Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

July 12, 2023

Jamie Prentice
Resource Development Branch
Ministry of Natural Resources and Forestry
300 Water Street, 2nd Floor South
Peterborough, ON K9J 3C7

Via email: aggregates@ontario.ca

Dear Jamie Prentice:

Re: Proposed Changes to Ontario Regulation 244/97
ERO Notice 019-6767

Further to our discussion on July 4, 2023, I am writing to provide you with comments on behalf of the Canadian Environmental Law Association (CELA) on the proposed changes to Ontario Regulation 244/77 (O. Reg 244/77). These changes, if implemented will authorize, operators of pits and quarries to self-file changes to existing site plans for certain activities without receiving approval from the Ministry of Natural Resources and Forestry (Ministry). The proposed changes are:

- Enabling recyclable aggregate material to be imported (concrete, asphalt, bricks, glass or ceramics) to aggregate sites
- Adding or relocating entrances or exits to aggregate sites when the operator can provide proof of the relevant road authority approval for the change
- Adding, removing or changing portable processing equipment at aggregate sites (e.g. for crushing or screening aggregate material)
- Adding, removing or changing portable concrete or asphalt plants where required for public authority projects
- Adding, removing or changing above-ground fuel storage at aggregate sites.

The Ministry is also seeking feedback on a new policy to clarify requirements, including notification requirements when amendments are proposed to existing licenses, permits or site plans that require approval.

For reasons outlined below, CELA does not believe that the proposed activities for self-filing can be characterized as "routine activities." CELA, therefore, recommends these activities remain subject to regulatory oversight and approval from the Ministry. Furthermore, we are also of the

view that some of the proposed amendments identified in the new policy should remain subject to notification requirements for reasons provided below.

GENERAL COMMENTS

(a) *Background*

CELA lawyers have represented low-income clients and vulnerable communities in the courts on a broad range of public interest environmental cases, including matters under the *Aggregate Resources Act* (*ARA*).

The overall objectives of CELA's clients in hearings under the *Aggregate Resources Act (ARA)* is to ensure good land-use planning and environmentally sound decision making. In particular, these cases have involved conserving water resources and sources of drinking water, protecting air quality, wildlife habitat and ecosystems features and functions; preserving prime agricultural lands; and safeguarding public health and safety.

In addition to litigation, CELA has also been involved in various provincial reviews of the *ARA* regime in recent years. These included testifying before the Standing Committee on General Government during the 2012 review of the *ARA*, attending numerous meetings of the *ARA* Multi-Stakeholder Working Group in the fall of 2013 and providing comments on the Ministry's 2016 Blueprint of Change regarding the aggregate sector. We also responded to the 2019 "A Place to Grow" survey conducted by the Ontario Growth Secretariat in relation to aggregate resource policy.

Our long-standing involvement in aggregate matters at the local, regional and provincial levels has provided the organization with an understanding of many of the public concerns and issues related to the regulatory framework governing aggregate operations in Ontario.

(b) Environmental Significance of Aggregate Production

The importation and storage of recycling materials on an aggregate site; the operation of portable processing equipment; the addition or relocation of entrances to aggregate sites; the operation of portable concrete or asphalt plants; and above-ground fuel storage, are all operational matters which have the potential to cause adverse impacts to the environment and public health. These activities either individually or in conjunction with other aggregate operations can cause environmental impacts, such as noise, dust, and odours and thereby exacerbate land use conflicts in local communities. In some cases, as discussed below, these activities may also result in the discharge of toxic chemicals and pose a serious threat to human health and the environment. Consequently, the Ministry's list of proposed activities cannot, in any way, be characterized as "small or routine" site plan changes to existing pits or quarries.

CELA is very concerned that the self-filing process will eliminate regulatory oversight that currently exists through the Ministry's approval process. The approval process allows ministry staff to undertake a proactive up-front assessment to ensure that changes to site plans do not

cause adverse impacts to human health and the environment. The Ministry's approval process, thus, provides an important mechanism for preventing land-use conflicts before they materialize.

CELA is not opposed in principle to self-filing for changes to existing pit or quarry site plans, provided they are, in fact, confined to "small or routine" changes which do not pose a risk to human health or the environment. However, none of the proposed changes to O. Reg 244/77 meet these criteria for reasons provided in more detail below. In fact, all the proposed activities are operational matters that will substantially increase impacts at an aggregate site. While the proposal may reduce regulatory burden for aggregate operators, it does so by placing the environment and the health and safety of Ontarians at risk. Therefore, CELA requests that the Ministry not proceed with the implementation of this proposal.

CELA is also concerned about the Ministry's capacity to undertake compliance and enforcement measures to ensure the integrity of the self-filing regime. In this regard, CELA notes that the Commissioner of the Environment has previously commented about the Ministry's lack of enforcement capacity in several reports (See, for example, Environment Commissioner of Ontario's 2017 Annual Report: *Good Choices, Bad Choices* at pages 182-183 and the Environmental Commissioner of Ontario's 2007 Special Report to the Legislative Assembly: *Doing Less with Less: How shortfalls in budget, staffing and in-house expertise are hampering the effectiveness of MOE and MNR*). Consequently, CELA is concerned that the Ministry does not have adequate capacity, in terms of staff and resources, to effectively ensure aggregate operators comply with the proposed self-filing regime. This factor is reason enough not to proceed with the implementation of the proposal.

