

May 5, 2020

Resource Development Coordinator
Ministry of Natural Resources and Forestry
Natural Resources Conservation Branch
Resource Development Section
300 Water Street
2nd Floor, South Tower
Peterborough, Ontario
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To Whom it May Concern.

RE: Environmental Registry of Ontario posting 019-1303 Proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act

The Ontario Federation of Agriculture (OFA) is Canada's largest voluntary general farm organization, representing more than 38,000 farm family businesses across Ontario. These farm businesses form the backbone of a robust food system and rural communities with the potential to drive the Ontario economy forward.

OFA welcomes this opportunity to provide its comments and perspective on the Proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards. We recognize the critical importance of aggregates for upgrading and maintaining our networks of roads and bridges, as well as for residential, commercial, institutional and industrial construction. Nevertheless, farmers continue to express concerns over the negative impacts of aggregate extraction and aggregate trucking on agricultural land uses and on individual farm operations.

The Discussion Paper states that the Ministry will be "developing guidance materials to better communicate best practices for preparing applications under the ARA". OFA looks forward to sharing our agricultural perspectives with the Ministry in the development of these guidance materials.

Water Report:

OFA welcomes the proposal that applicants will be required to report on the potential impacts of aggregate extraction on private water wells in addition to municipal water wells on the aquifer. It is not clear if the proposed requirements applicable to private wells will also include farm wells

used to water livestock and poultry, or that provide irrigation water. OFA recommends that reports on the potential impacts of aggregate extraction on private water wells clearly include farm wells used to water livestock and poultry, or that provide irrigation water, in addition to those private water wells that provide water to households.

The Discussion Paper indicates that if proposed aggregate extraction at the site has the potential for changes to the 'vulnerability' within a Wellhead Protection Area (A or B), that the water report must determine if the work on this site could also impact the vulnerability score or impose restrictions on surrounding properties. Limiting this study to the "site" itself is unacceptable. Other property owners could be negatively impacted, whether its their water supply or by other rules or regulations, including but not limited to source water protection. Both these assessments should be made for any aggregate extraction application, and not be limited to those applications to extract below the water table.

1.1.4 Agricultural Impact Assessments:

The Discussion Paper proposes to require an Agricultural Impact Assessment (AIA) for applications within a prime agricultural area that are located within those portions of Ontario subject to a Provincial Plan. That is a good start, but one that falls short of the mark. OFA believes that all aggregate applications within a prime agricultural area, regardless if they are subject to a Provincial Plan or not, should be required to complete an AIA. All prime agricultural land in Ontario, whether subject to a Provincial Plan or not, merits equal treatment and equal protection. Having the Agricultural Impact Assessment requirement only apply to those select areas of the province subject to a Provincial Plan serves to incent aggregate licence applicants to locate new pits and quarries in municipalities outside the scope of a Provincial Plan. All aggregate licence applications should face the same application criteria and standards. To allow licence applications to avoid completing an AIA simply because their proposed pit or quarry is outside the scope of a Provincial Plan is unacceptable. We remind the Ministry of Natural Resources and Forestry that less than 5% of Ontario's land area is capable of supporting agriculture. If we compare the area of Ontario farms between the 2016 and 2011 censuses, we note that 319,000 acres of agricultural land were lost to farming over that 5-year period, or 175 acres/day. Agriculture and agri-food are Ontario's number one economic drivers. Losses of the magnitude of 175 acres/day are unsustainable if people also expect Ontario's farms to continue to produce safe, affordable food, fibre and fuel for Ontarians, Canadians and consumers beyond. OFA demands that the Agricultural Impact Assessment requirements apply to all aggregate applications on prime agricultural land, regardless of where their proposed location in Ontario is.

1.1.6 Summary Statement:

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. In addition to the considerations noted in the Discussion Paper, OFA recommends that agriculture-related planning and land use considerations, such as the impacts on private farm water wells, dust, noise, truck traffic and site rehabilitation to an agricultural end use be included in the summary statement.

