A.C.R.O. Association of Counties and Regions of Ontario

Telephone (416) 593-1477 100 University Ave., Suite 501, Toronto, Ontario M5J 1V6

RESPONSE

TO

BILL 127 - AN ACT TO REVISE THE PITS AND QUARRIES CONTROL ACT, 1971

Endorsed by the ACRO Board of Directors

August 31, 1979

As Endorsed by the Municipal Liaison Committee

14 September 1979

The Ontario Legislature gave first reading to Bill 127 - *The Aggregates Act - An Act to Revise the Pits and Quarries Control Act, 1971*, on June 14, 1979.

The preceding *Pits and Quarries Control Act, 1971*, proved inadequate, failing to effectively control operation and rehabilitation standards. The recognition of ensuing environmental and rehabilitation problems precipitated the Ontario Mineral Aggregate Working Party appointment by the Ontario Government in December of 1975. The Working Party examined the operations of the aggregate industry and the concerns of municipalities, distributing its report in December 1976. After extensive review by concerned groups, recommendations were made for drafting the new legislation.

The Ministry of Natural Resources in revising the aggregate legislation is attempting to comprehensively supervise and regulate all aggregate operations. It is difficult to accurately predict whether or not this Bill does in fact give the necessary authority to the Minister to compel aggregate operators to comply with the Act. The Ministry will need appropriate financial and human resources if it is to effectively administer the revised Act. Without adequate manpower to enforce the legislation it is unlikely that the public will see any marked improvement in the operation or rehabilitation of pits and quarries.

The new Act has three purposes:

- *to provide for the management of the aggregate and Crown aggregate resources of Ontario;*
- *to control and regulate pits and quarries, wayside pits and quarries and Crown aggregate pits and quarries;*
- *to require the rehabilitation of land from which aggregate or Crown aggregate has been excavated.*

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Generally, the revised Act is significantly improved. Through two comprehensive systems of site plan documentation for licenses the Act should prove far more adequate in effectively controlling the operation and rehabilitation standards of the aggregate industry. The prescribed power of the Minister as outlined in Section 3 should result in improved research and information dissemination aiding both public and private aggregate operations to improve their rehabilitation and operational standards.

One area of concern strongly related to the problem of enforcement is the issue of future planning. The revised Act conspicuously avoids mentioning future designation of mineral aggregate areas. Under Section 3 subsection 2(f) of Bill 127 it is clear that future designation is being alluded to when it states that the Minister has the authority to *advise ministries and municipalities on planning matters related to aggregates*. This Association appreciates the critical need for future planning. It is imperative that all municipal governments in the responsible execution of their authority plan for the future. Unfortunately the realities of the past and present performance of some aggregate producers make it difficult if not impossible in a few county and regional situations for the designation of future aggregate areas. Through a co-operative effort on the part of aggregate producers, the Ministry of Natural Resources and municipal governments, this problem will hopefully be resolved.

For the purpose of responding to the revised legislation the Association reviewed most sections within the Act. It was difficult to segregate sections of the Act according to sections "pertaining to" and sections "not pertaining to" counties and regions. There are few if any pit or quarry operations in Southern Ontario that do not in some manner have a significant effect upon a county or region.

The following is a review of the sections that are of interest to this Association.

Section 1

ACRO concurs.

(*o*) "permittee" means a person who holds a permit;

(*p*) "pit" means land from which unconsolidated aggregate has been, is being or may be excavated, but does not include,

(i) an excavation for a building, a structure or a project of any kind that in the opinion of the Minister is not a pit, or

(ii) a wayside pit;

(*q*) "prescribed" means prescribed by the regulations;

(*r*) "progressive rehabilitation" means rehabilitation done sequentially in accordance with this Act, the regulations, the conditions of the licence or permit and the requirements of the site plan during the period that aggregate or Crown aggregate is being excavated;

