Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

November 4, 2019 **BY EMAIL**

Andrew MacDonald
Natural Resources Conservation Policy Branch
Ministry of Natural Resources and Forestry
300 Water Street
Peterborough, ON
K9J 8M5

Dear Mr. MacDonald:

RE: ERO NOTICE #019-0556 – PROPOSED CHANGES TO THE *AGGREGATE RESOURCES ACT* AND ONTARIO REGULATION 244/97

On behalf of the Canadian Environmental Law Association (CELA), I am writing to provide comments to the Ministry of Natural Resources and Forestry (MNRF) in relation to the proposed changes to the *Aggregate Resources Act* (*ARA*) and the general regulation under the *ARA* (O.Reg.244/97).

In the Environmental Registry notice[1] for these wide-ranging proposals, the MNRF states that the changes to the current *ARA* regime are being proposed in order to "reduce burdens for business while maintaining strong protection for the environment and managing impacts to communities."

However, CELA's assessment of the proposed *ARA* changes reveals that this initiative is unlikely to maintain "strong" environmental protection or result in appropriate management of community impacts. More fundamentally, CELA objects to the erroneous characterization of current *ARA* requirements as burdensome "red tape" that should be cut in order to benefit aggregate producers across Ontario.

Accordingly, for the reasons outlined below, CELA recommends that the key *ARA* proposals should not proceed in their current form, and they should instead be withdrawn, deleted or substantially re-written.

PART I – GENERAL COMMENTS

(a) Background

CELA is an environmental public interest law group founded in 1970 for the purposes of using and enhancing laws to protect the environment and safeguard human health. For almost 50 years,

[1] See https://ero.ontario.ca/notice/019-0556.

CELA lawyers have represented low-income and vulnerable communities in the courts and before tribunals on a wide variety of environmental issues.

For example, CELA lawyers frequently represent clients involved in quarry hearings under the *ARA*, *Planning Act* and other applicable statutes. In some cases, CELA's clients are objectors to *ARA* licence applications for new or expanded aggregate operations. In other cases, CELA's clients are added by the Local Planning Appeal Tribunal (LPAT) (formerly the Ontario Municipal Board) as parties or participants in response to appeals or objections filed by other persons.

The overall objectives of CELA's clients in quarry hearings under the *ARA* typically include: conserving water resources and sources of drinking water; protecting local air quality, wildlife habitat and ecosystem features/functions; preserving prime agricultural lands; safeguarding public health and safety; and facilitating meaningful public participation to ensure good land use planning and environmentally sound decision-making across Ontario.

Aside from our case work, CELA has also been involved in various provincial reviews of the *ARA* regime in recent years. For example, CELA testified before the Standing Committee on General Government during its 2012 review of the *ARA*.[2] Similarly, CELA participated in the numerous meetings of the *ARA* Multi-Stakeholder Working Group in the fall of 2014, and provided comments on the MNRF's 2016 *Blueprint for Change* regarding the aggregate sector.[3] We also responded to the 2019 "A Place to Grow" survey conducted by the Ontario Growth Secretariat in relation to aggregate resource policies.[4]

On the basis of our decades-long involvement in aggregate matters at the local, regional and provincial level throughout Ontario, CELA has carefully considered the proposed changes to the *ARA* regime from the public interest perspective of our client communities. Our findings, conclusions and recommendations are set out below.

(b) Environmental Significance of Aggregate Production

In CELA's experience, aggregate operations (e.g. pits and quarries) cannot be characterized as small-scale, temporary or environmentally benign land uses. To the contrary, the extraction, processing and transportation of aggregate materials (and other on-site ancillary activities such as dewatering, fuel storage or asphalt production) are significant, long-term and physically intrusive operations that can result in serious environmental and nuisance impacts (e.g. noise, dust, increased truck traffic, and adverse effects upon water resources, wildlife habitat, and agricultural lands).

Similar views have been expressed by the former Environmental Commissioner of Ontario (ECO) in her annual reports to the Ontario Legislature. For example, in her 2017 environmental protection report, the independent ECO found that:

[2] See https://www.cela.ca/publications/submissions-aggregate-resources-act.
[3] See https://www.cela.ca/aggregates-resources-2015.
[4] See https://www.cela.ca/Survey-A-Place-to-Grow.

