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May 1, 2017

Dear Ms. Zeran,

17-MNRF004: Proposed changes to Regulation 244/97 (under the Aggregate Resources Act) regarding aggregate fees and royalties

Please accept the following submissions on behalf of Ontario Nature, the Canadian Environmental Law Association, and Environmental Defence Canada. We support an increase in the annual fees for licenses, wayside permits, and aggregate permits. The proposed increase, however, does not go far enough as it does not allocate enough resources to the Aggregate Resources Trust and to the provincial government.

Fee Increase and Indexing

The proposal to increase the fees collected is a welcome first step towards adequately funding the rehabilitation of abandoned pits and quarries, and ensuring that inspection and enforcement of the ARA is sufficiently resourced. The proposed fee amounts, however, are not high enough to address the past decades of underfunding of the aggregates regime in Ontario. The Ministry of Natural Resources and Forestry (MNRF) must ensure that the fee amount is sufficient to adequately fund the aggregate regime, and the regulation must not limit the ability of the MNRF to impose higher fees as needed. We support the proposal to index the fees to the Ontario Consumer Price Index, provided the rates would not be indexed downwards, and the adequacy of the fees is regularly reviewed.

Recommendation 1: The fee amounts must be promptly increased to address identified needs, and the fees must be reviewed every two years to determine whether the Ontario aggregate regime is adequately funded.

Recommendation 2: The proposal to index the fees to the Ontario Consumer Price Index must include the provision that the rates will not be indexed downwards, as well as a provision stating that the indexation would not preclude further increases in fee amounts as necessary.

Rehabilitation

The decrease in the proportion of the fees that is allocated to the Aggregate Resources Trust and the provincial government is unacceptable. Requiring the “rehabilitation of land from which aggregate has been extracted” is one of the purposes of the *Aggregate Resources Act (ARA)*.¹ Recognizing the monumental task of addressing the abandoned pits and quarries in Ontario, the MNRF established the Aggregate Resources Trust (the Trust) in order to collect fees for the purpose of undertaking the rehabilitation of these sites. The Trust can only fulfil its purpose if it is adequately funded.

The Ontario Aggregate Resources Corporation (TOARC), which administers the Trust, estimates that there are currently 2,900 abandoned pits and quarries in Ontario that will require to be rehabilitated with support from TOARC and the Management of Abandoned Aggregate Properties Program (MAAP).² The Ontario Legislative Assembly Standing Committee on General Government’s *Report on the Review of the Aggregate Resources Act* estimates that at the established levels of funding, it would take between 100 and 130 years to rehabilitate abandoned sites.³ The Report further states that if the fee amount that was allocated to MAAP was increased to 3 cents per tonne, the rehabilitation of the abandoned pits and quarries could be completed within 20 years.⁴

The proposed change in fees under Regulation 244/97 would see a decrease in the proportion of fees directed to the Aggregate Resources Trust by 30%. With the overall proposed increase in fees, that would mean that the amount per tonne that is earmarked for rehabilitation would increase from \$0.005 to \$0.006. This is grossly inadequate. Under this proposal, it would take 121 years to rehabilitate all remaining abandoned sites, with the increase supporting only an additional 6.8ha of rehabilitation per year.⁵ MNRF’s continued reliance on a plan whose success can only be measured in centuries is very disappointing.

¹ *Aggregate Resources Act*, RSO 1990, c A.8 (ARA), s 2(c).

² *TOARC 2015 Annual Report: Rehabilitating Legacy Pits and Quarries*, online: <http://www.toarc.com/pdfs/2015_TOARC_AReport.pdf>, at 2.

³ 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*], at 16.

⁴ *Ibid.*

⁵ The estimated total area to be rehabilitated (4,611ha) is calculated by multiplying the average area of a site (1.59ha) by the total number of sites, using figures from *TOARC 2015 Annual Report*.

Recommendation 3: The proposed changes to the proportion of the fees that will be allocated to the Aggregate Resources Trust must match the recommendations of the Standing Committee, and the amount must be increased to \$0.03 per tonne.

Allocations for Inspection and Enforcement

MNRF has not adequately addressed the shortfalls in its ability to inspect and enforce the ARA regime. Our organizations have made numerous submissions throughout the stakeholder engagement process and review of the ARA regarding the need to increase the capacity of MNRF for aggregate operations inspection and enforcement. Staff and resource shortages at MNRF hinder effective administration of the aggregates regime. These ongoing issues of compliance and enforcement were also highlighted in annual and special reports of the Environmental Commissioner of Ontario.⁶ The fees allocated to the provincial government must be earmarked for MNRF administration of the ARA regime.

It is imperative that MNRF have adequate inspection and enforcement capacity. This is especially important in light of the changes proposed in Bill 39, which would amend the ARA to rely on self-reporting to a greater degree.

Recommendation 4: The proposed changes to Regulation 244/97 must prioritize increasing the proportion of the fees that will be allocated to the provincial government. These funds must be earmarked for MNRF inspection and enforcement of the ARA regime in order to adequately address the shortfalls in the capacity of MNRF that were identified by the Environmental Commissioner of Ontario.

Exemptions from Fee Payments

The broad power of the Minister to exempt applicants and operators of aggregate facilities from payment of fees that is proposed in Bill 39 unduly weakens the increases proposed in this regulatory amendment. We do not agree with the exemptions and waivers of fees provided in Bill 39. If Bill 39 is passed as amended by the Standing Committee on Justice Policy, the proposed changes to Regulation 244/97 must address these exemptions.

Recommendation 5: The proposed changes to Regulation 244/97 must include restrictions on the Minister's powers to waive application fees and annual license and permit fees.

⁶ 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). See also 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.

Conclusion

We welcome the proposed increase in fees as a necessary first step, while noting that the overall amount of increase and the changes in the distribution of the collected fees do not address the systemically under-resourced inspection and enforcement of the *ARA* regime. The MAAP program must also be allocated a larger portion of the collected fees, so that the rehabilitation of abandoned sites is achieved within the next 20 years. The *ARA* must ensure the proposed fee increases result in actual substantial increase in funding in the priority areas. Ministerial discretion to waive fees must be removed from the *ARA*, or, at the very least, very strictly limited by Regulation 244/97.

Thank you for the opportunity to comment on the proposed changes.

Yours truly,



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Ontario Nature



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