

Aggregate Resource Act Review

“A Blueprint for Change”

Submission from Gravel Watch Ontario

December 2015

Gravel Watch Ontario 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. We are a province-wide coalition of citizens' groups and individuals. Gravel Watch Ontario is committed to working with the provincial government and other stakeholders in order to plan, implement and monitor the changes required to ensure that these new policies will protect both the health and well-being of Ontarians and the natural environment.

General Comments

- Gravel Watch Ontario feels strongly that legislative and regulatory change is required as it relates to aggregates in Ontario. GWO has long held the position that the Aggregate Resources Act (ARA) and its associated regulations, standards and policies need to be updated and brought into alignment with modern-day societal expectations as well as modern-day evidence based science. Gravel Watch Ontario supports the four goals of the Blueprint proposal:
 - o Stronger Oversight
 - o Environmental Accountability
 - o Improved Information and Participation
 - o Increased and Equalized Fees and Royalties

- Gravel Watch Ontario remains optimistic that the proposed changes to the regulatory environment contained within the Blueprint document may deliver on these goals. In some areas very specific details are provided, which allow stakeholders to understand and comment on the changes the government is contemplating. In other areas the eventual outcome is less clear or certain. More details are required before a complete assessment is possible. In some cases, where the proposals contain recommendations for discretionary powers, the outcome may be positive or negative depending on the application of those discretionary powers. And in some areas we do not feel that the goals will be reached by the changes as proposed. For instance, we do not feel that the focus on equalizing fees and royalties delivers on the public's expectations that significantly increased fees are needed in order to support a more robust and engaged aggregate program in Ontario. All the above notwithstanding, the Blueprint document does cover an impressively wide range of areas and the impact of its proposals will be significant.

- There are themes of risk-based oversight, discretionary requirements, and permits by rule contained within the document. Given the potential negative human health and environmental impacts that can occur during aggregate extraction, these permissive approaches must be implemented with extreme caution. Gravel Watch Ontario is opposed to these mechanisms being used without some level of oversight, their

application must be based on very clear criteria, and their ongoing use needs to be vigorously monitored to ensure that the integrity of the original intent is maintained.

- The proposed changes to move towards aligning the treatment of private and public lands; to find commonality between the processes and requirements for permits and licenses is supported by Gravel Watch Ontario. It will reduce the complexity of the regulatory environment and facilitate stakeholder engagement.
- The Blueprint document also deals with issues addressed by several layers of legislation. Some of the document's proposals will require changes to the Aggregate Resource Act, the Act's associated Regulations, the Provincial Standards and MNRF policies and procedures. Gravel Watch Ontario acknowledges that there are layers of changes that are required, but we also highlight the need to implement the reforms that are needed as soon as possible.
- There are several broad policy areas such as the consultation timeframes and notification requirements that do not require legislative changes in order to allow for their immediate implementation. Those changes could be brought forward today under the current legislation by changes to the Provincial Standards which are given force under existing regulation. We encourage the Ministry to implement those changes that they can, as soon as possible.
- Aggregate related Provincial Policy Statement (PPS) policies of Close To Market, No Need To Show Need, and the Preclude and Hinder Test have a dramatic impact on the management of aggregate resources in the province and on host communities. A recently modified PPS provision dealing with aggregate reprocessing, while entirely outside of the domain of the Aggregate Resource Act, could have a significant impact on the how the of the government's circular economy strategy is developed relating to aggregates. So while this Blueprint deals with the ARA and related instruments, if aggregate reform is to happen in Ontario, other related legislative instruments such as the PPS need to be modernized and reformed as well.
- The Blueprint document should further expand and clarify the government's intended approach with regards to the promotion, production and use of reprocessed aggregates in Ontario. This is timely; current interest and engagement is high. Gravel Watch Ontario strongly supports a closed loop or circular economy approach to aggregates. We should no longer be "dumping" aggregates into Lake Ontario or vacant fields. We must continue to focus on the reclamation and reuse of aggregate products. However, Gravel Watch Ontario continues to be alarmed by the apparent call to turn every extraction operation and site into a permanent Class III industrial operation by hosting aggregate reprocessing activities in all existing and proposed aggregate extraction sites. The process of aggregate extraction is a distinct and separate process from the reprocessing of reclaimed aggregate products. Those activities should be located close to both the source of the reclaimed materials and to the markets for the reprocessed product in order to limit transportation distances, the resultant wear on roads and bridges as well as emissions such as greenhouse gases. Aggregate reprocessing should be located in our urban landscapes. Current planning policy across the province would look very unfavourably at the prospect of establishing Class III industrial operations on the natural settings that are often associated with aggregate deposits. We accept that extraction occurs there because the deposits exist there. There is no such requirement for aggregate reprocessing. That it provides an operational advantage for operators to use

