

ONTARIO FEDERATION OF ANGLERS & HUNTERS



Ontario Conservation Centre

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December 6, 2016

Mr. Hal Leadlay, Coordinator
Ministry of Natural Resources and Forestry
Policy Division
Natural Resources Conservation Policy Branch
Resource Development Section
300 Water Street
Peterborough, Ontario
K9J 8M5

Dear Mr. Leadlay:

Subject: EBR 012-8443: Schedule 1 of Bill 39 - Aggregate Resources and Mining Modernization Act, 2016

On behalf of the Ontario Federation of Anglers and Hunters (OFAH), its 100,000 members, subscribers and supporters, and 740 member clubs, we have reviewed Schedule 1 of Bill 39 – Aggregate Resources and Mining Modernization Act, 2016 (hereafter Schedule 1). Please accept the following comments on areas of particular interest to our organization, our members, and outdoorsmen and women across the province.

General Comments

While aggregate resources are a necessary non-renewable resource for development and infrastructure, they are often found in areas with essential ecosystem services, sensitive habitats, and high potential for negative impacts. Much of the aggregate resources used today for development and building are sourced from the glacial deposits in the Niagara Escarpment and the Oak Ridges Moraine. These areas are important for the recharge of aquifers and in the filtration of water, and these aggregate deposits are the source of water for cold water streams flowing into Lake Ontario, Lake Erie, and Lake Huron. These streams are essential to the long-term health of native Brook Trout, provide habitat for many species at risk and many fish and wildlife species. Gravel deposits are also often found under sensitive or highly valuable habitat (oak savanna, near/in streams, and riparian areas) or in protected land use areas such as agricultural zones. These lands and waters are important to our members and serve irreplaceable ecological and environmental functions.

The OFAH is in general support of the modernization of the Aggregate Resources Act (ARA), but we feel that more could be done through legislation or regulation towards the establishment of integrated land management. While the ARA, with proposed amendments, has started to account for expanded considerations like source protection plans, we feel more could be done to ensure that information is shared with the province and municipalities, so that the cumulative effects of all activities on a landscape can be estimated.

Mr. Hal Leadlay
December 6, 2016
Page Two

Schedule 1 – Section 6

This amendment would allow for the removal or resignation of The Ontario Aggregate Resources Corporation (TOARC) as the trustee for the Aggregate Resources Trust, which funds the remediation of pits. This amendment is of interest to outdoor recreationists, as it has the potential to disrupt or delay the remediation of sites. The timelines for the removal or resignation is 90 days, but TOARC is listed as the trustee directly in the Act, meaning that the Act would need to be amended to specify the next trustee. The process of opening legislation takes considerable time and can make it difficult to rehabilitate sites or address landowner concerns in a timely manner. We agree with including this provision directly in the Act, but the Act should be further amended to permit the appointment of another trustee through regulation or policy. This would eliminate the need to amend the Act simply to appoint a trustee, which would ensure a timely transition to a new trustee and maintain the funding for remediation and protection of the environment.

Schedule 1 – Section 9

This section repeals existing Sections 9 and 10 of the ARA. Of concern to the OFAH is the repeal of Section 10 of the ARA. Currently, the onus is on the proponent to show in the application that the proposed operation is satisfactorily approved under zoning bylaw. This means that an application can only be deemed complete once they have approval from the municipality, which would also include approval by the local conservation authority. The current system ensures that the operation is acceptable to local interest groups and managing authorities, is subject to the Ontario Municipal Board appeal system, and allows local land managers with knowledge of the landscape to determine if the proposal is socially, economically, and environmentally feasible. Repealing Section 10 of the ARA is inconsistent with other amendments to the ARA, and limits the involvement of local regulators.

Schedule 1 – Subsection 10 (2)

This subsection modifies the ARA by repealing and replacing Subsection 11 (2), (3), and (4) of the existing Act and replacing it with three subsections related to custom notification and consultation processes. In general, we support the potential for custom consultation processes, but the proposed amendments would remove portions that dictate how objections are handled. If these sections are removed from the Act, procedures must be developed in regulation or other guiding documentation to enable objections to be lodged, to provide a process for the recording of the objection, and to ensure the regulator/minister is aware of objections that are made during consultation/notification. In the event that an approval is appealed, it is important to have a record of objections, actions undertaken to address them, or justification for not addressing them. Without this information, full public transparency and accountability is impossible.

Schedule 1 – Subsection 11

The OFAH is encouraged to see the inclusion of considerations of municipal drinking water sources in section 12 of the ARA. However, we would like to see more done, either through the Act, regulation, or policy, to encourage the assessment of cumulative impacts of all activities, not just aggregate extraction.

While it is important to recognize and reward self-reporting practices and adequate remediation approaches, there should still be consideration of these contraventions during the approval process that is outlined in subsection 12 (2). As the original and proposed substitute subsections state, self-reported contraventions where: (1) remediation efforts have started within 90 days; and (2) where the non-compliant activities were ceased immediately, will not be considered during the approval process. We believe that this type of situation should be considered in specific cases (e.g. where there are repeated contraventions), as adequate remediation and reactive actions does not equate to good management. If there are recurring contraventions without the implementation of effective prevention strategies, these contraventions should be considered in the approval process.

