SUBMISSIONS TO THE MINISTRY OF NATURAL RESOURCES REGARDING PROPOSED PROVINCIAL STANDARDS UNDER BILL 52 (*AGGREGATE RESOURCES ACT*)

Prepared by:

CANADIAN ENVIRONMENTAL LAW ASSOCIATION
COALITION ON THE NIAGARA ESCARPMENT
FEDERATION OF ONTARIO NATURALISTS
SAVE THE GANARASKA AGAIN
SAVE THE OAK RIDGES MORAINE
UXBRIDGE CONSERVATION ASSOCIATION

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SUBMISSIONS TO THE MINISTRY OF NATURAL RESOURCES REGARDING PROPOSED PROVINCIAL STANDARDS UNDER BILL 52 (AGGREGATE RESOURCES ACT)

SECTION 1.0 - INTRODUCTION

The Ministry of Natural Resources (MNR) has recently released Proposed Provincial Standards for Bill 52 under the Aggregate Resources Act (December 1996). This brief on the proposed "standards" has been prepared and endorsed by the following groups: Canadian Environmental Law Association (CELA); Coalition on the Niagara Escarpment (CONE); Federation of Ontario Naturalists (FON); Save the Ganaraska Again (SAGA); Save the Oak Ridges Moraine (STORM); and Uxbridge Conservation Association (UCA). Each of these public interest groups has a lengthy history of involvement in aggregate extraction issues at the provincial, regional and local levels.

CELA, CONE, FON, SAGA, STORM, and UCA strongly advocate the creation of effective and enforceable standards in relation to the aggregate industry. However, it is the unanimous conclusion of these groups that many of the MNR's proposed "standards" are inadequate as drafted.

In particular, CELA, CONE, FON, SAGA, STORM and UCA submit that the MNR's proposals contain far too many loopholes, inconsistencies, and omissions to be regarded as a comprehensive regulatory regime. Accordingly, the draft standards, when read in conjunction with the flawed legislative reforms contained in Bill 52, provide little assurance to Ontario residents that the adverse environmental impacts associated with aggregate extraction will be properly identified, prevented, reduced or mitigated under the new framework.

Indeed, many of the proposed standards seem to treat natural heritage protection as an afterthought or a matter of secondary importance. This casual approach to natural heritage protection is inconsistent with the fact that a stated objective of the ARA is "to minimize adverse impact on the environment in respect of aggregate operations."

The purpose of this brief is to outline some of the major concerns shared by CELA, CONE, FON, SAGA, STORM and UCA about the draft standards. These concerns have been organized into several categories:

- general comments on the format, organization, and application of the standards;

- detailed comments on:

  - site plan standards;

  - report standards;

  - prescribed conditions;

  - notification and consultation;

  - operational standards; and

  - annual compliance reporting.

The groups' recommendations regarding the proposed standards are summarized in Section 3.0 of this brief.

It should be noted that CELA, CONE, FON, SAGA, STORM and UCA reserve the right to make further or different submissions to the MNR about the draft standards as the proposals continue to evolve. Indeed, the MNR document itself is aptly entitled as a "work in progress", and as the standards are further developed (and posted on the Environmental Bill of Rights Registry as a proposed regulation), it is likely that CELA, CONE, FON, SAGA, STORM and UCA will make further submissions to the MNR.

SECTION 2.0 - CRITIQUE OF PROPOSED PROVINCIAL STANDARDS

2.1 General Comments

Presumably, all of the proposed standards will be contained in a regulation under the Aggregate Resources Act (ARA). If not, then they are not binding "standards" at all, and are, in essence, unenforceable guidelines or policies. Significantly, the introduction of the MNR document explains the intended purpose of the standards, but makes no reference to the passage of regulations under the ARA. If the object of this exercise is to produce rigorous and enforceable standards, then the standards must be contained in a regulation under the ARA.

RECOMMENDATION #1: **Once finalized, the standards must be contained in a regulation under the ARA.**

(a) Format and Organization

There are two general concerns about the format and organization of the proposed standards. First, the standards prescribe no fewer than 15 different licence and permit categories. The rationale for this proliferation of categories is unclear, particularly since many of the actual standards are identical within the licence and permit categories. Interestingly, the MNR document claims that the categories were developed "to provide more concise, user friendly and understandable requirements" under the ARA. It is highly questionable whether this objective is satisfied by delineating 15 different categories containing a large degree of repetition and overlap.

To avoid undue confusion and complexity, consideration should be given to cutting the number of categories in half (i.e. Class A Pits and Quarries Below Water; Class B Pits and Quarries Above Water; Aggregate Pits and Quarries Below Water; Aggregate Pits and Quarries Above Water; and other categories for Wayside Permits, Forest Industry Permits, and Permits Below Natural Water Body).

Second, there is considerable repetition within the standards for the various licence and permit categories. While there are certain advantages to listing all relevant requirements at one place for each category, the downside is that the overall package is unnecessarily lengthy and cumbersome. For example, the notification and consultation requirements for Categories 1 to 8 appear to be identical, and there seems to be no compelling reason to repeat these standards eight times in the body of the regulation. Accordingly, when the regulation is drafted, it may be preferable to simply prescribe the generic standards once at the beginning of the regulation, and then simply incorporate the standards by reference in each of the relevant categories. This approach would also permit the MNR to finetune, modify or supplement the standards, where necessary, for a particularly significant licence or permit category.

RECOMMENDATION #2: **Consideration should be given to reducing the number of licence and permit categories in order to avoid undue length, confusion and complexity. Consideration should also be given to consolidating identical standards rather than reproducing them within each licence and permit category.**

(b) Application of the New Standards

The introduction of the MNR document indicates that the "standards will apply only to sites which go through the licencing or permitting process subsequent to the proclamation of Bill

52". However, the introduction goes on to suggest that the operational standards and annual compliance reporting requirements will apply to existing licences and permits.