the locations of existing aggregate operations to reprocess and blend materials is not a sufficient nor appropriate reason to institutionalize policies promoting these industrial activities in aggregate extraction sites typically located in rural and environmentally sensitive settings. Aggregate reprocessing is an industrial process with operational similarities to other types of waste reprocessing activities. They should be regulated as such and oversight should come from the branches of the provincial government that have expertise in dealing with other circular economy industries.

- In addition, after the Standing Committee's report was presented to the legislature the government prepared a Comprehensive Response in February 2014. While the Blueprint deals with many of the topics covered in that response it does not deal with all of them. The investigation of alternative modes of transportation would be an example. Another would be specific plans for the expansion of the Pits and Quarries Online website to be a repository for other relevant information. As Gravel Watch Ontario and other stakeholders engage on the proposals of the Blueprint document, we remind the government of the need to address all of the issues and opportunities which have been identified.
- In several instances changes are proposed which will facilitate possible future changes. While the Blueprint document indicates that no immediate changes are intended at this time, without sufficient knowledge of what kinds of changes are being contemplated, those enabling provision could lead to outcomes that may or may not be in alignment with our members' perspective. Not knowing which of these is the case raises the concern of enabling future changes which could be implemented without the same level of transparency and stakeholder review which exists today. We remain guarded about these proposals.
- Gravel Watch Ontario and its members have experienced wide differences in the interpretation and application of existing policies in Ministry district offices. We would strongly recommend that the rollout of any policy updates be accompanied by a focused effort to ensure a common interpretation and application of these policies across the province. As well, we call for the establishment of processes to provide for interventions where policy is not implemented or not implemented as intended at the local level.
- In conclusion, Gravel Watch Ontario acknowledges that the Blueprint is a significant step towards improving the regulations dealing with aggregate licensing and extraction in Ontario. However, there must be a stronger acknowledgement by the government of the negative impacts from aggregate operations to host communities and the natural environment. Aggregates are an important element in supporting our high quality of life here in Ontario. But given the impacts that inherently come along with it, a rational argument could be made to limit the amount of aggregate extraction to only meet our province's immediate and anticipated needs, rather than the current policy framework that seems to institutionalize the protection and eventual extraction of almost all aggregate deposits to the benefit of the aggregate industry. Gravel Watch Ontario expects that both divergent factors be presented equally by government: a clear statement that aggregates are important to our quality of life in Ontario, but also a clear and unmitigated statement that the extraction of aggregate deposits is not a benign activity and that the negative impacts need to be managed by appropriate government policy for the protection of all Ontarians and the natural environment.

