Shafiq Qaadri, MPP
Chair, Standing Committee on Justice Policy
Care of: Christopher Tyrell, Clerk
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February 23, 2017

Dear Mr. Qaadri,

Schedule 1 of Bill 39 - Aggregate Resources and Mining Modernization Act, 2016

On behalf of Ontario Nature, the Canadian Environmental Law Association, and Environmental Defence, we would like to thank you for the opportunity to provide submissions on Schedule 1 of Bill 39, the *Aggregate Resources and Mining Modernization Act, 2016*.

Our organizations have been engaged in the *Aggregate Resources Act* ("ARA") consultation process for almost five years. We are disappointed and frustrated by the results.

Bill 39, as tabled before the Committee, will do little to enhance environmental accountability, provide stronger oversight, improve public participation, or ensure that adequate fees and royalties are in place. We hoped to see well-defined, enforceable provisions in the Act that would address the environmental and social issues arising from aggregates extraction in Ontario. Regulations are intended for detailed implementation matters not for substantive requirements, which should be spelled out in legislation. Instead, the Bill grants significant discretion to the Minister of Natural Resources and Forestry without clear limits or directions to the exercise of this discretion.

We understand that the intent is to draft regulations that will provide for stricter regulatory requirements than what is currently required, however, in the absence of language in to clarify the intent, the Bill weakens the legislative scheme governing aggregate resources in Ontario. We are unable to support the Bill as drafted.

Throughout the five years of consultation we have provided many written comments, addressing some of the key issues of aggregate operations. Many of these issues remain largely unaddressed, including: a stronger emphasis on recycling of aggregate, removal of the exception to the requirement to show need for aggregates in planning approvals, faster rehabilitation of abandoned pits and quarries, and an increase in resources for the enforcement of the Act. We ask the Standing Committee to consider possible additions to Bill 39 that would address these outstanding issues.

We also urge you to consider the following specific amendments to the Bill to address some of our many concerns.

A. Bill 39 must not remove regulatory oversight of aggregate operations

A.1 Annual compliance reports

The removal of the requirement of compliance reports to be filed annually unduly weakens the oversight of aggregate operations. If the intent of the regulatory scheme is to allow for more frequent compliance reports than the current annual rule, or to provide more detailed requirements regarding the content of compliance reports, the language of the Act should be amended to provide for a basic level of reporting requirements that can only be made more strict in the regulations. As such, the provisions of Bill 39 are too vague.

Subsection 16(1) of Bill 39 should be amended to remove the proposed new provision 15.1(1), and restore the existing wording of 15.1(1) of the Act so that annual reports continue to be required:

~~**16 (1) Subsections 15.1 (1) and (2) of the Act are repealed and the following substituted:**~~

~~**Compliance report**~~

~~**15.1** (1) Every licensee shall submit a report to the Minister for the purpose of assessing the licensee's compliance with this Act, the regulations, a site plan and the conditions of the licence.~~

~~**Same**~~

~~(2) A licensee shall prepare a compliance report in accordance with the regulations and submit the report in the prescribed manner annually or at such other intervals as may be prescribed.~~

Other provisions throughout the Bill that enact the corresponding changes to remove the requirement for an annual compliance report should also be removed.

Subsections 16(2), (4), and (5) of Bill 39 should be removed:

~~16 (2) Subsections 15.1 (4) and (5) of the Act are amended by striking out "an annual compliance report" wherever it appears and substituting in each case "a compliance report".~~

~~(4) Clause 15.1 (6) (a) of the Act is amended by striking out "an annual compliance report" and substituting "a compliance report".~~

~~(5) Clause 15.1 (6) (b) and subsections 15.1 (7) and (8) of the Act are amended by striking out "annual compliance report" wherever it appears and substituting in each case "compliance report".~~

Subsections 32(1), (2), (4) and (5) of Bill 39 should be removed:

~~32 (1) Subsections 40.1 (1) and (2) of the Act are repealed and the following substituted:~~

~~Compliance report~~

~~40.1~~ ~~(1) Every holder of an aggregate permit shall submit a report to the Minister for the purpose of assessing the permittee's compliance with this Act, the regulations, a site plan and the conditions of the permit.~~