(*s*) "public authority" includes the Crown, a Crown agency within the meaning of *The Crown Agency Act*, a municipality or local board as defined in *The Municipal Affairs Act*, an authority within the meaning of *The Conservation Authorities Act*, and Ontario Hydro; R.S.O. 1970, cc. 100, 118, 78

(*t*) "quarry" means land from which consolidated aggregate has been, is being or may be excavated, but does not include,

(i) an excavation for a building, a structure or a project of any kind that in the opinion of the Minister is not a quarry, or

(ii) a wayside quarry;

(*u*) "regional municipality" includes a district municipality and The Municipality of Metropolitan Toronto;

(*v*) "regulations" means the regulations made under this Act;

(*w*) "rehabilitate" means to treat land from which aggregate or Crown aggregate has been excavated so that the use or condition of the land,

(i) is restored to its former use or condition, or

(ii) is changed to another use or condition that is or will be compatible with the use of adjacent land,

and "rehabilitation" has a corresponding meaning;

(*x*) "site" means the land to which a licence or permit or an application therefor relates;

(*y*) "Treasurer" means the Treasurer of Ontario and Minister of Economics;

(*z*) "wayside pit or quarry" means land from which consolidated or unconsolidated aggregate, as the case may be, has been, is being or may be excavated for use in a project of a public authority and that is located outside the limits of the right of way of a highway, but does not include a pit or quarry. 1971, c. 96, s. 1, *amended*.

PART I

General

Section 2

ACRO concurs.

Section 3 and 4

ACRO has in the past stated that it recognizes the need for an uniform and all encompassing provincial approach to the management of mineral aggregate resources and also that the responsibilities for establishing broad guidelines and general policies must rest with the province.

The Ontario Mineral Aggregate Working Party recommended that the regional or county government is the appropriate level of municipal government to deal with aggregate issues. Section 3 of the revised Act clearly concentrates all authority and administration responsibilities upon the Minister of Natural Resources and any designated employee (Section 4). While this approach will guarantee uniformity, ACRO is concerned about the ability of a centralized authority to adequately administer and enforce the legislation.

Section 5

ACRO recommends all of Southern Ontario be designated under the new Act accompanied by appropriate financial and human resources enabling adequate enforcement of the legislation.

Section 6

ACRO concurs.

PART II

Pit and Quarry Licenses

Sections 7 to 9

These sections deal with the application requirements and licensing of aggregate operations. It appears that the Ministry has significantly improved the application requirements while making them relatively flexible through the use of two classes of licenses. These requirements appear adequate. ACRO would like to see the maximum annual tonnage of aggregate for a Class B license increased to 35,000 tonnes extracted annually. This increase would allow for more competitive bidding on contracts tendered by municipalities among the smaller aggregate operators. The minimum extracted annual tonnage for a Class A license would be increased accordingly to 35,000 tonnes extracted annually.

It is hoped that through the use of modern computer technology the data required by Sections 8 and 9 will be compiled, stored and made accessible to aid the Minister and other governmental officials and staff in future policy planning.

(3) Every site plan accompanying an application for a Class A licence shall be certified by a professional engineer who is a member of the Association of Professional Engineers of the Province of Ontario, an Ontario land surveyor, who is a member of the Association of Ontario Land Surveyors, a landscape architect who is a member of the Ontario Association of Landscape Architects, or any other qualified person approved in writing by the Minister that the site plan has been prepared by him. *New.* Certification

(4) The site plan accompanying an application for a Class B licence shall be in the prescribed form and shall show, Site plans for Class B licences

(*a*) a key map showing the location of the site;

(*b*) a general description of the site, including lot and concession lines, if any;

(*c*) the shape, dimensions and hectarage of the site;

(*d*) the existing and estimated final elevations of the site;

(*e*) the use of the land and the location and use of the buildings and other structures within 150 metres of the site;

(*f*) the location, dimensions and use of the buildings and other structures existing or proposed to be erected on the site;

(*g*) the location of the excavation setback limits;

(*h*) the location of fences and any significant natural features;

(*i*) the location of tree screens and the species and types of the trees;

(*j*) the location of earth berms and their height and slope;

(*k*) every entrance to and exit from the site;

(*l*) existing and proposed drainage facilities on the site;

(*m*) the sequence or direction of operation; and

(*n*) the progressive rehabilitation and final rehabilitation plans,

and may show such other information as the applicant considers advisable. 1971, c. 96, s. 4 (3), amended.