SPECIFIC COMMENTS

Recycling Aggregate Materials

CELA supports the recycling of aggregates materials but stockpiling recycling material, including concrete, asphalt, bricks, glass and ceramics on aggregate sites poses an environmental risk. Storage of asphalt, for example, can result in release of heavy metals such as cadmium, chromium, copper, nickel, lead and zins and polycyclic aromatic hydrocarbons into the soil and groundwater. The Ministry is proposing that no more than 20,000 tonnes for recycled materials can be stored on the site at any time. However, this is an arbitrary figure that does not provide any assurance that the proposed volume of recycled materials will not result in the leaching of toxic chemicals. Given the potential environmental risk, the importation and storage of recycling aggregate materials is not an appropriate candidate for self-filing.

Adding or relocating entrances to Aggregates Sites:

Adding or relocating the entrances to aggregate sites has the potential to cause adverse impacts on sensitive receptors through increased truck traffic, noise and dust. The haul routes and location and number of entrances to aggregate sites can cause nuisance impacts and lead to land-

use conflicts. Consequently, this proposed change cannot be characterized as small or routine changes and should remain subject to Ministry approval.

Adding, removing or changing portable processing equipment at aggregate sites

The number of portable processing equipment and their location on the site have potential to cause noise and dust and result in health and environmental impacts. Exposure to noise, depending on the volume and duration, can cause stress, high blood pressure and loss of productivity. Long-term exposure to dust particles is associated with skin and eye irritation and damage to internal organs. Young children, the elderly and those with existing respiratory conditions, such as asthma, are particularly vulnerable. Therefore, any addition or changes to the location of portable processing equipment at aggregate sites should remain subject to Ministry approval.

Adding, removing or changing portable concrete or asphalt plants where required for public authority projects

The addition or changes in the location of portable concrete and asphalt plants essentially raise the same concerns as those listed above in relating to portable processing plants.

However, portable asphalt plants raise additional concerns because they emit volatile organic compounds and particulate materials. The toxic chemicals which are released by asphalt plants include benzene, which is carcinogenic to humans. There have been numerous public complaints regarding the operation of asphalt plants in Ontario, including those operating pursuant to Environmental Compliance Approval issued by the Ministry of Environment Conservation and Parks.

Consequently, CELA recommends the Ministry not proceed with its proposal to allow self-filing for changes in relation to portable concrete or asphalt plants. These types of changes to site plans need to be subject to strict regulatory oversight and approval by the Ministry.

Adding or removing or changing above-ground fuel storage at aggregate sites.

Adding or changing the location of above -ground fuel storage poses risk of fire and explosion and potential leaks leading to contamination of surface and ground water. These types of changes warrant regulatory oversight and should be subject to Ministry approval.

In conclusion, the proposed activities for self-filing do not meet the definition of small or routine site plan changes. Accordingly, CELA recommends that the Ministry not implement the proposal to allow certain site plan amendments eligible for self-filing. While the proposal may reduce the regulatory burden for aggregate operators, it has the potential to cause serious impacts to human health and the environment and is not in the public interest.

NOTIFICATION AND CONSULTATION REQUIREMENTS FOR APPLCATION TO AMEND LICENSES, PERMITS AND SITE PLANS

The Ministry is also proposing a new policy to clarify requirements, including notification requirements when amendments are proposed to existing licenses, permits, or site plans that require ministry approval.

The Ministry is proposing that proponents not be required to undertake notification and consultation with respect to "non-significant changes to operations or rehabilitation" provided no other concerns have been identified.

However, CELA notes that many of the listed activities in the proposal have the potential to cause significant impacts to neighboring residents, the local community and the natural environment. These include, for example, installing portable or concrete plants or portable processing equipment, increasing the maximum annual tonnage of up to 5% of the original tonnage as well as increasing the hours of operation at an aggregate site.

Furthermore, it should be noted that negotiations between the proponent and other parties who may be impacted by aggregate operations often occur in cases that proceed to a hearing before the Ontario Land Tribunal. Experts for all parties generally participate in these negotiations to address and resolve a broad range of public concerns such as the hours of operation or where portable equipment should be allowed to operate at an aggregate site. The outcome of these negotiations is typically reflected on the site plan but may not necessarily be addressed in the tribunal's decision. CELA is concerned that the Ministry's proposal permits a proponent to unilaterally change the terms of these agreements as reflected in site plans without notification and input by parties who participated in good faith in the negotiations. This would fundamentally undermine public confidence in the integrity of the *ARA* process and exacerbate land-use conflicts in Ontario.

CELA, therefore, recommends that the proponent be required to continue to undertake notification and consultation in relation to the activities that the Ministry's proposal has classified as "non-significant changes." We note that the notification to interested parties is not an onerous requirement and can help forestall land-use conflicts before the occur.

Please do not hesitate to contact me at (416) 960-2284 ext. 7217 or via email at ramani@cela.ca if you have any questions with respect to the above.

Yours truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Ramani Nadarajah
Counsel