



May 12, 2020

Resource Development Coordinator
Ministry of Natural Resources and Forestry
Natural Resources Conservation Policy Branch
300 Water Street
Peterborough, ON
K9J 3C7

Re: Conservation Ontario's comments on "Proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act*"

Thank you for the opportunity to provide comments on the "Proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act*". Conservation Ontario is the network of Ontario's 36 conservation authorities (CAs). These comments are not intended to limit consideration of comments shared individually by CAs through this review and consultation process.

Under Section 28(11) of the current *Conservation Authorities Act* (Section 28(2) of the unproclaimed sections of the Act), areas licensed for aggregate extraction under the *Aggregate Resources Act* are exempt from CA permitting activities. However, there are other means through which CAs may bring local environmental and watershed knowledge into the application review process. CAs may review and provide comments on applications submitted under the *Aggregate Resources Act*, either directly to the Ministry or through their participating municipalities. Additionally, CAs may review applications for proposed new or expanded aggregate operations submitted pursuant to the *Planning Act*, and comment in an advisory capacity to municipalities making decisions on *Planning Act* applications. CAs may also provide comments in an advisory capacity on *Clean Water Act* considerations. Further, upon notification from municipalities, source protection authorities may assess whether certain activities such as aggregate extractions are considered transport pathways under the *Clean Water Act* and advise the applicant of policies that apply. Conservation authorities bring an important lens to the review of applications and amendments to existing licenses. As watershed resource management agencies, CAs have scientific information on local environmental conditions and can assess the potential for environmental effects of an application. CA comments generally focus on natural hazards (e.g. floodplains, river valley slopes and wetlands) and comments are provided to ensure that public health and safety is not compromised by the creation of new hazards.

Conservation Ontario is generally supportive of the proposals to amend O. Reg 244/97 and the Aggregate Resources of Ontario provincial Standards under the *Aggregate Resources Act*, including the Province's objective to modernize the way aggregate resources are managed and to promote economic growth within the aggregate industry while also protecting the environment and addressing community impacts. Many of the proposals would clarify requirements for applicants, permit or licence holders and agencies involved in the review of applications made under the *Aggregate Resources Act*. Conservation

Ontario offers the following general comments which apply to a variety of proposals made in the consultation paper. More detailed comments on individual proposals are included following this section.

General Comments

Proposals to amend O.Reg 224/97 and the Aggregate Resources of Ontario provincial Standards under the *Aggregate Resources Act*

1. Need for Cumulative Effects Assessments

Conservation Ontario notes that at this time, no proposals have been made to consider cumulative environmental effects for aggregate extraction activities. It is recommended that the application process be enhanced to require below water table expansions and new proposals to be supported by a cumulative impact assessment. The Province may consider reviewing the 2010 Cumulative Effects Assessment (Water Quality and Quantity) Best Practices Paper for Below-Water Sand and Gravel Extraction Operations in Priority Subwatersheds in the Grand River Watershed completed by the Grand River Conservation Authority (GRCA), Ministry of Natural Resources and Forestry (MNRF) and the Ontario Stone, Sand & Gravel Association (OSSGA). The paper provides best practices, outlining a reasonable, consistent and scientifically-defensible approach to assessing potential cumulative effects of below-water sand and gravel extraction as part of MNRF's review and approval process under the *ARA*. Many of the best practices found in the paper could be considered in the development of a provincial framework for cumulative effects assessments. Copies of the paper are available through the GRCA.

Cumulative effects assessments would be of particular importance in areas where there is a concentration of existing licenses or new applications for extractions below the water table or in drinking water vulnerable areas under the *Clean Water Act*. These assessments would facilitate the consideration of potential significant impacts to groundwater from multiple operations that may otherwise not be deemed significant if assessed individually/on an individual basis. The cumulative effects assessments could further be used to demonstrate that there will be no offsite or onsite impacts to the quantity and quality of local water resources that sustain natural environment features and municipal drinking water sources.

2. Notification and Consultation Requirements

Section 1.3 of the consultation companion document outlines a number of proposals related to notification and consultation requirements. Conservation Ontario is generally supportive of the inclusion of more direction around commenting responsibilities and circulation requirements to avoid duplication and streamline the review of aggregate applications. Section 1.3.4 (Circulating New Applications to Agencies) provides the example of an applicant being required to circulate an application to a conservation authority (where one exists) to "determine whether the proposed site is within an area regulated by the Conservation Authority, and if it is, **whether the application has the potential to impact the control of flooding, erosion or other natural hazards**". As proposed new or expanded aggregate operations applications may be subject to review under the *Planning Act*, CAs would review these applications per their delegated responsibility to represent the Provincial interest on matters in planning exercises pertaining to Natural Hazards (encompassed by Section 3.1 of the Provincial Policy Statement). The above example is interpreted to be a reference to this delegated responsibility. It should be further noted that in addition to this role, CAs may be involved in the application review process in a number of ways. For example, CAs may provide additional comments to municipalities