(5) Every site plan accompanying an application for a Class B licence shall be signed by the applicant. *New.* Signature

Section 10

ACRO concurs provided that any enacted area by-law be applicable to the Ministry without exclusion.

Section 11

ACRO concurs provided municipalities in subsection (a) means a county or region and local municipality.

Section 12

ACRO concurs. This is the only opportunity for municipal input into a decision to issue a license. ACRO is concerned about the interpretation of subsection 7. What is "sufficiently substantial" to a municipality may not appear "sufficiently substantial" to the Minister. The wording of this subsection is not supported for this reason.

Section 13

ACRO concurs and reiterates the necessity for compliance with enacted area by-laws and appropriate notification of issuance or change in the condition of a license to the county or region and the local municipality.

Section 14

ACRO concurs. There is serious concern over the possibility of a decrease in funding in some other area by the Province once disbursal of annual license fees begins. ACRO's support of Section 14 is contingent upon the understanding that the disbursal of annual license fees will not affect in any way the transfer of any other funds from the Province to municipalities. It is further recommended that a sub-section 5 be added to this Section to read: The Minister shall remit to the local municipality and region or county their portion of the license fees within 45 days of March 15.

Section 15

ACRO concurs.

Section 16

ACRO concurs.

Section 17

ACRO concurs - as far as this Section goes. It is essential that the counties and regions and local municipalities be asked for input at least every fifth year. Provision should be made for comments from the municipal level at any time during the annual inspection and review for the purpose of assessing the licensee's compliance with the Act.

Sections 18 to 20

ACRO concurs.

Section 21

ACRO concurs. It is necessary that the Minister notify the county or region and local municipality of any intended change in the status of a license.

Section 22

ACRO is concerned that after having gone through the process of an OMB hearing the Minister may choose to ignore the Boards recommendations. In such a circumstance an appeal to Cabinet should be provided for.

Section 23

ACRO concurs.

PART III

Wayside Pit and Quarry Permits

Section 24

ACRO partially agrees - the county, region and local municipality should be permitted to comment on permit issuances.

Section 25

ACRO concurs.

Section 26

The Minister must consider all comments provided by the local municipality and the county or region.

Section 27

This Section is unacceptable. A consultation mechanism that is acceptable to both the Ministry and the county or region and the local municipality must be established and implemented before any area by-law can be ignored by the Minister or his staff. Municipal input is essential.

Section 28

This is essential.

Section 29

ACRO concurs provided the county or region and the local municipality are notified of any wayside pit and quarry operation within the political boundaries of the municipalities.

Section 30

ACRO concurs provided the county or region and local municipality are notified accordingly.

Section 31

ACRO concurs.

Section 32

ACRO concurs provided the Minister notify the county or region and local municipality of any change in permit status and provided that the Minister consider at any time, a request for a condition change, suspension or revocation of a wayside pit or quarry permit submitted by the county or region and local municipality in which that operation is located.

PART IV

Abandoned Pits and Quarries

Section 33

ACRO concurs.

PART V

Crown Aggregate Permits

Sections 34 to 45

ACRO concurs provided notification is given to any adjacent county, region and local municipality where crown aggregate is being extracted. Provision should also be made for disbursal of funds accordingly to adjacent municipalities if there are costs incurred by the transport of crown aggregate over those municipal roads. The specific situation will dictate the need.