~~Same~~

~~(2) A compliance report shall be prepared and submitted in accordance with the regulations annually or at such other intervals as may be prescribed.~~

~~(2) Subsections 40.1 (4) and (5) of the Act are amended by striking out "an annual compliance report" wherever it appears and substituting in each case "a compliance report".~~

~~(4) Clause 40.1 (6) (a) of the Act is amended by striking out "an annual compliance report" and substituting "a compliance report".~~

~~(5) Clause 40.1 (6) (b) and subsections 40.1 (7) and (8) of the Act are amended by striking out "annual compliance report" wherever it appears and substituting in each case "compliance report".~~

A.2 Exemptions allowing a person to operate a pit or quarry without a licence

Bill 39 proposes to allow for the operation of a pit or quarry without a licence. This legislative change would further weaken the regulatory oversight of aggregate operations. Requirements regarding the issuance of a licence are best set out in the legislation. Without more details regarding the conditions that may be imposed by regulation we are not able to support this provision, and recommend that the following sections of Bill 39 be removed.

Subsection 7(1) of Bill 39 should be removed:

~~7 (1) Section 7 of the Act is amended by adding the following subsections:~~

~~Exception, regulations~~

~~(1.1) Despite subsection (1), a person who meets the qualifications that may be prescribed may operate a pit or quarry that meets the prescribed criteria on land described in subsection~~

~~(1) without a licence if the person does so in accordance with such terms or conditions that may be prescribed.~~

Subsection 28(1) of Bill 39 should be removed:

~~**28. (1) Section 34 of the Act is amended by adding the following subsection:**~~
~~**Exception, regulations**~~
~~(1.1) Despite subsection (1), a person may operate a pit or quarry to excavate aggregate or topsoil described in subsection (1) without an aggregate permit if,~~
~~(a) the person has the prescribed qualifications; and~~
~~(b) the person operates the pit or quarry in accordance with any prescribed terms or conditions.~~

A.3 Minor amendments

Bill 39 exempts licence and wayside permit holders from obtaining Minister's approval when making minor amendments. These exemptions unduly weaken the oversight of the Minister. In the absence of the limiting regulation, we are not able to support these exemptions.

Bill 39, subsection 13(1) should be amended by removing the following subsection:

~~**Minor amendments [licence]**~~
~~**13** (2.3) Despite subsection (2.2), a licensee may make such minor amendments to the site plan as may be prescribed without the approval of the Minister if the amendments are prepared and submitted to the Minister in accordance with the regulations, along with any prescribed fee.~~

Bill 39, section 25 should be amended by removing the following subsection:

~~**Minor amendments [wayside permit]**~~
~~**30.1** (5) Despite subsection (4), the holder of a wayside permit may make such minor amendments to the site plan as may be prescribed without the approval of the Minister if the amendments are prepared and submitted to the Minister in accordance with the regulations, along with any prescribed fee.~~

Bill 39, section 31 should be amended by removing the following subsection:

~~**Minor amendments [permit]**~~

~~**37.1** (5) Despite subsection (4), the holder of an aggregate permit may make such minor amendments to the site plan as may be prescribed without the approval of the Minister if the amendments are prepared and submitted to the Minister in accordance with the regulations, along with any prescribed fee.~~

B. Bill 39 must enhance opportunities for public participation

Aggregate operations can cause significant impacts to human and environmental health. Landowners adjacent to aggregate operations often see groundwater and surface contamination, loss of habitat for endangered species, health impacts from noise, dust, or vibration. Bill 39 must not reduce the requirements for neighbouring residents and municipalities to be notified of proposals and changes to licences or permits. Meaningful public participation in decisions that affect their health and their environment is essential. Decisions should not be exempted from public notification and consultation requirements. In light of the inadequate inspection and enforcement by the MNRF, the establishment of custom plans would weaken government oversight of aggregate operations.

Bill 39, subsection 10(2) should be removed to the extent that it refers to a custom plan of consultation and notification procedures:

~~**10 (1) Subsection 11 (1) of the Act is amended by adding "subject to any requirement to the contrary that may be specified in a custom plan approved under subsection (4.2)" at the end.**~~

(2) Subsections 11 (2), (3) and (4) of the Act are repealed and the following substituted:

Public record

(2) The name and address of individuals who participate in the prescribed notification and consultation procedures form part of a public record and may be made available to the public unless the individual requests that his or her name and address remain confidential.

