendments of site plans seems a way to reduce administrative burdens at the MNRF and on the industry. Given that amendments occur over successive years, there needs to be a way to correlate proposed amendments to prohibitions, objections, rehabilitation requirements and compliance orders.
	2. Increased public participation in the monitoring of sites reflects a complaints-driven system rather than continuous improvement through inspection. Ove the years of an aggregate site’s life, public commitment has little reward. In fact, most communities would look at is a punishment – asking for more time to monitor a pit that the community has proven itself to be capable of preventing, and asking an individual to watch successive degradations of the quality of life.
	3. Migrations within the site can mean that aggregate materials, scrap material or equipment impinge upon neighbouring residents in terms of view or noise. “Sensitive receptors” may find that these undesirable impacts alter their quality of life negatively.
	4. The extension of comment periods is a good thing. Separating comment from objection can confuse the public and further distance it from the processes which MNRF needs the public to trust. When the public engages in a licence proposal, they would need to again engage as an objection. There will be a drop off because people will assume that their comment was the objection, then anger when their objection was not registered.

**Recommendations:**

1. Extend comment periods as noted above.
2. Reward individuals, groups and communities for long-term commitment, through intervener funds.
3. **Cost reductions through loosening of the regulatory burden**

Here the costing estimates are on one side of the equation only. Data is equally necessary on the supply under current licence in Ontario, on the projected demand for virgin aggregate, on rates of progressive and final rehabilitation, on costs borne by communities who oppose pits and quarries so that informed decisions can be made by the MNRF and proponents on the eventual necessity of new pits.

**Recommendations:**

1. Quantify Ontario’s licenced supply.
2. Project Ontario’s total need for aggregate, including reprocessed and virgin product.
3. Regulate maximum disturbed areas.
4. **Rehabilitation**

A definition of end dates on pits and quarries is needed. As an “interim land use” they go on for years and years, continuing to annoy the community. Similarly, progressive rehabilitation is important in maintaining a relationship between aggregate operators and their communities. Often a large portion of required rehabilitation area is left as water features, a net loss to food production. Since site plans now can be altered more easily, it remains to be seen how long we wait before the completion of the work as promised at the time of creation of the site plan. In some senses, the site plan represents a covenant between the pit operator and the community.

**Recommendations:**

1. Create incentives for rehabilitation and surrendering of licences.
2. Establish best practices for progressive, integrated and comprehensive rehabilitation
3. Rebuild trust in the covenant between the MNRF, operators and the community around rehabilitation.
4. Exclude water from the definition of rehabilitation.
5. Find ways to rehabilitate abandoned pits and quarries.

**Conclusion**

The Oxford Coalition for Social Justice appreciates the opportunity for consultation presented by the ERO posting of the regulations related to the Aggregate Act and provides this document in good faith. Similarly, the Coalition advocates for acts of good faith on the part of the industry in the reduction of the anxiety caused by the frequent prospect of new pits and quarries, in the reduction of abandoned and dormant pits and the adoption of best practices for active operations.

The Oxford Coalition for Social Justice further appreciates opportunities to engage in discussion of regulations being proposed.