

Katie Rosa, Aggregate Resources Officer
Ministry of Natural Resources and Forestry, Policy Division
Natural Resources Conservation Policy Branch
Resource Development Section
300 Water Street
Peterborough, Ontario
K9J 8M5

15 December 2015

Dear Ms Rosa:

Re: A Blueprint for Change: A Proposal to modernize and strengthen the *Aggregate Resources Act* policy framework: EBR Registry Number 012-5444

These are the submissions of the Canadian Environmental Law Association (CELA) to the Ministry of Natural Resources and Forestry on the above proposal.

Background on CELA

The Canadian Environmental Law Association (CELA) is a non-profit, public interest organization established in 1970 with a mandate to use existing laws to protect the environment and to advocate environmental law reforms. Funded by Legal Aid Ontario, CELA is a specialty community legal clinic providing legal services to low income individuals and disadvantaged communities across Ontario who are experiencing environmental problems. As a legal aid clinic, CELA also engages in various law reform, public education, and community outreach initiatives.

CELA has a long history of involvement in, and expertise in respect of, laws and policies regarding aggregate extraction, having frequently appeared before the courts, tribunals, legislative committees, and municipal bodies, as well as having written extensively, on the subject. CELA testified before the Standing Committee on General Government in the course of the 2012 review of the *Aggregate Resources Act (ARA)*. The issues raised at that time remain just as pertinent, and a copy of our written submissions is attached for ease of reference. CELA also participated in the numerous meetings of the *ARA* Multistakeholder Working Group in the fall of 2014.

Introduction

It is disappointing to see that the current proposed changes to the *ARA*, outlined in *A Blueprint for Change*, fail to take our substantial concerns into account. We also note with concern that the proposed reform of the Act also disregards recommendations made by the Standing Committee on General Government in their 2013 *Report on the Review of the Aggregate Resources Act*.¹

¹ Ontario, Legislative Assembly, Standing Committee on General Government, *Report on the Review of the Aggregate Resources Act* (2013) (Chair: Grant Crack) [*Report on the Review of the ARA*].

CELA's present submissions echo our concerns regarding the inadequate enforcement of the *ARA*, the unbalanced position of aggregate resource extraction in land use planning, the lack of progress on issues of recycled materials and rehabilitation of abandoned sites, and outstanding concerns regarding source water protection.

The Ministry of Natural Resources and Forestry has to enhance its capacity to enforce the *Aggregate Resources Act*

The Ministry of Natural Resources and Forestry (MNRF) has not adequately responded to the numerous calls to increase its ability to inspect and enforce the regulations under the *ARA*. CELA reiterates the points made in our 2012 submissions, which can be found in Section V., on page 6 of the attached document. The reports of the Environmental Commissioner of Ontario (ECO), cited in our previous submissions, remain cogent.

Self-reported concerns regarding MNRF staff capacity to adequately inspect aggregate production sites and ensure compliance were summarized by the ECO in a special report to the Legislative Assembly.² The wide-ranging impacts of the insufficient funding of MNRF are also summarized in the ECO 2012-2013 annual report, which cautions against the long-term effects of the shrinking of budgets for environmental protection.³ MNRF will not be able to adequately fulfill its mandate of protecting and managing Ontario's natural resources without the capacity to enforce the *ARA*.

The proposed new *ARA* compliance provisions rely even more on industry self-reporting, which is a matter of serious concern, given the lack of MNRF resources to undertake inspection. CELA submits that indexing fees and royalties under the *ARA* to the Ontario Consumer Price Index will not do enough to address the chronic underfunding of the MNRF and the gaps in *ARA* enforcement. The amount of fees and royalties that is imposed should be based on the ministry's need for resources to ensure adequate enforcement.

Privileged treatment of aggregate operations is not justified

The proposed changes to the *ARA* fail to enact a requirement of proponents of new projects to demonstrate need. This special treatment of aggregate resource extraction is unprecedented among environmental regulation of industrial activities. Examining a project's necessity, and weighing its alternatives, is an essential environmental planning tool that allows for a balancing of competing interests. For example, proponents of projects that are subject to the Ontario *Environmental Assessment Act*, have to show

- “6.1(2)(b) a description of and a statement of the rationale for,
 - (i) the undertaking,
 - (ii) the alternative methods of carrying out the undertaking, and

² Environmental Commissioner of Ontario, “Doing Less with Less: How Shortfalls in Budget, Staffing and In-House Expertise are Hampering the Effectiveness of MOE and MNR” in *Special Report to the Legislative Assembly of Ontario* (Toronto: ECO, 2007).