~~**Custom plan**~~

~~(3) If an application for a licence relates to a proposed pit or quarry that meets the prescribed criteria, the Minister shall require the applicant to prepare a custom plan that meets the requirements set out in subsection (4) and the prescribed requirements and to submit the plan to the Minister.~~

~~**Contents**~~

~~(4) A custom plan shall set out,~~

~~(a) consultation and notification procedures that the applicant will follow in addition to, or instead of, the procedures required by subsection (1); and~~

~~(b) a description of any surveys or studies relating to the proposed pit or quarry that the applicant will carry out and any documentation that the applicant will prepare.~~

~~**Timing for preparation of plan**~~

~~(4.1) The applicant shall prepare the custom plan and submit it to the Minister and further consideration of the application may be refused until the plan is submitted.~~

~~**Approval by Minister**~~

~~(4.2) Upon receipt of a custom plan, the Minister may approve the plan, approve the plan with such modifications as the Minister considers appropriate or require the applicant to prepare another plan.~~

~~**Compliance with plan**~~

~~(4.3) An applicant shall comply with a custom plan that is approved by the Minister within such time period as is set out in the plan and shall notify the Minister when all the requirements set out in the plan have been met.~~

~~**Same**~~

~~(4.4) Until all the requirements set out in the custom plan have been satisfied, further consideration of the application may be refused.~~

Bill 39, section 29 should be removed to the extent that it refers to a custom plan and notification procedure:

~~**29. The Act is amended by adding the following sections:**~~

~~**Notification and consultation**~~

~~35. (1) If an application for an aggregate permit complies with this Act and the regulations, the Minister shall require the applicant to comply with the prescribed notification and consultation procedures, subject to any requirement to the contrary that may be specified in a custom plan under section 35.1.~~

Public record

(2) The name and address of individuals who participate in the prescribed notification and consultation procedures form part of a public record and may be made available to the public unless the individual requests that his or her name and address remain confidential.

~~**Custom plan**~~

~~35.1 (1) If an application for an aggregate permit relates to a proposed pit or quarry that meets the prescribed criteria, the Minister shall require the applicant to prepare and submit to the Minister a custom plan that meets the requirements set out in subsection (2) and the prescribed requirements and to submit the plan to the Minister.~~

~~**Content**~~

~~(2) A custom plan shall set out,~~

~~(a) consultation and notification procedures that the applicant will follow in addition to, or instead of, the procedures required by subsection 35 (1); and~~

~~(b) a description of any surveys or studies relating to the proposed pit or quarry that the applicant will carry out and any documentation that the applicant will prepare.~~

~~**Timing for preparation of plan**~~

~~(3) The applicant shall prepare the custom plan and submit it to the Minister and further consideration of the application may be refused until the plan is submitted.~~

~~**Approval by Minister**~~

~~(4) Upon receipt of a custom plan, the Minister may approve the plan, approve the plan with such modifications as the Minister considers appropriate or require the applicant to prepare another plan.~~

~~**Compliance with plan**~~

~~(5) An applicant shall comply with a custom plan that is approved by the Minister within such time period as is set out in the plan and shall notify the Minister when all the requirements of the plan have been met.~~

~~**Same**~~

~~(6) Until all the requirements in the custom plan have been satisfied, further consideration of the application may be refused.~~

C. Bill 39 must provide for more rigorous environmental standards

We welcome the amendments included in subsection 11(1) and section 23 of the Bill, which include effects on municipal drinking water as one of the factors to be considered by the Minister when approving licences or permits for aggregate operations. However, we remain disappointed by the lack of further substantive changes proposed in Bill 39 that would address the social and environmental issues arising from aggregates extraction. Please consult our submissions on the Environmental Registry EBR 012-8443, as well as our other submissions referenced in the introduction of these comments.