> The process of both siting and approving the operation of pits (sand and gravel) and quarries (solid bedrock material such as limestone and granite) is often highly controversial and divisive for many local communities. Few people want to live beside an aggregate operation or its haul roads as they typically generate dust and noise and increase truck traffic.
>
> Aggregate operations can also impact local water systems, wildlife, natural habitats, and farmland. In addition, as pits and quarries often cluster together in groups – where nature deposited the most desirable types of rock – cumulative environmental effects can arise.[5]

This ECO report noted that there are over 6,000 approved pits and quarries across the province, most of which are concentrated on private lands in southern Ontario where the most aggregate is consumed and where land use development pressures are the greatest.[6] The ECO's analysis also confirmed that even when public objections have resulted in MNRF referrals of licence applications to public hearings under the *ARA*, "approvals are rarely denied completely."[7]

More importantly, despite the MNRF's revisions to the *ARA* regime in 2017, the ECO identified the need to undertake further measures to "lighten the environmental footprint of aggregates in Ontario."[8] In particular, the ECO made three main recommendations to the Ontario government:

- decrease the demand for "new" or "virgin" aggregate (e.g. by increasing the use of recycled aggregate, wood building materials and green infrastructure);
- strengthen MNRF powers to update site-specific environmental requirements to ensure that long-operating pits and quarries continue to meet modern standards; and
- improve progressive and final rehabilitation rates through better compliance and enforcement by the MNRF, and through clearer timelines for rehabilitation.[9]

Unfortunately, the *ARA* changes now being proposed by the Ontario government are not aimed at addressing the ECO's well-founded concerns and sound recommendations for long overdue reform. Instead, the current *ARA* proposals are moving in the opposite direction of the ECO recommendations by proposing to modify (or remove) key components of the current provincial and municipal framework that attempt to prevent, minimize or mitigate the adverse effects and environmental risks associated with aggregate production.

Contrary to industry or governmental claims, CELA submits these existing safeguards are not "red tape" nor do they impose an undue burden to the aggregate industry by wholly preventing or unreasonably constraining aggregate extraction. In fact, the record amply demonstrated that new or expanded aggregate operations are readily approvable in Ontario, particularly since they receive preferential treatment in the Provincial Policy Statement issued under the *Planning Act*.[10]

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[5] ECO, *2017 Annual Report: Good Choices, Bad Choices*, page 168.
[6] *Ibid*, page 171.
[7] *Ibid*.
[8] *Ibid*, page 175.
[9] *Ibid*, pages 175 to 183.
[10] See CELA's recent submission on Ontario's proposed changes to the Provincial Policy Statement which assign even greater priority to aggregate production: https://www.cela.ca/planning-act-2019-pps-review.

Accordingly, CELA concludes the Ontario government has fundamentally failed to produce any persuasive evidence-based justification for rolling back or weakening existing legislative and regulatory protections in the aggregate context.

RECOMMENDATION 1: The provincial government should immediately develop and consult Ontarians on appropriate *ARA* changes that decrease aggregate demand, strengthen MNRF powers to protect the environment, and improve rehabilitation rates through better enforcement, as described in the 2017 ECO report.

(c) Unsatisfactory Public Consultation on the Proposed ARA Changes

Before addressing the substance of the proposed *ARA* changes, CELA is compelled to raise two concerns about the objectionable manner in which public input has been solicited by the MNRF about this important matter.

First, the Environmental Registry notice suggests that the *ARA* proposals are intended to address issues raised by aggregate industry representatives at the March 2019 "Aggregates Summit" hosted by the MNRF. Despite our extensive involvement in aggregate cases and law reform initiatives, CELA, other environmental and residents' groups, and leading farm organizations were not invited to participate in the Summit to identify outstanding issues and make recommendations from a non-industry perspective. Accordingly, CELA submits that the *ARA* proposals that flow from the Summit can only be viewed as one-sided attempts to satisfy the aggregate industry, and they do not constitute fair, balanced and effective measures that safeguard all public and private interests that may be affected by aggregate operations.

Second, CELA notes that the current Environmental Registry notice was originally posted on September 20, 2019 to provide a 45 day comment period that ends on November 4, 2019. However, one week prior to the expiry of the comment deadline, the Registry notice was "updated" to provide a link to omnibus Bill 132, which was introduced in the Ontario Legislature on October 28, 2019 in order to amend numerous provincial statutes, including those administered by the MNRF.

