

A  
PROPOSED  
PITS AND QUARRIES  
CONTROL AND REHABILITATION  
ACT  
1977

SUBMITTED TO THE  
FOUNDATION FOR  
AGGREGATE STUDIES

BY

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FINAL DRAFT

29th August, 1977.

A PROPOSED  
PITS AND QUARRIES CONTROL AND  
REHABILITATION ACT, 1977

Interpre-  
tation

1. In this Act,

- (a) "area(s) affected" includes the land from which minerals are removed by pit or quarry operations and all other land area in which the natural land surface has been disturbed as a result of or incidental to pit or quarry activities, including but not limited to private ways and roads appurtenant to any such area, land excavations, workings, refuse banks, spoil banks, repair areas, storage areas, processing areas, shipping areas, and areas in which structures, facilities, equipment, machines, tools, or other materials or property which result from, or are used in, pit or quarry operations are situated;
- (b) "Board" means the Ontario Municipal Board;
- (c) "environment" includes;
  - (i) air, land, water,
  - (ii) humans, plant and animal life,
  - (iii) the social, economic and cultural conditions that influence the life of humans or a community,
  - (iv) any building, structure, machine or other device or thing made by humans,
  - (v) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of humans or
  - (vi) any part or combination of the foregoing and the inter-relationships between any two or more of them;
- (d) "inspector" means a member of the public service who is designated in writing by the Minister as an inspector for the purposes of this Act;
- (e) "Minister" means the Minister of the Environment; ✕

(2)

- (f) "Ministry" means the Ministry of the Environment;
- (g) "operator" means the person or persons who own the right to extract material from a pit or quarry or wayside pit or quarry;
- (h) "orphaned lands" include any lands that have been the subject of pit or quarry operations but have not been rehabilitated during, or after the cessation of, such operations;
- (i) "person" includes any individual, partnership, firm, corporation incorporated or unincorporated joint venture, incorporated or unincorporated association, trust, estate, commission, board public or private institution, municipality or other political subdivision of the province, a public body, Her Majesty the Queen in right of Ontario, a Crown agency, or any other legal entity;
- (j) "pit" means a place where unconsolidated gravel, stone, sand earth, clay, fill, mineral or other material is being or has been removed by means of an excavation to supply material for construction, industrial or manufacturing purposes, but does not include a wayside pit;
- (k) "quarry" means a place where consolidated rock has been or is being removed by means of an excavation, including use of explosives, to supply material for construction, industrial or manufacturing purposes, but does not include a wayside quarry or open pit metal mine;
- (l) "regulations" means the regulations made under this Act;
- (m) "rehabilitation" includes the process of grading and shaping of the disturbed land in the area affected, constructing water control facilities, the taking of measures to control current

or future air, water or soil pollution, and the planting of vegetation, all of which is directed toward placing the area affected in a condition at least as productive as that in existence prior to the commencement of any pit or quarry operations;

(n) "wayside pit" or "wayside quarry" means a temporary pit or quarry opened and used by a municipality solely for the purpose of a particular municipal project or contract of road construction and not located on the road right of way.

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|----|---|-------------------------|
| 2. | This Act applies to the whole of Ontario unless the Act is designated inapplicable to areas of the province by the regulations.   | Application of Act      |
| 3. | The purpose of this Act is <u>to provide for the protection of the environment of Ontario and for rehabilitation of areas affected by pit and quarry operations; and to provide a right of relief from decisions and activities which do not protect the environment or facilitate rehabilitation of areas affected by pit and quarry operations.</u> | Purpose                 |
| 4. | Every operator shall ensure that the requirements of this Act and the regulations are complied with in respect of his pit or quarry or wayside pit or wayside quarry.   | Duty of operator        |
| 5. | No person shall open, establish or operate a pit or quarry except under the authority of a licence issued by the Minister to the operator.  | Pit or quarry licence   |
| 6. | An application for a licence to operate a pit or quarry shall be filed with the Minister and shall be accompanied by the following:   | Contents of application |

*Whole of Province*

(4)

- (1) Environmental Assessment. An environmental assessment shall include;
- (a) a description of the need for the pit or quarry operation, the persons it is likely to benefit, the persons it is likely to harm and the period of time over which the impact is likely to occur;
  - (b) a description of the proposed ultimate consumer(s) of the product;
  - (c) a description of the proposed pit or quarry operation adequate to permit a careful prediction of its environmental impact;
  - (d) an account of the environmental impact which will be caused or that might reasonably be caused if the proposed pit or quarry operation is implemented, including a discussion of their significance and irreversibility;
  - (e) a description of measures available to minimize, mitigate or remedy the environmental impact;
  - (f) an account of the extent to which energy will be consumed and non-renewable resources will be used for the transportation of the product;
  - (g) an account of the alternative methods of carrying out the pit or quarry operation including a discussion of their environmental impacts, significance and irreversibility;
  - (h) an account of the alternative transportation modes and routes;
  - (i) a description of the tendency, if any, of the proposed operation and related activities including transportation to induce or encourage industrialization, urbanization or related changes in the area or region

Environmental  
Assessment

(5)

(j) a qualitative and quantitative account of the degree of uncertainty contained in any description of the environmental impact of the proposed pit or quarry operation, alternative methods and alternative transportation modes or routes.

