

August 29th 2005

Stuart Thatcher
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Aggregate and Petroleum Resources Section
Lands and Waters Branch
Ministry of Natural Resources
P.O. Box 7000
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PETERBOROUGH, ON
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Dear Mr. Thatcher,

Re: EBR PB05E6006 – Aggregate Resources’ Policy & Procedures Manual
By Fax to: 705-755-1206

Thank You

Friends of Rural Communities and the Environment thank you for the opportunity to comment on the Aggregate Resources’ Policy and Procedures Manual and for your personal attendance at the July meeting in Puslinch. We also appreciate your direct intervention to extend the comment period by another month based on feedback at the meeting and presumably echoed by participants in other parts of Ontario.

We do note that the review period remains cursory for a document of the size and implication of this Manual, including the need to cross-reference the Act, Regulation 244/97 and the Provincial Standards for interpretation. As such, our organization has chosen to allocate our resources in such a way as to focus on some thematic comments and to acknowledge that other organizations, such as the Mill Creek Subwatershed Community Liaison Team, among others, will provide more of a ‘line by line’ analysis of specific areas of the Manual.

FORCE

Friends of Rural Communities and the Environment (FORCE) is a federally registered not for profit corporation. It is a citizen-based advocacy group with hundreds of supporters in Kilbride (Burlington), rural Milton, Campbellville, Mountsberg, Freelton, and Carlisle. FORCE was formed in June 2004 to protect our natural and built environments in the face of a proposed large-scale, *below the established groundwater table*, aggregate development by Lowndes Holdings in the Northeast Flamborough portion of the amalgamated City of Hamilton. We note upfront that our organization is not anti-aggregate nor anti-road. Indeed, our area is home to some of Ontario and Canada’s largest aggregate operations. We do, however, have significant issues with the current

application in its proposed location for substantive reasons. We also believe that our organization has a responsibility to promote good government in the area and, ergo, we have a responsibility to input to the broader reform processes which bear upon the approvals process for development proposals such as the one before our communities.

Two of the overriding themes behind FORCE's comments to this Manual are "*Ecology or Conservation First*" and *Certainty*. We have consistently stressed these themes in submissions on related provincial government initiatives such as the Greenbelt, Planning Reform, and Source Water Protection and believe that they should underlay land use planning and aggregate resource management as well.

We can look to both the pollution prevention/abatement community and the conservation community for interpretations of the "Ecology or Conservation First" Principle. With the former, the precautionary principle must be applied when risks – to such things as drinking source water – cannot be prevented nor adequately predicted quantitatively. With respect to conservation, the predominant thinking is that there should be no new or expanded development uses until a network of protected areas is reserved which adequately represents the natural regions – including terrestrial and hydrologic features/functions - affected by that future development.

Certainty is the second principle – certainty, in our case, for the Aggregate industry, Certainty for the Municipalities charged with implementing Provincial Policies and Procedures locally, and Certainty for the residents who make the decision to call these Communities home for their families and their businesses and are then impacted by the uncertainty of proposed developments and land use changes.

To begin, we note that the purposes of the Aggregate Resources Act, as legislated in section 2, are:

- (a) To provide for the management of the aggregate resources of Ontario
- (b) To control and regulate aggregate operations on crown and private lands
- (c) To require the rehabilitation of land from which aggregate has been excavated and
- (d) To minimize adverse impact on the environment in respect of aggregate operations.

These purposes are clear, meaningful and can serve the public interest both in terms of our collective need for aggregate resources as well as our need to protect and enhance our environment. How the purposes are implemented (along with other legislative and regulatory provisions), however, determines how successful the actual outcomes are.

MNR's Role

The opening comments presented in Puslinch suggested that MNR staff implement what the ARA says and cannot change the rules. It was also suggested that MNR does not take a position on applications but performs a "clerical function" to collect data and studies and simply refers all matters to the Ontario Municipal Board for decision. This explicitly stated role, and any reflection of same in the Manual, is of concern to our organization for two reasons.

First, by contrast, section 11 of the ARA appears to place an onus on the Minister to ensure that a “*comprehensive review*” is undertaken and that the application is complete prior to referring an application for the public consultation phase of an ARA licence. It would seem to our organization that MNR is well positioned – in conjunction with its colleagues in relevant portfolios - to undertake this assessment and evaluate an application given the breadth of issues and Provincial Interests contained within the Ministry. We can find no section which mutes the ministry voice and renders its function clerical – the decision of the Minister to refer a matter or application to the OMB is discretionary.

Second, the presentation, and practical experience whereby municipal and/or OMB conditions have not been reflected in site plans and licence conditions, suggest that the MNR acts strictly within its mandate for implementation. The Manual should provide for the role of MNR and for the role of other related portfolios and agencies (with interministry MOUs or other appropriate instruments) throughout the application, operation, and rehabilitation processes in terms of evaluation and enforcement. This has been the case with occupational health and safety and environmental enforcement in some jurisdictions. This would ensure that conditions related to haul routes, culture/archaeology and other issues outside of direct MNR purview are captured and enforced – particularly where referrals and/or appeals to the OMB or Joint Board do occur.