44.—(1) Where the Minister has, Notice to applicant or permittee

suspended a Crown aggregate permit;

(*b*) revoked a Crown aggregate permit; or

(*c*) refused to issue another Crown aggregate permit upon an application under subsection 2 of section 34,

he shall serve forthwith notice thereof including the reasons therefor upon the applicant or permittee.

(2) Any action of the Minister under subsection 1 is effective as soon as the notice mentioned in that subsection is served upon the applicant or permittee. Time of taking effect

(3) The notice under subsection 1 shall inform the recipient that he is entitled to a hearing by the Commissioner if he serves, within fifteen days after the notice under subsection 1 is served upon him, the Minister with notice that he requires a hearing. Notice requiring a hearing

(4) Where the recipient serves the Minister with notice under subsection 3 that he requires a hearing, the Minister shall refer the matter to the Commissioner for a hearing. Hearing

(5) Where a matter is referred to the Commissioner, the Commissioner shall hold a hearing to decide whether the Crown aggregate permit should remain suspended or revoked or be issued, as the case may be, and the Commissioner may, after the hearing, so decide. Idem

(6) Where a matter is referred to the Commissioner under this section, he shall specify the parties to the proceedings. Idem

(7) The Commissioner shall serve notice upon the parties to the proceedings of his decision and the reasons therefor. Notice of decision

(8) An appeal lies to the Supreme Court from a decision of the Commissioner under this section if a notice of appeal is served by the party appealing upon the other parties to the proceedings within fifteen days after the receipt by him of the notice of the decision. *New.* Appeal

45.—(1) The Minister shall determine the royalty per tonne that each Crown aggregate permittee must pay under subsection 2, but in no case shall the royalty be less than the prescribed minimum royalty, and, in determining the royalty, the Minister shall have regard to the location, quantity, type and accessibility of the Crown aggregate and its intended use. Royalties

(2) Every Crown aggregate permittee shall pay a royalty to the Treasurer on or before the tenth day of the month immediately following the month in which the Crown aggregate is removed from the site at the rate per tonne determined under subsection 1 multiplied by the number of tonnes removed. Royalties to be paid

(3) The Minister may require a Crown aggregate permittee to give security of the prescribed kind and in an amount or amounts determined by the Minister for the payment of any sum that is due or that may become due under subsection 2. Security

(4) Where a person defaults in the payment of a royalty under subsection 2, the amount thereof may be recovered by the Crown Recovery of royalties in default

PART VI

Rehabilitation

Sections 46 to 54

ACRO concurs.

Rehabilitation security accounts

51.—(1) Sums paid by a licensee, a wayside pit or quarry permittee or a Crown aggregate permittee under section 48, 49 or 50 shall be held in an account in his name and shall be paid out in accordance with this Part.

Interest payable

(2) Sums paid by a licenseee or Crown aggregate permittee under section 48 or 50 shall earn interest at the prescribed rate.

Interest deemed security

(3) Interest earned under subsection 2 shall be deemed to form part of the rehabilitation security. *New*.

Partial refunds

52.—(1) Where a licensee or a Crown aggregate permittee submits proof to the satisfaction of the Minister that he has performed progressive rehabilitation on his site in accordance with this Act, the regulations, the conditions of his licence or Crown aggregate permit and the requirements of his site plan, he is entitled to a refund not more than twice a year out of his rehabilitation security account in accordance with the regulations.

Amount

(2) The Minister shall determine the amount of the refund mentioned in subsection 1, but in no case shall the amount of the refund reduce the amount remaining in the rehabilitation security account of the licensee or Crown aggregate permittee to less than the prescribed minimum per hectare requiring rehabilitation. *New*.

Refunds when rehabilitation work fully performed

53. Where a licensee or permittee has submitted proof to the satisfaction of the Minister that he has performed his final rehabilitation work in accordance with this Act, the regulations, the conditions of his licence or permit and the requirements of his site plan, the Treasurer shall refund to him the total sum to his credit in his rehabilitation security account. *New*.