1.2.1 Site Plan Standards – Improving Flexibility:

The Ministry is proposing that in lieu of mandatory fencing of aggregate sites on private land, that the applicant be permitted to clearly delineate and maintain boundary markers. OFA views this proposed change as utterly unacceptable. If not a fence, what means will clearly delineate and maintain an aggregate site's boundaries? And how will this alternative to a fence serve to deter

trespassers from entering the aggregate site and injuring themselves or damaging the operator's property?

All pits and quarries in agricultural areas should be fenced, with no exceptions. Fences not only serve to delineate the boundaries on one's property, but also to deter unauthorized or inadvertent access. If aggregate operators are exempted from requirements to fence, the obligations to fence would totally shift to the abutting farmers. Line fences benefit the property owners on both sides. Ontario's Line Fences Act bases cost-sharing of line fences on their benefit both parties, making each property owner share in the costs of fence construction and future maintenance.

OFA also points out that fencing one's aggregate extraction site is not an onerous financial burden on the operator. OMAFRA's Farm Fencing Systems factsheet (2019) (<http://www.omafra.gov.on.ca/english/engineer/facts/08-035.htm>) puts the cost of a 4-foot, 9-strand page wire fence at \$2.61 per foot, including labour.

Without a fence to clearly mark the property boundary of an aggregate site, how will the increased liability exposure be addressed. OFA opposes any efforts to transfer that liability to property owners abutting a pit or quarry. Someone will ultimately bear the burden of a liability judgement. If the Ministry proposed to exempt pit and quarry operators from fencing their operations, that burden must not fall to the abutting property owners.

Lastly, we draw to the Ministry's attention that section 21 of the Line Fences Act requires the owner of a fence to notify any adjoining landowners in writing of their desire to take down an existing line fence, 6 months before removing the line fence. OFA demands that proposals to remove current requirements for mandatory fencing around aggregate sites on private land be dropped from proposals to amend O.Reg. 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act.

1.3.2 Notification and Consultation Process:

The Ministry is proposing that residents within 150 metres (500') of a proposed pit, or 500 metres (1,640') of a proposed quarry, be notified. Notification of landowners within 120 metres (400') of a proposed pit or quarry would continue. Residents would include landowners and tenants. We find this aspect confusing. On one hand, the Ministry is proposing to notify landowners and residents in proximity to a Class A application differently; residents within 150 metres of a pit and within 500 metres of a quarry versus landowners within 120 metres of a proposed pit or quarry. The discrimination between resident and landowner is unacceptable. Landowners tend to be there for the long term; residents, which would include tenants, may not have the same tie to place. Given that the impacts of a proposed pit or quarry could impact landowners to a much greater degree than residents, OFA recommends that all landowners, as well as all residents, within 150 metres of a proposed pit, or within 500 metres of a proposed quarry be notified of any aggregate applications.

1.3.3 Objection Process on Private Land:

"Submissions made during the proposed 60-day notification period should not be considered objections". This seems overly bureaucratic and prescriptive. OFA sees no rationale for excluding submissions and comments made during the "proposed 60-day notification period". Concerns raised during the proposed 60-day notification period should be treated the same as concerns submitted during the 20-day response period. The outcome will see the legitimate concerns of local residents ignored because they voiced them "too early". People who voice concerns during the 60-day notification period may believe that they do not need to submit them during the 20-day

response period. OFA strongly recommends that all comments and concerns pertaining to private land applications submitted during the proposed 60-day notification period be treated exactly the same as concerns submitted during the 20-day response period.

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

OFA's comments focus solely on extraction of aggregates from land owned by a farm business in this section.