(2) Site Plan. A site plan shall include;

Site  
plan

(a) the location, true shape, topography, contours, dimensions, acreage and description of the lands set aside for the purposes of the pit or quarry;

(b) the use of all land and the location and use of all buildings and structures lying within a distance of 500 feet of any of the boundaries of the lands set aside for the purposes of the pit or quarry;

(c) the location, height, dimensions and use of all buildings or structures existing or proposed to be erected on the lands set aside;

(d) existing and anticipated final grades of excavations, contours where necessary and excavation set backs;

(e) drainage provisions;

(f) all entrances and exits;

(g) as far as possible ultimate pit development, progressive and ultimate road plan, any water diversion or storage, location of stockpiles for stripping and products, tree screening and berming, progressive and ultimate rehabilitation and, where possible, intended use and ownership of the land after the extraction operations have ceased;

(6)

(h) cross-sections where necessary to show geology, progressive pit development and ultimate rehabilitation; and

(i) such other information as the Minister may require or as is prescribed by the regulations.

(2a) The site plan for an application in respect of a pit or quarry producing less than 10,000 cubic yards per year may be in a short form prescribed by the regulations in lieu of the form required by subsection 2.

Shortform  
of site  
plan

(3) Rehabilitation Plan. A complete and detailed plan for the rehabilitation of the area affected. Each plan shall include the following;

Rehabili-  
tation Plan

(a) a statement of the current official plan designation, the current zoning and the zoning prior to the commencement of the pit or quarry operations and if not stated under section 6(1) a description of the environment of the area affected or likely to be affected;

(b) the use which is proposed to be made of the land following rehabilitation;

(c) the manner in which topsoil and subsoil will be conserved and restored. If conditions do not permit the conservation and restoration of all or part of the topsoil and subsoil, a full explanation of said conditions must be given, and alternative procedures proposed;

(d) where the proposed land use so requires, the manner in which compaction of the soil will be accomplished;

(7)

(e) a complete planting program providing for the planting of trees, grasses, legumes or shrubs, or a combination thereof as best calculated to permanently restore vegetation to the area affected. If conditions do not permit the planting of vegetation on all or part of the area affected, and if such conditions pose an actual or potential threat of soil erosion or siltation, then alternate procedures must be proposed to prevent the threat of soil erosion or siltation;

(f) a detailed timetable for the accomplishment of each step in the rehabilitation plan including progressive rehabilitation, and the operator's estimate of the cost of each such step and the total cost to him of the rehabilitation program.

(4) Every application for a licence shall include an explanatory note and a summary of the environmental assessment, site plan and rehabilitation plan.

7. The applicant for a pit or quarry licence shall give public notice at the time of the filing of an application, of his intent to operate a pit or quarry, and its proposed location to:

Notice

(1) every occupant and registered owner of property within two thousand (2,000) feet of the boundaries of the property of the proposed pit or quarry operation;

(2) all households, as enumerated on the latest assessment rolls, that are on the proposed local truck routes and alternative routes up to the first limited or restricted access highway as defined in the Public Transportation and Highway Improvement Act;

(3) the clerk of every municipality where the proposed pit or quarry is to be located, and every municipality abutting such municipality(s);



(4) the public, by

(a) publishing the notice in all newspapers published in and circulated through the municipalities described under subsection 3 once per week for three weeks immediately following the filing of the application and,

(b) posting the notice in a conspicuous place at or near the site of the proposed pit or quarry operation;

(5) Such information to be included in the notice shall conform to regulations issued by the Minister under this Act.

(6) All notices required to be given are sufficiently given if sent by ordinary pre-paid mail.

8. Where an application for a licence has been submitted to the Minister, the Minister shall, within 120 days, cause a review of the environmental assessment, site plan and rehabilitation plan to be prepared.

Minister's review

9. (1) The applicant shall provide copies of the environmental assessment, site plan, rehabilitation plan, summary and explanatory note at reasonable cost to each person who submits a written request to the applicant.

Applicant to provide copies of plans etc.

(2) The Minister shall make sufficient copies of his review to provide a copy at reasonable cost to each person who submits a written request to the Minister.