Surprisingly, the updated ERO notice makes no mention of the fact that Schedule 16 in Bill 132 specifies the actual text of amendments to the *ARA* that implement the proposals outlined in the ERO notice. Moreover, the updated notice implies that only "three" MNRF statutes (e.g. *Crown Forest Sustainability Act*, *Oil, Gas and Salt Resources Act*, and *Lakes and Rivers Improvement Act*) are being amended by Bill 132. In our view, not only is this notice is misleading and incorrect on this point, but it also demonstrates that the *ARA* changes have progressed well beyond the proposal stage, and were likely drafted by legislative counsel before or during the current public comment period.

In light of Schedule 16 in Bill 132, it appears to CELA that the Ontario government has already decided to proceed with *ARA* changes, well before the current public comment period has even been completed. CELA submits that this unfortunate chronology seriously undermines the efficacy of the public participation provisions under Part II of the *Environmental Bill of Rights* (*EBR*). In addition, the timing of Schedule 16 in Bill 132 sends an inappropriate signal to members

of the public that their comments on ERO #019-0556 are wasted, immaterial, or too late to have any tangible effect on MNRF decision-making about the proposed changes to the *ARA*.

In these circumstances, CELA recommends that the ERO notice should be re-posted for another 45 day comment period, and should be amended to expressly notify the public that Schedule 16 of Bill 132 contains specific amendments to the *ARA*. We are aware that the Environmental Registry now contains a new notice that establishes an inadequate 30 day comment period for Bill 132 in its entirety,[11] and this notice also lacks any explicit reference to the proposed *ARA* changes.

RECOMMENDATION 2: Environmental Registry notice #019-0556 should be re-posted to establish a further 45 day public comment period, and should be amended to expressly indicate that Schedule 16 of Bill 132 contains the specific text of the *ARA* amendments proposed by the provincial government.

PART II – SPECIFIC COMMENTS ON THE PROPOSED *ARA* CHANGES

CELA's comments, concerns and recommendations about the proposed statutory and regulatory changes to the current *ARA* regime are set out below.

(a) Proposed Statutory Changes

The Environmental Registry notice articulates the Ontario government's intentions as follows:

> We are proposing to make amendments to the *Aggregate Resources Act*, while continuing to ensure operators are meeting high standards for aggregate extraction, that would:
>
> - strengthen protection of water resources by creating a more robust application process for existing operators that want to expand to extract aggregate within the water table, allowing for increased public engagement on applications that may impact water resources. This would allow municipalities and others to officially object to an application and provide the opportunity to have their concerns heard by the Local Planning Appeal Tribunal;
> - clarify that depth of extraction of pits and quarries is managed under the *Aggregate Resources Act* and that duplicative municipal zoning by-laws relating to the depth of aggregate extraction would not apply;
> - clarify the application of municipal zoning on Crown land does not apply to aggregate extraction;
> - clarify how haul routes are considered under the *Aggregate Resources Act* so that the Local Planning Appeal Tribunal and the Minister, when making a decision about issuing or refusing a licence, cannot impose conditions requiring agreements between municipalities and aggregate producers regarding aggregate haulage. This change is proposed to apply to all applications in progress where a decision by the Local Planning Appeal Tribunal or the Minister has not yet been made. Municipalities and aggregate producers may continue to enter into agreements on a voluntary basis;

[11] See https://ero.ontario.ca/notice/019-0774.

- improve access to aggregates in adjacent municipal road allowances through a simpler application process (i.e. amendment vs a new application) for an existing license holder, if supported by the municipality; and
- provide more flexibility for regulations to permit self-filing of routine site plan amendments, as long as regulatory conditions are met.

While these proposals have been framed at a high-level without including key implementation details, Schedule 16 of Bill 132 sheds some additional light on how the Ontario government intends to amend the *ARA*.