OFA supports the principle of exempting a farm business from a license to extract a limited amount of sand or gravel, from property owned by the farmer or farm business, by registering their activity and following rules set out in regulations. OFA welcomes the provisions that would allow a farmer to move sand or gravel from farm-to-farm, provided they are part of the same registered farm business. When the Ministry consulted on A Blueprint for Change: A Proposal to modernize and strengthen the Aggregate Resources Act policy framework in 2015, the Ministry proposed a 5000-tonne ceiling on extraction from land owned by a farm business. Now they are proposing a 1000-tonne ceiling. We question the rationale behind this significant reduction in potential tonnage? OFA recommends that a 5000-tonne ceiling on extraction from land owned by a farm business be adopted.

The proposal sets out a number of specific conditions;

- only unconsolidated material (sand or gravel) is being extracted,
- no blasting or processing of aggregates,
- only above the water table extraction,
- excavation does not occur with specified setbacks from lot lines, abutting residences, sensitive receptors (residences, schools, hospitals),
- water bodies,
- water wells or septic systems,
- plugged or active petroleum wells,
- category A or B wellhead protection areas, or
- areas where development is prohibited by a conservation authority.

Generally, the specified setbacks are reasonable. We do, however, question a couple of the conditions. The Ministry is proposing a 90 metre (300 ft.) set back from "any part of the property boundary that abuts neighbouring land in use for residential purposes". Additionally, the ministry is proposing a 90 metre (300 ft.) set back from sensitive receptors, such as residences, schools, hospitals". It is more likely that we will find schools within agricultural areas, and less likely that we will find hospitals located there. Across most of Ontario's agricultural areas, each individual farm property at least could have, or likely does have, a residence on that farm. The proposed 90 metre set back would unduly constrain utilization of the proposed extraction from land owned by a farm business provisions. Extraction from land owned by a farm business will not include blasting or processing. It will also conform to setbacks from water bodies, water wells, septic systems and petroleum wells. It could also be limited to a specified time, say between 8:00 AM and 6:00 PM Monday to Friday and excluding statutory holidays. OFA recommends that the proposed 90 metre setbacks from residences and sensitive uses be replaced with the general 30 metre setback from the property boundary, and that the 8:00 AM and 6:00 PM time-of-day and Monday to Friday and excluding statutory holidays day-of-the-week restrictions be adopted.

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

It is troublesome to learn that currently there are no approvals required to extract within a provincial or municipal road right-of-way. A complete absence of rules for extraction within a road right-of-way is unacceptable. At minimum, there should be requirements to assess the road right-of-way to determine if extraction within it would in any way impact source water protection areas and neighbouring private water wells. OFA recommends that licensed aggregate extraction within a provincial or municipal road right-of-way include mandatory screening for potential impacts to source water protection and neighbouring private water wells.

3.1.1 Miscellaneous Changes:

OFA's comments on fencing are in 1.2.1.

OFA offers no comments on Crown Land boundary marking, save for recommending that where private land abuts a Crown Land aggregate site, that mandatory fencing apply to these instances.

With reference to gates at aggregate sites, the current practice of using chains or cables in lieu of an actual gate is unacceptable. OFA supports the Ministry's proposal to require an actual gate at site entrances.

3.1.2 Dust & 3.1.3 Blasting:

Residences, hospitals or schools are considered to be "sensitive receptors". We agree that residences, hospitals or schools should be protected from noises and dusts from aggregate extraction activities through appropriate setbacks. OFA believes that farms with livestock and poultry also deserve to be protected from the impacts from noises and dusts from aggregate extraction activities too. Loud and random noises negatively impact herd and/or flock health, which translates into reduced farm income from meat and/or milk production. If residences, hospitals or schools merit setbacks from a site's boundary to address noise and dust impacts, OFA requests that these sensitive receptor setbacks also apply to livestock and poultry farms.

Dust reduces crop yields and can also damage harvest equipment. In addition, it is not beneficial for livestock to feed on dust-covered crops. The Ministry is proposing to require all license and permit holders to mitigate dust to prevent it from leaving the site. Licence holders would need to mitigate dust regardless of their proximity to a "sensitive receptor". Permit holders would only need to mitigate dust if a sensitive receptor was within 1000 metres of the site boundary. OFA believes that farms should be viewed as "sensitive receptors" when it comes to off-site dust from aggregate operations.