Minister to provide copies of review

(3) The applicant shall lodge at the time of his application, and any person may inspect, the environmental assessment, site plan and rehabilitation plan at the Minister's office, the head office of the applicant, the regional or district of the Ministry nearest the site

of the proposed pit or quarry operation, the clerk's office of the municipality where the proposed pit or quarry is to be located and; the public library of every municipality where the proposed pit or quarry is to be located.

(4) The Minister shall lodge his review, and any person may inspect the Minister's review of the environmental assessment, site plan or rehabilitation plan at either the Minister's office, the regional or district office of the Ministry nearest the site of the proposed pit or quarry operation, the clerk's office of the municipality where the proposed pit or quarry is to be located and; the public library of every municipality where the proposed pit or quarry is to be located.

*Review*

10. (1) Any person may at any time make written submissions to the Minister concerning the proposed pit or quarry operation and may request that the Minister refer the matter to the Board.
- (2) The Minister shall not make a decision respecting a licence for 30 days following the lodging of his review.
- (3) The Minister may, and if a request is received by the Minister, the Minister shall, unless such request is not made in good faith or is frivolous or is made only for the purpose of delay, refer the matter to the Board for a decision.
- (4) If no request for a referral to the Board is made, the Minister shall, after the expiry of the 30 day period referred to in subsection 2, make a decision.
- (5) The decision of the Minister or the Board shall contain terms and conditions and such terms and conditions shall be consistent with the purposes of this Act and the applicant's environmental assessment, site plan and rehabilitation plan.

Any person  
to make  
submissions

11. (1) The Minister shall establish a fund to be known as the Pit and Quarry Hearing Assistance Fund. Hearing fund
- (2) In addition to any fees required from pit and quarry applicants as specified in the Act or regulations every pit and quarry applicant shall pay into the Pit and Quarry Hearing Assistance Fund a sum equal to 1/10 of 1 per cent of the estimated \_\_\_\_\_ of the pit or quarry operation.
- (3) Where a person may be affected, directly or indirectly by a proposed pit or quarry operation, financial assistance shall be made available to such person from the Hearing Assistance Fund, where it can be shown, to the Minister's satisfaction, that such person does not have sufficient financial resources to enable him to be adequately represented in the hearing, and will require such assistance to be able to do so.
- (4) The Funds provided pursuant to subsection 3 shall be available for all legal fees and disbursements, conduct money and necessary witness fees for expert witnesses and relevant reports and studies for the person entitled to assistance. Nothing in this section shall prevent or prejudice an application for financial assistance under the Legal Aid Act, R.S.O. 1970, c. 239 as amended, or any other special or general Act of the Legislative Assembly of Ontario.
- (5) In the event that the amount is not adequate for the purposes of this section, the Minister shall increase the amount to be paid out of the Fund to a level equal to reasonable costs.
- (6) If several persons having identical or substantially similar interests apply for assistance from the Fund with regard to the same pit or quarry application, the Board shall have the discretion to issue one sum to all such persons.

12. (1) The Minister, or the Board after a hearing, shall refuse to issue a licence to operate a pit or quarry where the environmental assessment, site plan or rehabilitation plan do not comply with this Act or the regulations or where the operation of the pit or quarry would be against the interest of the public taking into account,
- Grounds for refusal to issue a licence
- (a) the preservation of the character of the environment;
  - (b) the availability of natural environment for the enjoyment of the public and future generations thereof;
  - (c) the need, if any, for restricting excessively large total pit or quarry output in the locality;
  - (d) the traffic density on local roads;
  - (e) any possible effect on the water table or surface drainage pattern;
  - (f) the nature and location of other land uses that could be affected by the pit or quarry operation;
  - (g) the character, location and size of nearby communities;  
and
  - (h) the existence of conditions leading to soil erosion and siltation which will not be prevented by procedures or alternatives as outlined in section 6(3)(e).
- (2) (a) No licence shall be issued in respect of a pit or quarry where the location is in contravention of an official plan of the municipality in which it is located.
- Idem

(b) No licence shall be issued in respect of a pit or quarry where the location is in contravention of a by-law of the municipality in which it is located.

(3) (a) Where a local municipality does not have an official plan governing the location of pits and quarries, the Minister shall give the municipal council notice of the filing of the application and if council objects to the location of the pit or quarry within forty-five days after receiving the notice, the Minister shall not issue the licence and subsections 3-5 of section 10 do not apply. Idem

(b) Where a local municipality does not have a by-law governing the location of pits and quarries, the Minister shall give the municipal council notice of the filing of the application and if council objects to the location of the pit or quarry within forty-five days after receiving the notice, the Minister shall not issue the licence and subsections 3-5 of section 10 do not apply.