C.1 Disallow licences that rely on the pumping of water in perpetuity

The Act lacks a clear prohibition of extraction below the water table that necessitates pumping of water in perpetuity. These types of aggregate operations cause undue strain on groundwater, and increase the risk of contamination of significant sources of drinking water. As noted in the Crombie report *Planning for Health, Prosperity and Growth in the Greater Golden Horseshoe: 2015 – 2041*, pumping in perpetuity "has long-term implications for water supplies and ecosystem integrity."[1]

Bill 39 should be amended by adding the following subsection:

11(1.1) The Act is amended by adding the following:

12(1.1) Despite subsection (1), no licence shall be issued for an operation that requires the pumping of water in perpetuity.

[1] Crombie, David, *Planning for Health, Prosperity and Growth in the Greater Golden Horseshoe: 2015 – 2041*, Ministry of Municipal Affairs and Housing, online: http://www.mah.gov.on.ca/Asset11110.aspx?method=1>, p. 113.

C.2 Issue licences on a fixed term basis

In the Provincial Policy Statement, aggregate resource extraction is referred to as an "interim" land use, a term which underplays the negative impacts of extraction and misleadingly implies that the land will be returned to its former use. In fact, pits are seldom returned to their former state, and quarries result in permanent and significant changes to hydrological and natural systems.

Under the existing Act, an operator can keep a site open indefinitely before moving to final rehabilitation and closure of the operation. Communities, municipalities and other stakeholders want greater clarity and certainty about the length of time a particular operation may be in existence. It is essential to know when a site will undergo final rehabilitation in order to plan for its use after a licence is surrendered. For example, a site may be destined to become an important future element of a municipality's natural heritage system or may be tied to future economic development as a recreation feature. Understanding that demand and type of material are key factors that determine how quickly or sporadically a particular site is mined, the current open-ended nature of licences is unacceptable. Bill 39 should be amended to provide for fixed term licences.

Bill 39, section 12 should be amended by adding the following:

12(2) The Act is amended by adding the following:

12.3 (1) A licence shall include a date on which the licence expires.

(2) A licencee must surrender a licence pursuant to section 19 no later than the date described in subsection (1).

D. Bill 39 must remove the increased flexibility with respect to the collection and distribution of fees and royalties

Bill 39 includes a number of provisions exempting licencees and permitees from the payment of the relevant fees. There is no persuasive reason why these exemptions are necessary. There is broad agreement among the stakeholders involved in this consultation that fees for operating aggregate sites should be raised. The Environmental Commissioner of Ontario has reported numerous times on the ongoing issues regarding compliance with the Act, and enforcement of the Act.[2] Bill 39 should make changes that facilitate collection of fees and royalties in a way that is fair, adequate for the enforcement of the Act, and transparent. We submit that the provisions of the

[2] Environmental Commissioner of Ontario, "Doing Less with Less: How Shortfalls in Budget, Staffing and In-House Expertise are Hampering the Effectiveness of MOE and MNR" in *Special Report to the Legislative Assembly of Ontario* (Toronto: ECO, 2007). See also Environmental Commissioner of Ontario, "The Role of Government as Environmental Steward" in *Serving the Public: Annual report 2012/2013* (Toronto: ECO, 2013) at pp. 45-54, 57-60.

Bill that allow for exemptions from the payment or fees without any clear requirements or conditions should be removed.

Bill 39, section 14 should be amended by removing subsection 14(5):

~~**Waiver of fee**~~
~~14 (5) The Minister may waive the requirement to pay all or part of an annual licence fee.~~

Bill 39, subsection 21(2) should be amended by removing the following:

~~**Waiver of fee**~~
~~23 (4.3) The Minister may waive the requirement to pay all or part of an application fee~~

Bill 39, section 31 should be amended by removing the following:

~~**Waiver of fee**~~
~~37.2 (5) The Minister may waive the requirement to pay all or part of an annual permit fee under this section.~~

Thank you for the opportunity to comment on Bill 39, and we urge you to adopt the changes suggested above.

Yours truly,

Dr. Anne Bell
Director of Conservation and Education
Ontario Nature

Barbora Grochalova
Counsel
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Keith Brooks
Programs Director
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APPENDIX 1

Comments on EBR# 012-8443: Schedule 1 of Bill 39 - Aggregate Resources and Mining Modernization Act, 2016, submitted on December 5, 2016

On behalf of Ontario Nature, the Canadian Environmental Law Association and Environmental Defence, we would like to convey our frustration and disappointment with Schedule 1 of Bill 39, the *Aggregate Resources and Mining Modernization Act, 2016*. After over four years of public consultation it fails to deliver the changes needed to address the negative social and environmental impacts that arise from aggregate extraction in Ontario.