At the present time, CELA's preliminary views on these statutory amendments may be summarized as follows:

1. While the ERO notice proposes to "strengthen" groundwater protection through a more "robust" application process for aggregate extraction below the water table, it appears to CELA that there is little or nothing in Schedule 16 of Bill 132 that actually implements this commitment. For example, Schedule 16 proposes to expand the regulation-making authority under the *ARA* to enable the provincial Cabinet to define the term "below the water table,"[12] but no proposed definition has been offered. Moreover, while Schedule 16 adds or amends provisions regarding licence/permit applications, licence/permit conditions, and site plans,[13] there seems to be no material change in the application process used to review and approve these items. Indeed, several of these proposed changes are not new at all, but are instead lifted directly from the 2017 amendments to the *ARA* that were made by the previous government, but which have not yet been proclaimed into force.

2. Schedule 16 proposes a new section 13.1 in the *ARA* to address situations where an operator of an above-water table pit or quarry wants to extract aggregate from below the water table.[14] However, CELA notes that there are no substantive safeguards in this new provision that expressly protect groundwater quantity or quantity. In theory, effective and enforceable controls on below-water table extractions could be imposed through new regulatory standards under the *ARA*, but unless and until these standards are promulgated, CELA is unable to agree with the Ontario government's claim that the new application process will better protect groundwater. CELA further notes that section 13.1 itself does not establish a new application process; instead, it simply provides that the existing process will continue to apply unless a new one is prescribed by regulation (which has not happened yet). Therefore, the current status quo remains in effect, which CELA would not characterize as "robust" for the purposes of groundwater protection.

3. Alarmingly, Schedule 16 purports to remove municipalities' authority to protect groundwater resources through zoning by-law restrictions on the depth of extraction.[15] In CELA's view, making zoning by-laws inoperative in this manner weakens – not

[12] Bill 132, Schedule 16, subsection 18(1).
[13] *Ibid*, sections 4 to 6.
[14] *Ibid*, subsection 6(1).
[15] *Ibid*, section 3.

strengthens – groundwater protection, and unduly interferes with the municipalities' duty to identify and protect water resources in accordance with the Provincial Policy Statement issued under the *Planning Act*. Moreover, we are unaware of any compelling jurisdictional, legal or technical reasons why the *ARA* amendments should strip away the existing municipal right to utilize zoning restrictions that safeguard groundwater, especially in the numerous communities across Ontario that are wholly dependent on aquifers for drinking water supply purposes.

4. New subsection 13.1(4) in Schedule 16 specifies that municipalities or members of the public may file objections to new below-water table extraction at existing sites, and the Minister may, in his/her discretion, refer such objections (or just certain issues) to the LPAT for a hearing. In CELA's opinion, this is merely a refinement of existing objection/referral rights under the *ARA*,[16] and does not represent a bold new step to protect groundwater from impacts arising from deepened aggregate extraction. In addition, it is unclear to CELA why the onus of protecting groundwater falls by default to municipalities or concerned citizens, who must expend time, money and effort in appealing matters to the LPAT. Instead, CELA submits that it is the primary responsibility of Ontario government at first instance to set and enforce clear, comprehensive and effective standards for protecting groundwater resources from extraction-related impacts.

5. Schedule 16 clarifies that an *ARA* licencee is not entitled to an LPAT hearing if the Minister adds or varies licence conditions in order to implement source protection plans approved under the *Clean Water Act* (*CWA*).[17] CELA supports this provision, although we note that it flows directly from the mandatory *CWA* requirement[18] that prescribed instruments – such as *ARA* licences for pits and quarries[19] – must be amended to conform to policies in source protection plans that address significant drinking water threats.

6. Schedule 16 stipulates that zoning by-laws are "inoperative" if they include prohibitions against the establishment of pits and quarries on Crown land.[20] CELA presumes that this provision is intended to serve as a legislative response to an Ontario court decision[21] which held that third parties operating on Crown land are subject to applicable zoning by-laws. However, no rationale has been provided by the Ontario for ousting municipal by-laws in this manner under the *ARA*. In short, this provision seems to be a solution in search of a problem.

7. The *ARA* currently identifies various factors that the Minister or the LPAT are to take into account when making decisions about licence applications, including "the main haulage routes and proposed truck traffic to and from the site."[22] However, Schedule 16 adds a new provision that would prohibit these decision-makers from considering "road degradation

[16] *ARA*, subsection 11(5).
[17] Bill 132, Schedule 16, subsection 5(5).
[18] *CWA*, section 43.
[19] O.Reg.287/07, subsection 1.0.1.
[20] Bill 132, Schedule 16, section 11.
[21] *Glaspell v. Ontario*, 2015 ONSC 3965 (Ont SCJ).
[22] *ARA*, subsection 12(h).

that may result from proposed truck traffic to and from the site."[23] If enacted, this prohibition would apply to all pending and future licence applications.[24] CELA does not support this provision since road damage and wear-and-tear from high-volume truck traffic is an important consideration, particularly for residents living along haul routes and for smaller municipalities with numerous aggregate operations and limited funds for road repair and maintenance.