It is understandable why the new notification and consultation requirements would not normally apply to existing operations -- unless there is a fresh application from these operations, there is no need for public notice or consultation. However, it is unclear why the new site plan standards and prescribed conditions cannot apply to existing operations in the same manner (and for the same reasons) as the new operational standards and compliance reporting requirements.

RECOMMENDATION #3: **Once finalized, the standards should apply to new and existing licences and permits.**

2.2 Site Plan Standards

(a) General

Subject to the comments below, CELA, CONE, FON, SAGA, STORM and UCA have no objections in principle to the proposed site plan standards that require the submission of information respecting existing features, proposed operations, cross-sections, and progressive and final rehabilitation. However, given that many of these standards appear to be identical within various licence and permit categories, the groups submit that consideration should be given to consolidating the generic site plan standards into one location in the ARA regulation, and then prescribing any additional or special requirements that may be unique to specific categories of licences and permits. This streamlined approach would certainly reduce the cluttered and repetitive nature of the proposed site plan standards.

RECOMMENDATION #4: **Consideration should be given to consolidating generic site plan standards into one location in the ARA regulation, and then prescribing any additional or special requirements that may be unique to specific categories of licences and permits.**

It is noteworthy, however, that there appear to be some significant differences between the site plan standards that are proposed for Class A and Class B licences. For example, although the site plan standards appear to require the same types of information, the level of detail required for Class B licences is considerably less rigorous than Class A. These differences are reflected in a comparison of the site plan standards for Categories 1 and 3 (Class A pit above and below water) and Categories 5 and 7 (Class B pit above and below water), as indicated in Appendix A of this brief. One particularly objectionable difference is that Class B site

plans do not have to be prepared by qualified technical experts; instead, it appears that the Class B applicant or any other person can prepare the site plan. This distinction is unacceptable, particularly since Class B site plans generally contain the same information as Class A site plans, where the use of experts is mandatory.

RECOMMENDATION #5: **Site plans for Class A and B licences must be prepared by qualified technical experts.**

As described below in relation to report standards, there is no environmental rationale for reducing or eliminating documentation requirements for Class B licences. Accordingly, the site plan standards should require the uniform level of detail for Class A and B licences, regardless of the proposed tonnage limits. Similar requirements should be imposed in respect of significant aggregate permits.

RECOMMENDATION #6: **Site plan standards should require the same information and the same level of detail for Class A and B licences as well as significant aggregate permits.**

(b) Significant Natural Features

Under the heading of "Existing Features", the proposed site plan standards in most licence and permit categories inappropriately lump together significant "natural" features and "manmade" features that may be present on the site (i.e. section 1.1.27 in most categories). Natural features warrant separate treatment, and section 1.1.27 should be amended and expanded to provide further guidance on the types of natural features that should be mapped.

RECOMMENDATION #7: **Section 1.1.27 within the various licence and permit categories should be amended to distinguish between natural and manmade site features, and to specify that the term "significant natural features" includes:**

- **significant wetlands;**
- **significant woodlands (south and east of the Canadian Shield);**
- **significant valleylands (south and east of the Canadian Shield);**

- significant Areas of Natural and Scientific Interest (ANSI);

- significant wildlife habitat;

- fish habitat;

- habitat of endangered, threatened, vulnerable and rare wildlife species;

- significant or rare vegetation types; and

- other environmental protection (EP) areas identified in official plans (i.e. ESA's, ESPA's, natural areas, hazard lands, etc.).

In order to ensure that the term "significant" is not left to the subjective interpretation of aggregate producers, it is recommended that the definition of "significant" in the Provincial Policy Statement under the Planning Act be included or cross-referenced within the Bill 52 standards. This definition currently reads as follows:

Significant means,

- in regard to wetlands and areas of natural and scientific interest, an area identified as provincially significant by the Ministry of Natural Resources using evaluation procedures established by the province, as amended from time to time;

- in regard to other features or areas in policy 2.3 [i.e. habitat of endangered and threatened species, woodlands, valleylands, and wildlife habitat], ecologically important in terms of features, functions, representation or amount, and contributing to the quality and diversity of an identifiable geographic area or natural heritage system...

- in regard to other matters, important in terms of amount, content, representation or effect.[1]

For the same reason, it would also be desirable for the Bill 52 standards to adopt or cross-reference the Provincial Policy Statement's definitions of "wetlands", "woodlands", "valleylands", "areas of natural and scientific interest", "wildlife habitat", "fish habitat",

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[1] Provincial Policy Statement (May 22, 1996), pp.17-18.

"endangered species", and "threatened species".

RECOMMENDATION #8: **The Bill 52 standards should include or cross-reference the definitions of "significant", "wetlands", "woodlands", "valleylands", "areas of natural and scientific interest", "wildlife habitat", "fish habitat", "endangered species" and "threatened species" found in the Provincial Policy Statement issued under the Planning Act.**

(c) Elevation of Water Table

There are a number of inconsistencies within the site plan standards' requirement that the elevation of the water table must be determined. This is a critically important determination, particularly for pits and quarries that are required to extract above the water table.

For example, in Categories 1 and 2, Section 1.1.19 requires "the elevation of the water table on site", while section 1.2.6 requires "the elevation of the water table". In Category 3, section 1.1.19 requires the "elevation of the water table or provide information that the final depth of extraction is at least 2 metres above the water table", while section 1.2.6 requires "the elevation of the water table on site". Similar inconsistencies are found within the relevant sections for Categories 4 to 8. It would be preferable to have the elevation of the water table established under section 1.1 - Existing Features, then deal with operational restrictions (i.e. X metres above the water table) in Section 1.2 - Operations.

RECOMMENDATION #9: **The elevation of the water table should be dealt with under Section 1.1 - Existing Features, while operational restrictions should be dealt with under section 1.2 - Operations.**

A more significant problem is the fact that the site plan standards fail to recognize that there are seasonal fluctuations in water table elevations. This problem also exists with respect to the hydrogeological assessments required under Section 2.0. In general, water tables are higher in the spring and fall, and are lower in the summer months. Accordingly, site plan standards should require applicants to establish both the high and low elevations of the water table. For above-water table extraction, the standards should stipulate that the extraction must be X metres above the seasonal high for the watertable. Otherwise, it could be argued that extraction is taking place within the water table, which may trigger hydrogeological investigations under Section 2 (Report Standards) and may also represent non-compliance.

