



March 2020

Resource Development Coordinator
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Via email:
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Re: Proposals to amend O.Reg. 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act ERO# 13-1303

Gravel Watch Ontario is a province-wide coalition of citizens' 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 15 years of experience in advising both communities and government agencies working on aggregate matters.

We appreciate the opportunity to comment on these proposed changes to the Aggregate Resources Act (ARA) Regulations and associated Provincial Standards. In addition to our written submission included in the attached document, we strongly recommended that additional consultation activities take place before this work is finalized. Aggregate policy can be controversial, and it is important that we get it right. In particular we call for a small group multi-stakeholder working session where policy makers can hear the perspectives and concerns from key stakeholders in a shared session. Such forums have been convened in the past and we believe that they provided a distinct opportunity for decision makers to evaluate any differing perspectives in order to chart the best way forward.

We also want to take this opportunity to reiterate two of our prior recommendations for aggregate reform in Ontario.

Aspects of current aggregate policy create an awkward situation for decision makers when evaluating proposed aggregate operations. On one hand, the Provincial Policy Statement specifies that applicants are not required to demonstrate need for proposed operations. On the other hand, applicants often claim a critical need for new aggregate operations by presenting data implying a shortage of supply. Gravel Watch Ontario's position is that supply and consumption studies for aggregates at a regional level should be maintained by the Ministry. This level of information compiled at a regional scale should not impact the open competitive marketplace but would provide insight into the criticality of any particular proposed aggregate operation.

MNR, as the lead organization for the management of aggregates in Ontario, should possess greater expertise to evaluate applications and enforce consistent best practices across the province. This would be in addition to the current role that independent third-party reviewers provide. The current situation of effectively outsourcing the debate over aggregate licences to the municipalities and non-industry third parties is an abdication of MNR's role. The province as the regulator of aggregate extraction should be more engaged.

Should you have any questions or would like to discuss our comments in more detail, please feel free to contact us.

Sincerely,
Graham Flint, B.A.Sc, P. Eng

A handwritten signature in black ink that reads "G. Flint". The signature is written in a cursive, flowing style with a long horizontal line extending from the bottom of the "t".

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Gravel Watch Ontario
Submission to ERO: 013-1303
Proposals to amend O.Reg. 244/97 and the Aggregate
Resources of Ontario Provincial Standards under the
Aggregate Resources Act (ARA)

Thank you for the opportunity to comment on the proposed changes to the Aggregate Resources Act Regulations and Provincial Standards.

Gravel Watch Ontario 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 15 years of experience in advising both communities and government agencies in aggregate matters.

General Comment

As a general comment, we find it difficult to provide specific comments and recommendations in several areas given the level of detail provided in the proposal document. We hope that as the work on the revisions continues more detailed information will be forthcoming along with additional opportunities to provide feedback at that time.

Our comments will follow the structure of the proposal document:

Section 1 – Proposed Changes for Applications to Establish a New Site

Part 1.1: Study and Information Requirements

1.1.1 Water Report

Given the recent restrictions placed on municipal governments effectively eliminating their ability to control the depth of extraction in aggregate sites, the

province must improve the approach to studying the impact of aggregate extraction on groundwater resources.

The proposal requirement for a groundwater study of at least one year is inadequate. While we have seen some extreme situations where groundwater levels have been measured during a single season, they are the exception. For the majority of hydrogeologic studies done in support of aggregate operations it is already common practice to do multiyear studies. Given the rapid rate of change in environmental conditions with ongoing climate change, providing any kind of guidance that a single year groundwater study would be adequate is inappropriate.

The proposal speaks to “proposing to clarify some of the current requirements for the assessment of impacts to water in order to determine the significance and potential of impacts and the feasibility of mitigation” and provides some examples. Without any further information it is difficult to provide comment on this item. Certainly, any potential impact on existing drinking water wells needs to be understood, but without any details on what the requirements and approach to assessment will be, comments can’t be provided.

We fully support the requirement to ensure that local source water protection plans and policies are addressed.

The specification that a “water budget ... may be required” is an example where these proposals seem to be requiring minimal studies and information that are already established as common practices. If the goal of this legislative and regulatory update was to create a “more robust” groundwater study regime, the proposals presented here are falling short.

1.1.2 Cultural Heritage Report

Studies on a proposal’s impact to the Built and Cultural landscape are an important aspect of evaluating a proposal. We support the direction being proposed to align the requirements of these studies with the Province’s policy framework.

