



Aggregate Resources Act Review

***AMO Submission to the Standing
Committee on General
Government***

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Association of
Municipalities
of Ontario

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Introduction

The Standing Committee on General Government requested that AMO provide input into its Review of the *Aggregates Resources Act* as part of the Committee's work on the Referral from the Legislative Assembly.

Given the short notice of the Committee's sitting and its sitting date, there has not been time to undertake our normal policy development process and involve the Board of Directors in building a province-wide analysis and consideration of recommendations.

We will undertake this to inform government should a subsequent, more comprehensive policy development process occur at the province. In the meantime, AMO staff is providing some commentary on the matters within the scope of the Committee's review but the Committee should appreciate that the AMO Board may have some additional or divergent advice.

There are 444 municipal governments in Ontario, all of which are consumers of aggregates and then also some that are or become host municipalities. As such there are some interests in common, such as the price and then more specific, narrow interests for which the *Aggregate Resources Act* is important legislation, along with the *Planning Act* and the Provincial Policy Statement.

AMO urges you to consult more formally with the municipalities that host aggregate operations to ensure the issue has broad input from the most directly affected municipal governments. To that end, we hope that the municipal governments that form the Top Aggregate Producing Municipalities will be consulted during your review. Scope of the Committee's Review:

AMO understands that in referring the *Aggregates Resources Act* to the Standing Committee on General Government, the Legislative Assembly set the following terms: *"That the Standing Committee on General Government review the Aggregate Resources Act and report to the House its observations and recommendations with respect to strengthening the Act. In developing such recommendations, the Committee's focus shall include, but not be limited to, the following areas: The Act's*

consultation process; how siting, operations, and rehabilitation are addressed in the Act; Best practices and new developments in the industry; Fees / Royalties; and, Aggregate resource development and protection, including conservation/recycling.”

Municipal Impacts

In reviewing the Standing Committee’s mandate, the task before you is about confirming what is working well, and what is not since the Act and regulatory framework has not been reviewed for some time. As with any legislation, there needs to be a true balance between the needs of the economy, the environment and social goals and that these are achieved if not safeguarded in legislation, including the *Aggregates Resources Act*.

As host communities, municipal governments are concerned with the change in land use to permit a new operation and the planning process, through to the actual siting and day to day operations of pits and quarries and the effect these operations have on nearby residents and businesses including the effect on quality of life through dust, noise and truck emissions. We often hear about concerns about the impact these operations and the transport of aggregates from the site to market have on water and air quality, the safety of roads and, of course, the wear on our infrastructure through increased trucking.

Municipal governments are providers of clean, safe drinking water and wastewater services to the majority of Ontario’s residents. The *Clean Water Act and the Safe Drinking Water Act* specify the duties and responsibilities of municipalities and others in safeguarding drinking water systems and resources, as well as the legal repercussions of not doing so. Aggregate operations especially any that go below the water table may affect ground water sources of our drinking water systems. The public wants to see the safety and supply of their water sources protected in any quarry or pit operation before any approvals or permits are allowed, including any cumulative effect when multiple operations occur and over time. The province will need to ensure that an appropriate policy balance, with appropriate safeguards, is applied to aggregate operations.

The Standing Committee will know that municipal governments own more infrastructure than any other order of government in the Province of Ontario which means they are a significant user and consumer of aggregates. Therefore affordability and location to market are important in their endeavours in building and maintaining safe roads, buildings, sewers and water mains as well as treatment plants. They need to have continued access to high quality, safe and affordable raw materials. Without these, municipal governments cannot afford to provide the infrastructure systems that keep local and provincial economies going and growing and provide our residents with the supports that they rely on every day to make their lives better.

Municipal governments and their contractors are also operators of wayside pits and quarries for the completion of public infrastructure projects and, as such are governed as an aggregate producer under the Act. In this way, municipalities have a need to maintain flexibility to ensure we are able to complete public works, in the public interest, as expediently as possible. The current rules for wayside permits seem to strike that balance and as these permits are only time-limited, they should be less of a concern to the Standing Committee as the disturbance of the pit or quarry needs to be justified by the public's need for the infrastructure.

In considering how to move forward, the Standing Committee will have to keep in mind these extremely important aspects of municipalities' relationship to our aggregate resources because, in one place, they encapsulate the conflicting issues before you.