RECOMMENDATION #10: **The site plan and technical report standards should require applicants to establish both the high and low elevations of the water table. For operations that are to**

stay above the water table, the standards should specify that no extraction is to occur within X metres above the seasonal high elevation for the water table.

2.3 Report Standards

(a) Summary Statements

The proposed report standards in Categories 1 to 4 properly require Class A licence applicants to submit a "summary statement" that, among other things, contains information on "the natural environment that may be affected by the pit [or quarry] operation and any proposed remedial measures that are considered necessary" (see section 2.1.2). However, this important provision is conspicuously absent from the report standards prescribed for Class B licences (Categories 5 to 8), aggregate permits (Categories 9 to 14), and wayside permits (Category 15).

The distinction between Class A and B licences (i.e. extraction of more or less than 20,000 tonnes annually) has long been criticized as arbitrary and unrelated to the actual environmental significance of aggregate operations. There is no environmental rationale for reducing or eliminating documentation requirements for Class B licences, aggregate permits, or wayside permits. Accordingly, CELA, CONE, FON, SAGA, STORM and UCA strongly object to the MNR's proposal to misuse the 20,000 tonne threshold as the dividing line to determine which operators should report upon natural environment impacts and proposed mitigation measures. In the groups' view, all categories of licences and permits must require the submission of summary statements on natural environment impacts and proposed mitigation measures. The following language is recommended for this general requirement:

> 2.1.2 the natural environment that may be affected directly or indirectly by the pit or quarry operation, including significant natural features as defined by section 1.1.27 [supra], and any proposed preventitive, mitigative or remedial measures to address negative impacts upon the natural environment.

RECOMMENDATION #11: **The proposed report standards should be amended to require all licence and permit applicants to submit summary statements on natural environment impacts and on any proposed preventitive, mitigative, or remedial measures to address negative impacts upon the natural environment.**

Although groundwater may be subsumed within the term "natural environment", it is

submitted that groundwater should be identified as a separate issue under the list of matters contained in a summary report. It appears that only Categories 3 and 4 require a summary statement of groundwater issues and concerns. This requirement should be generally imposed on all aggregate operations, regardless of whether the extraction is to occur below, at, or above the watertable. Indeed, where the applicant is required to submit a hydrogeological report, then the report should be summarized in the summary statement.

RECOMMENDATION #12: **The proposed report standards should require a summary statement of groundwater issues and concerns for all categories of licences and permits.**

Similarly, it appears odd that applicants are not required to provide a summary statement or a technical report regarding social or cultural impacts, even where such impacts are highly likely to materialize due to the proximity of residences, schools, churches, other institutions and nearby land uses.

RECOMMENDATION #13: **The proposed report standards should require a summary statement and/or a technical report regarding social and cultural impacts that will occur, or are likely to occur, as a result of the aggregate operations.**

The actual level of detail to be included in the summary statement remains unclear under the proposed standards. Are these statements intended to be "plain language" summaries of the technical reports? If so, then it would make sense to stipulate that the report authors (who must possess certain training or experience) are the persons who prepare the summary statements. It may also be prudent for the MNR to develop, with public input, guidelines to assist the authors of summary statements in terms of content and level of detail.

RECOMMENDATION #14: **Consideration should be given to requiring report authors to prepare the summary statements. The MNR should also consider developing, with public input, guidelines to assist report authors in drafting summary statements.**

(b) Technical Reports

In many instances, applicants will be required to submit "hydrogeological impact assessments". The proposed report standards indicate that the assessment shall "take into account" various factors. This term is too ambiguous and should be replaced with language which specifies that the assessment "shall address" or "shall contain information and recommendations concerning" the prescribed factors. The proposed usage of the term "significant adverse impacts" is also ambiguous and should be replaced by more precise

language; otherwise, it is left up to the applicant to determine what is, or is not, "significant" or "adverse".

RECOMMENDATION #15: **With respect to the requirements relating to hydrogeological assessments, ambiguous terms (i.e. "take into account" or "significant adverse impacts") should be replaced by more precise and prescriptive terminology.**

As described above, the hydrogeological assessment should require the determination of high and low water table elevations, and, where applicable, the demonstration that operations will remain above the seasonal high water table. There is a significant typo in section 2.1.1 in Category 8 -- the above-water table distance should read "four (4) metres", not two metres. It is also unclear why hydrogeological assessment obligations appear at the end of section 2.2 for Class B licences, rather than at the beginning as for Class A licences. It is presumed that this reversed order is not intended to suggest that hydrogeological assessments are less important for Class B licences.

The proposed report standards also require, among other things, the submission of "Natural Environment Level 1" reports for certain natural heritage features, such as significant wetlands, woodlands, valleylands, fish and wildlife habitat (see section 2.2.1 or section 2.2.2). This requirement appears in the report standards in virtually all licence and permit categories except Category 13 (aggregate permit below natural water body) and Category 14 (forest industry).

As described above, the Bill 52 standards should include or cross-reference the Provincial Policy Statement definition of "significant" and other key definitions. However, the list of natural heritage features to be studied in a Level 1 report should be expanded to include: "habitat of endangered, threatened, vulnerable and rare species"; "other environmental protection (EP) areas identified in official plans (i.e. ESA's, ESPA's, natural areas, hazard lands, etc.)"; "significant or rare vegetation types". The rationale for these three additional categories is as follows: (1) the October 1996 National Accord for the Protection of Species at Risk, which was endorsed by Ontario, commits signatories to take steps to protect "all species at risk throughout the country"; (2) areas that have been designated by lower- or upper-tier municipalities as environmentally sensitive areas should be accorded status under the Bill 52 standards; and (3) it is ecologically important to protect significant or rare vegetation types such as those identified as provincially rare by the Ontario Natural Heritage Information System.