According to the posting on the Environmental Registry (EBR# 012-8443), the proposed amendments to the *Aggregate Resources Act* (ARA) through Bill 39 "would be the first step to modernizing and strengthening the way that aggregate resources are managed in Ontario by enabling stronger oversight, enhancing environmental accountability, improving information and participation and increasing fees and royalties." We fully support the objectives, as expressed. Yet, the proposed amendments would do little to accomplish these objectives. They fall far short of the expectations created when the Ministry of Natural Resources and Forestry (MNRF) released *A Blueprint for Change* in 2015. Key requirements regarding oversight, environmental accountability, public participation and fees and royalties are left to be developed in regulation and to the discretion of the Minister, with no conditions and none of the hoped-for clarity or commitment to improve environmental protection.

As noted on the EBR posting, should the Bill pass, there will be further consultation on regulations and policy. While opportunities for public consultation are always welcome, we must point out that in this particular situation, consultations on the ARA have been going on for over four years already. Such lengthy consultations - with such disappointing results - are extremely onerous and discouraging. It is a struggle for individuals and non-government organizations such as ours, with very limited capacity, to adequately engage over such an extended time period. We question why the process has been dragged out for so many years. It suggests a lack of government resolve to deal with the issues directly and transparently and to make the decisions needed to address public concerns.

To be clear, our organizations are not seeking additional ministerial and Cabinet discretion, which is the focus of the proposed amendments that emphasize new regulations almost exclusively. Rather, we are looking for well-defined, enforceable provisions in the Act that address the environmental and social issues arising from aggregates extraction in Ontario. Regulations are intended for detailed implementation matters not for substantive requirements which should be spelled out in legislation.

Below is a list of some of the changes our groups had hoped to see in the amended ARA. None of these has been addressed, as far as we can ascertain:

1. A requirement for applicants for aggregate licences to demonstrate need for aggregate extraction in a particular area.
2. A requirement for MNRF to develop and maintain an up-to-date publicly available assessment of current aggregate demand and supply and provide projections of future needs, including analysis of opportunities for conservation, recycling and reduction of the demand for aggregates.
3. A requirement for MNRF to track and evaluate the amount of recycled aggregate resources used in Ontario, and make reports of the results available to the public.
4. Strict conditions in the legislation regarding self-filing to ensure the public interest is properly served.
5. A requirement to file site plans, rehabilitation plans and annual compliance reports online, to ensure public access and accountability.
6. A requirement to establish a schedule for rehabilitation of abandoned pits and quarries,
7. Detailed requirements regarding extraction of aggregates from beds of lakes or rivers.
8. A requirement for a full environmental assessment of potential impacts on the hydrological system for applications to extract aggregates below the water table.
9. A clear prohibition of extraction that necessitates pumping of water in perpetuity.
10. The establishment of maximum disturbed area at all new sites to encourage progressive rehabilitation.
11. A fixed term on licences (so that land use planning and rehabilitation can proceed in a timely fashion).
12. New rules and reporting requirements regarding the importation of fill for rehabilitation (to prevent contamination).
13. A clear requirement for applicants to prepare specific studies regarding: impacts on natural heritage; impacts on municipal water supplies; cumulative impacts on hydrology and hydrogeology (including water quality and quantity); and impacts on agricultural values.
14. Improved requirements regarding notification and consultation with Indigenous communities.
15. Expanded timelines for public consultation (up to 120 days).
16. Extension of the 120 metre area within which residents are notified of application.
17. A requirement to file a new application for an operation that is intended to change an above water table extraction to a below water table extraction. Significantly enhanced royalty fees earmarked for rehabilitation purposes payable by licensees with such fees going to the Trust to ensure rehabilitation occurs.

Instead, Bill 39 introduces a suite of enabling amendments that risk undermining oversight, environmental protection and public participation. These include proposals to:

1. Remove the requirement for annual compliance reports (allowing them to be required more or less frequently, as prescribed in regulation).