Siting Consultation

As the terms referred to you by the Legislature note, the Standing Committee has been requested to review the Act's consultation process and how siting, operations and rehabilitation of aggregates sites can better engage those affected.

Municipal councils in host communities currently come under a great deal of pressure from residents to exert more authority over aggregates operations. Except for the current provision in section 12.1(1) of the current Act, which allows zoning by-laws to prohibit establishment of pits or quarries, municipalities generally have limited control over these operations. A more robust consultation process for siting and site plan amendment may be helpful.

Some of the challenges relating to site plans for the operations arise from the planning process itself. Generally, official plans do not identify where new pits or quarries are likely to be sited. Often, the use of rural land for this specific purpose is only apparent after industry has done its business case analysis, (recognizing proprietary information is involved) and then determines to proceed. The change in land use is attempted through an official plan amendment basis and/or zoning bylaw change. And in some instances, questions arise as to whether environmental assessments should be part of the processes, given the potential environmental impacts. Therefore the public can be 'surprised' that the agricultural land or marginal rural lands are being proposed for aggregate operations. This change of use and the potential impacts are the core matters, the solutions of which become part of the siting of the operations, conditions of the operations and the monitoring through the other development tools.

We recognize that the matter of land use and planning is not directly within the scope of the Committee, but it does relate to and intersect with this Act. There are over two hundred pieces of provincial legislation and regulation, including this Act, that relate to Ontario's planning system and the volume alone, let alone understanding which piece of legislation or regulation among them all take precedence. Ontario's planning system and its resource development process has become more complex.

On the matter of physical siting of the aggregates operations and amending the related site plans after operation has begun, better engagement of those municipalities affected and especially municipal hosts is needed. As a result, municipal governments ask the question 'how will the review of the *Aggregate Resources Act* ensure that municipal governments, their residents and the public be best engaged in finding solutions to the contentious issues that have surrounded aggregates operations?'

AMO believes that the Standing Committee has an opportunity to design a process for siting, site approval amendment and rehabilitation of sites that:

- Ensures optimal environmental, social and economic impacts and benefits are studied by the proponent of an aggregate operation before a proposal is put forward;
- Ensures extensive public and municipal government input at the outset of any proposal on those impacts and benefits;

- Requires proponents of any new or amended operations to consult and negotiate with municipal governments, residents and the public of a host community and those that may be affected by one (although not a host to a site) through transport, dust, noise or processing to understand and address their concerns; and
- Requires public and transparent development of rehabilitation plans, based on public and municipal input, for a site before approval is granted.

In addition, the Standing Committee should consider how best to ensure rehabilitation takes place in accordance with these plans by requiring a timeline for site operations, based on the best estimates of the producer, at the end of which rehabilitation will have to commence or end depending on the degree of progressive rehabilitation undertaken. Enforcement of aggregate agreements and rehabilitation plans are important.

Host Community Infrastructure

It has long been recognized that extraction of aggregates, and indeed other resources, can place severe wear on the roads and other infrastructure of host communities and those nearby whose roads and bridges are also used. In the past, the government, the Aggregates Resources Trust and now The Ontario Aggregate Resources Corporation have collected and transferred funds for the upkeep of affected roads and rehabilitation of sites. The current corporation also collects data on aggregates operations.

Municipal governments hosting aggregates operations have long believed that the reimbursement municipalities receive for their road infrastructure is much lower than the actual costs imposed by the wear and tear of operations attributed to aggregates transportation. That said it is recognized that funding was increased several years ago after a long hiatus for adjustment. The Committee may wish to offer a position on what an appropriate rate should be – should it be full actual cost or some other criteria or some type of industry-municipal government partnership. Certainly, an approach that is more predictable, more reflective of changing circumstances and costs and one that doesn't rely on advocacy/lobbying efforts would be better. Possible criteria for reimbursement to ensure municipal roads and other infrastructure affected by aggregates haulage can be maintained in good repair could be the number of

kilometers traveled on municipal roads traveled, the tonnage of aggregate hauled and the classification of the road.