8. Schedule 16 proposes to make it easier for licenced site boundaries to be expanded to include adjoining road allowances, provided that "prescribed conditions, if any, are satisfied."[25] However, since the proposed regulatory conditions (or the proposed "simplified process") have not been disclosed by the provincial government to date, CELA is unable to comment further on this provision.

9. Schedule 16 proposes to expand the Cabinet's regulation-making authority under the *ARA* in relation to site plan amendments.[26] Currently, this authority only permits regulations that address "minor" site plan amendments that can be made without the Minister's approval. However, Schedule 16 proposes to delete the word "minor," which potentially allows proponents to make even major changes without Ministerial approval, provided that the prescribed regulatory requirements are met. Since the Ontario government has not identified the types of "self-filed" site plan amendments that will be permissible, and has not released draft regulatory language on this matter, CELA cannot support this *ARA* amendment.

For the foregoing reasons, CELA recommends that the Ontario government should not proceed with the proposed *ARA* amendments pertaining to road degradation (section 2), exclusion of municipal zoning by-laws to aggregate extraction depths (section 3) or Crown land (section 11), and amendments to site plans without Ministerial approval (section 18(2)).

RECOMMENDATION 3: The proposed *ARA* amendments in sections 2, 3, 11 and 18(2) of Schedule 16 in Bill 132 should not be enacted by the provincial government.

(b) Proposed Regulatory Changes

Aside from the above-noted proposals for statutory changes, the Environmental Registry notice states that the Ontario government is also "considering" the following regulatory changes:

- enhanced reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken;
- allowing operators to self-file changes to existing site plans for some routine activities, subject to conditions set out in regulation (e.g. re-location of some structures or fencing, as long as setbacks are respected);

[23] Bill 132, Schedule 16, section 2.
[24] *Ibid*.
[25] *Ibid*, section 7.
[26] *Ibid*, subsection 18(2).

- allowing some low-risk activities to occur without a licence if conditions specified in regulation are followed (e.g. extraction of small amounts of aggregate if material is for personal use and does not leave the property);
- clarifying requirements for site plan amendment applications;
- streamlining compliance reporting requirements, while maintaining the annual requirement;
- reviewing application requirements for new sites, including notification and consultation requirements; and
- receiving feedback on whether aggregate fees should be changed.

Unfortunately, the actual wording of the proposed amendments to O.Reg.244/97 is not provided in any MNRF documentation attached or linked to the Environmental Registry notice. This omission makes it exceedingly difficult for CELA and other interested persons to provide detailed comments on the regulatory proposals.[27]

On this point, the Environmental Registry notice acknowledges the lack of specificity in the above-noted proposals, but commits the MNRF "to consult further on more specific details related to the regulatory proposals, including any proposed changes to aggregate fees at a later date."

In light of this commitment, CELA reserves the right to make further submissions on these regulatory proposals when the MNRF eventually provides sufficient details about precisely what changes are being made to O.Reg.244/97.

RECOMMENDATION 4: Before the provincial government proceeds with any of its proposed regulatory changes, the draft text of the actual regulatory amendments must be posted on the Environmental Registry for public review and comment in accordance with Part II of the *EBR*.

At the present time, CELA's preliminary views on the vague regulatory proposals described above may be summarized as follows:

1. CELA has no objection in principle to the proposal to "enhance" reporting by aggregate producers on the status of rehabilitation efforts. However, rather than just passively receive proponents' reports, CELA submits that it is far more important for the MNRF to proactively take all necessary compliance and enforcement steps to ensure that approved rehabilitation plans are actually being implemented in an effective and timely manner. This would address the ECO's finding that rehabilitation is often non-existent or of poor quality.[28] This is particularly true in relation to the thousands of abandoned pits and quarries across Ontario that have never been rehabilitated to date, and may not be rehabilitated for many more decades (if at all), due to the timing and cost considerations outlined below in Appendix A to these submissions. In addition, CELA submits that the

[27] CELA notes that draft regulatory language has been included in another recent Environmental Registry posting in order to facilitate public consultation under the *EBR* about potential changes to Regulation 903 (Wells): see https://ero.ontario.ca/notice/013-1513. We are therefore unclear why the MNRF has failed or refused to disclose the draft text of its proposed changes to O.Reg. 244/97.