Section 1.0 Proposed Changes for Establishing New Sites

- Requirements relating to the establishment of new aggregate operations are critical, as once these operations are established and the natural land forms are disturbed, it can become impossible to return the sites to their original state. A poorly sited aggregate operation can be a source of negative impacts for generations to come.
- The goal to update the study requirements in order to bring them in line with current best practices is welcomed.
- Gravel Watch Ontario strongly supports the enhancement of study and information requirements. The inclusion of requirements within the ARA application process to address air quality, transportation issues and the impact to agricultural lands are long overdue. Note we use the term “air quality” rather than “dust” as the term “dust” can infer a nuisance factor, whereas “air quality” speaks to impacts on human and natural environment health which should be the focus here.
- For agricultural impact studies, we support the inclusion of prime agricultural lands (Class 1-3) and all lands within a prime agricultural area. Gravel Watch Ontario reaffirms its position that no new below the water table aggregate extraction should occur on prime agricultural lands because of the unlikely ability to return that land to an agricultural after use.
- Study requirements, focused on determining agricultural capability in order to evaluate rehabilitation plans and results, are supported.
- The proposal to adopt a risk assessment approach in determining the scope and scale of the studies is supported, but the use of the requested annual extraction tonnage as a trigger and determiner of the scope of the studies is not. While the size of an operation is a factor, the context of the existing natural and built environment is a far more significant determiner of the degree and scope of studies that should be undertaken.
- While hydrogeological studies need to be done at a sub-watershed and site-specific scale, we also support the notion of requiring cumulative impact assessments where factors specific to the region and/or area justify it. We remain concerned though about letting the applicant’s retained expert make that determination. There should be more guidance and review by government officials in order to ensure cumulative impact studies are completed when required. Given the criticality of accurate hydrogeological assessments, mandatory peer reviews should be considered.
- The inclusion of consideration of the impact of water use activities throughout the “life of the site” and beyond is strongly supported.
- Special provisions for applications within the two-year time of travel zones are supported.
- Given that aggregate operations are located in rural areas which are typically sparsely populated, consideration should be given to extending source water protection policies to clusters of private wells and in certain instances individual private wells. These elements are currently deferred under the current source water protection work, but commitments have been made to extend the framework to them in the future. Given aggregates’ prominence in the rural communities and its potential impact on source water resources,

application of source water protection provisions should be accelerated as part of the aggregate application process.

- Gravel Watch Ontario fully supports the concept of a maximum disturbed area as a vehicle to reduce the negative impacts from extraction and to ensure timely progressive rehabilitation.
- Plain language summaries for proposed aggregate operations will assist stakeholders in understanding and engaging during the application process, and are supported.
- Requirements for stakeholder notification and engagement should be enhanced from current levels. The range of notification timelines and areas shown in appendix 1 are an improvement. As mentioned previously though, relying on annual extraction tonnage limits to determine those requirements may not result in appropriate notification and consultation requirements given that factors other than annual extractive tonnage limit may be the source of interest in the project. Gravel Watch Ontario continues to advocate for a staged system where initial prescribed notification parameters are followed for all applications, and that through that initial process interest in the application can trigger an enhanced engagement process.
- Also the numerous annual production breakpoints in the requirement and notification appendix do not seem to be based on any specific analysis, nor designed to deliver any particular outcome. Gravel Watch Ontario predicts that, with such arbitrary breakpoints, applicants may submit applications with 1 tonne less than the next breakpoint in order to avoid more onerous requirements. If annual tonnage is going to be one of the factors used to determine application requirements, broader more-encompassing ranges need to be considered.
- The adoption of a Terms of Reference approach is an interesting one, and the use of that approach beyond the scenarios presented should be considered.
- The proposed updates to the list of agencies to be notified for both licence and permit applications such as the Conservation Authorities and Source Water Protection Committees is strongly supported.
- The provision of the ability for an applicant to extend the consultation period beyond the current two-year limit is conditionally supported, provided that the criteria for extension and the amount of time given for the extension is further defined. Typically, applicants have more resources available to support their applications, and as a result there is a concern that extending the application timeline could be used as a way to drain the limited resources of organizations, private and public, engaged in the consultation process.
- The updating to allow, and in some case require, electronic communication and dissemination of information is enthusiastically supported. The requirement for applicants to establish and maintain a website for the dissemination of information during the application process is also enthusiastically supported; however, the limitation of this requirement to applications over 1 million tonnes is not, as it is too narrow. Data indicates that applications in the range of 100K to 500k are the most common, and those applications should also be subject this requirement.

