



May 15, 2020

BY E-MAIL ONLY (darlene.dove@ontario.ca)

Ms. Darlene Dove
Resource Development Coordinator
Ministry of Natural Resources and Forestry
Natural Resources Conservation Policy Branch - Resource Development Section
300 Water Street
2nd Floor, South Tower
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Dear Ms. Dove:

Re: Proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act (ERO #019-1303)

Thank you for the opportunity to comment on the Ministry of Natural Resources and Forestry's (MNRF) Environmental Registry (ERO) posting on the proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act*.

The Toronto and Region Conservation Authority's (TRCA) conducts itself in accordance with the objects, powers, roles and responsibilities set out for conservation authorities (CA) under the *Conservation Authorities Act* and the MNRF Procedural Manual chapter on CA policies and procedures for plan review and permitting activities as follows:

- A public commenting body under the *Planning Act* and *Environmental Assessment Act*;
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement;
- A regulatory authority under Section 28 of the *Conservation Authorities Act*;
- A service provider to municipal partners and other public agencies;
- A Source Protection Authority under the *Clean Water Act*;
- A resource management agency; and
- A major landowner in the Greater Toronto Area.

In these roles, and as stated in the *Made-In-Ontario Environment Plan*, CAs work in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources. As the Source Protection Authority for the Credit Valley-Toronto and Region-Central Lake Ontario Source Protection Region, TRCA staff work to ensure protection of existing and future municipal drinking water sources.

Government Proposal

We understand the government's current proposal builds on amendments made in December 2019 to the *Aggregate Resources Act* (ARA) as part of Bill 132, the *Better for People, Smarter for Business*

Act. This includes proposed changes to Ontario Regulation (O. Reg.) 244/97 made under the *Aggregate Resources Act*, and changes to the *Aggregate Resources of Ontario: Provincial Standards, Version 1.0 (Provincial Standards)*. The Provincial Standards set out the application process for proposed pits and quarries under the ARA. The standards also identify the criteria for licence, permit and wayside permit applications.

The changes being proposed are intended 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. We also understand that, in addition to the currently proposed regulatory changes, MNRF will be developing guidance materials to better communicate best practices for preparing applications under the ARA.

General Comments

TRCA previously submitted comments to MNRF in 2019 on the proposed amendments to the *Aggregate Resources Act* (ERO #019-0556). TRCA staff have reviewed the currently proposed changes as outlined in the Discussion Paper, “Proposals to amend O.Reg. 244/97 and the *Aggregate Resources of Ontario Provincial Standards* under the *Aggregate Resources Act*” (February 2020). We are pleased that the proposal recognizes that, while Ontario requires a continued supply of aggregate resources, it is equally important to recognize and manage the impact excavation operations can have on the natural environment and on the communities that surround them. Further, we support the intent of the proposed changes to clarify requirements for applicants, permit or licence holders and agencies involved in the review of applications made under the *Aggregate Resources Act*.

TRCA staff are aware of Conservation Ontario’s submission on the proposal, dated May 12, 2020, and support their comments. While some of TRCA’s comments overlap with Conservation Ontario’s many are in addition and are organized around sections in the Discussion Paper.

Water Report Requirements Subsection 1.1.1, Water Report, of the Discussion Paper, proposes to better clarify how the water table is determined, who is qualified to prepare a water report and enhance the information required as part the report. The requirements should be specific to assessing impacts to the different components of the water resource system to improve consistency with the Provincial Policy Statement and provincial plans for protecting water quality and quantity and the requirements of source protection plans under the *Clean Water Act*. For example, the current proposal would ensure the water report determines the significance and potential of impacts and feasibility of mitigation for impacts to water. TRCA staff assert that the water report should require not only an assessment of the feasibility of mitigation, but require avoidance of impacts where possible, or mitigation where avoidance is not possible. As well, the applicant should be required to specify all activities identified as Prescribed Drinking Water Threats in Ontario Regulation 287/07 under the *Clean Water Act* which are likely to occur at the extraction site. This information will be critical to evaluating whether the activity would result in a significant drinking water threat to a drinking water source.

Maximum Predicted Water Table

The proposed changes for applications outlined in section 1.1 would require the water table to be established using the maximum predicted elevation of the water table. The water table (to be referenced as the “maximum predicted water table”) would be assessed by monitoring the groundwater table at the site for a minimum of one year to account for seasonal variations and influences due to precipitation. TRCA staff recommend increasing the minimum number of required groundwater monitoring years to account for annual as well as seasonal fluctuations in ground water conditions.