13. (1) Once the Minister or the Board has made a decision, the Minister shall issue the licence containing the terms and conditions contained in the decision consistent with the purposes of this Act. Minister to issue licence

(2) Notwithstanding subsection 1, no licence shall take effect and the operator shall not proceed with any part of his operation that is the subject of the licence until all appeals under this Act have been exhausted.

14. Any person may, within 10 days of the Minister's or the Board's decision, apply to the Supreme Court of Ontario for a review of that decision. Appeal to Supreme Court

15. The Supreme Court shall determine the matter de novo, and may examine the environmental assessment, the site plan, the rehabilitation plan, the Minister's review, submissions made to the Minister, the record before the Board, if any, and such further material as is necessary in the opinion of the Court to reach a decision. The Court may affirm or may rescind the order of the Board or the Minister and may exercise all powers of the Board and may direct the Board to take any action which the Board may take and as the Court considers proper, and consistent with the purposes of this Act, the Court may substitute its opinion for that of the Board or the Court may refer the matter back to the Board for rehearing in whole or in part, in accordance with such directions as the Court considers proper.
16. Any person shall have standing to appear before the Supreme Court and shall have the right to call evidence, to examine and cross-examine witnesses, to make submissions to the Court, and may be represented by counsel.

Powers of  
Court on  
appeal

Standing

Alternative #1 to Sections 14 - 16 above.

14. (1) Upon the petition of any party or person filed with the Clerk of the Legislative Assembly of Ontario within twenty-eight days after the date of any order or decision of the Board, if the Assembly is in session or, if not, at the commencement of the next ensuing session, the Assembly shall, by resolution
- (a) Confirm, vary or rescind the whole or any part of such order or decision; or
- (b) require the Board to hold a new public hearing of the whole or any part of the application to the Board upon which such order or decision of the Board was made,
- and the decision of the Board after the public hearing ordered under Clause (b) is not subject to petition under this section.

Petition to  
Assembly

- (2) Any party or person who has filed a petition under subsection 1 may at any time withdraw the petition by filing a notice of withdrawal with the Clerk of the Legislative Assembly.

Withdrawal  
of petition

Alternative #2 to Sections 14 - 16 above.

14. (1) Upon the petition of any party or person, filed with the Clerk of the Executive Council within twenty-eight days after the date of any order or decision of the Board, the Lieutenant-Governor in Council shall
- (a) confirm, vary or rescind the whole or any part of such order or decision; or
- (b) require the Board to hold a new public hearing of the whole or any part of the application to the Board upon which such order or decision of the Board was made,
- and the decision of the Board after the public hearing ordered under Clause (b) is not subject to petition under this section.

Petition to  
Cabinet

- (2) Any party or person who has filed a petition under subsection 1 may at any time withdraw the petition by filing a notice of withdrawal with the Clerk of the Executive Council.\*

Withdrawal  
of petition

\*End of Alternative #2

17. Every operator shall carry on his operations in accordance with the environmental assessment, site plan and rehabilitation plan upon which his licence is based as approved by the Minister.
18. (1) The Minister shall review the operation of each licensee at least once in each year for the purpose of reassessing the licensee's compliance with this Act, the regulations, the site plan, the terms and conditions of the licence, that part of the environmental assessment that may have been incorporated into the approval, and the rehabilitation plan.

Environ-  
mental  
assessment,  
site plan,  
rehabili-  
tation plan  
binding

Review of  
licence

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| (2) The Minister may revoke a licence for a contravention of any provision of the site plan, any term or condition of the licence any requirement of this Act or the regulations, any part of the environmental assessment that may have been incorporated into the approval, or the rehabilitation plan.                               | Revocation<br>of licences                    |
| (3) Where the Minister finds that an operation has not been undertaken within twelve months of the licence's issuance, the Minister shall revoke the licence under the provisions established under section 19.   |  |
| (4) As part of the Minister's annual review of the operation of each licensee, the Minister shall ensure that the maximum duration of operation of the pit or quarry is stated as a condition of the licence and such condition is not exceeded by the licensee.  |  |
| 19. (1) Where the Minister proposes to refuse to issue a licence or proposes to revoke a licence, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or licensee.  | Notice of<br>intention<br>to refuse          |
| (2) A notice under subsection 1 shall inform the applicant or registrant that he is entitled to a hearing by the Board if he mails or delivers, within thirty (30) days after the notice under subsection 1 is served on him, notice in writing requiring a hearing to the Minister and the Board and he may so require such a hearing. | Notice<br>requiring<br>hearing               |
| (3) Where an applicant or registrant does not require a hearing by the Board in accordance with subsection 2, the Minister may carry out the proposal stated in his notice under subsection 1.  | Powers of<br>Minister<br>where no<br>hearing |