1.1.3 Natural Environment Report

We support the updating of the requirements for natural environment studies to reflect the requirements of the provincial regional plans.

1.1.4 Agricultural Impact Assessment (AIA)

Regarding AIA studies, Gravel Watch Ontario believes that all proposals which impact the agricultural system within a host community should require an AIA. Given the alarming reduction of agricultural lands occurring across the province, limiting the requirement to prime agricultural areas only is overly restrictive.

1.1.5 Blast Design Report

We support the proposals in this area and offer our perspective that this is an area where more review should be done to ensure that the current blast studies requirements represent the best practices already established in other jurisdictions.

1.1.6 Summary Statement

We support the proposals in this area and feel updated regulations would benefit from more clarity of what this requirement under the Aggregate Resources Act represents. Gravel Watch Ontario recommends that guidance be provided to applicants clearly indicating that the requirements contained in these ARA regulations are not to be interpreted to remove nor satisfy any requirements under the Planning Act which may be required to support any request to change the zoning on a property. ARA requirements and Planning Act requirements are distinctly different and the Summary Statement requirements under this section of the regulations do not remove the necessity to deal with requirements under the Planning Act.

**1.1.7 Application Requirements for Extraction from Land under Water
&
1.1.8 Forestry Aggregate Pits**

Gravel Watch Ontario has no specific comments on either of these proposals.

Part 1.2: Site Plan and Licence / Permit Conditions

1.2.1 Site Plan Standards – Improving Flexibility

Gravel Watch Ontario is very concerned over the cumulative impact of these proposals. The list of elements of an aggregate operation that would now be subject to only “general” siting on an operation site is very comprehensive. The overall impact of relocating these elements on an operational site could dramatically change the overall impact that the site may have on the natural environment and the community that hosts it. Our perspective is that the change could be so significant that a site which was harmoniously existing in its current form could become incompatible.

If this proposal moves forward, then impact studies required for future proposed sites would have to consider all the possible configurations of all these elements within the proposed “general areas”; a task which in our opinion would be impractical.

We are greatly concerned over the proposal to remove the requirement for a physical fence around aggregate sites. While some flexibility in the requirement around fencing might be appropriate, the removal of the requirement for a physical barrier is concerning. We foresee tragic situations with albeit trespassing individuals becoming injured or worst on aggregate sites.

1.2.2 Site Plan Standards – Modernization

The issue of recycled or reprocessed aggregate needs a more thorough handling in the updated regulations. Reprocessing aggregate represents an additional Class III industrial activity with its associated fugitive emissions such as noise, dust and

vibration. Gravel Watch Ontario continues to recommend that reprocessing activities be considered a distinct type of activity within aggregate sites and that a new set of regulations dealing with these activities be developed to deal with them and the issues associated with them. We also feel that aggregate reprocessing should not be considered a default activity on extraction sites. Reprocessing of aggregates should be done in industrial settings close to both the source and destination for the product.

We strongly support the clarification that all activities taking place on the site represents the site “operating” and as a result those activities need to be in compliance with the hours of operation for the site.

We remain disappointed by the seemingly timid approach to moving aggregate regulation into the current century when it comes to documentation. Electronic site plans should be mandatory, and the pdf format should be required, not encouraged.

1.2.3 Qualified Professionals to Prepare Site Plans

Gravel Watch Ontario supports the proposed update to the list of qualified professionals that may prepare site plans.

1.2.4 Prescribed Licence and Permit Conditions (New Sites)

Gravel Watch Ontario would recommend that the requirements for noise mitigation for Class B licences should be harmonised with the requirements for dust, namely that both are required where a sensitive receptor is within 500 metres.

We are concerned about the removal of the requirement to have approvals from other ministries as part of the ARA regulations. As the Ministry of Natural Resources and Forestry (MNRF) is seen as the lead ministry when it comes to managing aggregate sites, it is MNRF inspectors who will most likely visit an aggregate site and not including these dependent requirements in the MNRF regulatory framework will limit the ability of aggregate inspectors from enforcing

these requirements. Aggregate sites should not be operating without these associated approvals and MNR aggregate personnel are best prepared to enforce that dependency.

Gravel Watch Ontario fully supports “catching up” for prescribed conditions on all existing aggregate sites.

Part 1.3: Notification and Consultation Requirements

1.3.1 Notification and Consultation Timeframes

The Notification and Consultation processes are for many Ontarians their first exposure to the Aggregate Resources Act and its legislative and regulatory requirements. It is critical that this system is clear, robust, and fair to all stakeholders.