TRCA's Wetland Water Balance and Wetland Risk Assessment technical guidance documents could be useful to help characterize impacts to sensitive groundwater dependent features. We encourage their inclusion in the Recommended References sections of the revised Provincial Standards.

Natural Hazards

The current proposed contents of a water report do not address areas of natural hazards. TRCA staff assert that the water report should require studies be conducted by a professional water resources engineer confirming the proposed works align with the natural hazard policies outlined in Section 3.1 of PPS, 2020, including being generally directed to areas outside of hazardous lands associated with shorelines and watercourses, and new hazards are not created and existing hazards are not aggravated.

Natural Environment Reports - Subsection 1.1.3 Natural Environment Report reinforces that all pit and quarry applications are required to include a natural environment report, as outlined in the Provincial Standards. The report is required to identify natural heritage features on or within proximity to the proposed pit or quarry. TRCA is supportive of the proposed update to requirements for natural environment reports, as the existing requirements are outdated and inconsistent with current Provincial Plans and the PPS, 2020. TRCA staff recommend that definitions of features be updated to align with provincial plans and the PPS. We also recommend that all wetlands be included as natural heritage features to be identified in natural environment reports, instead of limiting the requirement to identify only provincially significant wetlands. Unevaluated or locally significant wetlands may constitute sensitive groundwater features that should be included in the natural environment report to more accurately assess the potential impacts of proposed works on natural heritage features.

Notification and Consultation Requirements – In section 1.3 of the Discussion Paper, it is proposed that the list of agencies that are circulated new applications would be updated to reflect current government organization and responsibilities, and that “agencies would not be asked to review aspects of applications that are beyond their mandate.” The Paper uses the example of conservation authorities, saying that applicants would determine whether the proposed site is within a regulated area, and if it is, whether the application has the potential to impact the control of flooding, erosion or other natural hazards. TRCA appreciates that conservation authorities have been referenced as an example in the Discussion Paper. However, we recommend that the other roles of CAs as previously identified in our introductory comments be referenced, given the exemption of CA permits for ARA operations.

Further, in order to provide clarity to both applicants and review agencies, the ARA Provincial Standards should include reference to the various roles of other ministries, municipalities and CAs in the review process relative to the ARA and its regulations, standards and policies. We appreciate the statement in this section that the Ministry will continue to explore with other ministries and municipal partners as to how applications can be reviewed to reduce review duplication and improve efficiency but as key partners that can help streamline reviews, conservation authorities should be a part of these discussions.

Excavations Exempt from Licences - Section 2.1 proposes parameters under which excavations on private land by a person or farm operations would be exempted in regulation, not requiring a licence from MNRF.

Circumstances Allowing Licence Exemption

In TRCA's previous submission on the proposed changes to the ARA in 2019, we specified that it

needs to be clarified if this proposal is geared to a short term, small area and small amount of extraction, such as a wayside pit for a local project. We also stated that MNRF should ensure the criteria to be met are consulted on before allowing work without a licence. Clear definitions and a distinction between “routine activity” and “low-risk activity” are needed. Further, we commented there should be a clear process for regulating the number and instances of such activities. There is a potential for cumulative impact where multiple low risk takings occur near one another, to other takings, or to environmental receptors. Lastly, we stated that TRCA’s contracts for flood and erosion control construction projects require successful proponents to provide proof of licence from quarries they intend to acquire aggregate from to ensure sourcing of stone from responsible, law-abiding pits and quarries. TRCA recommends this be a requirement under ARA regulations to ensure all proponents are held to a common standard.

Several of these themes were addressed in the proposed approach. The short term, limited number of instances, and limited area criteria are all addressed, to a degree. TRCA staff remain concerned that there is a risk the proposed blanket approach to allowing extraction without technical review by relevant stakeholders, including CAs, will result in unintended impacts to the environment. To enhance the proposed approach and help ensure watercourse, wetland and source protection in cases where no licence for the excavation must be obtained, we strongly recommend adding the following bold text to the first item listed under, “While undertaking the excavation, the individual or farm business would be required to ensure that sediment from the excavation is prevented from entering any water body, **watercourse or wetland.**”