Mr. Hal Leadlay
December 6, 2016
Page Three

Schedule 1 – Section 12

The OFAH is in full support of the regulator being able to attach such conditions as may be appropriate for the approval, the area, and the proponent as proposed in the new ARA section 12.2. The original section had requirements for the distribution of the approval and final site plans to municipalities. The OFAH believes this requirement should be maintained to ensure that information is available to municipalities to help in the integrated management of the landscape under their jurisdiction.

Schedule 1 – Subsection 13 (3)

The addition of Subsection 13 (12) to the Act (allowing the regulator to make immediate changes to conditions to align with a source protection plan without a hearing) is fully supported by the OFAH. The development of the source protection plan provides opportunity for licensees to be involved in the development that may affect the potential new conditions that are added to their licence. The protection of groundwater through a source protection plan, though based predominantly around municipal drinking water, is also beneficial to aquifers that are source water for streams and rivers. In the future the OFAH would like to see source water protection expanded to include all aquifers regardless of municipal utilization, as well as the recognition of the valuable services they provide to the overall health of the environment and people.

Schedule 1 – Section 16 and Section 32

The OFAH is in support of modifications that allow for flexibility in scheduled reporting requirements so long as it maintains the integrity and protection of the environment and sustainable development. The OFAH believes that active pits should report on compliance at least annually, but modifications to scheduled reporting for inactive pits may be possible using a risk-based management framework. The elimination of requirements to provide these reports to municipalities may impact the management of resources and should not be considered.

The OFAH is in support of Subsection 16 (3) of Schedule 1, as this provides the ability for the minister to take a stronger compliance action in the event of a contravention being discovered by an inspector. This is a positive step, but there should also be requirements to report contraventions to the regulator immediately. While some contraventions relating to spills and releases of contaminants may have reporting requirements under other legislation (e.g. Environmental Protection Act), time requirements are not specified. Statements like “the responsible party of a site will, as soon as that person knows or ought to know of the contravention, report it to the Ministry,” gives defensible structure to the proposed new ARA Subsections 15.1 (5.1) and 40.1 (5.1).

Schedule 1 – Subsection 18 (3)

This repeals ARA subsection 18 (11) that calls for the recipient of an aggregate license transfer to notify local municipalities. This information is valuable for local managers and authorities, from land management to source protection plans under the Clean Water Act, and should be retained.

Schedule 1 – Subsection 28 (1)

This subsection adds Subsection 34 (1.1) to the ARA allowing for a person with prescribed qualifications to operate a pit or quarry in accordance with prescribed terms and conditions. This amendment could create a “permit-to-rule” system for some operations. This change is consistent with suggestions the OFAH made during the consultation period for *A Blueprint for Change*, but further development of a code of practice or regulation with these prescriptions is required. This approach will be an effective and efficient way to manage low risk aggregate resource extraction operations, but the development of the prescriptions will need to consider the long-term environmental sustainability and protection of essential ecological services. To prevent abuse under this type of system, strong compliance and monitoring will be necessary. Enhancing the powers of local municipalities to perform inspections and initiate compliance actions in regards to the prescribed terms and conditions may be effective.

ONTARIO FEDERATION OF ANGLERS AND HUNTERS

Mr. Hal Leadlay
December 6, 2016
Page Four

Schedule 1 – Section 29

The establishment of custom consultation plans and approaches, while valuable for considering the differences between regions in the province, creates the potential for some stakeholders to not have appropriate opportunities to consult. Even where aggregate operations occur in areas with limited local population and interest, there may be individuals or groups that have a stake in the area due to resource-based recreation, seasonal camping, or other factors. The OFAH, while supportive of allowing custom approaches that can maximize consultation efficiency, is concerned about potential shortfalls. Further work around the requirements of standard and custom consultation approaches needs to be done to ensure the integrity of the consultation process.

Schedule 1 – Section 38

The OFAH is in full support of the province collecting appropriate royalties on provincial resources. If aggregate is utilized and not returned to the original source location for remediation purposes, and the use of the material is for commercial or economic gain of any individual, group, or corporation, royalties should apply.

Schedule 1 – Subsection 41 (2)

We fully support the addition of accountability structures to the legislation. Providing false information in an attempt to attain a permit puts the environment at risk and could impact habitat, waterbodies, and fish and wildlife.

Schedule 1 – Subsection 53

The OFAH is in full support of amendments that provide the province with mechanisms to ensure that over-extraction of a resource does not occur. Non-compliance with annual extraction limits could have significant negative impacts on environmental services, habitat, fisheries, wildlife, and human health.

Conclusion

In summary, the OFAH is encouraged by the modernization documents for the ARA, and believe that this is an ideal time to develop a comprehensive, accountable, and sustainable framework for aggregates now and in the future. While there are many questions related to maintaining communication between provincial and local regulators, and questions related to the future development of regulations and policies, many of these proposed changes are positive. The sustainability of aggregate resource development has a direct impact on the outdoors community. The proposed changes could be beneficial to the people who enjoy the outdoors, beneficial to the environment and natural systems and ecosystems, and beneficial to fish and wildlife, including species at risk.

The OFAH appreciates the opportunity to contribute to the discussion around aggregate resource regulation that will help ensure a sustainable, healthy Ontario now and for future generations. We look forward to working with the province further on this and any future initiatives.

Yours in Conservation,



Robert Cole
Land Use Policy and Habitat Specialist

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cc: OFAH Board of Directors
OFAH Land Use, Access, Trails Advisory Committee
Angelo Lombardo, OFAH Executive Director
Matt DeMille, OFAH Manager, Fish & Wildlife Services
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