2. Replace licence application procedures and requirements (ARA, sec. 8 – 11) with procedures and requirements in regulation.
3. Create new exemptions to sections 7 and 34 allowing a person to operate a pit or quarry without an aggregate licence or an aggregate permit (qualifications and conditions to be prescribed in regulation).
4. Allow licensees and permittees to make minor amendments to site plans without the Minister's approval (details to be prescribed in regulation).
5. Prohibit the Minister from having regard to a history of non-compliance if the applicant remedied non-compliance within 90 days of getting caught.
6. Add new exemptions from the prescribed notification and consultation procedures that normally pertain to a person applying for an aggregate licence or permit.
7. Allow licence or permit holders to apply to amend a site plan without public notification requirements.
8. Allow the Minister to waive application fees for licences and permits and other licence and permit fees.
9. Provide that licensees and permittees are protected from prosecution on self-reported violations if they are reported before they are discovered by an Inspector;[3]

Even where proposed amendments are intended to enhance environmental protection, the lack of clear requirements or conditions makes the outcome highly uncertain and vulnerable to future changes in minister or government. For example:

1. While the Minister must "have regard to" impacts on municipal drinking water when granting licence or permit, there is no requirement to refuse a licence or permit application that conflicts with source water protections.
2. Rehabilitation reports are mandatory, but critical requirements about frequency of submission and critical elements to be included are left to regulation.
3. Impact studies "may" be required in regulations.
4. The Minister "may" require additional studies, tests, inventories etc..
5. Regulations "may" provide for a person with prescribed qualifications to review technical or specialized studies or reports that a licensee or permittee is required to prepare and to submit a report to the Minister.
6. Flexibility with respect to the collection and distribution of fees and royalties will be increased. While the government has expressed its intent to increase fees and royalties at this time, there are no conditions attached to the approach to determining the fees, or what costs they must cover.

[3] The Supreme Court of Canada held in R v Fitzpatrick that statutory self reporting requirement does not infringe rights against self incrimination under s. 7 of the Charter in context of a regulatory scheme. http://www.hrcr.org/safrica/arrested_rights/fitzpatrick.html. There are strong policy reasons why this should not be allowed. Otherwise, licensees who contravene the ARA can avoid prosecution simply by notifying the Ministry. This does not ensure specific or general deterrence from committing the offence in the first place.

7. While the Minister will be able to set aside Crown land where no aggregate permit will be issued, no conditions are attached to constrain or direct this power.
8. The new sections 37 and 37.1 which provide authority of the Minister to attach any conditions, or to vary conditions at any time, are ambiguous in that this power may be used so as to better environmental protection; but may also be used so as to decrease environmental protection including provisions that citizens groups have advocated for. The instrument classification regulation under the *Environmental Bill of Rights* captures aggregate permits and site plans, allowing for public comment, but the EBR coverage is subject to certain qualifiers and exceptions.

In the suite of proposed amendments there are some which provide the clarity and certainty needed:

1. The requirement that the Minister must determine whether adequate consultation with Indigenous communities has taken place before issuing a license or permit.
2. Higher maximum fines for non-compliance
3. Allowing the Minister to add conditions to existing sites, without tribunal hearings, to implement a source protection plan under the Clean Water Act;[4]

We support these three amendments. Given the Ministry's poor record to date in terms of enforcement, however, the second amendment listed will be of no benefit unless the Ministry invests in staff to monitor and enforce compliance.

In closing, we thank you for the opportunity to comment on the proposed changes, but regret that we are not able to support the Bill as proposed.

Yours truly,

Dr. Anne Bell
Director of Conservation and Education
Ontario Nature

[4] Approved source protection plans take priority under the conflict provisions of the *Clean Water Act*. O.Reg. 287/07 under the CWA lists s.37 ARA permits as prescribed instruments. Subsection 38(7) of the CWA requires prescribed instruments to conform to significant threat policies and Great Lakes policies in approved plans. Similarly, s.43 of the CWA requires existing instruments to be amended to conform with such policies. Accordingly, where they are applicable, there should be no impediment to the Ministerial power to impose conditions that implement the Source Protection Plan.

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