Gravel Watch Ontario supports the expansion of the initial notification period from 45 to 60 days. The existing regulations and the current proposed updates have reference to both business days and calendar days. Our recommendation would be to standardize on one or the other, but that the use of both creates the potential for unnecessary confusion.

The proposal speaks to allowing applicants request an extension past the current two-year deadline. Gravel Watch Ontario does not support this proposal. The uncertainty that a potential aggregate site creates in host communities can be extreme. Studies indicate for instance that it is during this timeframe that there is the greatest impact on surrounding property values. Creating certainty is a characteristic of good processes and allowing for undefined extensions to the aggregate application process goes against that principle.

1.3.2 Notification and Consultation Process

While Gravel Watch Ontario supports the Class A notification proposals, namely a requirement to notify all residents within 150 metres of a pit of 500 metres of a quarry, we feel that these same requirements should also apply to proposed Class

B sites. We would also recommend that the radius of landowner notification be harmonized at 150 metres for pits and 500 metres for quarries.

An additional item not covered in the proposal has to do with the required signage posted on aggregate sites. While the regulations are clear about the posting of an informational sign, it is currently silent on when those signs can be removed. Gravel Watch Ontario strongly recommends that regulatory language be included to indicate that the signage should remain installed, in readable condition, for as long as the application is under consideration.

And finally, we recommend that pending aggregate applications should be added to the Pits and Quarries online website as a pending application once the applications have been deemed completed by the MNRF.

1.3.3 Objection Process on Private Land

The details provided in this area of the proposal are insufficient to allow us to provide specific comments and recommendations. In place we offer the following comments.

The proposal as outlined reflects a “tinkering” to the current system and will likely cause significant confusion and conflict. If the goal is to improve this process, then perhaps a larger reworking of it is required.

During this period of the application process there are really two different activities underway. There is a requirement under the Environmental Bill of Rights to allow the public to comment on the proposed aggregate site. Currently that is done by posting the aggregate application on the Ontario Environmental Registry and inviting comments. Those comments however are not considered as objections under the Aggregate Resources Act.

Only objections collected under the current 45-day notification period are considered “objections.” Those formal “objections” lead to appeal rights under the ARA through a referral to the Local Planning Appeal Tribunal (LPAT). Currently, citizens who still have concerns over the project will continue to object

to it through the ARA process, but might not have any intention of appearing in front of the tribunal.

Revisions to this aspect of the application process should provide for both streams of engagement. The public should be allowed to continue to raise concerns over the project and those concerns should become part of the public hearing record for any adjudication of the matter at an LPAT hearing.

Stakeholders who desire to obtain the right to appeal any decision in this matter could be required to differentiate themselves by being required to follow a different set of requirements. Those requirements could include needing to identify themselves during the notification period and reconfirming their objection as the application process concludes or by identifying themselves by completing a structured form later in the process.

The process should also be designed to deal with stakeholders who may develop an interest in the project as the process moves along. We have a highly mobile society and residents will move into and out of communities, properties will be bought and sold as these processes move along and the ability for these stakeholders to participate in these processes should be accommodated.

Also, the need to have “all parties” agree to the use of electronic communications could create a situation where one stakeholder could negatively impact all other parties. The regulations should be written in a way that allows for a variety of communication vehicles which are now generally accepted in our civil society. At the very least references to registered mail should be replaced with any form of delivery that creates a record of transmission (for example courier delivery or a traceable Canada Post service should all be acceptable.)

1.3.4 Circulating New Applications to Agencies

Gravel Watch Ontario is concerned over the rationale for the changes in this area. Thorough review of aggregate applications is required. Different organizations will be able to bring different expertise and perspectives to different technical areas of the applications. In some situations, it may be a shared responsibility between an upper and lower tiered municipality. In other situations, there may be a long-

standing working relationship set up between the potential host municipality and some third-party agency, where that third-party agency supports gaps in the rural municipality's in-house experience. The goal for any updates to circulation requirements should be to ensure that the application is thoroughly reviewed to ensure its impacts are understood, not to limit the sources of review. Review efficiency is certainly a desirable outcome, but efficiency shouldn't be obtained at the expense of thoroughness.

Section 2 – Prescribed Rules for Minor Excavations

2.1 Excavation from Private Land or Land Owned by a Farm Business &

2.2 Excavation within a Highway Right of Way for Road Construction

Gravel Watch Ontario supports these proposals.