While the extension of the *Aggregates Resources Act* to currently undesignated parts of the province is not within the terms of this review, AMO is aware that some extension has occurred in previous years and did not involve public consultation. The Committee may wish to reinforce that the Province must have consultation with and within municipalities in undesignated areas should there be any consideration to future extension of the Act. AMO notes also, that while it is out of scope of the Standing Committee's review of the *Aggregates Resources Act*, extension of a similar compensation regime for other resources activities that impact municipal infrastructure, such as mining, should not be lost as no corresponding mechanism exists with regard to the *Mining Act*.

In addition, for the purposes of planning and oversight it would be valuable for the information collected and reported by the operators to be amassed and collated into one place where municipal governments, provincial ministries, operators, residents and the public could have easy and transparent access to extraction, operation and rehabilitation information that is not proprietary information of the aggregate owner. Such a database could be funded through the fees collected and based on the work of Ministry of Natural Resources inspectors, site compliance reporting and The Ontario Aggregate Resources Corporation.

Ideally, collection and collation would be coordinated through one neutral body and verified through the inspection process. It is likely that, to do this, the Ministry of Natural Resources or other body would need additional inspectors and a more robust cost recovery regime for aggregates would need to be in place in Ontario.

More Sustainable Aggregate

AMO is aware that the Standing Committee has been asked to examine the issue of aggregate conservation, recycling and resource sustainability. With regard to conservation, AMO understands that the Ministry of Natural Resources has indicated it will undertake an aggregate resource conservation plan and we urge the Ministry to do so with appropriate opportunities for municipal and public comments and consultation. The issue of recycling is one in which municipal governments have an interest. To the

extent that recycled aggregates can meet the performance needs of municipal departments and builders for safe, affordable and reliable materials, it should be encouraged and perhaps there is a role for the Ministry to play in formulating best practices in managing recycling.

However, AMO is aware that using recycled aggregate may diminish the performance of infrastructure in some cases, potentially requiring more frequent maintenance and greater emissions in the case of roads, potentially diminishing safety in the case of bridges and other structures. We also understand that recycling in aggregate operations can cause disruption to affected communities. With these issues in mind, some caution and more work on the part of the industry and the government to ensure safety seems appropriate.

On the issue of aggregate resource sustainability, AMO does see some opportunity for the industry and for Ontario. We are aware of efforts on the part of the aggregate industry to develop certification programs for operators that would require efforts to more sustainably manage the extraction of aggregates. AMO believes that the Standing Committee should consider the extent to which the *Aggregate Resources Act* can provide incentives for producers to pursue this and how best to coordinate the different efforts underway. This is an area where it is possible that the public interest could be well served by the private actions and responsibility of the industry. AMO believes it should be encouraged.

Next Steps

We strongly encourage the Standing Committee to issue a draft report on what it has heard through its process, what the range of concerns and ideas and options for dealing with them have been proposed for the areas within its review process and seek feedback on this draft report before the Committee submits its recommendations with the Legislature.

Good public policy demands care and consideration of analysis and impacts. Good policy development can then anticipate consequences and mitigate them. Unintended consequences can then be avoided. We believe the Committee should be motivated by this and issue a preliminary report on its findings.

Conclusion

Municipal governments intersect in many ways with the *Aggregate Resources Act* regime. Municipal governments are assigned land use planning responsibilities. The public look to councils to represent them. The industry looks to council to work with them to develop resources. Municipal governments are host and users. In all of this, there are a myriad of relationships that rest on quality of process, responding to concerns and trust in decisions made.

In addition, the continued safeguarding of water sources, ensuring the affordability of building materials for the infrastructure we all depend on, the upkeep of municipal roads and bridges used to transport aggregates materials, and the rehabilitation of sites are all key considerations where a fine and transparent balance must be sought. We have provided you with some very quick commentary on the issues before the Committee. As noted at the outset, should the report of the Committee recommend that the Act undergo changes, AMO would be interested in undertaking its Task Force policy development approach that would involve those top producing host municipalities, those that rely on the market, and a geographical representative of northern and southern Ontario as the Act has different meaning and impact across the province. The Ministries are reminded that should legislative change be undertaken for this Act, that there is another piece of legislation that sets out requirement for pre-consultation through an Ontario-AMO Memorandum of Understanding. Again, it is an effective vehicle for developing good public policy and good implementation.

AMO looks forward to seeing how the Standing Committee addresses the issues before it and concerns raised and its recommendations on the *Aggregates Resources Act*. We wish you the best in your deliberations.