Provincial Interests

The current position regarding Provincial Interests is reflected in the Provincial Policy Statement 2005, effective March 1st of this year. We note that major portions of the text of the Policy and Procedures Manual predate the issuance of this Statement (and possibly even the PPS 1997). *The text of the Manual needs to be reviewed to ensure that it accurately reflects the intent and interpretations of the Provincial Interest provisions – notably in the Wise Use of Resources section - in the current PPS and its definitions.*

Similarly, the text of the Manual should be in compliance and consistent with information contained in other MNR and ministry Manuals and publications. Examples include: Protecting What Sustains Us: Ontario’s Biodiversity Strategy 2005, Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement 1999, and the Ontario Wetland Evaluation System Southern Manual March 1993, among others.

Protection and Conservation of Water Resources as one Provincial Interest

Protection of surface and ground water resources has rightly become a major focus for legislative, regulatory, and implementation guide change in recent years and other source water protection legislation is pending. *The Policy and Procedures Manual should ensure that our water resources are protected by requiring the full assessment and evaluation of expected, unanticipated and actual adverse impacts and the effects of proposed mitigative measures.* This should include full modelling and, at a minimum, the types of analyses specified in the Expert Technical Committee report to the Minister of the Environment regarding source water protection. *Cumulative environmental impacts, especially in below the ground water table environments, should also be explicitly reflected in the Manual and fully analyzed and evaluated prior to decision.*

The MOE has the legal jurisdiction to protect all surface and ground water resources through the provisions of the Ontario Water Resources Act (s29(1)). *The Ministry of the Environment should return to an active role* reviewing and commenting on surface and ground water impacts for all proposed pits and quarries, whatever category, and when amendments to site plans are proposed and/or licence conditions are proposed to be varied, added or rescinded. This role should not be simply assumed by MNR personnel. Further, *MOE "Permits to Take Water" should be incorporated upfront into the licensing process for pits and quarries* not simply when a permit application is being processed.

Resources

Resources – both financial and human – are critical for successful outcomes. Significant re-investment is required at MNR and related portfolios in order to permit the analysis and evaluation required at the application stage, to actually implement the Policy and Procedures Manual, and to enforce legislative, regulatory and related provisions. MNR is in particular need of conservation and enforcement officers and enforcement supervisors. We understand that there are some 2800 licences issued (some 2400 which are not standardized and were established prior to the ARA Provincial Standards) and some 3300 permits. Twenty inspectors, 16 in Southern Ontario, is clearly woefully inadequate to control and regulate the number of operations in existence and the variable performance within the sector. The Ontario Environment Commissioner has documented the resource issue in two recent Annual Reports with respect to below target inspection rates and performance generally and, with particular focus, on poor performance in progressive and final rehabilitation. Re-investment in human resources for this sector are also important to ensure a healthy counterbalance to the strong industry self-stewardship role established in the current version of the ARA. MNR must be seen and be perceived to be acting in the public interest.

Reflecting The Public Interest

The Policy and Procedures Manual contains references such as “not contrary to the public interest” and “necessary to protect the public interest”. If this is not to be simply “lip service”, it follows that all sections of the Manual should require notification and consultation with the local Municipality, the county or regional municipality if applicable, agencies, and the general public when certain changes are contemplated. Notification and consultation can be conducted professionally in a timely manner and are embraced by proactive and good corporate citizens. These should include such things as:

- Relief from compliance with provisions in the Act, Regulation 244/97 and/or the Provincial Standards
- Amendments to Site Plans
- Variances, additions and/or deletions/rescinding of licence conditions (prescribed and specific)
- Transfers of licence and
- Application for a new licence category (1-8) and/or permit category (9-15) for a pit or quarry already licensed or for which a permit has previously been issued.

Interpreting the ARA

The points and themes noted above, including an explicit reflection of the public interest, are also relevant because undoubtedly the ARA, Regulation 244/97 and the Provincial Standards require interpretation. As much as the ministry is to implement what the ARA says and not change the rules, interpretation is a subjective thing and policy making through interpretation occurs.

As one example, section 2.00.00 Licences: General includes the statement that “All licenses are issued in perpetuity or until the license is surrendered or revoked. Licence may be issued with termination date as a condition of the licence (although this situation is rare).” We have been unable to locate a “perpetuity clause” within the ARA or related instruments. Perpetuity also seems inconsistent with the postulated “interim use” that aggregate operations are to represent. Interpretation is suggesting such a position, however, on licences with significant impact. Most other licences for other resource and consumer purposes have limitations based on time, lifespan, extraction limits, performance, etc.

Another example is the process for expansion of aggregate operations. MNR’s position, through interpretation as opposed to explicit legislative or regulatory provision, is that the site plan is the primary instrument that regulates how a site is to be operated (i.e. its depth of extraction). Even where a site plan indicated that extraction below the water table was not to occur, no fulsome process and public involvement is required for such a vertical expansion.

Conclusion

The Aggregate Policy and Procedures Manual is an important tool to assist MNR staff in their duty to effect the purposes of the ARA. Its updating is important in order to reflect the most current statutory provisions and other regulatory advances across related government initiatives. If amended thoroughly and supported with sufficient human and financial resources, the public interest in terms of both aggregate development and environmental protection can be better served.

Yours sincerely,

A handwritten signature in black ink that reads "G. Flint". The signature is written in a cursive style with a long horizontal line underneath the name.

Graham Flint, B.A.Sc., P.Eng.
FORCE Chair & Spokesperson