RECOMMENDATION #16: **The proposed standards for technical reports should be amended to ensure that "Natural Environment Level 1" studies also include: habitat of endangered, threatened, vulnerable and rare species; designated environmentally sensitive areas identified in official plans; and significant or rare vegetation types.**

It is noteworthy that Level 1 reports are intended to determine whether natural heritage features exist on the site or "adjacent lands". However, the report standards fail to define "adjacent lands". To avoid confusion and to provide greater certainty and consistency, the report standards should include or cross-reference the definition of "adjacent lands" in the Provincial Policy Statement issued under the Planning Act. This definition presently reads as follows:

> **Adjacent lands** means those lands, contiguous to a specific natural heritage feature or area, where it is likely that development or site alteration would have a negative impact on the feature or area....[2]

However, in all instances, "adjacent lands" must be no less than 120 metres from the boundary of the licenced property.

RECOMMENDATION #17: **The proposed standards for technical reports should include or cross-reference the definition of "adjacent lands" found in the Provincial Policy Statement issued under the Planning Act, but in all instances "adjacent lands" shall not be less than 120 metres.**

It should also be pointed out that the Provincial Policy Statement definition specifically refers to whether it has been demonstrated that there will be no negative impacts, while the Bill 52 standards for Level 2 reports refer to any impact on natural heritage features or ecological functions. The MNR should remove this apparent discrepancy by adopting the Provincial Policy Statement wording in order to ensure a level playing field and a provincially approved environmental standard.

As described above, Natural Environment Level 1 and 2 reports are not specifically required in relation to Category 13 (aggregate permits below natural water body). Given the potential impact of such operations upon the aquatic environment, it is recommended that Category 13 technical reports should, at a minimum, make mandatory an assessment of potentially impacted fish or fish habitat, including habitat for endangered, threatened, vulnerable or rare species.

RECOMMENDATION #18: **The proposed standards for technical reports under Category 13 should require an assessment of the potential impact of aggregate operations on fish and fish habitat, including habitat for endangered, threatened, vulnerable and rare species.**

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[2] Ibid., p.13.

2.4 Prescribed Conditions

The proposed Bill 52 standards set out a number of "prescribed conditions" for each licence and permit category. It is understood that these province-wide conditions will apply automatically to aggregate operations within the various categories. However, it is possible for the Minister or the Ontario Municipal Board to impose additional conditions of approval.

CELA, CONE, FON, SAGA, STORM and UCA have no particular objections to the rather general conditions that have been prescribed for each category of licence and permit. In fact, many of the prescribed conditions simply amount to a directive to obey the environmental laws of Ontario (i.e. comply with the requirements of the Gasoline Handling Act, the Environmental Protection Act, the Ontario Water Resources Act, the Crown Forests Sustainability Act, and the tonnage limits under the Aggregate Resources Act). Accordingly, the overall utility or effectiveness of these prescribed conditions is somewhat questionable, although they may serve an educational function for some aggregate operators.

It is noteworthy that the Ministry of Environment and Energy has made similar attempts to prescribe general standards for various types of waste disposal sites under Regulation 347 under the Environmental Protection Act. However, these general standards were often superseded by more detailed and more stringent site-specific conditions of approval imposed by either the Environmental Assessment Board or the Director of Approvals Branch. It seems likely that a similar trend will emerge with respect to the prescribed conditions for aggregate operations, and the prescribed conditions will become generally irrelevant in many instances.

2.5 Notification and Consultation

The different categories of aggregate licences and permits are subject to various standards relating to public notification and consultation under the ARA. Indeed, it appears as if the notification and consultation standards are identical for many licence categories. Accordingly, it is unclear why it is necessary to replicate the same standards numerous times, rather than simply consolidating the standards into one generic package.

(a) Notice

With respect to notice, the proposed requirements do little more than simply continue the main components of the status quo (i.e. signage and newspaper advertisements). The standards go on to require the service of written notice to landowners located within 120 metres of the proposed pit or quarry. This requirement is laudable, but written notice should not be limited to only those landowners within 120 metres, particularly since the social and

environmental impacts of aggregate operations are not necessarily confined to 120 metres of the property boundary. In addition, in many rural areas, the proposed 120 metre standard may only reach abutting landowners but not other nearby residents who may be interested in, or affected by, the proposed pit or quarry.

Accordingly, written notice should be required for all landowners within 300 metres of the proposed pit or quarry, and to all landowners along the proposed haul routes. Indeed, Category 9 permit standards impose a 300 metre notice requirement. It is also unclear why the written notice is limited to landowners rather than tenants or other non-owner occupants who may be interested in, or affected by, the proposed pit and quarry. In the interests of fairness and consistency, and to encourage public involvement in the application process, it is submitted that written notice should be provided to non-owner occupants in the same manner as landowners.

RECOMMENDATION #19: **Written notice should be delivered personally or by registered mail to landowners and non-owner occupants within 300 metres of the proposed licence boundary, and to landowners and non-owner occupants along proposed haul routes.**

Given the environmental significance of aggregate licences and permits, notice should also be posted on the Environmental Bill of Rights (EBR) Registry to facilitate broad public notice of pending applications under the ARA. Indeed, these licences should be prescribed and classified by the MNR as Class II instruments for the purposes of the EBR.

RECOMMENDATION #20: **Notice of applications for aggregate licences or permits should be posted on the EBR Registry, and such approvals should be prescribed and classified as Class II instruments for the purposes of the EBR.**

CELA, CONE, FON, SAGA, STORM and UCA support the mandatory circulation of the complete application package to municipal, regional and provincial officials for review and comment. However, in light of decreasing resources and staff cutbacks being experienced by these levels of government, the groups query whether this circulation process will actually produce meaningful and comprehensive governmental reviews of individual applications. It also appears that the list of governmental agencies to be notified by the applicant is too short in several categories (i.e. Categories 1 to 8).

For example, the list in several licence categories does not include the Ministry of Citizenship, Culture and Recreation (MCCR), although the proposed standards require applicants to undertake archeological investigations and reports. Similarly, there appears to be no obligation in Categories 1 to 8 to notify representatives of federal agencies or First Nations that may be interested in, or affected by, the proposed aggregate operations.