[28] *Supra*, footnote 5, page 181.

proponents' reports should be easily accessible for public review (e.g. either upon request to MNRF staff or by web-posting).

2. As noted above, CELA is concerned about the proposal to enable proponents to "self-file" changes to approved site plans for so-called "routine activities." First, aside from the fencing/structure example listed in the ERO notice, the MNRF has not identified the full range of activities that would fall under this broad proposal, nor has the MNRF identified any criteria that would be used to assess whether or not a proposed change is "routine." Second, this "self-file" approach seems to suggest that there will likely be no (or inadequate) public notice/comment opportunities for site plan changes, which is a long-standing systemic problem under the *ARA*. Third, site plans are legally binding statutory instruments, and we are aware of no other instances under Ontario's legislation where proponents of environmentally significant facilities can themselves make unilateral changes to an issued permit, licence or approval. CELA therefore concludes that this questionable proposal should not proceed any further.

3. CELA has the same concerns in relation to the proposal to allow unspecified "low-risk" activities to occur without a licence under the *ARA*. First, there is no definition of "low-risk," nor are there any proposed criteria for assessing the relative risks of on-site activities that otherwise require an approval under the *ARA*. Second, there is no information about precisely which regulatory conditions or standards will be promulgated to govern allegedly "low-risk" activities. Third, even the illustrative example outlined in the ERO notice (e.g. extraction of unquantified "small" amounts of aggregate for personal use) raises a number of serious interpretive questions, and does not address the fact that even small aggregate operations can cause environmental or nuisance impacts. Accordingly, CELA concludes that this unwarranted "permit-by-rule" approach should not be pursued by the MNRF.

4. While the MNRF proposes to "clarify" requirements for site plan amendment procedures, it has not specified what the new or amended requirements will entail. This paucity of information makes it difficult to comment on this proposal. At the very least, CELA submits any new requirements must include meaningful opportunities for public review/comment before the MNRF renders its decision on proposed amendments.

5. We have similar concerns about the proposed "streamlining" of compliance reporting obligations under the *ARA*. For example, no particulars have been offered by the MNRF to describe which reporting duties will be altered, reduced or removed. Moreover, given the day-to-day demands and other duties placed upon local MNRF staff, CELA concludes that the current self-reporting of proponent non-compliance should be maintained, particularly since self-reporting is addressed (if not encouraged) in the *ARA*.[29]

6. The proposal to "review" existing requirements for new site applications is also plagued by a complete lack of detail about exactly what, if anything, that the MNRF is proposing to change. We are particularly concerned about the apparent intent to review "notice and consultation" requirements under the *ARA*. On this point, CELA submits that the minimum

[29] *ARA*, subsection 12(2).

standards for public engagement on new site applications have been problematic, and that these notice/consultation standards should be strengthened or improved, rather than streamlined or substantially reduced.

7. The ERO notice states that while no changes in aggregate fees are being proposed at the present time, the MNRF nevertheless invites public input on this issue. CELA submits that such fees (and tonnage royalties) should be increased to better reflect the cost of Ontario's administration of the *ARA* regime, and to make recycled aggregate more cost-competitive with "new" aggregate, as recommended by the 2017 ECO report.[30]

PART III – CONCLUSIONS AND SUMMARY OF RECOMMENDATIONS

For the foregoing reasons, CELA concludes that the Ontario government's proposed changes to the *ARA* and O.Reg.244/97 fail to address long-standing concerns about the adverse environmental, public health and socio-economic impacts of aggregate extraction. Instead, the proposed changes are clearly aimed at making it easier to establish or expand pits and quarries across Ontario.