through a service agreement or Memorandum of Understanding (i.e. CAs may advise municipalities on consistency with other sections of the PPS, such as Natural Heritage or Water). CAs may also provide comments in an advisory capacity on *Clean Water Act* considerations, and, upon notification from municipalities, source protection authorities may assess whether certain activities such as aggregate extractions are considered transport pathways under the *Clean Water Act* and advise the applicant of policies that apply. It is recommended that the Provincial Standards include reference to the various commenting capacities of CAs to provide clarity to applicants and review agencies.

Regarding the proposed amendments to the notification and consultation process, Conservation Ontario recommends that pre-consultation with agencies such as conservation authorities and municipalities be included as a mandatory requirement to ensure that any “terms of reference” for technical reports are completed for new pits and quarries. Effective pre-consultation would ensure that applications include the required technical information prior to municipal and agency review, and would allow applications to then be reviewed in a timely manner.

Lastly, the Ministry is proposing to make amendments to existing notification and consultation timeframes to extend the existing “notification period” to 60 days and increase the timeframe for the Ministry to deem an application complete from 15 days to 20 for an application on Crown Land. Conservation Ontario notes that the timeframe is presented in calendar days for the notification period and business days for the Ministry service times. To ensure consistency and clarity for applicants, Conservation Ontario recommends the Ministry utilize a consistent timeframe format for all review periods.

3. Accessibility of Data

In addition to cumulative effects assessments, the 2010 paper developed by the MNRF, GRCA and the OSSGA (referenced above) included a proposal to develop a common data collection database which would sort and merge data from all licensed operations. It was proposed that the database would be used to collect, compile and merge data collected from each operation with historical data, to be made available to government agencies, local operators and municipalities to assist in any assessment of groundwater and surface water regimes. Conservation Ontario recommends that the Ministry work to establish a publicly accessible data portal which would allow new applicants and existing permit/licence holders to electronically submit all relevant information (e.g. site plans, annual compliance and monitoring data, etc.) which would then be accessible to other interested parties. Such a platform would provide an opportunity for greater transparency and would support the Ministry’s proposal to allow a qualified person to use existing information on the site or adjacent sites to make a determination of the maximum predicted water table elevation (Section 1.1.1). To support such a platform, the Standards should include a requirement that all information be submitted electronically (including supporting technical reports) and an agreement that information will be made accessible to other parties.

Detailed Comments

Section 1

Proposed Changes for Applications to Establish a New Site

Part 1.1: Study and Information Requirements

Water Report

Conservation Ontario is supportive of some of the proposed changes, including clarification of the required qualifications for individuals who may prepare the Water Report as well as the new requirement for the report to summarize how local source water protection plans and policies are addressed. In addition to the proposed changes to the content of a water report, it is recommended that additional consideration be given to downstream environmental effects, particularly as they relate to flooding and erosion in wetlands and watercourses, with the report requiring avoidance or mitigation of impacts if possible, rather than the “feasibility of mitigation”. The Standards and technical guides will need to ensure that appropriate criteria is put in place to protect quality and quantity of water in communities and assess and/or prevent any potential threat to source water and the supply of local municipal drinking water. It is recommended that the assessment of impacts be defined with the same criteria as the current Growth Plan requirements for natural resource systems and assessment of water resource systems. These areas include “key hydrological features” such as all wetlands, including unevaluated wetlands.

Regarding the proposed changes to how the water table is established, Conservation Ontario is concerned that the proposed site monitoring of the ground water table for a “minimum of one year” may not produce an accurate assessment of the water table due to variations in the natural environment from year to year. Many technical reports to support planning applications require two to five years of data collection. It is recommended the Province increase the monitoring timeframe to a minimum of two years to account for annual variations in the natural environment. Conservation Ontario further notes that the proposal states that if information sources already exist on or adjacent to the site, a determination of the maximum predicted water table elevation could be made by a qualified professional with the submission of supporting data. It is requested that the Province further refine criteria for this approach to clarify limitations of the age of data used, as well as requirements for what would classify as an “adjacent site”. Depending on the age of data and the distance of the adjacent site, this approach may not allow the qualified person to make an accurate determination of the maximum predicted water table on site.