On the other hand, Categories 9 to 12 (aggregate permits) require notice to MCCR as well as to the Ministry of Transportation and the Ministry of Northern Development and Mines (both of which, inexplicably, do not have to be notified in Categories 1 to 8). It is also noteworthy that these permit categories list "forest companies" as "agencies" that are to be circulated with the full application package. Forest companies are not agencies, and they should be consulted in the same manner as any other interested member of the public.

Accordingly, the agency lists in the various categories should be expanded to ensure greater consistency and to require notice to all provincial and federal ministries and agencies as may be appropriate, and representatives of First Nations communities where relevant.

RECOMMENDATION #21: **The proposed standards should expand the list of governments, ministries and agencies that are to be notified by applicants. At a minimum, the list should also include all federal and provincial ministries and agencies as may be appropriate, and representatives of First Nations communities where relevant.**

It is also noteworthy that the proposed standards specify that the onus is on the applicant to contact the various levels of government and to otherwise comply with the prescribed notice requirements. It thus appears that the MNR will be relying upon the "honour system" with respect to the fulfillment of the notice requirements. To ensure that interested agencies or landowners are not omitted by inadvertence (or design) by applicants, it is submitted that applicants should be required to file a statutory declaration with the Minister (i.e. at the end of the 45 day period) certifying that they have complied with the notification and consultation standards. If it is subsequently discovered that inadequate notice was provided by the applicant, or that interested agencies or landowners did not receive notice at all, the application should be held in abeyance (or the licence or permit should be suspended if already issued) until the notice and consultation deficiencies are rectified by the applicant.

RECOMMENDATION #22: **Applicants should be required to file a statutory declaration certifying that they have complied with the public notice and consultation requirements. Where there has been significant non-compliance with these requirements, the Minister should be empowered to hold the application in abeyance (or to suspend licences or permits if already issued) until the applicant rectifies the non-compliance.**

(b) Consultation

The proposed standards in several licence categories give applicants the option of convening

either a "Public Meeting" or an "Open House" during the 45 day public comment period. No other communication techniques or programs for facilitating public participation are referenced in the proposed standards. It thus appears that the proposed standards simply equate "consultation" with "Public Meetings" and "Open Houses".

In theory, public meetings and open houses are potentially useful ways of soliciting public input on proposed aggregate operations. In practice, however, proponent-driven meetings and open houses often become be one-sided "show-and-tell" sessions rather than vehicles for constructive two-way dialogue. It is therefore recommended that the proposed standards' brief treatment of consultation should be expanded to include reference to other appropriate forms of public consultation, such as: factsheets; brochures; working groups; public liaison committees; workshops; seminars; focus groups; briefings; conferences; site inspections; surveys and questionnaires.

RECOMMENDATION #23: **The proposed standards' discussion of public "consultation" should be expanded to include other appropriate consultation and communication techniques that facilitate greater public participation in the application process.**

The proposed consultation standards are completely silent on the desirability of consulting the public before the application is finalized and submitted to the MNR. Indeed, the applicant is only required to carry out so-called "consultation" during the perfunctory 45 day comment period, which occurs after the proposal has been submitted to the MNR. The main drawback to this ex post facto approach is that critical design or technical decisions will be made by applicants early in the process without the benefit of public input. This, in turn, limits the flexibility and willingness of applicants to agree to significant modifications to their proposed operations in response to public concerns that may be raised during the 45 day comment period. Not only does this undermine public credibility in the decision-making process, but it also provides a surefire recipe for adversarial confrontations and costly objections to the Ontario Municipal Board.

CELA, CONE, FON, SAGA, STORM and UCA therefore recommend that the proposed standards should strongly encourage (if not require) pre-submission consultation by applicants. Pre-submission consultation clearly benefits applicants as well as the MNR and interested stakeholders since it provides opportunities to identify and mitigate significant issues or impacts at the earliest planning stages.

The groups also note that the consultation standards pay minimal attention to the critically important issue of access to information about the application. Proposed Form 1 indicates that the public may view the "site plan and report for the proposal" at either municipal offices or MNR offices, but it is not at all clear that all relevant reports, studies and other documentation generated by or for the applicant will be disclosed upon request to the public. In order for public consultation to work properly, members of the public must enjoy full and

timely access to all relevant documentation. Accordingly, the proposed standards should be expanded to entrench the principle of public access to all relevant information and documentation.

RECOMMENDATION #24: **The proposed standards should strongly encourage (if not require) pre-submission consultation by applicants, and should expressly mandate full and timely public access to all relevant information and documentation regarding the proposed aggregate operations.**

(c) Objections

The groups support the proposed standards' terse requirement that applicants shall "attempt to resolve all objections" received from the public. Whether this conflict resolution will actually occur in practice remains to be seen.

The licence category standards go on to indicate that once agency comments, applicants' recommendations, and objectors' recommendations are received, MNR staff will make recommendations to the Minister under section 11 of the ARA. Presumably, these recommendations will focus on whether the application and objections should be referred to the Ontario Municipal Board for a public hearing, or whether the Minister should decide to grant or refuse the application.

Under the former ARA, the Minister was required to refer the matter to the Board upon the request of an objector, unless the Minister opined that the hearing request was frivolous or vexatious, or failed to disclose a substantial interest warranting a hearing. Under the ARA as amended by Bill 52, the Minister has considerably more discretion to refuse to refer a matter to the Board for a hearing. This new discretion may tempt some applicants to take the "hard-line" and refuse to accomodate public objections in the expectation that a hearing is unlikely to be ordered except in the most egregious or controversial circumstances.

To correct this perception, and to make applicants more responsive to public objections, the proposed standards should include a presumption (or criteria) in favour of public hearings where there are significant unresolved objections filed by agencies or members of the public.