CELA further notes that the Ontario government has not substantiated the alleged need for its proposals by providing credible, objective and evidence-based justification for these controversial legislative and regulatory changes. However, CELA anticipates that the underlying rationale for these industry-friendly changes is to supply even larger tonnages of new aggregate materials for the additional urban sprawl that is likely to be facilitated by the government's recently proposed changes to the Provincial Policy Statement issued under the *Planning Act*.

From our public interest perspective, these changes do not constitute sound environmental or land use planning policy, and they virtually guarantee the continuation – if not intensification – of intractable land use disputes over new or expanded aggregate operations and their attendant impacts, particularly in relation to water resources.

Moreover, the Ontario government's failure to provide sufficient particulars about how the proposed *ARA* changes will be implemented by the MNRF makes it exceedingly difficult for stakeholders to provide feedback. Similarly, the Ontario's government's apparent decision to proceed with the statutory changes (e.g. by introducing Schedule 16 in Bill 132 in the Ontario Legislature while the public comment period is still underway) is contrary to the public participation rights under Part II of the *EBR*.

Accordingly, CELA makes the following recommendations in relation to the *ARA* amendments and regulatory proposals:

RECOMMENDATION 1: The provincial government should immediately develop and consult Ontarians on appropriate *ARA* changes that decrease aggregate demand, strengthen

[30] *Supra*, footnote 5, pages 175 and 177 to 178.

MNRF powers to protect the environment, and improve rehabilitation rates through better enforcement, as described in the 2017 ECO report.

RECOMMENDATION 2: Environmental Registry notice #019-0556 should be re-posted to establish a further 45 day public comment period, and should be amended to expressly indicate that Schedule 16 of Bill 132 contains the specific text of the *ARA* amendments proposed by the provincial government.

RECOMMENDATION 3: The proposed *ARA* amendments in sections 2, 3, 11 and 18(2) of Schedule 16 in Bill 132 should not be enacted by the provincial government.

RECOMMENDATION 4: Before the provincial government proceeds with any of its proposed regulatory changes, the draft text of the actual regulatory amendments must be posted on the Environmental Registry for public review and comment in accordance with Part II of the *EBR*.

We trust that CELA's recommendations will be duly considered and acted upon by the Ontario government as it continues to consider changes to the current *ARA* regime.

Please contact the undersigned if you have any questions arising from this submission.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Richard D. Lindgren
Counsel

cc. Mr. Jerry DeMarco, Commissioner of the Environment

APPENDIX A:
REHABILITATION OF ABANDONED PITS AND QUARRIES

Prepared by Joseph F. Castrilli, CELA Counsel

In a 2012 submission to the Standing Committee on General Government on the *Aggregate Resources Act* ("*ARA*"), CELA indicated that rehabilitation of the thousands of abandoned pits and quarries in Ontario was taking too long.[31] In the submission of CELA, the problem still persists. In 2017, representatives of the Ontario Aggregate Resources Corporation ("TOARC"), an entity created by the Ontario Ministry of Natural Resources and Forestry ("MNRF") in 1997 to administer the province's rehabilitation program, indicated there were 3,200 abandoned sites that would require rehabilitation and that the program is capable of rehabilitating 30-40 sites per year.[32] By that yardstick alone, it will take 80-106 years to rehabilitate those sites (3,200 divided by 40 = 80 years; 3,200 divided by 30 = 106.6 years). Tables 1 and 2 provide greater detail and illustrate the slow rate of rehabilitation of abandoned pits and quarries in the province whether one relies on TOARC data, or CELA's assessment of that data, which suggests the potential for an even slower timeframe.

Table 1: Number of Years Necessary to Rehabilitate 3,200 Abandoned Pits and Quarries in Ontario

Number of abandoned pit and quarry sites	3,200[33]
Average site size	1.58 hectares (ha)[34]
Number of hectares requiring rehabilitation	5,056 (3,200 x 1.58)
Average cost of site rehabilitation per hectare	$11,700[35]
Funds available to spend on abandoned pit and quarry site rehabilitation per year	$400,000 - $600,000[36]
Number of hectares that can be rehabilitated per year (TOARC assessment)[37]	47.4 ha (based on 30 sites x 1.58 ha of average site size) or 63.2 ha (based on 40 sites x 1.58 ha of average site size)
Number of years necessary to rehabilitate 3,200 abandoned pit and quarry sites in Ontario	**106.67 years** (5,056 number of ha abandoned ÷ 47.4 ha capable of being rehabilitated per year) or **80 years** (5,056 number of ha abandoned ÷ 63.2 ha capable of being rehabilitated per year)