Section 3 – Proposed Changes to How New and Existing Sites are Managed and Operated

Part 3.1 Operating Requirements for All Sites (New and Existing)

3.1.1 Miscellaneous Changes

We raise once again our concerns over the relaxing of the requirement to have a physical fence barrier around pits and quarries on private land.

3.1.2 Dust

While we strongly support the requirement “to mitigate dust to prevent it from leaving the site”, we feel that such a requirement is unrealistic and therefore unenforceable. Further it creates a false expectation for those living within the vicinity of an aggregate site that they will not be impacted by dust.

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 required studies in support of proposed aggregate sites. Gravel Watch Ontario strongly recommends that comprehensive air quality studies leading to successful and measurable dust mitigation and air quality monitoring be required for all aggregate sites, new and existing. A Best Management Practices Plan is a step in the right direction, but any action taken needs to deal with site specific conditions and not only be in compliance with general industry best practices.

3.1.3 Blasting

Gravel Watch Ontario supports the proposal; however, the requirement to implement measures to prevent fly rock only if sensitive receptors are within 500 metres, seems arbitrary and low. While fly rock is not a common occurrence in Ontario aggregate sites, the risk it poses to local residents is extreme if it does occur. We would recommend a 1,000 metre radius at minimum as the trigger for preventive measures with the additional requirement that all blasting studies include an evaluation of the potential threats from fly rock.

3.1.4 Recycling

Gravel Watch Ontario supports the proposed tonnage limitation on the amount of imported and stored material. We also support the requirement that reprocessing activities do not delay progressive or final rehabilitation.

We also reiterate our position that aggregate reprocessing is a distinct industrial process that should not by default be located in extractive aggregate sites. And as mentioned before as a distinct industrial process Gravel Watch Ontario believes it requires a specific set of regulations dealing with the issues it raises.

Part 3.2: Annual Compliance Reporting

3.2.1 Compliance Assessment Reports

Gravel Watch Ontario supports the proposed overhaul of the annual compliance assessment reports (CAR) with the following exception.

The issue of inactive or dormant pits and quarries is a growing concern. The focus of compliance reports for dormant sites should be on reducing the disturbed area, advancing the expected progressive rehabilitation and acting on the plan to return the site to operation or complete final rehabilitation and surrender the licence or permit. The CARs for dormant sites should reflect the goal of limiting and reducing the number of dormant sites in existence.

3.2.2 Rehabilitation Reporting

Gravel Watch Ontario supports the proposal for Rehabilitation Reporting.

Part 3.3: Site Plan Amendments

3.3.1 Site Plan Amendment Process

While Gravel Watch Ontario has no specific concerns over the proposed approach in this section, we do offer the following observation.

Beyond the fundamental amendment informational requirements listed, the required information and processes proposed here seems to be very vague. While acknowledging that amendment requests may cover a wide range of possible subject areas, we offer the recommendation that the more structure that can be brought to amendment informational requirements and processes the better. Certainty is desirable for all stakeholders. The final regulations should limit the use of phrases such as “may be required” or “for more significant amendments” as much as possible.

3.3.2 Amendments to Expand into a Road Allowance

Gravel Watch Ontario continues to raise concerns over this new policy now incorporated into the ARA. Our perspective remains that this expedited facility should only be available in circumstances when the road allowance under consideration is adjacent to aggregate operations on both sides. Often road allowances are considered part of the “buffer” space between aggregate sites and other adjacent land uses. In those cases, we continue to offer our perspective that expansion into road allowances should not be treated any differently than the expansion of any licenced area onto new lands.

We support the requirement for comprehensive studies to ensure that any potential impacts are addressed but don’t understand why “the technical studies may differ from what is required for a new application”. Without further details on what this aspect of the proposal envisions, we can’t offer any further comment.

Finally, notification requirements should be harmonized with the other proposed notification requirements included in these proposals including notifying residents in addition to landowners.

3.3.3 Amendments to Expand an Existing Site Below the Water Table

This type of change to an aggregate site is of critical interest to a wide range of stakeholders. Local residents, municipalities, conservation authorities and others all have an interest in the outcome of such a request.

We support the requirement for hydrogeologic studies containing the same information as studies for new operations.

We disagree with the proposal not to require natural environment reports unless “new surface area would be disturbed”. Impacts on groundwater originating within the existing licenced area could have significant impacts on surrounding natural features outside of the licenced area. A natural environment report should be required regardless of the expansion of the surface area.