Conservation Ontario supports the new requirement to be added to the water report that would identify source protection vulnerable areas and activities and that would summarize how local source protection plans and policies are addressed. The standards should include the identification of the presence of an aquitard to a municipal drinking water supply on or near the site and a detailed assessment on how the application will avoid any impacts to the aquitard. It is recommended that Wellhead Protection Area (WHPA) - C and D also be considered in the water report, besides WHPA-A and B. Activities at the site may involve the handling and storage of dense non-aqueous phase liquids (DNAPLs), which could be a significant drinking water threat in WHPA-C. Moderate and low threat risks could also occur in WHPA-D. It is also recommended that further clarity be provided around the different responsibilities of the applicant, the source protection plan policy implementing body, municipality and source protection authority as described below.

- The applicant should identify all of the types of activities included with the application (e.g. fuel, DNAPLs or salt storage). While this information helps to determine if the proposed activities could be significant level threats to drinking water sources, it is up to the designated implementing body to make this determination based on the applicable local plan policies as well as the comprehensive risk assessment framework under the *Clean Water Act*.
- The municipality, upon review of an application, may flag activities as potential “transport pathways” which have the potential to change vulnerability within a vulnerable area. If activities are flagged, the municipality will provide the local source protection authority (SPA) and the source protection committee (SPC) notice of the proposal and other information per *Clean Water Act* O. Reg. 287/07 S. 27. A copy of the notice is provided to the applicant. The SPA will evaluate whether or not the transport pathway would impact the WHPA by either increasing the vulnerability or expanding the boundaries of these areas. This evaluation is not the applicant’s responsibility.

As described above, the applicant would need to not only provide information, but also obtain information from various stakeholders in order to summarize how local source protection plans and policies are addressed. Further clarification is needed.

Lastly, Conservation Ontario is supportive of the proposed inclusion of a water budget in the water report. It is recommended that the content for the water report include clear criteria for when a water budget is required. A technical guideline for water budget analysis is required which should be adopted by reference into the regulation.

Natural Environment Report

The proposed approach to update the requirements in the natural environment report is welcomed, however, Conservation Ontario recommends that a broader approach be taken which would include the impacts of proposed development on all natural heritage features (e.g. all wetlands, including unevaluated wetlands). It is recommended that this report be prepared with consideration for hydrogeological and water budget components of on-site or adjacent wetlands and watercourses, and associated natural heritage features / functions.

Summary Statement

Conservation Ontario is pleased to note that applications proposing extraction would be required to identify activities proposed at the site that are significant threats to source water, and they would be required to reference existing source water protection policies approved under the *Clean Water Act* on the site plan. As identified earlier in the comments on the Water Report, it is recommended that clarity be provided around the different responsibilities of the applicant, the source protection plan policy implementing body, municipality and source protection authority.

Further, the Ministry is proposing that the summary statement for all proposed pits and quarries on private land and Crown land contain planning and land use considerations. Further detail is required on what planning and land use considerations will be included in the Summary Statement, and how proposed site operations will be addressed should they not align with applicable planning and land use considerations. It is recommended that the summary statement indicate whether the application is consistent with the Provincial Policy Statement and, if other provincial plan policies apply, indicate how they were addressed.

Application Requirements for Extraction from Land under Water

The proposed approach involves customized information, notification and consultation requirements for each site. It is recommended that conservation authorities be identified as an agency for review of applications for extraction under water, where a local conservation authority may exist. Early consultation with conservation authorities is recommended in order to obtain relevant local information which may assist applicants with technical assessments and/or reporting requirements associated with an application.

Part 1.2: Site Plan and Licence/Permit Conditions

Site Plan Standards – Improving Flexibility

The approach under this section and Section 3.1 proposes to remove the requirement for site plans to include details for how trees and stumps will be disposed of or used, and instead, a new operating requirement would specify that trees and stumps need to be properly disposed of. It is recommended that the amended site plan standards clearly outline what would constitute “proper disposal”.

Further, the proposed approach outlines a requirement that the site plan speak to the location of a list of elements on site (e.g. buildings and structures, scrap storage areas, etc.). Under this approach, licence and permit holders would still be required to ensure these items are not located within setbacks specified in the Operations Standards. In addition to these setbacks, it is recommended that the listed items should still be required to not be located within natural heritage features.

Site Plan Standards – Modernization

If a new pit or quarry imports excess soil to facilitate rehabilitation on site and is located within a Wellhead Protection Area, the standard will need to specify that excess soil importation must be ‘clean’ fill that will not impact source water quality.

Section 2

Prescribed Rules for Minor Excavations

Part 2.1: Excavation from Private Land or Land Owned by a Farm Business

The proposal in Section 2.1 would allow persons or farm operations on private lands to undertake aggregate extraction without needing to obtain a licence from the Ministry, provided rules set out in the regulations are followed. As one of the conditions, the proposed approach stipulates that excavation does not occur within an area where development is **prohibited** by a conservation authority. It is strongly recommended that this wording be changed to state that excavation does not occur within “an area which is regulated by a conservation authority, unless written approval has been obtained by the local conservation authority to undertake proposed works”.