RECOMMENDATION #25: **The proposed standards should include a presumption that an application shall be referred to the Ontario Municipal Board for a hearing where there are significant unresolved objections from any agency or person.**

2.6 Operational Standards

The proposed Bill 52 standards set out a number of "operational standards" for each category of licence and permit. It is understood that the operational standards are intended to address daily operational requirements that are not already prescribed by the approved site plan. Where there is a conflict between the operational standards and the site plan, the site plan prevails to the extent of the inconsistency.

Compared to the "prescribed conditions" discussed above, the proposed operational standards are more likely to have some on-the-ground relevance for aggregate operators, at least where the same matters are not already covered by the site plan. CELA, CONE, FON, SAGA, STORM and UCA have no objections in principle to the operational standards that have been proposed for each licence and permit category. However, the groups submit that consideration should be given to increasing the minimum excavation setback areas and on-site buffer distances prescribed by the operational standards. Maintaining the largest distance possible between aggregate operations and residential neighbours should help reduce social impacts, nuisance impacts, and litigious confrontations.

RECOMMENDATION #26: **Consideration should be given to increasing the minimum excavation setback areas and on-site buffer distances prescribed by the operational standards.**

It also appears that virtually identical operational standards have been prescribed for many licence and permit categories. Once again, consideration should be given to consolidating these generic standards into a single location in the ARA regulation, and then prescribing such further or other standards or variances as may be appropriate for different categories.

RECOMMENDATION #27: **Consideration should be given to consolidating generic operational standards into a single location in the ARA regulation, and then prescribing additional standards or variances as may be appropriate for specific categories of licences and permits.**

It is unclear whether the MNR document has inadvertently omitted operational standards for Category 13 (permits below natural water body).

2.7 Annual Compliance Reporting

(a) General

Despite the proposed annual compliance reporting requirements, the new "self-monitoring" regime remains as one of the most objectionable aspects of the Bill 52 regime. There is still a dearth of persuasive evidence demonstrating that self-monitoring by aggregate operators will result in better compliance rates, more prosecutions, or increased usage of other enforcement tools such as licence revocation.

Indeed, given the significant MNR staff reductions and budget cutbacks (both of which are well-known to the regulated industry), it seems likely that MNR inspection activities will be reduced to mere tokenism. It appears that after further planned cuts are implemented within MNR, there will only be some 17 aggregate officers to oversee the 3,000 pits and quarries across Ontario. Indeed, even while section 17 (mandatory annual inspections) of the ARA was in force, there was evidence that up to 40% of all licences were not being inspected on an annual basis.[3] These figures raise serious questions about the ability of the remaining staff to adequately review and verify the accuracy and completeness of the numerous compliance reports that will be submitted by aggregate operators. In the opinion of CELA, CONE, FON, SAGA, STORM, and UCA, perfunctory reviews of the prescribed checklists (i.e. Forms 594 and 595) are inadequate substitutes for a systematic program of on-site monitoring, investigation, and enforcement by public officials.

The groups also find it odd that the compliance reporting standards make no reference to the fact that submitted reports are in the public domain and are available to members of the public upon request. Section 15.1(3) of the revised ARA indicates that the public may inspect such reports in MNR offices, but makes no reference to public access to the reports that must be filed with local or regional municipalities (which may be more accessible to local residents than distant MNR offices). For the purposes of greater certainty and predictability, the compliance reporting standards should contain a provision stipulating that all completed compliance reports will be accessible to members of the public upon request. Indeed, the knowledge that neighbours may be scrutinizing the veracity of compliance reports may induce some aggregate operators to be more forthcoming when completing compliance forms.

RECOMMENDATION #28: **The compliance reporting standards should include a provision which stipulates that completed compliance forms are in the public domain and shall be made available to any person upon request to the MNR or to local or regional municipalities possessing copies of the forms.**

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[3] MNR, Self-Monitoring Program: Update Report (March 1996), p.1.

(b) Licence and Permit Reporting Requirements

In general, the compliance reporting requirements are substantially similiar within most of the licence and permit categories. As described above, there seems to be little need to reproduce the same reporting standards over a dozen times. The ARA regulation, when passed, should simply codify compliance reporting requirements once and incorporate them by reference for each licence and permit category as may be appropriate.

RECOMMENDATION #29: **Consideration should be given to codifying the appropriate reporting standards once and incorporating them by reference for each licence and permit category as may be appropriate.**

It should be noted that the reporting standards are generally procedural in nature, and they provide few details on fulfilling substantive obligations or avoiding contraventions under the ARA. Indeed, the reporting standards do not even indicate that it is an offence to knowingly submit false or misleading information in the compliance report. Including such a warning in the reporting standards (and the forms themselves in a manner analogous to tax returns) would send a clear signal that the compliance reports must be taken seriously and completed correctly by the persons filling in the forms.

RECOMMENDATION #30: **The compliance reporting standards (and prescribed forms) should contain a provision stipulating that it is an offence to knowingly submit false or misleading information in compliance reports filed under the ARA.**

As a further safeguard, the prescribed report forms (i.e. Forms 594, 595, 596, 597) should be amended to require a person submitting the form to provide a statutory declaration that the submitted information is correct, true and accurate to the best or his or her knowledge. As drafted, the forms simply require the person to identify himself or herself, but they do not require the person to affirm or swear that the information is true. Unless this oversight is corrected, there appears to be no positive duty on the person to take steps to determine whether or not the submitted information is actually correct.

RECOMMENDATION #31: **The prescribed compliance report forms should be amended to require persons to provide a statutory declaration that the submitted information is correct, true and accurate to the best of their knowledge.**

At the same time, it appears ironic that the compliance reporting standards do not specify that the forms are to be completed by a duly qualified, experienced or competent person having sufficient knowledge of the aggregate operations in question and the relevant

regulatory requirements. This is to be contrasted with the technical report standards for various licence and permit categories, which state, in boldface, that technical reports "must be completed by a person with appropriate training and/or experience". Given the MNR's overreliance on compliance reports under the new Bill 52 regime, the reporting standards must stipulate that persons completing and submitting the forms must possess proper qualifications and knowledge to do so.