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| <p>(4) Where the Minister gives notice of his intention to revoke a licence and, in the opinion of the Minister, the continuation of the operation of the pit or quarry constitutes an immediate threat to the interests of the public, the Minister may, upon notice to the licensee, immediately suspend the licence pending the final disposition of the matter.</p>   | <p>Interim<br/>suspension</p>   |
| <p>20. (1) Where a matter is referred to the Board for a hearing, the Board shall hold a hearing as to whether the licence to which the hearing relates should be issued or revoked, as the case may be, and the applicant or licensee, any person who made a hearing request under section 10, and such other persons as the Board specifies shall be parties to the proceedings.</p>  | <p>Hearing<br/>by Board</p>   |
| <p>(2) A hearing by the Board shall be conducted in accordance with the rules, practices and procedures as determined by the Board under The Ontario Municipal Board Act, except that section 94 of the said Act does not apply.</p>  | <p>Procedure<br/>R.S.O.<br/>1970 c.323</p>                                |
| <p>(3) The Board shall, at the conclusion of a hearing under this section, make a decision as to the issue or revocation of the licence to which the hearing relates, as the case may be, and shall send a copy of its decision to each party to the proceedings and the Minister.</p>  | <p>Decision<br/>of Board</p>  |
| <p>(4) When under this Act the Minister has referred a matter to the Board, the matter may be taken back from the Board by the Minister at any time prior to a decision in respect thereof having been made by the Board, provided however that where a matter has been referred to the Board pursuant to the request of any person the matter shall not be taken back from the Board by the Minister except on the further request of such person and with concurrence of all other persons, if any, who had requested that the matter be referred to the Board.</p> | <p>Resumption<br/>by Minister<br/>of matter<br/>referred to<br/>Board</p> |

21. Any person shall have standing to appear at a hearing, to offer evidence, to examine and cross-examine witnesses and to be represented by an agent or by counsel. Standing before Board
22. (1) Notwithstanding that a licence or permit has been issued under this Act, no person shall operate a pit or quarry in the Amabel or Lockport Formation at any point nearer to the natural edge of the Niagara escarpment than 300 feet measured horizontally. Escarpment
- (2) For the purposes of this section, the Amabel and Lockport Formations are defined in Geological Survey of Canada Memoir 289, 1957, entitled "Silurian Stratigraphy and Palaeontology of the Niagara Escarpment". 1971, c. 96, s. 10. Idem
23. (1) Every licensee shall maintain on deposit with the Treasurer of Ontario security in the amount determined by the Minister, if there is no hearing, or else by the Board, based upon the total estimated cost to the province of completing the approved rehabilitation plan. Said estimate shall be based upon the operator's statement of his estimated cost of fulfilling the plan during the course of his operation, inspection of the application and other documents submitted, information obtained from the public hearing or the submissions of any person or party to a hearing, if any, inspection of the area to be affected, and such other criteria as may be relevant, including the proposed land use and the additional cost to the province which may be entailed by being required to bring personnel or equipment to the site after abandonment by the operator, in excess of the cost to the operator of performing the necessary work during the course of his pit or quarry operations. No security deposit shall be filed for less than \_\_\_\_\_ cents per ton of material to be removed from the pit or quarry property in the calendar year. Security for rehabilitation

*Minimum stated in act + method of calculation of additional amount should be stated in Act itself*

(a) As the operator completes each separate step of the approved rehabilitation plan, he shall report said completion to the Ministry and request the release of that portion of the security which relates to the completed portion of the rehabilitation plan. Upon the receipt of such notification and request the Minister shall cause the site to be inspected, and if he finds that the work has been performed in a proper and workmanlike manner and is in compliance with the approved rehabilitation plan and with the law applicable, he shall release that portion of the rehabilitation plan, provided, however, that the Minister shall withhold an amount equivalent to five per cent of said amount for a period of five years from the completion date of said work, as a contingency allowance for the reimbursement of the province of any cost encountered due to after-discovered faulty or negligent work of the operator.

(2) Where the rehabilitation program of a pit or quarry or abandoned pit or quarry is not carried out in accordance with the requirements of this Act, the regulations, the rehabilitation plan, the site plan or the environmental assessment as incorporated in the terms and conditions of the licence, the Minister may direct that the security deposited under subsection 1 be forfeited. Forfeiture

(3) (a) Upon the direction of the Minister under subsection 2, the security is forfeited and the Minister may authorize any person or persons to enter upon the premises on which the pit or quarry is situate and perform such work as is necessary to complete the rehabilitation requirements, and the cost thereof shall be paid out of the moneys forfeited and the balance refunded in accordance with the regulations. Completion of rehabilitation

(b) Where there are insufficient funds remaining in the security deposit to meet the costs incurred under clause a, the province shall be entitled to a lien for the price of the work upon the estate or interest of the owner in the land. Where province entitled to lien

