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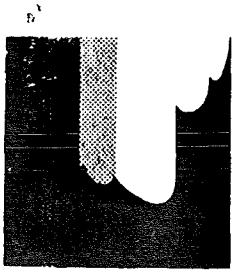

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MINERAL AGGREGATE RESOURCE PLANNING POLICY:

RESPONSE OF THE

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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INTRODUCTION

The Canadian Environmental Law Association (CELA) is a public-interest environmental law organization. In this capacity, we have often acted as counsel for citizens' groups. In addition, CELA has engaged in legal research and law reform.

Aggregate extraction, and the environmental consequences associated with it, have led CELA to make legislative submissions in the past. In 1979, the Centre for Resource Studies of Queen's University published a paper written by CELA staff titled "The Proposed Ontario Aggregates Act: Discussion, Evaluation and Recommendations". On February 5, 1980, CELA submitted a brief on the proposed Aggregates Act, Bill 127 to the Standing Committee on Resources Developments.

Sound mineral aggregate resource management policies must be based on the premise that there is a need to minimize adverse social and environmental impacts, to protect features of significant natural, architectural, historical or archaeological interest, and to conserve aggregates, which are a non-renewable resource. It should also provide for

public participation in the process of licencing, monitoring and reviewing the operations of mineral aggregate extraction activities. The policy must provide enforcement mechanisms for rehabilitating completed sites and abandoned sites.

It is recognized that a reliable source of aggregates is necessary to the provincial economy. Aggregate is vital to virtually all types of construction activities. However, the manner of operation, the location and the lack of rehabilitation has made pits and quarries a frequent and vexing source of conflict between the operator, and rate-payers groups and the municipality. Therefore, provincial mineral aggregate policy must recognize as a first principle the need to carry out extractions of this vital resource in ways that minimize social and environmental problems.

Most of the gravel mined in Ontario is extracted from highly urbanized areas containing about 1/4 of Canada's population and most of Canada's Class I, II, III and IV farmland. Therefore, the province must recognize the need to safeguard these other valued land uses. Mineral aggregate extraction should not be given greater priority over equally valued and essential land uses. The Province must declare other important land uses, such as foodlands, to be a matter of provincial interest in a strongly worded policy similar to the Mineral Aggregate Policy.

II. Protection of the Environment

The proposed government policy recognizes the need to require that mineral aggregate extraction be carried out with minimal social and environmental cost. However, this is only one of a long list of principles within the policy. We strongly recommend that this principle be made the first objective of the government's policy.

Pits and quarries are a source of severe environmental problems for municipalities. Aggregate extraction activity has in the past affected groundwater quality and quantity. It causes nuisance problems because of the dust and noise. Heavy truck traffic creates stress on the road systems. The lack of rehabilitation or poor rehabilitation of pits and quarries leaves the municipality with a useless eyesore. Is it any wonder that municipalities have been taking advantage of their statutory powers to restrict mineral aggregate activities within their boundaries?

By making environmentally and socially sound pits and quarries operations the first principle of the policy, the provincial government will be assuring the municipalities that operators will shoulder the responsibility for the long-term problems associated with exhausted mineral aggregate extraction sites. Policy and regulatory prohibitions must be established immediately by the provincial government to:

a) establish and enforce good operating standards;

b) establish and enforce rehabilitation standards;

c) establish and implement evaluation and approval procedures for new operations and expansion of existing programs and wayside pits and quarries, that permit increased public participation.

III. Mineral Aggregates Policy and Conflicts with Other Land-Uses

In the absence of provincial policy declaring other land uses as provincially significant, the strongly-worded mineral aggregates policy appears to establish mineral aggregate extraction as being predominant over other competing land uses.

The policy on mineral aggregates recognizes in some cases that other land uses such as special agricultural land uses may take preference over aggregate extraction. We feel this assurance is insufficient. The work "may" should be replaced by the word "must": specifically, speciality croplands and high capability agricultural land use for Class I, II, III and IV soils should have preference over aggregate extraction in most cases.

Therefore we recommend that mineral aggregate producers not be allowed to extract on lands with special or good agricultural potential and that they must prove there is a substantial need for aggregates which cannot be met elsewhere

before being allowed to extract on lands with high agricultural capability. However, in situations where the supply of good quality agricultural potential has been reduced in an area, no extraction should take place.

This Ministry of Natural Resources (MNR) policy is promoting the idea that rehabilitating exhausted sand and gravel land to an agricultural after use is possible. We are not convinced that it is possible to grow crops of the same quality on land which has been rehabilitated. In a booklet published by MNR, Agriculture and the Aggregate Industry, MNR states: "rehabilitated lands should be used for leguminous crops such as afalfa or legumes - but not for corn or other general crops". Furthermore, MNR states in their booklet that abandoned pits and quarries cannot be rehabilitated for use in producing arable crops, they can only be used as permanent pasture land.