RECOMMENDATION #32: **The compliance reporting standards must include a provision stipulating that the report forms are to be completed only by duly qualified and experienced persons possessing sufficient knowledge of the aggregate operations and the relevant regulatory requirements.**

The minimalist nature of the proposed compliance reporting standards is reflected in the actual checklists prescribed as Form 594 (licences) and Form 595 (aggregate permits). Licencees and permitees are simply required to check off the appropriate boxes in the checklist, although they may elect to add some optional comments if they so desire. The perfunctory exercise of checking off boxes will undoubtedly serve as an invitation to some aggregate operators to provide the barest of information about what is actually happening on-site. Consequently, residents and MNR staff who review the compliance reports may be left with vague or ambiguous information about actual operations, particularly since on-site verification by MNR staff seems to be only a remote possibility. Accordingly, these simplistic checklists should be supplemented by more substantive semi-annual summaries or reports (i.e. every second or third year) to provide greater information about actual on-site conditions, operational constraints, environmental impacts, remedial actions, and compliance problems.

RECOMMENDATION #33: **Licencees and permittees should be required to not only submit completed checklists, but to also file semi-annual reports or summaries to provide greater public information about actual on-site conditions, operational constraints, environmental impacts, remedial actions, and compliance problems.**

Another fundamental difficulty is that at best, an annual compliance report can only provide a fleeting "snapshot" of an operator's level of compliance with regulatory requirements. In general, the reporting standards only require the assessment of operations "once" between May and September of each year, and the report is due no later than September 30th of each year. If significant non-compliance or an adverse environmental effect arises the day after the assessment has been completed or submitted, then the problem may go undetected or unknown to the MNR for a considerable period of time (i.e. until September 30th of the following year). This is a clearly unacceptable scenario which can be avoided by either: (1) increasing the frequency of reporting requirements; or (2) imposing a positive duty to report significant non-compliance occurrences or adverse environmental effects forthwith to the MNR.

RECOMMENDATION #34: **The compliance reporting standards should be amended to either increase the frequency of reporting requirements, or to impose a positive duty on licencees or permittees to report significant non-compliance occurrences or adverse environmental effects forthwith to the MNR.**

Category 13 reporting requirements (aggregate permit below natural water bodies) appear to be erroneously entitled as "Operational Standards". In addition, this Category makes reference to Form 597, which has not been included in the MNR document for public review and comment.

It is unclear why there are no annual compliance reporting obligations in Category 14 (forest industry), particularly since it is important to know whether forest companies are complying with the Category 14 operational standards or other regulatory requirements.

RECOMMENDATION #35: **The proposed standards for Category 14 (forest industry) should include annual reporting requirements respecting compliance (or non-compliance) with Category 14 operational standards and other regulatory requirements.**

For Category 15 (wayside permits for public authority projects), compliance reporting obligations are only triggered when the MNR specifically requests the permitee to file a compliance report. No other guidance or criteria are offered to indicate precisely when, or under what circumstances, the MNR will request compliance reports. If compliance reports are now to be the centrepiece of the Bill 52 enforcement regime, then it is submitted that such reports should not be discretionary but mandatory for every wayside permit.

For short-term public authority projects, perhaps a compliance assessment should be required upon the completion of the project. In other circumstances, where a series of wayside permits has been issued, more frequent compliance reports (i.e. every 6 to 12 months?) would be appropriate. In all instances, wayside permittees should not enjoy the option of not filing compliance reports. It is also noteworthy that Form 596 for Category 15 permits has not been included in the MNR document for public review and comment.

RECOMMENDATION #36: **Mandatory compliance reporting requirements (with appropriate timeframes) should be imposed with respect to Category 15 wayside permits.**

SECTION 3.0 - CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

For the foregoing reasons, CELA, CONE, FON, SAGA, STORM and UCA submit that the proposed Bill 52 standards require further development, amendment and refinement before they are incorporated into a regulation under the ARA. This further work should be directed at removing internal inconsistencies, avoiding unneccessary duplication, and generally enhancing provisions related to natural heritage protection, notification and consultation, and annual compliance reporting.

The groups' major recommendations are as follows:

RECOMMENDATION #1: Once finalized, the standards must be contained in a regulation under the ARA.

RECOMMENDATION #2: Consideration should be given to reducing the number of licence and permit categories in order to avoid undue length, confusion and complexity. Consideration should also be given to consolidating identical standards rather than reproducing them within each licence and permit category.

RECOMMENDATION #3: Once finalized, the standards should apply to new and existing licences and permits.

RECOMMENDATION #4: Consideration should be given to consolidating generic site plan standards into one location in the ARA regulation, and then prescribing any additional or special requirements that may be unique to specific categories of licences and permits.

RECOMMENDATION #5: Site plans for Class A and B licences must be prepared by qualified technical experts.

RECOMMENDATION #6: Site plan standards should require the same information and the same level of detail for Class A and B licences as well as significant aggregate permits.

RECOMMENDATION #7: Section 1.1.27 within the various licence and permit categories should be amended to distinguish between natural and manmade site features, and to specify that the term "significant natural features" includes:

- significant wetlands;
- significant woodlands (south and east of the Canadian Shield);
- significant valleylands (south and east of the Canadian Shield);
- significant Areas of Natural and Scientific Interest (ANSI);
- significant wildlife habitat;
- fish habitat;
- habitat of endangered, threatened, vulnerable and rare wildlife species;
- significant or rare vegetation types; and
- other environmental protection (EP) areas identified in official plans (i.e. ESA's, ESPA's, natural areas, hazard lands, etc.).

RECOMMENDATION #8: The Bill 52 standards should include or cross-reference the definitions of "significant", "wetlands", "woodlands", "valleylands", "areas of natural and scientific interest", "wildlife habitat", "fish habitat", "endangered species" and "threatened species" found in the Provincial Policy Statement issued under the Planning Act.

RECOMMENDATION #9: The elevation of the water table should be dealt with under Section 1.1 - Existing Features, while operational restrictions should be dealt with under section 1.2 - Operations.