Additionally, conditions for the excavation would require the individual or farm business to ensure that “sediment from the excavation is prevented from entering any water body”. It is recommended that this bullet be expanded to prevent sedimentation in wetlands, as well as water bodies, to ensure the hydrologic functions of wetlands are not impaired by excavation activities. While some specific issues relating to sediment and erosion control may be enforced through the CA Section 28 permitting process, additional detail regarding how the Ministry will ensure compliance with the proposed approach is requested.

Lastly, while the proposed approach outlines restrictions related to tonnage and area of extraction, Conservation Ontario recommends that a limit be placed on the amount of times this type of extraction can take place on a single lot area. This additional condition may be best represented as a percentage amount of the total lot area. The note that is provided which states that “once rehabilitated, a site excavated under this rule could not be excavated again” is not clear. It is requested that the Ministry clarify whether a “site” is the disturbed area or the overall parcel / lot.

Part 2.2: Excavation within a Highway Right of Way for Road Construction

Conservation Ontario is supportive of the Province clarifying conditions in regulation for excavation within a highway right of way for road construction. It is recommended that in addition to the proposed conditions, measures be put in place to ensure that excavation within a right of way would not negatively impact flooding or erosion and would not have a negative impact for adjacent wetlands and watercourses.

Proposed Changes to How New and Existing Sites are Managed and Operated

Part 3.3: Site Plan Amendments

Site plan Amendment Process

Conservation Ontario is supportive of the Ministry clarifying information, submission and circulation requirements for the site plan amendment process. The proposed approach for site plan amendments outlines that circulation of proposed amendments may be required to municipalities, other agencies and interested parties for comment. However, the Ministry would continue to only forward copies of the revised site plans to local municipalities where the pit or quarry is located. It is requested that the proposed approach be amended, such that the Ministry would be required to circulate revised site plans to all agencies that participated in the initial review of the proposed amendments.

Additionally, it is recommended that the Province be able to initiate site plan amendments, particularly in cases where new information becomes available. For example, in cases where an existing licence has been inactive for some time, technical reports may be outdated or, in some cases, were never required. The Ministry should have the ability to require licensees or permit holders to complete new technical assessments to address new and changing information.

Amendment to Expand an Existing Site Below the Water Table

The proposed amendment outlines information and notification requirements for amendment applications to expand an existing pit or quarry on private land below the water table. Conservation Ontario is pleased to note that applicants would be required to prepare and submit a hydrogeological (“water”) report, prepared by a qualified person, requiring all of the same information that an application for a new pit or quarry to extract below the water table would need to prepare. It is further recommended that any application for extraction below the water table should only be approved with an established adaptive management program that would cease ongoing extraction if negative environmental impacts occur.

Conservation Ontario appreciates the proposed requirement for applicants to circulate the amendment application to the conservation authority in whose jurisdiction the site is located. Conservation authorities generally review these applications with regard to natural hazards which may not be captured in the municipal review.

Further, item B) under this section proposes that “if no new surface area would be disturbed as a result of the amendment, the applicant would usually not need to prepare a new natural environment report...”. It is recommended that applicants be required to prepare a new environment report for applications to expand an existing pit or quarry on private land below the water table, as expanding extraction may have adverse impacts on natural heritage features and their functions (e.g. fish habitat).

Lastly, item H) under this section proposes that the “applicant would need to submit documentation of the notification and consultation process to the ministry within two years of notifying landowners and agencies of the proposal”. No additional details have been provided as to what happens after this two year period, other than that the Ministry may refer outstanding objections to the LPAT. It is recommended that the proposal clearly outline how and when the Ministry must make a decision on the site plan amendment and criteria which would be used to refer outstanding objections to the LPAT. If possible, a mediation process should be established to address any outstanding objections prior to referring the application to LPAT. This could result in potential time and cost savings if a resolution can be achieved using an objective third party.

Thank you for the opportunity to review and provide comments on the “*Proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act*”. It is anticipated that the concepts outlined in the consultation companion document will be incorporated into the draft Standards. As a next step, Conservation Ontario would encourage the Province to provide the final proposed draft Standards for public and agency consultation. This would provide an opportunity for a comprehensive review to determine if any components of the draft Standards require clarification to achieve the desired results of reducing regulatory burdens while also maintaining strong environmental protections. Should you have any questions about this letter please feel free to contact myself at extension 229.

Sincerely,



Nicholas Fischer
Policy and Planning Officer

c.c. All CA CAOs/GMs

Leo Leong, Manager, Water Policy, Ministry of Environment, Conservation and Parks