While we support the requirement that the amendment must provide information on how the request aligns with the Provincial Policy Statement or Provincial Regional Plans, we are unclear about the proposal that this information would not be required for operations that wish to expand their below the water table extraction area. If the provincial plans have policies related to below water table extraction, then those policies need to be respected. There should not be an implicit policy to allow a restricted activity to expand simply because it currently exists in a more limited way.

Notification requirements, objection processes and associated timelines should be harmonized with the requirements for new proposed sites including in situations where the below the water table extraction activities are being expanded.

3.3.4 Self-filing of Site Plan Amendments

While Gravel Watch Ontario does not oppose an expedited process for “small and routine” amendments, the determination of what is small and routine is critical and not always universally agreed to by all stakeholders.

While Gravel Watch Ontario supports the proposed criteria which would make amendments ineligible for self-filing, we do want to raise process concerns over the criteria dealing with amendments which “change or impact a condition put in place to resolve objections or concerns at the time of application”.

We aren’t aware of any process in place to track such items. Some of them can be captured as the result of administrative hearings, but these situations can occur at any time during the application process and those decisions may not even have been brought to the attention of an applicant.

An adjacent property owner or resident may look at the proposed site plan and say, “I can live with an entrance being placed there” and not raise any concerns. However, if the entrance had been moved to a different location serious objections may have been raised.

What may be considered a minor change by one stakeholder may in the perspective of others be a major and significant change giving rise to serious concerns. What is small and routine to one party may be anything but to another.

Gravel Watch Ontario continues to advocate for a tiered approach to this process. Self-filing or permit by rule policies should include a process whereby stakeholders can request further consideration and exploration of these proposed changes based on the impacts that these changes may create. The process should include a robust notification process followed by a window of time for stakeholders to raise concerns. If no concerns are raised, then the proposed changes move forward. If, however, concerns are raised, the proposed changes should revert to a traditional approach of thorough review and decision making.

Taken as a collective group the range of subject areas that may be impacted by self-filed amendments is very comprehensive. An operator could through self-filed amendments add, remove or re-locate:

- Buildings and Structures
- Portable Processing Equipment
- Portable Concrete or Asphalt Plants
- Internal Haul Routes
- Scrap and Stockpile storage areas

The cumulative effect of these changes could fundamentally change the operational nature of an aggregate site.

For elements such as plants and equipment the ability to allow the addition of them is of the greatest concern as the potential to impact fugitive emissions of noise, dust and vibrations is great. For elements such as stockpiles it could be the relocation or removal of them that gives rise to concerns for a particular stakeholder as the stockpiles may have been providing some screening from visual concerns or emissions of dust and noise. As mentioned before, the relocation of entrances could create very significant concerns for shared users of the impacted roadways.

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 to expediting “small and routine” amendments.

Gravel Watch Ontario strongly recommends that additional consultation and multi-stakeholder engagement be conducted to ensure that any implementation of this type of regulation does not create more issues than it resolves.

Regarding Recycling: we raise once again our perspective that the reprocessing of aggregates raises a number of issues that deserves a set of regulatory requirements developed specifically for it. We strongly oppose the concept that a self-filed amendment could allow a reprocessing operation to begin without a thorough and comprehensive review on any potential impacts.

Section 4 – When the Changes are Proposed to Come into Effect

Gravel Watch Ontario has no comments to offer regarding the proposed implementation timelines.

Section 5 – Regulatory Impact Assessment

Gravel Watch Ontario does not have expertise required to provide detailed comments on this section of the proposal.

From a cursory review we raise concerns over the ability to prepare such an analysis. As aggregate operations come in such a wide range of configurations and operational variables we are concerned that it would be impossible to develop such an industry wide calculation of financial impact and further that even if one were to derive such a blended number its applicability to any individual aggregate operator would be limited.

We also highlight that while consideration of economics should be an element of review for these proposals, economics are not the only element that should be considered.

The often-used triple bottom line approach – economics, environmental and social impact - would be a much more appropriate analysis framework.

Consideration of only the economic impact of the subject industry will by the very nature of the methodology used lead to negative impacts to the two areas, environment and society. Those elements of a prosperous Ontario shouldn't be subordinated to an industry's economic prosperity.

Conclusion

Should you have any questions or would like to discuss our comments in more detail, please feel free to contact us.