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| <p>(4) For the purpose of providing revenue to establish a fund for the rehabilitation of orphaned lands as defined in this Act a fee of _____ cents per ton of material to be removed per calendar year shall be levied on each licensee. Such fund shall be known as the Pits and Quarries Orphaned Lands Fund. The allocation of these funds shall be made by the Minister for the furtherance of rehabilitation of orphaned lands.</p> | <p>Orphaned lands fund</p>                   |
| <p>24. (1) No Person shall open, establish or operate a wayside pit or wayside quarry except under the authority of a permit issued by the Minister to the operator.</p>   | <p>Permits for wayside pits and quarries</p> |
| <p>(2) The Minister may issue a permit to operate a wayside pit or wayside quarry where,</p>   | <p>Issuance of permits</p>                   |
| <p>(a) the pit or quarry is necessary for the purposes of the contract or project;</p>   |  |
| <p>(b) adequate provision shall be made as terms and conditions of the permit to ensure a method of operation and adequate rehabilitation so as to constitute only a temporary inconvenience to the public;</p>  |  |
| <p>(c) the operator has submitted a rehabilitation plan in accordance with the provisions of this Act.</p>   |  |
| <p>(3) The Minister shall issue the permit subject to such terms and conditions, including terms for rehabilitation and security therefor, as the Minister, in his discretion, considers advisable.</p>  | <p>Terms and conditions of permits</p>       |
| <p>(4) A permit issued under this section expires on the completion of the project or contract or eighteen months after its issue, whichever occurs first. Rehabilitation must be completed within six months of the operator's cessation of extractive activities.</p>  | <p>Expiration</p>                            |

No further wayside pit permits shall be issued for that site or any part thereof. If an operator wishes to continue to use such site or any part thereof after the expiration of the eighteen month period stated in the wayside pit permit, such site or any part thereof shall be treated as a new pit or quarry subject to the general provisions of this Act.

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|---------|---|---|
| (5)     | The Minister may revoke a permit issued under this section for any breach of the terms and conditions of the permit or of this Act or the regulations.  | Revo-<br>cation   |
| (6)     | The issuance of a permit to operate a wayside pit or quarry shall not be construed to affect the application of any other law or requirements applying to the right to establish the wayside pit or quarry or its location. 1971, c. 96, s. 12.   | Permit<br>subject to<br>satisfying<br>other re-<br>quirements |
| 25. (1) | An inspector may enter in or upon any land or premises set aside for the purposes of a pit or quarry or wayside pit or quarry at any time to make such examinations, tests and inquiries as may be necessary for the purposes of ensuring compliance with this Act, the regulations, the site plan and the terms and conditions of the licence or permit.   |   |
| (2)     | No person shall hinder or obstruct an inspector in the performance of his duties or furnish him with false information or refuse to furnish him with information. 1971, c. 96, s. 13.   | Impeding<br>inspector   |
| (3)     | Any person may review and copy at reasonable cost an inspector's report arising from sub-section 1 as it relates to either protection of the environment or rehabilitation of areas affected by pit or quarry operations. Such review and copying may take place at either the Minister's office, or the regional or local district office of the Ministry nearest the site of the pit or quarry operation. | Review of<br>inspector's<br>reports                           |

26. A licence or permit issued under this Act is not transferable.  
1971, c. 96, s. 14. Licence or permit not transferable
27. (1) The Minister or any person, in addition to any other remedy and to any penalty imposed by law, may apply to the Supreme Court of Ontario for an order, Application to Court for order
- (a) enjoining any person from doing or carrying on a pit or quarry operation contrary to this Act; or
- (b) enjoining any person from carrying on a pit or quarry operation contrary to the approval granted,
- and the Court may make the order on such terms and conditions as the Court considers proper.
- (2) An appeal lies to the Supreme Court of Ontario (Court of Appeal) from an order made under subsection 1. Appeal
28. (1) Any person, in addition to any other remedy and to any penalty imposed by law, may apply to the Supreme Court of Ontario for an order declaring a pit or quarry operation to be a source or cause of pollution, impairment or destruction of the environment, notwithstanding its compliance with a licence or permit issued under this Act, and the Court may make the order and grant the appropriate relief including imposing conditions on the operator that are required to protect or restore the environment from pollution, impairment or destruction. Right of relief from pollution, impairment, destruction
- (2) An appeal lies to the Supreme Court of Ontario (Court of Appeal) from an order made under subsection 1. Appeal