- The proposal to require a “new” application for operations that wish to move from above water table to below water table extraction is supported, with the understanding that a new full application process is required as well.
- The provision for small scale farm extraction is supported, provided it is appropriately and clearly defined and limited in scope.
- The proposed changes allowing the waiving of application requirements seem to provide the government with necessary flexibility for use in rare situations, but support for this provision would be contingent upon appropriate criteria being in place to prevent abuse of this provision.
- Provisions for establishing a peer review process by the Ministry is supported as a vehicle to enhance the Ministry’s role in processing applications.
- Grandfathering provisions can be justified for existing operations in newly designated areas. Given though that those sites would not have been fully evaluated under the ARA and could be operating outside of some requirements under the Act, future amendments for those grandfathered sites should trigger a requirement for a new application and full review under the provisions of the Act.
- The Permit by Rule approach needs to be tightly scoped in order to prevent abuse.
- Observation: the establishment of new aggregate operations is undertaken by two different regulatory application processes. There is an Aggregate Licence application made under the Aggregate Resource Act, and an application for Land Use Planning Approval under the Planning Act. Activities and processes under these two streams can run concurrently or sequentially. The nature and form of public engagement under these two processes, while seemingly similar, actually have some very different requirements and approaches for the public. Members of the public may easily find themselves in non-compliance with the requirements of one or the other of these processes by misinformation, misunderstanding or unintended failure to comply with their unique rules.
- Opportunities exist to increase the similarity between the two processes. For example, under the Planning Act members of the public have the right to engage in the land use planning process by submitting written comments or speaking at public meetings. Having done so they gain the right of appeal for the eventual decision made on the planning matter. Under the ARA, members of the public must “object” to the proposed licence early in the process, otherwise they have no appeal rights. Changes could be made to the ARA consultation requirements and processes that would more closely mirror the Planning Act. Members of the public, for instance, could be given the right to participate in prescribed events held as part of the application process, and having done so earn the right to object or appeal the eventual licence or permit decision. With this kind of change, greater consistency between the aggregate licence application process and the land use planning application process could be achieved. The benefit could be less public confusion and more effective public engagement.
- Gravel Watch Ontario is not in the position to comment authoritatively on the requirements for engagement with First Nations. Having said that, we continue to take the position that acknowledgement of, and respect for, First Nations claims, treaties, and concerns must be part of any effective aggregate management regime.

- Finally, the application process for establishing new aggregate operations in Ontario is described as a proponent-driven system. During testimony at the initial committee sessions senior representatives of MNRF confirmed that the Ministry predominantly acts as a process monitor and adjudicator during the proponent-driven application process. Specifically, when asked about reviewing application documents, the official confirmed that the Ministry's role is only to check that the required documents are present and have been prepared by a qualified individual, but that they do not review the contents of those documents for their validity. Gravel Watch Ontario continues to call upon the Ministry to become more engaged in the application process. Ministry staff within the aggregate program needs to be the experts on aggregate operations in Ontario who establish minimum requirements and best practices and who evaluate the appropriateness of, and risks associated with, any particular application. Leaving that kind of thorough assessment to municipalities, agencies and other interested stakeholders or pushing the examination of the documents and project's validity to administrative processes such as the Ontario Municipal Board is an abdication of that role and responsibilities. The Blueprint proposal should include proposals for closing this gap.