For the same reason, TRCA staff recommend addition of the following item to the list of criteria where excavation cannot occur: “The excavation does not occur within **30 metres of a watercourse or wetland.**” In addition, TRCA staff suggest adding WHPA-C and WHPA-Q to the list of prohibited areas as follows (bold text), in order to ensure proper technical review of proposed works and that potential impacts to municipal source water are avoided: “The excavation does not occur within a category A, B, **C or Q** wellhead protection area under the *Clean Water Act.*”

The proposal states that, while undertaking the excavation, the individual or farm business would be required to ensure that, within one year of the final year of excavation, the excavation area is rehabilitated to its former land use or rehabilitated by sloping all faces to a minimum of 3:1 and vegetated to prevent erosion. In order to prevent potential erosion and sedimentation issues, TRCA recommends including that erosion and sediment control best practices should be adhered to during operations, rehabilitated areas be vegetated within a certain amount of time following sloping of faces, and that invasive or non-native vegetation species not be planted or seeded.

Operating Requirements for All Sites

Dust

Subsection 3.1.2 Dust proposes dust mitigation requirements for licenses and permits to prevent dust from leaving excavation sites. TRCA notes that dust suppressants are often chloride based. The application of these chemicals would result in chloride leaching into the ground, recharging water supply aquifers, and increasing chloride levels in private and municipal supply wells. Where dust suppression is required at aggregate sites located within vulnerable areas under the *Clean Water Act*, chloride-based dust suppressants should be prohibited to avoid potential source water impacts.

Recycling

Subsection 3.1.4 Recycling proposes certain operating requirements associated with aggregate recycling within pits and quarries, including that recyclable asphalt may not be stored within 30 metres of a water body or within 2 metres of the established groundwater table.

TRCA staff are concerned these thresholds may still pose a concern especially in a vulnerable area under the *Clean Water Act*, or within 120 metres of a wetland and watercourse. TRCA recommends prohibiting placing recyclable asphalt within vulnerable areas and increasing setbacks for water bodies. It should also be clarified that the term “water body” includes wetlands and watercourses.

Annual Compliance Reporting - Subsection 3.2.2 Rehabilitation Reporting proposes to require operators to report additional information on progressive and final rehabilitation activities. We understand MNRF’s objective is to provide further transparency on how sites are advancing towards full rehabilitation and encourage operators to better reflect their ongoing efforts. TRCA’s previous submission on the ARA included support for enhanced reporting and noted that TRCA has staff expertise in restoration ecology to provide technical advice on rehabilitation projects.

This section also states the Ministry is working on additional guidance for operators and municipalities, such as best management practices for rehabilitation. TRCA encourages this approach and offers our staff’s ecological restoration expertise to assist in the development of technical guidance resources.

Site Plan Amendment Process

Circulation of Proposed Amendments

Section 3.3 Site Plan Amendments, subsection 3.3.1 Site Plan Amendment Process states that circulation of the proposed amendment(s) to municipalities, other agencies and interested parties for comment may be required. As stated in our comments on section 1.3 for notification and consultation, the roles of CAs, municipalities and other public agencies in this review should be clarified.

Natural Heritage Features

Subsection 3.3.1 seeks to improve consistency of information being submitted to request a site plan amendment. TRCA recommends that natural heritage features proposed for removal be quantified in the submission. This will enable MNRF to accurately assess the implications of the proposed amendment on the natural heritage system.

Qualified Person Requirements

The same subsection states that, for more significant amendments that require new technical drawings or extensive changes to the site plan notes, new amended pages would be required, and for changes to technical drawings in a site plan for a Class A licence, the new pages may need to be prepared by a qualified person. TRCA requests clarification on circumstances that require a qualified person for a Class A licence in order to improve predictability of the amendment process and consistency across amendment applications.

Drinking Water Vulnerable Areas

Subsection 3.3.4 Self-Filing of Plan Amendments proposes requirements with which operators must comply to be eligible for amendment self-filing. This proposal does not directly address a concern TRCA included in our earlier submission on the ARA regarding self-filing for pits and quarries located within drinking water vulnerable areas. In addition to MNRF’s proposed requirements, TRCA requests a requirement that operators must identify, if applicable, any amendments made in order to achieve conformity with local source protection plans. Operators can be directed to the MECP Source Protection Information Atlas to identify drinking water vulnerable areas within their site and applicable source protection policies.