29. (1) Subject to section 7 and subsection 2 of section 20, any notice required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by ordinary pre-paid mail addressed to the person to whom delivery or service is required to be made at the latest address for service appearing on the records of the assessment rolls. Service
- (2) Where service is made by ordinary pre-paid mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date. Idem
30. The provisions of this Act and the regulations are in addition to and not in substitution for the provisions of Part LX of the The Mining Act. Applicator of Part LX of R.S.O. 1970, c.274
31. (1) This Act applies to operators of pits and quarries operating prior to the coming into force of this Act except that the requirements for an environmental assessment, public notice and Board hearings shall not apply to such existing operations. Applicator to existing pits and quarries
- (2) Existing operators shall be required to meet the site and rehabilitation plan requirements of this Act. They shall further be required to submit such information on the part of their site which remains to be worked as well as on the whole of their site operations that have been worked prior to the coming into force of this Act. Existing operators shall meet security deposit, fees and other levy requirements as outlined in this Act, save and except that any existing deposits shall accrue to the benefit of the operator under this Act as partial fulfillment of his rehabilitation obligations.

(3) This Act applies to operators of wayside pits and quarries operating prior to the coming into force of this Act only insofar as a rehabilitation plan is required.

32. Every person who contravenes any provision of this Act or the regulations or is in breach of any term or condition of his licence or permit is guilty of an offence and on first summary conviction is liable to a fine of not less than \$1,000 and not more than \$5,000 and on subsequent summary convictions to a fine of not less than \$2,500 and not more than \$10,000 for every day or part thereof upon which the offence occurs or continues.      Offence

33. (1) The Lieutenant Governor in Council may make regulations,      Regulations

(a) governing applications for licences and permits and providing for their issue;

(b) prescribing additional information to be included on site plans under section 6;

(c) governing the management and operation of pits and quarries and wayside pits and wayside quarries including,

(i) the use that shall be made of land set aside for the purpose,

(ii) the location, construction and use of buildings on the lands set aside for the purpose,

(iii) prescribing the hours during which any class or classes of activity may be carried on, on lands set aside for the purpose,



(24)

(iv) prescribing the sound levels permissible in their operation,

(v) governing final slopes, excavation set backs, fencing, tree screening and berming, warning signs, blasting requirements, roads and exits;

(d) governing the rehabilitation of pits and quarries and way-side pits and quarries including the stockpiling of soil for the purpose;

(e) requiring the payment of fees for licences and permits and prescribing the amounts thereof;

(f) prescribing forms for the purposes of this Act and providing for their use;

(g) exempting parts of Ontario to which this Act will not apply;

(h) respecting any matter considered necessary or advisable to carry out the intent of this Act.

(2) No regulations made under this Act shall come into force until, Idem

(a) notice of the proposed regulation has been given by publishing the proposed regulation in the Ontario Gazette, and

(b) a hearing has been held by the Minister or his designate to consider the regulation if a person makes a written request to the Minister for such a hearing within 30 days of the publication of the proposed regulation in the Ontario Gazette.

34. The Niagara Escarpment Protection Act is repealed. 1971, c. 96, s.21.

35. This Act binds the Crown.

R.S.O.1970  
c. 297  
repealed  
The Crown

COMMENTARY\*

\*A brief explanation of selected provisions of the proposed Pits and Quarries Control and Rehabilitation Act, 1977.

Section

- 2 This section changes the emphasis that exists in the current Pits and Quarries Control Act, 1971. Under the current Act, areas or parts of the province are not subject to the Act's provisions unless they are brought under the Act's ambit by regulation. The notion that is embodied in the proposed section 2 reverses this approach. The Act applies to the whole province unless the government can justify exempting out certain parts (usually municipalities) of the province. This scheme is not unlike the approach taken in the Environmental Assessment Act where the entire public sector is subject to environmental assessment requirements unless exempted from compliance by Ministerial order or regulation. The scheme under this proposed Act recognizes, however, that there should be some prior public scrutiny of exemptions before they are made. Thus, because exemptions must be made by regulation under this Act they are subject to public review as outlined in section 33(2). This provision does not necessarily place a burden on a government that first does its homework and has developed sound arguments respecting exemptions.
- 3 Increasingly, Ontario environmental legislation includes a purpose section. See, for example, the Environmental Protection Act, 1971 and the Environmental Assessment Act, 1975.
- 6 Under this section, the pit or quarry licence applicant must submit three distinct forms of information:
1. An environmental assessment;
  2. Site Plan;
  3. Rehabilitation Plan.

He must also submit an explanatory note and summary of the above three items. The current Pits and Quarries Control Act, 1971 does not adequately develop the rehabilitation plan concept, but rather subsumes it under the site plan. Other jurisdictions (e.g. Alberta, Pennsylvania, etc.) make the rehabilitation plan a prominent part of their requirements. The current Act does not require the submission of an environmental assessment. However, such a document is invaluable for reviewing the other environmental implications of pit and quarry operations, such as noise, trucking versus other transportation modes and related matters.

