Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

CELEBRATING 50 Years 1970 - 2020 OF ENVIRONMENTAL PROTECTION

February 24, 2022

VIA email
Cathy Curlew
NDMNRF - RPDPB - Resources Development Section
300 Water Street
2nd Floor South Tower
Peterborough, ON K9J 3C7

Dear Ms. Curlew:

Re: ERO NOTICE # 019-4801 –PROPOSED REGULATORY CHANGES FOR THE BENEFICIAL REUSE OF EXCESS SOIL AT PITS AND QUARRIES IN ONTARIO

On behalf of the Canadian Environmental Law Association (CELA), I am writing to provide comments to the Ministry in relation to the Environmental Registry notice[1] that proposes significant changes in the current *Aggregate Resources Act* ("ARA") regime for the "beneficial reuse of excess soil at pits and quarries in Ontario."

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. CELA lawyers frequently represent clients involved in quarry hearings under the ARA, *Planning Act*, and other applicable statutes. 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. Therefore, on the basis of our decades-long involvement in aggregate matters at the local, regional and provincial level throughout Ontario, CELA submits that the sparse information contained within the above-noted ERO notice is not sufficient to fully understand or comment on the proposed regulatory changes.

In particular, CELA notes that the ERO posting was not accompanied by a draft copy of the proposed regulation for consultation purposes. However, our understanding is that the current proposal is intended to ensure that the cleanest fill goes below the water table for rehabilitation

[1] See https://ero.ontario.ca/notice/019-4801#supporting-materials

purposes. This overall intention appears laudable in theory since it would assist in protecting ground water resources. However, the "devil is in the details" and the precise regulatory language in this case will likely be technical and complex in nature. Without access to the draft regulation, it is exceptionally difficult (if not impossible) for the public to provide meaningful comments on the substance of this proposal.

In addition, CELA submits that if worked-out quarry land (other than Crown land) is going to be put back into agricultural production (i.e., food crops) as an after-use, then it is imperative to ensure that the upper layer of fill is also tested and found to be clean enough for this sensitive land use. Moreover, it appears from the ERO notice that the Ministry intends to rely upon aggregate operators to hire their own "qualified persons" to determine the acceptability of large quantities of fill to be placed below the water table. If utilized, this controversial "self-policing" approach will need to be accompanied by announced and unannounced inspections under the ARA by Ministry staff to ensure compliance with regulatory requirements and provincial standards.

More generally, CELA, through its previous submissions to the Ontario government, has continued to express concern about the dismal rate of progressive and final rehabilitation of quarries throughout Ontario. Our concerns are also shared by the former Environmental Commissioner of Ontario (ECO) in her annual reports to the Ontario Legislature.[2] For example, CELA's submission dated November 4, 2019 explains in detail how the government needs to immediately work on ARA changes aimed at improving the frequency and efficacy of rehabilitation activities, including through better enforcement.[3]

For the foregoing reasons, CELA recommends that the public comment on the proposed regulatory changes should be extended by at least 60 days and that the ERO notice should be updated and re-posted to include a draft copy of the actual proposed regulatory amendments. In our view, these steps are necessary to allow Ontarians to meaningfully participate in the Ministry's decision-making, pursuant to Part II of Ontario's *Environmental Bill of Rights, 1993*.

Sincerely,

MANEKA KAUR
Student-at-Law
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

[2] See https://www.auditor.on.ca/en/content/reporttopics/envreports/env17/Good-Choices-Bad-Choices.pdf
[3] See https://cela.ca/wp-content/uploads/2019/11/CELA-Response-ARA-proposals.pdf