Self-Filing

Additionally, TRCA staff identified several criteria of concern related to proposed activities eligible for self-filing. There is potential for petroleum oils and lubricants released from portable processing

equipment to cause impacts to surface water and groundwater if located near water resources. Similarly, portable concrete and asphalt plants pose potential risks to surface and groundwater due to the nature of the materials they use. For example, cement has a high pH and spills may impact the pH of surface and groundwater. Asphalt plants involve tar, a hydrocarbon material, which likewise poses an environmental risk to surface and ground water should leakage or spills occur. Portable processing equipment and portable concrete and asphalt plants should therefore have an added criterion that the equipment will not be located within a minimum distance of surface water or a within a minimum depth to ground water. TRCA requests MNRF determine appropriate depth to groundwater depending on the characteristics of the soil or aggregate forming the barrier between the equipment and the groundwater table, as there are considerable differences in groundwater flow velocities depending on the material.

Cumulative Effects

TRCA commented in our previous submission to the Province on the ARA, that the application process should be enhanced to require below water table extraction works expansions and new proposals to be supported by a cumulative impact assessment. Such an assessment would include identification of existing takings in a pre-determined radius upgradient of the site (of the water taking), and an assessment of whether the proposed taking might have the potential to exacerbate any existing situation, or to impact environmental receptors and other takers downgradient of the site. 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*.

TRCA Recommendations

In order to further the conservation, restoration and management of natural resources within our watersheds, and to ensure protection of existing and future municipal drinking water sources, TRCA recommends the following:

1. That water reports include studies conducted by a professional water resources engineer confirming the proposed works align with the natural hazard policies outlined in Section 3.1 of the Provincial Policy Statement, including being generally directed to areas outside of hazardous lands associated with shorelines and watercourses, and that new hazards are not created and existing hazards are not aggravated.
2. That water reports for applications above and below the water table require the following:
 - a. Consider local source protection plans and policies, as proposed, including an assessment of potential impacts to drinking water sources for below water aggregate extraction and measures to prevent or mitigate those impacts (and that the Ministry clarify how the applicant is required to work with stakeholders to complete this section of the water report).
 - b. Determine whether proposed works are located in WHPA-C and WHPA-Q, in addition to WHPA-A and WHPA-B.
 - c. Assess impacts to water resource systems including significant groundwater recharge areas, highly vulnerable aquifers, and wellhead protection areas-A, -B, -C, and -Q.
 - d. Specify all activities identified as Prescribed Drinking Water Threats in Ontario Regulation 287/07 under the *Clean Water Act* which are likely to occur at the extraction site.
 - e. Identify the presence of an aquitard to a municipal drinking water supply that is located on or near the proposed extraction site and, if an aquitard is present, provide a detailed

assessment on how the proposed works will avoid or mitigate any impacts to the aquitard.

3. That the minimum number of required groundwater monitoring years to establish the water table be increased to account for annual, as well as seasonal fluctuations, in groundwater conditions.
4. That the Natural Environment Report definitions of features be updated for consistency with the Provincial Policy Statement and provincial plans, and that all wetlands be included as natural heritage features.
5. That the roles of review agencies in application review, including CA roles, be clarified and that CAs be identified as partner agencies to assist in coordinating and streamlining reviews, where applicable.
6. That the proposed approach to allowing extraction without technical review by relevant stakeholders, including CAs, be enhanced to require excavation operators to ensure that:
 - a. sediment from excavation is prevented from entering any water body, watercourse or wetland;
 - b. excavation does not occur within 30 metres of a watercourse or wetland;
 - c. excavation does not occur within a category A, B, C or Q wellhead protection areas under the *Clean Water Act*;
 - d. rehabilitated areas be vegetated within a certain amount of time following sloping of faces, and that invasive vegetation species shall not be planted or seeded; and
 - e. the potential for cumulative impacts is addressed and avoided or mitigated.
7. That the placement of recyclable asphalt be prohibited within vulnerable areas under the *Clean Water Act* and that setbacks to water bodies be increased, including wetlands and watercourses.
8. That TRCA be engaged to provide ecological restoration expertise in the Ministry's initiative to develop technical guidance for operators and municipalities on best management practices for rehabilitation.
9. That a cumulative impact assessment be required for below water table extraction works expansions and new proposals.

Thank you once again for the opportunity to provide feedback on the proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act*. Should you have any questions, require clarification on any of the above, or wish to meet to discuss our remarks, please contact the undersigned at 416.661.6600 Ext. 5281 or at laurie.nelson@trca.ca.

Sincerely,

<Original signed by>

Laurie Nelson, MCIP, RPP
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BY E-MAIL

CC:

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