- 7 This section addresses the need for timely and comprehensive notice to municipalities and the public about proposed pit and quarry operations. It includes notice to those who may be on proposed truck routes as well.
- 8,9 These sections address the need for the ready availability of applications and governmental reviews to the public at a nominal cost. Lack of such information is a frequent public complaint when attempting to review proposals.
- 10 The concepts embodied in section 10 are essentially those found in the Environmental Assessment Act and the Planning Act.
- 11 A frequent complaint of citizens and public interest groups is the glaring disparity between the resources of those proposing development and those seeking to prevent environmental and social disruption. Funding of citizens or groups is not a new idea; it is an integral approach of the proposed Hartt Inquiry on Northern Development, for example. It can be argued, however, and as this section proposes, that the proponent (who is going to benefit most from a resource proposal) has an obligation to the public to financially ensure that all relevant viewpoints on the proposal are brought to the attention of decision-makers.

12 This section generally clarifies the grounds in the existing Act upon which

1. the Minister may refuse a licence and
2. where a municipality can reject a proposal.

13 Section 13(2) makes it clear that an operator may not proceed with his operation even if in the possession of a licence until all appeal mechanisms under the Act have been exhausted. This is designed to prevent a situation where the operator in possession of a licence begins to make financial and other commitments to the project which can have the effect of turning a licence into a fait accompli even though legitimate opportunities for appeal have not been exhausted. The provision, in short, helps to prevent the operator from foreclosing options that should be available to a court to order.

14- These sections relating to appeal are stated in the alternative;

and alterna-  
tives 1&2

- 16 1. judicial review - parties to proceedings are granted similar powers in such statutes as the Ontario Health Disciplines Act and the Public Health Act;
2. legislative remand or review - this is not unlike that found in the Parkway Belt Act and;
3. cabinet appeal - as found in the Ontario Municipal Board Act (s.94).

20 The Board as decision-maker in first instance is similar to concepts in the Environmental Assessment Act and Planning Act. (s. 20(3)).  
Section 20(4) is from the Planning Act.

23 There are essentially three schemes at work in section 23 respecting rehabilitation.

1. a levy or security deposit is required to meet costs of rehabilitation as stated by the operator and reviewed by MOE, OMB and the public. Where the operator meets his rehabilitation obligation, he gets back the deposit which remains outstanding, if any.

2. where the government is required to do rehabilitation work on orphaned lands or existing operations where the operator has failed to meet his rehabilitation requirement, the government acquires a lien on the land for that amount which it expends.
3. a separate levy is assessed for an orphaned lands fund. This arises from the Aggregate Working Party Report of 1977 which indicated that there are a great number of unrehabilitated pits and quarries in the province.

24 Section 24 (2) (c) is added to the current Act as a means of ensuring that municipalities meet their rehabilitation obligation, though they are not subject to the otherwise more comprehensive provisions of the Act. Section 24 (4) is added to prevent a wayside pit or quarry, which is meant to be a temporary extractive option, from becoming a long-term extractive activity not otherwise subject to the Act.

25 This provision has been introduced to increase the public's capacity to enforce provisions of the Act. Information can only be made available that relates to the purposes of the Act; to wit "protection of the environment or rehabilitation of areas affected by pit and quarry operations."

27 This section reflects the fact that in a democratic society all persons have an interest in the enforcement of public laws.

28 This section grants any person the right to initiate an action in the courts to protect the environment regardless of whether the pit or quarry operation is being undertaken in accordance with an approval under the Act. It reflects the fact that approvals may not always be able to foresee subsequent environmental disruptions caused by an operation acting in accordance with regulatory provisions and approvals.

- 31 This section reflects concern that existing pit or quarry operations could inflict repetitious environmental injury while new proposals would have only one chance to do so. The section limits itself essentially to rehabilitation concerns, concerns which if not met can have long-term adverse environmental impact.
- 32 The existing offence section of the Pits and Quarries Control Act, 1971 (s. 18) is typical of almost all Ministry of Natural Resources administered legislation. That is, the offence sections frequently hinder or eliminate the common law right of any person to initiate a private prosecution for the enforcement of valid legislation. (See also the Mining Act and the Beach Protection Act). The Aggregate Working Party admits that part of the problem with the existing Act is that limited staff resources hinder enforcement efforts. Under such circumstances and even under prospective staff increases, eliminating the citizen as an enforcement vehicle runs counter to common sense. Section 32 in this proposed Act restores the citizen's capacity to institute private prosecutions.
- 33 Section 33(2) instills the notion of public participation in the regulation setting process. Regulations are frequently the teeth of whether a statute will be effective or not but are rarely subject to prior public scrutiny before they become law.