IV. Reasonable Costs

The province's policy on mineral aggregates states: "Mineral aggregates should be available at a reasonable cost". From CELA's perspective, the term reasonable cost is not synonymous with the lowest cost. A reasonable cost should incorporate in the price structure the cost of properly rehabilitating the pit or quarry, the cost of compensating the community for causing environmental damage, and the liability for problems that may arise from abandoned pits in the future.

V. Should Mineral Aggregates be Exploited Wherever They are Found

The aim of the policy for official plans is to encourage municipalities to identify and protect as much of the mineral aggregate resource as realistically possible in the context of other land use objectives.

The province's policy should clarify whether the existence of mineral aggregates always necessitates its exploitation. The only limitation the policy places on extraction is where extraction may not be feasible, or where alternate land use or development would not preclude or hinder future extraction. The policy places the onus on the developer of the alternate use to convince the municipality that mineral extraction is not feasible and that the alternative use is more beneficial to the community in the long run. We maintain that in situations where other uses conflict with mineral aggregate extraction, the onus should be on the mineral aggregate producer to prove a need. For example, the onus should be placed on aggregate producers to show their need is greater than the need for agricultural land, because the impact of aggregate production on agricultural land is devastating.

Special consideration for limiting mineral aggregate extraction should be given to municipalities that already have an inordinately high number of pits and quarries, or have a

high number of pits and quarries which have not been properly rehabilitated. A municipality in that situation should be able to stipulate in its official plan: (a) where numerous numbers of pits and quarries are in operation, no more will be permitted until existing sites are completed and rehabilitated; (b) where numerous abandoned pits and quarries exist, no new pits and quarries will be permitted until the province, the mineral aggregate industry as a whole or the previous owner rehabilitates the abandoned pits and quarries; (c) the municipality may enter into a pit and quarry development agreement with the aggregate producer.

With respect to the latter option, the contract between the municipality and the aggregate producer should allow the producer to establish a pit or a quarry based on the fulfilment by the aggregate producer of agreed-upon conditions. They may include: a) an agreement requiring the aggregate producer to rehabilitate the completed pit or quarry to a desired after-use state; b) a requirement that the operator carry out the extraction in an environmentally safe and acceptable manner; c) payment of a levy for road repairs. Future approvals by the municipality could then be based on the producer's performance of its obligations under the contract. For example, in cases where an aggregate producer reneged on the agreement, the licence for the existing operation could be revoked. Future bids for licences would then be refused by the Ministry of

Natural Resources until the terms of the agreements were fulfilled. In addition, the municipality could pursue civil action against the mineral aggregate producer.

VI. Zoning By-Laws

The policy as it applies to future pits and quarry operations has some merit. We agree that once a municipality has identified the areas it wants to reserve for mineral aggregate extraction, then it should use zoning by-laws to segregate mineral extraction operations from incompatible uses. In addition, municipal by-laws should require screening and set-back requirements for all permanent pits and quarries.

VII. Recommendations

The provincial government should use its mineral aggregates policy to promote the responsible extraction of mineral aggregates. The province should do this by:

1) Augmenting and enforcing the rehabilitation requirements in the Pits and Quarries Control Act. Failure to properly rehabilitate land should result in no future licence being awarded to negligent operators. Rehabilitation methods should be researched by the Ministry of Natural Resources and new and more sound techniques introduced to the industry.

2) Adopting as a first principle the requirement that mineral aggregate extraction be carried on with minimal social and environmental cost.

3) Recognizing that there are other land uses of provincial significance and the need to protect these other land uses.

4) Requiring that pits and quarries as much as possible be located on lands of no or low agricultural potential, and stipulating that where an aggregate producer wants to locate pits or quarries on such lands, the onus must be on him to prove need.

5) Promoting true cost accounting principles when calculating the costs of aggregate production. A reasonable price is not the same as the lowest price.

6) Recognizing that promotion of mineral extraction at any cost is an unsound policy. Therefore the policy should be sensitive to the needs of municipalities which already have a large number of pits and quarries or abandoned pits and quarries.

7) Requiring mineral aggregate producers to sign extraction agreements with the municipality in which

they establish their operations. The agreement would make an operator responsible for fulfilling rehabilitation requirements. Failure to fulfill the requirements by the operator would leave him open to civil action and jeopardize the approval of future licences.

8) Establishing realistic setback requirements and requiring that they be enforced. No infringements on buffer areas should be allowed.