Section 2.0 Proposed Changes to the Management and Operation of Existing and Future Sites

- Provisions to allow requests for additional studies and information are essential in order to ensure that aggregate operations stay current with the science of our natural environment and with societal expectations. We support the need to do this in a responsible way with the appropriate level of transparency; the need for it is critical though. Our perspective is that the industry often expresses the view that, once a licence or permit is granted, the ability to investigate and study the impacts from those operations is over. Given the intrusive nature of these operations and the ever evolving knowledge in our society, that expectation is unrealistic and in conflict with a progressive society.
- The ability to establish conditions for an existing site related to source water protection is appropriate and fully supported. The examples given in the document relate to fuel storage requirements, but our submission would be that other provisions are required given the full mandate of source water protection authorities.
- The inclusion of recycled aggregate in the tonnage limit of operations is justified and supported. Gravel Watch Ontario continues to raise concerns about the appropriateness and desirability of reprocessing aggregate material in sites established for the extraction of raw aggregate material. Gravel Watch Ontario maintains the position that aggregate repossessing is an ongoing industrial activity that belongs in an industrial location and should typically be located close to the source and eventual destination of the reprocessed material; namely the urban environment.
- Inclusion of reprocessing activities as part of the overall reporting requirements is supported, as are the reporting requirements around the importation of fill.
- As noted in the document, the large-scale importation of fill into aggregate operations or other locations in the rural landscape has become a major issue. Gravel Watch Ontario notes that, in addition to any reporting requirements, the results of the ongoing work in this area may identify other operational restrictions on fill importation beyond reporting requirements.

- In addition to clarifying the requirements for operational record keeping, Gravel Watch Ontario advocates for increased data to allow the Province to do long-range supply-and-demand analysis. The industry often puts forward the case that there is a shortage of aggregate material available, yet market indicators (such as falling prices and the lack of supply restrictions) would indicate otherwise. Reporting requirements should include the raw data which would allow the Ministry to assess rather than estimate the supply and demand conditions by region across the province.
- Gravel Watch Ontario agrees that the current self-compliance reporting system needs to be changed. We do not feel that it is serving its intended purpose. Rather than reducing the frequency and scope of the process, we advocate that the program should be enhanced to make it more relevant. For example, consideration should be given to establishing the reporting elements at the time of issuance of the license or permit. The frequency could also be established on a site-by-site basis, with prescribed minimum frequencies that take into account the level and nature of the activities occurring on the site.
- Gravel Watch Ontario also takes the position that while self-reporting can serve as a component of a broad oversight program, it is only part of the solution to understanding what is occurring in aggregate operations across the province. Gravel Watch Ontario continues to call for increased onsite engagement and oversight of aggregate operations by MNR staff.
- The combination of the current licence categories and the existing amendment process creates a fundamental conflict. When a licence is granted within a category, amendments can be granted that move that licence from one category to another, effectively issuing a new licence or permit. Gravel Watch Ontario's perspective is that the current system does not serve the stakeholders well. A review of the current category system should be undertaken.
- The philosophy presented within the Blueprint document dealing with changes to existing permissions are positive, but they are presented at such a high level it is difficult to comment on them. From a directional sense, Gravel Watch Ontario supports the outcomes they seem to lead to and will be willing to participate in the development of the requirements which serve those intentions.
- Gravel Watch Ontario supports the concept of limited self-filing site plan amendments only if they are limited in scope and continually managed to prevent abuse. Any such systems would have to be implemented in a transparent way, using tools such as Pit and Quarries Online.
- The proposal to remove the minimum and increase the maximum fines for offences under the Act is supported. Gravel Watch Ontario notes again that an impediment to appropriate use of fines as an enforcement and oversight tool is that the aggregate inspectors are not able to lay the fines themselves. We understand that they need to involve a conservation officer from the Ministry. Gravel Watch Ontario feels that this need to coordinate with another member of MNR's staff complicates the process of issuing a fine and thereby reduces that likelihood that fines will be used to ensure compliance.

- Of particular concern to Gravel Watch Ontario is dormant and inactive sites. Our experience leads us to believe that many of the issues raised by stakeholders related to the lack of rehabilitation and inappropriate on site activities for example are actually caused by the long-term status of inactive and dormant sites. Aggregate extraction is an environmentally and socially intrusive process. The impacts from these operations need to be minimized. Leaving an aggregate site dormant, inactive or even under-utilized for extended periods of time is incongruent with the goals and assumptions of the aggregate program in Ontario. Effective supply and demand management can play a role in dealing with these situations, so can incentives and fees used to influence business decisions. And while Gravel Watch Ontario does acknowledge that in some markets sites will be dormant until local infrastructure needs create new demands for products, there are a number of active market areas with many dormant sites that are simply left in that state for operational or other business reasons. Effective aggregate management needs to deal with these sites so that they are either producing or are rehabilitated to alternate appropriate land uses.