³ Environmental Commissioner of Ontario, “The Role of Government as Environmental Steward” in *Serving the Public: Annual Report 2012/2013* (Toronto: ECO, 2013) at pp. 45-54, 57-60.

(iii) the alternatives to the undertaking;”⁴

Instead, the Provincial Policy Statement (PPS) 2014 states that a demonstration of need “shall not be required” when considering aggregate resource extraction proposals.⁵ The *Planning Act* requires that all planning decisions must be consistent with the PPS,⁶ thus allowing for planning decisions that unjustifiably favour aggregate pits and quarries over any other land use.

The MNRF has provided no credible rationale for exempting the aggregate industry from what is a well-established regulatory requirement for other types of projects. This results in privileged treatment of aggregate extraction activities by allowing them to trump all other planning and land use interests in the province, including conservation, agriculture, and residential uses.⁷

Amending Ontario planning policy is the most effective way to enhance the planning process. However, the proposed changes to the *ARA* also provide opportunities for incorporating an analysis of supply and demand of aggregate resources in the area.

Every proposal for a new facility or an expansion under the *ARA* should require a demonstration of need. The PPS should then be amended to reconcile the legislative scheme. We also recommend that paragraph c. “Enhanced summary statement requirements for all applications”⁸ be amended to include a statement on the need for the proposed aggregate facility in the area, accounting for existing and projected demand and supply.

More emphasis on recycling aggregates is needed

Recognizing that aggregate materials are a non-renewable resource, CELA supports an increased emphasis on the use of recycled aggregate materials. Increased use of recycled materials, has the potential to reduce the need for new extraction operations, as well as reduce the significant public cost and environmental impacts associated with transportation.⁹ The Standing Committee acknowledges in its report that the exact proportion of recycled aggregate used in Ontario is unknown, although one estimate suggests it could be as low as 7 per cent.¹⁰ Therefore, there is significant room for improvement. Unfortunately, the current proposal to modernize the *ARA* is a missed opportunity for a comprehensive effort towards greater use of recycled products.

CELA is especially disappointed that the proposed changes to the *ARA* are not responsive to the recommendations of the Standing Committee with regards to recycling. We request that the Ministry adopt the recommendations of the Committee that increase the use of recycled aggregate. In particular, the Ministry should take measures to track and evaluate the amount of recycled aggregate resources used in Ontario, and make reports of the results available to the public.

⁴ *Environmental Assessment Act*, RSO 1990, c E.18, s. 6.1(2)(b).

⁵ Ontario, Ministry of Municipal Affairs and Housing, *2014 Provincial Policy Statement under the Planning Act*, at s. 2.5.2.1.

⁶ R.S.O. 1990, c P.13, s. 3(5).

⁷ Environmental Commissioner of Ontario, “Planning Matters” in *Managing New Challenges: Annual report 2013/2014* (Toronto: ECO, 2014) at p. 145.

⁸ Ministry of Natural Resources and Forestry, *A Blueprint for Change: A proposal to modernize and strengthen the Aggregate Resources Act policy framework*, <<http://apps.mnr.gov.on.ca/public/files/er/blueprint-for-change.pdf>> [A *Blueprint for Change*], at page 10.

⁹ *Report on the Review of the ARA*, at p. 10.

¹⁰ *Ibid*, at p. 9.

The Ministry should also incorporate incentives for recycling into the licensing process, and the regulations that guide the operations of existing facilities. One of the ways of addressing these concerns at the point of licensing is by amending s. 12(1) of the *ARA* to include the proponent's plans for recycling aggregate as one of the matters to be considered by the Minister when approving a license. However, any recycling must be conducted in a location and in a manner that ensures no negative health impacts result from the operation, and that does not pose a nuisance to surrounding residents.