RECOMMENDATION #10: The site plan and technical report standards should require applicants to establish both the high and low elevations of the water table. For operations that are to stay above the water table, the standards should specify that no extraction is to occur with the prescribed distance above the seasonal high elevation for the water table.

RECOMMENDATION #11: The proposed report standards should be amended to

require all licence and permit applicants to submit summary statements on natural environment impacts and on any proposed preventitive, mitigative, or remedial measures to address negative impacts upon the natural environment.

RECOMMENDATION #12: The proposed report standards should require a summary statement of groundwater issues and concerns for all categories of licences and permits.

RECOMMENDATION #13: The proposed report standards should require a summary statement and/or a technical report regarding social and cultural impacts that will occur, or are likely to occur, as a result of the aggregate operations.

RECOMMENDATION #14: Consideration should be given to requiring report authors to prepare the summary statements. The MNR should also consider developing, with public input, guidelines to assist report authors in drafting summary statements.

RECOMMENDATION #15: With respect to the requirements relating to hydrogeological assessments, ambiguous terms (i.e. "take into account" or "significant adverse impacts") should be replaced by more precise and prescriptive terminology.

RECOMMENDATION #16: The proposed standards for technical reports should be amended to ensure that "Natural Environment Level 1" studies also include: habitat of endangered, threatened, vulnerable and rare species; designated environmentally sensitive areas; and significant or rare vegetation types.

RECOMMENDATION #17: The proposed standards for technical reports should include or cross-reference the definition of "adjacent lands" found in the Provincial Policy Statement issued under the Planning Act, but in all instances "adjacent lands" shall not be less than 120 metres.

RECOMMENDATION #18: The proposed standards for technical reports under Category 13 should require an assessment of the potential impact of aggregate operations on fish and fish habitat, including habitat for endangered, threatened, vulnerable and rare species.

RECOMMENDATION #19: Written notice should be delivered personally or by

registered mail to landowners and non-owner occupants within 300 metres of the proposed licence boundary, and to landowners and non-owner occupants along proposed haul routes.

RECOMMENDATION #20: Notice of applications for aggregate licences or permits should be posted on the EBR Registry, and such approvals should be prescribed and classified as Class II instruments for the purposes of the EBR.

RECOMMENDATION #21: The proposed standards should expand the list of governments, ministries and agencies that are to be notified by applicants. At a minimum, the list should also include all federal and provincial ministries and agencies as may be appropriate, and representatives of First Nations communities where relevant.

RECOMMENDATION #22: Applicants should be required to file a statutory declaration certifying that they have complied with the public notice and consultation requirements. Where there has been significant non-compliance with these requirements, the Minister should be empowered to hold the application in abeyance (or to suspend licences or permits if already issued) until the applicant rectifies the non-compliance.

RECOMMENDATION #23: The proposed standards' discussion of public "consultation" should be expanded to include other appropriate consultation and communication techniques that facilitate greater public participation in the application process.

RECOMMENDATION #24: The proposed standards should strongly encourage (if not require) pre-submission consultation by applicants, and should expressly mandate full and timely public access to all relevant information and documentation regarding the proposed aggregate operations.

RECOMMENDATION #25: The proposed standards should include a presumption that an application shall be referred to the Ontario Municipal Board for a hearing where there are significant unresolved objections from any agency or person.

RECOMMENDATION #26: Consideration should be given to increasing the minimum

excavation setback areas and on-site buffer distances prescribed by the operational standards.

RECOMMENDATION #27: Consideration should be given to consolidating generic operational standards into a single location in the ARA regulation, and then prescribing additional standards or variances as may be appropriate for specific categories of licences and permits.

RECOMMENDATION #28: The compliance reporting standards should include a provision which stipulates that completed compliance forms are in the public domain and shall be made available to any person upon request to the MNR or to local or regional municipalities possessing copies of the forms.

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RECOMMENDATION #35: The proposed standards for Category 14 (forest industry) should include annual reporting requirements respecting compliance (or non-compliance) with Category 14 operational standards and other regulatory requirements.

RECOMMENDATION #36: Mandatory compliance reporting requirements (with appropriate timeframes) should be imposed with respect to Category 15 wayside permits.

February 14, 1997

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APPENDIX A - COMPARISON OF SITE PLAN STANDARDS

CLASS A	CLASS B
Sub-sections (headings) entitled: 1.1 Existing Conditions 1.2 Operations 1.3 Progressive rehabilitation 1.4 Final rehabilition 1.5 Cross-sections	No sub-sections listed: Most of same details are included in this category except for those specified below - they may be listed in different order which does not seem to confer more or less significance to the items
Information to be shown on three separate drawings with details using a combination of headings	One drawing only required
1.1.4 Map scale - 1:2000 and 1:5000	1.4 Ontario Base Map specified - 1:10,000
1.1.7 Experts listed for plan preparation Professional Engineer, Ontario Land Surveyor, Landscape Architect et. al	1.7 No experts listed and site plan can be prepared by applicant or any other person
More details: 1:4.7 'final surface water drainage and drainage facilities on site' 1.4.8 'the final elevations of the rehabilitated areas of the site illustrated by a one or more meter contour elevation' 1.3.1 "the sequence and direction of progressive rehabilitation"	Some details lacking: 1.50 'final drainage pattern' 1.44 'the final floor elevation of the site' Missing
Cross-sections: - one or more cross-sections specified 1.5.1 wording: "...the anticipated final elevation of the water table, within the licensed boundary" 1.5.2 - cross-section of a typical earth berm that will be constructed on site	Cross-sections: - only one cross-section specified 1.52 wording: "... and the elevation of the established water table" No earth berm cross-section specified

	Three Drawings	OBMs	Applicants may prepare site plan	Sub-sections	Experts listed	Extraction to within 2m of water table	Details in Prog. rehab.	Details in final rehab.	Details of cross-sections
Category 1	☐			☐	☐		☐	☐	☐
Category 3	☐			☐	☐	☐	☐	☐	☐
Category 5		☐	☐						
Category 7		☐	☐			☐