[31] Joseph F. Castrilli and Ramani Nadarajah, Canadian Environmental Law Association, Submissions to the Standing Committee on General Government on the *Aggregate Resources Act*, (May 14, 2012) at 8-11.
[32] Erica Rumbolt, The Ontario Aggregate Resources Corporation, "Rehabilitating Legacy Pits and Quarries Across Ontario", Canadian Reclamation, Issue 1, Vol. 17 (Spring / Summer 2017).
[33] *Ibid.*
[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*
[37] *Ibid.*

Table 2: Number of Years Necessary to Rehabilitate 3,200 Abandoned Pits and Quarries in Ontario

Number of abandoned pit and quarry sites	3,200[38]
Average site size	1.58 hectares (ha)[39]
Number of hectares requiring rehabilitation	5,056 (3,200 x 1.58)
Average cost of site rehabilitation per hectare	$11,700[40]
Funds available to spend on abandoned pit and quarry site rehabilitation per year	$400,000 - $600,000[41]
Number of hectares that can be rehabilitated per year (CELA assessment)	34.2 ha (based on $400,000 available per year ÷ $11,700 average cost per ha) or 51.3 ha (based on $600,000 available per year ÷ $11,700 average cost per ha)
Number of years necessary to rehabilitate 3,200 abandoned pit and quarry sites in Ontario	**148 years** (5,056 number of ha abandoned ÷ 34.2 ha capable of being rehabilitated per year) or **98.6 years** (5,056 number of ha abandoned ÷ 51.3 ha capable of being rehabilitated per year)

CELA suggests that Table 2 is the more accurate assessment of the number of years it will take to rehabilitate 3,200 sites because TOARC indicates that "the average amount available for rehabilitation projects ranges from $400,000 to $600,000 each year".[42] Because of that monetary limitation, it might be possible for TOARC, if it had $600,000 annually, to rehabilitate 30 sites per year because it would cost $554,580 to do so (30 sites x 1.58 ha per site = 47.4 ha x $11,700 per ha = $554,580). However, it certainly would not be possible for TOARC to rehabilitate 40 sites per year because that would cost $739,440 to do so (40 sites x 1.58 ha per site = 63.2 ha x $11,700 per ha = $739,440). If TOARC only received $400,000 in a year for rehabilitation, it would only be able to rehabilitate 21.6 sites ($400,000 ÷ $11,700 = 34.2 ha ÷ 1.58 ha per site = 21.6 sites). Accordingly, the better view is that at its current pace of rehabilitation, TOARC may be looking at almost 150 years to rehabilitate all existing abandoned pit and quarry sites in Ontario. As CELA noted in its 2012 submission: "By any benchmark, a program, the potential success of which can only be measured in centuries, is not a program the Ontario legislature, the public, the regulated community, or regulators can have confidence in".[43] In CELA's submission, that view is still valid today, particularly because in 2006, the MNRF estimate of the number of sites that were candidates for rehabilitation was only 2,700.[44]

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[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid.*
[43] *Supra* note 31, at 10.
[44] *Ibid*. referring to footnote 27 therein being an estimate from a 2006 MNRF publication.

Furthermore, the legacy of abandoned pits and quarries will not only take a long time to clear up, it will also be costly. Table 3 illustrates the potential costs.

Table 3: Potential Costs of Rehabilitating Abandoned Pits and Quarries in Ontario

Number of abandoned pits and quarries	Costs
3,200	**$59,155,200** (based on 5,056 ha requiring rehabilitation x $11,700 rehabilitation cost per ha)

In 2012 that estimate was approximately $52 million based on 2,700 sites and only 4,563 ha requiring rehabilitation.[45]

As CELA suggested in 2012, the place to start in crafting a solution to the problem is with a realistic re-evaluation of the adequacy of the legislative framework on rehabilitation, and fee limits contained in the regulations, coupled with a credible timeframe for clearing up the backlog of abandoned sites. The goal of such reforms today, as it was in 2012, is to achieve the complete rehabilitation of abandoned pits and quarries in a few decades, not centuries.[46]

[45] *Supra* note 31, at 11.
[46] *Ibid*.