OFA supports the proposed new requirements that all quarry operators prevent fly rock from leaving their site during blasting operations.

3.2.2 Rehabilitation Reporting:

The Ministry is proposing that pit and quarry operators be required to report additional information on progressive and final rehabilitation activities, such as which phase of their planned extraction they're currently in and details of the rehabilitation activities they've undertaken, such as seeding, tree-planting, grading or backfilling slopes. Pit and quarry operators would also be required to describe final rehabilitation activities and the known final use for the site; agricultural, recreational or natural heritage. OFA supports these rehabilitation reporting requirements.

The discussion paper indicates that annual compliance reports should be made available to the public on request. While this is positive, OFA recommends that in lieu of making these reports available to the public on request, that the Ministry require that annual compliance reports be automatically circulated to the upper and lower tier municipality where the pit or quarry is located as well as to individuals who have requested to receive the annual compliance report for as long as the sites licence is in effect.

OFA supports proposed work by the Ministry of Natural Resources and Forestry on the development of additional guidance for operators and municipalities, such as rehabilitation Best Management Practices (BMPs). We further recommend that the Ministry of Natural Resources and Forestry engage the Ministry of Agriculture, Food and Rural Affairs, the University of Guelph and farm organizations in the development of rehabilitation BMPs.

Lastly, OFA requests that any proposed changes to proposed rehabilitation outcomes be subject to a mandatory public review and consultation process before the changes are accepted by the Ministry of Natural Resources and Forestry.

3.3.3 Amendment to Expand and Existing Site Below the Water Table:

Any proposed change that would see extraction below the water table would require the applicant submit a hydrogeological (water) report, prepared by a Qualified Person. The hydrogeological report would include same information as a new application. OFA supports this proposal.

As part of the proposed approach for an Amendment to Expand and Existing Site Below the Water Table, item g) (page 35) proposes the same 60-day notification period followed by the 20-day response period. Any proposed Amendment to Expand and Existing Site Below the Water Table should automatically include a public meeting. Furthermore, as we stated in reference to section 1.3.3, treating comments in the 60-day period differently than those received during the 20-day response period makes no sense, and seems overly bureaucratic and prescriptive. OFA sees no rationale for excluding submissions and comments made during the “proposed 60-day notification period”. Concerns raised during the proposed 60-day notification period should be treated the same as concerns submitted during the 20-day response period. The outcome will see the legitimate concerns of local residents ignored because they came “too early”. OFA strongly recommends that comments and concerns pertaining to applications for an Amendment to Expand and Existing Site Below the Water Table submitted during the 60-day notification period must be treated exactly the same as concerns submitted during the 20-day response period.

The discussion paper proposes to circulate these to the Ministry of Natural Resources and Forestry, the Ministry of Environment, Conservation and Parks, conservation authorities, upper and lower tier municipalities and to the Niagara Escarpment Commission. OFA believes that the circulation area to landowners and residents should be widened to be within a 500-metre radius of the site; and should also require the proponent to undertake a water quality and water quantity assessment of every private water well (residential and farm) within that 500-metre radius.

3.3.4 Self-Filing of Site Plan Amendments:

The Discussion Paper provides no details on the Ministry’s proposed changes to a site plan that would qualify for “self-filing”, the mechanism to ensure that these self-filed amendments meet any proposed criteria for self-filing and the penalties for non-compliance with the proposed criteria for self-filing. We need to know these details before we can provide informed comments.

The Ontario Federation of Agriculture welcomes this opportunity to provide its perspectives on the Proposed amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the Aggregate Resources Act through an agricultural lens. We trust that our recommendations on this proposal will be carefully considered.

Sincerely,



Keith Currie
President

KC/pc

cc: The Honourable John Yakabuski, Minister of Natural Resources and Forestry
The Honourable Ernie Hardeman, Minister of Agriculture, Food and Rural Affairs
OFA Board of Directors