More resources needed for rehabilitation of abandoned pits and quarries

CELA's submissions to the Standing Committee in 2012 outlined the glaringly inadequate progress on the rehabilitation of abandoned aggregate facilities.¹¹ Our main concerns were the timing and the financing of rehabilitation projects. CELA estimated that it could take up to 335 years to rehabilitate all the pits and quarries known to be abandoned at that time in Ontario.¹²

Although the Standing Committee's estimate of the number of sites is more conservative, the Committee nevertheless states that with the current rate of funding it will take between 100 and 130 years to rehabilitate abandoned sites.¹³ The Standing Committee further estimates that if the funding for the Management of Abandoned Aggregate Properties (MAAP) Program increased from 0.5 cent per tonne to 3 cents per tonne of material extracted annually, it would be possible to rehabilitate all sites within 20 years.¹⁴

CELA does not adopt the Standing Committee's estimate of the number of abandoned sites in Ontario, but reiterates the Committee's recommendation to increase the share of the annual license fee that is dedicated to the MAAP Program.

Source water protection requires stronger legislative provisions

The impact of aggregate extraction activities on water quantity and quality continues to be a concern for communities across Ontario. CELA supports the general direction of the proposed changes, however, the *ARA* should include stronger provisions for source water protection.

CELA welcomes the changes in paragraph j, which will make it mandatory for facilities wishing to expand extraction below the water table to submit a new application.¹⁵ However, the changes to requirements for new applications, outlined in paragraph a, do not provide adequate protection of drinking water resources.¹⁶ A cumulative effects study should be conducted anytime a water impact assessment is required, and it should include the potential impacts on groundwater quality and quantity, both at a local sub-watershed and a watershed scale.

Further submissions on water issues will follow, in anticipation of further research.

¹¹ Joseph Castrilli and Ramani Nadarajah, "Submissions to the Standing Committee on General Government on the Aggregate Resources Act" (CELA, May 14, 2012) <<http://www.cela.ca/publications/submissions-aggregate-resources-act>>. Please see page 8 of the attached 2012 submissions.

¹² *Ibid.*, p. 9-10.

¹³ *Report on the Review of the ARA*, at p. 16.

¹⁴ *Ibid.*

¹⁵ *A Blueprint for Change*, at p. 13.

¹⁶ *Ibid.*, at p. 9.

Conclusions and recommendations

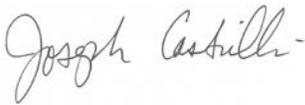
CELA's submissions on the proposed *A Blueprint for Change* provide a summary of the key issues regarding the ARA that we encounter in the course of our work. More detail on the inadequate rehabilitation of abandoned pits and quarries can be found in our 2012 submissions, which are attached. That document also provides more detail regarding CELA's concerns about land use planning and siting of aggregate extraction facilities, as well as the long-standing problems with compliance and enforcement.

The current proposal is not responsive to the fundamental issues we identified during the consultation period, nor does it take into account many of the recommendations of the Standing Committee. For ease of reference, our recommendations, including outstanding recommendations made in 2012, are summarized below:

- 1. Funding should be made available to restore the number of aggregate field inspectors to a level that will enable more frequent and thorough monitoring of a greater number of pits and quarries in the province.**
- 2. MNRF should increase the current per tonne licence fees and royalties charged on extraction of aggregates to a level sufficient to continue to fund staff capacity within MNRF. Indexing the fees and royalties to the Consumer Price Index is not enough.**
- 3. Applicants for aggregate licences under the ARA should be required to demonstrate need for aggregate extraction in a particular area.**
- 4. Every proposal for a new facility or an expansion under the ARA should require a demonstration of need. The PPS should be amended to reconcile this legislative scheme.**
- 5. Paragraph c. of *A Blueprint for Change*, which touches on "enhanced summary statement requirements for all applications," should be amended to include a statement on the need for the proposed aggregate facility in the area, accounting for existing and projected demand and supply.**
- 6. The MNRF should develop and maintain an up-to-date publicly available assessment of current aggregate demand and supply and provide projections of future needs, including analysis of opportunities for conservation, recycling, and reduction of the demand for aggregates.**
- 7. MNRF should take measures to track and evaluate the amount of recycled aggregate resources used in Ontario, and make reports of the results available to the public.**
- 8. MNRF should develop a comprehensive plan on how to integrate incentives for recycling into the licensing process, as well as the management and operations of existing facilities.**

9. The *ARA* should be amended to require by regulation the establishment of a schedule for the rehabilitation of all abandoned pits and quarries in Ontario.
10. The *ARA* regulations should be amended to increase the fees payable by licensees to the Trust so that the rehabilitation schedule established can be met.
11. With regards to new applications, a cumulative effects study should be conducted anytime a water impact assessment is conducted, and it should include the potential impacts on groundwater quality and quantity.

Yours truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



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Encl. 2012 CELA Submissions to Standing Committee on General Government