When rehabilitation work not performed

54.—(1) Where a licence or permit is revoked or a permit expires and the rehabilitation work has not been performed in accordance with this Act, the regulations, the conditions of the licence or permit, and the requirements of the site plan to the satisfaction of the Minister, the Minister may enter upon the site and perform such rehabilitation work as he considers necessary. *New*.

Recovery of cost

(2) The cost of rehabilitation work performed by the Minister under subsection 1 is a debt due to the Crown by the former licensee or permittee and shall be paid by the Treasurer out of the former licensee's or permittee's rehabilitation security account into the Consolidated Revenue Fund. 1971, c. 96, s. 11, *amended*.

Disposition of surplus

(3) Where any sum remains to the credit of the former licensee or permittee in his rehabilitation security account after the cost of rehabilitation work performed by the Minister under subsection 1 has been paid out under subsection 2, the sum so remaining shall be paid by the Treasurer to the former licensee or permittee.

Recovery of deficiency

(4) Where the sum to the credit of the former licensee or permittee in his rehabilitation security account is insufficient to defray the cost of rehabilitation work performed by the Minister under subsection 1, the amount of the deficiency is a debt due to the Crown by the former licensee or permittee and is recoverable by the Crown in any court of competent jurisdiction. *New*.

PART VII

Offences and Penalties

Sections 55 to 57

ACRO concurs with the exception of Section 56 subsection (2). ACRO would like to see the penalty for an offence under Section 55 subsection (3), (4), (5) or (6) increased from a minimum of $200 to a minimum of $1000.

Section 62

Subsection (a) to (e) - ACRO concurs providing the summary sheet from the Ministry of Natural Resources is an accurate representation of the fee structure and that the comments made by ACRO on Section 14 subsection (3) are met.

Subsection (f) - ACRO concurs only if the concerns mentioned in ACRO's response to Section 14 subsection (3) are met.

Subsection (g) to (p) - ACRO concurs.

Section 63

ACRO concurs.

Section 64

Subsection (1) to (3) - ACRO concurs.

Subsection (4) - ACRO cannot agree with non-compliance of an area by-law without consultation with the municipality involved.

Subsection (5) to (9) - ACRO concurs.

Section 65

Subsection (1) to (4) - ACRO concurs.

Subsection (5) - ACRO cannot support non-compliance with an area by-law without consultation with the municipality involved.

Subsection (6) - ACRO concurs.

Sections 66 to 71

ACRO concurs.

RESPONSE TO SUMMARY OF FINANCIAL ASPECTS OF THE REGULATIONS FOR THE AGGREGATES ACT

The proposed license fees outlined in the summary sheet have received general acceptance by ACRO. Until the system is in operation it is difficult to comment on whether the fees, as disbursed to municipalities will cover the costs incurred as a result of aggregate operations. Obviously some municipalities that are presently providing a significant percentage of the total aggregate produced will find deficiencies in the system. Other municipalities will find the license fees adequate. At the county or regional level, ACRO recommends an increase in the proposed per tonnage fee charged to aggregate operators to allow for an increase from 1/2¢ per tonne to the County or Region up to 1¢ per tonne to the County or Region. This increase should cover the costs incurred for road maintenance as a result of trucking aggregate.

ACRO is satisfied with the rehabilitation security deposit and supports the unilateral imposition of the surcharge. Hopefully this increase in the rehabilitation security deposit will significantly improve the present unsatisfactory level of rehabilitation being carried out in the province.

There are two areas of concern regarding the proposed financial aspects of the regulations.

The first area of concern, as previously mentioned, deals with the disbursal of annual license fees. ACRO is seriously concerned about the possibility of the Province cutting back in another area of funding to municipalities in order to balance out this new source of revenue to municipalities. It is hoped this will not occur and that the Ministry of Natural Resources will do all it can to ensure against the possibility.

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