Section 3.0 Fees and Royalties

- Gravel Watch Ontario supports the proposals contained within the document which level the playing field between the numerous legislative frameworks that deal with aggregate materials. It is an issue that the industry has been raising, and we support its resolution.
- Provisions allowing more flexibility in the collection, disbursement and use of fees, as well as programs to evaluate their effectiveness, are supported. As an example, Gravel Watch Ontario continues to raise concerns that the existing mandate of TOARC to do research and provide data related to aggregates in the province is, in our opinion, not being met.
- Many stakeholders have been calling for an increase in the tonnage fee structure related to aggregates. Whether it be to better compensate local municipalities which face increased costs to repair municipal infrastructures such as bridges and roads damaged by aggregate activities, or to fund effective oversight and aggregate program administration from the MNRF, there needs to be more funding within the system.
- The Blueprint document speaks of consultation with municipal organizations to consider an increase to their portion of the annual aggregate fees. While this is one component of the financial model, it is only one. Gravel Watch Ontario calls for a more ambitious plan to raise the fees in order to more appropriately fund both the existing policy framework as well as the proposed changes contained within the Blueprint document. Currently the level of in-field presence at individual aggregate sites is inadequate making it virtually impossible for the Ministry to fully execute its responsibilities. All stakeholders would benefit from a more engaged regulator. Consultations should include a wider range of stakeholders and a broader scope of discussion.
- The proposal to index aggregate fees to changes in the CPI does provide an independent mechanism to scale fees with consumer inflation, but indexing by consumer inflation does not seem to be a relevant measure. Gravel Watch Ontario understands that there is a Construction Price Index that might be a much more appropriate index. But in the end, fees should be set at a level required to meet the program goals and provide funding to administer the program. The current level of investment in the aggregate program does not do this. The existing fees need to be raised and then subject to periodic review and

adjustment in order to ensure that they remain sufficient to meet the program requirements.

Section 4.0 Other Proposed Changes

- The ability to require performance reporting for any party that carries out duties under the authority of the Act is fully supported by Gravel Watch Ontario.
- Similarly, the ability to establish programs that would train or certify those preparing reports, documents, or submissions under the act is supported.
- The proposal to update references of “registered mail” to allow for other forms of traceable delivery mechanisms is welcomed.
- The changes proposed to specify that the MNRF “may” be a party at an OMB hearing for an application rather than “must” be raises concerns. Gravel Watch Ontario’s position would be that the Ministry should always be part of hearings concerning an application for an aggregate licence. The Ministry’s staff members are the experts on the subject of aggregates in Ontario. They have value to bring to the proceedings. The Ministry’s role can be scaled according to issues being dealt with at the hearing and the assessment that the Ministry has made regarding those issues, but they should always be part of the proceedings. The current absence from aggregate application hearings is a disservice to the remaining parties and to the province as a whole.

Gravel Watch Ontario commends the Ministry Team which has consulted with stakeholders and prepared the Blueprint document. We appreciate the continuing opportunity to add our feedback and perspectives. As stated earlier in this submission, the Blueprint document covers a wide range of areas. Taken as a whole, the changes proposed are an ambitious undertaking which will have an impact on aggregate resource management in Ontario.

We challenge the Province to explore those areas where more opportunity exists. We encourage the Province to look for ways to accelerate the implementation of as many of these proposals as possible.

Gravel Watch Ontario looks forward to continuing to work with the Province as the details and implementation for these proposals are further defined. We remain committed to ensure that Ontario continues to benefit from the effective use of aggregate resources while at the same time effectively managing the inherently intrusive social and environmental impacts that comes with them.